

# Study Guide

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## International Criminal Court

**GalMUN XIX**



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## **Letter from the Presidency**

*Esteemed delegates,*

We are beyond honored to welcome you to this year's edition of GalMUN!

It is with great pleasure that we extend our warmest greetings to you as you embark on your journey in the realm of international criminal law. This is a unique opportunity to put your skills of debate and persuasion to the test as the case at hand entails the responsibility of resolving an issue with profound historical implications. Throughout the conference, you will have to prove a deep understanding of the case but also use a bit of creativity at times.

Regarding the document at hand, we have provided you with comprehensive information that is meant to help you gain a better understanding of the case: The Prosecutor v. Ratko Mladić. We strongly advise you to thoroughly read it and take in all the information; however, the Study Guide is only the first step in documenting yourself on the matter. We highly encourage you to deepen your research process in order to further prepare yourself for the conference.

All in all, we believe the position you have been given will enable you to showcase your abilities to their fullest potential and foster unexpected personal development.

With that being said, we cannot wait to see you there!

*Kindest regards,*

*Ioana Ștefănescu and David-Antonio Gheorghiu*

*Presidents of the GalMUN International Criminal Court*

## Introduction to the Court

The Case of Ratko Mladic was, in reality, not tried at the International Criminal Court, however, for the purpose of simplifying certain procedures that would better fit this simulation, this Committee has received its name as such. In reality, the Court responsible for Mladic's case and many others related to the Yugoslav Wars was the International Criminal Tribunal for the Former Yugoslavia (ICTY), a tribunal whose documents and statutes represent the basis of this committee. Accordingly, in all substantive and procedural issues, in the applicability of law, etc, this court will be treated as the ICTY, adhering to its Statute and Rules of Procedure and Evidence. Thus, when looking at legal documents, the order of applicability in accordance with the Concurrent Powers Principle will be: Statute of the International Criminal Tribunal for the former Yugoslavia, International Treaties and customary law, and finally, Municipal Law.<sup>1</sup>

## Founding

Established by the UNSC on May 25th, 1993, the International Criminal Tribunal for the Former Yugoslavia (ICTY) was an *ad hoc* court located in the Hague. The ICTY was dedicated to indicting war criminals of the Yugoslav wars. As one of the three main international tribunals in recent history, the others being the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL). The ICTY played a major role in shaping global efforts to hold perpetrators of war crimes and crimes against humanity responsible. The ICTY is the first tribunal established for the purpose of punishing violations of international humanitarian law since the post-World War II trials and is a unique case study in the realm of international criminal justice. It is also the first criminal tribunal set up under Chapter VII of the United Nations Charter (a technique utilized subsequently in setting up the tribunals in Rwanda and possibly Sierra Leone) and has been granted broad powers of drafting and amending its own Rules of Procedure and Evidence, which is something that sets it aside from other criminal jurisdictions, including the ICC.

The ICTY is the predecessor to the International Criminal Court (ICC), and lessons learned in the time of the Court's activity (Activity seized with the conviction of Ratko Mladic in 2017,

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<sup>1</sup> Boas, Gideon. "Comparing the ICTY and the ICC: Some Procedural and Substantive Issues." *Netherlands International Law Review* 47, no. 3 (2000): 267-91. <https://doi.org/10.1017/S0165070X00000991>.

it being the last case to be tried) were applied in the establishing of the ICC and in the signing of the Rome Statute.

## Functions

The ICTY is comprised of 3 bodies: The Chambers, The office of the Prosecutor, and The Registry.

There are 4 total Chambers, in effect courtrooms. Three are for regular trials and one is reserved for appeals, our simulation happens in one of the former Chambers.<sup>2</sup> For the purposes of the simulation, the Court will allow up to 9 judges instead of 3. The jurisdiction of the Court, as specified in Article 1, is over Grave Breaches of the Geneva Convention of 1949 (Article 2), Violations of the laws or customs of war (Article 3), Genocide (Article 4), and Crimes against humanity (Article 5) committed within the territory of the former Yugoslavia.<sup>3</sup>

The Prosecution Division is responsible for all aspects of preparation and presentation of prosecution cases at trial. Each case is handled by a multidisciplinary team of lawyers, investigators, analysts, and support staff.<sup>4</sup> In accordance with Civil Law practices, the Prosecution must also immediately share information that might result in an acquittal of the Defendant.<sup>5</sup>

The office of the Registry, with its head, the Registrar is akin to the United Nations Secretariat: It deals with budgetary issues, logistics, including witnesses and witness protection, translation, record keeping, etc.<sup>6</sup>

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<sup>2</sup> 'Organizational Chart | International Criminal Tribunal for the Former Yugoslavia'. Accessed 5 March 2024. <https://www.icty.org/en/about/tribunal/organisational-chart>.

<sup>3</sup> UN Security Council, *Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 7 July 2009)*, -, 25 May 1993, <https://www.refworld.org/legal/constinstr/unsc/1993/en/30367> [accessed 05 March 2024]

<sup>4</sup> 'Organizational Chart | International Criminal Tribunal for the Former Yugoslavia'. Accessed 5 March 2024. <https://www.icty.org/en/about/tribunal/organisational-chart>.

<sup>5</sup> Boas, Gideon. "Comparing the ICTY and the ICC: Some Procedural and Substantive Issues." *Netherlands International Law Review* 47, no. 3 (2000): 267–91. <https://doi.org/10.1017/S0165070X00000991>.

<sup>6</sup> 'Organizational Chart | International Criminal Tribunal for the Former Yugoslavia'. Accessed 5 March 2024. <https://www.icty.org/en/about/tribunal/organisational-chart>.

## Introduction to the Case

### Background

1980 marked a crucial year for Yugoslavia, as it faced the death of its long-time ruler, Josip Broz Tito. Tito had led resistance movements in the Balkans during World War II, effectively liberating Yugoslavia, and had become its leader post-war. In 1974, he became the unchallenged leader of the country and effectively served as its sovereign until his death in 1980. Tito himself described Yugoslavia as “one country which has two alphabets, three languages, four religions, five nationalities, six republics, surrounded by seven neighbors, a country in which eight ethnic minorities live” and he was not exaggerating. Yugoslavia was an extremely divided nation, and while Tito could hold the country together with his unparalleled authority, cracks began to show following his death.

In Tito's absence, the country turned to a rotating presidency system. Yet, without a unifying figure, individuals such as Milosevic and Tadjman began fueling nationalist sentiments in Yugoslavia's various republics, and with an increase of nationalism in many of the country's minorities, the country moved closer and closer to a division. It did not help that on top of Yugoslavia's government army, the republics had their own armed forces as well.

Adding to the division was the conflict between reformists and conservatives. Reformists demanded economic restructuring, increasing the autonomy of the republics. Conservatives favored maintaining strict control over both the republics and the economy.

As discussions about economic reform began to get off the ground, economic disparities within Yugoslavia led to regional tensions as well. Richer republics, like Slovenia and Croatia, demanded that the poorer republics take the brunt of the reforms, arguing that the poor republics had mismanaged their economies, and thus needed to reform. While the poorer republics argued that the pressure of the reform should be applied to everyone equally since they were all part of the same country. When it became apparent that these discussions were getting fruitless, calls for independence began to gain momentum within Slovenia and Croatia. Gradually, nationalism began to rise in other republics as well, and without a strong central government to reconcile these nationalist aspirations with the Yugoslav identity, the breakdown of the federation became increasingly unpreventable.

With the collapse of the Eastern Bloc in the early 1990s, Yugoslavia faced unprecedented change. In 1990, multiparty elections across the republics saw nationalist parties gain power in Croatia and Slovenia, leading to both declaring independence in 1991. This declaration immediately sparked conflicts with the Krajina Serbs and a brief conflict with the Yugoslav army. The conflict was quick, however, and Slovenia and Croatia's independence soon became unopposed.

Bosnia tried to follow their path. However, Bosnia's declaration was marked with a much more difficult path. Ethnic tensions immediately erupted into The Bosnian War, characterized by ethnic cleansing and atrocities such as the Srebrenica Massacre. It was under this setting that Mladic became involved, and it was for alleged crimes in this conflict, and the conflicts which followed, that Mladic was indicted.

Ratko Mladić, a professional soldier, gained recognition as a Bosnian Serb army commander at that time. As tensions intensified, Mladić became a fundamental figure within the Bosnian Serb leadership and played a crucial role in military actions against Bosniak (Bosnian Muslim) and Bosnian Croat troops, as well as against the civilian population.

The initial phase of the conflict in the late spring of 1992 unfolded with a very similar pattern in the various municipalities claimed as part of the Bosnian-Serb Republic. The Bosnian-Serb forces initiated assaults on towns and villages inhabited by Bosnian Muslims and Bosnian Croats. Some of the residents were killed, while the majority were forcibly expelled from their homes and municipalities. Numerous individuals were arrested and brought to detention camps, established in locations such as school buildings and factories. The detainees endured deplorable conditions throughout the summer, often being transferred out of their municipality under the pretense of prisoner exchanges.

With regard to the second phase of the conflict, the Bosnian-Serb army, in particular the Sarajevo-Romanija Corps, deliberately shelled and sniped the civilian population of Sarajevo, often at places that had little or no military value.

The most controversial event linked to the Mladic's command was the Srebrenica massacre, which took place between 6 and 11 July 1995, the town of Srebrenica was captured by the Bosnian Armed Forces, even though it was supposed to be a United Nations Safe Area.

Consequently, they embarked on a genocidal rampage, murdering over 8,000 Bosniak men and boys during the following three months.

Thousands of Bosnian-Muslim civilians, notably women, children, and the elderly, fled to Potočari to seek shelter in a compound used by the UN Protection Force. Meanwhile, the majority of men opted to escape the enclave on foot, aiming to reach Tuzla, which was controlled by the Bosnian-Muslim side of the conflict. These many thousand men traveled together in one long column. Between 12 and 14 July 1995, the Bosnian-Serb army and police organized the evacuation of approximately 25,000 Bosnian Muslims, predominantly women, children, and the elderly, from the Srebrenica enclave to areas under the control of the Bosnia-Herzegovina army. Meanwhile, men and boys, as young as 12 years old, were separated and detained in temporary detention facilities alongside others captured from the column. Subsequently, these men and boys were transported to execution sites in Srebrenica, Bratunac, and Zvornik, where they were killed.

During some weeks in May and June 1995, the Bosnian-Serb army officers and soldiers together with the Bosnian-Serb police arrested and detained hundreds of United Nations personnel. Some of them were tied or handcuffed at locations of strategic military importance for the army.

In the aftermath of the conflict, attempts were undertaken to convict those responsible for war crimes, crimes against humanity, as well as genocide. In July 1995, Ratko Mladic was indicted by the ICTY for his alleged participation in crimes such as genocide, extermination, murder, and other war crimes. Nevertheless, Mladić had been on the run for over a decade and despite the intensive operation to arrest him abroad, he managed to escape.

Eventually, in May 2011, Ratko Mladić was arrested in Serbia after a long search and was brought to The Hague in The Netherlands in order to stand trial for the allegations against him.

## The Case

The ICTY Prosecutor filed two separate indictments against Ratko Mladić on July 24 1995 and November 15 1995 respectively. These indictments were joined into one on April 28, 2000. Mladic was a main military leader in the Bosnian-Serb Republic throughout the Bosnia-Herzegovina military conflict in the 1990s. The first indictment was presented during the most brutal phases of the Bosnia-Herzegovina conflict, the second indictment followed later that year to cover the events that took place in Srebrenica in July that year, after the first indictment had been filed.

Mladic was charged for his capacity as Commander of the Main Staff in the Bosnian-Serb Army. Throughout the war, he held the highest military position in the republic and reported directly to his president, Radovan Karadžić. In the Indictment, the Prosecution alleged that Mladic was individually responsible for having committed, planned, instigated, ordered, and aided, and abetted the alleged crimes, pursuant to Article 7(1) of the ICTY Statute. The Prosecution charged Mladić with 11 counts of genocide, crimes against humanity, and violations of the laws and customs of war, pursuant to Articles 3 through 5 of the Statute.

The crime base in the case is divided into four parts, corresponding to four joint criminal enterprises (JCE).

The concept of Joint Criminal Enterprise is a legal concept used during war criminal tribunals to prosecute members for crimes that they were involved in as part of a group, even if they themselves were not physically committing the crimes. In cases of JCE, individuals could be held responsible for a crime if they have actualized, permitted, or encouraged crimes, without having directly executed (or without having been proven to have directly executed) the crimes. In order to establish that an individual was involved in a JCE, the Indictment needs to prove that the alleged JCE has met three criteria: the plurality of persons, the existence of a common aim, and participation and design or purpose of the individual in the actualization of the common aim.

The first part of the case was about crimes committed in 15 municipalities in the Bosnian-Serb Republic. Mladic, suspected to be an integral part of the first JCE, was allegedly involved in the execution of the JCE's objective of the permanent removal of

Bosnian Muslim and Bosnian Croats from the Bosnian-Serb claimed territories. Throughout the process, Mladic allegedly carried out, amongst other crimes, forced deportation, persecution, and other inhumane acts of forcible transfer, all of which were crimes against humanity.

The second part of the case concerned crimes allegedly committed in Sarajevo, where the Indictment claimed that Mladic participated in a JCE which had the objective of spreading terror among the civilian population of Sarajevo. Their tactics allegedly involved a campaign of frequent shelling and sniping.

The third part of the case, corresponding to the third JCE, concerned crimes committed in and around the region of Srebrenica in July of 1995. Here, Mladic was alleged to have participated in the elimination of the Bosnian Muslim population in Srebrenica.

The fourth and final part of the case, corresponding to the fourth JCE, alleged that Mladic took part in the act of taking hostage UN personnel to compel NATO to abstain from carrying out airstrikes against Bosnian-Serb military targets.

The Indictment against Mladić covers a time period of about three and a half years and geographically major parts of the territory claimed as the Bosnian-Serb Republic. The number of alleged victims in the case was in the tenth of thousands. A scope rarely rivaled in international law.

On 24 February 2014, the Prosecution ended presenting its evidence and witnesses and 2 months later, on 15 April 2014, the Trial Chamber issued an oral decision dismissing the motion for acquittal filed by Mladić. On 19 May 2014, the Defense opened its case, offering relevant evidence and witnesses who testified in support of Mladić and closed it on 16 August 2016. The pronouncement of the judgment took place on 22 November 2017.

## **Applicable Law**

The Statute of the International Criminal Tribunal for the Former Yugoslavia (herein the Statute) will have precedence over any other piece of international customary law. The Statute numbers 34 Articles. However, of particular relevance to the Trial are:

- Article 1
- Article 2
- Article 3
- Article 4
- Article 5
- Article 6
- Article 7
- Article 8
- Article 9

In regards to crime definitions and jurisdictions:

- Article 15
- Article 20
- Article 21
- Article 23
- Article 24
- Article 26

In regards to particular procedures, the Court may take during debate. [citation needed]

However, the Statute alone may not be sufficient to satisfy Proceedings. In this case, the following are applicable as long as they are not in conflict with the Statute:

- Convention on the Prevention and Punishment of the Crime of Genocide, New York, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277.
- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, United Nations, Treaty Series, vol. 75, p. 31.

- Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, Geneva, 12 August 1949, United Nations, Treaty Series, vol. 75, p. 85.
- Geneva Convention relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, United Nations, Treaty Series, vol. 75, p. 135.
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, United Nations, Treaty Series, vol. 75, p. 287.
- International Covenant on Civil and Political Rights, New York, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.
- Rome Statute of the International Criminal Court, Rome, 17 July 1998, United Nations, Treaty Series, vol. 2187, p. 3. [second citation needed]

Lastly, if not in conflict with any of the above, elements of the Municipal Law of the former Yugoslavia are allowed.

## **Legal Questions**

Because the defendant did not *directly* commit any of the crimes of which he is accused; the most important question of the case will be establishing the nature of his connection to these crimes and his individual criminal responsibility (pursuant to Art. 7 of the Statute). In other words, his involvement in the JCEs.

Another question of the case is the existence of JECs, that they had established criminal goals, and that they actually succeeded and committed said crimes.

Lastly, and possibly a point of contention, is whether or not said crimes meet their definitions in (This order of applicability) the Statute and/or the Geneva Conventions.

## **The Memorial**

### **I. Statement of the Facts**

In the initial section of the Memorial, each party shall recount the sequence of events from their perspective. During this phase of the Memorial, the statements should be impartially written, devoid of arguments, as the process of argumentation is reserved for the subsequent chapters.

### **II. Statement of the Applicable Law**

In the second phase of the Memorial, the Advocates of the Prosecutor are expected to outline the Articles that they believe the Defence has violated, while the Advocates of the Defence must provide the Court with all the applicable legal provisions to substantiate their claim of non-violation by their defendants.

**Note!** In this part of the Memorial, the Advocates are not required to explain the reasons behind their belief that the Law was violated or the rationale for their party's non-infringement.

### **III. Claims and arguments supporting the claims**

In this third chapter of the Memorial, the Advocates of each party must expand upon the observed irregularities in the opposing party. Furthermore, each claim should be backed by factual and indisputable evidence; otherwise, it will be susceptible to counterarguments from the Advocates of the opposing party.

### **IV. Desires and Proposals**

In this concluding phase of the Memorial, the Advocates of each party must express their desires regarding the judgment of the Court, adhering to the precise terms advised by the Court.

**Together with the Memorial, the Presidency needs to receive a list of witnesses from the Advocates and the evidence both parties use to support their claims.**

**The Advocates have to find Stipulations - facts and events both parties agree on - and present them to the Presidency.**

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Comprehensive Collection on all Case files including the Judgement, Trial Chamber Orders, Motions and Transcripts: <https://ucr.irmct.org/scasedocs/case/IT-09-92#eng>

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