

Annex A

Public

Prosecution’s reference list for hearing in the case ICC-02/04-01/15:

Prosecutor vs. Dominic Ongwen

14 February 2022

- A. The burden and standard of proof applicable to defences excluding criminal responsibility (article 31 of the Statute)**
- A1 ICC-01/04-01/06-3121-Red A05 (“[Lubanga AJ](#)”), para. 22; ICC-01/05-01/13-2275-Red (“[Bemba et al. AJ](#)”), para. 96; , ICC-01/04-02/06-2666-Red A01 A02 (“[Ntaganda AJ](#)”), para. 37; ICC-01/04-02/12-271-Corr (“[Ngudjolo AJ](#)”), para. 125.
- A2 ICC-02/04-01/15-1762-Red (“[Trial Judgment](#)”), para. 228; [Ngudjolo AJ](#), para. 109; Schabas/McDermott, “Article 66” in O. Triffterer and K. Ambos (eds.), *The Rome Statute of the International Criminal Court: a Commentary*, 3rd Ed. (München/Oxford/Baden Baden: C.H. Beck/Hart/Nomos, 2016), p. 1645, mn. 26 (or 4th Ed., p. 1961, mn. 26).
- B. Mental disease or defect as a ground excluding criminal responsibility**
- B1 *Oxford English Dictionary*, “destroy, v.”
- B2 *Prosecutor v. Zejnir Delalić, Zdravko Mucić, a.k.a. “Pavo”, Hazim Delić & Esad Landžo, a.k.a. “Zenga”, IT-96-21-A, App.Ch., Judgment, 20 February 2001* (“[Čelebići AJ](#)”), para. 587; S. Janssen, ‘Mental condition defences in supranational criminal law,’ [2004] 4 *International Criminal Law Review* 83 (“Janssen”), p. 87; A. Eser and K. Ambos, ‘Article 31: grounds for excluding criminal responsibility,’ in K. Ambos (ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary*, 4th Ed. (München/Oxford/Baden Baden: C.H. Beck/Hart/Nomos: 2022) (“Eser and Ambos”), p. 1361 (mn. 24).
- B3 [Čelebići AJ](#), para. 594.
- B4 M. Scaliotti, ‘Defences before the International Criminal Court: substantive grounds for excluding criminal responsibility – Part 2,’ [2002] 2 *International Criminal Law Review* 1 (“Scaliotti”), pp. 23-26; P. Saland, ‘International criminal law principles,’ in R. S. Lee (ed.), *The International Criminal Court—the Making*

of the Rome Statute: Issues, Negotiations, Results (The Hague: Kluwer, 1999), pp. 206-207.

- B5 P. H. Robinson, ‘The effect of mental illness under US criminal law,’ [2014] 65(2) *Northern Ireland Legal Quarterly* 229 (“Robinson”), p. 230.
- B6 *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, App.Ch., [Judgment](#), 5 July 2001, para. 70. *See also e.g.* A. Cassese *et al.*, *Cassese’s International Criminal Law*, 3rd Ed. (Oxford: OUP, 2013), p. 225 (referring to *Stenger*).
- B7 M. Bohlander, *The German Criminal Code: a Modern English Translation* (Oxford: Hart, 2008), p. 42 (ss. 20-21); M. Bohlander, *Principles of German Criminal Law* (Oxford: Hart, 2009), pp. 131-132; B. Krebs, ‘Justification and excuse in article 31(1) of the Rome Statute,’ [2013] 2(3) *Cambridge Journal of International and Comparative Law* 382(“Krebs”), pp. 386, 389; Janssen, p. 84; Scaliotti, p. 19 (fn. 104); [Čelebići AJ](#), para. 588 (fn. 986); [Criminal Code of Italy](#), arts. 88-89; [Criminal Code of Spain](#), arts. 20(1), 21; [Criminal Code of Peru](#), arts. 20(1), 21.
- B8 Law Commission of England and Wales, *Criminal Liability—Insanity and Automatism: a Discussion Paper*, 23 July 2013, paras. 1.20-1.21 (“total”), 1.87 (“complete”), 1.93 (“wholly”), 2.35, 3.1-3.3, 3.29, 4.1, 4.4, 4.6, 4.18, 4.78, 4.81, 4.124, 4.126, 4.160, 10.2, 10.8; *Bagatenda v. Uganda*, Criminal Appeal No. 10 of 2006, p. 10 (citing Ugandan Penal Code, s. 11); S. Yeo, ‘The insanity defence in the criminal laws of the Commonwealth of Nations,’ [2008] *Singapore Journal of Legal Studies* 241, p. 263; *see further* 243-244, 248-249, 258.
- B9 Robinson, pp. 231-232.
- B10 *See* ICC-02/04-01/15-1952 (“[Prosecution Response to Amici Curiae](#)”), paras. 12-16.
- B11 *See e.g.* ICC-01/11-01/11-695-AnXI OA8 (“[Gaddafi Admissibility AD Judge Ibáñez Carranza Sep. Op.](#)”), paras. 44, 48-53, 55, 58-60, 105-106; IACtHR, *Velásquez-Rodríguez v. Honduras*, [Judgment](#), 29 July 1988 (Merits), para. 166; IACtHR, *Almonacid Arellano et al. v. Chile*, [Judgment](#), 26 September 2006 (Preliminary Objections, Merits, Reparations and Costs), para. 110. *See also* L.

Burgorgue-Larsen and A. Úbeda de Torres, *The Inter-American Court of Human Rights: Case Law and Commentary* (Oxford: OUP, 2011), pp. 705-709, 713-715.

C. Duress as a ground excluding criminal responsibility

- C1 Eser and Ambos, p. 1373 (mn. 51); K. Ambos, *Treatise on International Criminal Law, Volume I: Foundations and General Part*, 1st Ed. (Oxford : OUP, 2013) (“Ambos (2013)”), p. 358; S. Aktypis, in J. Fernandez et al., *Statut de Rome de la Court Pénale Internationale Commentaire Article par Article* (Editions Pedone, 2012) (“Aktypis”), p. 924; ICC-02/04-01/15-422-Red (“[Confirmation Decision](#)”), para. 153; ICC-02/04-01/15-1882-Conf (“[Prosecution Response to Conviction Appeal](#)”), paras. 308-311.
- C2 Ambos (2013), p. 357; Eser and Ambos p. 1373 (mn. 51); R. Cryer et al., *An Introduction to International Criminal Law and Procedure* (CUP, 2014) (“Cryer et al.”), p. 408; *Oxford English Dictionary*, “threat, *n.*”
- C3 W. Nortje and N. Quéniéver, *Child Soldiers and the Defence of Duress under International Criminal Law* (Palgrave Macmillan, 2020) (“Nortje and Quéniéver”), p. 64; Eser and Ambos, p. 1374 (mns. 54-55); Ambos (2013), p. 359; Cryer et al., p. 408; [Krebs](#), p. 409.
- C4 Eser and Ambos, p.1375 (mn. 57); Nortje and Quéniéver, p. 64; Cryer et al., p. 408.
- C5 Eser and Ambos, p.1376 (mn 59); Nortje and Quéniéver, p. 124; Ambos (2013), pp. 359-360; Aktypis, p.925; G. Werle, *Principles of International Criminal Law*, 1st Ed. (T.M.C. Asser Press, 2005), p. 147 (mn. 430).