

**ANNEX C**

**PUBLIC**

## LIST OF AUTHORITIES

### Cumulative Convictions – *Ne bis in idem* principle

1. Report of the International Law Commission on the work of its forty-fifth session (3 May-23 July 1993), UN Doc [No. A/48/10](#), p. 121 :

*Article 45. Double jeopardy (non bis in idem)*

*“(1) The principle of ne bis in idem, sometimes referred to as the prohibition against double jeopardy, is a fundamental principle of criminal law. This principle is recognized in article 14, paragraph 7, of the International Covenant on Civil and Political Rights which states that “No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.*

*(2) The provision recognizes this principle with respect to the Court. It is also inspired by article 10 of the Statute of the International Tribunal created by the Security Council for crimes committed in the former Yugoslavia, with minor modifications to take account of the possibility of a previous trial in another international court or tribunal.*

*(3) The prohibition on subsequent trials under paragraph 1 applies only where the Court has actually exercised jurisdiction and made a determination on the merits with respect to the particular acts constituting the crime”.*

2. Report of the International Law Commission on the work of its forty-sixth session 2 May-22 July 1994, UN Doc [No. A/49/10](#), pp. 117-118 :

*“[...] The non bis in idem principle applies both to cases where an accused person has been first tried by the International Criminal Court, and a subsequent trial is proposed before another court, and to the converse situation of a person already tried before some other court and subsequently accused of a crime under the Statute. In both situations, the principle only applies where the first court actually exercised jurisdiction and made a determination on the merits with respect to the particular acts constituting the crime, and where there was a sufficient measure of identity between the crimes which were the subject of the successive trials”.*

3. Draft Statute for an International Criminal Court - Alternative to the ILC-Draft - (Siracusa-Draft) prepared by a Committee of Experts, Siracusa/Freiburg, 1 July 1995, p. 63 (document not available in Legal Tools or online, but available in the paper collection of the Preparatory Works) :

*“The U.S. constitutional prohibition of double jeopardy prohibits the prosecution from appealing acquittals. The prohibition is not against being twice punished, but against being twice forced to stand trial for the same offense. There are two important rationales for the rule. One rationale is that the trial itself is a great ordeal, and once the defendant is acquitted, the ordeal must end. See *U.S. v. Ball*, 163 U.S. 662, 669 (1896). The other is based on the increased risk of an erroneous conviction that may occur if the state, with its superior resources, were allowed to retry an individual until it finally obtained a conviction. See *Green v. United States*, 355 U.S. 184, 187-188 (1957) and *United States v. DiFrancesco*, 449 U.S. 117, 130 (1980). These rationales are*

*just as applicable to prosecution before an international criminal court as to domestic prosecutions. The ICC Prosecutor, together with State authorities assisting the Prosecutor, will have the full resources of the court and several interested States behind it, while defendants and their counsel will be acting alone to refute guilt”.*

4. International Commission of Jurists, [Third ICJ Position Paper](#), 1 August 1995, pp. 26 and 29-30 (International Commission of Jurists) :

*“Also important to the issue of complementarity is the principle of non bis in idem, or “double jeopardy”, which means that no person shall be tried twice for the same crime. [...] Some countries have expressed concern that their national jurisdiction will be adversely affected by the provisions [concerning non bis in idem] of the Revised Draft Statute. It is the position of the ICJ that the Revised Draft Statute poses no such threat to the jurisdiction of national tribunals. The Court is meant to complement national courts, and to neither replace nor review them. Where competent national authorities, following ordinary procedures, conduct an investigation, there will be no need for the International Criminal Court to act”.*

5. ILC Draft Statute for an International Criminal Court with Suggested Modifications (Updated Siracusa-Draft) prepared by a Committee of Experts for consideration by the Preparatory Committee on the Establishment of a Permanent International Criminal Court pursuant to General Assembly Resolution A/Res 50/46 (18 December 1995), 15 March 1996, p. 102 (document not available in Legal Tools or online, but available in the paper collection of the Preparatory Works) :

*“The Constitutions or laws of most States, and general principles of international law prohibit double jeopardy. Many legal systems preclude the prosecution from appealing acquittals. The prohibition is not against being twice punished, but against being twice forced to stand trial for the same offenses”.*

6. [Memorandum by the ICTY President to the Members of the Preparatory Committee on the Establishment of an International Criminal Court](#), 22 March 1996, paras. 27-28 :

*“Article 9 of the Statute provides that the International Tribunal and national courts shall have concurrent jurisdiction over the crimes within the jurisdiction of the International Tribunal, but that the International Tribunal shall have primacy over national courts. This situation may lead to repeated prosecutions of the same persons for the same conduct. Article 10 of the Statute prohibits such repeated prosecutions, with two exceptions. Paragraph 1 provides that “[n]o person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal.” Paragraph 2 provides that “[a] person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal only if: (a) the act for which he or she was tried was characterised as an ordinary crime; or... (b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted. [...] So far, only Trial Chamber II has addressed this question. It ruled that an investigation proceeding by a national authority leading*

*to an indictment already filed against the accused has not progressed so far that the accused has actually been tried as that term is used in the Statute”.*

7. ICTY, *Prosecutor v. Tadić*, [Decision on Defence Motion on the Principle of non-bis-in-idem](#), Case No. IT-94-1-T, 14 November 1995, para. 9 :

*“The principle of non-bis-in-idem, appears in some form as part of the international legal code of many nations. Whether characterized as non-bis-in-idem, double jeopardy or autrefois acquit, autrefois convict, this principle normally protects a person from being tried twice or punished twice for the same acts. This principle has gained a certain international status since it is articulated in Article 14 (7) of the International Covenant on Civil and Political Rights as a standard of fair trial, but it is generally applied so as to cover only double prosecution in the same State”.*

8. Amnesty International - The International criminal court -Making the right choices – Part -1 AI Index: [IOR 40/01/97](#), 1 January 1997, pp. 72-73 :

*“The prohibition of double jeopardy (non bis in idem) is a fundamental principle of law recognized in international human rights treaties and other instruments, including the ICCPR, the American Convention on Human Rights, Additional Protocol I and the Yugoslavia and Rwanda Statutes. It prohibits only retrials after an acquittal by the same jurisdiction. Therefore, the international criminal court may retry persons when the court of a state has conducted a sham or unfair trial. Nevertheless, to ensure that the international criminal court is an effective complement to national courts, the statute should also preclude retrial by national courts of persons acquitted or convicted by the international criminal court”.*

9. Amnesty International - The International criminal court -Making the right choices - Part II, AI Index: IOR 40/11/97, 1 July 1997, pp. 65-66 (document not available in Legal Tools or online, but available in the paper collection of the Preparatory Works) :

*“Since the prohibition of double jeopardy (non bis in idem) prohibits only retrials after an acquittal by the same jurisdiction, Article 42 appears to be consistent with international standards, but it should also prohibit the court itself from retrying a person after it has issued a final judgment of acquittal or conviction concerning the same crime”.*