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**Panel n°3**

**War Crimes and crimes against humanity in the context of the war in Ukraine**

**ICC – Jurisdiction – International Crimes - Summary**

The International Criminal Court (the “Court”) is a permanent jurisdiction with a universal vocation, unlike other international jurisdictions which have been created for a particular conflict, for a country or for an event. However, the universal vocation of the ICC shall be considered carefully, for instant, the Court is not a universal jurisdiction, it does not have universal jurisdiction, it cannot judge the crimes committed anywhere, anytime and by anyone, but it has the ambition to become universal.

The Court was created by an international treaty; the Rome Statute is an international convention, the Court was therefore created by an agreement of the States Parties. It is the only international jurisdiction created by an agreement between States. The International Tribunals were created by a resolution of the Security Council. They were organs of the United Nations. Hybrid tribunals are, in most cases, created by agreement between the concerned State and the United Nations.

The consequence of creation by a State agreement is that unlike the courts which have always had primacy over national jurisdictions, the Court does not have this primacy. The Court has additional jurisdiction which it will be able to exercise only if States do not exercise their prerogatives as sovereign States in the prosecution of the most serious crimes.

Under Article 5 of the Roma Statute, the Court’s jurisdiction is limited to the most serious crimes of concern to the international community as a whole.

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All international crimes are extremely serious and all are punished with the same sentence which will be determined by circumstances of each case, degree of responsibility and personal characteristics of the accused.

The same act may be qualified as genocide, crime against humanity and war crime. The qualification will depend on the context in which the crime has been committed and author's intent.

### **Genocide**

The genocide is the crime committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. It is defined by the Convention on the Prevention and Punishment of the Crime of Genocide adopted in 1948 by United Nations General Assembly. It is only international crime that has essentially identical definition in different texts regulating international crimes.

Two elements are of the most importance for the qualification of an act as genocide: the intent to destroy and the victim's belonging to one of the following groups: national, ethnical, racial or religious. These elements distinguish genocide from other international crimes.

The intent to destroy must be directed to physical destruction of the group. A part of group can also be targeted, namely the group can be targeted in specific geographical area.

The groups are specifically defined as national, ethnical racial and religious. The attack on any other group like political or social groups is not constitutive of the genocide.

Contrary to some other crimes, like extermination, the number of victims is without any importance for genocide. It can be committed with a sole victim if the victim belongs to abovementioned groups and if he / she was attacked with intent to destroy the group.

The genocide is often qualified as "crime of the crimes". It is without any doubt the most serious crime and shall be reserved to very specific cases where destruction of the group is attempted because the group has specific national, racial, ethnical or religious identity.

### **Crimes Against Humanity**

Contrary to the genocide, the crimes against humanity have not a homogenous definition. In different international texts qualified differently the crimes against humanity. It covers murders, extermination, enslavement, deportation and forcible transfer, imprisonment, rape and other sexual violences, torture, persecution, apartheid and other inhuman acts.

The common characteristic of crimes against humanity is that is committed as part of a widespread or systematic attack directed against any civilian population.

Among all these crimes, the persecution has specific characteristics as it is the only one of crimes against humanity that requires a specific intent, an intent that is close to the genocide intent. However, the persecutory intent is not destruction intent. Moreover, it is not the group that is targeted but the individual having the specific characteristics. Finally the groups that can be targeted are broader than that targeted by genocide. In addition to racial, national, ethnic and religious groups, the persecution can target political, cultural, gender or any other social group.

### **War Crimes**

War crimes can be committed in international or non-international armed conflict. While the same acts will often be qualified as war crimes regardless the international or non-international character of the conflict, their legal definition may differ. The existence of an armed conflict is a necessary condition for war crimes which cannot be committed outside of an armed conflict.

War crimes are also known as Violations of Wars Law and Customs or Violations of Geneva Conventions or Humanitarian Law Violations. In fact they cover violations of War Laws which were established as such in Geneva Convention and its Protocols.

The Article 8 of the ICC Statute regulates war crimes before the ICC. It is very long and its structure is not very clear. It makes distinction between crimes committed in international conflict and those committed in non-international conflict.

While other international crimes target human beings, the war crimes may target buildings vehicles and other material goods.

It is not very clear why the ICC Statute limited the war crimes on those committed as part of a plan or policy or as part of a large-scale commission of such crimes. Customary international law does not have such limitation.

### **Aggression**

The crime of aggression was incorporated in the Statute by an amendment in 2010 and entered into force in 2017 after the amendment was ratified by 30 member States.

The Rome Statute distinguishes the crime of aggression from the act of aggression. It defines the crime of aggression as “*the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations*” (Rome Statute Article 8bis).

In some cases the Prosecutor Office shall firstly ascertain that the United Nations Security Council made a determination of an act of aggression.

The ICC jurisdiction over crimes of aggression is limited. In respect of a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory.

Moreover, the member States may not accept the jurisdiction of the Court for the crime of aggression. If they wish to do so, they only shall inform the Court Registrar that they do not accept the Court jurisdiction for the crime of aggression.