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Promoting Universal Jurisdiction while Evoking the Crimes Committed within Former Yugoslavia

Glossary

Terminology of International Criminal Law

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A

Absolute universal jurisdiction – Jurisdiction to investigate and prosecute a person suspected of committing a serious international crime regardless of their nationality, the nationality of the victim, the location where the offence was committed, or the location of the suspect.

Accession – Is the act whereby a country accepts the offer or the opportunity to become a party to an international treaty already negotiated and signed by other countries.

Aggression – Crime under international criminal law, it is committed when one country uses its armed forces against the sovereignty, integrity, or independence of another country or in violation of the provisions of the Charter of the United Nations.

Amnesty – Mechanism to excuse from criminal responsibility the perpetrators of a crime, generally before prosecution. International law prohibits the applicability of amnesties or similar mechanisms to exonerate alleged perpetrators of genocide, crimes against humanity, gross human rights violations or international crimes from criminal responsibility, or to excuse the state's responsibility to investigate or prosecute those responsible.

Armed conflict – Protracted armed confrontation between the armed forces of States (international armed conflict) or between governmental authorities and organised armed groups or between such groups within a State (non-international armed conflict). Other situations of violence, such as internal disturbances and tensions are not considered to be armed conflicts.

C

Civil party – Person who, in certain legal systems, is considered a victim of a crime and intervenes in the criminal proceedings to participate in the proceedings, bring testimony and evidence to the case, interview and question witnesses, and request reparations (including possible compensation) for the violations they sustained.

Command or Superior Responsibility – Doctrine according to which individuals in superior positions who do not prevent or punish subordinates from committing international crimes may be held individually criminally responsible.

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Complementarity – ICC principle deferring to national prosecutions unless States are unwilling or unable to prosecute genuinely.

Conditional universal jurisdiction – Jurisdiction to investigate and prosecute a person suspected of committing a serious international crime, limited by the requirement of perpetrator presence.

Core International Crimes - War crimes, crimes against humanity, genocide as well as the crime of aggression are considered core international crimes. While the exact scope of these crimes slightly varies across domestic jurisdictions, it is largely based on the provisions of the Rome Statute of the International criminal Court. These are crimes are considered to affect the international community as such with the primary responsibility of prosecution lying with the national States.

Crimes against humanity - Actss committed as part of a widespread or systematic attack directed against any civilian population. These crimes include, among others, murder, torture, sexual violence, enslavement, persecution, or enforced disappearance.

Criminal Code or Penal Code – Refers to a system of laws concerned with crimes and the punishment of individuals who commit those crimes.

Criminal liability – Refers to when a person can be held legally responsible for breaking criminal law.

Criminal procedure – Set of legal rules and laws that regulate mechanisms under which crimes are investigated, prosecuted, adjudicated, and punished.

D

Disappearance - Arrest/detention by State agents followed by concealment of victim's fate/location.

E

Erga omnes – Obligation that a State owes to the entire international community, rather than to a specific state or group of States. These obligations are considered so fundamental that any state can be considered to have a legal interest in their protection, and a breach of such an obligation can be invoked by any State.

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Extradition – Legal process where an alleged perpetrator is removed from one jurisdiction upon the request of another jurisdiction for criminal prosecution or punishment.

F

Fair Trial – A judicial proceeding that is conducted in such a manner as to conform to fundamental concepts of equality and justice. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) concerns the right to equality before courts and tribunal and to a fair trial.

G

Genocide – Acts committed with the intent to destroy a national, ethnic, racial or religious group in whole or in part. The criminalised acts include killing of or causing serious bodily or mental harm to members of one of these groups, deliberately imposing on the group conditions of life aimed at its physical destruction and forcibly transferring children in the group to another group. Genocide is considered to be a crime under international law whether it is carried out in times of peace or during war.

Grave breaches of the Geneva Conventions – Refers to violations that are considered the most serious and that all countries that have ratified the Geneva Conventions must either prosecute or extradite if alleged perpetrators of grave breaches are found on their territory. Examples of grave breaches include wilful killing, torture and inhuman treatment; wilfully causing great suffering to the body or health; and extensive, unlawful, and wanton destruction of property.

H

Human Rights Law – A set of international rules, established by treaty and custom, whose purpose is to protect the lives and human dignity of individuals from the arbitrary behaviour of governments. Human rights law applies to everyone at all times and in all circumstances.

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Immunity – In criminal law, it stands for the exemption from criminal prosecution or punishment. A privilege enjoyed by certain persons (e.g. diplomats, parliamentarians, members of a government, heads of state or of government) enabling them to exercise their functions without fear of legal proceedings being brought against them.

Individual criminal responsibility – Means that a person who commits a crime (including one of the most serious international crimes) can be held individually responsible for this crime before a court of law.

International armed conflict - An international armed conflict is said to exist when armed force is used by at least two States against each other even if one of the States does not recognise that it is at war. A state of occupation or a war of national liberation also constitutes an international armed conflict.

International Court of Justice (ICJ) – The principal judicial organ of the United Nations with jurisdiction over disputes between member States.

International Criminal Court (ICC) – Permanent international court established to investigate and prosecute individuals accused of committing the most serious crimes, namely the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. The ICC has no primacy over national courts, but it complements their work when they are unable or unwilling to investigate or prosecute those responsible for the crimes under their jurisdiction.

International Criminal Law – Area of public international law that establishes individual criminal responsibility for international crimes, such as war crimes, crimes against humanity, genocide, and the crime of aggression. It is the branch of international law that is designed to hold people—not countries—responsible for crimes before a court of law.

International Criminal Tribunal for the former Yugoslavia (ICTY) – Court established by the United Nations in 1993 to prosecute persons accused of committing war crimes, genocide and crimes against humanity in the territory of the former Yugoslavia since 1991. The ICTY has primacy over national courts.

International Criminal Tribunal for Rwanda (ICTR) – Court established by the United Nations in 1995 to prosecute persons accused of committing genocide, crimes against humanity and war crimes in the territory of Rwanda and by Rwandese in neighbouring States in 1994. The ICTR has primacy over national courts.

Indictment – Official document filed by a prosecution office, detailing the precise facts of the case and describing what crimes the accused is said to have committed. An

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indictment forms the base of a trial as only facts that are detailed in the indictment can be adjudicated in court. The legal qualification of facts included in the indictment can, however, change throughout the proceedings, given the defendant is informed about any changes in due time.

Individual Criminal Responsibility – This principle of individual criminal responsibility establishes that persons may be held criminally liable for violations of international law when they engage in conduct that contributes to the commission of international crimes. This foundational doctrine is codified in Article 25(3) of the Rome Statute of the International Criminal Court. which enumerates the modes of participation that attract criminal responsibility.

Intent – Mental element of the crime (*mens rea*). It can be proven directly from statements or orders, or inferred from a systematic pattern. Intent is not the same as motive.

International humanitarian law – Set of rules which seek to limit and prevent human suffering in times of armed conflict. It is also known as the laws of war.

International treaties – written agreements between countries. They can be referred to as treaties, conventions, statutes, or agreements but all have the same legal effect on countries that have signed or ratified the treaty. When a State ratifies a treaty, it agrees to be legally bound by the obligations of that treaty.

J

Joint Criminal Enterprise (JCE) – Mode of liability, which assigns individual criminal responsibility to all individuals who together have been part of a common plan, design, or purpose which amounts to or involves the commission of a crime. Article 25(d) of the Rome Statute provides that an accused contributes to the commission of a crime with a common purpose by furthering the criminal activity or having the knowledge that the group intends to commit a crime.

Jurisdiction – Jurisdiction refers to the power of a judiciary to rule over a specific case. There are different grounds to establish jurisdiction: (1) universal – for core international crimes; (2) territorial – based on the location of the crime committed; (3) active nationality – based on the nationality of the perpetrator; (4) passive nationality – based on the nationality of the victim.

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M

Mens rea – Mental element/intent required for criminal liability.

Modes of liability – Different forms of responsibility for committing a crime. Modes of liability includes direct or indirect liability: direct liability refers to a person who commits the crime itself and indirect liability arises when a person assists, aids, or abets in the commission of the crime. Command or superior responsibility are forms of indirect criminal liability.

N

National legislation – Set of laws of a particular country.

Ne bis in idem/ Double jeopardy – Principle in criminal law and considered a fundamental human right, which prohibits the prosecution of an individual for the same facts that they have already been prosecuted for. This is also applicable to prosecutions conducted by different States.

O

Office of the Prosecutor of the International Criminal Court – Independent prosecutorial part of the International Criminal Court. Its mandate is to receive and analyse information on the alleged crimes within the jurisdiction of the Court and to bring the alleged perpetrators before the Court.

Other Serious Violations of International Humanitarian Law - Crimes committed during international and non-international armed conflict. These crimes, though not found in any treaty, are regarded as being part of customary international law. Following crimes are examples of other serious violations of international humanitarian law: making a civilian population that does not participate in the hostilities the object of the attack; launching an attack knowing there would civilian casualties; or attacking facilities designated as non-military targets.

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Passive personality jurisdiction – Jurisdiction of a State to conduct investigations and prosecute violations that have been committed against its nationals outside of its territory. Most commonly this applies to victim who are nationals but at times also includes victims who are permanent residents or stateless persons residing permanently in the country.

Personal immunity – Certain government office holders—such as Heads of State, Heads of Government, and ministers of foreign affairs—cannot be held accountable for violations of the law while undertaking any acts in an official or private capacity during the term of office.

Proprio Motu – This term refers to powers granted to the ICC Prosecutor under Article 15 (3) of the Rome Statute, which enable him to initiate an investigation at his own instigation, without a referral from a State Party or the UN Security Council.

Prosecution – Institution and conducting of legal proceedings against someone in with regards to a criminal charge.

Prosecutor – Lawyer representing the interest of the government who generally initiates the prosecution and presents the case in criminal proceedings.

Public Prosecutor – Government official who conducts criminal prosecutions on behalf of the state.

R

Ratification of an international treaty – Legal process of giving formal approval to a treaty, so it becomes legally binding on a country. Once a country has ratified a treaty, it is legally obligated to perform the requirements and obligations under the treaty.

Rome Statute of the International Criminal Court – International treaty that established the International Criminal Court, which was adopted at a diplomatic conference in Rome, Italy, on 17 July 1998. Among other things, it defines the crimes falling within the jurisdiction of the Court and the rules of procedure and the mechanisms for States to cooperate with the ICC. Over 120 countries are States Parties to the Rome Statute.

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Trial *in absentia* – Court proceedings conducted without the defendant being present.

U

Universal jurisdiction – Legal principle that, under international law, certain crimes are so serious that the duty to investigate and prosecute the perpetrators of these crimes extends beyond the borders of the country where the crimes were committed. These crimes include the most serious international crimes: war crimes, crimes against humanity, genocide, and the crime of aggression. Some countries have also allowed other serious or transnational crimes to be prosecuted under universal jurisdiction principle, including piracy, torture, certain organised crimes, money laundering, and financial crimes.

V

Victims – In the legal sense, the concept refers to people who have suffered harm or whose close family members has suffered harm as a result of a crime. This harm can include physical or mental injury, emotional suffering, economic loss, or the substantial impairment of fundamental rights.

W

Warrant of Arrest - A legal document authorising the arrest and detention of an individual by the authorities. A warrant of arrest would be issued instead of a summons in cases where a summons was not considered sufficient to ensure that the individual would appear before the court on the date set (e.g. that he or she would be likely to evade the court). A warrant of arrest from the International Criminal Court would oblige all States parties to comply with the court by arresting the indicted individual and transferring him or her to the custody of the court.

War Crimes – Serious violation of international humanitarian law (Geneva Conventions) during an armed conflict, that give rise to criminal responsibility.

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