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6.1.1. Crime against peace, war crime, or crime against humanity

COMMON ANALYSIS
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Article12(2)(a) QD and Article 17(1)(a) QD refer to specific serious violations of international law, as defined in the relevant international instruments:

? **'Crime against peace'** is related to the planning, preparation, initiation, waging or participation in a common plan or conspiracy related to a war of aggression. It is considered applicable only in the context of international armed conflict and would usually be committed by individuals in a high position of authority, representing a State or a State-like entity. It can be noted that in practice this ground is rarely applied.

? **'War crimes'** are **serious violations of international humanitarian law**, committed against a protected person or object (civilians, combatants placed out of combat, such as in detention or being wounded, or those who have put down their arms, or civilian and cultural objects) or through the use of unlawful weapons or means of warfare.[31] War crimes can only be committed during an armed conflict qualified accordingly under international humanitarian law. The nature of the armed conflict (international or non-international) is decisive in order to define the elements of the particular war crime.[32]

They can be committed by combatants/fighters, as well as civilians, as long as there is a sufficient link to the armed conflict. This means that the act needs to have been 'closely' related to the armed conflict.[33]

Some relevant (non-exhaustive) examples of war crimes include:

- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture of persons taking no direct part in hostilities;
- committing outrages upon personal dignity, in particular humiliating and degrading treatment of persons taking no direct part in hostilities;
- intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law
- intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- killing or wounding treacherously a combatant adversary;

- the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable;

- conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.

? '**Crimes against humanity**' are fundamentally inhumane acts, committed as part of a systematic or widespread attack against any civilian population.[34], [35] Inhumane acts, which could reach this threshold when committed pursuant to or in furtherance of a State or organisational policy[36], include: murder, extermination, enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law; enforced disappearance of persons; apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Crimes against humanity can be committed in peace time as well as during an armed conflict. Even a single act could fall under this exclusion ground provided it forms part of a widespread or systematic attack against a civilian population and the act is committed by any person (including a civilian) who had knowledge of the attack and the link of the act to the attack. Some crimes against humanity would require an additional specific intent (e.g. persecution and genocide).

In order to establish whether a war crime or a crime against humanity has been committed, the case officer should consult the relevant international instruments and case law of the international criminal tribunals.

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[31] War crimes are listed, inter alia, under Article 8 of the Rome Statute, under the 'Grave Breaches' provisions of the 1949 Geneva Convention and Additional Protocol I, common Article 3 and relevant provisions of Additional Protocol II, the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Statute of the International Criminal Tribunal for Rwanda (ICTR). [back to text]

[32] Note that the assessment under Article 12(2)(a) QD and Article 17(1)(a) QD refers to the relevant international instruments defining the terms. Therefore, the assessment of whether or not an armed conflict takes place, as well as its nature, is based on international humanitarian law and may differ from the assessment in the context of Article 15(c) QD as defined in the Diakité judgment of the CJEU. [back to text]

[33] 'The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed', ICTY (Appeals Chamber), judgment of 12 June 2002, Prosecutor v Kunarac et al., IT-96-23 and IT-96-23/1-A, para. 58. [back to text]

[34] Crimes against humanity are defined in international instruments, inter alia, Article 7 of the Rome Statute. See also ICC, The Prosecutor v Germain Katanga, judgment of 7 March 2014, ICC-01/04-01/07 (*Katanga*). [back to text]

[35] On 'widespread' and 'systematic', see for example, ICTY, *Prosecutor v Dusko Tadic aka "Dule" (Opinion and Judgment)*, IT-94-1-T, judgment of 7 May 1997, para. 648; ICTR, *The Prosecutor v Jean-Paul Akayesu (Trial Judgment)*, ICTR-96-4-T, judgment of 2 September 1998, para. 580; ICTY, *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Appeal Judgment)*, IT-96-23 & IT-96-23/1-A, 12 June 2002, para. 94; on 'civilian

population' see ICTY, *Prosecutor v Dusko Tadic aka "Dule" (Opinion and Judgment)*, IT-94-1-T, judgment of 7 May 1997, para. 648; ICTR, *The Prosecutor v Jean-Paul Akayesu (Trial Judgment)*, ICTR-96-4-T, judgment of 2 September 1998, para. 644. [back to text]

[36] On 'state or organisational policy', see *Katanga*, paras. 1106-1113. [back to text]

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