

## **Summary in English**

The theme of this dissertation is the subject matter jurisdiction of the International Criminal Court (ICC). Offences such as aggression, genocide, crimes against humanity and war crimes, sometimes called the “core crimes”, are the most serious crimes ever identified under international law. These crimes do not violate only some particular rights, but they threaten the whole international community, peace, security and well-being of the world. Therefore it is essential to have a precise legal definition of these grave crimes and to establish an effective judicial mechanism for prosecution of the most dangerous criminals. However, it is not easy to find general consent on these matters among the international community. There is not much space for internationalisation in the field of criminal law, which was traditionally considered an important part of national sovereignty. Thus the path towards establishment of the ICC, which is the first permanent international criminal judicial body ever, was extremely difficult, as was definition of the four core crimes falling within its jurisdiction.

This thesis scrutinises the concrete provisions of the ICC Statute, the “Rome Statute”, which constitute substantive law by defining the crime of genocide (art. 6), crimes against humanity (art. 7), war crimes (art. 8) and the “brand new” crime of aggression (art. 8bis) as the Court’s jurisdiction *ratione materiae*. International criminal law can be considered a relatively young branch of law, which is progressively developing and which offers broad possibilities for research. The current legal definitions of the four crimes under international law are not yet perfect, some revision should be made in the future, and therefore there is room for proposals *de lege ferenda* in this respect. The thesis does not deal with the Court’s jurisdiction *ratione temporis*, or *ratione personae*. Procedural issues are also not the primary object.

The dissertation achieves the following objectives: 1) to provide a comprehensive picture of the actual development of the definitions of the core crimes; 2) to summarise the historical and political background; 3) to scrutinise the Statute’s substantive law provisions – to carry out an in-depth analysis, provide proper interpretation of these provisions, define the relevant terms and point out the most problematic issues; 4) to provide a historical-legal comparison (compare the former provisions mainly of the ad hoc international criminal tribunals’ statutes with the relevant articles of the Rome Statute); 5) to make a mutual comparison of the particular crimes within the Rome Statute, focus on the individual specifics, point out the differences and also mention some common aspects; 6) to assess

possibilities *de lege ferenda*, analyse the changes made during the Review Conference in 2010; and 7) to sum up the actual case law.

The thesis should help to answer some basic questions, like: Are the relevant provisions of the Rome Statute in fact just a codification of the customary international law or are there some differences? Do all relevant articles correspond to the requirements of the modern age, or are they out of date and useless today? Does the ICC help to develop international criminal law? Can definitions of crimes in the Rome Statute be considered a high-quality legal text or are there some deficiencies like inconsistency, overlapping, vagueness or on the contrary is the text too casuistic? Did the necessity of finding a compromise affect the text in some way? Are the definitions of core crimes useful for the Court's practice? Was the Review Conference successful in solving the current problems in definitions of crimes, mainly the definition of aggression?

International criminal law has made really great progress over the last few decades. Establishment of the ICC was a turning point in the history of international criminal justice. The Rome Statute is sometimes considered the biggest codification of existing customary international criminal law. But the Statute also brings with it some important innovation to international law, including some new definitions of crimes. On the other hand, most of the definitions are quite rigid, which means, that some provisions do not meet the modern requirements and can be avoided easily. The so-called codification was also not performed very systematically in some respects; therefore there are many overlapping provisions. Negotiations among many states negatively affected the quality of legal texts as well. Anyway, the ICC has already been operating for several years, thus the Rome Statute can be considered to provide a sufficient legal basis for prosecution of the most dangerous crimes.

Each crime falling within the Court's jurisdiction is specific in some respect. The definition of genocide was literally derived from the Genocide Convention adopted in 1948. The Rome Statute confirms genocide as a particular crime separate from crimes against humanity. The intent to destroy a protected group of people – the specific perpetrator's intent (*dolus specialis*) – is the element, which distinguishes genocide from other crimes under international law. Crimes against humanity are drawn up in article 7. This article is unique due to the fact that it contains a special explanatory paragraph which helps to interpret some crucial terms, such as extermination, enslavement, torture, forced pregnancy, persecution, the crime of apartheid, enforced disappearance of persons and others. The Rome Statute also confirmed that the war nexus is no longer required for prosecution of these crimes. War crimes on the other hand must naturally be associated with an armed conflict, both

international and non-international. The Rome Statute contains in all probability the most comprehensive list of war crimes ever, which is on the other hand not very well-arranged. Duplicity and overlapping are therefore quite usual within article 8. The crime of aggression, although sometimes considered the most serious criminal conduct, was the most problematic one. It had been originally included in the Court's jurisdiction without any legal definition. Although the crime of aggression was legally defined during the Review Conference in 2010, the ICC is still powerless to prosecute it. The Court will exercise jurisdiction over the crime of aggression not earlier than in 2017. The definition of the crime is essentially inspired by the United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974. It combines both state responsibility and the responsibility of the individual. The UN Security Council has a specific position in this respect, because it is entitled to determine whether an act of aggression was committed by a certain state or not, which makes the situation even more complicated. It is especially the independence of the Court that may be endangered. Further discussions concerning the definition of aggression can naturally be expected.

As mentioned earlier, the legal definition of these crimes is the main subject of the study. Some crimes which had not been included into the Court's jurisdiction, treaty-based crimes, are also mentioned in the thesis in order to create a comprehensive picture of the development of international criminal law.

The conclusion of the thesis tries to summarise the findings, point out the most problematic aspects and propose some possibilities for the future. Although there is immense room for improvement, the Rome Statute can be considered a fundamental source of contemporary international criminal law.