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# Ukraine and the International Criminal Court: the second declaration of acceptance and why it is worth the comparison to the situation in Georgia

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**Abstract:** Now that the first step towards bringing to justice those responsible in the conflict in Georgia has been made, it is fairly normal to put some hope into the fact that, following the second declaration of accepting the ICC's jurisdiction, the situation in Ukraine will fall into the same steps, although probably much later. Without bringing too much attention to the facts, since they are not unfamiliar, the focus of the article will be brought to picturing the course of events following Ukraine's second declaration, from the ICC Prosecutor's point of view. The choice of comparison to Georgia is not random in the slightest: from the historical background to the evolution of events, the Russian Federation's implication and scopes, to the procedure that has to be followed by the Prosecutor in order for the alleged crimes to be brought to justice.

**Key-words:** International Criminal Court; the Rome Statute; crimes of war; crimes against humanity

## I. Introduction

On 8 September 2015, the Registrar of the International Criminal Court<sup>1</sup> received a declaration lodged by Ukraine accepting the ICC's jurisdiction with respect to alleged crimes committed on the State's territory since 20 February 2014. Formulated under article 12(3) of the Rome Statute,<sup>2</sup> the founding treaty of the ICC, which makes it possible for a State not party to the Statute to accept the exercise of the jurisdiction of the ICC, the declaration highlights the determination of Ukraine to engage in a full cooperation with the Court as soon as requested. This is, however, the second declaration of the sort lodged by Ukraine under article 12(3); the former declaration was lodged on 17 April 2014 and referred to alleged crimes committed on its territory from 21 November 2013 to 22 February 2014.

As many of the east-European States, Ukraine is not a party to the Rome Statute and neither is Russia, which is pointed largely responsible for the occurred events. Such being the case, in order for a State that is not party to the Statute to defer a situation to the ICC, the latter has to lodge a declaration of acceptance of the Court's jurisdiction with respect to a specific situation – alleged crimes. The acceptance of the jurisdiction does not automatically call for the commencement of an investigation, however. It is for the ICC Prosecutor to decide whether to request the judge's authorization to open an investigation, when and if the Prosecutor considers that the information made available for the Office is sufficient for establishing the existence of a reasonable basis to open an investigation.

By means of these two declarations submitted by Ukraine, the ICC would be competent to exercise jurisdiction, if the case should be, over alleged crimes committed in the context of Euromaidan and those committed since the 20 February 2014 onwards.

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<sup>1</sup> Abbreviated, in the following, as ICC.

<sup>2</sup> Article 12 *Preconditions to the exercise of the jurisdiction*.

3. If the acceptance of a State, which is not a Party to this Statute, is required under para.2, the State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without delay or exception in accordance with Part 9.

This demarche of the Ukrainian State is not at all a surprising one; on the contrary, given the example of the situation in Georgia in the period of 1 July to 10 October 2008 concerning war crimes and crimes against humanity allegedly committed in and around South Ossetia and given the quite striking similarities of the two situations, it is even more likely to say that the events in the last two years in Ukraine make for an even more solid case before the ICC. Of course, when referring to the similarities of the two situations, the common historical background and the Russian implication are the first that come to mind.

## II. Briefly stating the facts

It is probably fair to say that the present crisis in Ukraine was foreseeable since the Orange Revolution in November 2004 – January 2005 and the State's first attempt to join NATO in 2008; and it is likewise agreed that the European Union<sup>3</sup> failed to take into consideration the entangled nature of the Russian and Ukrainian economies when launching the Eastern Partnership in 2009; as it was, it all came down to facing Ukraine with the impossible: having to choose between Europe and Russia.<sup>4</sup> Postponing the decision on the agreement costed Mr. Viktor Yanukovich his chair and gave an excuse for pro-European manifestations at Maïdan, whilst the Russian president was completely excluded from the discussions in respect of the EU-Ukraine agreement.

It is also questionable to say that the European officials did not see, so to speak, the handwriting on the wall. Nevertheless, the manifestations at Maïdan were encouraged by various site visits of European and American officials and thrusting aside the Ukrainian president in the dawn of 22 February, whilst choosing not to respect the agreement of 21 February - this was overall interpreted by Moscow as a genuine "coup d'état".

On 28 February 2014, the Permanent Representative of Ukraine to the United Nations addressed a letter requesting an urgent meeting of the Security Council, due to the deteriorations of the situation in Ukraine. The drafted Security Council Resolution on 15 March 2014 – which was vetoed by Russia – echoed the general appreciation that the referendum in Crimea<sup>5</sup> was invalid and called upon all member States and international organizations not to recognize any alteration of the status of Crimea based on this referendum<sup>6</sup>. The separatism threat became vivid when pro-Russian protesters occupied on 7 April 2014 government offices in Donetsk, Luhansk and Kharkiv. In the meantime, the EU envisioned and implemented a series of sanctions directed towards individual Russians and the Russian Federation.

On 17 April 2014, Russia, Ukraine and EU foreign ministers agreed on a de-escalation arrangement for the conflict, whilst the European Parliament called for EU sanctions against the Russian energy sector. A couple of days later though, the Russian foreign minister Sergei Lavrov accused Ukraine of breaking the Geneva agreement by not disarming illegal nationalist groups. Until 20 June 2014, the United Nations estimated more than 400 casualties since 15 April.

On 11 May 2014, the pro-Russians separatists declared the independence of Luhansk and Donetsk, after the referendums that were generally looked upon in the same manner as was the referendum in Crimea. On 27 June 2014, the EU-Ukraine Association Agreement was signed, symbolizing a political and economic arrangement. The Malaysia Airlines flight MH17 from Amsterdam to Kuala Lumpur

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<sup>3</sup> Abbreviated, in the following, as EU.

<sup>4</sup> Jean-Pierre Chevènement, *Crise ukrainienne, une épreuve de vérité*, Le Monde Diplomatique, p. 11, juin 2015 The author sees the Ukrainian crisis as an accidental skid and the annexation of Crimea as an unplanned for event.

<sup>5</sup> Which happened on 16 March 2014 and where 97% of voters opted for secession. The following day, the Crimean parliament declared independence and formally asked the Russian Federation to join it, whilst adopting the rouble and switching to Moscow time. On the same day, Russia recognized the Crimean independence.

<sup>6</sup> UN Security Council draft resolution S/2014/189 ([www.securitycouncilreport.org](http://www.securitycouncilreport.org)).

was downed near the village of Hrabove in the Donbass region, which was held by the rebels; 298 people were killed in the catastrophe, which was very recently proved to have been due to an attack by a Russian-made Buk missile.

By the end of October 2014, Ukrainians had already elected a new parliament, a new head of State and started on its way to a more stable situation in territory. All the while, harsher international sanctions were implemented towards the Russian Federation by the EU and vice versa.

The beginning of 2015 brought yet another event to shatter the hope: eight people were killed in a shelling of Donetsk bus stop on 22 January 20km from the besieged airport of Donetsk, which was believed to be under separatist control and, only a day later, 30 civilians died in a shelling of Mariupol.

The second Minsk agreement was signed on 12 February 2015 involving Russia, Ukraine, Germany and pro-Russian separatists. The casualties risen in the escalating conflict around the village of Starohnativka in the Donetsk region in August 2015 were, however, not in the spirit and the letter of the Minsk agreements.<sup>7</sup>

### III. The two declarations

On 22 February 2014, the Verkhovna Rada of Ukraine<sup>8</sup> adopted the Resolution “On the self-withdrawal of the President of Ukraine from performing his Constitutional Duties and Setting Early Elections of the President of Ukraine”. Consequently, the parliament also adopted a resolution authorizing the Chairman of the Verkhovna Rada, Mr. Oleksandr Turchynov, to exercise the presidential duties in accordance with article 112 of the Constitution of Ukraine. Within the limits and the temporary nature of its powers, the Acting President had the constitutional abilities to represent the State of Ukraine in international relations, to administer the foreign political activity, to conduct negotiations and conclude international treaties of Ukraine. No later than 24 February, the Parliament also adopted *the Declaration on Recognition of the Jurisdiction of ICC<sup>9</sup> over crimes against humanity, committed by senior officials of the State, which led to extremely grave consequences and mass murder of Ukrainian nationals during peaceful protests within the period 21 November 2013 – 22 February 2014.*<sup>10</sup>

The declaration pursues to bring to criminal liability in the ICC a number of senior officials, namely Yanukovich,<sup>11</sup> in respect of crimes against humanity stipulated in the article 7 of the Rome Statute and committed during the peaceful protests within the named period.<sup>12</sup> The declaration mentions that Ukrainian law enforcement agencies, on the orders of senior officials of the State, unlawfully used physical force, special means and weapons towards the participants of peaceful actions in Kiev and other cities. The events led to killing over 100 nationals of Ukraine and other States, injuring and mutilating more than 2000 persons, torturing civilian population, abducting and enforced disappearing of persons, forcefully and unlawfully depriving of liberty, forcefully transferring to deserted places for the purpose of torture and murder, arbitrary imprisoning of persons in different cities of Ukraine, brutal beatings, unlawfully damaging peaceful actions participant’s property and many other features of the time.<sup>13</sup> Furthermore, the using by the local authorities and police of organized criminal groups for the purpose of intimidating and abducting, torturing, murdering people, damaging their property etc. and the overall fact that the persecution of people

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<sup>7</sup> For a detailed timeline of events, see [www.europarl.europa.eu](http://www.europarl.europa.eu).

<sup>8</sup> Ukraine’s exclusive legislative body.

<sup>9</sup> Which Mr. O. Turchynov signed as Chairman of the Parliament.

<sup>10</sup> The Declaration was lodged on 17 April 2014.

<sup>11</sup> The Declaration also refers to Pshonka Viktor Pavlovych – ex-Prosecutor-General of Ukraine, Zakharchenko Vitalii Yuriivych – ex-Minister of Internal Affairs of Ukraine, stating that other officials who issued and executed manifestly criminal orders which might be determined by the Prosecutor of the International Criminal Court.

<sup>12</sup> Declaration of the Verkhovna Rada of Ukraine, 17 April 2014 ([www.icc-cpi.int](http://www.icc-cpi.int)).

<sup>13</sup> Ibidem.

was carried out on political grounds (opposition parties, civil society organizations, “Euromaidan”, “AutoMaidan” activists etc.)<sup>14</sup>

Consequently, the ICC Prosecutor opened on 25 April 2014 a preliminary investigation into the Euromaidan events and in November 2014, an ICC delegation visited Kiev to assess the situation. On the 1-year anniversary of the Euromaidan protests, a coalition of 13 Ukrainian organizations and initiatives for combating impunity against humanity (such as Public Initiative Euromaidan SOS, Human Rights Information Center, International Renaissance Foundation or the Office of the Ukrainian Parliament Commissioner for Human Rights) published the summary of the communication that was submitted in January 2015 to the Prosecutor of the ICC and the International Partnership for Human Rights.<sup>15</sup>

On 4 February 2015, the Verkhovna Rada adopted yet another resolution, this time regarding another series of events: *The Declaration “On the recognition of the jurisdiction of the ICC by Ukraine over crimes against humanity and war crimes committed by senior officials of the Russian Federation and leaders of terrorist organizations “DNR” and “LNR”, which led to extremely grave consequences and mass murder of the Ukrainian nationals”*.<sup>16</sup>

The declaration was made for an indefinite period and pursues to bring a series of senior officials to criminal liability in the ICC in respect of crimes against humanity and war crimes, stipulated in article 7 and 8 of the Rome Statute, committed on the territory of Ukraine starting 20 February 2014. This second declaration mentions an ongoing-armed aggression against Ukraine by the hands of the military forces of the Russian Federation and Russian supported militant-terrorists, during which a part of the territory of an independent and sovereign State of Ukraine – the Autonomous Republic of Crimea and the city of Sevastopol – was annexed, but also parts of Donetsk and Luhansk regions were occupied; all of these, of course, with the cost of killing thousands of Ukrainian nationals, injuring other thousands, destroying the infrastructure of the whole regions and consequently forcing hundreds of thousands of people to flee from their homes.<sup>17</sup> The declaration of acceptance particularly highlights a recent act of violence by the hands of the above mentioned: the shelling from multiple-launch rocket system “Grad” of civilians in residential areas of the Mariupol city in Ukraine on 24 January 2015, which concluded in more than thirty deaths of civilians, including children, and over a hundred injuries.

#### **IV. The situation in Georgia: a comparison that is worth making**

When the dissolution of the Soviet Union was peacefully decided in the late 1991, little was thought about the potential conflicts that were to rise in that multinational, multiethnic space; as it is, the capricious tracing of the State frontiers would only multiply tensions between successor States and minorities (Transnistria, South Ossetia, Abkhazia, Adjara, etc.)<sup>18</sup>. Many of those multiethnic States had not existed before and such is the case of Ukraine, which had been an independent State only for 3 years during its history, from 1917 to 1920; moreover, Crimea had, in fact, never been Ukrainian before Nikita Khrushchev’s precipitated decision in 1954.

The South Ossetian Autonomous Region, on the other side, was created in Georgia following the occupation by the Bolshevik forces that occupied the latter, whilst North Ossetia was formed in Russia. As sunset reached over the Soviet Union, a separatist sentiment came to life in South Ossetia and led to several outbreaks of violence; the region even declared its intention to secede from Georgia in 1990 and proclaimed its independence in 1992; when offered autonomy in 2006, South Ossetians

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<sup>14</sup> Ibidem.

<sup>15</sup> The summary of the communication can be found at [www.fidh.org](http://www.fidh.org).

<sup>16</sup> Submitted officially on 8 September 2015.

<sup>17</sup> Declaration of the Verkhovna Rada of Ukraine, 8 September 2015 ([www.icc-cpi.int](http://www.icc-cpi.int)).

<sup>18</sup> Jean-Pierre Chevènement, *Crise ukrainienne, une épreuve de vérité*, Le Monde Diplomatique, p. 11, June 2015.

widely rejected it in a referendum and tensions came to rise fiercely again in August 2008; clashes between Georgian troops and separatist forces, and days later joined by Russian forces, concluded in the sweeping away of the Georgians from the region; after the war, Russia formally recognized both South Ossetia and Abkhazia as independent States.<sup>19</sup> What followed the events in 2008 was a so-called *quiet annexation* of South Ossetia by the Russian Federation: in April 2009, Russia bolstered its position in the region by signing a five-year agreement to take formal and effective control of South Ossetia's frontiers with Georgia proper, as well as those of Abkhazia and started in 2015 an alliance with South Ossetia that would abolish border checkpoints.

However, Georgia's position vis-à-vis the ICC is slightly different from Ukraine's: Georgia deposited its instrument of ratification to the Rome Statute on 5 September 2003, therefore the ICC has jurisdiction over Statute crimes committed on the territory of Georgia or by its nationals from 1 December 2003 onwards. On 14 August 2008, the ICC Prosecutor issued a statement on Georgia by which it informs that the Office considers all information relating to alleged crimes within its jurisdiction committed on the territory of Georgia or by its nationals<sup>20</sup> and therefore started analyzing the alleged crimes committed during the conflict in August 2008 in what is formally known as a *preliminary investigation*. Consequently, at the end of this examination, on 13 October 2015, the Prosecutor requested authorization to open an investigation.

The procedure, instated by the Rome Statute, does not allow the Prosecutor to formally commence an investigation in this situation at its own will, considering the fact that such an investigation can only be triggered following a referral of either the United Nations Security Council or an ICC member State. Given the fact that the Prosecutor decided to open an investigation on its own motion, without such a referral, an ICC Pre-Trial chamber must authorize the investigation at the Prosecutor's request.

Likewise, neither the Ukrainian lodged declaration of accepting the ICC jurisdiction formulated under article 12(3) of the Rome Statute does not simply set course to an investigation by the Prosecutor of the ICC. Once a declaration of acceptance of the jurisdiction is submitted, the Prosecutor of the ICC is responsible for determining whether there is a reasonable basis to proceed with an investigation into a situation. The prosecutor analyses the seriousness of the information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that the Prosecutor deems appropriate and receives written or oral testimony at the seat of the Court. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, a request for authorization of an investigation can be submitted to the Pre-Trial Chamber. If the Pre-Trial Chamber, upon examination of this request and the supporting material, considers that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation.<sup>21</sup>

#### **A. A few facts on the Preliminary Examination by the Prosecutor of the ICC**

##### ***General Principles***

Article 53(1)(a)-(c) of the Statute establishes the legal framework for a preliminary examination. The Prosecutor shall consider *jurisdiction* (temporal, material, and either territorial or personal jurisdiction), *admissibility* (complementarity and gravity) and the *interests of justice*.

The preliminary examination process is conducted on the basis of the facts and information available, and in the context of the principles of independence, impartiality and objectivity.

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<sup>19</sup> The independence was also recognised by Venezuela and Nicaragua and some of the Pacific island States.

<sup>20</sup> Prosecutor's statement on Georgia, 14 August 2008 ([www.icc-cpi.int](http://www.icc-cpi.int)).

<sup>21</sup> Policy Paper Preliminary Examinations, ICC-Office of the prosecutor, 2013, p. 2.

The Prosecutor shall act independently of instructions, which means that any decision made should be in no way influenced or altered by presumed or known wishes of any party, or in connection with efforts to secure cooperation.<sup>22</sup> The scope of the prosecutor's examination cannot be limited in a manner contrary to the Statute and whenever a referral is accompanied by supporting documentation identifying potential perpetrators, the Office is not bound or constrained by the given information when conducting the investigation. In other words, if the Prosecutor finds specific persons that should be charged and that were not initially pointed at within the given information, it shall proceed in consequence.

The principle of impartiality<sup>23</sup> means that the Prosecutor will apply consistent methods and criteria, irrespective of the States or parties involved or the person(s) or group(s) concerned, which can only lead to the conclusion that, for instance, geo-political implications are not relevant criteria determining whether to open an investigation into a situation under the Statute or not.<sup>24</sup>

The principle of objectivity provides for an investigation by a Prosecutor that takes equally into consideration both incriminating and exonerating circumstances.<sup>25</sup> But the same principle of objectivity is applied at the preliminary examination stage in relation to information that could constitute the basis for a determination to proceed with an investigation.

### ***Statutory Factors***

Firstly, it is extremely important to underline the fact that the statutory factors apply to all situations, whether the preliminary examination was triggered by a declaration lodged under article 12(3) of the Statute, on the basis on information received on crimes or by a referral.<sup>26</sup>

In accordance with article 53(1)(a) of the Statute, the Prosecutor must determine whether there is a reasonable basis to believe that a crime within the *jurisdiction* of the Court has been committed. Consequently, the temporal, territorial, personal or subject-matter jurisdictional requirements have to be fulfilled.

In terms of *admissibility*, an assessment of *complementarity* and *gravity* are required<sup>27</sup> and the Prosecutor must be satisfied with regard to admissibility on both aspects before proceeding. The complementarity assessment<sup>28</sup> is case-specific and relates to whether genuine and lawful investigations and prosecutions have been or are being conducted in the State concerned in respect of the case(s) identified by the Office.<sup>29</sup> However, the complementarity principle extends to any State that has jurisdictional competence over a case and applies irrespective of whether that State is a Party to the Statute.<sup>30</sup> As confirmed by the Court, the absence of national proceedings (for instance, domestic inactivity) is sufficient to make the case admissible. In essence, the complementarity assessment is the expression of the compromise between promoters of a court that has the competence to judge and rule *prima facie* any kind of crime that, judging by its gravity, should concern the international community as a whole and the states' wish to keep their sovereign prerogatives in respect to exercising jurisdiction over certain persons. In other words, the ICC only becomes competent to judge when the State does not want or cannot act in consequence of its judicial prerogatives.<sup>31</sup> Gravity, as the second assessment of complementarity, includes both quantitative and qualitative considerations. The factors that guide the Prosecutor's assessment include the scale, nature, manner of commission of the crimes and their impact.

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<sup>22</sup> *Idem*, p.7.

<sup>23</sup> Article 21(3) of the Rome Statute.

<sup>24</sup> Policy Paper Preliminary Examinations, ICC-Office of the prosecutor, 2013, p. 8.

<sup>25</sup> Article 54(1) of the Rome Statute.

<sup>26</sup> Policy Paper Preliminary Examinations, ICC-Office of the prosecutor, 2013, p. 8.

<sup>27</sup> As set out in article 17(1) of the Statute.

<sup>28</sup> As stated also in the Preamble and article 1 of the Statute.

<sup>29</sup> Policy Paper Preliminary Examinations, ICC-Office of the prosecutor, 2013, p. 11.

<sup>30</sup> *Idem*, footnote no. 33, p. 11.

<sup>31</sup> Bogdan Aureescu, *Sistemul jurisdicțiilor internaționale*, Ediția 2, C.H.Beck, 2013, p. 170.

Finally, *the interests of justice* are only considered where the requirements of jurisdiction and admissibility are met; whilst the jurisdiction and admissibility are positive requirements, the lack of interests of justice is the one that, in the end, may not give a reason to proceed.<sup>32</sup>

However, there are no timelines provided in the Statute for ending a preliminary examination<sup>33</sup> and in the course of its preliminary examination activities, the Office shall seek to contribute to the two important goals of the Rome Statute: the prevention of crimes and the ending of impunity, by encouraging genuine national proceedings.

## **B. The Prosecutor's request for authorization of an investigation in the situation in Georgia**

Pursuant to article 15(3) of the Rome Statute, the Prosecutor's request for authorization for an investigation in respect to the situation in Georgia referred, however, to events taking place from 1 July 2008, which precedes the dates of the alleged crimes; in its application, the Prosecutor indicated that it might be relevant to establishing the existence of crimes against humanity and war crimes that the events prior to August 2008 be considered. Since August 2008, the Prosecutor's Office conducted a preliminary examination into the situation in Georgia and gathered information on alleged crimes attributed to the three parties involved in the armed conflict: the Georgian armed forces, the South Ossetian forces and the Russian armed forces. As a result of its examination based on the information available, the Prosecution has identified the following *war crimes and crimes against humanity* which it reasonably believes fall within the jurisdiction of the ICC, thus triggering its request to the Pre-Trial Chamber I to authorize its investigation: killings, forcible displacements and persecution of ethnic Georgian civilians, destruction and pillaging of their property by South Ossetian forces (with possible participation by Russian forces); intentionally directing attacks against Georgian peacekeepers by South Ossetian forces and against Russian peacekeepers by Georgian forces.<sup>34</sup>

As far as complementarity is concerned, the Prosecutor indicated in the application that however well the national proceedings seemed to look at the beginning, the Georgian government confirmed in 2015 that domestic proceedings for the alleged displacement of ethnic Georgians from South Ossetia or for the allegations of intentional directing attacks against Georgian peacekeepers have been indefinitely suspended (although Russian domestic investigations on attacks against Russian peacekeepers are currently processing). The Prosecution also pointed that the Independent Fact-Finding mission on the Conflict in Georgia (IFFMCG)<sup>35</sup> reported that about 850 persons died as a result of the armed conflict while more than 100,000 civilians fled their homes. It also showed that there is a reasonable basis to believe that members of the Joint Peacekeeping Force Headquarters (JPKF HQ), including the Georgian and Russian contingents, were at separate times the subject of intentional attacks constituting war crimes within the jurisdiction of the Court.<sup>36</sup>

Of course, setting aside all doubts about the fact that the Prosecutor would have competency in investigating the situation in Georgia since the principle of complementarity is respected, an important aspect has to be mentioned: as far as South Ossetia is concerned, the Prosecution Office has considered it as a part of the territory of Georgia and not as a State within the meaning of article 17 of the Rome Statute.<sup>37</sup> Accordingly, the Prosecution does not consider that the South Ossetian *de facto* authorities would have a standing before the ICC to lodge an admissibility challenge

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<sup>32</sup> Policy Paper Preliminary Examinations, ICC-Office of the prosecutor, 2013, p. 16.

<sup>33</sup> *Idem*, p. 3.

<sup>34</sup> Request for authorization of an investigation pursuant to article 15, Office of the Prosecutor, ICC-01/15, 13 October 2015, p. 5.

<sup>35</sup> Established by the Council of the European Union.

<sup>36</sup> Request for authorization of an investigation pursuant to article 15, Office of the Prosecutor, ICC-01/15, 13 October 2015, p. 9.

<sup>37</sup> As pointed out in the application, *idem*, p. 150.



pursuant to article 19(2)(b) of the Rome Statute.<sup>38</sup> Furthermore, neither could the Russian Federation have a standing in the matter.

As far as the condition of gravity is concerned, the Prosecution attached to its application two annexes presenting an indicative list of crimes within the jurisdiction of the Court allegedly committed and a preliminary list of persons or groups that appear to be the most responsible for the most serious crimes.<sup>39</sup>

The Prosecutor also mentioned that victims of alleged crimes within the context of the situation have manifested their interests in seeing justice done in various ways, which gives motif to believe the third condition for admissibility is fulfilled as well.

The application formulated to request authorization to investigate the situation in Georgia, irrespective of the Pre-Trial Chamber's decision, gives enough reason to believe that a similar preliminary procedure would be opened by the ICC Prosecutor in respect to the situation in Ukraine. With regard to the situation in Georgia though, one aspect is undoubtedly clear: no charges against Georgian or Russian officials suspected of responsibility for starting the conflicts will be pressed by the ICC Prosecutor, since the court will not be able to exercise jurisdiction over the crime of aggression until at least 2017 – and, if activated, it will only apply to cases that occur after the activation. Similarly, the situation in Ukraine will most certainly not result in charges against State officials for the crime of aggression. Such as it is, the odds are not likely to play in favor of this happening, since the Review Conference of the Rome Statute in 2010 (Kampala) states that: the Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties<sup>40</sup> and, 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.<sup>41</sup>

Last, but not least, one more aspect needs to be mentioned: while it is true that Russia is not an ICC State-party, the question of whether the ICC Prosecutor can or cannot investigate allegations against Russian nationals is one of the first ones to come to mind. The ICC has jurisdiction over crimes committed on the territory of a State party – Georgia's case – and over crimes committed on the territory of a State that has accepted the ICC's jurisdiction – Ukraine's case. This means that the Court's jurisdiction extends to crimes committed or directed to be committed by Russian nationals on the territories of the above mentioned States. And as far as the international law goes, both the South Ossetia region and the regions concerned in the Ukrainian conflict are still part of each of the respective State; therefore, crimes committed on those territories by Russian nationals or directed to be committed by Russian nationals fall under the Court's jurisdiction. This, however, does not guarantee much: while the Georgian – and, respectively, the Ukrainian – government will be obligated to fully cooperate with the court if the investigation is authorized, Russian authorities will not be bound by the same obligation.

In other words, there is not much of a chance that the Russian Federation will hand over on a plate several or even any of its nationals to face justice before ICC.

## VIII. Conclusion

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<sup>38</sup> The article's content states that challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by a State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted.

<sup>39</sup> Request for authorization of an investigation pursuant to article 15, Office of the Prosecutor, ICC-01/15, 13 October 2015, p. 152.

<sup>40</sup> Article 15*bis* as proposed by the Draft Resolution at the Review Conference of the Rome Statute, 11 June 2010, Annex I: Amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression.

<sup>41</sup> *Ibidem*.

The ICC Prosecutor requesting authorization for investigation in respect to the situation in Georgia and the potentially identical request with regard to the situation in Ukraine, however far from the present hour that shall be, can mean only one thing for the future of the ICC: the Court can finally put to flight all those critics and accusations of unfairly targeting only African leaders for prosecution. As it is, the situation in Georgia could be motif for the very first case of the ICC outside of Africa and a potential second case in respect to the situation in Georgia could mean an even stronger proof of the Court trying to keep up to the expectations everyone has put into her. The only aspect we cannot predict much on, though, is the outcome of the procedures when it comes down to the Russian Federation.

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