

**Nicolas LIGNEUL**

*Doctor in Law (PhD), Associate Professor in Public Law at the University of Paris Est-Créteil, Attorney at law (Paris Bar)*

## **CONCLUSION OF THE SYMPOSIUM: UKRAINE, LAND OF GENOCIDE?**

At the end of this colloquium, it is up to me to say a few words of conclusion. A few months ago, when we started working on the preparation of this conference with Dean Nataliia Yatskiv, we had the idea of confronting the position of French and Ukrainian jurists and historians and working together to question the qualification of genocide in Ukraine.

The result now seems to me to be very unexpected and very impressive.

The many contributions of our fellow historians have shown us that the massacres have been repeated for a very large number of years in Ukraine. In fact, the phenomenon seems to me to have increased. Thus, since the Holodomor, these massacres have not really stopped. From this point of view, the current situation seems to be a kind of stumbling block in a genocidal construction.

Thus, the presentations of our fellow historians would have merited a systematic legal analysis of each massacre and each period. This would have made it possible to place each of the massacres in its context and to compare it with the international criminal law that was applicable at the time. This study would undoubtedly have made it possible to show the extent to which the perpetrators of the massacres of which Ukraine has been the victim have succeeded in circumventing international criminal law over the years.

This systematic analysis was obviously not possible in the short time available for this colloquium.

However, as we all know, and as Ukrainian legal colleagues have demonstrated throughout this colloquium, the offence of genocide is a criminal offence. It is strictly defined. For genocide to take place, there must be a legal element, a material element and an intentional element. The repetition of horrific massacres is not sufficient to qualify the existence of this offence. Legally, the qualification of genocide also presupposes an incriminating text and a genocidal intent.

The current situation of Russia's invasion of Ukraine must be confronted with international criminal law. This was elaborated during the colloquium,

Russia ratified the Convention on the Prevention and Punishment of Genocide<sup>1</sup>. The International Court of Justice has described the prohibition of genocide as a peremptory norm of public international law<sup>2</sup>. There is therefore no doubt as to the legal element of the offence.

To the extent that the material facts of repeated massacres are fully established, in order for the classification of genocide to be retained, the genocidal intent must be proved. It is therefore necessary to show that the massacres that regularly take place in Ukraine are part of a comprehensive plan to destroy Ukrainian identity.

The evidence of this desire to destroy Ukrainian identity exists and has been mentioned. It's a reality: Russia wants to destroy Ukrainian identity.

Unfortunately, Russia's violations of international criminal law on the territory of Ukraine are very numerous and, even if I have decided to limit my remarks to the current conflict, they are so numerous and frequent that it is not possible to know all of them.

Obviously, the designation of an international crime is no longer an end in itself. Since the beginning of the twentieth century, but especially since 1945, international crimes have not only led to philosophical or diplomatic condemnation.

International criminal law was built so that the perpetrators of these crimes could be prosecuted and convicted. Since 1999, it has adopted the Rome Statute, which established the International Criminal Court (ICC).

Among the international crimes committed by Russia during the invasion of Ukraine, some do not fall within the jurisdiction of the International Criminal Court, while others do.

For example, the crime of wilful disappearance was defined by a 2006 international convention. It has not been incorporated into the jurisdiction of the International Criminal Court (ICC). The ICC cannot therefore prosecute and convict perpetrators of crimes of voluntary disappearance.

1 Convention of 9 December 1948 ratified by Russia with some reservations. On this basis, the ICJ declared that it had jurisdiction over allegations of genocide against Russia for its actions in the Donetsk and Luhansk oblasts in Ukraine. ( Cf. ICJ (Ordo) 2 February 2024 – (RG No. 182) ALLEGATIONS OF GENOCIDE UNDER THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (UKRAINE v. RUSSIAN FEDERATION)

2 The prohibition of genocide is a jus cogens measure, e.g. in the ICJ 2002 judgment, «Case concerning the arrest warrant of 11 April 2020» (Democratic Republic of the Congo v Belgium), [2020] ECR 3, p. 22. or in ICJ 26 February 2007 «Application of the Convention on the Prevention and Punishment of the Crime of Genocide» (Bosnia and Herzegovina v. Serbia and Montenegro), Rc. 2007, p. 43.

However, Ukraine acceded to this international convention in 2015. The Russians can therefore be prosecuted on this basis for the voluntary disappearances they have organised and carried out on Ukrainian territory.

Similarly, article 8 bis of the Rome Statute defines the crime of aggression.

Despite this, Ukraine's request for the application of the ICC Statute cannot be implemented for the crime of aggression. The ICC's mandate does not include the crime of aggression. For it to be included, Ukraine and Russia would have had to ratify the Statute of the Rome Convention before the Prosecutor General at the International Criminal Court (ICC) had a mandate. As we all know, this is not the case. It seems to me indisputable that Ukraine has been a victim of Russia's crime of aggression. Yet, prosecution cannot be brought before the International Criminal Court on this basis.

Even if there is obvious aggression. Legally, she cannot be prosecuted before the ICC. This seems to me to be all the more important because, legally, it is possible to prosecute the crime of aggression of which Ukraine has been the victim since 2014. However, such proceedings cannot be brought before the ICC, whose mandate can only cover crimes of aggression if the states concerned have previously ratified the Rome Statute and its Article 8bis.

In this case, that is not the case.

Russia's violation of the Charter of the United Nations is clearly noteworthy.

The solution proposed by the European Union is to create a specialized court within the framework of the United Nations to hold Russia accountable for its violation of the Charter of the United Nations.

The jurisdiction of this court would then be recognized with regard to the Russian state and not its leaders.

That seems to me to be insufficient. Many victims would not be recognized as such.

The crime of aggression is a dispute between states. The prosecution of crimes of aggression is, in general, frustrating for lawyers. But, in reality, there was a crime of aggression committed by Russia against Ukraine. Russia must answer for this. The prosecution of the Russian state will necessarily be insufficient in terms of the facts prosecuted<sup>1</sup>, with regard to the perpetrators likely to be convicted<sup>2</sup> and/or the victims of the abuses committed by Russia on Ukrainian territory.

The symposium was the most fruitful in relation to crimes that could fall within the jurisdiction of the International Criminal Court.

1 There are many other offences committed in addition to the crime of assault

2 Many individuals have committed war crimes or crimes against humanity in connection with Russia's invasion of Ukraine.

Unfortunately, since February 2022, there has been no doubt about the qualification of certain crimes. For example, there is no dispute that many war crimes or crimes against humanity have been committed. On the other hand, the qualification of genocide is disputed by Russia.

Russia wants to challenge this characterization, in particular by challenging genocidal intent. The matter has been referred to the ICJ. It dismissed the preliminary objections. In the coming months, it will therefore be up to him to judge whether Russia committed genocide in Donetsk and Luhansk<sup>1</sup>. The indications of the existence of this intention were raised on the occasion of this colloquium. The impression that emerges from our work is that there is a genocide perpetrated in Ukraine by Russia. In a few months' time, the ICJ will confirm or refute this impression.

**Nicolas LIGNEUL. Conclusion of the Symposium: Ukraine, land of genocide?**

The offence of genocide is a criminal offence. It is strictly defined. For genocide to take place, there must be a legal element, a material element and an intentional element. The repetition of horrific massacres is not sufficient to qualify the existence of this offence. Legally, the qualification of genocide also presupposes an incriminating text and a genocidal intent.

The current situation of Russia's invasion of Ukraine must be confronted with international criminal law.

Obviously, the designation of an international crime is no longer an end in itself. Since the beginning of the twentieth century, but especially since 1945, international crimes have not only led to philosophical or diplomatic condemnation. International criminal law was built so that the perpetrators of these crimes could be prosecuted and convicted. Since 1999, it has adopted the Rome Statute, which established the International Criminal Court (ICC).

Among the international crimes committed by Russia during the invasion of Ukraine, some do not fall within the jurisdiction of the International Criminal Court, while others do.

The crime of aggression is a dispute between states. The prosecution of crimes of aggression is, in general, frustrating for lawyers. But, in reality, there was a crime of aggression committed by Russia against Ukraine. Russia must answer for this. The prosecution of the Russian state will necessarily be insufficient in terms of the facts prosecuted, with regard to the perpetrators likely to be convicted and/or the victims of the abuses committed by Russia on Ukrainian territory.

**Keywords:** genocide, the crime of genocide, Russia's aggression against Ukraine

---

1 ICJ 2 february 2024 (ORDER) Allegations of Genocide under the convention on the prevention and punishment of the crime of Genocide (RG 182).