

- 1- True. The ICC's material competence indeed concerns crimes that were within the competence of the ICTR and the ICTY; however, it is not the same. The ICC has material competence over crimes of genocide, war crimes, crimes against humanity, and crimes of aggression according to art.5 RS. For example, the ICTY had no jurisdiction over crimes of aggression. And about the ICTR, it condemned violations of Art. 3 common to Geneva Conventions and of Additional Protocol II, which includes acts of terrorism, now the ICC currently has no power to judge terrorism.
- 2- False. Art.21 RS reflects that mentioned in art.38 ICJ statute. However, it considers the specificities of criminal law, establishing a hierarchy between the sources. As the article itself says, the judge must first apply the provisions of the Rome statute, and if necessary to assist elements of crime in accordance with Article 9 RS. After this, a series of sources follows, and as a last resort, the judge may resort to the national principles of the states concerned. But it is only as a last resort.
- 3- False. The first international courts only regulated disputes between states. However, it is currently not so; individuals are involved, not least because international crimes are committed by men and not by abstract entities.
- 4- True. When we talk about the ICC's personal jurisdiction, we need to go to art.26 RS, which tells us that the ICC has no jurisdiction over people under the age of 18, at the time the crime was committed. In this sense, the ICC has no jurisdiction over crimes committed by child soldiers. However, it must punish those who use child soldiers as per art.8 (b) (xxvi).
- 5- False. As we are talking about the property here, we should go to art.31 (d), we would have to see if we were in a situation of necessity and duress.  
It is true that if there were people inside, there was a threat to their lives. This threat was created by someone else, by Juan. However, the guard's conduct was neither necessary nor reasonable, since shooting Juan in the head did not remove the threat, Juan had already set the house on fire.
- 6- True. As we know, one of the ways for a case to reach the ICC is through the investigation proprio motu as established in art.13 (c). In these cases, it is always necessary to authorize the Pre-trial chamber according to art.15 (3).  
After that, there are preliminary investigations, and if there is enough basis to believe that someone committed a crime, then there is confirmation of the cartoons. Furthermore, we cannot say that the person is automatically

condemned because the pre-trial chamber on hearing the accusations, with the prosecutor and the accused present, may consider that the accusations are unfounded.

- 7- True. We are facing an international conflict, and Hakim's action constitutes the attempt to carry out an act of war crime according to art.8 (b) (ix). The attempt is punished by art.25 (f), now Hakim never threw the bomb, but it was found to put the bomb, and that was the beginning of the action. On the other hand, he did not voluntarily give up, so he must be punished for the attempt.
- 8- False. Having a public procedure allows the judgment to be evaluated by the general public, thus preventing the court's arbitrary and unjust acts. However, this principle can be limited, as we see in art.64 (7), 67 (1), and 74 (5) RS, in order to protect the accused, victims or witnesses, or information that is confidential or sensitive.
- 9- False. When there is a request for review in accordance with art.84 RS, the court must again call the judgment of the first instance that issued the sentence initial, or constitute a new judgment of the lower court, or maintain its competence to hear the cause.
- 10- False. So that intoxication can be considered a form of exclusion from criminal liability under the terms of art.31 (b) RS. The person must be under a state of intoxication, for example, because he has used drugs; also, the person must be unable to analyze his conduct's unlawful character or to control the conduct. Moreover, it has to be an involuntary intoxication. If a soldier knows that he is going to the battlefield and still takes drugs, this will not remove criminal responsibility that may arise from the commission of a crime within the ICC's jurisdiction.
- 11- False. In addition to being able to be activated by the UN security council, non-member states can also request under the terms of art.12 (3) RS through a declaration to the Registrar, that the ICC exercises jurisdiction over a certain crime and that they are obliged to cooperate with the court.
- 12- True. According to art.22 and art.23 RS we can see that no one can be criminally responsible if no law criminalizes that conduct at the time it was committed. However, unlike national systems, it does not have to be a written law; it can be an unwritten law. Unlike national law, ICL is heavily influenced by customary international law. Therefore, in ICL, only is necessary a sufficiently determined law (written or unwritten) that punishes the perpetrator's behavior.

II

First, it is necessary to see if we are dealing with the material competence of the ICC. In this specific case, we are facing a war crime, which is the ICC's responsibility under the terms of art.5 (c). We are facing an international conflict since we are talking about the dispute for territory between two states, state X and state Y, and therefore when looking for the acts that constitute a crime, we must go to art.8 (2) (ab ).

### **We will see the responsibility of the director of Kazim prison**

Before, it is necessary to mention that Damian and Hiba, despite having already served the military forces of State Y, are now prisoners of war, and therefore, are not at the service of State Y, thus being covered by the Geneva conventions, more specifically by the 3rd convention.

Regarding the conduct towards Hiba, as we can see, State X could punish her disciplinarily for the fact that she fled, according to art.92 CG III; however, this punishment can never jeopardize her health status, nor leave you without access to basic sanitary conditions as established in art.29. We can then say that there were serious violations of the Geneva Convention.

Regarding the material elements, there was conduct on the part of Kazim, and this conduct can fulfill the acts referred to in art.8 (2) (ii-iii) since leaving Hiba without access to basic conditions is inhumane, as well as caused him a severe illness caused by the conditions to which he was subjected. This conduct had consequences since, as already said, it brought serious health problems to Hiba, as well as it was for 1 year in inhuman conditions. Furthermore, there is a causal link between Kazim's conduct and the crime since if Kazim had given dignified conditions, Hiba would not be like that.

Regarding the contextual elements, as we know, it was an international conflict, and Hiba was arrested for belonging to the enemy military force.

With regard to subjective elements, we have to go to art.30 RS. Kazim wanted to carry out that conduct, had the intention that Hiba would have that treatment and wanted to cause that consequence, and therefore there was intention and knowledge. Furthermore, he was also aware of the contextual element, the existence of an international conflict, since he was the head of that prisoner of war prison.

Here we have no way of excluding criminal liability, and therefore, about material jurisdiction, the ICC would have jurisdiction.

Personal jurisdiction was also fulfilled since Kazim is a natural person according to art.25 (1) RS and over 18 years old (art.26 RS).The temporal jurisdiction is also fulfilled since Kazim was a national of state X that ratified RS, and therefore, according to art.12 n°3 RS, it was possible to exercise jurisdiction. Here there could be any of the 3 referral defined in art.13 RS.

### **Regarding conduct by Amani**

Once again, there is a serious violation of Geneva, since it is stated in art. 130 that a prisoner of war cannot be coerced into participating in the enemy state's military forces.

Regarding the material elements. Thus, Amani's conduct fits in art.8 (2) (v); this conduct had a consequence since it caused fear to prisoners who were coerced to ally themselves with enemy forces. There is a causal link between Amani's conduct and the soldiers' behavior since Amani's threat made prisoners of war join enemy forces.

Regarding the contextual element, we were once again facing an international conflict.

About the mental element, according to art.30 RS, Amani had the intention of coercing the military, as well as he wanted the prisoners of war to ally themselves with the forces of state X, besides he was aware of the existence of a military conflict because as the statement itself tells us, he was furious that State Y was winning, besides, he was the new head of the POW camp.

There is also no cause for exclusion of liability hereunder art.31 RS.

There was personal jurisdiction since Amani was a natural person and over 18 years old according to art.26 RS and temporal jurisdiction since Amani was part of state X, which was part of the Rome statute. There could be any of the 3 referrals defined in art.13 RS.

### **Regarding Asim's responsibility**

We can say that his conduct is provided for in art.8 (b) (xxv) since there is a direct attack on the civilian population, which is left with nothing to eat.

This conduct has consequences; the population of the state y runs out of food, and there is a causal link between the conduct of Asim and the protected interests since it was the blocking of food transport that prevented it from reaching citizens. About the contextual elements, too, once again, we know that we are facing an international conflict.

Regarding the mental element, in article 30 RS, Asim freely decided to destroy the food containers and wanted to cause that consequence, that is, that the people of

State Y had no food. He also knew about the existence of contextual elements since he was a soldier of State X.

Regarding the causes of exclusion from criminal liability, we need to see art.33 RS, since Asim had the duty to obey his superior Amani's orders, however, as we are told, Asim was aware of the unlawful nature of his conduct. Therefore, criminal liability could not be excluded.

Once again, the personal liability under the terms of art.25 and art.26 RS was fulfilled, as well as the temporal jurisdiction, since Asim was a soldier of state X that had ratified the RS according art.12 (2) (b).

Note that in this case, Amani ordered that access to food be blocked; in this case, Armani participated in the crime through the accessoryship by art.25 nº3 (b).

To say that there was order, it is necessary to have a subordinate relationship between Amani and Asi, which there was since one was a military superior of the other. In this sense, Amani could be responsible.