

The Preconditions for Exercising the Jurisdiction of the International Criminal Court

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Abstract:

The International Criminal Court (ICC) plays a pivotal role in ensuring the protection of fundamental human rights and freedoms globally. Its jurisdiction, as defined by Article 5 of the Rome Statute, extends to specific crimes of concern, such as genocide, war crimes, crimes against humanity, and the crime of aggression. The ICC's framework emphasizes two key principles: delivering international criminal justice and complementing national legal systems through its principle of complementarity. This ensures that while the ICC intervenes in cases where national courts are unwilling or unable to act, it does not override national sovereignty. This paper examines the three central jurisdictional dimensions: *ratione personae*, addressing who can be held accountable; *ratione materiae*, concerning the types of crimes within the Court's scope; and *ratione temporis*, which refers to the time frame during which these crimes must have occurred. The analysis will underscore the significance of these principles in realizing the ICC's mandate.

Keywords: Jurisdiction Conditions; International Criminal Court; Jurisdiction.

1. INTRODUCTION

The rise in criminal activity is one of the most significant threats to the stability of the international community. Despite various efforts to address this issue, regional conflicts and wars remain persistent challenges that require collective solutions. Since the end of World War I, the intensity and destructiveness of wars have only escalated,

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resulting in widespread devastation, loss of cultural heritage, and violations of fundamental principles set by religious law¹.

Turning to the International Criminal Court (ICC) to hold accountable those responsible for these atrocities requires adherence to the procedures laid out in the Court's Statute, along with its rules for evidence and proceedings. In the face of ongoing and severe breaches of human values and legal principles, even the most well-intentioned legal frameworks and international efforts to uphold basic rights risk becoming hollow if not actively enforced. This underscores the need for coordinated international action to protect human rights² and maintain global security.

The establishment of the ICC has thus become essential for prosecuting individuals responsible for international crimes³. The Court's authority, backed by both national and international measures, strengthens global cooperation through international law and relevant agreements⁴. The ICC's jurisdiction is specifically reserved for the most severe crimes that affect the entire international community. These crimes include:

Genocide, crimes against humanity, war crimes, and crimes of aggression.

International criminal law plays a crucial role in bridging the gap between national and international legal systems⁵, much like how national criminal law governs relations between states and individuals at the domestic level. The principle of complementarity emerges from this relationship, with each system reinforcing the other. To fully understand this dynamic, the following points must be considered:

¹ Apparition d'un Modèle Universel de Procès, équitable, voir Serge Gunichard et Jacques Bricson, *Procédure Pénale*, [Apparition of a Universal Model of Fair Trial, see Serge Gunichard and Jacques Bricson, *Criminal Procedure*], Lexis Nexis, Letek, 4th edition, 2008, p. 130.

² Muhammad Al-Tarawna et al., *Al-Qanun Al-Duwali Al-Insani*, "Ba'that Al-Salib Al-Ahmar Al-Duwali, [International Humanitarian Law], International Red Cross Mission, Cairo, 3rd Edition, 2006, p. 244.

³ Ashraf Faiz Al-Lamsawi, *Al-Mahkama Al-Jina'iyya Al-Duwaliyya* [The International Criminal Court], 1st Edition, National Center for Legal Publications, pp. 7-8.

⁴ Dr. Abdel Fattah Mohamed Serag, *Mabda' Al-Takamul fi Al-Qada' Al-Jina'i Al-Duwali* [The Principle of Complementarity in International Criminal Justice], Dar Al-Nahda Al-Arabiya, 1st Edition, Cairo, p. 7.

⁵ Said Abdel Matlub Hassan, *Al-Mahkama Al-Jina'iyya Al-Duwaliyya* [The International Criminal Court: Establishment, Statute, Legislative and Judicial Jurisdiction and Applications of Current and Contemporary International Criminal Justice], Dar Al-Nahda Al-Arabiya, Cairo, 2004, p. 29.

International criminal law aims to combat serious crimes with the assistance of national criminal law, which applies primarily to individuals.

Crimes considered international are those that constitute grave violations of both international and domestic legal norms. These must be addressed decisively, as they reflect collective legal standards set by the global community, established either through treaties or constitutional provisions¹.

The commission of an international crime triggers individual criminal responsibility, which is key in defining the jurisdiction of national and international courts tasked with enforcing criminal sanctions. As a result, criminal law encompasses both substantive and procedural elements².

Given the above, the key question arises: What are the prerequisites for the jurisdiction of the International Criminal Court?

1. The Temporal Condition:

The rule of law is a fundamental principle that holds sway across the international community, even though its interpretation and level of adherence may vary among different legal systems. This principle demands that everyone—both leaders and the public—abide by laws enacted by legitimate authorities. It forms the backbone of the legitimacy of both governmental actions and individual behaviors. The differences in the application of this principle arise from varying social and cultural values and the type of political regime in each society.

The rule of law serves a dual purpose: it safeguards individual rights and freedoms against the encroachments of public authorities, while also ensuring the protection of the broader public interest. This balance is maintained through two key mechanisms:

- Individuals are obligated to follow the laws that govern them.
- Public authorities must apply and respect these laws, refraining from infringing on individual rights and freedoms, thereby providing security for the population and legitimizing the actions of state institutions in line with legal statutes³.

¹ Omar Hattab, *Ijra'at Al-Tahqiq wa Damaniatuha Amam Al-Mahkama Al-Jina'iyya Al-Duwaliyya* [Investigation Procedures and Guarantees before the International Criminal Court], Magister Thesis in International Law and International Relations, University of Algiers, Faculty of Law Ben Aknoun, 2008-2009, p. 8.

² Abdelkader Al-Bakirat, *Al-Adala Al-Jina'iyya Al-Duwaliyya* [International Criminal Justice], University Publications Office, Algeria, 2nd Edition, 2007, pp. 44-45.

³ Ahmed Fathi Sorour, *Al-Shar'iyya Al-Dusturiyya wa Huquq Al-Insan* [Constitutional Legitimacy and Human Rights], Dar Al-Nahda Al-Arabiya, Revised Edition, Cairo, 1995, p.125.

Historically, the rule of law has evolved within democratic national systems, tied closely to national constitutions. It emerged alongside the separation of powers, bringing about the principle of legislative authority's exclusive right to criminalize and regulate behavior.

Criminalization and punishment involve a set of legal rules that define which actions are prohibited and what penalties follow from breaking those rules. These laws serve as universal warnings, demanding compliance and penalizing violators. In essence, the rules of criminalization and punishment focus on¹:

First: Defining crimes by specifying which actions are prohibited, thus drawing a clear line between acceptable and unlawful behavior².

Second: Outlining the consequences for those who violate the established norms.

Third: Acting as a general legal deterrent, transitioning from a theoretical warning to practical enforcement when a crime occurs.

Fourth: Ensuring that penalties for lawbreakers are imposed by an authority, protecting the community's rights³.

Criminalization and punishment operate through several categories of legal rules:

- **The first category** focuses on identifying the material acts criminalized by law.
- **The second category** involves the societal reaction to those acts⁴.
- **The third category** affects social behavior, along with individual rights and freedoms.
- **The fourth category** ensures a balance between protecting societal interests and safeguarding individual rights and freedoms.

The effectiveness of criminalization and punishment depends on two main factors:

- How well they reflect societal values and interests.
- How effectively the penalties are applied to meet dual objectives: protecting

¹ Mohamed Zaki Abu Amer, *Al-Ijra'at Al-Jina'iyya [Criminal Procedures]*, Dar Al-Jamea Al-Jadida for Publishing, Alexandria, 7th Edition, 2005, p5.

² Frédéric Dbove and François Falletti, *Précis de droit pénal et de procédure pénale*, Presse Universitaire de France / PUF / 2001, pp. 39-40.

³ Ali Abdel Qader Al-Qahwaji, *Qanun Al-Uqubat [Penal Law]*, Al-Halabi Legal Publications, 2002, p5.

⁴ Mohamed Said Namour, *Usul Al-Ijra'at Al-Jaza'iyya [Principles of Criminal Procedures]*, Dar Al-Thaqafa for Publishing and Distribution, 1st Edition, Amman, 2005, p9.

public interests while ensuring the rights and freedoms of individuals, striking a balance between collective security and individual liberty.

Before the court can exercise its jurisdiction, specific conditions must be met to ensure its authority is valid.

1.1 The Non-retroactivity of Legal Texts in National Criminal Law.

Article 11 of the Rome Statute defines the temporal jurisdiction of the International Criminal Court (ICC), specifying that the Court only has jurisdiction over crimes committed after the Statute came into effect on July 1, 2002¹.

The principle of non-retroactivity, a core aspect of criminal legality², ensures that laws are not applied to actions taken before those laws were enacted. This concept is reaffirmed in Article 24 of the Rome Statute, which states that no one can be held criminally responsible for acts committed before the Statute became active.

This principle is crucial for protecting individual freedoms and rights, as it would be unjust to punish someone for actions that were legally permitted at the time they were carried out. However, if a new law benefits the accused³, such as reducing a penalty, retroactive application may be allowed. The ICC's jurisdiction, as outlined in Article 11, is strictly forward-looking, meaning it does not apply to crimes committed before the Statute took effect. For any state that becomes a party to the Statute after its entry into force, the Court's jurisdiction only applies to crimes committed after the Statute becomes effective for that particular state⁴.

The temporal jurisdiction of past international tribunals, such as those for Yugoslavia and Rwanda, was similarly limited to specific time frames that aligned with the events that took place in those regions. For example, the jurisdiction of the Yugoslavia Tribunal began in January 1991 and lasted until the end of its mandate. The Rwanda Tribunal's jurisdiction was limited to crimes committed between January 1 and December 31, 1994.

¹ Abdelkader Al-Bakirat, *Ijra'at Al-Tiqaadi Amam Al-Mahkama Al-Jina'iyya Al-Duwaliyya*, [Procedures of Litigation before the International Criminal Court], published article in the Algerian Journal of Legal, Economic, and Political Sciences, Issue 04/2008, p. 300.

² See Articles 22, 23, 24 of the Statute of the International Criminal Court.

³ It is the same regulation, which is contained in Article 2 of the Algerian Penal Code, does not apply retroactively except in cases where it is more severe.

⁴ Omar Hattab, *Ibid*, p. 11.

For the ICC, its jurisdiction becomes effective once 60 states have ratified the Statute. This jurisdiction can only be exercised after the sixtieth ratification is submitted, with the Statute coming into force 60 days after this submission.

- For any state that joins after the Statute becomes effective, the ICC's jurisdiction takes effect on the first day of the month following 60 days from the submission of its ratification documents.
- Under Article 124 of the Statute, states can defer the Court's jurisdiction over war crimes for seven years.

Thus, the principle of non-retroactivity generally works in favor of the accused¹, preventing the application of harsher laws to past actions. However, if a new law offers a benefit, such as reducing a penalty, it can be applied retroactively. Criminal laws take effect immediately upon enforcement by the competent authority, which varies by country but typically refers to the legislative body or the presidency of the state. In Algeria, for example, this principle is codified in Article 2 of the Penal Code.

The general rule is that the criminal statute applies from the moment it is enacted until it is repealed, affecting all actions and behaviors committed after its enactment. Although legislators may sometimes allow the retroactive application of substantive rules (such as penalties) as an exception, this applies only in favor of the accused and does not extend to procedural rules.

The immediate entry into force of criminal statutes is a direct result of the principle of criminal legality, ensuring that the law in effect at the time of the crime is the one applied. In essence, new criminal laws do not apply retroactively if they are harsher than the old ones. For retroactive application, the following conditions must be met:

- The previous law must not have been temporary.
- The judgment must be issued after the new law takes effect.
- The new law must favor the accused².

At the core of these conditions is the understanding that when a penalty is abolished or reduced, it is a recognition that the original punishment was either excessive or not in the best interest of individuals, prompting the change.

1.2 The Principle of Non-Retroactivity of Criminalization and Punishment Rules in International Criminal Law

¹ Frédéric Dabove and François Falleti, *Précis de droit pénal et de procédure pénale*, Presse Universitaire de France / PUF / 2001, p. 55.

² Mohamed Zaki Abu Amer, *Al-Ijra'at Al-Jina'iyya [Criminal Procedures]*, Dar Al-Jamea Al-Jadida for Publishing, Alexandria, 7th Edition, 2005, p31.

The Rome Statute of the International Criminal Court firmly upholds the principle of criminal legality, which means that no crime or punishment can exist without a clear legal basis. This principle ensures that individuals cannot be prosecuted for actions that were not defined as crimes at the time they were committed.

When a state ratifies international agreements that give those agreements the force of domestic law, it obligates the state to criminalize certain behaviors while also protecting national interests that have international implications. According to Article 1 and the preamble of the Rome Statute, national courts have the primary responsibility for prosecuting crimes, with the International Criminal Court acting as a complementary institution.

However, many countries subject their domestic laws to review to ensure they are compatible with the Rome Statute, as seen with France¹. Ratifying the Rome Statute does not automatically incorporate the crimes and penalties outlined in the treaty into national law. Instead, these crimes define the jurisdiction of the International Criminal Court itself. To apply these crimes and penalties domestically, national legislation must adopt them in line with the principle of national jurisdiction, which is central to the Rome Statute. Each state is responsible for fulfilling its international obligations through its legislative authority, ensuring that its laws clearly define crimes, their elements, and the corresponding penalties. Therefore, the Rome Statute indirectly influences criminalization and punishment, with national laws becoming the direct source when they integrate these international crimes into domestic legislation, a process called harmonization².

Article (24/1) of the Rome Statute reiterates the principle of non-retroactivity, affirming that no one can be held criminally liable for actions committed before the Statute came into force. It would be unjust to prosecute someone under a law that was not in effect when the conduct in question occurred.

International criminal law differs from domestic law in that its criminalization and punishment rules are declaratory rather than creative. Many acts criminalized in international law were established through international custom long before treaties codified them. These customs form the foundation for international criminal law, which later treaties have built upon.

Article 21 of the Rome Statute outlines the sources the International Criminal Court relies on when applying the law:

¹ Mohamed Hanafi Mahmoud, *Jara'im Al-Harb Amam Al-Qada' Al-Jina'i Al-Duwali* [War Crimes before International Criminal Justice], Dar Al-Nahda Al-Arabiya, 1st Edition, 2006, p. 102.

² Ahmed Fathi Sorour, *Al-Qanun Al-Jena'i Al-Dusturi* [Constitutional Criminal Law], Dar Al-Shorouk, Cairo, 3rd Edition, 2004, pp. 55-56.

- **First**, the Statute itself, along with the elements of crimes, procedural rules, and evidentiary standards set by the Court.
- **Second**, where relevant, applicable treaties and international law principles, including those related to armed conflict.
- The general principles of law derived from national legal systems worldwide, including domestic laws of states typically exercising jurisdiction over the crime, as long as these principles are consistent with the Statute and internationally recognized norms¹.

Thus, the law applied by the International Criminal Court comes from:

- Primary sources like the Rome Statute and related international treaties, followed by international legal principles.
- Legal sources including general legal principles, precedents set by the Court, and established international customs.

2. The Personal Condition

Article 1 of the Rome Statute establishes the International Criminal Court (ICC) as a permanent judicial body with jurisdiction over individuals. The Statute's preamble urges states to participate in combating crimes and holding perpetrators accountable.

Article 25 of the Statute lays out several key principles regarding individual criminal responsibility, which apply regardless of a person's status or position²:

- 1) The Court has the authority to prosecute natural persons.
- 2) Individuals committing crimes under the Court's jurisdiction are personally responsible and can face punishment.
- 3) Criminal responsibility applies whether the crime is committed individually or in collaboration with others, through incitement, assistance, encouragement, or providing the means to commit the crime.
- 4) Criminal responsibility extends to those who contribute to a group's criminal activity with the intention of supporting the crime, knowing the criminal purpose, or attempting to carry it out through direct actions.

Historically, the concept of individual criminal liability at the international level was not well-defined in legal frameworks that criminalized international crimes, as no international judicial body existed to enforce these laws or punish offenders.

¹ Abdel Moneim Abdel Ghani, *Al-Jara'im Al-Duwaliyya [International Crimes]*, Study in International Criminal Law, Dar Al-Jamea Al-Jadida, Alexandria, [no edition], 2007, p.158.

² Article 1, Statute of the International Criminal Tribunal, for the former Yugoslavia, 2006, see also: Article 1 ICTR.

Traditionally, international law viewed states as the primary subjects, not individuals. Thus, the punishment of international criminals was uncertain.

The principle of criminal legality in domestic legal systems typically rejects the idea of international criminal liability for individuals unless national laws incorporate international criminalization standards. The first indications of international criminal liability for individuals emerged through international criminal courts¹, often established either by victorious powers after a war or by decisions of the UN Security Council.

Nevertheless, Article 227 of the Treaty of Versailles proposed creating a special court to prosecute the German Kaiser for initiating World War I, while Articles 228 and 229 sought the prosecution of German military officers for violating the laws of war. Additionally, in 1943, Churchill, Roosevelt, and Stalin signed the Moscow Declaration, which called for the trial of Nazi leaders².

These early efforts eventually led to the formation of international criminal courts designed to prosecute individuals based on legal rules that harmonize with national criminal regulations³.

Article 31 of the Rome Statute provides specific grounds for excluding individual criminal liability⁴:

- A person is not liable if they suffer from a mental or physical condition that prevents them from understanding the illegality of their actions or from controlling their behavior according to the law.
- Intoxication can serve as a defense if it impairs a person's ability to understand the nature of their actions⁵ unless the intoxication was voluntary, and the person knew it could lead to criminal behavior⁶.

¹ Abdelkader Al-Bakirat, *Al-Adala Al-Jina'iyya Al-Duwaliyya* [International Criminal Justice], University Publications Office, Algeria, 2nd Edition, 2007, p. 165 and after it.

² Mahmoud Sharif Bassiouni et al. *Al-Itar Al-Urfi lil-Qanun Al-Duwali Al-Insani (Al-Tadakhulat wal-Thughurat wal-Ghumood)*, [The Customary Framework of International Humanitarian Law (Interventions, Gaps, and Ambiguities)], International Red Cross Mission, Cairo, 3rd Edition, 2006, p. 10-16.

³ Ali Abdel Qader Al-Qahwaji, *Ibid*, p.97.

⁴ These are nearly the same bases excluding criminal liability recognized by the Algerian legislator (insanity, duress, minority) Articles 47, 48 of the Penal Code, for more details see in this regard: Ahsan Bousquia, *Al-Wajeez fi Al-Qanun Al-Jazai Al-Amm* [The Concise in General Criminal Law], Dar Houma for Publishing and Distribution, Algeria, 2007, pp. 181-192.

⁵ Ahsan Bousquia, *Ibid*, p.651 and after it.

⁶ Abdelkader Al-Bakirat, *Al-Adala Al-Jina'iyya Al-Duwaliyya* [International Criminal Justice], *Ibid*, p. 97.

- A person may defend themselves or others from war crimes or protect critical property ¹if the response is reasonable and proportionate to the threat.
- Actions performed under duress, where the person acted to avoid death or serious harm, can also exclude liability, as long as the harm caused was not greater than the harm avoided. The threat must come from another person or uncontrollable circumstances.
- The ICC evaluates the possibility of applying these exclusions during trials, based on the Statute, procedural rules, and evidence.

Article 33 of the Statute further clarifies that individuals are not exempt from responsibility if they committed a crime under orders from a government or superior, except in specific cases:

- If the person was legally obligated to obey the order.
- If the person was unaware of the illegality of the act.
- If the illegality of the act was not obvious, except in cases of genocide or genocides or crimes against humanity.

Lastly, the Court does not have jurisdiction over individuals under 18 years of age, as stated in Article 26².

3. The Objective Condition

The International Criminal Court (ICC) holds jurisdiction over four major international crimes, each raising global concerns and posing threats to international peace and order. These crimes include:

3.1 Genocide

Genocide is recognized globally as a serious crime, violating key United Nations principles, moral standards, and divine laws. It is condemned universally by the global community³. Genocide involves acts aimed at partially or completely eradicating a group based on national, ethnic, racial, or religious identity. The term combines two Latin words: "GENO," meaning race or kind, and "CIDE," meaning killing⁴. It was first

¹ See Article 31 paragraphs (c) and (d) of the Statute of the International Criminal Court.

² See Article 26 of the Statute of the International Criminal Court.

³ United Nations Convention on the Prevention and Punishment of the Crime of Genocide, adopted on December 9th, 1948.

⁴ Abdel Moneim Abdel Ghani, *Al-Jara'im Al-Duwaliyya [International Crimes]*, Study in International Criminal Law, Dar Al-Jamea Al-Jadida, Alexandria, 2007, p. 594.

introduced in United Nations General Assembly Resolution 96/1 on December 11th, 1946, where the UN formally condemned genocide as a crime under international law¹.

Professor Donnedieu de Vabres identified three main types of genocide:

- a) Physical genocide: Direct attacks on life, health, and physical safety.
- b) Biological genocide: Measures like forced abortions and sterilization that limit population growth.
- c) Cultural genocide: Attacks on a group's language, traditions, and cultural heritage².

3.2 Crimes Against Humanity

The idea of crimes against humanity first appeared in the preamble to the Fourth Hague Convention of 1907, which extended protections to both civilians and combatants in armed conflicts³.

After World War I, the Allied Powers formed a commission to investigate war crimes, determining that the 1915 Armenian massacre by the Ottoman Turks constituted "crimes against the laws of humanity."⁴

Article 7 of the Rome Statute outlines crimes against humanity, drawing from previous legal frameworks, including the Nuremberg Military Tribunal (Article 6, paragraph 2) and the statutes governing the international criminal tribunals for Yugoslavia and Rwanda. The Rwanda Tribunal expanded the definition to include rape, linking crimes against humanity to systematic or widespread criminal activity⁵.

3.3 War Crimes and Aggression

Article 8 of the Rome Statute defines war crimes and divides them into several categories:

First Category: Grave breaches of the Geneva Conventions of 1949, including eight major offenses against individuals and property.

¹ Mohamed Khalil Morsi, Jarimat Al-Ibada Al-Jamaiyya fi Al-Qada' Al-Jina'i Al-Duwali, [The Crime of Genocide in International Criminal Justice], Journal of Security and Law, Issue 1, 2003, p 174.

² Abdel Moneim Abdel Ghani, Ibid, p. 596.

³ See the preamble of the Hague Convention IV of 1907 and the Annexed Regulations concerning the Laws and Customs of on Land War.

⁴ Mahmoud Sharif Bassiouni et al. Ibid, p. 86.

⁵ The sentence: "A directed attack against any civilian population" means a behavioral approach that includes the repeated commission of the acts referred to in the first paragraph, by any group of civilians pursuant to a state law or organization decreeing this attack or promoting such a policy.

Second Category: Other serious violations of the laws and customs applicable to international armed conflicts, encompassing 26 crimes committed during military operations involving recognized states or persons under international law¹.

Third Category: Violations of Article 3, common to all four Geneva Conventions. These include acts like murder, mutilation, torture, cruel treatment, and degrading treatment, as well as hostage-taking and passing sentences without fair trials².

Fourth Category: Other significant breaches of laws applicable in non-international armed conflicts, focusing on attacks against civilians, cultural sites, healthcare facilities, and essential infrastructure.

Fifth Category: Crimes described under paragraph 2(e), applying to internal conflicts involving prolonged fighting between government forces and organized armed groups or between such groups themselves.

The crime of aggression was officially defined during the ICC's Review Conference held in Kampala, Uganda, in 2010³. About 4,600 representatives from states, international organizations, and NGOs participated⁴.

They adopted the definition from United Nations General Assembly Resolution 3314 (1974). Following this, Articles 121 and 123 of the Rome Statute were amended⁵, and Article 8 bis was added, defining aggression⁶ as the planning, initiation, or execution of aggressive acts by a person in control of a state's political or military forces. The aggression must clearly violate the UN Charter⁷ in terms of its nature, scale, and severity.

¹ Mohamed Hanafi Mahmoud, Ibid, p. 253.

² Mahmoud Sharif Bassiouni et al. Ibid, p. 107.

³ Ahmad Wafi, Al-Aliyat Al-Duwaliyya li Himayat Huquq Al-Insan wa Mabda' Al-Siyadah, [International Mechanisms for the Protection of Human Rights and the Principle of Sovereignty], State Doctorate in International Law and International Relations, University of Algiers 1, Faculty of Law, 2010-2011, p. 307.

⁴ Abd El Wahab Shiter, Jarimat Al-Udwan fi Dhil Al-Nitham Al-Asasi lil-Mahkama Al-Jina'iyya Al-Duwaliyya, [The Crime of Aggression under the Statute of the International Criminal Court], Al-Majalla Al-Akadimiyya lil-Buhuth Al-Qanuniyya, Abderrahmane Mira University of Béjaia, Faculty of Law and Political Science, Issue 1, 2011, p. 169.

⁵ Ahmad Wafi, Ibid, p307.

⁶ Boubaker Abdelkader, Al-Mas'uliyya Al-Jina'iyya Al-Duwaliyya 'an Al-Jarima Al-Duwaliyya - Mas'uliyat Al-Dawla wal-Fard, [International Criminal Responsibility for International Crime – State and Individual Responsibility], Algerian Journal of Legal, Economic, and Political Sciences, University of Algiers 1, Faculty of Law, Issue 1, March 2012, p. 476.

⁷ Montasser Said Hamouda, Al-Nazariya Al-Ammah Lil-Jarimah Al-Duwaliyya, Ahkam Al-Qanun Al-Duwali Al-Jina'i, Dirasa Tahliliyya [General Theory of International Crime, Provisions of International Criminal Law, Analytical Study], Dar Al-Jamea Al-Jadida, Alexandria, Egypt, 2006, p. 162 and after it.

Article 8 bis¹ of the Rome Statute aligns with the definition from the 1974 UN General Assembly, particularly through the inclusion of Article 2(5), which ensures consistency with the UN Charter. The ICC's jurisdiction over aggression only took effect after two conditions were met: a two-thirds majority vote by States Parties after January 1, 2017, and ratification by at least 30 states. This means that the ICC could not prosecute crimes of aggression until 2018, provided these ratifications were secured before January 2017².

4. Issues related to admissibility and applicable law:

4.1 Admissibility Issues:

The Rome Statute defines specific conditions under which a case may be deemed inadmissible³ before the International Criminal Court (ICC). These include⁴:

- If a state is already investigating or prosecuting the crime, unless it is clear that the state is unwilling or unable to genuinely carry out the investigation and prosecution.
- If the accused has already been prosecuted for the same crime, adhering to the principle that no one can be prosecuted twice for the same offense.
- If a state has investigated or prosecuted a crime and decided not to proceed, or dismissed the case, unless this decision was due to the state's unwillingness to investigate and prosecute.

Several indicators suggest a state's unwillingness to fulfill its judicial responsibilities, as recognized by international legal principles:

- Unjustifiable delays in legal proceedings.
- Actions taken by the state to shield the accused from accountability before the ICC.
- Unfair or unclear legal procedures.

The ICC Prosecutor is responsible for deciding on admissibility. Upon submitting a case, the Prosecutor informs the relevant States Parties with jurisdiction, giving them one month to notify the Court if they are investigating the case and requesting to proceed.

¹ Boubaker Abdelkader, Ibid, p. 476.

² Mohamed bin Abdel Sadik, Study: Review Conference of the Statute of the International Criminal Court, Part 1/3, available online at <http://www.assabah.press.ma/index>.

³ Ali Abdelkader Al-Qahwaji, Al-Qanun Al-Duwali Al-Jina'i Ahm Al-Jara'im Al-Duwaliyya wal-Mahakim Al-Duwaliyya Al-Khassa [International Criminal Law: Most Important International Crimes and Special International Courts], Al-Halabi Publications, 1st Edition, Beirut, 2001, pp. 331-334.

⁴ Article 18 of the Statute of the International Criminal Court.

The Prosecutor has six months to reconsider a decision to investigate if it becomes clear that the state is unwilling or incapable of carrying out its judicial duties¹. If the Prosecutor withdraws from a case, they may periodically request updates or information from the state conducting the investigation².

Challenges to admissibility are raised before charges are confirmed. The Pre-Trial Chamber addresses the case, and it may later proceed to the Trial Chamber. Decisions made at this stage can be appealed to the Appeals Chamber. The ICC has the authority to rule on its own jurisdiction. The following parties may challenge the Court's jurisdiction:

- The accused or convicted person.
- The state with jurisdiction over the case.
- Any state that has submitted a declaration of acceptance of the Court's jurisdiction to the registrar³.

4.2 Applicable Law:

Article 21 of the Rome Statute outlines the laws applied by the ICC when adjudicating cases under its jurisdiction:

First: The Statute itself, including the elements of crimes, procedural rules, and evidence standards of the ICC.

Second: Applicable treaties, international legal principles, and the laws governing armed conflict⁴.

Third: General principles of international law derived from various national criminal laws that address the same crimes, provided these principles do not contradict the Statute, international law, or globally recognized standards.

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5. Conclusion

¹ Ziad Attani, *Al-Mahkama Al-Jina'iyya Al-Duwaliyya wa Tatwur Al-Qanun Al-Jina'i Al-Duwali* [The International Criminal Court and the Development of International Criminal Law], Al-Halabi Legal Publications, Lebanon, 1st Edition, 2009, p. 57.

² Sanaa Ouda, Mohamed Eid, *Ibid*, p. 58.

³ Article 19, paragraph 2 of the Statute of the International Criminal Court.

⁴ The term “international law for the laws of armed conflict” is the “International Humanitarian Law”, which is a modern term used in international law.

As discussed, the current international criminal justice system, represented by the ICC, does not seek to replace national courts or take over their jurisdiction. Instead, it aims to strengthen and support them in addressing the most serious crimes against humanity. The ICC serves to complete the international criminal justice system, which strives to maintain global peace and security. The crimes outlined in the Rome Statute have international significance, transcending regional boundaries and becoming key concerns of international law, as addressed by the ICC through its material (*ratione materiae*), personal (*ratione personae*), and temporal (*ratione temporis*) jurisdiction.

However, a significant issue for the ICC is the challenge it faces within the broader international framework, primarily governed by the United Nations Charter. This framework has not kept pace with international developments, highlighting the need for reform. These challenges include inherent limitations in the Statute, especially concerning jurisdiction, admissibility, applicable law, and the referral process.

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