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# ROLE OF ICC IN THE PROTECTION OF HUMAN RIGHTS

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## ABSTRACT

The International Criminal Court (ICC) has the power to punish crimes like genocide, crimes against humanity, war crimes, and the crime of aggression. The ICC was set up as a permanent criminal court to deal with these crimes, which threaten the international community's peace, security, and well-being. This paper will try to figure out what these crimes are and how they affect international law and human rights. The paper will look at how these crimes are defined by the law, how they have been treated in the past, and how they affect world politics today. In the paper, the importance of these crimes in shaping the international legal system and protecting human rights will be shown by analysing relevant literature and case studies. The paper will also talk about the problems the ICC faces when trying to prosecute these crimes, such as limited state cooperation, and what these problems mean for the ICC's ability to deal with these crimes. The paper will say that the crimes that fall under the ICC's jurisdiction are an important part of international law and human rights. It will also suggest ways to deal with the problems that the ICC faces so that it can deal with these crimes effectively.

**Keywords:** Human Rights, International Criminal Court.

## INTRODUCTION

A legal body called the International Criminal Court (ICC) was created to look into and try people for crimes including genocide, crimes against humanity, war crimes, and aggression.<sup>1</sup> In order to promote and defend human rights, stop those who commit international crimes from going unpunished, and provide victims justice, the court was established in 2002.<sup>2</sup>

There are 123 member nations of the ICC, which has its headquarters in The Hague,

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<sup>1</sup> "About the Court," International Criminal Court, accessed April 10, 2023, <https://www.icc-cpi.int/about>

<sup>2</sup> Ibid

Netherlands.<sup>3</sup> The Court has jurisdiction over crimes committed on the soil of member states, crimes committed by citizens of member states, and offences that have been reported to the nation by either a member state that has acknowledged the court's authority or the United Nations Security Council.<sup>4</sup>

The International Criminal Court (ICC) is a court of complementary jurisdiction, which means it works in conjunction with national courts and only looks into and brings charges for crimes when national courts are unable or unwilling to do so.<sup>5</sup> In order to strengthen its ability to look into and punish crimes committed abroad, the court also collaborates closely with national authorities.<sup>6</sup>

The International Criminal Court (ICC) has been involved in a number of high-profile cases, including the trial of Laurent Gbagbo, the former president of the Ivory Coast, and Charles Ble Goude, who was accused of committing crimes against humanity in connection with the post-election violence in 2010–2011.<sup>7</sup> The Sudanese President, Omar al-Bashir, who is accused of genocide, crimes against humanity, and war crimes committed during the Darfur crisis, is among the prominent people for whom the court has issued an arrest warrant.<sup>8</sup>

The investigation and prosecution of international crimes by the ICC is essential for upholding human rights and avoiding impunity. Holding criminals accountable for the most egregious crimes is one of the goals of the ICC, which also strives to promote respect for international law and discourage future crimes.<sup>9</sup> The ICC's role in bringing justice to victims is particularly crucial because it may aid in giving people harmed by international crimes a feeling of closure.<sup>10</sup>

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<sup>3</sup> “States Parties,” International Criminal Court, accessed April 10, 2023, <https://www.icc-cpi.int/states-parties>.

<sup>4</sup> “Jurisdiction and Admissibility,” International Criminal Court, accessed April 10, 2023, <https://www.icc-cpi.int/about/jurisdiction>.

<sup>5</sup> “Complementarity,” International Criminal Court, accessed April 10, 2023, <https://www.icc-cpi.int/about/complementarity>.

<sup>6</sup> Ibid

<sup>7</sup> “ICC Trial Chamber I acquits Mr Gbagbo and Mr Ble Goude from all charges of crimes against humanity,” International Criminal Court, January 15, 2019, <https://www.icc-cpi.int/Pages/item.aspx?name=190115-press-release-acquittal-gbagbo-blegoude>.

<sup>8</sup> “Sudanese President Omar Al-Bashir Wanted by ICC for Genocide, War Crimes and Crimes Against Humanity,” International Criminal Court, March 4, 2009, <https://www.icc-cpi.int/Pages/item.aspx?name=PR399>.

<sup>9</sup> “The ICC and the prevention of Genocide, Crimes Against Humanity and War Crimes,” International Criminal Court, accessed April 10, 2023, <https://www.icc-cpi.int/prevention>.

<sup>10</sup> “Justice for Victims,” International Criminal Court, accessed April 10, 2023,

## Crimes Within the International Criminal Court's Jurisdiction.

The Rome Statute created the International Criminal Court (ICC) in 2002 as a permanent international court with the authority to try people for the most egregious crimes committed abroad. Genocide, crimes against humanity, war crimes, and, as of 2018, the act of aggression are among these crimes. Each of these crimes will be thoroughly examined in this article, along with their definitions and the ICC's authority to prosecute them.

### Genocide

Genocide is the deliberate killing of members of a national, ethnic, racial, or religious group with the intent of physically eliminating them or stopping their procreation.<sup>11</sup> It may also include substantial physical or mental suffering. Genocide committed on or after July 1, 2002, the day the Rome Statute came into effect, falls within the purview of the International Criminal Court (ICC).

According to the Rome Statute, genocide is any of the following acts carried out with the intent to completely or partially destroy a national, ethnic, racial, or religious group: (a) killing group members; (b) seriously injuring group members physically or psychologically; (c) purposefully imposing on the group conditions of life calculated to bring about its complete or partial physical destruction; (d) enacting laws intended to prevent births within the group.<sup>12</sup>

The act committed, the explicit purpose to obliterate a national, ethnical, racial, or religious group either completely or partially, and the existence of a protected group are all considered parts of the offense.<sup>13</sup>

Regardless of whether the state in question is a party to the ICC Statute, the ICC has jurisdiction over the crime of genocide when it is committed on the territory of a state party, when the accused is a citizen of a state party, or when the Security Council submits the case to the ICC.<sup>14</sup> Moreover, if the accused is a citizen of a state party or if the accused is present on the territory of a state party and the state consents to the ICC's exercise of jurisdiction, the ICC may have

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<http://www.icc-cpi.int/justice-for/victims>.

<sup>11</sup> Convention on the Prevention and Punishment of the Crime of Genocide, art. 2, Dec. 9, 1948, 78 U.N.T.S. 277, available at <https://www.ohchr.org/en/professionalinterest/pages/cppcg.aspx>.

<sup>12</sup> Id. art. 6.

<sup>13</sup> Id. art. 6(c).

<sup>14</sup> Id. art. 12.

jurisdiction over genocide committed beyond the borders of a state party.<sup>15</sup>

The worldwide eradication of a national, ethnic, racial, or religious group, in whole or in part, is referred to as genocide. Subject to specific restrictions and circumstances, the ICC has jurisdiction over crimes of genocide committed on or after July 1, 2002.

### **Crimes against humanity**

Crimes against humanity are significant offenses committed with the knowledge of the attack and as part of a widespread or systematic assault on any civilian population.<sup>16</sup> These crimes include homicide, genocide, slavery, torture, discrimination based on race and other such inhumane deeds. Crimes against humanity committed on or after July 1, 2002, the day the Rome Statute took effect, are subject to the jurisdiction of the International Criminal Court (ICC).<sup>17</sup>

According to the Rome Statute, any of the following actions that are committed as part of an extensive or systematic assault against a civilian population with knowledge of the attack constitute crimes against humanity:

- (a) “Murder”
- (b) “Extermination”
- (c) “Enslavement”;
- (d) “Deportation or forceable transfer of population”;
- (e) “Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law”;
- (f) “Torture”;
- (g) “Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity.”
- (h) “Persecution against any identifiable group or collectively on political”
- (i) “Forcible disappearances of people”
- (j) “Other inhuman actions of a comparable kind committed globally that result in significant suffering or grave bodily harm or impairment of mental or physical health.”<sup>18</sup>

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<sup>15</sup> Id. art. 12(2).

<sup>16</sup> Rome Statute of the International Criminal Court, art. 7, July 17, 1998, 2187 U.N.T.S. 90, available at <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>

<sup>17</sup> Id. art. 11.

<sup>18</sup> Id. art. 7.

The act performed, the backdrop of a pervasive or systematic assault on a civilian population, knowledge of the attack, and the presence of a protected group are all components of the offense.<sup>19</sup>

Regardless of whether the state in question is a party to the ICC Statute, the International Criminal Court (ICC) has authority over atrocities against humanity committed on the territory of a state party, where the accused is a citizen of a state party, or when the Security Council submits the case to the ICC.<sup>20</sup> Additionally, if the accused is a citizen of a state party or if the accused is present on the territory of a state party and the State consents to the exercise of jurisdiction by the ICC, the ICC may exercise jurisdiction over crimes against humanity committed outside the territory of a state party.<sup>21</sup>

In conclusion, crimes against humanity are heinous crimes carried out in the course of a planned, methodical, and pervasive assault on any civilian population. The ICC has jurisdiction over human rights violations perpetrated on or after July 1, 2002, under particular limitations and circumstances.

## **Crimes of War**

Serious transgressions of international humanitarian law that take place during armed conflict are referred to as war crimes. The purposeful targeting of civilians or non-combatants, torture, rape, and the use of weapons that are illegal are only a few examples of crimes that may be perpetrated by both state and non-state actors. In the case of an armed conflict that lacks an international component but involves a government or other organization is actually in control of a territory, the International Criminal Court (ICC) has jurisdiction over war crimes that are committed as part of a widespread or systematic assault against a civilian population.<sup>22</sup>

The Rome Statute, a treaty that has been adopted by 123 nations as of September 2021, founded the ICC in 2002.<sup>23</sup> The ICC can only prosecute cases when national courts are unable or unwilling to do so itself. The ICC's jurisdiction is supplementary to national jurisdiction, which

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<sup>19</sup> Id. art. 7(1).

<sup>20</sup> Id. art. 12.

<sup>21</sup> Id. art. 12(2).

<sup>22</sup> Rome Statute of the International Criminal Court, Article 8.

<sup>23</sup> International Criminal Court, "States Parties," accessed September 27, 2021, <https://www.icc-cpi.int/about/states-parties>.

means that the Court can only do so in certain circumstances.<sup>24</sup> Anyone who are citizens of a state party to the Rome Statute or whose crimes were committed on the territory of a state party, including military and political leaders, are subject to investigation and prosecution by the ICC for war crimes.<sup>25</sup>

The International Criminal Court (ICC) must first decide whether there is enough evidence to sustain accusations against a person and if it is reasonable to pursue the case before it may begin a war crimes prosecution.<sup>26</sup> The person will be taken before the ICC for trial if the Court chooses to go further. If found guilty, the offender may receive a jail term and be ordered to compensate the victims for their losses as a consequence of the war crimes.<sup>27</sup>

In general, the ICC's authority over war crimes is a crucial instrument for encouraging accountability and deterrent in armed conflict circumstances. The ICC contributes to ensuring that the principles of international humanitarian law are upheld and that victims of war crimes get the justice they are due by holding people accountable for their conduct.

### **The Crime of Aggression**

The use of military force by a state against the sovereignty, territorial integrity, or political independence of another state, in violation of the UN Charter, is referred to as an act of aggression.<sup>28</sup> Subject to ratification by at least thirty nations parties to the ICC Statute and a decision by the ICC's Assembly of States Parties to activate the jurisdiction, the International Criminal Court (ICC) has jurisdiction over acts of aggression committed on or after July 17, 2018.<sup>29</sup>

A person in a position to effectively exercise control over or direct the political or military action of a State is considered to be in a position to plan, prepare, initiate, or carry out an act of aggression that, by its nature, seriousness, or scale, constitutes a manifest violation of the

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<sup>24</sup> Rome Statute, Article 17.

<sup>25</sup> Rome Statute, Article 12.

<sup>26</sup> Rome Statute, Article 53-55.

<sup>27</sup> Rome Statute, Article 75.

<sup>28</sup> United Nations General Assembly, Definition of Aggression, GA Res. 3314 (XXIX) (Dec. 14, 1974), available at <http://www.un-documents.net/a29r3314.htm>

<sup>29</sup> United Nations General Assembly, Definition of Aggression, GA Res. 3314 (XXIX) (Dec. 14, 1974), available at <http://www.un-documents.net/a29r3314.htm>

United Nations Charter, according to the Rome Statute.<sup>30</sup> The act of aggression, the person who performed it, and their awareness of the factual conditions establishing that the act of aggression would constitute a clear violation of the UN Charter are all considered components of the crime.<sup>31</sup>

The need that the defendant be a citizen of a state party or that the crime was committed on its territory is only two of the restrictions on the ICC's ability to prosecute crimes of aggression.<sup>32</sup> Moreover, the UN Security Council must decide that a state that is not a signatory to the ICC Statute or a state party that has not acknowledged the ICC's jurisdiction over crimes of aggression committed the crime before the ICC may exercise its jurisdiction over it.<sup>33</sup>

In conclusion, the use of military force by a state against the sovereignty, territorial integrity, or political independence of another state in violation of the UN Charter is referred to as an act of aggression. Certain crimes committed on or after July 17, 2018, are subject to the jurisdiction of the ICC, subject to specific restrictions and circumstances.

### **Aspects of the ICC's procedure relating to jurisdiction and admissibility**

The most severe international crimes, including genocide, war crimes, and crimes against humanity, are handled by the International Criminal Court (ICC), a permanent court. Yet before a case can go to trial, some procedural problems need to be carefully considered. These concerns relate to the ICC's jurisdiction and admissibility. This article will go through the ICC's jurisdictional and admissibility procedural difficulties.

Its jurisdiction is restricted to crimes committed within its reach, which includes crimes committed on the territory of a state party to the Rome Statute, crimes committed by a national of a state party, and crimes referred to the ICC by the United Nations Security Council.<sup>34</sup> Jurisdiction is the ability of a court to hear and decide a case of the ICC. Moreover, if a non-state party has specifically agreed to the ICC's jurisdiction or if the crime was committed on its territory, the ICC has jurisdiction over that non-state party's crimes.<sup>35</sup>

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<sup>30</sup> Rome Statute of the International Criminal Court, art. 8bis (1), July 17, 1998, 2187 U.N.T.S. 90, available at <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>.

<sup>31</sup> Id. Art. 8bis (2).

<sup>32</sup> Id. Art. 15bis (1).

<sup>33</sup> Id. Art. 15bis (4).

<sup>34</sup> Rome Statute of the International Criminal Court, Art. 12-13 (1998).

<sup>35</sup> Rome Statute of the International Criminal Court, Art. 12(2) (1998).

Contrarily, admissibility refers to whether a matter is suitable for the ICC to examine. Admissibility is based on a number of factors, such as whether the case is being investigated or prosecuted by a state with jurisdiction over the crime, whether it is being done so in a way that complies with the complementarity principle, and whether it is being done so in a way that respects the rights of the accused.<sup>36</sup>

The absence of universal acceptance of the Rome Statute is one of the issues the ICC has with respect to jurisdiction. The Rome Statute has been ratified by 123 nations, including the majority of those in South America, Africa, and Europe.<sup>37</sup> Nevertheless, several significant nations, like China, Russia, and the United States, have not. This implies that unless the crimes are submitted to the ICC by the United Nations Security Council, the ICC cannot exercise its jurisdiction over crimes committed in those countries or by citizens of those countries.

Another important procedural issue for the ICC is admissibility. The ICC must only become involved under the complementarity principle when national authorities are unable or unwilling to look into and punish international crimes. This indicates that the ICC can only look into and try cases of crimes committed abroad. This implies that the ICC may only look into and bring charges in a case if the state in issue is unable or unwilling to do so, or if the investigation or prosecution is carried out in a way that violates the complementarity principle.<sup>38</sup>

Conclusion: Before a case may go forward to trial, a number of procedural factors that must be carefully considered affect the ICC's jurisdiction and admissibility. The ICC's jurisdiction is restricted to crimes committed within its territorial scope, and admissibility is based on a number of criteria, including whether the case is being investigated or prosecuted by a state with jurisdiction over the crime, whether it is being done so in accordance with the complementarity principle, and whether it respects the rights of the accused.

## **Jurisdiction over the Subject Matter**

The crimes committed on the territory of a state party to the Rome Statute, the crimes committed by citizens of a state party, or the crimes that the UN Security Council has referred

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<sup>36</sup> Rome Statute of the International Criminal Court, Art. 17 (1998).

<sup>37</sup> International Criminal Court, States Parties, [https://www.icc-cpi.int/pages/asp\\_sattes.aspx](https://www.icc-cpi.int/pages/asp_sattes.aspx) (last visited Apr. 11, 2023).

<sup>38</sup> Rome Statute of the International Criminal Court, Art. 17(1) (1998).

to the ICC fall within the ICC's purview.<sup>39</sup> There will be 123 states that have ratified the Rome Statute as of April 2023.<sup>40</sup>

The ICC can only exercise jurisdiction if national authorities are unable or unwilling to investigate and prosecute the relevant offences. The ICC's authority is supplementary to national criminal jurisdictions.<sup>41</sup> The ICC may also only bring criminal charges against people, not against governments, and it cannot impose civil or political sanctions.<sup>42</sup>

The subject matter jurisdiction of the ICC has generated significant debate. The ICC should be able to pursue a wide variety of crimes, including corruption and environmental crimes, according to critics who claim that the organization's authority is too broad.<sup>43</sup>

The subject matter jurisdiction of the ICC is very important in securing responsibility for the most severe international crimes, notwithstanding the dispute. The ICC seeks to prevent other crimes and advance respect for international law by bringing those responsible for these crimes accountable.

### **Genocide-related Subject Matter Jurisdiction.**

The crime of genocide, which is defined as certain actions "committed with intent to eliminate, in whole or in part, a national, ethnical, racial, or religious group," falls within the purview of the International Criminal Court (ICC).<sup>44</sup>

The International Criminal Court (ICC) must conclude that genocide was committed on the soil of a state party to the Rome Statute, by a citizen of a state party, or that the UN Security Council has referred the case to the ICC in order to establish subject matter jurisdiction.<sup>45</sup>

The ICC's jurisdiction over genocide is a crucial instrument for bringing perpetrators of this crime responsible since it is one of the most heinous international crimes. The Prosecutor v.

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<sup>39</sup> Rome Statute of the International Criminal Court, art. 12, July 17, 1998, 2187 U.N.T.S. 3.

<sup>40</sup> "Status of Ratifications," International Criminal Court, accessed April 10, 2023, <https://www.icc-int/about/status-of-ratifications>.

<sup>41</sup> Rome Statute of the International Criminal Court, art. 17

<sup>42</sup> Rome Statute of the International Criminal Court, art. 25.

<sup>43</sup> Benjamin N. Schiff, "The International Criminal Court: A Short Introduction," Congressional Research Service, January 23, 2017, <https://fas.org/sgp/crs/misc/R44207.pdf>.

<sup>44</sup> Rome Statute of the International Criminal Court, art. 6, July 17, 1998, 2187 U.N.T.S. 3.

<sup>45</sup> Rome Statute of the international Criminal Court, art. 12.

Omar Hassan Ahmad Al Bashir, in which the ICC issued arrest warrants for the former president of Sudan for his suspected involvement in the genocide in Darfur, is one of the cases the ICC has looked into and prosecuted.<sup>46</sup>

But, the ICC's authority to prosecute genocide has also come under challenge. Others contend that the ICC's definition of genocide is too limited and should include encompass other crimes, such as ecocide and cultural genocide.<sup>47</sup> Some contend that the ICC's authority to investigate cases of genocide is too wide and infringes on national sovereignty.<sup>48</sup>

The ICC's subject matter jurisdiction over genocide is a crucial instrument for achieving responsibility for one of the most terrible crimes under international law, notwithstanding the debate.

### **Subject Matter Jurisdiction on Crimes against Humanity.**

The crime of crimes against humanity, which is defined as certain actions "committed as part of a widespread or systematic assault intended against any civilian population, with knowledge of the attack," is subject to subject matter jurisdiction by the International Criminal Court (ICC).<sup>49</sup>

The International Criminal Court (ICC) must establish that the crime was committed on the soil of a state party to the Rome Statute, by a country of a state party, or that the UN Security Council has referred the case to the ICC in order to have subject matter jurisdiction over crimes against humanity.<sup>50</sup>

The ICC's jurisdiction over crimes against humanity is a crucial instrument for bringing perpetrators of these crimes responsible since they are among the most heinous international crimes. One essential instrument for bringing perpetrators of heinous crimes responsible is the ICC. A number of cases containing claims of crimes against humanity have been looked into

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<sup>46</sup> "Situation in Darfur, Sudan," International Criminal Court, accessed April 10, 2023, <https://www.icc-cpi.int/darfur>.

<sup>47</sup> Kirsten J. Fisher, "Ecocide and Genocide: Defining the Relationship and Charting a Way Forward," *Journal of Human Rights and the Environment* 8, no. 2 (2017): 163-191.

<sup>48</sup> William Schabas, "THE International Criminal Court: A Commentary on the Rome Statute," (Oxford University Press, 2010), 198-199.

<sup>49</sup> Rome Statute of the International Criminal Court, art. 7, July 17, 1998, 2187 U.N.T.S. 3.

<sup>50</sup> Rome Statute of the International Criminal Court, art. 12.

and tried by the ICC, notably *The Prosecutor v. Thomas Lubanga Dyilo*, in which the court found a Congolese warlord guilty for his part in eliminating and recruiting young soldiers.<sup>51</sup>

Yet the ICC's authority over crimes against humanity has also come under assault. Others contend that the definition of crimes against humanity used by the ICC is excessively wide and that other behaviours, such as drug and people trafficking, should be included.<sup>52</sup> Others contend that the ICC should have the authority to prosecute crimes committed by non-state entities like companies and armed groups and that its jurisdiction over crimes against humanity is too narrow.<sup>53</sup>

Notwithstanding the debate, the ICC's subject matter jurisdiction over crimes against humanity is a crucial instrument for making sure those responsible for one of the most horrific crimes are recognized by international law.

### **Subject Matter Jurisdiction on War Crimes**

War crimes, which are defined as certain actions "committed as part of a plan or policy or as part of a large-scale commission of such crimes," are crimes that fall within the subject matter jurisdiction of the International Criminal Court (ICC).<sup>54</sup>

The International Criminal Court (ICC) must determine that the crime was committed on the territory of a state party to the Rome Statute, by a national of a state party, or that the United Security Council has referred the case to the ICC in order to establish subject matter jurisdiction over war crimes.<sup>55</sup>

The ICC's authority over war crimes is a crucial instrument for bringing perpetrators of these crimes responsible since they are among the most heinous international crimes. The *Prosecution v. Bosco Ntaganda* case, in which the ICC found a Congolese rebel commander guilty of war crimes including murder, rape, and sexual enslavement, is one of several cases

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<sup>51</sup> *The Prosecutor v. Thomas Lubanga Dyilo*, "International Criminal Court, accessed April 10, 2023, <https://www.icc-cpi.int/lubanga>.

<sup>52</sup> W. Michael Reisman, "Crimes Against Humanity." *The American Journal of International Law* 93, no. 1 (1999): 43-58.

<sup>53</sup> William Schabas, "The International Criminal Court: A Commentary on the Rome Statute," (Oxford University Press, 2010), 166-168.

<sup>54</sup> Rome Statute of the International Criminal Court, art. 8, July 17, 1998, 2187 U.N.T.S. 3.

<sup>55</sup> Rome Statute of the International Criminal Court, art. 12.

the ICC has looked into and prosecuted.<sup>56</sup>

But, the ICC's authority to prosecute war crimes has also come under challenge. Others contend that the ICC's definition of war crimes is too limited and that it should include additional behaviours, such as the use of drone strikes and depleted uranium.<sup>57</sup> Others contend that the ICC's authority to prosecute war crimes is overbroad and infringes on national sovereignty.<sup>58</sup> The subject matter jurisdiction of the ICC for war crimes, notwithstanding the dispute, is a crucial instrument for securing responsibility for one of the most horrific crimes under international law.

### **Subject matter jurisdiction on Crimes of Aggression**

The crime of aggression, is defined as the "planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a state, of an act of aggression which, by its character, gravity, and scale, constitutes a manifest violation of the Charter of the United Nations," is subject to subject matter jurisdiction by the International Criminal Court (ICC).<sup>59</sup>

The International Criminal Court (ICC) must determine that the crime was committed on the territory of a state party to the Rome Statute, by a national of a state party, or that the UN Security Council has referred the case to the ICC in order to establish subject matter jurisdiction over the crime of aggression.<sup>60</sup>

Once the Rome Statute's Kampala Amendments were approved on July 17, 2018, the ICC's jurisdiction over the crime of aggression became effective.<sup>61</sup> An essential method for holding people responsible for one of the most severe international crimes under international law is the ICC's jurisdiction over the crime of aggression.

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<sup>56</sup> "The Prosecutor v. Bosco Ntaganda," International Criminal Court, accessed April 10, 2023, <https://www.icc-cpi.int/ntaganda>.

<sup>57</sup> Bonnie Docherty and Tyler Giannini, "Drones and the International Rule of Law," *Harvard International Law Journal* 54, no. 1 (2013): 1-75.

<sup>58</sup> William Schabas, "The International Criminal Court: A Commentary on the Rome Statute," (Oxford University Press, 2010), 137-139.

<sup>59</sup> Rome Statute of the International Criminal Court, art. 8 bis, July 17, 1998, 2187 U.N.T.S. 3

<sup>60</sup> Rome Statute of the International Criminal Court, art. 15 bis.

<sup>61</sup> "The Crime of Aggression," International Criminal Court, accessed April 10, 2023, <https://www.icc-cpi.int/crime-of-aggression>.

But, the ICC's authority to prosecute crimes of aggression has also come under challenge. Others claim that the International Criminal Court's (ICC) definition of the crime of aggressiveness is too broad and allows the ICC too much latitude in defining what counts as an aggressive conduct.<sup>62</sup> Others contend that the International Criminal Court's (ICC) jurisdiction over the crime of aggression infringes on state sovereignty and might be used as a political swaying tool.<sup>63</sup>

Notwithstanding the opposition, the International Criminal Court's (ICC) subject matter jurisdiction over the crime of aggression is a crucial instrument for guaranteeing responsibility for one of the most heinous crimes under international law.

### **Temporal jurisdiction**

International crimes committed after the Rome Statute, the International Criminal Court's founding instrument, went into effect on July 1, 2002 fall within the ICC's temporal jurisdiction.<sup>64</sup> To the extent that they were committed during an armed conflict and were not pardoned, crimes that took place before that date may likewise fall within the purview of the ICC.<sup>65</sup> This is referred to as retroactive jurisdiction, and it is accepted by international law since the law is not arbitrarily or unfairly applied in this way.<sup>66</sup>

Additionally, crimes that continue to be committed after the Rome Statute comes into effect may potentially fall within the purview of the ICC. This is referred to as continuing jurisdiction, and it implies that even after its jurisdiction has been invoked, the ICC may continue to look into and pursue criminal offences.<sup>67</sup> This is crucial in situations when crimes are committed over time, such in genocide or crimes against humanity prosecutions.

It is important to remember that the ICC only has jurisdiction over crimes committed on the soil of nations that have accepted the Rome Statute or if the accused offender is a citizen of

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<sup>62</sup> Jennifer Trahan, "The Kampala Compromise on the Crime of Aggression: Did States Bargain Away Too Much?" *Leiden Journal of International Law* 25, no. 1 (2012): 49-72.

<sup>63</sup> John Dugard, "The International Criminal Court and the Crime of Aggression," *South Africa Journal on Human Rights* 21, no. 1 (2005): 71-87.

<sup>64</sup> Rome Statute of the International Criminal Court, art. 11(1).

<sup>65</sup> *Ibid.*, art. 11(2).

<sup>66</sup> See, e.g., *Prosecutor v. Furundzija*, Judgment, Trial Chamber II, 10 December 1998, para. 151.

<sup>67</sup> Rome Statute of the International Criminal Court, art. 12(2).

one of those nations.<sup>68</sup> Even though the nation where the crimes were committed is not a signatory to the Rome Statute, the UN Security Council may nevertheless send cases to the ICC.<sup>69</sup> This was the case with the Sudanese crisis in Darfur, which the Security Council referred to the ICC in 2005.

In addition to temporal jurisdiction, the ICC also possesses personal jurisdiction over suspects in international crime cases as well as geographical jurisdiction over crimes committed on the soil of a state signatory to the Rome Statute.<sup>70</sup> If the crime was reported to the court by the Security Council or if the accused is a citizen of a state party to the Rome Statute, the ICC may also have jurisdiction over crimes committed on the territory of a non-state party.<sup>71</sup>

Ultimately, the ICC's jurisdiction is precisely defined and subject to a number of restrictions, but it nonetheless serves as a crucial instrument for making sure that those responsible for the most heinous crimes against humanity are brought to justice.

### **Territorial Jurisdiction**

Genocide, crimes against humanity, war crimes, and crimes of aggression are the four main international crimes that fall within the purview of the International Criminal Court (ICC), a court of last resort. When certain crimes are committed by a national of a State Party to the Rome Statute, the agreement that formed the ICC, or on the territory of a State Party, the ICC has jurisdiction over them.<sup>72</sup>

Territorial jurisdiction describes a court's ability to hear cases depending on the location of the offense. The ICC's geographical jurisdiction is restricted to crimes committed on a State Party's territory. Hence, the ICC lacks the authority to bring charges against offenders who commit crimes on the territory of a State Party.

There are two significant exceptions to this rule, however. First, regardless of whether the crimes were committed on the territory of a State Party, the UN Security Council has the authority to submit circumstances to the ICC for investigation and prosecution. Second, if a

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<sup>68</sup> Ibid., art. 12(2)(a).

<sup>69</sup> Ibid., art. 13(b).

<sup>70</sup> Ibid., arts. 12-13.

<sup>71</sup> Ibid., art. 12(2)(b).

<sup>72</sup> Rome Statute of the International Criminal Court, Article 12.

non-State Party State recognises the ICC's jurisdiction, the ICC may claim jurisdiction over crimes committed there.<sup>73</sup>

The ICC has personal jurisdiction against those who commit international crimes in addition to territorial jurisdiction. The ability of a court to hear cases depending on the nationality or place of residence of the accused is known as personal jurisdiction. Individuals who are citizens of a State Party or who are alleged to have committed crimes on its soil fall within the personal jurisdiction of the ICC.<sup>74</sup>

## Conclusion

With two significant exceptions—referrals from the UN Security Council and admission of jurisdiction by a non-State Party—the ICC's territorial jurisdiction is restricted to crimes committed on the territory of a State Party. Also, those who commit crimes abroad while being citizens of a State Party or while on its soil are within the personal jurisdiction of the ICC.

## Personal Jurisdiction

Those who commit crimes against humanity are subject to personal jurisdiction by the International Criminal Court (ICC). The ability of a court to hear cases depending on the nationality or place of residence of the accused is known as personal jurisdiction. Individuals who are citizens of a State Party or who are alleged to have committed crimes on its soil fall within the personal jurisdiction of the ICC.<sup>75</sup>

The accused's country or place of residence at the time of the offence are not factors in determining the ICC's personal jurisdiction. The ICC may nonetheless exercise jurisdiction if the crime was committed on the territory of a State Party or if the accused was a national of a State Party at the time of the offence, even if the accused is no longer a resident of or a citizen of a State Party.<sup>76</sup>

In addition to having personal jurisdiction over people, the ICC may prosecute legal organisations like companies for crimes committed abroad.<sup>77</sup> This kind of jurisdiction is less

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<sup>73</sup> Ibid., Article 13.

<sup>74</sup> Ibid., Article 12.

<sup>75</sup> Rome Statute of the International Criminal Court, Article 12.

<sup>76</sup> Ibid., Article 25(1).

<sup>77</sup> Ibid., Article 25(1).

well-known and has not yet been put to the fullest practicable test.

## **Conclusion**

Those who commit crimes on the soil of a State Party or who are citizens of a State Party are subject to the personal jurisdiction of the ICC. The accused's nationality or place of residence at the time of the offence are not restrictions on this jurisdiction. While this sort of jurisdiction is less well-established, the ICC also has jurisdiction over organisations that engage in international crimes.

## **Recent Cases**

### **Al Mahdi**

#### **Introduction**

The International Criminal Court (ICC) began looking into the situation in Mali in 2012.<sup>78</sup> Ahmad Al Faqi Al Mahdi was the first individual to admit guilt to the war crime of planning assaults on Timbuktu, Mali's historical and cultural landmarks before the International Criminal Court (ICC) in 2016. The case of Al Mahdi and its ramifications for international criminal law will be examined in this case study.

#### **Case Summary**

In 2012, Timbuktu, Mali, was governed by the Islamic extremist organisation Ansar Dine, of which Al Mahdi was a member. Al Mahdi enforced the group's version of Islamic law in Timbuktu as a member of the "Morality Police" organisation. Ansar Dine considered these structures to be idolatrous and ordered their demolition.

Al Mahdi supervised the burning of nine mausolea and the Sidi Yahia Mosque in Timbuktu during June and July of 2012. The demolition of these locations, which had strong cultural and religious importance, was extensively denounced by the world community.

In September 2015, Al Mahdi was taken into custody by Nigerian police and handed up to the ICC. In accordance with Article 8(2)(e)(iv) of the Rome Statute, he pled guilty to the war crime of deliberately ordering assaults on historical and cultural landmarks in August 2016. He

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<sup>78</sup> ICC, Situation in the Republic of Mali, ICC-01/12-01/15, <https://www.icc-cpi.int/mali/al-mahdi>.

received the lightest punishment ever imposed by the ICC: nine years in jail.<sup>79</sup>

## **Implications for International Criminal Law**

The Al Mahdi case was notable for a number of reasons. It was the first instance in which a person has been accused and found guilty under international criminal law exclusively for the destruction of cultural property. This case exemplified the value of cultural heritage, the part it plays in shaping community identity and memory, and the dedication of the international community to preserving cultural heritage.

The case also emphasised the ICC's authority to investigate crimes against cultural property. Article 8(2)(e)(iv) of the Rome Statute, which defines the war crime of intentionally directing attacks against buildings dedicated to religion, education, art, science, or charitable purposes, as well as historic monuments, hospitals, and locations where the sick and injured are gathered, establishes the ICC's jurisdiction over such crimes.

Ultimately, the Al Mahdi case illustrated the significance of international collaboration in the struggle against the continuation of international crimes with impunity. The collaboration between the countries of Niger and Mali as well as the ICC itself led to Al Mahdi's arrest and transfer to the ICC.<sup>80</sup>

## **Conclusion**

The Al Mahdi case was a significant turning point in the development of international criminal law because it established the International Criminal Court's (ICC) authority over crimes against cultural property and the commitment of the international community to preventing the destruction of cultural property. In the struggle against international criminal impunity, it also served as a reminder of the value of international collaboration.

## **Ali Abd-Al-Rahman**

Under the Gaddafi dictatorship, Ali Abd-Al-Rahman worked for the Libyan Arab Jamahiriya's intelligence service. He was accused of war crimes, including as torture and inhumane treatment of prisoners in Libyan jails, as well as a crime against humanity that included

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<sup>79</sup> Ibid.

<sup>80</sup> ICC, Al Mahdi Case: First ICC Case to Focus on the Destruction of Cultural Heritage, <https://www.icc-cpi.int/Pages/item.aspx?name=pr1263>.

persecuting and imprisoning people. The Libyan authorities detained Ali Abd-Al-Rahman in 2011, and the International Criminal Court took possession of him (ICC).

In 2011, the Office of the Prosecutor (OTP) of the ICC completed an initial investigation into the situation in Libya and found that there was cause to suspect that war crimes and crimes against humanity had been committed there since February 15, 2011. A warrant for the arrest of Muammar Gaddafi, his son Saif Al-Islam Gaddafi, and his intelligence head Abdullah Al-Senussi was sought by the OTP in June 2011. The ICC Pre-Trial Chamber issued the arrest warrants in July 2011.<sup>81</sup>

Ali Abd-Al-Rahman was detained by the authorities of Libya in August 2011 and accused of war crimes and crimes against humanity.<sup>82</sup> The Libyan government notified the ICC in September 2011 that Ali Abd-Al-Rahman would not be handed over because they could and would prosecute him at home.<sup>83</sup> In an October 2013 ruling, the ICC Pre-Trial Chamber determined that Libya was unable to conduct Ali Abd-Al-Rahman's and that the case was consequently admissible to the ICC.<sup>84</sup>

Ali Abd-Al-Rahman was handed up to the International Criminal Court (ICC) in The Hague, Netherlands, in January 2014.<sup>85</sup> Ali Abd-Al-Rahman was found guilty of crimes against humanity and war crimes by the ICC Trial Chamber in July 2016 after the matter had gone to trial, and he was given a nine-year jail term.<sup>86</sup>

The Ali Abd-Al-Rahman case brings to light the difficulties the complementarity principle presents for the ICC's admissibility system. The concept mandates that the ICC only intervenes when governments are unwilling or unable to carry out processes, even if it seeks to guarantee that nations have the main duty for investigating and prosecuting crimes that fall within their purview.<sup>87</sup> As can be seen in this instance, the ICC Pre-Trial Court decided that Libya was unable to conduct the procedures against Ali-Al-Rahman, and as a result, the case was

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<sup>81</sup> Situation in the Libyan Arab Jamahiriya, ICC-01/11-01/11, Pre-Trial Chamber I (June 27, 2011).

<sup>82</sup> Prosecutor v. Abd-Al-Rahman, ICC-01/11-01/11-198, Pre-Trial Chamber I (Aug. 31, 2011).

<sup>83</sup> Situation in Libya, ICC-01/11, Pre-Trial Chamber I (Nov. 22, 2011).

<sup>84</sup> Prosecutor v. Abd-Al-Rahman, ICC-01/11-01/11-529, Pre-Trial Chamber I (Oct. 11, 2013).

<sup>85</sup> ICC, Libya: Ali Abd-Al-Rahman transferred to the ICC, ICC-CPI-20140121-PR963 (Jan. 21, 2014).

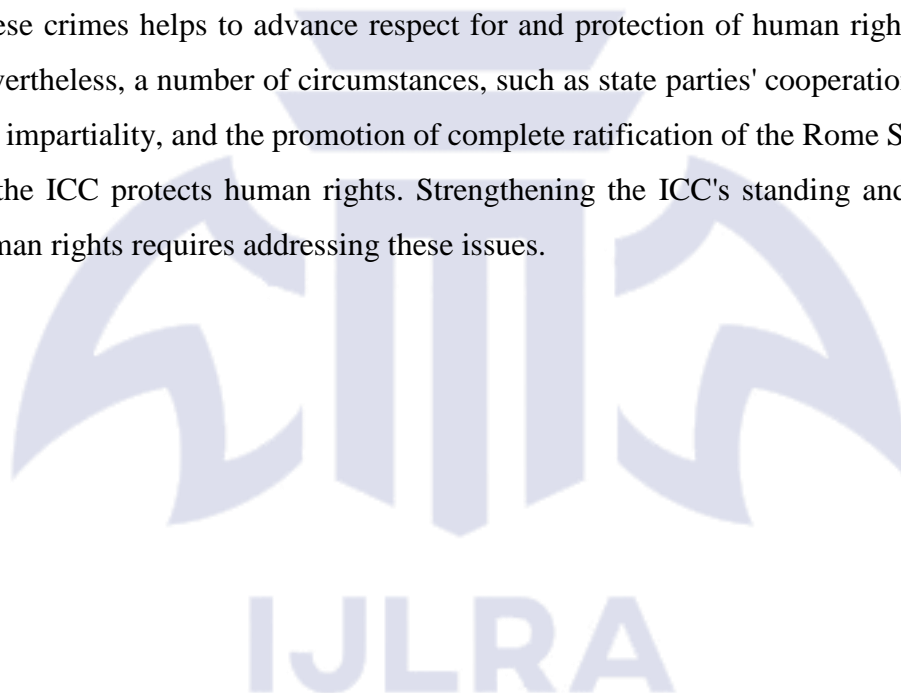
<sup>86</sup> Prosecutor v. Abd-al-Rahman, ICC-01/11-01/11-212, Trial Chamber I (July 15, 2016).

<sup>87</sup> See Rome Statute of the International Criminal Court, art. 17.

admissible to the ICC.<sup>88</sup> Ali Abd-Al-Rahman was only brought to the ICC's custody three years after the admission decision, and it took a further two years for the case to go to trial. This case, however, also highlights the difficulties in implementing ICC rulings.<sup>89</sup>

## CONCLUSION

In conclusion, by giving people a way to be held responsible for grave international crimes, the International Criminal Court (ICC) plays a crucial role in defending human rights. While the ICC's authority is restricted to crimes that endanger humanity, its capacity to confront and prevent these crimes helps to advance respect for and protection of human rights across the world. Nevertheless, a number of circumstances, such as state parties' cooperation, the court's justice and impartiality, and the promotion of complete ratification of the Rome Statute, affect how well the ICC protects human rights. Strengthening the ICC's standing and capacity to defend human rights requires addressing these issues.



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<sup>88</sup> ICC, Situation in Libya: Pre-Trial Chamber I reject Libya's challenge to the admissibility of the case against Saif Al-Islam Gaddafi and refers the matter to the ICC Prosecutor for non-compliance by Libya with requests for cooperation, ICC-CPI-20120401-PR773 (Apr. 1, 2012).

<sup>89</sup> ICC, Libya: Ali Abd-AL-Rahman transferred to the ICC, ICC-CPI-20140121-PR963 (Jan. 21, 2014); Prosecutor v. Abd-Al-Rahman, ICC-01/11-01/11-212, Trial Chamber I (July 15, 2016).