

# International Criminal Justice

## The International Criminal Court

LLM in International Studies

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# The 1998 International Conference in Rome

- ICC Statute Adoption
- Draft of Preparatory Committee
- Different views among groups of states / non-agreement initially
- Like-minded group ≠ Non-aligned movement
- Issues of definition of international crimes
- Establishment of a permanent international judicial body
- Dispute over ICC jurisdiction (Art. 12 ICC Statute)
- **Territorial Jurisdiction (Art 12(2)(a))**: The Court has jurisdiction if the crime was committed on the territory of a State Party. This includes vessels or aircraft registered to a State Party.
- **Personal Jurisdiction (Art 12(2)(b))**: The Court has jurisdiction if the accused person is a national of a State Party.
- **Alternative Criteria**: Only one of these criteria needs to be met (not both) for the Court to proceed in cases initiated by states or the Prosecutor (Art 13(a) or (c)).
- **Non-Party Acceptance (Art 12(3))**: If a state that is not a Party to the Statute is involved (e.g., as the territory where the crime occurred), that state may accept the Court's jurisdiction on an *ad hoc* basis via a declaration.

# The 1998 International Conference in Rome (2)

- Following the Rome conference, a preparatory committee met for more than four years to draft the court's secondary legislative texts
- **The Rules of Procedure and Evidence (RPE) and the Elements of Crimes.**

# ICC Jurisdiction

- Art. 12: reflects the principle of territorial sovereignty & active personality
- The state has unquestionable jurisdiction over criminal acts that take place on its territory
- The state either exercises criminal jurisdiction through its national judicial system, or cedes/transfers jurisdiction to international judicial organizations
- It is irrelevant for the issue of the ICC's jurisdiction whether the alleged perpetrator has been arrested in a state party to the ICC or is in a non-state party
- In the second case, the state is not initially obliged to cooperate with the ICC for his extradition – unless the exercise of jurisdiction is at the initiative of the Security Council
- Principle *pacta tertiis nec nocent nec prosunt* (see VCLT)

# ICC Jurisdiction (2)

- The ICC exercises its jurisdiction in place of the state that has territorial sovereignty (principle of complementarity)
- The Statute (Art. 12) empowers the ICC to exercise jurisdiction in place of a state that is unable or unwilling to exercise criminal jurisdiction
- Art. 13B ICC: ICC jurisdiction by virtue of a UNSC resolution
- Legacy of the Special Tribunal for Rwanda and the former Yugoslavia
- Effective legal tool (?) – permanent and flexible ad hoc international criminal court with indefinite temporal jurisdiction

# ICC Jurisdiction (3)

- Art. 12 – confirms that the principles of territorial jurisdiction and active personality are indisputable in international law
- Universal jurisdiction passes through the condition of Art. 12
- Art. 12 concerns jurisdiction *ratione loci* and *ratione personae*
- Case of excluded territories: (Denmark), New Zealand ≠ UK
- Case of occupied territories: a) occupying state and state of occupied territory both parties to the ICC Statute, b) the first of the two is a party to the ICC Statute, c) the second of the two is a party to the ICC Statute
- No condition is set for occupied territories in the ICC Statute

# ICC Jurisdiction (4)

- The jurisdiction of the ICC extends to the entire recognized territory of a state party, even to parts that are occupied and over which the state does not exercise effective control
- Cases of Cyprus, Golan Heights, Guantanamo Bay
- **ICC Pre-Trial Chamber I: Lubanga case – direct reference to the Tadic case “overall control test”**

# ICC Jurisdiction (5)

- Palestine case: **Operation Cast Lead** (2008-2009)  
Occupation of the Gaza Strip
- Appeal to Israeli courts by non-profit legal entities
- Recommendation of fact-finding mission by UN Human Rights Council
- **Goldstone Report** – proposed investigation of international crimes upon mandate of the Security Council (13B ICC)
- The Palestinian Authority accepted the jurisdiction of the ICC (2009 declaration)
- Officially registered on the ICC register – the Palestinian Authority consented to the exercise of ICC jurisdiction for crimes committed in Palestine after 2002

# ICC Jurisdiction (6)

- The argument was raised that Palestine is not an internationally recognized state – its possible admission would constitute politicization of the ICC
- See ICC Opinion on Palestine
- See ICC Opinion on Kosovo

# ICC Temporal Jurisdiction

- Art. 126 ICC: commencement of temporal jurisdiction (1.7.2022)
- Art. 11 para. 2: if a State becomes a party to this Statute after its entry into force, the Court may exercise its jurisdiction only in relation to crimes committed after the entry into force of this Statute for that State, unless it has made the declaration provided for in art. 12 para. 3
- Art. 12 para. 3: ad hoc declaration of acceptance of jurisdiction
- If a State decides, when ratifying the ICC, to also make a declaration under art. 12 para. 3, the ICC may investigate cases that took place not only before its ratification, but that also began to occur before the specified time of the declaration for its ad hoc acceptance, provided that they are ongoing crimes
- **See Janowiec v. Russia (ECtHR)**
- Retroactive power to exercise jurisdiction – extension *ratione temporis*
- The ICC's jurisdiction is generally prospective, focusing on crimes committed after the Statute becomes binding on that state, ensuring that states are not held liable for actions occurring before they joined.