

Rome Statute of the International Criminal Court

The Statute entered into force on 1 July 2002.

SUBSTANTIAL MATTERS *REGARDING THE ROME STATUTE*

PART I. ESTABLISHMENT OF THE COURT

Q: Give the nature and legal status of the International Criminal Court.

The International Criminal Court is a permanent institution having the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in the Statute. (ARTICLE 1)

The Court shall be complementary to national criminal jurisdictions. (*ibid.*)

The Court shall have international legal personality. (ARTICLE 4)

Q: Where is the seat of the International Criminal Court?

The seat of the Court is at **The Hague** in the Netherlands (the host State). The Court may, however, sit elsewhere, whenever it considers it desirable, as provided in the Statute. (ARTICLE 3)

Q: What is the composition of the International Criminal Court?

The Court is composed of the following organs:

- (a) The Presidency;
- (b) An Appeals Division, a Trial Division and a Pre-Trial Division;
- (c) The Office of the Prosecutor;
- (d) The Registry.



PART II. JURISDICTION AND APPLICABLE LAW

Q: What crimes are under the jurisdiction of the Court?

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression. (ARTICLE 5)

Q: Does the court have jurisdiction over natural persons?

YES. The Court shall have jurisdiction over natural persons pursuant to this Statute.

Q: Define *genocide*.

For the purpose of this Statute, *genocide* means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group. (ARTICLE 6)

Q: Define *crimes against humanity*.

For the purpose of this Statute, *crime against humanity* means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible 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, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violation of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are



universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. (ARTICLE 7)

NOTE:

Forced pregnancy means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

Persecution means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

The crime of apartheid means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Q: What does jurisdiction *ratione temporis* mean?

The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration accepting the exercise of the Court's jurisdiction. (ARTICLE 11)

Q: What does rule on *Ne bis in idem* mean? What are the exceptions to the rule?

It means that no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court. Likewise, no person shall be tried by *another* court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.

The above rule does not apply when the proceedings in the *other* court:

- (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or



- (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice. (ARTICLE 20)

NOTE:

The International Covenant on Civil and Political Rights guarantees the right to be free from double jeopardy, however, it does not apply to prosecutions by two *different sovereigns* (unless the relevant extradition treaty expresses a prohibition). The Rome Statute for the International Criminal Court creates a different form of under its *non bis in idem* rule.

Q: Can a Head of State interpose the doctrine of immunity from suit for crimes under the jurisdiction of the Court?

NO. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person. (ARTICLE 27)

NOTE:

The Court shall have no jurisdiction over any person who was under the age of 18 *at the time of the alleged commission of a crime*. (ARTICLE 26)

Q: What law(s) shall the Court apply in deciding cases?

The Court shall apply:

- (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
- (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
- (c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

The Court may apply principles and rules of law as interpreted in its previous decisions.

The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status. (ARTICLE 21)



PART III. PRINCIPLES OF CRIMINAL LAW

Q: Does the principle of *nullum crimen sine lege* and *nullum poena sine lege* apply to cases before the Court?

YES. Under the Statute, *nullum crimen sine lege* is applicable, hence:

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.
2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted. (ARTICLE 22)

As regards *nullum poena sine lege*, the Statute provides that “a person convicted by the Court may be punished only in accordance with this Statute.” (ARTICLE 23)

Q: Does the Statute operate retroactively or prospectively?

Prospectively. The Statute provides that no person shall be criminally responsible under this Statute for conduct *prior to the entry into force* of the Statute.

In the event of a change in the law applicable to a given case prior to a final judgment, the law more favourable to the person being investigated, prosecuted or convicted shall apply. (ARTICLE 24)

Q: What is the scope of the liability of an individual under the Statute?

A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

- (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
- (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
- (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
- (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) Be made in the knowledge of the intention of the group to commit the crime;
- (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;



- (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose. (ARTICLE 25)

NOTE:

No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under International Law. (ARTICLE 25)

Q: When may commanders or superiors be criminally responsible for the acts of their forces or subordinates?

As regards FORCES, a *commander* shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

- (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
- (i) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution. (ARTICLE 28)

As regards SUBORDINATES, a *superior* shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- (ii) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
- (iii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (iv) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution. (*ibid.*)

Q: What is the prescriptive period for prosecuting cases falling under the jurisdiction of the Court?

So long as it is within the jurisdiction of the Court, the crimes within its jurisdiction SHALL NOT be subject to any statute of limitations. (ARTICLE 29)



Q: Can an individual be convicted of a crime under the Statute even if he has no intent or knowledge of the crime?

NO. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. (ARTICLE 30)

NOTE:

A person has intent where:

- (a) In relation to conduct, that person means to engage in the conduct;
- (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events. (ARTICLE 30)

Under the Statute 'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. 'Know' and 'knowingly' shall be construed accordingly.

Q: The grounds for excluding criminal liability are provided for under Article 31 of the Statute, are these grounds exclusive?

NO. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. (ARTICLE 31)

NOTE:

Among the grounds are: mental deficiency or defect, state of intoxication, self-defense, threat of imminent death or of continuing or imminent serious bodily harm.

Q: Will mistake of fact or mistake of law exonerate a person from criminal liability under the Statute?

A *mistake of fact* shall be a ground for excluding criminal responsibility *only if* it negates the mental element required by the crime.

However, a *mistake of law* as to whether a particular type of conduct is a crime within the jurisdiction of the Court *shall not be a ground* for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in Article 33. (ARTICLE 32)

Q: Can the defense that of obedience to an order of a Government or superior exculpate a person from criminal liability under the Statute?

NO, mere obedience is not enough. The following must be proven:

- (a) The person was under a legal obligation to obey orders of the Government or the superior in question;
- (b) The person did not know that the order was unlawful; and
- (c) The order was not manifestly unlawful. (ARTICLE 33)



NOTE:

For purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful. (*ibid.*)

PART IV. OTHER MATTERS

- The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfillment of its purposes. (ARTICLE 48)
The privileges and immunities of:
 - (a) A judge or the Prosecutor may be waived by an absolute majority of the judges;
 - (b) The Registrar may be waived by the Presidency;
 - (c) The Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor;
 - (d) The Deputy Registrar and staff of the Registry may be waived by the Registrar.
- The *official languages* of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The *working languages* of the Court shall be English and French. (ARTICLE 50)
- A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of the Statute. (ARTICLE 59)
- A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:
 - (a) The warrant applies to that person;
 - (b) The person has been arrested in accordance with the proper process; and
 - (c) The person's rights have been respected.The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender. (*ibid.*)

NOTE: THE TREATMENT OF PROCEDURAL MATTERS UNDER THE ROME STATUTE ARE MOSTLY THE SAME WITH THE RULES OF COURT AND OTHER PROCEDURAL RULES UNDER THE PHILIPPINE JURISDICTION. LIBERTAS ET IUSTITIA