

# JUDICIAL COOPERATION WITHIN THE FRAMEWORK OF THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT

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**Abstract:** *The Statute of the International Criminal Court (ICC) mandates the establishment of robust cooperation mechanisms for international criminal justice. This involves efficient information exchange between member state authorities and the ICC. Provisions outlined in the statute, particularly in Chapter IX, Articles 86 through 101, outline the framework for such cooperation. Cooperation extends to executing judicial decisions, including prison sentences and fines, as detailed in Chapter X of the Statute. This article discusses two aspects: first, the exchange of information between states and the Court, covering evidence and investigation of criminal acts; second, various forms of judicial cooperation between states and the ICC.*

**Keywords:** *International Criminal Court (ICC) □ Statute □ Judicial cooperation □ Information exchange □ Execution of judicial decisions.*

## Introduction:

International criminal justice necessitates, pursuant to the provisions outlined in the Statute of the International Criminal Court, the expedited establishment of new and effective arrangements for cooperation on a more comprehensive basis. Additionally, the exchange of information between competent authorities of the member states and the Court itself is deemed a significant activity that also requires highlighting, elucidation, and clarification. This is in light of the provisions set forth in the basic rules of the Rules of Procedure and Evidence relating to the Statute, which stipulates in its provisions of Chapter IX on international cooperation and judicial assistance, delineating the framework of such assistance under the provisions of Articles 86 through 101.<sup>1</sup>

Pursuant to the procedural rules outlined in these provisions, from Rule 176 to Rule 197, cooperation as stipulated in the Statute also pertains to the process of executing judicial decisions issued by this Court, whether it involves the execution of prison sentences or the enforcement of fines and confiscation measures. This is because the execution of judgments issued by the International Criminal Court is subject to several guidelines as outlined in Chapter X of the Court's Statute.<sup>2</sup>

Therefore, we have decided to divide this subject into two requests. The first request addresses the advanced stages, involving the exchange of information between states and the Court, encompassing all aspects related to evidence and investigation of criminal acts. In the second request, we have endeavored to mention and attempt to compile the forms of cooperation, categorizing them under judicial cooperation between states and the Court.

## First Request: Exchange of Information and Surrender or Presentation of Criminals to the Court.

The procedural rules enshrined in international treaties aim to place the rules of international law into practice to protect the interests of the international community by ensuring that offenders do not escape punishment through organizing procedures and specifying means that lead to the discovery of truth and the determination of the right of the international community to punishment.

Every person exposed to prosecution for some acts committed by them, which the courts perceive as having a criminal nature, even though there is nothing to indicate or suggest their illegitimacy at the time of their commission, and insecurity reaches its peak if judges are given additional authority to determine the nature of the punishment applied to the crimes they have invented.<sup>3</sup>

Upon the commission of a crime, the first step is the investigative process and ensuring a fair trial in accordance with international agreements. The validation of statements made by the accused, victim, or eyewitnesses, along with inspection procedures and all ensuing actions such as the summoning of the accused, arrest, pretrial detention, or questioning of witnesses, if any, must adhere to legal provisions. This ensures the right to defense, which is guaranteed at this stage. Therefore, the first section addresses the exchange of information and the procedural method



outlined in the statute, while the second section pertains to the presentation or surrender to the criminal court.

#### **First Section: Exchange of Information with the International Criminal Court**

The legally authorized body to request referral or receipt of messages regarding information is the Court Registrar. As mentioned earlier in the first chapter, the Prosecutor serves as an investigator, and other bodies of the Court also conduct investigations and inquiries. Therefore, Article 87 of the Court's Statute stipulates forms of cooperation and the bodies required to provide assistance, whether they are states parties to the Court, non-parties, or international organizations. This is done by specifying the channels legally empowered to receive such requests, as well as the language in which the requesting party communicates.<sup>4</sup>

Furthermore, in the event of a change in the legally authorized entity to interact with the Court, it is incumbent upon the latter to inform the Court Registrar in writing of this change. This procedure may aim to prevent delays in exchanging information, for which a deadline of 45 days is set for carrying out the specified tasks in the cooperation request.

The content of the cooperation request, as stipulated in Article 87, encompasses information, documents, or other forms of judicial cooperation and assistance. Thus, these documents or information pertain to the act and the perpetrator, i.e., the crime and the criminal, including the place and time of its commission, which categorically does not recognize the principle of statute of limitations.<sup>5</sup>

The article also stipulated cooperation with international organizations and the identification of communication channels according to the same conditions and forms outlined above.

The information provided to the Court may include documents issued by individuals accused of committing specific crimes under the jurisdiction of the Court. It may also include visual recordings related to the incidents for which the accused are being prosecuted.

The official communication channels between the Court and states or between the Court and international organizations involve submitting cooperation requests aimed at convicting and attributing the crime to its perpetrator. This is because it is a rule of evidence that the burden of proof lies on the party making the claim.<sup>6</sup>

As the jurisdiction of the Court is an extension of national judicial competence, evidentiary procedures and requests for assistance are necessarily subject to domestic law, despite the formalities required under the provisions of Chapter IX.

Article 05/61 of the Statute provides: "During the session, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds for believing that the person committed the alleged crime. The Prosecutor may rely on documentary evidence or a brief presentation of evidence and may not need to call witnesses expected to testify at trial."

Refutation of charges in case of non-admission of guilt is unacceptable and unlawful because if the evidence is insufficient, the accused person is acquitted in accordance with the provisions of the law. Article 04/99 of the Statute also provides for the Prosecutor's authority to conduct certain investigative activities directly without the presence of the authorities of the state to which the request is directed, within the territory of that state. In particular, the Prosecutor may collect witness testimonies and conduct inspections.

It can be said that such powers do not constitute an infringement on the national sovereignty of the state, as the basis for this lies in the provisions of Article 54 and Article 03/57, as well as the provisions of Chapter IX of the Statute concerning international cooperation and judicial assistance. These provisions ensure respect for national sovereignty when exercising the Prosecutor's jurisdiction. This constitutes an exception to the rule, conditioned firstly on the state to which the request is directed being a state where the crime is alleged to have occurred within its territory. Additionally, there must be a decision on admissibility under Articles 18 and 19 of the Statute. Secondly, the Prosecutor is required to engage in all possible consultations with the state to which the request is directed before initiating proceedings.



This commitment entails that each party state must remove any obstacles within its procedures that impede cooperation and ensure that its national law obligates courts and other authorities to fully cooperate with the Court whenever requested to do so.

In regards to requests for investigations or judicial proceedings, the States Parties under Article 93 agreed to provide a wide range of assistance to the Court during investigations and judicial proceedings. This includes identifying the identity and whereabouts of witnesses, locations of items, gathering evidence, questioning persons subject to investigation or prosecution, serving judicial documents, facilitating voluntary appearances of witnesses before the Court, examining sites, exhuming bodies, conducting inspections and seizures, providing documents, protecting victims and witnesses, and preserving evidence.

Additionally, they committed to identifying, tracing, and freezing assets and instruments used in the commission of crimes, such as weapons and vehicles, for the purpose of forfeiture, particularly for the benefit of victims. Furthermore, the States Parties agreed to provide any other form of assistance not prohibited by their national laws.<sup>7</sup>

In order to enhance the effectiveness of the International Criminal Court, states should remove these restrictions by appropriately adjusting their national legislation in accordance with the Court's Statute.

The exchange of information between the Court and states is subject to these states ratifying or acceding to the treaty establishing the Court, or expressly accepting the exercise of the Court's jurisdiction as follows: the state where the act or omission occurred, or the state of registration of the ship or aircraft if the crime was committed aboard one of them, or the state of nationality of the person under investigation or prosecution.

In the event of cooperation with the International Criminal Court (ICC) by a non-party state to the Statute, and upon exercising its jurisdiction over the crime, the state must consent through a declaration deposited with the Court to its jurisdiction concerning the crime under investigation.<sup>8</sup>

However, Article 87(5) permits the ICC to request assistance from any state that has not ratified the Statute based on a special agreement. If a state joins such an agreement, it becomes obligated to comply with requests for assistance. Yet, when the Security Council refers a case deemed to threaten international peace and security, the state may be requested to use its powers under Chapter VII of the United Nations Charter to ensure non-party states cooperate with requests for assistance from the Court.

The ICC applies its statute, procedural rules, and its own rules of evidence, as well as relevant treaties, principles of international law, and rules derived from national legal systems worldwide. National laws of states exercising jurisdiction over the crime are also applied, provided they do not conflict with the ICC Statute, international law, or internationally recognized rules and standards. Thus, the Statute does not follow the sequence set forth in Article 38 of the Statute of the International Court of Justice.<sup>9</sup>

The International Criminal Court (ICC), established by treaty, relies practically on effective cooperation among states to fulfill its duties correctly. Unlike national courts, it lacks direct enforcement powers, except for limited investigative powers it exercises. It cannot issue arrest warrants, search homes or premises, compel witnesses to appear, exhume graves, or determine the nature of weapons used. Therefore, it relies on national authorities to execute these tasks.

Hence, for the ICC to effectively perform its duties, it is crucial for states that have ratified the Statute - namely, the States Parties - to provide full cooperation from the commencement of investigations to the execution of judgments.

The essential aspects of mandatory cooperation by States Parties with the ICC lie in Article 86, which stipulates that cooperation must be complete with the ICC in investigating and prosecuting crimes falling within its jurisdiction.

The ICC may request any cooperating state to have the freedom to use its procedures concerning cooperation with other states, as stipulated in Article 88. This ensures the necessary procedures under its national laws to facilitate all forms of cooperation outlined in Chapter IX of the Statute, which delineates states' obligations regarding cooperation with the ICC.<sup>10</sup>



### The second branch: Submission or Surrender to the Court

The extradition of criminals has been stipulated in several international agreements.<sup>11</sup> In addition to the provision in Article 88 of the First Protocol of 1977 attached to the Geneva Conventions of 1949, which states: "The High Contracting Parties shall cooperate with each other in surrendering criminals..."<sup>12</sup>

Some countries only extradite individuals based on an extradition treaty they have concluded with another state. Therefore, it is necessary to ensure the existence of such a treaty between the two countries. Many countries agree to extradite individuals even without such a treaty, based on the principle of reciprocity. However, in most cases, extradition of nationals is prohibited despite the existence of a bilateral extradition treaty, which usually follows similar rules, including:

1. Dual criminality: Meaning the participation of both countries in criminalizing an act, i.e., the necessity to criminalize the actions alleged to have been committed in the laws of both the requesting state and the receiving state.

2. Burden of proof: The state requesting extradition usually commits to providing preliminary evidence against the suspect before surrendering them, ensuring that individuals are not apprehended and surrendered without the necessary evidence.

Exception of Political Crimes: Most countries do not extradite individuals suspected of committing political crimes. The criteria for determining what constitutes political crimes vary, but generally include rebellion against the established government and related offenses. However, crimes against humanity, torture, genocide, and war crimes are not considered political crimes. The Convention on the Prevention and Punishment of the Crime of Genocide explicitly states that genocide is not considered a political crime concerning extradition.

Principle of Specialty: A state requesting the extradition of an individual may only prosecute and punish them for the crimes relied upon by the extraditing state.

Article 102 of the Statute of the Court states: "For the purposes of this Statute:

(a) 'Surrender' means the delivering of a person by one State to the Court in execution of a warrant of arrest issued by the Court;

(b) 'Extradition' means the delivering of a person by one State to another State pursuant to an extradition agreement or treaty or to domestic legislation... provided that the surrender is for the purpose of surrender to the Court, then it is subject to the principle of prior cooperation mentioned above and to the principle of complementarity between national judicial system and the Court's statute.

The issue of the danger of surrendering a state's nationals to foreign jurisdiction, a principle enshrined in the constitutions of many countries, underscores the conflict of this principle with the obligation to surrender a state's nationals to the International Criminal Court in the event of its jurisdiction being

invoked for trial.<sup>13</sup>

Here, as stipulated in Article 102 of the Statute of the Court, referral to the Court entails the submission of an individual by a state to the International Criminal Court, which is considered an extension of national jurisdiction.

This is based on the understanding that the state submitting the individual acknowledges and agrees that there is an international criminal jurisdiction that supersedes its national jurisdiction.

Provisions from Articles 89 to 90 of the Statute, as well as procedural rules and rules of evidence from Rule 181 to 186, detail the procedure for submitting individuals to the Court and the circumstances that may arise during their extradition. It also addresses the priority of requests in case a state party receives both a request from the Court for the surrender of a person for trial and a request for extradition from another state for the same or different criminal acts, outlining how to handle such situations by giving precedence to one of the requests.

Analyzing the provisions of these articles in order, we find the following:

Article 89 of the Statute: An individual may challenge before the national court on the basis that they have been tried for the same acts by the national judiciary. Accordingly, in adherence to the principle of non bis in idem (not being tried twice for the same offense), the national court transfers and



notifies the challenge to the International Criminal Court, which then proceeds with one of the following procedural steps: either accepting the challenge and subsequently obliging the submission of the individual for trial, or suspending the acceptance of the challenge, thereby deferring the execution of the surrender request, which results in the release of the individual unless held for another reason.

It is incumbent upon the requesting state to allow for the transfer of an individual sought for surrender to the International Criminal Court by another state, in accordance with the national procedural law of the transit state, which is a party, while taking into account exceptions that may impede or delay the surrender of such individual.

The request for transit shall include the following: a description of the person to be transferred, a brief statement of the facts of the case and its legal characterization, as well as the arrest and surrender order, which are the documents accompanying the detained or arrested person during the transit until arrival at the premises of the International Criminal Court.

Procedural Rule 182 provides for the possibility of submitting a transit request through all means capable of conveying written records. In the event of air transportation, no permission for transit is required from a state where landing was not planned. In case of emergency landing, the state where the aircraft landed may request transit permission from the Court, provided that the person remains detained, subject to the condition that the extension of detention does not exceed 96 hours from the time of emergency landing unless the request is submitted within this period.

Procedural Rule 183 stipulates the following: "The possibility of provisional surrender following the consultations referred to in paragraph 4 of Article 89. The requested state may provisionally surrender the requested person, subject to conditions agreed upon between the requesting state and the Court.

In this case, the individual mentioned, namely the detainee, remains in pre-trial detention during the period of his appearance before the court and is transferred to the requesting state once his appearance before the court is no longer required, within a deadline not exceeding the time necessary to complete the proceedings at most."

The bilateral cooperation between states and the court is subject to bilateral treaties related to the extradition of individuals for trial, aimed at preventing war crimes and crimes against humanity and ensuring accountability, thereby hindering impunity and evasion of trial.<sup>14</sup>

Furthermore, certain agreements concluded between states and international organizations, which, in our view, are based on the principle of cooperation in tracking criminals, if such agreements concern crimes punishable under domestic laws, with their specificity in the field of domestic public law, it is preferable to conclude agreements regarding the most serious crimes that have an international character.<sup>15</sup>

Article 90 of the Statute includes assumptions of incidents that may occur and can be divided as follows: a state receives a request from the court to surrender an individual while simultaneously receiving a request for extradition from another state, whether a party or non-party to the statute of the court.

In the event that the requesting state is a party to the court, priority lies with the court provided that:

1. The court has declared its acceptance of the case in accordance with Articles 181 and 182 of the Statute.
2. The court informs the requesting state of the extradition procedures as per the first condition.
3. The individual is not surrendered to the state before the court decides on the inadmissibility.

If the requesting state is a non-party, the priority for the extradition request to the court is subject to:

1. The court having declared its acceptance of the case.
2. The absence of an international obligation to extradite the individual to the requesting state (no mutual extradition agreement between the two states).





3. In the event of the court not declaring the admissibility of the case, it is at the discretion of the state to extradite the individual to the requesting state.

4. If the court declares the admissibility of the case and the requested state is subject to an international obligation to extradite the individual to the requesting state, differentiation, balance, and preference occur based on:

- Date of each request: Priority is given to the first.
- Interests of the requesting state: Whether the crime occurred within its territory or the victims or the accused are its nationals.

Exploring the possibility of referral to the court after surrender by the state.

In the event a state party receives a request for referral and a request for surrender due to behavior not constituting a referral request, the preference is based on the following:

Referral to the court in the absence of an international obligation for surrender.

The possibility of considering a referral request after surrender, in accordance with the provisions of paragraph 06, involves assessing the nature and criminal gravity of the individual's conduct and the act committed. The state to which the referral and surrender requests are made must, after the court declares its non-acceptance and the state fails to surrender the individual to the requesting state, notify the court of this decision.

Article 91 of the statute stipulates the content of the arrest and surrender request, which must be in writing and, in cases of urgency, may utilize all means capable of achieving the purpose, while respecting the channels and methods previously determined.

The arrest request includes the following information: Sufficient descriptions of the individual to identify them, their whereabouts, or possible whereabouts.

All documents, statements, or information commonly used in extradition treaties between states.<sup>16</sup> In cases where there is a conviction against the individual, the request should also include:

A copy of the arrest warrant issued against them.

A copy of the conviction judgment issued against him.

Accurate information regarding the match of the identity of the individual to be surrendered and the convicted person.

A copy of the conviction judgment and a statement of the remaining term and the duration served by this person in prison.

The individual may be detained provisionally if requested to be presented to the court, as stipulated by Article 92 of the statute, subjecting them to provisions concerning the urgent situation necessitating the temporary detention of the person to be presented.

If the person to be presented to the court is pursued by the state where the plane made an emergency landing or where they are serving a sentence, the latter must consult with the court regarding the presentation for trial. The legal procedures that the states parties must take when receiving a request for the arrest and surrender of a person find their legal basis in the provisions of Article 01/59, which call upon the states parties to promptly fulfill the requests of the International Criminal Court for the arrest of suspects within their territories and their presentation for trial.

The court should assist states in locating the accused by providing with the request an arrest warrant, identifying information, and the documents required to meet the formalities prescribed by the national law for the extradition process in the concerned country.

Moreover, national courts are obligated under Article 59, paragraph 7/02, to ensure respect for the rights of the accused and their prompt surrender.

In the event that national law prohibits the extradition of nationals, such national prohibitions do not apply to the International Criminal Court (ICC). Article 102 clarifies that extradition to the ICC is a legal procedure distinct from extradition between states.

#### **The second requirement: Judicial cooperation and enforcement of judgments**

Having a national judiciary capable of dealing with international crimes outlined in the statute of the International Criminal Court (ICC) is the best means to ensure judicial sovereignty. This can only be achieved through the training of judicial personnel knowledgeable about international crimes and familiar with the principles of international law as well as national criminal law. Judicial cooperation



among states wishing to join the ICC lies in reconciling conflicts between their constitutions and national legislations on one hand and the ICC statute on the other. Additionally, these states should enact national legislation covering all criminal acts specified in the ICC statute. The implementation aspect is equally important as cooperation, as it is the fruit harvested from cooperation. Ensuring the enforcement of ICC judgments makes it a deterrent tool for anyone attempting to undermine national criminal laws by criminalizing acts specified in the ICC statute or by judgments issued by the court on behalf of states.<sup>17</sup>

Therefore, in this section, we will explore the concept of judicial cooperation between the parties and the court, focusing on harmonizing national legislation with the statute. Then, in the second subsection, we will address the issue of implementing court judgments, whether it involves precautionary measures (such as imprisonment or asset confiscation resulting from criminal acts (criminal proceeds)).

#### **Subsection One: Judicial Cooperation**

Some have argued that Article 4 of the statute, concerning the exercise of the International Criminal Court's functions and powers, constitutes a violation of national sovereignty by allowing a foreign entity to exercise inherent jurisdiction subject to its judicial authority.

In this regard, we refer initially to the provisions of paragraph 10 of the preamble of the statute, which emphasizes that the International Criminal Court will complement national criminal jurisdictions. This phrase is explicitly stated in Article 1 of the statute. Article 17 of the statute further stipulates that the International Criminal Court does not supplant national judicial jurisdictions but intervenes exclusively when the State concerned is unable to conduct an investigation or lacks the capacity to do so.

The independence or impartiality of national judicial authorities, as evidenced or proven by circumstances indicating an intention to exempt the person concerned from genuine judicial scrutiny, is emphasized.<sup>18</sup>

Accordingly, the statute encourages states to exercise their judicial authority over crimes falling within the jurisdiction of the court, and the court may only exercise its authority to enforce the provisions of Article 17.

Article 29 of the statute stipulates the following:

"No statute of limitations shall apply to the crimes within the jurisdiction of the Court." To address this, we state that crimes against humanity and war crimes under customary international law are not subject to limitation periods. Moreover, the 1968 Convention articulated this customary rule in an international treaty that prohibits the application of statutes of limitations to such crimes. Therefore, by ratifying the statute, states accept the jurisdiction of this provision, which establishes a special rule for a specific type of crime. Thus, there is no conflict between national sovereignty and the non-applicability of statutes of limitations to crimes falling within the jurisdiction of the court. To avoid such issues, states should enact legislation consistent with this principle.

The inclusion of national laws covering crimes within the jurisdiction of the court, to avoid the pitfalls of judicial jurisdiction over matters that fall under the authority of states, is one aspect of judicial cooperation.<sup>19</sup>

Drawing on the experiences of some states parties to the court, particularly in enacting legislation to prosecute international crimes prior to joining the court, notably Belgium, New Zealand, and Canada, sets a commendable example. It is imperative to enact comprehensive legislation regarding crimes specified in the statute. Following the genocidal crimes in former Yugoslavia and Rwanda, several countries referred perpetrators of these crimes to trial based on the principle of universal jurisdiction and the application of the principle of no impunity.<sup>20</sup>

In Belgium, authorities arrested a Rwandan citizen named Vincent Nzamwita, charging him with genocide. In Germany, a Bavarian court sentenced a Bosnian Serb citizen named Tofoslav Đajić to five years in prison in 1997 under the Geneva Conventions for aiding and abetting in the killing of 14 Bosnian Muslim men in 1992. In September 1997, the Düsseldorf High Court sentenced Nikola Borgić, the former leader of a Serbian parliamentary group, to life imprisonment after convicting him on



eleven counts of genocide, thirty counts of deliberate homicide, but did not rule on a third case against a Bosnian Serb accused of genocide.

In Denmark, a Bosnian Muslim man named Rafiq Saric was sentenced to eight years in prison for committing war crimes after being charged with torturing prisoners in a prison run by Croats in Bosnia in 1993, under the Geneva Conventions. In April 1999, a Swiss military court convicted an accomplice for committing war crimes in Rwanda.

Furthermore, French authorities convicted a Rwandan pastor named Wenceslas Munyeshyaka of genocide, crimes against humanity, and torture.

In February 2000, a Senegalese court charged exiled Chadian dictator Hussein Habre with torture. Therefore,<sup>21</sup> it has become imperative for Arab countries, whether they ratified the Rome Statute or not, to enact national legislation addressing international crimes to assert jurisdiction over such crimes committed within their territory. They should also regulate other matters related to international judicial cooperation in the field of international criminal law.<sup>22</sup>

Terrorism has become a serious crime, and Arab countries have sought to establish treaties for cooperation in this field. Some argue that terrorism constitutes a crime against humanity when certain conditions are met.

Dr. Draid Bishara believes that:

In fact, serious terrorist crimes can be characterized as crimes against humanity by linking them to other terrorist acts committed subsequent to their occurrence, which result in the deaths of a large number of innocent people. This requires presenting evidence that these actions were committed as part of a systematic plan orchestrated by a security or political authority for specific political or ideological reasons, or with the aim of undermining national unity in a particular country and inciting one group against another.

On this basis, these crimes can be considered crimes against humanity and referred to the International Criminal Court by a decision of the Security Council in accordance with the provisions of Article 13 of the Court's statute, based on the fact that all these crimes occurred after 2002, i.e., after the commencement of the aforementioned jurisdiction and authority.<sup>23</sup>

Indeed, the heinous terrorist crime, which victimizes innocents and is followed by a series of systematic and organized terrorist attacks using explosives against civilians, is aimed at destabilizing the security and stability of a country and undermining national unity and the foundations of coexistence therein.

By their nature, terrorist acts can be characterized as crimes against humanity due to their high level of severity and the systematic plan under which they are committed, as affirmed by the International Committee of the Red Cross.<sup>24</sup>

Based on this legal theory, terrorist crimes can be referred to the International Criminal Court as crimes against humanity falling within its jurisdiction.

This referral initiates an investigation and requires the State Party, through its Prosecutor before the Court, to proceed with the crimes committed and reported, accompanied by all the documents, evidence, and proof in its possession, as stipulated by Article 14 of the Rome Statute:

"The International Criminal Court may exercise its jurisdiction over a crime referred to it by a State Party to the Rome Statute where the crime occurred on the territory of that State or the accused person is one of its nationals.

(1) A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed and request the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes. (2) The situation referred to under paragraph 1 shall be accompanied by such information as is available to the referring State from its own investigations."

The judiciary itself may consider a case falling within its criminal jurisdiction upon the claim of the prosecutor before that judiciary, who may initiate an investigation into a case that may involve the commission of one or more crimes falling under the jurisdiction of the International Criminal Court, provided that the accused person is a national of a State Party to the Rome Statute or that the crime occurred within the territory of a state party to the same agreement.





However, in this case, prior authorization must be obtained from the Pre-Trial Chamber, and the Court ultimately considers crimes falling within its jurisdiction based on a decision by the Security Council under Article 13 of the Rome Statute and in accordance with Chapter VII of the United Nations Charter. In such a case, the Security Council decides to refer a specific criminal case to the International Criminal Court, assuming that one or more crimes fall within the jurisdiction of the Court and simultaneously constitute a threat to peace and international security.

In this latter case, the Court has the authority to take over the criminal case referred to it by the Security Council, even if the crime did not occur within the territory of a State party to the Rome Statute, or if the perpetrator, accomplice, or instigator is not a national of such a state. However, it is the duty of the Court to ensure the actual threat posed by the criminal situation to international peace and security and that the national judiciary of the state where the crime occurred or where the perpetrator, accomplice, or instigator holds citizenship is unable to undertake criminal prosecution and trial proceedings, or that the authorities of that state do not wish to conduct the trial, or are obstructing its progress in order to allow suspected individuals to evade punishment.<sup>25</sup>

Therefore, cooperation of states with the International Criminal Court through enacting domestic legislation and criminalizing acts with international criminal liability would help prevent criminals from evading punishment regardless of their positions within the state. No immunity is granted to the criminal, even if they are a head of state or government.

#### **The second aspect: Execution of Judgments**

The implementation of judgments issued by the International Criminal Court is subject to several criteria as outlined in Article 103 of its statute, particularly under Section 10 of the basic rules. Reviewing the statute reveals the prescribed penalties:

1. Temporary imprisonment for a maximum period of thirty years.
2. Life imprisonment: This penalty is determined based on the criminal severity of the act and the specific circumstances of the convicted person, in accordance with procedural and evidentiary rules. These penalties entail restrictions on personal freedom. Additionally, another type of penalty that the court can impose is monetary fines against the convicted individual.<sup>26</sup>

The monetary penalties imposed on an individual include:

1. Imposition of a monetary fine according to procedural and evidentiary rules.
2. Confiscation of proceeds, assets, or funds directly or indirectly derived from the crime, without prejudice to the rights of other innocent parties.

Article 103 of the statute contains four paragraphs reflecting the procedures that the executing state must undertake upon accepting the implementation of a prison sentence, as well as the procedures that the court must follow before any assignment of the state executing the prison sentence.

Regarding the execution of prison sentences, it is important to note the significant role of states in implementing the judgments issued by the court. The court expresses its readiness to accept convicted individuals by indicating their willingness to do so, and the court then assigns the state where the prison sentence will be executed from a list of states that have specifically expressed their willingness.

Procedural Rule 200 regarding the list of executing states states the following:

1. The Registrar establishes a list of states willing to accept convicted individuals and manages this list.
- 2 The Presidency shall not include a state in the list provided for in paragraph (1) of Article 103 if it does not agree to the conditions attached to its acceptance by that state. The Presidency may, before making a decision, request any additional information from that state.
- 3 - A state that conditions its acceptance may withdraw these conditions at any time, and any amendments or additions to these conditions shall be subject to the approval of the Presidency.
- 4 - A state may notify the Registrar at any time of its withdrawal from the list, and such withdrawal shall not affect the implementation of judgments relating to persons that the state has already accepted.



5 - The Court may enter into bilateral arrangements with states to establish a framework for accepting prisoners sentenced by the Court, provided that these arrangements are consistent with the provisions of the Statute.<sup>27</sup>

The implementation of a prison sentence shall only take effect after the judgment becomes final and binding, meaning that it has acquired the status of *res judicata*, i.e., it cannot be challenged by any means.

States may provide conditions for accommodating the convicted person, and the Court may accept or reject them. In the latter case, the Court shall designate another state for the execution of the judgment.

The International Criminal Court must consider certain circumstances when determining the state of execution, including the following:

- The obligation of states parties to share responsibility for implementing judgments.
- Application of prevailing standards for the treatment of prisoners in accordance with international treaties in force.
- Consideration of the opinions and nationalities of the convicted individuals.

Any other factors related to the circumstances of the crime, the convicted person, or the actual execution as deemed appropriate by the executing state.

The decision of the United Nations General Assembly Resolution 111/45 issued on 1990/12/14, which includes the provision that: "There shall be no distinction on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." This principle is fundamental to the promotion and development of the welfare of all members of society. Furthermore, it is imperative to treat all prisoners with the due respect for the preservation of their personal dignity and values as human beings.

Respect for religious beliefs, cultural values, and civilizational values of the groups to which prisoners belong, regardless of the requirements of the circumstances.

The responsibility of detaining prisoners and protecting society from crime should not outweigh the achievement of other objectives.

Apart from these restrictions, there is a clear need arising from the fact of detention that all prisoners retain the human rights and fundamental freedoms as stipulated in the Universal Declaration of Human Rights when ratified by states.

Article 15 of the Convention against Torture, concluded in 1987, reaffirmed that torture is no longer acceptable or permissible for recognition. This aligns with the objective of criminal proceedings worldwide, where any statements or confessions obtained through torture are excluded. Both the right to non-coerced confession and the exclusion of evidence obtained through torture or coercion are integral components of fair and impartial trials.<sup>28</sup>

The cooperation of states parties with the International Criminal Court in implementing prison sentences is subject to formalities and principles outlined in the national judicial system of each state, as well as in the statute of the International Criminal Court and procedural rules and evidentiary rules related to the same system.

The punishment imposed on the accused and the extent of its application remain subject to the provisions of the law. There is no indication of seeking revenge against the accused individual, as these situations are in line with the regulated standards for treating prisoners under accepted international treaties. These conditions are neither more nor less favorable than those available to prisoners convicted of similar crimes in the executing state.<sup>29</sup>

Granting the convicted accused full freedom to express their opinion regarding the executing state, and granting them such a right, is sufficient evidence for the proper conduct of international criminal justice. The punishment imposed on the accused allows them to choose the state presented by the court for the execution of the remaining sentence in accordance with the provisions of Rule 205, which designates the state of execution as the host state for the accused.

The accused has the freedom to choose the executing state, aided by assistance from their defense. The choice will depend on the extent to which the executing state complies with international agreements.



Therefore, Article 10 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment stipulated the following:

Each state ensures the full inclusion of education and information regarding the prohibition of torture in the training programs of law enforcement officials, whether civilian or military, and those working in the medical field, public officials, or others who may be involved in the detention of any individual subjected to any form of arrest, detention, or imprisonment, or in the interrogation or treatment of such individual. Each state party ensures the incorporation of this prohibition into the laws and instructions issued concerning the duties and functions of such persons.

Implementation of fines, confiscation, and compensation orders: In addition to enforcing the court's prison sentences, states are also responsible for implementing any measures related to fines or confiscation ordered according to Article 9 of its statute.

The procedural rules and rules of evidence have clarified, albeit not precisely, the implementation of these supplementary punitive measures, how they are carried out. The procedural Rule 217 states: For the purpose of implementing orders for fines, confiscation, and compensation, the Presidency may, as appropriate, seek cooperation and take measures regarding implementation, according to Chapter B. It also sends copies of relevant orders to any state to which the convicted person has direct links, either by nationality, permanent residence, habitual residence, or the location of assets and properties of the convicted person or those with whom the victim has such connections.

The Presidency informs the state, as appropriate, of any claims by a third party or the absence of claims from a person who has been notified of any actions taken under Article 75.

The essential aspect of implementing measures for fines, confiscation, and compensation is to ensure that victims receive their rights resulting from the harm inflicted upon them by the committed crime. Thus, the executing state, in accordance with the requests made by the court regarding the proceeds and assets of the convicted person, can facilitate the confiscation process. This involves the selling of assets and freezing financial assets, placing them in a credit fund to enable victims to claim their rights, as well as to collect the fines imposed by the court.

Confiscating the assets and revenues of the convicted person does not affect innocent parties, thus respecting the principle of individuality.

The presence of unregistered assets under the name of the accused is not subject to seizure and confiscation at all, such as properties registered under the name of the accused's spouse, children, or parents, which sometimes facilitates evasion.

If the contracting state is unable to execute the confiscation order issued by the court, it must take necessary measures to recover the value of the proceeds, assets, or properties that the court has ordered to be seized without infringing upon the rights of other parties. The referral of assets or proceeds resulting from the sale of real estate and other assets obtained from a contracting state due to the execution of a court order to that state.<sup>30</sup>

The implementation of the confiscation order is subject to formal controls, which include:

1. Identifying the person against whom the order was issued.
2. Conviction.
3. Identifying the proceeds, assets, and assets ordered by the court to be confiscated under the relevant judgment.

If the contracting state is unable to execute the confiscation order regarding specific proceeds, assets, or properties, it takes measures to obtain their value by identifying available information about their location.

In implementing compensation orders, the order specifies the following:

Identity of the individual against whom the order was issued.

Regarding financial compensations: identification of the victims eligible for individual compensations by determining the amount or value to be paid to each victim.

These amounts designated for compensations are deposited in an investment fund, which includes details about the properties and assets subject to compensation. If the court grants compensations on an individual basis, a copy of the compensation order is sent to the concerned victim.



Regarding the necessity of not modifying compensation orders: the court emphasized that national authorities, when executing compensation orders, are not allowed to modify the compensation determined by the court, or the scope or extent of any damage or loss, or injury identified by the court in its order, and they must facilitate the execution of this order.


The matter is referred to the Presidency in matters related to the disposal, distribution, or allocation of properties or assets after consulting with the Prosecutor, the convicted person, the victims or their legal representatives, the national authorities of the executing State or any interested third party, or the representatives of the investment fund referred to in Article 79, in all matters related to the disposal of the properties or assets of the convicted person obtained or distributed through the execution of a court order.<sup>31</sup>

In all circumstances, when the Presidency decides on the distribution of the convicted person's properties and assets, it prioritizes the implementation of measures related to compensating the victims. This is stipulated by Procedural Rule 221.

#### **Conclusion:**

The subject of international cooperation with international criminal justice, especially the International Criminal Court (ICC), has many aspects and facets that are subject to continuous and successive developments aimed at enhancing the functioning of this international criminal justice institution. One of the well-established principles in contemporary international law is that natural persons who are guilty of committing crimes against peace, humanity, and war crimes, including their planning, organization, and commission, bear responsibility for them alongside the concerned states. This principle was first articulated precisely and clearly in the Convention on the Prosecution and Punishment of Major War Criminals of the European States. Therefore, criminal prosecution is considered as a general rule, independent of investigation. However, this rule is an exception before the ICC, as matters related to opening investigations, notification mechanisms, and conditions for accepting lawsuits are stipulated in the court's statute, linked together because the prosecuting authority and the authority responsible for authorizing prosecution are both the Pre-Trial Chamber. They possess investigatory powers constrained by precise procedures, implicit conditions, and established principles in the court's statute or procedural rules. The uniformity of potential evidence by the states parties collectively ensures that cooperation between the states parties or with the court guarantees absolute assurance of jurisdiction, ethics, and aesthetics, thereby preventing impunity.

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- [1] Annex No. 01, containing the provisions of Chapter IX of the Statute of the International Criminal Court concerning "International Cooperation and Mutual Legal Assistance.
  - [2] Taher Mukhtar Ali Saad, *International Criminal Law, International Penalties*, Dar Al-Kitab Al-Jadidah United, Beirut, Lebanon, First Edition, 2000, page.231.
  - [3] 3Ben Sheikh Al-Hussein, *Principles of General Criminal Law*, Madar Homa Printing, Algeria, Second Edition, 2000, page 33.
  - [4] Statute of the International Criminal Court.
  - [5] Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted and opened for signature and ratification by General Assembly resolution 2391 (XXIII) of 26 November 1965.
  - [6] Statute of the International Criminal Court.
  - [7] Taher Mukhtar Al-Saad, *International Criminal Law, International Penalties*, Dar Al-Kitab Al-Jadidah Al-Mutahidah, Beirut, Lebanon, First Edition, 2000, Page 230.
  - [8] Mohamed Mustafa Younis, "Treatment of Prisoners in Light of the Rules and Principles of Public International Law," *Dar Al Nahda Al Arabiya*, Beirut - Lebanon - 1992, page 156.
  - [9] Hasan Ibrahim Saleh Obeid, "International Criminal Justice," *Dar Al Nahda Al Arabiya*, 1997, page 204.

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- [10] Al-Tahir Mukhtar Ali Saad, "International Criminal Law: International Penalties," Dar Al Kitab Al Jadeedah Al Mutahidah, Beirut - Lebanon, First Edition, 2000, page 234.
- [11] Treaty on the Prevention and Punishment of the Crime of 1948.
- [12] Genocide, with its Appendix No. 03 Resolution 3074 issued on December 3, 1973.
- [13] Abdel Wahab Hirmas, International Crimes and Jurisdiction Over Them - Dar Al-Nahda Al-Arabiyya, Cairo, 1997, p. 124.
- [14] Attachment No. 03, containing Resolution No. 3074 issued on December 3, 1973.
- [15] 1Advocating for space cooperation between Algeria and the Arab Maghreb Union countries, signed in Ras Lanuf (Libya) on March 9-10, 1991, and ratified by Presidential Decree No. 181/94 dated June 27, 1994.
- [16] 1Extradition and Judicial Cooperation Agreement in Criminal Matters between the People's Democratic Republic of Algeria and the Kingdom of Belgium, approved by Decree No. 61/70 dated 1970/10/08.
- [17] Abdul Wahab Hamoud, International Crimes and Their Punishment Authority, Dar Al-Nahda Al-Arabiya, Cairo, 1997 edition, page 152.
- [18] Saeed Abdul Latif Hussein: "The International Criminal Court and Applications of Modern and Contemporary Criminal Justice" - Arab Renaissance House, Cairo - 2004, pages 259 and 260.
- [19] Mahmoud Sharif Besyouni, "The International Criminal Court," Third Edition, Rose Yusuf Al-Jadida Printing Press, Cairo, 2002, page 510.
- [20] Annex No. 02: Elements of Crimes adopted by the Assembly of States Parties to the Rome Statute of the International Criminal Court in its first session held in New York during the period from 3 to 10 September 2002.
- [21] Hugo Jombue Moudiki, la compétence universelle et le procès de Bruxelles, publication de l'organisation des avocats sans frontière, Bruxelles, 2001 p15.
- [22] Adel Majid's report from the Arab League seminar on "The Effects of Ratification and Accession to the Statute of the International Criminal Court on Legal Obligations and National Legislation in Arab Countries," held in Cairo from February 3 to 4, 2002, is included in Mahmoud Sharif's book supplement on page 511.
- [23] Draid Bishara, an article published in Al-Nahar newspaper (Lebanon) on October 20, 2005.
- [24] The report issued by the International Law Commission for the year 1995.
- [25] Ouskan Solera, discusses supplementary jurisdiction and international criminal justice in the International Review of the Red Cross, Issue 847 (2002), pages 183-164.
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- [27] Mohammed Mustafa Younis, "Treatment of Prisoners in Light of the Rules and Principles of Public International Law," Dar Al-Nahda Al-Arabiya, Beirut, Lebanon - 1992, p. 85.
- [28] The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted and opened for signature, ratification, and accession by General Assembly resolution 46/39 of the United Nations on 10 December 1984, entry into force on 26 June 1987.
- [29] Mohammed Mustafa Younis, Treatment of Prisoners in Light of the Principles and Rules of Public International Law, Dar Al-Nahda Al-Arabiyya, Beirut - Lebanon - 1992, p. 232.
- [30] Taher Mukhtar Ali Saad, International Criminal Law: International Penalties, Dar Al-Kitab Al-Jadidah, United Beirut Lebanon, First Edition 2000, Page 243.
- [31] Basic System of the International Criminal Court.