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## ICC AND ICL: THE IMPACT OF INTERNATIONAL CRIMINAL LAW ON INTERNATIONAL CRIMINAL COURT

### المحكمة الجنائية الدولية والقانون الجنائي الدولي: تأثير القانون الجنائي الدولي على المحكمة الجنائية الدولية

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#### ملخص البحث

يركز المقال على مدى تأثير القواعد القانون الجنائي الدولي على القواعد القانونية والإجرائية للمحكمة الجنائية الدولية، ومدى الارتباط الموجود بين المحكمة الجنائية الدولية والقانون الجنائي الدولي. ويستكشف المقال على أن القانون الجنائي الدولي يُحمّل المسؤولية الجنائية الدولية للفرد ثم نجد المحكمة الجنائية الدولية هي كجسر لتنفيذ تلك القواعد القانونية للقانون الجنائي الدولي. إن القانون الجنائي الدولي والمحكمة الجنائية الدولية هما فرعان لبعضهما البعض عن بعض حيث يُجرّم القانون الجنائي الدولي الجرائم الدولية و من ثم المحكمة الجنائية الدولية تحاكم تلك الجرائم. لا تختلف القواعد القانونية الإجرائية للمحكمة الجنائية الدولية عن القواعد الإجرائية للقانون الجنائي الدولي، وبالتالي هو يؤثر بشكل مباشر على المحكمة وإجراءاتها. لو لا القانون الجنائي الدولي لما وُجدت المحكمة الجنائية الدولية على الإطلاق. وفي البحث تم استخدام المنهج التحليلي، والطريقة الاستقرائية، والأسلوب النقدي والمفاهيمي والوصفي لتحليل الموضوع، ولرصد ودراسة الجهود العلمية لحل المشكلة والإجابة على أسئلة البحث. وستخلصت الدراسة بالنتائج عدة، وعلى مقدمتها حيث ووجد الباحث أن العلاقة بين القانون الجنائي الدولي والمحكمة الجنائية الدولية تمول رقابة في تعزيز قواعد القانون الجنائي الدولي. وخرج البحث بتوصيات عدة، حيث يوصي البحث المحكمة الجنائية الدولية بالمشاركة من أجل التغلب على التحديات في تطبيق بعض المبادئ التي وصفها القانون الجنائي الدولي مثل نهج وإجراءات اتخاذ الحكم والعقوبات ضد المدان.

كلمات مفتاحية: التأثير، القانون الجنائي الدولي، المحكمة الجنائية الدولية.

## Abstract

This article focuses mostly on the narrower body of International Criminal Law (ICL)'s influence on the International Criminal Court (ICC) as one exact path and procedure connected between the ICL and the ICC. The article explores to say that ICL ascribes individual criminal responsibility for crimes which are left an open variety of questions concerning the discretion over enforcement international crimes through the ICC procedure. ICL and ICC are the branches of each other in standing their connection as the ICL criminalises international crimes and the ICC prosecutes those international crimes. ICC procedure does not differ from the ICL rules of proceedings, thus directly influences on the court and its proceedings. If ICL does not come to exist, the ICC might also do not exist at all. Analytical approach, inductive method, critical, conceptual, and descriptive methods are used to analyse the subject to monitor and study the scientific efforts to solve the problem and answer the questions of the research. The research found that the connection between the international criminal law and the international criminal court censoriously funded in increasing the rules of the ICL. The research recommends to the ICC has to be engaged in order to overcome the challenges in applying some of the principle described by the international criminal law such as sentences approach.

**Keywords:** ICL, ICC, Impact.

## List of Abbreviations

ECCC	Extraordinary Chambers for the Courts of Cambodia
GC	Geneva Conventions
IAC	International Armed Conflict
ICC	International Criminal Court
ICJ	International Criminal Court
ICL	International Criminal Law
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal For the Former Yugoslavia
IHL	International Humanitarian Law
IMT	International Military Tribunal, Nuremberg
IMT	International Military Tribunal, Tokyo
KSC	Kosovo Specialist Chambers
NIAC	Non International Armed Conflicts
SCSL	Special Court for Sierra Leone
STL	Special Tribunal for Lebanon
UN	United Nations
UNSC	United Nations Security Council
WW II	World War Two

## 1. Introduction

### 1.1 STATEMENT OF THE PROBLEM

The International Criminal Law (ICL) classifies the body of an international law that describes the international crimes through international customary law, mainly; crime of genocide, war crimes, crimes against humanity, and the crime of aggression, as well as the technique and procedure to be functional during the trial and prosecution before the International Criminal Court (ICC). ICL has a significant role and impact to the ICC in establishing the subject matter jurisdiction of the court as well as rule of procedures of the ICC. One of the main sources of the ICC and its Rome Statute which established the court is ICL. Therefore, the research is targeting to explore these ICL impacts toward the ICC accordingly.

### 1.2 RESEARCH QUESTIONS

1. What is the concept and sources of international criminal law?
2. What is the international criminal court and the subject matter jurisdiction of the court?
3. How does international criminal law Impact on the international criminal court?

### 1.3 RESEARCH OBJECTIVES

1. To elaborate the concept and sources of international criminal law?
2. To analyse in how does international criminal law Impact on the international criminal court?
3. To examine and define the international criminal court and the subject matter jurisdiction of the court?

### 1.4 RESEARCH METHODOLOGY

1. **Analytical Approach:** By studying the rules and laws related to the international criminal law and international criminal court identifying and analysing the provisions related to the ICL and ICC.

2. **Inductive Methodology:** Studying various works including publications, reference books, books, articles, court, regulations, laws, decisions and rulings related to the ICC and ICL.
3. **Critical, Conceptual, and Descriptive Part:** pointing to find solutions of the research problem.

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## 1.1 Introduction

International Criminal Law (ICL) is one of the parts of international law. The international criminal law concerns about the issues relating to international crimes, such as war crimes, genocide, crimes against humanity, crimes of aggression and other international crimes. The International criminal law is still an important within the context of international law. Despite in recent prior and especially in the last decade, it has experienced there is no developments and renewed attention from the international community toward international criminal law.

The establishment and the good work of International Criminal Tribunal For the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), and creation of various international criminal courts and tribunals have some an advance, contribution to the development in international criminal law.<sup>1</sup> However, it can be seen that there are some evidences that international criminal law has become a long way since International Military Tribunal (IMT), Nuremberg and International Military Tribunal (IMT) Tokyo.

The International Criminal Court (ICC) deals with the most serious criminal offenses and its objectives are to achieve individual accountability for those who committed atrocity crimes of concern to the international community.<sup>2</sup>

## 1.2 The Concept of International Criminal Law (ICL)

International criminal law is a subset of public international law, and is the main subject of these materials, while international law typically concerns inter-state relations, international criminal law concerns individuals. In particular, international criminal law places responsibility for individual person, not states or organisations, and proscribes and punishes acts that are defined as crimes by international law.

International criminal law is a relatively new body of international law, and aspects of it are neither uniform nor universal. For example, some aspects of the law of the ICTY are unique

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<sup>1</sup> Silvia D. Ascoli, Sentencing in International Criminal Law, the Approach of the two UN ad hoc Tribunals and Future Perspectives for the International Criminal Court, (Florence, Hart, 2011).

<sup>2</sup> Ibid.

to that jurisdiction, do not reflect customary international law and also differ from the law of the ICC. Although there are various interpretations of the categories of international crimes,<sup>1</sup> these materials deal with crimes falling within the jurisdiction of international tribunals, *hybrid* and *ad hoc* courts, including the ICTY, ICTR and the ICC. These crimes comprise genocide, crimes against humanity, war crimes and the crime of aggression.<sup>2</sup> In the concept of those international criminal courts and tribunals, international crimes do not include piracy, terrorism, and slavery, drug trafficking and other international crimes.

ICL and ICC proceedings include laws, procedures and principles relating to modes of liability, defenses, evidence, court procedures, sentencing, victims participation, witnesses protection, mutual legal assistance and cooperation issues.<sup>3</sup>

### 1.3 The Sources of International Criminal Law (ICL)

ICL is one of the international law features. ICL concerns on issues relating to international crimes, such as war crimes, genocide, crimes against humanity, crimes of aggression and other international crimes. Public international law is law that governs the action of state and how state interacts with each other and individual citizens. Public international law involves rules and principles that deal with the conduct, rights and obligations of states and international organisations, as well as dealing with relations among states.<sup>4</sup>

However, the relationship between public international law and domestic criminal law has greatly contributed to the development of the ICL, not only in a historical context, but also in the present situation of turmoil and conflicting ideologies. The sources of ICL originally derived from public international law, and though they have passed through a development of their own,

<sup>1</sup> Robert Cryer and et al, An Introduction to International Criminal Law and Procedure, (UK: Cambridge University Press, 2<sup>nd</sup> ed., 2010), 4.

<sup>2</sup> Related to the Crime of Aggression, ICC ASP RC/Res.6, The Crime of Aggression, 11 June 2010; Rome Statute of the International Criminal Court, Art. 8bis (2002).

<sup>3</sup> ICC, International Criminal Law and Practice Training Materials, 3.

<sup>4</sup> Ibid., 3.



they still, of necessity, depend on this traditional field of law. Therefore, it will be a starting-point in this article to establish what these sources are.<sup>1</sup>

By consulting the 1945 Statute of the International Court of Justice (ICJ) located in the Hague, Netherlands, annexed to the United Nations Charter,<sup>2</sup> it can be easily ascertained from article 38 what sources of law the international courts are expected to apply.<sup>3</sup> ICJ is one of the six principal organs of the United Nations (UN). Its function is to decide in accordance with international law, such international disputes between states as are submitted to it. ICJ does not deal with and decide criminal cases. In spite of this fact, there is a good deal of reason to assume that the sources purporting to constitute international law according to the introductory provision of Article 38 also do apply, though not directly, to criminal cases as minimum standards required for international criminal liability. This is true, irrespective of the enforcement model applied, whether the case is tried by a national court, an international court or the ICJ itself if it were given the authority and competence to do so.

The sources listed in Article 38<sup>4</sup> are the following:

- (a) "International conventions, whether general or particular, establishing rules expressly recognised by the contesting States;
- (b) International custom, as evidence of a general practice accepted as law;
- (c) The general principles of law recognised by civilized nations;
- (d) Subject to the provisions of Article 59,<sup>5</sup> judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. International conventions and international custom are the most important sources of public international law, and even more so where ICL is concerned".<sup>6</sup>

<sup>1</sup> Jonatan Thormundsson, *The Sources of International Criminal Law with Reference to the Human Rights Principles of Domestic Criminal Law*, (Stockholm Institute for Scandinavian Law, 2009), 387.

<sup>2</sup> United Nations Charter (adopted 14 August 1941, signed 26 June 1945, effective 24 October 1945, Art. 8.

<sup>3</sup> *Ibid.*, Art. 38.

<sup>4</sup> *Ibid.*, 38.

<sup>5</sup> *Ibid.*, 59

<sup>6</sup> Jonatan Thormundsson, 388.

Thus, the sources of the contemporary public international law can be classified into seven:<sup>1</sup>

1. "International customs;
2. Treaties;
3. General principles of law;
4. Judicial decisions;
5. Opinions of legal scholars;
6. Equity;
7. Acts of international organizations".<sup>2</sup>

The crimes against ICL are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced. This is probably the most renowned phrase from the judgment of the IMT at Nuremberg.<sup>3</sup> In more than six decades which have passed since the IMT, Nuremberg judgment was handed down, the recognition and the understanding of the concept of individual responsibility under ICL has been significantly reinforced and developed.<sup>4</sup>

Particularly, since the establishment of the ICTY,<sup>5</sup> the <sup>6</sup>ICTR,<sup>7</sup> the ICC, as well as other *hybrid* courts or internationalised domestic courts and tribunals, such as the Special Court for Sierra Leone (SCSL)<sup>8</sup> Extraordinary Chambers for the Courts of Cambodia (ECCC),<sup>9</sup> Kosovo

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<sup>1</sup> See: United Nations Charter.

<sup>2</sup> Walid Abdulrahim, "Sources of Public International Law", <https://sites.google.com> (accessed 10 July, 2019).

<sup>3</sup> Judlawch, "International Military Tribunal. Judgment: The Law of the Charter", <http://avalon.law.yale.edu/imt/judlawch.asp> (accessed 5 July, 2019).

<sup>4</sup> R. Kerr, *The International Criminal Tribunal for Former Yugoslavia: An Exercise in Law, Politics and Diplomacy*, (UK: Oxford University Press, 2004), 6.

<sup>5</sup> R. Kerr, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone*, (UK: Cambridge University Press, 2006), 4.

<sup>6</sup> UNIRMCT, <http://www.irmct.org/en> (accessed 18 December, 2018).

<sup>7</sup> L. J. van den Herik, *The International Criminal Tribunal for Rwanda, New York, 1998: The Contribution of the Rwanda Tribunal to the Development of International Law*, (The Hague: 2005).

<sup>8</sup> UN, <http://rscsl.org/> (accessed 18 December, 2018).

<sup>9</sup> ECCC, <https://www.eccc.gov.kh/en/node/39457> (accessed 17 December, 2018)

Specialist Chambers (KSC),<sup>1</sup> Special Tribunal for Lebanon (STL).<sup>2</sup> The concept of individual responsibility under ICL has a much higher profile today, than ever before in the history. The rules of international law concerning international crimes and individual responsibility have not always appeared sufficiently clear.<sup>3</sup>

As ICL is a subset of public international law, the sources of ICL are largely the same as those of public international law.<sup>4</sup> Those five sources of ICL used by international and *hybrid* criminal courts generally.<sup>5</sup> The relevance and importance of these sources in national criminal jurisdictions differ between countries. For example, in some jurisdictions, the direct source of ICL is national legislation incorporating ICL. In this instance, treaty and customary international law cannot be used as a direct source.

Conversely, some courts can apply the treaty law, but not customary international law, while in others; custom can be applied as well. Moreover, even if national legislation is the direct source of the applicable law, ICL treaties, commentaries on them and international judicial decisions are often used as aids to interpret the national law and are sometimes considered persuasive (not binding) precedent.<sup>6</sup>

#### 1.4 International Criminal Court (ICC)

The ICC in The Hague has been part of the global criminal justice system since 2002. The Rome Statute which established the court has been ratified by 122, and 33 states parties to the court are from the African continent.

For the first time in the history of humankind, states decided to accept the jurisdiction of a permanent international criminal court for the prosecution of the perpetrators of the most serious

<sup>1</sup> KSC, <https://www.scp-ks.org/en> (accessed 18 December, 2018).

<sup>2</sup> STL, <https://www.stl-tsl.org/en/> (accessed 18 December, 2018).

<sup>3</sup> Pawel Aleksander Kupis, "Sources of International Criminal Law", Munich, GRIN Verlag, <http://www.grin.com/en/e-book/288051> (accessed 12 June, 2019).

<sup>4</sup> Dapo Akande, *The Sources of International Criminal Law in Companion to International Criminal Law and Justice*, (UK: Oxford University Press, 2012), 41-53.

<sup>5</sup> ICC, *International Criminal Law and Practice Training Materials*, 4.

<sup>6</sup> *Ibid.*, 5.

crimes committed in their territories or by their nationals after the entry into force of the Rome Statute on 1 July 2002.<sup>1</sup>

On 17 July 1998, a conference of 160 states established the first treaty-based permanent international criminal court. The treaty adopted during that conference is known as the Rome Diplomatic Conference of the ICC. Among other things, it sets out the crimes falling within the jurisdiction the ICC, the rules of procedure and the mechanisms for States to cooperate with the ICC. The countries which have accepted these rules are known as states parties and are represented in the Assembly of States Parties.<sup>2</sup>

The ICC is not a substitute for national courts. According to the Rome Statute, it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes. The ICC can only intervene when a state is unable or unwilling genuinely to carry out the investigation and prosecute the perpetrators.<sup>3</sup>

The primary mission of the ICC is to help put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole, and thus to contribute to the prevention of such crimes.

#### 1.4.1 Crimes within the Subject Matter Jurisdiction of the ICC

ICC is a permanent international criminal court established to investigate or prosecute individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression.<sup>4</sup>

The mandate of the court is to try individuals “rather than states”, and to hold such persons accountable for the most serious crimes of concern to the international community as a whole,

<sup>1</sup> ICC, Public Information and Documentation Section. Understanding the International Criminal Court, Registry, International Criminal Court, (The Hague: Maanweg), 1.

<sup>2</sup> Ibid., 3.

<sup>3</sup> Antonio Cassese and et al, The Rome Statute of the International Criminal Court: A Commentary, (UK: Oxford University Press, 2002), vol. 1, 334.

<sup>4</sup> William A. Schabas, The International Criminal Court: A Commentary on the Rome Statute, (UK: Oxford University Press, 2010), 101.

namely the crime of genocide, war crimes, crimes against humanity, and the crime of aggression, when the conditions for the exercise of the court's jurisdiction over the latter are fulfilled.<sup>1</sup>

1. Genocide.
2. Crimes against humanity.
3. War crimes.
4. Crime of aggression.<sup>2</sup>

#### 1.4.1.1 Genocide Crime

According to the Rome Statute, crime of genocide" means any of the following act committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group: "killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group".<sup>3</sup>

#### 1.4.1.2 Crimes against humanity

Crimes against humanity include any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:<sup>4</sup> "murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity; persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury".<sup>5</sup>

<sup>1</sup> ICC, Elements of Crimes, (The Hague: ICC, 2011), 13.

<sup>2</sup> Rome Statute of the International Criminal Court (ICC) (adopted 17 July 1998, corrected 10 November 1998, 12 July 1999, 30 November, 1999, 8 May 2000, 17 January 2001 and 16 January 2002, entered into force July 2002), Preamble, Para 4, and Art. 5.

<sup>3</sup> Ibid.

<sup>4</sup> Dieter Kastrup, "From Nuremberg to Rome and Beyond: The Fight against Genocide, War Crimes, and Crimes against Humanity", Hein Law Journal, Fordham International Law Journal, vol. 23, (1999): 406.

<sup>5</sup> Rome Statute, Art. 5.

#### 1.4.1.3 War crimes

War crimes are included mass grave breaches of the Geneva Conventions (GC),<sup>1</sup> of International Humanitarian Law (IHL), and other serious and grave violations of international law and customs, which is applicable in International Armed Conflict (IAC) and Non International Armed Conflicts (NIAC) conflicts “not of an international character” listed in the Rome Statute, when they are committed as part of a plan or policy or on a large scale. These prohibited acts include:<sup>2</sup> “murder; mutilation, cruel treatment and torture; taking of hostages; intentionally directing attacks against the civilian population; intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historical monuments or hospitals; pillaging; rape, sexual slavery, forced pregnancy or any other form of sexual violence; conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities”.<sup>3</sup>

#### 1.4.1.4 Crime of aggression

As adopted by the Assembly of States Parties during the Review Conference of the Rome Statute<sup>4</sup> held in Kampala, Uganda, between 31 May and 11 June 2010,<sup>5</sup> the crime of aggression means: “planning, preparation, initiation or execution of an act of using armed force by a state against the sovereignty, territorial integrity or political independence of another state”.<sup>6</sup>

The act of aggression includes,<sup>7</sup> among other things, “invasion, military occupation, and annexation by the use of force, blockade of the ports or coasts, if it is considered being, by its

<sup>1</sup> Geneva Conventions (adopted and entered into force 12 August 1949).

<sup>2</sup> Shana Tabak, “War Crimes and the Development of the Rome Statute”, *Hein Law Journal, Georgetown Journal of International Law*, vol. 40, no. 10, (2009): 77.

<sup>3</sup> Rome Statute, Art. 5.

<sup>4</sup> M. Milanovic, “Crime of Aggression and Legality: Custom in Kampala”, *Journal of International Criminal Justice*, vol. 10, (2012): 165-157.

<sup>5</sup> ICC, Public Information and Documentation Section, 6.

<sup>6</sup> *Ibid.*

<sup>7</sup> S. Sayapin, *The Crime of Aggression in International Criminal Law: Historical Development, Comparative Analysis and Present State*, (T. M. C. Asser Press, 2014), 202-203.

character, gravity and scale, a manifest violation of the Charter of the United Nations". The perpetrator of the act of aggression is a person who is in a position effectively to exercise control over or to direct the political or military action of a State".<sup>1</sup>

### 1.5 ICL AND ICC

International criminal law (ICL) has developed in large part of international crimes since during the mid-to-late twentieth century.<sup>2</sup> The International Criminal Court (ICC) is a permanent independent international judicial institution established in 2002 to investigate or prosecute the ICL crimes and cases.<sup>3</sup> In the formal legal terms, ICL and ICC are just like other branches of public international law in terms of their relationship since the ICL criminalises international crimes while the ICC prosecutes those international crimes.

The ICL does not challenge primary executive and judicial powers of the states since has no primacy over national criminal system.<sup>4</sup> Similarly to the ICC as the court is a court of last resort and does not have the primacy over national criminal system.<sup>5</sup> ICC procedure, thus is not different from the ICL procedure which directly impacts the court and its proceedings. When ICL does come into play, however, arguably it might the ICC also does not exist at all.<sup>6</sup>

The ICC jurisdiction is that jurisdiction over the most serious ICL crimes committed by individuals such as nationals of, or on the territory of a state party to the Rome Statute or other states accepting the ICC's jurisdiction. It has jurisdiction also over ICL crimes cases referred by the United Nations Security Council (UNSC).<sup>7</sup>

<sup>1</sup> Rome Statute, Art. 5.

<sup>2</sup> M. Sharif Bassiouni, Introduction to International Criminal Law, (New York: Transnational Publishers, Ardsley, 2<sup>nd</sup> ed., 2003), 30.

<sup>3</sup> Ibid.

<sup>4</sup> M. Politi and F. Gioia, The International Criminal Court and National Jurisdictions, (Georgia: Ashgate, Aldershot, 2008), 21.

<sup>5</sup> Kreß, C. and Lattanzi, F., The Rome Statute and Domestic Legal Order, (Italy: Sirente, Ripa di Fagnano Alto, 2000), 11.

<sup>6</sup> Kirsch P., "The Role of the International Criminal Court in Enforcing International Criminal Law", American University International Law Review, vol. 22, no. 4, (2007): 539-543.

<sup>7</sup> Ibid., 5.

The prosecution of ICL crimes often accorded with the establishment of international criminal court, whether special or ad hoc and hybrid courts.<sup>1</sup> The history of the contemporary ICL begins with IMT Nuremberg and IMT Tokyo tribunals which established after World War II (WW II) to prosecute senior German and Japanese Military officials for war crimes, crimes against humanity, and the crime against peace known as the crime of aggression.<sup>2</sup>

In addition successor of ad hoc tribunals include an international criminal court created by the United Nations Security Council to address crimes committed in the former Yugoslavia and in Rwanda (ICTY and ICTR) in the 1990s, and various "hybrid" courts that reflect cooperation between domestic authorities and international judicial institutions, including a mix of domestic and foreign judges.<sup>3</sup>

And recently also seen the establishment and operation of the international criminal court. In general discussion, these international criminal courts and tribunals all concentrate on core crimes of the ICL mainly; crime of genocide, crimes against humanity, war crimes and the crime of aggression.<sup>4</sup>

In short, the current establishment of the ICC is great noteworthy of new episode of harmonisation between the ICL and ICC in developing the ICL since the ICC has the latent to investigate or prosecute the ICL core crimes committed wherever in the world.<sup>5</sup>

## 1.6 Conclusion

International criminal law is one of the most vital aspects of international criminal court rules of procedure since it concerns on the issues connecting to the international crimes, such as war crimes, genocide, crimes against humanity, crimes of aggression and other international crimes. The relationship between the international criminal law and the international criminal court has

<sup>1</sup> Alexander K.A. Greenawalt, *The Pluralism of International Criminal Law*, (India: Pace Law Faculty Publications, 2011), 50.

<sup>2</sup> Kerr, R., 9.

<sup>3</sup> ICTY Case (Prosecutor v Duško Tadić aka) (Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction) ICTY Case no. IT-94-1, 2 October 1995, Para 117.

<sup>4</sup> ICTY Case (Prosecutor v Radovan Karadžić and Ratko Mladić) Indictment, ICTY Case no. IT-95-18-I, 14 November, 1995, Para 111.

<sup>5</sup> Robert Cryer and et al., 10.



critically contributed in developing the ICL, where the sources of the international criminal court initially derived by the international criminal law.

### 1.6.1 Findings

Based on the study conducted on the topic, the researcher found that;

1. The sources of the international criminal court originally imitative by the international criminal law.
2. The International criminal law has a role in being the international criminal court and its procedure where the court prosecutes the international crimes described by the ICL.
3. The connection between the international criminal law and the international criminal court censoriously funded in increasing the rules of the ICL.

### 1.6.2 Recommendations

1. The ICC has to be engaged in order to overcome the challenges in applying some of the principle described by the international criminal law such as sentence approach.
2. The ICC should overwhelmed the challenges of the future prospect of the ICC to prosecute the perpetrators of international crimes.
3. The ICC has to boost the significance of international criminal law and related area, such as international humanitarian law, and international human rights.

### References

- Alexander, K. A. (2011). Greenawalt, *The Pluralism of International Criminal Law*, (India: Pace Law Faculty Publications, 50.
- Bassiouni, M. Sharif. (2003). *Introduction to International Criminal Law*, New York: Transnational Publishers, Ardsley, 2<sup>nd</sup> ed., 30.
- Cassese, Antonio and et al. (2002). *The Rome Statute of the International Criminal Court: A Commentary*. UK: Oxford University Press. vol. 1, 334.
- Dapo, Akande. (2012). *The Sources of International Criminal Law in Companion to International Criminal Law and Justice*. UK: Oxford University Press. 41-53.

- Dieter, Kastrup. (1999). "From Nuremberg to Rome and Beyond: The Fight against Genocide, War Crimes, and Crimes against Humanity". *Hein Law Journal, Fordham International Law Journal*. vol. 23, 406.
- ECCC, <https://www.eccc.gov.kh/en/node/39457> (accessed 17 December, 2018)
- Geneva Conventions (adopted and entered into force 12 August 1949).
- Herik, L. J. van den. (2005). *The International Criminal Tribunal for Rwanda, New York, 1998: The Contribution of the Rwanda Tribunal to the Development of International Law*. The Hague.
- ICC, (2010). Public Information and Documentation Section. *Understanding the International Criminal Court, Registry, International Criminal Court*. The Hague: Maanweg. 1.
- ICC, (2011). *Elements of Crimes*. The Hague: ICC. 13.
- ICC, *International Criminal Law and Practice Training Materials*. 4.
- ICTY Case (Prosecutor v Duško Tadić aka)* (Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction) ICTY Case no IT-94-1, 2 October 1995, Para 117.
- ICTY Case (Prosecutor v Radovan Karadžić and Ratko Mladić)* Indictment, ICTY Case no IT-95-18-I, Para 111.
- Jonatan, Thormundsson. (2009). *The Sources of International Criminal Law with Reference to the Human Rights Principles of Domestic Criminal Law*. (Stockholm Institute for Scandinavian Law. 387.
- Judlawch, "International Military Tribunal. Judgment: The Law of the Charter", <http://avalon.law.yale.edu/imt/judlawch.asp> (accessed 5 July, 2019).
- Katherine Iliopoulos, "The African Union and the ICC", <http://www.crimesofwar.org> (accessed 20 October, 2018).
- Kerr, R. (2004). *The International Criminal Tribunal for Former Yugoslavia: An Exercise in Law, Politics and Diplomacy*. UK: Oxford University Press. 6.

- Kerr, R. (2006). *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone*. UK: Cambridge University Press. 4.
- Kirsch P. (2007). "The Role of the International Criminal Court in Enforcing International Criminal Law", *American University International Law Review*, vol. 22, No. 4, 539-543.
- Kreß, C. and Lattanzi, F. (2000). *The Rome Statute and Domestic Legal Orders*, Italy: Sirente, Ripa di Fagnano Alto, 11.
- KSC, <https://www.scp-ks.org/en> (accessed 18 December, 2018).
- M. Politi and F. Gioia, (2008). *The International Criminal Court and National Jurisdictions*, Georgia: Ashgate, Aldershot, 21.
- Milanovic, M. (2012). "Crime of Aggression and Legality: Custom in Kampala". *Journal of International Criminal Justice*. vol. 10, 165-157.
- News Africa, "Why African States are Leaving the ICC"? <http://www.iol.co.za/news> (accessed 19 January, 2019).
- Pawel, Aleksander Kupis. "Sources of International Criminal Law", Munich, GRIN Verlag <http://www.grin.com/en/e-book/288051> (accessed 12 June, 2019).
- Politi, M. and F. Gioia, (2008). *The International Criminal Court and National Jurisdictions*, Giogia: Ashgate, Aldershot, 21.
- Related to the Crime of Aggression, ICC ASP RC/Res.6, The Crime of Aggression, 11 June 2010; The Rome Statute of the International Criminal Court, Art. 8 bis.
- Robert Cryer and et al, (2010). *An Introduction to International Criminal Law and Procedure*. UK: Cambridge University Press. 4.
- Rome Statute of the International Criminal Court (ICC) (adopted 17 July 1998, corrected 10 November 1998, 12 July 1999, 30 November, 1999, 8 May 2000, 17 January 2001 and 16 January 2002, entered into force July 2002), Preamble, Para 4, and Art. 5.
- Sayapin, S. (2014). *The Crime of Aggression in International Criminal Law: Historical Development, Comparative Analysis and Present State*. T. M. C. Asser Press. 202-203.

Shana, Tabak. (2009). "War Crimes and the Development of the Rome Statute". *Hein Law Journal, Georgetown Journal of International Law*, vol. 40, No. 10, 77.

Silvia, D. Ascoli. (2011). *Sentencing in International Criminal Law, the Approach of the two UN ad hoc Tribunals and Future Perspectives for the International Criminal Court*. Florence, Hart.

STL, <https://www.stl-tsl.org/en/> (accessed 18 December, 2018).

UN, <http://rscsl.org/> (accessed 18 December, 2018).

UNIRMCT, <http://www.irmct.org/en> (accessed 18 December, 2018).

United Nations Charter (adopted 14 August 1941, signed 26 June 1945, effective 24 October 1945.

Walid, Abdulrahim. "Sources of Public International Law", <https://sites.google.com> (accessed 10 July, 2019).

William, A. Schabas. (2010). *The International Criminal Court: A Commentary on the Rome Statute*. UK: Oxford University Press. 101.