I. Competence

111. The avowed aim of the Statute resolutely proclaimed in paragraphs 4 and 5 of the Preamble is to end the impunity of the perpetrators of grave crimes involving inhuman conduct that forms the subject-matter of the Statute, and through their punishment, set its standard of disowning such conduct as unbecoming humanity; such crimes have ravaged humanity in the past and are apt to do so if repeated in the future. This is the principal object of the Statute sought to be achieved by the establishment of the ICC upon which jurisdiction is vested to try, subject to the principle of complementarity, individuals accused of committing crimes within the jurisdiction of the Court as declared in article 1. The subjects of the jurisdiction of the Court are individuals, every individual, irrespective of capacity or position, who commits a crime within the jurisdiction of the Court. Accountability is personal and so is criminal responsibility. Article 25.1 specifically provides that the jurisdiction of the Court is exercised over natural persons for criminal acts for which they are responsible. Individual responsibility for criminal conduct is at the root of the Statute. Official capacity as stated in article 27 is irrelevant. It does not absolve one of criminal responsibility nor does it dissociate him/her from a criminal act committed in cohort. No one from the Head of State downwards is exempt from the jurisdiction of the Court and no immunities under national or international law can exclude the actors from the writ of the Court. The underlying principle is that no excuse can ever justify conduct violative of the essence of humanity, conduct unpardonable under any circumstances.

112. The jurisdiction of the Court and the serious crimes within its purview are defined by article 5. Article 5.1 reads:

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.
The assumption of jurisdiction over the crime of aggression is by virtue of the provisions of article 5.2 subject to the following proviso: No jurisdiction can be assumed or exercised over acts amounting to aggression until a definition of the crime is provided, contemplated to take place by amendment of the Statute at the Review Conference of the General Assembly of States Parties to be held within seven years after entry into force of the Rome Statute, as envisaged in articles 121 and 123. The definition of aggression must, as stated in article 5, be “consistent with the relevant provisions of the Charter of the United Nations”. Article 123.1 provides that seven years after the entry into force of the Statute the Secretary-General of the United Nations shall convene a Review Conference to consider amendments to the Statute. It is of interest to note that the Nuremberg and Tokyo Charters acknowledged the planning, preparation and the waging of war as crimes against peace and many indictments and convictions were founded on this understanding of international law.

There was no lack of definition of the crime of aggression at the time of the establishment of the Rome Statute. It had been defined by a resolution of the General Assembly as follows:

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.\(^{139}\)

The International Law Commission did not provide the Rome Conference, where the provisions of the Statute were elicited, with a definition of aggression, a fact that left a gap in the delineation of its ingredients leading to a suspension of its enforceability. At the Kampala Review Conference of the Rome Statute, a definition was agreed.\(^{140}\)

Article 5 limits the jurisdiction of the Court to what are perceived by the makers of the Statute as the most serious crimes of concern to the international community. Without this limitation, one could identify other grave crimes that have bedevilled the world and scarred humanity such as trading in narcotics. As may be gathered from the nature of the crimes within the jurisdiction of the ICC, the concern of the international community is focused on crimes, which, in addition to debasing humanity, have dire consequences on world order.

The jurisdiction of the Court over the crimes specified in the Statute is not unqualified. It is subject to the relevant provisions of the Statute prescribing


\(^{140}\) See “Annex”.