



Lexsitus Lecturer: Professor Morten Bergsmo

Topic: ICC Statute Article 11 Jurisdiction *ratione temporis*

Level: Introductory

Date of recording: 24 February 2017

Place of recording: Florence

Duration of recording: 07:15

PURL of film: www.cilrap.org/cilrap-film/11-bergsmo/

PURL of English transcript: www.legal-tools.org/doc/c5b3aa/

We will now consider article 11 jurisdiction *ratione temporis*, or jurisdiction by reason of time, or by reason of time period, or quite simply temporal jurisdiction. Article 11 defines the temporal scope of the jurisdiction of the ICC. It has two paragraphs. Paragraph 1 says: “The Court has jurisdiction only with respect to crimes committed after entering into force of this Statute”. The Statute entered into force on 1st of July, 2002.

Article 126, paragraph 1 regulates when the ICC Statute enters into force. It says that should happen on the first day of the month, after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance approval or accession with the Secretary-General of the United Nations. It was on the 13th of April, 2002 that the 60th instrument of ratification was deposited. Hence, the Statute went into force on 1st of July, 2002.

What if there is a criminal transaction that commands prior to 1st of July, 2002 with conduct in the transaction before 1st of July and after 1st of July? Would the Court then have temporal jurisdiction? It is hard to see which scenario this would refer to, and it is hard to see the added value of justice of forcing the interpretation of the Statute so that it also included conduct that occurred prior to 1st of July, if indeed conduct that occurred during the transaction after the 1st of July can be included. Then, an academic question for you to consider and perhaps discuss with others with whom you may be studying International Criminal Law. What if the United Nations Security Council, acting under Chapter 7 of the United Nations Charter, referred to the ICC conduct that occurred prior to 1st of July, 2002? Would this give the Office of the Prosecutor a basis from which one could argue that the Court has the temporal jurisdiction? After all, under article 103 of the United Nations Charter, obligations generated by the UN Security Council when acting under Chapter 7, in particular, have primacy for UN Member States over obligations generated by other treaties, such as in this case, the Statute of the ICC.

When you consider this purely academic question, please take into account the following consideration: which scenario, which situation would warrant or justify that one places such a pressure on the interpretation of the Statute in order to accommodate an extension prior to 1st of

July? Common wisdom is that the Court would not have such a power under its Statute and that it would not be recommendable for the Security Council to try to alter that.

Paragraph 2 of article 11 says:

If a State becomes a Party to the Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of the Statute for that state, unless that State has made a declaration under article 12 paragraph 3.

Indeed, the precondition to the Court's exercise of its jurisdiction is that the relevant State has accepted the jurisdiction of the Court if there is not referral by the Security Council under article 13. It is article 126, paragraph 2 which determines when the Statute enters into force for a state.

It says:

For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such state of its instrument of ratification, acceptance, approval or accession.

It means that at least two months must pass from the day a state deposits its instrument of ratification etc. with the UN Secretary General.

Thank you for your attention.