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Elements of universal jurisdiction in criminal matters: Rome statute (1998) and domestic law in the Colombian case

Abstract

The process of defining competences for the repression of serious attacks against human rights and international humanitarian law, has been the product of multiple events. It impacted the decisions of the international community and caused a modification to the legal orientation of the nations. It can be said that this process has been the result of the globalization of world activity, a principle that a few decades ago could not have anticipated the evolution that this concept under study will inevitably have.

This article analyzes the elements of universal jurisdiction that are linked to the Rome Statute, which compelled us today to react and change our main notions on international justice. The text has been developed using a qualitative method of a hermeneutic, comparative and teleological nature. It uses methodological instruments of a historical, reflective, descriptive and propositional, argumentative type.

Keywords: principle of universal jurisdiction, legality, domestic law, Rome statute, International criminal court, International criminal jurisdiction

Volume 7 Issue 5 - 2023

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Received: October 04, 2023 | **Published:** October 16, 2023

Introduction

The occurrence of international acts in criminal law can be noticed after the Second World War, when it was presented as the part of international law that included the norms that determined the legal and legislative competence of States in the repression of crimes. That is, it was observed on procedural grounds. In turn, this concept was determined by the repression of crimes that regulated the procedures that took place between one State and another for the administration of justice.

Pursuant to this definition, it was indicated that the scope of this discipline was very restricted since it was limited to certain acts that are punished by the criminal law of the State, responding to a plausible international security interest, regulated by multilateral treaties. These included issues relating to human trafficking, genocide, war crimes, counterfeiting, terrorism, etc.[1]

The current assessments show international criminal law as a process that is being lived today by virtue of globalization and responds to the need to solve the problems that have arisen from serious violations of human rights and humanitarian law within the exclusive framework of the internal legal systems of the States.

In the 60ths international instruments to identify serious international violation appeared but there was not enough consensus. At that stage it was difficult to identify them, because the international conventional sources that classified these conducts as crimes against humanity were not clear. In this sense, in the absence of internal legislation many cases were simply unpunished.[2]

At present, this definition can be found between transnational criminal law, that implies international prosecution of crime, such as drug trafficking, money laundering, etc., and in international criminal law that resides in the prosecution of essential values of the international community such as combating impunity and all the material justice such access to justice, effective resources, reasonable terms, reparation and compensation, victims' rights etc.[3]

Primarily, procedural legislations and norms in many cases based on principles of the internal principles of the States for the application of special international instruments. Secondly this interpretation process focused on the creation of its own domestic principles that reside in their laws, inspired by international sources through the production of judicial decisions from Nuremberg, Yugoslavia and Rwanda, to the ICC.

The problem of the international source seems to be solved, by some, from the point of view of the principle of Universal Jurisdiction, according to which, a state can prosecute the perpetrators of crimes of genocide, crimes against humanity or war, regardless of which regardless of their nationality, applying their internal legislation.[4]

The International Criminal Court proposed a legitimate global alternative invested with jurisdiction and competence in this international case, although there are still more signatory countries, in any case a certain international relevance is already observed by having more than a dozen processes for international prosecution and many causes associated with the preliminary stage. In this process, important situations such as Palestine, Venezuela and, of course, Colombia were observed.[5]

Along with these concepts, international humanitarian law also received its welcome in the world of globalization, with its characteristics of neutrality that made it an essential piece for the

[1]Reyes Echandía Alfonso. Criminal Law. General Part, 6th ed, Editorial Universidad Externado de Colombia, Bogotá; 1979.

[2]Cassese Antonio. International Criminal Law. 2nd ed, Free translation. Oxford University Press Inc. United States; 2008. 27 p.

[3]Olasolo Héctor. The aims of international criminal law. 29 International Law. *Colombian Journal of International Law*. 2016;93–146.

[4]Córdoba Triviño Jaime. International Criminal Law, Study of the crimes of Genocide and War Crimes with reference to the New Colombian Penal Code. Gustavo Ibañez Legal Editions, Bogotá; 2001;1517..

[5]https://www.icc-cpi.int/Pages/cases.aspx.

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defense of fundamental rights. As a result of this development, a little more than 70 years after the Universal Declaration of 1948, its rules remain in full force and are mainly included in the principles established in the four Geneva conventions of 1949, together with their additional protocols. The International Committee of the Red Cross, an international organization that basically works for the understanding and dissemination of International Humanitarian Law, has defined it as international norms of conventional or customary origin, especially aimed at problems of a humanitarian nature that derive directly from conflicts. armed, international or not, and limit, for humanitarian reasons, the right of the parties to the conflict to use the methods and means of waging war of their choice or to protect the people and property affected or likely to be affected by the conflict.[6]

All of these instruments have served to assess the serious violations of international regulations in the different conflicts that have been the object of evaluation before the ICC, as in the case of Colombia, the Middle East with Palestine and Lebanon, the conflicts of the Democratic Republic of the Congo, etc.[7]

In this new international order, the promotion of modern constitutional processes has not been lacking, with its orientation elaborated from the notion of the "Social State of Law", based on the ideological support that is added from the theory of interpretation fundamental rights, which in our environment dates back to the year 1991, with the promulgation of the new Political Constitution.

As a result of this Constituent process, regarding the aspects of international relations of our legal system, the consecration of the so-called block of constitutionality, which sets the competence of international treaties, in the same order and rank as that of the Charter. Politics, a principle that is included in art. 93 of the Statute in question, and that without opposition is the main object of discussion in the present investigation.

In this sense, it is worth noting a phenomenon that has gained international acceptance with the passing of modern times. It is an event that has been taking place in the midst of the expansion of the economy and communications, to the detriment of the natural and political borders of States. Its interference in the internal systems of States has been of such importance that its passage has been repealing the fundamental institutions of nations to accommodate them to the new imposed order.

A clear example of this new world orientation came to a happy end on July 17, 1998, the day on which the reflected will of one hundred and twenty countries, members of the United Nations, recognizing the universal competence of the International Criminal Court, as a principle jus cogens, voted in favor of the establishment and approval of the "…Rome Statute…" For the establishment of the International Criminal Court.

This Regulation, in the various countries of the international community, has produced a modification in the internal legal structures, by imposing its essential principles of jurisdiction ratione materiae, which have generated a respectful trend of human rights and obligations for judicial systems. internal, under penalty of being replaced by international activity.

In current times, its development and solidity in the face of great challenges such as conflicts in the Middle East, South America and Africa mainly are observed. In other words, his intervention already represents a global vision that twenty years ago was just beginning to generate consequences in the law of nations. It still remains to be seen whether transnational global phenomena at some point may be considered international crimes, but this debate will still have to wait, especially regarding the collective harm to universally protected interests.

At the time of the work, to review and observe the current effects of the ICC in the community of nations, which every day have more international importance, such as, for example, with respect to the sentences against Thomas Lubanga, it is noted that elements such as in the case of the crime of forced recruitment of minors, is one of the large-scale systematic elements, recognized in the decision, as well as other decisions that are more related to war crimes through attacks against protected property and attacks against the administration of justice. Let us hope that the various objects of intervention maintain their course, so that as we have more decisions we can analyze the development of international justice, especially in the following aspects: of crimes; of the principles, of the authors and participants; of the process and other aspects, which are necessary in the precedents of the ICC.

In current times, all these elements of discussion maintain a balance in the judicial guarantees, which are developed between trial and punishment, through an international legitimacy that every day oblige their consultation and interpretation in the internal penal systems of the Nations.

Universal jurisdiction background

One of the main manifestations of the principle of universal jurisdiction appears in the text of principles for the establishment of the special ad hoc Court of Nuremberg, which in articles 1 and 2 established the bases of international jurisdiction for crimes committed in accordance with international law.[8] On this point, it should be noted that in principles 1st and 2nd there are clear references to what will constitute the *nullum crimen sine lege* area that is subsequently developed at the level of typicality in principle VI. Likewise, in the text, the responsibility of heads of state or State authorities was expressed (Principle III),[9] as well as the responsibility derived from due obedience coming from a higher order (Principle IV).[10]

Likewise, in principle V, the bases of due process of the Nuremberg trial were established, with respect to a person accused of a crime under international law. It was an impartial judgment on

[6]McMahan Jeff. Laws of War. The Philosophy of International Law. Edited. By Samantha Besson and John Tasioulas. Oxford University Press. United States; 2010;494;495.

[7]Prieto San Juan Rafael. War Crimes, Grave Infractions and Violations of International Humanitarian Law. Editorial Pontificia Universidad Javeriana, Grupo Editorial Ibáñez. Colombia; 2010. 32 p.

[8]Principles of International Law recognized by the Statute and by the rulings of the Nuremberg Tribunal" (Approved by the United Nations International Law Commission in 1950) Principle. I.-Any Person who commits an act that constitutes a crime under international law is responsible for it and is subject to punishment. O'DONELL et al. Compilation of International Instruments. Office in Colombia of the United Nations High Commissioner for Human Rights. Bogotá D.C: 3rd ed. 2002;469–470.

[9]Principle III. The fact that the person who has committed an act that constitutes a crime under international law has acted as head of State or as an authority of the State does not exempt him from responsibility under international law O´Donell Ibídem. 469, 470 p.

[10]Principle IV. The fact that a person has acted in compliance with an order from his Government or a hierarchical superior does not exempt him from responsibility under international law, if he has actually had the moral possibility of choosing. Principles of International Law recognized by the Statute and by the rulings of the Nuremberg Tribunal" (Approved by the United Nations International Law Commission in 1950), 469, 470 p.

Citation: Sandoval Mesa JA, Gillés Bélanger P. Elements of universal jurisdiction in criminal matters: Rome statute (1998) and domestic law in the Colombian case. *Sociol Int J.* 2023;7(5):246–250. DOI: 10.15406/sij.2023.07.00351

the facts and the law (Principle V). In principle VI, the conducts subject to judgment by the aforementioned Court were developed. In particular, conduct against Humanity is mentioned, differentiated from conduct against peace, the latter being more associated with aggression and war crimes.[11] It should be noted that crimes against humanity describe current behaviors of this nature, carried out against the civilian population and in any circumstance, whether in moments against peace (aggression) in the scenario of war crimes or in relation to this one (Currently, in development or in the context of IHL).[12] Since the Nuremberg Tribunal, the use of the expression crime of international law marks one of the differences between this figure and the delictium iuris Pentium, by placing the former within the framework of international law, establishing the primacy of this over internal regulations.[13] For its part, in principle VII, complicity was developed as a form of special crime, in accordance with international law.[14]

If observed carefully, the first 5 principles accentuate international responsibility for the commission of the conduct set forth in principle VI. The first three principles state the scope of the commission of conduct and personal responsibility even under conditions derived from the status of head of State, competent authority or in compliance with superior orders. Ultimately, they define with precise clarity an international responsibility determined by the acts that are generated against a community of nations.[15]

On the other hand, the principles enunciated, as a precedent and influence on international institutions, for the establishment of the universal jurisdiction of the International Criminal Court (hereinafter ICC), have preserved almost in their entirety, the mandatory destination for the protection of the universally recognized legal rights that are developed in international crimes, particularly in the face of crimes against humanity (Principle VI. a) Crimes against Peace. b) War Crimes. c) Crimes against Humanity.).[16] In addition to the provisions of the Nuremberg Tribunal, it is necessary to cite Law 10 of the Allied Control Council, of December 20, 1945, for the persecution of persons guilty of Crimes against Peace, War Crimes and Crimes against Humanity. This law was implemented in the respective occupation zones of France, the United Kingdom, Russia and the United States.[17]

The progress in the formulation of this series of behaviors, which appears reflected in the Rome Statute, allows us to establish, in this precedent of international jurisdiction, limits of both normality and confrontation and in turn serve as a basis for the State to remain attentive, to regulate these areas of normality, alteration and peaceful coexistence. This connotation was reflected in the United Nations *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity* of November 26, 1968,[18] which in its article 1st indicated the scope of these two types of conduct as a necessary precedent, for the establishment of an international jurisdiction.[19] Based on the documents of the International Law Commission and those provided by the Secretary General of the United Nations, the General Assembly adopted and opened for signature, ratification and accession on November 28, 1968, the *Convention on the Non-Applicability of Statutory Limitations to War* enslavement, deportation and other inhuman acts committed against any civilian population or persecutions for political, racial or religious reasons, when such acts are committed or such persecutions are carried out. carried out to perpetrate a crime against peace or a war crime, or in connection with it..." Principles of International Law recognized by the Statute and by the judgments of the Nuremberg Tribunal" (Approved by the International Law Commission of the United Nations in 1950). O'DONELL Et. Al. Ob. cit., pp. 469 and 470. *Crimes and Crimes Against Humanity.*[20] It was in force on November 11th of 1970, but Colombia has not yet signed this Instrument.[21]

In the case of Colombia, during the post-war period in which multiple instruments derived from Nuremberg were adopted; At the national level, both in the Constitution of 1886 and in the internal penal code of 1936 in force until 1980, this concept of international repression of crimes does not appear developed, only references to the adoption of instruments on this topic appear., but from the constitutional point of view. For example, the four Geneva Conventions of 1949 were adopted by approving law 5 of 1960, in force for Colombia, May 8, 1962; the Convention for the Prevention and Punishment of the Crime of Genocide adopted in 1948 and whose entry into force for Colombia on January 27, 1960, through approving law 28 of 1959, among others.[22]

Scope of the concept of universal jurisdiction at the international level

Around this idea of the effects of the concept of Universal jurisdiction at the international level, the bases of an international principle of justice have been laid down throughout history, claimed in various forms. Firstly, the criminal law of a State is applicable to certain crimes regardless of the place of their commission and the

[11]Principle VI. The crimes listed below are punishable as crimes under international law: a) Crimes against Peace. i) Plan, prepare, initiate or wage a war of aggression or a War that violates international treaties, agreements or guarantees. ii) Participate in a common plan or conspiracy to carry out any of the acts mentioned in section i. b) War Crimes. Violations of the laws or customs of war, which include, but are not limited to, the murder, ill-treatment, or deportation to work under conditions of slavery or for any other purpose, of the civilian population of occupied territories or found therein, the murder or ill-treatment of prisoners of war or persons at sea, the execution of hostages, the looting of public or private property, the unjustifiable destruction of cities, towns or villages or devastation not justified by military needs. c) Crimes against Humanity. Murder, extermination.

[12]Rueda Fernadez Casilda. Delitos de Derecho Internacional. Tipificación y Represión Internacional. España. 2002;34, 35 p.

[13]Ibidem. 34, 35 p.

[14]Principle VII. Complicity in the commission of a crime against peace, a war crime or a crime against humanity, as set out in principle VI, also constitutes a crime under international law…". 469 p.

[15]Sandoval Mesa Jaime Alberto. The Criminal Guarantee in criminal and international criminal matters. Edit. Tirant Lo Blanche. Valencia. España: 2018; 147 p.

[16]Olasolo Héctor. International Criminal Court. Where to investigate? Valencia Spain, Ed. Tirant lo Blanche and Spanish Red Cross. 2003; 38 p.

[17]Ibídem. 38 p.

[18]Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity Adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) of 26 November 1968. International Law Comission. 2023.

[19]CAMARGO PEDRO Pablo. Manual of International Criminal Law. Special General and Procedural Parts before the International Criminal Court. Bogotá D.C. Ed. Leyer. Second edition, 2007. pag. 182.

[20]International Law Commission. Ob. Cit. UN. Disponible en. Consultada. 2023.

[21]Carmargo Pedro Pablo. Ob. 182 p.

[22]Sentence C-574 of 1994, C-225 of 1995, C-177 of 2001, C-578 of 2002, C-291 of 2007, C-1189 of 2000, C-801 of 2009 among others. Compilation of International Instruments, Office of the High Commissioner for the United Nations. Bogotá D C; 2002;381–471.

nationality of the offender.[23] It is a complementary principle to the principle of territoriality, whose ultimate purpose is to prevent impunity for the criminal.[24] In this case, the fundamental presupposition for the application of criminal law by virtue of this principle is type or character of the crimes subject to it. In effect, these are crimes that attack not state or individual values but rather fundamental interests of the international community, transcendental interests and in whose conservation the international community as a whole is interested.[25]

Secondly, this international demand for justice is characterized because it is not linked to any of the traditional constitutive elements of statehood. This principle of Universal jurisdiction has tried to be defined as a title of jurisdiction that attributes jurisdiction to the authorities of a State that lacks special links or nexus of union with the facts whose prosecution it is about. The above can be presented either from the point of view of the place of commission, the nationality of the perpetrators and victims, or the interests or legal assets harmed.

In the same sense, another concept indicates the criterion of universal jurisdiction, intended not only to protect state interests, but also values that interest the International Community, allowing the prosecution of acts that directly violate community values and interests.[26] The expressed criteria obey the sources of the Rome Statute, with the difference that in the latter, the competence is of a supranational and non-state body, however it is noted that this competence is not completely Universal given the conditions that derive from the own treaty.[27] Likewise, the concept of injury to legal rights that are of interest to the international community constitutes the most relevant foundation of the universal jurisdiction conceived in the Rome Statute.[28]

Therefore, the principle of Universal jurisdiction is that in which powers are assigned to certain special or ordinary authorities, for the repression of crimes, which, regardless of the place of their commission and the nationality of the authors or victims, threaten property international or supranational legal matters of special importance.[29] Therefore, they transcend the sphere of individual and specific interests of one or several States in particular. Some of these characteristics are reflected in the Rome Statute and therefore, its scope is Universal, mediating the limits established in the same instrument.[30]

In the case of Colombian, the issue appears related, even from the 1980 penal code through the rules of interpretation of the law in space, such as literal 6 of article 15, which indicates the possibility of prosecution of crimes committed in the foreigner by a foreigner and specifically in articles 14 to 16 of law 599 of 2000. However, the issue was already part of the prosecution of crimes in extradition issues derived, for example, from the Montevideo convention of 1933. In In any case, the scope developed was and continues to be much more limited than that established in the international doctrine mentioned above. In summary, in a preliminary way, the coexistence of the principle of universal jurisdiction and the international criminal jurisdiction of the International Criminal Court conceived in the Rome Statute (1998) is possible; however, given the scope of this last instrument, the possibility of exercising Competition has greater coercibility in the ICC scenario, given the effects vis-à-vis the signatory States, than the principle of universal jurisdiction, which is optional to the rights of States that accept such promotion of competences.

The development of Universal jurisdiction in the Rome Statute of 1998 (SR)

Following this line of protection of community interests, the principle of universal jurisdiction links with acts that harm, or at least threaten, the security interests, not only of the prosecuting State, but also of other States; In this sense, the principle defends common security interests of all States, especially in areas, such as the high seas, that are not under any sovereign power.[31] A classic example was the persecution of piracy, which is the responsibility of every State and the same has recently occurred with the prosecution of international terrorism, which ultimately threatens the security of all States, even in the face of their own sovereignty.[32] With all this, as a background, the violation of the principle of non-intervention is also excluded, according to which: no State can seek to exercise its sovereignty to the detriment of the security of a State or the community of States.[33] In the case of the ICC, the following foundations derived from the aforementioned theory are presented, as presented below.

General aspects the universal jurisdiction of the International Criminal Court–ICC

In the Rome Statute it is an international organization and not a State and therefore it should not be understood that the ICC exercises sovereignty, but rather the universal jurisdiction conceived therein. In this way, with regard to specific crimes that protect these universally recognized legal rights, we must refer above all to the content of the Rome Statute of the ICC, which according to its art. 1st, it is aimed precisely at "…exercising its jurisdiction over persons with respect to the most serious crimes of international significance…". As such they are considered, in accordance with art. 5.1 that are considered in this way, given their importance for the international community as a whole.[34]

[23]Andres Dominguez Ana Cristina. Derecho Penal Internacional, Tirant Monografías 456. Valencia, España: 2006;177 p.

[24]Regarding the scope of universal jurisdiction as an international principle, it can be consulted in the exposition that is made with respect to the legislation of France and Belgium in CASSESE Antonio y DELMAS-MARTY Mireille. Crímenes Internacionales y Jurisdicciones Internacionales. Colombia: 2004;34 p.

[25]Andres Dominguez. 177 p.

[26]Cassese Antonio, Delmas-Marty Mireille. 40 p.

[27]Article 1 The Court An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute. Disponible. 2023.

[28]Sandoval Mesa Jaime Alberto. Manual of International Criminal Law. EdIT. Strap Lo Blanche. Bogotá DC; 2022; 66 p.

[29]Cassese Antonio, Delmas-Marty Mireille. 40 p.

[30]A difference that can be noted is that the principle of Universal Jurisdiction for the prosecution of international crimes recognized by the International Community as a whole does not require its express provision in any treaty or International Convention to be applicable. GOMEZ BENITEZ José Manuel. Universal Jurisdiction for War Crimes, Against Humanity, Genocide and Torture. The principle of Universal Justice. Madrid. Spain Ed. Colex. 2001. 64 p.

[31]Ambos Kai. Topics of International and European Criminal Law. Madrid, Spain, Marcial Pons, Legal and Social Editions S.A. 2006. 94 p.

[32]Ambos. 2006;94 p.

[33]Ibídem. 94 p.

[34]Ibídem. 94 p.

In accordance with the above, the elements are generated that are part of the competence *ratione materiae* that is assigned to the International Criminal Court and whose object, in addition to generating the ingredients of universal jurisdiction noted, includes among international crimes, above all, genocide. (art. 6) and crimes against humanity (art. 7). The latter include slavery and human trafficking. War crimes (Art. 8), whether international or not, are also developed and the common factors that imply in all of them, the need to be perpetrated in a collective and organized manner.[35]

In this sense, a need for identity of conduct begins to be defined for domestic law to determine that competence *rationae materiae* over crimes that are typified in the Rome Statute and that must be related in domestic law.

Competence and principles described in the Rome Statute

From the stated points of view, the anticipation of a supralegality criterion is observed that begins to have not only international application but also opposition to national law, particularly with internal legality, a matter that derives in the first place from the content of the art. 5th of the E.R (crimes of genocide; crimes against humanity; war and the crime of aggression). Through this clause, the conducts that must exist and coincide in domestic law are developed, so that they are brought under the knowledge of the aforementioned international court.[36]

In this sense, it is necessary to note that not only is the identity of the conduct in domestic law sufficient, but it is also necessary that the conditions of admissibility (Art. 17 E.R.) and complementary or supplementary jurisdiction be met first.

In the Rome Statute, the principles that analyze and complement the scope of said behaviors are structured as follows: Principle of legality of crimes and penalties (Arts. 22 to 24 E.R.); rules relating to criminal liability (Articles 25, 27, 28, 29 and 30) and rules relating to the exclusion of criminal liability (Articles 26, 31, 32 and 33).[37]

The system described in the aforementioned clauses allows for the creation of a regulatory complex that is finally integrated into the national legal system, through article 93 of the Political Constitution, and in turn, generates multiple consequences for the penal system that, except for some advances, has not had sufficient review for the adequate implementation of the Rome Statute in Colombian legislation.[38]

With respect to this perspective, the truth is that the context of the Rome Statute and its rules of jurisdiction allow the concept of universal jurisdiction to be amplified, but within the limits established in the scope of its jurisdiction. It may be seen as a more limited principle than the principle of universal jurisdiction, given the rigor of the treaty that delimits its scope, but in strict terms the concept of effectiveness is much greater, given its special principles of prosecution, in this case of international crimes.

[35]Ibídem. 94 p.

[36]CFR. Art. 17 Rome Statute.

[37]Andrés Dominguez Ob. Cit. pag. 126

[38]On this point, in December 2008, Law 1268 was approved, through which the rules of procedure and evidence and the elements of the crime were adopted. This advance is significant given that domestic law involves a countless number of behaviors and procedures that have not been harmonized in domestic law.

In a current precedent, the permanent jurisdiction of the ICC exercises its functions over the cases submitted under its prosecution, replacing the previous principles of domestic jurisdiction of the countries. Such is the case of Russia's invasion of Ukraine, because it had a precedent of the invasion of the Crimean Peninsula, instead of nations, given their principle of universal jurisdiction, proceeding to open preliminary investigations into these events. Instead, it was the same ICC that at that time decided to take on the case due to the request of a non-party State such as Ukraine at that time

In this case of Russia's invasion of Ukraine, the concept of the ICC assumed in the investigation was more due to a factor of jurisdiction assumed by this International Court, according to the admissibility criteria (Art. 1; 12(3) and 17 Rome Statute 1998) and not due to factors of Universal jurisdiction, leaving aside elements that were due to political rather than legal reasons. In this case, let us remember that in 2014 Ukraine accepted the jurisdiction of the ICC for Russia's invasion of Crimea and since last year when the war began in this country it determined that the jurisdiction took place in the same context of the initial case and therefore It was appropriate to assume jurisdiction due to the specific situation of the initial crimes of aggression and those developed by virtue of this specific case.[39]

Conclusion

Based on the concept of universal jurisdiction, it is possible to observe that the concept of legality that specifies the conditions for the exercise of international criminal jurisdiction of the Rome Statute (1998) and allows the exercise of a factor of legality, which provides security to the signatory State or to the one that accepts its jurisdiction. Therefore, its exercise will not be generic but rather on specific crimes as established in articles 5 and following of the aforementioned Statute.

At the same time, processes such as the Colombian one that was decided for its constitutional integration, allow choosing the jurisdiction of jurisdiction in the event that an investigation is opened in the ICC, since it implies its integration into domestic law under the complementary clause, instead of the principle of optional universal jurisdiction that may come from other national jurisdictions. The ICC process promotes greater legitimacy, even more so, in the presence of the limits established in the jurisdictional crimes described in the Rome Statute, as in the case of Ukraine cited, in which the criminal jurisdiction factor of the ICC was more relevant than parallel processes of international actions.

Acknowledgments

None.

Conflicts of interest

The authors declare that there is no conflict of interest.

Funding

None.

[39]Decisions on the Ukraine case investigation. ICC. 2014.