



**STRATHMORE LAW SCHOOL  
MASTERS OF LAW (LL.M)  
END OF MODULE MAIN EXAMINATION  
LLM 8201: INTERNATIONAL CRIMINAL LAW**

Date: **Thursday, 25<sup>th</sup> March 2025**

Time: 3 Hours

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**Instructions**

1. This examination consists of **FIVE** questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions
3. This is a closed-book examination.
4. You should spend a fair amount of time organizing your thoughts before starting to write.
5. Careful organization and clarity will be highly valued.
6. Please start each question on a new page.

**QUESTION 1 [30 MARKS]**

- (a) Article 1 of the Rome Statute provides that the International Criminal Court (ICC) “shall have the power to exercise jurisdiction over persons for the most serious crimes of international concern”. With reference to the provisions of the Rome Statute and the practice or jurisprudence of the ICC, discuss how the following factors affect or relate to the personal (*ratione personae*) jurisdiction of the ICC.
- (i) The age of the accused at the time of the alleged commission of a crime **[3 Marks]**
  - (ii) The availability of the accused to stand trial **[3 Marks]**
  - (iii) The official capacity of the accused **[3 Marks]**
  - (iv) The past conviction or acquittal of the accused **[3 Marks]**
- (b) In terms of the general rule, the International Criminal Court has jurisdiction over crimes committed on the territory or by nationals of States Parties. With concrete examples and reference to the pertinent provisions of the Rome Statute, discuss **two** ways in which the ICC may be conferred jurisdiction over crimes committed on the territory or by nationals of a non-State Party. **[8 Marks]**
- (c) On 15 December 2017, States Parties to the Rome Statute made the historic decision to activate the International Criminal Court’s jurisdiction over the crime of aggression as from 18 July 2018. Discuss preconditions and restrictions to the

exercise of the International Criminal Court's jurisdiction over the crime of aggression. [10 Marks]

### QUESTION 2 [15 MARKS]

“Among the grievous crimes this Tribunal has the duty to punish, the crime of genocide is singled out for special condemnation and opprobrium. The gravity of genocide is reflected in the stringent requirements which must be satisfied before this conviction is imposed. These requirements ... guard against a danger that convictions for this crime will be imposed lightly. Where these requirements are satisfied, however, the law must not shy away from referring to the crime committed by its proper name”.

*Prosecutor v Krstic (Appeal Judgment), IT-98-33-A, International Criminal Tribunal for the Former Yugoslavia, 19 April 2004, paras 36-37.*

In view of the above statement, discuss the requirements needed under the Rome Statute for the International Criminal Court to be satisfied that the crime of genocide has been committed. Support your answer with relevant treaty provisions and applicable jurisprudence.

### QUESTION THREE [15 MARKS]

On 18 December 2024, the secretariat of the Assembly of States Parties to the Rome Statute issued a *note verbale* announcing that the nomination period for the election of six judges of the International Criminal Court would run from 6 January to 30 March 2025. The *note verbale* also indicated that the election of the six judges would take place during the 24<sup>th</sup> session of the Assembly of States Parties scheduled to take place from 5 to 9 December 2025.

The Kenyan government is interested in nominating a candidate for the upcoming election. You are a Principal Legal Officer at the Kenya Ministry of Foreign and Diaspora Affairs. To ensure that Kenya nominates a suitable candidate with reasonable prospects of being elected, your line manager has asked you to prepare a briefing on the nomination and election process of ICC judges, with a particular focus on the following:

- a) Requisite qualifications of candidates
- b) Procedure for the nomination of candidates
- c) Key considerations by the Assembly of States Parties in determining the composition or “the face” of the ICC.

Prepare the briefing bearing in mind the provisions of the Rome Statute and the practice of the Assembly of States Parties.

### QUESTION 4 [15 MARKS]

“If you were to ask most people with some knowledge of the ICC what was meant by the idea of complementarity there is a good chance many of them would say ... that the ICC will act only if the state with jurisdiction is unwilling or unable to do so. This is what commentators have called the ‘slogan version of complementarity’ .... The slogan version

does not understand the importance of the Two-Step process. Only if you understand how the test works will you understand the right questions to ask about complementarity.”

Paul Seils *Handbook on complementarity: An introduction to the role of national courts and the ICC in prosecuting international crimes* (2016) 43

Using the factual scenarios envisaged under Article 17 of the Rome Statute, describe the Two-Step Process used by the International Criminal Court to determine issues of admissibility before it.

#### **QUESTION FIVE [15 Marks]**

“I argue that the Malabo Protocol is a watershed moment in international criminal law and international legal norms in global politics. When placed in its broader context and history of Pan-African visions, it fits into a larger path of Africa’s pioneering role in creating and sustaining international legal norms. I contend that it would be reductive to merely view this moment in the AU history as a direct response to perceived threats from the ICC, or a mechanism to shield African leaders from accountability.”

Oumar Ba ‘Exit from Nuremberg to the Hague: The Malabo Protocol and the Pan-African Road to Arusha’ (2023) 3 *Global Studies Quarterly* 1, 3

Considering the above quote, discuss **three** legal innovations or pioneering norms introduced by the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol).