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مبدأ عدم جواز المحاكمة عن ذات الفعل مرتين في المحكمة الجنائية الدولية

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The principle of non bis in idem (double indictment) at the International Criminal Court

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الملخص:
مبدأ عدم جواز المحاكمة عن ذات الفعل مرتين، والمعروف أيضًا بمبدأ "عدم جواز المحاكمة مرتين عن نفس الجرم وهو حجر الزاوية في نظام العدالة الجنائية الدولية، ويضمن حماية الأفراد من الملاحقة القضائية المتكررة عن نفس الجرائم ويكرس هذا المبدأ في المادة 20 من نظام روما الأساسي للمحكمة الجنائية الدولية، والذي ينص بوضوح على أنه لا يجوز محاكمة شخص أمام المحكمة عن أفعال شكلت أساسًا لجرائم سبق أن أدين أو برئ منها من قبل المحكمة ذاتها والهدف الأساسي هو منع الإرهاق القضائي غير المبرر للمتهمين والحفاظ على استقرار الأحكام القضائية.
ومع ذلك، لا يمنع هذا المبدأ المحكمة الجنائية الدولية من ممارسة اختصاصها إذا كانت الإجراءات المتخذة على المستوى الوطني لا تتماشى مع معايير العدالة الحقيقية وينص نظام روما الأساسي على استثناءات تسمح للمحكمة بمراجعة القضايا التي تم فيها التلاعب بالإجراءات الوطنية لحماية الشخص من المسؤولية الجنائية الدولية، أو عندما لم يتم إجراء التحقيقات أو المحاكمات بشكل مستقل أو نزيه، أو بطريقة لا تتفق مع نية جلب الشخص إلى العدالة وهذا يعكس مبدأ التكاملية الذي يحكم علاقة المحكمة بالأنظمة القضائية الوطنية، حيث تتدخل المحكمة فقط عندما تكون الدول غير راغبة أو غير قادرة بصدق على محاكمة الجرائم الدولية الخطيرة. يهدف هذا التوازن إلى ضمان عدم إفلات مرتكبي الجرائم الأكثر خطورة من العقاب، مع احترام سيادة الدول وقدرتها على تحقيق العدالة.

الكلمات الدالة: عدم جواز ، المحاكمة، مرتين، الفعل، المحكمة الجنائية الدولية.

Abstract:
The principle of non bis in idem, also known as the principle of "neither bis in idem" (double indictment), is a cornerstone of the international criminal justice system and ensures the protection of individuals from repeated prosecution for the same crimes. This principle is

enshrined in Article 20 of the Rome Statute of the International Criminal Court, which clearly states that no person may be tried before the Court for acts that constituted the basis of crimes for which they have already been convicted or acquitted by the same court. The primary objective is to prevent undue judicial overburdening of accused persons and to maintain the stability of judicial decisions. However, this principle does not prevent the ICC from exercising its jurisdiction if the proceedings at the national level do not conform to standards of genuine justice. The Rome Statute provides exceptions that allow the Court to review cases in which national procedures have been manipulated to shield the person from international criminal responsibility, or when investigations or trials were not conducted independently or impartially, or in a manner inconsistent with the intent of bringing the person to justice. This reflects the principle of complementarity that governs the Court's relationship with national judicial systems, whereby the Court only intervenes when states are genuinely unwilling or unable to prosecute international crimes. Serious. This balance aims to ensure that perpetrators of the most serious crimes do not go unpunished, while respecting states' sovereignty and their ability to deliver justice.
Keywords: inadmissibility, trial, twice, act, ICC.

Introduction:

The principle of **ne bis in idem**, or not being tried for the same act twice, is one of the fundamental guarantees of a fair trial. The general rule is that no person should be tried twice for the same crime, and this legal principle has become firmly established in all legal systems worldwide. Therefore, a person who has been previously convicted or acquitted by a national court cannot be tried again before the International Criminal Court (ICC). However, an exception to this principle was introduced in **Article 20, Paragraph 3 of the Rome Statute**, which states:

3. No person who has been tried by another court for conduct also proscribed under articles 6, 7, 8 or 8 bis shall be tried by the Court with respect to the same conduct unless the proceedings in the other court: (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Hence, a conviction or acquittal by a national court does not, in specific cases, preclude prosecution and trial by the ICC if it is found that the national court proceedings were intended to shield the person from criminal or penal responsibility, or that the national court proceedings were not conducted independently or impartially in accordance with internationally recognized standards for fair trials. Undoubtedly, the increasing commission of serious international crimes and the impunity of their perpetrators at the national level led to the establishment of ad hoc international tribunals as a preliminary step towards creating a permanent international judiciary, despite the criticisms leveled against these temporary tribunals. What can be credited to these attempts is that they accelerated the establishment of a permanent international criminal court, namely the **International Criminal Court (ICC)**, headquartered in The Hague/Netherlands.

The Preamble to the Rome Statute of the International Criminal Court states that there are common bonds uniting all peoples, and that the cultures of the world together constitute a common heritage, and that it is a matter of concern that this delicate mosaic may be shattered at any time. Thus, the success of the Rome Diplomatic Conference in the summer of 1998 emerged with the aim of establishing a permanent international criminal justice system for the prosecution

of international crimes and combating impunity at both national and international levels. The Rome Statute includes well-established legal measures and provisions in the field of international standards for fair trials and has devised ingenious principles to combat impunity. Among the important principles in the Rome Statute is what is stipulated and detailed in **Article 20** of this Statute, which is the principle of "**ne bis in idem**" and the exceptions thereto, which is the subject of our study in this research.

Secondly: Importance of the Topic

The importance of this research lies in understanding the extent to which the Court possesses an exception to hear cases involving individuals acquitted or convicted by national judiciary, provided that the national trial proceedings lacked the global standards required for fair trials, or were intended for the offender to escape justice.

Thirdly: Problem Statement

It may practically be very difficult for a state to admit that its national courts have violated the accused's right to a fair trial. Given this, the wording of Article 20 of the Rome Statute gives the interpreter a general impression that the ICC has the discretionary power to determine this, or whether the state whose jurisdiction is contested by the ICC has violated internationally recognized fair trial standards. Here, it can be said that the general rule is not absolute because the same Article 20, specifically in its third paragraph (b), includes an exception to this general rule. The content of this exception is that the ICC may try a person again if the criminal proceedings in the national judiciary were flawed by the absence of a genuine will of the state to prosecute, such as when the trial was not conducted independently or impartially in accordance with due process standards recognized by international law.

It is undeniable that the application of this exception is contingent upon proving that national courts failed to observe trial fairness. Hence, a highly complex problem arises: How can a balance be struck or achieved between the accused's interest in being tried a second time to receive a fair trial, and the interest of the States Parties to the Rome Statute in ensuring that the ICC does not abuse its broad discretionary power in monitoring and evaluating the performance of national courts regarding their adherence to due process standards recognized by international law, in a manner that might ultimately lead to a complete undermining of the principle of complementarity between international and national judicial jurisdictions?

Another question arises here: Do the exceptions to Article 20, Paragraph 3 of the Rome Statute contradict the admissibility criteria set forth in Article 17 concerning complementary jurisdiction?

In this context, general principles of international criminal law refer to those principles that apply to international crimes and relate to their legal basis, general elements, and grounds for justification. Naturally, among these principles is the subject of this research, which is the principle of "**ne bis in idem**".

Research Methodology

Given the importance of this topic, we adopted a **historical method** to trace the historical context of the emergence of this principle and its inclusion in Article 20 of the Rome Statute, and a **descriptive method** to describe and detail this article and explain its connections with other principles.

Therefore, the research plan will be as follows:

Chapter One: The Nature of the Principle of Ne Bis In Idem

- **Section One:** Historical Context of Article 20 of the Rome Statute and its Concept
- **Section Two:** Application of the Principle of Ne Bis In Idem and its Exceptions

Chapter Two: Linkages Between Article 17 and Article 20 of the Rome Statute

- **Section One:** The Principle of Complementarity and its Relationship to the Principle of Ne Bis In Idem
- **Section Two:** Amnesty Laws and their Relationship to the Principle of Ne Bis In Idem

Chapter One: The Nature of the Principle of Ne Bis In Idem

According to Article 20 of the Rome Statute, a person should not be tried for a crime twice. This logical fact was not only introduced by the Rome Statute, but was preceded by all legal systems in the world and procedural penal law, known as the principle of "**ne bis in idem**." It has also been emphasized in major human rights instruments such as the Universal Declaration of Human Rights and the Geneva Conventions, among others. Despite this, there is an exception stating that prosecution or trial by the International Criminal Court is not precluded, according to Article 20, paragraph 3 of the Rome Statute, if it is found that the proceedings before the national court were aimed at shielding the person concerned from criminal responsibility, or that the national court proceedings were not conducted independently or impartially according to international standards. To study the historical development of this principle and review the meaning of Article 20 in the Rome Statute will be in Section One, and for the application of the principle of ne bis in idem and its exceptions will be in Section Two.

Section One: Historical Context of Article 20 of the Rome Statute and its Concept

Article 14 of the International Covenant on Civil and Political Rights explicitly stipulated this principle and classified it as a human right enjoying international protection in Article 4 of the European Convention on Human Rights No. 7, in paragraph 4 of Article 8 of the American Convention on Human Rights, and in paragraph 1 of Article 30 of the United Nations Standard Minimum Rules for the Treatment of Prisoners. Hence, this principle is fundamental and has been widely applied in criminal justice in almost all countries.

This rule was explicitly stated in **Article 20 of the Rome Statute**, under the title "**Ne Bis In Idem**," which stipulated the following: (1) Except as otherwise provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the Court has already convicted or acquitted that person. (2) No person shall be tried by another court for a crime other than those referred to in Article 5 for which that person has already been convicted or acquitted by the Court. (3) No person who has been tried by another court for conduct also proscribed under articles 6, 7, 8 or 8 bis shall be tried by the Court with respect to the same conduct unless the proceedings in the other court: (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

The content of Article 20 of the Rome Statute is largely based on paragraph 7 of Article 10 of the International Covenant on Civil and Political Rights of 1966, which aims to limit the non-punishment of the same person for the same facts.

Through a careful review of the text of Article 20 of the Rome Statute, the concept of this article can be inferred: as a general rule, the International Criminal Court may not try any person again for a crime mentioned in Articles 6, 7, 8, and 8 bis of the Rome Statute, if a national court in a State Party or non-Party to the Rome Statute has already convicted or acquitted that person. However, as an exception to this rule, the International Criminal Court can play an exceptional role in specific cases mentioned in paragraph 3 of Article 20 of the Rome Statute, which we will address later.

This principle is based on three foundations: First: No person should face more than one trial for the same crime. Second: The public prosecution cannot take action against the same persons for the same facts once criminal proceedings have concluded. Third: This principle reflects the respect and sanctity of judicial decisions issued in this regard.

In this context, we turn to the real-life case that occurred in Libya, where the Pre-Trial Chamber in the case of Mr. Saif Al-Islam Gaddafi, after the referral of the situation in Libya to the International Criminal Court by virtue of Security Council Resolution No. 1970 of 2011, stated that this case represents a practical example of Article 20, paragraph 3 of the Rome Statute. The Pre-Trial Chamber I of the International Criminal Court, by its reasoned decision of April 5, 2019, rejected by majority the appeal filed by Mr. Saif Al-Islam Gaddafi's defense team regarding the admissibility of the case before the International Criminal Court. The Chamber ruled by a majority of two of its three judges, Judge Péter Kovács and Judge Reine Adélaïde Sophie Gandaho, that the case was admissible before the Court. The defense team had filed an appeal on June 6, 2018, challenging the admissibility of the case against Mr. Saif Al-Islam Gaddafi, claiming and arguing that the Tripoli Criminal Court had issued a conviction on July 28, 2015, for the same conduct in essence as alleged in the case before the International Criminal Court. In this context, Mr. Saif Al-Islam Gaddafi's defense team stated that their client was also released from prison on April 12, 2016, pursuant to Law No. 6 of 2015, issued by the Libyan House of Representatives, which provided for a general amnesty for all Libyans. Based on this, Saif Al-Islam Gaddafi argued against the admissibility of the case filed in the International Criminal Court concerning crimes falling within its jurisdiction.

However, the two judges assigned to the case at the International Criminal Court concluded their decision after carefully considering the various pleadings and observations submitted by Mr. Saif Al-Islam's defense team, the Prosecutor, and the legal representatives of the victims to the Court, as well as previous submissions by the Government of Libya. The two ICC judges concluded that for the Libyan judiciary to argue against the inadmissibility of a second trial before this Court according to Article 20 and its exceptions, the judgment of the Tripoli Criminal Court had to be final and have the force of *res judicata*. Since this did not occur, the ICC judges were not convinced that this condition had been met in this case, because the judgment of the Tripoli Criminal Court is still appealable and was issued against Mr. Gaddafi in absentia, which leaves the door open for the possibility of reconsidering the case if he appears before the Court. This is because the accusation leveled against him by the International Criminal Court, according to the Office of the Prosecutor of the Court, relates to crimes specified in Article 5 of the Rome Statute, which it described as the most serious crimes against humanity. This means that national amnesty laws do not prevent defendants accused of serious crimes from being tried before the Court in accordance with Article 20, paragraph 3 of the Rome Statute. In this context, the ICC judges added that decisions or amnesty laws for serious acts such as intentional killing, crimes against humanity, and war crimes are inconsistent with internationally recognized human rights standards, as these decisions undermine the obligations of states to diligently investigate, prosecute, and punish perpetrators of crimes falling within the Court's core jurisdiction. Furthermore, they deprive victims of the opportunity to access the truth and the possibility of recourse to justice and seeking reparations when permissible.

Section Two: Application of the Principle of Ne Bis In Idem and its Exceptions

The application of this principle does not raise any problems in national criminal law because it has become a constitutional principle, and most national criminal laws have adopted this

principle, with some of them including exceptions to it. As we mentioned earlier, most international criminal legislations have adopted this principle in one way or another.

There is a significant difference between countries on how to adopt this principle. Some countries prohibit legal action for the same act after a final conviction or acquittal, while others permit retrial when new facts or evidence about the act emerge, or in the event of a grave and fundamental error in the first trial for the act. There are also countries that allow retrial but prohibit double punishment for the same act. The core of applying this principle is the **authority of criminal judgments or the force of *res judicata***, because the principle of ne bis in idem is the negative legal effect of a judgment acquiring the status of a final and conclusive judgment. For the principle to be applied, a set of conditions must be met:

1. **Issuance of a judgment by a competent criminal court constituted according to law**, and this judgment must be conclusive in the case, either by acquittal or conviction, because other judgments, such as judgments of non-jurisdiction or preliminary, preparatory, or interim judgments, do not have the force to terminate the criminal case, and as a result, do not prevent reconsideration and re-examination of the act.
2. **The judgment must acquire finality**, which it does either by exhausting all legal avenues of appeal or by the expiration of the legal period prescribed for appealing criminal judgments.
3. **Identity of the issued judgment with the new (second) case in terms of parties, subject matter, and cause.**

The parties in a criminal case are the prosecuting authority representing the state, and this party or litigant is fixed and does not change. The second party or other litigant is the accused, who changes from one criminal case to another. Under this principle, a criminal case cannot be brought against a person who has already been tried on the same subject matter a second time. However, if new facts emerge proving the involvement of partners or principal offenders, the public prosecution may initiate proceedings against them.

The unity of the subject matter of a criminal case generally means the state's right to punish individuals who violate the rules of the penal code and other criminal laws and commit acts deemed serious crimes by the legislator. The unity of cause means the unity of the charge, i.e., the factual incident constituting the crime for which the final judgment was issued. The cause in a case consists of two parts: the material fact and the legal description given to it. The decisive factor is the material fact itself, regardless of the description subsequently given to it. Therefore, if a final judgment is issued against an accused for the material fact constituting the crime under a certain cause, for example, the same person cannot be re-tried for the same fact under a different description or classification. If the facts of the case differ, then the person can be tried a second time for the fact that was not decided by the judiciary. To determine whether the fact for which a person is to be tried is the same fact for which they were previously tried, legal scholars have established a criterion to rely on: asking the following question: Did the judiciary, when considering the first fact, have the authority to decide on the new fact for which the accused is to be tried, or not? If the answer is yes, it cannot be considered independent of the first fact for which the judgment was issued, because the law has presumed its non-existence, and this is a presumption that does not admit evidence to the contrary.

Consequently, a second trial is not permissible for it. If the answer is no, it means it is an independent fact, and therefore a second trial is permissible because it is impossible to assume that the judge had examined it and decided on its non-existence.

The exceptions to the principle of "ne bis in idem" in Article 20, paragraph 3: This principle is based on the requirements of justice and legal stability. However, some argue that absolute

justice is impossible to achieve, and it is also unknown whether any potential amendments to a judgment would bring it closer to achieving justice or move it further away. Confirming a judgment convicting an innocent person is not related to justice, directly or indirectly. Therefore, some laws have permitted, in certain cases, retrial for an act twice, referred to as cases of retrial or appeal for review. This is what Article 20, paragraph 3, stipulated, setting criteria for whether the domestic judgment of a case is inadmissible before the ICC. The two exceptions to this principle are:

1. The case where the proceedings are intended to shield the person concerned from criminal responsibility for crimes falling within the jurisdiction of the Court.
2. The second case is if the proceedings before the national courts were not conducted independently and impartially, in accordance with the guarantees of fair trial stipulated in international law.

Most legislations that allowed retrial permitted it only for judgments of conviction and not for judgments of acquittal, because the justifications for allowing reconsideration of judgments of conviction and punishment are limited to specific circumstances defined by law.

Chapter Two: Linkages Between Article 17 and Article 20 of the Rome Statute

It is clear that the Rome Statute establishing the International Criminal Court, in the matter of **complementary jurisdiction** on which the Court relies in its relationship with the national judiciary of states, largely aims to push states, whether parties or non-parties, to make their national judiciary more serious and vigilant in prosecuting perpetrators of serious international crimes. This is to avoid the embarrassment of losing jurisdiction if any state is proven to be lax or unable or unwilling to investigate or prosecute in accordance with **Article 17 of the Rome Statute**, or in the absence of internationally recognized fair trial standards, or if the purpose of the trial was to allow the concerned person to escape punishment in accordance with **Article 20, paragraph 3 of the Rome Statute**. In this section, we will detail the principle of complementarity and its relationship to the principle of ne bis in idem in the first subsection, and in the second, we will address amnesty laws and their relationship to the principle of ne bis in idem.

Section One: The Principle of Complementarity and its Relationship to the Principle of Ne Bis In Idem

The Preamble to the Statute of the International Criminal Court indicates that it is complementary to national criminal courts. Furthermore, the Statute directly referred to the principle of complementarity, emphasizing the necessity of taking "national" measures to ensure the maximum possible effectiveness in combating impunity. The objectives stated in the Preamble aim to guide the interpretation and application of the Statute according to the concept of the complementary relationship with the International Criminal Court, indeed, the fundamental pillar upon which the entire Court was built according to the previous considerations.

Some political systems in many countries experience internal turmoil and conflicts that lead to a series of practices and obstacles that ultimately impede the enforcement of judicial decisions, increase cases of impunity, and violate the principle of speedy trial. Impunity occurs in such circumstances either *de facto* or *de jure*. Hence, the jurisdiction of the International Criminal Court to hear crimes in such cases arises when the state is unable or unwilling, in order to curb impunity. Here, the link between Article 17 and Article 20, paragraph 3 of the Statute becomes clear, as their common purpose is to prevent impunity and strive for a fair and impartial trial.

Section Two: Amnesty Laws and their Relationship to the Principle of Ne Bis In Idem

The problem related to the principle of ne bis in idem, specifically according to Article 20, paragraph 3, is the issue of **amnesty**. The Rome Statute's omission of the issue of amnesty is considered the biggest point of contention. The issue of amnesty was raised during the work of the Preparatory Committee in 1997 by the United States, which presented a discussion paper on state practices in 13 countries. However, the document was not seriously discussed, and the question about amnesty was deleted at the Rome Conference. Bilateral consultations relied on amnesty but failed to make progress due to strong resistance from some states who believed that the question was about non-interference in national decisions.

One of the challenges facing international efforts to combat impunity is the widespread granting of amnesties for the purpose of protecting persons who have been convicted of committing serious international crimes described by the Rome Statute as the most serious crimes against humanity.

An amnesty law can become a real obstacle to the International Criminal Court's exercise of its complementary jurisdiction if it is used for the purpose of escaping punishment. However, it is important to note that amnesty can, on the other hand, signal the return of peace or reconciliation among internally warring groups. Therefore, it is crucial to distinguish between the good faith and bad faith of the legislative authority of any state when issuing an amnesty law. In this context, Mary Robinson stated: "I want to emphasize that there are some grave violations of human rights and international humanitarian law that should not be covered by amnesty. The United Nations signed the Sierra Leone Peace Agreement, which put an end to the atrocities committed in that country; however, according to the United Nations, amnesty provisions of all types stipulated in Article Nine of the Agreement do not apply to international crimes such as genocide, crimes against humanity, war crimes, and international humanitarian law; because accepting amnesty would send the wrong message to justice, victims, and criminals alike." Nevertheless, many national criminal laws, such as those in Libya, Morocco, and Egypt, permit the head of state or their representative, depending on the nature and form of each system of governance, to grant amnesty to persons who have committed serious crimes, in order to end impunity. This approach confirms what is stated in Article 53(4) of the Statute: "The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or to prosecute on the basis of new facts or information." In light of his discretionary powers under Article 53 of the Rome Statute, the Prosecutor may rely on this provision to consider the effects of amnesty or not, and whether it was approved for reasons of supreme interest and comprehensive national reconciliation, and without infringing on the rights of victims, or for the purpose of allowing perpetrators to escape punishment. Thus, it can be said that the emergence of the permanent International Criminal Court may prompt states to be more serious in granting amnesty according to national interest necessities and in a way that does not allow the perpetrator to escape the punishment prescribed by law, as the jurisdiction of the International Criminal Court came as a complementary jurisdiction to fill the void that might occur in national justice, in order to enable the Court to put an end to impunity.

Conclusion

According to the rule concerning the principle of "**ne bis in idem**" in **Article 20**, if a national court has prosecuted a person who committed an international crime within the jurisdiction of the International Criminal Court, that person should not be tried for the same conduct a second time before the Court. However, the Court possesses an exception, in accordance with **Article 20, paragraph 3**, to consider those acquitted or convicted by national judiciary, provided that the

national trial proceedings lacked the global standards required for fair trials. Nevertheless, many countries still suffer from the exacerbation of impunity and the absence of justice due to many complexities, disturbances, and internal conflicts. Consequently, if the inability of the state's judicial system to fulfill its role is proven, or if its unwillingness to prosecute perpetrators of the crimes specified in Article 5 of the Rome Statute for the Court is proven, and that the trials conducted by the national judiciary lack the standards of fair trials in international law, then complementary jurisdiction in such circumstances limits and reduces the phenomenon of impunity by filling the void in national justice.

Hence, this research summarized its most important findings:

1. If a national court has prosecuted a person who committed an international crime within the jurisdiction of the International Criminal Court, that person should not be tried for the same conduct a second time.
2. Under the exceptional rule of **Article 20, paragraph 3** of the Statute, the ICC may initiate a new trial if the national court proceedings were motivated by "shielding the person concerned from criminal responsibility" or if "the due process standards for fair trials recognized in international law were not respected."
3. Amidst the growing phenomenon of impunity, especially as the value of respecting human rights has become a global value of concern to all humanity and subject to universal monitoring, the ICC's exercise of **Article 20, paragraph 3**, aims to not wait longer for national judiciaries of states to remain free of oversight.
4. National judiciary in such countries remains hampered and unable to fulfill its role, or is simply unwilling due to various challenges and circumstances, which has empowered the International Criminal Court to exercise primary jurisdiction.
5. It can be said that the goal of deterrence has become achievable, even if theoretically, for crimes within the jurisdiction of the International Criminal Court. Thus, the complementary jurisdiction of the International Criminal Court is the central pillar in applying the principle of **ne bis in idem** referred to in **Article 20, paragraph 3**.

Recommendations:

1. I recommend adopting the exceptions set forth in **Article 20, paragraph 3** of the Rome Statute, even if the state is not a party to the International Criminal Court, as in the case of Saif Al-Islam Gaddafi in Libya and other countries, to curb impunity for the most serious crimes stipulated in the Rome Statute.
2. I recommend that the Rome Statute address the issue of **amnesty** when it is intended to protect individuals who have been convicted of committing serious international crimes, as the Statute's omission of this issue is highly controversial.

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