



On the complementary principle of the jurisdiction of the International Criminal Court

Geng ZHIMIN ¹

School of International Law, University of World Economics and Diplomacy, School of Marxism, Jining Normal University

ARTICLE INFO

Article history:

Received August 2023

Received in revised form

15 September 2023

Accepted 15 October 2023

Available online

25 November 2023

Keywords:

principle of
complementarity,
jurisdiction,
contracting state

ABSTRACT

The birth of the International Criminal Court aims to strengthen the punishment of serious crimes internationally through international cooperation, but its jurisdiction is related to handling the relationship between domestic courts and the International Criminal Court. The establishment of the Rome Statute stipulated the principle of complementary jurisdiction of the International Criminal Court. This article attempts to illustrate the significance, characteristics, application, and submission of relevant countries and the Security Council of the complementary principle of the jurisdiction of the International Criminal Court, which has been widely recognized by the international community. The complementary principle of the jurisdiction of the International Criminal Court has also been fully applied in practice.

2181-1415/© 2023 in Science LLC.

DOI: <https://doi.org/10.47689/2181-1415-vol4-iss5-pp31-41>

This is an open access article under the Attribution 4.0 International (CC BY 4.0) license (<https://creativecommons.org/licenses/by/4.0/deed.ru>)

Xalqaro jinoiy sud yurisdiksiyasining to'ldiruvchi prinsipi to'g'risida

Kalit so'zlar:

to'ldiruvchilik prinsipi,
yurisdiksiya,
ahdlashuvchidavlat.

ANNOTATSIYA

Xalqaro jinoiy sudning tug'ilishi xalqaro hamkorlik orqali og'ir jinoyatlar uchun jazoni xalqaro miqyosda kuchaytirishga qaratilgan, ammo uning yurisdiksiyasi mahalliy sudlar va Xalqaro jinoiy sud o'rtasidagi munosabatlarni ko'rib chiqish bilan bog'liq. Rim statutining o'rnatilishi Xalqaro jinoiy sudning qo'shimcha yurisdiksiya tamoyilini belgilab berdi. Ushbu maqola

¹School of International Law, University of World Economics and Diplomacy, School of Marxism, Jining Normal University

xalqaro hamjamiyat tomonidan keng e'tirof etilgan Xalqaro jinoiy sud yurisdiksiyasining bir-birini to'ldiruvchi tamoyilining ahamiyati, xususiyatlari, qo'llanilishi va tegishli mamlakatlar va Xavfsizlik Kengashi tomonidan taqdim etilishini ko'rsatishga harakat qiladi. Xalqaro jinoiy sud yurisdiksiyasining bir-birini to'ldiruvchi prinsipi ham amalda to'liq qo'llanildi.

О дополнительном принципе юрисдикции Международного уголовного суда

АННОТАЦИЯ

Ключевые слова:

принцип
дополнительности,
юрисдикция,
договаривающееся
государство.

Цель создания Международного уголовного суда заключается в усилении ответственности за тяжкие международные преступления через глобальное сотрудничество. Однако его юрисдикция требует грамотного взаимодействия с национальными судами. Римский статут утвердил принцип дополнительной юрисдикции Международного уголовного суда. Данная статья призвана осветить значение, особенности и практическое применение этого принципа, а также его признание и восприятие со стороны разных стран и Совета Безопасности. На практике дополнительный принцип юрисдикции Международного уголовного суда активно применяется.

An overview of the principle of complementarity in the jurisdiction of the International Criminal Court

1. The meaning of the principle of complementarity

The establishment of the International Criminal Court is the result of the legal creation and punishment of crimes, and many sovereign countries believe that the establishment of the International Criminal Court will inevitably sacrifice or require the transfer of some of their sovereignty. According to the principle of national sovereignty, a country has the right to exercise jurisdiction over criminal acts within its territory, as well as the right to exercise jurisdiction over criminal acts committed by its nationals outside its territory. At present, there are situations where some sovereign countries are unwilling or unable to exercise jurisdiction to curb serious criminal acts, which requires an international institution to exercise jurisdiction over such serious international criminal crimes. Balancing national sovereignty with the jurisdiction of the International Criminal Court is by no means an easy task.

Respect for national sovereignty is a fundamental principle of international criminal law, which is revealed in respect for the domestic jurisdiction of countries over international crimes in terms of jurisdiction. This is also a common requirement for all international organizations. Only when domestic courts are unable or unwilling to exercise jurisdiction over international crimes can jurisdiction be transferred to the International Criminal Court to bring the perpetrators to justice. Therefore, the complementary principle of the jurisdiction of the International Criminal Court is manifested as under normal circumstances, the jurisdiction to prevent, combat, and punish international

criminal crimes is in the hands of sovereign states; only when sovereign states are unable or refuse to exercise this jurisdiction can the International Criminal Court take over. On the one hand, it respects the status of national sovereignty to ensure national jurisdiction, and on the other hand, it effectively avoids the situation where the International Criminal Court becomes a subsidiary institution of domestic courts of sovereign states. From this, it can be seen that the International Criminal Court only plays a supplementary role and cannot replace domestic courts. However this does not mean that the status of the International Criminal Court is lower than that of domestic courts, and the purpose of the principle of complementarity is to urge domestic courts to actively exercise their rights.

In summary, the jurisdiction of the International Criminal Court is a supplement to national jurisdiction. When both domestic courts and the International Criminal Court have jurisdiction over a crime, domestic courts have priority rights to investigate and prosecute. Only domestic courts cannot punish crimes, and the International Criminal Court exercises jurisdiction to ensure judicial fairness.

2. Characteristics of the principle of complementarity

Compared with the International Court of Justice, the principle of complementarity of the International Criminal Court has the following characteristics: firstly, the principle of complementarity has a statutory nature. Different from the conditions for the establishment of the jurisdiction of the contracting parties of the International Court of Justice, the jurisdiction of the contracting parties of the International Criminal Court is automatically established when they become a contracting party. As long as they become a contracting party, they recognize that the International Criminal Court has jurisdiction over core crimes, which is in accordance with the relevant provisions of the Rome Statute. Secondly, the principle of complementarity is humility. The Rome Statute lists four types of crimes: genocide, harm to humanity, war, and aggression. The necessary prerequisite for the International Criminal Court to have jurisdiction over it is to become a contracting party or issue a declaration to accept the jurisdiction of the International Criminal Court. The principle of complementarity respects fully the jurisdiction of sovereign states and prioritizes the transfer of jurisdiction to sovereign states. Only when sovereign states find it difficult to exercise effectively their jurisdiction will the International Criminal Court take over the case for jurisdiction, which is an inverted priority jurisdiction. Finally, the principle of complementarity is mandatory. The International Criminal Court has established legal obligations for contracting parties. If the contracting party fails to fulfill the obligation, it shall exercise jurisdiction on behalf of the contracting party. The Contracting States shall not make reservations to the Statute.

Application of the principle of complementarity in the jurisdiction of the International Criminal Court

1. Conditions for the exercise of jurisdiction by the International Criminal Court

The International Criminal Court has jurisdiction over the four criminal acts mentioned in the Rome Statute, but in the end, the court may not exercise its jurisdiction, which only means that it has the basic premise to exercise this power. As a country joins the Rome Statute, it signifies its recognition and acceptance of the jurisdiction of the International Criminal Court over the aforementioned criminal acts. For non-contracting parties, the International Criminal Court can also be granted jurisdiction by declaring acceptance. But the jurisdiction of the International Criminal Court always plays a

complementary role. However, there are also situations where the International Criminal Court is unable to exercise its jurisdiction, namely: the first type is cases being prosecuted or investigated by sovereign countries with jurisdiction; The second option is for the country to investigate the incident and decide not to prosecute the relevant individuals; The third principle is the principle of nonbis in idem, where the relevant personnel have already received punishment; The fourth type is that the severity of the case is not sufficient to initiate the investigation process. Faced with the first two situations, the International Criminal Court needs to rule out the possibility of states being "unwilling" and "unable" to investigate and prosecute to exercise its jurisdiction. 'Unwillingness' includes three situations: the litigation that has already been or is currently underway is to shield an individual; litigation is not timely, resulting in relevant personnel being at large; the ongoing or ongoing litigation is unfair. The term 'cannot' mainly refers to the situation where a country's internal judicial system is in a state of collapse or has completely collapsed, making it unable to exercise jurisdiction. The subject of judgment for "unwilling" and "unable" is the International Criminal Court.

2. The impact of the exercise of jurisdiction by the International Criminal Court on non-contracting parties

The Rome Statute stipulates two paths for accepting the jurisdiction of the International Criminal Court, namely becoming a contracting party or declaring acceptance. However, for a serious international crime, the International Criminal Court may have jurisdiction over the country where the crime is committed, the nationality of the offender, and the nationality of the victim, but it ignores the feelings of the country where the offender is supervised or the international community of the victim and violates the sovereignty of the country. According to the provisions of the Rome Statute, non-contracting parties can either modify their domestic laws through the first method of becoming contracting parties; Either through the second approach, continue to adhere to principles and resist the application of the Rome Statute.

The practice of the principle of complementarity in the jurisdiction of the International Criminal Court

1. Submission of a situation by a country to the International Criminal Court

The submission of situations by countries to the International Criminal Court can be divided into two categories: one is the submission of situations by contracting parties to the International Criminal Court. One type involves noncontracting parties submitting situations to the International Criminal Court. So far, the International Criminal Court has accepted the situations submitted by the three contracting parties, Congo, Uganda, and the Central African Republic, and the Prosecutor's Office has launched an investigation into the situations submitted by Congo and Uganda. The Congo case was a series of devastating cases in the early 20th century, including the massacre, which the President of Congo hoped the International Criminal Court would have jurisdiction over. The Ugandan case is also a case where the President of the country hopes that the International Criminal Court will have jurisdiction to conduct an investigation. The third is the Central African Republic, which submits all crimes committed within its territory after the entry into force of the Rome Statute to the International Criminal Court. Prosecutors need to analyze the specific situation and investigate the crimes they believe should be under their jurisdiction.

The above three contracting states have not exercised their jurisdiction in order to prevent criminals from evading criminal responsibility and avoid the occurrence of

impunity. The International Criminal Court is fully capable of exercising its jurisdiction. It is equivalent to three contracting states abandoning the priority of national jurisdiction granted by the Supplementary Principles of the International Criminal Court.

As a non-contracting party, Cote d'Ivoire stated in 2005 accepting crimes committed within its territory since September 19, 2002. The International Criminal Court has jurisdiction over relevant crimes, as stipulated clearly in the Rome Statute, and is also a prerequisite for the application of the principle of complementarity.

2. The Security Council submits the situation to the International Criminal Court

In addition to the countries mentioned above submitting situations to the International Criminal Court, there are also cases where the Security Council submits situations to the National Criminal Court, which is currently the case in the Darfur region of Sudan. That is, the Security Council will refer the situation in Sudan's Darfur to the International Criminal Court. As of now, Sudan is not a party to the Rome Statute, and Sudan itself has objections to the exercise of jurisdiction by the International Criminal Court. However, it is reasonable for the Security Council to still submit the situation in Sudan to the jurisdiction of the International Criminal Court, specifically for the following reasons:

Firstly, in 2003, the "Sudan Liberation Army" and others in the Darfur region of Sudan launched antigovernment armed struggles, resulting in the displacement of nearly one million Sudanese people. The situation in the Darfur region of Sudan has violated human rights and humanitarian law, posing a threat to international peace and security; There is no capacity or willingness to handle the situation within Sudan, and serious criminal acts are ignored. To prevent those who have committed serious crimes from going unpunished, armed conflicts in non-contracting countries can only be referred by the Security Council to the International Criminal Court. The purpose of the establishment of the International Criminal Court is to punish serious criminal acts.

Secondly, as the only international criminal justice institution, the International Criminal Court can bring to justice individuals such as senior officials who have committed serious criminal acts within the Sudanese government. And the members of the International Criminal Court are authoritative figures from various countries, who can ensure the human rights of defendants. As a permanent institution, the International Criminal Court can immediately initiate proceedings.

Third, although the Sudan has established the Darfur Special Court, the level of suspicion it has prosecuted is relatively low, allowing some people who have committed serious crimes to go unpunished. At this time, the International Criminal Court can investigate individuals who have committed serious crimes, exercising the complementary function of the International Criminal Court.

In summary, Sudan, as the first situation submitted by the Security Council, has put an end to impunity and played a leading role in stabilizing the Sudan region. However, it is worth noting that it clearly stipulates the jurisdictional relationship between the International Criminal Court and the domestic courts of sovereign countries, that is, the former only serves a supplementary role and cannot surpass national criminal justice institutions, but also plays a supervisory role.

Epilogue

The principle of complementarity effectively addresses the admissibility and operability of the International Criminal Court and also encourages the contracting parties to the Rome Statute to better fulfill their mandatory obligations, requiring them to actively fulfill their jurisdiction over international serious criminal acts.

BIBLIOGRAPHY:

1. Ma Chengyuan. International Crime and Responsibility [M]. China University of Political Science and Law Press, 2000
2. Gao Yanping. International Criminal Court [M]. Century Knowledge Press, 1999
3. Wu Jinggao. On the Application of the Supplementary Principle of the International Criminal Court [J]. Law and Society, 2007 (4)
4. Qu Tao, Wang Xiaohui. On the Supplementary Principle of the Jurisdiction of the International Criminal Court [J]. Yinshan Academic Journal, 2007 (6)