

Balancing Peace and Justice: Challenges and Strategies in the Jurisdiction of the International Criminal Court

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Abstract: The creation of the International Criminal Court (ICC) has successfully pushed for the prosecution of global crimes. This is a significant development in the area of international law and will have a significant effect on the world's peaceful advancement. In order to advance the justice of the international order, it is impossible to ignore the jurisdiction question, which has always been the ICC's central concern. As long as the nation submitting the case is the nation where the crime was committed or the nation of nationality of the criminal suspect, it can fall under the purview of the ICC's authority. The ICC has heard a number of international criminal cases since its founding, including those in Sudan's Darfur. This essay examines the conflict between peace and justice in the ICC, analyzes it, identifies the limitations of the real implementation process, and finally makes pertinent recommendations. Its main concern is the jurisdiction of the ICC.

Keywords: international law, International Criminal Court, peace and justice

1. Introduction

With the increase in the number of new types of crimes and transnational crimes, people all over the world are attaching more and more importance to peace and security. In today's society, although no world war has broken out, there are still serious armed conflicts in the Middle East and other regions, which all the time threaten the survival of mankind and destroy the desire of mankind to build a better home. Previously, the international community generally believed that many criminal problems could not be solved by domestic courts, so it was necessary to establish a global-scale international criminal justice organization to punish international criminals and maintain world peace. The establishment of the International Criminal Court (ICC) has satisfied the yearning of international friends for a peaceful and stable life [1]. The international community has regarded the ICC greatly ever since it was founded, although it has been debatable whether its purpose has been fulfilled. Long-standing contention has revolved on the question of jurisdiction, and numerous fresh paradoxes have developed as a result.

The ICC's judicial value refers to fulfilling and actualizing the demand, purpose and desire of practice subjects, those are individuals, nations and international organizations. In the rapid changing and developing international community. Researches on judicial value of the ICC focus not merely on theoretical problems, but more on practical issues with important instructional significance for the

practice of the ICC Judicial value of the ICC is multidimensional, of which, the most important values are justice value, peace value, value of human rights and sovereignty value.

Justice is the core of the ICC's judicial value; peace is the basis for realizing judicial value; human rights is the uppermost goal: sovereignty ensures achievements of the value. Even though, innumerable links are between these values, a harmonious equilibrium is hard to achieve with conflicts in different temporal and spatial environments. In this essay, this article will discuss the conflict between international criminal justice and peace. It is simply an issue on whether perpetrators should be prosecuted by ICC or get amnesties due to the national reconciliation.

2. Overview of the Value of Peace and Justice in the ICC

2.1. Definition and Conceptualization of Peace and Justice

The dictionary definition of peace means “the state of absence of war and hostile violence.” In the context of this study, peace refers to “the absence of war”, which is a word corresponding to “war”, but it is not the real sense of peace, nor is it the real peace in the modern legal sense. True peace should be based on peace in general and should include the justification of the means and ends for maintaining or establishing it. There have been many fragile pseudo peace states in the international community, such as the “Cold War” state between the United States and the Soviet Union is the fragile peace under the confrontation between the two powers. This peace is fragile and fragile, and beneath its apparent calm lies a potential threat to genuine international peace.

Justice in international law is different from the general concept of justice at the individual level. It is not only a guide to action in the moral direction, but also refers to the fairness and justice of judicial procedures and judicial systems. The phrase “Justice delayed is injustice” reflects the importance of the judicial process [2]. It emphasizes that even if the judicial result is just, if the judgment time is too long or the parties are informed of the result too late, the original procedural justice and outcome justice will be transformed into injustice. Therefore, the greatest justice in the ICC should be the judicial system and the pursuit of judicial value based on the universal values of protecting human rights and limiting power.

2.2. The Interplay Between Peace and Justice in International Criminal Law

Justice itself is a value with multiple meanings. It is closely related to freedom, equality, peace and security [3]. As the judicial value of the ICC, the relationship between justice and peace is both closely linked and conflicting. On the one hand, justice is itself a relation and an order, that is, an internal order. The maintenance of this internal order requires the support and maintenance of external order, and when this internal order of justice is maintained, it will appear as external peace. On the other hand, justice is also a social need. As the judicial value of the ICC, justice originally has no absolute standard, but is a pursuit of just judicial order and judicial system, and its maintenance needs to rely on the provisions of law. The pursuit of justice by States parties to the ICC tends to damage the justice of the international community as a whole. If all States parties ignore the overall justice of the international community and over-emphasize individual justice, it will inevitably lead to chaos in the international community, and war will become an inevitable outcome of the pursuit of justice. Thus all wars, even wars of aggression, can be justified in the name of justice. In the end, justice must become a legitimate cloak for the destruction of peace.

2.3. Importance of Balancing Peace and Justice in the ICC's Work

The conflict between justice and peace is inevitable but reconcilable in the value selection of the ICC. It cannot insist on absolute justice or absolute peace in the practice process. For absolute justice does

not necessarily mean peace, and absolute peace does not mean justice. Peace and justice are constantly reinforcing and influencing each other, and true justice and peace can be achieved only when the right balance is found between them in the international community.

3. Challenges and Difficulties

3.1. Political Considerations: The Conflict Between State Sovereignty and Human Rights

Article 12 of the Rome Statute's temporal jurisdiction states that: (I) A State acknowledges the Court's jurisdiction over the offenses listed in Article 5 by becoming a State Party to this Statute; and (b) In the case of Article 13, Subparagraphs 1 or 3, the Court may exercise jurisdiction if one or more of the following States is a Party to this Statute or has accepted the Court's jurisdiction in accordance with Paragraph 3: the country of the accused's nationality. (iii) If, in accordance with paragraph 2, a State Party other than the one covered by the current Statute is needed to recognize the Court's jurisdiction over the alleged offence, that State may submit to the Registrar a declaration to that effect. In accordance with Part IX of the Statute, the receiving State shall provide prompt and without reservation cooperation to the Court.

After a crime has been committed that implicates that State, the State does not need to provide any additional signals of acceptance of the ICC's jurisdiction as long as it becomes a State party. The ICC's jurisdiction is made clear by this clause to be an automatic jurisdiction. If there was an automatic jurisdiction clause, it would be simpler to join the act and consent to the court's jurisdiction, but this step forward revealed a conflict between defending human rights and preserving sovereign independence. Most States parties depend on the ICC to administer justice and protect the country's peace and security when crimes covered by the Court's jurisdiction occur in their countries.

However, in other cases, the protection of human rights by the court may infringe on state sovereignty because the States Parties may be able to deal with crimes committed within their borders or may not want foreigners meddling in their domestic matters [4].

3.2. Mechanism Complexities: The Conflicting Mechanism of Case Jurisdiction Initiation

Although the Security Council has the right to refer cases in theory, it still faces numerous obstacles in the practice process. The Rome Statute clearly stipulates that there are three types of parties that may activate the supplementary jurisdiction of the ICC: first, States parties to the Statute; Second, the Security Council; Its third prosecutor of the ICC. Although these three subjects guarantee the justice of the initiation procedure from various aspects to a certain extent, there are still shortcomings.

First of all, when a State party to the Rome Statute submits the status of the case, if the prosecutor initiates jurisdiction, the country concerned may take into account the factors of its own sovereignty violation and conceal a large number of details that are not conducive to its own involvement, which will cause insufficient evidence in judicial trials and lead to biased results. Therefore, if the prosecutor's power is not properly used, it will lead to a serious waste of judicial resources and the fairness of judicial results.

Second, although the one-vote veto system of the Security Council can guarantee the timely exercise of its power, if the power is used unreasonably, it will reduce the judicial efficiency. As long as one of them has filed an objection, the initiation of the jurisdiction proceedings is only an illusion. Therefore, although the Security Council has the right to refer cases in theory, it still faces numerous obstacles in the practice process.

3.3. Legal Lag: The Jurisdiction of the ICC Has Limitation

Genocide, crimes against humanity, war crimes, and crimes of aggression are the only four crimes that fall under the purview of the ICC [5]. Because it clearly limits the area of authority, such law stands for the defense of human rights and respect for national sovereignty.

The establishment of such jurisdiction of the ICC, however, is not conducive to the effective prevention and punishment of more serious drug and terrorist crimes given the existing international climate and the rising prevalence of crimes. These crimes, which fall outside of the ICC's jurisdiction, have drawn a lot of worry and attention since they seriously undermine the regular and orderly peaceful development and interactions of the international community.

However, because the Rome Statute has opted to disregard these offences, the Court does not have the necessary institutional or legal support to exercise jurisdiction over them. In the long run, this will lead to a more hostile environment in the international community, so that peace and justice are even more impossible to achieve.

4. Case Studies and Strategies

4.1. Case Studies and Analysis

4.1.1. Case Studies Demonstrating Instances of Conflict Between Peace and Justice

Darfur is a region in western Sudan that has borders with Central Africa, Libya, Chad, and other countries. The inhabitants of Darfur were compelled to relocate south and engaged in violence with surrounding black tribes over a range of resources in the 1960s and 1970s as a result of overgrazing and population increase. Furthermore, the protracted inter-tribal conflict in Darfur has left most of the region in a state of chaos. Clan rivalries have been more violent in recent years as a result of Darfur's continued exploitation of its mineral resources, namely its oil. Some of its bordering countries have also participated in various ways.

The black residents of Darfur successively formed two armed forces, the Sudan Liberation Army and the Justice and Equality Movement, and engaged in armed activities against the government in order to demand regional autonomy on the grounds that the government had failed to protect the rights and interests of the native black people.

So far, tens of thousands of people have been killed or injured in clashes between the two armies and the government. When rebels in the region rose up against the government, Sudanese President Omar al-Bashir did not send troops to intervene. Instead, he gave money to local militias and encouraged them to fight the rebels. While the Sudanese government continues to supply them with weapons, such as planes that bomb villages, the militias have been accused of genocide for their violence in Darfur, which has killed thousands of civilians and many indigenous people. In September 2004, the United States government concluded that "genocide has taken place in Darfur and that the Government of Sudan should be held responsible [6]." Although Bashir claimed that the government had quelled the rebellion in February 2004, rebels still operate in the area.

Omar al-Bashir, the president of Sudan, is wanted by the ICC on suspicion of war crimes and crimes against humanity as of March 4, 2009. The Sudanese government first refused the arrest order, and as soon as it was issued by the ICC, a sizable crowd in the capital of Sudan rushed to the streets to demonstrate against the court and show support for President Bashir.

Since the ICC issued an arrest warrant for Bashir, there have been many demonstrations in Sudan against the jurisdiction of the ICC, and the situation in Sudan has become more chaotic [7]. Instead of bringing justice to Darfur, the actions of the ICC have made peace in Sudan increasingly elusive. The contradiction between peace and justice has not been alleviated to a certain extent, but has been intensified.

4.1.2. Analysis of Specific Challenges Faced Employed in Those Cases

First, the arrest warrant sets a bad precedent that could expose many countries that are not party to the Rome Statute to the fear of becoming the next target of persecution [8].

Secondly, the peace process between the Sudan and Darfur has been significantly affected. First, the arrest warrant is just one of many measures that some Western countries have taken against Sudan. Second, rebel groups in Sudan's Darfur region may be stimulated by arrest warrants to commit more radical acts.

4.2. Strategies for Harmonizing Peace and Justice

4.2.1. Collaboration: Uphold the Principle of Global Justice

The core of the judicial value of the ICC is to realize the justice of the international community, and the realization of justice is the value goal of the ICC. Rawls believes that society is a union of people. In collective life, people accept the constraints of common life. In social life, there are both consistent interests and conflicting interests. The same is true of the international community.

The principle of global justice means that the international community of all countries, international organizations, etc. should accept common international constraints when acting in the international community. Inevitably, this will benefit some countries or hurt others, but without a basic, common international constraint that allows countries to compete for interests at will, on the surface, some powerful countries may gain more benefits than under international constraints.

However, from the perspective of the international community as a whole, the damage suffered by the world is far greater than the damage under international constraints. The principle of global justice is such an international constraint. If every country can stand at the height of global justice in international exchanges and sacrifice self-justice as a way to obtain global justice, then the international community will become safe, orderly and just.

4.2.2. Conflict Prevention: Improve the ICC's Case Acceptance Mechanism

"Article 17 of the Rome Statute provides for the admissibility of cases, so that there is a basis for subsequent acceptance of submissions". However, the provisions of the statute are still to be perfected, and its standards are not clear in the specific operation process.

Although the Rome Statute provides three ways to submit cases, it still cannot meet the needs of judicial practice. Because there are cases where countries do not submit because they fear that their domestic judicial sovereignty will be undermined, or because of political considerations [9]. If the subject who has the right to submit cannot exercise the right to submit in time, the rights of the victim will not be effectively protected. In addition, there are cases where victims abuse judicial resources.

Therefore, in the process of implementing the Statute, ICC should pay attention to the true validity of the evidence collected or submitted by the country concerned, as well as the legality of the process of obtaining evidence. Therefore, only by ensuring the objective truth of the evidence can the interests of the international community be effectively safeguarded.

4.2.3. Adjustment of Jurisdiction: Broaden the Scope of ICC Jurisdiction

There are some restrictions on the types of crimes that the ICC may prosecute under the Rome Statute. Because Genocide, crimes against humanity, war crimes, and acts of aggression are the four categories of crimes for which the ICC has jurisdiction, as stated in Article 5 of the Rome Statute.

With the development of the international society, economy and culture, various new types of crimes have emerged in an endless stream. For example, in recent years, with the development of

economy and high technology, transnational financial fraud, illegal manufacturing of biological and chemical weapons and a series of criminal acts that endanger human life and property safety.

The law has a certain lag, and the law has lagged behind the development of society from the beginning of its birth, and it has been more than ten years since the signing of the Rome Statute. During this period, both the type and the number of serious crimes subject to jurisdiction have increased. The original jurisdiction can no longer meet the scope and intensity of the fight against serious criminal offences.

If the ICC still insist on limiting the jurisdictional crimes to the original four crimes, it will allow many more serious and harmful crimes than the above crimes to escape the punishment of the law [10]. It will also continue to expand the scope and number of groups that are not protected by law. It was therefore necessary to keep pace with the development of society and to bring under jurisdiction serious crimes that should be combated.

5. Conclusion

As legitimate subjects in the international community, sovereign states should strive to solve various contradictions and conflicts in domestic society, especially deep-seated problems, so as to fully realize and develop human rights in domestic society. Only on this basis can the long-term peace and stability of the national society be achieved and the rule of law civilization and order of the international community be continuously promoted and developed.

Under the simple concept of sovereignty, the traditional sovereign independence issues such as sovereign interference mainly rely on direct military coercive means, while the national sovereignty issues based on the realization and development of human rights cannot be solved by force. What it needs is the joint efforts and comprehensive governance of sovereign states and the international community.

Therefore, only with a full understanding of the true functional significance and role of the protection and development of human rights for international peace and sovereignty can the responsibility of sovereignty as protection be properly defined and realized. Therefore, when the ICC can take into account the relationship between state sovereignty and human rights in the exercise of jurisdiction, it can truly realize the sovereignty and independence of states and build a good international legal order on the basis of the universal realization and development of human rights.

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