



A Study on the Jurisdiction of the International Criminal Court

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Abstract

The establishment of the International Criminal Court, on the one hand to promote the development of international criminal trial work, on the other hand, also on the serious harm to human crimes to crack down on the world has brought a huge impact, to maintain the peace and security of the international community for the purpose. However, as a new affair, the International Criminal Court also faces a series of development problems that need to be solved urgently. Under this background, this paper starts with the jurisdiction of the International Criminal Court, discusses the emergence of the International Criminal Court, the scope of jurisdiction, the challenges and opportunities it faces in the current development process, and gives corresponding suggestions on its improvement.

Keywords: *International Criminal Court; Jurisdiction; Crime; Rome Statute; Human Crimes; Security; International Community*

Introduction

The 20th century was the most war-prone century in human history. About 80 million people were killed in the two world wars. Although the third World War did not break out, there were more than 100 armed conflicts around the world, which were no less deadly and brutal than the First World War. Thus, the International Criminal Court was born in accordance with history. The birth of the International Criminal Court has brought great influence to the world, and the jurisdiction of the International Criminal Court mainly covers certain types of crimes, including genocide, crimes against humanity, war crimes and crimes of aggression. However, the jurisdiction of the International Criminal Court is subject to subjective limitations, and only when the nationality of the accused or the country where the crime was committed is a State party to the Rome Statute or a State that has declared its acceptance of the jurisdiction of the International Criminal Court, the International Criminal Court will exercise supplementary jurisdiction over this type of crime. There is also the case of the Security Council, in which case the International Criminal Court would have jurisdiction. Thus, the birth of the International Criminal Court offers hope that the human rights abuses of the past will no longer go unpunished, and that such crimes will be prevented.

The Main Part

1. Overview of the International Criminal Court (ICC)

The historical evolution of the International Criminal Court. Two major military courts were established after World War II. In the 20th century, two world wars broke out, objectively promoting the rapid development of international criminal justice institutions. The Peace Treaty of Versailles was formally adopted by the Paris Peace Conference after the end of the World War I in 1919, which stipulated the establishment of military courts to punish the main responsible individuals in the war. The relevant provisions of the Treaty of Versailles laid the foundation for the subsequent investigation of individual criminal responsibility.

After the World War II, the Allies set up two international military tribunals, Nuremberg and the Far East, to try war criminals. As for the Nuremberg International Court of Justice, Britain, the United States, France and the Soviet Union jointly signed the London Agreement on the Prosecution and Punishment of the Major War Criminals of the European Axis powers in London on August 8, 1945. The Nuremberg International Military Court was formally established in accordance with the agreement. The Nuremberg Court mainly has jurisdiction over two types of individuals: individuals and criminal organizations and groups. According to the provisions of the Nuremberg Charter, the Nuremberg Court has jurisdiction over crimes including: crimes against peace; war crimes; crimes against humanity. The Nuremberg Court, as a new way of trying war criminals after World War II, has also had some unsatisfactory aspects that have been questioned. The main viewpoints are: firstly, the Nuremberg Court is not an international court, but a court of allies; secondly, the Allies effectively occupied Germany, making the courts more like domestic courts; thirdly, the judges of the Nuremberg Court are appointed by the victor themselves; fourthly, the court applies *ex post facto* law; fifthly, all the individuals being tried are Germans, and war criminals from the Allied Powers are not subject to trial. Although the Nuremberg Court has received different criticisms, it has provided theoretical support, trial models, and practical experience for the future birth of the International Criminal Court. Compared with the Nuremberg Court, the Far East International Criminal Court has the following characteristics: firstly, the Far East International Criminal Court was established by authorizing the Supreme Command of the Far East Allied Forces based on a series of documents; secondly, the wording of some charges by the Far East International Criminal Court is different from that of the Nuremberg Court; thirdly, the attitude of the Far East International Criminal Court towards criminal organizations is different from that of Nuremberg; fourth, the Far East Criminal Court did not make a Trial *in absentia* for any defendant; fifthly, the judges of the Tokyo Court have inconsistent opinions on the judgment. Finally, the Tokyo court is more susceptible to external interference.

Therefore, the establishment of the two major military courts had a profound impact on the subsequent establishment of the International Criminal Court and also provided reference and guidance for its establishment.

The establishment of two major criminal courts. The establishment of the Criminal Tribunal for the Former Yugoslavia was under certain background conditions, because the fighting in the former Yugoslavia affected international peace and security. The Security Council requested the parties to the conflict to stop violating International humanitarian law, and decided to establish an international criminal court to try the criminals who violated International humanitarian law in the former Yugoslavia. The court is located in The Hague and consists of a Chamber, Prosecutor, and Registry. This form of criminal court is unprecedented, and attempts have been made to maintain international peace and security through the use of the International Criminal Court, which has led to the full development of international criminal law. The experience gained has also to some extent promoted the establishment of the International Criminal Court.

The establishment period of the Criminal Tribunal for Rwanda is basically the same as that of the Criminal Tribunal for the Former Yugoslavia. It was also established in response to the humanitarian crisis. Its task is to prosecute and try those responsible for the genocide committed in Rwanda in 1994 and other serious violations of International humanitarian law, as well as Rwandan citizens responsible for genocide and other such atrocities committed in neighboring countries.

The International Criminal Court (ICC). Whether it is the establishment of international military courts or international criminal courts, they play a pioneering or regional role. If criminal trials are to play a role on a global scale, it must be the International Criminal Court. The idea of establishing the International Criminal Court was budding before World War I, but due to the radical innovative ideas in the historical context at that time, it was not taken seriously. Between the two world wars, the academic community made certain efforts to promote the establishment of the International Criminal Court. Next is the United Nations, which, shortly after its establishment, began to form the International Criminal Court and achieved some results. It drafted the Draft Statute of the International Criminal Court, clarified the definition of aggression, established the Preparatory Committee for the International Criminal Court, and adopted the Rome Statute. Currently, the Rome Statute has over 120 contracting parties. The organizational structure of the International Criminal Court includes the Presidency, the aforementioned chambers, trial chambers, pre-trial chambers, the Office of the Prosecutor, and the Registry. According to the provisions of the Rome Statute, judges, prosecutors and other relevant staff members are required to take an oath and perform their duties in accordance with the law before taking office. The emergence of the International Criminal Court is a milestone event in the history of international criminal law, taking a significant step towards the realization of noble ideals by the international community.

Jurisdiction of the International Criminal Court. Characteristics of the jurisdiction of the International Criminal Court. Compared to national criminal jurisdiction, the jurisdiction of the International Criminal Court mainly has the following characteristics: first, the exercise of the jurisdiction of the International Criminal Court needs to comply with specific conditions. According to many mathematicians, the jurisdiction of the International Criminal Court is a supplementary form of international criminal jurisdiction. This indicates that if a country's domestic courts are unable to exercise national jurisdiction and actively request supplementary jurisdiction from the International Criminal Court; second, the International Criminal Court can only exercise jurisdiction over specific matters. Compared to the criminal jurisdiction of a country, the International Criminal Court can only exercise jurisdiction over crimes specified in the Rome Statute, with extremely limited scope; third, the exercise of jurisdiction by the International Criminal Court requires the express consent of the countries concerned. Usually, a country becoming a party to the Rome Statute is considered to have accepted the jurisdiction of the International Criminal Court. However, there are suspicions hidden in the relevant provisions of the Rome Statute regarding the creation of obligations by third countries, which has led some countries to have doubts and refuse to become parties to the Rome Statute. In addition, as a legacy of history, it involves the Crime of aggression. So far, few States parties have accepted or ratified the Crime of aggression, so it can only exercise jurisdiction within the scope of the accepting or ratifying States.

Objects under the jurisdiction of the International Criminal Court. According to the Rome Statute, the crimes under the jurisdiction of the International Criminal Court include genocide, crimes against humanity, war crimes and Crime of aggression. Firstly, regarding the crime of genocide, Article 6 of the Rome Statute stipulates that genocide refers to acts committed intentionally and resulting in the partial or total extinction of a specific ethnic, racial, ethnic or religious group. Secondly, regarding crimes against humanity, according to Article 7 (1) of the Rome Statute, crimes against humanity refer to acts of murder, extermination, slavery, expulsion, etc. committed as part of an attack, knowing that the attack was widely or systematically targeting the civilian population. As for war crimes, article 8 of the Rome Statute stipulates war crimes in international armed conflict. Finally, the Crime of aggression is not defined in the Rome Statute.

2. The development and dilemma of the International Criminal Court

The development of the International Criminal Court. Increase in the number of members of the International Criminal Court. As of October 6, 2015, 134 countries worldwide have signed and 123 countries have ratified the Rome Statute, including 34 African countries, 28 Latin American countries, and 19 Asia Pacific countries. Among the member countries of the Rome Statute, most common law countries have established their domestic laws.

Different countries have varying attitudes towards the International Criminal Court: European countries have a positive support attitude towards the Court; Latin American countries hold a positive attitude towards the International Criminal Court; many Asian countries hold a skeptical attitude towards the International Criminal Court; although many African countries have promoted the establishment of the International Criminal Court, after its formal establishment, most of its jurisdictional acts and objects of jurisdiction has been directed towards African countries, causing some African countries to feel discouraged and extremely indifferent towards the International Criminal Court.

Progress made in the International Criminal Court system. The International Criminal Court has relevant institutions, each of which sets relevant internal regulations to provide theoretical guidance for the operation of the Court. The International Criminal Court's system of allowing victims to participate in litigation and victim compensation is also a new attempt.

Continuously improving the legislation of the International Criminal Court. First, the Amendment to the Crime of aggression was adopted, which defined the definition of the Crime of aggression, the conditions for the jurisdiction of the courts, the scope of the jurisdiction of the courts over Crime of aggression cases, and the conditions for the application and effectiveness of the law on the Crime of aggression; secondly, the relevant conditions for war crimes have been passed, including crimes related to weapons used in non-international armed conflicts as war crimes.

The dilemma faced by the International Criminal Court. Currently, the International Criminal Court system and related legal provisions have been developed and improved to some extent, but they also face some difficulties. The impartiality of the jurisdiction of the International Criminal Court is being questioned. The International Criminal Court has more than 100 contracting countries, but there are no major powers such as China, the United States, Russia, or India. Although African countries were once active promoters of the International Criminal Court, some African countries have successively withdrawn from the Rome Statute. The main reason is that the International Criminal Court interferes in its internal affairs, lacks sufficient respect for the judicial sovereignty of African countries, and violates the Diplomatic immunity of African leaders. Since its establishment, over two-thirds of the cases under the jurisdiction of the International Criminal Court have come from African countries and have been questioned as tools of Western colonialism, leading to doubts about its impartiality;

The scope of the jurisdiction of the International Criminal Court is limited. The establishment of the International Criminal Court is based on the concept of maintaining universal jurisdiction, while Asian countries adhere to the basic principle of non-interference in their internal affairs, which conflicts with the principle of universality followed by the International Criminal Court. In practice, the International Criminal Court has the least number of participating countries in the Asian region. Based on the previous text, it can be understood that major powers, including the United States, China, and others, have not accepted the jurisdiction of the International Criminal Court. From the perspective of reasons, the United States opposes the principle that the International Criminal Court has jurisdiction over citizens of contracting states, while also resisting this behavior. China is wary of whether the International Criminal Court will become a tool for interfering in the internal affairs of other countries, and emphasizes the need to consider joining the International Criminal Court by adding the principles of complementarity and national unity. Therefore, the "non-participation" of China, the United States, India, Russia, as well as ASEAN and Asian countries greatly limits the jurisdiction of the International Criminal Court.

Difficulties in enforcing the jurisdiction of the International Criminal Court. At present, the International Criminal Court is actually just an international organization formed through mutual communication and compromise among countries around the world, without its own sovereignty, therefore there is no mandatory guarantee for the enforcement of its criminal effective judgments. So, when the International Criminal Court makes judgments against contracting parties, it relies on their execution and cooperation. Once there is no cooperation from the contracting parties, all judgments made by the International Criminal Court will have no meaning, thus affecting the authority of the International Criminal Court.

3. The suggestions on improving the jurisdiction rules of the International Criminal Court

At present, the International Criminal Court is facing multiple challenges and accusations in its specific operation, which requires it to actively improve and undergo a certain degree of reform.

Weakening the initiation of the jurisdiction of the International Criminal Court. The International Criminal Court needs to exercise its jurisdiction in accordance with the provisions of the Rome Statute, which to some extent limits its ability to play its intended role when established. The International Criminal Court should conduct judicial activities on the basis of respecting national sovereignty. On the premise of respecting national sovereignty, the Rome Statute should adjust its content to reduce the limitations on the jurisdiction of the International Criminal Court, so that its jurisdictional function can be fully utilized.

The Rome Statute stipulates three ways to activate the jurisdiction of the International Criminal Court, but in practice, these three ways still cannot meet the current reality. Many countries are concerned about the damage to their domestic judicial sovereignty after submission, or based on political considerations. This will result in the victim's rights not being guaranteed.

Expanding the jurisdiction of the International Criminal Court. The International Criminal Court has jurisdiction over four crimes, namely, genocide, crimes against humanity, war crimes and Crime of aggression. However, with the development of the international community, new types of international crimes seriously endangering society have increased, resulting in the limitations of the law. The scope of jurisdiction and the intensity of combat stipulated in the Rome Statute cannot meet the current actual needs. For serious crimes beyond its jurisdiction, the International Criminal Court can exercise jurisdiction in accordance with relevant initiation procedures, providing a safe and suitable environment for human survival for all humanity, and further maintaining world peace and development.

Improving the operability of the International Criminal Court. The Rome Statute is the core basis for the exercise of the jurisdiction of the International Criminal Court, but its formulation lacks operability, such as the allocation of the burden of proof. Especially in the process of obtaining evidence, attention should be paid to the legality and objectivity of the evidence. Although the jurisdiction of the case lies with the International Criminal Court, the prosecutor of the International Criminal Court is required to maintain an objective and neutral attitude in the process of providing evidence, in order to safeguard the interests of the international community. At the same time, sovereign countries are required to actively cooperate with the International Criminal Court, in order to achieve the goal of combating serious crimes and fully safeguard the authority of the International Criminal Court. In the process of confirming and exercising the jurisdiction of the International Criminal Court, it is necessary to fully consider the common interests of the international community and various countries, clarify the premise and key to applying supplementary jurisdiction is the transfer of judicial power, explore the current shortcomings and make improvements, in order to achieve effective improvement of the functions of the International Criminal Court. Under the background of the rapid development of artificial intelligence and big data information technology, the International Criminal Court also needs to keep pace with the times, research and discuss new major crimes, and bring them into the jurisdiction of the International Criminal Court.

Conclusion

The establishment of the International Criminal Court has added a “safety valve” to world peace and security, which is a “safety valve” to punish serious international crimes by judicial means. However, as an emerging legal thing, it will certainly encounter setbacks on the way forward, which is the basic law of the development of things. Since its establishment, the International Criminal Court has been constantly challenged by sovereign states, which has led to the non-cooperation of relevant countries in the implementation of the court. Therefore, the International Criminal Court needs to further improve the relevant system to address the concerns of countries that have not joined the International Criminal Court and allow more countries to join it. We have to admit that as the international community moves towards the rule of law, the rule of law of the International Criminal Court must be the trend of The Times. All countries should adopt an open and confident attitude towards the ICC and create more favorable conditions for joining the court.

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