



The Conflict Between the Principle of State Sovereignty and the Enforcement of International Criminal Court Judgments

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Abstract

The conflict between the principle of state sovereignty and the enforcement of International Criminal Court (ICC) judgments arises when states perceive that the implementation of these judgments harms their sovereignty or diminishes their power and jurisdiction. Although in the 19th century, states voluntarily granted the Court jurisdiction to prosecute international crimes to establish international order, security, and peace in their relations, some countries consider the enforcement of ICC judgments to be contrary to their interests and thus do not implement them. Therefore, examining the conflict between the principle of state sovereignty and the enforcement of the Court's judgments is crucial in the international arena. Ensuring international order and security necessitates research on such a topic. The objective of this research is to identify the interveners in international order concerning the enforcement of the Court's judgments, in order to determine their conflict or interaction with the enforcement of ICC judgments. The present study, by examining the principles of state sovereignty and the jurisdiction of the International Criminal Court, employs a descriptive-analytical method and utilizes library and internet resources to answer the question of whether the enforcement of the Court's judgments conflicts with the principle of state sovereignty. The research findings indicate that the enforcement of the Court's judgments is not only not contrary to state sovereignty but is also essential for respecting human rights and maintaining international order. States that do not act in accordance with the Statute and judgments of the Court do so due to their pursuit of power, economic interests, and the preservation of their political ideologies in interactions with other countries.

Keywords: *Sovereignty; State, Court; Non-conflict; Complementary jurisdiction; Jurisdiction*

Introduction

The profound transformations of the 20th century, profoundly influenced by the international legal order, have fundamentally challenged the foundational principles of state sovereignty, precipitating significant shifts in national structures and international relations. Today, to ensure international order and security, states have voluntarily assumed obligations based on their consent and have established enforceable norms to guarantee the execution of these commitments, norms alterable solely through mutual agreement of states. This self-imposed limitation by states underscores the supremacy of international order over domestic order, demonstrating how national sovereignty is circumscribed by international law. The objective of these limitations is to secure international order, security, and peace (Mafi, 2015: 117; Naghibi-Mofrad, Sharifi-Tarazkouhi, 2010: 25).

The adjudication of international crimes constitutes a pivotal issue within international law. This area imposes obligations on states, extending even beyond national borders and governmental frameworks, through distinct institutional structures and enforcement mechanisms. The extensive incidents and developments arising from international crimes in the 19th century were, to a certain extent, suppressed by the establishment of international tribunals. Consequently, heads of state resolved to create a permanent court to prevent the recurrence of international crimes and specific offenses such as genocide, crimes against humanity, war crimes, and crimes of aggression. Furthermore, they aimed to advance the cause of criminal justice and prosecute international criminals globally. This imperative stems from the demands of human rights and the establishment of international peace and security, which necessitate that no criminal, even on an international scale, remain unpunished, and that they be pursued by legal systems worldwide, including international law. (Soleimanzadeh, 2016: 13).

To this end, the international community must forge a regulated, empowered, efficient, and well-equipped legal system. Following the commission of egregious human rights violations globally, the existence of an independent and impartial international court, capable of ensuring international order and security, has become a shared objective of all states. It was with this aim that the Statute of the International Criminal Court (ICC) entered into force in 2000, establishing the ICC as a crucial judicial institution within the international legal system, mandated to prosecute grave international crimes. Although the ICC has contributed to the suppression of international crimes, in certain instances, its judgments are not enforced by non-member states, and at times, even by member states.

Given that the maintenance of international order and security is considered a fundamental principle for preserving global peace and security, and for preventing the recurrence of similar atrocities, an examination of the tension between the principle of state sovereignty and the enforcement of ICC judgments is of paramount importance. The preservation of international peace and the establishment of justice on the international stage necessitate that states, in concert with the ICC, suppress heinous and inhumane crimes. Far from viewing the enforcement of ICC judgments as an infringement upon their sovereignty, states should embrace the ICC, as an international institution, taking responsibility for the administration of justice in situations where national courts are unable to address international crimes, thereby strengthening the international legal system. This demonstrates respect for other states and their sovereignty (Seyyedzadeh Sani, Gholami, 2020: 173).

While several scholars in the field of international law have conducted research on the principle of state sovereignty, the jurisdiction of states in prosecuting international crimes, and the jurisdiction of the International Criminal Court, no specific research has been undertaken on the subject of the present inquiry, which directly examines the principle of state sovereignty in conjunction with the enforcement of ICC judgments. However, by way of tangential analysis, two distinct researchers have offered insights in this domain. Seyyed Saeed Ahmadi et al., in an article titled "The Necessity of Revisiting the Principle of Non-Intervention in Light of Emerging Human Rights Norms," address the imperative of re-evaluating the concept of "the principle of non-intervention" and its compatibility with nascent human rights norms. Similarly, Morteza Akbari-Layemi, in an article titled "The Implementation of the Right to Self-

Determination: The Conflict Between Human Rights and State Sovereignty," analyzes the right of states to self-determination, positing that with the advent of human rights concepts, the absolute nature of the right to self-determination has been tempered. Although the aforementioned studies have approached the principle of state sovereignty from various perspectives, often characterizing interventions as a form of infringement upon state sovereignty, in most cases, such interventions have not been perceived as violations of the principle of sovereignty. Rather, they have been presented as an evolution in the concept and understanding of this principle. In the context of enforcing ICC judgments, contrary to popular belief, such enforcement does not violate state sovereignty; instead, it frames it within the evolution, development, peace preservation, and human rights considerations of the concept of sovereignty.

Accordingly, the objectives of this research are to analyze the existing tensions, present a novel concept of state sovereignty and its relationship with the enforcement of ICC judgments, and elucidate the Court's role in securing international order, peace, and security. The primary question is whether the enforcement of ICC judgments conflicts with the principle of state sovereignty. This research, formulated using a descriptive-analytical method and drawing upon library and internet resources, indicates that the enforcement of ICC judgments is not only not contrary to state sovereignty but is essential for upholding human rights and maintaining international order. In instances where states fail to prosecute crimes falling under Article 5 of the Court's Statute or lack the capacity to do so, the International Criminal Court intervenes to prevent injustice and ensure human rights. While the Court's intervention may appear to contradict domestic state sovereignty, it fundamentally seeks to protect the sovereignty of victimized states and establish a legal framework for the administration of justice. In this regard, the enforcement of Court judgments should not be considered a violation of sovereignty; rather, it should be viewed as a global instrument for strengthening order and realizing human rights at the international level. The non-compliance of states with the Statute and judgments of the Court often stems from their pursuit of power, economic interests, and the preservation of political ideologies in their interactions with other countries. Consequently, this study can lead to a better understanding of the balance between national sovereignty and international obligations, demonstrating that in today's world, international cooperation and respect for human rights must take precedence, even when they might appear to pose a threat to national sovereignty.

1. The Principle of State Sovereignty

The recognition and enforcement of foreign judgments in both international and national law have long been subjects of considerable debate and have undergone numerous historical transformations. In the late Middle Ages, a unified and integrated legal system in Europe, particularly in continental countries, facilitated the liberal recognition of foreign judgments. However, with the emergence of the idea of sovereignty, the belief arose that accepting foreign judgments could be perceived as a limitation on national sovereignty (Maghsoudi-Pashaki, 2022: 222). King Louis XIII's imperial edict in France, famously known as the Edict of Michau (enacted 1629), clearly illustrates this shift in approach. With the promulgation of this edict, all effects of judgments rendered by foreign countries were nullified, and this approach was gradually adopted by other European nations (Michaels, 2009: 2-9). Consequently, various countries today face significant challenges regarding the recognition and acceptance of foreign judgments.

These challenges stem from multiple factors, including the inability of countries to establish a unified definition of justice, the risk of accepting foreign rulings without oversight from the domestic judicial system, and issues related to the power dynamics and displays of force by certain states. It is generally accepted that no judgment from one country's court can be automatically enforced in another country, a reality that has underscored the need for an independent and credible institution to review and confirm foreign judgments (Childress III, 2010: 13). In ensuring this international order, each state endeavors to exercise its sovereignty within its territorial, aerial, and maritime domains. This independent sovereignty prevents countries from applying each other's laws within their own territories, as such an action could compromise their independence and sovereignty.

In recent years, the concept of international comity has been incorporated into legal literature and judicial practice. This concept emphasizes the recognition of and respect for the judicial decisions of foreign systems, potentially playing a positive role in fostering constructive relations among states. In this regard, states' adherence to the judgments of the International Criminal Court as a credible decision-making body is considered one way to strengthen sovereignty and international order. In summary, the recognition and enforcement of foreign judgments remain a challenging issue that necessitates a balance between national sovereignty and international cooperation to uphold global order and justice.

1.1. Territorial Jurisdiction

Territorial jurisdiction is one of the most fundamental and longstanding principles in determining domestic criminal jurisdiction. Based on this principle, a state's authority to prosecute and adjudicate a crime is determined by the location where all or part of the offense occurred (Mirmohammad Sadeghi, 2022: 23). The right to sovereignty and independence of each country dictates that other countries refrain from interfering in their internal affairs (Farajihaha, Aghaei, 2012: 70). States exercise their authority and sovereignty through territorial jurisdiction, preventing any foreign state from intervening in their domestic matters. For this reason, to preserve the sovereignty and authority of states, the Rome Statute of the International Criminal Court prioritizes the prosecution of international crimes by the state in whose territory the crime occurred or by the state whose national committed the crime.¹

The advantages of this principle over others include the ease and higher quality of gathering and examining evidence, indications, and circumstantial evidence pertinent to each crime. This process also aims to ensure that punishment serves as a deterrent and to reinforce the authority and sovereignty of states (Mirmohammad Sadeghi, 2022: 23).

1.2. Personal Jurisdiction

States, in order to consolidate their authority and sovereignty, deem themselves competent to adjudicate crimes in which their nationals are involved. Some European countries believe that the connection between a state and its nationals is so robust that these countries can prosecute their nationals for crimes committed in any territory, provided that the act committed is considered a crime both in the country where it occurred and in the national's home country (Mirmohammad Sadeghi, 2022: 23). Personal jurisdiction can be applied in two ways: positive personal jurisdiction, where a national of a country commits a criminal act outside the borders of their own country, meaning the state of nationality can prosecute them for the offense; and negative personal jurisdiction, where a national of a country is the victim of a criminal act outside their home country, allowing the state to take necessary measures to protect their rights.

These two types of personal jurisdiction enable states to actively protect their nationals and ensure that justice is served for them. A detailed discussion of each of these concepts requires a separate opportunity.

1.3. Protective Jurisdiction

According to this principle, if a state is harmed by the commission of a crime outside its borders, it may prosecute the perpetrator in its own courts. This includes moral damages that may harm the sovereignty and reputation of that state (Mirmohammad Sadeghi, 2021: 72). In this type of jurisdiction, the crucial point is the harm inflicted upon the state, irrespective of whether the perpetrator is a national of that state or a foreign national. In other words, this principle is applied when the interests of the

¹ . Article 1, Rome Statute of the International Criminal Court: "...This Court shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions..."

country have been affected and the country has suffered damage due to abnormal conduct. This mechanism enables states to effectively protect their rights and interests against external threats.

1.4. Universal Jurisdiction

Universal jurisdiction is an exceptional and specific right in domestic criminal law, under which all countries can prosecute and try criminals within their territory, regardless of where the crime occurred or the nationality of the perpetrator or victim. This principle is based on the premise that certain crimes are considered so heinous and intolerable by the international community that their perpetrators are deemed enemies of all nations (Mirmohammad Sadeghi, 2022: 23).

Consequently, a state that finds criminals within its territory can prosecute and punish them. This approach enables states to take action against abnormal conduct and international crimes, particularly those such as war crimes, genocide, and terrorism, in order to maintain security and justice. Given the importance and severity of these types of offenses, states have incorporated the principle of universal jurisdiction into their domestic laws to effectively defend human rights and the security of the international community.

2. Modes of Exercising the Court's Jurisdiction in Prosecuting Crimes

The International Criminal Court (ICC), in light of its objectives and foundational principles, possesses a set of jurisdictions upon which its rules and judgments must be applied to Member States and also to situations referred by the Security Council. The overarching and fundamental goal of the Court is to combat grave international crimes, the occurrence of which on the international level threatens global peace and security. Combating international criminal phenomena through traditional principles found in domestic courts, such as the principle of territorial jurisdiction, jurisdiction based on the nationality of the perpetrator or victim, and protective jurisdiction, is not always feasible. In certain instances, the existing conditions and impediments in applying these principles lead to limitations for states in prosecuting international crimes. Specifically, if the perpetrators of these crimes hold governmental positions, they may benefit from particular protections; or if the crime occurred in the territory of one country, and its perpetrators are nationals of another. Furthermore, if the crime was committed against their fundamental interests, traditional principles of combating criminal phenomena will also prove ineffective in these cases and incapable of addressing humanity's need to prevent impunity for individuals whose actions are committed against the entire human community, which means that criminals have not received their just deserts (Tahmasbi, 2016: 43).

With the advancement of human rights doctrines and the proliferation of international crimes, this lacuna became palpable in the international community. Various countries, aiming to combat international crimes, deemed it necessary to identify and confront those who violate the common interests of humanity. On the other hand, adherence to the principle of sovereignty prevented the formation of a common, supranational judicial authority, directing the attention of states toward national courts. In this regard, recourse to the principle of universal jurisdiction² and the principle of international jurisdiction³ gained prominence as appropriate solutions for prosecuting international crimes.

After extensive deliberation and multilateral discussions over many years, the International Criminal Court was finally adopted in 1998 and entered into force in 2002. The Court possesses jurisdiction to prosecute international crimes such as genocide, crimes against humanity, war crimes, and crimes of aggression, which are considered among the most serious crimes on the international stage. The jurisdiction of the International Criminal Court has been defined with a precision surpassing that of ad hoc international criminal tribunals, as the Court is not a special judicial body and, consequently, its

² . Universal jurisdiction refers to the extension of criminal law enforcement jurisdiction to international crimes.

³ . Refers to the voluntary agreement of Member States based on a treaty, granting jurisdiction over specific crimes to the designated court.

jurisdiction is not bound by specific geographical or temporal limitations (Roubeau, 2020: 744). Member States desired that this jurisdiction be defined in such a way as to be acceptable and enforceable. In this vein, the Rome Statute of the International Criminal Court, taking into account international conditions and circumstances, has defined several types of jurisdiction for the Court.

2.1. Subject-Matter Jurisdiction

As initially envisioned in the draft of the International Criminal Court, the Court was intended to have jurisdiction over all international crimes arising from treaties and conventions. For this purpose, state representatives had considered a general and comprehensive jurisdiction. However, the differing viewpoints evident at the Rome Conference limited the opportunity for comprehensive discussions on all international crimes. Ultimately, the final decision was to rely on the quantum satis (sufficient quantity) and merely enumerate customary international crimes as important subject matters under the Court's jurisdiction, while foregoing crimes originating from treaties (Beigzadeh, 1996: 66).

Therefore, with the adoption of the aforementioned Statute, the International Criminal Court has jurisdiction over four major international crimes. These crimes include genocide, crimes against humanity, war crimes, and the crime of aggression, which are considered among the most serious crimes. Currently, the Court primarily deals with the first three crimes. Regarding the crime of aggression, the Court will exercise jurisdiction only when provisions relating to it, including its definition and the conditions under which the Court shall exercise jurisdiction with respect to this crime, have been adopted in accordance with Articles 121 and 123 of the Statute of the Court. What is necessary is that these provisions must be consistent with the relevant rules of the Charter of the United Nations (Article 5, paragraph 2, of the Rome Statute of the International Criminal Court).

2.2. Territorial Jurisdiction

Territorial jurisdiction refers to the geographical area falling within the domain of a state. The purpose of the Court's territorial jurisdiction is to adjudicate all or part of the crimes committed within the territory of its Member States, such that the Court can address crimes falling within its jurisdiction in accordance with the principle of territoriality (Article 12, paragraph 2(1), of the Rome Statute of the International Criminal Court). Based on this principle, the Court limits its jurisdiction to Member States. The purpose of this limitation is to respect the sovereignty of states that have not yet acceded to the Court's membership, and the International Criminal Court cannot act against them without their consent (Roubeau, 2020: 754). It is not, however, necessary for all stages of a crime's commission to occur within the territory of a single state; a crime may commence in one state's territory and conclude in another's (Tahmasbi, 2016: 152). Therefore, in the first instance, jurisdiction over the aforementioned crimes arises from the jurisdiction of the relevant local court, and in the second instance, from the jurisdiction of the International Criminal Court.

It is noteworthy that, according to the aforementioned Statute, vessels and aircraft registered under the flag of a Member State are also considered part of the territorial domain of that same state (Article 12, paragraph 2(1), of the Rome Statute of the International Criminal Court).

2.3. Personal Jurisdiction

As the exercise of state sovereignty is not limited to territorial boundaries, and state nationals are considered one of the constituent elements of a state, it is essential to define a legal relationship between individuals and the state (Tahmasbi, 2016: 169). Accordingly, whenever individuals commit criminal acts outside the territory of their state of nationality, they are subject to punishment upon their return to their home country, provided that the committed act is recognized as a criminal act by both states.

The personal jurisdiction of the Court is considered one of the most deeply rooted bases of jurisdiction because it practically represents the continuity of states' jurisdiction. On this basis, states have

collectively delegated their right to an independent international organization (Dehimi, 2001: 22). The criminal court's jurisdiction may be determined based on the "principle of active personal jurisdiction" or the "principle of passive personal jurisdiction." The purpose of active personal jurisdiction is to prevent impunity for state nationals who commit crimes outside their territory without being prosecuted and returning to their home country. The purpose of passive personal jurisdiction is to protect the nationals of a state who have become victims of a crime committed in the territory of another state (Tahmasbi, 2016: 170-171). Since passive personal jurisdiction poses challenges, including lack of access to the crime scene, witnesses, documents, etc., the International Criminal Court's jurisdiction is predominantly based on the principle of active personal jurisdiction⁴. Through this approach, criminal justice can be better applied.

2.4. Referral by the Security Council

Some Member States, despite international crimes falling within the jurisdiction of the International Criminal Court being amenable to prosecution in domestic courts based on the principle of universal jurisdiction, advocated for the inclusion of this principle in the Court's Statute, a proposal that was accepted only in certain circumstances (Mirmohammad Sadeghi, 2021: 83). Pursuant to Article 13(b), the referral of a specific situation to the Prosecutor is made by the Security Council. The Security Council, acting under Chapter VII of the United Nations Charter, may refer to the Prosecutor a situation in which one or more of the crimes within the Court's jurisdiction appear to have been committed. In such a case, the Court acquires jurisdiction over those crimes. It is evident that in this scenario, the membership of the state where the crime occurred or the state of nationality of the accused in the Statute of the Court is not a prerequisite for the Court to exercise its jurisdiction (Tahmasbi, 2016: 124). Consequently, the International Criminal Court does not require the consent of any state to exercise its jurisdiction.

2.5. Acceptance of Jurisdiction by Declaration

Non-Member States in whose territory a crime has been committed or by whose national a crime has been committed may, pursuant to Article 13(2), by lodging a declaration with the Registrar of the Court, accept the exercise of jurisdiction by the Court with respect to that crime. In such a case, the Court may exercise jurisdiction over the prosecution of the aforementioned crimes. The existence of reciprocity is one of the methods for enforcing judicial decisions of foreign states or international bodies; thus, if reciprocity is recognized, countries will recognize and enforce their judicial decisions within their own territory. According to a legal rule, reciprocity can manifest in one of the following forms: political treaty, enactment of law by the parties, and international custom (Maghsoudi-Pashaki, 2022: 227). In this regard, states, by lodging a declaration with the Court, grant it jurisdiction over the investigation of crimes falling within the Court's purview.

3. *Examining the Conflict Between the Principle of State Sovereignty and the Enforcement of Judgments*

The principles of sovereignty and human rights are not inherently contradictory. Human rights are individual rights rooted in human needs and capabilities, enjoyed by every person by virtue of being human. Sovereignty, on the other hand, signifies supreme and paramount power exercised within a specific territory or defined area (Akbari-Layemi, 2016: 72). The crucial point is that, in light of contemporary international developments and transformations, the absolute sovereignty of states has gradually eroded, and its scope of authority and application has been limited and modified. Consequently, absolute sovereignty, which previously brooked no interference, has evolved into a relative concept. Human rights and the imperative of ensuring international order and security, by virtue of human rights

⁴ . Article 12, paragraph 2(b) of the Rome Statute of the International Criminal Court: "a State of which the person accused of the crime is a national."

instruments and states' adherence to international treaties, have led to the transfer of these rights from the domain of states' domestic jurisdiction to the international sphere.

Subsequently, the necessity of international relations and the development of human rights have profoundly transformed state sovereignty. States have committed to recognizing human rights and freedoms, as well as minority rights, thereby moderating their sovereignty. Despite the adoption of the Rome Statute of the International Criminal Court for the purpose of upholding human rights and ensuring international order and security globally, some international crimes are still occurring in certain countries.⁵ The enforcement of the Court's judgments and the provisions of its Statute are perceived by some countries as conflicting with their principle of sovereignty, leading them to exert their power over weaker states. Therefore, it is necessary to examine the reasons for the conflict between state sovereignty and the application of the regulations and judgments of the International Criminal Court.

3.1. Arguments for Upholding State Sovereignty

States maintain that sovereignty is the exclusive right of a government to oversee a specific territorial domain (Giddens, 2005: 811). Accordingly, some countries, citing principles and rules of international law, disregard the judgments of the International Criminal Court, considering their enforcement to be in opposition to their authority and sovereignty. Some of their arguments will be discussed as follows.

3.1.1. The Right to Non-Intervention

The principle of non-intervention, as one of the fundamental tenets of the international system, emphasizes the equality of states and their national sovereignty, prohibiting any state from interfering in the domestic affairs of another. This principle has deep roots in history and significant international developments, one of the most prominent being the Treaty of Westphalia in 1648. This treaty, which brought an end to the Thirty Years' War in Europe, contributed to the formation of independent states and the establishment of rules for interstate relations (Mojtahedi et al., 2023: 41), and is considered the first multilateral peace treaty in Europe (Spielvogel, 2014: 645). With the adoption of UN General Assembly Resolution 2625⁶ on October 24, 1970, this principle was solidified in its modern form. This resolution emphasizes that no state or group of states has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state, and any form of intervention, whether military or otherwise, constitutes a violation of international law (UN General Assembly Resolution 2625 (XXV), 1970). This principle, stemming from the principle of respect for state sovereignty as per Article 2, paragraph 1 of the UN Charter, is also considered a crucial and influential element in the international legal and political order (Ahmadi et al., 2021: 144).

The principle of non-intervention not only respects the national sovereignty of states but also refers to the right of self-determination of peoples. Some jurists interpret this principle as a safeguard for the domestic sphere of countries, viewing the exercise of domestic jurisdiction by states as a result of their sovereignty and freedom of action (Mirfakhriani, 2015: 24). Others consider it to be the independent exercise of legislative, executive, and judicial powers by states (Galina G, 1998: 123). However, while this principle is recognized as one of the cornerstones of international law, the practical approaches of states in this regard are highly diverse and sometimes contradictory. Particularly concerning the prosecution of international crimes, invoking the principle of non-intervention can pose challenges. Some states believe that the actions of the International Criminal Court violate the principles of national sovereignty and the equality of states, exacerbating tensions and disagreements in the international arena. In general, the principle of non-intervention, as a central tenet of the international system, emphasizes the

⁵ . One such crime can be named the crime of the Israeli fascist regime against the oppressed people of Gaza.

⁶ . This resolution was adopted without a vote on October 24, 1970.

necessity of respecting the sovereignty and rights of states, yet in practice, there are significant challenges in its interpretation and implementation.

3.1.2. Conflict with the Principle of Sovereignty

In the contemporary understanding of sovereignty, any absolute and total authority of sovereignty, particularly from the perspective of individual domination over nations and domestic interest groups, is negated. In these circumstances, it appears that what connects the concept of state sovereignty and the principle of non-intervention in the domestic sphere is a principle known as the right to self-determination (Mojtahedi et al., 2023: 43). Based on this, foreign states cannot interfere in the significant affairs of other states. The recognition and enforcement of foreign judgments are two important matters in public international law. Recognition essentially means that a foreign judgment is treated as having the same effect as it does in its country of origin, whereas the enforcement of a foreign judgment means compulsory compliance through mechanisms such as seizure of assets, detention, or any other coercive means (B. Svantesson, 2007: 53). Therefore, a court must recognize foreign judgments before enforcing them. However, it is not necessary for every foreign judgment to be recognized and enforced (Collins et al., 2008: 48). Based on the common and uniform law prevalent in Central and Western Europe in the late Middle Ages, with the exception of England and some Scandinavian countries, there was no clear distinction between domestic and foreign judgments, and foreign judgments were recognized and enforced (Maghsoudi-Pashaki, 2022: 222). With the emergence of the idea of state sovereignty, the obligation to enforce foreign judgments was rejected as an unjustified limitation on state sovereignty (Maghsoudi-Pashaki, 2022: 222).

Currently, the principle of recognition of foreign judgments is accepted in many countries, but for various reasons, including the inability of countries worldwide to establish a unified meaning of justice, accepting the validity of foreign judgments without the oversight of domestic courts has become illogical. Therefore, it is generally accepted that no judgment from one country's court can be enforced *ex proprio vigore* (by its own force) in another country (Jean-Gabriel, 1971: 14).

3.1.3. The Principle of Sovereign Equality

The principle of equality in international law is generally associated with the external aspect of state sovereignty. In other words, when speaking of the domestic sphere of sovereignty, it means that the sovereign state, within its sphere of authority, possesses an inherent power that does not derive from any other power, and there is no other power that can equal it. Nevertheless, some jurists believe that the interpretation of sovereign equality should transcend a state-centric approach. States that claim equality in the international arena shape and regulate their relations based on agreements. The similarity of their legal status and common interests lead them to implement the rules of international law out of duty and in cooperation with the international community. Therefore, the consolidation of the sovereignty and independence of various countries necessitates their consent to choose the rules by which they wish to be bound, rather than being automatically subject to them (Mafi, 2015: 122-126).

3.2. Conditions for the Application of Court Judgments

The lack of universal jurisdiction for the International Criminal Court is considered one of this institution's weaknesses (Zamani, Hosseini-Akbarnajad, 2009: 226-227). The absence of such jurisdiction can lead to the non-prosecution of perpetrators of international crimes. A number of criminals have committed egregious human rights violations in non-member states of the Court, and in this regard, the Court's jurisdiction is silent. This issue prevents the effective realization of justice in the international community and allows international criminals to remain unpunished. On the other hand, in order to comply with the provisions of the Court's Statute and to prevent conflicts with the interests and sovereignty of states, certain jurisdictions and conditions have been stipulated for the application of the Court's rules, which will be discussed below.

3.2.1. Complementarity Jurisdiction

The Court's jurisdiction over the crimes enumerated in the Statute is complementary jurisdiction. This means that the Court acts only in cases where national courts are unable or unwilling to prosecute the crimes in question (Article 17, paragraph 1(a), of the Rome Statute of the International Criminal Court). Therefore, in the first instance, it is the right and perhaps even the duty of states to exercise their criminal jurisdiction over perpetrators of international crimes⁷. The complementary nature of the Court's jurisdiction, in addition to prioritizing states in the prosecution and punishment of international crimes, is also based on the effectiveness and efficiency of proceedings (Zamani, Hosseini-Akbarnajad, 2009: 204). This implies that states, due to their greater access to evidence, documents, witnesses, and resources necessary for investigating and prosecuting international crimes, should take action in fulfilling their primary responsibility to bring perpetrators of international crimes to justice. In the event of non-prosecution or ineffective prosecution by states, the Court will act in accordance with its duties under the Statute. Furthermore, it is necessary for the Court's jurisdiction to be complementary for criminal justice to be realized, as the activities of the Court and national courts are complementary to each other (Zamani, Hosseini-Akbarnajad, 2009: 205).

Complementary jurisdiction is not explicitly defined in the Rome Statute of the International Criminal Court. However, the draft Statute submitted to the United Nations General Assembly by the International Law Commission in 1994 indicated that the Court would act as a complementary body in cases where national criminal systems were "unavailable" or "ineffective." The Preamble to the Statute emphasizes that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes" (Preamble, Rome Statute of the International Criminal Court). The concluding part of the Preamble further stresses that "the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions" (Preamble, Rome Statute of the International Criminal Court). Article 1 of the Statute merely emphasizes the complementary nature of the Court's jurisdiction, without delving into the concept of complementarity itself (Tahmasbi, 2016: 297). The principle of complementarity jurisdiction reflects the relationship between the Court and national courts, meaning that the International Criminal Court complements national courts and is subject to their actions (Salehi et al., 2019: 426). In essence, complementarity jurisdiction can be described as a filter or a gateway for accessing the International Criminal Court. Based on this, the Court's Statute recognizes the priority of national courts in prosecuting international crimes, and in case of a conflict between a state and the Court, action taken by the state will be accepted as a priority.

Complementary jurisdiction, as part of the admissibility mechanisms and procedural methods, is defined in Articles 17, 18, and 19 of the Rome Statute of the International Criminal Court. According to Article 17, if a State having jurisdiction⁸ has commenced an investigation or prosecution in a matter within the Court's jurisdiction, or has taken the necessary judicial decisions regarding it (including conviction, acquittal, or decision not to prosecute), the Court is obligated to declare the case inadmissible and refrain from accepting it (Tahmasbi, 2016: 297). Article 18, paragraph 1 and its sub-paragraphs indicate that the principle of complementarity jurisdiction is applicable to any state that has jurisdiction. Even if a country, for any reason (including territorial, personal, or universal jurisdiction), is not a member of the Statute but is willing and able to prosecute, complementarity jurisdiction also applies to it (Cassese, 2008: 439).

The principle of complementarity, according to the Statute, emphasizes the priority of "proceedings" by national courts, not merely the priority of their "jurisdiction" (Shariatbagheri, 2006: 50-51). All crimes falling under the Statute are simultaneously within the jurisdiction of both the Court and

⁷ . Currently, the punishment of perpetrators of international crimes goes beyond a mere right and privilege, as this matter is evolving into an international duty and obligation that states must fulfill. This demonstrates the process of development and evolution of international criminal law and its impact on national judicial systems. See also: (Sicilianos, 2007: 225-241).

⁸ . A situation which a State Party refers to the Court, or the Prosecutor initiates an investigation proprio motu and the Pre-Trial Chamber authorizes the criminal investigation, or the Security Council refers a situation to the Court; (Cassese, 2008: 439).

national courts; however, the priority in prosecution belongs to national courts. If these courts refuse or are unable to prosecute the crimes, the International Criminal Court is obligated to intervene. However, the main challenge related to the Court's complementary jurisdiction is the issue of concurrent jurisdiction among national courts. In cases where multiple national courts have jurisdiction over a particular crime under domestic laws or international treaties, the question arises as to which of these courts has priority. Unfortunately, the Court has not provided criteria for determining priority among these states (Tahmasbi, 2016: 298). One of the criticisms leveled against the system of concurrent jurisdiction is that the absence of criteria and prioritization leads to the selection of the most unsuitable country for the prosecution and trial of international crimes (Clipp, 2005: 165).

3.2.2. Admissibility

One of the important concepts included in the Rome Statute of the International Criminal Court alongside complementary jurisdiction, and recognized as complementing it, is "admissibility." This principle is mentioned in the Preamble and Article 17 of the Court's Statute and is defined as the acceptance of conditions for bringing a case before the International Criminal Court. The purpose of establishing this principle is to prevent conflicts between national courts and the International Criminal Court, essentially to prevent clashes between national sovereignty and international sovereignty (Saber, 2009: 174). Major powers and powerful states, concerned that the Court, as an international judicial organization with universal jurisdiction, might diminish their authority, have accepted the principle of admissibility alongside the Court's complementary jurisdiction. Thus, this principle limits the Court's jurisdiction over crimes and the manner in which they are prosecuted.

The admissibility of a case before the International Criminal Court, despite some overlap, differs from the principle of the Court's complementary jurisdiction. A situation may fall within the Court's jurisdiction but lack admissibility. In such a case, the inadmissibility will not affect the existence of the Court's jurisdiction (Mirmohammad Sadeghi, 2021: 64). The purpose of jurisdiction is the Court's ability to hear various cases in the absence of state action, which is determined based on positive complementarity jurisdiction with regard to temporal, spatial, type of crime, and the perpetrators' situation elements. In contrast, admissibility refers to the conditions and circumstances under which the International Criminal Court has the right to intervene (Salehi et al., 2019: 429-430). Jurisdiction refers to the Court's ability to examine a particular situation in which a crime has occurred, whereas admissibility involves the stage at which a specific case has been formed and the Court can decide whether to proceed with the prosecution of the said crimes. Therefore, the issue of jurisdiction has temporal priority over admissibility (Mirmohammad Sadeghi, 2021: 64). In fact, admissibility is a tool that enables the application of the principle of complementarity with respect to a specific matter (Salehi et al., 2019: 429-430).

In examining the occurrence of international crimes before the Court, it is necessary to consider the matter from two dimensions: first, the principle of the Court's complementary jurisdiction, and second, the rule of sufficient gravity of the crime, meaning that if the committed act is not of sufficient gravity, the Court will not accept it (Roubeau, 2020: 759). If none of these conditions are met, or if, in circumstances where the aforementioned criteria have been established, the Court determines that initiating preliminary investigations and prosecuting the accused would be contrary to the interests of justice, the matter is identified as inadmissible, and the investigation and prosecution are halted (Babaei et al., 2020: 90-91).

3.2.3. Non-Acceptance of Legal Persons' Responsibility

The principle of individual criminal responsibility is accepted in the Rome Statute of the International Criminal Court (Tahmasbi, 2016: 178). This principle was first recognized and implemented in international relations by virtue of the London Charter. After the establishment of the United Nations, its General Assembly, by Resolutions 95 (I) and 96 (I) on December 11, 1946, recognized the principle of

individual responsibility for international crimes. Therefore, this principle became recognized in customary international law (V. Dusko Tadic, Case No. IT-94-1-T, 2 October 1995, Para. 134). However, the acceptance of criminal responsibility for legal persons was not approved by the Member States in the Statute of the Court. During negotiations held prior to and during the Rome Diplomatic Conference, some state representatives, particularly the French delegation, emphasized the possibility of providing for criminal responsibility for legal persons (United Nations General Assembly Official Reports, U.N. Doc. A/51/22 (1996), VOL. II, p. 79). However, this proposal was ultimately rejected by the participating countries.

Member States of the Court cited two main reasons for rejecting the acceptance of the principle of criminal responsibility for legal persons. Firstly, in many national legal systems, the principle of criminal responsibility of legal persons is not accepted. Therefore, given the Court's complementary jurisdiction, it is questionable how the Court could impose criminal responsibility on legal persons. Secondly, if criminal responsibility were to be assigned to legal persons, the Court would face practical difficulties in its implementation (Tahmasbi, 2016: 179). Moreover, prosecuting both natural and legal persons would increase the Court's responsibilities, which could lead to increased costs and double the time spent. Thus, according to Article 25, paragraph 1, of the Rome Statute of the International Criminal Court, the Court has jurisdiction only over natural persons, and the criminal responsibility of legal persons is not accepted⁹. Therefore, if natural persons, acting as decision-makers or in any other way, pursue their objectives through legal persons to commit crimes within the Court's jurisdiction, they will be individually responsible, and the Court can prosecute them (Tahmasbi, 2016: 180).

The non-acceptance of the principle of criminal jurisdiction over legal persons may lead to the impunity of many international criminals. Particularly, powerful countries can easily conceal the true nature of their crimes, which has prevented the acceptance of the principle of criminal responsibility for legal persons. Therefore, it is essential that an independent international court does not disregard the criminal responsibility of legal persons in international crimes. Furthermore, the domestic legal systems of many countries have gradually accepted the criminal responsibility of legal persons, and this principle is also developing in other countries (Tahmasbi, 2016: 180-181).

3.3. Non-Acceptance of Court Judgments

Given the developments of the last three decades, in some cases, behaviors are observed where, despite no conflict with state sovereignty, court judgments have not been enforced or have been suspended. For instance, regarding the non-arrest of Omar al-Bashir by the Islamic Republic of Iran, which, despite not being a party to the Statute of the Court, declared its support for al-Bashir, the Court's judgments have not been enforced. However, concerning the non-arrest of Putin by Mongolia, a state party to the Statute and legally obliged to enforce it, we witness the disregard of the Court's judgments.

Two main reasons appear to play a key role in the non-enforcement of the Court's judgments, which states prioritize over the fulfillment of obligations arising from international treaties. This perspective can hinder the realization of international justice and weaken the international judicial system.

3.3.1. Limiting the Power of Hegemonic States

Power-seeking has historically been a primary driver of international and global conflicts. Governments and empires, upon identifying an opportunity to expand their territory, would engage in military campaigns against neighboring states. However, with the advancement of human knowledge, the elevation of civilization, and the rule of law among nations, it was assumed that expansionist and hegemonic views would disappear. Yet, reality has shown that not only have these views not vanished, but atrocities such as World Wars I and II have proven the opposite (Ja'fari, 2012: 111). Even after the

⁹ . Article 25, paragraph 1, of the Rome Statute of the International Criminal Court: "The Court shall have jurisdiction over natural persons pursuant to this Statute."

dark periods of history, expansionist and hegemonic actions persist. Powerful states continue to exert influence over medium and weak states¹⁰ and also oppose the rules and judgments of the International Criminal Court. International rules and institutions, including the Court, were established with the aim of ensuring international order, peace, and global justice. Some states and countries with superior military and economic power are unwilling to live in an international environment where binding global rules and international criminal law exist (Ferencz, 1992: 383-384). Therefore, they seek to create conditions that allow them to continue their actions and activities without any hindrance or limitation.

Some authors categorize hegemonic states into three groups:

Group One: States that seek to govern the entire world and define themselves as global leaders. These states engage in all types of domination (economic, military, scientific, cultural, etc.) across the globe. For example, the United States considers itself a superpower and global leader.

Group Two: States classified as medium-sized, seeking dominance and superiority over a specific region of the world. These states aim to control neighboring states and become the superior regional power, such as the Israeli regime, which seeks dominance over the Middle Eastern countries bordering the Mediterranean and Red Seas.

Group Three: Former federal states that have disintegrated and become independent states. Although these states have lost their former power, they are in some way seeking to establish dominance and superiority over newly independent countries, such as Russia and Serbia (Ja'fari, 2012: 112-113).

Therefore, these states, in considering the non-enforcement of the Court's judgments, evaluate it as contrary to their principle of sovereignty and, citing the principle of non-intervention, refuse to accept the Court's judgments in order to preserve their power in the region and the world.

3.3.2. Securing Economic Interests

Economic relations and the realization of associated benefits are among the most significant reasons why countries seek to maintain and strengthen their interactions. In particular, some countries prefer to prioritize their economic interests over obligations arising from international treaties. For example, an arrest warrant for Vladimir Putin, the President of Russia, was issued by the International Criminal Court on March 17, 2023. He is accused of committing war crimes and the unlawful deportation of population (children) and unlawful transfer of population (children) from occupied areas of Ukraine to Russia (Mirmohammad Sadeghi, IRNA News Agency: 2023-03-17). However, the lack of enforcement mechanisms by the Court has meant that this warrant remains in a state of suspension.

Mongolia, a state party to the Rome Statute of the International Criminal Court since 2002, during Putin's recent visit to the country, not only refrained from arresting him despite the Court's request but also proceeded to sign energy agreements with Putin (Tabnak News Agency: June 5, 2024). Many news agencies believe that Mongolia's approach was driven by the pursuit of its economic interests, as Mongolia imports significant amounts of oil and electricity from Russia annually. The spokesperson for the Mongolian government stated in this regard: "Mongolia imports 95% of its petroleum products and over 20% of its electricity from Russia. These imports are vital to ensure our existence and that of our people." He also added: "Mongolia pursues a policy of neutrality in all its diplomatic relations" (Aftab News: June 5, 2024). Thus, it is clearly evident that maintaining economic interests and relations can be more important for states than adhering to international obligations and treaties.

¹⁰ . Examples include the power-seeking of states such as the United States, Israel, and Russia.

3.3.3. Ensuring and Maintaining Diplomatic Relations and Political Ideologies

This is considered one of the main reasons for the non-enforcement of International Criminal Court judgments by some countries. Countries often refrain from enforcing these judgments to preserve their relations with other states and to secure political interests. Omar Hassan Ahmad al-Bashir, the former President of Sudan, is one of the influential figures in this context. He is accused of committing war crimes and crimes against humanity, particularly in the Darfur region. In 2003, conflicts arose due to ethnic cleansing against non-Arab individuals in this region, resulting in the killing of approximately 300,000 people and the displacement of over 2.5 million (Zamani, 2008: 14).

The United Nations Security Council, in light of this situation, referred the situation to the International Criminal Court, pursuant to Chapter VII of the UN Charter¹¹. Following investigations, the Court's Prosecutor issued arrest warrants for Omar al-Bashir in 2009 and 2010 (Zamani, 2008: 14). Meanwhile, the Islamic Republic of Iran was the first country to react in support of Omar al-Bashir, which can be attributed to Sudan's Islamic identity and the accusations against him being, in a way, influenced by political pressures. On the other hand, Western and European countries, which played a significant role in the Security Council, supported non-Arab forces and had, in a sense, formed an alliance with the Zionist regime of Israel. These ideological and political conflicts create obstacles to the enforcement of International Criminal Court judgments at the international level, demonstrating the impact of diplomatic relations on international legal actions.

4. Enforcement of International Criminal Court Judgments

The enforcement of judgments by the International Criminal Court (ICC) presents one of the institution's primary challenges. The absence of a centralized enforcement power at the international level means that the implementation of the Court's judgments and decisions relies on the good faith and cooperation of states. In other words, the cooperation and general consensus of states are key factors in implementing rules of international law and enforcing the Court's judgments (Mafi, 2015: 116). Since the inception of international criminal law thought, the issue of conflict between state sovereignty and international institutions has been raised, and this matter has gradually been incorporated into international law, particularly after the Nuremberg and Tokyo trials. In the post-Cold War era, with the increase in international interventions in various regions, this issue reached a more practical and robust stage. The drafters of the Rome Statute of the International Criminal Court had anticipated potential opposition from states and considered the right of state sovereignty as one of the possible obstacles to the administration of international justice.

The issues of universal jurisdiction and the complementary jurisdiction of the International Criminal Court are also among the important discussions raised by jurists prior to the establishment of this Court. These two types of jurisdiction are designed to complement each other in prosecuting international crimes and should not be perceived as mutually exclusive (Zamani, Hosseini-Akbarnajad, 2009: 231). The Court's complementary jurisdiction means that national courts must initially address these matters, and only if domestic courts are unable to prosecute does the International Criminal Court intervene (Saber, 2009: 174). In the Court's Statute, the principle of complementary jurisdiction is recognized in the Preamble and in Article 1, and it is emphasized in other articles such as 17, 18, and 19 that the examination of a case should first be conducted in national courts. Furthermore, in Article 12, the principle of *ne bis in idem* (double jeopardy) for a crime is recognized. Some authors believe that the International Criminal Court not only does not harm state sovereignty but operates within the framework of traditional principles and methods of international law, and in fact, does not introduce any particular novelty (Struett, 2005: 179). Therefore, the existence of effective enforcement guarantees for the Court's

¹¹ . According to Articles 39-51 of the United Nations Charter, the Security Council refers any action it determines to constitute a threat to peace, breach of peace, or act of aggression to the International Criminal Court, for the purpose of maintaining or restoring international peace and security.

judgments depends on the cooperation and good faith of states, and along this path, there are challenges and obstacles that can affect the advancement of international justice.

The fundamental question is whether members of any international community enjoy absolute freedom to infringe upon the rights of others, with the justification that individuals in forming a society can disregard laws that are inconsistent with their desires? The answer to this question is unequivocally negative (Bassiouni, 2012: 675-677). From this answer, it can be concluded that when states and sovereigns choose to live at the international level, they must adhere to the minimum rules and regulations of international law, failing which they will be deprived of the benefits of global collective life. As Theodore Roosevelt once reminded, the reaction of the civilized world to any violation of human rights provokes the wrath of the civilized world (Robertson, 2004: 544). For this reason, arguments based on the principle of non-intervention or considering the enforcement of International Criminal Court judgments as contrary to the principle of sovereignty and the equality of states are merely erroneous justifications in the realm of international relations. The *raison d'être* of the International Criminal Court is to put an end to international crimes, uphold human rights, and ensure international order and security, all of which have been approved through the voluntary membership of states and must be respected by them without spurious justifications. Furthermore, international morality also dictates that global order and security should not be undermined for the sake of autocratic and power-seeking desires. To achieve criminal justice at the international level, adherence to the provisions of the Statute and the enforcement of the International Criminal Court's judgments are essential. Kelsen correctly states: "One can only hope for the realization of the idea of international justice when the victorious and powerful states observe the law they wish to impose on the defeated states" (Kochler, 2006: 1).

The enforcement mechanisms for rules of international law must be sought in the dynamics of state relations and their solidarity in interacting with international actors. The common interests and fundamental needs of states in controlling international crimes and ensuring global order compel them to cooperate with each other to achieve shared objectives (Mafi, 2015: 119). Therefore, the existence of centralized power at the international level conflicts with the principle of state sovereignty, as Article 2, paragraph 1 of the United Nations Charter emphasizes the sovereign equality of UN Member States (Article 2, paragraph 1, UN Charter, adopted 1945). Hence, the existence of common interests and the prevention of international crimes obligates states to comply with international rules and regulations, as well as to enforce the judgments of the International Criminal Court.

Consequently, the obligation to comply with international rules and regulations and to enforce the judgments of the International Criminal Court is unavoidable, not only from a legal perspective but also from an ethical and social standpoint. States must leverage their common interests in preventing international crimes and ensuring global order by cooperating with each other. Furthermore, cooperation and solidarity among countries in confronting international challenges, particularly in the fields of human rights and criminal justice, are recognized as a necessity in the realm of international relations.

Conclusion

The discourse surrounding the International Criminal Court (ICC) and the challenges related to its jurisdiction and state sovereignty constitutes a pivotal topic within international law. The adoption of the Rome Statute in 1998 marks a key advancement in international endeavors to establish an effective mechanism for confronting international crimes. Nevertheless, this subject has been extensively debated and scrutinized, impacting various facets, including state sovereignty, the Court's jurisdiction, and the ethical and legal principles governing international relations. Pursuant to its Statute, the ICC possesses jurisdiction to adjudicate four primary international crimes: war crimes, crimes against humanity, genocide, and the crime of aggression. This jurisdiction encompasses crimes committed within the territory of State Parties or by their nationals. Furthermore, the Court can exercise jurisdiction based on a referral from the United Nations Security Council or the acceptance of jurisdiction by non-State Parties.

However, the principle of state sovereignty, along with other principles such as non-intervention and sovereign equality in international relations, engenders challenges regarding the enforcement of the Court's judgments. These principles underscore that no state shall intervene in the domestic affairs of other states. Research findings indicate that the enforcement of the Court's judgments will not conflict with state sovereignty. Instances where the Court's judgments are not executed stem from inter-state relations aimed at securing economic interests and supporting political ideologies. Nonetheless, the mechanisms of the Court can contribute to the preservation of human rights and justice at the international level, provided that these instruments are designed and implemented with due regard for national sovereignty. The recognition of the Court's complementary jurisdiction signifies that, in instances where national judicial systems are unable or unwilling to prosecute international crimes, the Court can act as a superseding authority. Conversely, the complex realities of international security and order consistently demonstrate that the International Criminal Court should be regarded as an authority transcending states, and its rules should, in certain circumstances, take precedence over the domestic laws of states. Consequently, while state sovereignty must be respected, it is imperative that international mechanisms for upholding security and justice are designed in a manner that simultaneously emphasizes sovereign realities while providing effective tools for combating international crimes.

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