

International Criminal Justice Between National Constitutions and the Rome Statute (Obstacles and Challenges)

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Abstract

The Basic Statute of the International Criminal Court represented an important change from traditional international agreements, both in terms of its subject matter and the legal discussion surrounding it. However, its prominence diminished after the Rome diplomatic conference. However, it is plausible that a multitude of concerns may have been a significant deterrent for other states to refuse to endorse this legislation. The jurisdiction of the International Criminal Court is excluded for many reasons, including constitutional amendments resulting from ratification, issues related to national law, and violations of international agreements.

According to the Rome Statute, the International Criminal Court's special jurisdiction depends on the commission of an international crime. This foundational document confers upon the court the power to decide such crimes and take legal action against those responsible for their perpetration. The determination of this jurisdiction was made in accordance with Article 5 of the Basic Statute. The scope of its application is limited to the most egregious violations that align with the collective welfare of the global community. The court has the jurisdiction to adjudicate cases pertaining to war crimes, crimes of aggression, genocide, and crimes against humanity, therefore exercising its competence in these matters. The jurisdiction of the court to decide matters pertaining to aggression is dependent on the assembly of states parties' adoption of the definition of the crime of aggression, as well as the fulfilment of the necessary conditions for the court to exercise its jurisdiction in such situations.

Keywords: obstacles- Constitutions -International society- criminal jurisdiction - constitutional rules- extradition-amnesty- bilateral- legislative adjustment- restraining

1. Introduction

The Rome Statute, like other international agreements, has the potential to generate disagreements among its signatories over its essence and meaning. Article 119 of the above-mentioned Statute explains how these problems can be solved. This includes issues related to the court's judicial duties as well as those related to the implementation and interpretation of the Basic Statute when there are disagreements between member states. However, it is important to note that possible issues may arise in situations where there is a disagreement between the jurisdiction of a court and the rules stated in its Basic Statute, as well as constitutional, legislative, and internal regulations.

The establishment of the International Criminal Court has been widely acknowledged as a significant achievement of the international community during the last decade of the twentieth century. The formation of the International Criminal Jurisdiction has been recognised as a noteworthy accomplishment by different stakeholders, including advocacy groups dedicated to advancing the rights of victims of international crimes. The main aim of their efforts is to address the problem of impunity and provide justice for those who have been victimised. The court faced many issues related to the Rome Convention on jurisdiction outside the Basic Statute, as well as its failure to adhere to constitutional principles, national law, and international treaties. The issues involving national legislation and constitutional principles, as well as those relevant to international agreements, have been previously addressed

The issue of determining levels of aggressiveness plays a pivotal role in the establishment of the social security system. To effectively maintain the goal of maintaining worldwide peace and security, it becomes imperative to provide conditions that enable the identification of the party accountable for instigating acts of violence. It is crucial to define certain conditions in order to reach consensus among the global collective that the collaborative efforts are targeting. Furthermore, it is important to build a comprehensive framework for efficiently organising the collective processes that include the observance of legal obligations. This may include the implementation of punitive measures against both nations and individuals responsible for perpetrating such actions. Despite the several endeavours made to provide a clear delineation of aggression, it is apparent that the Rome Statute is deficient in this aspect. However, it is important to note that the international community recognises the severity of this crime, as shown by its explicit mention of aggression as one of the most serious offences in Article 5/D of the Statute.

This study tries to answer many questions brought up by discussions and opinions on the international efforts exerted through the provisions and rules of International Criminal Law to enable groups of victims of international crimes to fulfil their rights, get reparation for what they suffered due to committing international crimes, and finally achieve international criminal justice.

The goal of the study is to find out what problems the International Criminal Court might face as it tries to reach its goals as a permanent international judicial body. It also shows how the different constitutional rules and jurisdictions in different member states are inconsistent, which is a problem when it comes to prosecuting crimes and catching the people who did them, especially when it comes to international crimes. In addition, the contributions of its parties in trying to find an

adjustment legislative to be compatible with the Rome statute through some different legal methods

2. Literature Review

Bach, A , Travis , J. (2021) discussed that The Statute of the International Criminal Court represented a significant development in the realm of international agreements, both in terms of its subject matter and the legal controversies and debates it generated. While these controversies subsided following the Rome Diplomatic Conference, it is important to acknowledge that certain objections persist, which may serve as primary reasons for non-compliance. A considerable number of nations have formally accepted and implemented this system, so exempting themselves from the jurisdiction of the International Criminal Court. There have been several explanations for this phenomenon, including those associated with the constitutional harmonisation that occurs upon ratification, some related to domestic legislation, and those that contradict international treaties. (Kurniawan Tri. and Erri 2021) explored that The Court faced many challenges related to jurisdiction outside the scope of the Statute due to its inconsistency with constitutional norms, internal laws, and international agreements, as outlined in the Rome Convention. (ELHAW,El-Wafa , Hashish and Salmi,2023) discussed that there are various analytical perspectives on international jurisprudence and the stances adopted by states parties to the Rome Statute in relation to...The article examines the impact of legislative modifications to the Rome Statute in the context of creating international criminal justice. Additionally, it explores the adverse consequences resulting from the suspension of jurisdiction over the crime of aggression, therefore impacting international criminal justice.

2. The contradiction between the constitutional rules and the national legislation

2-1: The contradiction between the jurisdictions and the constitutional rules

2-1- A-(Immunity)

According to Article 27 of the Basic Statute of the International Criminal Court (ICC), the concept of impunity was not recognised, and the official authority held by presidents of states and other governing bodies was not considered.

The application of this fundamental statute is universal, extending to all individuals despite their official ability (Prayitno, Strong Praise , 2013)

The court's jurisdiction over an individual is not precluded by the immunities or particular procedural restrictions associated with their official status under national or international law.

The basic concept of complementary jurisdiction must be developed prior to the exercise of authority by the court. Article 11 of the preamble to the Rome Convention states that the role of the court should be in addition to the criminal jurisdiction of individual nations. According to national consulting organisations, the incorporation of Article 27 in the Basic Statute, which pertains to the disapproval of formal capacity or impunity for avoiding punishment for international crimes, is considered a significant legal issue that contradicts the constitutions of various states throughout the framework of the Rome Basic Statute.

For example, the French Constitutional Council has determined that there is a contradiction between Article 27 of the Rome Basic Statute and Article 86 of the French Constitution. Article 86

of the French Constitution states that the President of the Republic is exempt from responsibility for any mistakes they may have committed while carrying out their official responsibilities. With the exception of cases requiring state treason as outlined in the aforementioned wording of Article 86, paragraph 1, the factor that required France's constitutional change in accordance with the Rome Convention (4)

France approved an amendment to its constitution that included Article 53, Paragraph 2, which recognises the republic's capacity to recognise the jurisdiction of the International Criminal Court, in accordance with the requirements outlined in the agreement ratified in July 1998.

The French Constitutional Council has undertaken the task of assessing certain elements of the International Criminal Court's Basic Statute that are in contradiction with the French Constitution. The investigation highlighted three areas with apparent inconsistencies, including the perceived impunity of the state president and members of parliament. The impact of the International Criminal Court's jurisdiction on the exercise of state sovereignty and the power of general prosecution officers (Howard Zehr, 2002)

The International Criminal Court's Rome Statute has been incorporated into French law, providing increased legislative importance within the national jurisdiction. When faced with constitutional provisions that offer immunity to authorities and sweeping amnesty to individuals found guilty of international crimes, the International Criminal Court has difficulty executing its authority.

2-1-B: The punishment of imprisonment

According to Articles 77 and 78 of the International Criminal Court's Basic Statute, the court must consider a variety of considerations while assessing the appropriate sentence. The nature of the offence, any unique circumstances relating to the convicted person in line with procedural standards, and the rules of proof are among these elements.

In accordance with the court's judgement, the length of custody is subtracted from the imposed jail sentence. Furthermore, the court deducts the term of confinement directly linked to the offending activity (Iskamto, D., & Jenita. , 2020)

In scenarios where a person is convicted of many crimes, the court issues distinct sentences for each offence, with a combined judgement that determines the overall length of incarceration. The designated length does not fall below the top limit set for each judgement, nor does it exceed a term of 30 years of imprisonment or a life sentence as stated in paragraph (1/B) of article (77).

However, it is essential to note that the fundamental legislation in Rome has a stipulation whereby the offender may become eligible for parole after completing two-thirds of their jail sentence, or twenty-five years in the case of a life imprisonment term, as specifically outlined in Article 110. The court has the jurisdiction to assess the imposed sentence with the purpose of ascertaining its eligibility for reduction, contingent upon the fulfilment of the criteria stipulated in paragraph (1/B4) of article (110) of the Rome fundamental legislation.

The issue of national implementation of sanctions and national laws is addressed in Article 80 of the Rome Basic Statute. This provision of the Basic Statute places no constraints on states' ability to carry out the sanctions established in their respective national laws. Furthermore, it does not

prohibit states from enacting laws that do not include the sanctions stated in this section (Dunkel, FJ Grzywa-Holten. & P. Horsfield , 2015)

Article (105) of the Rome fundamental law specifies that the jail sentence is obligatory for all states parties who have consented to its execution. The previously indicated states have no capacity to change it in any manner, and the addition of new conditions that were not there at the time of first admission has a significant influence on the state of incarceration or its duration. If a prisoner is moved to another state, the various states must notify the court in order for the court to offer an accurate assessment of the situation.

2-1-C-Extradition:

The article (102) explicitly differentiated between extraditing between nations and presenting from one state to the International Criminal Court for the purposes of this fundamental statute: -

Presenting signifies that a state transfers a person to court in accordance with the Basic Statute.

Extradition indicates that a state sends a person to another state in accordance with a treaty or national law (Acorn, AE , 2004)

In accordance with the provisions outlined in Articles 86 to 92 of the Basic Statute, it is impermissible for the state to impose excessive and arduous requirements, as well as rely on many rules, in order to contest extradition requests from other governments as stipulated in treaties established between them. Delivering a presentation before the International Criminal Court (ICC) is regarded as a fulfilment of the complementarity principle and an attempt to overcome the principle of constitutional impunity, which restricts a state from extraditing its own citizens. Nevertheless, the extradition process, established through a treaty between states, is dependent on the presence of substantial proof against the individuals sought for extradition. Moreover, the responsibility of evaluating the sufficiency of such evidence lies with the state to which the extradition request is directed, rather than being contingent upon additional criteria outlined in international treaties and national laws that may impose stricter conditions and prohibit extradition, such as the principle of double criminality. The omission of political offences from the process of extradition, the apprehensions about the fair administration of justice, the dismissal of crimes due to the passage of time, the incorporation of amnesty, and other considerations that relate to state constitutional elements (Chiste, KB , 2013)

Therefore, in accordance with the provisions outlined in Article 89/3/A of the Basic Statute, member states were obligated to improve the procedure for bringing individuals to the International Criminal Court according to their respective national protocols for the transfer of those individuals.

According to the national procedures of the state party, individuals wanted for presentation before a court in another state are generally allowed to be transferred across its territory. However, there may be exceptions to this rule if the transfer will impede or prolong the process of presenting the individual before the court.

As article 98 of the Rome basic statute noted:

1. The court has the jurisdiction to make a request for presentation or assistance that would require

the state to which the request is directed to act in a way that contradicts its responsibilities under international law with respect to its immunities. In the event that the court is unable to obtain the third state's cooperation, diplomatic impunity may restrict the court's ability to waive the immunity of a person or piece of property belonging to a third state (Dhami, Mandeep K. Greg Mantle and Darrell Fox c , 2009)

The court has the jurisdiction to issue an order that compels the state, to whom the directive is directed, to behave in a way that violates its obligations under an international agreement. The aforementioned condition requires the obtaining of an agreement from the sending state as a prerequisite for the extradition of an individual who has nationality in the receiving state (Garduque, L. R , 2018)

2-2: The contradiction between the jurisdiction and the national legislation:

2-2-A: The contradiction between the jurisdiction and the principle of national sovereignty:

The idea of sovereignty differs from similar concepts such as authority, independence, and territory. The ruling body that possesses and exercises power over people is referred to as authority, but the position of a state institution, comprising its legal, political, and economic components, is referred to as independence. A sovereign state is defined as a self-contained entity. The idea of regional sovereignty, which refers to the state's authority over persons and entities both inside and outside its boundaries, may be used to highlight the link between sovereignty and territory (Hartono, Bambang , 2016)

International Criminal Law provides a mechanism that challenges the absolute sovereignty of states by focusing on the importance of international criminal responsibility. Its primary objective is to pursue and punish individuals who commit international crimes. This approach aims to limit the principle of sovereignty in order to prevent perpetrators from avoiding punishment.

2-2-B: The right of amnesty

The amnesty comprises a prohibition on criminal prosecution and, in certain cases, subsequent civil proceedings against specified persons or groups of people with respect to specific unlawful activities performed prior to the amnesty's confirmation.

The retroactive demonstration of B-Vitiation of any legal duty, as well as the adoption of amnesty measures, may not free persons of legal liability for future activities that may serve as an encouragement to break the law.

According to Amnesty International, amnesty refers to a society giving up part or all of an individual's rights depending on the nature of the offence committed. The community, on the other hand, may grant amnesty to entirely or partly postpone the application of the penalty, or to substitute the punishment with a less harsh option. Alternatively, the crime itself may be planned with the goal of securing official approval and legitimising the criminal's actions (Hirsch, Avon. J. Roberts. AE Bottoms. K. Roach & M. Schiff (Eds.) , 2003)

In response to concerns raised by the United Nations over the potential disregard of national laws regarding the right to amnesty, Resolution No.44/133 was issued on August 12, 1992. This resolution specifically addresses the protection of individuals who are subjected to enforced disappearance processes, as outlined in Article 18 of the UN's charter. Individuals who engage in acts of enforced disappearance are unlikely to exercise their right to amnesty due to the inherent

illegality associated with the implementation of amnesty procedures in such cases.

In order to prevent the legal prosecution of those who may bear legal responsibility for committing acts of war crimes, genocide, crimes against humanity, or serious breaches of human rights, particularly those targeting a certain gender.

The argument is in conflict with the fundamental principle of ensuring victims' rights to a fair and efficient judicial process (Larsen, Joudo , 2014)

The restrictions imposed on individuals and communities in obtaining information pertaining to violations of human and humanitarian law hinders their entitlement to truth. The International Criminal Jurisdiction has refrained from adopting an official position on this issue, despite the commitment made by the allied forces in the aftermath of World War II that granting amnesty to those responsible for international crimes is in violation of the law. The issuance of amnesty to Emperor Hirohito of Japan was promptly executed by General MacArthur, the respected military commander of the United States. Hirohito was judged responsible for Japan's participation in the Second World War. The problem of placing political considerations as more important than the ideals of justice and the rights of victims is well recognised.

In accordance with Article 110 of the Rome Statute, a contradiction developed between the aforementioned statute and domestic laws that included provisions for amnesty. As to the declaration of the French Constitutional Council, the jurisdiction of the International Criminal Court is limited to enforcing of amnesty rules, as stipulated in its Basic Statute. The matter that led France to seek the arrest and presentation of an individual before a court based on information outlined in the amnesty - The Council concluded that this decision disputed the necessary conditions for exercising national sovereignty - Therefore, a constitutional justification is necessary to address this situation (Liebman, Miriam ,(2007)

On the contrary, multiple schools of jurisprudence have argued that there exists no contradiction between this particular statute and domestic laws. In relation to the concept of amnesty, it is important to note that the International Criminal Court (ICC) explores the possibility of reducing penalties and issuing release orders for those convicted under its Basic Statute. This applies only to cases where the ICC has maintained jurisdiction and has delivered its decision (Frazier, D , 2020)

3-The contradiction between the jurisdiction and the international conventions

3-1-The legislative adjustments of the Rome Statute:

The concept of legislative change, as mentioned in the preamble of the Rome Statute, is articulated in paragraph four, when member states express their commitment to ensuring that the gravest violations that pertain to the international community are not exempted from punishment. This commitment includes the prosecution of persons responsible for such offences in an efficient manner, utilising both domestic mechanisms and the enhancement of international collaboration. The legislative modifications are often considered to be the principal components of these efforts on a national scale (Shoham, SGO Beck & M. Kett (Eds.) , 2008)

The preamble of the document consistently highlights the state's responsibility to exercise International Criminal Jurisdiction over individuals responsible for committing international crimes.

This obligation is dependent upon the existence of domestic legislation that penalises those who engage in such offences.

3-2-A-The theory of unity of laws

A particular viewpoint throughout the field of Jurisprudence argues that International Law and National Law are inherently linked and constitute a unified legal framework. This viewpoint posits that jurists have adhered to a single legal framework, resulting in the potential for contradictions and conflicts between laws that apply to both frameworks.

The supporters of this side divided into two teams:

The first team outbalances the elevation of National Law and it relied on a group of reasons

1-The basis of National Law is derived from the will of the state and its sovereignty, granting it complete autonomy in determining its international obligations.

2-The determination of the authority in charge of establishing conventions on behalf of the state, as well as the legitimacy of these conventions throughout the national legal framework, is governed by the national legal system. Hence, the authority of domestic legislation derives from the national constitution (Wibowo, Kurniawan Tri. and Erri Gunrahti Yuni U , 2021)

This viewpoint has faced criticism from current Jurisprudence, since it regards International Law only as a collection of international treaties, disregarding the traditional roots of this legal framework. Furthermore, the international community has increasingly adhered to international regulations that derive from the directives established by the majority that includes numerous nations

The second team of this jurisprudential side outbalances the elevation of International Law Above National Law (Zehr, Howard. & B. Toews (Eds.) , 2004)

The proponents of this team relied on a set of justifications:-

-The concept of the elevation of International Law The idea of Supranational Law may be linked back to the hierarchical view of legal norms. Therefore, each rule gets its authority from its consistency with a higher principle, ultimately leading to an essential rule that acts as the bedrock for the whole legal framework

The state's sovereignty is not unlimited with regards to its territory or its citizens. The exercise of sovereignty is regulated by international law, which defines the characteristics of this exercise and sets its regulations (Yasin, Muhamma , 2021)

3-2-B-The bilateral theory:

Proponents of this concept argue that both laws are considered autonomous statutes, characterised by their independent and separate nature due to their equal standing. Therefore, they have presented a series of rationales that support their viewpoint:

The difference between the origins of national law and international law is rooted in their respective sources. National law is derived from the autonomous decision-making of a particular state, but the foundations of international law are rooted in the collective decision-making of several nations. This collective will is shown via explicit mechanisms such as international treaties or implicitly through established international customs and practices. Neither of the two laws has the authority to impose

or alter the conditions of the other law or invalidate them (Baron, J. , 2018)

The distinction resides in the particular individuals to whom the provisions of each piece of legislation are targeted. The relationships between people, involving both natural and legal persons, in addition to the relationship between individuals and the state, are governed by national legislation. Conversely, international law regulates the interactions between entities that possess legal personality at an international level. Whether they were nation-states, international bodies, or other organisations in periods of peace or war,

-The legal statutes of National Law and International Law differ with regard to of their structure and character. In the field of national law, the presence of organisations or permanent supreme panels is seen essential for the creation and enforcement of laws by coercive measures, including both legislative and judicial authorities. Nevertheless, in the context of international law, such panels are conspicuously absent. National law includes the legislative framework established by a state, while international law is mainly controlled by the notion of contractual agreements (Bach , A. , Travis , J. , 2021)

It is essential that the international regulations are incorporated into national legislation in order to be effectively implemented. Therefore, such laws will be regarded as an integral component of the national legal framework.

The idea faced criticism from several sources, since those who supported it provided different justifications for the intended audience of the rule, although the fundamental essence of the rule stayed same. The rule may pertain to the state as an entity, or it may relate to individual citizens, and both rules have the same legal characteristics. The proposition of exposing all state actions to the scrutiny of International Law, whether general, particular, or national, lacks reasonability (Bishop, d.M. , 2012)

The identification of the responsibility for the action of the state is dependent upon many rules. There is an agreement among the international community on the proponents of this strategy, which argues for the unification of laws in conjunction with the progress of International Law. Nevertheless, there was substantial variation across nations in terms of these ideas. Every state attempted to find appropriate solutions for resolving the interplay between the two legal systems. Certain governments, such as the United governments of America, have acknowledged the primacy of International Law above domestic law. The recognition of this principle is evident in the statement found in the second paragraph of the sixth article of the United States Constitution, whereby it is stipulated that foreign treaties ratified by the United States should have the highest legal authority inside the country. The Supreme Court of the United States aligns international treaties with domestic law. Certain nations, such as the UK, prioritise their domestic constitution above the principles of International Law. Despite the apparent equality between the two legal systems, international agreements are not integrated into the law of England. There are proponents who contend that International Law has a comparative advantage over national laws, with the exception of constitutional laws, in nations such as Germany and Italy, unless there is recognition and endorsement by the legislative authorities (Blakinger , K. , 2019)

4- Restraining the jurisdiction by the international crimes

4- 1 -The discordancy on the crime of a aggression

The crime of aggression is explicitly addressed in Article 5 of the Basic Statute, as well as in other relevant sections included in the final constitution. Nevertheless, differing perspectives have emerged among the delegations that took part in the Rome Conference regarding the inclusion of this offence within the court's jurisdiction. One perspective is that the exclusion of the crime of violence represents a step backward in regards to the values contained in the Nuremberg and Tokyo charters (Duwe, G., & Clark, V , 2015).

The discussions focused on the idea that the definitions of the crime of aggression given during the conference had inadequacies and failed to consider the implications of United Nations Resolution No. 3314. This resolution, enacted on 14 December 1974, put out three distinct perspectives. (Abo el-Wafa 2021)

The first point of view says that the action seen is a sign of strategic thinking and planning, with people in political or military positions in each country starting and carrying out aggressive actions. However, this particular viewpoint has faced criticism for its intrinsic lack of clarity and failing to clearly define the vital elements that make up the criminal crime (Brown, E.& Douglas-Gabrial , d. , 2016)

Another point of view argues for the adoption of the phrase used in the United Nations resolution, but with modifications to expressly include the involvement of persons in the perpetration of the crime in question. In addition, it proposes the development of an all-inclusive catalogue that outlines the many activities that form the offence of aggression. This perspective has faced criticism for its absence of consideration for individual culpability, but it does hint at the recognition of the international responsibility of the state involved in the assault. In this study, we aim to investigate the effects of a specific treatment on a particular population (Cadora, E. , 2014).

The third perspective offers a comprehensive analysis that combines the two previous viewpoints. It posits that the crime of aggression transpires when a nation initiates an armed assault on another nation, aiming to undermine regional stability or hinder political autonomy, with the ultimate objective of occupying the targeted state's territory either partially or entirely. (Abdelaziz, Hashish, Khalil, Abo El-Wafa 2023)

The subject being analysed was not immune to criticism, as it demonstrated a limited scope by prioritising some aspects while neglecting others, possibly disregarding significant factors such as armed assaults motivated by motives unconnected to conquering territory.

4-2-The role of the Security Council in the Jurisdiction of the court's consideration of the crime of aggression:

The permanent member states of the Security Council expressed their support and commitment to preserving the continued legitimacy of the Security Council's authority in addressing acts of aggression. The representative from the United States at the United states emphasised the vital importance of offering support to the Security Council in carrying out its responsibilities, among the states being discussed (Cullen, F. T., & Jonson, C. L , 2017)

The proposal received support from representatives hailing from France, England, Russia, Germany, and Israel. The Israeli assign made an unequivocal acknowledgment that the court's authority over the crime of aggression should be based on the judgements of the Security Council. The person

who made the aforementioned statement recognised that this particular judgement had the potential to have negative implications for the court's standing as an autonomous judicial institution (Campbell, M. C., Vogel, M. & Williams, J , 2015).

While other countries took a contrasting stance to that of the Security Council, pushing for the preservation of the International Criminal Court's autonomy. In light of the aforementioned circumstances, the representative from Syria expressed the importance of establishing a clear distinction between the perpetrators of aggression and those individuals who are actively striving for freedom and exercising their fundamental right to autonomy in shaping their nation's future. The aforementioned perspective was similarly held by representatives from several countries, such as Jordan, Egypt, the United Arab Emirates, and the Kingdom of Saudi Arabia (Creswell, J. W., & Poth, C. N , 2018).

Opposing nations offered many reasons for their stance, with the primary concern being the jurisdiction handed to the Security Council. This allocation of authority undermines the court's legitimacy, restricts its independence, and compromises its impartiality. Moreover, this might have a negative effect on its effectiveness and gives the permanent member states of the Security Council the prerogative to challenge its rulings. In addition, the court's unique character as an autonomous judicial entity apart from the Security Council is significant. The lack of compliance to the Security Council of the occurrence of aggression is a procedural matter. Therefore, the court is authorised to verify the existence of aggression and to hold people responsible for their international responsibilities, exercising its independence. From the perspective of law, the general prosecutor, equipped with various investigative tools, is responsible for examining matters that are presented to them by states or the Security Council. The decision to press charges is dependent upon the availability of sufficient evidence (Charmaz, K , 2014).

3. Conclusion

-International criminal law plays a crucial role in protecting human rights, acting as a significant and conclusive phase in their protection. The criminalization of acts that infringe upon these rights and the subsequent punishment of those accountable have been significantly shaped in recent decades, particularly in the last ten years of the twentieth century. This development was marked by the establishment of specialised international criminal courts and the permanent international criminal court. These institutions have been instrumental in enforcing the principles that hold individuals accountable for international crimes.

The evolution of this legislation as a means of ensuring the imposition of penalties for those involved in international criminal activity highlights its significance. Nonetheless, it encountered challenges related to transitional justice, a component of the international court system that preceded the formation of the International Criminal Court. The prioritisation of political concerns above the goals of international criminal justice is achieved via the exercise of sovereignty.

4. Recommendations

1. The necessity to ask the states parties to end the adjustments concerning the national legal statutes quickly. To make their national statutes match the Rome Basic Statute to avoid moving jurisdiction from the national courts to the International Criminal Court.

The establishment of the International Criminal Court (ICC) can be attributed to an international consensus aimed at establishing a permanent international criminal jurisdiction. This difference sets it apart from previous special international courts, as it reflects the common intention of the majority of the international community. This statement highlights the global commitment to strengthening the rule of law and moving away from power dynamics in favour of international consensus. It is essential for all governments to recognise that the main objective of the court is to achieve criminal international justice.

3-Presenting suggestions to adjust the text of article (98) of the Rome Basic Statute, in a way, that matches the principle of complementary jurisdiction of the International Criminal Court. In order not to make problems in the issue of presenting, the criminals accused of committing international crimes in the framework of cooperation between the court and the states parties.

4-The necessity to reconsider the criteria that control the Relationship between the Security Council and the International Criminal Court. Especially, concerning International Criminal justice of the Rome Basic Statute), which grants the Security Council the authority of postponement. In order not to affect negatively on the judicial, function of the International Criminal Court in achieving international justice, which can weaken the stocks of the court and the refusal of many states to join it. In addition, it caused the waste of the rights of the victims of the international crimes and it delays their obtaining to their rights

Reference :

1. Acorn, AE (2004) *Compulsory compassion: A critique of restorative justice* . UBC Press. Vancouver. Canada
2. Abo el-Wafa (2021) ,The Jurisdiction of the UAE Federal Supreme Court on Constitutional Interpretation ,Arab Law Quarterly 35 (2021) 1-25 brill.com/alq
3. Bach , A. , Travis , J. (2021) , Aug. 16) Don't ignore the infrastructure of criminal justice
4. (Opinion-editorial) The Hill . [https://thehill.com/blogs/congress-blog/politics/568063-don't-igonre-the-infrastuucture-of-criminal-justice](https://thehill.com/blogs/congress-blog/politics/568063-don-t-igonre-the-infrastuucture-of-criminal-justice)
5. Baron, J. (2018) . A Brief History of Evidence – Based policy , *Annals of the American Academy of political & social science* , 678(1)
6. Bishop, d.M. (2012) . Evidence-Based practice and juvenile justice *criminology public policy* , 11(3)
7. Blakinger , K. (2019)New York prisons offer "Tough Love , Boot Camp programs . But prisoners Say They're ' Torture ' and 'Hell' The Appeal
8. <https://theappeal.org/new-yourk-prisons-offer-tough-love-boot-camp-progreams-but-prisoners-say-theyre-torture-and-hell/>
9. Brown, E.& Douglas-Gabrial , d. (2016) . since 1980 , spending on prisons has grown three times as much as spending on public education *Washington post*
10. <https://www.washingtonpost.com/news/education/wp/2016/07/07since-1980-spending-on-prisons-has-grown-three-times-faster-than-spening-on-public-education/>
11. Campbell, M. C., Vogel, M. & Williams, J. (2015). Historical Contingencies and the Evolving Importance of Race, Violent Crime, and Region in Explaining Mass Incarceration in the United States. *Criminology*, 53(2)
12. Charmaz, K. (2014). *Constructing Grounded Theory* (2nd ed.). Thousand Oaks, CA: Sage

13. Chiste, KB (2013) The origins of modern restorative justice: Five examples from the english-speaking world . University of British Columbia Law Review. 46(1)
14. Creswell, J. W., & Poth, C. N. (2018). *Qualitative Inquiry and Research Design* (4th ed). Thousand Oaks, CA: Sage.
15. Cullen, F. T., & Jonson, C. L. (2017). *Correctional Theory: Context and Consequences*(2nd ed.) Thousand Oaks, CA: Sage.
16. Cadora, E. (2014). Civics Lessons: How Certain Schemes to End Mass Incarceration Can
17. Fail. *The Annals of the American Academy of Political and Social Science*, Vol.651, Detaining Democracy? Criminal Justice and American Civil Life (January2014),
18. Dhami, Mandeep K. Greg Mantle and Darrell Fox c. (2009) Restorative justice in prisons. *Contemporary Justice Review* . 12(4). doi:10.1080/10282580903343027.
19. Dunkel, FJ Grzywa-Holten. & P. Horsfield. (2015) Restorative justice and mediation in penal matters – a stocktaking of legal issues. implementation strategies and outcomes in 36 european countries . Monchengladbach. Germany: Verlag Godesberg Forum
20. Duwe, G., & Clark, V. (2015). Importance of Program Integrity: Outcome Evaluation for a Gender-Responsive, Cognitive-Behavioral Program for Female Offenders. *Criminology & Public Policy*, 14(2)
 - Frazier, D. (2020) 55,000 Mississippi Children Devastated by Impact of Parent in Prison. Mississippi Public Broadcasting.
21. <https://www.mpbonline.org/blogs/news/55000-mississippi-children-devastated-by-impact-of-parent-in-prison/#:~:text=Seven%20percent%20of%20Mississippi's%20children,group%20that%20researches%20children's%20issues.>
22. Hartono, Bambang (2016) Restorative Justice Analysis in the Context of the Ultimum Remedium as a Settlement of Child Crime Problems . *Journal of Legal Institutions* Volume 10
23. Hirsch, Avon. J. Roberts. AE Bottoms. K. Roach & M. Schiff (Eds.) (2003) *Restorative justice and criminal justice: Competing or reconcilable paradigms?* Portland. OR: Hart Publishing
24. Howard Zehr, 2002, *The Little Book Of Restorative Justice*, Good Books, Intercourse, United States of America, p. 11
25. Gehad Mohamed Abdelaziz, Adham Hashish, Ahmed Khalil, Tarek Abo El-Wafa (2023) ,Commentary on the French Court of Cassation's Judgment on the Negligent Food Fraud: E-Coli Testing Oversight Case ,1058 *Journal for Re Attach Therapy and Developmental Diversities* ISSN: 2589-7799 2023 August; 6 (9s): 1058-1069
26. Iskanto, D., & Jenita. (2020). Analysis of Attitude factors Toward Entrepreneurial Intention in Indonesian. *KnE Social Sciences*, 2020,
27. <https://doi.org/10.18502/kss.v4i9.7346>
28. Larsen, Joudo (2014) *Restorative justice in the australian criminal justice system* . Australian Institute of Criminology. Canberra. Australia
29. Liebman, Miriam. (2007) *Restorative justice: How It Works* . Jessica Kingsley Publishers. London
30. Prayitno, Strong Praise (2013). *Restorative justice* . Postgraduate Legal Studies. General Sudirman University. Purwokerto.
31. Shoham, SGO Beck & M. Kett (Eds.) (2008) *International Handbook Of Penology An Criminal Justice* . Boca Raton. FL: CRC Press.
32. Wibowo, Kurniawan Tri. and Erri Gunrahti Yuni U (2021) *Restorative Justice in*

- Criminal Justice in Indonesia. Indian pen. Macassar
33. Yasin, Muhamma (2021) No Confession of Guilt. Restorative Justice is Hard to Achieve
34. [https://www. Hukumonline.com/berita/baca/lt5f50b6f36a777/without-confession-guilt-justice-restorative-difficult-achievement](https://www.Hukumonline.com/berita/baca/lt5f50b6f36a777/without-confession-guilt-justice-restorative-difficult-achievement)
35. guilt--justice-restorative-difficult-achievement
36. Zehr, Howard. & B. Toews (Eds.) (2004) Critical issues in restorative justice Boulder. CO: Criminal Justice Press