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BEYOND THE ICC'S JUSTICE: THE ROAD TO CONSTRUCTION OF ACJ&HR

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Abstract. *In 2017, the African Union passed a resolution on a large-scale withdrawal from the International Criminal Court, and the relationship between the African Union and the International Criminal Court has become increasingly tense. The "Bashir case" highlights the root cause of the tension between them, that is, the imbalance between political stability and judicial justice. The mandate of the «Rome Statute» on the UNSC and the politicization of international crimes have gradually politicized the International Criminal Court, which then plunged the ICC into a crisis of legitimacy. The hybrid tribunal model is an ideal model for the International Criminal Court to get rid of the crisis of legitimacy and balance the relationship between political stability and judicial justice. Promoting the establishment of the "African Court of Justice and Human Rights" provides a way to ease the tension between Africa and the International Criminal Court and jointly promote criminal justice in Africa.*

In a scientific article, the author emphasizes that the "Bashir case" has aggravated international relations between the countries of the African continent and representatives of the ICC. And while the ICC prosecutes international crimes committed in a highly political environment and provides criminal justice around the world, problems arise when the perpetrators of these crimes are members of political parties or high-ranking government officials. As a result of such problems, today in international law the jurisdiction of the International Criminal Court has all the signs of politicization. In this regard, the subjects of international law should fully use the full potential of the "principle of complementarity" and use the legal approach of a mixed tribunal to restore normal and constructive relations with African countries, which, to a certain extent, will stop the process of politicization of the ICC.

Key words: *crisis of legitimacy; Criminal justice; hybrid tribunal; The African Court of Justice and Human Rights (ACJ&HR).*

ХАЛЫҚАРАЛЫҚ ҚЫЛМЫСТЫҚ СОТЫ ӘДІЛЕТІНЕН ТЫС: ACJ&HR ҚҰРУ ЖОЛЫ

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Аннотация. *2017 жылы Африка Одағы Халықаралық қылмыстық соттан ауқымды шығу туралы қарар қабылдады және Африка Одағы мен Халықаралық қылмыстық сот арасындағы қарым-қатынастар шиеленісе түсуде.*

«Башир ісі» олардың арасындағы шиеленістің негізгі себебін, яғни саяси тұрақтылық пен сот әділдігі арасындағы теңгерімсіздікті көрсетеді. БҰҰ Қауіпсіздік Кеңесінің «Рим Статутының» мандаты және халықаралық қылмыстардың саясилануы Халықаралық қылмыстық сотты біртіндеп саясиландырды, содан кейін ол ХҚК-ны заңдылық дағдарысына ұшыратты. Гибридті трибунал моделі халықаралық қылмыстық сот үшін заңдылық дағдарысын шешуге және саяси тұрақтылық пен сот әділдігі арасындағы қатынасты теңестіруге арналған тамаша үлгі болып табылады. «Адам құқықтарының африкалық сотын» құруға жәрдемдесу Африка мен Халықаралық қылмыстық сот арасындағы шиеленісті бәсеңдетуге және Африкадағы қылмыстық сот төрелігін бірлесіп ілгерілетуге

көмектеседі. Ғылыми мақаласында автор «Башир ісі» Африка континентіндегі елдер мен ХҚО өкілдері арасындағы халықаралық қарым-қатынасты ушықтырғанын атап көрсетеді. Ал ХҚК жоғары саяси жағдайда жасалған халықаралық қылмыстарды құдалап, бүкіл әлемде қылмыстық сот төрелігін жүзеге асырып жатқанда, бұл қылмыстарды жасағандар саяси партиялардың мүшелері немесе жоғары лауазымды мемлекеттік қызметкерлер болған кезде проблемалар туындайды. Осындай проблемалардың нәтижесінде бүгінгі күні халықаралық құқықта Халықаралық қылмыстық соттың юрисдикциясы саясаттанудың барлық белгілеріне ие. Осыған байланысты халықаралық құқық субъектілері «толықтырғыштық принципінің» барлық әлеуетін толық пайдалануы керек және Африка елдерімен қалыпты және сындарлы қарым-қатынастарды қалпына келтіру үшін аралас трибуналдың құқықтық тәсілін пайдалануы керек, бұл белгілі бір дәрежеде тоқтатылады. ХҚК саясиландыру процесі.

Түйін сөздер: *заңдылық дағдарысы; Қылмыстық сот төрелігі; гибридтік трибунал; Африка соты және адам құқықтары (ACJ&HR).*

ЗА ПРЕДЕЛАМИ ПРАВОСУДИЯ МЕЖДУНАРОДНОГО УГОЛОВНОГО СУДА: ПУТЬ К СОЗДАНИЮ ACJ&HR

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Аннотация. *В 2017 году Африканский союз принял резолюцию о широкомасштабном выходе из Международного уголовного суда (МУС), и отношения между Африканским союзом и Международным уголовным судом становятся все более напряженными.*

"Дело Башира" высвечивает первопричину напряженности между ними, то есть дисбаланс между политической стабильностью и судебным правосудием. Мандат «Римского статута» СБ (Служба безопасности) ООН и политизация международных преступлений постепенно политизировали Международный уголовный суд, что затем повергло МУС в кризис легитимности. Модель гибридного трибунала является идеальной моделью для Международного уголовного суда, позволяющей избавиться от кризиса легитимности и сбалансировать отношения между политической стабильностью и судебным правосудием. Содействие созданию "Африканского суда по правам человека" позволяет ослабить напряженность в отношениях между Африкой и Международным уголовным судом и совместно содействовать уголовному правосудию в Африке.

В научной статье, автор подчеркивает, что "дело Башира" обострило международные отношения между странами африканского континента и представителями МУС. И хотя МУС преследует международные преступления, совершенные в условиях высокой политической конъюнктуры, и обеспечивает уголовное правосудие во всем мире, то возникают проблемы, когда исполнителями этих преступлений являются члены политических партий или высокопоставленные правительственные чиновники. Вследсвие таких проблем, сегодня в международном праве юрисдикция Международного уголовного суда имеет все признаки политизации. В этой связи, субъекты международного права должны в полной мере использовать весь потенциал "принципа взаимодополняемости" и использовать правовой подход смешанного трибунала для восстановления нормальных и конструктивных отношений с со странами Африки, что в определенной степенис остановит процесс политизации МУС.

Ключевые слова: *кризис легитимности; Уголовное правосудие; гибридный трибунал; Африканский суд и права человека (ACJ&HR).*

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Introduction

"The rule of law is one of the important achievements of human civilization" [1]. "Aware of the interdependence of the people of all countries...unimaginable atrocities... endangering the peace, security and well-being of the world" [1], the ICC has been established, which aims to establish rule of law in international criminal field and achieve criminal justice. At the beginning of the establishment of the Court, African countries actively participated in the negotiation of the Rome Statute and formed the largest group of contracting parties in the ICC. However, at the beginning of the 21st century, the relationship between Africa and the International Criminal Court deteriorated sharply, especially after the Security Council submitted the geopolitical and strategic "Sudan situation" to the International Criminal Court in 2005 based on Article 13 of the «Rome Statute», which strengthened Africa's assumption-the International Criminal Court is a selective judicial system that serves the interests of the West-and exacerbated the tension between them. The highly political nature of provisions of Article 13 of the «Rome Statute» and the crimes under its jurisdiction have gradually politicized the International Criminal Court and plunged into a "crisis of legality". The International Criminal Court assumes the responsibility of upholding justice in the international society. Its "supplementary principle" requires it to assume the obligation of jurisdiction when a State party "cannot" or "unwilling" to do so. So ICC's cooperation with Africa and the provision of criminal justice to Africa is not only urgent but necessary.

The International Criminal Court exercises jurisdiction over serious international crimes that endanger human well-being and security, and provides justice to the international community. However, the case of "African countries using the International Criminal Court to exclude domestic opposition forces" shows that these crimes are highly politicized. Dealing with the peace and security issues in the regions affected by these crimes can easily make the International Criminal Court fall into a politicized mire. The provisions of Article 13 of the Rome Statute undoubtedly intensified the politicization of the International Criminal Court, and the legitimacy of the court itself encountered a crisis.

Due to the long-term political and economic marginalization of Darfur, Sudan, under the call of the Justice and Equality Movement, the Sudan Liberation Army provoked a civil war with the government in 2003. The Sudanese government launched a genocide against members of these two organizations[2]. Nearly 400,000 people died in the conflict in the first 29 months[3], in view of the serious situation, the UN Security Council, based on Article 13 of the Rome Statute, passed Resolution 1593 on March 1, 2005, submitting the situation in Darfur to the International Criminal Court to investigate and prosecute crimes in Darfur. However, Sudan has not signed the «Rome Statute» and is not a party to the International Criminal Court. The International Criminal Court cannot exercise the jurisdiction in Sudan through the principles of "personal jurisdiction" and "territorial jurisdiction". The court has the power of "universal jurisdiction", but the principle of universal jurisdiction is in dispute both in theory and in practice. Therefore, the Sudanese government refuses the International Criminal Court to exercise jurisdiction over its own situation.

"The African Union, on the Peace and Security Council conference in 2008 and the heads of government conference in 2009, asked the Security Council to exercise its power to delay the investigation and prosecution of the International Criminal Court in order to peacefully resolve the conflict in Sudan through diplomatic means, but the situation in Sudan was still submitted to the International Criminal Court." [4]. On March 4, 2009, the International Criminal Court, ignoring the opposition of the African Union, issued an arrest warrant for Bashir and immediately launched an investigation into the Darfur region. The arrest warrant for the incumbent Sudanese President Bashir has strained relations between Africa and the International Criminal Court. Although

[1] *Michelle Bachelet. Statement by UN High Commissioner for Human Rights, //https://www.ohchr.org/en/2021/07/annual-venice-conference-global-state-human-rights-statement-united-nations-high (16 July, 2021).*

[2] *World Without Genocide, // https://worldwithoutgenocide.org/genocides-and-conflicts/darfur-genocide (January, 2021).*

[3] *Statement to the United Nations Security Council on the Situation in Darfur, pursuant to UNSCR 1593 (2005) // https://www.icc-cpi.int/news/statement-united-nations-security-council-situation-darfur-pursuant-unscr-1593-2005-8 (18 December, 2019).*

[4] *Security Council of 31 March 2005 //https://www.un.org/press/en/2005/sc8351.doc.htm (2019).*

the Security Council proposed in Resolution 1593 that "the International Criminal Court and the African Union jointly discuss arrangements that will help the court's work" [5], it did not have any practical effect.

The Sudan case has aroused dissatisfaction and criticism of the International Criminal Court by the African Union and even around the world, and the core of these criticisms lies in Article 13 of the Rome Statute. According to Article 13, the Security Council can freely guide the operation of the International Criminal Court. However, "the operation of the Security Council is generally regarded as promoting the interests of its permanent members (mainly Western powers), rather than pursuing peace and security on a global scale" [2]. And its political nature has detracted from the legitimacy of the International Criminal Court, especially since three of the five permanent members are not parties to the Rome Statute. The legitimacy crisis of the International Criminal Court is undoubtedly revealed after the Sudan case.

Materials and methods

Questions of the jurisdiction of the International Criminal Court are widely reflected in research activities. Therefore, based on a comparative analysis of the positions of states and researchers on such a high-profile process as the issuance of a warrant for the arrest of Sudanese President Omar Bashar, common approaches of developed countries were determined. The identified approaches did not meet the interests of the countries of the African Union and the author of the article studied domestic and foreign works, as well as interstate jurisprudence of some African countries and identified a fair method for establishing a unified justice system in African countries.

Discussion

The provisions of Article 13 of the Rome Statute and the political nature of the crime itself have made the International Criminal Court increasingly politicized and plunged into a crisis of legitimacy. At the same time, tensions between Africa and the ICC have formed, which has triggered widespread criticism of the International Criminal Court in Africa and the international community. Inspecting Africa's criticism of the International Criminal Court will help to uncover the internal reasons for the tension between the two and provide guidance for breaking the deadlock. The AU's criticism of the International Criminal Court is mainly reflected in three aspects: political prejudice, universal jurisdiction, and unclear procuratorial power.

Critic 1: The International Criminal Court has political prejudice against Africa.

After the establishment of the International Criminal Court, there has been extensive cooperation with Africa. However, the arrest warrant issued by the International Criminal Court against Sudanese President Bashir means that the obligation of African countries to cooperate with the International Criminal Court has changed from having no actual consequences to a serious conflict of interest, that is, the choice conflict of obligation to cooperate in the Rome Statute and the sovereign immunity in customary international law. Even so, African countries still actively cooperate with the work of the International Criminal Court-Analysis on critics: Most of the cases under the jurisdiction of the International Criminal Court are not a political prejudice in Africa, but are due to the politicization of the International Criminal Court. First, the «Rome Statute» authorized the Security Council to enable it to guide the operation of the International Criminal Court; Secondly, the international criminal law system is an inter-state system based on the transfer of sovereignty, which is inevitably restricted by international politics. When the country where the crime is committed is a political or economic power, the International Criminal Court is unable to exercise jurisdiction over it, just like British diplomacy Minister Robin Cook said: "I can say that this is not a court that can prosecute the British Prime Minister or the American President".

Critic 2: Universal jurisdiction violates national sovereignty

The «Rome Statute» stipulates that the principle of jurisdiction of the ICC is "supplementary principle", but Judge Lauterpeter "inferences based on the implied terms of the purpose of the «Rome Statute»" [6] and Article 13 of the Rome Statute, which authorizes the Security Council to submit a situation Substantially, established the

[5] *Press Release, SC/8351 dated 31 March_2005. // https://www.icc-cpi.int/news/icc-security-council-refers-situation-darfur-icc-prosecutor (2021).*

[6] *International Criminal Court. The Hague, The Netherlands. // https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf (2020).*

universal jurisdiction of the International Criminal Court over the three crimes (except the crime of aggression) of the «Rome Statute». Universal jurisdiction is a power that disregards sovereignty. No matter who commits a crime or where the crime occurs, the International Criminal Court can exercise jurisdiction over it. As early as 2008, the AU Commission criticized the universal jurisdiction of the International Criminal Court: "The International Criminal Court abuses universal jurisdiction in Africa, and the prosecution of African leaders has a destabilizing effect on political stability, and it may have an adverse impact on their ability to handle international relations, especially when the peace process is ongoing" [7].

Analysis on critics: It is undeniable that the exercise of universal jurisdiction by the International Criminal Court is a major advancement in the development of the rule of law civilization, because "crimes under the jurisdiction of the International Criminal Court are so universally condemned that their perpetrators become the public enemy of mankind" [8], and the ICC exercises jurisdiction over this crime helps to promote criminal justice to the world. African criticism of universal jurisdiction focuses on the relationship between "sovereignty", "justice" and "political stability". "Sovereignty is the cornerstone of the international order. In the absence of a supranational organization that controls the sovereignty of the country, respect for sovereignty can help maintain political stability" [3]. However, "the theory of absolute sovereignty runs counter to the principle of individual responsibility in international criminal law" [4], and the "responsibility to protect (R2P)" is also recognized by the international community. However, when universal jurisdiction involves the relationship between "justice and peace", Africa's opposition to universal jurisdiction goes beyond recognition of the "responsibility to protect". The International Criminal Court regards justice as a prerequisite for peace, but African history does not reject atrocity crimes. From the perspective of African countries, time and peace efforts will eliminate all hatred and turmoil, and the value of peace is far higher than the realization of justice. As Montesquieu pointed out from the perspective of materialism-national customs have a decisive effect on the legal system, which means that the justice of the International Criminal Court will inevitably be stranded in Africa.

Critic 3: The dispute between the Security Council and the ICC for procuratorial power.

Article 13 of the «Rome Statute» stipulates that the Security Council has the power to "submit the situation" and "delay investigation and prosecution", that is, when the Security Council believes that the "situation" endangers peace, it can submit the "situation" to the ICC, regardless of the country where the "situation" occurs, or whether it is a party of the Rome Statute or not; and when the Security Council believes that the ICC's prosecution, investigation, and arrest are contrary to the positive nature of international criminal law, it can delay the proceeding of the ICC's procedures. The Statute's authorization to the Security Council has triggered a dispute between the International Criminal Court and the Security Council's procuratorial power, and the political nature of the Security Council itself has also plunged the International Criminal Court into crisis of legitimacy.

Analysis on critic: Article 13 of the «Rome Statute» is caused by historical reasons. When the International Criminal Commission drafted the Rome Statute, it believed that the «Charter of the United Nations» gave the Security Council the responsibility to maintain world peace and security. Therefore, granting the Security Council the right to submit situations would help the Security Council fulfill its responsibilities. According to Article 39 of the «Charter of the United Nations», the Security Council can only take measures in accordance with Article 41 of the Charter when aggression, threats to the peace, or breach of the peace occurs. However, the Security Council's exercise of the right to "submit a situation" or "delay investigation and prosecution" on several occasions does not comply with Article 39 of the Charter, which highlights the political nature of the relationship between the International Criminal Court and the Security Council. In addition, the ICC was established on the basis of the transfer of the sovereignty of the state parties, so it has no enforcement power, and the exercise of its procuratorial power depends on the assistance of the state parties and the Security Council - "The International Criminal Court is not a higher-level political entity (a supranational organization)" [5]. Therefore, "whether the

[7] *Invited Experts on the African Question, Topic for March 2013 – January_2014. // https://iccforum.com/africa (2022).*
[8] *Done at Rome, this 17th day of July_ 1998. //https://childrenandarmedconflict-un-org.translate.goog/keydocuments/english/romestatuteofthe7.html?_x_tr_sl=en&_x_tr_tl=ru&_x_tr_hl=ru&_x_tr_pto=sc (2022).*

International Criminal Court has independent procuratorial power" is questioned by the African Union.

From the Sudan case, it can be seen that the ICC and the African Union are at odds with each other in ways to achieve peace, security and justice in Africa. The reason is that the two values of "political stability" and "judicial justice" are arranged differently. As a judicial institution, the purpose of the International Criminal Court is to pursue the criminal responsibility of the perpetrators of international crimes. Although the International Criminal Court has fallen into the quagmire of politicization, the main purpose of the International Criminal Court is still to provide criminal justice to the international community. The AU, as a political institution, allows politics to penetrate into every field, "promoting integration, promoting peace, security, and cooperation, thereby achieving unity." Political stability is its primary goal.

In summary, the International Criminal Court lacks flexibility and adaptability when facing African cultural traditions. It unilaterally emphasizes the priority of judicial means, which has caused an imbalance in the relationship between political stability and judicial justice in Africa. This is the root cause of tension between the ICC and Africa.

As pointed out above, the root cause of the tension between the International Criminal Court and Africa lies in the different order of political stability and judicial justice, and the more direct reason is that the "Security Council submits the Sudan situation" method ignores the sovereignty of African countries. But "the sovereignty and territorial integrity that African countries have suffered during the long and often violent decolonization process are deeply ingrained in African countries' idea of handling inter-state affairs" [6]. The hybrid tribunal model is not a model where the ICC has vertical jurisdiction over domestic courts, but provides space for true and close cooperation on an equal basis, so this model fully respects the independent sovereignty of Africa.

Secondly, the legal basis for the application of hybrid tribunals includes both domestic law and international law, then African legal norms that prefer political stability can be applied in hybrid tribunals, which respects African legal and cultural traditions; and the application of international criminal law can effectively promote the reform of domestic legal norms in Africa and establish good legal system to better realize criminal justice in Africa.

Third, the hybrid tribunal takes into account the African tradition of "restorative justice", because it is established in the place where the crime occurred, the victim can actively participate in the trial process to maximize the protection of the victim's interests instead of just accepting abstract justice. It avoids the drawbacks of the "state-court" mechanism of the International Criminal Court that is detached from the victims and the people. At the same time, the restoration of social relations can also prevent the recurrence of conflicts.

Finally, the establishment of the hybrid tribunal greatly reduces the connection between the ICC and the UNSC, and avoids the legality reduction of the ICC caused by the politicization of the ICC; by the way, because domestic and international judges conduct trail jointly in hybrid tribunal, it enhances the local acceptability and maintenance the authority of the ICC.

In this way, the hybrid tribunal model not only provides a balance between political stability and judicial justice, and solves the legality crisis of the ICC due to politicization, but also broadens the criminal justice concept of "pure retaliation justice" of the International Criminal Court, and constructs a broad concept of criminal justice covering "respect for sovereignty and safeguarding political stability".

There is a realistic possibility and necessity to construct a "regional hybrid tribunal" in Africa, but the assume of the "African court of justice and human rights" as a "continental" hybrid tribunal lacks previous experience and reference. Therefore, it is necessary to put forward reasonable opinions based on the specific conditions of Africa, in order to promote the establishment of ACJ&HR, to break the deadlock between Africa and the International Criminal Court, and to promote the development of criminal justice in Africa.

In 2008, the African Union proposed to pass an agreement – «the Protocol of the African Court of Justice and Human Rights». But constrained by issues such as funding, jurisdiction, and relations with the International Criminal Court, the court has not been established yet. However, "the establishment of the Sierra Leone and Senegalese courts shows that if there is political will, it can promote the development of justice in Africa" [7].

Since the AU adopted a resolution to establish the ACJ&HR in 2008, it has not yet been established for 13 years. After investigation, there are three main reasons why it has not been established so far:

First, the shortage of funds. Most African countries are post-developed countries. Therefore, more than half of the AU's finances come from the assistance of international partners. In 2016, AfriCOG estimated that "each international criminal situation's trial will cost approximately $10-15 million,"[9] but in 2017, the African Union's budget was only 435 million dollars, while only about 10 million dollars was allocated to the ACJ&HR, therefore, it is doubtful whether the financial system of the African Union can support the operation of African judicial and human rights courts.

Second, the ability of jurisdiction is limited. The ACJ&HR takes international law, international human rights law, and international criminal law as its legal foundation at the same time. This action is not unprecedented in the history of international justice, but the direct consequence of excessive legal sources is "insufficient jurisdiction" and "rules conflict".

Third, the jurisdiction conflicts between the ICC and the ACJ&HR. The «Amendment» does not stipulate the jurisdictional relationship between the ACJ&HR and the ICC. Although some member states of the African Union withdrew from the «Rome Statute», some countries are still under the jurisdiction of the ICC. Under that circumstance, failure to resolve the overlap of jurisdiction between the ICC and the ACJ&HR will undoubtedly lead to the division of African judicial system.

Results

Any criticism before the establishment of the ACJ&HR is undoubtedly unwise. In order to promote the early establishment of the ACJ&HR, ease tensions between Africa and the ICC, and promote the development of African criminal justice and human rights protection, this paper proposes two suggestions as follows:

First, the ICC actively exercises the "principle of complementarity".

The direct cause of the tension between the AU and the ICC is the different position on "whether the sovereignty is immune or not". Africa believes that the value of political stability is higher than justice, and the political leaders who commit crimes are often extremely crucial in peace negotiations. Therefore, the "principle of sovereign immunity"[10] is extremely important in African law and political traditions. However, the «Rome Statute» denies "sovereign immunity" and emphasizes "personal responsibility"[11] in order to end "impunity", which is contrary to African legal traditions and has caused the work of the ICC in Africa to be embarrassed.

The International Criminal Court is aware of its limitations and legitimacy crisis, and emphasizes the role of the "principle of complementarity". In formulating its overall strategy, the OTP encouraged countries to strengthen legislation and emphasized that: "the absence of the International Criminal Court is the effective operation of the domestic judicial systems of various countries, which is a huge success"[12] In 2009, the OTP once again reiterated the "principle of complementarity", positioned the principle of "complementarity" as "a policy of active cooperation aiming at promoting national litigation"[13]. The ICC's emphasis on the "principle of complementarity" not only respects African domestic legal traditions, but forms external constraints on national sovereignty, and promotes domestic legislation to combat international crimes to maintain criminal justice.

The importance of a proposition does not lie in whether its logic is self-consistent, but in its practical effect. As a successful precedent for the cooperation between the International Criminal Court and African countries, the Senegal hybrid tribunal has provided guidance for the implementation of "actively consolidating the principle of complementarity".

Senegal established a court on August 22, 2012 at the request of the African Union to prosecute the former Chadian President Habré, who was in exile in its territory. Senegal has established four temporary courts within the national judicial framework: the Special Investigation Chamber (consisting of four Senegalese judges), the Special Prosecution Chamber (consisting of three Senegalese judges), and the Special Trial Chamber (two Senegalese judges and one of the presidents of the member states of the African Union), the Special Appeals Chamber (the same composition as the Prosecution Chamber). The

[9] *AfriCOG, 2016.// https://www.africaportal.org/documents/18801/saia_sop_293_clifford_20190117.pdf (January, 2021).*

[10] *«Rome Statue» Rome Statute of the International Criminal Court. p. 15. Article 27 «Irrelevance of official capacity». // https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf (2011).*

[11] *«Rome Statue» Rome Statute of the International Criminal Court. p. 14 Article 25 «Individual criminal responsibility».// https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf (2011).*

[12] *See The Rome Statute and Elements of Crimes. // http://www.icc-cpi.int/about/how-the-court-works (17 July_2018).*

[13] *P Hobbs. The Catalysing Effect of the Rome Statute in Africa: Positive Complementarity and Self-Referrals // https://link.springer.com/article/10.1007/s10609-020-09398-7 (02 June,_2021).*

applicable legal basis of the Senegal hybrid tribunal includes both Senegal's national criminal law and international criminal law. The hybrid tribunal exercises jurisdiction over the crimes of genocide, crimes against humanity, war crimes and torture committed by the former Chadian President Habré during 1982-1990. The Senegal hybrid tribunal has actively exercised the "principle of complementarity". First, the Senegal hybrid tribunal is rooted in the local legal culture and fully respects Senegal's own values and cultural outlook. In addition, the ICC rarely interferes with the operation of the tribunal and fully respects Senegal's judicial sovereignty, so its acceptability is extremely high; Secondly, "Senegal revised its laws during 2007-2010 in order to enable punish Habré" [8, p.-9], and then reformed the its judicial system so that its judicial justice meets international standards. In addition, based on support for international criminal justice, the Senegal hybrid tribunal received a lot of foreign aid, which eased the country's financial pressure.

The Senegal hybrid tribunal is called "the most patient and tenacious battle in the world", not only because of its long and repeated proceedings, but also because it is the first lawsuit filed by a victim against a former president since the establishment of the ICC. Suleiman founded the "Victims Association" during the tenure of former Chadian President Habré. During this period, he conducted 792 interviews and successfully persuaded the victims to testify to the Truth and Reconciliation Commission established by the President of Chad Idriss Deby, and the Truth and Reconciliation Commission through witness testimony learned that Habré's crimes resulted in 40,000 deaths. Encouraged by the "Victims Association" movement, the Chad "Association for the Promotion and Defense of Human Rights" called on domestic civil organizations to support the "Habré case". During the period, the "Human Rights Watch" formed a coalition and organized as many as 714 during Habré's tenure Pages of crime records, these records provide a solid foundation for the punishment of Habré and the return of justice to the Chadian people. On May 30, 2016, Habré was sentenced to life imprisonment for war crimes, crimes against humanity, and torture. The verdict was finalized on April 27, 2017 after appeal, and the original sentence was upheld. Although the entire trial lasted 15 years, it is undeniable that this result met the victim's justice demands-Habré was sentenced to life imprisonment. And the first-instance judgment sentenced Habré to compensate the 7396 victims with 90 million euros, and the second-instance sentenced Habré to compensate the victims with 125 million euros. The victory of the Habré case can be seen entirely due to the unremitting efforts of the victims and the support of civil social organizations, said Clement Abaifouta, chairman of the "Victims Association" in an interview: "I am very satisfied...this is African dedication to justice...I can't describe my current mood. This is a great excitement, a happy day, and a great victory for the victims"[14].

At the moment, the ICC's activities are facing opposition from the political elites of African countries, who are confident that by investigating cases mainly against Africans, it is showing bias. Condemning his activities, the AU decided in 2014 to develop an agreement on the basis of which a regional criminal court will be created in the form of a criminal chamber at the African Court of Justice and Human Rights [9, p. 8], and in 2017 even approved a resolution calling on all African States to stop interacting with the ICC and withdraw from the contract. Justifying the need to terminate participation in the treaty, the leaders of African countries identified several reasons. At the same time, many of them are quite legitimate, some indicate a lack of understanding of the principles of the ICC. For example, claiming that the ICC considers disproportionately many situations from the African region, they forget that most of them were referred to the ICC by the States themselves in accordance with Article 14 of the ICC Statute. Opponents of the ICC also tend to mix in their rhetoric the activities of a political body – the UN Security Council – and the ICC, which has a clear and limited legal mandate [9, p. 12].

Conclusion

Since the "Bashir case", the relationship between Africa and the ICC has become increasingly tense. The ICC prosecutes international crimes committed in a highly political environment and provides criminal justice to the world. When the perpetrators of these crimes are members political parties or high-level government officials, the jurisdiction of the International Criminal Court may put itself at risk of politicization. Although the

[14] *Maclean R. Chad's Hissein Habre found guilty of crimes against humanity, Dakar. https://www.theguardian.com/world/2016/may/30/chad-hissene-habre-guilty-crimes-against-humanity-senegal (2016).*

situation in Senegal is a long and dangerous process, it has provided successful experience for the establishment of the ACJ&HR to provide justice to the victims in conflicts or conflict-affected areas. As a hybrid tribunal, the establishment of ACJ&HR provides a way to solve the problem of the imbalance between "political stability" and "judicial politics", and helps to ease the tension between Africa and the ICC. Its advocacy of restorative justice helps to repair the social relations of the place where crimes occurred to prevent the recurrence of atrocities. The International Criminal Court should give full play to the full potential of the "the principle of complementarity" and use the legal approach of a hybrid tribunal to repair relations with Africa, and at the same time to eliminate its own legitimacy crisis due to politicization.

At the same time, the analyzed crisis phenomena between the African Union and the International Criminal Court made a huge contribution to the development of international criminal justice. Which, in turn, had a significant impact on the policy of states regarding the prosecution of persons for committed international crimes, and raising the role of the institution of punishment. It is the policy of impunity, observed especially in the countries of the African continent with the increasing role of the institution of international criminal jurisdiction, that largely contributed to a certain extent to streamlining this negative phenomenon.

In this regard, it is necessary, according to a number of African states, to introduce the practice of using mixed tribunals, which includes both domestic legislation and international law, then African legal norms that prefer political stability can be applied in mixed tribunals that respect African legal and cultural traditions.

The countries of the African Union have to do a lot of work on the regulation of the order associated with various rules of political stability and judicial justice, where national sovereignty and the dignity of the state come first. This aspect is one of the main ones for the countries of Africa, since for a long time they were in colonial dependence on European countries and which they have to face in the framework of the work of the international criminal court.

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