THE JURISDICTIONAL LIMITS OF THE INTERNATIONAL CRIMINAL COURT: A BARRIER TO JUSTICE?*

Abstract
In recent times, the impact of the International Criminal Court has been called to question owing to the several 'boundaries' that seem to fence off its jurisdiction. Thus, in the article, the jurisdictional limits of the International Criminal Court as well as its impact on global justice are succinctly examined. The article also explores the varying forms of limitation the Court faces as well as how these limitations can hinder its effectiveness in the prosecution of international crimes. Through case studies and analysis, the article explores the criticisms related to State sovereignty and selective prosecution as well as potential reforms to break the imaginary shackles of the International Criminal Court and enhance its efficacy. The ultimate goal in this article is to assess whether these jurisdictional limits inhibit global justice.

Keywords: Jurisdiction, International Criminal Court, Justice.

1. Introduction

It was during the 20th century that some of the most heinous crimes ever known to man were committed – acts like genocide and national war crimes seemed to be the order of the day. It was against this backdrop that representatives of 120 States gathered on the 17th day of July 1998 to adopt a statute in Rome which became known as the Rome Statute of the International Criminal Court or simply the 'Rome Statute'. The said Statute established the International Criminal Court and for the first time in the history of humankind, States decided to accept the jurisdiction of a permanent International Criminal Court for the prosecution of perpetrators of the most serious crimes committed in their territories or by their nationals after the entry into force of the Rome Statute on the 1st of July, 2002. In fact, the Preamble to the Rome Statute expressly states thus, 'The most serious crimes of concern to the international community as a whole must not go unpunished.'[1]

The establishment of the International Criminal Court was a vital advancement in the global pursuit of justice for heinous crimes like genocide, war crimes, crimes against humanity and aggression. As the world's first permanent international criminal tribunal, it was established to help put an end to impunity for the perpetrators of the most serious crimes that were of concern to the international community as a whole, and thus, contribute to the prevention of such crimes. The ICC is not a substitute for national courts as each State is supposed to exercise jurisdiction over those responsible for international crimes. What the ICC usually seeks to do is to provide accountability in cases where the State is unable to or unwilling to genuinely carry out the investigation and prosecution of perpetrators of international crimes.

The pending issue is that despite its seemingly wide powers, the International Criminal Court seems to be fettered in its ability to carry out its functions as outlined in the Rome Statute due to conflict as to its jurisdictional and scope of authority. Since the Court is expected to operate within a strict jurisdictional framework, it cannot stretch out the arms of the law to prosecute individuals from non-signatory states as well as those outside its temporal reach. This territorial restriction bars the Court from acting in several situations and this becomes an even bigger problem when dealing with powerful non-signatories like China, Russia and even the United States which have opted out of its jurisdiction.

Another jurisdictional bar is the fact that the International Criminal Court can only intervene when the national court is either unable to act or is unwilling to prosecute. This is according to the principle of complementarity as embedded in the Rome Statute. [2] The Preamble to the Statute emphasizes 'that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions.' The application of this principle has led to significant problems especially in instances where previous Heads of States claim immunity or when the national courts is corrupt or biased and opts to shield its nationals from international prosecution.

The aforementioned cases are all examples of how the jurisdictional width of the International Criminal Court keeps reducing thus leading to the question of its effectiveness in instituting and protecting global justice. Also, there have been several allegations of selective prosecution of individuals as critics have claimed that the ICC usually shines its laser beams on third world or less powerful countries while perpetrators of crime in more powerful and developed nations escape prosecution. This makes one wonder if the ICC is just a tool for the subjugation of less powerful nations or an independent body intent on carrying out its task of international crime prosecution. The obvious inability of the ICC to

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***By Kachidobelu John BIELU, PhD,** Senior Lecture, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. E-mail: kachibielu@gmail.com. Tel: +2348037443753.
***By Darlington Akachukwu OKOCHA, LLB, LLM Candidate,** Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. E-mail: darlingtonokocha19@gmail.com. Tel: +2348166779842.

[1]'Understanding the International Criminal Court' <https://www.icc-cpi.int/sites/defaulf/files/Publications/understanding-the -icc.pdf> accessed 29 August 2024.

[2] UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, art 17 <https://www.refworld.org/docid/3ae6b3a84.html> accessed 7 September 2024.

enforce arrest warrants such as in the case of Omar al-Bashir, the former Sudanese President further showcases the barriers caused by the jurisdictional limits of the Court.

This is the backdrop against which this article is written. Thus, this article will critically examine the jurisdictional framework of the International Criminal Court, explore the varying forms of jurisdictional limitation through analysis of cases and also look into the relationship between the Court and other international bodies. The article will also explore proposed reforms to the jurisdiction of the ICC while addressing the jurisdictional issues of the Court and recommending permanent solutions to the problems that seem to bar the Court's ability to promote global justice.

2. Historical Context and Development of the International Criminal Court

On the 1st day of July, 2002, some countries drawn from different continents came together to form the International Criminal Court as a forum to investigate and prosecute those responsible for the world's most heinous crimes. Today, the Rome Statute of the International Criminal Court which governs the ICC has 123 State parties. Prior to the Rome Statute, international criminal courts had been established on an ad-hoc basis. What is perhaps considered to be one of the earliest international courts was the one created by Article 227 of the Treaty of Versailles[3] which was created to try the former German Emperor - William II of Hohenzollern, for a 'supreme offence' against international morality and the sanctity of treaties although he was never tried. Another was the Treaty of Paris[4] which served as the substantive law basis for findings with respect to crimes against peace reached by the post-World War II courts at Nuremberg and Tokyo although it is doubtful if this actually counts as an international criminal court.[5]

After the World War II, the Allied nations drafted the United Nations Charter in June 1945. However, the only international court that was established by that Charter was the International Court of Justice and Article 34(1) of the Statute of the ICJ limits its jurisdiction to States only. Meanwhile, as at January 1945, France, Great Britain, the Soviet Union and the United States had already begun negotiations which would lead to the trial of Nazis who were designated as major war criminals. These negotiations culminated in an Agreement in London on August 8, 1945, to which was attached to a Charter of the International Military Tribunal which provided for the trial and punishment of persons for crimes against peace, war crimes and crimes against humanity. Just like others before it however, the Tribunal was one of an *ad hoc* nature as it was created for a specific limited purpose and its jurisdiction was restricted to the trial of individuals alleged to have committed major crimes connected with World War II.

Following the breakup of the Soviet Union, the necessity for an international criminal court was brought to the fore once more. The resultant agitation for one led to the creation of the International Tribunal for the Former Yugoslavia.[6] Thus, in the early 1990s, two ad-hoc tribunals were created as subsidiary organs of the UN Security Council: the International Criminal Tribunal for the former Yugoslavia (ICTY) formed in 1993, and the International Criminal Tribunal for Rwanda (ICTR) founded in 1994.[7] The ICTY and ICTR both operated for more than 20 years and more than 150 individuals were convicted for international crimes committed in the two countries. Despite criticism on the time and money spent, the ability of these tribunals to achieve true peace and reconciliation as well as difficulties in connection with the arrest of those indicted by the ICTY, both tribunals made contribution to the historic progress of international criminal law.[8]

For years, there was no permanent Tribunal for the trial of heinous crimes till everything culminated in the 1998 meeting in Rome that birthed the ICC. All in all, the Statute of the Court includes 128 Articles.[9] Article 1 clearly states thus, 'An International Criminal Court ('the Court') is hereby established. It 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 jurisdiction. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.' Article 2 provides that the relationship of the International Criminal Court to the United Nations will be based on an agreement between the Assembly of States Parties to the Statute and the United Nations while Article 3 provides that The Hague shall be the seat of the Court but that it may sit elsewhere as provided in the Statute. Of utmost importance to this research work is Part 2 (Articles 5-21) which is the core of the Statute as it

[3] Treaty of Versailles, 'Treaties and Other International Agreements of the United States of America, 1776-1949' (Charles I. Bevans comp., 1969) 43, 52.

[4] Ibid 732.

[5] H S Levie, 'The History and Status of the International Criminal Court' (2000) 75 (1) *International Law Studies* 245. <https://digitalcommons.usnwc.edu/context/ils/article/1427/viewcontent/vol_75_X_levie_the_history_and_status__1_.pdf> accessed 6 September 2024.

[6] The International Criminal Tribunal for the former Yugoslavia (ICTY) was created pursuant to Resolution 827, the ICTY Statute. See UN Security Council, Resolution 827 (1993), 25 May 1993.

[7] The International Criminal Tribunal for Rwanda (ICTR) was created pursuant to Resolution 955, the ICTR Statute. See UN Security Council, Resolution 955 (1994), 8 November 1994.

[8] In 2010, the UN Security Council created the International Residual Mechanism for Criminal Tribunals (IRMCT) to allow for the closure of the ICTY and ICTR by providing a shared institution responsible for concluding any lingering judicial matters, including the possible trial of remaining fugitives and the hearing of appeals against tribunal decisions.

[9] NCONF/183/9. July 17.1998. <http/www.un.orgliccpart1.htm> accessed 6 September 2024.

provides for the Court's jurisdiction, admissibility and applicable laws. In successive articles, the Statute enumerates and amplifies the crimes which are within the jurisdiction of the Court. Article 5 lists those crimes as (a) genocide; (b) crimes against humanity; (c) war crimes; and (d) the crime of aggression.[10]

By becoming a party to the Statute, a State accepts the jurisdiction of the Court with respect to the crimes enumerated in the Statute. For the Court to exercise jurisdiction, an alleged crime must (a) be referred to the Prosecutor by a State Party, or (b) by the Security Council, or (c) must result from an investigation initiated by the Prosecutor. With respect to (a) and (c), the Court only has jurisdiction if the conduct in question was committed on the territory of a State Party, or on board a vessel or aircraft registered in a State Party; or, the accused is a national of a State Party.[11] Since the official creation of the International Criminal Court in 2002 when the Rome Statute came into force, the ICC has become an established albeit controversial feature on the international scene. After two decades, the ICC has seemingly proven both its harshest critics and its most enthusiastic supporters wrong. The Court's record demonstrates that prosecuting people responsible for international crimes is possible, but it is as complex as it is time-consuming. Although the successful conviction of some perpetrators by the Court may assuage doubts about the ICC's viability, its successful prosecutions are infinitesimal compared to what is required of it and even its own goals for itself. So far, the Court's lofty goals of ending impunity and deterring atrocities remain unattained.[12]

3. The Jurisdictional Framework of the International Criminal Court

The International Criminal Court has jurisdiction over individuals directly responsible for committing crimes listed in the Rome Statute as well as others who may be indirectly responsible such as military commanders, political leaders or other superiors. The jurisdiction of the Court is limited to offences committed after the entry into force of the Rome Statute.[13] An ICC investigation may be initiated based on a referral from either the UN Security Council pursuant to Chapter VII of the UN Charter or a state party to the Rome Statute. The Office of the Prosecutor (OTP) may also initiate investigations independently, or *proprio motu*, subject to court authorization. For state or prosecutor-initiated investigations, Article 12 restricts the ICC's jurisdiction to crimes committed on the territory of a state party or those committed by a national of a state party, except where the relevant non-state party accepts the jurisdiction of the Court.[14] As a court of last resort and based on the principle of complementarity, the ICC does not pursue cases which are or used to be the subjects of credible investigations or prosecutions by the State with jurisdiction over the offences. Under Article 17 of the Rome Statute, cases that are or have been the subject of a national investigation and/or prosecution are inadmissible in the ICC unless the state in question is 'unwilling or unable genuinely to carry out the investigation or prosecution.' This deference to national courts extends to cases where States exercise extraterritorial jurisdiction over crimes within the ICC's jurisdiction, for example such as in Canada's *Crimes against Humanity and War Crimes Act*.[15]

Subject Matter Jurisdiction

The International Criminal Court only has jurisdiction over the 'most serious crimes of concern to the international community. The four crimes which fall under this broad divide are; the crime of genocide, crimes against humanity, war crimes and the crime of aggression.[16] The last one – the crime of aggression – was added as an afterthought during the Rome conference where it was listed as a crime under the jurisdiction of the Court however, the exercise of that jurisdiction was deferred until there were amendments to the Rome Statute which defined the crime and stipulated the conditions on the Court's jurisdiction.[17] The ICC's Assembly of States Parties adopted these amendments in June 2010 which the amendments came into force on 17 July 2018 after their ratification by over 30 states parties to the Statute. Canada has still not ratified the amendments thus restricting the jurisdiction of the Court over crimes of aggression committed on Canadian territory or by Canadian nationals.

Genocide: this is the first crime listed under the purview of the International Criminal Court and it is in fact referred to as the 'crime of crimes'. It was first defined in the 1948 Geneva Convention, a definition which was wholly adopted in Article 6 of the Rome Statute and improved upon.[18]

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[10] Ibid n 6.
[11] Ibid n 6.
[12] S McTaggart, L Barnett & B Dolin, 'The International Criminal Court: History and Role' (2022) *Library of Parliament* 1 <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/HillStudies/PDF/2002-11-E.pdf accessed 6 September 2024.
[13] Rome Statute, art 11.
[14] Rome Statute, art 12.
[15] Crimes against Humanity and War Crimes Act (S.C. 2000, c. 24).
[16] Article 5 of the Rome Statute of the International Criminal Court, 17 July 1998.
[17] UN, Amendments on the Crime of Aggression to the Rome Statute of the International Criminal Court, 8 May 2013.
[18] For a discussion of the elements of the crime of genocide, including the specific intent requirement, see ICC, Situation in Darfur, Sudan: In the Case of the Prosecutor v. Omar Hassan Ahmad Al Bashir ('Omar Al Bashir') –Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, Pre-Trial Chamber I, No. ICC-02/05-01/09, 4 March 2009.

Crimes against Humanity: this criminal concept has existed in international law for over a century and its being in Article 7 of the Statute has been described as both a codification and advancement of the concept under customary international law.[19] Unlike genocide, there is no discrimination requirement for Crimes against Humanity. This connotes that the population at the end of the target do not necessarily need to be members of a particular group. Also, as opposed to war crimes, there is no requirement that the crime needs take place within the context of an armed conflict.

War Crimes: Article 8 of the Rome Statute incorporated international crimes found in other international instruments, most notably the Geneva Conventions, as well as crimes which had not been previously codified in international law. As part of a nexus requirement for war crimes, the crimes must be committed 'in the context of' and be 'associated with an armed conflict.'

Crime of Aggression: as already stated above.

Territorial Jurisdiction

Currently, there are 123 State that are parties to the Rome Statute. Two former states parties have withdrawn from the treaty pursuant to Article 127. These States are; Burundi (in October 2017) and the Philippines (in March 2019). It is noteworthy that South Africa and the Gambia submitted notice of their intention to withdraw from the treaty, but revoked the notice before it even took effect. Only two of the five permanent members of the UN Security Council are currently parties to the treaty - France and the United Kingdom.[20] Severally, non-State parties have opted to accept the jurisdiction of the International Criminal Court pursuant to Article 12(3) of the Rome Statute without ratification. For example, Côte d'Ivoire and the State of Palestine have been the subject of preliminary examinations in the past based on a declaration under Article 12(3) but both countries subsequently became parties to the Statute.

National Jurisdiction

Under the Rome Statute, the ICC has jurisdiction over nationals of non-parties in three circumstances - the ICC may prosecute nationals of non-parties in situations referred to the ICC Prosecutor by the UN Security Council, non-party nationals are subject to the jurisdiction of the Court when they have committed a crime on the territory of a State that is a party to the Statute or has otherwise accepted the Court's jurisdiction with respect to that crime and lastly, jurisdiction may be exercised over the nationals of a non-party where the non-party has consented to the exercise of jurisdiction with respect to a particular crime.[21] In either of the first two circumstances, the consent of the state of nationality is not a prerequisite to the exercise of jurisdiction by the Court. In cases in which the ICC is exercising jurisdiction over individuals acting pursuant to the official policy of non-parties, it will not need to rule as a prerequisite on the responsibility of that non-party. In fact, the very purpose of international criminal responsibility is to separate the responsibility of individuals from that of the state and to focus on the personal responsibility of those who order, direct, or commit those crimes. Whilst state responsibility will often flow from the fact that an official of the state has committed an international crime, the ICC will not be engaged in making determinations about a state's legal responsibility, nor will it need to do so in order to convict an individual for war crimes, crimes against humanity or genocide. In cases of genocide (which require an intent to destroy a group) and crimes against humanity (which require a widespread or systematic attack), there will usually be a need for evidence of planning and preparation by a collective body which will often, though not always, be the state.

4. Limitations on the Jurisdiction of the International Criminal Court

The Limitations on ICC's Jurisdiction over Nationals of Non-State Parties

Although the ICC has jurisdiction over nationals of non-State parties when those nationals are accused of committing crimes on the territory of consenting states, the Rome Statute limits the exercise of this jurisdiction in specific circumstances. These specific circumstances are as follows;

Immunity of State Officials

It is established that the official capacity of an individual does not exempt that person from substantive criminal responsibility in relation to crimes prohibited by international law. Article 27[22] provides that State officials may be held criminally liable for crimes under international law. However, Article 98(1) seems to bar the effect of Article 27 as it provides that 'the Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.' This means that while the ICC may generally exercise its competence over state officials, its ability to

[19] K Ambos, 'Crimes Against Humanity and the International Criminal Court,' in Leila N. Sadat (ed)., *Forging a Convention for Crimes Against Humanity* (1st edn, Cambridge, 2011) 280.
[20] UN, Treaty Collection, Rome Statute of the International Criminal Court, 17 July 1998.
[21] Rome Statute, art 13.
[22] Rome Statute.

secure the arrest and surrender of state officials from other states is limited by the immunities international law accords to the state official when abroad. Article 98(1) is particularly relevant for states that are not party to the Statute because it prevents parties to the Statute from arresting and surrendering officials or diplomats of non-parties to the ICC, where those officials or diplomats have immunity under international law. This is an effective bar to the ICC's jurisdiction thus limiting global justice. The only way to bypass this is to make a distinction between personal immunity of such State officials and official immunity) for acts carried out in an official capacity. However, there is no official immunity in relation to acts which constitute international crimes and in respect of which there is universal jurisdiction. Thus, the ICC may request the arrest and surrender of serving State officials that are not entitled to official immunity and former officials as well where the crime they are alleged to have committed is one of universal jurisdiction.[23]

Principle of Complementarity

As earlier mentioned in this article and as provided in Article 17 of the Statute, the ICC may not exercise jurisdiction over nationals of non-State parties in cases in which a state is willing to or has genuinely and in good faith, investigated or prosecuted an individual with respect to the same crime. This applies to both State parties and non-State parties. In the case of State parties, the ICC can only intervene if the State is unable to prosecute or unwilling to do so. Article 20 of the Statute does not permit trial by the ICC of a person who has been tried 'by another court'. This functions as a form of estoppel.

Requests for Deferral from the UN Security Council

Article 16 of the Statute provides that the ICC Prosecutor may not commence or proceed with an investigation or prosecution, if the Security Council acting under Chapter VII of the UN Charter, has requested a deferral. Such a deferral of investigation or prosecution lasts for 12 months but may be renewed by the Security Council. This provision was inserted as a means of providing limited political control over the ICC Prosecutor as it was also acknowledged that there may be instances where the exercise of jurisdiction by the Court would interfere with the resolution of an ongoing conflict by the Security Council. Since State parties have accepted obligations under the Statute and non-parties have not, it is more likely that the Security Council will exercise its powers under Article 16 in relation to non-parties. So far, the only requests made by the Security Council for the deferral of ICC prosecution is for officials and personnel of non-parties taking part in operations which have been established or authorized by the UN.

Treaties under Article 98(2) of the Rome Statute

Article 98(2) of the Statute provides that certain treaties may prevent the surrender to the ICC of some nationals of non-State parties present on the territory of State parties. An example is the United States which has consistently concluded agreements with other States that US nationals will not be handed over to the ICC without consent from the US. This provision allows parties, on whose territory a person wanted by the ICC is present, to fulfil their obligations under international agreements preventing the transfer of such persons to the ICC but the provision of Article 98(2) cannot be interpreted to mean that a State party can avoid its obligations of cooperation with the ICC by simply concluding broad agreements in which the said State agrees not to transfer nationals of other States to the ICC. In essence, both existing and new agreements requiring the consent of a State that has sent or transferred a national or official to another State will restrict the right of the Court to obtain custody of non-party nationals from the territory of State parties. Since the ICC does not have the right to require the non-State party to transfer the suspect to the ICC, agreements in line with Article 98(2) will definitely impact on the jurisdiction of the Court over nationals of non-State parties thus restricting the Court's reach and limiting international justice.[24]

Extradition Agreements

Yet another limitation on the competence of the International Criminal Court to exercise jurisdiction over nationals of non-State parties is with respect to nationals who are present in the territory of a State Party which has an obligation to extradite them to the non-State party. Article 89 of the Rome Statute gives parties to the Statute the option to arrest and surrender persons on their territory to the ICC when the ICC requests their surrender. But there is a possibility that such a person, in respect of whom the request for surrender is made is also wanted by a State for prosecution (either for the same offence or for another offence), and that particular State also submits a request for extradition to the State Party with custody. In cases where the competing request for extradition comes from a non-party, the State Party with custody is only obliged to give priority to the ICC's surrender request where it does not have an international obligation to extradite the person to the non-State party. If there is a treaty requiring the extradition of the accused individual to the non-State party, the State party with custody has the right to choose whether to surrender the person to the Court or the non-State party.[25] Just like in the principle of complementarity in B above, there is a limitation on the exercise of the ICC's jurisdiction over non-party nationals only to the extent that the non-party is willing to exercise its jurisdiction. However, unlike the complementarity provisions, Article 90 does not provide a guarantee that the International Criminal

[23] D Akande, 'The Jurisdiction of the International Criminal Court over Nationals of Non-Parties; Legal Basis and Limits' (2003) 1 *Journal of International Criminal Justice (JICJ)* 642.

[24] Ibid, 646.

[25] Rome Statute, art 90.

Court will not exercise its jurisdiction. When Article 90 applies, it is up to the state with custody to determine which of the competing international obligations it will honour.

5. Case Studies on the Jurisdiction of the International Criminal Court

The Sudan (Darfur) Case[26]

One of the most prominent cases that aptly shows the Court's jurisdictional limitations is the Darfur crisis in Sudan. The United Nations Security Council (UNSC) referred the situation to the ICC in 2005 under Resolution 1593, granting the ICC jurisdiction despite Sudan not being a party to the Rome Statute. The ICC proceeded to indict Sudanese President Omar al-Bashir for war crimes, genocide, and crimes against humanity. However, the ICC faced significant challenges in enforcing its arrest warrants. Al-Bashir traveled to several countries, including ICC State Parties like South Africa, without being apprehended, as many governments cited the principle of head-of-state immunity or feared political backlash. Despite the UNSC referral, Sudan's non-cooperation and the lack of international enforcement mechanisms showcased the ICC's reliance on state cooperation for successful prosecutions. This case highlights the limitations in prosecuting non-signatory states and the political difficulties of arresting high-profile figures.

The Democratic Republic of Congo[27]

The DRC has been one of the ICC's more successful cases, but it still reveals important jurisdictional challenges. The country ratified the Rome Statute in 2002, allowing the ICC to investigate crimes committed during the Second Congo War and its aftermath. Thomas Lubanga, a militia leader, became the first person to be convicted by the ICC for war crimes, particularly for the conscription of child soldiers. While this case marked a milestone in international justice, it also exposed the limitations of the ICC's scope. The ICC's focus was narrow, concentrating on a few individuals rather than addressing the widespread crimes committed by various actors during the conflict. Moreover, critics argued that the ICC disproportionately focused on rebel leaders while neglecting the responsibility of government forces, leading to accusations of selective justice. This raised concerns about the ICC's capacity to address the complexity of conflicts involving multiple actors and the political pressures that might shape prosecutorial decisions.

The Monetary Gold Case[28]

In the Monetary Gold case, the ICJ held that it would not decide a case if it would involve adjudicating on the rights and responsibilities of a third party not before the Court which had not given its consent to the proceedings. Even if we were to accept, albeit wrongly, that the Monetary Gold doctrine applies to all international law tribunals, it will not in most cases, be violated by the exercise of jurisdiction by the International Criminal Court over nationals of non-State parties in respect of official acts done pursuant to the policy of the said non-State party. This doctrine does not, however, prevent adjudication of a case simply because that case implicates the interests of non-consenting third parties or because a decision may cast doubt on the legality of actions of third-party states or imply the legal responsibility of those states. The case law of the ICJ under the Monetary Gold doctrine shows that the doctrine is only properly applicable in cases where a pronouncement by the Court on the rights and responsibilities of the third State is an absolutely necessary prerequisite for the determination of the case before the court. The limitation of this doctrine can be seen in the two cases in which the Court has applied the doctrine and other cases in which the doctrine was pleaded by a party but not applied by the Court. In the Monetary Gold case, the Court applied the doctrine because it was necessary to determine whether Albania had committed any international wrong against Italy and whether she was under an obligation to pay compensation to the latter.

6. Conclusion and Recommendations

From the above discussions on the jurisdictional framework of the International Criminal Court, the limitations of the Court are very apparent. It almost seems as though the Court is hedged in on every side with limiting principles and agreements leaving only a small window of instances under which it can act. This is nothing but a significant barrier to global justice. It would seem as though the ICC was created to serve no purpose in the light of the numerous limitations but that is untrue because in spite of these restrictions, the Court has gone ahead to achieve some major goals by successfully prosecuting international offenders and enhancing justice. In spite of its successes, it is expedient that we remove the fetters that seem to bind the ICC currently so it can be free to act out its objectives fully thus enhancing global justice. This we can do by implementing the following recommendations.

i) Enhancing the Complementarity Principle: State Sovereignty remains one of the biggest barriers to the ICC's jurisdiction. Many countries argue that the ICC encroaches on their sovereign rights, especially when it involves prosecuting sitting heads of state or military leaders. One solution to this tension is enhancing the ICC's complementarity principle, where the court only intervenes when national judicial systems are unwilling or unable to prosecute crimes. Strengthening the complementarity principle could involve joint investigations between the ICC and national authorities

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[26] *The Prosecutor v Omar Hassan Ahmad Al-Bashir* ICC-02/05-01/09.
[27] *The Prosecutor v Thomas Lubanga Dyilo* ICC-01/04-01/06.
[28] Monetary Gold Removed from Rome in 1843, *Italy v France and Ors,* (1954) ICJ Rep 19.

or capacity-building programs to improve the ability of domestic courts to prosecute international crimes. This would allow the ICC to act as a support mechanism rather than a direct competitor, reducing concerns about sovereignty while ensuring justice is served.

ii) Regional courts can play a key role in alleviating the jurisdictional burden on the ICC. Courts like the African Court on Human and Peoples' Rights (AFCHPR) can share jurisdiction over cases involving international crimes. This regional involvement would foster a greater sense of ownership and reduce perceptions of the ICC as a tool for Western-dominated justice, especially in regions like Africa, where the ICC has faced accusations of bias. Empowering regional courts to handle certain international crimes would also enable the ICC to focus on the most severe or complex cases. This division of labor would expand the global reach of international justice while respecting regional legal systems.

iii) A significant barrier to the ICC's effectiveness is the non-cooperation of major powers like the United States, China, and Russia, none of whom are parties to the Rome Statute. To mitigate this, the ICC could pursue bilateral agreements with non-signatories, allowing them to refer specific cases to the court without committing to full membership. Such ad-hoc jurisdiction agreements would allow the ICC to intervene in significant cases while respecting the reluctance of certain states to surrender their overall sovereignty to an international body. Another proposal is to offer observer status to non-signatories in ICC meetings, fostering dialogue and engagement without requiring full participation. This could encourage cooperation, especially in specific cases involving international crimes.

The ICC was borne out of the need for a body that prosecutes the most heinous and serious crimes, especially in cases where the offenders are leaders of States and are seemingly above the law in their States thus rendering the judicial effectiveness of that State useless. The ICC was not the product of a foolish or extra-active notion. Thus, it is important that we preserve the ICC by removing its jurisdictional fetters and allowing it roam free to effect global justice. It is believed that if this is done, in no distant time, the ICC will be a more active organization with more successful prosecutions and less criticisms thus leading to a safer world with global justice for all.