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Fragmentation of International Criminal Law in the Context of Global Governance: Manifestations, Negative Impacts, and Pathways to System Integration

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Abstract. The concept of international criminal law has developed rapidly. The emergence of relevant institutions-from the ad hoc tribunals of the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) to the permanent International Criminal Court (ICC)-has enhanced governance measures to address transnational atrocities, but it has also led to fragmentation characterized by normative conflicts, functional overlaps and enforcement gaps. With globalization, the disintegration of the international criminal law undermines the global governance. This paper examines particular expressions of fragmentation at rule, institutional, jurisdiction, and implementation levelsand evaluates the adverse effects of fragmentation on enforcement effectiveness, coordinated governance and international fairness. In this paper, the comparative research approach is adopted to prove such issues as treatsy-based discrepancies in crime definitions, judicial inconsistencies due to inconsistent enforcement of soft and hard law, selective prosecution due to jurisdictional conflicts and accountability gaps in new fields of cybercrime and AI-driven offenses. To control these concerns, the proposals comprise developing the bodies of authority to interpret the soft law, quickening the process of the soft law being converted to hard law by instituting regional pilot programs, the adoption of the tiered jurisdiction system, homogenizing evidence, and introducing the global level of training. The goals of these strategies are to overcome interpretative disagreements, increase cooperation internationally, revitalize judicial fairness and promote equity of international criminal law.

Keywords: Fragmentation of international criminal law, Global Governance Challenges, Judicial Coordination Mechanisms.

1. Introduction

The role of the international criminal law in dealing with the severe acts of transnational atrocities as well as the preservation of international order is becoming more conspicuous. The internationalization of criminal law is manifested in the fact that temporary courts then turned into permanent institutions. This fast development and variety has caused a split in the framework of the international criminal law. Such fragmentation (normative conflicts, institutional overlap and

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enforcement gaps) is undermining the efficiency of global governance, in the present context of globalization and high development rate, systemic solutions are needed. The exchange of international criminal law previous studies has furnished a substantive yet disputed academic ground regarding the split up of international criminal legislation: the International Law Commission (ILC) report evaluates the impact of specialized regimes leading to the struggle of conflicting norms, researchers examined broader fragmentation with greater emphasis on the perils of regime isolation on governance hitches by normative tension and instability between regimes. It also considers that the role of courts in creating or reducing fragmentation through interactions or through hybrid tribunals, that multiplicity can be associated with the inconsistencies of procedures or increase pluralism in enforcement. Other studies also emphasize jurisdictional issues, such as the harmonization of aggression crimes slowing down, creating ICC loopholes. International criminal law has been faced by many disputes in terms of its interpretation and jurisdictional issues since its inception. This paper attempts to eliminate all these controversies, promote the good working of the international governance process and uphold the international criminal law by examining the structural issues that the international system of law experiences. This paper will provide a piecemeal exposition of four perspectives of rules, institutions, jurisdiction, and implementation based predominately on treaties, judgment, and policy documents, and suggest a detailed plan of action.

2. The concrete manifestation of fragmentation of international criminal law

2.1. Rule fragmentation

2.1.1. Treaty conflicts and interpretational discrepancies

Different standards and interpretations of legal terminology exist. Different international criminal law instruments contain significant differences in their provisions regarding the elements of the same crime. For example, Article 2 of the 1984 Convention on the Prevention and Punishment of the Genocide states that an act constitutes genocide if it is aimed at "intent to destroy in whole or in part." However, in Article 6 of the Rome Statute, as reflected in the Al Bashir case, the 'in part' of the group targeted by the crime of genocide should constitute a substantial part of that group. This has led to completely different conclusions between domestic courts of various countries and the ICC regarding the same crime, resulting in substantial controversy. On the other hand, the definition of crime of aggression and the setting of jurisdiction also represent typical differences in interpretation. The Kampala Amendment of 2016 provides conditions for the international court of justice to exercise jurisdiction over crimes of aggression but has not yet been widely recognized. There remain serious differences of opinion among countries regarding the understanding and application of the crime of aggression [1]. It is often due to conflict between treaties that the current world pattern has been fragmented in the application of international criminal law treaties [2].

2.1.2. Confusion in the application of soft law and hard law, as well as in the standards of application

Mixed application of soft and hard law, lack of clear guidelines, and strong discretionary choice by national courts in application, resulting in inconsistent standards. In ICC judicial practice, discussions on contentious issues often involve extensive references to soft law, such as interventions by the United Nations Security Council, drafts by the International Law Commission,

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and expert group reports. However, there are no unified rules to determine the order of applicability or the legal effect of these soft laws. Therefore, when domestic courts cite these soft laws, they have a high degree of discretion due to the lack of uniform standards, which can result in completely opposite characterizations and judgments for the same facts in different countries [2]. For example, In the case of the situation in Afghanistan (ICC-02/17), the Pre-Trial Chamber broadened its interpretation of Article 15(4) of the Rome Statute, considering the assessment of "just interests" as a positive requirement and prioritizing soft law elements such as the feasibility of investigation, the complexity of the armed conflict, and impunity, thereby refusing to authorize an investigation. The court of appeal rejected the judgment of the first instance and found that the "appropriate principles" of article 15 (4) of the Roman constitution, including jurisdiction, criminal situation and admission of prosecution, were satisfied. The court overturned the first trial and allowed the prosecutor to investigate. This reflects the difference between the applicable standards of soft law and hard law.

2.2. Fragmentation at the institutional level

2.2.1. The increase in international criminal justice institutions has led to confusion regarding conviction standards and conflicts of power

The simultaneous presence of the ICC, the two ad hoc tribunals, including the ICTY and the ICTR, the Special Court for Sierra Leone (SCSL), the Special Tribunal for Lebanon (STL), the Kosovo Specialist Chambers, and a variety of regional criminal courts (of which the discussions cover Latin America and Africa) is an unmistakable sign of fragmentation. Different institutions work according to their independent laws, evidence presentations, and procedures, which creates a large disparity in the conviction level and a sentence. To illustrate, the ICTY is guided by the principle of complementarity and the broadness of state rights on the judicial process, and its rules of evidence are rather lenient. Concurrently, the ICTY and ICTR, which are special tribunals formed by the United Nations Security Council, lay special stress on some conflicts solving, rules of evidence at the tribunals favor oral testimony, and tables on sentencing are based on deterrence and reconciliation, where the maximum penalty is life imprisonment without the death penalty.

This difference in evidentiary and sentencing standards does not only bring out the evidentiary differences but also makes the functional overlaps and conflicts of authority worse. One notable case would be the conflict between the right of participation of victims and the right of sentencing. Article 68(3) of the Rome Statute gives the victims an extensive right to take part as stipulated in the Rome statute by state that the victim has the right to express their opinion in the trial and sentence proceedings. However, in reality the views of the representative of a victim are normally in conflict with the views of the prosecutor and the defence the court were forced to meet the divergent procedural requirements of the prosecution and the defence in the sentencing period. Whereas the ICC spins this organizational dysfunction into an internal account of bureaucracy to management, the tension between the victim participation processes and the sentencing functions has not actually been addressed; on the contrary, it actually reveals the possible anomalies of administrative management in the institution being transformed to judicial management [3]. Such disintegration is traced in the tension between the international human rights law and the international criminal law that strive to safeguard the rights and interests of the victims [4].

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2.3. Fragmentation at the implementation level

Inconsistent treaty implementation standards, varying levels of cooperation among countries, and procedural obstacles to judicial assistance.

To date, the number of signatory states to the Rome Statute is relatively low compared to all countries in the world, with major powers like the United States, China, and Russia generally not participating. This makes retroactive implementation of the ICC globally quite difficult. Even in contracting parties, their domestic legislation may contain special provisions outside the Rome Statute. Countries such as Germany and the Netherlands have ensured the implementation of Articles 27 and 86 of the Rome Statute through their domestic laws, but some countries have reserved exceptions to exemptions or conditions for cooperation in their domestic legislation, which has led to obstacles in the transfer of evidence and the arrest of suspects. This situation stems from some countries' concerns about their own sovereignty and the diversity of national legislation. When non-party states refuse to cooperate, the enforcement of the ICC is more restricted [5]. For instance, in the AI Bashir case, South Africa, Jordan, and other contracting parties refused to execute the ICC's arrest warrant for Bashir within their territories because their domestic laws' interpretation of Article 27 of the Rome Statute conflicted with international standards, which to some extent reflects the harm of fragmented implementation of regulations.

3. Negative influence of fragmentation of international criminal law

3.1. Weakening the effectiveness of international criminal law enforcement

3.1.1. Conflicts in rules lead to confusion in the application of law, and the judicial consequences becoming increasingly unpredictable

There are some conflicts between international criminal law treaties and regional and international system norms. Such conflicts greatly reduce the predictability of international criminal law in judicial decisions because different rules of evidence and thresholds for conviction between different courts have different consequences: it may be considered a war crime in the ICC but may not be convicted in a regional court due to differences in interpretation. This situation increases the difficulty of judicial application [2]. In addition, the mixed application of soft law and hard law often lacks a unified standard of application, which further amplifies the confusion in the application of law [2].

3.1.2. Jurisdictional conflicts lead to 'selective prosecution', undermining impartiality and authority

Jurisdictional conflicts often lead to politicized choices. The ICC's concentrated investigations in African cases have been accused of bias. If the parallel proposal of the Special Tribunal for Crimes of Aggression in Ukraine and the ICC is ultimately formed, it will further exacerbate this risk and deepen the label of "selective justice" [6]. This conflict arises from the discrepancy between the ICC's theory of 'transfer of jurisdiction' and state sovereignty, undermining the judicial authority of the courts [7]. For example, in the case of AI Bashir, the state's insistence on Bashir's exemption based on customary international law, thereby refusing to carry out the ICC's arrest of him, demonstrates the impact of jurisdictional fragmentation [7]..

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3.1.3. Lack of coordination between agencies leads to "excessive punishment" or "double prosecution"

Lack of co-ordination and fragmentation between various agencies can easily result in trials and possible punishment of the wrong people. To illustrate, where victim involvement clashes with sentencing process, the ICC tried to fill bureaucratic issues using management reform, but was unable to settle the internal issues, making the execution somewhat inefficient [3]. Besides, such disintegration of inter-agency coordination reveals the risk of crisis of administration to adjudication, exposing its further inherent risk in the possibility of no punishment to the guilty [3]. Tensions between the international criminal law and the international human rights law in safeguarding the rights of the victims have further contributed to institutional fragmentation resulting in the recurrent prosecutions or failures [4].

3.2. Hinders the coordinated advancement of global governance

International criminal law also prevents the unified advancement of world management seriously and exacerbates the situation of an empty nesteehee in new areas. The standards of the courts of law can hardly be applied to the best of their ability in these spheres since there exist no relative agreements or jurisdictions. Using the example of cybercrime, there has been no international criminal law in the definition, jurisdiction, and rules of evidence of any crime [8]. As an example, the question of the responsibility of AI weapon-related crimes, Data-driven Learning systems (DDL) applied in committing international crimes can serve as a stepping stone towards the accountability gap because they are unpredictable and difficult to explain [9]. The absence of cooperation by the major powers, on the other hand, discredits the entire international community concerning international criminal law institutions, lowers the pace of global rule of law, and inhibitor multilateral cooperation effectiveness [6]. The transfer of evidence has been hampered in the conflict in Ukraine because major powers have refused to cooperate, which has sluggled the progress of the global rule of law [5]. Consequently, in order to avoid such scenarios, a few non governmental organizations are requesting stronger nations to engage in collaboration to deter a crisis of trust [10].

3.3. Damages the fairness and justice of the international community

Developing countries are the primary victims of the fragmentation of international criminal law. Regions such as eastern Democratic Republic of Congo and Darfur in Sudan are extremely lacking in judicial resources, yet they have become hotspots for ICC cases due to geopolitical factors. They often face the dilemma of selective justice brought about by the fragmentation of international criminal law. This imbalance exacerbates the victimization of developing countries, especially those in Africa, putting them at a disadvantage in the competition for jurisdiction [2]. At the same time, there are serious shortcomings in the current protection of rights for victims of international crime, and victims of cybercrime often struggle to obtain compensation due to jurisdictional disputes [8].

4. Fragmented approaches to international criminal law

4.1. Core integration path of fragmented international criminal law

The normative integration path of international criminal law mainly includes two aspects: the first is to establish a specialized treaty interpretation body, and the second is to accelerate the process of

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transforming soft law into hard law. On the one hand, an authoritative treaty interpretation body should be established to clarify conflict rules such as "later law prevails over earlier law" and "special law prevails over general law" on a large scale. For instance, this body could be led by the United Nations International Law Commission, with members including representatives from state parties, non-state parties, and legal experts, adopting a decision-making mechanism of 'consensus + majority rule'. Furthermore, by establishing a hierarchical interpretation mechanism and a centralized authoritative body, the uniformity and stability of international law can be effectively promoted [2]. For example, the New York Special Conference in 2025 failed to pass an amendment on the issue of jurisdiction over crimes of aggression, resulting in continued fragmentation of jurisdiction. The best way to resolve this situation is to involve an authoritative body to interpret the issue of jurisdiction [1]. At the same time, the process of hardening soft laws should be accelerated. The hardening of soft law should proceed through a 'regional pilot - global promotion' model, first unifying soft law application standards within African and European regional organizations, then gradually incorporating them into the ICC framework. The Ljubljana-Hague Convention has transformed the practice of mutual legal assistance in conventional warfare into a mandatory obligation, which is a successful example of the transformation from soft law to hard law. Therefore, more countries should be encouraged to join it [10].

4.2. Institutional integration

For the governance of institutions, it is necessary to establish a clear hierarchical jurisdiction system with well-defined responsibilities, clearly delineate jurisdictional boundaries, and effectively avoid judicial vacuums through the principle of supplementation [7]. On this basis, a unified and systematic body should be established to coordinate global international criminal law institutions, handling matters such as case transfers, evidence sharing, and the enforcement of judgments. Within the framework of the 'Ljubljana-Hague Convention,' such a body can standardize procedures for evidence and extradition, ensure procedural justice, and prevent evasion of prosecution due to procedural irregularities [5]. At the same time, the United Nations and regional organizations should also play a role in rule-making and judicial assistance. The UN Security Council can coordinate jurisdictional conflicts, and regional organizations can promote the unification and systematic integration of local judicial rules [6].

4.3. Integration at the judicial level

First, it is necessary to unify the evidence standards of global criminal justice institutions and solve the procedural and accessibility problems of cross-border evidence collection. This brings convenience to the process of proving certain serious crimes and the fact will reduce the level of proving the cases and the threshold of proving the cases also can be reduced, thus empowering the process of convincing the plan [5]. Second, individuals ought to take on board of the Ljubljana-Hague Convention returns on its own with regard to the cross-border enforcement of judgment [10]. Create a data platform globally to offer the flow of information and judicial support among the global institutions. Lastly, international criminal judge and prosecutor training should be often conducted jointly by people to bring the judicial notions and standards in line. Professional contacts are an opportunity to foster uniformity in the perception of standards among judicial staff across countries, including training in the crimes of DDL system, to deal with the new cases [10].

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5. Conclusion

Conclusively, the general fragmentation of international criminal law is seen to be in terms of a conflict of rules, institutional duplication and gaps in its enforcement that limit its effectiveness to fight international crimes and to uphold international order. The Clash between the definition of crimes, jurisdictions, inconsistencies in application of the flexible and strict laws among other challenges has led to chaos in the judicial system which may give conflicting decisions on the same facts by different courts. In addition, new forms of crimes such as cybercrime, AI-related crimes that take advantage of the data-driven learning systems are not regulated and contribute to the lack of accountability and the threat of impunity. This paper supports the idea of a concerted effort to integrate the international criminal law framework: creating an official interpretation authority, setting up a hierarchical jurisdiction structure, homogenizing the standards of evidence, and creating an intercontinental training center of judges and prosecutors. By introducing the mechanisms like Ljubljana-The Hague Convention, that seeks to intensify mutual legal collaborations, facilitate cooperation between the United Nations and regional entities in investigating crimes of universal importance, the introduction will in turn improve the equity of the judicial system, common truth and solidify the interconnected world order of governance in interdependent world.

References

[1] Bardelle, A. (2025) A historic chance missed: Harmonization of the ICC's jurisdiction over the crime of aggression delayed once more. Opinio Juris.
[2] Chawla, S. (2021) Fragmentation of international law: A critical analysis. SSRN Electronic Journal.
[3] Clements, R. (2019) From bureaucracy to management: The International Criminal Court's internal progress narrative. Leiden Journal of International Law, 32(1), 149–167.
[4] Tsui, E. (2021) Arenas of interaction: The relationship between international criminal law and international human rights law. Justice in Conflict.
[5] Moodrick-Even Khen, H. (2025) Mutual legal assistance and double criminality: Bolstering the struggle against impunity outside the ICC framework. Journal of International Criminal Justice, 23(1), 87–106.
[6] Leontiev, L. (2025) On the rise of universal criminal justice. Torkel Opsahl Academic EPublisher.
[7] Sadat, L.N. (2023) The conferred jurisdiction of the International Criminal Court. Notre Dame Law Review, 99(2), 549–610.
[8] Fidler, M. (2025) Fragmentation of international cybercrime law. Utah Law Review, 2025(3), 737–780.
[9] Greipl, A.R. (2023) Data-driven learning systems and the commission of international crimes: Concerns for criminal responsibility? Journal of International Criminal Justice, 21(5), 1097–1118.
[10] Amnesty International. (2025) Global: States should promptly join the Ljubljana-The Hague Convention on international cooperation in prosecuting crimes under international law: Joint statement. Amnesty International.