От Редакции.

В журнале «Международная жизнь» № 4/2024 г. опубликовано на русском языке *Заключение Международно-правового совета при МИД России* **«Проблемы правомерности деятельности Международного уголовного суда»**. В пояснении к этой публикации Директор Правового департамента МИД России М.В. Мусихин отметил, что Международный уголовный суд, на который «международным сообществом когда-то возлагались надежды», превратился «в насквозь коррумпированный и работающий строго по политическим заказам орган. Неудивительно, что и в научном заключении Международно-правовой совет» при МИД России приходит к выводу о «полной дискредитации и утрате международной легитимности» Международного уголовного суда. Ниже печатается перевод названного научного заключения, выполненный аспирантами кафедры международного права МГИМО А.М. Корженяк и В.В. Пчелинцевой. Перевод документа опубликован на сайте Министерства иностранных дел Российской Федерации (URL: https://mid.ru/ru/foreign_policy/legal_problems_of-international_cooperation/1949021/?lang=en).

OPINION OF THE INTERNATIONAL LAW ADVISORY BOARD UNDER THE MINISTRY OF FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION

PROBLEMS OF LEGALITY OF THE INTERNATIONAL CRIMINAL COURT

The Legal Nature of the ICC

The International Criminal Court (ICC) was established by an international treaty, the Rome Statute, adopted on July 17, 1998[1]. As of March 1, 2024, 124 States have become parties to the Rome Statute. Despite the seemingly impressive number of parties[2], this treaty cannot be considered universal. In particular, among the States not participating in it one finds three of the five permanent members of the UN Security Council – Russia[3], China and the United States; the industrially developed and densely

[1] The adoption of the Rome Statute was preceded by a long period of preparatory work, which demonstrates the particular sensitivity of issues related to the administration of international criminal justice for States. For instance, the Convention on the establishment of an International Criminal Court drafted in 1934 under the auspices of the League of Nations failed to enter into force due to insufficient number of ratifications. See, e. g.: Volevodz A. G., Volevodz V. A. Historical and International Legal Prerequisites for the Formation of the Contemporary System of International Criminal Justice // International Criminal Law and International Justice. 2008. No. 2. P. 2-9; Bassiouni Ch. M. Chronology of Efforts to Establish an International Criminal Court // Revue internationale de droit penal. 2015. Vol. 86. No. 3-4. P. 1163-1194.

[2] For comparison, 116 States are parties to the 1969 Vienna Convention on the Law of Treaties and 114 States are parties to the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies.

[3] The Russian legal expert community expressed doubts about the compatibility of the national legal system and the Rome Statute long before the decision of the Government not to become a party to the treaty. See Tuzmukhamedov B. R. The Rome Statute of the ICC: Possible Issues of Constitutionality // Moscow Journal of International Law. 2002. No. 2. P. 165-173 and other works by the same author; Vedernikova O. N. On the Issue of Ratification of the Rome Statute of the International Criminal Court // Criminal Procedure. 2010. No. 4. P. 13-19.

populated India, Pakistan, Türkiye, Malaysia and Indonesia; Arab States, with the exception of Jordan and Tunisia; and many other States[4].

At different points in time, some earlier signatories, namely Israel, Russia, the United States and Sudan, have declared their intention not to become parties to the Rome Statute.

In contrast to sovereign States – the primary and main subjects of international law – international organisations are its derivative (secondary) subjects, created by agreement between States. They are, "notwithstanding frequent assertions, … not some universal, supranational entities "absorbing" the sovereign rights of States and dictating to them the rules and norms of conduct on the world stage"[5]. In any case, the scope of authority of international organisations cannot exceed that of the States establishing them.

The exercise of judicial functions by the ICC does not contradict its legal nature as an international organisation. It follows that the activities of the ICC as an interstate judicial body must be carried out in strict accordance with the provisions of its constitutive treaty, i. e. the Rome Statute. At the same time, the application and interpretation of the Statute (and other instruments governing the activity of the ICC) must be carried out on the basis of and in unconditional respect of the norms of current international law, primarily the UN Charter and the principles of international law enshrined therein.

An inherent element of the legal personality of an international organisation is its capacity to incur responsibility for internationally wrongful acts[6]. In 2011, the UN International Law Commission adopted the Draft Articles on the Responsibility of International Organisations, which to a large extent codified the rules of customary international law in the area. It is quite logical to assume that international organisations exercising functions of a judicial body may, like any other international organisation, commit wrongful acts and bear responsibility for them[7].

Jurisdiction of the ICC

As enshrined in the preamble to the Rome Statute and its Article 1, the ICC is meant to complement (rather than replace) national jurisdictions. According to Article 5 of the Statute, the jurisdiction of the Court is limited to the most "serious crimes of concern to the international community as a whole". This category includes the crime of genocide, crimes against humanity, war crimes and the crime of aggression. However, the ICC has jurisdiction over these crimes only if they were committed on the territory (or on board a vessel or aircraft) of a State Party to the Rome Statute or by its national (Article 12).

States non-parties to the Rome Statute may accept the ICC's jurisdiction over the crimes listed in Article 5 (by means of a special declaration) if the conditions set out in Article 12 of the Rome Statute are met. Côte d'Ivoire was the first to do so in 2003 (10 years before it ratified the Statute)[8], followed by Ukraine in 2014[9].

With regard to the crime of aggression, according to Articles 15bis and 15ter of the Rome Statute[10], the ICC can only exercise its jurisdiction when the situation concerned is referred to it by the UN Security Council or by the State itself[11].

Despite the said provisions of the Rome Statute limiting the jurisdiction of the ICC, including its jurisdiction *ratione temporis* and *ratione loci,* in its practice the Court has repeatedly deviated from them and, in fact, acted beyond its powers.

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[4] Thus, in terms of the population of States that are not parties to the Rome Statute, the majority of the world's inhabitants fall outside the jurisdiction of the ICC.

[5] Fedorov V. N. The United Nations, Other International Organisations and Their Role in the XXI Century. Moscow, 2005. P. 53.

[6] Shaw M. International Law. Eighth Edition. Cambridge, 2017. P. 1001; Advisory Opinion of 11 April 1949 on Reparation for Injuries Suffered in the Service of the United Nations. I. C. J Reports, 1949. P. 9.

[7] Examples of bringing the ICC to responsibility can be found in the practice of the Administrative Tribunal of the International Labour Organization, where labour disputes have been considered – and often won by the ICC employees. See, e. g., International Labour Organization. Administrative Tribunal, 132nd Session, Judgment No. 4405. P.-V. d. M. v. ICC of 7 July 2021. The Tribunal obliged the ICC to pay € 160,000 as pecuniary damage, € 40,000 as moral damage and € 5,000 as legal fees to the applicant's heirs who had expressed their intention to pursue the case after her death. See URL: https://www.ilo.org/dyn/triblex/triblexmain.fullText?p_lang=en&p_judgment_no=4405&p_language_code=EN.

[8] See more on Côte d'Ivoire's situation referral to the ICC. URL: https://www.icc-cpi.int/cdi.

[9] See more on Ukraine's situation referral to the ICC. URL: https://www.icc-cpi.int/situations/ukraine.

[10] Incorporated as a result of the adoption of amendments by the Review Conference held in Kampala in 2010; it has to date entered into force for 45 States.

[11] Kibalnik A. G. (2019) The crime of aggression: deceived expectations of international criminal law *All-Russian Journal of Criminology*. Vol. 13. No. 2. P. 300-310.

Exercise of jurisdiction over a State that has withdrawn from the Rome Statute

In February 2018, the ICC Prosecutor announced the launch of a preliminary examination of the situation in the Philippines[12]. On March 16, 2018, the Philippines notified the UN Secretary-General of its withdrawal from the Rome Statute. On March 17, 2019, the withdrawal became effective (under Article 127 of the Statute, it shall take effect one year after the date of receipt of the notification of withdrawal, unless the notification specifies a later date).

As of March 17, 2019, the case was at the "preliminary examination" stage. It was not until 2021, when the Philippines was no longer a party to the Rome Statute, that the Prosecutor sought and obtained the consent of the Pre-Trial Chamber to launch a full investigation[13]. In 2023, the decision was upheld by the Appeals Chamber[14] (by a minimal margin of one vote, three judges to two, the latter expressing their arguments in a dissenting opinion).

According to Article 5 of the 1969 Vienna Convention on the Law of Treaties, it "applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within the framework of an international organization"[15]. It means, in particular, that each State has the sovereign right to withdraw from the constituent treaty of an international organization (in the case of the ICC, it is enshrined in Article 127 of the Roma Statute). The initiation of an investigation into the situation of a State that has withdrawn from the Rome Statute by the Court is inconsistent with the abovementioned right. It also contradicts the sovereign right of each State to consent to submit to the jurisdiction of an international court[16].

Article 127, paragraph 2, of the Rome Statute does provide that withdrawal from that treaty does not relieve a State from fulfilling the obligations that arose during its participation in the Statute. However, this provision specifies Article 70 of the 1969 Vienna Convention on the Law of Treaties: the withdrawal of a State from a treaty does not affect the obligations it had incurred during the period of its implementation. This provision must be interpreted in light of the fundamental principle of the law of treaties: a treaty is binding only on its parties. The obligation to cooperate with the ICC under Article 86 of the Rome Statute applies only to the parties to that treaty. In Article 70 of the Vienna Convention itself, the rule on the maintenance of obligations incurred prior to withdrawal (paragraph 1 (b)) is preceded by the provision establishing that, upon withdrawal from a treaty, a State is released from any obligation to perform it in the future (paragraph 1 (a)).

There is no evidence suggesting that Article 127 of the Rome Statute is an additional arrangement extending the obligations of States terminating their participation in the ICC beyond those enshrined in Article 70 of the Vienna Convention. In particular, such reading is not confirmed by *travaux préparatoires* of the Rome conference[17]. Therefore, when a State withdraws from the Rome Statute, it may only be bound by the duties that arose during its participation in the treaty, which includes the specific requests for cooperation that the ICC made to the

[12] URL: https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-opening-preliminary-0.

[13] Decision on the Prosecutor's request for authorisation of an investigation pursuant to Art. 15 (3) of the Statute. URL: https://www.icc-cpi.int/court-record/icc-01/21-12

[14] Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I's Authorisation. URL: https://www.icc-cpi.int/court-record/icc-01/21-77

[15] See also: Tunkin G. I. Theory of International Law. Moscow, 1970. P. 362-366; Vienna Convention on the Law of Treaties. Commentary / A. N. Talalaev (compiler and author of commentary). Moscow, 1997. P. 21-22.

[16] Bezhanishvili M. ICC Appeal Judgement on the Philippines - Keeping the Court's Post-Withdrawal Jurisdiction on Life Support? URL: https://opiniojuris.org/2023/09/28/icc-appeal-judgment-on-the-philippines-keeping-the-courts-post-withdrawal-jurisdiction-on-life-support/. The principle of the States' voluntary recognition of the jurisdiction of international courts has been repeatedly upheld by the UN International Court of Justice. See, inter alia, Corfu Channel Case (Preliminary Objection), Judgment, 25 March 1948, I. C. J. Reports 1948. p. 15 at P. 27; Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France), Judgment of 4 June 2008, Reports of Judgments, Advisory Opinions and Orders, 2008. P. 177 et al. (I. C. J. Reports, 2008. P. 177), P. 27/200, para 48. It is also supported by the legal doctrine - see, e. g., Shaw M. Op. cit. P. 817.

[17] See the discussion of final clauses and especially Article 115 (Article 127 in the final text of the Rome Statute): United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Volume II: Summary records of the plenary and meetings of the Committee of the Whole, A/CONF.183/13 (volume.11). See also Roger C. S. Commentary to Art. 127 in Triffterer O., Ambos C. Rome Statute of the International Criminal Court. A Commentary. Third Edition. Munich, 2016. P. 2322-2324.

State prior to its withdrawal from the Statute. After the withdrawal, no new duty of a State towards the Court can arise. A different interpretation would mean permanently subjecting a withdrawing State to all obligations under the Statute, that is to say, effectively invalidating the very idea of a withdrawal from a treaty.

Thus, one should agree with the judges of the Appeals Chamber who voted against upholding the decision to open an investigation. In their view, the conditions for the Court to exercise its jurisdiction as specified in Article 12 of the Rome Statute should exist at the time of its invocation in accordance with Article 13 of the Statute, i. e. at the time when the Pre-Trial Chamber of the ICC authorises an investigation into the situation[18]. As rightly pointed out in the Dissenting opinion, it is crucial in this case that the Philippines had withdrawn from the Statute prior to the Prosecutor's request to initiate an investigation[19]. It is noteworthy that the judges voting in favour of the decision did not argue with this thesis but preferred not to address the issue at all, citing procedural obstacles.

Violation of jurisdiction ratione loci

The "situation in Bangladesh" under investigation of the ICC Prosecutor concerns the alleged "forcible deportation" of Rohingyas from Myanmar to Bangladesh as a crime against humanity under Article 7, paragraph 1 (d) of the Rome Statute. In 2018, the Office of the Prosecutor of the ICC[20] and later its Pre-Trial Chamber[21] concluded that the conditions for the exercise of jurisdiction by the Court under Article 12, paragraph 2 (a) of the Rome Statute were in place. According to the paragraph cited, the Court has jurisdiction if the "State on whose territory the act occurred" is a party to the Statute. Meanwhile, Myanmar is not a party to the treaty and has not even signed it.

As follows from the ICC's reasoning, deportation is an "inherently transboundary crime"[22] and, therefore, the transfer of Rohingyas from Myanmar to Bangladesh is a crime partially committed on the territory of Bangladesh (which allegedly allows applying Article 12 para 2 (a) of the Rome Statute). The Court considered this evidence sufficient to establish its jurisdiction, despite the fact that Bangladesh is neither the State on whose territory the acts were committed nor the State of nationality of the alleged offenders.

According to the logic of the ICC, a restrictive interpretation of Article 12, paragraph 2 (a) would be contrary to the object and purpose of the Rome Statute[23]. Thus, rendering their judgement, the Pre-Trial Chamber judges refused to take into account the intention of States drafting the Statute to restrict the interpretation of territorial jurisdiction in such cases[24].

Therefore, as in the case of the Philippines, the ICC is seeking to exercise jurisdiction over a State non-party to the Rome Statute. While in the case of the Philippines it extended the provision of Article 127 on the "residual" obligations of a withdrawing State, in the case of Myanmar it arbitrarily extended its jurisdiction to a State that had never been a party to the Statute, on the ground that the crimes under investigation were "partially" committed on the territory of Bangladesh.

ICC and Immunities of State Officials

According to the Judgment of the International Court of Justice of February 14, 2002, in the *Arrest Warrant Case (Democratic Republic of the Congo v. Belgium),* "in international law it is firmly established that, as also diplomatic and consular agents, certain holders of high-ranking office in a State, such as the Head of State, Head of Government and Minister for Foreign Affairs, enjoy immunities from jurisdiction

[18] Dissenting opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze. Para 26. URL: https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd18051fd38.pdf.

[19] Ibid. Para 27.

[20] URL: https://www.icc-cpi.int/court-record/icc-roc463-01/18-1

[21] Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", No. ICC-RoC46(3)-01/18, September 6, 2018, paras 70-72. URL : https://www.icc-cpi.int/court-record/icc-roc463-01/18-37

[22] Ibid. Para 71.

[23] Ibid. Para 69-70.

[24] Guilfoyle D. The ICC pre-trial chamber decision on jurisdiction over the situation in Myanmar // Australian Journal of International Affairs. 2019. Vol. 73. No. 1. P. 5.

in other States, both civil and criminal"[25]. That position is widely supported by publicists[26] and members of the UN International Law Commission[27].

As regards State Parties to the Rome Statute, the provisions of Article 27, paragraph 2, apply according to which "immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person". Therefore, State Parties to the Statute came to agreement that for the purposes of exercising the criminal jurisdiction of the ICC immunities do not apply as between them. In other words, some kind of collective waiver of the immunity of State Parties' officials in favour of the ICC jurisdiction exists by virtue of the treaty.

Meanwhile, according to Article 98, paragraph 1, of the Rome Statute "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". These provisions apply, in particular, to requests for assistance concering surrender of an official of a State non-party to the Statute.

In 2019, the Appeals Division of the ICC groundlessly asserted in its Judgment in the case of Sudanese President Al-Bashir (appeal filed by Jordan)[28] the absence of a rule of customary international law prescribing that the Heads of State enjoy immunity from jurisdiction of international courts. According to the Judgment, such courts "when adjudicating international crimes, do not act on behalf of a particular State or States. Rather, international courts act on behalf of the international community as a whole"[29].

In the meantime, only ICC Member States could waive their officials' immunities in relations among themselves and with the Court by becoming a party to a treaty (namely, Rome Statute). As concerns States that are not parties to the Statute, the general international law norms on immunities of State officials apply in whole to relations among them as well as to relations between them and ICC Member States.

It is sometimes asserted that immunity from international criminal jurisdiction is not an international custom[30]. They argue that as no permanent international criminal institutions existed before 1990s, neither general practice nor *opinio juris* could be established which would form such a custom. That argument should be rejected. The fact that each State Party to the Rome Statute is bound by the international law norms governing immunities of State officials is indisputable. These norms define the limits of exercise of criminal jurisdiction by any such State. They correspond to the rights of other States to have their State officials' immunity from foreign criminal jurisdiction respected. Therefore, several States, and even a considerable number of States, may not conclude a treaty circumventing these norms and infringing upon the rights of third States mentioned above.

Another argument commonly referred to is the practice of the Nuremberg and Tokyo Military Tribunals established at the end of the Second World War as well as the International Criminal Tribunals

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[25] Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002. P. 3, Para 51. URL: https://www.icj-cij.org/sites/default/files/case-related/121/121-20020214-JUD-01-00-EN.pdf.

[26] Van Alebeek R. The immunity of states and their officials in international criminal law and international human rights law. Oxford, 2008. P.169.

[27] The topic "Immunity of State officials from foreign criminal jurisdiction" was included in the ILC programme of work in 2007. Special rapporteurs R. A. Kolodkin and C. Escobar Hernández produced eight reports on the issue. The Commission adopted draft articles concerning the topic on first reading.

[28] Situation in Darfur, Sudan. Judgment in the Jordan Referral re Al-Bashir Appeal, No. ICC-02/05-01/09 OA2, May 6, 2019. URL https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_02593.PDF.

[29] Ibid. Para 115.

[30] Some experts adhere with confidence to the opinion described. See Sadat L. N. Heads of State and other government officials before the International Criminal Court: The Uneasy Revolution Continues in The Elgar Companion to the International Criminal Court / ed. M. Deguzman and V. Oosterveld. Cheltenham, 2020. P. 96-127; some others agree with it in general while expressing their uncertainty. See De Wet E. Referrals to the International Criminal Court Under Chapter VII of the United Nations Charter and the Immunity of Foreign State Officials // American Journal of International Law. 2018. Vol. 112. P. 33-37. The position mentioned was enshrined in *amici curiae* conclusions expressed in the Decision of May 31, 2004, of the Appeals Chamber of the Residual Special Court for Sierra Leone in case Prosecutor against C. G. Taylor. See Decision on Immunity from Jurisdiction, Section I. Submissions of *Amici Curiae.* URL: https://www.rscsl.org/Documents/Decisions/Taylor/Appeal/059/SCSL-03-01-I-059.pdf.

for the former Yugoslavia and Rwanda which did not apply immunities of State officials[31]. This evidence should be considered inconclusive as well. Neither Germany nor Japan advanced the issue of immunity of their State officials, which they could not even have done, their sovereign rights being exercised by the victorious powers[32]. As for the International Criminal Tribunals for the former Yugoslavia and Rwanda, those were created by virtue of the UN Security Council resolutions, respect of the obligatory provisions of which prevails upon other international law obligations of States according to Article 103 of the UN Charter.

To conclude, ICC arguments in the Al-Bashir case are nothing but an attempt of the Court to arbitrarily and unilaterally extend the scope of its competence while limiting the sovereign rights of States non-parties to the Rome Statute. Such an approach contradicts the principle *pacta tertiis nec nocent nec prosunt* enshrined in Article 34 of the 1969 Vienna Convention on the Law of the Treaties, according to which a treaty may not create either obligations or rights for a third State without its consent. In this case, principles of the law of international organisations are infringed as well, in particular the principles of speciality and unacceptability of *ultra vires* acts by international organisations[33]. The Appeals Chamber's assertion about the absence of international customary norm vesting State officials with immunity from criminal prosecution by international jurisdictions cannot be supported by either State practice or *opinio juris*. It is not surprising that it sparked vivid objections within the expert community[34].

On March 17, 2023, the ICC announced the issuance by the Pre-Trial Chamber of arrest warrants against the President of the Russian Federation and the Presidential Commissioner for Children's Rights. The text of the warrants has been undisclosed "in order to protect victims and witnesses and also to safeguard the investigation"[35]. Official representatives of the Russian Federation have qualified the warrants as legally void[36]. On the contrary, some States' and international organisations' officials "commended" issuance thereof[37]. Moreover, some of them declared willingness to enforce the warrants[38].

Adding to the absurdity of the accusations giving rise to the warrants issued (the evacuation of children from the frontline being unfoundedly alleged to constitute "unlawful deportation"), the decision was issued in violation of the generally recognised principles and norms of international law governing immunities of State officials including the absolute immunity of the current Head of State from foreign criminal jurisdiction.

The legal consequence of issuance of the ICC warrant consists in obliging State Parties to the Rome Statute to arrest the individual in respect of whom the warrant was issued. However, in case of individuals enjoying immunity as officials of a State non-party to the Rome Statute which does not cooperate with the ICC, the issuance of warrant results in violation of Article 98 of the Rome Statute and is, therefore, unlawful.

The attempts to enforce the warrants thus issued shall be unlawful as well. It is important to emphasize that the ICC does not possess a coercive apparatus

[31] See, e. g., Mettraux G., Dugard J. du Plessis M. Heads of State Immunities, International Crimes and President Bashir's Visit to South Africa // International Criminal Law Review. 2018. Vol. 18. No. 4. P. 587-588.

[32] As regards Germany, the Definitive German Instrument of Surrender of May 8, 1945, and Declaration regarding the defeat of Germany and the assumption of supreme authority with respect to Germany by the Governments of the United States of America, the Union of Soviet Socialist Republics, the United Kingdom and the Provisional Government of the French Republic of June 5, 1945 which develops the provisions of the former, serve as legal ground for such exercise of these rights.

[33] Advisory Opinion of the International Court on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict brought by the World Health Organization, I. C. J. Reports, 1996. Para 24-27; Tunkin G. I. Op. cit. P. 367-372.

[34] Akande D. ICC Appeals Chamber Holds that Heads of State Have No Immunity Under Customary International Law Before International Tribunals // EJIL – Talk! Blog of the European Society of International Law. May 6, 2019; Jacobs D. You have just entered Narnia: ICC Appeals Chamber adopts the worst possible solution on immunities in the Bashir case, May 6, 2019. URL: https://dovjacobs.com/2019/05/06/you-have-just-entered-narnia-icc-appeals-chamber-adopts-the-worst-possible-solution-on-immunities-in-the-bashir-case/.

[35] URL: https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and.

[36] URL: https://tass.ru/politika/17301121, https://www.mid.ru/ru/foreign_policy/news/1859387/#9.

[37] See Russia/Ukraine: Statement by the [EU] High Representative following the ICC decision concerning the arrest warrant against President Putin as of 19 March 2023. URL: https://www.eeas.europa.eu/eeas/russiaukraine-statement-high-representative-following-icc-decision-concerning-arrest-warrant-against_en.

[38] URL: https://www.zeit.de/news/2023-03/19/buschmann-sind-zur-verhaftung-putins-verpflichtet, https://www.dublin-news.com/news/273658937/if-putin-comes-to-ireland-he-would-be-arrested-says-dept-of-justice.

of its own. Hence, the arrest warrants can only be enforced through measures taken by law enforcement authorities of States. These measures constitute a form of exercise by the executing State of its own jurisdiction. As demonstrated above, the fact that the warrants were issued by the ICC, not by national law enforcement authorities, does not exempt the State from obligation to respect immunities of foreign State officials.

Given the above analysis, an attempt of any State to enforce the "warrant for arrest" of March 17, 2023, would constitute an internationally wrongful act giving rise to international responsibility.

ICC role in conflict settlement

The States creating the ICC were guided by the idea that prosecution of individuals responsible for the most serious international crimes by an international jurisdiction would facilitate conflict settlement and post-conflict reconciliation. Thus, the Rome Statute enshrines a procedure of cooperation between the Court and the UN Security Council as the main international body responsible for the maintenance of international peace and security. UN SC may refer to the Court any situation for investigation as well as suspend an investigation initiated. Therefore, the ICC was designed as an element of conflict settlement system under the auspices of the United Nations. In practice, the results of ICC activities as a peace maintaining body are, to say the least, controversial[39].

For instance, not only was the prosecution of the then-President of Sudan Omar Al-Bashir (the "Situation in Darfur" was referred to the Court by the UN SC in 2005) conducted in violation of international law norms governing the immunity of State officials, but it also compromised the efforts of mediators aimed at conflict resolution within the region. In particular, Arab League officials asserted that the decision of the ICC creates "a dangerous precedent" in the system of international relations and may negatively impact the situation in Sudan as well as in the region in general[40]. When Jordan appealed one of ICC decisions regarding Mr Al-Bashir, Arab League submitted to the Court detailed arguments supporting Jordan's application and declared that the goals of international justice "cannot be achieved at any cost. The fight against impunity must take place within the framework of international law, including the rules that aim to guarantee orderly relations between States"[41].

It is significant that no single State enforced the arrest warrant againt Mr Al-Bashir. One cannot help suggesting that African States were guided by the understanding that, on the one hand, Al-Bashir enjoyed immunity and, on the other hand, thatthe ICC prosecution was counter-productive.

To conclude, the role of the Court in the "Darfur case" cannot be called a success either from the standpoint of administration of justice or from that of national reconciliation. On the contrary, the measures taken by the ICC de facto escalated the tensions in East Africa[42] and led to a long-term discord between the Court and the African Union.

Another example of the Court's acting without taking into account the actual context of political settlement was the investigation into the situation in Kenya. In 2013, Uhuru Kenyatta, who was under charges of the Court (connected with the internal political crisis of 2007-2008), was elected President of the country. As a result, the ICC found itself in the position of a body trying, by prosecuting an individual, to promote a resolution of a situation that in fact had already been resolved through compromises between political forces and votes of the citizens. The investigation was closed in 2015 because of insufficient evidence. As a result, the long-term work of the ICC in Kenya did not lead to results either in terms of directly implementing criminal justice (in the case involving a total of 8 people not a single sentence was passed), or in terms of facilitating the resolution of the internal political conflict.

The abovementioned examples (the list could be continued) indicate that the ICC, instead of serving as a means of peaceful settlement of disputes, often becomes a source of new conflicts or problems.

In general, the fact that for a long time after the commencement of its work in 2002 the Court handled exclusively African cases (situations in the

[39] See, e. g., Benyera E. The Failure of the International Criminal Court in Africa. Abingdon, 2022. 202 p.

[40] URL: https://www.aljazeera.com/news/2008/7/19/sudan-genocide-charges-dangerous.

[41] The League of Arab States' Observations on the Hashemite Kingdom of Jordan's appeal against the "Decision under Article 87(7) of the Rome Statute on the noncompliance by Jordan with the request by the Court for the arrest and surrender [of] Omar Al-Bashir", ICC-02/05-01109, July 16, 2018. URL: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_03714.PDF.

[42] Nouwen S, Werner W. Doing Justice to the Political: The International Criminal Court in Uganda and Sudan. // The European Journal of International Law. Vol. 21. No. 4. P. 941-965.

Democratic Republic of the Congo, Central African Republic, Uganda, Sudan, Kenya, Libya, Côte d'Ivoire, Mali) triggered the development by the African Union of an advisory "Withdrawal Strategy from the ICC", which was approved by its highest authority, the Assembly of the Union[43].

Unfounded criminal prosecution of persons

The ICC also faces challenges in respecting fundamental human rights, including protection from unlawful and unfounded prosecution. The most striking example in this regard is the case of the former Vice-President of the Democratic Republic of the Congo, Jean-Pierre Bemba, who was sentenced by the ICC to 18 years in prison. In June 2018 (after 10 years in custody at the ICC detention centre in the Hague), the ICC Appeals Chamber reversed his 2016 first instance conviction[44] and acquitted him of all charges of war crimes and crimes against humanity in the Central African Republic committed in the period from 2002 to 2003[45].

Mr Bemba went on to request that the ICC pay him compensation in the amount of 68 million euros for ten years of unjustified detention and for damage to his property seized in Belgium, Portugal and the DRC in accordance with an ICC order. This request was based on Article 85, paragraph 3, of the Rome Statute, which provides for the possibility of compensation in exceptional circumstances when a "gross and obvious miscarriage of justice" is discovered.

It is noteworthy that this was already the third claim for compensation addressed to the Court by persons acquitted following a trial (although the previous two involved significantly different sums of compensation: 906.3 thousand euros in the case of Mathieu Ngudjolo and 27 thousand euros in the case of Jean -Jacques Mangenda-Kabongo). Nevertheless, as in the two previous cases, the ICC rejected Mr Bemba's claim without any convincing grounds[46]. Thus, it avoided clarifying important issues regarding proper compensation to persons subjected to unjustified criminal prosecution by the Court, as well as the liability of the ICC and its Member States enforcing its orders for failure to ensure the safety of the seized property of the defendants[47]. This situation demonstrates structural problems in the activities of the ICC, resulting in its violation of fundamental human rights guaranteed by universal and regional treaties[48].

A politicized approach to the administration of justice

The administration of international justice inevitably implies a strong political component. It is natural for an international judicial body to take political considerations into account (as evidenced above, in the case of Kenya, it was the Court's failure to take into account objective political developments which led to the stalemate in the investigation). Nevertheless, decisions of international courts must be based on law; political factors must be considered to the extent they support legal conclusions. In this regard, the following instances demonstrate the Court's excessive reliance on political considerations.

This reliance, along with the desire of certain States to exert undue political pressure on the ICC, has become particularly pronounced since the Court began examining the alleged crimes committed by U.S. military personnel in Afghanistan. An unprecedented development in the history of international judicial bodies was the decision by the President of the United States, Donald Trump, to impose individual restrictive measures against the ICC Prosecutor, Fatou Bensouda, several high-ranking officials from her office and even their family members[49].

[43] Decision on the International Criminal Court, Assembly/AI/Dec.622(XXVIII), 28th Ordinary Session of the Assembly of the Union, January 30-31, 2017. para 8. URL: https://au.int/sites/default/files/decisions/32520-sc19553_e_original_-_assembly_decisions_621-641_-_xxviii.pdf. See also the commentary to the "Exit Strategy from the ICC": Allan Ngari, The AU's (Other) ICC Strategy, February 14, 2017. URL: https://issafrica.org/iss-today/the-aus-other-icc-strategy.

[44] Situation in the Central African Republic in the Case of the Prosecutor v. Jean-Pierre Bemba Gombo, Judgment of Chamber III, March 21, 2016. URL: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2016_02238.PDF.

[45] Situation in the Central African Republic in the Case of the Prosecutor v. Jean-Pierre Bemba Gombo, Judgment of the Appeals Chamber, June 8, 2018. URL: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_02984.PDF.

[46] URL: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_01979.PDF.

[47] Birkett D. J. Managing Frozen Assets at the International Criminal Court: The Fallout of the Bemba Acquittal // Journal of International Criminal Justice. Vol. 18. No. 3. P. 765–790.

[48] Article 9 Para 1 of the International Covenant on Civil and Political Rights adopted in 1966 et al.

[49] Blocking Property of Certain Persons Associated With the International Criminal Court. Executive Order 13928 of June 11, 2020. URL: https://www.federalregister.gov/documents/2020/06/15/2020-12953/blocking-property-of-certain-persons-associated-with-the-international-criminal-court.

Moreover, the United States threatened to implement restrictive measures against any legal entities or individuals who would assist the ICC in conducting activities that contradict the interests of the US.

As one of the early steps at his new post, Karim Khan, who succeeded Ms Bensouda in February 2021, submitted a request to the Pre-Trial Chamber to reopen the Afghanistan case. However, the request focused on re-investigating crimes committed by the Taliban and ISIL and downplaying other aspects of the case[50]. The Prosecutor justified this decision, first, by a lack of resources and, second, by what he considered to be the more serious nature of the offences committed by terrorist organisations. In practice, however, this meant terminating the investigation into U.S. crimes in the Afghanistan case. Even if we assume that Mr Khan acted in good faith based solely on legal considerations, his decision to "deprioritize" the investigation of NATO soldiers' crimes cannot be assessed outside the context of the US restrictive measures against the former ICC Prosecutor. One cannot help suggesting that these measures were a significant force driving the Office of the ICC Prosecutor to change its approach to the Afghanistan investigation. It is noteworthy that the United States' restrictive measures against the ICC former Prosecutor were lifted on April 1, 2021[51], less than two months after Mr Khan assumed office.

The politicized approach is also evident in ICC investigation into the "situation in Georgia", referring to events in South Ossetia from July to September 2008. In this instance, the Office of the ICC Prosecutor:

- consistently ignored information it received confirming that crimes under the Rome Statute were committed by Georgian military personnel;
- was inactive in its investigation for several years, apparently realising that prosecuting representatives of only one party to the conflict may be perceived as bias;
- on March 10, 2022, requested issuance of arrest warrants for three South Ossetian nationals, two weeks after the launch by the Russian Federation of the special military operation in Ukraine;
- following the issuance of the warrants, announced the termination of the investigation.

It is difficult to consider this sequence of events as anything but evidence to the fact that the investigation into the "situation in Georgia" had been designed as a political undertaking from its inception.

The political bias of the ICC is also illustrated by its approach to investigating the "situation in Palestine". Despite the abundance of documented crimes under the Rome Statute, as well as repeated referrals to the Court by various States (the situation was first "referred" to the ICC by Palestine back in 2009[52], then formally again in 2018, after that by Palestine, South Africa, Bolivia, Bangladesh, Comoros and Djibouti in November, 2023, and finally by Chile and Mexico in January 2024), the official investigation, which began in March 2021, de facto stands still.

Among other things, the contrast between the approach of the current ICC Prosecutor (and his predecessors) to the situations in Ukraine and Palestine is noteworthy. In the first case[53], on February 28, 2022, Mr. Khan directly called on the States concerned to "refer" the situation to the ICC (in order to avoid applying to the Pre-Trial Chamber for permission to initiate an investigation, which is required when a case is initiated by the Prosecutor himself). On March 1-2 , the situation was "referred" to the Court by 39 States, and as soon as March 2 the Prosecutor announced the initiation of the investigation.

In the case of Palestine, however, 15 years have passed since the first "reference", but the investigation has hardly progressed[54]. Moreover, in 2023, Mr Khan allocated the least funding (944.1 thousand euros) to the Palestinian situation out of all open investigations. Although the sum mentioned is five times

[50] Statement of the Prosecutor of the ICC, Karim A. Khan QC, following the application for an expedited order under Article 18 (2) seeking authorization to resume investigations in the Situation in Afghanistan. URL: https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-khan-qc-following-application.

[51] Termination of Emergency With Respect to the International Criminal Court, Executive Order 14022 of April 1, 2021. URL: https://www.federalregister.gov/documents/2021/04/07/2021-07239/termination-of-emergency-with-respect-to-the-international-criminal-court.

[52] The ICC Prosecutor at the time, L. Moreno-Ocampo, initiated a preliminary examination but terminated it in 2012 due to impossibility to determine whether Palestine was a "State" within the meaning of the Rome Statute. URL: https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf.

[53] See the statement of procedural timeline on the official ICC website. URL: https://www.icc-cpi.int/situations/ukraine.

[54] Mariniello T. The ICC Prosecutor's Double Standards in the Time of an Unfolding Genocide. URL: https://opiniojuris.org/2024/01/03/the-icc-prosecutors-double-standards-in-the-time-of-an-unfolding-genocide/.

less than the budget for the Ukrainian" case (4499.8 thousand euros), it was for the investigation on Ukraine that the ICC Prosecutor requested additional voluntary donations from State Parties to the Rome Statute. These as well as other facts gave grounds for more than 250 lawyers, human rights activists and politicians to send an open letter to the Assembly of the ICC Member States in December 2023 with a call to review Mr Khan's activities' compatibility with the current Standards of Conduct of the ICC Prosecutor, in particular as regards the principles of impartiality and the prohibition of discrimination[55].

Finally, the measures taken by the ICC in the context of the Ukrainian crisis were accompanied by evident political manipulation. The issuance of the arrest warrants on March 17, 2023, was accompanied, inter alia, by the following events:

- replacement of one of the three judges of the Pre-Trial Chamber one day before the Prosecutor's request to authorise the issuance of the arrest warrants was received;
- release on parole of the Prosecutor's brother from detention in the United Kingdom on the same day;
- issuance of the warrants three days before the donor conference aimed to raise funds for the ICC investigation.

These circumstances, cited in the briefing by the Russian Foreign Ministry Spokesperson dated March 30, 2023, gave her grounds for asserting that "the Prosecutor and the judges are obediently following the course set by Western sponsors"[56].

Problems in the organisation of the ICC activities

There are a number of organizational particularities of the ICC that call into question its independence, impartiality and integrity as a judicial body. The most notable of these are the following:

- The unique role of the Prosecutor, who has virtually become the central figure of the ICC. It is the Prosecutor who makes a decision on whether to initiate an investigation, controls its pace (including by allocating resources to different investigations), determines the list of persons to be prosecuted, and decides whether to terminate an investigation. In fact, ICC Judges can hear cases exclusively upon the Prosecutor's submission. At the same time, the mechanism of judicial control[57] over the measures taken by the Prosecutor enshrined in the Statute has proven to be ineffective in practice, and a vertical control by a superior prosecutor, traditional in national legal systems, is understandably absent in the ICC. As a result, as one researcher put it, "the world acquired an independent prosecutor vested with the power, at least in terms of practical consequences of his actions, to change governments"[58]. The fact that a body claiming a special role in the administration of international criminal justice is entirely dependent on a single individual falling outside of anybody's control cannot be recognized as a situation consistent with the criteria of a proper organization of a judicial body. Moreover, according to the same researcher, "it is becoming increasingly clear that achieving the lofty goal of removing policy from the field of international prosecutorial activity is not only unrealistic, but simply impossible"[59];
- The possibility to "receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities" provided for in the Rome Statute (Article 116). The most important requirement for a judicial body is its independence, which should be not only formal, but also effective and, moreover, visible. Meanwhile, the ICC has a wide practice of accepting voluntary contributions, including from States that publicly call on the Court to investigate certain crimes of particular States and

[55] URL: https://twailr.com/open-letter-to-the-assembly-of-state-parties-regarding-the-otps-engagement-with-situation-in-palestine/; See also Egian H., Rabbani M. Is the ICC Prosecutor Karim Khan fit tor Purpose? URL: https://www.passblue.com/2023/11/28/is-the-icc-prosecutor-karim-khan-fit-for-purpose/#:~:text=Karim%20Khan%27s%20unprecedented%20politicization%20of,to%20address%20its%20declining%20legitimacy.

[56] URL: https://www.mid.ru/tv/?id=1860654&lang=ru#5.

[57] See Turner J. I. (2015) Accountability of International Prosecutors *The Law and Practice of the International Criminal Court* / ed. C. Stahn. Oxford,. P. 383-407.

[58] Schabas W. A. (2008) "O Brave New World": the Role of the Prosecutor of the International Criminal Court *Die Friedens-Warte*. Vol. 83. No. 4. P. 13.

[59] Ibid. P. 30.

individuals[60]. While contributions are formally credited to the ICC budget without being tied to a specific investigation, it is clear that at least the sponsoring State assumes their "intended" use and decides on providing further contributions depending on whether the previous ones have been spent on purposes of interest to that State. In fact, this leads to a desire to provide an unfair advantage to an interested party in the course of judicial consideration of a case, which as amounts to inadmissible interference or even bribery of the Court under international legal acts on combating corruption.

- Rendering contradictory decisions. Of course, errors may occur in practice of any court, and they can be rectified either by a higher court or by the same court hearing a new similar case. However, Member States have the right to expect the ICC to minimize errors and other situations requiring deviations from earlier decisions, especially given the high level of financial demands of the Court. Practice, however, illustrates the opposite. The most striking example of the ICC's inconsistency are the decisions rendered in respect of States that refused to arrest the President of the Sudan, Omar Al-Bashir, despite the existence of an arrest warrant issued by the ICC. Thus, in a relevant decision adopted in response to such a refusal by Malawi, the Pre-Trial Chamber, while recognizing the existence of the customary international legal norm on the immunity of State officials from prosecution, paradoxically concluded afterwards that there was an exception to it, by virtue of which the immunity of the Head of State did not extend to charges of the most serious international crimes brought by international judicial institutions[61]. In a decision on the Democratic Republic of the Congo's non-cooperation with the ICC[62], the Chamber argued that by referring the situation in the Sudan to the Court and ordering that the Government of that State "cooperate fully with and render any necessary assistance to the Court and the Prosecutor", the UN Security Council allegedly implicitly abrogated the immunity of any Sudanese official[63]. Considering Jordan's appeal, the ICC Appeals Chamber, as stated earlier, advanced a new rationale: that there is no customary rule of international law providing for immunity from international (as opposed to national) criminal jurisdiction at all, and that the ICC is supposedly acting on behalf of the entire international community. Thus, at least three different justifications for the same legal position have been formulated by the ICC. Needless to say that, as a result, each of these justifications has remained unconvincing, and most importantly, there is no legal certainty as to what position the ICC will take the next time the issue comes before it;

- The inability of judges to reach agreed positions, which manifests itself in the overreaching practice of dissenting judicial opinions. The institution of a dissenting opinion of a judge is not in itself questionable. However, in the ICC, the practice has taken an exaggerated form. For instance, one judgment of the ICC Appeals Chamber, rendered by three votes to two and consisting of 80 pages, is accompanied by a joint dissenting opinion of the two minority judges on 269 pages, a joint opinion of two majority judges on 34 pages, and a dissentingopinion of the third majority judge on 117 pages[64]. Another four-to-one 90-page judgment is accompanied by a 190-page joint dissenting opinion of all four majority judges, while the judgment itself is replete with references to the dissenting opinion[65]. The length of the dissenting opinions calls into question the reasoning and

[60] Statement of the UK Minister of Justice dated March 24, 2022. URL: https://www.gov.uk/government/international-coalition-to-support-icc-russia-war-crimes-investigation; Official communication from the Dutch Ministry of Justice and Security dated March, 20, 2023. URL: https://www.government.nl/latest/news/2023/03/20/extra-dutch-support-for-the-international-criminal-court; Official communication from the Irish Department of Foreign Affairs dated April 14, 2022. URL: https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2022/april-minister-for-foreign-affairs-simon-coveney-announces-3-million-for-the-icc.php.

[61] Situation in Darfur, Sudan. Decision Pursuant to Article 87 (7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir, No. ICC-02/05-01/09, December 12, 2011, para 43. URL: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2011_21722.PDF. The argument on inapplicability of immunities of State officials to international crimes was repealed by the UN International Court of Justice in its decision in the Arrest Warrant of April 11, 2000, case, see para 58.

[62] URL: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2014_03452.PDF (See para 29).

[63] UN SC Resolution No. S/RES/1593 (2005) adopted on May 21, 2005, para 2. If we agreed with the Court's argument, there would be no need to discuss the customary nature of the norms governing immunities of State officials – otherwise there would be nothing for the UN SC to "abrogate".

[64] Appeals Chamber Decision ICC-01/05-01/08A of June 8, 2018.

[65] Appeals Chamber Decision ICC-02/05-01/09 OA2 of May 6, 2019.

persuasiveness of the decisions rendered. Moreover, in the second case, it appears as if the main purpose of the dissenting opinion is to allow references to it to be incorporated into the judgment in order to increase the "authority" of its content.

The ICC's "legitimacy" problem

As demonstrated above, cases of violation of norms of customary and conventional international law are far from being isolated in ICC practice . In particular, it concerns the personal and functional immunities of State officials, the principle that international treaties are not binding on third parties, and the principle of voluntary submission of a State to the jurisdiction of international courts. These norms are of particular importance for the international system, as they derive directly from the fundamental principle of the sovereign equality of States. Moreover, the Court interprets the provisions of the Rome Statute itself (in particular, those concerning the Court's jurisdiction *ratione temporis* and *ratione loci,* as well as the principle of complementarity) too broadly, clearly acting beyond the competence granted to it by the State Parties. This has been coupled with selective law enforcement, the ICC's counterproductive role in conflict resolution, its susceptibility to undue political pressure, the use of the Court by States to settle scores with opponents, contradictory rulings, and problems with collegiality.

The combination of these violations and shortcomings, their consistent and deliberate nature, and the Court's demonstrated inability and unwillingness to address them suggests a gradual loss of legitimacy of the ICC[66].

Put together, these factors have already led some State Parties to the Rome Statute to withdraw from it (Burundi and the Philippines). Other State Parties announced plans to do so at various times, but have not yet been able to implement them (See the African Union's "Withdrawal Strategy"; the notifications of withdrawal from the Rome Statute made and subsequently withdrawn by the Gambia and South Africa). Meanwhile, in a number of cases, State Parties to the Rome Statute have refused to cooperate with the Office of the Prosecutor (the situation in Kenya) and to execute "arrest warrants" issued by the Court (the Al-Bashir Case).

Since 2015, only four new States have become parties to the Rome Statute. Over the same period, the Statute saw two completed withdrawals, two incomplete withdrawals and one "signature withdrawal" (declaration of intention not to become a party to the Rome Statute). In fact, the process of increasing participation in the ICC has come to a halt. It would not be surprising for a treaty opened for signature more than a quarter of a century ago, if it were not for the fact that the largest and most influential States of the world, including three of the five permanent members of the UN Security Council, do not participate in the Rome Statute. Meanwhile, even States-Parties have refused to cooperate with it in a number of proceedings, with one regional organisation, the African Union, raising doubts about the prospects of cooperation with the ICC and another one, the League of Arab States, persuasively criticising its legal positions.

Those as well as other circumstances give reason to believe that even the most persistent supporters of the ICC are justified in recognizing that "today the Court remains a fragile institution the future of which is uncertain"[67]. As shown, responsibility for the unmet expectations, and indeed the erosion of the ICC's legitimacy, lies with the organization itself, its specific officials, as well as with States and other actors seeking to abuse the judicial process for both short-term and far-reaching political purposes.

Conclusions

1. When establishing an international organization, including in the form of a judicial body, States do not have the right to vest it with powers they do not possess themselves. In particular, the criminal jurisdiction of States, by virtue of generally recognized norms of international law, is limited by the immunity of foreign State officials. In these circumstances, the jurisdiction of an international criminal judicial body established by States is also limited by such immunities. The ICC's claim that by virtue of its "international" nature it is not bound by this limitation in relation to officials of States non-parties to the Rome Statute has no basis in international law.

2. In its practice, the ICC has repeatedly violated both the provisions of its own Statute and generally recognized norms of international law. Among

[66] Ispolinov A. S.(2024) Anatomy of a Crisis: Problems of Normative Legitimacy of the *ICC Law*. 2024. No. 2. P. 126; Ispolinov A. S. (2024) Anatomy of the crisis - 2: Problems of Subjective legitimacy of the *ICC Law*. 2024. No. 3. P. 68-75.

[67] Leila N. S. Justice Without Fear or Favour? The Uncertain Future of the International Criminal Court in The Past, Present and Future of the International Criminal Court / ed. A. Heinze, V. E. Dittrich. Brussels, 2021. P. 157.

the most obvious violations are attempts to exercise jurisdiction over acts allegedly committed on the territory and by citizens of a State non-party to the Rome Statute.

3. The ICC's claim to a unique international role stems from its founders' perception of a special contribution of criminal justice to conflict resolution and post-conflict reconciliation. In particular, the forms of interaction between the ICC and the UN Security Council enshrined in the Rome Statute are founded on this perception. However, the practice of the ICC and the reaction of States and their associations to numerous decisions of the Court and its Prosecutor illustrate that this institution has failed to fit into the international system of maintaining international peace and security. On the contrary, the ICC has repeatedly become a factor complicating the settlement of inter-State and intra-State disputes.

4. The Court's activity raises significant questions from a purely professional point of view. Contradictory decisions have repeatedly occurred in its practice. An abuse of separate opinions of judges, sometimes replacing the official motivation of decisions, is noted. The interaction between the Trial Chambers and the Prosecutor, whose exclusive powers, in fact, make judges dependent on him, is arranged ambiguously, which is accompanied by not unfounded allegations of politicization and bias of the ICC.

5. The so-called arrest warrants issued by the International Criminal Court against the President of the Russian Federation and the Presidential Commissioner for Children's Rights are unlawful under both general international law and the Rome Statute. By issuing these warrants, the ICC, as an international organization, has committed an internationally wrongful act.

6. National enforcement of arrest warrants issued by the ICC is a form of exercise by a State of its own criminal jurisdiction. Attempts to enforce arrest warrants issued by the ICC against officials of States that are not parties to the Rome Statute and in the absence of a relevant UN Security Council decision would be a violation of the norms governing immunities of State officials and, consequently, an internationally wrongful act giving rise to international responsibility of the State enforcing it.

7. In its activities, the ICC has deviated from both its original objectives enshrined in the Rome Statute and, in general, from norms and principles of international law. The totality of violations of international law committed by the ICC and its Prosecutor, procedural shortcomings, and extraneous political factors suggest raising the question of at least a persistent and probably irreversible loss of legitimacy and authority by the Court in the eyes of a significant part of the international community.