



A BRIEF ANALYSIS OF THE PROSECUTOR'S INVESTIGATIVE POWER OF THE INTERNATIONAL CRIMINAL COURT

Geng Zhimin

School of International Law, University of World Economics and Diplomacy, Tashkent 100174, Uzbekistan
School of Jining Normal University, Wulanchabu 012000, China

Article history:	Abstract:
Received: 6 th July 2024 Accepted: 4 th August 2024	In order to punish international crimes and ensure justice and justice in the international community, the establishment of domestic criminal justice systems has been unable to cope with cross-regional international crimes. The call for justice and peace led to the establishment of a long-term international criminal justice institution. Therefore, the International Criminal Court came into being. Therefore, the International Criminal Court came into being. The Court established the Office of the Prosecutor to receive and examine referred situations and any factual information about crimes within the jurisdiction of the Court, to investigate and prosecute in the Court. The Office of the Prosecutor has the power to investigate and prosecute crimes of genocide, crimes against humanity, aggression and war crimes committed by citizens of States parties or committed within the territory of States parties. At present, the international community has high hopes for the International Criminal Court, and the impartial exercise of the Prosecutor's powers is crucial for the ICC to sanction international crimes and operate effectively. Therefore, further research on the powers of the Prosecutor of the International Criminal Court is needed, and some clear suggestions for improvement need to be made to eliminate these difficulties.

Keywords: Prosecutor Investigative Power Rome Statute

1. Overview of the investigative powers of the Prosecutor of the International Criminal Court

1.1 Setup of the Prosecutor

The establishment of the Prosecutor of the International Criminal Court originated from the prosecution of international crimes. The real function of the Prosecutor of the International Criminal Court began after World War II, the prosecution of war criminals, especially the leaders of the Nazi regime. Since then, until the establishment of the International Criminal Court, four international criminal tribunals have been established successively, namely the Nuremberg Tribunal, the Far East Tribunal, the Former Yugoslavia Tribunal and the Rwanda Tribunal.

Different from domestic prosecutors, the prosecutor of

the International Criminal Court refers to a special form of prosecutor who serves in an international judicial body, is engaged in the prosecution and investigation of international crimes, has all or part of the prosecutorial functions, and applies international criminal law. The establishment of the prosecutor of the International Criminal Court is an important part of the international judicial system. According to the unique connotation of the prosecutor of the International Criminal Court, prosecutors who meet this form should include those who serve in the Nuremberg Tribunal, the Far East Tribunal, the Rwanda Tribunal, the Tribunal for the Former Yugoslavia and the International Criminal Court. Although the functions and powers of the prosecutors of each tribunal are different, both the institutional



nature of the work and the functional characteristics they enjoy are different from domestic prosecutors and are international prosecutors of the International Criminal Court. The first tribunal to establish the position of prosecutor of the International Criminal Court was the Nuremberg Tribunal. According to Article 14 of the Charter of the European International Military Tribunal, "Each signatory state shall appoint a general prosecutor to be responsible for the investigation and prosecution of war crimes. Chief war criminals, four general prosecutors form a committee".¹ They are jointly responsible for formulating work plans, deciding on the selection of primary war criminals, and preparing prosecution documents. During the investigation, the main tasks of the prosecutor include reviewing, collecting, submitting all necessary supporting materials, and obtaining preliminary agreement on necessary witnesses and defendants. The Prosecutor of the Far East Tribunal is appointed by the Supreme Commander of the Allied Forces to investigate and charge accused persons who have committed war crimes within the jurisdiction of the Tribunal, and at the same time provide appropriate legal assistance to the Supreme Commander. Since both tribunals are military courts, they are trials of war criminals responsible for war crimes, so the powers and obligations of prosecutors have a strong military connotation. Compared with the Prosecutor's functions of the Tribunal for the Former Yugoslavia and the Rwanda Tribunal, the Prosecutor of the Tribunal for the Former Yugoslavia is mainly responsible for and prosecuting those responsible for serious violations of international humanitarian law that have occurred in the former Yugoslavia since 1991, and has established the Prosecutor's Office to act independently as an integral part of the Tribunal. The Rwanda Tribunal has set up almost the same provisions as the Prosecutor of the Tribunal for the Former Yugoslavia in terms of the functions of prosecutors, and

even its prosecutors were held by the Prosecutor of the Tribunal for the Former Yugoslavia until 2003. The contribution of the Tribunal for the Former Yugoslavia and the Tribunal for Rwanda in combating international crimes and protecting human rights is unquestionable, but because they were established under the resolutions of the UN Security Council, their specific jurisdiction has directly led to the establishment of the two Tribunals. The prosecutors are full of political colors, their powers are severely limited, and they have not fully played the expected functions when the prosecutors were set up. Nonetheless, their establishment has accumulated experience and laid a foundation for the establishment of the Prosecutor of the International Criminal Court.

1.2 Operation of Prosecutor's Investigative Power

The right to self-investigation is divided into two stages: the preliminary review stage before initiating a formal investigation, and the formal investigation stage. In the initiation of the investigation stage, the investigative power is mainly manifested in the analysis of the relevant situation information and the relevant case information by the ICC prosecutor to determine whether the threshold for initiating the investigation has been met. Once determined, whether it needs to be authorized or approved by the committal hearing court or judge, it means that the relevant criminal suspects have been included in the consideration of the judicial process, so at least they have a potential impact on their rights and obligations. Therefore, the choice and decision of the ICC prosecutor in the initiation of the investigation stage is a concrete manifestation of his exercise of discretion. In the formal investigation stage, the object of the investigation is a specific case, and the prosecutor should initiate a formal investigation only after the preliminary examination has been completed. The procedural operation of the right to self-investigation is divided into the following steps: first, the receipt of information, that is, the receipt of information submitted by individuals and

¹ Article 14 of the Charter of the European International Military Tribunal.



Non-governmental organizations that fall within the jurisdiction of the court. Second, a preliminary review is carried out. The Prosecutor needs to review the information submitted and collected, analyze the seriousness of the information, and distinguish whether there is a reasonable basis for conducting an investigation. If not, the Prosecutor may immediately decide to terminate the proceedings. Third, request authorization from the committal hearing chamber, the Prosecutor will submit the information collected to the committal hearing chamber, and at the same time make a request for authorization. The final decision is to start an investigation, and the prosecutor can immediately initiate a formal investigation after the committal hearing chamber agrees to the request. If the committal hearing chamber decides not to authorize, it can make another request to the committal hearing chamber after new material has been collected.

2. Problems in the exercise of the investigative powers of the Prosecutor of the International Criminal Court

Although the establishment of the prosecutor's investigative power has accumulated a lot of practical experience after a long period of use, there are still some problems that need to be solved in the judicial practice of investigating international crimes, including the conflict between the prosecutor's power and the powers of the UN Security Council, and the game with the powers of judges, and it is likely that the powers of the judges will be abused.

2.1 There is a conflict between the investigative power and the mandate of the Security Council

The powers of the UN Security Council and the prosecutor's investigative power can be said to contradict in some respects. According to the provisions of the Rome Statute, the situation submitted by the UN Security Council to the International Criminal Court is an important case for prosecutors to initiate investigations and prosecutions of international crimes. Source is one of three ways for prosecutors to initiate investigative powers.

It can be seen from the above provisions that the UN Security Council seems to have the same power to initiate criminal investigations as the prosecutor of the International Criminal Court, but in fact it is different. The situation referred by the Security Council to the International Criminal Court should include all situations including the entire criminal conflict, including both parties to the conflict, as well as various situations in which criminal acts occurred, not just referring a certain incident in the crime. The prosecutor is responsible for reviewing the situation referred by the Security Council, analyzing how many crimes there are in the situation referred, how many alleged offenders there are, and what degree of harmful consequences have been caused, and then deciding whether to investigate the situation. It can be seen that the powers of the UN Security Council to refer a situation are different from those of the prosecutor. The Security Council can only refer the entire "situation" to the International Criminal Court, and then the prosecutor can review it. There is no power to investigate and distinguish how many crimes and how many alleged offenders there are in the situation. Therefore, the powers of the UN Security Council and the prosecutor are still very different.

As an institution that maintains peace and justice in the international community, the UN Security Council has the obligation to combat international crimes, but when it wants to impose sanctions on international crimes, it must also be reviewed by the Prosecutor of the International Criminal Court before it can be investigated. Otherwise, there is no way to prosecute crimes, which makes the Security Council unable to fulfill its responsibilities. The specific performance is: the UN Security Council submits all the criminal situations contained in the situation to the International Criminal Court. After reviewing the information, the prosecutor can decide whether to initiate an investigation into the situation. After the prosecutor reviews the situation submitted by the Security Council, two situations will occur: one is that the prosecutor



recognizes

In order for the situation to meet the standards set by the International Criminal Court, and then agree to investigate the situation, the other is that the conduct in the situation does not have tangible evidence and material to prove that it meets the standard of criminality, and the prosecutor will make a decision not to investigate the situation. This led to a conflict between the Prosecutor and the Security Council in launching the investigation.

However, the UN Security Council can also use its powers to prevent prosecutors from initiating investigations. For example, the Security Council can request the International Criminal Court to suspend or suspend the prosecutor's investigation of a case under Chapter 7 of the UN Charter, and the Security Council can again request an extension of this time limit in accordance with the above provisions. As long as the Security Council makes another request to the International Criminal Court for the same reasons, the prosecutor must suspend or suspend the exercise of his investigation of the case. Therefore, the powers of the UN Security Council can also limit the exercise of the prosecutor's powers.²From this perspective, there is indeed a power conflict between the UN Security Council and the prosecutor.

2.2 There is a conflict between the power of investigation and the power of judge review

Fundamentally, the duties of judges and prosecutors are committed to maintaining a fair and just society. However, it is inevitable that prosecutors also conflict with the powers of judges in the process of exercising their powers. This conflict leads to a The cases are often delayed for a long time, which seriously wastes judicial resources, which in turn makes the cases handled by the International Criminal Court very complicated and lacks unified coordination.

² Zhao Bingzhi and Chen Hongyi: "Special Exploration of International Criminal Law and International Crime", People's Public Security University of China Press, 2003 edition.

The conflict between the prosecutor and the judge can be seen in the Bashir case. In the Bashir case, the judge of the International Criminal Court decided to suspend the case due to the objection of the defendant and the judge of the Trial Chamber. The reason is that the prosecutor did not disclose the evidence and materials he collected to the defendant and the judge. Neither the judge nor the defendant could verify and deal with the evidence that existed in the case. The prosecutor did not disclose any information when obtaining evidence and intelligence about the defendant. The Trial Chamber held that if the relevant evidence of his crime is not disclosed to the defendant, the defendant will not be able to prepare his own defense. More importantly, if even the evidence cannot be presented to the defendant and the judge, the fairness and reasonableness of the trial will also be questioned, and the defendant's right to a fair trial in court will not be guaranteed, which shows that the defendant did not receive a fair trial in this case. Furthermore, if even the judge cannot obtain these evidence and information related to the crime, there will be doubts about the authenticity and validity of the evidence, and the case will not be judged. This has created a game between the prosecutor and the judge. The prosecutor wants the case to be investigated and prosecuted as soon as possible, but the judge cannot ensure the fairness of the trial because he cannot see the evidence. The conflict of powers between the two parties has delayed the case for a long time. According to Article 54 of the Rome Statute, if the evidence collected by the prosecutor should be kept confidential, the information shall not be disclosed to the public without the consent of the provider of the information. After consultation, the judge and the defendant can only see the evidence about the crime if the provider of the evidence agrees to disclose it to the judge and the defendant. In the Bashir case, the judge made a decision to lift the stay of proceedings after the prosecutor provided the evidence to the judge, and the prosecution of the crime was



continued. The judge also made a series of provisions for the disclosure of evidence to the court and the defendant.³For example, information about who or who provided the material in certain documents should be removed from it, and those who provide clues for prosecutors to gather evidence should be kept confidential, and so on. In short, judges must ensure that there is sufficient evidentiary information, and that the defendant's right to a fair trial is not violated, and that witnesses who give evidence must be reasonably protected from being persecuted by suspects for giving evidence. Only after this decision is made can the trial continue. The above shows that the powers of prosecutors and judges are in conflict.

3. Legal perfection in the exercise of the investigative powers of the Prosecutor of the International Criminal Court

3.1 Coordination of relations with the Council

Compared with the UN Security Council, the Prosecutor of the International Criminal Court still has a lot of room for improvement in its investigation and prosecution system, and lacks a lot of practical experience in the field of international justice. Compared with the legal system of the Prosecutor of the International Criminal Court, the UN Security Council has richer historical experience, was established earlier, and the relevant legal system is more complete. Therefore, the Prosecutor of the International Criminal Court should actively seek to cooperate with the UN Security Council when exercising his powers, but also maintain his own independence and try to limit the Security Council to the current framework, rather than blindly cutting off ties with the Security Council. Therefore, various aspects should be considered to promote win-win cooperation between the Prosecutor of the International Criminal Court and the UN Security Council. First, the Security

Council's right to postpone investigations should be preserved and supported. The Security Council's power to postpone investigations can prevent the abuse of prosecutors' powers and ensure the impartiality of case investigations, but it should also be limited to a certain extent. Second, it can be stipulated that prosecutors have the right to apply to the court for reconsideration, and when new facts and evidentiary materials that are conducive to the investigation of crimes are discovered, they can apply to the court to resume the investigation. Finally, the International Criminal Court can be given certain powers to limit the investigative powers of the Security Council. Avoid the UN Security Council from using the power to postpone investigations to hinder prosecutors from exercising their powers.

3.2 Establish and improve the independent supervision mechanism

Although the Rome Statute stipulates relevant provisions to prevent prosecutors from abusing their powers when investigating crimes, from a practical point of view, the current activities of prosecutors in exercising their powers cannot fully guarantee that their powers will not be abused. Therefore, it is necessary to establish an independent oversight mechanism to supervise the actions of prosecutors in exercising their powers. First, the establishment of the supervisory body should be independent of the prosecutor's office, and the supervisory body should have its own powers to conduct investigations, accountability, and handling. The individuals to be supervised by the supervisory body will include all elected officials and all court staff, and the misconduct of the staff in exercising their powers will be sanctioned. Second, a supervisory body should also be publicly established, the status of staff and staff should be appointed, and when the prosecutor exercises his powers, the staff of the supervisory body should be equipped to exercise the responsibilities of investigating and prosecuting crimes together, and to supervise the exercise of powers. Finally, after supervision begins, the supervisory body should

³ See Reasons for Oral Decision lifting the stay of proceedings, ICC-01/04-01/06-1644, January 23, 2009.



regularly issue supervisory reports, including whether prosecutors have acted improperly in exercising their powers, so as to promote the development of independent supervisory mechanisms.

CONCLUSION

The establishment of the International Criminal Court satisfies the desire of the international community to establish a permanent judicial institution. Its establishment is a shock and deterrent to international serious crimes. The full cooperation between countries and the International Criminal Court in criminal crimes is not only a new breakthrough in the way of fighting crimes, but also It has really stepped up the crackdown from a practical point of view. The status of the prosecutor system of the International Criminal Court in the International Criminal Court is self-evident. It is an important criterion for whether the International Criminal Court can initiate jurisdiction. This system is an independent prosecutor system with the characteristics of the International Criminal Court created by the International Criminal Court after drawing on the experience and lessons of the Nuremberg Tribunal, the Far East Tribunal, the Tribunal for the Former Yugoslavia, and the Rwanda Tribunal, combined with the essence of the design of different legal systems. Although it has broad autonomy, it is also restricted to varying degrees by internal and external parties, which not only ensures that the power of investigation will not be arbitrarily abused, but also maximizes the role of prosecutors.

REFERENCES:

1. R. Goldstone, *For Humanity: Reflections of a War Crimes Investigator* [M]. Yale University Press, 2000, p. 105.
2. Goran Sluiter, *Cooperation of States with International Criminal Tribunals* Antonio Cassese *International Criminal Justice* [M]. Oxford University Press, 2009, p188.
3. Wang Xiumei. *Research on the International Criminal Court* [M]. Beijing: Renmin University of China Press, 2002.
4. Zhu Wenqi. *The International Criminal Court and China* [M]. Beijing: Renmin University of China Press, 2009.
5. Gao Yanping. *International Criminal Court* [M]. Beijing: World Knowledge Press, 1999.
6. Jia Yu. *International Criminal Law* [M]. Beijing: China University of Political Science and Law Press, 2004.
7. Zhao Bingzhi. *Monograph on the International Criminal Court* [M]. Beijing: People's Court Press, 2003.
8. Li Shiguang, Liu Daqun, Editor-in-Chief Ling Yan. *Commentary on the Rome Statute of the International Criminal Court* [M]. Beijing: Beijing University Press, 2006.
9. Zhao Bingzhi, Chen Hongyi. *Special Exploration on International Criminal Law and International Crime* [M]. Beijing: Chinese People's Public Security University Press, 2003.