Complementarity Principle?

The principle of complementarity recognizes that States have the first responsibility and right to prosecute. However, when a State fails to exercise this jurisdiction, a case becomes admissible before the International Criminal Court (ICC).

This distinguishes the ICC from international tribunals, such as those for the former Yugoslavia and Rwanda (ICTY and ICTR), which can only prosecute when a State is unable to do so.

The objective of the principle is to create an international system in which each national system responds effectively to mass atrocity crimes. The ICC should remain vigilant. Perpetrators of mass atrocity crimes must be held accountable and, if States are not genuinely trying or able to do so, then the Court should intervene to fight against impunity.

Does the ICC have jurisdiction?

If both a State and the International Criminal Court have jurisdiction, who gets to exercise it over a particular situation?

Complementarity is the answer to the question:

- Partnership
- Vigilance
- Complementarity

The idea is to encourage States to effectively investigate and prosecute mass atrocity crimes themselves. The Office of the Prosecutor of the ICC can provide national governments with support and advice on how to handle certain cases. The Office and the State can also agree to a division of labor, allowing the ICC to focus solely on the cases which the national government isn’t in a position to handle.

Guiding Principles

"As a consequence of complementarity, the number of cases that reach the Court should not be a measure of its efficiency. On the contrary, the absence of large numbers of cases can be seen as a major success."

Luis Moreno-Ocampo, former prosecutor of the ICC

The principle of complementarity recognizes that States have the first responsibility and right to prosecute. However, when the State fails to exercise this jurisdiction, a case becomes admissible before the International Criminal Court (ICC).

This distinguishes the ICC from international tribunals, such as those for the former Yugoslavia and Rwanda (ICTY and ICTR), which both have primary jurisdiction over cases.

The objective of the principle is to create an international system in which each national system responds effectively to mass atrocity crimes, with the ICC only intervening when necessary in order to ensure that these crimes never go unpunished.

Can jurisdiction be exercised?

There are three situations in which the ICC can exercise jurisdiction:

- The situation is referred to it by the State concerned
- The situation is referred to it by the UN Security Council
- The Prosecutor has decided to initiate an investigation into the situation

Has there been a UNSC deferral?

According to article 16 of the Rome Statute, the United Nations Security Council can defer a situation for 12 months if it acts under Chapter VII of the UN Charter. A deferral means that the prosecutor is barred from investigating or prosecuting individuals in a certain situation. The deferral can be renewed indefinitely.

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Is the case admissible?

There are three situations in which the ICC can exercise jurisdiction:

- The situation is referred to it by the State concerned
- The situation is referred to it by the UN Security Council
- The Prosecutor has decided to initiate an investigation into the situation

Admissibility contested! Two examples:

Libya

On 1 May 2012, Libya challenged the admissibility of the cases against Saif Al-Islam Gaddafi and Abdullah Al-Senussi.

The Court eventually found that the case against Al-Senussi was inadmissible at the ICC because the Libyan authorities were both willing and able to prosecute him.

The case against S. Gaddafi, however, was declared admissible because the Libyan government was not in a position to prosecute him.

Kenya


This was the first admissibility challenge the Court had to decide on.

The Court found that the cases were admissible at the ICC because the investigations that were being launched in Kenya did not focus on the same individuals.

Sources

- International Criminal Court, https://www.icc-cpi.int/
- Coalition for the International Criminal Court, http://www.iccnow.org/