



Study on the relationship between Russia and the International Criminal Court

Zixiao ZHU ^{a*}

^a *Tahota Urumqi Law Firm, Urumqi Xinjiang, 830000 China*

Abstract

In 2016, after 16 years of review period, Russia finally made the decision not to join the International Criminal Court and the Rome Statute, from support to doubt to reject, the change of Russia's position is not only a direct reaction to the investigation of Russian cases in recent years, but also out of the interests of the state, the interests of the legal system, and the doubt of the working mechanism of the International Criminal Court. Although it does not formally join the International Criminal Court, Russia still needs to bear certain international legal obligations, especially in the face of the possible compulsory jurisdiction of the International Criminal Court, Russia needs to take corresponding measures in international law and domestic law to avoid the adverse impact.

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* Corresponding author.

E-mail address: zixiao.zhu@tahota.com

1. Introduction

The International Criminal Court (ICC) is the first global, permanent international judicial body established to criminally hold individuals responsible for the most serious international crimes. It tries cases in four categories: the crime of aggression, genocide, crimes against humanity and war crimes. Based on the Statute of the International Criminal Court (hereinafter referred to as the Rome Statute), the International Criminal Court officially began its operation on July 1, 2002. As an independent judicial body outside the framework of the United Nations, the establishment and operation of the ICC is a practical measure taken by the international community after the two World Wars and a number of international (non-) armed conflicts. It carries with it the legal pursuit of maintaining international peace and security, deterring the illegal use of force and protecting war victims through a mechanism governed by law. It has filled the legal gap in international human rights law, international humanitarian law and the law of armed conflict, and is of great and far-reaching practical and theoretical value.

As of September 2021, 123 States around the world have ratified or acceded to the Rome Statute and become parties to the treaty ¹. Russia played an active role in promoting the negotiation and formulation of the Rome Statute, and signed the Statute on September 13, 2000, which began the long and tortuous stage of

domestic review. In fact, Russia supported the establishment of the ICC and the Rome Statute, and was not one of the seven countries that voted against it². However, instead of immediately reviewing and adopting the Rome Statute, the Russian Federation, after a long wait, formally confirmed its non-accession to the ICC by announcing its non-ratification of the Rome Statute in the form of a presidential decree on November 16, 2016. Russia's stance on the ICC has evolved from support to skepticism and ultimately to rejection, with no immediate prospects for positive change in their relationship.

Russia finally refused to adopt the Rome Statute for various reasons, including not only political considerations, but also legal conflicts and institutional problems. Such withdrawal has a certain impact on its domestic rule of law construction, the development of its relations with international judicial institutions and the improvement of the international Criminal Court mechanism. By studying the relationship between Russia, the International Criminal Court and the Rome Statute, this paper reviews the change of Russia's position from support to rejection, analyzes the specific reasons, and probes into its practical impact, with a view to providing useful reference for China, which also holds partial opposition opinions, when dealing with the relationship between the International Criminal Court and the Rome Statute.

2. Russia's positive contribution to the ICC and the Rome Statute

Russia actively participated in both the trials of World War II war criminals and the planning of the International Criminal Court. This demonstrates Russia's basic position of supporting the use of international law to sanction war criminals and safeguard world peace and security. Russia's support for the international criminal judicial order also extends to the active promotion of the International Criminal Court and the Rome Statute, which is mainly reflected in participating in the establishment of the international Military Tribunal to try war criminals, signing a series of international criminal law conventions, and promoting the adoption of the Rome Statute.

2.1. Russia participated in the establishment of the International Military Tribunal to try war criminals during World War II

The two international military tribunals established after World War II were the first international criminal judicial institutions in history to try the organizers, conspirators, instigators and planners of wars of aggression. They set a precedent for pursuing individual legal responsibility for war criminals through international judicial institutions, and laid the legal foundation for the subsequent creation of the International Criminal Court and the conclusion of the Rome Statute. This milestone holds a significant place in the history of international criminal law.

The Soviet Union actively contributed to the establishment of the International Military Tribunals at Nuremberg and Tokyo, advocating for the international prosecution of World War II war criminals and the principle of individual criminal responsibility. In October 1943, the foreign ministers of the Soviet Union, the United States and the United Kingdom met in Moscow and reached the Moscow Declaration on the Responsibility of the Hitlerites for Their Crimes, agreeing that Axis war criminals should be "escorted back to the places where they committed their crimes and tried by the people they had persecuted"³. Before and after the end of World War II, the Communique of the Yalta Conference and the Protocol of the Potsdam Conference both explicitly called for "the establishment of military tribunals to try war criminals". On August 8, 1945, and January 19, 1946, the victors, including the Soviet Union (Russia), adopted the London Agreement, the Charter of the International Military Tribunal for Europe and the Charter of the International Military Tribunal for the Far East, respectively, establishing the International Military Tribunal at Nuremberg and the International Tribunal for the Far East to conduct public criminal trials of war criminals from Germany, Japan and other countries during World War II. Among them, the Chief Prosecutor of the Soviet Union (Russia), Theu. Rudenko, members of the Supreme Military Court of the Soviet Union, as the main representatives of the victorious countries, participated in the prosecution and trial work of the two international military tribunals. In addition, Deputy Prosecutor General of the Soviet Union, Sergei Pokrovsky,

was a member of the Soviet Court. Nikitchenko, law professor Ekisa N Trainin and others also participated in the trial.

As the deputy chairman of the Russian Association of International Prosecutors, A.K. Zviyatintsov, put it, "The Soviet Union was not only the initiator of the Nuremberg trials, but actually the main driving force." ⁴ The outstanding contribution of the Soviet Union (Russia) to the work of the International Military Tribunal at Nuremberg is mainly reflected in:

First, the proposal for the establishment of an international military tribunal was put forward on 14 October 1942 by the then Soviet Foreign Minister. Molotov proposed that military and political war criminals of Germany and other countries should be tried under the framework of international criminal law, and individual responsibility should be pursued. This statement reflected the Soviet Union's basic position on war criminals of the Second World War ⁵. Molotov also became one of the first official representatives to propose the establishment of an international military tribunal.

And Soviet workers, including its diplomats, prosecutors and jurists, made a major contribution to the victorious consensus of the London Agreement of August 8, 1945, to prosecute major war criminals. Law professor A.N. Trainin, a member of the delegation, presented the results of theoretical analysis on the criminal responsibility of the entire criminal system of the Nazi group, including the norms and principles of accountability for war crimes, which received the support and approval of the US and British delegations.

Third, the Soviet delegation did a lot of work in the trial preparation and trial work, including drafting indictments, maintaining charges and delivering judgments, and exposing the criminal facts of the war criminals on trial. The Soviet Union (Russia) set up a special State Commission to investigate the atrocities committed by the German Fascist aggressors and their accomplices, which was in charge of collecting all kinds of evidence for the trial of war criminals ⁶. After the trial, the International Military Tribunal awarded a commendation order to the Soviet workers who actively participated in the drafting of the statute and in the handling of the trial.

2.2. Contributing to the International Criminal Court and the Rome Statute

From 15 June to 17 July 1998, 160 States, 31 organizations and 136 non-governmental organizations (NGOs) held the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of the International Criminal Court in Rome, Italy, to discuss the establishment of the International Criminal Court. At its 1st plenary meeting, held on the morning of 15 June 1998, 31 Vice-Presidents of the Conference were elected and a 9-member Credentials Committee was appointed. At its 2nd plenary meeting, held on the afternoon of the same day, a 25-member drafting committee was appointed, of which Russia was a member ⁷. In addition, members of the Russian delegation actively participated in a number of round tables in which they expressed their views on specific articles of the Rome Statute.

With regard to the establishment of an International Criminal Court and the conclusion of a related convention, Russian Representative Aleksandr Ushakov expressed support for the proposal to establish an International Criminal Court in The Hague. At the plenary session, he made his country's position clear: The purpose of the Rome Statute is "to establish a permanent international criminal court for the maintenance of peace and justice," in order to take concrete measures to hold individuals responsible for the most serious international crimes. The ICC should therefore be an "effective and independent authority" that "under no circumstances becomes an instrument of political manipulation" and that "guarantees the proper administration of justice." ⁸ Many of these propositions can be regarded as Russia's basic attitude towards the ICC.

As far as the "jurisdiction of the International Criminal Court" is concerned, Representative Ushakov of Russia agrees with the provision in the preamble of the Statute that "the International Criminal Court shall play a complementary role in domestic criminal jurisdiction", stating that "when States are unable or unwilling to prosecute a crime, the jurisdiction of the Court may supplement that of domestic courts". At the

same time, he also supported the ICC's jurisdiction over the most serious international crimes, specifically, "the court's jurisdiction should be extended to genocide, aggression, war crimes, crimes against humanity and the most serious crimes of terrorism", "it would be a major achievement if serious violations of the Geneva Conventions in non-international armed conflicts were included in the court's jurisdiction"⁹. Russian delegate Gvolegyan said that "the principle of 'consent of States' can be applied on the basis of Article 7, paragraph 2, 'crimes against humanity' of the Statute," and that if the court attempts to obtain jurisdiction before trial, "it must obtain the initial consent of the State in which the act was committed and the State in which the suspect is detained."¹⁰ The Russian representative Panin said that he does not agree with the provisions of "extending the jurisdiction of the Court to non-contracting States because of a State's complaint", and believes that "the only way for the court to have legal effect on non-contracting States is based on UN Security Council resolutions", in addition to the provisions of the Statute imposing obligations on non-contracting States should be regarded as a violation of international law¹¹.

In terms of "the positioning of the International Criminal Court in the system of international organizations", Russian representative Ushakov said that "the International Criminal Court should be integrated into the existing guarantee system of international peace and stability", "if the court does not cooperate closely with the Security Council, it will be doomed to failure", "the Court has mandatory jurisdiction over the relevant cases referred to the Security Council."¹² "There is no conflict between the Security Council, which aims to exert political influence on states, and the Court, which will play an essential role in maintaining international peace and security," said Russian representative Georgy Gvolegyan, "There is no conflict between the two."¹³

In terms of "the relationship between the ICC and domestic courts," Russian delegate Dmitry Ushakov said, "full cooperation between States parties and the Court should be provided for, on the basis of not infringing on national security." In order to ensure "the broadest possible participation of States in the statute," the statute should "unconditionally include the fundamental principles of progress in criminal justice," and at the same time, "States should be allowed to make reservations to individual provisions of the Statute that are not related to issues of principle."¹⁴

2.3. Continue to follow the work of the ICC

From the conclusion of the Rome Statute in 1998 to the formal operation of the ICC in 2002, to the review of various situations and cases, Russia has paid great attention to the establishment and improvement of the institution of the ICC. The academic community in Russia also supports the positive role of the ICC and the Rome Statute in international justice. This is mainly reflected in affirming the significance of the establishment of the International Criminal Court, supporting the work of the International Criminal Court and paying attention to the establishment of the international Criminal Court.

From May 31 to June 11, 2010, Russia participated as an observer State in the Review Conference of the Rome Statute of the International Criminal Court held in Kampala, Uganda, and was appointed as a member of the Drafting Committee at the 9th meeting. At the 13th meeting, held on 11 June 2010, Russia made a statement on the "Harmonized definition of the crime of Aggression in the International Criminal Court", acknowledging the results and efforts of the staff of the Review Conference. At the same time, it made comments on the "definition of the crime of aggression", pointing out that the resolution does not reflect the leading role of the Security Council in the mechanism of maintaining peace and security. Russia will continue its efforts to harmonize the relations between the UN Charter and the Rome Statute, and between the UN Security Council and the International Criminal Court¹⁵.

The position of the Russian delegation at the Kampala Conference continues the consistent attitude of the Russian political and academic community towards the ICC and the Rome Statute. The Associate Professor of Law of the National Research University of Higher Economics of Russia, G. T. Bogusch, has written a number of academic papers, including Cooperation and Division between Russia and the International Criminal Court, the International Criminal Court and the International Criminal Justice System, highlighting the significance of the establishment of the International Criminal Court. He said, "The practice of the

International Criminal Court has made contributions to the development of international law and has had a significant impact on the development of criminal law systems and legal theories in various countries." "The establishment of the International Criminal Court and other international criminal tribunals has greatly changed the political and legal ecology of the international community and effectively improved the problem of impunity." ¹⁶ "The idea of establishing the International Criminal Court reflects mankind's century-old pursuit of a just world order, which is impossible without punishment for serious crimes that violate the basis of human civilization." The activities of the International Criminal Court have had a positive impact on the reconstruction of peace in various regions of the world ¹⁷. In particular, it has played an important role in defining the crime of aggression, expanding the scope of States parties and the trial of specific cases, thus contributing to the improvement and development of international rule of law. The above views have been widely supported and agreed by many Russian scholars ¹⁸.

3. The main reasons why Russia does not join the ICC

Although the International Criminal Court was widely supported by Russian officials and academic circles in the early years of its creation in the late 20th century and early 21st century, on November 16, 2016, at the initiative of the Russian Ministry of Justice and after consultation with the Russian Ministry of Foreign Affairs, the Supreme Court, the Supreme Prosecutor's Office and the Investigative Committee, President Putin officially signed and issued Presidential Decree No. 361 "Decision of the Russian Federation not to accede to the Rome Statute and the International Criminal Court". Strictly speaking, Russia does not "withdraw" from the Statute, as it is not a party to the Statute, but in terms of its legal nature, it is better defined as "notification of intention not to accede to the treaty" or "notification of withdrawal of signature on the Rome Statute". This is due to Russia's political security considerations, as well as conflicts between domestic and international law, self-generated drawbacks of the mechanism, and intensification of sensitive cases.

3.1. The fundamental position of safeguarding national interests

National interest is a decisive factor in the change of a country's policy stance and the disposition of international relations, the then-presidential press secretary P. Sergeevich said in an interview with RIA Novosti that "it is precisely the national interest that requires Russia to take the final decision of rejection when reviewing the Rome Statute and the bill on joining the International Criminal Court". This view was supported by the then chairman of the Federal Constitutional Legislation Committee A. Alexandrovich, who pointed out that "when deciding whether to join the relevant international agreements, the national interests of Russia should be taken into account." Obviously, the fundamental reason for this decision was to protect the basic starting point of national interests ¹⁹.

The current world power pattern was formed under the leadership of Western countries, and its mechanism construction, operation mode and value pursuit are deeply influenced by Western values. Values reflect the specific measures taken by a country in safeguarding its strategic interests and people's rights and interests, such as the means and forces used to negotiate or fight, and the response and response to new threats emerging in a certain region. The difference of legal system is one of the main symbols of different values, and the creation of the International Criminal Court is influenced by Western values, which has caused some tendentious issues, triggered differences of opinion among different countries, and even jeopardized national interests.

Mana-borisovich, a law professor at TISBI University of Management in Russia, pointed out that Russia's withdrawal from the treaty reflected the "differences in culture and values between Russia and Western countries", which was the concrete embodiment of the field of consciousness in national interests ²⁰. In particular, it is reflected in the application of the theory of "retributive justice" in the International Criminal Court. According to the theory of "retaliatory justice", crimes violate national interests and should be punished by the state. Even in disputes between citizens, the state can intervene forcibly and exercise jurisdiction. At this time, the role of the state is to help the victim by means of criminal sanctions and strike the criminal suspects to seek justice. This is the main goal of the International Criminal Court and the Rome Statute. However, in the trend of international rule of law development, even in many non-Western countries,

such as Russia and Africa, the theory of "restorative justice", which is different from the theory of "retributive justice", has become popular. Compared with the theory of retributive justice, which focuses on the punishment of the criminal suspect, the theory of restorative justice pays more attention to the treatment and comfort of the victim. "The International Criminal Court and the Rome Statute are entirely based on the Western theory of 'retributive justice', without taking into account other ideas, especially the Russian theory of 'restorative justice', and the fundamental and systematic contradictions between them are irreconcilable," he said ²¹.

Under the contemporary system of international law, national judicial power is an important part of sovereign rights and interests, and once it is threatened, it will cause serious consequences. In particular, international institutions under the control of a single ideology have the danger, possibility and tendency to degenerate into tools of political struggle. Therefore, in the International Criminal Court, which is dominated by Western values, Russia cannot help but worry that its national interests will be seriously threatened by external threats. The 2017 Rome Statute included the "crime of aggression", under which military intervention, participation in non-international armed conflicts or support for foreign rebels could lead to criminal liability for national leaders. It remains to be seen whether this will become a legal weapon of "Yang conspire" against a sovereign state. However, when we study the trials of major leaders of some African countries by the ICC in recent years, we cannot help but worry that the ICC will become a political tool of some countries or groups of countries, and further obstruct or interfere with the domestic political situation or peace process of some countries. Russia is facing the reality test of this issue and has made positive responses to avoid the ICC becoming a tool of political struggle. For example, on November 15, 2013, Russia voted in favor of the Security Council's consideration of the draft resolution on the postponement of the trial of the leaders of Kenya in the International Criminal Court. In reality, Western media routinely accuse the Russian government and military of committing genocide and war crimes, and try to hold Russia accountable. Given its strong stance on sovereign rights and interests, Russia's rejection of the International Criminal Court and the Rome Statute seems logical.

3.2. The shortcomings of the ICC mechanism are becoming more and more obvious

The Russian Foreign Ministry issued a statement after President Vladimir Putin formally announced that he would not join the ICC, saying that "the court has not lived up to the hopes placed in him and has not become a truly independent and authoritative international judicial body." In its 14 years of operation, the court has passed only four judgements at a total cost of more than \$1 billion." ²² In fact, the international community has many questions about the work of the ICC, while the ICC is extremely dependent on the support of sovereign states to carry out its work. Under such circumstances, how to ensure the fairness of prosecution and trial, and avoid the phenomenon of judicial initiative and inefficiency is a long-term reality test for the ICC.

Russia's doubts about the working mechanism of the International Criminal Court mainly focus on whether its judicial work reflects fairness and justice, mainly reflected in the selective justice and double standards of some practices of the International Criminal Court. In 2017, the African Union issued a collective withdrawal strategy, calling on member states to withdraw from the ICC and the Rome Statute. The reality is that the majority of the cases under the jurisdiction of the ICC are indeed African countries. Under the concept of national sovereignty, an international organization cannot force a sovereign state to make a choice. Therefore, rather than a plan, the strategy should be defined as a direct criticism by some African countries of the selective justice and double standards of the ICC. In the case of the ICC investigation into the Libya case, Russia explicitly questioned the working model of the ICC, criticizing that "it only focuses on some of the parties involved in the 2011 incident, and since the investigation was launched, we have not seen any real steps taken by the ICC to fairly investigate the conduct of other parties." ²³ So far, the ICC reports have not included the findings of investigations into crimes committed by the Islamic State. In addition, in addition to the Islamic State, there are other terrorist organizations in Libya on the sanctions list of the Security Council, but they are not reflected in the report, which will undoubtedly raise questions in the international community about the work of the ICC. The most immediate impact on Russia is the ICC's investigation into the Russia-Georgia war. In due course, Russia has given some support to the work of the ICC and provided a large

number of evidentiary documents to the prosecutor. But in the 2015 report of the ICC Prosecutor's Office, the prosecutor largely blamed Russia for the crimes committed during the Russo-Georgian war²⁴. This conclusion has profoundly influenced Russia's support for the ICC. Russian Foreign Minister Sergei Lavrov described the report as a "biased investigation", saying that "the prosecutor of the International Criminal Court has completely ignored the large amount of material provided by Russia"²⁵.

Given the uncertainties in the application of the legal provisions of the Rome Statute and the interpretation of the rules, as well as the dual role of judges' discretion in international judicial trials, the issue of judicial initiative in the work of the international Criminal Court has also received wide attention from the international community. Different from judicial legislative activities to fill legal gaps, judicial initiative refers to the work of the judiciary to deviate from the literal meaning of legal articles and the original intention of lawmakers, and expand the definition of crimes under the jurisdiction of the International Criminal Court and the scope of admissible cases²⁶. Such unauthorized judicial acts have the tendency to violate the provisions of the Rome Statute, which is also inconsistent with the intention of the legislators. At the same time, they also threaten the judicial authority and the legitimacy of the ICC. In the case of Kenya, for example, the majority of the Pre-Trial Chamber judges did not strictly follow the definition of "organization" in Article 7 of the Rome Statute and expanded the scope of application of the law. "At the ICC, judges do not have the function of making rules," says Robert Stanislavovic, a law professor at St Petersburg University in Russia²⁷. By their legal nature, ICC judgements are not sources of law, but concrete cases of interpretation and application of norms of international humanitarian law, international criminal law and the law of armed conflict enshrined in the Rome Statute. In addition, the inefficiency of the ICC's work is particularly acute because it relies on the support of sovereign states to collect evidence and interrogates witnesses and victims. As the Russian representative criticized at the UN Security Council General Assembly, "The nature and content of the report of the Office of the Prosecutor of the International Criminal Court (ICC) on the Darfur (Sudan case) investigation, year after year," and "the Sudan case should be discussed in the ICC Assembly of States Parties and its subsidiary bodies, rather than through the Security Council to exert pressure on those who have dissenting views."²⁸

3.3. The conflict of laws between Russian domestic law and the Rome Statute

Comparing the specific provisions of the Rome Statute of the International Criminal Court and the Criminal Code of the Russian Constitution, it is not difficult to find that there are certain legal conflicts between the two, which is the main internal reason why Russia has not ratified the Rome Statute for a long time.

First, the immunity of the head of state. In contemporary judicial systems, the lack of immunity from international justice for high-ranking officials accused of international crimes is almost universally recognized, among which article 27 of the Rome Statute also provides for the principle of "irrelevance of official capacity" in order to eliminate the immunity of heads of state²⁹. In contrast, Articles 91 and 98 of the Russian Constitution grant inviolable rights to the President, members of the Federation Council and members of the Duma, respectively. Russia also has a procedure for removing the president, but the conflict between the two is obvious.

The second is the issue of "impunity". "No punishment for one crime" is a basic rule of law principle based on safeguarding citizens' basic rights and interests and saving judicial costs, which means that criminal suspects should only be held responsible once for their crimes. Article 20 of the Rome Statute defines the system of "no second trial for one crime", but its paragraph 3 provides for two exceptions, namely "in order to shield the person concerned from criminal responsibility; Or is not carried out in an independent or impartial manner in accordance with the principles of due process recognized by international law, and in a manner incompatible with the purpose of bringing the person concerned to justice ". This principle is enshrined in Article 50 of the Russian Constitution, which states that "no one shall be sentenced again for the same offence", but there are no exceptions to it.

Third, there is the question of imprisonment. Imprisonment is a basic punishment execution mode of contemporary criminal law. Article 105, paragraph 1, of the Rome Statute provides that "Sentences of imprisonment shall be binding on States Parties and shall not be modified by them in any way". And Article

50, paragraph 3, of the Russian Constitution gives every person sentenced for a crime the right to request a reconsideration of the sentence, a pardon or a commutation of the sentence. Under this provision, 89 pardons have been issued in Russia³⁰. In this context, the contradiction between the Rome Statute and the Russian Constitution regarding the preservation of human rights still exists.

Fourth, the hierarchy of courts. According to the Law on the Organization of Courts of Russia, the courts of Russia are composed of two parts: the Federal court system and the Federal Subject court system, under which there are various levels of courts, which specifically carry out the judicial power conferred by Chapter VII of the Russian Constitution. There is no provision for the establishment of courts in a different order, including the order in which international treaties are concluded. However, Article 1 of the Rome Statute makes clear the supplementary jurisdictional status of the ICC. This article means that the ICC will exercise judicial power jointly with Russian courts, and it is debatable whether the existence and jurisdiction of its complementary judicial bodies are compatible with the Russian Constitution.

Fifth, the issue of extradition of citizens. Extradition is an important system for international judicial cooperation between countries. Its important legal basis is domestic law and extradition treaties signed by the two sides. According to Articles 61 and 63 of the Russian Constitution, "no Russian citizen shall be expelled from the country or extradited to another state", and "no one shall be extradited to a foreign state because of his political convictions or because of acts (or omissions) not recognized as crimes by the Federation". "The extradition of persons accused of committing crimes and the surrender of sentenced persons for the purpose of serving sentences in other countries shall be carried out in accordance with federal law or international treaties of the Russian Federation." It can be analyzed that the object of Russia's extradition cooperation is the state, and it does not have the authorization to extradite to international organizations at present. In addition, although the term "transfer" is used in Article 89 of the Rome Statute, the legal essence and function of the two are the same.

Russia is a party to the 1969 Vienna Convention on the Law of Treaties, Article 27 of which clearly stipulates the rule that "a party may not invoke the provisions of its domestic law as an excuse for non-performance of the treaty", and the Russian Constitution also stipulates that "priority should be given to the application of ratified international conventions"³¹. "At the same time, the Rome Statute is again a strict treaty, with article 120 of the Statute requiring that "any reservation be prohibited." Therefore, if the Rome Statute is ratified, the legal conflicts between domestic law and the statute will be an important choice that has to be resolved. Russia must carry out a series of legal amendment activities to avoid the conflicts between domestic law and international law affecting the unity of national legal system.

3.4. The investigation of the Russia-related case by the International Criminal Court has become a direct trigger

Shortly after the ICC published its pre-trial report on Ukraine's Crimea, Russia issued a presidential decree not to join the ICC and the Rome Statute, even though then-presidential Press Secretary P. Sergeevich made it clear that Russia's decision not to join the ICC had nothing to do with the Ukraine investigation, but analyzing the circumstances, it is difficult to determine if there is no connection³².

After the Crimean crisis ended, the Government of Ukraine, although not a State party to the ICC, submitted declarations to the ICC on 17 April 2014 and 8 September 2015, respectively, in accordance with Article 12, paragraph 3, of the Rome Statute, expressing its acceptance of the jurisdiction of the ICC over criminal offences committed on the territory of Ukraine after 21 November 2013. On 25 April 2014, the Office of the Prosecutor of the ICC conducted a preliminary review of the situation in Ukraine, and published the results in the review report submitted in 2016. The ICC concluded that "the situation in Crimea and Sevastopol amounted to an international armed conflict between Ukraine and Russia" and that "the international armed conflict began no later than February 26" and that "Russia, without the consent of the Government of Ukraine, sent its own armed forces to take control of part of the territory of Ukraine. The law of armed conflict will continue to apply after March 18, 2014."³³ In the ICC prosecutor's most recent report on the Ukraine case in 2020, this language was amended to read "where the conflict is international, there is a reasonable basis to believe that the following war crimes have been committed: intentional attacks causing harm to civilians and civilian objects, disproportionate attacks and unlawful imprisonment"³⁴.

The International Criminal Court's review of Ukraine has provoked a furious reaction in Russia. The head of Russia's International Law Commission, Sergei Kosachev, described the report as "extremely politicized, highly controversial and grossly inconsistent," saying that "it is illegal to treat the Crimean crisis as an armed conflict between Russia and Ukraine, and Russia has every reason to question the fairness and fairness of the document."³⁵ "The preliminary report of the Prosecutor of the International Criminal Court violates the provisions of international law," said A. Yakovlevich, director of the Russian Institute of Legislation and Comparative Law. "Aggression is the use of force or armed attack against a State, undermining its territorial integrity, political independence or in any other manner inconsistent with the Charter of the United Nations. "There was no act of aggression in the Ukraine case, there is no Security Council resolution that has the authority to make such a conclusion, and the prosecutor of the ICC has no authority to make such a judgment."³⁶ Russia has classified the Ukraine case as part of a political offensive by Western strategic rivals and supporters to use international institutions to launch a legal battle against Russia, to identify certain acts as criminal violations of international law, and then to brand Russia as a lawbreaker or even an aggressor to reduce its international reputation and regional influence.

In fact, the Ukraine case is not the first international case that Russia has faced. In 2011, Georgia filed a lawsuit against Russia at the International Court of Justice and the International Criminal Court over the August 2008 Russia-Georgia conflict, seeking compensation. Resolution 1323(2003) of the Parliamentary Assembly of the Council of Europe on the situation of Human rights in Chechnya demands that "in response to the possible impunity in the Republic of Chechnya, the international community should consider the establishment of a tribunal to deal with war crimes and crimes against humanity in its territory, and urges Russia to ratify the Rome Statute as soon as possible"³⁷. These international proceedings have aroused great concern in Russia, and how to avoid falling into a juridical-jurisdictional disadvantage has become a key concern of Russia. Therefore, it is no surprise that Russia issued presidential Decree No. 361 to formally state its position on the ICC the day after the ICC first published the prosecutor's review report on the Ukraine case in 2016.

4. Main Implications of Russia's non-accession to the ICC

In a legal sense, Russia's refusal to accede to the Rome Statute has not given rise to a plethora of legal rights and obligations. It does not seem to have any legal impact, but in fact, under the situation of international security and the rule of law of peace, strengthening international judicial cooperation has become a basic trend. Moreover, with citizens' increasing awareness of the rule of law, it is also a legal obligation of states to strengthen punishment for the most serious international crimes. Although Russia has not ratified the Rome Statute, it does not mean that it has given up its corresponding international obligations, and the promulgation of presidential decrees will inevitably have a certain impact on its domestic rule of law construction and international judicial cooperation.

4.1. Russia cannot avoid undertaking international obligations

Russia's legal status before and after its withdrawal from signing the Rome Statute should be clarified, so as to determine the changes in rights and obligations arising from the change in its legal status as a State party to the Convention. According to the Russian Constitution, "the State Duma and the Federation Council are responsible for the ratification and abrogation of international treaties of the Russian Federation." Therefore, the formal signing of the Rome Statute does not mean that Russia has fully become a member of the International Criminal Court, which needs to be reviewed by the domestic Federal Assembly. At this time, Russia does not fully comply with the statute, only in accordance with Article 18 of the Vienna Convention on the Law of Treaties to fulfill the obligation of "shall not impede the object and purpose of the treaty before its entry into force", which is a basic provision for countries that have signed the treaty but have not yet had legal effect due to the completion of domestic review procedures, Russia is in line with the requirements of this article.

Russia's final decision not to join the International Criminal Court and the Rome Statute is essentially a "withdrawal" of its signature on the Rome Statute, avoiding the relevant regulations of the signatory states of

the relevant provisions. But in fact, Russia's "revocation" does not prevent it from bearing the corresponding international obligations.

On the one hand, Russia still needs to shoulder its international obligations in combating the most serious international criminal crimes. The International Criminal Court and the Rome Statute aim to prevent the perpetrators of international crimes from going unpunished, which is also an important goal pursued by the international rule of law. The prevention and punishment of the most serious international criminal crimes are included in the purposes of international conventions such as the Statute of the International Tribunal for the Former Yugoslavia, the Statute of the International Criminal Tribunal for Rwanda, the Convention on the Prevention and Punishment of the Crime of Genocide and the Geneva Convention for the Protection of Victims of War, to which Russia is a party. In addition, Russia is subject to the provisions of customary international law and is obliged to undertake the criminal prosecution of international crimes and to carry out international cooperation in this field, as was the case with the former Judge of the Constitutional Court of the Russian Federation. "Although it has not acceded to the Rome Statute, some of its provisions contain universally recognized principles and norms with the meaning of customary international law, and Russia is obliged to abide by them," said Professor Tyunov³⁸.

On the other hand, even if Russia does not accede to the Rome Statute, it cannot avoid the jurisdiction of the International Criminal Court, because according to the jurisdiction provisions of Articles 11 to 14 of the Rome Statute, if the State concerned is a party to the ICC, or if it voluntarily refers the situation to the jurisdiction of the ICC, or if the UN Security Council adopts relevant resolutions, it does not matter whether Russia, as the country involved, recognizes or does not recognize the jurisdiction of the International Criminal Court, and the above-mentioned countries still have the opportunity to bring a case against Russia. This is indeed the case in practice, with the Russia-Georgia war investigation stemming from Georgia's accession to the ICC in 2003 and the Crimean crisis resulting from Ukraine's acceptance of ICC jurisdiction in February 2015.

In addition, Russia also needs to maintain some respect for the ICC and the Rome Statute. Under modern international treaty law, states have a general obligation to respect treaties signed by other states, Russian jurists say. Likashuk agrees, writing in his book "The Law of Modern International Treaties" that States have a general obligation "to respect and recognize lawful international acts concluded between other States, provided that they do not infringe upon the rights of third States"³⁹. The very fact that an international treaty is in force creates an obligation for non-States parties to respect that treaty, which stems not from the treaty itself but from the relevant principles and norms of general international law, in particular the requirements of the principles of sovereign equality and non-interference.

4.2. Improve the rules governing the punishment of the most serious international crimes under domestic law

As mentioned above, Russia's decision not to join the International Criminal Court and the Rome Statute cannot absolutely avoid the jurisdiction of the International Criminal Court. Therefore, it is necessary for Russia to further improve its domestic laws on the punishment of the most serious international crimes, which is not only an effective means to gain the initiative in the face of jurisdictional disputes, but also a concrete manifestation of international obligations.

In order to avoid jurisdictional disputes by improving the punishment rules of the most serious international crimes in its domestic law, Russia needs to focus on the "incrimination" standard, and the key is to solve the problem of "the inability of domestic law", so as to avoid the complementary jurisdictional rules of the International Criminal Court. The "incrimination" standard is mainly reflected in two aspects: one is the setting of charges, the other is the age of criminal responsibility. To avoid jurisdictional disputes, it is necessary to set rules equal to or stricter than the Rome Statute in these two aspects, which can effectively avoid the phenomenon that "domestic law cannot be governed". With regard to the "age of criminal responsibility", Article 26 of the Rome Statute defines "at least 18 years of age", while Article 20 of the Criminal Code of the Russian Federation stipulates that criminal responsibility begins at the age of 16, and criminal responsibility for 20 crimes is assumed between the ages of 14 and 16⁴⁰. In contrast, the age of criminal responsibility for "crime" in Russia is stricter than that of the International Criminal Court, so the emphasis should be placed on the setting of charges.

In fact, Russia has already set up relevant provisions in its domestic criminal law legislation. Articles 353 to 360 of Section 12 of the Criminal Code of the Russian Federation, "Crimes against the peace and security of Mankind", stipulate eight crimes, basically including "crime of aggression", "crime of genocide" and "war crimes"⁴¹. In this regard, E N. Tricozzi, senior researcher at the Russian Institute of Law and Comparative Law, pointed out that "it is necessary to adapt Russia's sectoral legislation to the requirements of international criminal law in order to minimize cases of genocide, war crimes and crimes against humanity that may fall under the jurisdiction of the International Criminal Court on the basis of the principle of complementarity"⁴². Therefore, the Criminal Code of the Russian Federation does not need to create new categories of crimes or introduce new definitions of crimes, but should be improved and amended in accordance with the relevant international treaties signed by Russia. For example, two new types of "crimes against human security" and "war crimes" are added to the criminal Code. Amend the specific connotation of genocide in Article 357 to add the act of "inflicting grievous injury in spirit"; And further improve the use of prohibited means and methods of warfare in Article 356 by specifically enumerating a list of criminal acts.

4.3. Further strengthen international judicial cooperation

Russia has always stood for strengthening the application of the norms and principles of international law in handling international affairs. Supporting the ICC and the Rome Statute is an important measure for Russia to enhance its international image, which can be seen from its active participation in the series of meetings on the establishment of the ICC and the formulation of the Rome Statute. Russia's non-accession to the ICC and the Rome Statute does not mean that it has given up this position. International judicial cooperation is still an important way for Russia to enhance its international influence and promote the normalization of relations with neighboring countries. In June 2021, Putin formally submitted to the State Duma a bill entitled "Authorizing the Federal Prosecutor General's Office to represent Russia in the European Court of Human Rights", with a view to further strengthening cooperation and exchanges with the European Court of Human Rights and fully protecting Russia's legitimate rights and interests. In addition, a Ministry of International Cooperation has been set up within the framework of the Federal Supreme Court to provide comprehensive support for international cooperation and strengthen practical cooperation with foreign judicial departments and international judicial institutions.

Strengthening judicial cooperation among CIS countries and establishing a unified judicial body have become an important part of Russia's pursuit of new development of international judicial cooperation. This initiative has multiple values. It can not only consolidate the political and legal ties between Russia and its major neighboring partners, strengthen its control over traditional strategic space, but also highlight the positive image of Russia as a supporter of international rule of law and effectively improve the negative image of powerful countries. In his report to the Federal Assembly, Putin clearly proposed to "synchronize the reform process of Russia and the CIS countries" and ensure legal cooperation on human and civil rights⁴³. International treaties such as the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters and the Joint National Action Plan against Organized Crime and Other Dangerous Crimes in the Territory of the Member States of the Commonwealth of Independent States, which have been amended and tested by practice many times, have made it possible to create an international judicial institution and legal system of the Commonwealth of Independent States with regional characteristics and complete mechanisms. In fact, in the civil field, the international judicial institutions of the Commonwealth of Independent States have already achieved results. The International Economic Court of the Commonwealth of Independent States has been officially put into operation to handle economic disputes between member States. In the context of strengthening criminal justice and the fight against crime, it is foreseeable that the establishment of a unified judicial body will become an important part of Russia's efforts to strengthen judicial cooperation in the CIS countries.

In addition, Russia officially confirmed its accession to the European Court of Human Rights on 30 March 1998, recognizing the Court's compulsory jurisdiction in the interpretation and application of the European Convention on Human Rights and its Protocols. This is also an important way for Russia to further strengthen international judicial cooperation. In accordance with the commitments made upon accession to the

Convention, Russia has carried out legal amendment activities and adjusted its existing domestic legislation to bring it into line with the provisions of the Convention. Although there are some differences between Russia and the European Court of Human Rights due to political and legal reasons, Russia has always maintained a positive attitude of cooperation towards the European Court of Human Rights. It is foreseeable that this position will be upheld and strengthened after Russia announced that it will not join the International Criminal Court.

5. Epilogue

Considering the tortuous review process of the Rome Statute and the trend of tension in Russia-EU relations, it can be predicted that Russia is unlikely to restart the review process of the Rome Statute in the short term. In fact, Russia is not the first country to declare that it will not join the ICC. As of now, some major countries in the world, including the United States, Russia and China, are not parties to the ICC and the Rome Statute. As an international organization whose legal basis is the recognition and support of States parties, the reduction in the number of States parties has, to some extent, weakened the governance capacity and international status of the ICC. How to carry out institutional reform and increase the number of States parties has become an important issue in the work of the ICC.

China has a good tradition of upholding international criminal justice, and actively supported the establishment of the International Criminal Court at the Rome Plenipotentiary Conference, but in view of the many concerns about the work of the International Criminal Court, so far it has not joined. However, as China moves to the center of the world stage and becomes more integrated into the global governance system, due to the characteristics of the ICC's jurisdiction system and international relations, it is also inevitable that China will be associated with it. Compared with the early days of the ICC, China's domestic legal system has taken on a larger scale, and it has accumulated certain practical experience in increasingly frequent international judicial cooperation. China is now capable of using international judicial mechanisms and the Rome Statute to safeguard national interests. Therefore, based on the basic position of observer state of the International Criminal Court, China should, on the one hand, improve the legal system and enrich the gaps in the provisions of the domestic criminal law on the five war crimes, on the other hand, improve the level of safeguarding the legitimate rights and interests of the state and citizens by using the international legal system, and exercise the ability of international judicial cooperation in both offense and defense. After formally announcing its non-accession to the ICC, Russia has also maintained regular cooperation with other international judicial bodies and gradually incorporated the most serious international crimes into its criminal punishment system. The useful experience in this process is worth learning from.

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