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Complementarity Principle in Prosecution of International Crimes: Assessing its Necessity and Efficacy

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1. Introduction

The effectiveness of international criminal law relies upon its implementation mechanisms functioning both in national and international forums to vindicate international criminal law violations.[1] Since there are two tiers prosecution systems it becomes necessary to regulate the relationship between the systems. In this regard, the principle of complementarity, considered one of the Rome Statute's cornerstone principles, appeared to govern the jurisdictional relationship between international criminal court (ICC) and national criminal justice actors.[2] While regulating the functioning of crimes adjudication systems, this principle has received both praise and criticism over the years. Some argue that this principle signifies an ingenious solution to a deadlock between sovereignty anxious states and the role of ICC while others claim that it is an excessive concession to sovereignty that may endanger the successful functioning of ICC.[3] Taking these criticisms in mind, this paper examines the principle of complementarity by scrutinizing its strength and limitations. It looks at the positive aspects and challenges of complementarity principle from its historical context and addresses its implication for the effectiveness of international criminal law. The paper, in essence, argues that the complementarity principle holds its relevance for the growth of international criminal law despite having certain limitations.

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1 Mohamed M. El Zeidy, 'The Principle of Complementarity: A new Machinery to Implement International Criminal Law' (2001-2002), 23(4) *Michigan. Journal of International Law* 869.

2 Nirej Sekhon, 'Complementarity and Post Coloniality' (2013) 27 *Emory International Law Review* 799.

3 Markus Benzing, 'The complimentary regime of International Criminal Court: International criminal justice between state sovereignty and fight against impunity' in Armin Von Bogdandy, Rüdiger Wolfrum and Christiane E. Philipp (eds.), *Max Planck Yearbook of United Nations Law* (Vol 7, Koninkijke Brill 2003) 591.

2. Historical Evolution of the Principle of Complementarity

The emergence of complementarity principle is not new. It coincides with the history of adjudication of crimes under international law. Historically states are used to prosecute crimes within the national jurisdiction even if crimes are of international character.[4] By virtue of state sovereignty and territoriality principle states regard it as an inherent right to exercise its jurisdiction over crimes committed in its territory.[5] The historical development suggested that the suspect criminals of World War I were tried under domestic jurisdiction.[6] It was also found that in rare cases states gave up from exercising the inherent right of sovereignty and they preferred not to entertain any international intervention unless required by special circumstances.[7]

However, with the change of time it became evident to prosecute grave crimes of international nature at the international forums going beyond state sponsored national jurisdiction. So the tension on the one hand based on utmost reliance of state sovereignty in terms of prosecuting crimes at the domestic level and adjudication of grave international crimes at the international forum on the other hand was rising.[8] In this regard, the complementarity principle emerged exploring the complementary role of both national and international criminal adjudication systems for the prosecution of international crimes and to fight against impunity.

The recognition of the complementarity principle can be traced back from the history of war crimes trial in Allied Tribunals after World War I where the allies allowed Germany to prosecute the accused in German courts with a reservation of setting aside the German verdicts under Article 228 of the Versailles Treaty.[9] Article 228 obliged the German government surrender the accused of war crimes to the

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4 ibid 870.
5 ibid.
6 ibid.
7 ibid.
8 Claire Brighton, 'Avoiding Unwillingness: Addressing the Political Pitfalls Inherent in the Complementarity Regime of the International Criminal Court' (2012) 12(4) *International Criminal Law Review* 629.
9 Treaty of Peace with Germany, June 28, 1919, arts. 228-30, S. TREATY Doc. No. 66 49, at 90 (1919). Article 228 stipulates: 'The German Government recognizes the right of the Allied and Associated Powers to bring before military Tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a Tribunal in Germany or in the territory of her allies. The German Government shall hand over to the Allied and Associated Powers, or to such one of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by rank, office or employment which they held under the German authorities'. Referred in Zeidy (n 1) 871.

Allies so that they could be tried by a special military tribunal at the international level.[10] The spirit of this Article implied the principle of complementarity in terms of punishing the criminals when Germany failed to try them at national level and opened the door of prosecution at the international forum.[11] Regarding the trial of war criminals after the World War II there were again two tiers systems of adjudication where major criminals were tried under International Military Tribunal (IMT) and rest of them were tried by internal criminal jurisdiction.[12] Though IMT and national courts had different jurisdictions and tried different categories of crimes, the complementarity principle came up at a balancing point of effective cooperation between international and national criminal jurisdictions.[13]

The principle of complementarity was also reflected in the drafting history of Genocide Convention[14] where it was found that even in respect to the establishment of International tribunals most states claimed to exercise their own national criminal jurisdictions first and international court would only have jurisdiction if the states had failed to act.[15]

Finally, the principle of complementarity receives explicit recognition in the Statute of International Criminal Court. In this regard, the draft history of incorporation of this principle in the statute deserves attention. One of the important problems that the drafters of the statute faced was the question of determining the relationship between national and the newly emerged International Criminal Court.[16] It was found that some of the delegations, though supported the establishment of international criminal court, were unwilling to create an institution that could impinge on national sovereignty.[17] While stressing on the principle of complementarity, a number of delegates argued that this principle should focus on the primacy of domestic jurisdiction.[18] It was suggested that the issue of complementarity and the relationship between ICC and national courts should be scrutinised considering the

[10] ibid 872.
[11] ibid.
[12] ibid 874.
[13] ibid 876.
[14] Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter referred as Genocide Convention].
[15] Zeidy (n 1) 878.
[16] William A. Schabas, 'Complementarity in Practice: Creative solutions or a Trap for the Court?' in Mauro Politi and Federica Gioia (eds.), *The International Criminal Court and National Jurisdictions* (Ashgate Publishing Limited 2008) 25-48.
[17] Zeidy (n 1) 890. Also in Jennifer J. Llewellyn, 'A Comment on the Complementarity Jurisdiction of the International Criminal Court: Adding Insult to Injury in Transitional Contexts?' (2001) 24(2) *The Dalhousie Law Journal* 192.
[18] Zeidy (n 1) 890. Also in Jennifer (n 17) 195.

issue of international judicial cooperation.[19] After a long debate on this issue, the principle of complementarity secured its incorporation most significantly in the preamble and Article 1. The Principle also spelled out in Articles 15, 17, 18, and 19 of the Rome Statute of the International Criminal Court.

3. The Principle of Complementarity: What It Entails?

The preamble of the Rome Statute states: "… the most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation."[20] It also adds: "the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions."[21]

Furthermore, Article 1 of the Statute states that "An International Criminal Court ('the Court') is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute".[22]

The preamble along with Article 1 entails the core aspect of the principle of complementarity in international criminal law. It starts with the aim of fighting against impunity of most serious crimes through effective prosecution at the national level and with the help of international cooperation. These two tiers adjudication of crimes reflect the complementary relationship between international criminal court and national jurisdiction. The principle deals with how the court will function emphasizing that crimes will be adjudicated primarily at the national jurisdiction and if national jurisdiction is unwilling or unable to prosecute only then the ICC will come into operation as a last resort of adjudication.[23] In this regard, it can be deduced that the purpose of ICC is to supplement the domestic adjudication of international crimes rather than supplant the domestic enforcement of international norms.[24]

The reason behind the emphasis on domestic adjudication is obvious from the fact that complementarity principle is more attuned with the sovereignty of the states.[25] It also signifies the obligation of states to use their domestic forum with a

[19] Zeidy (n 1) 890.
[20] Rome Statute of the International Criminal Court 1998, which entered into force on July 1, 2002, para 4.
[21] ibid, para 10.
[22] ibid, art 1.
[23] ibid, art 17.
[24] Zeidy (n.1) 896.
[25] A. Casssese, *International Criminal Law* (3rd edn, Oxford University Press, 2013) 298.

view to punishing the violators of international law. In addition, the duplicative reference of complementarity principle both in preamble and Article 1 also indicated that such duplication reflected the desire of the states to uphold state sovereignty from external influences.[26] Being part of complementarity, on the other hand, the ICC retains its power over irresponsible states that refuse the adjudication of heinous international crimes.[27] By taking two approaches simultaneously, complementarity principle comes into a balancing point between sovereign right of national states and international forum in terms of adjudication of crimes with the aim that no crime should go unpunished.[28]

4. Rationale behind Complementarity Principle

The Rome Statute does not offer any definition of complementarity. As such, in order to understand its nature and scope, the rational philosophy of the principle should be properly appreciated. The following discussion shall reflect the rationality behind the complementarity principle along with its contribution in the sphere of international criminal law.

4.1 Sovereignty of States and Complementarity Principle

One of the most significant rationale of complementarity principle is the protection of sovereignty of both State parties and third states.[29] Traditionally criminal jurisdiction has been left to the national sphere and it was the unfettered prerogatives of sovereign states to exercise criminal jurisdiction within the limits of public international law.[30] This exercise of criminal jurisdiction also considered as the central aspect of sovereignty itself.[31] International criminal law, while allowing individuals to avail international forum of adjudication, has been trying for a major shift in this regard.[32] However, the interest of the states is still prevalent and in most of the cases they remain in uncompromising position to give up their sovereignty in favour of an international tribunal.[33]

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[26] Zeidy (n 1) 897.
[27] ibid 896.
[28] Brighton (n 8) 632.
[29] Benzing (n 3) 59.
[30] Olympia Bekou, 'In the hands of the State: Implementing Legislation and Complementarity' in Carsten Stahn and Mohamed M. EI Zeidy (eds), *The International Criminal Court and Complementarity: From theory to Practice* (Vol II, First Published (2011), Cambridge University Press 2011) 830-852.
[31] cf. Ian Brownlie, *Principles of Public International Law* (5th edn, Oxford University Press 1998) 298 referred in Bekou (n 30).
[32] Bekou (n 30) 834.
[33] ibid.

It is apparent from the jurisdictional relationship of States with ICC that consideration of sovereignty still has an influence over the functioning of ICC. The permanent nature of newly established ICC also stipulates that states while maintaining the sovereign prerogatives want to conduct the trail of criminals in accordance with their legal basis and in the exceptional cases refer them to the jurisdiction of ICC.[34] States, in this regard, were also concerned on the fact that their own nationals might be brought before the international tribunal without their consent and to address this anxiety complementary principle emerged to assuage their concerns.[35]

Another important factor that led to the adoption of complementarity principle is that ICC does not have any retrospective jurisdiction rather it has only prospective jurisdiction that extends only to future crimes. It is mentionable here that both Nuremburg and Tokyo International Military tribunals as well as International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) dealt with crimes which were committed earlier to the establishment of these tribunals.[36] For this reason, while establishing the ICC, states were more concerned on the ground that they might lose their control in the hands of external forum.[37] In this regard, with a view to preserving their interest, states agreed to set up the international criminal court on the ground of securing primacy of jurisdiction in the hands of sovereign states and on their failure only international forums can come forward.[38] So it can be argued that sovereign states still enjoy a substantial degree of control over the jurisdictional issues.

4.2 Duty to Prosecute and Shared Responsibility

The Rome Statute does not confine itself only to the assertion of the 'right' of the states to exercise criminal jurisdiction at the national level rather it also refers to the 'duty' of every state (not limited to state parties) to exercise its criminal jurisdiction over those responsible for international crimes.[39] So exercising sovereign rights carries a responsibility also. In this regard, the concept of 'responsibility to protect' refers that sovereign states are responsible for the protection of their people from mass atrocities and this responsibility extends not only to their own people but also to

[34] ibid 835.
[35] ibid.
[36] ibid 836.
[37] ibid.
[38] ibid.
[39] Benzing (n 3) 596. Referred the Paragraph 6 of the Rome statue of International Criminal Court.

the international community.[40] With the change of time it is increasingly felt that principle of non-interference in the domestic jurisdiction of the states cannot be considered as a safeguarding obstacle behind which massive human rights violation could occur with impunity. It has been argued that sovereignty is not merely a right or power but a responsibility also.[41] The right to inviolability amounts to nothingness, if the provision of rights safeguards is not ensured. [42]

The concept of sovereignty as responsibility is connected with the essence of complementarity principle. The essence of complementarity principle lies on the fact that it entails two tiers obligations on the states; firstly, by requiring the states on part of their obligations to prosecute alleged perpetrators at the domestic level and secondly, referring to an international prosecution in case when they failed to carry out their duty to prosecute.[43] Thus, complementarity principle allowed the prosecution at international level where national systems failed to take measures to avoid impunity and prevent future crimes.[44]

Based on the discussion above it can be said that, complementarity principle introduced a broader system of justice where the ICC and domestic courts complement each other with their mutual efforts to institutionalize accountability for mass crimes.[45] This wider system of justice implied that domestic jurisdictions and ICC carry a shared responsibility in combating crimes and promoting international criminal justice. The principle also serves another subtle role. The international criminal law gets the incentives of the state mechanism through the domestic enforcement.[46] In this way, it serves the interest of the international community at a broader perspective by prosecuting international crimes effectively. It discourages the culture of impunity and contributes to crimes deterrence.[47]

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[40] Luke Glanvile, 'The Rise of the Responsibility to Protect in Sovereignty and the Responsibility to protect: A New History' (The University of Chicago Press 2014) 171.

[41] ibid 174.

[42] ibid.

[43] Benzing (n 3) 596.

[44] ibid.

[45] Carsten Stahn, 'Taking Complementarity Seriously: On the Sense and Sensibility of 'Classical' 'Positive' and 'Negative' Complementarity' in Carsten Stahn and Mohamed M. EI Zeidy (eds), *The International Criminal Court and Complementarity: From theory to Practice* (Cambridge University Press 2011) 233-282.

[46] Benzing (n 3) 596. The Bangladesh war trial in this regard can be noted. Though, Bangladesh has been prosecuting international crimes committed during the country's liberation war in 1971, an area where the ICC Statute does not have its operation, the Bangladesh experience can offer an explanatory study for the future study of complementarity principle by way of analogy. See, S M Masum Billah, 'Pakistani war criminals should not go unpunished' (December 16, 2015, Dhaka), http://www.thedailystar.net/supplements/pakistani-war-criminals-should-not-go-unpunished-187996. Accessed 10 March, 2021.

[47] Rome statue of the International Criminal Court, para 5 of the Preamble.

4.3 Protecting Rights of the Accused

The essence of complementarity principle also lies on the fact that international criminal court relied on domestic adjudication of international crimes with the expectation that human rights of the accused will be protected with due consideration at the domestic court and this mandate got recognition in Articles 17-19 that defined complementarity principle.[48] According to Article 17[49] principles of due process recognized by international law will be the determining factors in judging the willingness of the state to prosecute.[50] The principle of due process while aiming to protect the fair trial rights of the accused marked the unwillingness of the state where a state overzealously prosecute the criminals without independent and impartial proceedings along with unjustified delay that disregard the rights of the accused.[51] In this regard, principle of complementarity comes into scenario on the ground that when rights of the accused are denied at the domestic prosecution, international criminal court has the right to reconsider the case that clearly demonstrates the complementary relationship between domestic and international adjudication of crimes.

4.4 Resource Constrain of the International Criminal Court

Coming to the practical underpinnings of the principle of complementarity, it is submitted that since international criminal court has financial and infrastructural limitations it would not be able to settle the wide number of cases committed in various jurisdictions of the world.[52] It is alleged that due to resource constrain, the Court is unable to widen its scope in terms of undertaking any effective action in every case.[53] In recent years, States parties have slightly increased their contribution to the resources of ICC, however, the overall budget approach still continues to negatively influence the ability of the ICC in prosecuting crimes.[54]

The resource constrain hampers the investigations of current as well as previous cases while creating unnecessary delay and backlog in settling cases. Such capacity crisis of ICC driven by resource constrain raises questions about the effectiveness as well as legitimacy of the ICC in dealing with crimes where the intervention of ICC is

[48] Benzing (n 3) 597.
[49] Rome Statue of the International Criminal Court, art 17(2).
[50] Benzing (n 3) 597.
[51] ibid.
[52] Casssese (n 25) 298.
[53] Benzing (n 3) 599.
[54] Elizabeth Evenson & Jonathan O'Donohue, 'The International Criminal Court at risk' (May 6, 2015), <https://www.openglobalrights.org/international-criminal-court-at-risk/> accessed 21 May 2021.

warranted.[55] While addressing this practical impediment of lack of adequate resources, Rome Statue establishes a network of courts both at national and international levels that reflect complementarity scheme of prosecution of crimes.

4.5 Effective Prosecution at the Domestic Level

Another feature of complementarity principle addresses the effectiveness of domestic prosecution. It is argued that collection of evidence and witnesses are key factors to ensure effective prosecution and domestic courts are in a better position to facilitate the functioning of the courts proceedings.[56] It is also obvious that trials conducted closer to the place of occurrence have inherent practical and expressive value.[57] In addition, the educational value of a trial is lost when it is conducted far from the country of accused.[58] In case of domestic prosecution, it is more probable that the people at large will get the opportunity to identify the accused and denounce his criminal behaviour that also serves the purpose of criminal justice.

5. Challenges and Weaknesses of Complementarity Principle

As discussed above, we have seen the rationale of the principle of complementarity which actually reflects the strength of the principle upon which the principle is premised. However, this principle also has some limitations which deserve to be discussed in order to assess its competency in the context of international criminal law discourse.

Though it has been found that one of the rationale of complementarity principle implies about a right of the accused to be prosecuted by domestic authorities and tried before a domestic court, however, this is not an established right.[59] It was held in the decision of the Appeals of the ICTY in the *Tadic* Interlocutory Appeal on Jurisdiction[60] where the Chamber rejected the right of appellant to be tried by national courts under national laws.[61] It also added that under the ICTY's statutory framework the transfer of jurisdiction to an international tribunal did not violate any right of the accused.[62]

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[55] ibid.
[56] Casssese (n 25) 298.
[57] Benzing (n 3) 600.
[58] Tzvetan Todorov, 'The limitations of justice' (2004) 2(3) *Journal of International Criminal Justice* 711.
[59] Benzing (n 3) 599.
[60] *Prosecutor* v. *Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction 2 October 1995. Cited in Benzing (n 3) 599.
[61] Benzing (n 3) 599.
[62] ibid.

5.1 Domestic Prosecution of International Crimes: Is It Really Effective?

As it has been observed earlier that complementarity principle refers the primacy of domestic court in terms of prosecuting international crimes, but the question still remains how far the domestic court is effective to adjudicate crimes of international nature? It has been argued that in relation to international crimes particularly of war crimes and crimes against humanity state is often heavily involved as a perpetrator and in most of the cases these crimes are left unprosecuted.[63] Domestic courts while facing with societal and political tensions along with a fear of antagonizing patriotic sentiments or vested political interests often face challenges to ensure fair and efficient system of adjudication of crimes.[64]

In this regard, the failures of the Leipzig Trials in the aftermath of First World War are worth mentionable.[65] The resulting consequence of this type of domestic trial is that courts of the opponent state or the party may come down heavily on war criminals depriving their procedural rights.[66] Another significant point is that restrictive definition of ICC crimes in implementing (national) law may weaken the mandate the ICC Statute. There may be some states who could not make their implementing laws similar to the content of the crimes of ICC statute.[67] This lack of criminalization in national criminal laws might affect the admissibility of a case before the court and it can also lighten the credibility of investigation proceedings compromising the procedural fairness of international criminal justice system.[68]

Another challenging issue grounded on the fact that with a view to ensuring effective prosecution at the domestic level, the state concerned must establish its criminal justice system with tangible capacity that would be able to deal with ICC crimes rendering international justice.[69] In addition, since there is no established monitoring mechanism for assessing the effectiveness of the domestic prosecution, there remains a challenge whether there are genuine attempts at conviction or domestic prosecution is held only to avert justice.[70]

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[63] Herman van der Wilt, 'War Crimes and the Requirement of a Nexus with an Armed Conflict' (2012) 10(5) *Journal of International Criminal Justice*, 1113-1128.
[64] ibid 1115.
[65] ibid.
[66] ibid 1116.
[67] Julio Bacio Terracino, National Implementation of ICC Crimes: Impact on National Jurisdictions and the ICC, (2007) 5(2) *Journal of International Criminal Justice* 421, 426.
[68] ibid 422.
[69] M Rafiqul Islam, *'International Law: Current Concepts and Future Directions'* (2014) (LexisNexis Butterworths 543).
[70] ibid 546.

5.2 Limited Scope of Intervention by International Forum

With a view to addressing the legal stalemates arising out of domestic courts, the intervention of the ICC or other tribunals is inevitable. But if we look back to the principle of complementarity, it is found that the ICC has limited scope of intervention since the principle emphasized mostly on domestic courts and referred international forum as a last resort. It is true that state has a duty to exercise its criminal jurisdiction over those responsible for international crimes but the very establishment of ICC indicates that there is deplorable gap between duty and practice.[71] In addition, the nature of international crimes suggests that these crimes violate the rules of customary international law that reflect the values of international community as a whole and to repress those crimes there exists a universal interest which can arguably be better served by the international court.[72] Complementarity principle, in this regard, while preserving and protecting domestic jurisdiction against ICC intervention failed to respond the aforesaid universal interest.

The limited scope of intervention also lies on the fact that the jurisdiction and functioning of ICC is contingent on the shortcomings or failures of domestic jurisdictions that means ICC comes into scenario only where the domestic system does not function properly. This contingency makes the ICC a mere watchdog body with the task of overseeing the genuinity of domestic adjudications[73] and the role of ICC as a separate distinct forum of prosecution is compromised. The complementary relationship between the ICC and states also suggests that in cases where the ICC does have jurisdiction it has to rely on national authorities in terms of collecting evidences and taking enforcement measures.[74] In fact, the drafting history of ICC Statute also revealed that while establishing an international court the emphasis was mostly to complement the existing national jurisdictions in criminal matters.[75]

5.3 Crisis of Implementing Law and Complementarity Principle

In order to be part of ICC's cooperation regime as reflected by complementarity principle, states parties to the Rome Statute are under an obligation to enact implementing law at the national level. The rationality is that implementing law will

[71] Wilt (n 63) 1116.
[72] ibid 1114.
[73] ibid 253.
[74] Claus Kress and Flavia Lattanzi (eds), *The Rome statute and Domestic legal orders: General aspect and Constitutional issues* (Nomos Verlagsgesellschaft 2000) 29 <https://books.google.co.uk/books?id=TTLvWqcWpn0C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false> accessed 08 March 2021.
[75] William A Schabas, 'The rise and fall of complementarity' in Carsten Stahn and Mohamed M. EIZeidy (eds), *The International Criminal Court and Complementarity: From theory to Practice* (Cambridge University Press 2011) 150-164.

demonstrate the state's awareness in relation to its primary responsibility under international law and to ensure accountability by prosecuting international crimes at the national courts.[76] While maintaining this responsibility as well as giving effect to complementarity principle, implementing law needs to incorporate provisions comprising international crimes, the general principles of liability and the defences found in the Rome statute.[77] In addition, states desiring to avoid the jurisdiction of ICC are required to undertake action by making implementing law as a result of the operation of the complementarity principle.[78]

However, in reality it has been observed that more than fifty percent of the state parties to the Rome Statute do not have implementing legislation and States, those have implementing laws, adopt variant approaches based on their own legal systems and on their individual needs.[79] It is more than probable that states while emphasizing on domestic legal systems would fail to confirm the international fair trial standards including due process required by complementarity test of international criminal law.[80] This variant approach of state practices in relation to implementing law also widens the gap between ICC and national courts which goes against the spirit of complementarity principle. In addition, there remains a danger that absence of implementing laws or diverse approaches of implementing laws at national level might not be able to confirm the international community's standards of the best form of criminal justice.[81]

In addition to the limitations as discussed above, there remains also a possible danger that failure to exclude the provisions of amnesties and pardons for international crimes in the implementing legislation might undermine the essence of complementarity principle.[82]

6. Effectiveness of International Criminal Law and Justification for Complementarity

It is undeniable that effectiveness of international criminal law depends upon its implementation by prosecuting international crimes.[83] Although the roots of criminal prosecutions are found in the 17th and 18th Century but international criminal law

[76] Frederic Megret, 'Too much of a good thing? Implementation and use of Complementarity' in Carsten Stahn and Mohamed M. ElZeidy (eds), *The International Criminal Court and Complementarity: From theory to Practice* (Cambridge University Press 2011) 361-390.
[77] Bekou (n 30) 839.
[78] ibid.
[79] ibid.
[80] Megret (n 76) 373.
[81] ibid 363.
[82] Simon M. Meisenberg, 'Complying with Complementarity? The Cambodian implementation of the Rome Statue of the International Criminal Court' (2015), 5(1) *Asian Journal of International Law* 123, 139.
[83] Zeidy (n 1) 973.

started to expand its scope after the adoption of Rome Statute.[84] The Rome Statue while establishing ICC, a governing body of international criminal law, describes the ultimate goal of international criminal law that is to end impunity for perpetrators of international crimes.[85] As it has been observed that though criminal prosecutions were conducted at the state level from long times ago, however, those prosecutions were subjected to serious criticisms from different corners that prompted to the establishment of ICC.[86] In this regard, determination of suitable forum of prosecution of crimes became necessary because there were two forums one was in the national level and other in the newly established international forum. Here lies the delicate problem and the principle of complementarity came forward to respond in this regard. In order to address this delicate relationship, the position of complementarity principle is found to be paradoxical[87] and it is also apparent from the strength and weaknesses of the principle as discussed above.

The paradox is marked on the ground that complementarity principle has been traditionally used to defend specific interest both in international and national levels.[88] In the national level states applied this principle defensively in order to limit the engagement of ICC and to protect domestic jurisdiction while emphasizing more on the strict primacy of domestic adjudication of crimes.[89] On the other hand, with a view to overcoming its own deficiencies such as lack of enforcement power and limited capacity, ICC treated complementarity principle as a protective tool.[90]

It is also noticeable that in the initial stage of ICC, effectiveness of prosecution, by virtue of complementarity principle, was understood in the sense of strict prioritization of domestic jurisdiction and at the same time the absence of cases before the ICC was regarded as a major success.[91] Here, the position of complementarity principle is criticized on the ground that a systematic deference to domestic proceedings may undermine the shared responsibility of states and ICC in terms of ensuring effective and expeditious justice.[92] However, it can fairly be assumed that the justification of complementarity principle based on effectiveness, though faces criticism, is still considered as an important tool of balancing strategy between national sovereignty interests and International community interests.[93]

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[84] Saqib Jawad, 'Objectiveness of International Criminal Law and Jurisdiction of ICC' (2015), 3(3) *Sociology and Anthropology* (2015) 3(3) 163-170 <http://www.hrpub.org/download/20150301/SA3-19602854.pdf> accessed 10 March 2021.
[85] Preamble to the Rome Statute of the International Criminal Court.
[86] Jawad (n 84) 163.
[87] Stahn (n 45) 234.
[88] ibid.
[89] ibid.
[90] ibid 235.
[91] ibid 276.
[92] ibid 277.
[93] Zeidy (n 1) 889.

7. Conclusion

The essentiality of complementary principle in relation to the effectiveness of international criminal law, though not well established, cannot be ignored since it portrays the practical difficulties of international crimes adjudication process. It cannot be denied that this principle could be traced even long before the newly expanded version of international criminal law but it is also true that the complementarity regime still remains far from perfect.[94]

It is worthy to add that international criminal law, though, urged to create global regime like ICC in order to guard against the abuse of sovereign powers[95], the above mentioned discussion suggested that it would have been impossible to establish an effective ICC without the commitment of sovereign states. It is practical that the tension between national and international forums of prosecution would be increased if states are found to be reluctant to compromise their sovereign powers. Considering this practicality, complementarity principle tried to ease the tension by categorizing responsibilities at both national and international levels with a view to achieving a common goal of ending impunity. The compromise by way of complementarity also underscores the humanitarian interest along with maintaining of international peace and security that receives prominence over any sovereign interests or interests of international community.

In this regard, the suggestion of the Report of the Bureau on Complementarity (2010) is worth mentioning that stresses on the enhancement of the capacity of national jurisdictions to investigate and prosecute serious crimes of international concern through the combined efforts of state parties, the ICC and other stakeholders including international organizations and civil societies.[96] Finally, it can be submitted that amidst of the limitations of the ICC in the one hand and the fear of abusive sovereign powers at the domestic level, on the other hand, the complementarity principle might not be the panacea but it is also not the 'pandora's box'. The role of this principle towards the effectiveness of international criminal law can hardly be underestimated.

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[94] ibid 969.

[95] Payam Akhavan, 'International Criminal Justice in the era of failed states: The ICC and the Self-referral debate' in Carsten Stahn and Mohamed M. EI Zeidy (eds), *The International Criminal Court and Complementarity: From theory to Practice* (Cambridge University Press 2011) 283.

[96] 'Report of the Bureau on complementarity' (Note by the Secretariat), Assembly of State Parties, International Criminal Court, (New York, 6-10 December 2010) <https://www.icc-cpi.int/iccdocs/asp_docs/ASP9/ICC-ASP-9-26-ENG.pdf> accessed 12 March 2021.