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Protecting victims of international crimes: A reflection on the functional interpretation of the Statute of the International Criminal Court

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Abstract. This study identified essential factors concerning the safeguarding of victims of international crimes within the context of the functional interpretation of the Rome Statute. The study examined the principal worldwide legal frameworks governing the protection of victims of these crimes. The study employed hermeneutic, system-structural analysis, comparative legal, and other methods. The analysis results indicated that the legislation of Kazakhstan lacks clearly defined norms that relate to the responsibility of the state to victims, as well as their right to adequate reparation, including compensation and rehabilitation, as mandated by the UN Convention against Torture. Kazakhstan and China have not ratified the Rome Statute, largely due to political considerations. Kazakhstan's accession to the Rome Statute could lead to the harmonisation of national standards with international demands concerning the rule of law and the protection of human rights, as well as strengthen global efforts to counteract the evils that threaten peace and security. It was also found that the lack of clarity in the normative terminology and methods of interpretation of the Rome Statute, as well as conflicts between different objectives, led to the use of a functionalist approach by the court in interpreting the

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Statute. This weakens its basic function of protecting people's rights, violates the competences of the participating states and interferes with the principle of national sovereignty. The study addressed the need for victimological prevention of victims of international crimes, which should include improving the practice of treating victims, revising legislation, and developing new structures and services. It is also essential to provide information about the methods of abuse and the diversity of victims through various media formats

Keywords: victim; prevention; competition of criminal law norms; functionalism; implementation

Introduction

Crimes of war against humanity, genocide, and acts of aggression have held considerable global significance for a protracted duration. Those crimes do not simply violate legal norms, but undermine the foundations of international order and security, causing irreparable damage to all humankind. The national justice system is often unable to act effectively against persons in high positions of authority in the state, even in cases where these persons violate basic human rights. This is because such individuals have significant resources and power that allow them to manipulate legal and political processes while avoiding accountability for their actions. National courts and law enforcement agencies may be under pressure and may also face obstacles related to conflicts of interest, threats, or corruption, which substantially limit their ability to provide justice in such situations. In such circumstances, the only effective mechanism for holding those in the highest positions of state accountable is the establishment and functioning of a permanent international body. On 17 July 1998, the permanent International Criminal Court (ICC) was established by an international treaty signed by representatives of 120 states (ICC at a Glance, 2024) and the Rome Statute (1988) was adopted.

Kazakhstan and China refrained from signing and ratifying the Statute. The reluctance of certain states to collaborate with the ICC may hinder its capacity to adequately safeguard victims of international crimes, especially in instances when national legal frameworks lack the requisite resources or the determination to prosecute offenders. This underscores the need for continued international dialogue and the search for compromise solutions that respect national sovereignty but are also consistent with international obligations to protect human rights.

K.B. Menlenkyzy (2014), S.B. Sayapin (2018), N. Sidorova and S. Simbinova (2024) shown that the incorporation of international legal principles into Kazakhstan's national legislation is essential for aligning the country's legal system with international standards. This integration strengthens the rule of law and improves mechanisms for protecting citizens' rights and freedoms in criminal proceedings. S. Darcy (2021), D. Adeyemo (2021), and N. Hodgson (2023) focus on analysing the work of the ICC in the context of protecting victims of international crimes. Their studies emphasise that ensuring justice for victims is one of the main tasks of the court. These studies showed that while victim participation has evolved in national criminal systems, including the ability to challenge decisions not to prosecute, there is a limitation in the fulfilment of analogous functions within the ICC, particularly in decisions to initiate investigations.

T. Altunjan (2021) emphasised the significance of the Statute in the investigation of sexual violence (ICC at a Glance, 2024). T. Altunjan's research shows that the ICC is making great strides in applying the potential of the Statute to bring accountability for such offences. B. Kotecha (2020), J. Powderly (2020), and H. Makale (2021) focused on the role of judges in providing protection to victims of international crimes. The researchers note that despite the significant achievements of the ICC, it faces challenges in providing full protection and support to victims and witnesses, including limited resources and facilities, lack of infrastructure and specialised services, procedural, political, and bureaucratic barriers. Simultaneously, there exists a range of underdeveloped practical concerns about the functional interpretation of the Statute and its implications for victim protection. Concrete measures designed to safeguard the rights and interests of victims in international criminal procedures have been inadequately scrutinised. Academic study has predominantly concentrated on the general dimensions of victim protection for specific categories of international crimes, including genocide, crimes against humanity, war crimes, and acts of aggression. However, prevention in the context of international crimes stays under-reported and under-practised. These gaps highlight the need to further explore the specificity of the functional interpretation of the Statute.

This study aimed to analyse critical elements of victim protection in international crimes. By the designated objective, the study's tasks were delineated as follows:

- to delineate global legal principles for the safeguarding of victims of international crimes;
- to identify the specific features of the Rome Statute's (1988) interpretation of international legal norms aimed at protecting victims of international crimes;
- to propose specific measures for the prevention of international crimes within the framework of victim protection.

Materials and methods

This study analysed the legal rules governing the ICC, making it possible to assess the scope of possible legal protection for victims of international crimes and to identify areas for improvement of existing mechanisms. The following international and national legal instruments were examined as foundational documents: Rome Statute of the International Criminal Court (1988); International Covenant on Civil and Political Rights (1966); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005); United Nations Convention against Transnational Organised Crime (2000), covering international criminal groups; Council of Europe Convention on the Prevention of Terrorism (2005), aimed at combating terrorism; Vienna Convention on the Law of Treaties (1969); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985); Additional Protocol II to the Geneva Conventions relating to the Protection of Victims of Armed Conflicts of a non-international character (1977); Criminal Procedural Code No. 231-V ZRC of the Republic of Kazakhstan (2014).

The research utilised both general science and specialised methodologies. The hermeneutic method, focused on text interpretation and meaning, clarified the concept of the victim within the context of international legal standards. The utilisation of the hermeneutic method facilitated a thorough examination of the essential themes. The system-structural analysis technique facilitated the identification of the functional attributes of the elements within the Criminal Procedural Code (2014) and the Rome Statute (1988), as well as their positioning within the framework of international legislation. This encompasses an examination of the penalty system, its interplay with other legal entities, and the mechanisms and phases of harmonisation, along with the possible results of this process. The comparative legal method was employed to evaluate the feasibility of implementing the Charter in China and Kazakhstan. Induction and deduction were utilised to analyse the decisions of international tribunals, identify the core of international legal concepts, and extract specific conclusions from the fundamental principles of international instruments. A rigid methodology was employed to analyse the stipulations of the Statute and the laws of Kazakhstan.

Results and discussion

Global legal principles for the safeguarding of victims of international crimes. Victimology, during its development, has formed concepts previously unknown to criminology, among which the term "victim" is of key significance. In some cases, the term is used synonymously with "affected" or "person". However, as S. Darcy (2021) and D. Adeyemo (2021) note, the criminological definition of "victim" has a broader meaning and is different from the criminal law concept. International legal instruments more often use the term "victim of crime" instead of "victim". These terms have different meanings, with "victim of crime" referring to a wider range of persons than "victim". Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), a victim is defined as any person who has suffered physical, material harm, or mental anguish as a result of acts or inactions that violate criminal legislation. Victim status is acknowledged irrespective of the identification, apprehension, conviction, or prosecution of the offenders. Additionally, in specific instances, victims may encompass immediate relatives, dependents of the victim, and anyone who experienced harm while attempting to assist the sufferer or avert criminal repercussions.

State attention to victims is often far inferior to that given to offenders (Report of the court on..., 2023). The emphasis is on the legal standing and rights of the accused, highlighting the existing imbalance. A crucial element is the necessity to achieve equilibrium between justice for perpetrators and safeguarding the interests of victims. E. Yunara and T. Kemas (2024), M. Lostal (2021) and N. Rakhmawati (2023) argue that victims are often regarded only as additional witnesses whose function is limited to confirming the guilt of the accused. The International Covenant on Civil and Political Rights (1966) emphasises the importance of acknowledging crime victims as distinct legal entities, highlighting the necessity for their comprehensive involvement in the justice process and the safeguarding of their rights. Before the implementation of the Rome Statute (1988), victims of international crimes were primarily regarded as witnesses, and their sole form of recompense was a legal recognition that an offence had occurred. The establishment of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005) created new opportunities for implementing restorative measures in conjunction with traditional legal mechanisms such as restitution, compensation, and rehabilitation. They define the term 'victim' to include any person affected by unlawful acts in criminal proceedings.

International legal standards concerning the safeguarding of crime victims have undergone significant advancement via numerous international instruments. For example, the United Nations Convention against Transnational Organised Crime (2000) played a key role in establishing principles of victim support and protection. Under Articles 6, 25, 32 of the Convention, states parties are obliged to implement measures aimed at ensuring the protection of victims from threats and intimidation, as well as to provide them with access to redress and compensation mechanisms. Victims are also entitled to express their views and concerns during criminal proceedings, which is an essential aspect of their legal defence. Additionally, analogous provisions are contained in Council of Europe conventions aimed at protecting victims. For example, the provisions of Articles 14, 16 of the Council of Europe Convention on the Prevention of Terrorism (2005) provide those states should take measures to protect victims of terrorism, including the provision of financial support and compensation to victims and their families, according to national legislation.

The Kazakh legal framework is deficient in explicitly delineated methods for safeguarding the rights of victims of torture and ill-treatment. There is a deficiency in effective protocols to guarantee legal remedy, encompassing reparation and rehabilitation of victims by the international norms established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Thus, Kazakhstan has no specially designated bodies or structures responsible for the protection of victims of torture and ill-treatment, which complicates the implementation of legal protection and rehabilitation of victims. There is also a lack of clearly regulated procedures for the provision of such support in Kazakhstan, which may result in victims not receiving proper recovery and compensation, as there are no specialised legal acts establishing concrete conditions and procedures for compensation and medical help. At the same time, the Criminal Procedural Code No. 231-V ZRC of the Republic of Kazakhstan (2014) does not mandate the possibility of filing a lawsuit against the state in criminal proceedings, as a lawsuit can be filed only against the accused or suspects. This means that evidence of the guilt of concrete officials is not necessary for damages. Currently in Kazakhstan, the right to damages is only available in cases of unlawful conviction or prosecution, as well as in cases of preventive measures such as detention or house arrest.

Problematic aspects of accession of China and Kazakhstan to the Rome Statute. The global world regards the permanent ICC as a key component in combating impunity and upholding humanitarian and human rights legislation. The ICC's position is affirmed by the accession of 124 states to the Rome Statute (1988) by 2024, reflecting extensive acknowledgment and endorsement of its function within the international legal framework (States

Parties..., 2024). According to F.M. Hassan and M.H.B.M. Rusli (2022), N. Khan *et al.* (2023), the Statute is a fundamental document in the field of international criminal law. It established the legal basis for the ICC's operations and set novel procedural standards, indicating a significant advancement in the evolution of international criminal law.

States' attitudes towards the ICC are contradictory and reflect broader international and intrastate considerations. From the ICC's perspective, the participation of countries such as China is crucial as their active inclusion in the international criminal justice system could strengthen the global legal order (Lei, 2014). As a permanent member of the UN Security Council, China's backing may substantially enhance the effectiveness of the ICC (Klobucista & Ferragamo, 2024), particularly when the Security Council refers cases to the Court, as evidenced by the situations in Libya and Darfur. Moreover, China's participation could lend additional legitimacy to the ICC and encourage other countries to accede to the Rome Statute, thereby strengthening global justice. However, there is also considerable criticism of the ICC, which may explain the reluctance of China and Kazakhstan to join the Statute. One of the key arguments against the ICC is countries' fear of interference in their internal affairs. For example, China has repeatedly emphasised the priority of state sovereignty, which it understands to be incompatible with the power of an international court to intervene in the affairs of countries without their consent.

Arguments supporting a nation's participation in the ICC include the enhancement of international cooperation, the delivery of justice for victims of transnational crimes, and the strengthening of the global rule of law (Vartyletska & Shapovalova, 2024). The accession of China or Kazakhstan could substantially strengthen the ICC's authority and set precedents for the further development of international justice. Nevertheless, criticism of the ICC and considerations of sovereignty stay principal factors that have prevented countries such as China and Kazakhstan from joining. China's resistance to the ICC stems from both legal and political considerations. From a policy standpoint, China is apprehensive about the interplay between international justice, peace processes, the functions of the UN Security Council, and domestic justice matters. H. Janatmakan and M. Sadeghi (2021) assert that the ICC, as a component of the international legal framework, must take into account the objectives and principles of the Statute, thereby contributing substantially to the preservation of global peace and security. Given that peacekeeping is chiefly the purview of the Security Council, the ICC is anticipated to proceed with circumspection to avoid undermining the Council's political initiatives aimed at resolving international and regional disputes.

China's legal objections to the ICC relate to key aspects of criminal jurisdiction and the definition of offences. W. Guangya, who represented China at the United Nations from 2003 to 2008, expressed the views of the Chinese government, emphasising several important points (General Statement at the UN Conference of..., 2024). Primary among these are apprehensions that the ICC's jurisdiction lacks a foundation in the principle of voluntary consent, which raises issues with potential infringements on state sovereignty and inconsistencies with the Vienna Convention on the Law of Treaties. China expresses doubts about the ICC on these key issues related to criminal jurisdiction and the definition of offences. China's main argument against the Rome Statute is that the document imposes obligations on states that are not parties to it. According to the Chinese authorities, this effectively turns the Court into a supranational body capable of interfering in the sovereign affairs of states. The principle of supplementary jurisdiction allows the ICC to determine whether national justice systems can effectively and impartially investigate and try cases involving their nationals. This raise concerns that the ICC may make decisions that exceed the bounds of generally accepted international law and disregard national sovereignty.

China contests the incorporation of war crimes perpetrated during internal armed conflicts into the jurisdiction of the ICC. China asserts that the Statute's definition of "war crimes" broadens the conventional framework of international law and the provisions of Additional Protocol II to the Geneva Conventions for the Protection of Victims of Armed Conflicts of a Non-International Character (1977). Moreover, the term "crimes against humanity" in the Rome Statute includes activities that affect human rights, regardless of whether armed conflict exists. From China's perspective, this diverges from the foundational intent of founding the ICC and contravenes established international law. Furthermore, the Chinese authorities express concern about the inclusion of the crime of aggression under the jurisdiction of the ICC. They argue it could compromise the UN Security Council's role in international security matters. The Chinese stance is that the Statute should be considered an international treaty enforceable solely on governments that have ratified it, by the concept of relativity established in the Vienna Convention on the Law of Treaties (1969). China views the ICC's authority over non-ratifying governments as an infringement of their sovereignty and incompatible with the stipulations of the Statute.

Consequently, the jurisdiction of the ICC should augment, rather than supplant, national legal systems. China's concerns encompass two primary areas. Initially, the rejection of ICC jurisdiction by particular governments might significantly constrain the Court's authority and diminish the efficacy of the concept of complementarity. Secondly, China often refers to the existence of national proceedings in countries involved in ICC cases without assessing their authenticity and effectiveness. This complicates the objective determination of the admissibility of cases for consideration by the ICC, as the need to consider and analyse national justice mechanisms may influence the decisions taken by the ICC. During the Third Plenary Session of the ICC Statute Drafting Conference on 16 June 1998, the Chinese representative articulated concerns that the ICC might serve as a tool for political coercion or intrusion into the domestic matters of sovereign states (Mahaseth & Bansal, 2021). In this context, China strongly maintains that justice for international crimes should stay within the system of international relations, where the principle of national sovereignty is respected, and international tribunals, if established, should act in harmony with national legal systems and respect their authority.

According to H. Mahaseth and A. Bansal (2021), China's position reflects the broader issue of the balance between international justice and state sovereignty. They argue that China's fears of possible political interference by the ICC are not unfounded, considering precedents where international tribunals could be used to exert political pressure on individual states. Such arguments are strengthened by the fact that the jurisdiction of the ICC is based on international norms that may conflict with national legal systems, especially in

countries where justice is administered within specific legal and political traditions. Researchers emphasise that China, like other major states, considers the possibility of losing control over internal justice processes as a threat to its national sovereignty and legal autonomy. This argument is supported by the idea that universal jurisdiction can be used as a tool to interfere in the internal affairs of states, especially those with significant political or economic influence in the international arena.

Notwithstanding this, advocates of international justice, including S. Klobucista and M. Ferragamo (2024), assert that the ICC was established to combat impunity for grave international offenses such as genocide, crimes against humanity, and war crimes. Its operations should not be viewed as a challenge to state sovereignty, but rather as a mechanism for collective accountability in instances where national judicial systems are either incapable or reluctant to prosecute offenders. Consequently, the legal evaluation of this stance indicates that China contends the ICC has overstepped its authority, particularly regarding the principle of supplemental jurisdiction. This principle suggests that the ICC can intervene when national justice systems cannot effectively carry out legal proceedings. However, China argues that this interference could be politically motivated and undermine national judiciaries, which may have their mechanisms for dealing with offences. This position is assessed negatively because, from a legal standpoint, China's position effectively makes it impossible to apply international law to hold accountable those who commit grave crimes, such as war crimes or genocide, in territories where national courts are unable to do so. China's strategy emphasises sovereignty, potentially obstructing the enforcement of international human rights standards. Thus, from the perspective of sovereignty, China's position is legally correct, but from the perspective of international justice, China's opposition has caused the international community to question whether it wants to implement human rights standards established by international criminal law in its own country.

Kazakhstan's political position on participation in the Statute is largely determined by the desire to preserve national sovereignty and to prefer universal jurisdiction to deal with serious international crimes (Summary Record of the 3rd Meeting…, 1998). Kazakhstan is concerned about the potential impact of international courts and tribunals on the internal legal systems of states, believing that interference by these bodies may undermine the independence of national jurisdictions and their ability to deal effectively with international crimes. Such interference could threaten not only the countries' legal autonomy but also their internal legal order, which is a cause of concern for the Kazakh authorities. In that regard, Kazakhstan preferred those international crimes be dealt with under universal jurisdiction, which would preserve control over domestic processes and ensure a more balanced distribution of justice between national and international structures. However, the criticism of the ICC from Kazakhstan's perspective points to several notable aspects. Although the ICC was conceived as an independent international body, its dependence on decisions of the UN Security Council, which can refer cases to the ICC, raises doubts about the fairness and objectivity of the Court's work. Countries may specifically apprehend that involvement in the ICC could result in encroachment onto their domestic affairs under the guise of justice, so contravening the idea of sovereignty. Furthermore, the ICC encounters challenges in executing its decisions due to its authority being confined to those that have accepted the Rome Statute. Kazakhstan may see this limitation as an obstacle to effective international justice, as the ICC cannot bring criminals to justice if their states are not parties to the Statute. This gives the impression that the ICC system is flawed and cannot always handle global challenges.

Simultaneously, involvement in the ICC affords nations the chance to collaborate with the global community in addressing crimes that are frequently transnational and necessitate a unified effort (Yemets *et al.*, 2024). The ICC functions based on complementarity, wherein the Court intervenes only when national judicial systems are incapable or disinclined to investigate and prosecute offenders. The ICC thus respects the sovereignty of states by giving them primacy in the administration of justice but intervenes only in exceptional cases where national legal systems fail.

Kazakhstan's accession to the ICC could strengthen international cooperation on justice issues and protect the rights of victims by providing an additional mechanism to achieve justice if national structures prove insufficient. The refusal to ratify may suggest an attempt to avoid introducing additional mechanisms to facilitate the prosecution of perpetrators of serious offences, regardless of their official position. This may limit the scope for international justice and leave the full responsibility to national law enforcement systems, which may be inadequate to handle complex issues. Kazakhstan's accession to the Rome Statute will facilitate convergence with international standards on the rule of law and the protection of human rights, as well as strengthen global efforts to counter crimes that threaten peace and security (Podoprigora *et al.*, 2019). This reinforces and enhances the nation's global standing in criminal justice. From the ICC's viewpoint, Kazakhstan's involvement in the international justice system might significantly aid in combating international crimes and augment global justice. However, critical arguments related to sovereignty, possible political manipulation and the Court's limited jurisdiction continue to be important obstacles for countries seeking to maintain control over internal justice processes.

The legal assessment of Kazakhstan's position on participation in the ICC is based on a series of key aspects related to the protection of state sovereignty, legal autonomy, and potential risks of interference by international bodies in internal affairs. Kazakhstan is concerned about the possibility that the activities of the ICC may undermine the independence of national legal systems, which raises questions about the protection of national sovereignty and the country's ability to provide justice unassisted (Ryskaliyev *et al.*, 2019). This stance is firmly grounded on legal principles, as the ICC possesses the authority to intervene in circumstances when national judicial systems are either inadequate or reluctant to pursue individuals accountable for international crimes. However, this is considered a threat to national sovereignty. Understanding Kazakhstan's desire to protect its sovereignty is important to ensure national independence in the legal sphere. This emphasises the significance of preserving national judiciaries as core institutions of justice. On the other hand, Kazakhstan's refusal to ratify the Statute potentially limits the ability to prosecute perpetrators of international crimes, which could be detrimental to global efforts to ensure human rights and justice.

Researchers who have investigated Kazakhstan's position address several important aspects. K.B. Menlenkyzy (2014) states that Kazakhstan is trying to find a balance between preserving sovereignty and seeking to integrate into the world community in the context of ensuring justice. According to S.B. Sayapin (2018), Kazakhstan adheres to a cautious stance towards the ICC, considering it advisable to develop national legal mechanisms to address issues related to international crimes instead of referring these issues to an international court. Consequently, Kazakhstan's stance on the ICC is legally robust, however, it exhibits deficiencies regarding international justice and the global struggle against serious crimes. Therefore, analysing the functional interpretation of the Statute in the context of Kazakhstan's potential accession is necessary to assess the extent to which national legislation follows international standards and how international obligations will be integrated into the country's legal system.

Distinct characteristics of a functionalist analysis of the Rome Statute regarding the safeguarding of victims of international crimes. Functionalist theory of criminal law interpretation, as part of purposive rational theory, emphasises the need to adapt criminal justice to current societal changes and criminal policy objectives. According to G. Maucec (2021), this theory rejects a dogmatic approach, emphasising the active role of the judiciary in adapting criminal law to new conditions and challenges.

Article 22(2) of the Statute prescribes a strict interpretation of offences without expansive interpretation to avoid undue interference with the justice process. In cases of uncertainty, the interpretation should be in favour of the accused. However, deviations arise in the practical application of these principles. For example, in the case concerning the situation in Myanmar and Bangladesh (Six years after the Myanmar military..., 2023). The Pre-Trial Chamber permitted an interpretation of the Rome Statute that was not entirely aligned with its rigorous methodology. Despite Myanmar's non-participation in the Statute and ongoing disputes on the validity of the ICC's jurisdiction, the ICC implemented a functional approach. This enabled it to tackle the Rohingya crisis in Myanmar despite the lack of a definitive legal foundation, aiming to provide justice and avert impunity. M. Billah (2021) underscores the necessity of differentiating between crimes against humanity, as delineated in Article 7, and conventional crimes, which are regulated by state criminal legislation. Misunderstanding these ideas may infringe upon national sovereignty, impact the jurisdiction of domestic courts, and result in an unwarranted extension of the ICC's authority. The case studies indicate that the interpretation of the Statute demonstrates a propensity for functionalism. The functionalist theory of interpretation, based on the rational theory of purpose, emphasises a purposive approach in interpreting law. The ICC's reasons for adopting a functionalist interpretation relate not only to its aim of eradicating impunity, but also to the fact that the Statute itself has elements of ambiguity (Buribayev *et al.*, 2020).

Legal interpretation should be aimed at fulfilling the goals and values embedded in legal norms. As noted by N. Rajkovic (2020) and A. Rohman (2023), F. Abubakar (2023), where the literal meaning of norms corresponds to their legislative context, their interpretation should serve the purpose of legal regulation and consider its hierarchical structure. Interpreting the requirements of the Statute necessitates careful consideration of its objectives, which dictate the methodology for comprehending and implementing the regulations. The Preamble to the Statute plays a key role as it sets out the basic principles and objectives of international criminal justice. The Preamble underscores the necessity of penalizing offenses that jeopardize the peace, security, and welfare of people, such as genocide, war crimes, and crimes against humanity (Martsenko & Lukasevych-Krutnyk, 2024). These serious offences must be prosecuted and punished to prevent impunity and promote global justice. The preamble is an essential element of any international treaty, as it provides the overall context and direction for the interpretation of the rules. It functions as a reference for law enforcement officials, aiding in the navigation of intricate legal matters and ensuring that all judicial proceedings align with the articulated objectives and tenets of international justice. The preamble not only validates the necessity of addressing crimes that jeopardise peace but also directs the operations of the ICC, guaranteeing alignment with its defined objectives and values. The notion of "ending impunity" embodies the primary objective and essential principle of the Statute. Judges must consider this objective when interpreting the Statute. In instances of international crimes before the ICC, the aspiration to eradicate impunity is frequently employed to justify broad or narrow interpretations of regulations. Judges may alter the explicit interpretation of regulations to align more effectively with the objectives of criminal policy. This approach can lead to a considerable expansion of law enforcement practices aimed at combating impunity, which requires a careful balance between the interpretation of norms and their original meaning.

In the Rohingya case, for example, to hold Myanmar liable for the offence of "deportation", the Pre-Trial Chamber deviated from the requirements of Article 38 (ICC at a Glance, 2024), which covers the definition of customary international law (Rohman, 2023). The ICC expanded its jurisdiction to include not only "the territory where the offence occurred" but also "the territory where the ultimate consequences of the offence occurred". This expansion of jurisdiction reflects the ICC's desire to broaden the scope of impunity cases, which emphasises the need to carefully balance the goal of ending impunity with the principles of legal certainty.

In another case involving the situation in Kenya, the ICC decided to give a broad interpretation to the term "organisation" (ICC Pre-Trial Chamber I rules..., 2018), despite the requirements of the Vienna Convention (1969), which presuppose a strict definition. This decision promoted justice for victims of crime, but also demonstrated the shortcomings of the functionalist approach in international criminal law. This approach, despite its positive aspects, ignores possible negative consequences, including uncertainty and inconsistency in the application of the rules. The ICC's actions in this context emphasise its increasing role in international criminal law through non-standard interpretations of norms, raising concerns about the compatibility of such approaches with modern principles of the rule of law. Moreover, criticism from the international community has had concrete consequences. For example, after the Court asserted its jurisdiction over the situation in Kenya, a formal challenge by the Government followed (Situation in the Republic of Kenya..., 2011). The nation questioned

the validity of prosecuting six senior officials, prompting the Kenyan Parliament to withdraw from the Statute, therefore underscoring the tensions and inconsistencies in the enforcement of international criminal law.

Article 22 contains only one concrete provision (ICC at a Glance, 2024) on methods of legal interpretation, which prescribes a precise and limited definition of offences, precluding the use of analogies to broaden their interpretation. N. Rehman *et al.* (2024) and A. Lukin (2020) highlights that one of the key strategies for protecting the rights of defendants is the "strict interpretation" method, also known as the "leniency rule", which involves minimising legal risks for defendants. Since international criminal law focuses on individual criminal responsibility, it may be difficult and not always suitable to apply the methods of interpretation prescribed in the Vienna Convention to international criminal law. Several factors contribute to the difficulties in applying the functional approach in international criminal law. Firstly, international criminal law focuses on individual criminal responsibility, which requires a more detailed and precise interpretation of the rules than that mandated by the Vienna Convention (1969). This arises from the necessity to evaluate the specific circumstances of each case and the individual rights of the accused, which complicates the implementation of broad interpretative principles. Secondly, the Vienna Convention provides interpretative frameworks that may neglect the specificities of international criminal justice, which emphasises the protection of victims' rights and the achievement of global justice. A functional approach may prove insufficient due to variations in legal systems and cultural contexts, necessitating the adaptation of interpretative methodologies to the distinct realities of international criminal justice. Consequently, the implementation of the functional approach may face challenges owing to the necessity of reconciling universal standards with the particular demands of individual criminal accountability, thereby complicating its use in international contexts.

According to L. Domagalski (2023), D.R. Banjarani *et al.* (2023), "any interpretation, to a greater or lesser extent, involves a teleological interpretation. When different methods of interpretation lead to different results or fail to reach unequivocal conclusions, teleological interpretation should be the ultimate criterion". This creates a hierarchy in methods of interpretation, where purposive interpretation dominates over other methods. The purposive interpretation often exceeds the intention of the legislator, also considering the objectives of criminal policy and changes in social reality. P. Hobbs (2020) and I. Hall and R. Jeffery (2023) argues that "only fairness and justice are consistent with the application of concrete expediency as a primary factor". Therefore, the use of purposive interpretation as the main approach allows the court the flexibility to apply a functionalist interpretation of the rules.

Preventing international crimes that target individual victims is key to maintaining the global rule of law and justice. Victimisation prevention represents a key area of crime prevention, which, as studies by M. Dauster (2023) and N.F. Kahimba *et al.* (2020) indicate, is still underdeveloped in a series of communities. This approach includes a set of activities carried out by social institutions aimed at identifying and eliminating factors contributing to victimisation behaviour, as well as preventing conditions conducive to the commission of crime. The principal objectives of victimisation prevention are to identify groups and individuals at high risk of victimisation and to develop strategies to enhance their protection and prevent crime and subsequent victimisation.

Since the ICC has no executive power and depends on the cooperation and support of states, the application of purposive interpretation must be carefully regulated. This approach should be used only as a last resort, after all other methods of interpretation have been exhausted, to preserve the original purposes and stability of the Statute.

Conclusions

Kazakhstan's acceptance of the Rome Statute will strengthen the nation's legal system by incorporating international criminal justice standards and reaffirming its commitment to combating international crimes. Kazakhstan's participation will strengthen its role in global efforts to address genocide, war crimes, and crimes against humanity, thereby bolstering international law and justice. This involvement would elevate Kazakhstan's international legal standing, bolster its reputation for human rights and justice, and strengthen national security and international collaboration.

The study examined instances that illustrate various methodologies for interpreting international law employed by the ICC. In the Rohingya case, the ICC deviated from the stipulations of Article 38 of the Statute in delineating customary international law. The court expanded its jurisdiction to include not only the territory where the offence occurred but also the territory where the consequences occurred, indicating the Court's desire to cover a wider range of impunity. This approach raises important questions of legal certainty and the balance between the pursuit of justice and compliance with international norms. As another example, the decision in a case involving a situation in Kenya was considered, where the ICC had given a broad interpretation of the term "organisation". This decision has enhanced access to justice for crime victims but has prompted inquiries over the boundaries of such interpretation, particularly concerning the stipulations of the Vienna Convention on the Law of Treaties, which mandates a stringent definition of terms. Such an approach, despite its positive aspects, may lead to unpredictable consequences and legal uncertainty in the application of international norms.

Functional interpretation of statutes reveals several key problems related to legal uncertainty and difficulties in interpreting norms. This approach, while providing flexibility in enforcement, can lead to increased powers, which makes it more difficult to respect the principles of national sovereignty. The Rome Statute, being an international treaty, is based on the consent of states, which implies the transfer of part of judicial sovereignty to international institutions. Consequently, its interpretation must focus on the Rome Statute's primary purpose of protecting victims of serious crimes, while ensuring that the international community actively seeks to achieve justice and prevent impunity despite existing political and legal differences. Potential research directions encompass comparative analyses of normative interpretation in international and national systems, which may elucidate distinctions and commonalities in their interpretation and application, thereby facilitating recommendations for enhancing human rights practices.

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Conflict of interest

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Захист жертв міжнародних злочинів: рефлексія щодо функціонального тлумачення Статуту Міжнародного кримінального суду

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Анотація. Метою цього дослідження було виявлення ключових аспектів захисту жертв міжнародних злочинів у контексті функціональної інтерпретації Римського статуту. Під час дослідження було проведено аналіз основних міжнародно-правових документів, що регулюють захист жертв таких злочинів. Дослідження проведено за допомогою герменевтичного, системно-структурного аналізу, порівняльно-правового та інших методів. Результати аналізу засвідчили, що в законодавстві Казахстану відсутні чітко прописані норми, які стосуються відповідальності держави перед постраждалими, а також їхнього права на адекватне відшкодування, включно з компенсацією та реабілітацією, що передбачено Конвенцією ООН проти катувань. Констатовано, що Казахстан і Китай не ратифікували Римський статут, значною мірою через політичні міркування. Приєднання Казахстану до Римського статуту могло б призвести до гармонізації національних стандартів з міжнародними вимогами у сфері верховенства права та захисту прав людини, а також зміцнити глобальні зусилля з протидії злочинам, що загрожують миру і безпеці. Також було встановлено, що невизначеність у нормативній термінології та методах тлумачення Римського статуту, а також конфлікти між різними цілями, призвели до використання функціоналістського підходу судом при інтерпретації статуту. Це послаблює його основну функцію захисту прав людини, порушує повноваження держав-учасниць і суперечить принципу національного суверенітету. Звернуто увагу на необхідність віктимологічної профілактики жертв міжнародних злочинів, яка має включати поліпшення практики поводження з жертвами, перегляд законодавства та розвиток нових структур і служб. Суттєве значення також має роз'яснювальна робота, спрямована на інформування про методи злочинів та вразливість жертв через різні медіаформати. Практичне значення дослідження полягає у викладених зауваженнях і рекомендаціях, щодо функціонального тлумачення Статуту Міжнародного кримінального суду в його практиці

Ключові слова: потерпілий; профілактика; конкуренція кримінально-правових норм; функціоналізм; імплементація