



COUNTERING THE EVIDENTIARY CHALLENGES IN ICC WAR CRIMES PROSECUTION

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ABSTRACT :

The paper examines the International Criminal Court's (ICC) prosecution of war crimes under the Rome Statute, following its historical growth and outlining major revisions that create the current framework of international criminal law. It covers the extensive extent of the Statute's definition of war crimes, procedural protections, and jurisdictional principles meant to ensure justice and universal responsibility. The primary concern is the continuous obstacles the ICC encounters in prosecuting wartime atrocities. These include the high evidence standards necessary for conviction, problems in assigning command responsibility, political intervention, and logistical hurdles inherent in working within combat zones. The paper also discusses the crucial function of complementarity, assessing the complicated relationship between the ICC and national authorities, where insufficient cooperation from states often inhibits investigation and enforcement activities. By interacting with recent case law, the paper explains how these problems appear in reality, resulting in delayed or weakened prosecutions. Additionally, it evaluates contemporary reform measures aiming at boosting prosecution efficacy and strengthening enforcement through procedural innovations and increased international collaboration. The findings underline the necessity for a flexible and adaptive legal framework capable of addressing the shifting dynamics of modern armed conflicts. The paper closes by urging for continuous statute development and stronger global collaboration as conditions for preserving the ICC's credibility and increasing its capacity to deliver justice. It claims that only by ongoing reform and dedication can international criminal justice institutions preserve the values of accountability and responsibility in the global order.

KEYWORDS: International Criminal Court (ICC), Rome Statute, War crimes prosecution, International criminal law, International-cooperation.

INTRODUCTION

The imperative to prosecute war crimes is inseparably woven into the fabric of contemporary international law. The legacy of two world wars and innumerable regional conflicts has tragically shown that impunity deepens suffering and perpetuates cycles of violence. The second half of the twentieth century, with the Nuremberg and Tokyo tribunals, woke the world to the need for makers of law to be made answerable, not corporate bodies or abstract entities, for the most serious breaches of law and conscience. Yet, these first attempts were ad hoc and limited in scope, with their jurisdiction limited by the very circumstances of their creation and the geopolitical realities prevailing⁴

Only until the last 10 years into the millennium did the international community achieve the establishment of a standing tribunal, the ICC-the product of decades of advocacy and acute humanitarian crises, according to the Rome Statute of 1998. The Statute, being a product of painstaking negotiations among states with significantly different legal traditions and interests, intends to serve as the legal basis for a universal jurisdictional enormous, an enormous entity to end impunity for war crimes, genocide, crimes against humanity, and, more recently, aggression. In spirit and letter, the Rome Statute marks a historic affirmation of commitment to justice, to the importance of the rule of law, and to the dignity of victims⁵

At the core of the ICC mandate sits the prosecution of war crimes, a category of acts with particular moral and legal complexity. The Statute is notable for the very broad and very specific definitions, reflecting the changing humanitarian law norms. The architecture incorporates fundamental principles, such as complementarity, to the effect that priority should be given to national jurisdictions wherever possible, whereas where domestic jurisdictions do not act, the Court is empowered to intervene.⁶ On the procedural level, the law provides almost paradoxically for maximum protection of the accused

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⁴ Christian Tomuschat, *The Legacy of Nuremberg*, 4 J. Int'l Crim. Just. 830 (2006), <https://doi.org/10.1093/jicj/mql051>

⁵ Int'l Bar Ass'n, *Strengthening the International Criminal Court and the Rome Statute System* (2015), <https://www.ibanet.org/> (last visited Sept. 15, 2025).

⁶ On complementarity (priority to national jurisdictions; art. 17 admissibility): Rome Statute art. 17 (complementarity); and ICC, *Understanding the ICC*

while also safeguarding the interest and security of witnesses who tend to be frail.⁷

The most significant challenge arguably stems from the ICC's reliance on cooperation from states. The Court's absence of its own enforcement apparatus leaves it dependent on national states for arrests, taking of evidence, and enforcement of convictions. In reality, this reliance has subjected the ICC to selective compliance, diplomatic obstruction, and sometimes outright non-compliance or withdrawal. Countries with strong interests at play have been able to evade or resist the Court's jurisdiction, challenging the universality and fairness of international criminal justice. The withdrawal of some African nations, in the face of accusations of neocolonial bias and political selectivity, attests to the fragility of the Court's legitimacy.⁸

Doctrinal disagreements and legal uncertainties add to these institutional challenges. Command responsibility's shape, the standard for joint criminal enterprise proof, the conflict zone evidence's admissibility, and the level of gravity required to activate jurisdiction these all are locations for contentious scholarly and judicial argument.⁹ From Lubanga through Al Mahdi, cases have demonstrated the promise for innovation in jurisprudence as much as the risks for traveling an unprecedented legal ground.¹⁰

Correspondingly, the Rome Statute has been amended considerably, and the ICC has itself tried to innovate trying out new procedures, increasing its involvement with local justice mechanisms, and accepting evidence gathering through technology. The Kampala Amendments, for example, gave the Court additional jurisdiction over the crime of aggression, but there are recurrent debates over scope in circumstances where cyber warfare or environmental degradation is involved.¹¹

HISTORICAL EVOLUTION OF THE ROME STATUTE

The Quest for Permanent International Justice

The notion of a permanent international criminal court to try the globe's darkest offenses genocide, international armed conflict crimes, crimes against humanity has its origins in the wake of the Second World War. The Nuremberg and Tokyo tribunals were the precursors of the notion of prosecuting individuals, not states, and the start of the modern era of international criminal law. These ad hoc courts were, however, of restricted scope of jurisdiction and temporal jurisdiction, and the urgency of having a standing court to avoid impunity between crises took on increasing fervour. The conceptual development took further momentum with the increasing will of the states to build a judicial institution that could perennially and universally tackle such crimes.¹²

The eventual prospect of a permanent international criminal court to try the highest crimes genocide, war crimes, crimes against humanity has its origins in the aftermath of the Second World War. The Nuremberg and Tokyo tribunals opened the way by making individuals, and not the state, guilty, marking the onset of the era of modern international criminal law. These ad hoc tribunals were lacking in scope and temporal jurisdiction, and the need for a standing court to avoid impunity between crises increased.¹³ The conceptual development further gathered pace with the broader desire of the states to frame a judicial institution that could redress these crimes universally and on a permanent basis.

The Rome Conference of 1998: Adoption of the Statute

The Rome Statute was adopted on 17 July 1998 at the United Nations Diplomatic Conference of Plenipotentiaries in Rome, Italy. The conference was the culmination of decades of diplomatic efforts and campaigns by states and civil society to institutionalize a permanent court. The Statute attempted to reconcile competing legal traditions and political interests by outlining a comprehensive legal system for jurisdiction, crimes definitions, and procedural guarantees.¹⁴ It was passed with overwhelming majority and opened for signature, a milestone in international law history.

Kyoto Protocol and Establishment of the ICC

the passing of the required 60 ratifications for the Rome Statute, the document came into effect on 01 July 2002. This event marked the formal opening

(overview of complementarity and admissibility), <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf> (last visited Sept. 28, 2025).

⁷ Rome Statute of the International Criminal Court, art. 17 (Complementarity Principle), in *Rome Statute of the International Criminal Court*, July 17, 1998, U.N. Doc. A/CONF.183/9, 37 I.L.M. 1002, art. 17, https://espejournals.ekb.eg/article_264814_9bd4445ed806705de9ca123122cb7e7d.pdf (last visited Sept. 5, 2025).

⁸ Beth Van Schaack, State Cooperation & the International Criminal Court: A Role for the United States? Santa Clara Univ. Legal Studies Research Paper No. 5-11 (Mar. 1, 2011), <https://ssrn.com/abstract=1773681>.

⁹ Prosecutor v. Lubanga, Case No. ICC-01/04-01/06, Trial Chamber I, Judgment (Mar. 14, 2012).

¹⁰ On procedural protections (presumption of innocence; witness/victim protection): Rome Statute arts. 66 (presumption of innocence) & 68 (protection of victims and witnesses), Rome Statute, supra, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> (last visited Sept. 28, 2025).

¹¹ Stuart Ford, The Impact of the Ad Hoc Tribunals on the International Criminal Court, in *The Legacy of Ad Hoc Tribunals in International Criminal Law: Assessing the ICTY's and the ICTR's Most Significant Legal Accomplishments* 307 (Milena Sterio & Michael Scharf eds., Cambridge Univ. Press 2019).

¹² Sharon A. Williams, *The Rome Statute on the International Criminal Court: From 1947–2000 and Beyond*, 38 Osgoode Hall L.J. 297 (2000), <https://digitalcommons.osgoode.yorku.ca/ohlj/vol38/iss2/5>.

¹³ Coalition for the International Criminal Court, *The Road to Rome: The Coalition's Role in the Adoption of the Rome Statute*, <https://www.coalitionfortheicc.org/road-to-rome> (last visited Sept. 7, 2025).

¹⁴ Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9, 37 I.L.M. 1002, arts. 5–8, https://legal.un.org/icc/statute/english/rome_statute%28e%29.pdf (last visited Sept. 8, 2025).

of the International Criminal Court, the very first international court to carry the mantle of permanency and the exclusive jurisdiction over genocide, crimes against humanity, and war crimes, and later on, the crime of aggression. Under the parameters of the treaty, the ICC is empowered to operate with a Prosecutor, and with the rest of the judges that will have been elected, and also with the available procedural groundwork for the functional divisions of the court. Differently from the rest of 'previous tribunals, the ICC is not a separately coordinated body, but rather a self-contained unit fused into the international legal order, with the aim of serving the national courts through the principle of complementarity'.¹⁵

Jurisdiction, Offences Crimes and Complementarity

The Rome Statute includes ICC jurisdiction over the four core crimes of genocide, crimes against humanity, and during the wars, they've added aggression. Along with an international humanitarian law, the Statute has been attentive to changes and has provided detailed definitions for the crimes of war. One of the fundamental structural principles is complementarity. The ICC only acts if a national jurisdiction is unwilling or unable to prosecute. The ICC is not considered a global policeman. The principles of territoriality and respect to national jurisdictions permit such judicial control, which allows the ICC to function as the last resort.¹⁶

Capturing Significant Events and Solved Cases

The first cases of the ICC such as those of Thomas Lubanga and Bosco Ntaganda were significant in the development of the law of war crimes. These cases refined the concepts of command responsibility and joint criminal enterprise and modified the burden of proof. The Court's decisions have further strengthened the thresholds for tiered, multiple, or systematic assaults as central to the definitions of war crimes in the Statute. These initiatives have increased the global recognition and acceptance of international criminal law and enhanced the available enforcement mechanisms.

The Kampala Review Conference And Then Other Amendments

The ICC gained 'the crime of aggression' because of the amendments adopted during the Fourth Review Conference held in Kampala, Uganda in July, 2010. These amendments added substantive and procedural dimensions to the Court's jurisdiction, which in turn, activated the Court's aggression.¹⁷ The Kampala alterations provided at least one of the ICC's pivots of fiercely contended jurisdiction in Supposed Arguments- a jurisdiction that is bound to further politicized consensus and ratifications, in a practical exolette that rather stiffly maintains the peremptory indication to a bearer's presumption of the world order. New accountability from the ICC and mostly added procedural amendments, contrary to Quasi-Universalist speculation, reaffirmed in multiplicity a pre-agreed disaffection within a collection of horrendous restrictions, instinctively fused with the Council's overwhelming dominance.¹⁸

Ongoing Challenges, Criticisms, and Outlook

Despite significant development the system of Rome statue and icc faced challenges regarding selectivity and enforcement limits and political controversies and states non-compliance policies and icc dependency on political referral challenges to prosecute non state actors and evolving state of non-state outlook toward icc and evolving landscape of international justice system. also advance challenges land recent discussion regarding icc deterrent mechanism regarding new challenges like cyber warfare transnation terrorism reflecting dynamic contested nature of Rome statue evolution phrase.

LEGAL FRAMEWORK FOR WAR CRIMES UNDER THE ROME STATUTE

Article 8 and the Structure of War Crimes

Article 8 of the Rome Statute is the central provision of prosecution of war crimes in the International Criminal Court (ICC). Article 8 is structurally organized so that war crimes are separated into separate categories based on the nature of armed conflict. Article 8(2)(a) deals with "grave breaches" of the 1949 Geneva Conventions, including acts like wilful killing, torture, deportation or forcible transfer of a person to another country against their will, and taking hostages in international armed conflicts. Article 8(2)(b) elaborates on the other grave breaches in international armed conflicts, such as attacks against civilians, the employment of banned weapons, and sexual violence crimes like rape or forced prostitution. For non-international armed conflict, Articles 8(2)(c) and (e) make murder, mutilation, cruelty, and attacks on persons protected by the laws of war, and sexual violence, conscription of children and pillage crimes. All provisions for international conflict are not carried over to internal conflicts; for instance, the employment of some prohibited weapons and perfidy are only reserved for international contexts.¹⁹ This conscious structuring, imitating international humanitarian law (IHL) but extending its horizons, illustrates the Statute's adaptive nature, particularly evident in sections such as sexual and gender-based crimes.²⁰

¹⁵Scott McTaggart, *The International Criminal Court: History and Role*(Parliament of Canada, 2022).

https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/200211E (last visited Sept. 2, 2025).

¹⁶ Knut Dörmann, War Crimes under the Rome Statute of the International Criminal Court, 7 Max Planck Yearb. U.N. L. 345

(2003), https://www.mpil.de/files/pdf3/mpunyb_doermann_7.pdf. (last visited Sept. 2, 2025).

¹⁷ *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Judgment pursuant to Article 74 of the Statute (5 Apr. 2012).

¹⁸ Christodoulos Kaoutzanis, A Turbulent Adolescence Ahead: The ICC's Insistence on Disclosure in the Lubanga Trial, 12 Wash. U. Glob. Stud. L. Rev. 263

(2013), https://openscholarship.wustl.edu/law_globalstudies/vol12/iss2/6.

¹⁹ Rome Statute of the International Criminal Court, U.N. Human Rights Off. of the High Comm'r, <https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court> (last visited Sept. 7, 2025).

²⁰ War Crimes under the Rome Statute of the International Criminal Court and Their Source in International Humanitarian Law: Comparative Table, Int'l Comm. of the Red Cross, <https://www.icrc.org/en/download/file/1420/war-crimes-comparative-table.pdf> (last visited Sept. 7, 2025).

Elements of Crimes and Customary International Law

In order to implement Article 8 of the Rome Statute, the negotiators drafted the “Elements of Crimes” document, which specifies the contextual and conduct requirements for the various war crimes. The document serves as an interpretive tool outlining the “acts or omissions” as well as circumstances under which culpability arises. For instance, the grave breaches enumerated in Article 8(2)(a) require the victims to be “protected persons” under the Geneva Conventions and occurring in the context of an international armed conflict.²¹ Similarly, for attacks against civilians, the Elements require proof that targets were civilians intentionally and not directly participating in hostilities when the acts took place. The mental elements of the crimes (knowledge or “willfulness”) are defined and referenced in various parts of the documents to differentiate accidents from criminal conduct. The Elements provide necessary structure for both judges and prosecutors to avoid the vague, sweeping application of the Statute and ensure consistency between cases being prosecuted internationally.

Procedural Safeguards and Statutory Mechanisms

The Statute’s procedural machinery assures internationally accepted due process. Article 54 commits the Office of the Prosecutor to investigate both incriminating and exonerating factors, highlighting impartiality. Article 66 puts the presumption of innocence at the forefront, imposing the burden on the prosecution to prove guilt beyond reasonable doubt. Article 67 guarantees a range of fair trial rights: public hearings, time for preparation of defense, and the right to meet the opposing witnesses. Article 68 makes provision for the indispensable protection of witnesses and victims, while Article 69 governs evidence admissibility, allowing for flexibility between inquisitorial and adversarial traditions of criminal law. Article 53 provides the Prosecutor with wide-ranging discretion to refuse to prosecute when it would not be in “the interests of justice,” exercising a balance between a push for accountability and pragmatic and humanitarian considerations.²²

Jurisdictional Preconditions and Complementarity- Article 17

The powers of the ICC are limited through jurisdictional provisions. Article 11 sets temporal jurisdiction and limits the Court to crimes committed after July 1, 2002 (the date the Statute entered into force). Territorial and personal jurisdiction flow from Article 12, restricting jurisdiction to crimes committed by nationals (or on the territory) of State Parties, or by virtue of Security Council referrals. The principle of ‘complementarity’ contained in Article 17 is an important foundation of the Statute, which reserves the ICC to only act as a court of last resort, and only when national legal systems are genuinely unable or unwilling to investigate or prosecute international crimes. This collaborative model has encouraged States to implement domestic legislation regarding Rome Statute crimes as a means to avoid ICC involvement, and become a prominent aspect of the conversation around international criminal law.²³

Analytical Perspective- Effectiveness, Controversy, and the Living Instrument

The structure and changing application of Article 8, and its complex procedural structures, have brought the ICC to the forefront of the global prosecution of war crimes. Nevertheless, there remain significant obstacles. Academics have ongoing critiques of the degree to which war crimes provisions apply in non-international armed conflicts, which may create a hierarchy of victims. In practice, ICC investigations are subject to significant hurdles in collecting evidence, assuring witness safety, and relying on state cooperation, which may be affected by political calculation. However, the increasingly flexible nature of the Statute, the once again amending provisions (i.e. concerning weapons or starvation of civilians), and the ongoing developments in the ICC jurisprudence confirm it remains a “living instrument,” evolving to respond to the new realities of warfare and humanitarian practice. For jurists and academics, the Rome Statute represents both the promise of progress, and the active vehicle of global legal development.

CORE LEGAL PRINCIPLES UNDER THE ROME STATUTE: JURISDICTION, ADMISSIBILITY, AND INDIVIDUAL CRIMINAL RESPONSIBILITY

Jurisdiction:

The ICC’s jurisdiction under the Rome Statute is multifaceted, limited by subject matter, territoriality, nationality, and time. It covers genocide, crimes against humanity, war crimes, and aggression, with jurisdiction over crimes committed after July 1, 2002, the Statute’s effective date. Territorial jurisdiction applies to crimes on a State Party’s soil or by its nationals, while the United Nations Security Council can extend ICC jurisdiction via referrals, as seen in situations like Darfur, Libya, and Syria. Recent developments, including the 2023–2024 Palestine and Ukraine investigations, test jurisdictional boundaries amid political and legal complexities, particularly concerning state recognition and Security Council veto politics.²⁴ Amendments in the past decade, such as the Kampala Amendments (activating crime of aggression jurisdiction), and provisions expanding war crimes definitions reflect the ICC’s

²¹ Elements of Crimes for the Rome Statute of the International Criminal Court, ICC, <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf> (last visited Sept. 8, 2025).

²² Antonio Cassese, The Statute of the International Criminal Court: Some Preliminary Reflections, 10 Eur. J. Int’l L. 144 (1999), <https://ejil.org/pdfs/10/1/570.pdf> (last visited Sept. 8, 2025).

²³ Leena Grover, A Call to Arms: Fundamental Dilemmas Confronting the Interpretation of Crimes in the Rome Statute of the International Criminal Court, 21 Eur. J. Int’l L. 543 (2010), <https://www.ejil.org/pdfs/21/3/2068.pdf> (last visited Sept. 8, 2025).

²⁴ Amicus Curiae Observations by ICJ Norway and Defend International Law, Pre-Trial Chamber I, Situation in the State of Palestine, No. ICC-01/18-276 (5 Aug. 2024), <https://www.legal-tools.org/doc/4vv6z9vp/pdf> (last visited Sept. 6, 2025).

responsiveness to changing warfare and geopolitical realities, although jurisdictional limitations stemming from consent remain politically sensitive.²⁵

Admissibility and complementarity:

Admissibility is predicated on the principle of complementarity (Article 17) a precept that limits the ICC's jurisdiction to situations when national jurisdictions are unable/unwilling to genuinely investigate or prosecute international crimes. The principle of complementarity seeks to protect sovereign jurisdiction while encouraging accountability on a local level. Accordingly, under the principle of complementarity, the Court has to assess the genuineness and competency of domestic proceedings that possess adequate investigation and judicial processes.²⁶ The ICC's increasingly complex cases, including admissibility challenges under the Palestine situation and cases that have arisen in Africa, engage complex inquiries of adjudication that balance adequacy of national proceedings with political realities. The admissibility of cases before the ICC also fuels national legal reform, given that it inspires States to amend domestic laws to meet the requisites of the Rome Statute. One level of discretion in admissibility decisions invites warranted critiques for selective justice, particularly in the cases of powerful states and charges that are politically motivated.²⁷

Individual Criminal Responsibility:

Individual criminal responsibility, as laid out in Article 25, is the foundation of the ICC, holding only natural persons accountable for their actions. This article outlines various ways one can be involved in a crime: through direct commission, ordering, aiding or abetting, participating in a joint criminal enterprise, or through command responsibility. Recent prosecutions by the ICC have applied these principles vigorously, including warrants related to the conflicts in Israel-Palestine and Sudan.²⁸ The concept of command responsibility has been further developed through case law, highlighting the need to demonstrate effective control, knowledge, and a failure to act by commanders or civilian leaders. The Court's evolving case law continues to shed light on different levels of culpability and the necessary mental state, ensuring alignment with customary international law and pushing forward the cause of global criminal accountability.²⁹

Recent amendments and/or changes of structure:

The ICC's Statute has recently been amended including by the 2010 Kampala amendment defining the crime of aggression. These amendments have replaced the Statute's rigid ceilings, albeit state ratification is required before the principles of aggression can be fully implemented. Between 2019 and 2021, the ICC adopted amendments and established the crime of starvation in the context of armed conflict, also outlawing the use of specific weapons. Such amendments unquestionably epitomize how the law is adapting over time to new forms of warfare and human rights abuses.³⁰ However, the effect of such amendments and updates exist only among states that provided ratification, exemplifying issues of global and international coverage.³¹ The ongoing amendments that are being discussed can reflect how the Statute provides a flexible legal system addressing today's realities of conflict and the demands of international demands.

Practical Challenges and Opportunities:

The ICC has considerable practical constraints operating within, including reliance on state cooperation to secure arrests and obtain evidence, political meddling and limited enforcement capabilities, and the challenges of collecting crime documentation in active war zones. The concepts of witness protection and evidence fidelity are always a concern.³² Yet with a growing formalization of its legal frameworks and deepening body of jurisprudence, the Court is increasingly solidifying its role as a prominent institution, advancing a legal framework to combat impunity. The Rome Statute's "living instrument" status allows it to adjust to the realities of changing politics and wars and merits continual scholarly scrutiny and ongoing discussions for reform.³³

RECENT HIGH-PROFILE ICC WAR CRIMES CASES

The International Criminal Court (ICC) has escalated its endeavours to prosecute war crimes via several prominent trials in recent years, especially since

²⁵ Rome Statute and Other Agreements, Assembly of States Parties Information, Assembly of States Parties to the Rome Statute of the International Criminal Court (updated Aug. 26, 2025), <https://asp.icc-cpi.int/RomeStatute> (last visited Sept. 8, 2025).

²⁶ Complementarity in the Palestine Situation at the ICC: Could Article 70 Conduct Render Israel "Unwilling" to Investigate Genuinely?, *Opinio Juris* (June 7, 2024), <https://opiniojuris.org/2024/06/07/complementarity-in-the-palestine-situation-at-the-icc-could-article-70-conduct-render-israel-unwilling-to-investigate-genuinely/> (last visited Sept. 8, 2025).

²⁷ *A New ICC Policy on Complementarity? Let's Fast Forward to Universal Jurisdiction Allocation*, *Just Security* (posted June 7, 2024), available at <https://www.justsecurity.org/98221/icc-policy-complementarity-universal-jurisdiction/> (last visited Sept. 4, 2025).

²⁸ Gerhard Werle, Individual Criminal Responsibility in Article 25 ICC Statute, 5 J. Int'l Crim. Just. 953 (2007), <https://legal-tools.org/doc/f50d22/pdf> (last visited Sept. 4, 2025).

²⁹ K. Aquilina & Klejda Mulaj, The International Criminal Court and Responsibility for Mass Atrocities: Can JCE Enhance Capacity to Hold Masterminds Accountable? 27 *Contemp. Just. Rev.* 1 (2024), <https://www.tandfonline.com/doi/full/10.1080/10282580.2024.2364034> (last visited Sept. 5, 2025).

³⁰ Amendment to Article 8 of the Rome Statute of the International Criminal Court (Intentionally Using Starvation of Civilians), UNTS Chapter XVIII-10(g), adopted at The Hague, Dec. 6, 2019, entered into force Oct. 14, 2021; UN Treaty Collection: Status of Treaties (last visited Sept. 6, 2025).

³¹ K.J. Heller, *The Rome Statute's Flawed Amendment Regime — Starvation in NIAC Edition*, *Opinio Juris* (Dec. 7, 2019), available at <https://opiniojuris.org/2019/12/07/the-rome-statutes-flawed-amendment-regime-starvation-in-niac-edition/> (last visited Sept. 6, 2025).

³² Ajitabh Mishra, Notes on International Criminal Law and International Criminal Court (Assistant Professor, Rayat College of Law), <https://rayatlaw.ac.in/public/uploads/study-material-6119.pdf> (last visited Sept. 2, 2025).

³³ Structure of the ICC, Int'l Criminal Court Project, Am. Bar Ass'n, <http://www.aba-icc.org/about-the-icc/structure-of-the-icc/> (last visited Sept. 2, 2025).

2024. These cases reflect both the developing techniques of international criminal prosecution and the enduring obstacles facing the Court in obtaining accountability for the gravest international crimes.³⁴ This research explores three significant recent cases that show the ICC's present strategy and the difficult factual, legal, and political hurdles it encounters.

The Ukraine Investigation: Putin and Russian Leadership

The ICC's inquiry into the circumstances in Ukraine is one of its most consequential and politically delicate cases. On March 17, 2023, the Court issued arrest warrants for Russian President Vladimir Putin and Maria Lvova-Belova, the Commissioner for Children's Rights in Russia, representing the first instance of an arrest warrant being issued against a leader of a permanent member of the UN Security Council. The allegations pertain to the war crime of the unlawful deportation and transfer of children from seized Ukrainian territory to Russia.³⁵

The case involves accusations that Russian soldiers systematically abducted Ukrainian children from occupied regions, an act that qualifies as both a war crime and perhaps genocide under international law. In June 2024, the ICC increased its case with arrest warrants for more high-ranking Russian officials: former Defence Minister Sergei Shoigu and Chief of General Staff Valery Gerasimov, accused with coordinating strikes against civilian infrastructure. In March 2024, two further warrants were issued for Sergey Kobylash and Viktor Sokolov, for missile assaults on Ukrainian electrical infrastructure.

The Ukraine case has compelled the ICC to enhance its evidence-collection powers. The Court created a field office in Kyiv and dispatched investigative teams immediately to Ukraine, departing from its typical practice of conducting inquiries from The Hague. This is a substantial operational shift, with ICC Prosecutor Karim Khan highlighting the necessity to collect "relevant forensic and digital materials" in a manner that increases their admissibility. The Court has received more than 150,000 war crimes complaints from Ukrainian authorities, resulting in unparalleled logistical hurdles. To address this volume, the ICC initiated OTPLink, an enhanced digital evidence submission platform, and Project Harmony, characterized as "a milestone in the OTP's broader technological enhancement." These technologies leverage algorithms to handle and evaluate digital evidence more effectively than traditional approaches.³⁶

Despite the symbolic impact of the Putin arrest warrant, real enforcement remains hard. As of 2025, Putin continues to travel overseas, with several ICC member nations neglecting to execute the warrant. However, the warrants have achieved strategic aims by limiting the travel of Russian officials and indicating that high-level political figures are not immune from international criminal law.

Israel-Palestine: Netanyahu and Gallant Arrest Warrants

On November 21, 2024, the ICC issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant, marking the first arrest warrant against the head of a Western-backed democratic government. The allegations include war crimes of famine as a means of warfare and crimes against humanity include murder, persecution, and other cruel conduct during operations in Gaza following the October 7, 2023 Hamas onslaught.

The Pre-Trial Chamber determined sufficient reasons to infer that Netanyahu and Gallant have criminal culpability as co-perpetrators for offenses committed from at least 8 October 2023 to at least 20 May 2024. The Court decided that the denial of humanitarian supplies to Gaza established conditions of living designed to bring about the annihilation of part of the civilian population, resulting in civilian fatalities from starvation and dehydration.

Significantly, the Chamber also found evidence of purposeful infliction of pain through medical deprivation, compelling physicians to operate on wounded victims and perform out amputations, including on minors, without anaesthetics, constituting crimes against humanity.

The case exposes difficult jurisdictional problems, as Israel is not an ICC member state. The Court asserted jurisdiction based on Palestine's membership and territorial jurisdiction, as decided by Pre-Trial Chamber I. The Chamber dismissed Israel's arguments to jurisdiction, stating that such claims were premature before warrant issuance.³⁷

The warrants have produced diplomatic problems, with diverse foreign responses. While some jurisdictions have committed to enforcement commitments, others, like the United Kingdom, have questioned the choices. The legal community remains divided on the consequences, with some experts suggesting that state parties are legally compelled to enforce the orders, while others doubt the Court's authority.³⁸

Myanmar: Senior General Min Aung Hlaing

On November 27, 2024, ICC Prosecutor Karim Khan announced the request for an arrest warrant against Myanmar's military leader Senior General Min Aung Hlaing for crimes against humanity perpetrated against the Rohingya community. This request is the culmination of a five-year inquiry into the

³⁴ Human Rights Watch, *International Criminal Court*, Human Rights Watch, <https://www.hrw.org/topic/international-justice/international-criminal-court> (last visited Sept. 1, 2025).

³⁵ International Criminal Court, *Situation in Ukraine*, ICC, <https://www.icc-cpi.int/situations/ukraine> (last visited Sept. 5, 2025).

³⁶ *International Criminal Court: Last Hope for Ukraine and Global Justice*, ReliefWeb, <https://reliefweb.int/report/ukraine/international-criminal-court-last-hope-ukraine-and-global-justice> (last visited Sept. 10, 2025).

³⁷ Farisha Schezwen, *Navigating Orientalism in International Law: Weaponization of Linguistic Bias to Justify the Use of Force in Israel-Palestine*, *Juris Gentium Law Review*, Vol. 10, No. 2 (2025), <https://doi.org/10.22146/jglr.v10i2.19256>. *Journal Universitas Gadjah Mada*.

³⁸ Keshav Bhattarai & Mahmoud Yousef, *MENA Region in the Changing Global Order: Impacts of Historical Legacies and Contemporary*, in *The Middle East: Past, Present, and Future* (World Regional Geography Book Series, Springer Cham, 2025).

2016-2017 military campaign that led over 700,000 Rohingya to escape to Bangladesh.³⁹

The prosecutor believes Min Aung Hlaing has criminal responsibility for crimes against humanity of deportation and persecution conducted in Myanmar and in part in Bangladesh between August and December 2017. The atrocities were reportedly committed by Myanmar's armed forces, the Tatmadaw, aided by national police, border guard police, as well as non-Rohingya civilians.

The Rohingya case depends primarily on witness evidence from refugee camps in Bangladesh and documentation by international organizations. The UN International Independent Fact-Finding Mission on Myanmar has supplied vital data and analysis to the ICC.⁴⁰ However, the passage of time since 2017 and the continued persecution of the Rohingya people create substantial hurdles to evidence preservation and witness safety.

These high-profile cases reveal many recurring issues facing the ICC's prosecution strategy. The Court's increased reliance on digital evidence brings both possibilities and concerns. While digital data can give persuasive proof of criminal intent and deeds, problems remain concerning authenticity verification and alteration detection. The ICC has introduced new standards for digital evidence collecting, including geolocation data verification and metadata analysis, but worries continue regarding "deep fake" technology and wilful fabrication.⁴¹

The idea of complementarity, wherein the ICC only prosecutes when national courts are reluctant or unable to do so, confronts growing criticism. Critics claim that this notion permits powerful powers to dodge accountability while attacking smaller nations. The Ukraine case has pushed these boundaries, with the ICC advancing despite Russia's non-cooperation and refusal of jurisdiction. The ICC's dependence on state assistance for arrests, evidence collecting, and enforcement remains its most serious restriction. Of the 46 arrest warrants issued by the Court, only 21 defendants have been apprehended with member state help. This low execution rate weakens deterrent effects and victim faith in the legal system.

The Court continues to deal with the beyond reasonable doubt criterion in complicated international criminal cases. Inconsistent use of this test has led to problematic acquittals and convictions, with judges differing on whether all alternative hypotheses must point to guilt or whether reasonable doubt admits some ambiguity. The ICC confronts recurrent charges of prejudice, notably from African states and other Global South countries.⁴² The preponderance of prosecutions in Africa, along with scant action against Western powers, has led to charges that the Court functions as a tool of Western imperialism rather than global justice.

CHALLENGES IN PROSECUTING WAR CRIMES

I. Political and geopolitical obstacles

State Sovereignty and Non-Cooperation:

A principal difficulty confronting the International Criminal Court (ICC) is the hesitance of governments to provide comprehensive cooperation. The notion of state sovereignty frequently conflicts with the jurisdiction of the ICC, generating friction between international justice and national interests.⁴³ High-ranking political leaders and military officers accused of war crimes are frequently safeguarded by their governments, who argue that surrendering them would jeopardize national independence or political stability.⁴⁴ This hesitation is not simply theoretical but has played out in fact. A notable instance is the indictment of Sudan's former president, Omar al-Bashir, by the ICC for genocide, war crimes, and crimes against humanity in Darfur. Notwithstanding international arrest warrants, other governments declined to apprehend him during his foreign travels, invoking sovereignty or political factors. These incidents illustrate the diminished efficacy of the ICC when governments put their political interests over international responsibilities, resulting in victims being denied justice and offenders evading prosecution.⁴⁵

Influence of Powerful Nations:

Alongside state sovereignty, the role of global power dynamics heavily influences the functioning of the ICC. Geopolitical factors frequently influence the pursuit of justice in particular instances. Dominant states, particularly those with robust political or military connections, occasionally intervene to shield their allies from punishment, thereby compromising the Court's legitimacy and impartiality.⁴⁶ These interventions might take the form of blocking

³⁹ Prosecutor's application for an arrest warrant (Nov. 27, 2024): Int'l Crim. Ct., *Statement — Application for Warrant of Arrest in the Situation in Bangladesh/Myanmar* (Nov. 27, 2024), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-application-arrest-warrant-situation-bangladesh> (last visited Sept. 11, 2025).

⁴⁰ Prosecutor's application for an arrest warrant (Nov. 27, 2024): Int'l Crim. Ct., *Statement — Application for Warrant of Arrest in the Situation in Bangladesh/Myanmar* (Nov. 27, 2024), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-application-arrest-warrant-situation-bangladesh> (last visited Sept. 09, 2025).

⁴¹ UN Human Rights Council: *Fact-Finding Mission on Myanmar*, Office of the High Commissioner for Human Rights, <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/index> (last visited Sept. 10, 2025).

⁴² Human Rights Watch, *Myanmar: ICC Prosecutor Requests Arrest Warrant for Military Leader Min Aung Hlaing* (Nov. 27, 2024), <https://www.hrw.org/news/2024/11/27/myanmar-icc-prosecutor-requests-arrest-warrant> (last visited Sept. 10, 2025).

⁴³ U.N. Press Release, *Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution* (May 22, 2014), <https://press.un.org/en/2014/sc11407.doc.htm> (last visited Sept. 11, 2025).

⁴⁴ Olympia Bekou, *Dealing with Non-cooperation at the ICC: Towards a More Holistic Approach*, 20 Int'l Crim. L. Rev. 772 (2020).

⁴⁵ *The Enforcement Gap: How the International Criminal Court Failed in Darfur*, Al Jazeera (Mar. 25, 2013), <https://www.aljazeera.com/opinions/2013/3/25/the-enforcement-gap-how-the-international-criminal-court-failed-in-darfur>.

⁴⁶ U.N. Press Release, *Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution* (May 22, 2014), <https://press.un.org/en/2014/sc11407.doc.htm> (last visited Sept. 11, 2025).

referrals to the ICC through the United Nations Security Council, withholding cooperation, or employing diplomatic pressure to obstruct investigations. As a result, prosecutions are not always directed by the gravity of crimes committed but rather by the political interests at stake. This situation has prompted criticism that the ICC disproportionately focuses on leaders from weaker or less prominent states, while those supported by powerful nations evade accountability.⁴⁷ Such political manoeuvring erodes faith in the idea of universal accountability and raises major issues about whether global justice can ever genuinely be free from political interference.

II. Practical Challenges in Investigating and Prosecuting War Crimes

Evidence Collection in Conflict Zones:

One of the most severe barriers in prosecuting war crimes is the challenge of gathering trustworthy evidence from conflict zones. These places are generally distinguished by instability, restricted access, and an absence of basic security, which makes it extremely difficult for investigators to operate on the ground. Infrastructure is frequently damaged in the course of warfare, eliminating essential data or forensic traces that could otherwise serve as critical evidence in court. Ongoing violence and the presence of armed groups further hinder investigators from safely approaching affected areas, leaving many crimes undocumented or underreported. Beyond tangible proof, the collection of statements from survivors and witnesses provides another layer of difficulties.⁴⁸ Many persons who might provide vital accounts live under continual dread of retaliation by offenders or powerful armed groups. Their hesitation is even more obvious in locations where local authorities themselves may be implicated in the crimes, creating a climate of intimidation and silence. As a result, the evidential foundation needed for fair and effective trials is often poor, making it harder to hold culprits accountable.⁴⁹

Witness Protection and Security:

Closely tied to evidence collection is the constant difficulty of safeguarding the safety of witnesses who come forward to testify. Witnesses in war crimes prosecutions are regularly exposed to threats, intimidation, and even direct acts of violence aimed at silencing them. While the ICC has developed witness protection programs, the scope of these safeguards is restricted by budgetary and logistical constraints, meaning not every individual at danger may be fully shielded. Protecting witnesses is especially intimidating in active war zones, where armed groups maintain control over wide areas and have the power to harm anyone cooperating with foreign investigators.⁵⁰ Relocation, anonymity, and other safety measures are typically impossible to apply in such volatile environments. This creates a situation where many witnesses, even if eager to speak, cannot safely deliver testimony, leading to delays in hearings or weaker cases. Without comprehensive witness protection, the prosecution of war crimes fails to move forward, as justice rests greatly on the ability of witnesses to speak without fear of reprisal.⁵¹

III. Legal and Procedural Challenges

High Standards of Proof in War Crimes Trials:

Securing a conviction for war crimes requires prosecutors to fulfil extraordinarily high standards of proof. It is not enough to show that atrocities occurred; they must demonstrate beyond reasonable doubt that the accused knowingly committed the actions and had full awareness that their behaviour was prohibited under international law. This level of proof demands extensive and dependable evidence, which is often scarce in the aftermath of armed conflict. Prosecutors often depend on a combination of expert testimony, documentary records, and physical evidence such as forensic results. However, getting such information in war-torn places is incredibly difficult due to devastated infrastructure, lack of access, and continuous instability.⁵² Adding to this problem, war crimes prosecutions sometimes entail extremely technical and complicated legal arguments. The prosecution must meticulously prove that the acts committed come under the strict international legal criteria of war crimes, such as genocide, crimes against humanity, or violations of the rules of armed conflict. Drawing a clear relationship between the accused's conduct and these definitions takes rigorous investigation, significant preparation, and detailed evidence analysis.⁵³ As a result, trials can be protracted and resource-intensive, often taking years before a verdict is delivered.

Jurisdictional Issues and Challenges:

Alongside evidentiary hurdles, jurisdictional disputes constitute another severe impediment to the operation of the ICC. Some governments question the

⁴⁷ Kamari Maxine Clarke, *The International Criminal Court, the UN Security Council, and the Politics of Impunity in Africa*, 7 African J. Legal Stud. 297 (2014).

⁴⁸ *Comparative Practices on the Use of Information Collected in Conflict Zones as Evidence in Criminal Proceedings Related to Terrorist Offences*, Council of Eur. (2022).

⁴⁹ *Challenges of Monitoring, Reporting, and Fact-Finding During Armed Conflict*, Partnerships in Humanitarian Action & Protection, https://phap.org/PHAP/PHAP/Articles/LegArticles/MRF_Challenges_armed_conflict.aspx.

⁵⁰ VI. Victim and Witness Protection and Support, Hum. Rts. Watch (July 16, 1998), <https://www.hrw.org/reports/2008/icc0708/9.htm>.

⁵¹ *Recent Advancements and Remaining Gaps in Addressing the Witness Protection Challenge at the ICC*, Int'l Crim. Just.

Today, <https://www.international-criminal-justice-today.org/arguendo/recent-advancements-and-remaining-gaps-in-addressing-the-witness-protection-challenge-at-the-icc/>.

⁵² *ICC's Struggle with the Evidentiary Standard of Proof Beyond Reasonable Doubt*, Cambridge Int'l L.J. (Feb. 21, 2021), <https://cilj.co.uk/2021/02/22/icc-s-struggle-with-the-evidentiary-standard-of-proof-beyond-reasonable-doubt/>.

⁵³ Just Security, *Does the ICC Impose Too Low a Standard of Proof to Issue Arrest Warrants Against Heads of State?* (Dec. 2024), <<https://www.justsecurity.org/105708/icc-standard-proof-head-state/>> (last visited Sept. 2, 2025).

Court's authority by maintaining that they alone have the sovereign right to pursue crimes committed within their boundaries. When national leaders or state actors are implicated in such crimes, this resistance is considerably stronger, since governments may use jurisdictional considerations as a shield to protect themselves or their allies.⁵⁴ These arguments can impede proceedings and damage the Court's capacity to rule expeditiously. The situation is further aggravated by the fact that not all states are parties to the Rome Statute, the instrument that founded the ICC.⁵⁵ Powerful countries like the United States, Russia, and China have not ratified the Statute, meaning they are not legally bound by the Court's authority. As a result, they often refuse to participate in investigations or surrender suspects connected to their citizens or military activities. This lack of universal participation creates huge gaps in accountability, allowing individuals in non-member states to dodge punishment and limiting the Court's effectiveness as a truly global tool for pursuing war crimes.⁵⁶

PROPOSED SOLUTIONS AND FUTURE DIRECTIONS

I. Institutional and Legal Reforms

Alternative Enforcement Strategies:

The ICC confronts a huge enforcement vacuum since it lacks its own police or enforcement apparatus and must depend on the voluntary assistance of member nations to arrest and transfer individuals, freeze assets, and implement penalties. This reliance has often proven problematic, especially when politically strong or non-cooperative governments hide fugitives from capture or refuse to execute warrants.

To overcome these limitations, other enforcement tactics have arisen. Key among these is the ICC's relationship with Interpol, which enables the Court to issue Red Notices for fugitives globally, using a global police network.⁵⁷ There is also growing advocacy for regional partnerships such as the ICC's recent agreements with Europol and the use of United Nations specialized police teams that could provide dedicated expertise and operational support for ICC mandates, and even for the future establishment of an international or specialized police force tasked with arresting ICC fugitives. While these advances boost global reach and technological capabilities, they remain dependent on national authorities for practical implementation, underlining both their potential and persisting restrictions.⁵⁸

Sanction based approaches:

Sanctions-based initiatives offer significant levers for improving state compliance and achieving international justice. The effective use of Magnitsky-style targeted sanctions such as asset freezes, travel bans, and financial restrictions enables the international community to sidestep traditional barriers of state sovereignty by directly targeting individuals or entities obstructing ICC proceedings or refusing cooperation with investigations.⁵⁹ These procedures provide tangible repercussions for non-compliance, deterring potential abusers and those protecting them from justice.

Beyond just penalizing obstructive offenders, tailored sanctions also produce larger impacts. They convey significant diplomatic messages about the international community's intolerance for impunity, reinforcing normative expectations for state behaviour under international law. Sanctions can be coordinated multilaterally, ensuring that violators not only lose access to their own country's resources but also suffer isolation from the global banking system and major travel corridors. Where necessary, other tools like public naming and shaming, visa restrictions for families, or suspension of official relations can further enhance pressure.⁶⁰

II. Alternative Justice Mechanisms

Universal Jurisdiction Expansion:

Domestic prosecution systems under the principle of universal jurisdiction provide vital alternatives to ICC action, enabling national courts to pursue international crimes regardless of where they were committed or the nationality of the accused or victims. This theory is predicated in the notion that certain crimes, notably war crimes, genocide, and crimes against humanity, fundamentally harm the world community as a whole, therefore permitting any state to take jurisdiction even in the lack of traditional territorial or national links. Universal jurisdiction advances accountability where the ICC cannot act, such as when the state where the crime occurred lacks the political will, competence, or independence to prosecute.⁶¹

⁵⁴ Rome Statute arts. 12–13 (preconditions to exercise jurisdiction; referrals), & art. 127 (withdrawal), <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> (last visited Sept. 8, 2025).

⁵⁵ Leila Nadya Sadat, *Three Actions States Parties to the ICC Should Take Now*, Just Security (July 7, 2025), <https://www.justsecurity.org/116069/international-criminal-court-review-conference/>.

⁵⁶ *Commentary Rome Statute: Part 2, Articles 11-21*, Case Matrix Network (Aug. 15, 2017), <http://www.casematrixnetwork.org/cmn-knowledge-hub/icc-commentary-clicc/commentary-rome-statute/commentary-rome-statute-part-2-articles-11-21>.

⁵⁷ Naman Karl-Thomas Habtom, *ICC Arrest Warrants for Heads of State and Others*, 13 Korean J. Int'l & Comp. L. 115 (2025).

⁵⁸ Gwen P. Barnes, *The International Criminal Court's Ineffective Enforcement Mechanisms: The Indictment of President Omar Al Bashir*, 34 Fordham Int'l L.J. 1584 (2011).

⁵⁹ Victoria Kerr & James Patrick Sexton, *Human Rights and Security: Unpacking the Elusive Nature of Magnitsky Sanctions*, Eur. Soc'y Int'l L. Research Forum (2022).

⁶⁰ Anton Moiseenko, *Magnitsky Sanctions and Global Accountability*, The Regulatory Rev. (May 3, 2025), <https://www.theregview.org/2025/05/03/seminar-magnitsky-sanctions-and-global-accountability/>.

⁶¹ *The Future of International Criminal Law is Domestic*, VerfassungsBlog (June 23, 2025), <https://verfassungsblog.de/universal-jurisdiction-syria-assad->

Many states have adopted universal jurisdiction into their domestic legal frameworks, often necessitating prosecution or extradition of alleged criminals, as represented in treaties like the Geneva Conventions and different human rights documents. Countries such as New Zealand, Canada, Spain, and Germany have actively exercised universal jurisdiction, with national courts trying or investigating international crimes committed overseas. While universal jurisdiction extends the worldwide reach of justice, its application varies greatly depending on national legislation and political concerns, often leading to disputes with sovereignty. Nonetheless, this process remains an essential complement to the ICC, fostering accountability and eliminating safe havens for perpetrators of grave crimes.

Mutual Legal Assistance Treaties (MLATs):

Mutual Legal Assistance Treaties expressly addressing international crimes can greatly boost cooperation between national authorities and the ICC by establishing a defined legal basis for collaboration. These accords should incorporate comprehensive elements such as evidence exchange, witness protection and relocation, asset recovery, extradition processes, and coordination of legal proceedings to boost accountability efforts internationally. Effective MLATs permit rapid and secure movement of important materials and individuals, eliminating logistical and procedural constraints that typically delay international criminal investigations.⁶²

Some recent initiatives, like as the new MLA Treaty established in 2023 (Ljubljana-The Hague Convention), show efforts to bridge current cooperation gaps by demanding prosecution of basic international crimes and creating reciprocal duties for jurisdiction and assistance. The treaties also address procedural changes including covert investigations, collaborative investigative teams, and data protection to adapt legal cooperation to complicated multinational situations. By standardizing substantive definitions and procedural methods, MLATs not only improve ICC prosecutions but also strengthen local legal system's capacity to fight impunity effectively while respecting victim's rights. This improved cooperation structure is vital for overcoming sovereignty issues and guaranteeing seamless international judicial collaboration.⁶³

CONCLUSION

The International Criminal Court's journey from its inception through the Rome Statute in 1998 to its current operations epitomizes both humanity's highest aspirations for justice and the harsh realities of enforcing international law in a politically fragmented world. This comprehensive analysis reveals a judicial institution that, while fundamentally transformative in scope and ambition, remains constrained by systemic challenges that threaten its core mission of ending impunity for the gravest international crimes.

The ICC's establishment marked a watershed moment in international criminal law, creating the world's first permanent tribunal with jurisdiction over genocide, crimes against humanity, war crimes, and aggression. The Rome Statute's sophisticated legal framework demonstrates remarkable legal craftsmanship, yet the Court's performance reveals a troubling gap between legal innovation and practical effectiveness. With approximately 11 convictions from over 30 cases and an arrest warrant execution rate below 50%, the ICC's tangible impact remains limited.

The most fundamental challenge confronting the ICC lies in its dependence on state cooperation without corresponding enforcement mechanisms. This institutional weakness has manifested repeatedly, from Omar al-Bashir's decade-long evasion of arrest to Vladimir Putin's continued international mobility despite ICC warrants. The Court's reliance on voluntary state compliance creates an inherent contradiction: those most capable of committing mass atrocities are often best positioned to resist accountability.

The principle of complementarity, while conceptually sound in respecting national sovereignty, has inadvertently created opportunities for powerful states to avoid ICC jurisdiction through strategic domestic proceedings. This has led to accusations of selective justice, with the Court disproportionately targeting leaders from less powerful nations while those backed by major powers escape scrutiny. Recent arrest warrants for Israeli Prime Minister Netanyahu and Russian President Putin represent significant departures from this pattern, but have also exposed the Court to unprecedented political backlash and threats of institutional collapse.

Despite these structural challenges, emerging evidence suggests the ICC may be achieving deterrent effects beyond its conviction record. The Court's investigations have prompted domestic legal reforms in countries like Kenya and Uganda, demonstrating 'positive complementarity's' potential to strengthen national justice systems. The symbolic power of ICC warrants, while insufficient for immediate accountability, has imposed diplomatic costs on accused leaders, constraining their international mobility and legitimacy. The ICC has demonstrated remarkable adaptability in responding to contemporary challenges, particularly in evidence collection and case management. The development of digital evidence platforms like OTPLink and enhanced investigative techniques represent significant operational improvements. However, the Court's handling of high-profile cases has also revealed

[regime/](#).

⁶² Fisseha Tekle, *The Ljubljana – The Hague Convention: A Step Forward in Combating Impunity for Atrocity Crimes*, Int'l L. Blog (Sept. 18, 2023), <https://internationallaw.blog/2023/09/18/the-ljubljana-the-hague-convention-a-step-forward-in-combating-impunity-for-atrocity-crimes/>.

⁶³ Alison Bisset, *The Ljubljana-The Hague Convention: Where Are We Now?*, Opinio Juris (June 26, 2025), <https://opiniojuris.org/2025/06/26/the-ljubljana-the-hague-convention-where-are-we-now/>.

persistent vulnerabilities, including susceptibility to cyberattacks and intelligence operations designed to undermine investigations.

Effective reform must address both institutional limitations and broader systemic challenges. Alternative enforcement mechanisms, including targeted sanctions regimes and expanded universal jurisdiction, offer promising avenues for enhancing accountability beyond the ICC's direct reach. The complementarity principle requires fundamental recalibration to prevent manipulation by powerful actors while preserving its core function of encouraging domestic accountability. While the ICC's deterrent effect remains contested, empirical evidence increasingly supports the proposition that international criminal justice institutions can influence behaviour when combined with appropriate political pressures. The Court's impact appears strongest within supportive political environments and weakest when confronted with systematic non-cooperation from powerful states, suggesting effectiveness depends more on political will than legal powers.

The Rome Statute's characterization as a 'living instrument' reflects both its adaptability and ongoing evolution. Recent amendments addressing starvation as warfare and expanding weapon definitions demonstrate capacity for development, though limited ratification highlights persistent implementation challenges. Twenty-seven years after establishment, the ICC stands at a critical juncture where its legacy will be determined not merely by conviction records, but by its contribution to establishing international criminal accountability as an inviolable norm.

The ICC has succeeded in creating expectations of accountability that transcend jurisdictional limitations, inspiring domestic prosecutions and shaping discourse about mass atrocities. However, this normative influence remains fragile without corresponding enforcement capacity. The Court's future effectiveness depends on resolving the fundamental tension between its universal mandate and dependence on selective state cooperation, requiring institutional reform and broader international recommitment to accountability principles.

The prosecution of war crimes under the Rome Statute represents humanity's most ambitious attempt at universal criminal justice. While the experiment remains incomplete, the alternative systematic impunity for mass atrocities remains unacceptable. The ICC's continued evolution, supported by complementary mechanisms and sustained political commitment, offers the best prospect for realizing the Rome Statute's foundational promise that the gravest crimes will not go unpunished, and that rule of law will ultimately prevail over rule of power. In this ongoing struggle, the ICC remains an indispensable, if imperfect, instrument of hope and justice.

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