

JUSTICE WITHOUT POWER: THE ICC'S STRUGGLE TO ENFORCE ITS WILL

Aryan Agrawal

ABSTRACT: This research paper critiques the ICC failure at prosecuting war crimes, or its inability to execute arrest warrants and judgments absent state support. In its earliest mandate of battling impunity for war crimes in international crimes, the ICC remains organizationally reliant upon member states in order to effectuate—its sole limitation jeopardizing its effectiveness in bringing about justice. The article analyses legal, political, and institutional barriers to enforcement like state non-cooperation, political interference, and absence of an independent enforcement agency. High-profile cases like Sudan's Omar al-Bashir's non-arrest show the Court's inaction against influential or strategically protected targets. The article also analyzes broader implications of non-enforcement like compromised deterrence, reputational harm, and victim and international confidence erosion. Stepping away from the analogy with ad hoc tribunals and regional courts, this paper proposes a reform package to enhance the ICC's enforcement capacity through diplomatic, institutional, and cooperative means. It argues that unless the enforcement deficit is remedied, the ICC mandate would be incomplete, and international criminal justice would be susceptible to selective accountability.

Keywords: International Criminal Court; war crimes; enforcement; state cooperation; International Justice.

RESEARCH GAP:

"The Role of State Cooperation in the Enforcement of ICC Awards: A Critical Barrier to the Court's Effectiveness in Prosecuting War Crimes"-:

The effectiveness of the International Criminal Court in prosecuting war crimes is significantly hindered by its inability to enforce its own judgments, as the Court remains dependent on state cooperation to follow and enforce the orders from ICC, leading to impunity and undermining the credibility of international criminal justice.

RESEARCH QUESTIONS:

1. How does the International Criminal Court's dependence on state cooperation impact the enforcement of its arrest warrants and judgments?



2. What are the legal, political, and structural barriers that prevent the ICC from effectively securing compliance and executing its decisions?
3. What consequences does the non-enforcement of ICC judgments have on the Court's credibility, deterrence effect, and the broader goal of international justice?
4. What practical or institutional reforms could strengthen the ICC's enforcement mechanisms and improve its overall effectiveness in prosecuting war crimes?

RESEARCH OBJECTIVE:

The objective of this research paper is to critically examine how the International Criminal Court's reliance on state cooperation for the enforcement of arrest warrants and judgments affects its effectiveness in prosecuting war crimes. The study aims to identify the key legal, political, and institutional barriers to enforcement, assess the impact of these limitations on the Court's legitimacy and deterrence function, and explore potential reforms or mechanisms that could enhance the ICC's ability to ensure accountability for international crimes.

METHODOLOGY:

This research adopts a qualitative, doctrinal, and analytical methodology. The study primarily involves doctrinal legal research, focusing on the analysis of primary legal instruments such as the Rome Statute of the International Criminal Court. Additionally, secondary sources including academic articles, books, journal publications, and reports by international organizations and human rights bodies are examined to evaluate the practical enforcement challenges faced by the ICC. The research also includes a comparative analysis of the enforcement mechanisms of other international and hybrid tribunals, such as the ICTY and ICTR, to draw insights into possible reforms. Through this approach, the paper seeks to assess how enforcement gaps undermine the ICC's ability to prosecute war crimes effectively and identify recommendations for strengthening its enforcement capacity within the existing framework of international law.



LITERATURE REVIEW

The effectiveness of the International Criminal Court (ICC) in prosecuting war crimes has been the subject of intense academic debate. Most of the attacks in the literature are politicization of the Court's prosecutorial decisions. Alana Tiemessen (2014) argues that ICC prosecutions are politicized and based on states' strategic referrals and level of cooperation and thus result in selective justice and undermine the impartiality and credibility of the Court¹. This is supplemented by the tone of preference by Timothy McCormack (1997), who finds history for the onset of war crimes prosecutions and denounces the reactive and disarticulated policy of the international community that defines present enforcement².

Jelena Pejic (1998) also writes further on the functional and organizational constraints of the ICC and concludes that there are stringent limits to the autonomy and functionality of the Court under the guise of political agendas overriding its institution, dependence on state resources, and jurisdictional constraints³. This institutional delay is also stated in Barria and Roper (2005) research, whose analysis of the ICTY and ICTR as precursors to the ICC highlights the reality that, with virtual absolute failure to apprehend suspects and enforce, the deterrent function of international criminal justice institutions has been severely compromised⁴. Alex Whiting (2009) dissolves the general misunderstanding that delayed justice equates to lost justice⁵.

He contends that war crimes are serious and must be probed and tried over a long period, and disagrees that, efficiently managed, delayed trials can even yield richer and more genuine offspring of justice. But Jacob Katz Cogan (2002) is wiser in his judgment, expecting problems

¹ Alana Tiemessen, 'The International Criminal Court and the Politics of Prosecutions' (2014) 18 Int'l J Hum Rts 444

² Timothy L. H. McCormack, 'Selective Reaction to Atrocity: War Crimes and the Development of International Criminal Law' (1997) 60 Alb L Rev 681

³ Jelena Pejic, 'Creating a Permanent International Criminal Court: The Obstacles to Independence and Effectiveness' (1998) 29 Colum Hum Rts L Rev 291

⁴ Lilian A. Barria & Steven D. Roper, 'How Effective Are International Criminal Tribunals? An Analysis of the ICTY and the ICTR' (2005) 9 Int'l J Hum Rts 349

⁵ Alex Whiting, 'In International Criminal Prosecutions, Justice Delayed Can Be Justice Delivered' (2009) 50 Harv Int'l LJ 323



in international tribunals like limiting defense rights, inefficient procedure, and political motivation to all coalesce and cause harm to the standard of fair trial and erode faith in the ICC as a court of law⁶. James Cavallaro and Jamie O'Connell (2020) deflect the argument to preventative justice, arguing that the ICC not only needs to prosecute historic crimes but also should take a more active role in atrocity prevention by learning from regional human rights mechanisms. They demand more funds for indirect accountability and structural changes that enhance the ICC's leverage and responsiveness⁷.

Lastly, Ruth Wedgwood (1995) prioritizes institution-building and normative value of war crimes prosecutions. To her, even though the ICC cannot be argued to be ideal, its symbolic function in setting standards of accountability is of immeasurable value towards the advancement of international criminal justice⁸.

Collectively, these sources bear witness to convergent opinion that although the ICC represents progress in international justice for the discipline, its efficacy is undermined by political interference, enforcement vacuum, procedural limitations, and over-optimism. Increasingly, in the academy, there is convergence on less strident, more nuanced response to justice incorporating prevention, accountability, and ongoing social reconciliation as much as prosecution⁹.

INTRODUCTION

The International Criminal Court (ICC) was founded on the ambitious goal of eliminating impunity for the perpetrators of the world's worst crimes against international justice—i.e., genocide, crimes against war, crimes against humanity, and the crime of aggression. The Rome Statute of 1998 enshrines the ICC, which entered into force in 2002, as

⁶ Jacob Katz Cogan, 'International Criminal Courts and Fair Trials: Difficulties and Prospects' (2002) 27 Yale J Int'l L 111

⁷ James L. Cavallaro & Jamie O'Connell, 'When Prosecution Is Not Enough: How the International Criminal Court Can Prevent Atrocity and Advance Accountability by Emulating Regional Human Rights Institutions' (2020) 45 Yale J Int'l L 1

⁸ Ruth Wedgwood, 'Prosecuting War Crimes' (1995) 149 Mil L Rev 217

⁹ Allison Marston Danner, 'Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court' (2003) 97 Am J Int'l L 510



a symbol of global criminal justice. It is a permanent court with the mandate to hold human beings accountable for the atrocity crime on a large scale and fill where gaps in national judicial action are unable or unwilling to do so. Despite institutional excellence and normative merit, effectiveness in the delivery of its mandate by the ICC has always been questioned and questioned. At the back of every such complaint, there is always a straightforward, unanswerable question: the Court's sua sponte inaction in executing its warrants of arrest and orders¹⁰.

Compared to national judicial systems with an easily accessible police force to arrest and detain suspects, the ICC does not have an easily accessible force. It depends on the good will of its 124 State Parties—and occasionally other non-party states—to enforce arrest warrants, extradite suspects, and impose sentences. Such reliance severely incapacitates effective Court functioning because political agendas, sovereignty, and geopolitical alliances primarily obstruct enforcement. Everyday failures like the many instances of denial by ICC member states to arrest Sudanese former president Omar al-Bashir with rightful standing warrants pending have demonstrated this enforcement deficiency. These are not simply isolated errors but are a trend which presents an interesting paradox in the ICC's law-making capability and its capability for enforcement¹¹.

The issue is further aggravated by international relations world politics. Dominant non-members like the United States, Russia, and China hold global governance but except in the Rome Statute. They hate the ICC and they also enjoy veto in the United Nations Security Council, and this normally incapacitates sincere action against their friends or strategic friends. Therefore, the enforcement of ICC judgments is highly politicized and not determined by the gravity of crime but geopolitics. This compromises universality and impartiality in international

¹⁰ Alana Tiemessen, 'The International Criminal Court and the Politics of Prosecutions' (2014) 18 Int'l J Hum Rts 444

¹¹ Jelena Pejic, 'Creating a Permanent International Criminal Court: The Obstacles to Independence and Effectiveness' (1998) 29 Colum Hum Rts L Rev 291



criminal justice and undermines the legitimacy of the Court and provokes charges of bias, especially from the Global South¹².

The objective of this research study is to critically examine the underlying issue of enforcement as a determinant factor for the likelihood of success of the ICC in prosecuting war crimes. It will address the matters of enforcement in law, politics, and institutions, assess the effects of non-compliance on deterrence and legitimacy of the Court, and propose potential reforms that can enhance enforcement mechanisms¹³. The general thesis is that if the ICC is to apply its mandate, then it must have stable and trustworthy enforcement, lest international criminal justice is a ritual and not a pragmatic reality. Thus, the paper shall be contributing to the debate on the future of international justice as well as the reforms that will ensure the credibility and integrity of the ICC¹⁴.

CASE STUDY

1. Omar al-Bashir (Sudan): Delayed Justice in Regime Transition

Omar al-Bashir, deposed Sudanese president, was the first incumbent head of state to be indicted by the International Criminal Court. The ICC indicted him in 2009 and 2010 for genocide, crimes against humanity, and war crimes committed against him in the Darfur mass atrocities. But Bashir did not leave until 2019 and visited some of the ICC member states such as South Africa, Kenya, Chad, and Jordan without being arrested. They used diplomatic immunity or regional loyalty to their disadvantage even though they were legally committed by law under the Rome Statute to comply with the ICC.

After his removal by a civilian coup in 2019, Sudan's transitional government initially explored collaborating with the ICC. The government, in 2021, said that it was willing to extradite Bashir to The Hague. Such an extradition has not been done so far until 2025,

¹² Timothy L. H. McCormack, 'Selective Reaction to Atrocity: War Crimes and the Development of International Criminal Law' (1997) 60 Alb L Rev 681

¹³ Ruth Wedgwood, 'Prosecuting War Crimes' (1995) 149 Mil L Rev 217

¹⁴ Lilian A. Barria & Steven D. Roper, 'How Effective Are International Criminal Tribunals? An Analysis of the ICTY and the ICTR' (2005) 9 Int'l J Hum Rts 349



primarily due to internal instability, the involvement of the military in the transition process, and political opposition from influential actors in Sudan. This is a typical example of absolute reliance of the ICC on states' political processes of enforcement and to how even through regime changes, judicial accountability would remain suspended in suspense. It also illustrates how the legitimacy of the Court is tainted when states defaulted on arrest duties without being held accountable for it.

2. Vladimir Putin (Russia): Power Politics and Enforcement Paralysis

The ICC issued a record arrest warrant for Russian President Vladimir Putin in March 2023 on the illegal deportation of children as a war crime committed in occupied Ukraine and their transport to Russia during the conflict. The warrant was the first in the history of the ICC ever issued against the head of a UN permanent member council. The move was received by international attorneys and human rights activists alike as a milestone towards accountability, particularly in the context of an existing large-scale conflict.

Enforcement of the warrant has been simply out of the question nonetheless. Russia, as a non-signatory to the Rome Statute, has categorically denied the ICC jurisdiction and continues to extend protection to its officials against prosecution. The ultimate test was at the 2023 BRICS summit in South Africa, a member country of the ICC. Although Putin himself did not ultimately show up in person purportedly because of diplomatic pressure and a requirement of law under which South Africa would have been in a position of obligation to arrest him, the event presented a delicate diplomatic challenge. South Africa was roundly criticized for first saying that it would leave the warrant untouched, then for ultimately finding an escape clause.

This example is used to illustrate how global hierarchies of power and realpolitik erode the authority of the ICC. It reveals that enforcement is no less deeply political than is one of law, in which geostrategy-situated leaders are de facto above the law, and feeble states are bullied into complicity or obedience.



3. Saif al-Islam Gaddafi (Libya): Political Re-Emergence of a Fugitive

Saif al-Islam Gaddafi, the son of former Libyan ruler Muammar Gaddafi, was charged by the ICC in 2011 with crimes against humanity such as murder and persecution for his role in the Libyan revolution crackdown. He was arrested in 2011 by a militia and held in Zintan for years and was also sentenced to death in absentia by a Libyan court. Despite having an active ICC warrant, he was let go in 2017 on an amnesty plan by the militia, and Libyan forces did not arrest him again or extradite him to the ICC.

In a dramatic turn of events, Saif al-Islam sought to stand as a president candidate during the 2021 Libyan elections despite being an ICC fugitive. While his candidature had been delayed, restoration of political life was a declaration of an absolute failure of implementation of ICC judgments even in the post-conflict period. He can roam unfettered in Libya through to 2025, and it is an example of the ICC failure to do anything where there is neither the political will nor capability to put in place for the advantage of the hosting nation.

This case shows how national legal fragmentation, militia control, and bad institutions can prevent enforcement even when there is no global power protecting the accused. It also shows how ICC non-enforcement of warrants can result in those indicted for atrocities to regain public respect and return to political life, thereby once more discrediting international justice.

4. Joseph Kony (Uganda/LRA): The Serial Fugitive

Wanted Notorious Lord's Resistance Army (LRA) commander Joseph Kony has been under an ICC warrant of arrest since 2005, and his is therefore the Court's most visible warrant. He is accused of a series of offenses that range from murder to enslavement, rape, and conscripting children into the armed forces. As much as the Ugandan soldiers have hunted Kony for decades and the US special soldiers, the fugitive still cannot be found, said to be hiding in the remotest parts of Central African Republic, South Sudan, or Democratic Republic of Congo.

The United States again publicly offered a reward for information resulting in the capture of Kony in early 2024, a demonstration of continued worldwide fascination but also of



continued inability to bring him to justice. Instability in the region, poor borders, and lack of harmonized government have enabled him to remain concealed nearly two decades.

The Kony case illustrates the ICC's jurisdictional and authority constraints in ungoverned or lawless areas. It also challenges the application of international criminal law if the perpetrator is a non-state actor, especially where the ICC does not have logistics and security bases of operation. The fact that he is still on the loose despite global surveillance illustrates an institutional weakness in the Court's ability to project beyond cooperative state jurisdictions.

ANALYSIS

Q - How does state cooperation has impact on the enforcement of judgments?

The efficacy of the International Criminal Court (ICC) to bring war criminals to conviction through trial is irresistibly balanced by the institutional dependence of the ICC on state cooperation to enforce its arrest warrants and convictions to be put into effect¹⁵. In contrast to national courts located within states that have sovereignty and police and executive capacities to enforce judicial findings, there is no organizational agency of the ICC to enforce. This absence of independent operating machinery is one on which the Court will have no option but rely on nothing more than its 124 State Parties to voluntarily enforce its orders—i.e., arrests, extraditions, and surrender of suspects¹⁶.

The most indicative visual allegory for such structural weakness would probably be the situation of former Sudanese President Omar al-Bashir. Two arrest warrants had already been issued by the ICC against al-Bashir in 2009-2010 for his crimes of genocide, war crimes, and crimes against humanity in Darfur. Unfazed by the seriousness of the allegations, al-Bashir just went about his business and continued to travel wherever he pleased, even to ICC member states like South Africa, Kenya, and Jordan. They, deferring to a requirement to comply with a legal obligation to enforce ICC arrest warrants, refused to make the arrest. South Africa's denial, thus,

¹⁵ Jelena Pejic, 'Creating a Permanent International Criminal Court: The Obstacles to Independence and Effectiveness' (1998) 29 Colum Hum Rts L Rev 291

¹⁶ Alana Tiemessen, 'The International Criminal Court and the Politics of Prosecutions' (2014) 18 Int'l J Hum Rts 444



ushered in an extremely well-publicized legal controversy that attested to the vulnerability of international law when national politics and state sovereignty converge. Al-Bashir's arrest was attributed by South African authorities to undermine regional security and diplomatic relationships in the interests of political expediency rather than political adherence to global norms of the rule of law in the open¹⁷.

The implications of this reliance are colossal. Without authority to direct the arrest of or force its verdicts on an individual, the ICC's verdicts have a chance of being an empty ring. Arrest warrants and convictions mean nothing if states are discretionary on whether to implement or not implement them. Not implementing them not only leaves the victims' justice in abeyance, but also encourages the perpetrators, who believe that they would not be punished by engaging in astute political tactics. Such a belief that impunity can be used to exclude the Court undermines the institution's integrity and erodes the legitimacy of the Court as an international war crimes enforcer¹⁸.

Briefly, the ICC's failure to issue its arrest warrants and convictions without reliance on the assistance of third-party states is not a technical problem—it's a structural one that cuts at the very core of its mandate. Even if the Court shall still be obligated to trust on the good faith of incidentally hostile states and states bound politically, its right to mete out justice reasonably and in circular ways shall always be unable to operate at a hundred percent potential. This institutional deficit must be addressed through institutional change, enhanced international cooperation, or coalition politics for compliance if the ICC is to fulfil its mandate to end impunity for the world's most heinous crimes¹⁹.

Q - What are the barriers that prevent the effective securing compliance and executing decisions?

¹⁷ Ruth Wedgwood, 'Prosecuting War Crimes' (1995) 149 Mil L Rev 217

¹⁸ Jacob Katz Cogan, 'International Criminal Courts and Fair Trials: Difficulties and Prospects' (2002) 27 Yale J Int'l L 111

¹⁹ Allison Marston Danner, 'When Courts Make Law: How the International Criminal Tribunals Recast the Laws of War' (2006) 59 Vand L Rev 1



The International Criminal Court (ICC) was envisioned as a monumental institution to ensure that perpetrators of the most heinous international crimes—genocide, crimes against humanity, war crimes, and the crime of aggression—are held accountable in a manner consistent with principles of justice, impartiality, and legal integrity. However, despite this lofty mandate and the establishment of a comprehensive legal framework under the Rome Statute, the ICC faces formidable hurdles in fulfilling its purpose. These challenges, primarily legal, political, and structural, render the Court's ability to deliver justice substantially compromised, particularly in the face of modern geopolitical complexities²⁰.

Legal Barriers

At the heart of the ICC's limitations lies the legal framework of the Rome Statute, which, while robust in defining the Court's jurisdiction and powers, fails to provide it with independent means of enforcement. The absence of a binding enforcement mechanism stands as one of the most fundamental legal constraints crippling the ICC.

Absence of Independent Enforcement Authority

Article 86 of the Rome Statute compels State Parties to fully cooperate with the ICC in the arrest, surrender, and prosecution of indictees. However, this obligation, though theoretically binding under international law, lacks practical compulsion. The ICC does not possess its own enforcement arms—no police, no military, no direct sanctioning capability. It must rely entirely on the goodwill of states to fulfill arrest warrants and extradition requests. Where cooperation is withheld or delayed, the Court's only recourse is to refer non-compliant states to the Assembly of State Parties (ASP) or, in some cases, to the United Nations Security Council (UNSC). However, these mechanisms are ineffectual in many instances, often resulting in political stalemates or hollow condemnations.

A telling example is the case of former Sudanese President Omar al-Bashir. Despite two ICC arrest warrants issued in 2009 and 2010, al-Bashir traveled freely to several ICC member

²⁰ Jelena Pejic, 'Creating a Permanent International Criminal Court: The Obstacles to Independence and Effectiveness' (1998) 29 Colum Hum Rts L Rev 291



states—including South Africa and Jordan—without being apprehended. Though these states were legally obliged to arrest him, their failure to do so highlighted the ICC's powerlessness in enforcing its mandates without willing cooperation.

Non-Party States and the Jurisdictional Void

Another significant legal obstacle is the existence of non-party states. Major powers such as the United States, China, Russia, and India have either not ratified the Rome Statute or have withdrawn from it. As non-signatories, they are under no legal obligation to cooperate with the Court, nor can the ICC exercise jurisdiction over their nationals unless crimes occur on the territory of a state party or unless a UNSC referral is made.

This legal lacuna has immense implications. These countries, collectively, wield vast geopolitical influence, economic resources, and military capabilities. They have also been implicated—either directly or through their allies—in various acts that could potentially fall within the ICC's jurisdiction, such as alleged war crimes, torture, or crimes against humanity. However, their legal insulation effectively makes them safe havens from international accountability, undermining the very universality that the ICC aspires to achieve²¹.

Political Barriers

The ICC does not operate in a political vacuum; rather, it is enmeshed in a deeply politicized global order. Nowhere is this more evident than in the powers conferred upon the United Nations Security Council under the UN Charter, particularly its authority to refer cases to the ICC under Chapter VII.

UNSC Referrals and the Power of Veto

The five permanent members (P5) of the UNSC—China, France, Russia, the United Kingdom, and the United States—each wield unilateral veto power. This veto can be exercised to prevent referrals of situations that may implicate themselves or their allies. Consequently,

²¹ Timothy L. H. McCormack, 'Selective Reaction to Atrocity: War Crimes and the Development of International Criminal Law' (1997) 60 Alb L Rev 681



the decision to initiate ICC investigations becomes less about legal merit and more about political feasibility.

For instance, while the UNSC was quick to refer the Darfur situation in Sudan to the ICC in 2005, it has conspicuously refrained from referring situations involving alleged crimes committed by U.S. personnel in Afghanistan or by Russian forces in Ukraine prior to the full-scale invasion of 2022. Despite ample evidence and calls from human rights organizations, UNSC inaction has reinforced perceptions of politicized selectivity in international criminal justice.

Moreover, this inconsistency entrenches the belief that international law is a tool of convenience for dominant powers rather than a universal standard applied evenly across all nations. Critics argue that the ICC, being beholden to the whims of global superpowers, ends up targeting weaker states in Africa and elsewhere, while ignoring atrocities perpetrated or abetted by powerful nations.

Diplomatic and Economic Calculus of State Cooperation

Beyond the veto, states often calculate their cooperation with the ICC based on political expediency rather than legal obligation. Arresting a former head of state, cooperating with investigations implicating a strategic partner, or surrendering military personnel to the Court can entail significant diplomatic fallout, economic repercussions, or domestic political backlash.

For example, many African nations initially welcomed the ICC as a mechanism to end impunity. However, as the Court increasingly focused on African leaders while appearing to ignore crimes committed in other regions, political support for the ICC began to erode. The African Union has even proposed a mass withdrawal from the Rome Statute, accusing the Court of neocolonial bias. In such a climate, legal obligations are often subverted by realpolitik, further diminishing the ICC's authority²².

²² Alana Tiemessen, 'The International Criminal Court and the Politics of Prosecutions' (2014) 18 Int'l J Hum Rts 444



Structural Barriers

The ICC's legal and political weaknesses are compounded by severe structural deficiencies that prevent it from operating as a fully functional international judicial body.

Lack of Enforcement Infrastructure

Unlike domestic criminal courts or even earlier international tribunals like the International Criminal Tribunal for the former Yugoslavia (ICTY), the ICC lacks its own enforcement mechanisms. The ICTY benefitted significantly from the logistical and military support of NATO, which facilitated the arrest of high-profile suspects like Slobodan Milošević. In contrast, the ICC operates in a fragmented and often hostile international environment without the backing of any comparable enforcement structure.

Its reliance on state cooperation to execute arrest warrants means that individuals indicted by the Court often live freely for years, if not decades. This state of affairs not only emboldens potential perpetrators but also erodes the credibility of international justice in the eyes of victims and the international community alike.

Furthermore, the ICC's investigative and prosecutorial teams face significant barriers accessing conflict zones or collecting reliable evidence in the field. Hostile governments may deny access, and ongoing conflict can make it perilous to gather testimonies or secure documentation.

The Doctrine of Complementarity

The principle of complementarity, enshrined in the Rome Statute, posits that the ICC may only exercise jurisdiction when national judicial systems are unable or unwilling to prosecute alleged crimes. While intended to respect state sovereignty and promote domestic accountability, in practice this principle creates significant delays and inconsistencies in the delivery of justice.

States can stall proceedings by claiming to be investigating the matter themselves, often as a façade to shield perpetrators. The ICC must then conduct a complex admissibility assessment to determine whether genuine proceedings are underway. This legal entanglement



has often led to procedural deadlock, allowing suspects to evade justice under the guise of national sovereignty.

In addition, complementarity presents a structural conundrum for post-conflict societies. Newly stabilized governments may lack the judicial capacity, political will, or independence to conduct impartial prosecutions. In such cases, the ICC becomes the last resort, yet its hands remain tied by legal doctrines and diplomatic constraints²³.

The Cumulative Impact: A Court with Power in Theory, Paralysis in Practice

The convergence of legal inadequacies, political interference, and structural fragilities has left the ICC in a position where its theoretical powers vastly exceed its practical capacity. The result is a court that can issue arrest warrants that remain unenforced, initiate investigations that stall due to non-cooperation, and deliver judgments that are seen as selectively applied or politically motivated.

The disjuncture between the ICC's normative framework and operational reality breeds cynicism and disillusionment. Victims of atrocity crimes look to The Hague for justice, only to be met with bureaucratic inertia and diplomatic gamesmanship. Simultaneously, perpetrators exploit legal loopholes and political protection to remain beyond the Court's reach.

The Court's soft powers of binding enforcement and politicized referrals and selective cooperation actually prevent it from delivering justice in cases of war crimes. Unless the structural weaknesses—by means of reforms, enhanced legal tools, or enhanced international cooperation—are removed, the ICC will be compelled to resign itself to ineffectiveness, and most of the perpetrators will evade justice²⁴.

²³ Lilian A. Barria & Steven D. Roper, 'How Effective Are International Criminal Tribunals? An Analysis of the ICTY and the ICTR' (2005) 9 Int'l J Hum Rts 349

²⁴ Allison Marston Danner, 'When Courts Make Law: How the International Criminal Tribunals Recast the Laws of War' (2006) 59 Vand L Rev 1



Toward Reform: Proposals for Revitalizing the ICC

If the ICC is to fulfill its promise as the cornerstone of international criminal justice, comprehensive reforms are necessary:

1. **Strengthening Legal Mandates:** The Rome Statute could be amended to grant the ICC more robust powers of enforcement, possibly through standing agreements with UN peacekeeping forces or regional security bodies.
2. **Reforming the UNSC Referral System:** The power of the veto could be curtailed in matters involving mass atrocities through a procedural amendment to the UN Charter or through political agreements among P5 states not to use the veto in such cases.
3. **Creating Incentives for Cooperation:** Financial aid, trade benefits, or diplomatic recognition could be used to incentivize states to comply with ICC requests. Simultaneously, targeted sanctions could be imposed on states that obstruct justice.
4. **Enhancing Investigative Capacity:** Investment in remote evidence-gathering tools, secure communication with witnesses, and partnerships with NGOs could improve the Court's operational capabilities.
5. **Building Domestic Capacity:** The ICC should intensify its outreach to national judicial systems, providing technical and legal assistance to ensure domestic trials meet international standards, thus making complementarity more than just a procedural hurdle.

The ICC remains a symbol of humanity's aspiration to end impunity and uphold the rule of law. However, unless it overcomes the legal ambiguities, political obstacles, and structural deficits that currently undermine its function, it risks becoming a hollow institution. To preserve its legitimacy and efficacy, the international community must commit itself not only to moral pronouncements but to institutional reform and political courage. Only then can the ICC truly serve as a beacon of justice in a fractured world.



Q - What consequences does the non-enforcement of judgments have?

The reality that the ICC is not able to enforce its decrees because states are not co-operating has appalling and constitutional implications for its legitimacy, its deterrent power, and the international system of justice which it is striving to maintain. Enforcement is something bureaucrats do not want lightly—it is the required nexus that brings judicial fiat and actual justice. Without the weight of enforcement, the ICC is an imaginary court and at best only a ceremonial court and one which cannot be and powerless to have any influence on all but realistically every aspect of its existence and mandate²⁵.

Most importantly, the deterrent function of the ICC is severely undermined if the convictions cannot be enforced. Enforcement of international criminal law serves a strong purpose, discouraging future atrocities for punishing perpetrators of heinous crimes such as genocide, war crimes, and crimes against humanity²⁶.

For the victims, the ICC is a glimmer of hope—a hope to receive justice, compensation, and acknowledgment of their experience. But with its years of hearing without arrest, or known perpetrators let go, the Court's credibility is lost. The victims may see the ICC as remote, ineffective court that speaks in press releases but does nothing for justice. The saying "justice delayed is justice denied" best fits the situation of war crimes and mass violence, where speedy delivery of speed justice is the requirement of the time so that healing, reconciliation, and rebuilding of relations in societies take place²⁷.

It paralyzes the Court's deterrent, discourages victims, erodes state-to-state credibility, and exposes the grievance of injustice and partiality. Most importantly, it undermines the international endeavour to create an equal and fair system of accountability for crimes. It must

²⁵ Ruth Wedgwood, 'Prosecuting War Crimes' (1995) 149 *Mil L Rev* 217

²⁶ Alex Whiting, 'In International Criminal Prosecutions, Justice Delayed Can Be Justice Delivered' (2009) 50 *Harv Int'l LJ* 323

²⁷ Jacob Katz Cogan, 'International Criminal Courts and Fair Trials: Difficulties and Prospects' (2002) 27 *Yale J Int'l L* 111



be rectified if the ICC is to continue being a valuable tool and deliver justice and closure to the world's worst crimes²⁸.

Q - What could Strengthen enforcement mechanisms and improve effectiveness in prosecuting war crimes?

To make the ICC more effective, particularly in enforcing judgments and arrest warrants, there needs to be a synergy of stepped-up practical, institutional, and political reforms. The reforms need to deal with the inherent enforcement deficit as a result of the Court's dependence on state cooperation—a shortcoming that lowers its capacity to prosecute war crime offenders and bring speedy justice to victims²⁹.

One of the most tangible and near-real-time efforts at reform is to put access mechanisms to regional human rights tribunals, e.g., the African Court on Human and Peoples' Rights, the European Court of Human Rights, and the Inter-American Court of Human Rights, in some degree of synchronization. They possess sufficient legal force and regional credibility and may very well be applied in an effort to render ICC goals believable. National courts and institutions may also apply domestic political pressure, observe state enforcement of arrest warrants, and facilitate closer cooperation between national and international authorities. Placing enforcement action in a regional context allows the ICC to stretch beyond what would be tolerable sovereignty. Regional institutions, as an example, can be entrusted with an officially recognized role of compliance monitoring and follow-up upon arriving at a judgment, establishing an institution of overlapping responsibility³⁰.

The second central reform is to enhance the effectiveness of the United Nations Security Council (UNSC) and other international political institutions to enforce ICC judgments. Although the UNSC is currently able to refer cases to the ICC, the UNSC itself also routinely

²⁸ Alex Whiting, 'In International Criminal Prosecutions, Justice Delayed Can Be Justice Delivered' (2009) 50 Harv Int'l LJ 323

²⁹ Jelena Pejic, 'Creating a Permanent International Criminal Court: The Obstacles to Independence and Effectiveness' (1998) 29 Colum Hum Rts L Rev 291

³⁰ Allison Marston Danner, 'When Courts Make Law: How the International Criminal Tribunals Recast the Laws of War' (2006) 59 Vand L Rev 1



declines to serve its backup enforcement function. The ICC can invoke more binding, direct within the UN system requiring member states to act in accordance with Court rulings, particularly those referred by the Council itself. ICC may also have auto-executing measures triggered in referred cases—with definite diplomatic or economic action under UNSC mandate pre-determined. Political composition of the UNSC is short term, but to utilize it more seriously would be a giant step towards the establishment of the ICC enforcement power³¹.

The ICC is also able to enhance its institution capacity for public diplomacy and campaigning. Particularly, the more immediate "naming and shaming" tactic of outlaw regimes can be employed to construct international publicity and reputational pressure. Shaming reluctant governments into detaining indicted officials or cooperating in investigations can lead to foreign press scrutiny, citizen mobilization campaigns, and internal opposition movements³².

Moreover, the ICC can institutionalize cooperative arrangements with national judiciaries and police in politically oriented and stable governments. Capacity-building training and technical assistance can also assist national authorities to implement ICC-related judicial process and arrest suspects. The more states establish liaison offices or specialist national units in an attempt to assist in the provision of assistance to the ICC, the stronger is the international enforcement. In addition, the Court can strengthen compliance by encouraging supportive states positively and rewarding them and thereby exerting a positive model influence on other states to emulate³³.

Institutional reform in the long term would also include modifying the Rome Statute to contain more effective enforcement provisions or at least discuss proposals on a permanent institution of international enforcement—though politically some would resist that. While the

³¹ Ruth Wedgwood, 'Prosecuting War Crimes' (1995) 149 *Mil L Rev* 217

³² Timothy L. H. McCormack, 'Selective Reaction to Atrocity: War Crimes and the Development of International Criminal Law' (1997) 60 *Alb L Rev* 681

³³ James L. Cavallaro & Jamie O'Connell, 'When Prosecution Is Not Enough: How the International Criminal Court Can Prevent Atrocity and Advance Accountability by Emulating Regional Human Rights Institutions' (2020) 45 *Yale J Int'l L* 1



following ideas currently appear utopian, discussing such things along these lines is necessary for eventual change³⁴.

REFORM PROPOSALS AND THE WAY FORWARD

The International Criminal Court (ICC), as much promise as it is of an international permanent court of justice, still hovers on the horizon weighed down by the very same inherent drawback of enforcement. Its institutional dependence upon the goodwill of the states has made it susceptible to political manipulation, selective compliance, and brazen defiance. While these obstacles are ingrained in the international political and legal order, a four-track reform process of pragmatic, diplomatic, institutional, and juridical character has the potential to provide reasonable alternatives to re-establish functional legitimacy to the ICC and enable it to pursue its mandate to bring justice to the most serious international crimes³⁵.

5. *Strengthening Regional Cooperation Mechanisms*

The most valued shift would be ICC having cooperation arrangements with regional courts and entities like African Court on Human and Peoples' Rights, Inter-American Court of Human Rights, and European Court of Human Rights, to which it would have an official status of cooperation. They already have premises in regional political culture and juridical framework and are well placed to develop state action in their geography-oriented arena. These national courts would assist the ICC in enforcing arrest warrants, contribute intelligence and logistical assistance, and exert diplomatic pressure upon member states. This support will combat neocolonial opposition to impartiality and generate a sense of mutual legal obligation within a geographical region. Such coalitions would not only enhance effective enforcement but would

³⁴ Allison Marston Danner, 'Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court' (2003) 97 Am J Int'l L 510

³⁵ Alex Whiting, 'In International Criminal Prosecutions, Justice Delayed Can Be Justice Delivered' (2009) 50 Harv Int'l LJ 323



boost the legitimacy of the Court, especially with those states that see it as a Western or far-off court³⁶.

6. *Diplomatic and Economic Pressure against Non-Cooperative States*

Where legal pressure alone falls short to spur a response, specially designed diplomatic and economic pressure will be more effective. The ICC would also engage regional institutions such as the African Union, the United Nations, and the European Union in enforcing sanctions on such governments that systematically decline to execute arrest and surrender warrants against suspects. The sanctions can be designed in the words of asset freeze, foreign aid denial, travel ban on political leaders, or stripping the right to vote within regional institutions. These steps can radically change the cost-benefit analysis of states that harbour criminals from justice. In addition, associating enforcement with international criminal warrants to other diplomatic incentives—e.g., trade agreements, development assistance, or international alignments—can provide effective incentive to conform, particularly to poor or weak states³⁷.

7. *Strengthening the Role of the UN Security Council*

While the UN Security Council (UNSC) may refer cases to the ICC under Chapter VII of the UN Charter, its support is bound to be no broader. The Court's jurisdiction to enforce sentences in referred cases is massively undermined without constant political and logistic backing. In so far as this involves correction, the UNSC would be required to pass binding resolutions with enforcement features like deadlines for arrest cooperation, reporting requirements, and default sanctions. Procedural reforms within the UNSC are also needed, like the restriction of the use of the veto in a bid to utilize it in instances of mass crime and atrocities and against crimes against international law. Through translating UNSC referrals to symbolic

³⁶ Jelena Pejic, 'Creating a Permanent International Criminal Court: The Obstacles to Independence and Effectiveness' (1998) 29 Colum Hum Rts L Rev 291

³⁷ James L. Cavallaro & Jamie O'Connell, 'When Prosecution Is Not Enough: How the International Criminal Court Can Prevent Atrocity and Advance Accountability by Emulating Regional Human Rights Institutions' (2020) 45 Yale J Int'l L 1



action into binding commitment, the Court's functional capacity and mandate would be significantly heightened³⁸.

8. *Mobilization of Civil Society and Public Diplomacy*

As it has restricted enforcement capability, the ICC will increasingly have to depend on moral suasion and public shaming. Public diplomacy must be heightened. The Court should be in the business of shaming and naming the offending states with frequent public reporting, press briefings, and international campaigns. In collaboration with civil society, NGOs, and the academy, pressure can be put on governments and mass justice movements. Public action will be strongest in democracies or pseudo-democracies where reputation is at stake internationally. In addition, broad-based public campaigns that sensitise the people to their nation's commitment under the Rome Statute can mobilise domestic stakeholders towards pushing their politicians to comply³⁹.

9. *Institutional Amendments to the Rome Statute*

Will and diplomacy are necessary but institutional change over the long term will have to be accomplished in order to address the enforcement flaw of the ICC. This would be by way of amending the Rome Statute itself. Reforms can make more explicit and more efficient the legal responsibilities of member states, impose ever more severe sanctions on non-compliance, and enhance the powers of the Court to directly engage international enforcement authorities like INTERPOL. An independent office of enforcement coordination in the ICC can enable bridging national law enforcement authorities and regional security institutions. Although such legislative changes would have to be bargained out by States Parties—a political battle up the

³⁸ Timothy L. H. McCormack, 'Selective Reaction to Atrocity: War Crimes and the Development of International Criminal Law' (1997) 60 Alb L Rev 681

³⁹ Allison Marston Danner, 'Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court' (2003) 97 Am J Int'l L 510



steep hill of hill-climbing—they represent a step toward creating an enforcement mechanism that is coordinated, dynamic, and less reliant on ad hoc case-by-case diplomacy⁴⁰.

10. Ad Hoc and Hybrid Tribunals as Teachers of History

Lessons of the past. The ICTY and ICTR, while equally under constrained in enforcement in the early years, also matured with persistent international pressure and connection to wider political processes. Serbia's eventual cooperation in the arrest of suspects such as Slobodan Milošević and Ratko Mladić, for example, was effectively made contingent on EU accession negotiations and international rewards. Likewise, the Special Court for Sierra Leone, with robust UN support and regional cooperation, convicted Charles Taylor. The ICC can take a cue from these lessons by acting in concert with regional and international actors with the capability to exert external pressure. By coordinating its activities with the world development and political climate, the Court can close the enforcement gap and apprehend more fugitives⁴¹.

Enforcement is the International Criminal Court's weakest link. But it's not a lost cause. With wise intermixing of regional blocks, diplomatic pressure, legislative effort, civil society mobilization, and institutional change, the Court can increase its functional efficacy and reassert its role as guardian of international justice. The ICC will never have direct enforcement powers like national systems, but through innovative and collaborative mechanisms, it is possible to make its findings not bald statements but something meaningful and material of which justice demands⁴².

CONCLUSION

The establishment of the International Criminal Court (ICC) was a light of hope for the world to access justice, common desire to end impunity against perpetrators of the world's most

⁴⁰ Ruth Wedgwood, 'Prosecuting War Crimes' (1995) 149 *Mil L Rev* 217

⁴¹ Lilian A. Barria & Steven D. Roper, 'How Effective Are International Criminal Tribunals? An Analysis of the ICTY and the ICTR' (2005) 9 *Int'l J Hum Rts* 349

⁴² Jacob Katz Cogan, 'International Criminal Courts and Fair Trials: Difficulties and Prospects' (2002) 27 *Yale J Int'l L* 111



abhorrent crimes. But with its noble idealized remit and symbolic authority, the Court has found it difficult to realistically administer justice—among the first of which is that it has no power at all to enforce arrest warrants and convictions in the initial place. This research has assisted to close this gap in enforcement, illustrating how the ICC's institutional requirement for state cooperation has, in effect, incapacitated it from trying war crimes and its broader mandate.

The point is also supported by the fact that the ICC is in a *de facto* constraining situation. In the absence of an independent power of enforcement to act on its behalf, the Court relies on the political will of states to make arrests and extradite suspects. This has led to a trend of skewed cases—most recently Omar al-Bashir's where arrest warrants were denied—even from states with an international law obligation under the Rome Statute. This speaks to the weakness in a co-operative based framework of such cases particularly where state interest, sovereignty issues, or political allegiance take precedence over juridical obligations. Lack of ICC's coercive power renders its judicial power a theory in situation of non-cooperation, and criminals go unpunished and there is impunity. Political and legal obstacles prolong the enforcement gap.

The Rome Statute lacks an adequate sanction that compels cooperation, and the United Nations Security Council that handles the referral and assistance cases will be more likely to act discriminatorily with the use of the permanent members' veto power. This generated double standards and geo-political discriminations against the African countries that have also filed charges against the ICC of preferential prosecution of Global South figures and refusal to prosecute powerful non-members. That soiling of the Court image undermines international faith in fairness and impartiality of international criminal justice. Its failure to enforce its decisions has procedure impacts beyond. It dis-legitimizes the ICC as a deterrent, as perpetrators know the low chances of success in prosecution. Victims lose confidence in the Court to provide justice, which contaminates its transitional justice and reconciliation mandate. Its vision of global rule of law is also undermined where international standards are selectively applied or simply violated.

Even while they are being faced with such obligations, the research looks for reform options that are capable of maintaining the coercive powers of the ICC. Co-operation with local



human rights organizations, economic and diplomatic pressure on offending governments, more active public diplomacy, and transfer of ad hoc tribunals best practice like ICTY and ICTR are all options which can be made to work. The ICC would never have a national police force, but it is arguably still possible that one might construct a better enforcement tool through institutional innovation and international political leadership. Together, the usefulness of the ICC cannot be assessed in terms of jurisprudence or indictments but whether its judgments are put into practice. Without enforcement, justice is partial. In order to allow the ICC to arrive at the status of being a court of practice—a court capable of dispensing justice in spite of the obduracy of politics—one ought to address this glaring obvious shortcoming.

REFERENCES

- Alana Tiemessen, 'The International Criminal Court and the Politics of Prosecutions' (2014) 18 Int'l J Hum Rts 444
- Timothy L. H. McCormack, 'Selective Reaction to Atrocity: War Crimes and the Development of International Criminal Law' (1997) 60 Alb L Rev 681
- Jelena Pejic, 'Creating a Permanent International Criminal Court: The Obstacles to Independence and Effectiveness' (1998) 29 Colum Hum Rts L Rev 291
- Lilian A. Barria & Steven D. Roper, 'How Effective Are International Criminal Tribunals? An Analysis of the ICTY and the ICTR' (2005) 9 Int'l J Hum Rts 349
- Alex Whiting, 'In International Criminal Prosecutions, Justice Delayed Can Be Justice Delivered' (2009) 50 Harv Int'l LJ 323
- Jacob Katz Cogan, 'International Criminal Courts and Fair Trials: Difficulties and Prospects' (2002) 27 Yale J Int'l L 111
- James L. Cavallaro & Jamie O'Connell, 'When Prosecution Is Not Enough: How the International Criminal Court Can Prevent Atrocity and Advance Accountability by Emulating Regional Human Rights Institutions' (2020) 45 Yale J Int'l L 1
- Ruth Wedgwood, 'Prosecuting War Crimes' (1995) 149 Mil L Rev 217



Allison Marston Danner, 'Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court' (2003) 97 Am J Int'l L 510

