

THE EFFECTIVENESS OF THE INTERNATIONAL CRIMINAL COURT IN ADDRESSING WAR CRIMES AND CRIMES AGAINST HUMANITY

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Abstract

This paper examined the effectiveness of the International Criminal Court (ICC) in addressing war crimes and crimes against humanity. The ICC was established with the primary aim of ending impunity for the perpetrators of the most serious offenses that threaten the peace, security, and well-being of the world. Historically, the pursuit of justice for war crimes and crimes against humanity was sporadic, limited to ad hoc tribunals like those for Rwanda and the former Yugoslavia. The Rome Statute of 1998 marked a significant development in international law, creating a permanent institution dedicated to prosecuting such crimes. Despite its noble aims, the ICC faces substantial challenges. These include political interference, lack of cooperation from member states, and limitations in jurisdiction, as the court can only prosecute crimes committed within the territories of signatory states or referred to it by the United Nations Security Council. Additionally, the ICC has been criticized for perceived biases, particularly its focus on African cases, and its limited enforcement capabilities. However, the ICC has made important strides in advancing international justice, contributing to the development of international criminal law, and providing a platform for victims' voices. The court's work has also raised awareness and encouraged reforms in national judicial systems. The prospects for the ICC hinge on enhancing state cooperation, securing broader jurisdictional authority, and addressing the criticisms of bias to reinforce its legitimacy and effectiveness in the global fight against impunity for war crimes and crimes against humanity.

Keywords: ICC, War Crimes and Crimes Against Humanity

1.0 Introduction

The International Criminal Court (ICC) represents a landmark in the evolution of international criminal justice, created with the intent to bring to justice those responsible for the gravest offenses against humanity, including war crimes and crimes against humanity.² Its establishment in 2002 through the Rome Statute marked the first time that a permanent international tribunal was empowered to prosecute individuals for these heinous acts, filling a crucial gap in the global legal framework. The origin of the ICC can be traced back to the atrocities committed during World War II, which led to the establishment of the Nuremberg and Tokyo Tribunals. These tribunals laid the groundwork for prosecuting war crimes on an international scale and setting important legal precedents. However, they were limited in scope, applying only to the defeated Axis powers and lacking permanence. The Cold War further complicated the establishment of a permanent court due to geopolitical tensions. It was not until the end of the Cold

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² P Akhavan, 'Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?' [2001] (95) (1) *American Journal of International Law* 7-31.

War, with the creation of ad hoc tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) in the 1990s, that the international community renewed efforts to create a permanent judicial body. These tribunals highlighted the need for a consistent and ongoing mechanism to address such crimes, leading to the negotiations that resulted in the Rome Statute.³

The Rome Statute of 1998, which established the ICC, represents a significant step forward in the international community's efforts to combat impunity for the most serious crimes. While the ICC has made notable contributions to international criminal law and justice, it faces ongoing challenges related to political interference, state cooperation, and jurisdictional limitations. The effectiveness of the ICC in fulfilling its mandate will depend on its ability to navigate these challenges while maintaining its legitimacy and impartiality.

2.0 Examination of the Rome Statute, 1998

The Rome Statute, adopted on July 17, 1998, and entering into force on July 1, 2002, established the ICC as an independent permanent court. Its jurisdiction covers four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.⁴ The ICC's jurisdiction is complementary to national criminal jurisdictions, meaning it can only prosecute when national courts are unwilling or unable to do so. The Rome Statute, adopted on July 17, 1998, in Rome, Italy, marked a significant moment in the development of international criminal justice by establishing the International Criminal Court (ICC). The treaty, which entered into force on July 1, 2002, was the culmination of decades of efforts to create a permanent international court that could prosecute individuals for the most serious crimes of international concern, such as genocide, war crimes, crimes against humanity, and the crime of aggression.⁵

The reasons of States to approach International Criminal Court, maybe due to various reasons ranging from lack of funds, political will or perhaps the culprits are high profile persons of States. Also, difficulty in accessing evidence at the scene of crime, where journalists are not allowed to video crimes, for instance Al Jazeera.

The idea of an international criminal court dates to the aftermath of World War I, but it gained significant traction after World War II with the establishment of the Nuremberg and Tokyo Tribunals. However, the geopolitical tensions of the Cold War stalled progress on creating a permanent court. It was not until the 1990s, after the Cold War had ended and in response to atrocities in Rwanda and the former Yugoslavia, that the international community renewed efforts to establish a permanent judicial body. In 1994, the International Law Commission (ILC) presented a draft statute for an international criminal court to the United Nations General Assembly. This draft served as the basis for negotiations that began in 1995. These negotiations involved intense discussions among representatives from over 160 countries, non-governmental organizations, and legal experts. Key issues included the court's jurisdiction, its relationship with national courts, and the definition of crimes within its purview.⁶ The negotiations culminated in the Rome Conference of 1998, where the Rome Statute was adopted with

³ R S Clark, 'The International Criminal Court: Crimes Against Humanity' [2001] (50) (4) *Review of International Affairs* 293-309.

⁴ Rome ICC Statute, 1998

⁵ ICC Statute, 1998.

⁶ Rome Statute, 1998, article 12-20.

120 votes in favour, 7 against, and 21 abstentions. The treaty required ratification by 60 countries to enter into force, a milestone achieved on April 11, 2002. Legally, the ICC operates under a framework designed to uphold principles of international justice, with a focus on individual criminal responsibility. The court's jurisdiction is limited to crimes committed after its establishment and generally to the territories or nationals of states that have ratified the Rome Statute, unless the United Nations Security Council refers a case.

The ICC is composed of four main organs:

a. The Presidency

This organ is responsible for the overall administration of the court, except for the Office of the Prosecutor. It consists of three judges elected by their peers: the President and two Vice-Presidents, who serve for three-year terms.

b. The Judicial Divisions

The Judicial Divisions consist of 18 judges divided into three sections: Pre-Trial, Trial, and Appeals Divisions. These judges are elected by the Assembly of States Parties and serve nine-year non-renewable terms.

c. The Office of the Prosecutor (OTP)

The OTP is responsible for conducting investigations and prosecutions. It operates independently from the other organs of the court and is led by the Prosecutor, who is elected by the Assembly of States Parties for a nine-year term.

d. The Registry

The Registry is responsible for the non-judicial aspects of the court's administration, including managing court records, providing support to victims and witnesses, and maintaining the detention centre.

3.0 Effectiveness of the International Criminal Court in Addressing War Crimes and Crimes Against Humanity

The effectiveness of the ICC in addressing war crimes and crimes against humanity has been mixed.⁷ On one hand, the court has made significant contributions to international law, such as advancing the legal definitions of these crimes and establishing accountability for high-profile perpetrators, including heads of state. The ICC's existence has also served as a deterrent, influencing political and military leaders to consider the legal consequences of their actions. However, the ICC faces numerous challenges that affect its effectiveness. These include political constraints, as powerful nations that are not party to the Rome Statute, such as the United States, China, and Russia, limit the court's reach. Additionally, the ICC relies heavily on the cooperation of states to arrest and surrender suspects, which

⁷ F Megret, 'Epilogue to an Endless Debate: The International Criminal Court's Third-Party Jurisdiction and the Looming Revolution of International Law' [2001] (12) (2) *European Journal of International Law* 247-268.

is not always forthcoming. The court has also faced criticism for its perceived focus on Africa, raising questions about its impartiality and legitimacy.⁸

Despite these challenges, the ICC continues to play a crucial role in the international legal landscape. Its work not only provides a pathway to justice for victims but also helps to uphold the principles of international law and contribute to global peace and security. The ICC's future effectiveness will depend on its ability to overcome political obstacles, expand its jurisdictional reach, and maintain its credibility as an impartial arbiter of justice.⁹

The Rome Statute is a comprehensive document consisting of 128 articles, outlining the court's functions, jurisdiction, structure, and procedures. Article 5, Crimes within the Jurisdiction of the ICC, defines the four core crimes under the court's jurisdiction: genocide, crimes against humanity, war crimes, and the crime of aggression. The inclusion of the crime of aggression, however, was deferred for future negotiations and was only activated by an amendment adopted in 2010. Article 12, Preconditions to the Exercise of Jurisdiction, specifies that the ICC could exercise jurisdiction if the crime occurred in the territory of a State Party, or if the accused is a national of a State Party, or if the United Nations Security Council refers the situation to the court.

Furthermore, Article 17 establishes the principle of complementarity, meaning the ICC can only prosecute cases where national jurisdictions are unwilling or unable to do so. Article 27 asserts that official capacity as a head of state or government does not exempt an individual from criminal responsibility, nor does it constitute grounds for reducing a sentence. Article 53 provides the Prosecutor with discretion to decide whether to initiate an investigation or prosecution, considering factors such as the interests of justice and the gravity of the crime.¹⁰ Article 8 of the Rome Statute outlines the definition and scope of war crimes, which are serious violations of the laws and customs applicable in international and non-international armed conflicts.¹¹ War crimes include but are not limited to grave breaches of the Geneva Conventions (for instance wilful killing, torture, inhuman treatment). Intentionally directing attacks against civilians or civilian objects not taking part in hostilities, employing poisonous weapons, asphyxiating gases, or other weapons that cause unnecessary suffering, rape, sexual slavery, enforced prostitution, forced pregnancy, and other forms of sexual violence, conscripting or enlisting children under the age of 15 years into armed forces or groups. Article 7 defines crimes against humanity as widespread or systematic attacks directed against any civilian population, with knowledge of the attack.

4.0 Challenges Facing ICC

The International Criminal Court (ICC) plays a crucial role in prosecuting individuals for war crimes, crimes against humanity, genocide, and, more recently, the crime of aggression. However, the ICC faces significant challenges that undermine its effectiveness and credibility.

⁸ *Ibid.*

⁹ M M El Zeidy, 'The Principle of Complementarity: A New Machinery to Implement International Criminal Law' [2008] (23) (4) *Michigan Journal of International Law* 869-975.

¹⁰ *Ibid.*

¹¹ Rome Statute, 1998.

i. Lack of Enforcement Power

The ICC lacks its own enforcement mechanism, such as a police force, to execute arrest warrants and judgments.¹² It relies on member states to cooperate and enforce its decisions. For instance, the case of Omar Al Bashir, the former president of Sudan, illustrates this challenge. Despite being indicted by the ICC for genocide, war crimes, and crimes against humanity in Darfur, Al Bashir evaded arrest for years. Several countries, including ICC member states, failed to detain him during his international travels, highlighting the court's reliance on state cooperation and the difficulties in enforcing its mandates.

ii. Political Interference and Selectivity

The ICC often faces accusations of political bias and selectivity, particularly in its choice of cases and defendants. This can lead to the perception that the ICC is a tool of powerful states or that it disproportionately targets certain regions or leaders.¹³ For instance, the ICC has been criticized for focusing predominantly on African leaders, leading to allegations of bias from the African Union (AU). Cases like that of Uhuru Kenyatta, the President of Kenya, who was charged with crimes against humanity related to the 2007-2008 post-election violence, have fuelled this perception. Although the charges were later dropped due to insufficient evidence, the case strained relations between the ICC and several African nations.¹⁴

iii. State Non-Cooperation

The ICC's effectiveness is heavily dependent on state cooperation, particularly in the arrest and surrender of suspects. When states refuse to cooperate, it severely hampers the court's ability to prosecute crimes. In the case of Saif al-Islam Gaddafi, son of former Libyan leader Muammar Gaddafi, Libya refused to surrender him to the ICC despite an outstanding warrant for his arrest on charges of crimes against humanity during the 2011 civil war. Libya insisted on trying him domestically, illustrating how state non-cooperation can obstruct ICC proceedings.

iv. Limited Jurisdiction

The ICC's jurisdiction is limited to crimes committed on the territory of a State Party or by nationals of a State Party unless referred by the United Nations Security Council.¹⁵ This limitation restricts the court's ability to address crimes in non-member states.¹⁶

For instance, the ICC's inability to address crimes committed in Syria during the ongoing civil war highlights this challenge. Syria is not a party to the Rome Statute, and despite widespread reports of war crimes and crimes against humanity, the ICC has no jurisdiction to prosecute these crimes unless the United Nations Security Council refers the situation to the ICC, which has not happened due to political vetoes from permanent members.

¹² W A Schabas, 'The Banality of International Justice' [2011] (9) (4) *Journal of International Criminal Justice* 903-908.

¹³ *Ibid.*

¹⁴ H Olosolo, 'The Triggering Procedure of the International Criminal Court: Procedural Treatment of the Principle of Complementarity and the Role of the Office of the Prosecutor' [2007] (4) (1) *International Criminal Law Review* 121-146.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

iv. Resource Constraints

The ICC faces significant financial and logistical constraints, limiting its ability to investigate and prosecute cases effectively.¹⁷ These resource limitations can lead to delays and reduced effectiveness in delivering justice. For instance, the case of Joseph Kony and the Lord's Resistance Army (LRA) in Uganda illustrates the ICC's resource constraints. Despite issuing arrest warrants in 2005 for Kony and other LRA leaders for war crimes and crimes against humanity, the ICC has struggled to bring them to justice due to limited resources for tracking and apprehending them in remote and conflict-ridden areas.¹⁸

vi. Witness Protection and Intimidation

Witness protection is a critical challenge for the ICC. In many cases, witnesses face threats, intimidation, or even violence, which can undermine the integrity of the proceedings and lead to witness withdrawals or unreliable testimonies. For instance, in the case against Jean-Pierre Bemba Gombo, a Congolese politician and militia leader, several witnesses were allegedly intimidated, leading to retractions or altered testimonies. This issue was significant enough that it led to a separate trial for witness tampering against some of Bemba's associates. Witness protection remains a persistent challenge for the ICC, particularly in unstable regions.¹⁹

vii. Complexity and Length of Trials

ICC trials are often highly complex and lengthy, which can delay justice and lead to criticism of the court's efficiency. The lengthy duration of trials can also contribute to witness fatigue and the erosion of evidence over time. For instance, the trial of Thomas Lubanga Dyilo, the first person convicted by the ICC, took nearly six years from his arrest in 2006 to his conviction in 2012. The trial faced numerous delays due to issues related to evidence, procedural matters, and the complexity of the case, demonstrating the challenges of ensuring timely justice while maintaining due process.²⁰ Thus, the ICC's mission to deliver justice for the most serious crimes under international law is fraught with challenges, from a lack of enforcement power and political interference to jurisdictional limitations and resource constraints. While the court has made significant strides in international criminal justice, addressing these challenges is crucial for enhancing its effectiveness and legitimacy in the global arena. The continued evolution of international law and cooperation among states will be key to overcoming these obstacles.²¹

5.0 Achievements and Failures of the ICC

The ICC has had successes and failures in its quest to hold individuals accountable for war crimes and crimes against humanity. For instance, the case of *The Prosecutor v. Thomas Lubanga Dyilo*,²² the facts of the case were as follows, Thomas Lubanga Dyilo, a Congolese warlord, was the first person to be tried and convicted by the ICC. He was charged with enlisting and conscripting children under the age

¹⁷ A M Danner, 'Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court' [2003] (97) (3) *American Journal of International Law* 510-552.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ A M Danner, 'Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court' [2003] (97) (3) *American Journal of International Law* 510-552.

²¹ *Ibid.*

²² (ICC-01/04-01/06).

of 15 to participate actively in hostilities in the Democratic Republic of Congo (DRC) between 2002 and 2003. On March 14, 2012, the ICC found Lubanga guilty of war crimes related to the use of child soldiers. He was sentenced to 14 years of imprisonment. This case was a landmark as it was the first conviction by the ICC and highlighted the court's focus on crimes involving the exploitation of children in conflict. It set a precedent for future cases involving child soldiers. Also, the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.²³ The facts of the case were as follows Jean-Pierre Bemba, a former Vice President of the DRC, was charged with war crimes and crimes against humanity, including murder, rape, and pillaging, committed by his militia, the Mouvement de Libération du Congo (MLC), in the Central African Republic (CAR) between 2002 and 2003. On March 21, 2016, Bemba was found guilty of all charges, including command responsibility for the actions of his subordinates. He was sentenced to 18 years in prison. This case was significant as it was the first time the ICC held a high-ranking official responsible for crimes committed by troops under his command. It also underscored the ICC's commitment to addressing sexual violence in conflict.

Furthermore, is the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*.²⁴ The facts of the case shows that, Ahmad Al Faqi Al Mahdi, a member of the Ansar Dine militant group in Mali, was charged with the war crime of intentionally directing attacks against religious and historic buildings, including mausoleums in Timbuktu, in 2012. On September 27, 2016, Al Mahdi pleaded guilty and was sentenced to nine years in prison. This case marked the first time the ICC prosecuted the destruction of cultural heritage as a war crime. It highlighted the ICC's role in protecting cultural property in conflict zones.

However, the failures of ICC can be illustrated in the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir*,²⁵ where Omar Al Bashir, the former President of Sudan, was charged with war crimes, crimes against humanity, and genocide related to the conflict in Darfur, and his government was accused of orchestrating mass killings, rape, and displacement of civilians. Despite two arrest warrants issued by the ICC in 2009 and 2010, Al Bashir remained at large for years, traveling freely to various countries that did not enforce the warrants. Sudan's non-cooperation and the lack of enforcement mechanisms within the ICC exposed the court's limitations. Al Bashir was eventually ousted from power in 2019, and Sudan's transitional government agreed to hand him over to the ICC. However, the case highlighted the ICC's dependence on state cooperation and its inability to enforce arrest warrants independently. The case of *The Prosecutor v. Uhuru Muigai Kenyatta*,²⁶ Uhuru Kenyatta, the former President of Kenya, was charged with crimes against humanity, including murder, rape, and forcible transfer of population, in connection with the post-election violence in Kenya in 2007-2008. The case faced numerous obstacles, including alleged witness tampering, lack of cooperation from the Kenyan government, and insufficient evidence. The ICC's inability to gather enough evidence to proceed was a significant blow to its credibility.

In December 2014, the ICC withdrew charges against Kenyatta, citing lack of evidence and cooperation from the Kenyan authorities. This case underscored the difficulties the ICC faces when prosecuting powerful political figures, particularly in cases where state cooperation is essential for securing

²³ (ICC-01/05-01/08).

²⁴ (ICC-01/12-01/15).

²⁵ (ICC-02/05-01/09).

²⁶ (ICC-01/09-02/11).

evidence and protecting witnesses. Thus, the ICC, through the Rome Statute, has established a critical legal framework for prosecuting war crimes and crimes against humanity. While the court has achieved significant successes in holding individuals accountable for heinous crimes, it also faces considerable challenges, particularly in securing cooperation from states and enforcing its mandates. The successes of cases like those against Lubanga and Bemba demonstrate the ICC's potential to deliver justice, while the failures in cases like those against Al Bashir and Kenyatta highlight the need for enhanced international cooperation and stronger enforcement mechanisms.

6.0 Enforcement Mechanisms of the ICC

The International Criminal Court (ICC) relies on a combination of international cooperation, diplomatic efforts, and legal mechanisms to enforce its judgments. However, unlike national courts, the ICC does not have its own police force or military to carry out arrests or enforce its rulings. Instead, it depends on member states and international organizations to implement its decisions.

a. State Cooperation

The primary enforcement mechanism of the ICC is cooperation from its member states, as outlined in the Rome Statute. States Parties are obligated to comply with the court's requests for assistance, including arresting and surrendering suspects, providing evidence, protecting witnesses, and enforcing sentences.²⁷ The Arrest of Bosco Ntaganda, Bosco Ntaganda, a former Congolese rebel leader, was wanted by the ICC for war crimes and crimes against humanity committed in the Democratic Republic of Congo (DRC). In 2013, Ntaganda voluntarily surrendered at the U.S. embassy in Rwanda, and the Rwandan government cooperated by facilitating his transfer to The Hague. He was eventually tried and convicted by the ICC in 2019, receiving a 30-year sentence. This case highlights how state cooperation is essential in the ICC's ability to bring suspects to trial.²⁸

b. Referral to the United Nations Security Council (UNSC)

In cases where a state is not a party to the Rome Statute or refuses to cooperate, the ICC may seek the intervention of the United Nations Security Council (UNSC). The UNSC has the authority to refer cases to the ICC, impose sanctions, or take other measures to compel state compliance. However, this mechanism has limitations, especially when permanent UNSC members exercise their veto power. For instance, in 2005, the UNSC referred the situation in Darfur, Sudan, to the ICC, leading to the issuance of arrest warrants against Sudanese President Omar Al Bashir for genocide, war crimes, and crimes against humanity. Despite the referral, the enforcement of the warrants was complicated by Al Bashir's continued evasion and the lack of cooperation from certain states. Although the UNSC's referral initiated the ICC's involvement and inability to enforce the arrest warrants demonstrated the challenges associated with this mechanism.²⁹

c. Diplomatic Pressure and International Advocacy

The ICC often relies on diplomatic pressure and advocacy by the international community to enforce its decisions. This includes efforts by states, international organizations, and civil society groups to

²⁷ K A Rodman, 'Darfur and the Limits of Legal Deterrence' [2006] (28) (3) *Human Rights Quarterly Review* 529-560.

²⁸ *Ibid.*

²⁹ R Cryer, 'Sudan, Resolution 1593, and International Criminal Justice' [2005] (18) (3) *Leiden Journal of International Law* 529-552.

persuade or pressure governments into complying with the court's orders. Diplomatic pressure can take the form of public statements, economic sanctions, or restrictions on international aid. For instance, Laurent Gbagbo, the former President of Côte d'Ivoire, was arrested and transferred to the ICC in 2011 following significant diplomatic pressure from the international community. Gbagbo was charged with crimes against humanity for his role in the post-election violence in Côte d'Ivoire in 2010-2011. Although he was ultimately acquitted by the ICC in 2019, his initial arrest and transfer illustrate the role of international diplomacy in enforcing ICC mandates.³⁰

d. Regional and International Agreements

The ICC has established agreements with regional and international organizations to enhance enforcement mechanisms. These agreements facilitate cooperation with the ICC in areas such as the arrest and surrender of suspects, the protection of victims and witnesses, and the enforcement of sentences. For instance, the ICC has agreements with various states to enforce its sentences, meaning that convicted individuals serve their sentences in prisons of states that have agreed to host ICC convicts. For instance, the first person convicted by the ICC, Thomas Lubanga Dyilo, is serving his 14-year sentence in a prison in the Democratic Republic of Congo under such an agreement. This demonstrates how the ICC collaborates with states to enforce its sentences even though it lacks its own detention facilities.

e. Public Accountability and Moral Suasion

The ICC also uses public accountability and moral suasion as tools for enforcement.³¹ By bringing international attention to cases and making public the non-cooperation of states, the ICC can apply moral pressure on governments to comply with its orders. This approach relies heavily on the international community's commitment to justice and human rights. For instance, the ICC's pursuit of Omar Al Bashir was met with numerous challenges, particularly regarding non-cooperation by certain states. Despite multiple warrants for his arrest, Al Bashir travelled to several countries without being detained. The ICC responded by publicly condemning these states and reminding them of their obligations under international law. Although this did not immediately result in Al Bashir's arrest, it kept the issue in the international spotlight and increased pressure on states to comply with the ICC's requests. While these mechanisms have led to some successes, they are not without challenges. One of the challenges is the fact that ICC's reliance on state cooperation is a major limitation. If a state refuses to cooperate, the ICC has little recourse beyond diplomatic and moral pressure, enforcement is often hindered by political considerations, particularly when suspects are high-ranking officials or when powerful states oppose ICC interventions and the effectiveness of enforcement mechanisms can be inconsistent, leading to perceptions of selective justice or bias, particularly in cases involving African states.³²

The enforcement mechanisms of the ICC are fundamentally dependent on the cooperation of states, diplomatic efforts, and international agreements. While these mechanisms have enabled the ICC to

³⁰ *Ibid.*

³¹ S M H Nouwen and W G Werner, 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan' [2010] (21) (4) *European Journal of International Law* 941-965.

³² S M H Nouwen and W G Werner, 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan' [2010] (21) (4) *European Journal of International Law* 941-965.

achieve some degree of accountability for war crimes and crimes against humanity, they also expose the court's vulnerabilities, particularly when faced with non-cooperative states and political interference.³³ For the ICC to improve its enforcement capabilities, stronger international support and more robust mechanisms for compelling state compliance are needed.

7.0 Relationship between ICC and the Superpowers

The relationship between superpowers and the International Criminal Court (ICC) has been complex and often contentious. While the ICC was established to prosecute individuals for serious international crimes such as genocide, war crimes, and crimes against humanity, its operations have frequently conflicted with the interests and policies of major global powers. Therefore, major powers like the United States, Russia, and China are not parties to the Rome Statute, the treaty that established the ICC.³⁴ These countries have not ratified the Statute, limiting the court's jurisdiction over their nationals and territories. The refusal of these superpowers to join the ICC creates significant jurisdictional gaps. The ICC cannot prosecute crimes committed on their territories or by their citizens unless referred by the United Nations Security Council (UNSC), where these powers wield veto power. For instance, the U.S. has had a contentious relationship with the ICC, particularly under the Trump administration, which imposed sanctions on ICC officials in response to investigations into alleged war crimes by U.S. forces in Afghanistan. The U.S. has cited concerns about sovereignty and the potential for politically motivated prosecutions as reasons for not joining the ICC³⁵.

a. Veto Power in the United Nations Security Council

Superpowers like the U.S., Russia, and China hold permanent seats on the UNSC with veto power. This power allows them to block ICC referrals or actions that they perceive as contrary to their interests.

The veto power has been used by superpowers to prevent the ICC from investigating or prosecuting cases that involve their allies or strategic interests. In 2014, Russia and China vetoed a UNSC resolution that would have referred the situation in Syria to the ICC. The resolution aimed to investigate and prosecute war crimes committed during the Syrian civil war. Russia's veto was primarily to protect the Assad regime, an ally, while China generally supports the principle of non-interference in the internal affairs of sovereign states. Superpowers have often criticized the ICC for what they perceive as selective justice, particularly targeting African leaders while ignoring crimes committed by or in alliance with major powers. This perception of bias has led to accusations that the ICC is used as a tool by Western powers to exert influence over weaker states, particularly in Africa, while avoiding accountability for crimes committed by or with the complicity of major powers.

Several African leaders and the AU have accused the ICC of disproportionately targeting African states while ignoring crimes in other regions. This criticism is partly due to the ICC's focus on African conflicts, such as those in Sudan (Omar Al Bashir), Kenya (Uhuru Kenyatta), and Libya (Saif al-Islam Gaddafi). The absence of ICC investigations into alleged crimes by Western powers or their allies has

³³ F Bensouda, 'Reflections from the International Criminal Court Prosecutor' [2014] (29) (2) *American University Law Review* 281-290.

³⁴ *Ibid.*

³⁵ F Bensouda, 'Reflections from the International Criminal Court Prosecutor' [2014] (29) (2) *American University Law Review* 281-290.

fuelled these perceptions. Superpowers often prioritize national sovereignty and may oppose ICC interventions that they perceive as infringing on their own or their allies' sovereignty. This emphasis on sovereignty can lead to direct conflicts with the ICC, which operates under the principle that no individual, regardless of rank or nationality, is immune from prosecution for international crimes. Following the 2008 Russo-Georgian War, the ICC opened an investigation into alleged war crimes committed during the conflict. Russia has refused to cooperate with the ICC, arguing that the investigation is biased and infringes on its sovereignty. This situation illustrates the tension between the ICC's mandate to pursue justice and the national interests of a major power.³⁶

b. Diplomatic Pressure and Retaliation

Superpowers have exerted diplomatic pressure on the ICC and its member states to prevent or influence investigations and prosecutions. In some cases, they have retaliated against the ICC or its officials. Such actions can undermine the ICC's independence and credibility, making it difficult for the court to carry out its mandate impartially.³⁷ In response to the ICC's investigation into alleged war crimes in Afghanistan, including those by U.S. personnel, the Trump administration-imposed sanctions on ICC officials, including then-Prosecutor Fatou Bensouda.³⁸ These sanctions included asset freezes and travel bans, representing a significant escalation in U.S. opposition to the ICC.³⁹

c. Undermining ICC's Legitimacy

Superpowers sometimes engage in rhetoric or actions that undermine the legitimacy of the ICC, questioning its authority and framing it as ineffective or biased. Such narratives can diminish global support for the ICC, making it harder for the court to secure cooperation from states and further isolating it from influential global players. The ICC's decision to open an investigation into alleged war crimes in the Palestinian territories has been met with strong opposition from Israel, backed by the United States. Both countries have questioned the ICC's jurisdiction and accused it of bias.⁴⁰ The U.S. has threatened consequences for ICC actions that it perceives as unjustly targeting Israel, further complicating the court's efforts to carry out its investigations. Superpowers have shown inconsistent support for the ICC, sometimes backing its actions when it aligns with their interests, and at other times opposing it when it does not. This inconsistency can weaken the ICC's ability to function effectively, as it depends on consistent international support and cooperation to execute its mandate. Thus, during the 2011 Libyan civil war, the UNSC, with support from major powers including the U.S., referred the situation in Libya to the ICC. However, after the fall of Muammar Gaddafi, international support for the ICC's involvement in Libya waned, particularly as the political situation in Libya became more complex. This shift in support illustrates how superpowers may back ICC involvement when it aligns with their immediate strategic interests but withdraw support when those interests change. The relationship between superpowers and the ICC is marked by tension and conflict, rooted in issues of sovereignty, jurisdiction, and political interests.⁴¹ While superpowers can support and strengthen the

³⁶ S Ford, 'How Much Power Does the Prosecutor of the International Criminal Court Really Have?' [2012] (12) (2) *International Criminal Law Review* 257-271.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ G J A Knoops, 'The Prosecution and Defence of Peacekeepers under International Criminal Law' [2004] (4) (2) *International Criminal Law Review* 185-207.

⁴¹ *Ibid.*

ICC, they often act in ways that undermine its effectiveness and legitimacy when it conflicts with their own agendas. The ICC's future effectiveness will depend on its ability to navigate these challenges and secure broader, more consistent international support, particularly from the world's most powerful nations.

8.0 Conclusion

The International Criminal Court (ICC) has made notable contributions to the international justice system by addressing war crimes and crimes against humanity. It has successfully prosecuted high-profile cases, such as those involving Thomas Lubanga Dyilo and Dominic Ongwen, and its work in various regions demonstrates its potential to hold perpetrators accountable. However, the ICC faces significant challenges, including jurisdictional limitations, political resistance, and issues related to enforcement and cooperation. These factors impact its overall effectiveness and have led to criticisms of bias and limited reach.

9.0 Recommendations

1. Enhance Cooperation and Enforcement

The ICC should work to strengthen collaboration with member and non-member states to improve the enforcement of arrest warrants and the implementation of its decisions. Establishing more robust mechanisms to ensure the execution of ICC orders and arrest warrants, possibly through agreements with regional and international organizations, could enhance the court's effectiveness.

2. Expand Jurisdiction and Support

Efforts should be made to persuade more states to join the Rome Statute, which would enhance the ICC's jurisdiction and legitimacy. Increasing support for victims and witnesses, including protection and assistance, can improve the court's ability to gather evidence and secure testimonies.

3. Address Criticisms of Bias

The ICC should continue to address perceptions of bias by ensuring a transparent and balanced approach to investigations and prosecutions, including diversifying its focus to include a broader range of cases globally. Effective communication about the ICC's work and decisions can help counteract criticisms and build trust among diverse communities and stakeholders.

4. Adapt to Changing Dynamics

The ICC should remain adaptable to new types of conflicts and crimes, such as cyber warfare and environmental crimes, to address evolving challenges in international criminal justice. Investing in technological advancements and capacity building within the ICC can improve its efficiency and effectiveness in handling complex cases.