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JUSTICE AT A STANDSTILL: HOW GLOBAL NON-COOPERATION AND GEO-POLITICAL PRESSURES HAVE STALLED THE ICC's ABILITY TO ENFORCE ACCOUNTABILITY

- Thejangutuo Rio & Maven V K[1]

ABSTRACT

Since the adoption of the Rome Statute on 17 July 1998 and its enforcement on 1 July 2002, the International Criminal Court (ICC) has stood as the first permanent International Criminal tribunal with a mandate to prosecute genocide, crimes against humanity, war crimes, and the crime of aggression. Since its inception, the court has played a meaningful role in representing the concerns of States affected by conflicts and instability, providing a formal avenue for them to bring grave violations to international attention and seek accountability through an impartial judicial mechanism. In recent years, the relevance of the ICC has become increasingly pronounced as it addresses some of the world's most complex and ongoing conflicts. The Court has opened formal investigations and issued arrest warrants for alleged unlawful deportation and war crimes by Russia in Ukraine; initiated proceedings concerning alleged war crimes committed by both the Israeli government and Hamas in Palestine; and continues to examine grave international crimes in regions such as Darfur, Libya, the Democratic Republic of Congo, Burma, and Bangladesh, inter alia. Yet these ongoing investigations remain heavily restrained by the lack of cooperation from both the state parties and influential non-party states such as the United States, Russia, and Israel, who reject the court's jurisdiction as illegitimate. In recent years, opposition has intensified into retaliation, with the United States sanctioning ICC officials following arrest warrants involving Israeli leadership, Russia openly dismissing the enforceability of arrest warrants issued against President Vladimir Putin and senior officials, and Israel characterizing the Court's findings on Gaza as politically motivated. Such defiance reveals a core weakness within the architecture of international law, for without meaningful state

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cooperation and recognition of its mandate, the ICC's ability to truly administer justice becomes uncertain, and it risks becoming a largely moribund institution.

Keywords: ICC, State Co-operation, Accountability, War Crimes, International Conflicts.

INTRODUCTION

The International Criminal Court, established by the Rome Statute of 1998 (in force since 2002), was created as the first permanent international criminal tribunal empowered to prosecute genocide, crimes against humanity, war crimes, and aggression. The States creating the ICC were guided by the idea that prosecution of individuals responsible for the most serious international crimes by an international jurisdiction would facilitate conflict settlement and post-conflict reconciliation. [2]However, this idea has always been limited by a defining institutional reality. Unlike domestic criminal courts, the ICC was designed as a judicial body that lacks any independent enforcement power of its own. It can determine responsibility, issue warrants, and pronounce legal findings, but it cannot independently implement those findings. The Court therefore relies entirely on state cooperation for arrests, transfers of accused persons, and the execution of its decisions. Even its jurisdiction in certain situations depends on United Nations Security Council referrals, tying the Court's authority to geopolitical bargaining rather than autonomous justice. An illuminating example of this is the ICC's request to arrest and surrender Sudan's President Omar Al-Bashir for the commitment of the crimes under Article 5. The arrest warrant, first issued in 2009, was ignored by 19 different countries, 9 of which are signatories of the Rome Statute.[3] This structural dependence renders international criminal accountability vulnerable to the very political interests it seeks to restrain, particularly when even signatories of the Rome Statute openly disregard their cooperation obligations despite being formally bound by treaty commitments.

This institutional fragility has become especially visible in the context of contemporary global conflicts. From the war in Ukraine to the genocide in Gaza, alongside continuing crises in regions such as Darfur and Myanmar, the ICC has asserted jurisdiction over some of the most consequential

[2] 'Problems of Legality of the International Criminal Court' (Opinion of the International Law Advisory Board under the Ministry of Foreign Affairs of the Russian Federation, 8 May 2024) <https://mid.ru/en/foreign_policy/legal_problems_of_international_cooperation/1949021/> accessed 21 January 2026.

[3] Frankie Wong, 'Criticisms and Shortcomings of the ICC'(Access Accountability, 26 September 2019)<https://accessaccountability.org/criticisms-and-shortcomings-of-the-icc/> accessed 21 January 2026.

allegations of war crimes and crimes against humanity in the present era, including through arrest warrants against senior political leaders. Yet, the effectiveness of these interventions again depends on cooperation that is frequently withheld. Despite the ICC having jurisdiction in Ukraine over war crimes committed on its territory, Russia does not accept the Court's charges against President Vladimir Putin and other senior officials,[4] reinforcing how quickly judicial action becomes constrained when the state concerned rejects the Court's authority. The Gaza situation further demonstrates that non-cooperation may also be accompanied by external pressure intended to deter the Court itself. In 2024, the Court issued an arrest warrant against Israeli Prime Minister Benjamin Netanyahu for alleged war crimes in Gaza. The United States responded by imposing sanctions on ICC officials involved in the investigation, showing how great power influence is deployed to shield allies from international criminal accountability and further constrain the Court's capacity to function as an independent judicial institution.

In this context, the ICC's contemporary predicament is not simply an enforcement difficulty in a narrow sense. It reflects a deeper question about whether international criminal accountability can operate meaningfully in a system where law remains dependent on political will for its implementation. When the Court's strongest legal actions remain contingent on selective cooperation, including from the very states implicated, its function risks narrowing to documentation and condemnation rather than enforceable accountability. The central challenge, therefore, is not the absence of legal norms, but the structural dependence that allows those norms to be suspended whenever they implicate power.

BACKGROUND AND EVOLUTION OF THE INTERNATIONAL CRIMINAL COURT

According to Natalia M. Luterstein, international law in its narrow sense encompasses those branches of law that impose direct obligations under international norms, among which international criminal law occupies a central position. International criminal law is distinct in that it entails individual criminal responsibility for internationally recognized crimes, primarily war crimes, crimes against humanity,

[4] Kjersti Lohne, 'The International Criminal Court at Risk of Collapse'(Peace Research Institute Oslo, 10 January 2025)<https://www.prio.org/2025/01/the-international-criminal-court-at-risk-of-collapse/> accessed 21 January 2026.

and genocide, commonly referred to as jus cogens or core crimes.[5] It is within this normative framework that the International Criminal Court emerged as an institution born of necessity after a long and arduous process marked by several false starts[6].

After the Second World War, Brownlie observed that a movement started up within the international community which clearly began to engender a deeper consciousness of the need to prosecute serious violations of the laws of war, with regard to both the traditional responsibility of states, and the personal responsibility of individuals.[7] However, this aspiration faced an institutional difficulty, as states, while condemning atrocities in principle, remained cautious about establishing a court operating above sovereign control. The Nuremberg and Tokyo International Military Tribunals after the Second World War marked a decisive step by asserting individual criminal responsibility for international crimes, including those committed by senior leaders. Nevertheless, these tribunals faced legitimacy critiques, and the Cold War further weakened prospects for a permanent international criminal court due to geopolitical constraints on consensus and enforcement.

A notable revival occurred in 1989, when the United Nations General Assembly requested the International Law Commission to resume work on the establishment of such a court. This renewed engagement was soon overtaken by events. However, it was not until the 1990s that many governments rallied around the idea of a permanent trial to bring those responsible for the world's most serious crimes to justice. [8] The eruption of mass atrocities in the former Yugoslavia in 1993, followed by the Rwandan genocide in 1994, compelled the Security Council to establish the ICTY and ICTR through its resolutions. These tribunals, created in response to acute humanitarian crises, reaffirmed the international community's willingness to pursue criminal accountability in exceptional circumstances, while simultaneously underscoring the absence of a permanent judicial mechanism capable of addressing such crimes on a consistent and institutionalized basis.

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[5] Sheetal Thakur, 'Unraveling the Nexus of International Criminal Law: Understanding Its Scope, Subject Matter, and Sources' (2024) 8(1) UILS Law Review 79.

[6] Makau Mutua, 'The International Criminal Court: Promise and Politics' (2015) 109 *Proceedings of the Annual Meeting (American Society of International Law)* 269.

[7] Charles B A Ubah and Osy E Nwebo, 'The International Criminal Court: Antecedents, History, and Prospects' (2015) 3 *International Journal for Innovation Education and Research* 41.

[8] Adel Hamzah Othman, 'Role of International Criminal Court in Reducing Human Rights Violations' (2020) 9 *International Journal of Criminology and Sociology* .

The ICC therefore emerged as a permanent institution of international criminal justice, endowed with limited jurisdiction under the Rome Statute and structurally dependent on state consent and cooperation for investigation, arrest, and enforcement, thereby embedding political consent within the mechanics of accountability and shaping the tensions that continue to define its functioning.

INTERNATIONAL COOPERATION AND THE INTERNATIONAL CRIMINAL COURT: A LEGAL IDEAL OR A STRUCTURAL ILLUSION?

International cooperation lies at the conceptual core of the ICC system. The Rome Statute does not imagine international criminal justice as a supranational replacement for domestic authority, but as a distributed project in which sovereign states collectively sustain a judicial institution. Since its inception, the International Criminal Court has actively sought to promote the principles of cooperation, complementarity, and universality as foundational conditions for the effective functioning of its legal regime. The Court's design reflects the homogeneous nature of international institutions, grounded in consent, reciprocity, and shared responsibility. In this sense, cooperation is not merely operational support; it is the normative foundation upon which the Court's legitimacy rests.

This model draws from a broader tradition in international law that treats cooperation as the primary mode of governance for institutions lacking an independent police force, military, or territorial authority. Scholars such as Henkin have argued that international law functions not through coercion, but because states internalise legal norms and comply with them as a matter of routine.[9] The Rome Statute builds on this assumption by transforming cooperation into a binding legal obligation while leaving its implementation to domestic legal systems. This obligation is expressly articulated in the Statute itself. Article 86 establishes a general duty on States Parties to cooperate fully with the Court in the investigation and prosecution of crimes within its jurisdiction, while Article 88 requires States to ensure that their national law provides procedures enabling such cooperation. The duty to cooperate is therefore twofold: it entails both an international commitment to assist the Court and a

[9] Louis Henkin, *How Nations Behave: Law and Foreign Policy* (2nd edn, Columbia University Press 1979) 47–48.

corresponding obligation to adapt domestic legal frameworks to give practical effect to that commitment.[10]

Yet cooperation in the ICC context is structurally distinct from cooperation in regulatory or economic regimes. It requires states to act against individuals who may occupy positions of political authority, command military power, or embody national interest. This places cooperation in direct tension with sovereignty, not in its abstract formulation, but in its most sensitive manifestation: control over coercion, foreign relations, and political survival. Cooperation, therefore, demands not only legal compliance but political self-restraint, and is consequently uneven, conditional, and selectively activated.

This cooperative architecture is further structured by the principle of complementarity, articulated in the Preamble and Article 1 of the Rome Statute, which affirms that the Court's jurisdiction is "complementary to national criminal jurisdictions."[11] Under this framework, the ICC is precluded from exercising jurisdiction where a State is genuinely investigating or prosecuting alleged crimes within the Court's mandate. The Court may intervene only where national authorities are unwilling or unable to act in good faith.[12] Complementarity thus positions the ICC as a court of last resort and reorients cooperation away from the routine surrender of suspects toward the maintenance of domestic criminal justice systems capable of conducting effective investigations, prosecutions, and trials for international crimes. Yet the question arises whether such consensus-building can sustain an enforcement-oriented model of justice. As Koskenniemi argues, where legal authority lacks coercive backing, compliance risks devolving into interpretive contestation rather than obligation.[13] International cooperation thus remains both the ICC's normative foundation and its principal structural vulnerability, a tension that becomes most visible when the Court engages with active conflicts involving powerful political actors.

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[10] Valerie Oosterveld, Mike Perry and John McManus, 'The Cooperation of States with the International Criminal Court' (2001) 25(3) Fordham International Law Journal 767.

[11] Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, Preamble and art 1.a

[12] Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, art 17(1).

[13] Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2005)

ONGOING CONFLICTS AND THE LIMITS OF THE INTERNATIONAL CRIMINAL COURT

The contemporary relevance of the International Criminal Court is most visible in its engagement with ongoing armed conflicts marked by large scale civilian harm and allegations of grave violations of international humanitarian law. The situations in the State of Palestine and Ukraine exemplify the Court's increasing involvement in active international armed conflicts, grounded primarily in assertions of jurisdiction rather than independent enforcement capacity. In the Situation in Palestine, the Court's jurisdiction was grounded in Palestine's accession to the Rome Statute in 2015 and subsequent referrals, culminating in the opening of a formal investigation in March 2021 following Pre-Trial Chamber confirmation of territorial jurisdiction over Gaza, the West Bank, and East Jerusalem.[14] In November 2024, Pre-Trial Chamber I issued arrest warrants against Mohammed Diab Ibrahim Al Masri (Deif), Yahya Sinwar, and Ismail Haniyeh for crimes against humanity and war crimes arising from the 7 October 2023 attacks, including murder, extermination, hostage taking, torture, and sexual violence.[15] In the same set of decisions, the Chamber issued warrants against Benjamin Netanyahu and Yoav Gallant for war crimes and crimes against humanity committed in Gaza, including starvation as a method of warfare, willful killing, persecution, and other inhumane acts.[16] Israel rejected the Court's jurisdiction and challenged admissibility under Articles 18 and 19 of the Rome Statute; these challenges were dismissed by the Chamber. All warrants remain outstanding and unexecuted, with none of the accused in the custody of the Court.[17]

A parallel jurisdictional structure is evident in the Situation in Ukraine. Although neither Ukraine nor the Russian Federation is a State Party to the Rome Statute, Ukraine accepted the Court's jurisdiction over crimes committed on its territory under Article 12(3) and on this basis, the Prosecutor opened an investigation into alleged war crimes arising from the Russian invasion.[18] In March 2023, Pre-Trial Chamber II issued arrest warrants against Vladimir Putin, President of the Russian Federation, and Maria Lvova Belova, Commissioner for Children's Rights, for the war crimes of unlawful deportation

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[14] International Criminal Court, 'Situation in the State of Palestine (ICC-01/18)'(International Criminal Court)< https://www.icc-cpi.int/palestine> accessed 21 January 2026.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18]International Criminal Court, 'Situation in Ukraine (ICC-01/22)' (ICC)<https://www.icc-cpi.int/situations/ukrainee> accessed 21 January 2026.

and unlawful transfer of protected persons.[19] The Russian Federation has rejected the Court's jurisdiction and declined cooperation. While Russia symbolically withdrew its signature from the Rome Statute in 2016, this does not affect the Court's jurisdiction over crimes allegedly committed on Ukrainian territory.[20] The warrants remain unexecuted, with enforcement contingent upon the cooperation of States Parties should the accused enter their territory.

Beyond Palestine and Ukraine, the ICC continues to exercise jurisdiction in several protracted conflict contexts through Security Council referrals, State Party jurisdiction, and territorially grounded interpretations of the Rome Statute, each revealing distinct limits of enforcement. The situation in Darfur was referred to the ICC by the United Nations Security Council under Resolution 1593 (2005).[21] The Prosecutor charged senior Sudanese officials, including former President Omar Al Bashir, with genocide, crimes against humanity, and war crimes committed against civilian populations. Arrest warrants issued between 2009 and 2010 remain unexecuted.[22] Despite the binding nature of the referral, multiple States Parties failed to arrest Al Bashir during official visits, resulting in repeated judicial findings of non-cooperation. As some commentators have observed, the Court's intervention in Darfur has had limited practical impact on accountability and may have contributed to increased political polarization among conflict parties, complicating rather than facilitating pathways toward resolution.[23] This experience exposes the ICC's structural inability to translate formal jurisdiction into effective enforcement even where Security Council authority is invoked.

In response to escalating violence against civilian protestors, UNSC Resolution 1970 imposed sanctions on Libya and referred the situation to the ICC to investigate possible war crimes and crimes against humanity committed in Libya beginning on 15 February 2011. [24]Arrest warrants were issued against Muammar Gaddafi, Saif Al Islam Gaddafi, and Abdullah Al Senussi for murder and persecution. Following the collapse of the Gaddafi regime, Libya challenged admissibility on the basis

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[19] Ibid.

[20] Micaela Frulli, 'International Criminal Justice at the Russia–Ukraine Crossroads' (2023) 32 *Italian Yearbook of International Law* 231, 239–247.

[21]International Criminal Court, 'Situation in Darfur, Sudan (ICC-02/05)'<https://www.icc-cpi.int/darfur> accessed 23 January 2026.

[22] Ibid.

[23] Yvonne M. Dutton, 'The International Criminal Court in Ongoing Intrastate Conflicts: Navigating the Peace-Justice Divide' (2016) 22 Global Governance 598.

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

of domestic proceedings. Although the Court determined that Libya was not genuinely able to prosecute Saif Al Islam Gaddafi, he remains at large, and the absence of sustained cooperation continues to expose the practical limits of complementarity where surrender is withheld.

In contrast, the situation in the Democratic Republic of Congo demonstrates the ICC's capacity to secure convictions where cooperation and surrender are forthcoming. As a State Party to the Rome Statute, the DRC has been the site of prosecutions arising from non-international armed conflict involving organized armed groups. Convictions in cases against Thomas Lubanga, a militia leader convicted for the enlistment and use of child soldiers; Germain Katanga, convicted for war crimes and crimes against humanity arising from attacks on civilians; and Bosco Ntaganda, convicted for multiple war crimes and crimes against humanity committed in eastern Congo, illustrate the Court's ability to prosecute armed group leaders once suspects are surrendered into its custody.[25] Recognizing the need to strengthen international prosecutions and domestic accountability, the ICC and the DRC signed a Memorandum of Understanding in June 2023 establishing a renewed cooperative framework to support national investigations, evidence collection, and domestic justice mechanisms.[26] These developments place the ICC at the centre of some of the most politically sensitive conflicts of the present day, while revealing the limits of its authority in practice.

THE UNITED STATES AND THE ICC: A POWER STRUGGLE BETWEEN SOVEREIGNTY AND UNIVERSAL ENFORCEMENT

The relationship between the United States and the International Criminal Court has been marked by sustained ambivalence rather than a categorical rejection of international criminal accountability. Although the United States played a foundational role in shaping post–Second World War criminal justice through its leadership in the Nuremberg Trials, it has consistently resisted the creation of a permanent international criminal court capable of exercising jurisdiction over individuals without the explicit consent of their state of nationality. This tension was already apparent during the negotiations of the Rome Statute, in which the United States participated actively but opposed the final text on the

[25] International Criminal Court, 'Situation in the Democratic Republic of the Congo (ICC-01/04)' <https://www.icc-cpi.int/drc> accessed 23 January 2026.
[26] Elena Maghsoodnia, 'International Criminal Court' (2023) 39 IELR 271.

grounds that it conferred excessive independence upon the Prosecutor and failed to provide sufficient safeguards against politically motivated prosecutions of U.S. officials and military personnel. [27]

In particular, the United States argued that the Court should exercise jurisdiction only pursuant to referrals from the United Nations Security Council, a position that would have ensured effective control over the initiation of investigations through its veto power.[28] Although the Clinton administration authorized the signing of the Rome Statute in 2000, it declined to submit the treaty for Senate ratification, citing unresolved jurisdictional concerns.[29] These objections crystallized into formal opposition in 2002, when the United States withdrew its signature and enacted the American Service Members' Protection Act, thereby confirming a policy of non-recognition of the Court's jurisdiction over nationals of non-consenting states.

Since then, U.S. engagement with the ICC has been selective and instrumental. Washington has tolerated ICC action where it aligned with broader foreign policy objectives, including Security Council referrals concerning Darfur and Libya.[30] By contrast, ICC initiatives perceived to implicate U.S. nationals or close allies have prompted direct institutional resistance. The Prosecutor's investigation into the situation in Afghanistan, followed by developments in the Situation in Palestine, triggered the use of visa restrictions and economic sanctions against ICC personnel. In June 2020, the Trump administration imposed sanctions on ICC Prosecutor Fatou Bensouda and senior Court official Phakiso Mochochoko.[31] Although these measures were formally lifted in 2021, they normalized the notion that international judicial officials could be subjected to targeted state sanctions. Subsequent reporting indicates that this precedent was later expanded, with sanctions frameworks reportedly extended to additional ICC officials, including Prosecutor Karim A. A. Khan, reinforcing the capacity of powerful states to exert pressure on the Court through unilateral measures.

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[27] David J Scheffer, 'The United States and the International Criminal Court' (2017) American Journal of International Law, published online by Cambridge University Press, 27 February 2017.
[28] Tod Lindberg, A Way Forward with the International Criminal Court (Hoover Institution, Stanford University).
[29] David J Scheffer, 'The United States and the International Criminal Court' (2017) American Journal of International Law, published online by Cambridge University Press, 27 February 2017.
[30] Ibid
[31] Julian Borger, 'Trump Targets ICC with Sanctions after Court Opens War Crimes Investigation' The Guardian (Washington, 11 June 2020)

The contrast in enforcement is most clearly reflected in the ICC's focus on African countries, where the Court has largely preoccupied itself with conflicts arising from Africa while failing to investigate equally severe conflicts elsewhere. Although several African cases were initiated through State referrals or Security Council mandates, the ICC's most concrete custodial outcomes and convictions have overwhelmingly arisen in African contexts. By contrast, efforts to assert jurisdiction over powerful non-party states or their close allies have more often resulted in political resistance than in arrests or prosecutions. This disparity reflects a structural asymmetry inherent in a court dependent on state cooperation, rather than prosecutorial bias.

This structural asymmetry becomes most visible when international criminal law confronts direct exercises of military and political power by dominant states. In January 2026, the United States conducted a large-scale military operation on Venezuelan territory that resulted in the forcible capture and transfer of President Nicolás Maduro and his spouse to the United States to face domestic criminal proceedings.[32] Contemporary reporting described the operation undertaken without Security Council authorization and outside a recognized collective self-defense framework. United Nations Special Procedures mandate holders subsequently characterized the intervention as a grave violation of Article 2(4) of the United Nations Charter, warning that it may amount to the crime of aggression attributable to individual political and military leaders.[33] The experts further noted that, under customary international law principles affirmed by the ICJ in the Arrest Warrant case, sitting heads of state enjoy immunity from the criminal jurisdiction of foreign domestic courts during office. Despite unequivocal condemnation by United Nations experts and multiple nations, no institutional process was initiated to investigate, restrain, or sanction the United States for the use of force or the forcible transfer of a sitting head of state. This absence of consequence reflects a structural reality that the reach of international criminal law contracts at the point where political and military power is most concentrated. This exposes a deeper question for the international legal order i.e whether norms governing the use of force and individual criminal responsibility operate as binding constraints, or

[32] Rishabh Sharma, 'Captured Maduro Made to Perp-Walk in Custody, He Says "Happy New Year"' Business Standard (New Delhi, 4 January 2026).

[33] United Nations Office of the High Commissioner for Human Rights, 'UN Experts Condemn US Aggression against Venezuela' (OHCHR, 7 January 2026)

whether they function, in practice, as conditional standards whose application depends less on legality than on the identity of the actor involved.

WAY FORWARD AND CONCLUSION

The International Criminal Court does not fail because of legal ambiguity or institutional immaturity. It fails because it operates within an international order in which power, not law, determines the boundaries of accountability. The Court was never designed to override this reality and therefore remains structurally dependent on the very actors whose interests it is meant to constrain.

Through sanctions, tariff regimes, financial controls, and alliance-based pressure, the United States, among others, possesses tools of coercion far more effective than any arrest warrant issued by the ICC. Faced with a choice between compliance with international criminal law and the preservation of economic or political stability, most states predictably choose the latter.

The consequences of this imbalance are no longer abstract. They have produced visible institutional effects within the Rome Statute system itself. Several State Parties have withdrawn outright, most notably Burundi and the Philippines, following heightened engagement by the Office of the Prosecutor. Others have announced intentions to withdraw and later reversed course, as seen in South Africa and Gambia, while regional bodies such as the African Union have openly questioned continued cooperation. Thus, compliance has frequently been withheld in practice. The refusal by State Parties to arrest Omar Al Bashir despite binding legal obligations, and Kenya's resistance during the post-election violence investigations, illustrate how non-cooperation can hollow out the Court's authority without the political cost.

Since 2015, accession to the Rome Statute has effectively stalled, with three permanent members of the UNSC outside the system altogether. This reality exposes the limits of the assumption that strengthening domestic criminal law or encouraging voluntary cooperation will resolve the ICC's enforcement deficit. The central obstacle is not legal incapacity but political risk. States often possess the legal means to cooperate yet refrain because cooperation invites consequences imposed by even more powerful actors. As long as this asymmetry persists, international criminal justice will remain unevenly applied. If the ICC is to retain practical relevance, its member states must abandon the pretense that individual compliance is sufficient, and Cooperation must become a collective political

practice. The Rome Statute cannot function as an optional instrument invoked selectively without eroding its own authority. Treating its obligations as binding constraints on foreign policy and diplomatic engagement is therefore essential.

What must ultimately be rejected is the strategy of accommodation. The tolerance of informal exemptions and selective non-cooperation does not safeguard the International Criminal Court's viability; it entrenches its subordination to political power. A court that enforces accountability only where power permits cannot sustain as a criminal tribunal and instead risks functioning as an administrative mechanism for regulating weaker actors. International criminal justice rests on the claim that certain crimes transcend sovereignty, status, and political convenience. Although this claim has been consistently affirmed in principle, it has been repeatedly compromised in practice. Whether the ICC evolves into an institution capable of exercising meaningful authority or remains largely symbolic therefore depends not on further legal innovation, but on the willingness of its members to confront power collectively rather than defer to it individually. Without that willingness, the ICC will continue to exist but will fail to govern.

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