

## Issues of limitation of international criminal justice in the modern world

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**Abstract.** The study examined the problems associated with the International Criminal Court and its current role in the world. The exit of some countries from the African Union and sanctions by the United States of America raises questions about its role from a realistic perspective. This research aimed to investigate the tension between the International Criminal Court's ideological bases and the practical obstacles it encounters in a politicised international world that frequently restricts its efficacy due to state sovereignty, varied legal systems, and political interests. Doctrinal analysis, comparative legal analysis, case law analysis, political-legal analysis, and content analysis were used to implement this goal. The peculiarities of the formation of the International Criminal Court are revealed. It is emphasised that this court, created on an idealistic basis, faces challenges that include the withdrawal of African Union member states, U.S. sanctions, and resistance from countries prioritising national sovereignty and political interests. It is found that conflicts between state parties and the court, as well as problems in the court's governance, emphasise the inconsistency between the ideal concept of the International Criminal Court and the real basis of its work. The importance of a rational return of the International Criminal Court and a more balanced perception of its role in the modern world is highlighted. It is concluded that exaggerating the importance of the court may threaten its future existence, and therefore it is important to consider the realities of contemporary politics in the further development and functioning of the International Criminal Court. Recommendations are developed to improve the efficiency of the court's practice. This study offers practical insights for international legal practitioners, policymakers, and diplomats by emphasising the importance of reconciling national sovereignty and legal systems with International Criminal Court mandates in order to improve cooperation and effectiveness, particularly in politically unstable regions such as Africa and Eastern Europe

**Keywords:** African Union withdrawal; sanctions; role in modern justice; global policy challenges; idealistic foundations

### Introduction

As the first permanent international criminal justice institution in the history of the world, the International Criminal Court (ICC) has been different from previous international legal institutions since its inception. Only sovereign states are allowed to participate in court proceedings, while only individuals who have committed international crimes can be defendants. Even if the purpose of the court is to combat crimes that "shock the conscience of mankind", the court can only exercise supplementary jurisdiction, meaning that the ICC can intervene solely as an alternative when states are unwilling or unable to try perpetrators of international crimes under the Rome Statute on the ICC (2010).

The principle of supplementary jurisdiction is the core principle for the exercise of ICC jurisdiction. It is the result of a compromise between ideals and international society and a prerequisite for many countries to join the ICC.

Despite the limited jurisdiction of the court, the court still faces tensions with international society, such as issues of universal jurisdiction of the court, the right of the prosecutor to conduct investigation and so on. Some countries remain apprehensive about joining the Rome Statute, while others have reconsidered their participation. Burundi and the Philippines, for example, have already left the statute, while countries such as Israel and Myanmar have expressed

### Suggested Citation

**Article's History:** Received: 20.08.2024 Revised: 19.11.2024 Accepted: 23.12.2024

Wang, H., & Tatarinov, D. (2024). Issues of limitation of international criminal justice in the modern world. *Social & Legal Studios*, 7(4), 121-131. doi: 10.32518/sals4.2024.121.

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their intention to withdraw from it. The United States, Russia, China, and India are still hesitant to become state parties. These events highlight the persistent conflict between the ICC and some segments of global society, reflecting wider concerns about the court's function and influence in international justice.

ICC President Chile Ebo-Osuji told a conference on the work of the ICC on 2 November 2020 that the court is currently under pressure and threats from some powerful actors in world affairs. Joka Brandt, Permanent Representative of the Netherlands to the UN, said that "the ICC is an important part of the international system of justice and accountability. Nevertheless, this system is currently facing strong political pressure" (Siwen, 2020). In 2023 and 2024, the ICC faced heightened threats and pressure, particularly from Israel and the U.S., after ICC Prosecutor Karim Khan requested arrest warrants for Israeli leaders over alleged war crimes in Gaza (Davies, 2024). These actions prompted sharp political backlash, with threats of retaliation against the Court and its officials. UN experts condemned these threats, warning they undermined international justice. Despite this, 93 ICC member states reaffirmed their "unwavering support" for the Court in June 2024, standing against political interference and reasserting the importance of the ICC's role in ensuring international justice (Vignoli, 2024). In light of this situation, it is necessary to reconsider the reasons for the conflict between the court and international society from a law perspective and try to find a solution.

The ICC faces a range of complex problems, which necessitates in-depth analyses of the peculiarities of its activities. Meanwhile, it is characteristic that recent researchers have not paid enough attention to this problem. L. Mou (2021) investigated China's exclusionary rule for unlawfully obtained evidence and compared it to procedures at the ICC. The study determined that China's approach, motivated by political reasons, restricts the removal of such information, prioritising state control over justice in court proceedings. In contrast, the ICC follows tougher regulations to ensure the integrity of international justice. This comparative research highlights the political forces that shape legal systems across nations. B. Van Schaack (2020) investigated the complicated political landscape surrounding Syria's possible referral to the ICC. The study determined that geopolitical factors, notably the participation of permanent members of the United Nations Security Council, have hampered accountability for violations in Syria. B. Van Schaack (2020) contends that political considerations frequently impede international justice procedures, limiting the ICC's ability to handle serious crimes.

R.J. Mukama (2020) investigates the relationship between universal jurisdiction and the ICC's attempts to attain global criminal justice. The report indicates that, while universal jurisdiction might supplement the ICC's work, it confronts considerable obstacles such as inconsistent state participation and political opposition. R.J. Mukama (2020) emphasises the need for stronger international legal frameworks to increase the effectiveness of universal jurisdiction in addressing impunity. L.T. Chigowe (2020) examined the relationship between the ICC and the UN Security Council and concluded that it is characterised by both cooperation and conflict. The analysis revealed occasions in which the Council's political actions assisted or hampered the ICC's work, raising concerns about the impact of political agendas on international justice. L.T. Chigowe (2020) advocates

for reforms to guarantee that the ICC is independent of political pressures.

Z. Geng (2023) explored the issue of selective justice inside the ICC, specifically how the court's emphasis on certain cases over others causes perceptions of prejudice. The research determined that the ICC's selective prosecution is motivated by practical restrictions like as resource limits and geopolitical concerns, but that this has harmed the court's legitimacy in certain regions. L. Zeng (2021) examined the historical relevance of the ICC legislation in establishing current international law. The research found that the ICC is a significant step forward in the international legal order, offering a tool for holding individuals accountable for the most heinous crimes. L. Zeng (2021) emphasised the statute's significance in supporting global peace and stability, but also highlighted the problems created by non-cooperation from major powers.

The study of the conclusions drawn by scholars and the result of their research provides a better understanding of the current status and problems of the court. The purpose of this research is to explore the tension between the ICC idealistic foundations and the practical challenges it faces while operating in a highly politicised international environment where national sovereignty, varying legal systems, and political interests frequently limit its effectiveness. To address this, the research outlines three tasks:

- to analyse the influence of national sovereignty on the ICC's enforcement capacities, focussing on case studies like South Africa's reluctance to arrest Vladimir Putin despite ICC warrants;
- to examine how political factors impact governments' willingness to assist with the ICC, including the US's use of sanctions to hinder investigations;
- to investigate how differing legal traditions and political cultures, especially in non-Western nations, impact worldwide acceptability and implementation of ICC jurisdiction.

### Materials and methods

This study used a variety of specialised legal research and analysis methodologies to investigate the obstacles that the ICC encounters in its interactions with national legal systems. Doctrinal analysis was the primary study approach, with an emphasis on interpreting important legal documents that establish the ICC's authority, such as the Rome Statute on the International Criminal Court (2010), which outlines the ICC's jurisdiction, functions, and restrictions. The doctrinal method was also used to examine international treaties, such as the United Nations General Assembly Resolution No. 55/25, "United Nations Convention against Transnational Organised Crime" (2000), and the Treaty on the Prohibition of Nuclear Weapons (2017). The analysis of these legal documents showed the ICC's origins, member states' duties, and obstacles arising from varied levels of commitment to international criminal law.

A comparative legal analysis was used to determine the disparities between national laws and ICC norms, particularly in terms of human rights and the criminal penalty. In this regard, the research examined how Afghanistan's Penal Code (2017), which allows the death sentence, differs from the ICC's prohibition on capital punishment, as specified in Article 77 of the Rome Statute (2010). Brazil's Law No. 13.260 "On Anti-Terrorism" (2016) and Law of Republic of India No. 37 "On Unlawful Activities (Prevention)" (1967), both of which include provisions for long-term

imprisonment and ambiguous definitions of terrorism, were examined to show how national security laws can conflict with the ICC's emphasis on human rights and due process. The study examined the criminal legislation of Afghanistan, Brazil, Colombia, India, the Philippines, and Puerto Rico to identify discrepancies between their national legal systems and the ICC's principles, notably those concerning human rights, accountability, and rehabilitation.

Case law analysis was utilised to examine significant ICC prosecutions, including the conviction of D. Ongwen, a former Lord's Resistance Army commander, for war crimes and crimes against humanity. This case highlighted how the ICC acts in situations where national legal systems may refuse to prosecute. Another case, the acquittal of former Ivory Coast President L. Gbagbo, illustrated the court's acknowledgement of national sovereignty in its decision-making procedures. These instances revealed the complicated mechanics of upholding international justice, particularly when national and international interests overlapped.

Political-legal research was carried out to determine how geopolitical interests affect state cooperation with the ICC. For instance, South Africa's reluctance to arrest Vladimir Putin, despite being a Rome Statute signatory, demonstrated how national security and diplomatic immunity sometimes outweigh ICC demands. The study additionally explored Kenya's successful lobbying within the African Union to prevent the prosecution of President U. Kenyatta and Deputy President W. Ruto, demonstrating how political pressure may impede the court's efforts to prosecute high-ranking officials for crimes against humanity. This investigation focused on the larger political variables that influence the ICC's efficacy.

The content analysis of reports from organisations such as the United Nations (2023) and the World Economic Forum (2023) was employed to offer context for the ICC's strategic activities. For example, the International Criminal Court's (2023a) strategic plans for 2023-2025 were examined to evaluate the court's efforts to strengthen collaboration with member states and civil society. Reports from the Death Penalty Information Centre (2024) were analysed to contrast global trends in death punishment with the ICC's emphasis on rehabilitation rather than retribution, adding another degree of complication to the court's international mission. Using doctrinal, comparative, case law, political-legal, and content analysis methods allowed for a more nuanced analysis of how the ICC navigates the complicated political realities of a world controlled by sovereign countries.

## Results

The modern world has witnessed the birth of the ICC as the first permanent international criminal justice institution in the history of mankind. Today, this legal phenomenon raises several important questions and challenges that require deeper study and understanding. The ICC is the result of the realisation of an ideal concept developed under the influence of the world federalism movement, so it inevitably has various conflicts with the real world. The most fundamental conflict among their many is that the basis of its existence is designed by idealists according to a single national legal system, while the real international environment is highly politicised and is a binary legal system.

A prerequisite for the effective functioning of the court is the existence of world government in the international community and the recognition of international criminal

law as world law. In actuality, the international community, ruled by sovereign nations with opposing political agendas, is unable to fully embrace the ideas of global federalism. Consequently, the task for the ICC is to bridge the gap between its idealistic foundations and the practical complexity of a highly politicised world. Recent achievements of the ICC highlight its ongoing efforts to address international crimes and uphold justice. A notable development is the conviction of D. Ongwen, a former commander of the Lord's Resistance Army, who was sentenced to 25 years for committing 61 war crimes and crimes against humanity in Northern Uganda (Boddy, 2023). In June 2023, the ICC launched strategic plans for 2023-2025 aimed at enhancing its operational effectiveness and reinforcing its relationships with states and civil society (International Criminal Court, 2023a). This marks a significant effort to adapt to the complex international environment in which the court operates, as it seeks to balance its mandate with the political realities of securing cooperation from states.

First of all, the international community on which the ICC depends is a highly politicised and competitive society. In a competitive international society, it is virtually impossible to establish a world government (United Nations, 2023; World Economic Forum, 2023). This also means that the premise of an international unified legal system does not currently exist either. It is important to note that international criminal law, as represented by the Rome Statute, is not an example of worldwide law and is subject to serious politicisation. Also, world law is closely related to world government. As C. Cowley and N. Padfield (2024) note, the final stage of law development is world law. At the stage of world law, the laws of different countries and all kinds of laws will eventually tend to unify and become laws applicable to the whole world, they will be implemented by the world government, which will lead to the disappearance of the laws of different countries.

In 2024, the world community is still based on sovereign states and a world government does not yet exist. Furthermore, the level of development of the rule of law varies from country to country around the world, and there are also great differences in the legal culture and legal system of different countries (Baturin & Moroz, 2024). Countries' perception of international crime and international criminal law is also full of contradictions, as illustrated by the fact that only 123 states are parties to the Rome Statute (2010). International criminal law does not only refer to the Rome Statute but also includes various treaties on criminal matters developed or recognised by countries.

Notable examples include the United Nations General Assembly Resolution No. 58/4 "United Nations Convention against Corruption" (2003), which addresses corruption in both the public and private sectors, and the United Nations General Assembly Resolution No. 55/25 "United Nations Convention against Transnational Organized Crime" (2000), which aims to combat organised crime across national borders. Furthermore, the Treaty on the Prohibition of Nuclear Weapons (2017) indicates a growing worldwide agreement on concerns concerning weapons of mass destruction and its consequences for global security. These treaties seek to address specific criminal and human rights concerns by providing legal frameworks that supplement the Rome Statute (2010). However, they represent additional political and legal obstacles. Inconsistencies in enforcement and

accountability might result from different countries' promises and interpretations of these agreements. For example, the United Nations General Assembly Resolution No. 57/199 "Optional Protocol to the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment" (2002) faces implementation challenges due to varying national legal standards and levels of political will among states. Recent reports indicate that countries fail to align their domestic laws with the Convention, leading to inconsistent enforcement (World Court Rules, 2023).

However, there is currently no international criminal law instrument recognised or signed by all countries in the global community. Therefore, international criminal law is not the law of the world. As rightly pointed out by L. Henkin (2020), the ICC is created based on political decisions, reflecting the political proposals of the interstate system. Considering the problems of this court, R.H. Steinberg (2024) notes that in the legislative process of international criminal law, the participants are diplomats, not experts in international criminal law, comparative criminal law, or procedural law. It should also be noted that world criminal law, with the Rome Statute at its core, mainly reflects the legal ideas of the Western world, and its universality is somewhat lacking, making it difficult for the non-Western world to recognise it.

Article 170 of the Penal Code of Afghanistan (2017) allows for the death sentence for certain offences, including murder and terrorism (United Nations Assistance Mission in Afghanistan, 2023). This is in sharp contrast to Article 77 of the Rome Statute (2010), which forbids the application of the death penalty. The ICC prioritises rehabilitation above retribution, which aligns with international human rights principles that oppose capital punishment. The Afghan legal structure takes a punitive approach that contradicts these objectives, prolonging cycles of violence rather than promoting peace. The Death Penalty Information Centre (2024) demonstrates that countries that abolish the death penalty tend to experience lower rates of violent crime, suggesting that punitive measures do not effectively enhance public safety.

Law of Brazil No. 13.260, "On Anti-Terrorism" (2016), has sparked worries about its wide definitions and its abuse against political dissenters. Article 2 defines terrorism in ambiguous words that might include a wide range of actions, including protests. This opposes Article 7 of the Rome Statute (2010), which defines crimes against humanity and emphasises the importance of being explicit when characterising such acts. The potential for misuse of the Anti-Terrorism Law against political dissenters threatens the very foundations of democracy and civil rights in Brazil, revealing a growing trend where national security concerns are prioritised over individual freedoms.

Law of Colombia No. 975 (2005), often known as the Justice and Peace Law, offers lower terms for paramilitary members who demobilise and confess to their crimes. While intended to promote peace, this law may impede accountability for major crimes such as war crimes and crimes against humanity, as defined in Articles 5 and 21 of the Rome Statute (2010). The ICC requires nations to provide responsibility for such offences, implying that Colombia's policy may contradict its international legal obligations. This dilemma raises critical questions about the effectiveness of transitional justice mechanisms. In a legal environment where offenders can negotiate leniency, the message sent to society is one

of tolerance towards severe violations, which can further embolden those who commit such acts.

Law of Republic of India No. 37 "On the Unlawful Activities (Prevention)" (1967) in India provides for long-term imprisonment without prosecution and has been criticised for targeting certain populations. Article 9 of the Rome Statute (2010) protects the right to a fair trial and protection from arbitrary arrest. By permitting prolonged detention without trial, the UAPA risks normalising arbitrary detention and undermining the legal safeguards intended to protect individuals from state overreach. The lack of accountability for actions taken under this law raises alarms about the potential for human rights abuses. This legal framework reflects a broader global trend where states increasingly prioritise security over fundamental rights, posing significant challenges to the principles of justice that the ICC advocates. This disparity exposes a fundamental discrepancy between Indian domestic law and international standards established by the ICC.

Republic Act of Philippines No. 11479 (2020), commonly referred to as the Anti-Terrorism Act of 2020, has been criticised in the Philippines for its wide definitions of terrorism and clauses that allow for warrantless arrests. Article 15 of the Rome Statute (2010) emphasises fair trial rights and due process guarantees, which are jeopardised by this law. The Philippine government's stance has resulted in massive human rights breaches, including extrajudicial murders, which clearly contradicts the principles endorsed by the ICC to prevent such crimes.

While Puerto Rico is a US territory, local laws frequently mirror US government policy, which may contradict international conventions. Federal drug regulations sometimes inflict harsh punishments without taking into account mitigating circumstances or rehabilitation attempts (Controlled Substances Act, 2023). This approach defies Article 10 of the ICC Statute, which calls for compassionate treatment and rehabilitation of criminals. Puerto Rican punitive approach perpetuates cycles of criminality and fails to address the underlying social issues contributing to drug-related offenses. The lack of a rehabilitative focus in sentencing indicates a legal culture that prioritises punishment over social reintegration, which ultimately hampers efforts to build a more just society.

The review of criminal legislation in Afghanistan, Brazil, Colombia, India, the Philippines, and Puerto Rico demonstrates major contradictions with the principles set by the Rome Statute (2010). These contradictions go beyond legal differences, emphasising broader socioeconomic issues in which governments frequently prioritise power above justice and responsibility. Each country's approach reflects its own cultural, historical, and political backgrounds, which influence how laws are developed and implemented (Szytska, 2023). However, the ongoing conflicts between local legislation and international norms highlight the critical need for reform. Aligning national frameworks with the ICC principles is critical for encouraging responsibility, defending human rights, and prioritising rehabilitation over retribution. By incorporating the ICC's principles into their legal systems, these countries may help break the cycle of violence and impunity. Only through such efforts can justice be realised, opening up opportunities for a fairer global system that protects fundamental freedoms and advances human rights. The shortcomings in these countries' legal systems highlight the continuous challenges they confront in

promoting accountability and protecting human rights within their diverse historical and political contexts.

The problem of multiple equilibria often arises in the system of construction. M. Eilstrup-Sangiovanni and D. Verdier (2024) explained system construction using the coordination game model. The scholar believed that the distribution of national power can better explain the nature of institutional devices. In general, powerful countries have a strong ability to shape the rules of the social game, and the preferences of the weak are difficult to fully reflect. For example, the Western world played a leading role in the creation of the Rome Statute. During the preparatory phase of the statute, the “like-minded countries”, with Canada, Australia, Germany, Finland, and other medium-powered European and American countries in the leading role, almost monopolised all nominations for the presidency of the working group. Furthermore, since there is no world government in the global community, the obligations of state parties to cooperate under the Rome Statute (2010) are not binding. The peculiarity of international criminal justice cases defines the interests to which countries should pay attention when attempting to investigate such offences and punish suspects, namely the impact on internal peace and security and the stability and direction of the political situation. However, when the target of the trial is a government official or even the current president of a country, based on the particularities of status and the representativeness of actions, the offences brought to trial may initially largely reflect the sovereign will of the country. Despite the importance of preventing and punishing international crimes, this value objective cannot override the political preferences of nation-states for national security and stability.

The state and the ICC frequently disagree, primarily on the admissibility of the case and the execution of the arrest warrant. This dilemma is shown by South Africa’s unwillingness to arrest V. Putin, who is wanted by the ICC for war crimes (Camut, 2023). South Africa, as a member of the Rome Statute (2010), is legally obligated to execute such orders. Nonetheless, it has expressed reservations about diplomatic immunity and its geopolitical ramifications, showing a preference for national interests above international obligations. Article 27 of the Rome Statute (2010) clearly says that no head of state is immune from prosecution for international crimes. However, countries such as South Africa have used diplomatic immunity as a justification for not prosecuting leaders such as Putin, reflecting wider political issues. South Africa’s hesitation to arrest Putin is similar to its earlier unwillingness to imprison Sudan’s former president, Omar al-Bashir, despite an ICC warrant (Petit, 2020). This trend shows how political ties within organisations such as the African Union might impact state behaviour regarding ICC commitments. Historically, the AU has pushed its member states to oppose ICC mandates, claiming that such cooperation may jeopardise regional diplomatic efforts.

The ICC’s success is primarily dependent on state assistance, particularly in cases involving individuals with power. This dependence highlights the ICC’s weaknesses, as it lacks regular enforcement measures to guarantee compliance with its verdicts. The continuous conflict between national sovereignty and international accountability indicates that change may be required to improve the ICC’s enforcement powers. Potential reforms might include increasing international pressure on non-compliant governments or adopting

more specific procedures for addressing disputes between national interests and global legal duties.

States seek to prevent their nationals or high-level officials from being investigated or prosecuted at the ICC. For example, countries like the United States have used their political weight and influence to stall proceedings. In 2020, the US placed sanctions on ICC personnel, including former prosecutor Fatou Bensouda, to prevent the court from investigating suspected war crimes in Afghanistan. The US also stated that U.S. persons should not be subject to the ICC’s jurisdiction (United States imposes..., 2021). Similarly, Kenya used diplomatic pressure within the African Union (AU) to influence other states and block prosecution attempts against President U. Kenyatta and Deputy President W. Ruto during their ICC trials for post-election violence, garnering AU support to defer the cases to avoid regional destabilisation.

Even if the ICC has ordered the detention of a defendant, nation-states may face political obstacles in enforcing such warrants. For example, the arrest order for Russian President Vladimir Putin, issued in March 2023 for war crimes in Ukraine, confronts substantial political obstacles (Alexander, 2023). Russia refuses to recognise the ICC’s jurisdiction and has issued threats, making warrant enforcement improbable. From an international law standpoint, this incident underscores the limitations of the ICC’s dependence on state cooperation for enforcement. Non-signatory governments, like Russia, are not required to cooperate, and even signatory states face serious diplomatic and political consequences, such as instability or retribution, if they seek to implement the warrant. While the International Criminal Court’s legal authority is clear, the actual enforcement of its arrest warrants is severely hampered by geopolitical realities (Symonova, 2024). They may fear the possible consequences for their national security and stability if they execute an arrest warrant. States may employ diplomatic tactics, such as threats of sanctions or pressure on other countries, to protect their populations or accomplish political objectives. A significant example was when US politicians threatened ICC Prosecutor Karim Khan with penalties if arrest warrants were issued for Israeli leaders during the Gaza crisis (Hibbitts, 2024). These diplomatic threats, intended to shield Israeli leaders, demonstrate how powerful governments may hinder the ICC’s activities through political and diplomatic pressure.

The Rome Statute is intended to punish the most serious international crimes and to maintain world security, peace, and human well-being, that is, to effectively punish the perpetrators of serious crimes and to prevent the emergence of new international crimes through the trial and punishment of the perpetrators of crimes before the courts, especially the rulers of the countries that committed the offences under the statute. This is done to ensure the security of the entire world community and the well-being of all mankind (Steinberg, 2024). According to this logic, the court management of the global community follows a linear logic, emphasising that there is no peace without justice, i.e., trials help to restore truth, maintain justice, and then restore peace.

However, individuals in each country or international organisation appeal to their own tradition in social life to find solutions that best suit their interests in various disputes and conflicts, and on this basis, in the process of human interaction, a set of rules gradually emerges to suit their development and changes in social life. Take the African Union as an example (due to the African Union’s vehement

opposition to the ICC). K.A. Prorok (2020) notes that from the African Union's perspective, for the sake of internal order, the state can moderate the pursuit of personal justice to prevent more serious injustices, so ICC intervention in several African countries based on linear logic is considered "inappropriate". This is especially evident in Uganda, where the ICC's 2005 arrest warrant for Lord's Resistance Army (LRA) leader Joseph Kony hampered the Disarmament, Demobilisation, and Reintegration (DDR) process by discouraging combatants from surrendering under the country's Amnesty Act (International Criminal Court, 2023b). The intervention, intended to bring justice, actually exacerbated the conflict by interrupting settlement talks. A similar situation occurred in the Democratic Republic of the Congo, where the arrest of rebel commander Mathieu Ngudjolo in 2008, after he had been given amnesty as part of a peace agreement, sowed suspicion among former combatants and weakened the fragile truce (Clark, 2021). These incidents demonstrate how, rather than leading to peace, ICC interventions can often aggravate disputes and have more severe repercussions.

It is possible to conclude that since there is no world government and no international criminal code in the global community, the ICC, as an ideal conceptual solution, has inevitably faced many challenges from international society. The inability of state parties to fulfil their obligations to cooperate and the lack of effort in governance are all direct manifestations of the lack of a practical basis for the ideal design of the ICC. Faced with the challenges of international society, the global community must properly position the ICC from a realistic perspective so that it can intelligently fulfil its role in the global community.

In the process of a rational return to international society, the court must be held to this standard – not to deny the role of the court, but also not to exaggerate it. A "degree" must be considered, and that "degree" is "respect for national sovereignty". Since the common interests of the world community are based on national interests, the principle of national sovereignty remains a basic principle of international law and even international criminal law. Despite the importance of human rights, the principle of human rights is not above the principle of sovereignty.

To further appreciate how this balancing of human rights and sovereignty is handled in practice, consider some situations in which the ICC has navigated these principles. In various cases, the court has shown an understanding of the need to respect national sovereignty while carrying out its responsibility to ensure justice for international crimes. For example, in the case of former Ivory Coast president L. Gbagbo, the ICC cleared him of charges connected to post-election violence in 2019 (International Criminal Court, 2021a). The court underlined the significance of due process, recognising that national sovereignty played a crucial part in permitting Ivorian authorities to oversee the case. The court recognised national sovereignty by empowering Ivorian authorities to handle some parts of the case, maintaining a balance between international monitoring and domestic legal systems. Similarly, in the conviction of Bosco Ntaganda, a former Congolese military leader, the ICC took into account the complicated local dynamics in the Democratic Republic of the Congo. Ntaganda was convicted of war crimes and crimes against humanity in 2019, however ICC recognised the role of national courts in prosecuting these crimes (International Criminal Court, 2021b). By asserting its authority

only after concluding that local courts were unable or unwilling to act, the ICC honoured the Rome Statute's complementarity principle, which prioritises national legal institutions where reasonable. Even in the pursuit of justice, the court must carefully weigh its duties with the need to respect states' autonomy.

Even those international criminal lawyers who advocate the use of international criminal law to limit and prevent violations by states to protect human rights must recognise that there is a tension between values and expectations universally accepted by different people and national political interests, but international rules of criminal law must evolve within this tension (Steinberg, 2024). As L. Henkin (2020), international organisations promote national cooperation in technology, society, and culture. They will not make "supranational" decisions in the interests of all countries or all people anywhere. As an international organisation without a coercive body, the effective operation of the ICC depends heavily on the cooperation of state parties. To ensure the smooth operation of the court in the future and to fulfil its role, the sovereignty of States parties must be respected to increase their willingness to cooperate.

Thus, although international criminal law can adjust international relations by guiding, assessing or even condemning the behaviour of States, there are many instances where international criminal law is not followed and the effectiveness of international criminal law in restricting the behaviour of States is often questioned. The reason is that the world community is still a political society in which sovereign states are the basic unit, and in its essence, it is a political society. The international relations governed by international criminal law are more political than legal. Therefore, international criminal law and the ICC must consider the highly politicised nature of the world community.

## Discussion

There are various approaches to understanding the legal nature of the ICC and the presence or absence of political influence on its activities. For example, F. Mbirigi and P. Niyonizigiye (2024) noted that over the past decades, when there was an institutional development of international criminal law, starting from the 1990s, International Criminal Courts and tribunals, including the ICC, present their mission as apolitical, where only legal aspects are important, and politics is subordinated to law. F. Boehme (2020) described the ICC as apolitical because the Rome Statute binds decision-makers at the ICC and largely prohibits them from taking political considerations into account. The presentation of the ICC, according to L.N. Malu (2019), as explicitly apolitical is intended to reaffirm its credibility and legitimacy.

Although the ICC itself and some scholars consider it a legal institution free from political interference, this view also reveals its weaknesses: it is established based on political will, the crimes under its jurisdiction are linked to politics, and its effective functioning depends on the political will of sovereign states. Therefore, it is difficult to agree with the above position of scholars, given the politicised nature of the global community and its influence on the court's work, as argued in this study. Objectively speaking, the ICC remains an institution influenced by international political forces and has international political influence. The same position is taken by some academic researchers, such as H. Jo *et al.* (2021), who identified that throughout the

history of different conflicts, the main conflicting parties were not always afraid of the ICC, but they were aware and cautious about the political influence of this court, and, in turn, this caution reshaped their behaviour in conflicts and led to institutional changes that increased the level of responsibility in countries.

The effective functioning of the ICC depends on the political will of sovereign states. To date, only 123 states parties have signed the Rome Statute, and several major countries have not ratified it. The ICC is far from being universally recognised and the court itself has no executive body, which also means that the court's judicial actions are heavily dependent on the political will of sovereign states. Many countries co-operate with and refer cases to the ICC not out of a desire for international criminal justice, but to combat opposition forces at home. For example, Rwanda borders Uganda to the north and is exposed to the rebel forces of the Lord's Resistance Army in Uganda. In 2004, the Rwandan government referred the situation of this army on its territory to the ICC. It aimed to use the influence of the ICC to discredit the Lord's Resistance Army and combat its impact. However, after the ICC took the case to force the anti-government organisations to agree to hold peace talks with the government, the Rwandan government promised to pardon the criminal responsibility of the leaders of the anti-government organisations. This consideration of political factors led directly to the conflict between the Rwandan government and the ICC (Clark, 2021).

The reason for the conflict between the ICC and the Rwandan government is not only that the Rwandan government's assurances of criminal pardons for Lord's Resistance Army leaders undermine the credibility of the court, but also that it is difficult to conduct investigations without the support of the Rwandan government. The court's prosecutor is therefore often influenced by political factors in deciding whether to investigate. The most important influence is that the prosecutor must consider whether the investigation can win support from the countries involved (Voitenko, 2023). When the court cannot gain support from states or international organisations, its work is hampered.

ICC judicial actions also have a certain political impact on the global community, sometimes even negative. For example, the ICC intervention in Uganda in 2004 affected peace talks between the government and the Lord's Resistance Army, which exacerbated the conflict (Schomerus, 2021). The situation in Uganda reflects the tension between the principles of restorative justice in Africa and the repressive justice of the ICC. The issue of criminal accountability is a legal issue, but in practice, it becomes a political issue. Political factors not only directly affect the degree of co-operation of the countries concerned, but also directly affect the work of the ICC and the development of the peace process. L.G. Iommi (2020) supports this point of view, highlighting that political pressures from member states or politicians can influence the ICC's decision to accept certain cases and initiate investigations. This may include refusal to consider cases where the culpability of certain individuals may cause diplomatic or political disputes. The influence of political factors on the work of the ICC is also pointed out by S.L. Ochs (2021), drawing attention to the fact that for this purpose states use propaganda through the media. Thus, science repeatedly notes the influence of politics on the work and decision-making of the ICC.

Thus, the world community must have a clear understanding of the court because the court is not only a judicial institution operating under the Rome Statute, but also an international institution operating under various political factors, and its influence and actions go far beyond the legal sphere. Therefore, in the future functioning of the ICC, not only legal factors but also political factors need to be considered when considering whether and how to intervene. Otherwise, the court may face strong resistance from the states subject to its jurisdiction. Each country has different priorities in choosing justice and peace (Abdrasulov *et al.*, 2024). The ICC must therefore recognise the characteristics of the binary legal system of the global community and rationally understand the limitations of the application of international criminal law.

As a rule, the court will naturally play a role in international relations, but objectively speaking, the ICC's role is very limited. International criminal law is not world law. According to C. Geertz (2015), the law is local knowledge, and the concept of "local" refers not only to space, time, class, and various issues but also to link the local understanding of what happened with the local imagination of what might have happened. This view rightly emphasises the importance of considering differences in culture, ideology and legal traditions when considering the role of the ICC. Due to the significant differences in world systems, ideologies, and legal concepts among countries around the world, it is difficult to form a supranational international criminal code. Even if the provisions of Article 13 of the Rome Statute (2010) grant the ICC powers similar to universal jurisdiction, the international community often resists the court's intervention because of its uniform logic of governance and choice of values.

Furthermore, the ICC and national criminal law belong to two different systems, and the application of international criminal law is limited to national boundaries and can only be used as a complement to national criminal law. International criminal law is a variety of treaties or customs related to criminal matters signed or recognised by countries. From a historical perspective, international criminal law is just one branch of national criminal law. International criminal law only binds a member state after explicitly recognising it, which means that the law ends with national borders. Modern international relations are primarily political relations between states as the main subject of both international law and international politics is the state, and the state in its essence is a political entity (Martsenko & Lukasevych-Krutnyk, 2024). Because of its intrinsic nature, international criminal law can only play a secondary role in the international community and cannot be compared to national criminal law. In this context, M.Z. Oner (2021) rightly noted that the principle of complementarity is a formula created by the founders of the ICC who sought to balance the conflicting interests of international justice and state sovereignty.

Some scholars hope that the ICC will apply a direct system of enforcement. For example, K. Soler (2019) pointed out that the lack of enforcement powers is a serious limitation that paralyses the functions of the ICC. However, at the diplomatic conference in Rome, the views of different countries reflected the international society that national sovereignty must be respected (Prorok, 2020). This means that some countries do not want the ICC to have direct enforcement powers to avoid interference in their internal affairs. This situation highlights the complexity of the issue and the need to consider different perspectives in the design

and application of international instruments such as the ICC, as well as the impossibility of making a direct enforcement system a reality today.

The need to respect national sovereignty is also the reason why the Rome Statute finally compromises with international society and establishes the principle of supplementary jurisdiction. The principle of supplementary jurisdiction prioritises the jurisdiction of national courts, while the ICC is only complementary to national courts. Once a state with jurisdiction begins or investigates or prosecution of a situation, the ICC cannot exercise its jurisdiction. The principle of supplementary jurisdiction, on the one hand, encourages national courts to assume a role in punishing the perpetrators of international crimes; on the other hand, it encourages States Parties to improve their national judicial system and establish a cooperation mechanism based on national criminal jurisdiction and supplemented by international criminal jurisdiction to eliminate impunity in the international criminal sphere. For example, L.N. Sadat (2023), notes that the complementary jurisdiction of the ICC is recognised by states because of the need for courts that can perform acts that are not possible under the national legal system. This approach also notes the importance of the ICC in combating impunity in the international criminal sphere but focuses more on the role of national courts than on the role of international mechanisms.

Emphasising the complementary jurisdiction of the ICC does not mean excluding its jurisdiction over international crimes but is based on realities. On the one hand, the principle of supplementary jurisdiction can encourage state parties to take the initiative in judicial action and reduce fears of ICC interference with judicial sovereignty; on the other hand, as an external pressure, the ICC can effectively encourage active action by states parties and also achieve the ICC's goal of punishing crimes. However, it should be noted that the principle of supplementary jurisdiction essentially rejects the supranational character of the ICC. The court is only a complement to national courts, not a substitute for them, and the preservation of national sovereignty remains a prerequisite for the exercise of ICC jurisdiction. State initiative in judicial action may indeed make judicial action by the ICC more difficult to some extent, but the basis of the dual legal system of the world community is an undeniable fact. It is reckless to try to break this paradigm, which will also provoke opposition from state parties.

### Conclusions

The ICC faces many challenges related to the international society, including the absence of a world government and a common international criminal code. The interaction between the ICC and States Parties is complicated by political interests, especially in the area of national security. International criminal law and the ICC should be viewed in the light

of the politicised world community, where sovereign states play the greatest role. Different countries have different priorities for justice and peace, and the ICC must address this diversity and the limitations of the application of international criminal law.

Influenced by the global federalism movement, the ICC is an ideal conceptual solution developed by idealists under a single national system of law. However, real society is highly politicised, and functions based on a dual legal system. Therefore, the implementation of an idealistic single concept in real society is doomed to difficulties. The ICC must recognise that the state has always been the dominant motive of the national movement and has always had priority in international law and that the state in its essence is a political entity and the dual coexistence of national criminal law and international criminal law is represented in the international community. Therefore, the ICC must realise its political nature, the principle of supplementary jurisdiction and its subsidiary function. If the ICC deviates from realistic foundations and over-extends its role, conflicts between the international community and the ICC will only increase and the acceptance of the court by the international community will diminish.

The analysis of specific cases and national legislation in the Global South, such as South Africa's refusal to arrest Putin over diplomatic immunity concerns or Kenya's opposition to ICC proceedings against President U. Kenyatta, demonstrates how political interests frequently undermine the ICC's enforcement of international criminal law. National laws, such as Afghanistan's Penal Code, which allows the death sentence, and Colombia's Justice and Peace Law, which grants leniency to paramilitary members, highlight the difficulties of reconciling local legal systems with the ICC's goals. These cases show how the ICC must manage a complicated web of political and legal realities, especially in places where sovereign goals frequently clash with international responsibilities.

The ICC should continue to cooperate with state parties and seek dialogue to resolve differences and improve cooperation. It is important to find a balance between criminal aspects and political interests, considering the realities of the global community. The right approach to the complementary jurisdiction of the ICC can encourage proactive action by state parties and increase the effectiveness of the ICC in punishing crimes. Prospects for further research may include examining the influence of political factors on ICC decisions and assessing their implications for international justice.

### Acknowledgements

None.

### Conflict of interest

None.

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## Питання обмеження міжнародного кримінального правосуддя в сучасному світі

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**Анотація.** У дослідженні розглянуто проблеми, пов'язані з Міжнародним кримінальним судом та його сучасною роллю у світі. Вихід деяких країн з Африканського Союзу та санкції з боку Сполучених Штатів Америки ставлять питання про його роль з реалістичної точки зору. Це дослідження мало на меті вивчити суперечності між ідеологічними засадами Міжнародного кримінального суду та практичними перешкодами, з якими він стикається в політизованому міжнародному світі, що часто обмежує його ефективність через державний суверенітет, різноманітні правові системи та політичні інтереси. Для досягнення цієї мети було використано доктринальний аналіз, порівняльно-правовий аналіз, аналіз судової практики, політико-правовий аналіз та контент-аналіз. Розкрито особливості становлення Міжнародного кримінального суду. Підкреслено, що цей суд, створений на ідеалістичних засадах, стикається з викликами, серед яких вихід держав-членів Африканського Союзу, санкції США, опір країн, які ставлять на перше місце національний суверенітет і політичні інтереси. З'ясовано, що конфлікти між державами-учасницями та судом, а також проблеми в управлінні судом підкреслюють невідповідність між ідеальною концепцією Міжнародного кримінального суду та реальною основою його роботи. Підкреслюється важливість раціонального повернення Міжнародного кримінального суду та більш збалансованого сприйняття його ролі в сучасному світі. Зроблено висновок, що перебільшення значення суду може загрожувати його подальшому існуванню, а тому важливо враховувати реалії сучасної політики у його подальшому розвитку та функціонуванні. Розроблено рекомендації, спрямовані на підвищення ефективності практики суду. У дослідженні надано науково-практичну інформацію для юристів-міжнародників, політиків та дипломатів, підкреслено важливість узгодження національного суверенітету та правових систем з мандатами Міжнародного кримінального суду з метою покращення співпраці та ефективності, особливо в політично нестабільних регіонах, таких як Африка та Східна Європа

**Ключові слова:** вихід Африканського Союзу; санкції; роль у сучасному правосудді; глобальні політичні виклики; ідеалістичні засади