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Power vs. Principle: The Ongoing Battle to Influence the International Criminal Court

İhsan Faruk Kılavuz

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"Power at its best is love implementing the demands of justice."

Martin Luther King Jr.

Introduction

International law and politics share a complex, multidimensional relationship beyond mere interdisciplinarity, as they complement and shape each other at theoretical and functional levels. International law, as a system of rules and principles regulating interactions among states, international organisations, individuals, and other global actors, is inherently tied to politics. (Saputra, 2021) Beyond this technical role, their practical interdependence is also evident; law constrains and guides politics, while politics shapes the formation and implementation of international law. This mutual interaction influences state behaviour in the global arena, which helps define the essence of international law, functioning as a safeguard within the normative structure of the international system.

Nevertheless, this reciprocal relationship is not always positive or mutually reinforcing. Many disputes within the global sphere stem fundamentally from the competition—and, at times, outright conflict—between international law and politics. This tension is particularly evident when states, as sovereign powers and the most influential actors within the international system, prioritise their political interests over legal norms, disrupting the balance between international law and politics in favour of the latter.

At this juncture, the issue of political pressure and influence on the International Criminal Court (ICC) emerges as one of the most striking and tangible manifestations of this imbalance and conflict between them. The ICC, established as an independent judicial institution to address the most serious international crimes, including war crimes, crimes against humanity, genocide, and crimes of aggression, operates within a deeply politicised global context. (Tiemessen, 2014) Although the Rome Statute—the founding document of the ICC—was designed to safeguard the Court's independence from political interference as the world's permanent penal Court, its functioning frequently exposes significant susceptibility to external political pressures.

While accusations and criticisms often directly target the ICC itself, it is crucial to emphasise that the external pressures politicising the Court predominantly originate from non-judicial actors, including states, the United Nations Security Council (UNSC), and various other entities. These actors exert significant influence over decisions related to case referrals, deferrals, and the broader legitimacy of the ICC. This dynamic is particularly evident given the Court's lack of its own enforcement mechanisms, such as a police force or prison system, which makes it heavily reliant on external actors for cooperation.

While the intertwined nature of international law and politics makes political pressures on international judicial bodies like the ICC inevitable—and to some extent understandable or even constructive as a balancing mechanism—it is apparent from the current context that political actors' influence on the Court and its judicial processes does not constructively respect its independence and impartiality. (Zhu, 2014) Rather than fostering the ICC's functionality through cooperative engagement, institutional dependency on external actors leaves the Court vulnerable to political manipulation and exposes it to criticisms of politicisation. Therefore, it must be acknowledged that while the issue of politicisation is a valid concern, effectively addressing it requires a clear identification of its root causes, which predominantly lie not within the Court itself but with external actors.

This study examines the political influence exerted on the ICC by specific states, the UN Security Council, and other political actors. It aims to demonstrate, through concrete examples, how these actors attempt to pressure the Court and its judicial processes in ways that conflict with the principles of international criminal justice. Furthermore, it highlights systemic flaws that render the ICC vulnerable to political interference. By identifying these structural deficiencies, the study proposes measures to strengthen the ICC's independence and impartiality, thereby enhancing its resilience against undue political influence and ensuring its ability to deliver effective international criminal justice.

Criminal Justice à la Carte: Washington's Selective Approach to Criminal Justice

The United States has the most extensive track record of exerting political pressure on the ICC, often in stark contradiction to its apparent commitment to international criminal justice.

Historically, the U.S. played a leading role in establishing earlier *ad hoc* tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), under the auspices of the UN Security Council. Through these initiatives, Washington frequently expressed its commitment to international criminal justice. However, the U.S.'s endorsement of international criminal justice has been contingent upon its ability to influence such mechanisms, mainly through institutions established under the UN Security Council, where it wields veto power as a permanent member. Indeed, when it came to the ICC—a permanent judicial body independent of direct UN Security Council control—Washington not only opposed its establishment but also demonstrated hostility toward the Court through various legal mechanisms and methods of pressure since its inception.

In essence, the U.S. has sought to define the scope of international criminal justice according to its own political interests, selectively determining victims and perpetrators in alignment with its foreign policy priorities. In line with this, from its very inception, the ICC has faced persistent opposition from the U.S. The official rationale for this stance lies in concerns that politically motivated investigations and prosecutions could be initiated against U.S. nationals either by ICC member states or *proprio motu* by the ICC Prosecutor. (Aksar, 2003) With this rationale, during the negotiations at the 1998 Rome Conference, which led to the adoption of the Rome Statute establishing the ICC, Washington openly and fervently opposed its creation and ultimately voted against its adoption.

Nevertheless, despite this initial opposition, President Bill Clinton signed the Rome Statute on December 31, 2000—one of his administration's final acts before leaving office. This move was widely interpreted as a symbolic gesture rather than an indication of genuine intent to bind future U.S. administrations to the ICC's jurisdiction. In a way that validates this, shortly after taking office, President George

W. Bush's administration made clear its intent not to be bound by the Statute's provisions and formally 'unsigned' it on May 6, 2002.

Beyond withdrawing its signature, the U.S. embarked on a campaign to undermine the ICC's authority and effectiveness as part of a broader effort shaped by its foreign policy interests. This campaign included legal measures to shield U.S. nationals from ICC jurisdiction and weaken the Court's operational capacity. (Bayilloğlu, 2007)

Illegal Legalities: “Bilateral Immunity Agreements” and “the ASPA”

The United States has employed various legal tools to shield its nationals from the jurisdiction of the ICC, with two of the most controversial being Bilateral Immunity Agreements (BIAs) and the American Service-Members' Protection Act (ASPA).

BIAs, often called “Article 98 agreements,” are based on Article 98 of the Rome Statute, which prohibits states from surrendering individuals to the ICC if doing so would violate their international obligations under other agreements. Under this provision, the U.S. has signed approximately 100 bilateral agreements prohibiting states from extraditing U.S. nationals to the ICC. However, these agreements were often concluded in violation of the principle of “free consent,” a cornerstone of contract law. The U.S. frequently exerted significant economic, diplomatic, and military pressure to secure compliance. For instance, in 2005 alone, \$46 million in aid was withheld from countries that refused to sign BIAs, while programs such as International Military Education and Training (IMET) and Foreign Military Financing (FMF) were suspended for non-compliant states. In some cases, the U.S. leveraged NATO membership aspirations as a bargaining tool, leaving economically dependent nations with little choice but to comply.

Similarly, the ASPA, enacted in 2002 and informally known as the “Hague Invasion Act,” aims to protect U.S. nationals and allied personnel from ICC prosecution. (Onok, 2003) The Act prohibits any form of cooperation between U.S. entities and the ICC, restricts military assistance to ICC

member states unless they sign a BIA or meet specific exceptions, and conditions U.S. participation in UN peacekeeping missions on guarantees of immunity for American personnel. Its most contentious provision, Section 8, authorises the use of “all necessary means,” including military force, to secure the release of U.S. or allied personnel detained by or on behalf of the ICC. This provision is the basis for ASPA’s notorious moniker, as it explicitly threatens military action against ICC operations.

Critics argue that the BIAs and the ASPA undermine international criminal justice and reflect a broader U.S. strategy to insulate itself and its allies from accountability under international law. While proponents claim that they protect U.S. sovereignty and prevent politically motivated prosecutions of American personnel, these legal measures have drawn widespread condemnation from allies and human rights organisations alike for their aggressive stance against an institution dedicated to combating impunity for grave international crimes.

Moreover, the U.S.’s political and coercive influence over the ICC extends beyond these legal mechanisms, manifesting in concrete examples of direct interference.

Trump Administration’s Intimidation on the ICC: The Afghanistan Investigation Case

During the first Trump administration, the ICC faced unprecedented pressure following its decision to investigate alleged war crimes in Afghanistan, including Taliban attacks on civilians, torture by Afghan government forces, and allegations of torture by U.S. military personnel and the CIA in secret detention facilities. The Trump administration responded to this initiative with extraordinary measures that were widely criticised as a blatant interference with the ICC’s independence and drew condemnation from the international community.

On June 11, 2020, President Donald Trump signed “Executive Order 13928”, which declared the ICC’s jurisdiction over U.S. citizens and its allies an “extraordinary threat to the national security and foreign policy of the United States.” This order imposed harsh economic sanctions and travel restrictions on ICC officials. (Hansler, 2020) These measures froze the assets of ICC personnel within U.S. jurisdiction and prohibited their entry into the United States. Even family members of these officials were subjected to travel bans. Notably, then-ICC Prosecutor Fatou Bensouda and senior official Phakiso Mochochoko were added to the U.S. Department of Treasury’s ‘Specially



Designated Nationals (SDN) List.’ This designation effectively barred any financial or commercial transactions with them, with violators facing severe civil and criminal penalties. The threat of broad sanctions also had a chilling effect on institutions cooperating with the ICC; for instance, banks became reluctant to engage with the Court due to fear of legal repercussions.

In addition to these punitive actions, verbal attacks aimed at delegitimising the ICC became a hallmark of the Trump administration’s strategy. Secretary of State Mike Pompeo [referred to the ICC as a “kangaroo court,”](#) questioning its independence and impartiality. At the same time, Attorney General William Barr accused it of being “manipulated by foreign powers.” These statements further undermined the Court’s credibility as an impartial judicial institution. Despite criticism from the ICC itself, the European Union, and numerous human rights organisations, these aggressive measures against the Afghanistan investigation persisted.

U.S. Harsh Response to ICC Investigations into Alleged War Crimes in Occupied Palestinian Territories

In a similar vein, the ICC's decision to investigate alleged war crimes in the occupied Palestinian territories (OPT) provoked a strong reaction from Washington, rooted in its unwavering support for Israel.

It underscores Washington's broader resistance to international accountability mechanisms that challenge its allies or strategic interests. The U.S. has consistently rejected the ICC's jurisdiction over alleged crimes in Palestine, arguing that Palestine is not a sovereign state and, therefore, cannot confer jurisdiction upon the Court. In 2021, then-Secretary of State Antony Blinken denounced the investigation as undermining peace prospects in the region while unfairly targeting Israel. ([Al Jazeera, 2021](#)) Such rhetoric reflects Washington's long-standing policy of shielding Israel from international scrutiny while delegitimising the ICC's authority in politically sensitive cases.

Beyond rhetoric, tangible measures have been employed to oppose these investigations. Economic and diplomatic pressure remain central strategies, including threats

of sanctions against ICC personnel involved in cases concerning Israel. These actions echoed those taken during Trump's presidency under Executive Order 13928 but extended beyond individual sanctions to include lobbying efforts to dissuade other states from cooperating with ICC proceedings or complying with arrest warrants issued by the Court.

Additionally, Washington has reinforced its legal and political support for Israel through bilateral agreements like the American-Israeli Strategic Partnership, which guarantees extensive U.S. military and economic aid. Such measures signal unwavering U.S. commitment to Israel while undermining global efforts to hold perpetrators accountable for war crimes in OPT.

Consequently, the U.S.'s aggressive stance toward investigations involving both Afghanistan and Palestine highlights a troubling double standard in its approach to international criminal justice. While publicly advocating for human rights and accountability, Washington selectively opposes mechanisms that challenge its own interests or those of its allies. By leveraging legal instruments such as Bilateral Immunity Agreements and the ASPA, alongside economic coercion, diplomatic pressure, and even threats of military intervention, Washington has not only shielded its citizens but also sought to undermine the legitimacy and functionality of the ICC.



Reporters Without Borders (RSF) stage a demonstration at Plaza Mayor in Madrid, where they filed their fourth complaint with the International Criminal Court (ICC) against Israel, condemning the killing of over 130 journalists in Palestine in the past year. RSF members also stated that the largest massacre against the press in the shortest time took place in Palestine, during demonstrations held in 10 cities across Europe on September 26, 2024. (Burak Akbulut - Anadolu Agency)

Israel's Covert War on the ICC

As both a military and political ally of the United States, Israel demonstrates a comparable track record in exerting pressure on the ICC with it.

Following Palestine's accession to the Rome Statute in 2015, the ICC launched an investigation on March 3, 2021, into alleged crimes committed in the occupied Palestinian territories, including the West Bank, Gaza Strip, and East Jerusalem. The Court asserted its jurisdiction over crimes committed since June 13, 2014, focusing on Israel's military operations in Gaza, attacks on civilian targets, forced displacement, illegal settlement construction, and the use of starvation as a method of warfare—acts that potentially constitute war crimes and crimes against humanity. Perceiving this investigation as an “immediate and concrete threat,” Israel adopted extensive measures aimed at undermining the ICC's legitimacy and operations.

Beyond its public objections—such as contesting the Court's jurisdiction over Israeli individuals and actions in Palestinian territories—Israel reportedly engaged in covert operations targeting both the institutional framework of the ICC and individuals associated with it.

A groundbreaking investigation conducted by [The Guardian](#), [+972 Magazine](#), and Local Call revealed that senior Israeli government officials and intelligence operatives orchestrated a nine-year-long covert surveillance operation against ICC prosecutors and staff. This operation was designed to derail investigations into alleged war crimes committed by Israeli officials. The clandestine campaign involved multiple Israeli agencies, including the Ministry of Justice, Ministry of Foreign Affairs, National Security Council (NSC), and intelligence services such as Mossad. Former Mossad chief Yossi Cohen played a central role in these efforts to intimidate ICC officials. Cohen is alleged to have subjected former ICC Chief Prosecutor Fatou Bensouda to coercive meetings and threats directed at her and her family. These tactics went beyond mere intimidation, extending to attempts to discredit Bensouda by gathering sensitive information about her relatives to undermine her credibility.

This campaign reflects Israel's perception of the ICC as an “immediate and tangible threat,” prompting it to mobilise its highest political and military echelons in what has been described as a “war” against the Court. The intensity of these efforts escalated further with current ICC Chief Prosecutor Karim Khan's pursuit of arrest warrants against Israeli leaders such as Prime Minister Benjamin Netanyahu and Defence Minister Yoav Gallant for alleged war crimes

and crimes against humanity. Following the issuance of these warrants in November 2024, Israel once again was confrontational vis-à-vis the ICC.

The arrest warrants marked a significant turning point, accusing Netanyahu and Gallant of war crimes related to their roles in obstructing humanitarian aid to Gaza during military operations between October 2023 and May 2024. In response, Israel intensified its campaign against both Khan and the ICC itself. Reports indicate that similar intimidation tactics were employed against Khan as those used against Bensouda, including efforts to discredit him through allegations of misconduct coinciding with his legal actions against Israeli officials. Moreover, Israel ramped up its diplomatic lobbying efforts, leveraging allies such as the United States to denounce the warrants publicly while simultaneously pursuing legal challenges to contest the Court's jurisdiction.

All these developments underscore Israel's comprehensive strategy to shield its officials from accountability by targeting not only the ICC's institutional framework but also its personnel through intimidation, disinformation campaigns, and diplomatic manoeuvring. This approach raises critical questions about the ability of international justice mechanisms to operate independently when confronted with concerted state-led efforts to obstruct accountability processes. The ongoing confrontation between Israel and the ICC exemplifies broader tensions between state sovereignty, power and international law enforcement while highlighting significant challenges faced by global justice institutions in politically sensitive contexts.



Palestinian President Mahmoud Abbas (R) meets with International Criminal Court (ICC) Chief Prosecutor Karim Khan (L) in Ramallah, West Bank on December 02, 2023.
(Palestinian Presidency - Anadolu Agency)

The ICC and Africa: Justice Caught between Prejudice and Exploitation

On the other hand, the relationship between the ICC and African states has been among the most contentious dynamics in international criminal justice. While the ICC has often been accused of bias and selective justice for disproportionately targeting African leaders, a closer examination reveals that some African leaders have strategically exploited these accusations to shield themselves from accountability. By framing the Court as an anti-African institution, they have transformed claims of bias into demands for impunity, undermining the very principles of international criminal justice.

Africa has been disproportionately represented in ICC investigations—nearly all cases since the Court's inception have involved African states. However, this focus is not entirely without justification, as African states or the UN Security Council referred many cases to the ICC. Nevertheless, some leaders have weaponised allegations of bias to delegitimise the ICC and evade accountability. This deliberate manipulation undermines the Court's mandate and exerts political pressure on its operations.

A Standout Case: Kenya vs. the ICC

The ICC's investigation into Kenya's 2007–2008 post-election violence, which resulted in over 1,200 deaths and displaced hundreds of thousands, marked a significant turning point in its history. For the first time, sitting heads of state—President Uhuru Kenyatta and Deputy President William Ruto—faced charges before the Court. (Creutz, 2014) Initially, Kenya appeared cooperative, but it soon launched a political campaign to obstruct the ICC's work and defer cases against its leaders.

Kenya employed several tactics to undermine the ICC:

Obstruction of Justice: Despite being a party to the Rome Statute, Kenya refused to cooperate with the ICC by withholding evidence and intimidating witnesses.

Diplomatic Manoeuvres: Kenya sought deferral of cases through the UN Security Council, arguing that prosecuting sitting state leaders would destabilise regional peace and security.

Threats of Withdrawal: It threatened mass withdrawals from the ICC and rallied support from other African states through platforms like the African Union (AU).

These efforts were accompanied by rhetoric portraying

the ICC as an imperialist institution undermining state sovereignty. Moreover, President Kenyatta argued that his role as a regional leader required him to remain in Kenya to maintain peace and combat terrorism in East Africa. He claimed that his prosecution would jeopardise these efforts, citing regional security concerns. This narrative gained significant domestic and global support, further complicating the ICC's work. Ultimately, Kenya's refusal to cooperate forced the ICC Prosecutor to suspend Kenyatta's trial indefinitely in February 2014 due to lack of evidence. (Creutz, 2014)

The Role of the African Union

The African Union has also played a pivotal role in supporting Kenya's resistance against the ICC. While framed as concern over the politicisation of international justice, AU actions have themselves exerted political pressure on the Court:

- In October 2013, during a special AU summit in Addis Ababa to address concerns about the ICC, President Kenyatta [accused](#) the Court of being a “toy of declining imperial powers” rather than a genuine institution of justice.
- The AU threatened collective withdrawal from the ICC if African leaders' concerns were not addressed.
- The AU adopted a [resolution](#) granting immunity to sitting African heads of state from prosecution, which directly contradicts the letter and spirit of the Rome Statute.

These actions underscore how accusations of anti-African bias have evolved into broader demands for impunity. Some AU member states have sought to shield their leaders from accountability while undermining international justice mechanisms by asserting that prosecuting African leaders endangers regional peace and security. (Creutz, 2014)

Consequently, the Kenya case serves as a significant example of how legitimate concerns about bias can be manipulated to justify impunity and transformed into a tool of political pressure against the ICC in the hands of leaders. While the Court's selective justice accusations must be addressed seriously, they cannot override state parties' obligations under international law or be exploited as political blackmail to demand impunity.

The UN Security Council: A Political Body with Legal Influence over the ICC

The United Nations Security Council is another significant actor capable of exerting influence over the ICC, with the potential to disrupt the pursuit of international criminal justice. While the UNSC is widely recognised as having a role in international criminal justice, particularly under its mandate to maintain and restore international peace and security, its interventions in ICC matters have sparked both praise and criticism.

Referral Power under Article 13(b): Expanding Jurisdiction

Provisions within the Rome Statute explicitly regulate the UNSC's ability to intervene in ICC matters. One such mechanism is its referral power under Article 13(b), which allows the UNSC to refer situations outside its jurisdiction to the ICC. For example, the Security Council referred Sudan's Darfur region and Libya to the ICC, even though these states were not parties to the Rome Statute.

Such referrals enabled judicial processes to address crimes committed in these regions, extending the ICC's jurisdictional reach. Thus, this referral power is generally viewed as a positive tool for advancing international criminal justice, as it allows the ICC to address grave crimes that would otherwise fall beyond its mandate. (Zhu, 2014) While concerns have been raised about potential political motivations behind such referrals—suggesting that they may sometimes serve as political manoeuvres between states—these risks are mitigated by the fact that ultimate discretion over whether to proceed with investigations or prosecutions rests with the ICC itself. (Alanur, 2019) In other words, the referral mechanism is beneficial for promoting accountability and combating impunity.

Deferral Power under Article 16: An Operable Tool for Political Manipulation

In contrast, the UN Security Council's deferral power under Article 16 of the Rome Statute has been far more controversial. This provision allows the Security Council to request a 12-month deferral of any investigation or prosecution initiated by the ICC if it deems such action

necessary for maintaining international peace and security. (Tiemessen, 2014) The deferral can be renewed indefinitely, effectively granting the UNSC significant influence over ongoing judicial processes. Critics argue that this deferral power opens the door to politically motivated interference in ICC proceedings, undermining its independence and impartiality. (Zhu, 2014; Tiemessen, 2014)

A notable example occurred with Resolution 1422, adopted on July 12, 2002, which aimed to exempt personnel from non-signatory parties involved in UN operations from ICC jurisdiction. This Resolution was heavily driven by U.S. accustomable opposition to the ICC and its determination to shield American military personnel participating in UN operations from potential prosecution. The Resolution's adoption process was marked by intense U.S. pressure and coercion, casting a shadow over UNSC-ICC relations and highlighting how state interests can override international criminal justice. The U.S., as a permanent member of the UN Security Council, threatened to veto all UN peacekeeping operations if Resolution 1422 was not adopted. This threat posed a significant global peace and security risk, particularly endangering ongoing operations in sensitive regions like Bosnia. Additionally, Washington used economic leverage by threatening to cut military aid to countries that did not support or comply with its demands regarding this Resolution. These tactics effectively coerced other member states into supporting Resolution 1422, undermining their sovereign decision-making processes and demonstrating how political interests can dominate international justice mechanisms.

Consequently, while Article 13(b) of the Rome Statute significantly contributes to international justice by granting the UN Security Council the ability to expand the jurisdiction of the ICC to ensure accountability for serious crimes, the deferral power granted to it under Article 16 introduces substantial challenges by raising the risk of political interference and contributing to the politicisation of the Court.

Locking the ICC System Through States' Refusal to Cooperate

From another perspective, states can exploit the ICC's technical dependencies to interfere with its judicial processes.

The mechanism established by the Rome Statute envisions a dual structure: while the ICC serves as the judicial pillar, states are expected to act as executive pillars, assisting in initiating, advancing, and enforcing judicial processes. This design makes states indispensable for the ICC's functioning, mandating their cooperation as a legal obligation under various provisions of the Statute. In this scope, the ICC relies on states for critical functions such as collecting evidence, hearing witnesses, arresting suspects, and transferring them to The Hague for trial. (Bulut, 2024) Additionally, states must provide information and documentation necessary for investigations and prosecutions. Importantly, this cooperation is not discretionary but a mandatory obligation for state parties under the Rome Statute. For instance, Article 86 establishes a general duty for state parties to cooperate fully with the Court in its investigations and prosecutions. Accordingly, when state parties fail to fulfil their cooperation obligations, such non-compliance can be reported by the ICC to the Assembly of States Parties or even to the United Nations Security Council.

However, beyond such reporting—which carries no direct legal consequences—the ICC lacks enforcement mechanisms or punitive measures against non-cooperative states. This inability to compel state cooperation underscores one of the Court's most significant vulnerabilities: its dependence on states.

This dependence exposes it to political pressures and manipulation by states that may use non-cooperation as leverage against the Court. (Tiemessen, 2014) For example, in the case of Sudanese President Omar al-Bashir, despite an ICC-issued arrest warrant for alleged crimes against humanity and genocide, at least nine state parties openly declared that they would not arrest him during his visits to their territories. These actions not only defied their legal obligations under the Rome Statute but also symbolised direct challenges to the ICC's authority. Consequently, political pressures and challenges faced by the ICC stem not only from non-party states but also from states that have voluntarily accepted its jurisdiction yet fail to uphold their commitments.

While some measures have been introduced in this regard—such as Rule 68, which allows for prior recorded testimony under certain conditions, and Rule 100, enabling trials or parts of proceedings to be held outside The Hague—these steps remain insufficient to address the Court's dependency on states.

A potential solution lies in the establishment of supranational systems that provide the ICC with operational independence, the reduction of its financial dependency on states, and the strengthening of its principle of complementarity:

■ **Dedicated Enforcement Mechanisms:** Creating an independent enforcement body under international auspices could reduce reliance on national authorities for arrests and evidence collection. Such a body could function similarly to the International Criminal Tribunal for the former Yugoslavia (ICTY), which, in some cases, relied on NATO forces for arrests. This approach has led to the arrest of suspects even when national governments have been unwilling to cooperate. It could also include specialised units trained in international criminal investigations and sanctions, which could operate cross-border under international law. Drawing lessons from hybrid courts like the Special Court for Sierra Leone, which integrated international and domestic resources, this mechanism could collaborate with the United Nations or other regional organisations to ensure broader legitimacy and operational support.

■ **Strengthened Financial Autonomy:** Ensuring that funding does not depend heavily on contributions from state parties could shield the ICC from political pressures. Currently, the ICC relies almost entirely on assessed contributions from its member states, leaving it vulnerable to delayed payments or non-compliance and exposing it to political leverage by influential contributors. Many states delay or fail to fulfil their financial obligations in this scope, leaving the ICC underfunded. For example, in 2019, the top 10 debtor states owed approximately €80 million, a substantial portion of the annual ICC budget. States often pressure the ICC to operate within a "zero-growth" budget framework, even as its workload expands. (Wiebelhaus-Brahm & Ainley, 2023; Evans-Pritchard, 2012) This arm-twisting policy has led to resource shortages that hinder investigations and prosecutions. Consequently,

this financial dependency restricts the ICC's ability to allocate resources independently and exposes the Court to pressures and coercion from contributing states, particularly in politically sensitive cases. Therefore, it is essential to ensure outstanding financial stability and operational independence by diversifying funding sources to reduce external pressures on the ICC. This approach could include global levies, trust funds, or partial integration into the UN budget, all of which are seen as indispensable steps toward safeguarding the Court's autonomy.

■ Reforming Complementarity to Address Impunity Risks:

In addition to these points, addressing flaws in the ICC's complementarity regime is also critical. Under Article 17 of the Rome Statute, the ICC can only intervene when national jurisdictions are "unwilling or unable" to investigate or prosecute crimes genuinely. However, states have occasionally exploited this principle by conducting superficial or inadequate judicial proceedings that fail to meet international standards of justice. These "sham trials" allow perpetrators to evade

accountability while obstructing the ICC's jurisdiction. (Bayilioğlu, 2007) In this direction, states may initiate nominal investigations or prosecutions solely to render cases inadmissible before the ICC, thereby perpetuating impunity. To address these challenges, the ICC should implement a more robust framework for evaluating the genuineness of domestic judicial proceedings. This could involve revising the admissibility criteria under the complementarity principle to ensure stricter scrutiny of national trials' procedural and substantive fairness.

Additionally, the ICC could adopt a proactive approach to complementarity by encouraging and supporting states in conducting credible investigations and prosecutions. This could be achieved through capacity-building initiatives, technical assistance, and legal guidance, aligning with the ICC's role as a "court of last resort" while strengthening domestic judicial systems. Finally, enhanced monitoring mechanisms should be established to more effectively oversee domestic proceedings and enable timely intervention when states fail to fulfil their obligations under international law.



United Nations Security Council (UNSC) votes on a draft resolution submitted by the UK and Sierra Leone calling on the army and Rapid Support Forces (RSF) in Sudan to implement their obligations under the Jeddah Declaration, in New York, United States on November 18, 2024. The draft resolution, vetoed by Russia, received "yes" votes from 14 other UNSC members. (Fatih Aktaş - Anadolu Agency)

The Role of Civil Society and Media in Alleviating Pressures on the Court

Reducing the ICC's dependency on political actors is essential to alleviating external pressures and addressing the issue of politicisation. Constructive collaboration with civil society—including human rights organisations, advocates, scholars, and the media—can help mitigate this reliance while supporting the Court's efforts to combat impunity, deliver justice to victims, and strengthen international criminal justice. Despite challenges such as limited communication with local stakeholders and the sensitive nature of judicial processes, civil society continues to play a significant role in advancing the ICC's mandate. Given that the crimes addressed by the ICC affect humanity as a whole and that states often exert political pressure or fail to cooperate, the involvement of civil society is both necessary and appropriate. Indeed, as an institution born from global aspirations, the ICC's establishment is widely regarded as a "global civil society achievement," highlighting the importance of these partnerships in ensuring its effectiveness.

The civil society contributes to the ICC in several ways:

■ **Facilitating Access and Engagement:** Civil society organisations (CSOs) serve as intermediaries, connecting the ICC with victims, affected communities, and witnesses. Their proximity to these groups allows them to bridge the gap between the Court and local stakeholders, often in areas where the ICC lacks direct access. This role is essential for identifying eligible victims for participation in proceedings, applying for reparations, and accessing assistance programs like those provided by the [Trust Fund for Victims \(TFV\)](#).

■ **Documentation and Evidence Collection:** CSOs play a significant role in documenting atrocities and submitting information to the Court, which is often the first response to crimes when state authorities are unwilling or unable to act. This documentation is crucial for ICC investigations, particularly in situations like Palestine, Afghanistan, and Darfur-Sudan, where state cooperation might be lacking.

■ **Advocacy and Institutional Development:** Civil society actively engages with the ICC on institutional, thematic, and situation-specific issues, advocating for reforms and improvements. This includes influencing the Court's policies, practices, and the decision-making processes of its state parties. Their efforts have pushed for the universal ratification of the Rome Statute, as seen

with Armenia's recent ratification and Ukraine's upcoming membership.

■ **Monitoring and Shaping ICC Jurisprudence:** CSOs monitor fair trial rights and contribute to the development of ICC jurisprudence. They provide technical and legal expertise, which is invaluable for the Court's functioning and ensuring that justice is served according to international standards.

■ **Visibility and Amicus Curiae Briefs:** Civil society efforts make the Court's activities more visible, enhancing its legitimacy and public support. Additionally, CSOs file *amicus curiae* briefs during proceedings, providing the Court with additional legal analysis, policy arguments, or factual context that can influence judicial decisions. These briefs are often submitted by organisations like REDRESS, Kituo Cha Sheria, No Peace Without Justice, and Women's Initiatives for Gender Justice, offering unique perspectives and expertise to the Court.

Thus, the relationship between the ICC and civil society is essential for the Court to function independently of political actors. This relationship is not an anomaly but underscores the ICC as a "global civil society achievement," from its establishment through the Rome Statute negotiations to its current activities. This partnership is vital for the ICC to effectively fulfil its mandate, ensuring that justice for the gravest international crimes is not merely a legal pursuit but also a collective endeavour of the international community.

Similarly, the media can also play a significant role in reducing political pressures on the ICC and enhancing its ability to deliver justice effectively:

■ **Raising Awareness and Shaping Public Opinion:** The media can educate the public about the ICC's mandate, achievements, and challenges, countering disinformation campaigns that seek to delegitimise the Court. By providing accurate and accessible information, the media can foster greater public understanding and support for the ICC's work, making it harder for political actors to undermine its legitimacy. (Pena, 2021)

■ **Exposing Non-Cooperation and Political Interference:** Investigative journalism can highlight cases where states fail to cooperate with the ICC or exert undue influence on its operations and disclose secret campaigns against the Court. For instance, media coverage of non-compliance with ICC arrest warrants or

politically motivated propaganda campaigns can pressure governments to fulfil their obligations under international law. (Ochs, 2021)

■ **Promoting Transparency and Accountability:**

By reporting on ICC proceedings and decisions, the media can enhance transparency, ensuring that the Court remains accountable to its stakeholders while maintaining public trust. This is particularly important in politically sensitive cases where perceptions of bias or selectivity may arise. (Pena, 2021)

■ **Building Global Support Networks:** Media outlets can collaborate with civil society organisations, human rights advocates, and academic institutions to amplify voices that support international justice. This coalition-

building helps counterbalance political pressures and reinforces the ICC's independence.

■ **Leveraging Social Media for Evidence**

Collection: Social media platforms have increasingly become sources of evidence in international criminal investigations. Accordingly, the media can assist in identifying and verifying such evidence, as seen in cases like those involving atrocities committed by the State of Israel, where online content was used as critical evidence in prosecutions.

By fulfilling these roles, the media not only strengthens public confidence in the ICC but also creates an environment where political actors are less able to manipulate or undermine its work.



(Omar Marques - Anadolu Agency)

Conclusion

To sum up, in international criminal justice, the politicisation of the ICC represents a significant and pressing issue, characterised more by a struggle than by cooperation between international law and politics. However, attributing all blame for this problem solely to the Court will not yield practical solutions. It is crucial to recognise that political actors—primarily states and international bodies—often seek to obscure justice with power, targeting the ICC as a convenient scapegoat for their own interests. This tendency to place the responsibility for politicisation solely on the ICC must be challenged, as the true culprits are these external actors.

To address this issue effectively, all international stakeholders must embrace the ICC's institutional existence and legitimacy. The international community must work colla-

boratively to ensure the Court feels secure in conducting investigations and prosecutions. Most importantly, technical factors that lead to the ICC's dependency on political actors must be resolved, allowing it to function as a genuinely "independent and impartial" tribunal. In doing so, states should set aside their unwarranted concerns rooted in sovereignty regarding international law.

Fostering a supportive environment for the ICC will enhance its operational effectiveness and reaffirm its role as a cornerstone of international justice, capable of holding individuals accountable for serious crimes without undue political interference. This commitment from the international community is essential for restoring faith in the ICC and ensuring it can fulfil its mandate in a manner that upholds justice and accountability worldwide.

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