

## The Jurisdictional Limits of the ICC: Substantive, Temporal, Territorial, and Personal Dimensions

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### Abstract

The International Criminal Court (ICC) plays a crucial role in the global legal framework by addressing the most serious crimes that threaten fundamental interests and values recognized by the international community. These include genocide, crimes against humanity, war crimes, and the crime of aggression, as defined in the Rome Statute. The ICC's temporal jurisdiction applies solely to crimes committed after the enforcement of the statute, while its territorial jurisdiction includes offenses occurring within the territory of a state party or committed by one of its nationals. In certain cases, this jurisdiction may be extended based on referrals from the United Nations Security Council under Chapter Seven of the Statute. Furthermore, the ICC's personal jurisdiction allows it to pursue individuals from both state parties and non-state parties, provided that specific conditions are met. This jurisdiction encompasses leaders and officials, who can be held accountable when their culpability is demonstrated, as established immunities do not impede the pursuit of justice on an international scale.

**Keywords:** international justice, Rome Statute, jurisdiction, immunity, Security Council.

## القيود القضائية للمحكمة الجنائية الدولية: الأبعاد الموضوعية، والزمانية، والمكانية، والشخصية

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### المُلخَص

تعتبر المحكمة الجنائية الدولية صاحبة الولاية على أشد الجرائم خطورة التي تمس المصالح والقيم الجوهرية التي حرص المجتمع الدولي على حمايتها وعدم المساس بها. وتشمل هذه الجرائم الإبادة الجماعية، والجرائم ضد الإنسانية، وجرائم الحرب، وجريمة العدوان، وفقاً لنظام روما الأساسي. كما ينحصر اختصاص المحكمة الزماني في الجرائم الواقعة بعد نفاذ هذا النظام، والمكاني في إقليم الدولة الطرف أو إذا ارتكبت من قبل أحد رعاياها، مع إمكانية امتداده استثنائياً في حال الإحالة من مجلس الأمن وفقاً للفصل السابع من ميثاق الأمم المتحدة. كما يشمل اختصاصها الأشخاص من مواطني الدول الأطراف وغير الأطراف وفق شروط محددة، ويمتد ليطال القادة والمسؤولين متى ثبتت مسؤوليتهم، دون أن تشكل الحصانات مانعاً أمام العدالة الدولية.

الكلمات المفتاحية: العدالة الدولية، نظام روما الأساسي، الاختصاص، الحصانة، مجلس الأمن.

## **Introduction:**

The world witnessed numerous grave violations of international laws and customs during World War II, which drove nations to establish foundations capable of holding accountable those responsible for such crimes. This led to the creation of the Nuremberg and Tokyo Tribunals to prosecute individuals accused of committing these crimes. These trials were the first of their kind and helped formulate a set of principles defining individual international criminal responsibility.

Once World War II ended, new atrocities emerged, notably the genocide in Rwanda, which reaffirmed the urgent need to hold accountable those who violated the rules of international humanitarian law. This time, the UN Security Council took charge by issuing resolutions establishing special and temporary tribunals under Chapter VII of the UN Charter; to prosecute and punish those responsible, based on the principles developed during the post-war trials.

However, these special criminal tribunals faced extensive criticism and operational difficulties, prompting the need to establish a permanent international criminal court that could overcome the challenges encountered by its predecessors. This vision materialized at the end of the 1998 Rome Diplomatic Conference, which resulted in the adoption of the Rome Statute of the International Criminal Court (ICC), the first international legal instrument to establish a permanent court dedicated to trying individuals who commit the most heinous crimes.

The ICC was designed to fill the gap left by states that failed to fulfill their international obligations, a failure that led to the phenomenon of impunity and allowed perpetrators to live freely under the guise of sovereignty. Thus, the establishment of the ICC represents a landmark development in international law, as this new judicial body strengthens respect for international legal norms and acts as a deterrent mechanism for future violations.

The Rome Statute laid down the essential legal principles for deterring such crimes, including substantive rules defining crimes within its jurisdiction, provisions governing international criminal responsibility, and procedures for sentencing and enforcement. This makes the ICC one of the main pillars of international criminal justice and a benchmark of a nation's civilizational progress.

Given the vast number of legal issues worth studying within the ICC's framework, this re-

search focuses solely on the court's jurisdiction, due to its crucial importance to the court's function and operation.

Accordingly, defining the subject matter, temporal, territorial, and personal dimensions of the ICC's jurisdiction is not merely a technical or procedural issue; Instead, it represents a delicate equilibrium between two seemingly opposing yet complementary principles: state sovereignty on one hand, and the demands of international justice on the other. Overexpansion of the court's authority could be perceived as infringing on sovereignty, while excessive restriction could weaken justice and revive impunity.

Thus, this study aims to analyze the legal basis and normative limits of the ICC's jurisdiction as established by the Rome Statute. This analysis will explore four interrelated dimensions of jurisdiction: subject-matter, which defines the scope of crimes; temporal, which specifies the applicable timeframe; territorial, which identifies the geographic reach; and personal, which determines the individuals subject to the court's authority. Collectively, these dimensions outline the comprehensive scope within which the ICC may exercise its judicial powers.

From this foundation arises the central research question:

**How has the International Criminal Court managed to balance the limits of its subject-matter, temporal, territorial, and personal jurisdiction with the principle of national sovereignty, ensuring effective accountability while preventing impunity?**

This main question branches into several sub-questions addressed throughout the study, such as:

1. What is the substantive scope of the court's jurisdiction over the four core crimes, genocide, crimes against humanity, war crimes, and the crime of aggression, and how does this scope interact with evolving concepts of international justice?
2. How does the court exercise its temporal and territorial jurisdiction, and what limitations are imposed by Articles 11 and 12 of the Rome Statute, particularly regarding exceptional referrals by the UN Security Council?
3. What is the extent of the court's personal jurisdiction, and how can the principle of complementarity be reconciled with the prosecution of nationals of non-State Parties or political leaders who enjoy immunity under international law?

### **The Importance of the Study**

The importance of this study lies in the fact that it represents the fundamental entry point for understanding how the International Criminal Court operates within the contemporary international legal system. The effectiveness or legitimacy of the court cannot be properly assessed without analyzing its jurisdictional structure, which embodies the limits of international judicial authority in addressing international crimes. The topic critically examines the tension between state sovereignty and international obligations to address serious crimes, particularly in light of disputed Security Council referrals that raise concerns about the neutrality of international criminal justice. Further, this study proposes a fresh perspective on the jurisdictional boundaries of the International Criminal Court (ICC), accounting for recent jurisprudential developments, academic discussions on the broadening of international crimes, and the possible application of ICC authority to non-state actors.

### **Research Objectives**

This study aims to achieve a set of scientific and practical objectives, the most prominent of which are:

1. Analyzing the legal framework of the International Criminal Court's jurisdiction in all its forms and clarifying the foundations upon which each type is based.
2. Assessing the extent to which the court's jurisdictional system aligns with the principles of general international law, particularly the principles of sovereignty and non-intervention.
3. Identifying the legal and political challenges that hinder the application of jurisdiction, especially in relation to non-State Parties or in cases of referrals by the Security Council.

### **Adopted Methodology**

Given the multiple dimensions of the International Criminal Court's (ICC) jurisdiction, this study adopts a comparative analytical approach to deconstruct the judicial structure. It specifically examines the substantive, temporal, territorial, and personal elements of the ICC's authority. This analysis is conducted in light of the Rome Statute's provisions and their practical application. The subject is addressed in a logical sequence that allows for a comprehensive understanding of the various aspects of jurisdiction, beginning with the subject-matter jurisdiction that defines the nature of crimes falling within the court's au-

thority, followed by the temporal and territorial jurisdiction that determines the time frame and regional scope of judicial authority, and concluding with the personal jurisdiction that identifies the categories of persons subject to the court's rulings, including leaders and public officials.

Accordingly, the research will be divided into three main sections:

**First Section:** Subject-Matter (Substantive) Jurisdiction of the Four Core International Crimes

**Second Section:** Temporal and Territorial Jurisdiction

**Third Section:** Personal Jurisdiction

Based on the above, this research does not merely aim to describe the scope of jurisdiction; but rather offers a profound critical analysis that highlights the extent to which these boundaries align with the philosophy of international criminal justice and how they reconcile the requirements of national sovereignty with those of international justice.

## First Section: Subject-Matter (Substantive) Jurisdiction of the Four Core International Crimes

The subject-matter jurisdiction of the International Criminal Court constitutes the cornerstone in defining the scope of its judicial authority, as it determines the substantive domain within which the Court may exercise its power to prosecute offenders. According to Article (5) of the Rome Statute, the court's jurisdiction is limited to the most serious crimes of concern to the international community as a whole, namely: the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. This substantive limitation reflects the selective and objective nature of the Court's jurisdiction, as it has no authority beyond these four crimes. This restriction poses both legal and political challenges, particularly in cases involving legal qualification or transnational crimes that do not explicitly fall within these definitions.

The scope of the court's subject-matter jurisdiction presents significant legal challenges regarding the characterization of presented facts. Specifically, issues arise in determining whether these facts align with the precise definition of crimes stipulated in the Rome Statute, as well as the potential for overlap with crime classifications found in national laws or regional standards.

It also raises questions about whether the court tends to broaden or restrict its interpretation of jurisdiction, striking a balance between the principle of legality and the demands of international justice.

This section will be addressed through three main branches:

**The first branch: The scope of the Court's jurisdiction over the crime of genocide.**

**The second branch: The subject-matter jurisdiction over crimes against humanity.**

**The third branch: The extent of the Court's jurisdiction over war crimes and the crime of aggression.**

The analysis focuses on the legal framework of the International Criminal Court's jurisdiction regarding serious international crimes, as well as the challenges the Court encounters in classifying acts within its jurisdiction. It also seeks to assess the degree of flexibility or rigidity the Court demonstrates in interpreting this scope and how that affects its judicial effectiveness and international credibility.

**First Branch: The Scope of the Court's Jurisdiction over the Crime of Genocide**

The crime of genocide represents one of the most serious offenses threatening the existence of humankind. One of the earliest scholars to use this term was the Polish jurist Raphael Lemkin, who defined it as: "Anyone who participates in or conspires to destroy the life, liberty, or property of members of such a group is considered to have committed the crime of genocide against humanity<sup>(1)</sup>." This concept was the driving force that led the United Nations, through its General Assembly, to adopt the Convention on the Prevention and Punishment of the Crime of Genocide, which entered into force on January 12, 1951.

The Rome Statute, in Article 6, defines genocide as: "Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such." However, the court's jurisdiction over this crime is narrower and more restrictive compared to other international crimes. This limitation is primarily attributed to the strict wording of Article 6, which requires the presence of a specific intent to commit genocide, an intent aimed at destroying a national, ethnical, racial, or religious group, as such, in whole or in part. This requirement has drawn criticism from several scholars, including Professor Cherif Bassiouni, who considered it one of the weaknesses in the definition of the crime of genocide. He argued that it is not necessary for the destruction of the group to be complete; it should be sufficient that any act of genocide is committed against a particular group or segment thereof because of its belonging to a protected group.

This condition, while aimed at protecting human groups, creates a barrier to the Court's jurisdiction by excluding cases of large-scale collective violence where specific intent cannot be directly proven. For example, the International Criminal Court faced challenges in prosecuting genocide in conflicts like Darfur, leading to a reclassification of atrocities as crimes against humanity and war crimes. Later, based on evolving evidence, the prosecutor sought to reclassify these acts as genocide.<sup>(2)</sup>

The International Criminal Court has also encountered a profound normative dilemma concerning the boundaries of the definition of a protected group in the context of the crime of genocide. Article 6 of the Rome Statute restricts protection to national, ethnical, racial,

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(1) محمد الأمين بن حمو، بن دومة بن صليحة، المحكمة الجنائية الدولية، مذكرة ليسونس، كلية الحقوق والعلوم الإدارية، جامعة بلعباس، 2010، ص.70.

(2) ICC, Press Release: ICC issues warrant of arrest for Omar Al Bashir for war crimes and crimes against humanity (4 March 2009) — the first ICC arrest warrant did not include genocide. Accessed 29 September 2025, Available at: <https://www.iccpi.int/news/icc-issues-warrant-arrest-omar-al-bashir-president-sudan>.



and religious groups, excluding political and social groups even when experiencing similar persecution or destruction patterns.<sup>(1)</sup> This restriction has negatively affected the extent of the Court's jurisdiction, as an act cannot be classified as genocide if the victims do not belong to one of the four specified groups, regardless of the severity of the violence or the intent to destroy.

This restriction has faced significant criticism from international legal scholars, as mass atrocities like the Khmer Rouge crimes in Cambodia (1975–1979) targeted groups based on class and social status rather than ethnicity or religion, complicating their legal classification as genocide under the Statute's narrow concept<sup>(2)</sup>. The Pol Pot regime committed enormous atrocities against segments of the population based on class and social belonging, targeting intellectuals, professionals, urban residents, and even those perceived as educated, simply because they represented the "bourgeoisie" according to the regime's revolutionary ideology. Nevertheless, Article 6 of the Rome Statute does not include these categories among the "protected groups," limiting protection to national, racial, ethnic, and religious groups. The Extraordinary Chambers in the Courts of Cambodia (ECCC) faced great difficulty in qualifying these crimes as genocide, which led it to convict officials of crimes against humanity while restricting genocide charges to limited cases such as massacres against Muslim Chadian and Vietnamese minorities<sup>(3)</sup>. This has provoked wide debate in legal circles, where this limitation is viewed as a conceptually inadequate constraint that fails to accommodate the variety of patterns of genocide in contemporary reality. Many scholars also consider this restriction to create a "legal loophole" that could be exploited to avoid prosecution, especially in regimes that practice political violence or mass repression for ideological or social reasons<sup>(4)</sup>.

From a practical viewpoint, the exclusion of political and social groups indicates a legal gap and reveals a traditional, unequal perspective on group identity, limiting the Court's jurisdiction to address emerging and complex forms of genocide that do not conform to es-

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(1) يوسف مولود ولد، عن فاعلية القضاء الجنائي الدولي بين قانون القوة وقوة القانون، (الجزائر: دار الأمل للطباعة والنشر والتوزيع، 2013)، ص. 72.

(2) Tatiana E. Sainati, "Toward a Comparative Approach to the Crime of Genocide," Duke Law Journal, Vol. 62, No. 1 (2012), p. 170

(3) Extraordinary Chambers in the Courts of Cambodia (ECCC), Case 002/02 Judgment, 16 November 2018, paras. 3674–3701. (Accessed 29 September 2025),

(4) William A. Schabas, *Genocide in International Law: The Crime of Crimes*, 3rd ed. (Cambridge: Cambridge University Press, 2025), p. 146.

established categories. Several scholars have called for expanding the definition of a protected group to reflect the evolution of contemporary conflicts and to provide the Court with a flexible tool that enables it to prosecute multiple forms of mass destruction, regardless of ethnic or religious background alone<sup>(1)</sup>.

Maintaining a rigid definition without review undermines the Court's preventive and deterrent functions, resulting in an unjust legal distinction among victims. It may even be understood as an implicit message suggesting that certain groups are less deserving of international protection, which contradicts the principles of equality and non-discrimination upon which international law is founded.

A precise legal dilemma also arises concerning the distinction between the "specific intent" required for genocide and the general intent to commit mass killings. This distinction is fundamental in determining whether the International Criminal Court has subject-matter jurisdiction over the crime of genocide specifically, rather than merely over crimes against humanity or war crimes. Unlike other international crimes, genocide requires proof of a premeditated specific intent aimed at the total or partial destruction of a protected group, which imposes a high and complex evidentiary standard. The International Criminal Court, following the approach previously taken by the International Criminal Tribunal for Rwanda (ICTR), has faced a significant judicial challenge in proving this specific intent based on circumstantial evidence rather than direct or written proof reflecting the perpetrators' intentions. In the *Akayesu* case, the Rwandan Tribunal held that specific intent could be inferred from the context of the acts, the nature of the attacks, their consistency, their systematic character, and their exclusive targeting of a protected group<sup>(2)</sup>. The court relied on the pattern of the crimes, their repetition, and the absence of randomness to conclude the existence of genocidal intent.

However, this inductive approach has not been immune to criticism, as some scholars argue that excessive reliance on circumstantial evidence raises issues regarding the certainty of conviction and the accuracy of legal qualification<sup>(3)</sup>. It may also lead to an uncalculated expansion of the Court's jurisdiction, especially when the boundaries between organized

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(1) Alexander K.A. Greenawalt, "Rethinking Genocidal Intent: The Case for a Knowledge-Based Interpretation", Columbia Law Review, Vol. 99, No. 8 (1999), p. 2265

(2) Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgment, 2 September 1998, International Criminal Tribunal for Rwanda (ICTR), paras. 523–524, (Accessed 29 September 2025),

(3) Alexander K.A. Greenawalt, "Rethinking Genocidal Intent: The Case for a Knowledge-Based Interpretation", Ibid., p. 2269

mass killing and genocide are not sufficiently clear. Some have considered that insisting on interpreting specific intent from context without precise objective standards could result in the politicization of legal characterization, subjecting criminal accountability to assessments that may be influenced by international pressure or selective considerations<sup>(1)</sup>.

It is observed in the practices of the International Criminal Court, as in the *Al-Bashir* case, that specific intent was not always established through clear and independent evidence but was often inferred from the overall pattern of repeated and coordinated conduct by state apparatuses against a particular group. This raised questions as to whether state behavior alone is sufficient to constitute the mental element required for the crime of genocide<sup>(2)</sup>. Ultimately, this reveals the fragility of the evidentiary foundation upon which the Court relies in this regard and opens the door to challenges against its subject-matter jurisdiction in the absence of a solid and clear standard distinguishing specific intent from general intent to kill.

Further, the International Criminal Court's jurisdiction over genocide is very limited, both substantively and normatively, particularly regarding the identity of the protected group and the necessity to demonstrate specific intent. This makes invoking the Court's subject-matter jurisdiction in genocide cases a delicate legal challenge, assessed according to complex criteria that may not be present in many instances of mass persecution, regardless of their severity. Although the Court has endeavored to overcome some evidentiary obstacles through contextual and pattern-based analysis, its jurisdiction in this area remains fundamentally constrained by the provisions of the Rome Statute and their narrow interpretations.

And while the crime of genocide represents the highest degree of collective criminal intent, crimes against humanity embody another form of international crimes with a systematic nature but different legal requirements that expand the scope of the Court's jurisdiction. In the second branch, the focus will be on the Court's jurisdiction over crimes against humanity, specifically examining the systematic nature of attacks, the definition of "civilian population," and the criteria that define the limits of the Court's intervention in these crimes.

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(1) Alexander K.A. Greenawalt, "Rethinking Genocidal Intent: The Case for a Knowledge-Based Interpretation", Ibid., p. 2269

(2) International Criminal Court, Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09, Pre-Trial Chamber I, Decision on the Prosecution's Application for a Warrant of Arrest, 4 March 2009, paras. 138–144.(Accessed 29 September 2025),

## Second Branch: The Scope of the Court's Jurisdiction over Crimes Against Humanity

The concept of crimes against humanity dates back to the mid-nineteenth century, although the first list of such crimes was drawn up at the end of the First World War. However, it was formally codified in an international instrument with the establishment of the Charter of the Nuremberg Tribunal in 1945. In the following year, the United Nations General Assembly recognized that these crimes, as defined in the Nuremberg Charter, were part of international law. They were later included in the statutes of the tribunals for the former Yugoslavia and Rwanda, and for the first time were defined in an international treaty with the adoption of the Rome Statute of the International Criminal Court in 1998<sup>(1)</sup>. Article 7, paragraph 1, defines crimes against humanity as: "Any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."

Crimes against humanity provide a wider jurisdiction for the International Criminal Court than genocide, which requires specific intent to destroy a protected group, thereby restricting the court's jurisdiction to cases with demonstrated intent. They encompass grave criminal acts committed as part of a widespread or systematic attack directed against a civilian population, without the requirement that the victims belong to a particular group<sup>(2)</sup>. The Rome Statute adopted this concept in an expanded formulation that removes the restrictive limitations of genocide and elevates it to a wider scope of violations with a collective dimension.

The legal foundation of the Court's jurisdiction lies in Article 7 of the Rome Statute, which provides a broad list of acts that constitute crimes against humanity when committed in the context of such an attack, with the perpetrator's knowledge of its nature. This framework theoretically allows for the activation of the Court's subject-matter jurisdiction across a wide range of contexts, from internal armed conflicts to situations of systematic repression under authoritarian regimes<sup>(3)</sup>.

However, this textual flexibility has not been free from interpretative and normative challenges that hinder the Court's effectiveness. The two central concepts, "widespread or

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(1) محمد الأمين بن حمو، بن دومة بن صليحة، المحكمة الجنائية الدولية، مرجع سابق، ص. 120.

(2) Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law*, 2nd rev. ed. (The Hague: Kluwer Law International, 1999).p. 250

(3) محمد سعد حمد، الجرائم ضد الإنسانية في القانون الدولي الجنائي، رسالة ماجستير، جامعة الشرق الأوسط، 2014، ص. 67.

systematic attack” and “civilian population”, have remained subjects of extensive debate in both doctrine and jurisprudence. On one hand, the Statute requires that the acts be part of a policy of a State or an organization, which raises questions about the extent to which the crime can apply to non-state armed groups or authorities lacking internationally recognized legitimacy. Furthermore, determining what constitutes “systematic” or “widespread” is often left to flexible judicial discretion, leading to inconsistencies in practical application, particularly in cases such as *Katanga* and *Gbagbo*, where judges attempted to draw a clear line between random acts and organized patterns of violations<sup>(1)</sup>.

On the other hand, the definition of “civilian population” presents an additional challenge, particularly in conflicts of a non-international character or those involving local militias, where it may not be easy to distinguish civilians from individuals indirectly participating in hostilities. The International Criminal Court has encountered difficulties in some cases in proving that the victims were indeed “civilians” within the meaning required for subject-matter jurisdiction, which has hindered the possibility of bringing specific charges in certain incidents, especially when the overlap between civilians and combatants is minimal or deliberately obscured as part of a strategy of violence<sup>(2)</sup>.

Moreover, the requirement that the perpetrator have knowledge of the nature of the attack and that the acts be linked to it complicates the task of proving the mental element, thereby weakening the foundation of the Court’s jurisdiction, particularly in cases where orders were issued indirectly or where no clear and explicit policy was declared. This was evident, for example, in the acquittal of certain defendants in the *Bemba* case at the appeals stage, despite the gravity of the alleged acts, due to the prosecution’s failure to directly connect their conduct to a systematic plan or a widespread attack.<sup>(3)</sup>

All these challenges clearly demonstrate that the theoretical breadth of crimes against humanity does not necessarily translate into practical flexibility in activating the Court’s jurisdiction. Article 7 of the Rome Statute outlines various acts as crimes against humanity; however, its implementation faces significant interpretative and judicial challenges

(1) Fanny Benedetti, John L. Washburn, and Leila Nadya Sadat, *Negotiating the International Criminal Court: New Diplomacy, New Era* (Leiden: Martinus Nijhoff Publishers, 2005), pp. 91–92.

(2) ICC, Elements of Crimes, background and commentary on war crimes in noninternational armed conflicts — emphasizing that civilians lose protection “for such time as they take a direct part in hostilities.”) accessed 29 September 2025(. Available at: <https://www.icccpi.int/sites/default/files/NR/rdonlyres/05C-583CAFREN/ElementsOfCrimesEng.pdf>

(3) Prosecutor v. Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08 A, Judgment on the Appeal, 8 June 2018, paras. 181–196,( accessed 29 September 2025).

that hinder the Court's exercise of subject-matter jurisdiction in these matters. One of the most significant implications is that the Court often finds itself bound by the requirement to prove the existence of a general policy or organized plan forming the basis of the "widespread or systematic attack," which imposes an additional evidentiary burden on the Prosecutor and weakens the Court's capacity to act in response to grave violations where conclusive evidence of such a policy is lacking—even when the nature of the acts committed is severe enough to qualify as crimes against humanity<sup>(1)</sup>. Consequently, the "systematic attack" criterion becomes a tool that restricts the Court's jurisdiction rather than expanding it.

Political dynamics surrounding crimes against humanity affect the Court's role, creating challenges related to national sovereignty and international relations. This leads to differing responses from states regarding judicial cooperation, especially in terms of surrendering suspects or enforcing arrest warrants issued by the Court. This has, in several instances, resulted in the obstruction or failure of proceedings, as seen in the case of former Sudanese President Omar al-Bashir, where several states refused to execute arrest warrants despite being parties to the Statute, invoking arguments related to sovereign immunity or their regional obligations.<sup>(2)</sup>

Furthermore, the divergence of international positions regarding the classification of certain violations as crimes against humanity undermines the Court's political legitimacy necessary for activating its jurisdiction and leads to selectivity in initiating proceedings. This exposes the Court to accusations of applying double standards or yielding to the influence of major powers<sup>(3)</sup>. While the Court actively exercises its jurisdiction in certain African cases, it refrains from intervening in other situations of similar or even greater gravity, such as the ongoing conflicts in Palestine or Myanmar, thereby weakening the international community's confidence in its ability to achieve balanced justice<sup>(4)</sup>.

These issues collectively confirm that the effectiveness of the International Criminal Court

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(1) Leila Nadya Sadat, *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium*, (Ardsley, NY: Transnational Publishers, 2002), p. 196.

(2) Dapo Akande, "International Law Immunities and the International Criminal Court", *International and Comparative Law Quarterly*, Vol. 54, No. 1 (2005). p. 99.

(3) International Justice Resource Center, "Selectivity and Legitimacy in the International Criminal Court," (IJRC, 2021), Accessed 29 September 2025. available at: <https://ijrcenter.org/international-criminal-court>

(4) David Bosco, *Rough Justice: The International Criminal Court in a World of Power Politics*, (Oxford: Oxford University Press, 2014), p. 145.

is measured not only by the comprehensiveness of its founding provisions but also by its ability to overcome the practical obstacles hindering the activation of its jurisdiction over crimes against humanity, in a manner that ensures justice and prevents impunity.

Although the International Criminal Court has a theoretically broader jurisdiction over crimes against humanity than genocide, it faces significant interpretative and evidentiary challenges that limit its activation due to procedural and political constraints. The systematic attack criterion, the definition of “civilian population,” and other legal requirements constitute structural obstacles that affect the Court’s capacity to fully perform its role in addressing this category of crimes.

Accordingly, **in the third branch**, we move on to **analyze the jurisdiction of the International Criminal Court in relation to war crimes and the crime of aggression**, addressing the particularities of each in light of the legal and political challenges posed by the nature of international conflicts, their parties, and the characterization of the use of armed force, all of which directly affect the extent to which the Court can exercise its subject-matter jurisdiction in this domain.

### **Third Branch: The Scope of the Court’s Jurisdiction over War Crimes and the Crime of Aggression**

War crimes are those committed in violation of the laws, customs, and conventions of war, whether perpetrated by combatants or others. Article 6 of the 1945 Nuremberg Tribunal Charter defined them as “violations of the laws or customs of war.” Article 8, paragraph 2, of the 1998 Rome Statute of the International Criminal Court further defined them as “grave breaches of the Geneva Conventions of 12 August 1949.”

As for the crime of aggression, it constitutes the fourth crime within the jurisdiction of the International Criminal Court and is mentioned in paragraph 1(d) of Article 5 of the Statute concerning subject-matter jurisdiction. However, unlike the other three core crimes, this crime was not initially defined within the provisions of the Statute. Instead, paragraph 2 of Article 5 stipulates that the Court shall exercise jurisdiction over the crime of aggression once a definition is adopted in accordance with Articles 121 and 123 of the Statute. It also requires that any such determination be consistent with the provisions of the United Nations Charter.<sup>(1)</sup>

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(1) ليندة معمر يشوي، المحكمة الجنائية الدولية الدائمة واختصاصها، (الأردن: دار الثقافة للتوزيع والنشر،



After several attempts to define the crime of aggression, the Assembly of States Parties succeeded during the Kampala Conference in 2010 in adopting a definition that closely mirrored the one previously approved by the United Nations General Assembly in 1974. It was defined as: “the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.” The definition of the crime of aggression emerged as a result of a consensus formula reached among the participating states at the Kampala Conference. Consequently, under the Kampala Amendments, the crime of aggression incorporated certain special rules that distinguish it from the other crimes within the Rome Statute.

The jurisdiction of the International Criminal Court over war crimes and the crime of aggression represents the most sensitive and restrictive aspect of its work, as it does not merely concern the legal characterization of criminal conduct at the international level but also touches upon the core of national sovereignty and the behavior of states in the context of armed conflicts. Although the Court’s jurisdiction appears comprehensive in its textual provisions, it remains in practice constrained by precise conditions that sometimes strip it of its effectiveness, particularly when the crimes intersect with political or military considerations of a complex international nature.

With regard to war crimes, under the Rome Statute, they are not considered isolated violations but are presumed to occur within the framework of a clearly defined armed conflict, whether international or non-international. Furthermore, proving the existence of an “armed conflict” evolves from a technical issue into a complex legal and political dilemma, as it entails legal characterization influenced by the positions of involved states and parties. States frequently attempt, when accused of acts that may amount to war crimes, to deny the existence of an armed conflict in their actions or to claim that such acts fall within the scope of “internal security operations,” thereby placing them outside the Court’s subject-matter jurisdiction<sup>(1)</sup>. This conduct is not limited to states alone but also extends to non-state armed groups that lack international recognition, whose participation in conflicts raises additional questions regarding the extent of their subjection to the rules of international humanitarian law and, consequently, their international criminal responsibility.<sup>(2)</sup>

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213.ص، (2010)

(1) Antonio Cassese, *International Criminal Law*, 2nd Edition, (Oxford: Oxford University Press, 2008).p. 186

(2) Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (Oxford: Oxford University



This gives rise to what may be described as a “gray area” in international law, where the realities on the ground conflict with the political and legal narratives of states and armed parties, in the absence of precise and decisive criteria for characterizing a conflict. The situation becomes even more complex when it comes to establishing the “international nature of the conflict,” as this classification carries crucial legal consequences regarding the scope of jurisdiction, the classification of violations, and the determination of responsibilities.<sup>(1)</sup> In the absence of such consensus, the International Criminal Court remains constrained in its jurisdiction, which undermines victims’ confidence in the effectiveness of international justice and deepens the perception of its selectivity.

As for the crime of aggression, the jurisdictional limitations are even more complex. Although a precise definition of the crime was adopted in the Kampala Amendments (2010), stipulating the commission of a “manifest act of aggression” by one State against another, the Court’s jurisdiction remains subject to dual constraints, both legal and political.

From a legal standpoint, the Court may exercise its jurisdiction over the crime of aggression only if both the aggressor State and the victim State are parties to the amendments relating to this crime. This provision grants States a legal loophole to avoid accountability<sup>(2)</sup> and represents a major gap in the structure of the Rome Statute of the International Criminal Court, one that is difficult to close given the current international circumstances. Moreover, the fact that the world’s most powerful States, which continue to reject the legal existence of the Court to this day, are themselves responsible for the largest acts of aggression in the twenty-first century, without any regard for global public opinion or for United Nations resolutions, further deepens this legal and moral paradox.

From a political standpoint, the crime directly concerns the issue of the use of force in international relations, which has led influential states to oppose the expansion of the Court’s jurisdiction over it, fearing the politicization of the Court or its use as a tool of pressure.<sup>(3)</sup>

In addition, the activation of the Court’s jurisdiction over the crime of aggression remains

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Press, 2012), p. 335.

(1) Dapo Akande, “*Classification of Armed Conflicts: Relevant Legal Concepts*,” in *International Law and the Classification of Conflicts*, ed. Elizabeth Wilmschurst (Oxford: Oxford University Press, 2012), p. 34.

(2) Claus Kreß, “*On the Activation of ICC Jurisdiction Over the Crime of Aggression*,” *Journal of International Criminal Justice*, Vol. 16, No. 1 (2018), p. 6

(3) Roger S. Clark, “*Negotiating Provisions Defining the Crime of Aggression, Its Elements and the Conditions for ICC Exercise of Jurisdiction Over It*,” *European Journal of International Law*, vol. 20, no. 4 (2009), p. 1103

dependent on the intervention of the United Nations Security Council, which holds the authority to determine the existence of an “act of aggression” under Chapter VII of the UN Charter. The amendment to the Rome Statute of the International Criminal Court limits the Court’s jurisdiction regarding the crime of aggression to instances where the Security Council has previously affirmed the act, as stipulated in paragraph (6) of Article (15 bis) of the draft amendment.

In this context, the International Criminal Court does not exercise jurisdiction over the crime of aggression unless a prior decision has been issued by the Security Council confirming that an act of aggression has occurred. This requirement constitutes a limitation on the Court’s ability to consider this crime, given its direct impact on the Court’s work and the inherently political nature of such a decision, which is taken pursuant to Chapter VII of the United Nations Charter.

In this context, if the Security Council issues a decision confirming the occurrence of aggression, the Prosecutor of the International Criminal Court may then initiate an investigation, even if the Council has not formally referred the situation to the Court. However, if the Security Council concludes that no act of aggression has occurred or that the situation does not constitute a threat to or breach of peace, the Prosecutor is not permitted to initiate an investigation, since the Court’s jurisdiction over the crime of aggression is conditioned upon a prior determination by the Council.

Conversely, the draft amendment to the Statute introduced an exception granting the Prosecutor the authority to initiate an investigation into the crime of aggression after obtaining prior authorization from the Pre-Trial Chamber, in cases where the Security Council fails to take such a decision within six months from the date of notification. Nevertheless, the same amendment also introduced another limitation, allowing the suspension of the court’s jurisdiction over this crime, even when the Prosecutor is permitted to begin an investigation in the absence of a Council decision within the specified period. This limitation is based on Article 16 of the Rome Statute, which grants the Security Council the power to suspend the Court’s jurisdiction over the crime of aggression.

This requirement in Article 15 bis of the Statute subjects the Court to the political influence of the Security Council’s permanent members, making its jurisdiction contingent on geopolitical rather than purely legal criteria. This situation undermines the Court’s independence and restricts its capacity to ensure real accountability for crimes that pose the gravest threats to international peace. In practice, this complexity effectively paralyzes the

Court's ability to prosecute perpetrators of aggression, even though this crime is among the most serious international offenses and directly endangers global peace and security<sup>(1)</sup>. It diminishes the Court's stature by making it subordinate to a political organ that is not qualified to make legal determinations, which are the responsibility of judicial institutions. This, in turn, threatens to erode the foundations of international criminal justice.

The Court's subject-matter jurisdiction over war crimes and the crime of aggression, while established in the Rome Statute, is limited by interpretative, normative, and political factors, which hinder its judicial authority and often leave victims without access to criminal justice. These dilemmas raise the fundamental question: are legal texts alone sufficient to guarantee effective international justice, or does the Court's effectiveness remain contingent upon the political will of states and the international system as a whole? So, legal provisions are vital for international justice, but they need the backing of genuine international will and effective institutions to avoid political manipulation of judicial mechanisms. The International Criminal Court, despite representing a qualitative leap in the path of criminal justice, remains bound by the constraints of an international order governed by power dynamics, which subjects its jurisdiction to political pressures that sometimes undermine its impartiality and effectiveness.

Having examined the scope of the court's subject-matter jurisdiction, the study now proceeds in the **second section to analyze temporal and territorial jurisdiction**, two fundamental elements that define the geographical and temporal limits within which the court may exercise its authority, where the challenges related to the extent of the Court's jurisdiction and its interaction with state sovereignty in both spatial and temporal dimensions become evident.

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(1) Dapo Akande & Antonios Tzanakopoulos, "The International Criminal Court and the Crime of Aggression: The Consent Problem and the Role of the Security Council," in *The Oxford Handbook of the Use of Force in International Law*, eds. Marc Weller et al. (Oxford University Press, 2015), p. 710–711.

## Second Section: Temporal and Territorial Jurisdiction

The temporal and territorial jurisdiction of the International Criminal Court represent two fundamental pillars essential for determining the extent of the court's competence to carry out its judicial functions, as they form the legal framework that defines when and where the court may exercise its authority. This is crucial to ensuring the necessary balance between the principle of state sovereignty and the requirements of international justice. Temporal jurisdiction reinforces the idea that the court does not possess unlimited retroactive power but is limited to crimes committed within a specific period of time, thereby ensuring respect for the rights of the parties and the protection of fundamental legal principles. This strengthens the legitimacy of the court's decisions and prevents disputes arising from ambiguous or unjustified judicial interventions in distant historical events.

Territorial jurisdiction is tied to state sovereignty, with international law necessitating the Court to honor geographical boundaries set by member states. This limits intervention in non-party states' internal matters, except in exceptional cases. The complexity arises from cross-border conflicts and terrorism, which challenge the Court to adapt its jurisdiction in dynamic situations requiring precise and flexible regional interpretation.

Accordingly, this section addresses three main branches:

**The first branch examines the temporal limitations imposed on the Court's jurisdiction under Article 11 of the Rome Statute.**

**The second branch discusses the territorial scope of the Court's jurisdiction.**

**The third branch explores the exceptional cases of jurisdiction that allow the court to exercise its authority even when the concerned State is not a party to the Statute.**

The analysis in this section aims to demonstrate how temporal and territorial limitations form a vital practical and legal framework that balances respect for state sovereignty with the need to ensure international criminal justice. It also seeks to uncover the challenges that hinder the implementation of these parameters in international practice and their implications for the court's effectiveness and its ability to ensure deterrence and accountability.

### **First Branch: Temporal Limitations on the Court's Jurisdiction under Article 11 of the Rome Statute**

Temporal jurisdiction is one of the fundamental restrictions governing the authority of the

International Criminal Court, as explicitly stated in Article 11 of the Rome Statute. According to this provision, the court has no jurisdiction over crimes committed before the statute's entry into force, namely, after 1 July 2002, regardless of whether the concerned State subsequently joined the Statute or not, unless that State issues a specific declaration accepting the court's jurisdiction.

Although some argue that this provision reflects selective and politically influenced considerations, particularly concerning major powers, it has been suggested that, based on the principle of universal jurisdiction, the court could have been granted retroactive authority over such crimes, similar to the ad hoc tribunals that preceded it, or that the court's jurisdiction could have applied automatically to all states parties upon the statute's entry into force, regardless of when a particular state became a party. This reasoning rests on the notion that what a state can exercise individually under universal jurisdiction, states can collectively exercise legitimately through a unified judicial body. In the case of genocide in particular, such an approach could have been viewed as fulfilling the commitment contained in Article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide, without being considered retroactive application.

However, the Rome Statute explicitly affirms the principle of non-retroactivity in paragraph 1 of both Articles 22 and 24. Consequently, the court differs from the Nuremberg, Tokyo, former Yugoslavia, and Rwanda tribunals, all of which applied their mandates retroactively, one of the most significant aspects that drew criticism toward those courts.

This temporal limitation is not merely a technical constraint but embodies a fundamental principle of international criminal law: the prohibition of retroactive application of penal provisions, a cornerstone of the principle of legality firmly established in all comparative legal systems. Nonetheless, this temporal restriction has given rise to numerous practical and legal challenges, especially in cases involving grave crimes committed before this date or in states that joined the Statute years later, making it theoretically and practically impossible to prosecute perpetrators of those crimes within the court's framework.

This was clearly illustrated in the case of Uganda, where the court's jurisdiction was limited to crimes committed after the state's accession to the Rome Statute on 14 June 2002. As a result, several earlier acts, despite their evident criminal nature and connection to the ongoing conflict<sup>(1)</sup>, could not be prosecuted. A similar issue arose in the case of Côte

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(1) Max du Plessis, *Complementarity: A Working Relationship Between African States and the International Criminal Court*, Institute for Security Studies Paper No. 241, 2012, p. 9. Accessed 30 September 2025. Available at: [issafrica.org/research/papers/african-efforts-to-close-the-impunity-gap-lessons-for-com](http://issafrica.org/research/papers/african-efforts-to-close-the-impunity-gap-lessons-for-com)

d'Ivoire, which was not a party to the statute but submitted a declaration accepting the court's jurisdiction under Article 12(3) of the statute. However, this declaration included an optional temporal limitation, which sparked debate over the permissibility of defining a retroactive period within the framework of such a special declaration of acceptance<sup>(1)</sup>.

The complexity increases when the Court is presented with cases of a continuous or prolonged nature, such as enforced disappearance or forced displacement, as this raises the question of whether the persistence of the crime's effects after the Statute's entry into force allows the court to exercise its jurisdiction, even if the initial act constituting the crime occurred beforehand. Some chambers of the court have adopted a flexible interpretation of the concept of "continuity" in such cases, considering that continuous crimes fall within the court's jurisdiction if their commission or effects persisted beyond the date of entry into force.<sup>(2)</sup>

Inconsistencies in judicial reasoning regarding temporal jurisdiction have emerged across Court cases, undermining the Court's effectiveness and allowing for varied interpretations. The issue becomes even more sensitive when temporal limitation is raised as both a moral and legal dilemma, since some of the most serious international crimes, foremost among them genocide, occurred before the Rome Statute entered into force in 2002, as in the cases of the Rwandan genocide of 1994 and the Cambodian genocide of the 1970s. Despite the gravity of these crimes, the court was deprived of the ability to address them for purely textual reasons, which revived debate over the wisdom of subjecting international justice to a rigid temporal restriction<sup>(3)</sup>. Some scholars have argued that the Court's permanent nature should have justified granting it exceptional authority to adjudicate certain crimes committed prior to the Statute's entry into force, similar to ad hoc tribunals such as the International Criminal Tribunal for the former Yugoslavia, which was granted jurisdiction over crimes committed since 1991 despite being established in 1993<sup>(4)</sup>. This disparity raises profound questions about whether the temporal limitation truly reflects adherence to the principle of legal legality, or whether it, in fact, represents an obstacle that hinders the

plementarity-from-national-and-regional-actions?

(1) Carsten Stahn, *The Law and Practice of the International Criminal Court*, (Oxford: Oxford University Press, 2015), pp. 390–391.

(2) ICC, Pre-Trial Chamber I, Situation in the Democratic Republic of the Congo, Decision on the Prosecutor's Application for Warrants of Arrest, 10 February 2006, para. 86, Accessed 30 September 2025. Available at: [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2006\\_01842.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2006_01842.PDF)

(3) Schabas, William A., *An Introduction to the International Criminal Court*, 5th ed. (Cambridge: Cambridge University Press, 2017), pp. 117–118.

(4) Antonio Cassese, *International Criminal Law*, 2nd ed. Ibid., pp. 337–338.

universality of international justice.

Upon the Rome Statute's entry into force, the Court's jurisdiction is established for crimes committed thereafter, regardless of when the case begins or the accused is apprehended. The Statute adopts the approach that international crimes are not subject to a statute of limitations, and the right to prosecute and punish their perpetrators does not lapse over time. This principle was previously affirmed by the 1968 United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. The Rome Statute reaffirmed this principle by declaring that no limitation period applies to any of the crimes under the jurisdiction of the Court.<sup>(1)</sup>

Accordingly, the temporal limitations set forth in Article 11 of the Rome Statute, while reflecting respect for the principles of criminal legality and non-retroactivity, nevertheless pose real challenges to the Court's effectiveness, particularly in cases involving continuous crimes or crimes committed prior to a State's accession or the Statute's entry into force. These challenges highlight the fundamental difficulty of balancing the rigid legal framework of the Statute with the requirements of international criminal justice, which should not be constrained by time nor reduced to the mere dates of ratification and entry into force.

Building on this temporal limitation, which determines "when" the Court has jurisdiction, we now move to examine the regional or geographical dimension of the Court's jurisdiction, namely, "where" the Court may exercise its authority. This involves **discussing the scope of its territorial jurisdiction**, the position of the State in relation to the Rome Statute, whether it is a Party to it or not, and the impact of that status on the international legitimacy of initiating proceedings. These aspects will be addressed **in the second branch**.

## Second Branch: The Territorial Scope of the Court's Jurisdiction

The Court primarily relies on the principle of territorial criminal jurisdiction, which means that the crime must be committed within the territory of a State Party to the Rome Statute or be perpetrated by one of its nationals.

The territorial scope of the International Criminal Court's jurisdiction constitutes one of the key determinants for the activation of its judicial authority. Under Article 12 (3) of the Rome Statute, the Court does not have jurisdiction unless the State on whose territory the

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(1) براء منذر كمال عبد اللطيف، النظام القضائي للمحكمة الجنائية الدولية، (لبنان: دار الجامد للتوزيع والنشر، 2008) ص. 211.



crime was committed or the State of the accused's nationality is a Party to the Statute, or has submitted a special declaration accepting the Court's jurisdiction. This geographical requirement often serves as a legal barrier to the opening of investigations and creates recurring practical and legal challenges that affect the Court's ability to address many serious international crimes, particularly those committed in the territories of non-Party States.

In such cases, the Court cannot exercise jurisdiction over the crime unless it falls within a situation that has drawn the attention of the Security Council, which may refer the matter to the Prosecutor under Article 13 (b) of the Statute, or if the Prosecutor initiates an investigation proprio motu in accordance with Article 15. In the absence of either of these two mechanisms, perpetrators of such crimes remain at large, and justice remains powerless.<sup>(1)</sup>

As in the case of Syria, where the country's failure to accede to the Rome Statute and its refusal to submit a declaration accepting the Court's jurisdiction resulted in the exclusion of any possibility of initiating proceedings directly before the Court, despite the accumulation of UN and human rights evidence documenting large-scale war crimes and crimes against humanity<sup>(2)</sup>. The situation became even more complex after the Security Council failed to activate Article 13(b) and refer the situation in Syria to the court, following the use of the veto power by Russia and China in 2014.

Unlike the Syrian case, Ukraine resorted to the mechanism provided for in Article 12(3) of the Rome Statute, submitting in 2014 a declaration accepting the court's jurisdiction over crimes committed since 21 November 2013, related to the "Maidan" events and the ensuing large-scale acts of violence. Ukraine did not stop there but later expanded the scope of its declaration to include ongoing crimes committed on its territory, including those arising from the Russian military intervention since 2014, up to the war in 2022.<sup>(3)</sup>

In the case of Palestine, a unique legal issue arose concerning its international status. In

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(1) ولد يوسف مولود ، عن فاعلية القضاء الجنائي الدولي بين قانون القوة وقوة القانون، مرجع سابق ، ص. 149

(2) United Nations, "Security Council Fails to Adopt Draft Resolution Referring Syrian Crisis to International Criminal Court," UN Press Release SC/11407, 22 May 2014.(Accessed 30 September 2025). available at: <https://press.un.org/en/2014/sc11407.doc.htm>

(3) International Criminal Court, Ukraine accepts ICC jurisdiction over alleged crimes committed between 21 November 2013 and 22 February 2014, 17 April 2014. (Accessed 30 September 2025). ( Available at: <https://www.icc-cpi.int/news/ukraine-accepts-icc-jurisdiction-over-alleged-crimes-committed-between-21-november-2013-and-22>



2009, Palestine submitted a declaration under Article 12(3) of the Rome Statute, accepting the court's jurisdiction retroactively from 1 July 2002. However, the Office of the Prosecutor did not activate this declaration at the time, on the grounds that Palestine's legal status as a state had not yet been determined within the framework of the United Nations system.<sup>(1)</sup>

Nevertheless, this declaration represented a symbolic political and legal step that later paved the way for Palestine's actual integration into the international criminal justice system. On 1 January 2015, Palestine deposited its instruments of accession to the Rome Statute with the Secretary-General of the United Nations, making the statute officially applicable to its territory.<sup>(2)</sup>

Since that date, the International Criminal Court has held clear jurisdiction over international crimes committed in the Palestinian territories, which has strengthened Palestine's legal standing and provided affected parties with an international judicial mechanism for accountability, albeit within the limits of the ongoing political complexities surrounding the issue.

The International Criminal Court has also sought to test the limits of the territorial restriction set out in Article 12 of the Rome Statute through exceptional judicial interpretations. In the decision issued by Pre-Trial Chamber II in the *Myanmar–Bangladesh* case, the court held that the mere crossing of victims from the territory of a non-State Party (Myanmar) into the territory of a state party (Bangladesh) was sufficient to establish a territorial element enabling the court to exercise its jurisdiction. This approach was viewed as an expansive interpretation, as it went beyond the literal reading of the text, though it remained confined to specific factual circumstances involving cross-border displacement and persecution. This jurisprudence sparked a broad scholarly debate over the legitimacy of using the "cross-border element" as a basis for establishing territorial jurisdiction. Some scholars viewed it as a positive development that allows the court to overcome legal barriers that might otherwise prevent the prosecution of perpetrators, particularly in conflicts where the effects of crimes extend across borders, such as cases of forced displacement or enforced disappearance.<sup>(3)</sup>

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(1) International Criminal Court, The Prosecutor of the ICC opens a preliminary examination of the situation in Palestine, 16 January 2015. Accessed 30 September 2025. Available at: <https://www.icc-cpi.int/news/prosecutor-icc-opens-preliminary-examination-situation-palestine>

(2) International Criminal Court, Declaration Accepting the Jurisdiction of the International Criminal Court: Palestine, 1 January 2015. Accessed 30 September 2025. Available at: [https://www.icc-cpi.int/sites/default/files/itemsDocuments/Palestine\\_A\\_12-3.pdf](https://www.icc-cpi.int/sites/default/files/itemsDocuments/Palestine_A_12-3.pdf)

(3) ICC, Decision on the Prosecutor's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute

However, some scholars have cautioned that this expansive interpretation could lead to the erosion of the principle of territorial jurisdiction and constitute a departure from the explicit provisions of the Rome Statute, particularly since the text clearly requires that the State in which the crime was committed or the State of the accused's nationality be a party to the statute. According to this view, departing from this rule opens the door to the politicization of jurisdiction and exposes the court's decisions to legal challenges based on the weakness of their legal foundation.<sup>(1)</sup>

Nevertheless, these judicial interpretations, though seemingly expansive and aimed at reinforcing territorial jurisdiction beyond the framework of voluntary accession to the Rome Statute, remain subject to multidimensional criticism, particularly from the perspectives of politics and sovereignty. When the court relies on broad concepts to define the scope of its territorial jurisdiction, it steps into a legal and diplomatic minefield. This can undermine the court's legitimacy before the international community and open the door to accusations of selective justice or the instrumentalization of international law to serve particular agendas.

The fragility of the legal basis, when not grounded in the clear consent of the concerned state, places the court in a constant position of having to defend its jurisdiction and weakens its ability to enforce arrest warrants or secure international cooperation, especially when the interests of major powers conflict with the court's directions. Therefore, while linking jurisdiction to territory reinforces respect for the principle of national sovereignty, it simultaneously creates an environment of systematic impunity, particularly in conflicts occurring within the territories of non-state parties. Moreover, alternative mechanisms, such as referrals by the Security Council, often encounter political obstacles within the Council itself, notably due to the use of the veto power by permanent member states.<sup>(2)</sup>

From the foregoing, it becomes evident that the territorial jurisdiction of the International Criminal Court, although it may appear, on the surface, to be confined within the geographical boundaries of states parties to the Rome Statute or those that have expressly accepted the court's jurisdiction, remains governed by practical considerations that extend

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ute, Situation in the People's Republic of Myanmar, ICC-RoC46(3)-01/18, 6 September 2018. paras. 70 and 73. Accessed 30 September 2025.

(1) Dapo Akande, "The Scope and Application of the ICC Territorial Jurisdiction: The Article 12(2)(a) Debate", in *International Criminal Law: The ICC and Beyond*, ed. Leila Nadya Sadat (Oxford: Oxford University Press, 2011), pp. 123–124.

(2) Carsten Stahn, *A Critical Introduction to International Criminal Law* (Cambridge: Cambridge University Press, 2019), p. 214.

beyond the limits of legal texts. This is particularly true in cases involving cross-border armed conflicts or crimes committed within the territory of States that refuse to accede to the statute or to cooperate with the court.

Despite its legal clarity, the court's territorial jurisdiction is often deprived of its practical substance in the face of international political complexities. This necessitates examining the exceptional mechanisms established to overcome such limitations and to ensure that those responsible for international crimes do not escape accountability.

Accordingly, the United Nations Security Council emerges as a pivotal actor in enabling the court to transcend territorial constraints, pursuant to Article 13(b) of the Rome Statute, which authorizes the council, whenever the conditions stipulated in Chapter VII of the United Nations Charter are met, to refer to the court a situation involving any crime within its jurisdiction, even if that crime was committed in the territory of a non-state party or by its nationals.

Accordingly, the **third branch** will analyze this **exceptional form of jurisdiction**, focusing on the legal basis for such referrals, their scope and practical limits, and the challenges they raise in light of international power dynamics and the realities of the global system. The analysis will also highlight the extent to which this mechanism affects the court's effectiveness and expands its jurisdiction beyond the traditional contractual framework.

### **Third Branch: Exceptional Cases of Jurisdiction (Referral by the Security Council)**

Referral by the Security Council represents one of the exceptional mechanisms granted to the International Criminal Court under Article 13(b) of the Rome Statute. The Court can exercise jurisdiction over crimes committed in non-Party States or by their nationals, even without a contractual obligation to submit to its authority.

This possibility constitutes a clear exception to the principle of voluntarism governing State accession to the Court. The Security Council, acting under its powers granted by Chapter VII of the United Nations Charter, may refer a particular situation to the Court, thus activating a form of universal criminal jurisdiction, whenever it determines that the crimes in question constitute a threat to or breach of peace, or an act of aggression. The Security Council's referral authority ensures, to some extent, the compliance of UN member states with the Court's requests without conflicting with the Council's own prerogative to establish ad hoc international tribunals. Moreover, crimes committed before the Rome Statute's entry into force are inadmissible at the ICC, leading the Council to consider ad

hoc tribunals as the sole method for prosecuting these crimes. Hence, referral embodies a justified act of international sovereignty exercised under the umbrella of international legitimacy, even in the absence of the concerned State's consent.

In overcoming the jurisdictional limitations faced by the International Criminal Court due to the non-accession of certain states to the Rome Statute, the United Nations Security Council has played a decisive role through the referral mechanism provided for in Article 13(b). In the case of Darfur, Sudan, the Council adopted Resolution 1593 (2005) in March 2005, referring the situation in Darfur to the Court, thereby granting it authority to investigate international crimes committed there, despite Sudan not being a State Party to the statute. Similarly, in the case of Libya, the Council unanimously adopted Resolution 1970 (2011), referring the situation in Libya to the court, which allowed it to open extensive investigations and issue arrest warrants against senior Libyan officials, even though Libya was also not a state party<sup>(1)</sup>.

These referrals constituted a significant precedent in consolidating the role of the Security Council as a mechanism for expanding the court's jurisdiction beyond the framework of voluntary membership<sup>(2)</sup>.

However, this framework raises several complex issues. The first concerns the legitimacy of imposing international judicial jurisdiction on a sovereign state without its consent, particularly given the imbalance within the Security Council, where five states possess veto power, three of which (the United States, Russia, and China) are not parties to the Rome Statute. This has led to criticism that referrals are used for political rather than legal purposes and reflect a double standard in the application of international justice.

The second issue relates to the extent of the non-party state's obligation to cooperate with the court's mandates. When the Security Council refers to a situation, it does not simultaneously issue a binding framework requiring full cooperation by the state concerned; the referral merely authorizes the court to initiate investigations. The problem becomes even more complex when the crimes involve a state allied with major powers within the Security Council or when the veto power is used to block a referral, as occurred in the case of Syria, where efforts to refer the situation to the court have been obstructed since 2014 by Russia and China, despite well-documented evidence of acts amounting to war crimes and

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(1) UN Security Council, Resolution 1593 (2005) on the situation in Darfur, Sudan, adopted 31 March 2005. Available at: [https://undocs.org/S/RES/1593\(2005\)](https://undocs.org/S/RES/1593(2005)) (accessed September 29, 2025)

(2) نسرین معروفی، الدعوى الجزائية أمام المحكمة الجنائية الدولية، مذكرة ليسونس كلية الحقوق والعلوم الإدارية، جامعة بلعباس، 2011، ص. 44.

crimesagainsthumanity.<sup>(1)</sup>

The absence of an independent enforcement mechanism presents a legal challenge, placing the court in a predicament where it has presumed territorial jurisdiction but lacks effective means for enforcement, including investigation, arrest, or prosecution. This has led some scholars to describe the referral mechanism as a form of “paralyzed jurisdiction” unless it is supported by a binding enforcement framework issued by the Security Council itself.<sup>(2)</sup>

Therefore, although referral by the Security Council is important for expanding the court’s territorial jurisdiction to include non-state parties, it remains subject to political considerations that often outweigh purely legal ones. Consequently, the effectiveness of the International Criminal Court depends not only on its legal capacity but also on the extent of international political will, which raises legitimate questions about the future of international criminal justice in light of its subjection to selective tools in application. In the end, a number of advantages and disadvantages of referral by the Security Council can be identified. On the positive side, granting the Security Council the power of referral represents its recognition of the importance of the role of the International Criminal Court, which means its cooperation with it, and the ICC, as a relatively new judicial body, needs diverse and different support at the beginning of its path to fulfill its role in achieving criminal justice and combating impunity. Granting the Security Council the authority to initiate proceedings would activate the principle of universal criminal jurisdiction, thereby freeing the Court from the constraints of territory and nationality, regardless of whether states consent or not. On the negative side, the power granted to the Security Council would automatically lead to the suspension of the operation of the principle of complementarity and thus deprive national courts of their original jurisdiction to consider the crime committed, and the referrals it issues apply to all states parties and non-parties to the statute, which constitutes an intervention in state sovereignty. Likewise, giving the Security Council, as a political body, the right to initiate criminal proceedings would undermine confidence in the impartiality and independence of the court. By reviewing the temporal and territorial dimensions of the jurisdiction of the International

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(1) Jennifer Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*, Cambridge University Press, 2020, Chapter: “Case Studies – Veto Use Related to the Situation in Syria.” (accessed 1 October 2025).

Available at: [<https://www.cambridge.org/core/books/existing-legal-limits-to-security-council-veto-power-in-the-face-of-atrocity-crimes/case-studies/86FE5A3758C7A75480BD06098C60911B>]

(2) Victor O. Ayeni & Matthew A. Olong, “*Opportunities and Challenges to the UN Security Council Referral under the Rome Statute*,” *African Journal of International and Comparative Law*, 2017, p. 197

al Criminal Court, it becomes clear that this dual scope forms the cornerstone for defining the court's powers and ensuring that it does not exceed the limits of its mandate as established by the Rome Statute.

And if regulating temporal and territorial jurisdiction represents the objective framework for the court's intervention, **personal jurisdiction** comes to define the human scope of this mandate, namely the categories and individuals who may be subject to accountability before it. The importance of this dimension lies in its direct connection to the issue of official immunities, the principle of non-impunity, and the extent to which political and military leaders are held accountable for international crimes.

### Third Section: Personal Jurisdiction

Personal jurisdiction constitutes one of the fundamental pillars upon which the system of international criminal justice is built, as it precisely defines the human scope over which the International Criminal Court exercises its authority, identifying the categories and individuals who may fall under the reach of international justice. This concept reflects a profound legal philosophy that responsibility for international crimes is not bound by territorial or temporal considerations but is instead linked to the individual and their actions, wherever they are committed and regardless of their position or status. Thus, personal jurisdiction serves as an essential complement to the temporal and territorial jurisdictions previously discussed, forming together an integrated system that ensures the comprehensiveness and effectiveness of the court's mandate.

The practical importance of this jurisdiction is further amplified by its embodiment of the human dimension of international criminal justice, as the legal analysis moves from conceptual abstraction to direct application to natural persons accused of committing acts that constitute genocide, crimes against humanity, war crimes, and the crime of aggression. The ultimate goal of the court is not to prosecute states or entities but to bring to justice individuals who bear international criminal responsibility, regardless of their nationality, legal status, or the positions they hold.

This topic gains special significance in light of the political and diplomatic challenges that hinder the enforcement of international criminal law, as some individuals falling under the court's personal jurisdiction may enjoy political protection or legal immunity within their own countries, or may belong to states that are not parties to the Rome Statute. Accordingly, personal jurisdiction raises complex questions regarding the limits of the court's authority, the legitimacy of prosecuting such individuals, and the balance between national sovereignty and the imperatives of international accountability.

Accordingly, this section will be addressed through three main branches:

**First Branch: The Court's jurisdiction over nationals of States Parties to the Rome Statute.**

**Second Branch: The International Criminal Court's jurisdiction over nationals of non-State Parties.**

**Third Branch: The Court's Jurisdiction over Leaders**

This section thoroughly analyzes the three branches of personal jurisdiction to establish a comprehensive picture of the Court's personal scope. This analysis clarifies the



International Criminal Court's (ICC) ability to prosecute individuals regardless of their official status, nationality, or position. Ultimately, this reinforces the principle of non-impunity and affirms the universal character of international criminal justice.

### **First Branch: The Court's Jurisdiction over Nationals of States Parties**

Personal jurisdiction of the International Criminal Court is provided for in Article 25 and the subsequent provisions of Part III of the Rome Statute. From these articles, the meaning of personal jurisdiction can be understood as the court's competence to prosecute only natural persons, which means that legal entities, such as states, organizations, or institutions possessing legal personality, cannot be held accountable before it.

Historically, international judicial jurisdiction did not extend to individuals, as the jurisdiction of the International Court of Justice, under Article 34 of its statute, was limited exclusively to states. Therefore, when the International Criminal Court was established, it was said to have come to play a complementary role to that of the International Court of Justice by providing a criminal counterpart to its civil jurisdiction, thereby expanding the scope of international justice to include individuals.

The jurisdiction of the International Criminal Court over nationals of States Parties is applied directly through the principle of active personal jurisdiction. The court has the right to prosecute any person holding the nationality of a state that has ratified or acceded to the Rome Statute for crimes falling within its subject-matter jurisdiction, regardless of where the crime was committed or in which state it occurred. This extension represents one of the key safeguards included in the Statute to ensure that states parties bear responsibility for cooperating with the court in the prosecution and punishment of their nationals for serious international crimes.

This jurisdiction is based on a clear legal foundation set out in Article 12(2)(a) of the Rome Statute, which requires that, for the court to exercise jurisdiction, the state of nationality of the accused must be a State Party or have accepted the court's jurisdiction through a special declaration. Consequently, the court may exercise its authority even if the crime was committed within the territory of a non-state party, as long as the perpetrator is a national of a state party. This reflects the cross-border nature of personal jurisdiction in international criminal law.<sup>(1)</sup>

However, the application of this jurisdiction raises several practical and legal challenges.

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(1) Kai Ambos, *Treatise on International Criminal Law, Volume I – Foundations and General Part*, 2nd ed. (Oxford: Oxford University Press, 2021).p. 137



The first of these concerns the issue of dual nationality, which arises when the accused holds the nationality of both a state party and a non-state party. In such cases, although Article 12(2)(a) of the Rome Statute grants the court jurisdiction based on the nationality of the state party, the non-state party may invoke its sovereignty and demand that its national be tried before its own courts, relying on the principle of sovereign equality between states and the general rule of international law that prohibits subjecting a state to an international jurisdiction without its consent.

This debate has surfaced in some cases brought before the court, where certain states argued that dual nationality necessitates determining the “dominant” or “most relevant” nationality of the accused before establishing jurisdiction<sup>(1)</sup>. Examples include discussions concerning American nationals in Afghanistan or Israeli nationals in the Palestinian context, where it was argued that the non-State Party had not consented to the court’s jurisdiction.

The resolution of such issues typically relies on a broad interpretation of Article 12, emphasizing the contractual nature of the Rome Statute. Accordingly, holding the nationality of a State Party, even alongside another nationality, is sufficient to bring an individual under the court’s jurisdiction. Additionally, bilateral agreements may be concluded between the court and non-state parties, or between states parties and such states, to ensure the surrender or genuine national prosecution of individuals holding dual nationality.<sup>(2)</sup>

The second issue lies in the conflict of jurisdiction between the International Criminal Court and the national judicial systems of states parties. Article 17 of the Rome Statute establishes the principle of complementarity, whereby the court acts as a subsidiary body that intervenes only when a state party is unwilling or genuinely unable to carry out genuine prosecutions. However, in practice, some states resort to sham trials or superficial investigations with the aim of preventing the court’s intervention, a practice that contradicts the spirit of the statute and results in de facto impunity.<sup>(3)</sup> The solution lies in activating mechanisms for objectively assessing the genuineness of national proceedings, whereby the court examines elements of fair trial standards, the independence of the national judiciary, and

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(1) محمود شريف بسيوني، المحكمة الجنائية الدولية - نشأتها ونظامها الأساسي مع دراسة لتاريخ لجان التحقيق الدولية والمحاکم الجنائية الدولية السابقة، (القاهرة: إصدارات نادي القضاة المصري، 2001)، ص 415.

(2) Andrew Wolman, “Dual Nationality and International Criminal Court Jurisdiction,” Journal of International Criminal Justice, Vol. 18, No. 5 (2020), p. 1089.

(3) Mohamed El Zeidy, *The Principle of Complementarity in International Criminal Law: Origin, Development and Practice*, (Leiden: Martinus Nijhoff Publishers, 2008).p. 204.

the existence of a genuine will to prosecute. The case of *Prosecutor v. Thomas Lubanga* demonstrated that the court does not hesitate to intervene when it determines that domestic proceedings are merely a means of shielding individuals from international prosecution<sup>(1)</sup>. In addition, the capacities of national judicial systems can be strengthened through technical cooperation programs managed by the Office of the Prosecutor, ensuring the presence of both genuine willingness and capability to conduct effective prosecutions.<sup>(2)</sup>

The third issue concerns the political rather than the legal dimension. Although Article 86 of the Rome Statute imposes an absolute obligation on states parties to cooperate with the court, in practice there have been explicit or implicit instances of non-cooperation, either to protect prominent political or military figures or as a result of diplomatic pressure from allied states. Such practices undermine the court's ability to enforce its jurisdiction and render the principle of non-impunity subject to political calculations.

Addressing this issue requires not only legal mechanisms but also international pressure tools. In certain cases, the Security Council and the United Nations General Assembly have issued political resolutions urging States Parties to honor their commitments, while the Prosecutor may also appeal to international public opinion to shame non-compliant states<sup>(3)</sup>. Furthermore, the application of Article 87(7) of the Rome Statute, which empowers the court to refer cases of non-cooperation to the Assembly of States Parties or to the Security Council, constitutes an important legal pressure mechanism, although its effectiveness ultimately depends on the political will of the key actors involved.

In light of the foregoing, it becomes clear that the International Criminal Court's jurisdiction over nationals of States Parties constitutes a legally stable and well-established principle, founded on the voluntary accession of the state to the Rome Statute and its commitment to international standards of criminal accountability. This jurisdiction ensures the effectiveness of international justice in prosecuting the four core international crimes while respecting state sovereignty and providing fundamental legal safeguards for the accused.

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(1) ICC, *Prosecutor v. Thomas Lubanga Dyilo* (Decision on the Admissibility of the Case Pursuant to Article 19), ICC01/0401/06, 10 February 2006, para 31. Available at: [https://www.icc-cpi.int/CourtRecords/CR2008\\_01677.PDF](https://www.icc-cpi.int/CourtRecords/CR2008_01677.PDF) (accessed October 1, 2025).

(2) Michael P. Scharf, *The ICC's Jurisdiction over Nationals of Non-Party States: A Critique of the U.S. Position*, Law and Contemporary Problems, Vol. 64, No. 1 (2001), p. 67.

(3) International Criminal Court, Office of the Prosecutor, Policy on Cooperation and Complementarity, para. 18. Available at: <https://www.icc-cpi.int/news/icc-office-prosecutor-launches-policy-complementarity-and-cooperation> (accessed October 1, 2025).

Nevertheless, in practice, new challenges arise concerning crimes committed by nationals of states that have not yet acceded to the Rome Statute, or in situations where formal accession is absent. This necessitates moving on to examine the **court's personal jurisdiction over nationals of non-state parties** and the legal mechanisms that enable the court to exercise its authority in such cases.

### **Second Branch: The Court's Jurisdiction over Nationals of Non-State Parties**

The jurisdiction of the International Criminal Court over nationals of non-State Parties to the Rome Statute raises a complex legal issue directly related to the extent of international judicial authority over individuals in the absence of their states' formal membership. As a general rule, under the principle of sovereignty, jurisdiction falls under the authority of the state of the territory or the nationality of the accused. However, the grave nature of the four core international crimes, genocide, crimes against humanity, war crimes, and the crime of aggression, compels the international community to seek mechanisms that allow the prosecution of perpetrators even when their states are not parties to the Statute.

In this context, the personal dimension of jurisdiction emerges as the main gateway through which the court may exercise its authority, by subjecting individuals to the court's power whenever specific conditions set forth in the Statute or binding Security Council resolutions are met. Article 12(3) of the Rome Statute constitutes one of the most significant legal avenues in this regard, as it grants a non-State Party the ability to submit a special declaration accepting the court's jurisdiction over specific crimes committed by its nationals or within its territory. This voluntary acceptance serves as a limited but effective contractual mechanism, as it provides an explicit legal basis for the exercise of personal jurisdiction while respecting the element of sovereign consent.

However, this mechanism faces several practical limitations, such as defining the temporal and territorial scope of acceptance and restricting it to certain incidents or crimes. In addition, the concerned state may impose conditions or indirect reservations through a narrow interpretation of the declaration, which can limit the court's ability to take effective action.

In the absence of voluntary acceptance, the court may extend its jurisdiction over nationals of non-State Parties through referrals made by the Security Council under Chapter VII of the United Nations Charter, when it determines that a given situation constitutes a threat to international peace and security. This legal basis carries exceptional binding force, as it

obliges all states, whether Parties or non-Parties, to cooperate with the Court<sup>(1)</sup>. Despite its theoretical effectiveness, the mechanism faces political obstacles, as its activation relies on international power balance and the veto power of permanent Security Council members, which may hinder referrals of serious situations.

The main practical obstacles to implementing personal jurisdiction over nationals of non-state parties lie in the difficulty of arresting suspects, the lack of cooperation by national authorities, and the refusal to recognize the legitimacy of the court. Added to this are logistical challenges related to evidence collection and witness protection in territories lacking a secure environment or independent judicial institutions. Furthermore, there is a symbolic dimension to this confrontation, as some states perceive the court's actions as an infringement on their sovereignty or as a selective tool targeting their leadership for political reasons, which further complicates the enforcement of judicial decisions.<sup>(2)</sup>

Additionally, to address these challenges, the International Criminal Court has adopted a multifaceted approach based on strengthening international cooperation as an indispensable strategic option. This has been achieved through the conclusion of bilateral and multilateral agreements with states willing to cooperate, allowing the court to move beyond the limitations of rigid legal provisions toward practical arrangements that enable it to perform its functions effectively<sup>(3)</sup>. The court has also worked to activate the role of regional organizations and UN agencies, particularly United Nations field missions, in facilitating investigators' access to crime scenes and ensuring the secure collection of evidence, thereby guaranteeing the integrity of investigations and the protection of witnesses.<sup>(4)</sup>

In addition to legal instruments, the court resorts to indirect pressure mechanisms to compensate for the lack of binding enforcement tools, such as mobilizing international public opinion and human rights organizations, thereby creating political and moral costs for states that refuse to cooperate. The court also benefits from the follow-up mechanism be-

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(1) UN Security Council, Resolution 1593 (2005), 31 March 2005, referring the situation in Darfur to the ICC; and Resolution 1970 (2011), 26 February 2011, referring to the situation in Libya. Available at: <https://www.un.org/securitycouncil/> (accessed October 1, 2025).

(2) Jordan J. Paust, "The Reach of ICC Jurisdiction Over NonSignatory Nationals", *Vanderbilt Journal of Transnational Law*, Vol. 33 (2000), p. 15

(3) International Criminal Court, *Cooperation Agreements* (The Hague: Coalition for the International Criminal Court, 2021). Available at: <https://www.coalitionfortheicc.org/document/icc-cooperation-agreements> (accessed October 1, 2025).

(4) International Criminal Court, \*Report on Cooperation, (The Hague: Assembly of States Parties, 2021), pp. 7–9. Available at: <https://www.icc-cpi.int/sites/default/files/2021-12/asp20-report-on-cooperation-eng.pdf> (accessed October 1, 2025).

fore the Security Council, particularly in cases referred to by it, to keep the matter on the international agenda and to strengthen pressure on the states concerned.<sup>(1)</sup>

Moreover, the Pre-Trial Chambers play a fundamental role in monitoring the fulfillment of the legal conditions for jurisdiction and ensuring the procedural integrity of cases, thereby preventing the court from exceeding or misusing its mandate. Through this delicate balance between political flexibility in cooperation mechanisms and strict adherence to the principles of legal legitimacy, the court seeks to reconcile the requirements of national sovereignty with the imperatives of international criminal justice, thereby reinforcing the complementary relationship between national and international jurisdictions.<sup>(2)</sup>

Building on the foregoing, the analysis of the court's personal jurisdiction over nationals of non-state parties, with its accompanying legal mechanisms and practical obstacles, serves as a necessary prelude to understanding the broader framework of the court's jurisdiction over individuals holding high official positions. Therefore, it is necessary to move in **the third branch** to examine the specific nature of the **court's jurisdiction in relation to leaders**.

### **The Court's Jurisdiction over Leaders: From the Abolition of Immunities to Command Responsibility**

This section explores the International Criminal Court's (ICC) authority over political and military leaders, marking a key development in international law, the shift from traditional immunity for officials to individual criminal accountability. <sup>(3)</sup>Article 27 abolishes all immunities, affirming that official capacity, including that of heads of state, does not exempt individuals from prosecution. Article 28 establishes *command responsibility*, holding leaders personally liable for crimes they commit or knowingly fail to prevent or punish.

This framework distinguishes between *official capacity* (once protected by international law) and *personal criminal responsibility*, emphasizing that leadership entails greater accountability, not protection. Cases such as *Prosecutor v. Thomas Lubanga* affirmed that leaders are not immune before the ICC.

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(1) FIDH, Q&A: Unpacking the ICC Office of the Prosecutor's New Approach to Complementarity and Cooperation (Paris: International Federation for Human Rights, 2022). Available at: <https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/q-a-unpacking-the-icc-office-of-the-prosecutor-s-new-approach-to> (accessed October 1, 2025).

(2) International Center for Transitional Justice (ICTJ), What is Complementarity? National Courts, the ICC and the Struggle Against Impunity (New York: ICTJ, 2020). Available at: <https://www.ictj.org/sites/default/files/subsites/complementarity-icc/> (accessed October 1, 2025).

(3) Articles 27 and 28 of the *Rome Statute* form the legal foundation for this principle.

However, applying this ideal faces significant political and legal challenges. Many states see immunity as essential to maintaining international order and fear that prosecuting heads of state could politicize international justice. This tension is amplified by **Article 98**, which prevents the court from requesting the surrender of an individual if doing so would breach a state's international obligations regarding the immunity of a third state, unless that state consents. This creates a direct contradiction with Article 27: although immunity is formally abolished, it persists in practice.

The *Al-Bashir* case exemplifies this conflict. When South Africa failed to arrest Sudan's president during his visit, it justified its decision by citing obligations under its agreement with the African Union and Article 98. The ICC effectively prioritized existing treaties over the Rome Statute, acknowledging that states could rely on prior or subsequent international agreements to avoid compliance.

This controversy revealed a deeper divide among states. The **United States**, for instance, supported Article 98's protective interpretation to shield its citizens and entered into bilateral "impunity agreements" with other governments, including Egypt and Jordan, to prevent the surrender of U.S. nationals to the ICC. These actions, reinforced by the **American Service-Members' Protection Act (2002)**, violate both the *Rome Statute* and the *Vienna Convention on the Law of Treaties (1969)*, undermining the principle of equal justice and creating double standards in international accountability.

Some scholars argue that a **Security Council referral under Chapter VII** overrides Article 98, as seen in the *Darfur* referral, where the ICC treated Sudan as if it were a state party and deemed Al-Bashir's immunity inapplicable. Others, however, warn that allowing the Council to expand the court's jurisdiction transforms the ICC into a political tool, undermining its judicial independence.<sup>(1)</sup>

Overall, while the abolition of immunity and the establishment of command responsibility represent major advances in international criminal law, their implementation remains hampered by contradictions between Articles 27 and 98, the persistence of political influence, and the use of bilateral agreements to evade justice. The ICC's credibility thus depends on reconciling these tensions, ensuring that no leader, regardless of status or nationality, is beyond the reach of international law.

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(1) Observations by Professor Paola Gaeta as amicus curiae on the merits of the legal questions presented in the Hashemite Kingdom of Jordan's appeal against the Decision under Article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the court for the arrest and surrender of Omar Al-Bashir of 12 March 2018, Available at: <https://www.legal-tools.org/en/doc/0e3760/> (accessed October 1, 2025).



From my point of view, I see that **Article 98 of the Rome Statute should be abolished**, in order to prevent perpetrators of international crimes falling within the court's jurisdiction from evading prosecution, as this article represents a **legal loophole designed to create immunity and shield offenders from accountability before the court**.

It is also worth noting that recent international developments have revealed the sensitivity and limitations of the International Criminal Court's jurisdiction, particularly in contemporary conflicts where political and geographical considerations are deeply intertwined. The Russia-Ukraine situation in 2022 revived the debate over the court's capacity to exercise jurisdiction against a major power that is not a party to the Rome Statute. The arrest warrants issued against Russian officials represented a bold step toward reinforcing the principle of accountability but, at the same time, sparked intense debate over the consistency of this course of action with the principle of national sovereignty. Similarly, the case of Palestine since 2021 has provided another example of the challenges surrounding territorial jurisdiction, as the court's efforts encountered both legal and political obstacles related to the status of the State of Palestine and the limits of its jurisdiction. These developments have revealed the depth of the tension between the aspirations of international justice and the realities of global power dynamics.

These real-world examples confirm that the limits of jurisdiction are not merely a technical legal issue but a genuine test of the international community's will to place justice above politics. At the same time, they highlight the urgent need to activate the complementary relationship between national and international justice systems, ensuring a balanced distribution of criminal jurisdiction. Such an approach would enable national judicial systems to fulfill their primary role in combating impunity while allowing the International Criminal Court to exercise its jurisdiction in a supportive, rather than substitutive, manner, thereby ensuring harmony between the imperatives of sovereignty and the demands of justice.

Accordingly, the analysis of the dimensions of the International Criminal Court's jurisdiction, subject-matter, temporal, territorial, and personal, demonstrates that these aspects are not separate entities but rather constitute an integrated system that defines the scope of the Court's mandate and maintains its delicate balance between the demands of justice and the requirements of sovereignty. Subject-matter jurisdiction determines the nature of crimes that justify international intervention, while temporal and territorial jurisdiction establish limits that prevent violations of the principle of non-retroactivity and interference in the internal affairs of states. Personal jurisdiction, on the other hand, embodies the logic of universal individual responsibility and grants the Court the authority to hold accountable

all those who qualify as perpetrators, regardless of their positions or nationalities. Through the principle of complementarity, the Rome Statute allows the Court to intervene only when national judicial systems cannot or do not fulfill their duties, respecting state sovereignty. In this way, a balance is achieved between the universality of international justice and the particularity of national jurisdiction, within a framework of complementarity rather than conflict.

When comparing the jurisdiction of the International Criminal Court with that of national or special regional tribunals, such as the Special Court for Sierra Leone or the Special Tribunal for Lebanon, a fundamental difference becomes evident in both the legal foundation and the nature of their mandates. Special tribunals are established through political decisions or limited agreements and exercise their jurisdiction within narrow temporal and territorial frameworks confined to specific situations. In contrast, the International Criminal Court derives its legitimacy from a permanent legal system founded on a collective expression of international will.

However, this broader jurisdiction places a greater obligation on the court to maintain neutrality and impartiality, as it does not deal with isolated incidents but instead establishes general standards of accountability that transcend borders and sovereignties. Consequently, the International Criminal Court represents a qualitative evolution in the trajectory of international justice, combining institutional independence with a unified legal framework, thus serving as the highest safeguard for achieving global criminal justice without undermining national judicial systems.

Nevertheless, the effectiveness of this system remains contingent upon the will of states and the extent of their commitment to the provisions of the Rome Statute. Practical experience reveals that the Court is still constrained by political and institutional considerations that limit its jurisdiction, whether in the difficulty of enforcing arrest warrants or in the selectivity of referrals. Thus, legal texts alone are insufficient to guarantee effective international justice; rather, what is required are profound reforms that strengthen the court's independence and insulate it from political pressures, while expanding international cooperation and developing binding mechanisms for the enforcement of its rulings.

The real challenge, therefore, does not lie in the drafting of rules but in transforming international justice from a theoretical concept into a practical reality capable of breaking the cycle of impunity, without undermining the foundational principles of national sovereignty.



## Conclusion:

Thus, it becomes evident that defining the limits of the International Criminal Court's jurisdiction achieves a delicate balance between respect for national sovereignty and the imperatives of international accountability. The Court's jurisdiction, substantive, temporal, territorial, and personal, is deliberately constrained to ensure that it does not overstep the will of states. This limitation reflects a conscious effort to uphold justice and prevent impunity without undermining the sovereignty of either state parties or non-parties. Accordingly, the central issue underlying all aspects of this study remains the following fundamental question: How has the International Criminal Court managed to balance the limits of its jurisdiction with respect for the principle of national sovereignty in a way that ensures effective accountability and prevents impunity?

It is clear that the Court's jurisdiction over the crime of aggression intersects with the powers of the Security Council, which determines the occurrence of aggression while the Court prosecutes individual leaders. This overlap restricts the Court's independence and renders international justice subject to political balances, particularly since the Council may suspend investigations under Article 16 of the Rome Statute, thereby providing protection for accused leaders and weakening accountability mechanisms.

Regarding temporal and territorial jurisdiction, it has been shown that the international legislator sought to limit the Court's scope of intervention within clearly defined boundaries, both in time, beginning with the Statute's entry into force in 2002, and in territory, to preserve state sovereignty and prevent excessive expansion of the Court's mandate. However, Article 13(b), which provides for referrals from the Security Council, introduced a significant exception, opening the door to the exercise of exceptional jurisdiction that supersedes the will of non-State Parties. This development has given the relationship between the Court and the Security Council a complex character, one that intertwines law and politics.

As for personal jurisdiction, a central issue has emerged regarding the possibility of subjecting state leaders, whether from Parties or non-Parties, to the Court's authority. This represents a qualitative shift in international criminal thought from the principle of "sovereign immunity" to the principle of "individual accountability."

**Findings:**

The system of the International Criminal Court has established a precise and balanced framework of jurisdiction that reconciles, on the one hand, respect for national sovereignty and, on the other, the assurance that perpetrators of international crimes do not escape punishment. In doing so, it embodies the practical application of the principle of complementarity between national and international justice.

The Court's experience demonstrates that the achievement of international criminal justice cannot be separated from the political will of states. The success of its mandate remains contingent not merely on ratification of its Statute but on the actual cooperation and commitment of states in implementing its orders and warrants.

**Recommendations:**

It is essential to strengthen legislative harmonization between national laws and the provisions of the Rome Statute, enabling national judiciaries to exercise their primary jurisdiction over international crimes and thereby reducing the need for exceptional intervention by the Court.

The relationship between bilateral agreements and the Rome Statute must be redefined by adopting a clear complementary rule that obliges States Parties not to conclude or implement any bilateral agreements that conflict with the objectives and purposes of the Statute. Looking ahead, the future of international criminal justice suggests that the coming phase will witness a qualitative transformation in the concepts of jurisdiction and competence, going beyond the traditional frameworks established by the 1998 Rome Statute. The rapid pace of technological advancement and the expansion of transnational crimes, particularly in the fields of cybercrime and environmental crimes, compel the International Criminal Court to redefine its tools and operational mechanisms to maintain its ability to address serious violations in their evolving forms.

It is likely that the international community will move toward developing a more flexible, integrated system that bridges national and international justice, granting the Court a supervisory and coordinating role within the global justice architecture. Thus, the future of the Court depends on its readiness to evolve and expand the concept of international criminal justice into a more inclusive and dynamic framework, one that transforms international jurisdiction into a living, adaptive project capable of keeping pace with the transformations of the twenty-first century.

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