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JUSTICE ON TRIAL: LEGAL FRAMEWORKS AND FAILURES IN ADDRESSING WAR CRIMES AND CRIMES AGAINST HUMANITY

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ABSTRACT

Justice for war crimes together with crimes against humanity stands as a fundamental principle of international law yet numerous systemwide failures prevent effective accountability. The paper evaluates the legal structures together with institutional systems which manage mass atrocity situations including the International Criminal Court (ICC) and both ad hoc tribunals and hybrid courts. The progress of international criminal law faces ongoing political interference together with selective enforcement and jurisdictional limitations which prevent justice from being served. The examination of Myanmar and Syria and Darfur demonstrates the difficulties in prosecuting influential figures together with obtaining support from states that refuse compliance. The extended duration of trials combined with insufficient victim compensation and political influences weaken public confidence in international justice institutions. The research reveals a conflict between legal standards and political realities because UN Security Council veto power and superpower protection mechanisms frequently block accountability efforts. The paper recommends multiple reforms which include bounding Security Council veto power and supporting greater ICC membership and regional court systems and making victim rights the central focus. International justice obtains its credibility through the removal of political influence from legal systems and the establishment of equal enforcement mechanisms that prioritize survivor rights and dignity.

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INTRODUCTION

The quest for justice as a response to war crimes and crimes against humanity has characterized international legal evolution since the mid-20th century. The Nuremberg trial (1945-46) constituted a foundational principle under international law of holding individuals including heads of state, criminally liable for atrocities committed[2]. Yet years down the line, gruesome atrocities continue to unravel itself, as evidenced in Myanmar where the UN Independent International Fact-Finding Mission has deduced that atrocities committed against the Rohingya may amount to genocide, war crimes and crimes against humanity[3].

In post conflict societies, justice delivering system serves a twofold purpose: addressing past crimes and atrocities and laying the cornerstone of future peace and harmony. International centre for transnational justice (ICTJ) asserts that transactional justice is essential not only securing accountability but also for reinvigorating faith in institution and fostering sustainable stability[4]. This stance is reverberated in the United Nations Guidance note on Transnational justice which reiterates the rights of victim to truth justice and restitution as critical component of post conflict reconstruction[5].

[2] The Nuremberg Principles: Origins and Impact on Modern ICL: Nuremberg Academy, https://www.nurembergacademy.org/about-us/nuremberg-principles.
[3] United nations human rights council, Independent International Fact-Finding Mission on Myanmar https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/index
[4] International center for transnational justice, What Is Transitional Justice?, https://www.ictj.org/what-transitional-justice
[5]United nations human rights, Guidance Note of the Secretary General on Transitional Justice: A Strategic Tool for People, Prevention and Peace, https://www.ohchr.org/en/documents/tools-and-resources/guidance-note-secretary-general-transitional-justice-strategic-tool

Despite the conventional development of international criminal law, the pursuit of justice often clashes and becomes secondary with the geopolitical interests of powerful state. Many scholars argue that despite being designed to function independently the International criminal court continued to operate under the shadow of global political manoeuvring specifically in cased referred by the security council[6]. It is further accentuated that how cooperation with tribunals like International criminal Tribunal for the former Yugoslavia and International criminal Tribunal for Rwanda was a result of diplomatic influence rather than of legal obligations[7].

This paper will explore the efficacy of the current international and domestic legal structure and judicial framework in addressing war crimes against humanity, critically assessing the devolvement and functioning of institutions such as international criminal court and ad hoc tribunals etc. It will also examine the persistent structural failures through different case studies. Through doctrinal and comparative analysis, the paper aims to uncover how justice is often delayed or denied to victims, and proposes reforms to strengthen accountability and promote a more victim-centric approach to international justice.

UNDERSTANDING WAR CRIMES AND CRIMES AGAINST HUMANITY

At the forefront of the contemporary international criminal law is the legal construction and conceptual differentiation between war crimes, crimes against humanity, and genocide each having its own threshold of seriousness, contextual necessity, and burden of proof. Most codified in the Rome Statute of the international criminal court supplemented by the

[6] Mark Kersten, David Bosco, Rough Justice: The International Criminal Court in a World of Power Politics, Journal of International Criminal Justice, Volume 12, Issue 4, September 2014, Pages 887–888, https://doi.org/10.1093/jicj/mqu049

[7] Victor peskin, international justice in Rwanda and Balkans https://www.cambridge.org/core/books/international-justice-in-rwanda-and-the-balkans/975BC3287F9A8262731808D09BE0B27C

Geneva convention of 1949, constitutes the nexus of the global legal framework that seeks to avert impunity for mass atrocities.

As the tenth instrument to be adopted, in 1998, the Rome Statute, defines genocide in Article 6, as acts committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group"[8]. It is unique amongst various crimes as it is the only crime requiring specific intent (dolus specialis) to destroy a particular group. This intent precondition renders it extremely challenging to establish, as witnessed in the ICC's failure to prosecute genocidal crime even in cases well-documented, such as Darfur and Myanmar. According to Article 7 of the Rome Statute, crimes against humanity, comprise a vast array of atrocious activities such as murder, enslavement, deportation, torture, enforced disappearance, and sexual violence, "when committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack"[9]. The term "widespread or systematic" is not merely metaphorical but a threshold in law. In Prosecutor v. Tadić, the former Yugoslavia international criminal tribunal interpreted that "widespread" is used to indicate the extent of the acts, whereas "systematic" indicates organized and intentional patterns[10]. For this crime, a singular act can qualify if part of a larger campaign. At the ICTR, the Akayesu trial (1998) truly widened the definition of crimes against humanity, particularly for rape and sexual violence. The Akayesu judges implicitly labelled rape and sexual violence as a form of genocide for the first time in international law[11]. War crimes that are contained in article 8 of the Rome Statute are serious violations or violations of the Geneva Conventions, occurs in armed conflict,

[8] World public law, https://www.public.law/world/rome_statute/article_6_genocide , (4th July 2025)
[9] World public law, https://www.public.law/world/rome_statute/article_7_crimes_against_humanity , (4th July 2025)
[10]Magdalena Nergården ,no Place Like HomeDevelopment-Induced DisplacementACrime of Forcible Transfer of Populatio https://1library.net/article/widespread-systematic-attack-contextual-elements-crime.zg0nng8q
[11] United nations international residual mechanism for criminal tribunal https://unictr.irmct.org/en/news/historic-judgement-finds-akayesu-guilty-genocide#:~:text=With%20these%20words%20among%20others%2C%20the%20International%20Criminal,Akayesu%20guilty%20of%20Genocide%20and%20Crimes%20Against%20Humanity.

whether international or internationalised. These encompass wilful killing, attacking civilians, destruction of property that is not necessary for military purposes, and attacking humanitarian missions[12]. The Geneva Conventions of 1949, and most particularly Common Article 3 and the Additional Protocols, laid down that some basic rights are inalienable even when war rages on[13]. However, most states have not ratified the Additional Protocols or have consciously violated them in practice. The detention and treatment of Guantánamo Bay detainees and Russian-occupied Ukraine detainees[14] have loudly expressed concerns regarding overt war norms violations, while international accountability processes have been wanting in their reactions.

A major stumbling block is differentiating these crimes is the contextual elements. Such as war crimes need an armed conflict nexus, while crimes against humanity do not, they can take place in peacetime. Genocide demands evidence of intent to destroy a group, while crimes against humanity demand intent to attack civilians as part of a widespread attack. While these distinctions are easy and simple to distinguish in theory however in practice the lines tend to get blurred particularly in contemporary hybrid conflicts with state and non-state actors, cyber warfare, and proxy militias.

What comes out of this framework is a paradox. In theory, the law is well-rounded, forward-thinking, and emancipatory while the reality is different. Adopted in 2011 by ICC. the Elements of Crimes document offers a detailed breakdown of the actus reus (physical element) and mens rea (mental element) of every crime. But the effectiveness of these legal definitions to provide justice is severely impaired by uneven enforcement and political interference. For instance, in spite of convincing evidence brought by the UN Fact-Finding

[12] Huda Fatima , War Crimes under the Rome Statute: A Legal Analysis of Israel's Violations in Gaza https://rcilhr.com/war-crimes-under-the-rome-statute-a-legal-analysis-of-israels-violations-in-gaza/
[13] The Geneva conventions of 12 august 1949 https://www.icrc.org/sites/default/files/external/doc/en/assets/files/publications/icrc-002-0173.pdf
[14] ROTH Kenneth, U.S Officials misstate Geneva Convention requirements, Human Rights Watch, New York, 28 January 2002, http://www.hrw.org]

Mission on Myanmar (2018) of the Myanmar military's commission of crimes against humanity and potential genocide against the Rohingya, there has been no serious international prosecution that followed. The ICC jurisdictional and enforcement incapability compounded by Myanmar's failure to ratify the Rome Statute and Security Council paralysis because of China and Russia veto power have frozen the legal response[15]. Against these facts, the international legal system seems to have a credibility deficit: it utters high legal ideals, but does not apply them equally. This inconsistency does not merely undermine the jurisdiction of international criminal law, but the ethical gravity of the idea of justice itself. Therefore, the elementary comprehension of these crimes has to be joined with a realistic analysis of the systemic hindrances that deflect the prosecution process. The inability of the international community to take firm action in thoroughly documented cases, like Syria, Palestine, and Myanmar, calls into question the genuineness of the international community's adherence to the doctrine of never again.

INTERNATIONAL LEGAL FRAMEWORKS

The international struggle against war crimes and crimes against humanity has created a complex structure of institutions and legal systems. From permanent courts to ad hoc courts mingling international and domestic scope and national prosecutions with universal jurisdiction, these systems are the varying attempts at balancing justice, sovereignty, and legitimacy. Each mechanism arose to correct weaknesses of previous designs yet each admits weaknesses inherent in them: political manipulation, resource limitations, and neutrality challenges. This section reviews those institutions, noting innovations, weaknesses, and the political contingencies that operate them.

[15] UN report adds to mountain of evidence of Myanmar's atrocities against ethnic minorities https://www.amnesty.org/en/latest/news/2018/08/un-report-adds-to-mountain-of-evidence-of-myanmars-atrocities-against-ethnic-minorities/

1) The Rome Statute and the International Criminal Court (ICC)

The Rome Statute, which was created in 1998 and up and running in 2002, created a tribunal with permanent jurisdiction over genocide, crimes against humanity, war crimes, and aggression. Complementarity is core to the ICC's purpose. Therefore, national courts may pursue prosecutions, with the court only stepping in when national courts are unwilling or unable to[16]. The ICC has also handed landmark convictions. Thomas Lubanga's convictions for enlisting child soldiers[17] and Jean-Pierre Bemba's conviction for mass rape, along with the operation of the Trust Fund for Victims, highlight its developing jurisprudence and victim-focused spirit[18]. The court has further issued arrest warrants against incumbent heads of state, including Omar al-Bashir, in a departure from political immunity[19].

However, the court faces significant limitations. Powerful states like China, India, Russia, and the United States remain outside its jurisdiction. Its enforcement capacity is constrained by reliance on state cooperation, which has often been withheld, as seen in Sudan. Allegations of African bias have surfaced due to the court's heavy caseload from the continent, though many of these cases were referred by the states themselves[20]. The ICC has been criticized again in recent political activities. Hungary hinted in 2025 that it was withdrawing from the Rome Statute on account of politicization of the court's conduct,

[16] Linda E. Carter, The Principle of Complementarity and the International Criminal Court: The Role of Ne Bis in Idem, 8 Santa Clara J.Int'l L. 165 (2010).Available at: http://digitalcommons.law.scu.edu/scujil/vol8/iss1/8
[17] United nations In landmark ruling, ICC finds Congolese warlord guilty of recruiting child soldiers ,https://news.un.org/en/story/2012/03/406302
[18] Janine Natalya Clark, The First Rape Conviction at the ICC: An Analysis of the Bemba Judgment , Journal of International Criminal Justice, Volume 14, Issue 3, July 2016, Pages 667–687, https://doi.org/10.1093/jicj/mqw025
[19]International criminal court, ICC issues a warrant of arrest for Omar Al Bashir, President of Sudan, https://www.icc-cpi.int/news/icc-issues-warrant-arrest-omar-al-bashir-president-sudan
[20] Francisco Jose Quintana , APJ Discussion: Behind the International Criminal Court's Alleged 'African Bias', https://studentreview.hks.harvard.edu/apj-discussion-behind-the-international-criminal-courts-alleged-african-bias/ , (6th July 2025)

particularly on the issue of the Israel-Palestine conflict[21]. The court has been severely criticized by the public for selective prosecution and discredited its legitimacy.

The ICC remains a landmark institution in the landscape of international justice, but its effectiveness is undercut by limited reach, selective prosecution, and political fragility. Its long-term impact will depend on securing broader international support, depoliticizing its operations, and strengthening enforcement mechanisms.

2) Ad Hoc Tribunals: ICTY and ICTR

Before the ICC came into being, the main means for the international community to address atrocity crimes was through temporary tribunals. Of the two most important tribunals, the ICTY and the ICTR, both were created by the UN Security Council and, together, both created key legal advances that helped shaped the field of international crime before the ICC started to build its legal foundations.

The ICTY[22], for example, heard extremely high-profile cases, including that of Slobodan Milošević, and established important law around joint criminal enterprise and command responsibility. Particularly importantly, the ICTR recognized rape as a form genocide in the Akayesu case that opened the door for international prosecutions of this violence and offered a means of recognizing this violence as both gender-based and ethnically slanted. Despite the law that the tribunals helped establish, the tribunals suffered systematically from ineffective procedures, high costs, and a failure to engage local communities. The trials were long and expensive; the processes were so complicated that they were of little benefit to communities grappling with the violence. For all of these unique challenges, both

[21] International federation for human rights, Hungary's withdrawal from the International Criminal Court: Orbàn must face consequences, https://www.fidh.org/en/region/europe-central-asia/hungary/hungary-s-withdrawal-from-the-international-criminal-court-orban-must

[22]Rodman, K.A. (2011). International Criminal Tribunal for the Former Yugoslavia (ICTY). In: Chatterjee, D.K. (eds) Encyclopedia of Global Justice. Springer, Dordrecht. https://link.springer.com/rwe/10.1007/978-1-4020-9160-5_620

tribunals still established landmark developments for the ICC in terms of institutional development, and national prosecution for serious crimes, because an international prosecution could, and must, happen against important people and organizations.

3) Hybrid Courts: SCSL and ECCC

Hybrid tribunals are designed to merge international and domestic legal systems. They were conceived as a middle ground between the purely international tribunal and domestic trial and provide a path to local legitimacy while maintaining legal rigor; they still often face tremendous challenges.

The Special Court for Sierra Leone (SCSL) was established in 2002 through an agreement between the United Nations and the government of Sierra Leone and is seen a successful hybrid tribunal in that it prosecuted crimes committed during the civil war in Sierra Leone and was the first court to convict a former head of state, Charles Taylor, at the extraordinary step of convicting a former head of state[23]. With the relatively low cost of the SCSL for its scope of prosecution, there is now definitely a comparison with the ad hoc tribunals.

The Extraordinary Chambers in the Courts of Cambodia (ECCC) was established to try senior leaders of the Khmer Rouge government, although it has been hampered by political interference, slow processes, and budget over-run. In the end, while it did convict a few of the high-profile senior leaders, Comrade Duch and Nuon Chea, it was widely cited for producing too few convictions near the end of the decade-long proceedings as well as delaying justice for four decades. Hybrid courts demonstrate both the promise, and complications, of attempting to combine national ownership with international standards of accountability. When those courts do function effectively, they require sustained resourcing, political independence, and active local engagement.

[23]Taylor Sierra Leone war crimes trial verdict welcomed, https://www.bbc.com/news/world-africa-17864387 , (8th July 2025)

4) Universal Jurisdiction and National Prosecutions

Universal jurisdiction allows states to prosecute persons for international crimes regardless of where the crime occurred. Recent focus has resurfaced to this doctrine, especially with prosecutions recently carried out in Germany.

Germany has applied its national laws of universal jurisdiction to prosecute former Syrian officials, accused of actions from the Syrian civil war, while Germany has applied its Völkerstrafgesetzbuch (German law that regulates crimes against (public) international law) for these prosecutions[24]. In 2022, a sentence of life imprisonment was handed to Anwar Raslan for crimes against humanity[25]. More recently, Alaa Mousa was sentenced to life imprisonment for torture and murder in 2025[26].

These examples show how national courts can take action, even if international courts reach impasses due to political influence. However, cases using universal jurisdiction complicate matters further, and generally require an extensive amount of documentation, witness protection, multilingual proceedings, and political will. Critics have claimed national motivations—in regard to a countries immigration policy or foreign relations—may have bearing on who is prosecuted, and why[27]. Nevertheless, the German example demonstrates that if the right infrastructure and legal framework is in place, national courts can operate as effective sectors of the justice system within the globe—when other alternatives are ineffective.

[24] Hannah El-Hitami , Trial and error: Germany reforms its law on international crimes https://www.justiceinfo.net/en/134034-trial-and-error-germany-reforms-its-law-on-international-crimes.html , (8TH July 2025)

[25] ECCHR, Syria trial in Koblenz: Life sentence for Anwar R for crimes against humanity, https://www.ecchr.eu/en/press-release/syria-verdict-anwar-r/ (8th July 20250

[26] Joshua yang ,Aaron Weiner,S yrian doctor gets life sentence in Germany for slayings, torture under Assad https://www.washingtonpost.com/world/2025/06/16/alaa-mousa-germany-sentence-assad-torture-universal-jurisdiction/

[27] Hein de Haas, Mathias Czaika, Marie-Laurence Flahaux, Edo Mahendra, Katharina Natter, Simona Vezzoli, María Villares-Varela, International Migration: Trends, Determinants, and Policy Effects, https://doi.org/10.1111/padr.12291 , (8th July 2025)

5) UN Mechanisms and Commissions of Inquiry

Fact-finding missions and commissions of inquiry created by UN are useful mechanisms for addressing mass atrocities. They have no power to prosecute, but they do have the important role of identifying evidence, documenting offenders, and paving the path to prosecution. The Darfur Commission of Inquiry (2004-2005) is a memorable example of an inquiry that investigated and documented crimes occurring in Sudan, which ultimately led to a referral to the International Criminal Court by the UN security council. These commissions are often valuable early warning mechanisms as well, and contribute to the development of accountability in internationalism.

While they are effective mechanisms for accountability, commissions of inquiry face significant challenges. Recommendations are frequently ignored by states, follow up is limited, and commissioning bodies have almost no enforcement mechanisms to their findings. COIs are often perceived more as symbols than tools of justice. Accountability based on commissions of inquiry must be clearly placed into a broader strategy that includes mechanisms for prosecution, sanctions, and international cooperation. Without some form of follow-up strategy, the work of the COIs may only contribute to an archival document rather than accountability steps.

LEGAL AND INSTITUTIONAL FAILURES

Although there exists an advanced international legal system for the prosecution of war crimes and crimes against humanity, along with relevant international institutions, norms, and laws, many of the central failures continue to undermine global attempts to seek justice. The failures we explore in this part—including highly selective prosecutions, jurisdictional gaps, lack of enforced accountability, and an absence of substantial victim participation—cast doubt on the effectiveness, neutrality, and legitimacy of international criminal justice. This part examines these institutional failures through the lens of foundational journalism and research studies.

1) Selective Justice and Political Bias

One of the most enduring critiques of the international legal order, especially the ICC, is that it represents a form of selective justice. That is, powerful states and their allies are rarely, if ever, held accountable for allegations of war crimes. Less powerful states, or states that are politically isolated are visited with scrutiny. The ICC's selectivity, reinforced by its apparent reluctance to investigate or charge Western powers or their allies - despite credible allegations of war crimes - intensifies the perception of injustice.

The ICC has not even opened an investigation into actors from the United States or Israel, despite serious allegations of war crimes against both in Afghanistan and Palestine[28] . At the same time, the Court has opened and pursued several high-profile cases where leaders in Africa have been charged. There is widespread public belief that the ICC does not administer justice evenly. While many cases against African leaders were initiated by self-referral from African states, the sheer numbers have resulted in public perceptions that the ICC is biased.

The African Union (AU) has similarly chastised the ICC for targeting members of the AU while atrocities committed by Western backed regimes receive either minimal scrutiny or are completely ignored by the ICC[29]. Whether at an institutional level or at the strategic and policy level, every court's credibility ultimately lies in perceptions of fairness; should there be a perception that a court administers justice differently based on actors, then even good judgments legally, risk being seen as just as political instruments for challenging opponents.

[28] Triestino Mariniello , The ICC Prosecutor's Double Standards in the Time of an Unfolding Genocide, https://opiniojuris.org/2024/01/03/the-icc-prosecutors-double-standards-in-the-time-of-an-unfolding-genocide/ , (8th July 2025)

[29] Sascha-Dominick D. Bachmann & Naa A. Sowatey-Adjei, The African Union-ICC Controversy Before the ICJ: A Way Forward to Strengthen International Criminal Justice?, 29 Wash. Int'l L.J. 247 (2020). Available at: https://digitalcommons.law.uw.edu/wilj/vol29/iss2/3

2) Non-Cooperation and Non-Ratification of the Rome Statute

The international justice mechanisms' effectiveness is impaired by limited assent to jurisdiction. Many of the key players, such as the United States, China, India and Russia have refused to ratify the Rome statute, leaving themselves and their nationals free from ICC jurisdiction. These absences have created a double standard in that accountability is being sought from some but not others.

The United States signed the Rome statute but subsequently withdrew in 2002, and has since sought bilateral agreements to exempt U.S. personnel from the ICC jurisdiction[30]. China and Russia articulated similar concerns, concurrent with their attempts to offspring claims of national legal control and potential for misuse of supranational legal control. India has consistently not ratified the Rome statute on the basis that some of its provisions, MODs on internal armed conflict, might interfere with the ability to deal with domestic insurgencies and bear in mind national interests[31].

The net effect is a patchwork of accountability in which those who have the most power have the least chance of accountability; thereby undermining the universality of international criminal justice.

3) Enforcement Vacuum and Ignored Arrest Warrants

A further impediment with achieving justice is the lack of an independent enforcement mechanism. The ICC depends on state members to execute arrest warrants and detain an accused person. Without an alternative mechanism, states are capable to comply if they have the political will to do so rather than a legal obligation. This limitation is illustrated by the example of Sudanese President Omar al-Bashir. The ICC issued an arrest warrant

[30] Anup Shah, United States and the International Criminal Court https://www.globalissues.org/article/490/united-states-and-the-icc , (8th July 2025)

[31] Kirti Yadav, India and the Rome statue: an examination of the country's views on the international criminal court, Journal of Legal Research and Juridical Sciences, https://jlrjs.com/wp-content/uploads/2025/04/23.-Kirti-Yadav.pdf , (2025)

for al-Bashir to face trial for genocide and other counts related to the situation in Darfur in 2009. al-Bashir has travelled freely through ICC state parties on at least two occasions to South Africa and Jordan without being detained or arrested. After all this, India went ahead and invited al-Bashir to an international diplomatic summit. These incidents highlight the limitations faced by the ICC when attempting to impose accountability and compliance with states even powerful non-party states. Ultimately, these failings reinforce a perception that international law is optional for those powerful enough or with political goodwill.

4) Lengthy Trials, High Costs, and Limited Convictions

While international judicial bodies are significant from a symbolic perspective, they have generally not proven to be efficient or inexpensive. The International Criminal Court (ICC), in particular, has often been criticized for not acting more quickly, and also that it has achieved a low number of convictions with its significant budgeting. While there have been convictions since that time, it is still limited, and costly in terms of money or time (procedurally).

One reason international criminal cases and trials have longer timelines is associated with logistical issues surrounding evidence collection, witness testimony, and creating a multilingual trial experience. These procedural burdens when faced by the international criminal court lead to long timelines and public distrust in justice being served.

5) Inadequate Victim Participation and Reparations

While the Rome statute clearly provides for victim participation and reparations, it has been unevenly implemented, and slow as best. Victims face administrative burdens created by patronizing bureaucracies and undemocratic processes, and/or lack of representation in proceedings that would typically lead to administrator confusion and victimization. For many previously victimized people, these processes resulted in being deemed unqualified for a reparations process because their application was lost, took too long, didn't have the funding available, or simply did not navigate strict guidelines or other eligibility

restrictions. The ICC's Trust Fund for Victims attempts to provide reparations to victims, but struggles to provide reparations quickly and efficiently for the victims[32]. Some reparations for many previously victimized people, if any, would have simply been symbolic and did provide proportionate reflection of harm. Complaints about fear for retaliation, not having legal counsels articulate their testimony for their harm, and other geographic and economic barriers, have all reduced and complicated victim participation. These failures emphasize how undeniable international legal processes can become disconnected from the very class of victims they espouse to exercise law for, making them less legally valid and undermining the restorative potential of international justice.

THE POLITICS OF INTERNATIONAL JUSTICE

The effort to seek accountability for war crimes and crimes against humanity is inextricably linked to international politics. Although international organizations (including the International Criminal Court [ICC] and ad hoc tribunals) were created to guarantee accountability for the most serious crimes, there has been repeated interference in their work and decisions via political manipulation, selective application, and systemic preference. The role of politics defines some core elements of international justice, and four key issues demonstrate the extent to which political factors define the landscape of international justice- the veto power in the United Nations Security Council (UNSC), the absence of accountability for superpowers, the ongoing challenges to the dichotomy between justice and peace, and the influence of geopolitical partnerships on prosecution and investigation decisions pertaining to accountability.

[32] Gallen, J., & Moffett, L. (2022). The Palliative Role of Reparations in Reconciling Societies with the Past: Redressing Victims or Consolidating the State? Journal of Intervention and Statebuilding, 16(4), 498–518. https://doi.org/10.1080/17502977.2022.2042650

1) The Veto Power in the UN Security Council and Its Impact on ICC Referrals

- The Rome Statute, Article 13(b), provides that the Court can exercise jurisdiction over crimes that the UNSC refers to it[33]. However, it is often quite impossible for the UNSC to refer a situation that might lead to an ICC intervention, because of the veto power the five permanent members of the UNSC, China, France, Russia, the United Kingdom, and the United States. It is a fact that permanent members regularly veto sensible referrals to the ICC, even when the evidence is compelling, and even in the gravest circumstances. For example, the UNSC was presented with a resolution drafted by France, in 2014, to refer the situation in Syria to the ICC for atrocious war crimes perpetrated by the Assad regime and aggressive war crimes perpetrated by opposition forces[34]. The reported retaliation by China and Russia is an excellent example of the political impediments to referrals to the ICC[35]. This politicization of the UNSC referral process creates serious obstacles for the ICC to intervene into conflicts where there are powerful states, or allies of powerful states involved.
- The structure of the UNSC reflects the balance of power that existed in the wake of World War Two, not a commitment to justice. Relatedly, students of international relations have called the indifference to an unequal power distribution problematic because the fundamental imbalance in the relation produces a hierarchy of accountability, separating major powers (the US, UK, France, China, and Russia) from attention and even prosecution, whereas weaker states are unlikely to escape such scrutiny. This is a serious obstacle to the legitimacy and universality of international criminal justice.

[33] Alexandre Skander Galand, Chapter 2 Article 13 (b) vs State Sovereignty, https://doi.org/10.1163/9789004342217_004 , (9th July 2025)
[34] UN Security Council: Vetoes Betray Syrian Victims ,https://www.hrw.org/news/2014/05/22/un-security-council-vetoes-betray-syrian-victims , (9th July 2025)
[35] Aglaya Snetkov, Marc Lanteigne, 'The Loud Dissenter and its Cautious Partner' – Russia, China, global governance and humanitarian intervention, International Relations of the Asia-Pacific, Volume 15, Issue 1, January 2015, Pages 113–146, https://doi.org/10.1093/irap/lcu018

2) Superpower Immunity and the Limits of International Law

- The structural immunity afforded to world powers through the international system and the international system, especially the United States, is another proof of the ineffectiveness of the system if international law cannot be applied. The United States was a major part of the original Hegemonic agreement that created international courts; however, it has failed to ratify the Rome statute because of fears its military and political could be prosecuted for political reasons[36]. Moreover, the American Servicemembers' Protection Act (2002) better known as the "Hague Invasion Act", states that "the United States government may use all means necessary, and appropriate to free any American citizen" being held by the ICC[37].
- Similarly, Russia, based on domestic concerns, withdrew its membership from the Rome statute in 2016 after the ICC began to preliminary exam, or some allegations of war crime in Georgia and Crimea[38]. Most importantly, China, does not adhere to or engage with the Rome statute, leverages its political power and influence, to un-conditionally support their allies and silence any reference to its domestic actions. Ultimately, these classic examples exacerbate the problems with a justice system incapable of enforcing decisions against large non-compliant states.

3) Justice vs. Peace in Transitional Justice Processes

- At times the international community can be rash in its quandary to balance punishment for atrocities against fostering peace and reconciliation in post-conflict

[36] Ashish manav , Hegemony, The United States, and The World , https://www.thegeostrata.com/post/hegemony-the-united-states-and-the-world, (8th July 2025)
[37]U.S.: 'Hague Invasion Act' Becomes Law, https://www.hrw.org/news/2002/08/03/us-hague-invasion-act-becomes-law , (10th July 2025)
[38] Woolaver, H. (2019). Withdrawal from the International Criminal Court: International and Domestic Implications. In: Werle, G., Zimmermann, A. (eds) The International Criminal Court in Turbulent Times. International Criminal Justice Series, vol 23. T.M.C. Asser Press, The Hague. https://doi.org/10.1007/978-94-6265-303-0_3

societies. The "peace versus justice" issue became very real during the negotiations in Uganda between the Lord's Resistance Army (LRA), especially as ICC indictments against rebel leaders were viewed as factional impediments to negotiations[39]. Advocates of the view captured, in part, by LRA supporters say that judicial processes lengthen conflicts by discouraging participants from surrendering, or negotiating in bona fide fashion.

- However, others argue that there is no legitimate and sustainable peace unless we deal with impunity. Not punishing those responsible for mass atrocities serves to entrench a culture of violence, and to weaken the rule of law. In Rwanda and in former Yugoslavia, hybrid approaches, including elements of legal liability and community-based reconciliation mechanisms, have provided a testing ground. Yet the degree to which this type of compromise can actually threaten justice remains highly contentious[40].

4) Influence of Geopolitical Alliances on Prosecution Decisions

- Decisions to prosecute at the ICC cannot ignore geopolitical realities. The ICC has been labelled as imperialist and biased with disproportionate focus on African states in investigations, with thirteen of 31 present investigations being of African countries, which has led to AU leaders denouncing the court in Africa with claims of pursuing only African leaders and not Western actors involved in the conflicts in Iraq, Afghanistan, or Libya. The Afghanistan situation highlights the double standard. When the ICC Office of the Prosecutor attempted to investigate alleged war crimes by U.S. forces and the CIA regarding the conduct of war in Afghanistan, the Trump

[39] Katy Glassborow, Peace Versus Justice in Uganda, https://iwpr.net/global-voices/peace-versus-justice-uganda , (10th July 2025)
[40] Patryk I Labuda, The International Criminal Tribunal for Rwanda and Post-Genocide Justice 25 Years On, European Journal of International Law, Volume 31, Issue 3, August 2020, Pages 1113–1131, https://doi.org/10.1093/ejil/chaa066

administration decided to retaliate and imposed sanctions on the ICC's chief prosecutor Fatou Bensouda[41]. This demonstrated the vulnerability of international justice mechanisms to powerful states' political interests.

- The geopolitical calculus of alliances also has an impact on cases. For instance, the referral of the situation in Libya to the ICC in 2011 coincided with NATO's military intervention and action taken by critical Western states is often supportive of international justice[42]. Conversely, there has been no move of the type taken with Libya regarding the atrocities alleged to have been committed in Yemen, where Saudi Arabia and the UAE, Western allies are among those accused of potential war crimes.

TOWARDS A MORE JUST SYSTEM: RECOMMENDATIONS

Real accountability for war crimes and crimes against humanity necessitates structural reform that can fundamentally improve the political and institutional pitfalls of the global justice system as it stands. To move toward a more just and effective system, the following required reforms must be undertaken: reforming the referral practice of the UN Security Council, achieving universal ratification and cooperation with the International Criminal Court (ICC), creating regional courts with international legitimacy, improving national prosecution mechanisms, and promoting victim-centred justice based on reparative justice and truth-telling.

1) Reforming the UN Security Council's Referral Process

The UN Security Council's power to refer cases to the ICC under Article 13(b) of the Rome Statute remains a powerful mechanism, but has lost credence as a mechanism for justice

[41]International Criminal Court, https://www.icc-cpi.int/afghanistan , (10th July 2025)
[42] Victor Peskin, Mieczyslaw P. Boduszynski, The Rise and Fall of the ICC in Libya and the Politics of International Surrogate Enforcership, International Journal of Transitional Justice, Volume 10, Issue 2, July 2016, Pages 272–291, https://doi.org/10.1093/ijtj/ijw001

thanks to the veto. Some proposals have been made to limit political considerations from interfering with justice in relation to the veto: [e.g. the French-Mexican initiative[43] and the ACT[44] (Accountability, Coherence, and Transparency) Group's Code of Conduct, which requires permanent members to voluntary limit their power of veto in cases of genocide, war crimes, and crimes against humanity. While not legally binding, they demonstrate there is an emerging international consensus around limits to political considerations in justice. The development of an institutional definition including a limitation of the veto power to prevent the politicization of justice, either in the UN Charter itself or formal UNSC process, would help to ensure the ICC is more consistent and impartial in its referrals and restore some legitimacy to the international system.

2) **Ensuring Universal Ratification and Cooperation with the ICC**

As of 2025, as more than 120 states have ratified the to the Rome Statute, a number of incredibly powerful states remain outside the jurisdiction of the Court, including the United States of America, China, Russia, and India. Universal ratification would extend the jurisdiction of the ICC, and enhance the credibility of the Court and its claims and it would diminish claims of selective justice. Civil society, legal scholars, and governments must continue to promote broad ratification of the Rome Statute and use it, when possible, in their domestic legal systems.

So too is engagement in meaningful cooperation with the Court. Arrest warrants issued by the International Criminal Court (ICC) have historically been met with non-compliance, including the arrest warrant against, Omar al-Bashir of Sudan. The Assembly of States Parties should strengthen non-cooperation mechanism and consequences of non-

[43]MINISTERE DE L'EUROPE ET DES AFFAIRS ETRANGERS, https://www.diplomatie.gouv.fr/en/french-foreign-policy/france-and-the-united-nations/news-and-events/article/un-armenia-signs-on-to-french-mexican-initiative-to-regulate-veto-powers-at-the, (10th July 2025)

[44] United Nations, Department for general Assembly and conference management https://unterm.un.org/unterm2/en/view/UNHQ/0b8a01d4-d4c8-41f2-aacd-6bc74beb9677, (10th July 2025)

cooperation by establishing diplomatic and economic consequences. Formalizing partnerships between the ICC and regional organizations like the African Union and the European Union may further promote state cooperation.

3) Establishing Regional Tribunals with International Backing

While the ICC has limitations and legitimacy problems, regional hybrid tribunals with international cooperation can provide a practical alternative. The Special Court for Sierra Leone and Extraordinary Chambers in the Courts of Cambodia (ECCC) demonstrate that regionally embedded courts can provide a layer of justice, even if supplemented by international actors.

Regional courts might understand the local context relatively better, build rapport with local communities, and build connections between international law, and its domestic implications. The African Court of Justice and Human Rights could be an example of a regional court[45] that can unify, but needs to be politically backed and funded. Still, regionally-based courts must meet international legal standards in pursuit of limiting fragmentation and provide a rationale for Prosecutorial discretion.

4) Strengthening National Capacity to Prosecute International Crimes

While international courts have a crucial or vital symbolic and legal role, national jurisdictions remain the first line of defence against impunity. In terms of the International Criminal Court (ICC) the concept of complementarity means that it will only act when national courts are unwilling or unable to try a specific crime. Therefore, the international community should help to develop the legal, institutional and financial capacity at the domestic level.

[45]Kariuki Muigua , African Court of Justice and Human Rights: Emerging Jurisprudence,2020 https://kmco.co.ke/wp-content/uploads/2020/06/African-Court-on-Human-and-Peoples-Rights-Emerging-Jurisprudence-Kariuki-Muigua-June-2020.pdf

States should adopt legislation that specifically allows prosecution for genocide, war crimes and crimes against humanity; establish specialised prosecutorial teams; and train judges and lawyers in the prosecution of international crime. Further, international development support, including financial and technical resources, needs to be expanded by the UN, EU and all bilateral donors, particularly in the area of supporting post conflict states or developing states. Transitional justice commissions should also be supported, especially where trials may not be possible in the short-term.

5) Enhancing Victim Reparations, Truth-Telling, and Memorialization

Restorative justice in relation to international crimes should not only require appropriate penalties for perpetrators, but also should consider the survivors. The International Criminal Court (ICC) Trust Fund for Victims, has taken steps toward providing reparations and psychological support, in particular in Uganda and the Democratic Republic of Congo, but still suffers from insufficient financial contributions and insufficient access. States and international organisations should do the following: increase contributions toward the Fund, and support community-based reparations including rebuilding schools, hospitals, and households destroyed in armed conflict. Truth commissions conducted in South Africa, Peru and Sierra Leone all demonstrate the power of public testimony to acknowledge wrong-doings and non-judicial accountability to promote healing, and should extent to memorialisation projects such as museums, education curricula and public memorials which collectively preserve memory and support non-recurrence.

CONCLUSION

- The wave of pluralist efforts to hold people accountable for war crimes and for crimes against humanity for arguably the most complex and bold legal undertaking that we are ever likely to encounter. The establishment of institutions of the like of the International Criminal Court (ICC), ad hoc tribunals for Rwanda and the former Yugoslavia, and domestic Restorative Justice Processes that are committed to seeking

justice on the basis of universal jurisdiction, demonstrates the resolve of the community of nations to put an end to impunity for the most heinous crimes. These efforts are bolstered further by international legal instruments such as Geneva Conventions, the Rome Statute and customary international law which underpin these processes and provide a universal framework for pursuing accountability for these offences in the interests of establishing a worldly order in which injustice can no longer cross borders, and where people as individuals can be held responsible for criminal acts irrespective of their positionality or nationality.

- However, we have seen that the principles motivating these legal instruments usually break down once again in practice. For example, political interference, especially through the veto of the UN Security Council, has blocked important referrals to the Court especially in cases such as Syria. The unwillingness of the "great powers" to submit to international scrutiny around law exposes deep structural inequalities in the system. Selective penal enforcement (historically profusely seen only in dealing with African nations) raises valid concerns over judicial imperialism (and of course, 'selective enforcement', because there are no longer instruments that call-out systemic, or structural, international impunity). The peace/justice dilemma, in transitional contexts, continues to obstruct both the rights of victims to criminal accountability while not obstructing fragile peace processes. Furthermore, prosecutions are often determined by the interests of states and their geopolitical alliances rather than based on an assessment of harm and culpability.
- The impacts of these systemic failures are severe. They delegitimize international organizations, embolden abusers, and alienate survivors and affected populations from global justice. When justice is merely selective or politicized, it is just another form of power, instead of protection of the powerless. So many victims of mass atrocities: Yemen, Myanmar, Palestine, Ukraine, are still waiting for acknowledgment, redress and meaningful accountability.

- Nonetheless, despite the obstacles that lie ahead, and the battle for justice continues. We need reform we also have the opportunity for reform. To achieve a more just and functional system, reform must occur to political bodies such as restricting the veto regarding atrocity crimes, as well as the consistent cooperation with the ICC and universal ratification. We must continue to support and grow regional tribunals with an international mandate, support the use of empowered national courts, develop transitional justice mechanisms that are based on truth, reparations, memorialization, and to reclaim dignity not just from the perspective of punishment of perpetrators but to acknowledge suffering and employ measures to not permit the same situation to occur again. Further, political will is at the heart of the referred reforms. Unless states show a genuine commitment, there is only so much legal institutions can do (in terms of breadth and depth). Where the principle of justice is subordinated to power, where law is trumped by practical self-interest, democracy is absent, and justice cannot grow. Justice requires leaders to put human dignity ahead of politics and institutions that are shielded from the ubiquitous reach of global realpolitik. It is also paramount to embrace a survivor-centred approach to justice. In articulating legal frameworks, it is crucial to centre not only aspirations but a survivors day-to-day lived experience. Survivors must contribute to inform process in order to pursue accountability, truth and healing. Justice is made not just when the gavel strikes, or when something is written in legal text it is made in moral and ethical determining; in choices about memory and histories; in a right of communities to live free from violence and fear.
- Justice, is on trial, and not just only in the courtroom, but in the collective conscience of the international community. Its future may be contingent on whether we are able to convert aspirations into enforceable norms, and whether we have the commitment to confront the structures that have long supported the systematic denial of accountability. It is a hill to climb and the disruptions to it are countless. But the struggle continues, as does the hope that one day justice is not deferred to a later time but rather something that is to be enjoyed in the present.