

Justice or Jargon:

The ICC's Struggle for International Legitimacy

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ABSTRACT

This paper argues that the International Criminal Court's overreliance on state cooperation has undermined its legitimacy from inception. Referencing Lubanga, Al Bashir, and Netanyahu's cases, I argue the Court is unable to uphold its own rulings and enforcement mechanisms, rendering it little more than a symbol of justice. Unless major reforms are rapidly implemented, the Court's credibility will completely crumble, destroying any hopes for global justice and international accountability.

Methodology & Disclaimer

This research draws upon qualitative interviews conducted with individuals working in and alongside the International Criminal Court (ICC) and in related human rights fields. As several participants shared sensitive or non-public information, they requested that their comments remain confidential and not be directly cited. Therefore, this paper will not attribute or quote participants by name, but rather, will present a synthesis of themes and insights that emerged from these conversations. While this omission limits my ability to ground certain claims in direct testimony, it reflects the ethical responsibility owed to participants. To supplement these interviews, I relied upon publicly available secondary sources to better understand the ICC's history, institutional structure, and prominent cases; these instances are all clearly cited.

Introduction

Transnational crime and the pursuit of justice have long tested the limits of national sovereignty. When mass atrocities occur, individual states are often unwilling to act against allies, too politically constrained to intervene effectively, or directly implicated in the violence themselves. Others prefer passivity, engaging in buckpassing and hoping another actor will confront the crisis. Or, even when some states do respond, their involvement is insufficient and too late to resolve the crisis diplomatically or peacefully. These failures and gaps in accountability have created the demand for an international institution capable of prosecuting crimes that no single state could (or would) address.

Established by the Rome Statute in 2002, the International Criminal Court (ICC) was the “first permanent, treaty-based, international criminal court” specifically designed to meet this demand.¹ Unlike the ad hoc tribunals of the twentieth century, the ICC was envisioned as a standing body dedicated to upholding justice and accountability whenever states proved

¹ “The ICC at a Glance,” The International Criminal Court, accessed September 3, 2025.

unwilling or unable to act.² However, the ICC's legitimacy has been contested since its founding. Although the United States helped draft the Rome Statute (creating the ICC), out of fear that U.S. political and military personnel could be unrightfully prosecuted, the US refused to ratify the treaty.³ Other major powers, including Russia and China, also declined, leaving the Court without the universal backing its mission necessitates.⁴ Although many states *did* ratify the treaty, since its inception, the ICC has been forced to navigate an impossible position. The ICC was created to serve as a global authority yet lacks the support and jurisdiction necessary to fulfill its mission. Because the ICC is not a sovereign state nor does it wield any hard power, it is entirely dependent upon its member states. Without their compliance, it is powerless. Therefore, although in some instances, the ICC has secured convictions and advanced accountability, in the modern day, it is merely a symbol of justice. Unless major changes are made to solidify the ICC's legitimacy on a global scale, it will lose what little authority it still retains.

Historical Foundations of International Justice

Despite the obvious cracks and flaws in the ICC's foundation, the Court did not emerge suddenly or out of nowhere.⁵ Rather, its creation was thoughtfully planned and shaped by previous trial runs of international justice and authority—specifically the Nuremberg Trials and the International Criminal Tribunal for Yugoslavia (ICTY).⁶ These attempts at international justice were designed to hold state actors accountable for atrocities when domestic systems failed, and their mixed results show both the potential and limits of international justice.

² “Understanding the International Criminal Court,” The International Criminal Court, accessed September 3, 2025.

³ Curtis A. Bradley, “U.S. Announces Intent Not to Ratify International Criminal Court Treaty,” *ASIL Insights* 7, no. 7 (May 2002), American Society of International Law.

⁴ “Six Countries That Aren’t Part of the International Criminal Court,” *Nomad Capitalist* (blog), May 8, 2024.

⁵ United Nations, *Establishment of an International Criminal Court – Overview*, accessed September 3, 2025.

⁶ Richard Goldstone, *Historical Evolution – From Nuremberg to the International Criminal Court*, *Penn State International Law Review* 25, no. 4 (2007), accessed September 3, 2025.

The Nuremberg Trials following World War II proved that individuals (not just states) could be held accountable and prosecuted for crimes against humanity, genocide, and war crimes.⁷ By convicting top Nazi officials, the trials demonstrated that it was possible for an international legal framework to promote accountability. However, much of the trials' success can be attributed to the unique environment of post-war Germany rather than international law. The Allied powers had complete military control, custody of suspects, access to evidence, and the political ability to actually enforce rulings.⁸ Unlike later efforts, there was no debacle of state cooperation, as the defeated German regime had no choice but to comply. Nuremberg allowed the Allies to impose justice quickly and decisively, but they also revealed that legitimacy was dependent on military dominance, not independent legal authority.⁹ Thus, from the beginning, some interviewees questioned whether such legitimacy could possibly endure when political dominance and power were diffused.

Following the Nuremberg Trials' success, global justice proceedings continued to evolve, and fifty years later, the international community returned to the model of criminal tribunals to handle Yugoslavia proceedings. In 1993, the United Nations (UN) established the ICTY during the Balkan wars and revealed the fragility of the Nuremberg model.¹⁰ While this attempt at international justice sought to correct the mistakes and imitate the successes of the Nuremberg Trials, the ICTY underestimated the situations' key differences. Unlike with Nuremberg, the ICTY was not conducted with a defeated state or unified military power.¹¹ Operating in the

⁷ Hans Ehard, *The Nuremberg Trial Against the Major War Criminals and International Law*, *American Journal of International Law* 43, no. 2 (April 1949): 223–245.

⁸ U.S. Department of State, *The Nuremberg Trial and the Tokyo War Crimes Trials (1945–1948)*, Office of the Historian, accessed September 3, 2025.

⁹ C. Tomuschat, *Legacy of Nuremberg*, *Journal of International Criminal Justice* 4, no. 4 (September 2006): 830–844.

¹⁰ International Criminal Tribunal for the former Yugoslavia, *About the ICTY*, accessed September 3, 2025.

¹¹ Pierre Hazan, "The Revolution by the ICTY: The Concept of Justice in Wartime," *Journal of International Criminal Justice* 2, no. 2 (June 2004): 533–540.

middle of an ongoing conflict, the ICTY did not have reliable access to evidence or fully cooperative states. Although the ICTY ultimately indicted 161 individuals and even charged a sitting head of state with war crimes, its weaknesses far overshadowed its successes.¹² Tribunal proceedings dragged on for decades, and the court was dependent on state cooperation for suspects and evidence.¹³ Though some scholars view ICTY as semi-successful in establishing accountability, several interviewees explained that its dependence on reluctant states reduced its legitimacy to mere symbolism of justice. What seemed legally groundbreaking was ineffective in practice.

Together, the Nuremberg Trials and the ICTY showed the potential and restraints of international justice. They proved that courts could hold states and even state heads accountable. However, they also revealed the fundamental weakness of any tribunal without coercive enforcement or universal legitimacy. These lessons and this tension helped drive momentum for the creation of a permanent court. In the late 1990s, UN leaders and supportive states advocated for an institution that would not be ad hoc, confined to a single conflict, or so easily dismissed as Western-imposed justice.¹⁴ Founded by the Rome Statute, the ICC was supposed to be this solution. Instead, the ICC inherited the flaws of its predecessors without the conditions that made success possible.

The ICC's Golden (C)Age:

In 2012, ten years after the Court's establishment, the ICC delivered its first major conviction, leaving many to believe it was finally fulfilling its promise of global justice. This "golden moment" involved the trial of Congolese warlord Thomas Lubanga Dyilo, who was

¹² International Criminal Tribunal for the former Yugoslavia, *Key Figures of the Cases*, updated September 2023, accessed September 3, 2025.

¹³ International Criminal Tribunal for the former Yugoslavia, *Timeline*, accessed September 3, 2025.

¹⁴ Richard Falk (2002) Reviving the 1990s Trend toward Transnational Justice: Innovations and Institutions, *Journal of Human Development*, 3:2, 167-190.

prosecuted and convicted for conscripting and using child soldiers during the conflict in the Democratic Republic of Congo (DRC).¹⁵ The case began when the DRC referred the situation to the ICC in 2004, marking the Court's first-ever state referral.¹⁶ After investigating the situation, the ICC issued an arrest warrant for Lubanga in early 2006.¹⁷ Shortly after, the Congolese authorities arrested Lubanga and transferred him to ICC custody, handing the ICC the kind of cooperation it desperately depends on (but rarely receives).¹⁸ After several grueling years of proceedings, presenting evidence, and sifting through documentation, the Court sentenced Lubanga to fourteen years in prison for his crimes against humanity.¹⁹

For the Court and supporters of its legitimacy, this case seemed historic. Lubanga's trial was one of the first times an international tribunal had successfully prosecuted the recruitment of child soldiers. The DRC's cooperation crucially provided the ICC with access to evidence, witnesses, and the political space to operate without obstruction. Thus, supporters argued this case was proof that the ICC could deliver tangible accountability rather than just ambitious rhetoric.²⁰ For a brief moment, the ICC appeared to be functioning smoothly and balancing justice with political sensitivities.

However, this so-called entrance into the Golden Age was truthfully more of a golden cage, a dependence on state cooperation that defined the ICC's legitimacy from this point forward. Lubanga's case succeeded *because* the DRC cooperated. Even with that support, the ICC's legitimacy in prosecuting Lubanga was *still* fragile. Lubanga was also widely accused of

¹⁵ International Criminal Court, *The Prosecutor v. Thomas Lubanga Dyilo – Case Information Sheet*, accessed September 3, 2025.

¹⁶ ICC, *The Prosecutor v. Thomas Lubanga Dyilo – Case Information Sheet*.

¹⁷ ICC, *The Prosecutor v. Thomas Lubanga Dyilo – Case Information Sheet*.

¹⁸ ICC, *The Prosecutor v. Thomas Lubanga Dyilo – Case Information Sheet*.

¹⁹ International Criminal Court, *Thomas Lubanga Dyilo Sentenced to 14 Years' Imprisonment*, July 10, 2012.

²⁰ International Criminal Court, *Child-soldier charges in the first International Criminal Court case*, August 28, 2006.

sexual violence and mass killings, but the ICC only charged him with child soldier recruitment.²¹ Though this decision was likely made to secure Lubanga's conviction without jeopardizing the case through overreach or insufficient evidence, many criticized it as an unwillingness to even attempt full justice for victims.²² Reducing Lubanga's charges raised concerns about the Court's legitimacy and independence that continued to intensify as observers noted the Court's significant time delays and overreliance on NGOs.

While two interviewees argued that these flaws were just inevitable byproducts of a young institution, others asserted that Lubanga's case foreshadowed structural weaknesses that would plague the ICC throughout its existence. These interviewees explained that the problems revealed in Lubanga's case should have been addressed and properly handled when they arose, because this inaction caused the Court's reliance on state cooperation to remain its central vulnerability. For example, even after Lubanga's conviction, violence in the DRC continued, demonstrating that even when the ICC could secure a conviction, it still could not reshape political realities.^{23 24} Thus, the case meant to signify the ICC's golden age ultimately exposed how state reliance crippled its legitimacy from the very beginning. Instead of laying a foundation for legitimacy, Lubanga became evidence that the Court's authority was already eroding.

The ICC's Fatal Flaw

Though the ICC's reliance on state cooperation was evident in early cases, this dependency is still unresolved and continues to plague the Court today. Even before Lubanga's conviction in 2012, the case of Sudanese President Omar al-Bashir exposed the limits of ICC authority. In both 2009 and 2010, the ICC issued arrest warrants for al-Bashir for war crimes,

²¹ Amnesty International, *Landmark ICC Verdict over Use of Child Soldiers*, March 14, 2012.

²² Amnesty International, *Landmark ICC Verdict over Use of Child Soldiers*.

²³ Center for Preventive Action, *Conflict in the Democratic Republic of Congo*, updated June 9, 2025, accessed September 3, 2025.

²⁴ EBSCO, *Ituri Conflict (Democratic Republic of the Congo)*, 2021.

crimes against humanity, and genocide.²⁵ Yet, despite the gravity of these charges, nothing happened. Al-Bashir did not surrender, nor did any ICC member states arrest him. He continued to travel freely, even visiting South Africa, a member state, in 2015 without consequence.²⁶ The Court responded to this blatant disregard for its legitimacy with a “reprimand.” In 2017, two years later, the ICC *finally* conducted a trial.²⁷ The Court found South Africa guilty of violating its obligations but still did not issue a punishment.²⁸ Even today, the current status of the al-Bashir case is simply “frozen” in the pre-trial stage on the ICC’s website, acknowledging that unless al-Bashir is physically transferred to the Hague, the Court cannot proceed.²⁹ This case clearly illustrates the Court’s lack of legitimacy. When political risk outweighs legal duty, states merely ignore their obligation to the Rome Statute, and the ICC cannot do anything about it.

Nearly a decade later, nothing has changed. In November of 2024, the ICC issued an arrest warrant for Israeli Prime Minister Benjamin Netanyahu for crimes committed in the ongoing war with Gaza.³⁰ Yet, just like with al-Bashir, the warrant was meaningless in practice. In April of 2025, Netanyahu traveled to Hungary, an ICC member state, yet faced no legal action.³¹ Furthermore, a month after Netanyahu’s visit, Hungary actually withdrew from the Court altogether, citing the ICC’s lack of impartiality and credibility.³² By prioritizing political alliances over legal obligations, Hungary proved that the ICC *still* cannot enforce its authority if

²⁵ International Criminal Court, *Al Bashir Case (The Prosecutor v. Omar Hassan Ahmad Al Bashir)*, accessed September 3, 2025.

²⁶ Amnesty International, *ICC Rules against South Africa on “Shameful” Failure to Arrest President al-Bashir*, July 6, 2017.

²⁷ Coalition for the International Criminal Court, *ICC panel confirms: South Africa legally required to arrest al-Bashir*, July 6, 2017, accessed September 3, 2025.

²⁸ Amnesty International, *ICC Rules against South Africa on “Shameful” Failure to Arrest President al-Bashir*.

²⁹ ICC, *Al Bashir Case (The Prosecutor v. Omar Hassan Ahmad Al Bashir)*.

³⁰ “Netanyahu | International Criminal Court,” International Criminal Court, accessed September 3, 2025.

³¹ Justin Spike, *Hungary welcomes Netanyahu and says it will leave the International Criminal Court*, Associated Press, April 3, 2025.

³² “Hungary Votes to Withdraw from ICC over Israeli Warrants,” Politics, April 29, 2025.

states do not want to honor it. This withdrawal explicitly recognized the ICC's dwindling power and legitimacy.

Current State & Future of the ICC

Today, the ICC is at a crossroads. Either the Court enacts reforms to reclaim legitimacy or continues sliding into oblivion. As of 2025, 124 countries remain bound by the Rome Statute, but this number is decreasing.³³ With its June departure, Hungary joined Burundi and the Philippines as nations that have formally withdrawn from the ICC.³⁴ ³⁵ These withdrawals demonstrate how fragile membership has become as political costs outweigh perceived benefits. Even among residual member states, cooperation is inconsistent at best. Arrest warrants are easily issued, but without enforcement, they rarely serve as more than symbolic gestures

However, the Court's problems are not limited to these defecting member states. Even states that never ratified the Rome Statute are actively undermining the Court. For example, following the issuance of Netanyahu's warrant, the United States sanctioned ICC Chief Prosecutor Karim Khan.³⁶ These sanctions prohibited any US citizens from providing him with goods, funds, or services, thus these restrictions severely limited U.S. citizens working at the Court. By forcing some ICC employees to choose between their home country and the Court, these sanctions pitted national allegiance against international justice. These measures prompted the 2025 lawsuit *Iverson v. Trump*, in which ICC Prosecutor Eric Iverson challenged the sanctions' legality.³⁷ Although this dispute was eventually settled out of court, it illustrates a

³³ United Nations, *Rome Statute of the International Criminal Court* (Rome, July 17, 1998; entered into force July 1, 2002; status as at August 23, 2025), accessed September 3, 2025.

³⁴ International Criminal Court, *Situation in the Republic of Burundi* (Situation No. ICC-01/17), accessed September 3, 2025.

³⁵ International Criminal Court, *ICC Statement on The Philippines' Notice of Withdrawal (State Participation in the Rome Statute System Essential)*, March 20, 2018.

³⁶ The White House, *Imposing Sanctions on the International Criminal Court*, February 6, 2025.

³⁷ Human Rights First, *Iverson v. Trump Administration: Defending War-Crimes Prosecutors from Misused Sanctions*, accessed September 3, 2025.

larger problem for the ICC. If the ICC continues to not only lose members but be actively targeted by major world powers, its reputation and authority will endure irreparable damage.

Despite the horde of problems challenging the ICC's authority, one interviewee continued to brush these off, still claiming these issues are inevitable for a young institution. This interviewee relied upon examples like the U.S. Supreme Court to argue that judicial bodies (especially international ones) simply take time to cement its authority. However, I reject this argument. Time is not a luxury the ICC can afford. Without bold reforms to secure compliance and defend itself from future political attacks, the Court simply will not survive long enough to build up the legitimacy it desperately needs to succeed. The ICC must act now.

Conclusion

Although the ICC has made some progress in the quest for global justice, in the modern day, its authority is rapidly dwindling. Today, the ICC is little more than a symbol of justice. But tomorrow, even *that* might be a stretch. If the Court does not reform and strengthen the Rome Statute's enforcement mechanisms, it will forfeit its remaining credibility and relevance. Even with its ongoing legitimacy crisis, the ICC still represents a shared hope that mass atrocities will not go ignored, and that justice can transcend borders. If the world cannot even sustain a symbol of justice, the possibility of true justice is even more unimaginable. Therefore, the ICC's legitimacy crisis is not just an institutional issue but also a larger test of whether the international community is willing to defend the possibility for global accountability. Unless significant reforms are issued to secure member state compliance and protect the Court from political resistance, the ICC will continue to wither, and with it, any hope for international justice.

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