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# Jurisdiction, Functions, and Powers of International Criminal Courts

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## ABSTRACT

International criminal courts, as one of the most significant manifestations of the realization of international criminal justice, were established in response to the inadequacy of national mechanisms in addressing serious international crimes. These institutions demonstrated their necessity particularly after the Second World War and in the wake of organized crimes such as genocide, crimes against humanity, and war crimes. The establishment of ad hoc tribunals, such as the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, and subsequently the creation of the International Criminal Court as the first permanent international criminal judicial body, marked a turning point in the gradual development of international criminal law. In this article, using a descriptive–analytical approach, various dimensions of jurisdiction (including subject-matter, personal, territorial, and temporal jurisdiction), the principal functions of international criminal courts in prosecuting and punishing perpetrators of international crimes, and the judicial and executive powers of these courts are examined. Furthermore, through a structural comparison between ad hoc and permanent courts, their fundamental similarities and differences are analyzed. On the other hand, the challenges and obstacles facing these courts—including lack of state cooperation, politicization of judicial processes, the absence of effective enforcement mechanisms, and limitations related to territorial and temporal jurisdiction—are discussed. The findings of the article indicate that despite the relative successes of these courts in prosecuting some perpetrators of egregious crimes, a long path remains toward the full realization of international criminal justice. Accordingly, revisiting legal mechanisms and strengthening state cooperation with these institutions appear to be necessary and undeniable requirements.

**Keywords:** *international criminal justice; International Criminal Court; judicial jurisdiction; international crimes; genocide; crimes against humanity; International Criminal Tribunal for the former Yugoslavia; International Criminal Tribunal for Rwanda.*

## Introduction

Extensive transformations in international relations, particularly after the Second World War, have increasingly highlighted the role of international institutions in regulating the global order. One of the most important areas in which the need for transnational intervention and rule-making became evident was international criminal justice—an arena in which egregious and organized crimes such as genocide, war crimes, and crimes against humanity not only threatened the very foundations of human societies but also deeply wounded the collective conscience of



humankind. The experience of prosecuting Nazi leaders before the Nuremberg Tribunal and Japanese officials before the Tokyo Tribunal constituted the first significant steps toward establishing international criminal responsibility of individuals; however, these measures remained episodic and dependent on the will of the victorious powers. With the occurrence of humanitarian catastrophes such as the Yugoslav civil war and the Rwandan genocide in the 1990s, the international community once again emphasized the necessity of establishing independent institutions with transnational jurisdiction to adjudicate such crimes. In response to this need, two ad hoc tribunals—the International Criminal Tribunal for the former Yugoslavia in 1993 and the International Criminal Tribunal for Rwanda in 1994—were established under the authority of the United Nations Security Council. These practical experiences, despite certain shortcomings, paved the way for the establishment of a more permanent institution, namely the International Criminal Court in 2002, which is regarded as a turning point in the institutionalization of international criminal justice. From this perspective, international criminal courts are not perceived merely as judicial bodies, but rather as components of the broader system of global governance, operating with the aims of combating impunity, supporting victims, reconstructing post-crime societies, and strengthening a culture of accountability at the international level. Despite this significant position, the performance and structure of these courts have faced numerous challenges, including lack of cooperation by certain states, tensions with the principle of national sovereignty, politicization of judicial decisions, and limitations related to territorial and temporal jurisdiction. Accordingly, the present article seeks to provide a conceptual and legal clarification of international criminal courts, to examine in a structured manner their jurisdictions, functions, and powers, and, through a comparative assessment of ad hoc and permanent tribunals, to analyze the strengths, weaknesses, and reform requirements of this emerging legal system.

## **Historical Evolution of International Criminal Courts**

### *The Emergence of the Idea of Punishing International Crimes*

For centuries, the idea of international criminal responsibility of individuals—particularly political leaders—was regarded merely as a theoretical and philosophical concept. However, following the First World War and the Treaty of Versailles (1919), the notion of prosecuting political leaders was formally introduced for the first time. Although efforts to prosecute Kaiser Wilhelm II were unsuccessful, they laid the groundwork for the emergence of a novel conception of international justice (1).

### *The Nuremberg and Tokyo Tribunals*

A genuine advance in the implementation of international criminal justice was achieved through the establishment of the Nuremberg and Tokyo Tribunals. These courts prosecuted natural persons for crimes against peace, crimes against humanity, and war crimes. The Nuremberg Tribunal, relying on the London Charter, consolidated the conceptual foundation of “individual international criminal responsibility” (1).

### *Ad Hoc Tribunals in the 1990s*

With the outbreak of genocide and ethnic cleansing in the 1990s, the United Nations Security Council established two ad hoc tribunals, namely the ICTY and the ICTR. These tribunals not only prosecuted perpetrators of war crimes

but also contributed to the development of legal practice, including more precise definitions of “crimes against humanity” and the establishment of fair trial standards (2).

## **Structure and Organs of the International Criminal Court (ICC)**

### *Establishment and Legal Status*

The International Criminal Court was established on the basis of the Rome Statute, which was adopted on 17 July 1998, and entered into operation on 1 July 2002. The Court is the first permanent international judicial body with independent legal personality, operating on the basis of complementarity with respect to national courts (3).

### *The Four Principal Organs of the Court*

#### **(a) The Presidency**

The Presidency consists of a President and two Vice-Presidents elected from among the judges. Their responsibilities include internal administration, determining the composition of chambers, and overseeing the conduct of judicial sessions.

#### **(b) Judicial Chambers**

These comprise the Pre-Trial, Trial, and Appeals Chambers, in which judges are assigned based on their expertise. Each chamber has jurisdiction over a specific stage of the judicial proceedings.

#### **(c) The Office of the Prosecutor**

The role of this Office includes preliminary examination, initiation of investigations, prosecution, and the bringing of cases. The Prosecutor operates independently of states and other institutions and decides to initiate proceedings based on criteria such as the gravity of crimes and the interests of justice (4).

#### **(d) The Registry**

This organ is responsible for administrative management and support, witness protection, translation services, and document security. The Registrar, as the chief executive officer of the Court, is responsible for supervising the proper execution of administrative affairs (5).

## **Jurisdiction of the International Criminal Court**

### *Subject-Matter Jurisdiction*

The Court exercises jurisdiction only over crimes of international gravity. Pursuant to Article 5 of the Rome Statute, these crimes include:

Genocide: the intentional destruction, in whole or in part, of a national, ethnic, racial, or religious group;

Crimes against humanity: widespread or systematic attacks directed against a civilian population (6);

War crimes: serious violations of international humanitarian law in armed conflicts;

The crime of aggression: the unlawful use of force by a state against the territorial integrity of another state.

These jurisdictions are defined with respect to crimes of serious and global impact (6).

### *Temporal and Territorial Jurisdiction*

Courts may adjudicate only crimes committed after the date on which they began to operate. For example, the International Criminal Court has jurisdiction over crimes committed after the Rome Statute entered into force on 1

July 2002. The territorial jurisdiction of international criminal courts is limited to specific geographical scopes, which may include states parties to the Statute or situations referred to the Court by the United Nations Security Council. In hybrid courts, jurisdiction is usually defined within a specific country. Territorial jurisdiction includes:

- crimes committed on the territory of a state party;
- crimes committed by nationals of states parties;
- or situations referred by the United Nations Security Council (Article 13) (3).

### *Personal and Complementary Jurisdiction*

The Court exercises criminal responsibility only over natural persons. Pursuant to Article 25 of the Rome Statute, individual criminal responsibility constitutes a fundamental pillar of the Court. Furthermore, the Court may exercise jurisdiction only when national courts are unwilling or unable genuinely to prosecute. International criminal courts may adjudicate solely with respect to natural persons—not states or legal entities. In this context, principal perpetrators as well as their accomplices may be prosecuted as defendants. One of the distinctive features of international criminal courts is individual criminal responsibility, which—unlike in some national systems—may extend to high-ranking officials and even heads of state (3).

## **Functions and Powers of International Criminal Courts**

### *Investigative and Prosecutorial Powers*

**Comprehensive and in-depth investigations:** International criminal courts are empowered to conduct extensive investigations, including the interrogation of witnesses, examination of documents, and the use of digital and field-based evidence. This stage constitutes the most critical phase of the judicial process, without which the realization of a fair trial would not be possible (1).

**Issuance of international arrest warrants:** One of the key instruments available to these courts is the issuance of international arrest warrants for suspects, even when the accused is located in a non-cooperating state.

**Requests for cooperation from states and organizations:** Courts may request states to provide documents, arrest and surrender suspects, ensure the security of witnesses, and offer technical cooperation (7).

### *Adjudicative and Trial Powers*

**Conduct of fair trial proceedings:** Guaranteeing the rights of the accused, access to defense counsel, the right to present a defense, and the possibility of appealing issued judgments constitute fundamental principles of international criminal courts.

**Comprehensive assessment of evidence:** Judges are required to carefully examine documents, witness testimonies, and scientific evidence in order to ensure the administration of justice.

**Issuance of judgments and determination of penalties:** Judgments may include criminal convictions, acquittals, custodial sentences, financial penalties, or even orders for reparations to victims (8).

### *Protective and Supportive Powers*

**Protection of victims and witnesses:** In order to prevent threats, coercion, and abuse, international criminal courts have established protective mechanisms, including identity protection and physical and psychological security measures.

**Legal and psychological support:** Courts provide legal assistance, psychological counseling, and other forms of support to victims to enhance their access to justice.

**Reparations mechanisms:** Some courts allow claims for compensation and reparation for harm suffered by victims, which constitutes an element of restorative justice (9).

### **Challenges and Limitations of the Powers of International Criminal Courts**

Despite the significant position and prominent role of international criminal courts in advancing global criminal justice, these institutions face a range of challenges and limitations in the implementation and exercise of their jurisdiction. These challenges may be legal in nature or may stem from political, cultural, structural, or even operational factors. The most important of these obstacles are examined below.

#### *Lack of Cooperation by States and Political Actors*

One of the most serious obstacles to the effective enforcement of the powers of international courts is the lack of cooperation by states, particularly those that refuse to recognize the jurisdiction of such courts or to implement their decisions. This lack of cooperation may manifest in several forms:

**Refusal to arrest or surrender suspects:** A notable example is the refusal of several states to arrest Omar al-Bashir, the former President of Sudan. Despite the issuance of an arrest warrant by the International Criminal Court, States Parties to the Rome Statute, such as Kenya and South Africa, declined to execute it (10).

**Granting asylum to international suspects for political or strategic reasons:** This includes actions by certain states in concealing militia commanders or former officials accused of war crimes (10).

**Failure to provide documents, evidence, or access to investigation sites:** This is particularly prevalent in states affected by internal conflicts or characterized by unstable central governmental structures.

Such circumstances undermine the legitimacy and effectiveness of the courts and lead to victims' disillusionment with the realization of justice (10).

#### *Voluntary and Incomplete Nature of Statutory Frameworks*

Most international courts—particularly the International Criminal Court—are founded on the voluntary accession of states to the Rome Statute. This voluntary nature results in several consequences:

Many powerful states, such as the United States, Russia, China, and India, have either not signed the Rome Statute or have refused to ratify and implement it. As a result, crimes committed on the territories of these states fall outside the jurisdiction of the ICC unless referred by the United Nations Security Council (11).

States Parties may withdraw from membership, as exemplified by Burundi's withdrawal in 2017 and the Philippines' announcement of withdrawal following the initiation of investigations against its then President.

This "voluntary" structure means that the enforcement of court decisions is not binding unless supported by the United Nations Security Council or robust international cooperation (3).

### *Political Considerations and Selectivity in Referrals and Prosecutions*

Despite efforts to maintain judicial impartiality, international courts are sometimes influenced by political decisions and considerations of major powers. Examples include:

Selective referrals by the United Nations Security Council to the ICC; for instance, the referral of the Darfur situation in Sudan to the ICC in 2005 occurred while similar situations in Syria or Palestine remained unaddressed due to vetoes by Russia and the United States.

Allegations of double standards toward African states; many critics argue that the Court predominantly focuses on crimes committed in Africa while ignoring war crimes or military interventions by Western powers (11).

The ineffectiveness of judicial institutions in confronting influential aggressors; for example, the United States' military invasion of Iraq in 2003, despite extensive legal criticism, was not subject to ICC prosecution because the United States is not a party to the Rome Statute.

### *Operational and Practical Difficulties*

The exercise of the powers of international courts faces serious operational challenges, including:

**Difficulties in collecting evidence:** In war-torn or crisis regions, access by court investigators to crime scenes, victims, and witnesses is limited, thereby affecting the reliability and sufficiency of evidence.

**Threats and pressure against witnesses and victims:** In the absence of strong protective systems, witnesses are often exposed to threats or physical elimination and may refuse to testify (12).

**Budgetary and administrative constraints:** Many courts suffer from shortages of financial resources, specialized personnel, and logistical capacities. For example, by 2024, the annual budget of the ICC was approximately €150 million, which is widely regarded as insufficient given the breadth of its mandates (13).

### *Tension with the Principle of National Sovereignty*

One of the major theoretical and practical obstacles lies in the tension between the universal jurisdiction of international criminal courts and the principle of state sovereignty. Some states—particularly those with strong or authoritarian political systems—perceive international judicial intervention as a threat to their political and judicial independence.

States such as China and Russia, invoking the principle of non-intervention, consider any exercise of transnational jurisdiction as a violation of their sovereignty.

Even in democratic states, nationalist considerations may at times hinder full support for international courts, as seen in cases involving the Israeli military or United States armed forces (14).

### *Lengthy Judicial Proceedings*

Another frequent criticism of international courts concerns the slow and protracted nature of judicial proceedings. For example:

Proceedings before the ICTY or the ICC have in some cases lasted for many years; in certain instances, defendants have died or escaped before a final judgment was rendered.

The extended duration of investigations, indictment confirmation, trials, and appeals leads to the exhaustion of victims, witnesses, and defense counsel and may ultimately render justice ineffective (15).

## Conclusion

The rapid transformations of the twentieth century—particularly the occurrence of two world wars and the commission of atrocious crimes against humanity—led to the emergence of institutions within international law whose primary objective was to prevent the recurrence of past catastrophes and to hold perpetrators of international crimes accountable. In this context, international criminal courts, as one of the most significant manifestations of the evolution of contemporary international law, have played a prominent role in establishing a global legal order. These courts have not only sought to prevent the continuation of a culture of impunity by prosecuting grave crimes such as genocide, war crimes, crimes against humanity, and the crime of aggression against peace, but have also taken effective steps toward the realization of transnational criminal justice and the protection of victims of wars and armed conflicts. Courts such as the Nuremberg and Tokyo Tribunals, as well as the ICTY and ICTR, constituted the first practical steps and provided valuable experiences for designing future institutional structures. The powers of international criminal courts in adjudicating international crimes represent some of the most extensive legal and judicial instruments in the fight against impunity. By emphasizing subject-matter, personal, temporal, and territorial jurisdiction, together with investigative, prosecutorial, and adjudicative powers, these courts have made it possible to pursue criminal justice at the transnational level. Nevertheless, major limitations and obstacles—such as the lack of state cooperation, political considerations, and operational difficulties—have posed serious challenges to the achievement of the objectives of international criminal justice. Enhancing institutional capacities, increasing international cooperation, and guaranteeing judicial independence are among the fundamental strategies for strengthening the powers and effectiveness of international criminal courts. With the establishment of the International Criminal Court in 2002 on the basis of the Rome Statute, the international criminal justice system entered a new phase that, by focusing on the principle of individual criminal responsibility and the requirement of fair adjudication, has sought to become a model for transnational justice. Despite this, the performance of these institutions demonstrates that the full realization of international criminal justice objectives continues to face substantial obstacles and challenges. The most significant challenges include:

- **Limitations in personal and subject-matter jurisdiction:** The Court exercises jurisdiction only over natural persons from States Parties. This has resulted in certain global powers—such as the United States, China, Russia, and Israel—remaining outside the scope of the Court’s judicial oversight. Consequently, international justice faces a gap when confronting these states.
- **Lack of state cooperation in the enforcement of judgments:** State cooperation—particularly in the stages of arrest, surrender, and enforcement of sentences—is vital for the effectiveness of the Court. In practice, however, various states have refrained from cooperating with the Court for political, security-related, or national-interest reasons.
- **Judicial independence and the risk of politicization:** Certain actions of the Court—especially the issuance of indictments against some political leaders of African states—have reinforced the perception that the Court’s decision-making may be influenced by political pressures from major global powers. This perception stands in direct tension with the principle of judicial impartiality and independence.
- **Protracted proceedings and procedural inefficiency:** The adjudication of some cases before the Court has taken many years and has involved substantial financial and administrative costs, thereby weakening public confidence in the performance of international criminal courts.

- **Weaknesses in ensuring reparations for victims:** Although the Court has established mechanisms for reparations, in practice victims often remain deprived of effective support—whether financial, psychological, or social.
- **Challenges in balancing justice and peace:** In many armed conflicts, the pursuit of international justice may be perceived as an obstacle to peace processes, as accused leaders may be unwilling to relinquish power or sign peace agreements. This dilemma—commonly referred to as the “justice versus peace paradox”—constitutes one of the most complex debates in international criminal law.

Despite these challenges, international criminal courts have left a valuable legal legacy, including:

- the development of reliable judicial precedents for interpreting key concepts such as crimes against humanity, aggression, and genocide;
- the enhancement of victims’ rights and the recognition of their status within judicial proceedings;
- the expansion of global awareness regarding the necessity of combating impunity;
- the consolidation of the principle of criminal accountability at the international level.

### *Recommendations*

In light of the foregoing discussion, and with the aim of strengthening the effectiveness of international criminal courts and moving closer to the ideals of global justice, the following recommendations are proposed:

1. **Expanding the scope of universal jurisdiction:**

- Amending the Rome Statute to grant the Court universal jurisdiction, even with respect to non-member states, in specific circumstances and based on decisions of the United Nations General Assembly or the Security Council;
- Promoting the doctrine of “universal jurisdiction” within national legal systems so as to enable domestic courts to adjudicate international crimes.

2. **Reforming the Court’s structure to enhance judicial independence:**

- Revising the mechanisms for selecting judges and prosecutors to prevent undue influence by major powers;
- Establishing an independent oversight body to evaluate the Court’s performance and prevent political interference.

3. **Increasing state cooperation with the Court through incentives and enforcement mechanisms:**

- Employing diplomatic, economic, and political tools to encourage states to cooperate with the Court;
- Introducing mechanisms within the United Nations Charter or regional instruments that treat non-cooperation with the Court as a breach of international obligations.

4. **Enhancing the efficiency of judicial procedures:**

- Making broader use of information technology in judicial processes;
- Establishing regional chambers of the Court to expedite proceedings and reduce costs;
- Simplifying and harmonizing international criminal procedural rules.

5. **Strengthening the system of reparations for victims:**

- Increasing the financial resources of the Trust Fund for Victims;
- Establishing fair criteria for the assessment and payment of reparations;

- Supporting the physical, psychological, and social rehabilitation of victims through cooperation with humanitarian organizations.
6. **Enhancing interaction between the Court and domestic legal systems:**
- Providing training and capacity-building for national judges and prosecutors in the field of international criminal law;
  - Expanding bilateral and multilateral judicial cooperation between the Court and domestic courts;
  - Harmonizing domestic legislation with the principles enshrined in the Rome Statute.
7. **Expanding public awareness and education:**
- Promoting a culture of international criminal justice through the media, universities, and schools;
  - Organizing academic conferences and workshops to analyze the Court's jurisprudence and its impact on the international legal system.

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### **Authors' Contributions**

All authors equally contributed to this study.

### **Declaration of Interest**

The authors of this article declared no conflict of interest.

### **Ethical Considerations**

All ethical principles were adhered in conducting and writing this article.

### **Transparency of Data**

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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