

The International Criminal Court at a Crossroads: Institutional Design, Enforcement Deficits, and the Politics of International Accountability

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Abstract:

This article examines the International Criminal Court (ICC) as an institution whose principal vulnerability is structural rather than doctrinal. Drawing on the Rome Statute, the Court's case law, and the institutional record of the past two decades, the analysis argues that the ICC was designed with adjudicative authority but without enforcement capacity, and that this asymmetry now conditions every dimension of its performance. The article traces the Court's lineage from the Nuremberg and Tokyo tribunals through the ad hoc tribunals for the former Yugoslavia and Rwanda to the Rome Conference of 1998, and reconstructs the negotiated compromises—complementarity, consent-based jurisdiction, and Security Council involvement—that continue to shape its operation. A survey of landmark prosecutions from Lubanga to Al Hassan demonstrates both the Court's doctrinal contributions and a recurring pattern of evidentiary fragility, protracted proceedings, and collapsed cases. The analysis then examines three convergent pressures: the enforcement deficit produced by dependence on state cooperation, exemplified by the sustained failure to execute the warrants against Omar al-Bashir; escalating great-power opposition, culminating in two successive United States sanctions regimes directed at Court personnel; and a legitimacy crisis compounded by withdrawal announcements from four continents and, in July 2026, the first removal of a sitting Prosecutor in the Court's history. The article contends that the most consequential reforms are those achievable without amending the Rome Statute: graduated compliance mechanisms tied to the Assembly of States Parties, published case-selection criteria, regionalized cooperation agreements, assessed rather than voluntary reparations financing, and strengthened internal governance and oversight. Proposals to extend jurisdiction to ecocide and cyber operations are assessed as normatively attractive but strategically premature given the Court's present capacity constraints. The article concludes that the ICC remains indispensable to the international legal order precisely because no substitute exists, and that its survival depends less on expanding its mandate than on repairing the machinery through which its existing mandate is exercised.

Keywords: International Criminal Court; Rome Statute; complementarity; state cooperation; international criminal law; enforcement; institutional legitimacy; crimes against humanity; ecocide; transitional justice

1. Introduction

The International Criminal Court began operations on 1 July 2002, four years after the adoption of the Rome Statute at a diplomatic conference in Rome and following the deposit of the sixtieth instrument of ratification. It was the first permanent, treaty-based tribunal with jurisdiction over genocide, crimes against

humanity, war crimes, and—after the Kampala amendments of 2010—the crime of aggression. Its creation represented the institutionalization of a principle that had been asserted at Nuremberg but never given standing form: that individuals, including heads of state, bear personal criminal responsibility under international law for atrocities committed in the exercise of public power (Schabas 2020).

Twenty-four years later, the Court occupies an unusually precarious position. It has secured convictions that materially advanced international criminal law, including the first conviction for the conscription of child soldiers, the first for the destruction of cultural heritage, and the first recognition of forced marriage as a distinct crime against humanity. It has custody of a former head of state whose surrender in 2025 was widely read as a demonstration that the Court can reach beyond the African situations that dominated its early docket. At the same time it faces an unprecedented convergence of adverse conditions: sanctions imposed by the United States on its own judges and prosecutors, withdrawal announcements from states across four continents, chronic underfunding relative to a docket that has expanded to include Ukraine, Palestine, Venezuela, Myanmar, and Afghanistan, and—in July 2026—the removal of its Prosecutor by vote of the Assembly of States Parties following disciplinary proceedings, the first such removal in the Court’s history (Human Rights Watch 2026a).

The argument advanced here is that these difficulties, though they present as discrete political crises, share a common structural origin. The Rome Statute created an institution possessing full adjudicative authority and no enforcement capacity whatever. The Court has no police force, no power of arrest, no mechanism to compel the production of evidence, and no sanction available against a state that declines to comply with its orders beyond referral to a political body that has consistently declined to act. Every one of the Court’s operational limitations—its inability to try fugitives, its dependence on cooperative governments for witness protection, its vulnerability to the withdrawal of political support—follows from this single design feature. The analysis therefore treats enforcement dependency not as one problem among several but as the organizing constraint against which all others should be understood.

Four questions structure the inquiry that follows.

1. How adequately does the Rome Statute’s jurisdictional architecture accommodate an international order in which several of the most militarily powerful states remain outside the treaty regime and actively contest the Court’s authority?
2. What does the accumulated case law reveal about the relationship between prosecutorial strategy, evidentiary capacity, and adjudicative outcomes, and what does the pattern of collapsed and reversed cases indicate about institutional capability?
3. To what extent is the enforcement deficit a remediable defect of institutional design, as opposed to an inherent feature of consent-based international adjudication that no reform can eliminate?
4. Which reforms would meaningfully strengthen the Court’s legitimacy and effectiveness, and how should they be sequenced given that amendment of the Rome Statute is politically and procedurally difficult?

The article proceeds historically, then structurally, then critically. Sections 2 and 3 establish the Court’s legal foundations and institutional architecture. Section 4 surveys its jurisprudence. Sections 5 through 7 examine the enforcement deficit, great-power opposition, and the legitimacy crisis respectively. Section 8 addresses proposed jurisdictional expansion, and Section 9 sets out a reform agenda organized by feasibility.

2. Historical Foundations and Legal Framework

2.1 From Nuremberg to the Ad Hoc Tribunals

The ICC did not emerge in isolation. The International Military Tribunal at Nuremberg and its counterpart at Tokyo established, for the first time in practice, that individuals could be tried before an international bench for crimes against peace, war crimes, and crimes against humanity, and that official position furnished no immunity. These tribunals were vulnerable to the charge of victors' justice and applied law that was in part retroactive, but they supplied the conceptual foundation on which all subsequent international criminal law was built (Bassiouni 2013).

The Cold War suspended further institutional development for four decades. Proposals for a permanent court circulated within the International Law Commission from 1948 onward but made no progress against the political conditions of bipolar confrontation. The impasse ended with the atrocities in the former Yugoslavia and Rwanda, which prompted the Security Council to establish the International Criminal Tribunal for the former Yugoslavia in 1993 and the International Criminal Tribunal for Rwanda in 1994, both under Chapter VII of the United Nations Charter.

These tribunals proved that international prosecution was operationally feasible and generated the doctrinal apparatus on which the ICC would draw: the elaboration of joint criminal enterprise, the recognition of rape as an instrument of genocide in the Akayesu judgment, and a substantial jurisprudence on command responsibility. They also revealed the limitations of the ad hoc model. Each was territorially and temporally confined, each was expensive, each depended on continuing Security Council support, and each was open to the objection that the Council selected which atrocities warranted a tribunal and which did not. The case for a permanent institution with pre-established jurisdiction followed directly from these deficiencies (Cassese 2008).

2.2 The Rome Conference and the Architecture of Compromise

The United Nations Diplomatic Conference of Plenipotentiaries convened in Rome in June 1998 with representatives of more than 160 states, alongside an unusually influential coalition of non-governmental organizations. Negotiations were contentious on three axes: the scope of the Court's jurisdiction over nationals of non-party states, the role of the Security Council in triggering and suspending investigations, and the definition of and conditions for prosecuting the crime of aggression.

The Statute was adopted on 17 July 1998 by a vote of 120 in favour, seven against, and 21 abstentions. The votes against were unrecorded but were widely attributed to the United States, China, Israel, Iraq, Libya, Qatar, and Yemen. The instrument entered into force on 1 July 2002 upon the sixtieth ratification. As of mid-2026 the Rome Statute has 125 states parties.

The text that emerged reflects a series of compromises whose consequences have shaped every subsequent controversy. Jurisdiction was made largely consent-based. Complementarity was adopted as the governing admissibility principle. The Security Council was granted both a referral power and a deferral power. Each of these concessions was necessary to secure adoption; each has since constrained the Court's operation in ways its drafters anticipated only partially.

2.3 Jurisdictional Architecture

Article 5 establishes the four core crimes. Article 6 imports the definition of genocide from the 1948 Convention essentially unchanged, including the demanding requirement of specific intent to destroy a protected group in whole or in part. Article 7 defines crimes against humanity as enumerated inhumane acts committed as part of a widespread or systematic attack directed against a civilian population pursuant to a state or organizational policy. Article 8 addresses war crimes, distinguishing between international

and non-international armed conflict and incorporating the grave breaches regime of the Geneva Conventions. Article 8 bis, added at Kampala in 2010 and activated in 2018, defines the crime of aggression under a jurisdictional regime substantially narrower than that governing the other three crimes. Article 12 establishes the preconditions to the exercise of jurisdiction: the conduct must have occurred on the territory of a state party or been committed by a national of a state party, unless a non-party state accepts jurisdiction ad hoc under Article 12(3). Article 13 sets out the three triggers: referral by a state party, referral by the Security Council acting under Chapter VII, or investigation initiated proprio motu by the Prosecutor with the authorization of a Pre-Trial Chamber under Article 15.

Article 17, which governs admissibility, is the doctrinal centre of the system. It provides that a case is inadmissible where it is being or has been genuinely investigated or prosecuted by a state with jurisdiction, unless that state is unwilling or unable genuinely to carry out the proceedings. Complementarity was designed to protect sovereignty and to encourage domestic prosecution; in practice, the determination that a state is unwilling or unable has proved among the most politically sensitive judgments the Court makes, since it amounts to an official finding that a national justice system has failed.

Article 53 confers on the Prosecutor discretion to decline to initiate an investigation where, notwithstanding sufficient evidence and admissibility, there are substantial reasons to believe that an investigation would not serve the interests of justice. The provision has been invoked sparingly and has been criticized as an insufficiently constrained grant of discretion whose exercise is difficult to review (Orentlicher 2018).

Trigger mechanism	Legal basis	Jurisdictional reach	Principal limitation
State party referral	Art. 13(a), 14	Territory or nationals of states parties	Self-referrals may be used strategically against domestic opponents
Security Council referral	Art. 13(b)	Any state, including non-parties	Subject to permanent-member veto; no funding attaches to referral
Proprio motu investigation	Art. 13(c), 15	Territory or nationals of states parties	Requires Pre-Trial Chamber authorization; politically exposed
Ad hoc acceptance	Art. 12(3)	Accepting non-party state	Depends entirely on voluntary submission

Table 1: Jurisdictional Triggers under the Rome Statute and Their Structural Limitations

3. Institutional Architecture and Procedure

3.1 The Four Organs

The Court comprises four organs, each with defined functions and a measure of operational independence.

- The Presidency, consisting of a President and two Vice-Presidents elected by the judges, is responsible for the administration of the Court other than the Office of the Prosecutor, and for external relations and judicial assignment.

- The Judicial Divisions comprise eighteen judges elected by the Assembly of States Parties for non-renewable nine-year terms, organized into Pre-Trial, Trial, and Appeals Chambers. Article 36 requires that elections take account of the representation of the principal legal systems of the world, equitable geographical distribution, and a fair representation of female and male judges.
- The Office of the Prosecutor operates independently under Article 42 and is responsible for receiving referrals, conducting preliminary examinations and investigations, and prosecuting cases. It is internally divided among investigation, prosecution, and jurisdiction, complementarity and cooperation divisions.
- The Registry provides administrative and judicial support, including defence counsel services, the Victims and Witnesses Unit, the Office of Public Counsel for Victims, field operations, and public outreach.

The Assembly of States Parties, though not an organ of the Court, is its management oversight and legislative body. It adopts the budget, elects judges and the Prosecutor, and exercises disciplinary authority over elected officials—a power invoked for the first time in July 2026.

INSTITUTIONAL ARCHITECTURE OF THE INTERNATIONAL CRIMINAL COURT

ASSEMBLY OF STATES PARTIES (125 members)

Budget • Elections • Statutory amendment • Oversight and discipline • Non-cooperation findings



PRESIDENCY

Administration • External relations • Judicial assignment

JUDICIAL DIVISIONS (18 judges)

Pre-Trial Chambers — authorization, warrants, confirmation of charges

Trial Chambers — adjudication, conviction and sentence, reparations orders

Appeals Chamber — interlocutory and final appeal, revision

OFFICE OF THE PROSECUTOR (independent, Art. 42)

Preliminary examination • Investigation • Prosecution • Complementarity assessment

REGISTRY

Defence support • Victims and Witnesses Unit • Office of Public Counsel for Victims

Field offices • Outreach • Detention • Court management



TRUST FUND FOR VICTIMS (separate legal personality)

Implementation of reparations orders • Assistance mandate • Voluntary contributions

Figure 1. Institutional architecture of the International Criminal Court. The diagram distinguishes the four organs of the Court from the Assembly of States Parties, which exercises oversight without adjudicative function, and from the Trust Fund for Victims, which possesses separate legal personality and is financed principally through voluntary contributions.

3.2 Procedural Framework

Proceedings pass through four principal stages. A preliminary examination under Article 15 assesses whether there is a reasonable basis to proceed, evaluating jurisdiction, admissibility, and the interests of justice. Preliminary examinations have in several situations extended for a decade or more, a delay that has drawn sustained criticism.

Investigation under Articles 53 to 58 involves the collection of evidence, in which the Prosecutor is required by Article 54(1)(a) to investigate incriminating and exonerating circumstances equally. Where the Prosecutor establishes reasonable grounds to believe a person has committed a crime within jurisdiction, a Pre-Trial Chamber may issue a warrant of arrest or a summons to appear.

Confirmation of charges under Article 61 requires the Prosecutor to establish substantial grounds to believe the person committed each charged crime. The confirmation hearing functions as a significant filter: several cases, including those against Kenyan officials, collapsed at or shortly after this stage.

Trial and appeal are governed by Articles 62 to 84 and by the Rules of Procedure and Evidence. The accused enjoys the presumption of innocence, the right to counsel, disclosure rights, and the right to examine witnesses. Conviction requires proof beyond reasonable doubt. Both parties may appeal on grounds of procedural error, error of fact, or error of law, and the Appeals Chamber has on several occasions reversed convictions on evidentiary grounds.

3.3 Victim Participation and Reparations

The most significant procedural innovation of the Rome Statute is the participation of victims as autonomous actors rather than merely as witnesses. Article 68(3), elaborated by Rules 85 to 93, permits victims to present views and concerns at stages of the proceedings affecting their personal interests, provided this does not prejudice the rights of the accused or the fairness of the trial. Victims ordinarily participate through common legal representatives, either privately retained or provided by the Office of Public Counsel for Victims.

Article 75 empowers the Court to order reparations against a convicted person, including restitution, compensation, and rehabilitation. Because convicted persons are ordinarily indigent, implementation falls to the Trust Fund for Victims, which relies on voluntary contributions. The consequence is that reparations orders function as declaratory judgments whose satisfaction depends on donor generosity rather than judicial authority. The award in Ntaganda, which exceeded thirty million United States dollars, illustrates the gap between the scale of judicially assessed harm and the resources available to remedy it.

Participation has scaled dramatically. In Lubanga slightly over one hundred victims participated; in Ongwen the number of participating victims exceeded four thousand. This expansion has strained the Registry's capacity for application processing, verification, and representation, and has generated persistent complaints about delay, opacity of eligibility criteria, and the risk of retraumatization (Redress 2023).

4. Jurisprudential Development

The Court's case law is best read as a record of two simultaneous developments: substantial doctrinal advances in the definition of international crimes, and recurrent difficulty in converting investigations into sustained convictions.

Thomas Lubanga Dyilo, convicted in 2012, was the Court's first completed prosecution. The charges concerned conscripting and enlisting children under fifteen into the Union des Patriotes Congolais and using them actively in hostilities, contrary to Article 8(2)(e)(vii). The Trial Chamber's elaboration of co-perpetration under Article 25(3)(a) and its subsequent reparations order, which emphasized collective and symbolic measures, established templates for later cases. The proceedings also exposed early weaknesses: the Chamber found that intermediaries used by the prosecution had influenced witness testimony, and it excluded a substantial body of evidence in consequence.

Germain Katanga was convicted in 2014 as an accessory under Article 25(3)(d) for contributing to crimes committed during the 2003 attack on Bogoro. The Trial Chamber recharacterized the mode of liability at a late stage under Regulation 55, converting a principal-perpetrator charge into accessorial liability. The recharacterization secured a conviction but attracted criticism on fair-trial grounds, since the defence had prepared against a different theory of the case.

Jean-Pierre Bemba Gombo was convicted in 2016 under Article 28 for failing, as a military commander, to prevent or punish murder, rape, and pillage committed by Mouvement de Libération du Congo forces in the Central African Republic. The judgment was received as a landmark for accountability for sexual violence. In 2018 the Appeals Chamber acquitted him by majority, holding that the Trial Chamber had erred in assessing the reasonableness of the measures he had taken and had convicted on criminal acts falling outside the confirmed charges. Two judges dissented forcefully. The reversal, coming after a decade of proceedings, is frequently cited as the clearest instance of the gap between the Court's ambitions and its evidentiary practice.

Dominic Ongwen was convicted in 2021 on sixty-one counts of war crimes and crimes against humanity committed as a Lord's Resistance Army commander. Abducted as a child and himself a victim of the crimes he later perpetrated, Ongwen presented the Court with the question of how duress and impaired volition bear on responsibility for conduct committed in adulthood. The Chamber rejected the defences of duress and mental disease while treating his history as mitigating at sentencing. The judgment also recognized forced marriage as a distinct inhumane act under Article 7(1)(k) and entered the Court's first convictions for forced pregnancy.

Laurent Gbagbo and Charles Blé Goudé were acquitted in 2019 by a no-case-to-answer ruling delivered mid-trial, the Chamber finding that the prosecution had failed to demonstrate the existence of a common plan or a policy to attack the civilian population. The acquittal was upheld on appeal in 2021. Coming after eight years of proceedings, it prompted institutional reflection on investigative standards and on the Office of the Prosecutor's tendency to construct cases around senior political figures before the underlying evidentiary base had been secured.

Two later cases indicate a more disciplined approach. Ahmad Al Faqi Al Mahdi pleaded guilty in 2016 to the war crime of intentionally directing attacks against protected cultural objects in Timbuktu, producing the Court's first conviction for the destruction of cultural heritage and its first guilty plea. Al Hassan Ag Abdoul Aziz was convicted in 2024 for crimes committed during the occupation of Timbuktu. Both cases were narrowly framed, evidentially concentrated, and completed comparatively quickly—a pattern consistent with a strategic shift toward prosecutions the Court can realistically sustain.

Case	Outcome	Principal doctrinal contribution	Institutional lesson
Lubanga (DRC)	Convicted 2012	Child soldier recruitment; co-perpetration under Art. 25(3)(a); collective reparations	Intermediary misuse compromised evidence
Katanga (DRC)	Convicted 2014	Accessorial liability under Art. 25(3)(d)	Late recharacterization raises fair-trial concerns
Bemba (CAR)	Convicted 2016; acquitted on appeal 2018	Command responsibility under Art. 28	Evidentiary and charging deficiencies survived to appeal
Gbagbo / Blé Goudé (Côte d'Ivoire)	Acquitted 2019; upheld 2021	Threshold for proving a state or organizational policy	Cases built on political seniority rather than evidence collapse
Ongwen (Uganda)	Convicted 2021	Forced marriage and forced pregnancy; victim-perpetrator duality	Complex defences require substantial adjudicative resources
Al Mahdi (Mali)	Convicted 2016	Destruction of cultural property as a war crime; first guilty plea	Narrow framing yields efficient resolution
Al Hassan (Mali)	Convicted 2024	Gender-based persecution in occupied territory	Focused charging improves completion rates

Table 2: Landmark Prosecutions, Doctrinal Contributions, and Institutional Lessons

Read together, these cases suggest that the Court's doctrinal output has outpaced its investigative capacity. The most durable convictions have arisen where charges were narrow, the evidentiary base was documentary or physical, and the accused was proximate to the criminal conduct. The most conspicuous failures have arisen where the Office of the Prosecutor sought to establish the responsibility of remote senior figures through linkage evidence that ultimately proved insufficient. This is a resource problem before it is a legal one.

5. The Enforcement Deficit

The Court possesses no independent means of executing its own orders. Article 86 obliges states parties to cooperate fully, and Article 89 governs requests for arrest and surrender, but compliance rests on the good faith of the requested state. Where cooperation is withheld, Article 87(7) permits the Court to make a judicial finding of non-compliance and to refer the matter to the Assembly of States Parties or, in Security Council referral situations, to the Council. Neither body has imposed consequences on a non-complying state.

5.1 Arrest and Surrender

The Court has issued approximately sixty public arrest warrants since 2002, a substantial proportion of which remain unexecuted. The case of Omar al-Bashir remains the paradigmatic illustration. Warrants issued in 2009 and 2010 charged the then-President of Sudan with war crimes, crimes against humanity, and genocide in Darfur. Al-Bashir subsequently travelled to numerous states parties, including South Africa, Jordan, Chad, Kenya, and Uganda, without arrest. The Appeals Chamber held in the Jordan referral judgment of 2019 that head-of-state immunity does not obtain before an international court and that Jordan had accordingly violated its obligations. The legal question was resolved definitively; the practical consequence was nil. Al-Bashir has been in Sudanese custody since 2019 but has not been surrendered.

A comparable failure occurred in September 2024, when Vladimir Putin, subject to a warrant issued in March 2023 for the unlawful deportation of children from occupied Ukraine, made a state visit to Mongolia, a state party. Mongolia did not execute the warrant. The Pre-Trial Chamber found non-compliance and referred the matter to the Assembly of States Parties, which took no action.

Against this record, the surrender of Rodrigo Duterte in March 2025 stands as a significant counter-example. Duterte, sought for crimes against humanity in connection with killings carried out during his administration's anti-narcotics campaign, was arrested in Manila and transferred to The Hague notwithstanding the Philippines' withdrawal from the Rome Statute in 2019—withdrawal having no effect on jurisdiction over conduct occurring while the state was a party. The case demonstrates that the determining variable is not the Court's authority but the disposition of the government in physical possession of the suspect. Where a successor administration finds surrender politically advantageous, cooperation follows; where it does not, the same legal obligation produces nothing.

5.2 Security Council Referrals

Article 13(b) permits the Security Council to refer situations involving non-party states, extending the Court's reach beyond the consent-based limits of Article 12. The power has been exercised twice, in relation to Darfur in 2005 and Libya in 2011. Both referrals were structurally deficient in the same respect: each expressly provided that no expenses arising from the referral would be borne by the United Nations, obliging the Court to absorb costly investigations from a budget fixed by states parties, and neither established any mechanism for enforcing cooperation by the referred state.

Article 16 permits the Council to defer an investigation or prosecution for renewable twelve-month periods. The provision has been invoked in respect of peacekeeping personnel and has repeatedly been sought by African states in relation to the Kenyan and Sudanese situations. Its existence formalizes what is otherwise implicit: the Court's docket is, at the margins, subject to great-power political control.

5.3 Cooperation Beyond Arrest

Cooperation is equally indispensable to evidence collection and witness protection. Investigators require visas, site access, security guarantees, and the ability to interview witnesses without exposing them to reprisal. The Kenyan situation illustrates the consequences of withholding these: cases against senior officials, including Uhuru Kenyatta, collapsed after witnesses withdrew or recanted amid credible allegations of intimidation and after the government declined to produce financial and telecommunications records.

Witness relocation depends on bilateral agreements with states willing to accept protected persons. Relatively few states have concluded such agreements, and the resulting scarcity constrains which witnesses the Office of the Prosecutor can safely call. This is not a peripheral administrative matter; it directly determines what cases can be brought.

6. Great-Power Opposition: The United States and the Court

6.1 From Signature to Repudiation

The United States participated actively in the Rome negotiations but voted against the final text, objecting principally to the prospect of jurisdiction over nationals of non-party states. President Clinton signed the Statute in December 2000 while stating that he would not recommend ratification. In May 2002 the Bush administration notified the Secretary-General that the United States did not intend to become a party, an act commonly described as unsigned.

Congress enacted the American Servicemembers' Protection Act in 2002, restricting cooperation with the Court and authorizing the President to use all means necessary to secure the release of United States personnel detained on its behalf. The administration concluded bilateral non-surrender agreements under Article 98 with more than one hundred states. This period established a posture of institutional non-recognition, but not of active coercion.

6.2 The First Sanctions Regime

That changed in 2020. Following the Appeals Chamber's authorization of an investigation into the situation in Afghanistan, which encompassed alleged crimes by United States personnel, President Trump issued Executive Order 13928 in June 2020, declaring a national emergency with respect to the Court and authorizing asset freezes and entry restrictions against designated Court officials and those who materially assisted them. Prosecutor Fatou Bensouda and Phakiso Mochochoko, head of the Jurisdiction, Complementarity and Cooperation Division, were designated in September 2020.

The order was challenged in United States courts by human rights advocates and academics who argued that its provisions on material support unconstitutionally burdened protected speech and association, exposing American lawyers and scholars who advised or assisted the Court to criminal liability. A federal district court granted preliminary injunctive relief on First Amendment grounds. President Biden revoked the order in April 2021, the Secretary of State describing the sanctions as inappropriate and ineffective while reiterating continued disagreement with the Court's assertion of jurisdiction.

6.3 The Second Sanctions Regime

The confrontation resumed on a wider footing in 2025. In November 2024 Pre-Trial Chamber I issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant, alongside a warrant for Hamas commander Mohammed Diab Ibrahim Al-Masri, in connection with the conflict in Gaza. On 6 February 2025, during Netanyahu's visit to Washington, President Trump issued a further executive order imposing financial sanctions and visa restrictions on Court officials and their family members engaged in investigations of United States nationals or those of allied states, declaring that the Court had engaged in illegitimate and baseless actions targeting America and its close ally Israel. Prosecutor Karim Khan was designated.

The second regime has since expanded well beyond its predecessor in scope. Designations were extended during 2025 to deputy prosecutors and, in December 2025, to judges Gocha Lordkipanidze and Erdenebalsuren Damdin following the rejection of Israel's challenge to the Court's jurisdiction over the Palestine situation. Sanctions were also imposed on the United Nations Special Rapporteur on the occupied Palestinian territory. Litigation brought by rights organizations challenging the designations on constitutional grounds remains before the United States courts as of mid-2026.

The practical effects have been considerable and are largely operational rather than symbolic. Designation restricts access to the international financial system, complicating salary payments, travel, and contracting; commercial service providers have in some instances suspended relationships with the Court to manage

their own exposure to secondary liability. Sanctions directed at individual judges for the content of their judicial decisions represent a qualitative departure from ordinary interstate disagreement, and have been characterized by the Assembly of States Parties and by the European Union as an attack on judicial independence itself (Amnesty International 2025).

Period	United States posture	Principal instrument
1998–2000	Negotiating participant; voted against final text; signature without ratification	Rome Conference; signature Dec. 2000
2002–2008	Institutional non-recognition; protective legislation	Unsigning (2002); ASPA (2002); Art. 98 agreements
2009–2016	Selective engagement; support for referrals aligned with policy	Observer participation; Darfur and Libya referrals
2017–2021	Coercive opposition over the Afghanistan situation	EO 13928 (2020); designations; revoked Apr. 2021
2025–2026	Systematic coercion over Palestine situation warrants	Executive order of 6 Feb. 2025; designations extended to judges and deputy prosecutors

Table 3: Evolution of United States Policy toward the International Criminal Court

7. Legitimacy Under Strain

7.1 Selectivity and the Regional Critique

For the first fifteen years of its operation the Court's docket consisted almost entirely of African situations. The Court and its defenders observed correctly that most of these arose from self-referrals by African governments, and that African states constitute the largest regional bloc among states parties. The rebuttal has never fully answered the criticism, which concerns not only which situations were opened but which were not: preliminary examinations concerning conduct by nationals of powerful states have consistently been slower to mature into investigations, and the Afghanistan investigation was for a period deprioritized in a manner widely read as responsive to political pressure.

Empirical evidence on public perception is mixed rather than uniformly negative. Survey research has consistently found broad African support for the principle of international criminal justice alongside considerably lower confidence in the ICC as an institution, with confidence lowest in states where cases were delayed or abandoned. Perception tracks performance more closely than it tracks geography.

7.2 The Withdrawal Wave

Article 127 permits withdrawal on one year's written notice, without discharging obligations accrued while the state was a party. Burundi withdrew in 2017 and the Philippines in 2019, both in the immediate context of Court scrutiny.

The period since 2025 has produced a broader wave. Hungary announced withdrawal on 3 April 2025, during a visit by Netanyahu to Budapest at which the government declined to execute the outstanding warrant; the Hungarian parliament approved the measure in May 2025 and notification was deposited, making withdrawal effective 2 June 2026. Following a change of government, parliament voted on 27

May 2026 to reverse the decision, and Hungary formally withdrew its notification on 29 May 2026, days before it would have taken effect. In September 2025 Burkina Faso, Mali, and Niger, acting jointly as the Alliance of Sahel States, announced their withdrawal, characterizing the Court as an instrument of neo-colonial repression. In July 2026, hours after the Assembly voted to remove the Prosecutor, Venezuela announced its withdrawal, citing a geographical bias concentrated on African and Latin American states. The Hungarian reversal is analytically significant. It indicates that withdrawal decisions are frequently attributable to particular governments rather than to settled national positions, and that they are therefore reversible. It also indicates that the political cost of remaining a party is lower than the rhetoric surrounding withdrawal suggests. Membership stands at 125 states, essentially unchanged over the past decade.

7.3 Internal Governance and the Removal of the Prosecutor

The most serious blow to the Court's standing in 2026 originated within the institution. Allegations of sexual misconduct by Prosecutor Karim Khan against a subordinate staff member emerged publicly in late 2024. The United Nations Office of Internal Oversight Services conducted an investigation and delivered its report, running to approximately one hundred and fifty pages with several thousand pages of supporting material, in December 2025. Khan took a leave of absence during the investigation, with the deputy prosecutors assuming leadership of the Office. He denied the allegations throughout.

A panel of judicial experts appointed by the Assembly reported in March 2026. On 8 June 2026 the Bureau of the Assembly, by qualified majority, referred disciplinary proceedings to the Assembly, suspended the Prosecutor from duty pending final decision, and convened a special session. At that session, held at United Nations headquarters in New York on 24 July 2026, the Assembly voted by secret ballot to remove Khan from office, 82 states in favour, 13 against, and 15 abstaining, on the basis that he had committed serious misconduct and a serious breach of duty. It is the first removal of a chief prosecutor in the Court's history. His counsel indicated an intention to challenge the outcome, although the Rome Statute provides no evident avenue of appeal (Hamilton and Whiting 2026).

The episode is doubly damaging. It occurred while the Office was under external sanction, entangling a genuine internal accountability failure with an external campaign against the Court and making it difficult for observers to separate the two. And it exposed the absence of adequate internal governance machinery: the Court possessed no settled procedure for investigating and adjudicating misconduct by an elected official, and was obliged to improvise one over eighteen months. The immediate institutional consequence is a leadership vacuum in the Office of the Prosecutor at a moment of maximum external pressure and an unusually broad docket.

7.4 Budget and Capacity

The Court's annual budget, approved by the Assembly, has risen to roughly two hundred million euros, funded through assessed contributions. The Registry absorbs the largest share, reflecting its responsibility for detention, courtroom operations, field offices, defence and victim support, and translation across a large number of languages. The Court employs approximately nine hundred staff drawn from more than one hundred nationalities.

This budget supports a docket that now includes situations in Ukraine, Palestine, Bangladesh and Myanmar, Afghanistan, Venezuela, Libya, Sudan, the Philippines, and several others. The Office of the Prosecutor has repeatedly stated that it cannot investigate all situations within its jurisdiction at the necessary depth, and has adopted an explicit policy of sequencing and prioritization. Underfunding is not incidental to the enforcement deficit; it compounds it, since thorough investigation is the principal means by which the Court can reduce its dependence on cooperative states.

The Independent Expert Review commissioned by the Assembly delivered its final report in 2020 with 384 recommendations addressing governance, judicial efficiency, prosecutorial practice, and internal culture, including workplace conduct. Implementation has been partial. The events of 2025 and 2026 have given the unimplemented governance recommendations a retrospective significance they did not previously carry.

8. Emerging Jurisdictional Frontiers

Proposals to extend the Court's subject-matter jurisdiction have proliferated as the character of mass harm has changed. Each merits assessment against both normative and capacity criteria.

8.1 Digital Evidence and Cyber Operations

Digital material—satellite imagery, geolocated video, intercepted communications, and open-source content—has become central to ICC investigations, most visibly in Ukraine. The Office of the Prosecutor has issued policy guidance on the collection and preservation of such evidence and has developed internal capacity for digital forensics. The advantages are considerable: digital evidence can be gathered without physical access to territory, which partially mitigates the cooperation problem. The corresponding challenges concern authentication, chain of custody, the volume of material requiring review, and the vulnerability of open-source evidence to fabrication.

Whether cyber operations themselves fall within existing definitions is a distinct question. The Rome Statute does not mention cyber conduct. The better view is that operations producing physical consequences equivalent to those of kinetic attack—disabling hospital systems or water treatment infrastructure during armed conflict—are already capable of constituting war crimes under Article 8 without amendment. Operations producing only informational or economic harm are not, and would require statutory change that is unlikely to be achieved.

8.2 Ecocide

Article 8(2)(b)(iv) already criminalizes intentionally launching an attack in the knowledge that it will cause widespread, long-term and severe damage to the natural environment, but only in international armed conflict and subject to a proportionality qualification that has rendered it effectively unusable. An independent expert panel convened by the Stop Ecocide Foundation proposed a freestanding definition of ecocide in 2021, framed as unlawful or wanton acts committed with knowledge of a substantial likelihood of severe and either widespread or long-term environmental damage. In September 2024 Vanuatu, Fiji, and Samoa formally proposed the addition of ecocide as a fifth core crime, and the proposal has attracted support from several European states.

The normative case is substantial. The strategic case is weaker. Amendment under Article 121 requires a two-thirds majority of states parties, and the amendment binds only ratifying states. An amendment ratified by a modest number of states, none of them major emitters or resource extractors, would add jurisdictional complexity without corresponding enforcement reach, at a moment when the Court is unable to prosecute the crimes already within its mandate. The proposal is better characterized as a long-term normative project than as an immediate institutional priority.

8.3 Terrorism and Transnational Crime

Terrorism was considered at Rome and excluded, principally because states could not agree on a definition and feared politicized application. Terrorist conduct may be prosecuted where it satisfies the elements of an existing crime, as in the Mali cases arising from the occupation of Timbuktu. Creating a freestanding

crime of terrorism would revive the definitional disputes that defeated the proposal in 1998 and would expose the Court to precisely the accusations of political instrumentalization it can least afford.

8.4 The Preventive Function

The Court's deterrent effect is the least measured of its functions. Preliminary examinations, public warnings, and early warrant applications may influence the calculations of those contemplating atrocity, and the Office of the Prosecutor has made increasing use of public statements directed at ongoing conflicts. Evidence of deterrent effect is necessarily indirect and contested. It nevertheless represents a form of influence that does not depend on custody of the accused, and is therefore comparatively insulated from the enforcement deficit.

9. A Reform Agenda

Reform proposals should be assessed by feasibility as well as merit. Amendment of the Rome Statute is slow and produces fragmented obligations. The reforms with the greatest expected value are therefore those achievable through the Assembly of States Parties, through the Court's own practice, or through bilateral and regional arrangements.

9.1 Cooperation and Enforcement

The Assembly should adopt a graduated response procedure for judicial findings of non-compliance, establishing that such findings trigger defined consequences rather than discretionary consideration: mandatory public reporting, suspension of voting rights on budgetary matters, and formal review of the state's continued eligibility for Bureau and committee positions. None requires statutory amendment. The absence of any consequence whatever is a policy choice, not a legal constraint.

Standing cooperation agreements with regional organizations—the European Union, the African Union, ECOWAS, and the Organization of American States—would reduce dependence on case-by-case bilateral negotiation. Expanding the network of witness relocation agreements is among the highest-value and lowest-cost interventions available, since the scarcity of relocation capacity directly limits which cases can be brought.

9.2 Prosecutorial Transparency

The Office of the Prosecutor should publish case-selection criteria in operational rather than general terms, and should give reasons for decisions not to proceed where an examination has been open for an extended period. Publication does not surrender prosecutorial discretion; it renders its exercise reviewable in the court of professional and public opinion, which is the only forum in which the selectivity critique can be answered. Time limits on preliminary examinations, whether binding or presumptive, would address a delay that has done disproportionate reputational damage.

9.3 Reparations Financing

Reparations should be financed through assessed contributions to a dedicated reserve rather than through voluntary donations. The present arrangement produces judgments that cannot be satisfied, which is corrosive of the Court's credibility with the victim communities it exists to serve. A modest assessed reparations levy, calculated as a fixed proportion of the regular budget, would provide predictable minimum funding while preserving the Trust Fund's capacity to attract voluntary contributions for its assistance mandate.

9.4 Governance and Internal Accountability

The events of 2025 and 2026 make institutional reform urgent. The Assembly should establish a standing independent oversight mechanism with defined jurisdiction over misconduct by elected officials, clear

procedural rules, defined evidentiary standards, and a specified route of review. Improvising a disciplinary process during an active proceeding produced eighteen months of uncertainty and left every participant—complainant, respondent, and institution—worse served than a settled procedure would have. The relevant recommendations of the 2020 Independent Expert Review should be implemented in full.

9.5 Complementarity as Strategy

The Court’s most durable contribution may be indirect. Positive complementarity—technical assistance, evidence sharing, and support for domestic war crimes units—enables prosecutions in national courts that possess the enforcement capacity the ICC lacks. Universal jurisdiction proceedings in European national courts concerning Syrian state torture illustrate the model. Investment in national capacity is less visible than prosecution at The Hague, but it addresses the enforcement deficit at its source rather than working around it.

Domain	Principal reforms	Instrument required	Horizon
Cooperation	Graduated non-compliance consequences; regional cooperation agreements; expanded witness relocation network	ASP resolution; bilateral agreements	Short (1–3 years)
Prosecutorial practice	Published case-selection criteria; reasoned non-prosecution decisions; limits on preliminary examinations	OTP policy; ASP resolution	Short (1–3 years)
Reparations	Assessed contributions to a dedicated reserve; simplified victim application procedures	ASP budget decision	Medium (3–5 years)
Governance	Standing independent oversight mechanism; full implementation of Independent Expert Review recommendations	ASP resolution; Rules amendment	Short (1–3 years)
Complementarity	Technical assistance to national jurisdictions; evidence-sharing frameworks	OTP policy; donor funding	Ongoing
Jurisdiction	Ecocide amendment; clarification of cyber conduct under Art. 8	Art. 121 amendment	Long (5–10 years)

Table 4: Reform Recommendations by Domain, Required Instrument, and Feasible Horizon

10. Conclusion

The International Criminal Court is simultaneously the most ambitious institution of the modern international legal order and among its most constrained. It exercises jurisdiction over the gravest crimes known to law while depending, for every arrest it makes and every witness it protects, on the voluntary cooperation of states whose interests its work may threaten. That asymmetry was not an oversight of the Rome negotiations. It was the price of adoption, and it has been paid continuously ever since.

The four questions posed at the outset admit of reasonably clear answers. The jurisdictional architecture accommodates great-power abstention poorly, and the Security Council referral mechanism intended to bridge the gap has proved both rarely used and structurally defective. The case law reveals that the Court's doctrinal reach has consistently exceeded its investigative capacity, and that its most reliable convictions have come from narrowly framed cases resting on documentary and physical evidence rather than from ambitious prosecutions of remote senior figures. The enforcement deficit is partly remediable—the Assembly's persistent refusal to attach consequences to findings of non-compliance is a choice rather than a constraint—but it cannot be eliminated, because a court established by treaty among consenting states cannot acquire coercive authority over states that have not consented. And the reforms most likely to matter are the unglamorous ones: compliance procedures, published criteria, funded reparations, functioning internal oversight, and sustained investment in the national jurisdictions that possess the enforcement capacity the Court lacks.

The events of 2026 have made the stakes unusually plain. A Court under external sanction for the content of its judicial decisions, and simultaneously obliged to remove its own Prosecutor for serious misconduct, is an institution at genuine risk. Yet the response to institutional failure is repair rather than abandonment, and no alternative forum exists in which a head of government may be called to answer for atrocity. Venezuela's withdrawal and the Sahel states' departure are real losses; Hungary's reversal and the surrender of Duterte are real gains. The balance remains, on any honest accounting, close.

What the Court finally supplies is not the reliable punishment of the powerful, which it has never been equipped to deliver, but the maintained proposition that sovereignty confers no licence to commit atrocity and that the question of accountability remains formally open even when it cannot be pressed. That is a modest achievement measured against the Rome Statute's preamble. Measured against its absence, it is not modest at all.

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