
IS THE INTERNATIONAL CRIMINAL COURT (ICC) EFFECTIVE OR STRUCTURALLY POWERLESS?

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ABSTRACT

More than two decades after its creation, the International Criminal Court (ICC) remains a source of both hope and frustration in the quest for global accountability. Born from the 1998 Rome Statute, the Court was meant to prosecute the gravest crimes—genocide, war crimes, crimes against humanity, and aggression—when national systems fail. Yet its dependence on state cooperation, limited jurisdiction, and the non-participation of major powers raise a persistent question: is the ICC structurally hobbled from the start, or has it managed to build real influence despite these flaws? This paper examines the Court’s design, enforcement struggles, complementarity principle, and evolving practice, with special attention to India’s longstanding reservations. Drawing on recent cases from Mali, Ukraine, Afghanistan, and elsewhere, it argues that the ICC occupies an imperfect middle ground—normatively significant but practically constrained. For non-party states like India, the experience offers valuable lessons about sovereignty, domestic justice, and the limits of international institutions in a multipolar world.

INTRODUCTION

Walking through the corridors of international law today, it's hard not to feel the weight of unfinished justice. From the devastation in Ukraine to the endless cycles of conflict in the Middle East and Africa, allegations of mass atrocities keep surfacing, each one reopening old wounds. In this world of recurring violence, the International Criminal Court (ICC) was meant to be a turning point—a tribunal that could finally hold even the most powerful accountable for humanity's worst crimes.

Born from the optimism of the post–Cold War era, the ICC was established under the 1998 Rome Statute and began its work in 2002. Its mission was bold: to prosecute genocide, war crimes, crimes against humanity, and aggression. The idea carried moral clarity—no leader, no government, no military official should ever be above the law. To people who had endured injustice and seen their perpetrators walk free, the ICC offered a rare glimmer of hope. When the Rome Statute was signed, the atmosphere was charged with conviction. Then–UN Secretary-General Kofi Annan called the Court “a gift of hope to future generations.” President Bill Clinton, despite reservations, signed the treaty in 2000, calling it an affirmation of America's moral leadership in global justice. Nelson Mandela's South Africa, still healing from its own painful past, championed the Court as a safeguard against returning to the darkness of systemic oppression. For a moment, it seemed international law might finally rise above the pull of raw power.

But over two decades later, the story feels far less straightforward. The lingering question—asked in classrooms, conferences, and diplomatic halls alike—is whether the ICC is structurally powerless by design or whether it has carved out real influence despite its flaws. For survivors of atrocities, this isn't a theoretical debate; it determines whether justice is tangible or merely symbolic. And for countries like India, which has never joined the Rome Statute, it raises deeper questions about sovereignty, national strength, and who gets to decide what justice looks like.

On paper, the ICC can point to meaningful progress. It has won convictions in cases from the Democratic Republic of Congo and, more recently, in the Al Hassan case from Mali—where the accused was found guilty of war crimes and crimes against humanity in Timbuktu. The ongoing investigations into Ukraine and Palestine keep the Court in global headlines, and the principle of complementarity—stepping in only when national courts fail—has quietly pushed

several countries to reform their justice systems.

Supporters see these as signs of evolution, proof that a culture of accountability is slowly taking root. The simple fact that powerful figures now face real legal scrutiny has shifted global norms. Every indictment, however limited, chips away at the old assumption that might makes right.

Yet, anyone who follows the ICC closely knows how fragile its power truly is. The Court has no police, no army, no means to enforce its own warrants. It relies completely on states—often the same states whose leaders might be under investigation. Without their cooperation, justice stalls. The 2023 arrest warrant for Vladimir Putin, over the unlawful deportation of Ukrainian children, made global headlines but little progress. Earlier cases, like Sudan’s Omar al-Bashir, tell the same story. And when countries like Italy and Hungary were found non-compliant in 2025, it only underlined how often politics trumps principle.

The reality is, many of the world’s major powers—the United States, China, Russia, and India—remain outside the ICC’s membership. That exclusion shields their nationals from its reach but also leaves the Court politically vulnerable.

India’s stance, shaped over decades, reflects a distinctly Indian balance of idealism and caution. Since the Rome Conference, New Delhi has warned against the Court’s broad prosecutorial powers and the political sway of the UN Security Council’s referral system—tools that could be exploited by powerful nations. The ICC’s failure to define terrorism as a core crime adds to India’s skepticism, given its own long battle against cross-border terrorism. These concerns aren’t about evading accountability; they come from faith in India’s constitutional democracy and its capable judiciary. India believes justice can and should be served at home, without yielding sovereignty to an external court that answers to no electorate.

These choices mirror the compromises that shaped the Rome Statute itself. To win broad ratification, states built constraints right into the ICC’s foundation. It was designed to be independent—but never entirely free from politics. As a result, the Court can pronounce, investigate, and instruct, but it depends on others to act.

The ICC’s new Strategic Plan for 2026–2029 admits as much. It acknowledges ongoing problems—non-cooperation from states, limited funding, digital threats, security challenges,

and the need to better center victims in its work. That level of honesty is refreshing, even necessary, but it also reveals how deep the structural limits go.

So, does all this make the ICC powerless? Not quite. Flawed as it is, the Court has redefined what accountability can mean in an international system that still bows to politics. It's imperfect justice—delayed, fragile, sometimes selective—but it's a start. And for India and other non-members watching from the sidelines, the debate isn't just theoretical. It forces a rethink of how we balance sovereignty with shared responsibility, power with principle, and the pursuit of justice with the realities of global order.

1. The Jurisdictional Framework: Ambition Tempered by Compromise

The Rome Statute's jurisdictional design reflects a careful, sometimes uneasy, balance. Article 12 grants the Court authority over crimes committed on the territory of a state party or by its nationals. UN Security Council referrals under Chapter VII can extend reach to non-parties, as seen in the Darfur and Libya situations. The Prosecutor's *proprio motu* power under Article 15 adds an independent trigger, subject to judicial authorization.

This structure was meant to give the Court teeth while respecting sovereignty. In reality, it leaves notable gaps. Non-party states like India largely fall outside unless crimes occur on a state party's territory or via Security Council action—the latter often criticized for introducing great-power politics through veto dynamics.

India's reservations during and after the Rome Conference centred on precisely these points. There was concern that an overly broad Prosecutor role could lead to selective or politically motivated cases. The exclusion of terrorism as a standalone crime was especially disappointing for a country that has faced repeated cross-border attacks. Similarly, the treatment of certain weapons issues felt inconsistent with the Statute's humanitarian aims. These points continue to shape India's non-ratification stance, even as domestic law addresses many overlapping offences.

Recent practice shows both the framework's reach and its limits. The Palestine investigation and Ukraine situation demonstrate how territorial jurisdiction and state referrals can bring complex, high-stakes cases forward. Applications for warrants in Afghanistan in early 2025, focusing on gender-based persecution under the Taliban, reflect evolving priorities. Yet such

moves frequently provoke jurisdictional challenges and political pushback, reminding us that legal reach does not always translate into practical authority.

2. Enforcement: The Achilles' Heel

If jurisdiction reveals design compromises, enforcement exposes the Court's deepest structural weakness. The Statute imposes cooperation obligations on state parties (Articles 86–102), but compliance remains uneven. High-profile fugitives have evaded justice for years, eroding credibility.

The Putin warrant, still standing despite ongoing geopolitical developments and peace talk discussions in 2025, illustrates the point vividly. Enforcement depends on states' willingness, which can waver under diplomatic, security, or domestic pressures—as seen in recent non-compliance findings involving European states. The 2026–2029 Strategic Plan prioritizes better diplomatic outreach and arrest warrant enforcement, but without independent tools, progress hinges on external goodwill.

That said, enforcement is not entirely illusory. When political alignments or regional pressures converge, arrests and trials have occurred. The Trust Fund for Victims has attempted to deliver reparative justice, though funding and access issues persist. The gap between aspiration and delivery remains the Court's most visible vulnerability.

3. Complementarity: Promise and Practice

Complementarity (Article 17) is often described as the ICC's smartest feature—it positions the Court as a backstop, not a substitute, for national systems. In theory, the mere possibility of ICC involvement can spur domestic action, a phenomenon sometimes called “positive complementarity.” In practice, assessing whether a state is “unwilling or unable” can become contentious, inviting accusations of bias, especially when early cases focused heavily on African situations. Recent diversification into Ukraine, Palestine, and Afghanistan has helped address selectivity critiques, but debates over genuine versus sham proceedings continue. For India, with its independent judiciary and comprehensive penal framework, complementarity strengthens the case against ratification. Our courts have handled mass violence cases domestically, often under ordinary law supplemented by specific statutes. This self-reliance reduces the perceived need for an external layer, while still allowing India to

engage selectively with international norms.

4. The ICC's jurisprudence offers a mixed but instructive picture.

Convictions in Congo cases established important precedents on child soldiers and sexual violence. The Al Hassan verdict in Mali (conviction in 2024, sentence finalized with adjustments in 2025) addressed crimes in Timbuktu, including cultural destruction and gender-related persecution, marking a step forward even if the sentence was relatively modest after reductions.

Acquittals and lengthy proceedings have sometimes fueled efficiency criticisms, but they also demonstrate rigorous evidentiary standards. Ongoing situations test the Court amid active conflicts and great-power stakes. Developments like warrants related to gender persecution in Afghanistan show an institution trying to stay relevant to contemporary atrocities.

From an Indian vantage point, these cases highlight both the potential and the pitfalls. While critical of the structure, one can appreciate how the Statute has influenced broader discourse on accountability, even indirectly.

5. India's Stance:

A Principled Distance India's decision to abstain at Rome and remain outside stems from deep-seated concerns rather than indifference. Fears of politicization, Security Council imbalances, and threats to sovereignty sit alongside practical worries about terrorism's exclusion and potential interference in sensitive internal matters.

6. Yet India's engagement with international criminal justice is nuanced.

It supported earlier ad hoc tribunals in principle and maintains strong domestic mechanisms. Some voices in Indian legal circles suggest that selective cooperation or observer roles could allow influence over future reforms—perhaps even pushing for amendments on terrorism—without full commitment.

7. In today's multipolar reality, with emerging issues like corporate complicity or technology-enabled crimes, India's perspective could help make accountability mechanisms fairer and more inclusive.

The International Criminal Court is neither a complete failure nor a resounding triumph. Its structural limitations—reliance on state cooperation, jurisdictional gaps, and political entanglements—often constrain its reach. Yet it has advanced legal norms, prompted domestic reforms through complementarity, and delivered tangible justice in select cases. The 2026–2029 Strategic Plan’s emphasis on victim-centred approaches and institutional resilience suggests ongoing adaptation.

For India, the ICC experience is a reminder of the enduring importance of strong national institutions alongside cautious international engagement. Rather than dismissing the Court outright, the focus should be on pragmatic improvements: better enforcement mechanisms, potential amendments to address gaps like terrorism, and enhanced capacity-building partnerships.

In a world where power frequently trumps law, even an imperfect ICC contributes to a climate where impunity is harder to sustain. Its value lies not in dramatic convictions alone, but in quietly reinforcing the idea that accountability matters. Moving forward, states like India can play a constructive role by engaging critically—shaping reforms while safeguarding core principles of sovereignty and equitable justice.

Suggestions for Reform

1. Strengthen Assembly of States Parties mechanisms for addressing non-cooperation.
2. Consider amendments to include terrorism and explore corporate liability.
3. Promote positive complementarity through technical assistance and knowledge-sharing with non-parties.
4. Encourage broader dialogue on making the Court more representative of Global South concerns.

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