
THE AUCTION OF ACCOUNTABILITY: POWER, POLITICS AND THE TRIAL OF GLOBAL JUSTICE

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ABSTRACT

The rise of international criminal law, which has no borders and is aimed at prosecuting crimes against humanity, has changed the landscape of global justice today. The era after the Nuremberg and Tokyo Trials established this branch of international law based on the principle of *nullum crimen sine lege*, which allowed for the prosecution of war crimes and crimes against humanity, which later included the crime of genocide. The International Criminal Court (ICC) today is the realization of this framework, which continues to require compliance for states based on the *erga omnes* obligation to comply with universal norms for the protection of rights and the protection of human dignity. Looking ahead, however, there will be significant challenges, such as addressing any perceived institutional bias, overcome restrictions on universal jurisdiction, negotiate the politics of state cooperation, and finally enforce judgments against state actors, especially those with power that fall outside the reach of enforcement. Against this background, the article considers international criminal law in more detail and its close association with human rights, as the first and fundamental step in the development of international criminal law. The future will need to find a balance of justice, inclusion and effectiveness, while still ensuring that new forms of international criminal jurisprudence respond to technological advances, geopolitical tensions and a search for global understanding.

Introduction:

1. Background:

International criminal law is a special segment of public international law and is meant to bring persons responsible for the most inhuman crimes, among others, to justice; namely, crimes against humanity, genocide, and war crimes. It originated at the end of World War II, with the establishment by the Nuremberg and Tokyo Trials¹ of a new principle of criminal liability under international law. State actors were earlier protected from prosecution of crimes in their territory under the system of international relations known as the Westphalian system. The coming of jus cogens norms, that are peremptory principles of international law from which no derogation is permitted, revolutionized global legal thinking.² Central to these developments was the idea that certain crimes affect all of humanity (*erga omnes*), thereby justifying intervention and prosecution beyond national borders.

The maxim of *Nulla poena sine lege*-no punishment without law-found its way into these first prosecutions³ as it tried to ensure that no person would be prosecuted for actions judged illegal at the time of their performance. This was an innovation from the classical international law in which *jus ad bellum*, or the right to war, and *jus in bello*, or the law of war, had hitherto dominated the sphere. However, the trials themselves also significantly furthered the development of precepts like command responsibility-by which military and political superiors could be held personally liable for actions of those persons.⁴ Therefore, although the Nuremberg and Tokyo trials laid the ground for a new form of ICL they also provided seminal legal theories that would change the jurisprudence landscape in many ways.

2. Thesis Statement:

This paper's thesis posits that, while International Criminal Law is an indispensable tool for promoting global justice, it must be transformed to meet current challenges and remain relevant in the face of significant difficulties. This paper argues that ICL must change in order to meet contemporary challenges—such as enforcement limitations, perceived biases, and political

¹ Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (OUP 2011).

² Antonio Cassese, *International Criminal Law* (2nd edn, OUP 2008) 63-65

³ Rome Statute art 22-24

⁴ Rome Statute art 28

complexities surrounding the prosecution of state actors—while continuing to commit to core human rights principles. It argues that ICL needs to balance between the demands of justice, inclusivity, and effectiveness for its future course.

Chapter 1: Evolution of International Criminal Law

The Nuremberg and Tokyo Trials marked the beginning of individual criminal liability before international law, eradication of the defense superior orders, and codification of crimes such as crimes against humanity and genocide. In fact, they form a basis for principles of ICL under modern principles to shape documents such as Rome Statute of the ICC. Following the WWII era, international criminal law received further development through instruments that included the Geneva Conventions of 1949 and 1977 as well as the Genocide Convention of 1948. Their emphasis was on jus cogens norms that no state could derogate from via its municipal laws. On the other hand, further developments of ICL include the ICTY and the ICTR in the 1990s. ICL developed doctrines like command responsibility and joint criminal enterprise while confirming individual responsibility for heads of state. These tribunals indicated that sovereign immunity would no longer shield top-level officials from criminal prosecution. Taken together, these legal developments helped initiate the International Criminal Court and formed the basis for modern-day methods of prosecuting international crimes around the world.

1.1 Nuremberg and Tokyo Trials:

As we are Setting aside the historical importance and legal precedents established at the Nuremberg and Tokyo Trials, this is surely one of the most vital moments in the history of International Criminal Law. The trials introduced the concept of individual liability under international law ⁵- above the old notion of state sovereignty immunity; holding individuals responsible, including military leaders and political officials, for their involvement in the commission of egregious acts. The legal principles emerged from these trials included the rejection of the superior orders defense,⁶ commonly referred to as the Nuremberg defense, in which individuals claimed they merely were 'following orders' to escape liability for war crimes and crimes against humanity.

⁵ Heller (n 1) 4-7

⁶ Charter of the International Military Tribunal (adopted 8 August 1945) 82 UNTS 279, art 8

The Nuremberg Trials also were central to codifying certain international crimes against humanity (a defendant's actions being defined as an attack on a civilian), ultimately becoming the foundational legal principle found in the Rome Statute of the International Criminal Court⁷(ICC) and a principle that is vital to international criminal law to this day. Related to this, in the interests of justice no one would go unpunished based on rank or status: *nullum crimen sine poena*, no crime without punishment was upheld in this case. These trials also brought into the world the concept of genocide as a crime,⁸ which would eventually be formally codified in the 1948 Genocide Convention.

The Tokyo Trials were similar in legal structure but differed in that they focused on crimes committed in the Asia-Pacific theater. Both sets of the trials laid down a compelling precedent concerning accountability for violations of the most egregious order of international law, highlighting that the individuals and states could equally be held to account for international crimes. This departure in legal mindset from group to individual accountability would indeed shape the designing of all subsequent international legislation, namely the Geneva Convention, Genocide Convention, and culminating in forming the International Criminal Court itself.

1.2 The Post-WWII Activities:

Following the Nuremberg and Tokyo Trials, the International Criminal Law continued to enhance itself with the passing of numerous international conventions, treaties, and the establishment of different tribunals which aimed to build upon the principles laid during the Post World War II Era. In the framework of both international and non-international armed conflicts, the parties have duties ascribed by the rules of wars based upon the principle of *jus in bello*. This would set the tempo of basic tenets of international humanitarian law embedded in the 1949 Geneva Conventions and their Additional Protocols of 1977⁹. More so the 1948 Genocide Convention champions the idea of *jus cogens*¹⁰-a body of norms which are accepted globally as preemptive standards banning crimes such as war crimes and genocide and are not subject to override by domestic legislation or political factors. The 1990s saw the establishment by the UN Security Council of ad hoc international criminal tribunals such as that of the ICTR

⁷ Rome Statute art 7

⁸ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 ('Genocide Convention')

⁹ Geneva Conventions of 12 August 1949 (entered into force 21 October 1950) 75 UNTS 31-83

¹⁰ Genocide Convention (n 8)

and the ICTY¹¹ in reaction to war crime violations. These tribunals were formed under Chapter VII of the UN charter showing the will of the global community to uphold the subject of international law and ensure that accountability for crimes committed against humanity leads to justice. These tribunals were vital in countering the application of humanitarian laws and in promoting that one is bound to face the law for horrible misdeeds while addressing wartime atrocities. It played an important role in the formation of the legal doctrines that later defined command responsibility and joint criminal enterprise (JCE)¹², and in both areas, there has been an expansion in liability for those in positions of power.

In addition to resolving the issue of individual accountability the tribunals made it clear that senior officials and heads of state could no longer claim sovereign immunity in order to evade prosecution. The ICTY put this principle to the test when it indicted former Yugoslavian President Slobodan Milošević¹³ for crimes against humanity genocide and war crimes. Because they established the foundation for the International Criminal Court and offer a guide for the prosecution of international crimes in the twenty-first century the ICTY and ICTR make a significant contribution to ICL.

Chapter 2: International criminal law as it stands today

The birth of the International Criminal Court (ICC) in 1998 marked one of the single most important moments of both the setting and application of international criminal law. It was to be created under the Rome Statute: the ICC has the function of carrying individual responsibility for some of the gravest crimes against humanity. These crimes encompass aggression, war crimes, crimes against humanity, and genocide—acts that have inflicted immense suffering and pose ongoing threats to global peace and justice. The ICC which operates under the complementarity principle only steps in when national courts are unable or unwilling to bring the case successfully. By tackling impunity for severe crimes the ICC plays a vital role in maintaining justice discouraging further atrocities and strengthening the international community's adherence to human rights and international law. Landmark Case Thomas Lubanga Dyilo The former rebel leader from Congo is one among them whose case reveals how far the ICC can push with regard to prohibition in child soldiers' recruitment. In general, the basis for ICC has been laid out under principles like erga omnes obligations and

¹¹ UNSC Res 827 (25 May 1993) UN Doc S/RES/827, UNSC Res 955 (8 November 1994) UN Doc S/RES/955

¹² Prosecutor v Tadić (Appeal Judgment) IT-94-1-A (15 July 1999) [ICTY]

¹³ Prosecutor v Milošević (Indictment) IT-02-54 (22 November 2001) [ICTY]

aut dedere aut judicare, either prosecute or extradite. It's mainly the major treaties, among them being 1948 Genocide Convention, 1949 Geneva Conventions, and Rome Statute that defined the crimes as well as the mechanisms to prosecute them. Other important tribunals include Special Court for Sierra Leone as well as Extraordinary Chambers in Cambodia with their crucial parts in implementation of ICL to secure fair trials and due process, with impunity for those responsible for international crimes.

2.1 International Criminal Court (ICC):

The 1998 adoption of the Rome Statute created the International Criminal Court (ICC) ¹⁴which is a revolutionary step in the application of international criminal law (ICL). The ICC is committed to prosecuting those accountable for the most grave crimes of international concern such as crimes against humanity war crimes genocide and aggression. It is the first permanent international court of its kind. By developing a strong legal framework for dealing with crimes that endanger peace security and human dignity the courts creation reflects the determination of the international community to hold those responsible for such horrible acts accountable advance justice for victims and discourage similar crimes in the future. The ICC exercise of its jurisdiction under the complementarity principle ¹⁵only happens where courts are unable or unwilling to try such crimes thus complimenting but not displacing the domestic systems of the country.

In its landmark cases, the ICC has had the most conspicuous case in 2012 with the conviction of Thomas Lubanga Dyilo. Him being one of the ex-rebel leaders from the Democratic Republic of the Congo, he was convicted of the offenses against the recruitment and conscription of children ¹⁶into armed conflict and, inter alia, of war crimes under specific provisions of the Rome Statute prohibiting enlistment of children less than 15 years into an armed conflict. It marked a point crucial in the history of ICC because it was its first conviction and commitment to enlisting the practice of having child soldiers, proscribed by IHL. Other than this, in a nutshell, the case relied upon mens rea-a term coined for establishing the criminal intent behind proving liabilities in international crimes.

The ICC has a mandate founded on erga omnes obligation; this obliges all states to respect and

¹⁴ Rome Statute

¹⁵ Rome Statute art 17

¹⁶ Prosecutor v Lubanga Dyilo (Judgment) ICC-01/04-01/06 (14 March 2012) [ICC]

protect universal human rights norms. Another critical principle is that of *aut dedere aut judicare*, which underpins the working of the Court so that people who commit international crimes are either prosecuted by national courts or extradited to the ICC for prosecution. However, the ICC has some problems; for one, it is viewed as biased against African nations and, second, its approach to state cooperation in enforcement of arrest warrants is terribly problematic. Such problems have critical issues as to whether the Court really achieves the vision of delivering worldwide justice and holds people liable for the most heinous crimes of all time.

2.2 Legal Context:

It finds its bedrock in international treaties, conventions, and customary principles of international law aimed at punishing impunity of crimes so heinous in nature. The key instruments of such a framework include the Genocide Convention, 1948¹⁷; Geneva Conventions, 1949;¹⁸ and the Rome Statute of the ICC¹⁹, which not only codified such crimes as genocide, war crimes, and crimes against humanity but also established a framework for both national and international mechanisms to prosecute such crimes.

The Rome Statute invests the ICC with the power to prosecute a person for international crimes where certain conditions are met and include principles of territoriality and nationality. The Statute also lays down the rules of procedure and evidence for the operation of the Court,²⁰ including rights of the accused, obligations of states parties, and standards of proof required for criminal liability. The Rome Statute further embraces the complementarity principle, thus providing an assurance that the ICC shall only interfere when there are unwilling or incapable national jurisdictions to prosecute. Besides the ICC, there are several other tribunals and courts that perform the core role of implementing ICL. As is the case of the Extraordinary Chambers in the Courts of Cambodia, ECCC for the purpose of trying Khmer Rouge crimes, Special Court for Sierra Leone (SCSL) was intended to try war crimes committers who happened to committed their crime during the time of the Sierra Leonean Civil War. They apply the principles of a fair trial and due process such that individuals accused of international crimes are granted rights and protection to be on par with their domestic law.

¹⁷ Genocide Convention (n 8)

¹⁸ Geneva Conventions (n 9)

¹⁹ Rome Statute (n 14)

²⁰ Rome Statute (n 14) arts 64-72

Chapter 3: Future Prospects and Challenges

Key cases represent the evolution of ICL with each tackling aspects of international justice: how global accountability mechanisms shape themselves during Syria and dealing with a political aspect which affects Syria but on issues regarding jurisdiction where sovereignty can still override accountability through universal jurisdiction and domestic courts. The historic case against Thomas Lubanga Dyilo by the ICC for the utilization of child soldiers demonstrates the commitment to addressing severely violations of human rights and personal culpability under international law. Likewise, the conviction of Ahmad Al Faqi Al Mahdi for the destruction of cultural properties in Timbuktu demonstrates the growing development around protecting cultural properties as a war crime, a principle that is based on the Hague Conventions. These situations highlight the need for stronger international cooperation, more active evidence collection and presentation, and broader frameworks of prosecution. Moving forward, the ICL will need to be able to tackle issues at higher levels of leadership, more rigorous investigatory capacity, and stronger international commitment to human rights, cultural preservation, and universal accountability to provide justice across political and regional borders.

3.1 Ongoing Trial of Alleged War Criminals in the Syrian Conflict:

The cases of such alleged war criminals and his prosecution in Germany exemplifies both our notion that the opportunities and challenges that may lie ahead for the development of international criminal law. The Syrian conflict has seen some of the most egregious crimes imaginable: crimes against humanity, war crimes, and genocide, testing international criminal justice systems. Even though Syria is not a party to Rome Statute, the International Criminal Court has applied pressure of accountability on the issues through third-party jurisdiction and universal jurisdiction.

The only example that has received significant international media attention has been the cases against Anwar Raslan, former Syrian intelligence officer. ²¹Raslan is on trial in Germany for war crimes – he is accused of being a mastermind for torture, killings, and rape in detention centers. His case reinforces the point that national courts can and will be called upon to process cases involving international crimes when and if international criminal tribunals cannot or do

²¹ Deutsches Institut für Menschenrechte, 'Accountability for Syrian War Crimes: The Case of Anwar Raslan' (2022) <<https://www.institut-fuer-menschenrechte.de>> accessed 15 December 2024

not assert jurisdiction. Raslan's case also signifies a new trend of using universal jurisdiction²² to prosecute serious violations of ICL, it exemplifies that ICL is advancing and evolving as an accountability mechanism.

Nonetheless, the Syrian conflict has exposed long-standing problems, such as the possibility of enforcing accountability against an individual like Bashar al-Assad, whose actions are permitted in the name of geopolitical alliances and the idea of state sovereignty. While jus cogens norms are intended to protect individuals beyond reproach, political realities still almost always preclude prosecution and exhibit a fundamental limitation of ICL.

The trials related to the Syrian conflict demonstrate, even in light of the political complexities of accountability against state actors, a desire to enhance international mechanisms of accountability as a whole. This includes improving international cooperation, reforming enforcement structures, and ensuring political will in the face of such state actors. All of this must occur while maintaining an initial focus on witness cooperation and credible evidence from conflict actors, including, as practical challenges: practicality, ensuring safety in an unstable environment, poor infrastructure, etc.

Furthermore, these trials underscore the need for transitional justice mechanisms to facilitate a balance between accountability, peace, and reconciliation. In areas of such fragile regions of war, balancing political desires and raw accountability will require careful planning and the additional collaboration of international stakeholders and players. The quest for justice has to interact with the community, the regional bodies, and diplomacy to give the overall architecture a form of accountability, reconciliation, and sustainable peace. While the Syrian cases mark progress, they are a call to strengthen global commitment and resources to uphold international justice across political divides and regional complexities.

3.2 Highlighted ICC's Role in Addressing Child Soldier Recruitment Globally:

The recruitment and use of child soldiers, a grave violation of international humanitarian law and the Convention on the Rights of the Child, remain a critical focus of the ICC's work in promoting global justice. This is the case of Thomas Lubanga Dyilo, which proved to be a

²² Human Rights Watch, 'Syria's Justice Challenges: Universal Jurisdiction Cases' (2022) <<https://www.hrw.org>> accessed 15 December 2024

landmark one,²³ because the ICC finally decided to tackle this egregious violation of human rights. Lubanga was a warlord of the Democratic Republic of the Congo who recruited and conscripted minors under 15 years into armed groups. This case was historic because for the first time, it had set the precedent by prosecuting the first individual successfully specifically on charges of recruiting and using child soldiers and hence established a powerful precedent in international criminal jurisprudence.

This has highlighted the important role customary international law plays²⁴ in forming the ICC's application, such as in matters concerning child recruitment into military, a *jus cogens* principle of universal application. Concerning that the court's jurisdiction, the court's interpretations of the Rome Statute related to non-international armed conflict represented an extension to what we call the criminal behavior that could result in prosecution by its court. It also made the individual accountability of a single perpetrator through the responsibility of Lubanga for recruiting children to his cause, sending the message that those in positions of authority would be held accountable as individual perpetrators.

More than what we call just an immediate legal effect, the Lubanga case represented the psychological and physical harm inflicted upon child soldiers and why it is necessary for international mechanisms to deter this behavior. The ICC's possibility of prosecuting these offenses is an essential part of breaking the cycle of impunity that has persisted in allowing child soldiers to be utilized in armed conflict around the world.

Looking ahead, the ICC's efforts against child soldier recruitment will be more intensified because of the increasing reliance of non-state armed groups and terrorist organizations on such practices, where children are often used as tools of war. The challenge lies in ensuring that prosecutions reach beyond the lower-level commanders to the political and military leaders who orchestrate and condone such crimes. This will call for strong international cooperation, mechanisms of gathering evidence in the conflict area, and the strengthening of the national legal systems in place to ensure accountability at every level. With such approaches, the ICC will successfully advance its mission in securing the rights of children as well as ensuring justice around the world.

²³ Prosecutor v Lubanga Dyilo (Judgment) (n 16)

²⁴ Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law vol 1 (CUP 2005) Rule 135

3.3. Recognition of Destruction of Cultural Heritage as a Crime Under War Law:

In fact, the conviction by the International Criminal Court of Ahmad Al Faqi Al Mahdi in 2016 for destruction of cultural heritage in Timbuktu²⁵ was a remarkable victory for international criminal law. A militant of an armed Islamist group aligned with al-Qaeda, Al Mahdi was convicted as he intentionally directed attacks to religious and historical monuments as UNESCO World Heritage sites. This marked the first time the ICC prosecuted a person based solely on the destruction of cultural heritage, and thus was a landmark precedent for the future cases and marked growing recognition of cultural heritage protection as an important component of international justice.

Al Mahdi highlighted the development aspect of International Criminal Law in relation to the intent to destroy cultural heritage, now more widely understood as serious harm to human culture. In Accordance to Article 8 of the Rome Statute, a war crime is defined as the intentional direct attack against property of cultural significance,²⁶ which is property whose cultural significance is dedicated to religion, art or science, during an armed conflict. The harm done to local communities is seen as, equally, an attack against their shared human cultural identity. This principle was built upon in the Hague Conventions of 1899 and 1954,²⁷ which developed the overall legal regime for the protection of cultural property in armed conflict. The conviction of Al Mahdi reaffirmed such principles, and reaffirmed that even in the midst of war and internal conflict, it is necessary to protect the cultural heritage of humanity.

The prosecution of Al Mahdi was indeed said to have strongly focused on individual responsibility in international law, taking leaders of armed groups responsible for their actions or that of their subordinates. Now, the Al Mahdi case has opened the door for similar prosecutions in armed conflicts that have seen an emphasis on targeting cultural heritage in wars, such Syria, Iraq and Afghanistan, as well as crimes that purposely destroy historic and cultural monuments. The case demonstrated - beyond its immediate consequences for cultural crimes - that international justice mechanisms could address not just mass atrocities, but also crimes that threaten the historical and cultural fabric of societies.

²⁵ Prosecutor v Al Mahdi (Judgment and Sentence) ICC-01/12-01/15 (27 September 2016) [ICC]

²⁶ Rome Statute (n 14) art 8(2)(e)(iv)

²⁷ Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted 14 May 1954, entered into force 7 August 1956) 249 UNTS 215.

As we move forward, the key question is whether these prosecutions do not simply stop with rank-and-file individuals, but extend to those at the leadership level who have aided or, at minimum, allowed such attacks. Part of the international cooperation that is going to be necessary to address this problem more seriously will involve developing stronger investigative and prosecutorial mechanisms on this issue. So this Al Mahdi case remains one of the markers in which the international community is appealing to try to further harden the protection of its cultural heritage and furthermore ensure those persons try to erase it through violence and conflict are held accountable.

Chapter 4: Challenges in the Trajectory of ICL

There are also many and different issues pertaining to International Criminal Law (ICL) itself, such as the perception that the ICC is biased towards African defendants and that it has directed a disproportionate amount of attention toward African countries while limiting its reach towards powerful nations (the case of Omar al-Bashir is an example). While universal jurisdiction is essential to the future of ICL, states have been unwilling to pursue universal jurisdiction issues because of state sovereignty, the potential for political opportunism, and practical challenges associated with prosecuting individuals -- which is for example collecting evidence and/or providing a fair trial. These challenges call into question the legitimacy of ICL and require efforts at reform, better state cooperation, and an overall more thoughtful process of balancing justice and political stability.

4.1 ICC's Perceived Bias Against African Defendants:

A serious allegation has been levelled against the ICC, specifically with regard to being disproportionately focused on African defendants.²⁸ As a result, many have referred to the ICC as a neocolonial organization delivering selective justice. So far, most investigations and/or prosecutions involving the ICC first initiated since its establishment, have included-a, majority of its African situations, like Uganda, the DRC, Sudan, and Kenya. This has further created a notion that the Court is biased and acts for the benefit of the Western powers and hence fails to gain much credibility among the African states.

²⁸ Makau Mutua, 'The International Criminal Court: Neo-Colonialism or Law?' (2016) 33(2) Michigan Journal of International Law 23, 25-30

This principle of complementarity is, therefore, supposed to guide the jurisdiction of the ICC²⁹ in the sense that it only intervenes when national jurisdictions refuse or are incapable of trying the case. However, criticism would assert that application of this principle has been rather one-sided, especially in targeting much weaker states in Africa than ignoring crimes committed by much more powerful states outside this continent. This has brought accusations of double standards and selective prosecution that undermine the legitimacy and effectiveness of the Court in promoting global justice.

One of the most famous cases that illustrate this issue is against Sudanese President Omar al-Bashir³⁰ on charges of war crimes and crimes against humanity in Darfur. He could travel freely to several African countries without being arrested despite the issuance of an arrest warrant by the ICC. The accusations are thus leveled that the ICC lacks the authority and influence to enforce judgments against powerful state actors. This has further heightened the view that the ICC is indeed incapable of addressing crimes by big-state leaders,³¹ thus fostering the concept of bias by the ICC towards African nations further.

These measures, however, require that the ICC take steps towards diversifying its caseload to show that it can, and is willing, to prosecute people from every corner of the world irrespective of their political power and influence. This will entail cooperation from states outside of Africa, but also, perhaps, reform of the structure and procedures of the Court to make it a more fair and impartial organ of justice. Further, there is a need for ICC to improve its relations with the African states through organizations like the African Union as an avenue to building trust between each other and more cooperation in the pursuit of international justice.

4.3 Enforcing Judgments Against Powerful State Actors:

The greatest challenge for ICL, therefore, lies in compelling powerful state actors to execute judgments against them. International politics are still ruled by the doctrine of state sovereignty. In many instances, sovereign states are unwilling to abide by the process of internment of their leaders and officials in the courts outside the state borders. These kind of situations in which accused of international crimes like heads of state or high ranking military officials continue

²⁹ Rome Statute (n 15) art 17

³⁰ Prosecutor v Al-Bashir (Warrant of Arrest) ICC-02/05-01/09 (4 March 2009) [ICC]

³¹ Kerstin Mills, 'Bashir is Dividing Us': Africa and the International Criminal Court (2012) 34(2) Human Rights Quarterly 404

to escape international justice systems and therefore undermining the legitimacy and effectiveness of ICL.

The example of former Sudanese President Omar al-Bashir was indeed a true representation of the difficulties surrounding enforcing judgements against powerful state actors.³² The accused was charged by the International Criminal Court for war crimes, genocide and crimes against humanity committed in Darfur; in the months following the charge al-Bashir was free to travel to numerous African countries without being arrested. This is representative the limitations of the ICC enforcement mechanism³³ as the Court is reliant on states to cooperate with the Court to execute arrest warrants and to prosecute individuals accused of international crimes.

Yet Another complicating factors that we see when pursuing judgements against powerful state actors is weighing the normative demands of justice against the practical needs to maintain political stability. In some incidents, prosecuting sitting heads of state or high officials will actually exacerbate the conflicts, or destabilize clients that are already fragile, causing greater violence and repression to human rights. This has led to a discussion among the international community about whether justice should consider factors of peace and security first and in some places of conflict.

The international community as what we see today should work to enhance the enforcement mechanisms of international criminal justice institutions like the ICC and also create a body to check the efficiency and functioning of ICC. There needs to be greater political will from states for the Court to work, along with reforms to the structure and procedures of international courts to make sure that they can try individuals for international crimes while not letting political or military immunity to affect those processes. The international community should also devise new mechanisms to balance accountability for crimes with political stability, especially in an international context, in or relating to conflict-affected areas of the globe.

Chapter 5: Navigating the Future of International Criminal Law (ICL)

The future of International Criminal Law (ICL) of what we know of it today is that it needs to be balanced and prioritize accountability, inclusivity, and effectiveness. It will require a

³² Prosecutor v Al-Bashir (n 30)

³³ Dapo Akande, 'The Legal Nature of Security Council Referrals to the ICC and Its Impact on Al Bashir's Immunities' (2012) 7(2) Journal of International Criminal Justice 333

renewed commitment to the complementarity doctrine, national systems with supported capacity, and improved and enhanced cooperation through mutual legal assistance. Addressing the perceived bias of the ICC and making sure that prosecutions are brought from everywhere based on relevant legal criteria will promote inclusivity. Human rights should be a priority, balancing the requirement to protect the victim, to protect the right to a fair trial for those accused, and ensuring that states are held accountable through the responsibility to protect (R2P) doctrine. A unified strategy for ICL that cooperates, maintains and enforces human rights and accountable process is the only way to protect and advance global impactful accountability and justice for international crimes.

5.1 Nuanced Approach:

It will be highly necessary to balance justice, inclusiveness, and effectiveness in a proactive approach to International Criminal Law in the future. The dynamics of complex conflicts and even more exacerbated offenses that require greater dynamics of an international jurisdiction will involve multi-level strategies to competently navigate the diverse sociopolitical and legal landscapes. With the escalation of ICL postcolonially or in the global south, it will have to discover a balancing act to reconcile competing demands of justice for victims and their families in terms of accountability and prosecution, attempts to uphold State sovereignty, cooperate with other states, and to not instrumentally utilize law to achieve political ends.

Alongside a more multi-faceted and nuanced approach could be to refine the doctrine of complementarity, which governs the relationship between national jurisdiction and international jurisdiction. Under the doctrine, the ICC can only intervene when states are "unwilling or unable" to prosecute serious crimes based on international law. Its application of complementarity has to be calibrated to avoid allegations of overreaching or neo-imperialism. ICL institutions like the ICC need not only to invoke the principle of subsidiarity—it may also empower states domestically to enable justice for victims of crimes as per international law. In this case, subsidiarity, the legal principle wherein responsibility of justice for crime is principally for the Special Court or Court of Last Resort, such as the ICC, while also encouraging states to be primarily responsible for prosecution.

We cannot overestimate the significance of cooperation and mutual legal assistance. The effectiveness of ICL depends on states cooperating voluntarily in areas such as evidence collection, witness protection, and arrests and prosecutions. An integrated strategy would

include bettering international legal frameworks that would better connect national and international systems of laws. The successful prosecution of international crimes are built around these mechanisms including mutual legal assistance and extradition treaties.

In addition, the future of ICL is going to have to be more inclusive in the areas it concentrates on and the prosecutions it executes. The perception of the ICC as disproportionately focused on Africa must be addressed, and ICL institutions must demonstrate a commitment to prosecuting international crimes in all regions of the world. Diversification of geographical scope for investigation is essential, and that case selection has to be free of political influences by being based on objective legal criteria. An insightful approach is also about ensuring recognition of the rights of the accused, the right of being presumed innocent until found otherwise, and upholding trials at the standards set out by due process and guarantees of a fair trial.

In sum, a differentiated approach to ICL's future requires recalibrating its procedural and substantive elements so that ICL functions fairly, inclusively, and effectively. In this way, ICL can continue to evolve into a credible mechanism for providing justice to victims of serious atrocities by adapting to changes in the nature of international crimes and fostering deeper cooperation with national legal systems.

5.2 Human Rights at the Forefront:

With the evolution of international criminal law, human rights must be preserved. Human rights must be at the heart of the development of international criminal jurisprudence and guide prosecution as well as protection of victims. The most grave violations of international law include genocide, war crimes, crimes against humanity, and torture—all being grave violations of fundamental human rights, and the pursuit of justice for these crimes is intrinsically linked to the protection of human dignity.

One of the most important ways of promoting human rights is protecting their beneficiaries, particularly victims and witnesses ³⁴in international criminal trials. Many victims of mass atrocities will have to suffer from the psychological impact, social isolation, and displacement; consequently, their participation in proceedings involving legal issues is always inadmissible. ICL institutions, such as the ICC, are obliged to provide for the rights of victims in the form of

³⁴ Rome Statute (n 14) art 68

proper assistance, protection, and representation in trials, by victim impact statements and reparations. Such obligations represent the right to remedy and reparation under international human rights law.³⁵

However, ICL would observe in these rights guarantees that an accused is granted the fundamental rights under legality principles- no crime be punishable without a law that defines its crimes and provides reasonable guarantees for fair trial and protection from unfair or unjust prosecution- right to assume innocence presumed until proven or convicted for the crimes brought against that person. These rights are crucial to prevent miscarriages of justice as well as the proper conduct of prosecutions according to law. The principles of human rights require ICL institutions further vigilance against political manipulations so that international criminal justice will not be used as tools for political retribution.

Moreover, this would further require human rights to occupy the center stage of the future of ICL in holding states responsible for violation of human rights by state officials. This is the case because states are, in most instances, wielders of powerful influence; hence, achieving accountability to crimes committed under the label of national security, anti-terrorism, and other interests of the state is tough. While state actors are responsible for egregious human rights violations, these crimes must not go unrewarded. The legal and moral duty of the states and the international community to take proactive steps to prevent mass atrocities is what we call as Responsibility to Protect or (R2P).³⁶ This encompasses various severe violations of human rights, including genocide, crimes against humanity, and war crimes. Through fast and concerted action, the responsibility to protect seeks to achieve justice, hold parties accountable, and preserve the core values of dignity and international law.

In conclusion, human rights should be the foundation upon which ICL will move forward in its future development. With a focus on the protection of victims and ensuring the rights of accused persons, ICL can further be an important instrument for serving justice and upholding basic international human rights law tenets.

Chapter 6: Criticism of International Criminal Law (ICL)

The progression of International Criminal Law (ICL) as what we are seeing contemporarily

³⁵ Rome Statute (n 14) art 75

³⁶ UNGA Res 60/1 (2005) UN Doc A/RES/60/1, paras 138-139

must consider longstanding problems related to selective prosecution, ineffective enforcement mechanisms, and political influence. The International Criminal Court's (ICC) attention on prosecutions in Africa is an example of the perceived partiality, and violations of the legal principle of equality before the law, evoking neo-colonial concerns and an imbalance of geopolitical favor. Weak enforcement of legitimate laws occurs as long as states are legally compelled to cooperate to some degree because there is no global policing actor, which allows states and those with power to evade responsibility for violations of law, and continues with prosecutions of international criminals like Omar al-Bashir, as well as, U.S. insensitivity to the ICC's authority when commensurate violations of international law occurred in Afghanistan. This political manipulation of ICL limits impartial international justice, as states capitalize on ICL to serve their geopolitical interests rather than true accountability. A legal double standard is created in the enforcement of criminal laws where certain states are nationally charged, and others states escape accountability. A legitimate and credible ICL must comply with the legal doctrines of *nullum crimen sine lege*, *pacta sunt servanda*, and subsidiarity, and not only rely on evidence produced in trials to adduce justice, but rather access to transparent, impartial, and collectively produced evidentiary information should be taken to bring about an objective assessment of law to produce justice for those not only prosecuted but also world political actors violating human engagement. To be achieved, justice must remain free from political influence and work toward the underlying principles of universality and accountability.

6.1 Selective Prosecutions and Bias Against Africa

One of the very principal criticisms of ICL, with particular focus on the ICC stands to be what we call, the selective prosecution with an overt bias towards African countries.³⁷ From inception, the ICC has primarily prosecuted Africans while it has either deferred or avoided prosecuting powerful Western countries, along with their allies, for crimes committed in Africa or elsewhere. This is perceived as a neo-colonial practice where the ICC only seeks justice against weaker and politically unstable states while ignoring alleged crimes committed by stronger institutional or corporate actors. It has been argued that the ICC has been utilized unevenly such that justice does not equal justice before the law or legal equality. This has had implications for the legitimacy of the ICC and especially in African states where the principle of universal jurisdiction should provide a remedy for violations no matter the location or the

³⁷ Mutua (n 28) 35-40

nationality of the perpetrators.

For our understanding we can take a instance, that the efforts to prosecute Sudan's Omar al-Bashir but not Western perpetrators of crimes, such as in Afghanistan or Yemen, points to a biased application of justice. In 2016, some African countries threatened to withdraw from the Rome Statute³⁸ and accused the ICC of being biased against Africa. This approach is opposed to the legal principle *audi alteram partem*, that both parties have a right to present their case. A system will only succeed in preserving the universality of the doctrine if it is not political and it administers justice on law and facts alone rather than on political power. It is therefore essential to create a more just international legal world in which the justice system would be impartial, that excludes any political interference, and not dominated by a powerful state. It is only with such a commitment that the ICC can earn respect and legitimacy again as a legitimate global actor.

6.2 Enforcement Limitations and Ineffectiveness

Weak mechanisms for the ICC and other international tribunals continue to represent a significant practical limitation for the enforcement of International Criminal Law. This also fundamentally flaws the reliance of such systems on national governments to arrest and surrender the individuals accused of international crimes, which creates a crucial loophole through which powerful persons and nations can easily run from justice without any threat of prosecution. For example, what we saw in the case of Omar al-Bashir it is demonstrated how a host state can disregard the international legal obligation ³⁹to enforce ICC warrants. The absence of an independent international police force, coupled with the lack of legal means for enforcing ICC warrants, increases not only the incitement to violate fundamental norms of International Law, but also the concept of ICC State Cooperation obligations under the legal doctrine of subsidiarity.

Additionally we tend to miss one of the most important part being, the case of convictions there is considerable difficulty in enforcing sentences. This is largely because most powerful states disregard or refuse acquiescence to ICC decisions, and therefore deprive the Court of any ability to effectively enforce legally binding decisions. The ICC for example did not receive

³⁸ Tim Murithi, 'The African Union and the International Criminal Court: An Embattled Relationship?' (2012) 1 The International Criminal Court and Africa 1, 10-15

³⁹ Dire Tladi, 'The Duty on South Africa to Arrest and Surrender President Al-Bashir Under South African and International Law' (2015) 13(5) Journal of International Criminal Justice 1027

any cooperation from Russia in relation to its arrest warrants for the Ukraine conflict.⁴⁰ The United States had previously dismissed ICC jurisdiction over war crimes in Iraq and Afghanistan. Such inaction strips the legality of decisions as a consequence to ICL principles, specifically *pacta sunt servanda*; meaning decisions made to be binding become meaningless. In these cases, the basis of the ICC's reliance on diplomacy and national adherence to the power of legally violating decisions becomes a fundamental paradox that weakens the authority of the Court, and prescribes a need to either create legally binding agreements that can be enforced in regional alliances or collective legal cooperatives to bind the level of accountability necessary at every level regardless of global political interest. The only way to create strong mechanisms of enforcement is through enhanced international cooperation, mutual legal assistance treaties (MLATs), and coordinated regional consensus guidelines that provide a system in which no state could renege justice from cooperation refusals or politicians indicating otherwise.

6.3 Political Manipulation and Double Standards

The term Political manipulating and double standards in the use of ICL is a reoccurring problem. International criminal justice is typically put to use as a political tool, rather than as a real justice process. States often manipulate the ICC for the state's geopolitical objectives. This would include manipulating cases to pursue an opponent while others remain colleagues and outside prosecution. These manipulations violate the legal maxim *audi alteram partem* whereby all parties are guaranteed the right to a fair hearing. For instance, Western powers are supportive of the ICC examining atrocities committed in Africa, while not examining their own military actions and interventions outside their jurisdictional areas of jurisdiction. This is based on the doctrine of legal partiality, which is the converse of "*null poena sine lege*", which is the idea that no punishment should be imposed without a law in place.

In addition to other Instances we should also deliberate upon such issues of, ICL frequently employs double standards: while some states are punished by the international community and prosecuted through courts, others violate the law without consequences. The example of U.S. rejection of ICC legal authority for crimes in Iraq or Afghanistan, while simultaneously urging the ICC to prosecute cases consistent with US strategically, encapsulates this selective

⁴⁰ 'ICC Issues Arrest Warrants Against Sergei Shoigu and Valery Gerasimov' (ICC Press Release, 24 June 2024) <<https://www.icc-cpi.int>> accessed 15 December 2024

accountability. Double standards detract from the legal principle of equality before the law, implying international law is based on geopolitical expediency rather than objective legal standards. Addressing this challenge requires developing an international system committed to transparency, impartiality and universality, grounded in accountability based on legal merits and objective evidence, rather than political pressure or strategic interests through global cooperation, MLATs, and collective responsibility. An impartial international system will prioritize legal objectivity and integrity over national political interests to bolster the global commitment to accountability and justice for civil and political rights. Transparency, objectivity, and legal principles alone will allow the ICC and other international legal institutions to sustain their legitimacy and enable global confidence in international justice system.

Chapter 7: Creative Solutions to Tackle ICL Criticisms

To address the very challenges that we see in International Criminal Law (ICL), we would take a multi-pronged approach. First, we would decentralize justice by partnering with regional and national courts which solves the issues of bias and sovereignty of ICL while assuring accountability at the local level as demanded by complementarity. Second, the enforcement of ICL through an international police force would address the issue of state non-cooperation by utilizing universal jurisdiction collectively as sovereign states. Third, the universalized accountability would compel all states, regardless of their power, to comply with the ICL reflecting the principle of impartiality. Fourth, we would implement transparent and published criteria for selecting cases for prosecution which would enable the legal merits of a case to take precedence over political motives. Fifth, we would amend the Rome Statute to plug loopholes on evading prosecution by binding all states and nations under universal jurisdiction of international criminal law while adding various provisions for witness protection programs, extradition agreements, and mutual cooperation in attempts to increase universality and accountability and respect of the procedural and legal aspects of justice. Finally, these reforms together would enhance cooperation, respect for human rights, and ideally reinforce a proper system of worldwide justice which holds everybody accountable across boundaries and reinforces nation states' commitments to legal integrity, fairness, and justice.

7.1 Decentralizing International Justice.

A decentralized model of international justice is the very answer to what issue it Poses and

would address the issues of perceived bias and selective (or insufficiently robust) prosecution in International Criminal Law (ICL) through partnering with regional and national courts in implementing a system of accountability that is at least somewhat local. For example, the establishment of an African regional tribunal ⁴¹that is independent of the international court system would allow African states to undertake the prosecution of crimes perpetrated in the territory of African states, while respecting state sovereignty, a principled norm of international law. Such an arrangement would honor regional self-determination and state sovereignty, ⁴²which are important principles of international law, and would also conform to the notion of complementarity, which proposes that justice should be pursued in the local context before international justice can intervene. A decentralized model for international justice also reduces the logistical and resource burdens upon the ICC to intervene in a substantial manner, and allow the ICC to focus its drive on cases in which national systems have collapsed, or are not easily or politically able to intervene. Another aspect of regional courts is to promote justice closer to those in the affected community impacted by international crimes, along with building trust and cooperation. By simply promoting the principle of subsidiarity, responsibility is still largely retained in the powers of the state, which respects state sovereignty, while remaining cognizant of an international framework reviewing accountability and accountability through the lens of normative values and international human rights. Regional collaboration also allows for a region to learn and develop local mechanisms for judicial infrastructure, capacity building, and legal norms, which would allow for mechanisms to be sustained and equitable, and rapid in delivery, while producing impartial and proportionate results, along with existing within the potential tensions of a region's cultural and social milieu.

7.2 Strengthening Enforcement Through International Policing

As we move towards Creating a global police force that operates on a specialized mandate will likely enhance law enforcement for international crimes since this entity would focus specifically on executing arrest warrants issued by an international court, such as the ICC. This would consist of police officers from various states who act under the authority of the UN, ICC, or some other international entity. The legal basis for this force would be grounded in the

⁴¹ Gino J Naldi and Konstantinos D Magliveras, *The African Court on Human and Peoples' Rights: Institutional and Procedural Aspects* (CUP 2015)

⁴² Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 2(1)

principle of universal jurisdiction,⁴³ the legal standard that allows prosecution, no matter its location, for serious crimes that affect international interest. Creating this police force would counteract the issue of state non-cooperation and force accountable individuals, including those in powerful states, to not shield these individuals from punishment. The principle of equal sovereignty is limited to the mandate of this force in the application of international law, without differentiating between international law applicable depending on the international force policing a jurisdiction. The establishment of international police force would create operating space to also promote the mutual legal assistance of states and an additional basis of cooperation between states for evidence collection, witness protection, and extradition. Any state that refused to cooperate with an international police force would suffer the costs of diplomatic isolation, the restriction of economic relations with other states, and an increase in limitations on trade opportunities within a state. All of this elevates the cost of non-compliance and creates a better basis for international cooperation and solidarity.

Thus, this international police forces stands as a symbol of unity and commitment that international criminal justice is beyond political weight, adheres to legal norms, and puts victims' rights and justice above geopolitical concerns. Further, the force would also elevate collaborative intelligence sharing, coordination among national authorities, and would establish a stronger global enforcement network that ensures international justice would be upheld without fail at borders, even in places of weak state institutions or little international cooperation.

7.3 Universalizing Accountability with Global Court Participation

All states-states that make much noise about including influential ones like the US, China, and Russia-are added to the necessity for participation in such an international criminal court system as the ICC. It would need extensive changes in legal perspectives and constructions of binding mechanisms that do not rely on state consent.

While every other individual state in the world, irrespective of how important the country is to the selective application of international justice of the likes of the United States, China, and Russia, should also be forced into an international criminal court system-for example, the ICC-under compulsion-legal frameworks would need to be significantly overhauled to construct

⁴³ M Cherif Bassiouni, Introduction to International Criminal Law (2nd edn, Martinus Nijhoff 2011) 235-260

mechanisms, binding mechanisms by which a state would be unable or unwilling to consent. The principle Or the Grundnorm of equal sovereignty would underpin this reform to ensure that no state can evade international accountability.⁴⁴ Instruments could include regional coalitions, international treaties, and active engagement of civil society organizations to bring cases if national governments do not. This principle conforms to universality in regard to international criminal accountability, meaning the legal fiction that states will prosecute crimes of international concern, universally. This would also support accountability for powerful states, with the concern of placing matters in the diplomatic double standard realm of justice, all the while supporting the legal theory *Fiat Justitia Ruat Caelum*, being "let justice be done though the heavens fall," meaning regardless of political interest or power, justice prevails. Moreover, this process would allow for greater cooperation and solidarity between states, so that justice mechanisms move with transparency and equity. Further, creating some form global court participation body would provide stronger regional cooperation, diplomatic and engagement and collaborating intelligence sharing, as to access to evidence, witnesses, fair legal proceeding, and due process directly, without leaving a rigged process without integrity, while increasing global adherence that disengages the ease of circumventing international norms of seeking justice with a complicity.

7.4 Transparent Selection of Cases

As we start Prioritizing transparent listing criteria for states' and other bodies' investigation of prosecuting at the international level would help avoid the commitment of politically motivated selection of cases, or double standards, by international courts - including the ICC. Adding publicly available guidelines will ensure rational criteria that are objective and that will include a risk assessment such as the seriousness of the alleged crimes, evidence availability, and the willingness and capacity of national courts to prosecute the alleged crimes, but ensure criterion-based objectives are pursued to balance interests. Transparency will enhance the legal principle of impartiality, which is one of the most important principles in prosecutough ethics, that the selection of investigations and prosecutions in certain cases will be selected impartially without political agendas or realities. Other aspects of the guidance might include criteria like victim value and impact information, significance to the greater region, and the likelihood of a successful prosecution, ensured consideration of all aspects of justice be envisaged and ethically pursued. The legal principle *Nemo Auditur Pro Plico Adverse* asserts a process that

⁴⁴ UN Charter (n 41) art 2(1)

cannot even have credence until circumstances are in compliance with and adhere to like legitimate legal criteria. Transparent processes will improve stakeholders interests in procedural trust, even if condemnation might still occur, and the consequence would involve dipthong room to enhance legitimate intentions of courts. Additionally, the process of transparency will reflect a new relationship of greater collaboration between national authorities, more legitimately assuring complete ability to share evidence, and if beneficial, engage even beyond mutual legal assistance agreements, enhancing further effectiveness in the use of evidence, capacity, and robust systems. Transparency will help with clarity of communication, expectation, due diligence, and collaborative decision making around evidence towards seeking justice, ensuring a more reasonable predictability of process outcome by ensuring fairness and consistency, and ensure that there will be additional time spent determining issues independently, disputes about implementation guides are considered with legally credible prior processes.

7.5 Reforming the Rome Statute for Equal Accountability

As we move towards reforming the Rome Statute is essential to closing gaps that permit powerful nations to elude accountability under international law. All countries should be obligatory subjects of the ICC's jurisdiction, such that no nation is able to deny its responsibility while asking compliance from others; thus reflecting the principle of *pacta sunt servanda* in jurisprudence,⁴⁵ which is the observance of binding treaties without exception. The Rome Statute should provide also for crimes committed by persons from non-states parties to the Statute to be prosecuted to work toward universality in the international crime legal regime. These reforms could involve altering an existing treaty or creating a new binding treaty, or cooperating at the regional or international levels without the agreement of states. Nations that do not agree to cooperate, or that withdraw from an agreement should be subject to consequences, trade restrictions, and/or exclusion or isolation from the international diplomatic community to encourage compliance with international standards. The reforms should also encourage or mandate witness protection, cooperation in obtaining and sharing evidence, and mutual extradition agreements in international prosecutions. These changes align with the doctrine of international responsibility, holding states accountable for upholding global norms. By strengthening the Rome Statute, the global justice system would better adhere to

⁴⁵ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 26

international norms, uphold human rights, and guarantee accountability, maintaining the integrity and effectiveness of international criminal law while fostering unity and cooperation across nations. Such reforms would also bolster regional cooperation, collaborative intelligence sharing, and procedural transparency, ensuring that all trials meet the highest legal standards, reinforcing the commitment to uphold justice, fairness, and international cooperation in the pursuit of global accountability and equity.

Conclusion

This review and reflections about International Criminal Law, focuses on its history, present challenges, and future possibilities. Although the discussion reflects how far we've come since the Nuremberg Trials and acknowledges the ICC being a part of that evolution, it also drifts toward aspirational solutions and conveniently ignores the political realities of the politics of international justice that are often an artifice of policy. The more salient and pragmatic perspective of international criminal law is what is needed in order to create meaningful, worthwhile reforms.

Unfortunately the aspirations of the ICC, are continually undermined by its inefficiencies and political entanglements. The perception of bias directed at African countries is compounded with the double standards of international justice itself. The Majority of the ICC's significant prosecutions have been against African leaders, and its settlement of jurisdiction or political interference have dealt with crimes committed by nations who wield considerable influence on the world stage. This inconsistency in enforcement enervates ICC's legitimacy, and lends itself to a cynical view that international justice serves the needs of the most powerful or those who can afford to use the processes of international law to achieve American objectives. While socio-political changes may occur as adequate justification for amending the statute, such amendments still require the cooperation and acceptance of the states that benefit from the current implementation of hegemonic interests; one more contradiction to be considered.

While the vision of regional courts may appear attractive, it may amplify fragmentation without increasing inclusion, as court rooms must take into consideration regional biases, availability of resources, and different legal standards, which may lead to an inconsistent application of justice that undermines the universality of the ICL project. Furthermore, the principle of subsidiarity, while admirable, has the potential to be weaponized by states to avoid international accountability based on claims of domestic and territorial jurisdiction.

A significant point is that ICL, as it currently stands, is primarily theoretical and concerned with the aspirational rather than operating as an effective, enforceable human rights project. The concept of universal jurisdiction, which represents an instrument to combat impunity, however, often grapples with the real politics of interest from powerful countries. Unless and until these unequal, structural aspects of international law are dealt with, any form of reform is little more than window dressing. To conclude, while the narrative focused on human rights, equal accountability, and shielded against the injustices of the past, it clashes with an unpleasant reality: international justice does not function in a defined match of 'equality,' but in a contest of power. Until ICL is wholly up-front about these unequal structures, and admits the reality of structural inequality, its vision for a truly inclusive, effective justice will be an incomplete promise"- a courtroom where 'justice' will be on trial. Hence, rather than reaching for the stars in reform, ICL should perhaps be thinking about liberating itself from the shackles of political, legislative and legal thinking.