WANING AUTHORITY: THE ROLE OF THE INTERNATIONAL CRIMINAL COURT AND ITS INSTITUTIONAL INEFFICIENCIES IN RECENT TIMES

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ABSTRACT

The International Criminal Court ("ICC") was created by the Rome Statute as a permanent court of last resort for genocide, crimes against humanity, war crimes and the crime of aggression. Since 2023 it has issued some of the most consequential arrest warrants in its history. They name the sitting head of state of a permanent member of the UN Security Council and the sitting Prime Minister of a close Western ally, and, in a rare case of real enforcement, a former head of state who was arrested and handed over within days of the warrant. This article looks at those developments next to the structural weaknesses that have sharpened at the same time: widespread non-cooperation and non-execution of warrants, coercive unilateral sanctions against the Court's own personnel, an unresolved jurisdictional gap over aggression, persistent budget pressure and, most recently, a governance crisis stemming from misconduct allegations against the Prosecutor himself. I argue that the Court's growing readiness to target powerful states has exposed its structural limits instead of resolving them, because it depends wholly on the cooperation of the very states it seeks to hold to account.

Keywords: International Criminal Court, Rome Statute, international criminal justice, State non-cooperation, complementarity, crime of aggression, institutional inefficiency.

I. INTRODUCTION

The International Criminal Court was established by the Rome Statute of 1998 and sits at The Hague. It is the first permanent international tribunal with jurisdiction over individuals responsible for the gravest crimes of international concern: genocide, crimes against humanity, war crimes and, since 2018, the crime of aggression.[1] The Court was designed as a court of last resort that works on the principle of complementarity with national criminal jurisdictions. It now has about 125 States Parties and, over more than two decades, has opened investigations in situations across Africa, Eastern Europe, the Middle East and Southeast Asia.

By any measure the period since 2023 has been the most consequential in the Court's history. Arrest warrants have been issued for the sitting President of the Russian Federation, the sitting Prime Minister of Israel and a former President of the Philippines. The last of these led to the first surrender of a former head of state into the Court's custody. The same years, though, have shown how fragile the Court is. As of November 2025, thirty-three publicly known arrest warrants had not been executed, and the Court's own President felt compelled to appeal directly to the UN General Assembly for help in enforcing them.[2]

The article has four further parts. Part II sets out the ICC's institutional framework and mandate. Part III turns to three recent situations, Ukraine, Palestine and the Philippines, which show both how far the Court can reach and how much it relies on State cooperation. Part IV analyses the structural weaknesses that have grown worse in recent years: non-cooperation, coercive sanctions, the jurisdictional gap over aggression, limited resources and an unprecedented leadership crisis in the Office of the Prosecutor. Part V concludes by considering the reforms needed to protect the Court's credibility.

II. THE INSTITUTIONAL ROLE AND MANDATE OF THE ICC

The ICC's jurisdiction is deliberately residual. Under the principle of complementarity in article 17 of the Rome Statute, a case is inadmissible if a State with jurisdiction is already investigating or prosecuting it, unless that State is genuinely unwilling or unable to do so.[3] The

[1]Rome Statute of the International Criminal Court art. 1, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].
[2]Diyar Güldağan, International Criminal Court President Urges Global Cooperation to Enforce Arrest Warrants, Anadolu Ajansı (Nov. 11, 2025), https://www.aa.com.tr/en/middle-east/international-criminal-court-president-urges-global-cooperation-to-enforce-arrest-warrants/3741191.
[3]Rome Statute, supra note 1, art. 17.

Court can act only where the territorial or national State is a Party to the Statute, where that State has accepted jurisdiction by declaration, or where the UN Security Council refers a situation under Chapter VII of the UN Charter. The design aims to protect State sovereignty while still filling the gaps left by domestic impunity.

The Court also has no enforcement arm of its own. Article 89 of the Statute requires States Parties to comply with requests for the arrest and surrender of persons, but the Court has neither police nor military capacity to make anyone comply. It relies entirely on national authorities to carry out its warrants voluntarily.[4] As this article shows, that dependence has become the biggest single limit on the Court's practical effectiveness today.

III. RECENT SITUATIONS ILLUSTRATING THE ICC'S REACH, 2023-2026

A. The Situation in Ukraine: The Warrant Against President Putin

On March 17, 2023, Pre-Trial Chamber II of the ICC issued arrest warrants for Vladimir Vladimirovich Putin, President of the Russian Federation, and Maria Alekseyevna Lvova-Belova, Commissioner for Children's Rights in the Office of the President. Both are charged with the war crimes of unlawful deportation and unlawful transfer of children from occupied areas of Ukraine to the Russian Federation.[5] It was the first time the Court had issued a warrant against the sitting head of state of a permanent member of the Security Council. That was possible only because Ukraine, although not a State Party, had accepted the Court's jurisdiction by a declaration under article 12(3) of the Statute.

Russia has answered with open defiance instead of engagement. In 2023 and 2024 its authorities issued their own arrest warrants for eight ICC judges and the Prosecutor in direct retaliation, and a 2023 Russian statute criminalising cooperation with the Court is still in force.[6] More than three years after the warrant was issued, President Putin has travelled abroad, including to States Parties, without being arrested. This shows how little practical authority the Court has over the leaders of powerful States that refuse to cooperate.

[4]Rome Statute, supra note 1, art. 89.
[5]Situation in Ukraine, ICC-01/22, Warrant of Arrest for Vladimir Vladimirovich Putin, Pre-Trial Chamber II (Mar. 17, 2023).
[6]Human Rights Watch, Briefing Note for the Twenty-Fourth Session of the Assembly of States Parties to the International Criminal Court 2 (Nov. 19, 2025), https://www.hrw.org/news/2025/11/19/human-rights-watch-briefing-note-for-the-twenty-fourth-session-of-the-international.

B. The Situation in Palestine: Warrants Against Netanyahu and Gallant

On November 21, 2024, Pre-Trial Chamber I issued arrest warrants for Benjamin Netanyahu, Prime Minister of Israel, and Yoav Gallant, then Israel's Minister of Defence. The charges are the war crime of starvation as a method of warfare and crimes against humanity, including murder and persecution, allegedly committed in the context of the armed conflict in Gaza.[7] A parallel warrant request against the Hamas military commander Mohammed Deif was withdrawn after his death was confirmed in early 2025, and the requests concerning Ismail Haniyeh and Yahya Sinwar were likewise withdrawn after they died. In each case events on the battlefield, not judicial process, decided how far the Prosecution's charges could go.

The Netanyahu warrant has since become a central test of whether States Parties will comply. Italian officials professed support for the Court in general terms but publicly questioned whether a sitting head of government should be arrested. The Deputy Prime Minister remarked that Italy would not "engage in a firefight" to enforce the warrant.[8] The remark captures the distance between formal treaty obligation and political practice when States Parties face a warrant against a powerful ally.

C. The Situation in the Philippines: The Arrest and Surrender of Duterte

The arrest of the former Philippine President Rodrigo Duterte offers a contrast. It shows that enforcement is still possible when a cooperating government has the political will. The Prosecution requested a warrant on February 10, 2025, and Pre-Trial Chamber I issued it on March 7, 2025, for the crime against humanity of murder. The charge concerns extrajudicial killings allegedly committed during the "war on drugs" that Duterte oversaw as Mayor of Davao City and later as President.[9] Philippine authorities arrested him in Manila on March 11, 2025, on his return from Hong Kong, and surrendered him to the Court the next day. The speed owed much to a political rupture between the Duterte and Marcos camps and nothing to any strengthening of the Court's own enforcement capacity.[10] The case is the clearest recent sign

[7]Situation in the State of Palestine, ICC-01/18, Warrant of Arrest for Benjamin Netanyahu, Pre-Trial Chamber I (Nov. 21, 2024).
[8]The Enforcement of Arrest Warrants Issued by the International Criminal Court: Between the Duty to Cooperate and Realpolitik, ItalysPractice.info (Dec. 20, 2025), https://italyspractice.info/2025/12/20/the-enforcement-of-arrest-warrants-issued-by-the-international-criminal-court-between-the-duty-to-cooperate-and-realpolitik/.
[9]Situation in the Republic of the Philippines, ICC-01/21, Warrant of Arrest for Rodrigo Roa Duterte, Pre-Trial Chamber I (Mar. 7, 2025).
[10]Human Rights Watch, Philippines: Duterte Arrested on ICC Warrant (Mar. 12, 2025),

that the ICC's authority is in practice only as strong as the domestic political will of the State asked to give effect to it.

IV. STRUCTURAL AND RECENT INEFFICIENCIES

Despite the historic importance of these cases, the period since 2023 has also made the Court's structural weaknesses unusually plain.

A. Non-Cooperation and Non-Enforcement of Arrest Warrants

By late 2025 the Court had entered findings of non-compliance with its cooperation requests against Italy, Hungary and Mongolia. One leading human rights organisation has described this as an "erosion of state cooperation" and a "retreat from universality" within the Rome Statute system.[11] The Njeem episode shows how this plays out. On January 19, 2025, Italian authorities arrested Osama Elmasry Njeem, who is wanted by the Court for war crimes and crimes against humanity allegedly committed in Libya. Two days later they released him on stated "procedural grounds" and flew him back to Libya on an Italian state aircraft, without telling the Court. ICC judges formally found Italy in breach of its cooperation obligations on October 17, 2025, nine months later. A finding of non-compliance made so long after the suspect has been returned beyond the Court's reach does little to hold anyone to account.[12]

B. Political Interference and Coercive Sanctions

A different and more recent problem comes from unilateral coercive measures aimed at the Court itself. On February 6, 2025, the President of the United States signed Executive Order 14,203, "Imposing Sanctions on the International Criminal Court." It placed Prosecutor Karim Khan on the Treasury's Specially Designated Nationals list and imposed entry restrictions on ICC officials, expressly in response to the warrants issued against Netanyahu and Gallant.[13] It was the second time a US administration had sanctioned the Court. Similar measures were imposed on then-Prosecutor Fatou Bensouda in 2020 over the Afghanistan investigation, and the Biden administration lifted them in 2021. A US federal court found the 2025 order

https://www.hrw.org/news/2025/03/12/philippines-duterte-arrested-icc-warrant.

[11]Int'l Fed'n for Human Rights, Will States Parties Protect the International Criminal Court or Let It Be Dismantled? (2025), https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/will-states-parties-protect-the-international-criminal-court-or-let.

[12]Human Rights Watch, supra note 6, at 2-3.

[13]Exec. Order No. 14,203, 90 Fed. Reg. 9369 (Feb. 12, 2025).

unconstitutional and enjoined its enforcement in July 2025. By then months of operational disruption had already hit the Office of the Prosecutor and its roughly nine hundred staff, many of whom faced restrictions on travel and on receiving professional services from US persons in the meantime.[14]

C. The Jurisdictional Gap over the Crime of Aggression

One structural weakness, more than a political one, is that the Court still cannot exercise jurisdiction over the crime of aggression in the situations where it matters most today. Under the Kampala amendments, activated in 2018, the Court's aggression jurisdiction does not reach nationals of non-States Parties unless the Security Council makes a referral. That carve-out puts Russian nationals beyond prosecution for aggression against Ukraine, even though the Court has jurisdiction over the related war crimes. States Parties have also failed to adopt an amendment that would widen aggression jurisdiction, postponing the question until at least 2029. Victims of a paradigmatic act of aggression will therefore have no recourse to the Court for the foreseeable future.[15]

D. Budgetary and Institutional Resource Constraints

The Court's operations remain tightly limited by resources. The Assembly of States Parties approved a 2025 budget of about €195.5 million, only 4.5 percent more than the year before and well below the €202.6 million the Court had requested. The Committee on Budget and Finance noted that States Parties face financial constraints of their own.[16] Unbudgeted costs have made matters worse. The Court suffered sophisticated cyberattacks in September 2023 and again in June 2025, which led to a ring-fenced multi-year cybersecurity investment of €8.3 million. That spending has pulled resources away from the Court's core investigative and prosecutorial work just when its caseload and political exposure are at their heaviest.[17]

E. Leadership and Governance Crisis: The Prosecutor's Suspension

From an institutional standpoint, the most damaging recent development may be the crisis

[14]Michael Bassin, Court Rules Trump's ICC Sanctions Order Unconstitutional, Halts Enforcement, Press TV (July 19, 2025), https://www.globalsecurity.org/military/library/news/2025/07/mil-250719-presstv05.htm.
[15]Int'l Fed'n for Human Rights, supra note 11.
[16]Assembly of States Parties, Report of the Committee on Budget and Finance, ICC-ASP/24/25, at 3 (2025).
[17]Assembly of States Parties, Proposed Programme Budget for 2026, ICC-ASP/24/10, ¶ 34 (2025).

inside the Office of the Prosecutor. Allegations were first reported in May 2024 that Prosecutor Karim Khan had subjected a female staff member to sustained unwanted sexual contact. Khan requested an investigation while denying any wrongdoing, and on May 16, 2025 he took leave from his post pending an external inquiry by the UN Office of Internal Oversight Services.[18] The Bureau of the Assembly of States Parties suspended him on June 8, 2026. On July 24, 2026 the Assembly voted by an absolute majority of eighty-two States Parties to remove him from office. That ended his tenure about halfway through his nine-year term and left the post of Prosecutor vacant while the ICC handles the most politically sensitive caseload in its history. Khan has denied the allegations, and his legal team has said it will challenge the decision.[19] The episode raises serious questions about governance and accountability at the very top of an institution whose legitimacy rests on the perceived integrity of its leaders.

F. Selectivity and the Limits of Universality

Finally, the long-standing criticism that the Court's docket is geographically selective persists, even though its recent caseload has widened beyond Africa to include Ukraine, Palestine and the Philippines. Scholars have long asked whether the focus of ICC investigations on African situations during the Court's first two decades reflected an impartial use of prosecutorial discretion. The announced withdrawals of Hungary and three Sahel States from the Rome Statute in 2025 suggest that perceptions of selective or politically motivated enforcement continue to wear away the Statute's claim to universality. This holds even though the Court has recently been willing to pursue warrants against the leaders of powerful Western-aligned States and of permanent members of the Security Council.[20]

V. CONCLUSION

Since 2023 the International Criminal Court has been both at its most assertive and at its most vulnerable. The warrants against President Putin and Prime Minister Netanyahu show a

[18]Aljazeera, ICC Prosecutor to Step Aside Until Probe into Alleged Misconduct Ends (May 16, 2025), https://www.aljazeera.com/news/2025/5/16/icc-prosecutor-to-step-aside-until-probe-into-alleged-misconduct-ends.

[19]Sharon Mwende, Karim Khan Ousted as ICC Prosecutor, Journalists for Justice (July 24, 2026), https://jfjustice.net/karim-khan-ousted-as-icc-prosecutor/; Ahmet Salih Alacaci & Diyar Guldogan, War Crimes Court Votes to Remove Prosecutor Karim Khan as Legal Team Vows Challenge, Anadolu Ajansı (July 24, 2026), https://aa.com.tr/en/world/war-crimes-court-votes-to-remove-prosecutor-karim-khan-as-legal-team-vows-challenge/4008624.

[20]How Effective the International Criminal Court Has Been: Evaluating the Work and Progress of the International Criminal Court, 1 Notre Dame J. Int'l & Comp. L. (2023), https://scholarship.law.nd.edu/ndjicl/vol1/iss1/6/.

Prosecution that is, for the first time, willing to test the Court's authority against the leaders of the world's most powerful States. The arrest and surrender of Rodrigo Duterte shows that enforcement can still succeed when domestic political will lines up with the Court's mandate. Each of these successes, though, has come with institutional strain. Thirty-three arrest warrants remain outstanding, and the Court has documented non-cooperation by Italy, Hungary and Mongolia. The Court's own Prosecutor and staff have faced unprecedented unilateral sanctions. The jurisdictional gap over aggression will last until at least 2029. A chronic budget shortfall has been made worse by successive cyberattacks. Most gravely, the Prosecutor has been suspended and removed amid a sexual misconduct scandal, leaving the Office of the Prosecutor without permanent leadership at its most consequential moment.

Taken together, these developments suggest that the ICC's growing willingness to confront powerful States has not been matched by a stronger enforcement architecture, which is what its authority ultimately rests on. If the Court is to turn its recent assertiveness into lasting institutional authority, States Parties must move past rhetorical support. They need to adopt binding consequences for non-cooperation, genuinely widen the Court's aggression jurisdiction, provide sustained and predictable funding, and carry out internal governance reform strong enough to shield the Office of the Prosecutor from another leadership crisis like the present one. Without such reform, the Court risks becoming an institution whose authority is exercised most visibly where it can be enforced least.