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POLICY PAPER

# THE INTERNATIONAL JUSTICE SYSTEM:

## The ICJ, the ICC, the Challenge and Risk of Double Standards

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*The International Court of Justice and the International Criminal Court play key roles in upholding international law but face criticism over selective enforcement. The ICJ's reliance on state consent and UN Security Council enforcement often weakens its impact, while the ICC's jurisdictional limits and selective prosecutions raise concerns about equity. Contrasting global responses to similar rulings reveal geopolitical influences. The study underscores the need for institutional reform to strengthen credibility, ensure consistent application of international law, and restore trust, particularly in the Global South.*

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## I. INTRODUCTION

After the Cold War, renewed efforts were made to institutionalize global justice through legal mechanisms aimed at holding both states and individuals accountable for grave violations of international law. The International Court of Justice (ICJ) and the International Criminal Court (ICC) have played pivotal roles in adjudicating in disputes and prosecuting war crimes. However, the promise of universal justice has been undermined by selective enforcement, political interference, and glaring double standards in the application of international law.

To understand the contemporary failings of international justice fully, it is essential to examine its historical underpinnings. The modern system of international law did not emerge in a vacuum; rather, it evolved over centuries, shaped by both legal theory and political realities. While today's institutions are often presented as post-Second World War innovations, their lineage extends back to earlier attempts to regulate inter-state relationships through legal mechanisms.

From the earliest recorded treaties between Mesopotamian city-states and the Treaty of Kadesh (circa 1259 BCE) between Egypt and the Hittites, to the Roman concept of *jus gentium* (law of nations), rulers have long sought to create legal frameworks in order to manage conflicts and relationships between sovereign entities. In medieval Europe, the Catholic Church and canon law played a central role in arbitrating disputes between rulers, while early international legal scholars such as Hugo Grotius in the seventeenth century laid the intellectual foundations for modern international law. The Peace of Westphalia (1648) further reinforced the principle of state sovereignty, a concept that continues to shape debates on the limits of international adjudication today.

The nineteenth century saw the first institutional attempts to formalize international legal norms, particularly through the Hague Conventions of 1899 and 1907. These gatherings not only codified early laws of war but also led to the establishment of the Permanent Court of Arbitration (PCA), an important precursor to later judicial bodies. The PCA, while not a court in the strict sense, marked a shift towards structured dispute resolution, a concept that gained momentum following the First World War.

The League of Nations, created in 1920 to prevent future conflicts, established the Permanent Court of International Justice (PCIJ) in 1922. The PCIJ was a groundbreaking institution, a standing body for resolving disputes based on international law. However, much like today's ICJ, its effectiveness was limited by geopolitical power dynamics, as the League of Nations failed to constrain revisionist states in the 1930s. Following the Second World War, the PCIJ was replaced by the ICJ, which inherited many of its functions but operates within a stronger institutional framework under the United Nations.

This historical backdrop underscores the persistent tension between legal ideals and political realities. While international justice has long been framed as a means to regulate state behavior, powerful actors have consistently shaped its application to suit their interests. The ICJ and ICC, despite aspiring to positive neutrality, have inherited the same structural limitations that plagued earlier institutions. Understanding this historical evolution is crucial in order to assess why today's international legal order continues to suffer from selective enforcement and geopolitical bias.

While international justice institutions were envisaged as neutral arbiters, their track records indicate otherwise. Some ICJ rulings—such as the 2004 advisory opinion on Israel’s separation barrier and the 2024 *South Africa v. Israel* case—have not been enforced because of political pressure, particularly from Western powers. Similarly, the ICC’s prosecution patterns reveal inconsistencies, as seen in its cases against African leaders, Russian officials, and now Israeli and Hamas figures. This essay critically examines the selective application of justice by these institutions, and the broader geopolitical implications of such inconsistencies.

## II. THE ICJ: THE LIMITS OF LEGAL AUTHORITY IN A POLITICAL WORLD

### 1. The ICJ’s Role and Jurisdiction: A Critical Examination

Established in 1945 under the UN Charter, the International Court of Justice (ICJ) is the principal judicial organ of the United Nations, tasked with resolving disputes between states and providing advisory opinions on legal questions referred by UN bodies (UN Charter, Article 92). In the former role, the ICJ adjudicates in contentious cases, issuing legally binding rulings to consenting states. In the latter role, the ICJ’s advisory opinions are non-binding legal guidance for international organizations. The court has delivered landmark judgments on territorial disputes (*Nicaragua v. United States*, 1986), human rights violations (*Bosnia and Herzegovina v. Serbia and Montenegro*, 2007), and environmental law (*Costa Rica v. Nicaragua*, 2015). However, despite its role as the world’s highest court in inter-state legal disputes, its impact is undermined by structural weaknesses, including selective jurisdiction, non-compliance, and geopolitical interference (Madsen *et al*, 2018).

One of the ICJ’s fundamental limitations is that its jurisdiction is voluntary, meaning states must consent to being sued. Powerful nations often refuse to recognize its authority in cases that challenge their interests. The United States, for example, withdrew from the ICJ’s compulsory jurisdiction in 1986 after the court ruled against it in the *Nicaragua* case, in which it was found guilty of violating international law by supporting Contra rebels (Chayes, 1987). Similarly, China has consistently rejected ICJ jurisdiction over issues such as maritime disputes in the South China Sea, despite legal challenges from the Philippines and other claimants (Beckman, 2013). This voluntary nature of the court’s jurisdiction allows states to evade legal accountability when it is politically inconvenient, eroding the ICJ’s credibility as an impartial arbiter of international law (Alter, 2014).

A second and even more significant weakness is the ICJ’s lack of enforcement power. It relies on the UN Security Council (UNSC) to implement its rulings (UN Charter, Article 94). However, the geopolitical structure of the UNSC, particularly the veto power held by its five permanent members, often renders ICJ decisions unenforceable. For instance, when the court ruled in 2004 that Israel’s construction of a separation barrier in the West Bank violated international law (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*), the ruling was effectively ignored because of U.S. opposition at the UNSC (Bowering, 2005). Similarly, Russia disregarded the ICJ’s 2022 order to halt its military operations in Ukraine, knowing that its position on the UNSC shields it from meaningful repercussions (Tladi, 2023). This enforcement gap reveals a critical flaw: while the ICJ claims to uphold the rule of law, its authority is contingent on the political will of the most powerful states, thereby reinforcing legal double standards (Koskenniemi, 2001).

Beyond issues of jurisdiction and enforcement, the ICJ's advisory opinions—though influential—are often dismissed by states when they contradict national interests. While some opinions, such as those affirming Namibia's independence from South African rule (1971), have shaped international norms, others have been systematically ignored. The court's 2019 advisory opinion declaring the United Kingdom's continued occupation of the Chagos Archipelago illegal was met with outright defiance by London (Grovoqui, 2020). This underscored the broader reality that the ICJ, despite its legal authority, operates within a global system in which political and economic power determines the practical application of international law (Falk, 2014). Ultimately, while the ICJ remains an important institution in the international legal order, its dependence on state cooperation and the UNSC's political dynamics fundamentally limits its ability to deliver true justice on a global scale (Higgins, 1994).

## **2. The 2004 Advisory Opinion on Israel's Separation Barrier: A Case Study of Legal Double Standards**

One of the most glaring examples of the ICJ's limited power and the selective application of international law was its 2004 advisory opinion on Israel's West Bank separation barrier. Requested by the United Nations General Assembly (UNGA) under Resolution ES-10/14, the ICJ ruled overwhelmingly that the construction of the barrier violated international law, infringing Palestinian rights to self-determination, and contravening both the Fourth Geneva Convention (1949) and various UN Security Council resolutions (ICJ, 2004). The court determined that Israel must cease construction immediately, dismantle already-built sections, and provide reparations for damages caused by the barrier. Furthermore, the ruling emphasized that other states had a duty not to recognize or assist in maintaining the unlawful situation, reinforcing the principle of *erga omnes* obligations—legal duties owed to the entire international community (Craven, 2005).

Despite this unequivocal ruling, Israel rejected the ICJ's findings outright, citing self-defense and security concerns, and continued construction of the barrier. The United States, a permanent UN Security Council (UNSC) member and Israel's key ally, blocked any enforcement, ensuring that no sanctions or legal consequences followed (Kattan, 2008). The European Union (EU), while officially supporting the ICJ's decision, took no substantive action beyond diplomatic statements, illustrating the broader pattern in which Western powers selectively enforce international legal rulings based on strategic interests (Azarova, 2017). The fact that the ICJ ruling had no binding effect further underscored the court's limited ability to compel state compliance in politically sensitive cases (Shany, 2006). As a result, more than two decades later, the barrier remains largely intact, with ongoing construction extending deeper into occupied Palestinian territory, demonstrating the court's lack of enforcement power in cases in which powerful states shield their allies from accountability (Quigley, 2013).

This non-enforcement of the ICJ's 2004 ruling contrasts starkly with the West's reaction to the ICJ's 2022 ruling against Russia following its invasion of Ukraine (*Ukraine v. Russian Federation*, 2022). In this case, the ICJ issued an emergency order requiring Russia to cease military operations immediately, a decision that was immediately endorsed by the United States, the European Union, and NATO allies (Tladi, 2023). Western governments not only fully embraced the ruling but also used it as a legal justification for imposing sweeping economic sanctions on Russia, reinforcing the narrative of defending international law and the rules-based order (Hathaway and Shapiro, 2023). This stark discrepancy in responses to different rulings demonstrates that ICJ rulings are respected and enforced only when they align with the strategic interests of the world's most powerful states

(Koskeniemi, 2001). When the ruling threatens those interests—as in the case of Israel’s separation barrier—the ICJ is rendered impotent, exposing the geopolitical double standards that define the enforcement of international law (Benvenisti, 2009).

The broader implications of this selective enforcement are profound. By allowing powerful states and their allies to disregard ICJ rulings with impunity, the credibility of the international legal system is severely undermined (Johnstone, 2022). The ICJ’s authority is contingent on state compliance, yet the ability of dominant powers to shield certain states while punishing others reveals a hierarchical, rather than impartial, global legal order (Orford, 2006). This inconsistency fuels perceptions—particularly in the Global South—that international law is merely a tool of Western hegemony, wielded against adversaries but ignored when allies violate legal norms (Anghie, 2007). The case of Israel’s separation barrier was not an isolated incident but rather a paradigmatic example of the ICJ’s structural weakness, reinforcing the urgent need for reform of global legal institutions to ensure that international law applies universally, rather than selectively based on political convenience (Falk, 2014).

### 3. The 2024 Genocide Case: South Africa v. Israel

The 2024 genocide case brought by South Africa against Israel at the International Court of Justice (ICJ) marked a pivotal moment in the contemporary application of international law. South Africa’s petition, filed under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, alleged that Israel’s military campaign in Gaza constituted acts of genocide, arguing that the Israeli Defense Forces (IDF) engaged in systematic destruction of Palestinian lives and infrastructure (ICJ, 2024). The case focused on three core allegations: mass civilian casualties, the destruction of essential infrastructure, and the forced displacement of Palestinians by Israeli military operations. According to reports from UN agencies and human rights organizations, the conflict has resulted in tens of thousands of Palestinian deaths, including a disproportionate number of children and non-combatants, alongside the targeting of hospitals, refugee camps, and humanitarian aid convoys (B’tselem, 2024; Human Rights Watch, 2024). The case represents one of the most significant legal challenges to Israel in recent history, testing the credibility and impartiality of the ICJ within a deeply politicized international legal order.

In its preliminary ruling, the ICJ issued provisional measures, calling on Israel to take all possible action to prevent genocidal acts and allow the entry of humanitarian aid into Gaza (ICJ Order, 2024). However, the court stopped short of demanding an immediate ceasefire, a decision that diverged from past ICJ rulings when the court sought to impose stronger legal restraints on adversarial states (Tladi, 2024). This measured approach raised concerns over double standards in the ICJ’s handling of cases involving Western allies versus those concerning geopolitical adversaries. For instance, in *The Gambia v. Myanmar* (2020), the ICJ ordered Myanmar to take immediate measures to protect the Rohingya population from genocidal acts—a ruling that was widely supported by Western nations (Akande, 2020). The reluctance to impose a more forceful directive against Israel, despite the scale of destruction and international outcry, suggests that the ICJ operates within a highly politicized framework, in which the application of legal principles is conditioned by the geopolitical stature of the accused state (Koskeniemi, 2001).

Adding to the controversy, Western governments have rejected and dismissed outright the *South Africa v. Israel* case. The U.S., the UK, and Germany not only opposed the case but also publicly questioned its legitimacy, arguing that Israel’s actions fell under the framework of self-

defense rather than genocide (BBC, 2024). This stance stands in stark contrast to the enthusiastic endorsement of ICJ measures against Russia following its invasion of Ukraine, which saw Western governments swiftly invoking international law to justify sanctions and legal action (Hathaway and Shapiro, 2023). The difference between these two responses further fuels accusations that international legal institutions function selectively, reinforcing geopolitical alliances rather than upholding universal principles of justice (Orford, 2006). As in the 2004 case, and most interestingly every time it touches on Israel's abhorrently illegal actions, the blatant inconsistency in whether the ICJ's rulings are respected or dismissed reinforces the now largely held opinion that international law is an instrument of power, rather than an impartial system of global governance (Anghie, 2007).

The case also underscores the role of international legal institutions in shaping political narratives rather than enforcing binding constraints. While the ICJ's ruling generated significant diplomatic pressure on Israel, the absence of enforcement mechanisms once again exposed the court's structural weakness. Unlike the International Criminal Court (ICC), which has the power to issue arrest warrants for individuals, the ICJ can only adjudicate in relation to state responsibility without an enforcement arm to implement its decisions (Higgins, 1994). The failure of the United Nations Security Council (UNSC) to enforce the ICJ's ruling—due to U.S. veto power—demonstrates how legal accountability remains contingent on the interests of the world's most powerful nations (Johnstone, 2022). This limitation reflects broader concerns about the erosion of the rules-based order, as legal judgments increasingly appear to be symbolic rather than enforceable constraints on state behavior (Benvenisti, 2009).

Ultimately, the South Africa v. Israel case is more than a legal dispute—it is a litmus test for the legitimacy of international law itself. If Israel, like other U.S.-aligned states, can defy ICJ rulings with impunity, while adversarial states face legal repercussions, the credibility of international justice mechanisms will continue to deteriorate. The case reinforces the geopolitical nature of legal accountability, with the principles of sovereignty, human rights, and the prohibition of genocide applied selectively based on political calculations rather than legal norms (Falk, 2014). Without structural reforms to reduce the influence of powerful states over international courts, the ICJ risks becoming another instrument of legalized impunity, further disillusioning the international community, and deepening the divide between the Global South and the Western-led legal order (Grovgoui, 2020).

### **III. THE ICC: BETWEEN GLOBAL ACCOUNTABILITY AND POLITICAL INSTRUMENTALIZATION**

#### **1. The ICC's Structure and Challenges: A Critical Examination**

Unlike the ICJ, the International Criminal Court (ICC) focuses on individual criminal responsibility, holding perpetrators accountable for genocide, war crimes, crimes against humanity, and the crime of aggression. Established under the Rome Statute (2002), the ICC was designed as a permanent tribunal with universal jurisdiction over the world's gravest crimes, seeking to end impunity for state and non-state actors alike (Schabas, 2016). However, its jurisdiction is fundamentally constrained by its legal framework. The ICC can only prosecute citizens of states that have ratified the Rome Statute of crimes committed on their territory, unless the United Nations Security Council (UNSC) refers a case to the court, which allows prosecution even against non-signatories (Akande, 2003).

This framework has led to significant gaps in accountability, as powerful states that reject the ICC's jurisdiction can effectively shield their nationals from prosecution, while using the court as a political tool against adversaries (Tladi, 2019). The ICC's limited reach and reliance on state cooperation expose its vulnerability to selective justice and geopolitical influence, significantly undermining its credibility as a truly impartial judicial body (Ssenyonjo, 2017).

The court's lack of universal jurisdiction has been a major weakness, as several of the world's most powerful states—including the United States, China, Russia, and Israel—have refused to ratify the Rome Statute, arguing that the ICC threatens national sovereignty and could be weaponized against them (Kaye, 2011). The U.S. in particular has taken an overtly hostile stance toward the ICC, passing the American Service-Members' Protection Act (2002)—often referred to as the 'Hague Invasion Act'—which authorizes the use of military force to free U.S. personnel detained by the court (Scheffer, 2009). Successive U.S. administrations have sought to undermine the ICC's authority, applying sanctions on ICC officials who investigated potential U.S. war crimes in Afghanistan (Heller, 2021). Similarly, Russia withdrew from the Rome Statute in 2016 after the ICC's report classified its annexation of Crimea as an occupation, while China has consistently rejected international judicial oversight, maintaining its sovereignty as non-negotiable (Dixon, 2018). Israel, facing potential ICC investigations over its treatment of Palestinians, has rejected the court's jurisdiction outright, arguing that Palestine does not meet the legal criteria of a state under international law (Newton, 2020). These high-profile rejections of the ICC by major global powers expose its structural limitations, reinforcing the asymmetrical application of international criminal justice, in which weaker states face prosecution while powerful nations operate with near-total impunity (Nouwen & Werner, 2011).

Furthermore, the ICC's reliance on the UN Security Council for referrals exacerbates its vulnerability to geopolitical influence, as the permanent members (the U.S., UK, France, China, and Russia) can effectively block cases against themselves or their allies, while using the court to target adversaries (Bosco, 2014). This reality has led to highly selective prosecutions, with most ICC cases historically focused on African leaders, despite evidence of equivalent or more severe violations committed by Western and allied nations (Mégret, 2018). The ICC's prosecutions in Sudan, Kenya, Libya, and the Democratic Republic of Congo have fueled accusations that the court is a neo-colonial tool, disproportionately targeting the Global South while ignoring crimes committed by U.S. and European actors in Iraq, Afghanistan, and Palestine (Mamdani, 2010). The failure to prosecute Western-backed regimes for war crimes—such as Saudi Arabia's actions in Yemen or U.S.-led military interventions—has reinforced perceptions that the ICC serves as a selective instrument of global justice, rather than a neutral and universally applied legal mechanism (Orford, 2006). Similarly to the ICJ, unless the ICC undergoes substantial structural reform to mitigate political interference and to ensure evenhanded application of justice, it risks further delegitimization, weakening the broader international legal system and reinforcing global inequalities in the enforcement of human rights and international law (Grovoqui, 2020).

## **2. The ICC's Investigation into Israel and Hamas (2021–Present): A Case of Selective Justice?**

In 2021, the ICC formally launched an investigation into alleged war crimes and crimes against humanity committed during the Israeli-Palestinian conflict. The probe, initiated under Prosecutor Fatou Bensouda, was designed to examine violations by both Israeli military forces and Hamas within Gaza, the West Bank, and Israeli territory (ICC, 2021). The investigation focused on three key

allegations: (1) Israeli military operations that resulted in widespread civilian casualties, particularly during conflicts such as the 2014 Gaza War; (2) Hamas's indiscriminate rocket attacks targeting Israeli civilians, which constitute war crimes under the Rome Statute (Article 8); and (3) Israel's continued settlement expansion in the West Bank, which the ICC considers a serious violation of international law, amounting to population transfer under Article 8(2)(b)(viii) of the Rome Statute (Dannenbaum, 2022). However, despite the ICC's legal mandate, the investigation has been politically contentious, drawing harsh reactions from powerful Western nations, exposing the court's vulnerability to geopolitical pressure (Ssenyonjo, 2021).

The backlash against the investigation was immediate and intense. The U.S. and Eu publicly condemned the ICC's decision, arguing that the court lacked jurisdiction because Israel is not a signatory to the Rome Statute (Kersten, 2021). In an unprecedented move, the Trump administration imposed economic sanctions and travel bans on ICC officials, including then-Prosecutor Fatou Bensouda, accusing the court of targeting U.S. allies while ignoring other international crimes (Heller, 2021). The Biden administration later lifted the sanctions but maintained the U.S. opposition to the ICC's probe into Israel, signaling that Washington's hostility toward international judicial oversight remains deeply rooted in political alliances rather than legal principles (Tladi, 2023). This reaction contrasts sharply with the ICC's earlier investigations into African and Middle Eastern leaders, which Western powers actively endorsed (Mégret, 2018).

By 2024, reports had emerged that the ICC was preparing arrest warrants for senior Israeli officials, including Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant, over the military campaign in Gaza. This development was met with an unprecedented response from ICC member states, particularly in Europe. Germany, the United Kingdom, and other Rome Statute signatories declared that they would not enforce the warrants, despite their legal obligation to arrest ICC-indicted individuals (BBC, 2024).

This was particularly striking given that these same governments fully backed the ICC's 2023 arrest warrant for Russian President Vladimir Putin over war crimes committed in Ukraine (Hathaway and Shapiro, 2023). The blatant double standard raises serious concerns about the credibility of the ICC as a neutral judicial body. If international law is to be respected, it must be applied consistently, regardless of the political affiliations of the accused (Orford, 2006). Enforcing arrest warrants only when politically convenient undermines the entire premise of international justice (Benvenisti, 2009). In such circumstances, the ICC will continue to suffer from a credibility crisis related to the strong belief that international justice is merely an extension of political power, rather than a truly impartial system of accountability (Grovogui, 2020).

### **3. Selective Enforcement: Putin's Arrest vs. Israeli Officials**

The International Criminal Court's (ICC) 2023 arrest warrant for Russian President Vladimir Putin over war crimes in Ukraine marked a defining moment in the court's history, as it was one of the few instances of a sitting head of state of a major global power being indicted. The charges centered on the unlawful deportation of Ukrainian children to Russia, constituting a war crime under Article 8 of the Rome Statute (ICC, 2023). Western governments, particularly the U.S., EU, and NATO-aligned states, swiftly endorsed the ICC's decision, pledging to uphold the warrant and arrest Putin if he entered their territories (Hathaway and Shapiro, 2023). European nations, including Germany, France, and the United Kingdom, reaffirmed their commitment to the Rome Statute's principles, declaring that the ICC's rulings must be universally respected as a cornerstone of the rules-based

international order (Tladi, 2023). This response reinforced the narrative of international law as an impartial system, ostensibly capable of holding even the most powerful leaders accountable for human rights violations and war crimes.

However, this strict legal commitment was short lived. It unraveled pitifully when the ICC turned its attention to Israeli officials in 2024. Following extensive investigations into the Gaza conflict, reports indicated that the ICC was preparing arrest warrants for Israeli Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant, citing war crimes and potential crimes against humanity committed during military operations in Gaza (ICC, 2024). In a stark contrast to their response to Putin's indictment, the same Western governments that championed the ICC's authority in Ukraine quickly rejected the court's legitimacy in relation to Israel. Germany, the United Kingdom, and the European Union, all signatories to the Rome Statute, publicly announced that they would not comply with any ICC arrest warrants against Israeli officials (BBC, 2024).

Such selective enforcement has further fueled skepticism in the Global South about the ICC's credibility as an impartial judicial institution. Cases against leaders from Sudan, Kenya, the Democratic Republic of Congo, and Libya were pursued aggressively, often with the full backing of Western powers, reinforcing perceptions of a neo-colonial legal framework (Ssenyonjo, 2017). The refusal to apply the same standards to Israel—a long-time Western ally—while aggressively prosecuting Russia, further entrenches the belief that the ICC is merely a geopolitical tool rather than a truly independent court (Orford, 2006). This perception has led several African and Asian countries to reconsider their participation in the ICC, with South Africa, Burundi, and the Philippines previously moving to withdraw from the Rome Statute because of what they viewed as politically motivated prosecutions (Dixon, 2018).

The ICC's credibility crisis has been exacerbated by the United States' contradictory stance on the court's legitimacy. The U.S. sanctioned ICC officials in 2020 when the court investigated alleged U.S. war crimes in Afghanistan, yet openly applauded the ICC's actions against Putin just three years later (Kersten, 2021). Such double standards underscore how international criminal justice remains subordinate to global power dynamics, rendering the concept of universal accountability meaningless (Koskeniemi, 2001). For international justice to be truly effective, it must be applied universally, independent of political alliances. Otherwise, the ICC risks reinforcing a hierarchical global legal order, in which accountability exists only for those without the protection of powerful allies (Falk, 2014).

## **IV. THEORETICAL PERSPECTIVES ON INTERNATIONAL JUSTICE AND SELECTIVE PROSECUTION**

### **1. Realist Critiques of International Law: Power Over Principles**

Realist scholars argue that international law is inherently subordinated to the power dynamics of global politics, making it an instrument of statecraft rather than an impartial legal framework (Mearsheimer, 1994). Unlike liberal and constructivist perspectives, which emphasize the normative

force of legal rules and institutions, realism asserts that states comply with international law only when it aligns with their strategic interests (Carr, 1946). Institutions such as the ICJ and the ICC are not independent arbiters of justice but rather operate within an anarchic international system in which enforcement depends entirely on the political will of dominant states (Waltz, 1979). Since there is no overarching authority above the state, international law lacks true coercive power, functioning instead as a set of guidelines selectively followed or ignored based on power calculations (Morgenthau, 1948). This realist critique directly challenges the liberal ideal that legal norms and institutions can constrain state behavior in meaningful ways, arguing instead that international law merely reflects existing power structures rather than shaping them (Krasner, 1999).

From a realist perspective, international legal institutions are inherently weak because they rely on state consent and voluntary compliance. The ICJ, for example, only has jurisdiction when both states agree to submit to its rulings, meaning that powerful countries can simply opt out of its authority when decisions are unfavorable (Posner and Yoo, 2005). As previously mentioned, the U.S. withdrew from the ICJ's compulsory jurisdiction in 1986 after the court ruled against it in *Nicaragua v. United States*, demonstrating how great powers can circumvent international law without consequence (Chayes, 1987). Similarly, the ICC lacks enforcement power against non-signatories of the Rome Statute, allowing countries such as China, Russia, Israel, and the United States to remain beyond its reach (Goldsmith and Krasner, 2003). Even when international courts issue rulings, realist scholars point out that compliance is determined by political incentives rather than legal obligation, making enforcement a matter of power politics rather than legal principles (Mearsheimer, 2001).

Moreover, realism highlights the selective application of international law, arguing that it is often used as a tool of coercion by dominant states rather than a neutral mechanism of justice (Koskenniemi, 2005). Significantly different treatment of African leaders compared to Israeli war crimes reinforces realist arguments that international law is not applied universally but rather manipulated to serve the interests of powerful states (Benvenisti, 2009). The UN Security Council's ability to block ICC referrals through veto power further demonstrates how legal accountability is subject to geopolitical interests rather than an impartial legal order (Bosco, 2014). As a result, international law does not constrain power but instead operates within the framework of power politics, reinforcing existing hierarchies rather than dismantling them (Orford, 2006).

Another core realist critique is that international law lacks autonomy from the strategic interests of great powers, particularly when it comes to sovereignty and national security (Krasner, 1999). States will prioritize self-preservation over legal commitments, as seen in the U.S. withdrawal from the Anti-Ballistic Missile Treaty (2002), and its refusal to ratify the UN Convention on the Law of the Sea (UNCLOS) (Goldsmith and Posner, 2005). The failure to enforce legal rulings against major powers further validates the realist claim that legal norms are ineffective without military or economic enforcement mechanisms (Hathaway and Shapiro, 2017). Without credible enforcement mechanisms, international law is merely aspirational rhetoric (Kennedy, 2004).

Ultimately, realism offers a compelling critique of the liberal assumption that international law is a powerful constraint on state behavior. While international legal institutions provide a framework for diplomacy and conflict resolution, they do not override the fundamental realities of power politics (Mearsheimer, 2001). As long as states retain sovereignty as their highest priority, realists argue that international law will continue to function as an instrument of political expediency rather than an impartial system of justice (Falk, 2014). If international law is to gain legitimacy, it must address the

realist critique by ensuring greater consistency in enforcement, reducing political interference, and developing credible mechanisms to hold all states accountable—regardless of their geopolitical status (Grovgui, 2020).

## 2. The Global South's Disillusionment With the ICC

The ICC has long been viewed with skepticism by New South countries, particularly in Africa, Asia, and Latin America, because of its selective application of justice and its apparent bias against leaders from the Global South. The perception that the ICC targets African leaders disproportionately while failing to hold Western officials accountable has led to growing distrust and resentment, with some African states even threatening to withdraw from the Rome Statute entirely (Dixon, 2018).

One of the most cited examples of ICC bias is the case of Sudanese President Omar al-Bashir (2009), who became the first sitting head of state to be indicted by the ICC for crimes related to the Darfur conflict (ICC, 2009). Though the court issued an arrest warrant for al-Bashir, he continued to travel freely across Africa and the Middle East, with countries including South Africa and Chad refusing to comply with ICC extradition demands (Ssenyonjo, 2017). Many African leaders saw this indictment as an example of the ICC singling out African figures while ignoring Western-led interventions in Iraq, Libya, and Afghanistan, where severe war crimes, including torture, indiscriminate bombings, and civilian casualties, were widely documented (Benvenisti, 2009). The African Union (AU) criticized the ICC repeatedly for focusing disproportionately on African cases, arguing that the court had been weaponized by Western states to assert legal dominance over post-colonial nations (Murithi, 2013).

Similarly, the case of Kenyan President Uhuru Kenyatta (2010) further reinforced African states' perceptions that the ICC is incapable of applying justice impartially. Kenyatta was charged with crimes against humanity related to post-election violence in Kenya, but the case ultimately collapsed because of a lack of cooperation from Western governments in providing key evidence (ICC, 2014). African observers noted that while the ICC aggressively pursued prosecutions against non-Western leaders, it relied on Western states for intelligence, funding, and political backing, creating a structural imbalance that limited its ability to act independently (Bosco, 2014). The failure to secure cooperation in this case exposed the ICC's reliance on Western political will, which, when absent, rendered it unable to sustain prosecutions against even high-profile targets (Orford, 2006). These failures have fueled calls for regional alternatives to the ICC, with some African nations advocating for a stronger role for the African Court on Human and Peoples' Rights (AfCHPR), and the development of localized judicial mechanisms (Tladi, 2019).

The ICC's failure to prosecute Western leaders for war crimes in Iraq, Afghanistan, and Libya has been one of the most damaging blows to its legitimacy in the Global South. The U.S.-led invasion of Iraq in 2003, which resulted in hundreds of thousands of civilian deaths, was carried out without UN Security Council authorization, making it a clear violation of international law (Heller, 2021). Yet, no U.S. or UK official was ever charged for alleged war crimes, including torture at Abu Ghraib or the use of drone strikes on civilian populations (Hathaway and Shapiro, 2017). Similarly, NATO's 2011 intervention in Libya, which led to the overthrow and assassination of Muammar Gaddafi, was initially justified on humanitarian grounds, yet resulted in widespread instability, civilian casualties, and the rise of extremist groups (Kuperman, 2015). Despite clear evidence of war crimes committed by Western forces in these conflicts, the ICC failed to pursue any meaningful investigations.

In response to these inconsistencies, many Global South countries have increasingly pushed for

alternative regional justice mechanisms, arguing that international law should not be monopolized by institutions controlled by Western states (Grovgoui, 2020). The AU has led discussions on expanding the mandate of the AfCHPR to include criminal jurisdiction, allowing African states to prosecute war crimes and crimes against humanity without reliance on the ICC (Murithi, 2013). In Latin America, there have been renewed efforts to strengthen the Inter-American Court of Human Rights, while in Asia, some nations have called for an independent tribunal to address crimes committed by major global powers (Dixon, 2018). These efforts reflect a broader shift away from Western-centric legal institutions and toward a more multipolar legal order, in which regional bodies would play greater roles in defining and enforcing international law (Tladi, 2023). Unless the ICC undergoes significant reforms to ensure truly universal jurisdiction and remove political interference, it risks becoming further marginalized as the Global South seeks to reclaim agency over its legal and political sovereignty (Falk, 2014).

## V. CONCLUSION: TOWARDS A MORE CREDIBLE INTERNATIONAL JUSTICE SYSTEM

The ICJ and the ICC have played crucial roles in shaping global legal norms, issuing landmark rulings on territorial disputes, war crimes, and genocide. However, their impact remains fundamentally undermined by selective enforcement and geopolitical manipulation. The failure to apply international law consistently, regardless of a country's geopolitical standing, has led to growing skepticism in the Global South, where the ICC, in particular, is viewed as a tool of Western influence rather than an impartial judicial institution (Mamdani, 2010). If these courts are to serve as true pillars of global justice rather than instruments of power politics, meaningful reforms must be enacted to restore their credibility (Tladi, 2023).

A comprehensive overhaul of the ICJ and ICC's structures is necessary to ensure that international justice operates without political interference. First, the UNSC veto power over ICJ enforcement must be either abolished or significantly reformed. The UNSC, dominated by the five permanent members—the U.S., the UK, France, China, and Russia—effectively determines which ICJ rulings are enforced and which are ignored (Benvenisti, 2009). The current structure reduces the ICJ to a symbolic institution, with justice conditional on the interests of the most powerful states (Orford, 2006). Reforms to ensure that ICJ rulings are legally binding and automatically enforced—without requiring UNSC approval—would significantly strengthen the court's authority and limit political interference.

Similarly, the ICC's jurisdiction must be expanded to apply equally to all states, including the most powerful. At present, the ICC lacks the ability to prosecute individuals from non-signatory states unless referred by the UNSC, effectively granting legal immunity to U.S., Chinese, Russian, and Israeli officials (Goldsmith and Krasner, 2003). This structural flaw renders the idea of universal justice meaningless. For the ICC to function as a legitimate court rather than a selective legal weapon, it must be given the authority to prosecute all war crimes and crimes against humanity, regardless of the state involved.

Beyond structural changes, there must also be stronger safeguards to prevent political interference in ICC cases. The Trump administration's sanctions on ICC officials investigating U.S. war crimes in Afghanistan demonstrated how easily powerful states can undermine the court's independence (Heller, 2021). Similarly, the refusal of Germany, the UK, and other Western ICC signatories to

enforce potential arrest warrants against Israeli leaders in 2024, despite actively upholding the ICC's indictment of Russian President Vladimir Putin in 2023, further eroded the ICC's claim to impartiality (Tladi, 2023). The ICC must insulate itself from political pressure by strengthening its financial independence—moving away from reliance on Western funding—and ensuring that all cases are handled with consistent legal standards rather than being subject to geopolitical calculations (Mégret, 2018). Without such changes, the ICC risks further delegitimization, pushing more countries—particularly in the Global South—to seek alternative regional legal mechanisms (Grovgui, 2020).

If these critical reforms are not implemented, international justice will continue to function as an extension of global power hierarchies rather than a neutral legal system. The ICJ and ICC were established to ensure that the world's most serious crimes would not go unpunished, regardless of the perpetrator's nationality or political affiliation. The credibility of international law depends on whether it applies equally to all states, not just those that lack the power to resist its rulings. Without genuine reform, the international justice system risks irrelevance, as more countries in the Global South will turn away from Western-led institutions and seek to establish alternative legal frameworks (Anghie, 2007). The ICJ and ICC must choose between continuing down the path of selective justice and erosion of legitimacy, or embracing meaningful change to uphold the principles they were created to defend. The world cannot afford a legal order in which the most powerful states dictate the boundaries of accountability—justice must be truly universal, or it ceases to be justice.

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## ABOUT THE AUTHOR



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Ferid Belhaj took up the position of World Bank Vice President for Middle East and North Africa on July 1, 2018. Prior to this, he served as the Chief of Staff of the President of the World Bank Group for 15 months. From 2012 to 2017, Mr. Belhaj was World Bank Director for the Middle East, in charge of work programs in Lebanon, Syria, Jordan, Iraq and Iran, based in Beirut, Lebanon. In this capacity, he led the Bank's engagement on the Syrian refugee crisis and its impact on the region, including the creation of new financing instruments to help countries hosting forcibly displaced people; the ramping up of the Bank drive towards the reconstruction and recovery of Iraq during and after the ISIS invasion and the scaling up of the Bank's commitments to Lebanon and Jordan.

Before taking up his Mashreq assignment, Mr. Belhaj served as World Bank Director for the Pacific Department (2009-2012), where he developed a regional strategy that scaled up Bank engagement in small and fragile states, and tripled lending operations of the International Development Agency, one of the five institutions under the umbrella of the World Bank Group that provides interest-free loans and grants for Low-Income Countries. From 2007 to 2010, Mr. Belhaj was the World Bank's Special Representative to the United Nations (UN) in New York, where he engaged with various UN agencies on a range of programs, mainly climate change, the Millennium Development Goals, fragile and post-conflict states and the global financial and food crises.

## ABOUT THE POLICY CENTER FOR THE NEW SOUTH

The Policy Center for the New South (PCNS) is a Moroccan think tank aiming to contribute to the improvement of economic and social public policies that challenge Morocco and the rest of Africa as integral parts of the global South.

The PCNS pleads for an open, accountable and enterprising "new South" that defines its own narratives and mental maps around the Mediterranean and South Atlantic basins, as part of a forward-looking relationship with the rest of the world. Through its analytical endeavours, the think tank aims to support the development of public policies in Africa and to give the floor to experts from the South. This stance is focused on dialogue and partnership, and aims to cultivate African expertise and excellence needed for the accurate analysis of African and global challenges and the suggestion of appropriate solutions.

All opinions expressed in this publication are those of the author.

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