

United States' Refusal to the International Criminal Court's Investigation of Crimes Against Humanity Conducted by Israel in Palestine

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Abstract: *This research examines the legal validity of the United States' rejection of the International Criminal Court's (ICC) investigation into alleged crimes against humanity committed in Palestine. The issue arises from the imposition of United States sanctions on ICC officials, despite the United States not being a State Party to the Rome Statute and its reliance on domestic legislation such as the American Servicemembers' Protection Act of 2002. Using a normative juridical method, this study analyzes primary legal sources, including the Rome Statute, the Vienna Convention on the Law of Treaties, and ICC jurisprudence, alongside relevant secondary materials. Particular attention is given to the Appeals Chamber decision of 15 December 2025, which rejected Israel's objection under Article 18 of the Rome Statute and confirmed the Prosecutor's authority to proceed with the investigation into the situation in Palestine. The findings indicate that the ICC lawfully exercises territorial jurisdiction based on Palestine's 2015 accession and Article 12(2)(a) of the Rome Statute, and that obligations arising from *jus cogens* and *erga omnes* norms render unilateral countermeasures legally ineffective. Furthermore, the study argues that sanctions targeting ICC judges and prosecutors may constitute improper interference with the administration of justice under Article 70 of the Rome Statute. The study concludes that such sanctions undermine the independence of the ICC, weaken the universality of international criminal accountability, and risk politicizing the enforcement of core international crimes.*

Keywords: *International Criminal Court; Sanctions; Jurisdiction; Jus Cogens*

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INTRODUCTION

From the beginning, international law has been a reflection of natural law. The idea that international law is rooted in natural law

can be traced back to Cicero, a Roman philosopher who linked natural law as *lex naturae* and *ius gentium*, or international law¹. Cicero's view suggests that natural law and

¹ Atip Latipulhayat, *Hukum Internasional: Sumber-Sumber Hukum* (Sinar Grafika, 2021).

international law arise from the same source, namely *ratio naturalis* (natural reason). Over time, the values of international law have evolved.

Customary international law is frequently positioned at the apex of the international legal order, operating as a normative framework that informs both the formation and interpretation of treaty law. Central to this framework is the doctrine of *pacta sunt servanda*² which establishes that agreements concluded between states carry binding legal force and must be performed in good faith. This doctrine underpins the stability and predictability of treaty relations, serving as a foundational premise of international legal practice. Yet the binding nature of treaties is not without qualification. Article 34 of the 1969 Vienna Convention on the Law of Treaties articulates a critical limitation by affirming that treaties neither impose obligations upon nor confer rights on third parties, namely non-contracting states³.

This codification reflects the long-standing maxim *pacta tertiis nec nocent nec prosunt*, which functions as a doctrinal constraint against extending treaty effects to states that have not expressed consent to be bound. In *Guide to Latin in International Law*⁴, they emphasize that the *pacta tertiis nec nocent nec prosunt* doctrine not only prevents the imposition of treaty-based burdens on non-ratifying states but also precludes such states from deriving material

benefits from treaties to which they are not parties.

An important exception arises, however, when a treaty implicates violations of international law involving elements of humanitarian or international criminal concern⁵. The Rome Statute of the International Criminal Court 1998, known as the 1998 Rome Statute, particularly in Article 5, enumerates the core international crimes—war crimes, crimes against humanity, the crime of aggression, and genocide—each of which has crystallized within customary international law as *jus cogens* prohibitions⁶. These peremptory norms constitute non-derogable principles of fundamental importance, requiring compliance by all international actors, regardless of consent or treaty status⁷. This peremptory character is reaffirmed in Article 53 of the Vienna Convention on the Law of Treaties 1969, which provides that “a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.” This provision serves as a doctrinal safeguard, invalidating any treaty—regional or international—that seeks to circumvent, dilute, or contravene obligations arising from the commission or prohibition of core international crimes.⁸

In such circumstances, treaty obligations are extinguished *ipso jure* as the agreement is considered *void ab initio* legally null from the moment of its conclusion⁹. Consequently, *jus cogens*

² Khoirur Rizal Lutfi, “Teori Hukum Alam,” *Yuridis* 1, no. 1 (2014): 91–106.

³ UN, “VLCT,” 1155 United Nations § (1969).

⁴ X. Aaron Fellmeth and Maurice Howitz, *GUIDE TO LATIN IN INTERNATIONAL LAW* (Oxford University Press, Inc, 2021).

⁵ B. Lora Christyanti, “Jus Cogens Sebagai Dasar Mengikatnya Hukum Internasional,” *Yurispruden : Jurnal Fakultas Hukum Universitas Islam Malang* 5, no. 2 (2022): 196, <https://doi.org/10.33474/yur.v5i2.14611>.

⁶ ICC, “Rome Statute of the International Criminal Court,” 2187 ICC § (1998), https://doi.org/10.1163/9789047412878_059.

⁷ Traoré, S. B. (2021). “Chapter 6 Peremptory Norms and Interpretation in International Law”. In *Peremptory Norms of General International Law (Jus Cogens)*. Leiden, The Netherlands: Brill

⁸ UN, VLCT.

⁹ Krister Rasmussen, “Lawful Ends to Unlawful Wars : Coercion and Voidness in Peacemaking,” *The Yale Law Journal* 135:695 (2025): 695–761.

norms operate as a structural constraint on treaty-making power, ensuring that states cannot legitimize, through consensual arrangements, conduct that international law unequivocally prohibits. These obligations require states to refrain from, prevent, and respond to any conduct implicating international crimes, irrespective of particular treaty arrangements or bilateral interests¹⁰.

The concept of *erga omnes* entered the doctrinal vocabulary of international law through the landmark 1970 Barcelona Traction, Light and Power Company, Limited judgment. The dispute concerned a Canadian-incorporated company operating in Barcelona whose majority shareholders were Belgian nationals. Belgium sought to bring a claim before the International Court of Justice¹¹ against Spain, alleging injury to its nationals arising from Spanish governmental measures. The ICJ, however, rejected the claim, holding that Belgium lacked standing to exercise diplomatic protection on behalf of a corporation of Canadian nationality. Diplomatic protection, the Court reasoned, may only be invoked by the state of nationality of the corporate entity, Canada in this case, regardless of the nationality of the shareholders. Consequently, neither Canada nor Belgium could validly assert the claim in the manner advanced.¹²

In articulating this limitation, the ICJ drew a decisive distinction between obligations owed *inter partes* and obligations owed *erga omnes*. While diplomatic protection falls within the former category

and is contingent upon a specific legal nexus, the Court recognized the existence of obligations “toward the international community as a whole,” violations of which confer standing upon all states¹³.

Article 71 of the 1969 Vienna Convention on the Law of Treaties further reinforces the hierarchical authority of *jus cogens* by stipulating its retroactive effect: treaties inconsistent with peremptory norms must be brought into conformity with them or deemed without legal effect¹⁴. This retroactivity doctrine has become a recurrent point of reference in the enforcement of international criminal law, particularly in contexts involving allegations of systematic violations of humanitarian norms. A frequently cited contemporary illustration concerns allegations of crimes against humanity arising from the protracted conflict between Israel and the Palestinian population. The confrontation—one of the most enduring and politically consequential disputes of the twenty-first century—has repeatedly triggered scrutiny under international criminal law mechanisms. The International Criminal Court (ICC) asserted jurisdiction in this context not only because Palestine acceded to the Rome Statute in 2015, thereby granting the Court territorial and personal jurisdiction, but also because the ICC’s institutional mandate encompasses the adjudication of grave international crimes perpetrated by individuals or, through individual responsibility, by state agents.

Established by the 1998 Rome Statute as a permanent judicial body distinct from, though complementary to, the International

¹⁰ Christyanti, “Jus Cogens Sebagai Dasar Mengikatnya Hukum Internasional.”

¹¹ ICJ, “Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain),” *Limited, Judgment, ICJ Reports*, vol. 3, 1970.

¹² ICJ, “Case Concerning the Barcelona Traction, Light and Power Company, Limited,” *International Law Reports*, vol. 46, 1973, <https://doi.org/10.1017/cbo9781316151730.001>.

¹³ ICJ.

¹⁴ UN, VLCT.

Court of Justice, the ICC exercises authority over the core crimes codified in Article 5¹⁵. Its involvement in the Israel–Palestine situation exemplifies the functional reach of peremptory norms: where conducted violations pertain to jus cogens—such as systematic attacks on civilians—state consent or political contestation cannot diminish the applicability of international criminal accountability. In this sense, Article 71’s retroactivity principle operates not merely as a doctrinal rule governing treaty validity, but as a structural safeguard ensuring that no legal instrument may shield conduct that international law identifies as fundamentally impermissible. The escalating civilian toll ultimately catalyzed a decisive move by the International Criminal Court (ICC)¹⁶. In November 2024, Pre-Trial Chamber I issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Minister of Defense Yoav Gallant, as announced in its press release, Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel’s challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant¹⁷.

Against this backdrop, the controversy is no longer confined to a dispute over jurisdiction in a particular situation, but has evolved into a broader legal confrontation over the authority and autonomy of the international criminal justice system itself. The imposition of sanctions by a non-party state against an international judicial institution raises fundamental questions about the limits of state sovereignty, the

scope of lawful countermeasures, and the resilience of peremptory norms in the face of political resistance. The following analysis therefore shifts from a descriptive account of events to a normative evaluation of whether unilateral sanctions against the ICC can be justified under international law, and whether such measures are compatible with the obligations arising from jus cogens, erga omnes, and the principle of non-intervention.

These warrants form part of a broader investigative trajectory initiated on 5 February 2021, when the ICC confirmed its territorial jurisdiction over Palestine—an accession state to the 1998 Rome Statute—through its decision in Situation in the State of Palestine: Decision on the Territorial Jurisdiction¹⁸. The Court’s assertion of jurisdiction prompted immediate condemnation from Israel’s principal ally, the United States. The United States administration under President Donald J. Trump characterized the warrants as an overreach, asserting that the ICC impermissibly exercised jurisdiction over nationals of non-party states. In response, on 6 February 2025, the United States imposed sanctions on the ICC, invoking the “American Servicemembers’ Protection Act of 2002” (ASPA), which authorizes protective measures against international tribunals perceived to threaten United States sovereignty. Under ASPA, “*protected persons*” include United States nationals and designated allies, thereby enabling the United States to block the financial transactions of ICC officials and restrict their entry into United States territory—

¹⁵ Murphy, Sean D. "Aggression, Legitimacy and the International Criminal Court." *European Journal of International Law* 20, no. 4 (November 2009): 1147–1156. <https://doi.org/10.1093/ejil/chp079>.

¹⁶ Prakash, Bhaswat, U.S. Sanctions on International Criminal Court (May 2, 2021). Available at

SSRN: <https://ssrn.com/abstract=3838256> or <http://dx.doi.org/10.2139/ssrn.3838256>

¹⁷ ICC, “PRE-TRIAL CHAMBER I: SITUATION IN THE STATE OF PALESTINE,” *International Criminal Court*, n.d., https://doi.org/10.1163/9789004504783_007.

¹⁸ ICC.

constraints that materially impede the Court's ability to conduct comprehensive investigations into conducted international crimes.

The United States argued that Israel, likewise a non-party to the Rome Statute, was merely exercising sovereign prerogatives guaranteed under its constitutional order, and that the ICC's actions violated fundamental limits of consent-based jurisdiction. Since both Israel and the United States remain outside the Rome Statute framework, the dispute highlights a central tension in contemporary international law: whether a non-state party may lawfully obstruct the functions of an international criminal tribunal acting under universally binding norms, particularly *jus cogens* prohibitions and obligations *erga omnes* tied to crimes against humanity. Accordingly, this article examines the legal validity of United States sanctions against the ICC as measures taken by a non-party state, and evaluates their compatibility with customary international law, the principle of non-intervention, and the peremptory character of international criminal norms implicated in the Israel–Palestine situation.

METHOD

This study employs a normative juridical research design, relying primarily on secondary data. The primary legal materials consist of the Vienna Convention on the Law of Treaties, the 1998 Rome Statute, Executive Order 14203, the American Servicemembers' Protection Act of 2002, and official ICC documents, including decisions of the Pre-Trial Chamber and other authoritative issuances. The secondary materials include peer-reviewed

scholarly articles relevant to the subject matter, while tertiary sources encompass Black's Law Dictionary and reports from credible news agencies pertinent to the issues under examination. Methodologically, the research adopts both a case approach and a statute approach. The case approach focuses on jurisprudential guidance derived from judicial decisions, though not limited to them, allowing the study to extract doctrinal principles embedded in international adjudication. The statute approach centers on a systematic interpretation of governing instruments as binding normative frameworks¹⁹. Additionally, a conceptual approach is employed to engage with doctrinal understandings drawn from customary international law, facilitating the construction of theoretical hypotheses supported by coherent argumentative reasoning, even in relation to events that remain ongoing or unsettled. Data collection is conducted through comprehensive library research, involving the systematic examination of legal texts to synthesize a coherent theoretical foundation. The analysis relies on a qualitative–descriptive method designed to reinforce the study's normative arguments and to elucidate the legal issues at the core of the inquiry

ANALYSIS AND DISCUSSION

The legitimacy of intervention by the United States as a non-State Party to the ICC and the principle of non-intervention in the sovereignty of the ICC's jurisdiction

In legal theory, legitimacy derives from the Latin *lex* and denotes the authoritative validation of a norm within a

¹⁹ Saiful Anam, "Pendekatan Perundang-Undangan (Statute Approach) Dalam Penelitian Hukum," *Saplaw. Top*, 2017.

binding legal framework. As reflected in Black's Law Dictionary, legitimacy concerns the lawful, formally recognized status of a rule, implicating questions of both material and formal validity²⁰. Within international law, legitimacy functions as a criterion for assessing normative coherence, particularly where potential conflicts arise among overlapping international instruments. The maxim *lex specialis derogat legi generali* encapsulates this evaluative function by establishing the priority of a specific rule over a general one in cases of normative tension. This principle also highlights the need to distinguish between the operational spheres of international and domestic law, whose jurisdictional scopes differ substantially. Although international law lacks a rigid internal hierarchy, its effective operation requires compatibility with national legal orders. Ultimately, international and domestic legal systems operate interdependently: domestic incorporation gives practical effect to international norms, while international law provides interpretive and doctrinal guidance within national adjudication. Legitimacy thus serves as a structural device ensuring coherence across overlapping legal regimes.

In conceptual terms, the emergence of both national and international law is traditionally explained through the theories of monism and dualism. Monist theory posits an inherent interrelationship between the two legal orders and presumes the existence of a unified hierarchy. Within monism, two principal variants exist—national primacy and international primacy—each offering

distinct interpretive orientations. Under the national primacy variant, international law is viewed as subordinate to, and ultimately dependent on, domestic law. This position rests on the assertion that sovereign states constitute the foundational actors of the international system and that international organizations derive their authority from state consent. Consequently, monism with national primacy contends that international legal rules must not supersede national legislation.²¹

However, this view is structurally flawed. By subordinating international law entirely to domestic sovereignty, it obscures the functional interdependence between the two systems and reduces international law to treaty-based obligations alone, disregarding its other authoritative sources—most notably customary international law. Such a reductive approach fails to account for the broader normative architecture of international law and its capacity to generate binding obligations independent of explicit state consent. By contrast, the monist theory with international primacy asserts that international law constitutes the primary legal order from which domestic law subsequently derives its validity. This school of thought most prominently associated with Hans Kelsen's "*Grundnorm theory*" and the broader Vienna School, conceptualizes international law as the superior normative framework governing the conduct of states and informing the structure of national legal systems²².

Although this approach offers an appealingly coherent legal hierarchy, it faces

²⁰ Alexander Hamilton Frey and Henry Campbell Black, "Black's Law Dictionary," *University of Pennsylvania Law Review and American Law Register* 82, no. 8 (1934): 886, <https://doi.org/10.2307/3308065>.

²¹ Roberto Carlos Veriero Siregar, "Hubungan Hukum Internasional Dan Hukum Nasional," *Journal*

of Islamic Law El Madani 4, no. 1 (2024): 15–23, <https://doi.org/10.55438/jile.v4i1.143>.

²² Ukas Ukas and Zuhdi Arman, "Analisis Yuridis Hubungan Hukum Internasional Dengan Hukum Nasional (Dalam Kajian Prespektif Teori)," *Petita* 3, no. 2 (2021): 249–58, <https://doi.org/10.33373/pta.v3i2.3830>.

a fundamental conceptual gap: it contradicts the historical and sociological foundations of lawmaking, which demonstrate that international norms originally emerged from the practices and consent of sovereign states. In this sense, monism with international primacy generates a paradox by presupposing the priority of a legal order that itself depends upon national legal authority for its creation. In contrast to both monist variants, dualist theory maintains a strict separation between international and domestic law, treating them as distinct legal systems operating within different normative spheres. Under dualism, neither system inherently subordinates the other; instead, each retains independent validity and applies according to its respective jurisdictional domain. This perspective avoids the hierarchical dilemmas inherent in monist theories by acknowledging the structural autonomy of both legal orders while allowing for interaction without mutual negation.

The Dualist theoretical framework, in its general articulation, is often criticized for its foundational deficit, failing to adequately address the ontological question of the precedence or origin of legal norms. This conceptual lacuna effectively reduces the relationship to one of two distinct, yet inextricably linked, legal orders. Under this model, international legal instruments are only rendered operative within the domestic sphere through a formal act of transformation—specifically, their enactment into national statute—which then confers binding force upon the citizenry. A critical consequence of this Dualist perspective is the inherent possibility of a normative collision, where domestic law

may legitimately conflict with international legal obligations. Crucially, however, this allowance for conflict is strictly curtailed by the peremptory norms of general international law (*ius cogens*), which mandate that no domestic provision may violate fundamental international crimes²³.

The political response to the International Criminal Court's (ICC) investigation into conducted international crimes in the Israel-Palestine situation was exemplified by the United States' imposition of sanctions. This action, which included the freezing of assets and restrictions on entry, was formally articulated in “*Executive Order 14203 on Imposing Sanctions on the International Criminal Court*.” From the perspective of state sovereignty and the principle of non-intervention, the United States arguably asserts a right to sanction the ICC, premised on the argument that the Court has exceeded its jurisdictional mandate. This jurisdictional challenge centers on Article 12 of the 1998 Rome Statute, which strictly delineates the scope of the Court's authority to three primary conditions: (a) the crime is committed by a national of a State Party; (b) the crime occurs on the territory of a State Party; or (c) the situation is referred to the Prosecutor by the United Nations Security Council. Given that the United States is not a State Party, its position is that the ICC's investigation into the conduct of its nationals, or those of its allies, constitutes an overreach of its consent-based jurisdiction²⁴.

Notwithstanding this jurisdictional friction, the relationship between the United States and the ICC has been characterized by significant ambivalence. Although the United States was instrumental in the Court's

²³ Veriero Siregar, “Hubungan Hukum Internasional Dan Hukum Nasional.”

²⁴ ICC, Rome Statute of the International Criminal Court.

founding and initially signed the Rome Statute in 1998, President George W. Bush subsequently "unsigned" the treaty in 2002, formally withdrawing the United States' involvement. Despite this formal detachment, the United States has maintained a pragmatic, case-by-case cooperation with the ICC, notably providing logistical and intelligence support in certain international crime cases, such as the apprehension of leaders of the Lord's Resistance Army (LRA) following the initial referral in 2004. This selective engagement highlights a persistent tension between the United States' commitment to international justice and its staunch defense of national sovereignty against perceived external judicial authority.

The gravity of these atrocities provided the basis for the ICC to issue warrants of arrest against the organization's principal leaders. The United States assumed a substantial role in this matter, formalized by the Lord's Resistance Army Disarmament and Northern Uganda Recovery Act of 2010. This legislative mandate established a framework for Washington's commitment to supporting the Ugandan government's counterinsurgency efforts, including the provision of active military and operational support aimed at neutralizing the LRA's presence in northern Uganda. Subsequently, President Barack Obama authorized Operation Observant Compass in 2011, which provided non-combat military assistance specifically targeting the apprehension of key LRA figures, such as Joseph Kony. The operation was ultimately terminated in 2017, following the determination that the LRA no longer posed a significant threat, although the judicial process against LRA members continued through 2023. This sustained, albeit indirect, involvement serves as compelling evidence of the United States' pragmatic collaboration

with the ICC, demonstrating a willingness to align its foreign policy objectives with the Court's judicial goals despite its persistent status as a non-State Party to the Rome Statute.

Israel, a key ally of the United States, similarly maintains the status of a non-State Party to the 1998 Rome Statute. Despite this current position, Israel's initial engagement with the Court was marked by ambivalence: it signed the Statute on December 31, 2000, under Prime Minister Ehud Barak, thereby agreeing to the obligation not to defeat the object and purpose of the treaty. However, this commitment was short-lived, as Israel formally withdrew its signature on August 28, 2002. The official justifications provided by the Israeli government for this withdrawal centered on several critiques. Primarily, concerns were raised regarding internal governmental dilemmas and the jurisdictional scope of the ICC, specifically noting the omission of certain grave offenses, such as terrorism and narcotics trafficking, from the Court's mandate. Furthermore, Israel voiced apprehension over the selection process of ICC judges, claiming it was potentially discriminatory and could lead to biased judicial outcomes. This strategic withdrawal underscores a persistent sovereignty-versus-justice tension in the international legal order, mirroring the concerns of its principal ally.

The shared status of Israel and the United States as non-State Parties to the 1998 Rome Statute forms the legal-political basis for their rejection of the ICC's jurisdiction. Consequently, the sanctions imposed by the United States against the Court are deemed legitimate and binding within the ambit of United States domestic law. The primary legislative instrument underpinning this position is the American Servicemembers' Protection Act of 2002

(ASPA), which explicitly aims to shield United States and allied personnel from ICC prosecution. ASPA provides comprehensive protection against detention or arrest by the Court. Specifically, Section 2013(3) of the Act defines "covered allied persons," extending protection to government officials and non-major North Atlantic Treaty Organization (NATO) members—a category that, by extension, is often interpreted to include Israel.

ASPA establishes two distinct protected classes: "covered United States persons" (United States officials and personnel) and "covered allied persons" (allied personnel whose governments are not cooperating with the ICC). Furthermore, Section 2003(a)(2)(A)–(B) of the Act prohibits the ICC from exercising jurisdiction over individuals within the territories of the states designated under the statute, effectively establishing a domestic legal firewall against the Court's authority. This legislative framework transforms the international dispute over jurisdiction into a matter of national sovereignty, legally validating the United States policy of non-cooperation and active counter-measures against the ICC. The legal validity of any arrest executed "by, on behalf of, or at the request of the ICC" is subject to immediate contestation, particularly concerning the jurisdictional basis. This challenge was formally articulated in the Written Observations Pursuant to Rule 103 submitted by United States Senator Lindsey O. Graham on October 3, 2024. Graham contends that the ICC's purported authority over Gaza, the West Bank, and Israel is fundamentally flawed.

His argument rests on the assertion that Palestine fails to satisfy the constitutive criteria for statehood as defined by the 1933

Montevideo Convention, specifically citing the absence of a defined territory, a sovereign government, and effective control over the Gaza Strip. Consequently, the issuance of the arrest warrants is argued to be procedurally defective, constituting a formal violation of Article 18 of the 1998 Rome Statute. Graham concludes that the ICC is procedurally obligated to respect the principle of complementarity enshrined in Article 18, which mandates deference to Israel's inherent right to conduct genuine domestic investigations into the conducted international crimes committed in Palestine. This position highlights a critical tension between the Court's assertion of territorial jurisdiction and the contested status of the entity that acceded to the Rome Statute.

In direct contravention of the aforementioned challenges, the ICC's Pre-Trial Chamber I, in its Decision on the Territorial Jurisdiction (Situation in the State of Palestine), unequivocally affirmed that Palestine meets the criteria for a sovereign State and possesses territorial jurisdiction over Gaza and the West Bank. This affirmation is further buttressed by the recognition of Palestine's statehood as a matter of customary international law (*opinio juris*), thereby establishing a moral and legal obligation to address impunity for conducted international crimes.

The Court's position aligns with the established principle that the West Bank and Gaza constitute sovereign Palestinian territory. United Nations Security Council Resolution 242 (1967) explicitly calls for the withdrawal of Israeli armed forces from territories occupied in the recent conflict, confirming that Gaza, the West Bank, and parts of East Jerusalem remain Palestinian territory, notwithstanding the continued de facto occupation of East Jerusalem.

Furthermore, the Oslo Accords (Center for Israel Education, n.d.), signed in 1993, provide concrete evidence of Palestine's state-like capacity. These agreements conferred legitimacy upon the Palestinian Authority (PA) as the representative entity engaging in bilateral negotiations with Israel, effectively treating the PA as a sovereign counterpart for international negotiation and establishing a functional basis for statehood recognition.

Given the facts, the arrest warrants are *prima facie* valid and impose a binding obligation on all ICC State Parties. While the Court's jurisdiction is fundamentally governed by the principle of complementarity based on Article 1 of the Rome Statute—mandating intervention only when a State is genuinely unwilling or unable to prosecute—the warrants' validity is secured by the jurisdictional trigger. This trigger was formally activated on May 22, 2018, when the State of Palestine submitted an official referral to the Prosecutor concerning the situation on its territory²⁵. The scale of casualties unequivocally suggests the commission of grave international crimes falling under the Court's material jurisdiction on Article 5. Consequently, the peremptory nature of *ius cogens* norms dictates that neither the counter-measures enacted by the United States against the ICC nor the protective provisions of United States domestic law (such as ASPA) can legitimately negate the Court's authority to issue arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Minister of Defense Yoav Gallant, nor impede the continuation of the investigation.

Although Israel and the United States have never been parties to the Rome Statute, the ICC's jurisdiction over the situation remains intact because Palestine formally acceded to the Court in 2015 and thereby accepted the obligations under Article 12(2)(a) of the 1998 Rome Statute. This provision expressly authorizes the ICC to exercise jurisdiction over crimes committed on the territory of a State Party, irrespective of the nationality of the conducted perpetrator. Consequently, the non-membership of Israel or the United States does not preclude the Court from investigating conduct occurring within Palestinian territory. Moreover, Article 27 of the Rome Statute reinforces the legitimacy of ICC jurisdiction by eliminating immunities for heads of state or government in relation to core international crimes²⁶. Crimes against humanity—classified as “*core crimes*”—fall squarely within this exception, ensuring that neither official capacity nor diplomatic status can bar prosecution, and that legal consequences attach from the moment the Court issues its warrants. Together, Articles 12(2)(a) and 27 establish the doctrinal foundation for the ICC's continuing authority over conducted crimes committed in the Palestine situation, notwithstanding objections from non-State Parties.

International Implications of the United States' Intervention in Rejecting the ICC Investigation

In evaluating the ICC's efforts to articulate and extend its jurisdiction in this conflict, a clear sovereignty dilemma emerges: states must simultaneously uphold their obligations under international law

²⁵ Fatou Bensouda, “Statement of ICC Prosecutor, Fatou Bensouda, Respecting an Investigation of the Situation in Palestine,” International Criminal Court, 2021.

²⁶ Thomas Edward Judd and Submitted, “Impunity or Accountability? An Analysis of the Effectiveness of Article 27 of the Rome Statute Post Al-Bashir,” no. June (2025): 1–44.

while preserving the integrity of their national legal supremacy. This tension becomes particularly salient when examining the conduct of the United States—as a non-state party—that has sought to counteract the Court’s authority through the deployment of its own domestic legal instruments. Washington’s actions in February raise concerns about the precedent they may establish, namely the risk that protective policies adopted by a major power could recast “*erga omnes*” obligations into matters of geopolitical bargaining rather than universally binding norms. From a geopolitical perspective, such developments may prompt smaller states to reassess, with heightened caution, the strategic value and potential vulnerabilities associated with ICC membership.

As a hegemonic actor, the United States often views the ICC through the lens of liberal institutionalism—emphasizing principles of inter-state cooperation, equal access to justice, and constraints on unilateral state action—but simultaneously resists those very constraints when they impinge upon its own strategic interests. This duality underscores the ongoing struggle between the universality of international criminal accountability and the enduring realities of power asymmetry within the international system.

This dynamic provides the principal justification for the United States’ reliance on national sovereignty framed through the lenses of security and national defense. As noted in “*United States Realism and the International Criminal Court: A Clash of Sovereignty and Justice.*”²⁷ The United States has long rejected ICC membership to safeguard its perceived “structural

advantages” and to preserve a preference for conventional dispute-resolution mechanisms, including ad hoc tribunals. Ultimately, the United States’ apprehensions toward the ICC are consistently rooted in concerns over the preservation of sovereign autonomy. Accordingly, the United States adopts a realist posture, engaging with the ICC only when such cooperation serves its strategic interests. The legal and political implications of this stance are significant. As a central institution of international criminal accountability, the ICC faces substantial operational obstacles in pursuing its investigation of the conflict. The multi-sectoral pressures exerted by the United States generate profound destabilizing effects within the global political order, underscoring the persistent friction between universal norms of international justice and the power-driven imperatives of state sovereignty.

In August 2025, the United States escalated its sanctions regime, expanding the measures initially imposed solely on ICC Prosecutor Karim Khan to encompass four additional officials—Judge Kimberly Prost, Judge Nicolas Yann Guillou, Deputy Prosecutor Nazhat Shameem Khan, and Deputy Prosecutor Mame Mandiaye Niang. These sanctions were justified based on their involvement in issuing arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Minister of Defense Yoav Gallant. The resulting restrictions—financial prohibitions, asset freezes, and entry bans into United States territory—significantly constrain the ICC’s institutional capacity. The financial blockade is particularly destabilizing: major service providers, such as Google and Visa/Mastercard, have

²⁷ Catherine Williams Robert, “U . S . REALISM AND THE INTERNATIONAL CRIMINAL

COURT: A CLASH OF SOVEREIGNTY AND JUSTICE” 11, no. 4 (2023): 1–13.

reportedly implemented account suspensions pursuant to the United States blacklist, thereby impeding the basic operational functions of sanctioned ICC personnel. Such actions intensify longstanding concerns regarding the United States' selective adherence to international legal norms and its willingness to subordinate multilateral judicial mechanisms to strategic geopolitical imperatives (U.S. Department of State, 2025).

From a realist theoretical standpoint, however, the United States of sanctions as a defensive instrument to defend Israel from the consequences of international criminal accountability is predictable, reflecting a consistent pattern in which great powers prioritize alliance preservation and sovereign autonomy over universalist conceptions of global justice. The United States' posture toward international criminal justice is best understood as a form of sovereignty-centric balancing, a strategic doctrine designed to constrain the jurisdictional reach of international bodies over sovereign states²⁸. This policy was overtly manifested through Executive Order 14203, "Imposing Sanctions on the International Criminal Court," which effectively positioned the United States as a political bulwark for Israel, directly challenging the prevailing principles of universal jurisdiction and the enforcement of international criminal law. Consequently, ICC is exposed to a profound structural vulnerability stemming from the geopolitical leverage wielded by the United States.

This systemic pressure necessitates a proactive institutional response, compelling the Court to solicit robust multilateral

cooperation and state support to maintain the integrity and operational scope of its mandated jurisdiction. The current geopolitical climate thus underscores the imperative for establishing a protective regulatory framework that safeguards the ICC's judicial independence and ensures the effective administration of international criminal justice. Conversely, this systemic vulnerability is critically amplified should the imposition of sanctions be legitimized or validated by key United States allies. Such a development risks precipitating a gradual but profound crisis of institutional legitimacy for the International Criminal Court (ICC), the world's highest international criminal tribunal. This erosion is driven by the immense political pressure exerted on states that remain non-parties to the 1998 Rome Statute, threatening to undermine the very foundation of the Court's authority. The cumulative effect of United States political coercion will inevitably erode the ICC's institutional efficacy and diminish the trust placed in it by vulnerable states (often termed "unable" states in the context of complementarity), reliant on the international legal order.

Furthermore, the American Servicemembers Protection Act of 2002 (22 U.S.C. No. 7421 et seq.), infamously dubbed the "Hague Invasion Act," establishes the superpower as a normative exemplar for other non-party states seeking to repudiate or circumvent the obligations of the 1998 Rome Statute²⁹. The actions undertaken by the United States, therefore, serve as a foundational premise for a broader state policy paradigm that actively rejects international judicial mechanisms as a

²⁸ Rahmat Hidayat, Chandra Tambayong, and Abdul Haris, "Pengaruh Kekuasaan Negara Dalam Mengendalikan Keadilan Internasional: Studi Kasus International Criminal Court - Icc," *Action Research*

Literate 9, no. 3 (2025): 666–76, <https://doi.org/10.46799/ar.v9i3.2840>.

²⁹ United States of America, "American Servicemembers Protection Act of 2002" (2002).

concrete and legitimate forum for dispute resolution in the global arena. This trajectory portends fatal consequences by providing a strategic template for states implicated in the four core international crimes falling under the ICC's jurisdiction. The ensuing analysis of these implications will be strictly confined to the legal dimension, deliberately abstracting from geopolitical realities, explicit state sovereignty doctrines, or economic considerations.

Before the 2024 application for arrest warrants against the Israeli Prime Minister and former Defense Minister, Yoav Galant, the ICC had previously issued a warrant for Vladimir Putin in March ³⁰ on charges of war crimes, specifically the unlawful deportation or transfer of Ukrainian children to Russian-occupied or controlled territories. These high-profile actions have consistently generated intense political backlash and fostered profound skepticism regarding the ICC's operational effectiveness and credibility on the international stage. In this context, the decision to target sitting state leaders carries significant potential for impact, yet simultaneously risks establishing a detrimental precedent that jeopardizes the supremacy of international law. The primary implication arising from the US sanctions is the creation of a pernicious precedent for the international legal system, particularly if the underlying principle of such actions is perceived as controversial or inconsistently applied in future contexts. Should the global community perceive that a non-party superpower is acting arbitrarily against the ICC while it conducts investigations into conflicts, a concern emerges that similar measures will be increasingly adopted, especially within the current highly

competitive global political constellation. Ultimately, this perception risks transforming international law from an instrument of universal justice into a mere political tool.

The consequence of this action is global in scope, compelling states, particularly those with significant geopolitical influence, to re-evaluate the calculus of extending jurisdictional recognition to international bodies over their officials. This development serves to fortify the position of rejection held by states that have historically refused or been reluctant to ratify the 1998 Rome Statute, with Russia being a prominent example. The United States, in fact, explicitly repudiates the ICC's jurisdiction, asserting that its non-party status to the Rome Statute renders any warrants issued as "illegitimate and non-binding." Consequently, what was initially hailed as a decisive stride toward international accountability is now being transmuted into a deleterious precedent that erodes global confidence in the consistency, neutrality, and jurisdictional reach of international law, particularly when powerful states perceive their interests to be under threat. This precedent is poised to exacerbate resistance to international legal cooperation and destabilize commitments to established international legal standards.

Secondly, the ICC's exercise of jurisdiction in these cases exposes its structural and practical limitations, which many observers view as an "amputation" of its capacity to effectively enforce international law. Normatively, while the ICC possesses the legal mandate to prosecute war crimes and crimes against humanity under the 1998 Rome Statute, its application

³⁰ ICC, "Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich

Putin and Maria Alekseyevna Lvova-Belova," *International Criminal Court*, 2023.

to nationals of non-party states—such as Russia and the United States—is strictly contingent upon territorial jurisdiction and state cooperation. This means that when crimes are committed on the territory of a state that has accepted the ICC's jurisdiction (e.g., Palestine, which acceded via declaration), the Court can issue warrants against non-party nationals.

However, this authority is inherently fragile in practice: the ICC lacks its own executive enforcement arm, rendering arrests and detentions entirely dependent on the cooperation of States Parties to the 1998 Rome Statute. The recent cases of non-compliance vividly illustrate this weakness: despite the issuance of arrest warrants, the Israeli Prime Minister, Benjamin Netanyahu, could still undertake visits to non-member states without immediate legal consequence. Furthermore, several States Parties have shown political reluctance to execute the warrants due to overriding political, diplomatic, or national interest considerations.

Consequently, the ICC is *de facto* constrained in its enforcement capacity when its jurisdiction can be readily circumvented if member states are unwilling to cooperate. This scenario perfectly encapsulates a condition where international legal jurisdiction may exist, but its enforcement power is effectively amputated—especially when powerful actors are involved. The result is a growing skepticism among the international community, including major powers, regarding the ICC's purpose and efficacy. If the enforcement of international law is perceived to rest solely on political goodwill, the trust in the ICC and the broader international legal system will inevitably

erode. This fuels the critique that the ICC operates with "double standards" or is unduly politicized.

Thirdly, the confluence of negative precedent and jurisdictional limitations risks severely undermining compliance with both international and domestic law across numerous states. When states observe that international legal decisions, despite their normative clarity, are frequently hampered in their practical implementation, they may become less incentivized to adopt or ratify international legal instruments such as the 1998 Rome Statute. This dynamic could lead to a decline in state participation in international legal mechanisms and weaken the collective commitment to core international norms, including the prohibition of genocide, crimes against humanity, war crimes, and the crime of aggression. States may increasingly prioritize national interests, diplomatic expediency, geopolitical alliances, or security concerns over adherence to international legal obligations.

From a legal standpoint, the imposition of punitive measures against ICC personnel can be interpreted as contravening Article 70 of the Rome Statute, which criminalizes interference with the Court's operations³¹. Article 70 specifically prohibits acts that impede or threaten the performance of judicial functions, including obstruction, retaliation, or intimidation against judges, prosecutors, or staff. By sanctioning ICC officials in retaliation for decisions perceived as unfavorable such as the investigation into Israeli officials the U.S. actions arguably constitute a violation of this statutory protection. Such measures exemplify how geopolitical power can be

³¹ Devika Hovell, "The Center Cannot Hold: ICC Sanctions, Rogue Turns, and the Unmaking of Legal

Order," *Fordham International Law Journal* 48 (2025): 1105.

leveraged to weaken international accountability, undermining the very legal framework that the Statute seeks to protect.

Furthermore, if states perceive that accountability for serious violations is politically obstructed, the deterrent effect of international legal norms will be significantly compromised. War crimes and grave human rights abuses may be viewed as having a "low cost," suggesting that perpetrators with sufficient power can evade justice through state protection or political maneuvering, thereby eroding faith in the supremacy of law and international accountability. In the complex global context, such as the war in Ukraine, this condition endangers efforts to construct a consistent and equitable universal international legal system. Should a critical mass of states opt for recourse solely through national frameworks—or worse, outright rejection of international law—the fragmentation of global legal norms becomes a tangible threat. This outcome would fundamentally sabotage the long-term project of establishing a global order predicated on law, rather than mere power or geopolitical dominance³².

Fourth, from the perspective of international legal theory and political jurisprudence, the ICC's decision concerning Israeli Prime Minister Benjamin Netanyahu epitomizes the enduring tension between the idealism of international criminal law and the realities of geopolitical power. In principle, institutions such as the ICC are designed to advance universal justice, protect victims, and ensure that perpetrators of grave offenses are not insulated by virtue of political office. Comparable expectations emerged in the

context of the Russia–Ukraine conflict, where victims and observers anticipated that the ICC would provide accountability for mass civilian suffering. Yet geopolitical practice reveals the fragility of such idealism: when conducted perpetrators are leaders of powerful states, when jurisdictional consent is absent, and when cooperation is politically constrained, enforcement becomes contingent not on norms but on political will. This disjunction fuels critiques of “double standards,” wherein the ICC appears to exert jurisdiction disproportionately over weaker or isolated states while powerful actors remain effectively shielded through non-ratification or political alliances.

This is the core dilemma that the international law claims universality when its application is selective, and can the rule of law be upheld when its enforcement is susceptible to obstruction by geopolitical interests? The sanctions imposed by United States President Donald J. Trump starkly expose this paradox, raising foundational questions about the ICC's authority and the credibility of international criminal law. Absent consistent state support and sustained normative commitment, such developments risk deepening disillusionment with the promise of international law as a genuine instrument of global justice.

Based on the foregoing analysis, it can be concluded that although the ICC's decision to pursue an incumbent head of government such as Benjamin Netanyahu may be grounded in normative imperatives of justice and may function symbolically as an assertion of structural accountability, the decision simultaneously generates profound systemic risks for international law. First, it establishes a precedent susceptible to future

³² Devika Hovell, “The Center Cannot Hold: Icc Sanctions, Rogue Turns, and the Unmaking of Legal

Order,” *Fordham International Law Journal* 48(5), no. June (2025): 1105–26.

political manipulation, heightening concerns that international criminal law may be instrumentalized rather than applied impartially. Second, the practical constraints of jurisdiction and enforcement render the ICC's authority structurally attenuated, thereby undermining its institutional credibility. Third, such developments risk eroding state commitment to international legal norms, potentially accelerating the fragmentation of the global legal order. Fourth, the tension between legal idealism and geopolitical realism illustrates the inherent vulnerability of international law when confronted with the strategic interests of powerful states

CONCLUSION

The United States' opposition to the ICC, despite its non-party status exposes a fundamental weakness in its legal position, as the principle of non-intervention prohibits States from obstructing an international court acting within its lawful mandate. Reliance on domestic statutes such as the American Service Protection Acts (ASPA) of 2002 cannot override *jus cogens* and *erga omnes* obligations, which require universal accountability for core international crimes regardless of treaty consent. The ICC's confirmed territorial jurisdiction over Palestine, grounded in its 2015 accession and Article 12(2)(a), renders the United States' objections legally ineffective. Under established treaty law, including Article 27 of the Vienna Convention, domestic law cannot justify non-compliance with peremptory norms, making United States countermeasures incompatible with the contemporary international legal order. These coercive actions not only lack legal validity but also undermine the structural integrity and authority of the international criminal justice system. The author maintains that such

conduct seriously threatens the supremacy of international law and sets a harmful precedent that weakens global efforts to secure accountability for the gravest international crimes.

On the other hand, the United States' intervention in rejecting the ICC investigation generates a profoundly dangerous international precedent, recasting *erga omnes* obligations into instruments of geopolitical bargaining and thereby eroding the universality of international criminal accountability. The targeted sanctions imposed on ICC officials—extending to financial blockades and operational restrictions—demonstrate how unilateral pressure by a major power can disable a global judicial institution while simultaneously encouraging other States to emulate similar patterns of jurisdictional resistance. The ICC's structural vulnerabilities, particularly its dependence on State cooperation, further expose the ease with which powerful actors can evade enforcement, producing a systemic “effectiveness deficit” that undermines the Court's claim to authoritative jurisdiction over serious international crimes. This dynamic accelerates the fragmentation of the international legal order as States grow increasingly hesitant to ratify or comply with the Rome Statute. In the author's view, the United States' posture not only delegitimizes the ICC but constitutes a direct threat to the viability of the international justice project itself, entrenching conditions of impunity that endanger the credibility and future coherence of international law.

The author suggests that the Government of the State Parties to the Rome Statute should establish a unified legal and diplomatic mechanism aimed at shielding the ICC from coercive measures imposed by non-State Parties, particularly unilateral sanctions initiated by the United States.

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