

International Criminal Justice in Crisis: Selectivity, Universal Jurisdiction, and Compliance Challenges in the Conflicts of Ukraine, Gaza, Sudan, and the Philippines

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Abstract: *In 2026, the International Criminal Court (ICC) is going through its busiest period of simultaneous activity, with active investigations in Ukraine, Palestine, Sudan, and the Philippines, and at the same time the most severe legitimacy crisis since its creation in 2002. This article examines, from the standpoint of the doctrine of universal jurisdiction and the jurisdictional and complementarity regime of the Rome Statute, four situations that illustrate both the limits and the possibilities of the international criminal justice system: the pursuit of the crime of Russian aggression against Ukraine, the arrest warrants against Israeli officials over the war in Gaza, Sudan's prolonged non-compliance with Security Council Resolution 1593 (2005), and the successful surrender of former Philippine president Rodrigo Duterte in 2025. Using a comparative case study method, supplemented by an analysis of universal jurisdiction at the domestic level in Spain, Argentina, and Germany, the article argues that the Court's effectiveness is strongly conditioned by extra-legal variables, including state cooperation, political pressure, internal rivalries, and media attention, which together produce a pattern of selectivity that is difficult to reconcile with the principle of equality before the law underpinning international criminal law. The work includes a quantitative illustration of the growth of the Rome Statute's States Parties, the geographic distribution of the situations investigated, and the duration of de facto impunity.*

Keywords: International Criminal Court; universal jurisdiction; complementarity; crime of aggression; judicial selectivity; Ukraine; Gaza; Darfur; Philippines

1. Introduction

Rarely in its history has the International Criminal Court (ICC) attracted as much public attention, and at the same time as much institutional hostility, as during the 2024-2026 period. The Court is currently investigating crimes committed in the Ukraine conflict, has issued arrest warrants against Israel's prime minister and former defense minister over the war in Gaza, continues to demand, with little practical success, the surrender of those responsible for the Darfur atrocities referred by the Security Council more than two decades ago, and achieved in 2025 one of its greatest operational successes by taking former Philippine president Rodrigo Duterte into custody. These four situations share the same normative foundation, namely the prosecution of core international crimes under the Rome Statute system, whose relationship to the doctrine of universal jurisdiction and to the complementarity principle is examined in Section 2, yet they show markedly different outcomes in terms of state cooperation and the effective enforcement of the Court's decisions.

According to recent institutional data, the ICC now has 125 States Parties and maintains 61 active arrest warrants¹, while facing United States sanctions, Russian arrest warrants against its own judges, and announced withdrawals from the Rome Statute by several states, including Hungary's

notification, ultimately rescinded in May 2026, and the withdrawal instruments deposited by Niger, Burkina Faso, and Mali in June 2026 (United Nations Regional Information Centre [UNRIC], 2025; International Criminal Court, 2026c; Amnesty International, 2026). This context calls for a thorough review of the doctrinal foundations of universal jurisdiction, the Court's institutional architecture, and the structural reasons why some perpetrators of international crimes manage to evade justice for years, or even decades, while others are surrendered with relative speed.

This article analyzes, from a comparative legal perspective, the foundations of universal jurisdiction and its relationship to the Rome Statute, the application of that same principle within domestic jurisdictions, and four case studies that test the paper's central hypothesis: that the ICC's main challenge today is not primarily a shortage of legal norms, but a compliance crisis structurally tied to the geometry of international power. States with greater blocking capacity, whether as permanent members of the Security Council or through the backing of a power willing to sanction the Court itself, generally manage to shield their nationals from effective international criminal justice, whereas cooperation becomes more likely when domestic political incentives favor it, as the Philippine case demonstrates.

The article is organized into nine sections. Following this introduction, Section 2 develops the theoretical framework on

¹The 61 active arrest warrants figure is reported by the United Nations Regional Information Centre (UNRIC, 2025) based on an interview with the ICC presidency; at the time of writing it could not

be cross-checked against a second, independent public record breaking down the enforcement status of each warrant.

universal jurisdiction, the ICC's jurisdictional architecture, the crime of aggression, and the domestic application of the principle in Spain, Argentina, and Germany. Section 3 reviews the academic literature on selectivity and politicization in international criminal justice. Section 4 sets out the methodology. Section 5 presents the four case studies. Section 6 offers a comparative analysis through original tables; three original figures, presented alongside the sections they illustrate, provide quantitative support. Section 7 critically discusses the findings and outlines reform proposals. Section 8 presents the conclusions.

2. Theoretical Framework

2.1 Historical and Doctrinal Foundations of Universal Jurisdiction

Universal jurisdiction is, in the classic formulation of international criminal law doctrine, an exceptional jurisdictional title that requires no link of territoriality or nationality, nor any protection of the exercising state's own interests, and that is justified by the need to prevent impunity for crimes that offend the international community as a whole. As Martínez Alcañiz (2015) notes in his study of the universal jurisdiction principle and war crimes, the historical origins of this jurisdictional title trace back to the prosecution of piracy, slavery, and currency counterfeiting, and it later extended to genocide, war crimes, crimes against humanity, apartheid, and torture. It operates as a subsidiary tool in cases where the state of the *locus delicti* fails to act or lacks the capacity to do so.

This foundational question has also been addressed extensively in English-language scholarship. Cassese (2003), writing shortly after the Belgian Arrest Warrant case reached the International Court of Justice, cautions against an unduly expansive reading of universal jurisdiction and argues instead for a sensible, carefully bounded notion that closes impunity gaps for the gravest crimes without inviting the diplomatic friction that indiscriminate assertions of jurisdiction can produce. O'Keefe (2004) refines this debate by distinguishing between a state's prescriptive jurisdiction, its authority to criminalize conduct under domestic law, and its enforcement jurisdiction, the practical authority to investigate and prosecute through police action and the courts. This distinction clarifies why a state may lawfully legislate universal jurisdiction over a crime while still lacking the practical capacity, or the international backing, to enforce it against a particular defendant, a tension that recurs throughout the case studies examined in Section 5.

The decisive push toward the internationalization of these crimes emerged from the Nuremberg and Tokyo trials at the end of the Second World War, although its most developed normative form only arrived in the final decade of the twentieth century, with the adoption of the Rome Statute in 1998. The Statute systematically criminalized genocide, war crimes, and crimes against humanity, while leaving open the debate over whether other crimes, such as terrorism or serious environmental offenses, should eventually be added. Martínez Alcañiz (2015) further distinguishes between a mandatory, primary, concurrent, and absolute form of universal jurisdiction (the one contemplated in the 1949

Geneva Conventions for war crimes committed in international armed conflicts) and other restricted or optional forms subject to varying connection criteria depending on each state's domestic legal order.

This conceptual architecture explains why universal jurisdiction, far from being a uniform mechanism, is applied unevenly depending on each country's legislation, producing what the literature describes as positive and negative jurisdictional conflicts, both among states and between states and the ICC. Universal jurisdiction, in short, does not replace institutionalized international criminal justice but coexists with it as a complementary avenue, one that becomes particularly important in situations, discussed in Section 2.4, where the Court lacks formal jurisdiction.

2.2 The Rome Statute: Triggering Mechanisms and Complementarity

The 1998 Rome Statute, which created the ICC, does not establish universal jurisdiction in its pure form but rather a conditional jurisdictional regime. Under Article 13 of the Statute, the Court may exercise jurisdiction through three routes: referral by a State Party (Art. 14), referral by the United Nations Security Council acting under Chapter VII of the UN Charter, or a *proprio motu* investigation by the Prosecutor, subject to authorization from the Pre-Trial Chamber (Rome Statute, 1998, Art. 13). This is complemented by the principle of complementarity, set out in the tenth preambular paragraph and Article 1 of the Statute, under which the Court may only act when the state with primary jurisdiction is unwilling or unable genuinely to investigate or prosecute. Kleffner (2003) has shown that complementarity functions not merely as a jurisdictional filter but also as an incentive structure: because a genuine domestic investigation forecloses ICC action, states have a direct interest in incorporating international crimes into their own criminal codes so as to retain the primary right to prosecute their own nationals, a dynamic that helps explain the growing number of domestic universal jurisdiction statutes examined in Section 2.4. It should be stressed, therefore, that the ICC does not exercise universal jurisdiction *stricto sensu*; in this article, the doctrine examined in Section 2.1 operates as a common normative benchmark, the universal repression of core international crimes, against which two distinct institutional embodiments are assessed: the Court's treaty-based jurisdictional regime and the domestic universal jurisdiction statutes analyzed in Section 2.4.

This architecture, designed to respect state sovereignty, simultaneously produces the jurisdictional gaps analyzed in the case studies below. The Court can only exercise jurisdiction over crimes committed in the territory of a State Party, over nationals of a State Party, when a non-State Party accepts the Court's jurisdiction *ad hoc*, or when the Security Council refers a situation. None of the states whose most senior officials are subject to the arrest warrants examined in this article (Russia, Israel, and Sudan) cooperates effectively with the Court, and none of the three is a State Party to the Statute. The Philippine case, discussed later, adds a further variation: that of a state that withdrew from the Statute after a preliminary examination had already begun, without this

affecting the Court's jurisdiction over conduct that predated the withdrawal.

As of the time of writing, 125 states are Parties to the Rome Statute and 61 arrest warrants remain active (UNRIC, 2025),

a figure that reflects both the Court's growing judicial workload and a persistent structural enforcement problem: the ICC has no police force or military of its own, so it depends entirely on the cooperation of States Parties to carry out arrests, surrenders, and other forms of judicial assistance.

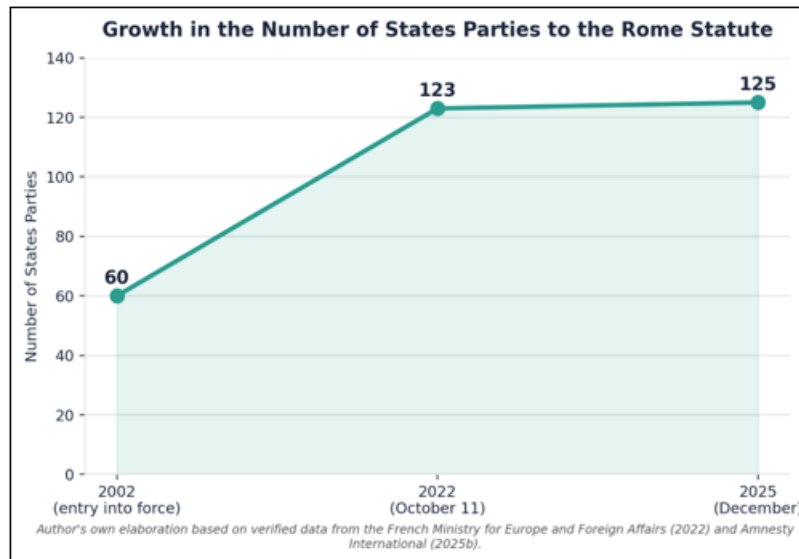


Figure 1: Growth in the number of States Parties to the Rome Statute in selected years (author's own elaboration based on verified data from the Ministry for Europe and Foreign Affairs of France, 2022, and Amnesty International, 2025b).

Figure 1 documents the steady growth in Rome Statute membership, from the 60 states that allowed it to enter into force in 2002 to the 125 States Parties recorded in December 2025. This growth nonetheless contrasts with the continued absence of several major military powers: the United States, Russia, China, and India are not Parties to the Statute, which structurally limits the universal reach the Court aspires to. The trend, moreover, is no longer one of uninterrupted growth: after Hungary's ultimately rescinded withdrawal notification, Niger, Burkina Faso, and Mali deposited their instruments of withdrawal in June 2026, effective one year later, the first withdrawal notifications to proceed since those of Burundi and the Philippines (Amnesty International, 2026).

2.3 The Crime of Aggression: The Kampala Amendments and Their Limits

The crime of aggression, added to the Rome Statute through the 2010 Kampala amendments, is a mechanism whose activation was made subject to particularly strict conditions. Under Article 15 bis of the Statute, the Court may only exercise jurisdiction over this crime when both the aggressor state and the victim state have ratified the corresponding amendment, unless the Security Council refers the situation under Article 15 ter. Kreß and von Holtzendorff (2010), who took part directly in the Kampala negotiations, describe the resulting compromise as a genuine, if fragile, achievement, one that reconciled, at least on paper, the competing demands of the Security Council's permanent members with those of smaller states seeking a meaningful and independent jurisdictional trigger. Bollo Arocena (2023) documents in detail how decisive this limitation proves to be in the Ukraine conflict, since neither Russia nor Ukraine has ratified those amendments, meaning the ICC lacks jurisdiction over the act of aggression itself, even though it can prosecute the related war crimes and crimes against humanity.

In response to this jurisdictional gap, several authors have documented proposals to create *ad hoc* special tribunals, such as the one launched within the Council of Europe in 2025 specifically to try the crime of aggression committed against Ukraine. Innovative as they are, such initiatives reopen a question raised repeatedly by legal scholars: whether international criminal law is drifting back toward a case-by-case model, contingent on the circumstantial political will of a group of states, rather than consolidating the universal and permanent vocation with which the ICC was conceived in 1998.

2.4 Universal Jurisdiction at the Domestic Level: Spain, Argentina, and Germany

Universal jurisdiction is not exhausted by the activity of the ICC. It also operates, in parallel and often as a complement, within the domestic legal systems of numerous states. Spain is one of the most frequently cited historical benchmarks: Article 23.4 of the 1985 Organic Law of the Judiciary (Ley Orgánica 6/1985) incorporated the universal justice principle, granting Spanish judges standing to prosecute serious crimes regardless of where they were committed or the nationality of the perpetrator or victim. As Martínez Alcañiz (2015) shows, however, the legislative reforms enacted through Ley Orgánica 1/2009 and Ley Orgánica 1/2014 considerably narrowed that scope, now requiring much stricter connection criteria with Spain before Spanish courts may assert jurisdiction; this restrictive turn followed an expansive phase marked by the Pinochet proceedings and by the Constitutional Court's broad reading of the principle in its judgment on the Guatemala case (Tribunal Constitucional de España, 2005).

Argentina, for its part, has developed a significant body of case law applying the universal jurisdiction principle, most

visibly in the so-called *querrela argentina* (Case No. 4591/2010), opened in 2010 before Federal Criminal and Correctional Court No. 1 of Buenos Aires under Judge María Servini to investigate crimes committed under the Franco dictatorship in Spain, alongside other human rights cases with regional reach, all in the absence of a unified special statute governing the matter (Baltasar Garzón International Foundation [FIBGAR], 2026). This experience shows that universal jurisdiction can function as a tool of regional complementarity even when the territorial state or the state of the accused's nationality lacks the will or capacity to investigate, although it faces cooperation and extradition obstacles structurally similar to those affecting the ICC itself.

Germany offers perhaps the most compelling contemporary example. The Code of Crimes against International Law (Völkerstrafgesetzbuch), enacted in 2002 and incorporating much of the Rome Statute into German domestic law (Federal Republic of Germany, 2002), allowed the Koblenz Higher Regional Court to try, between 2020 and 2022, two former officials of the Syrian intelligence apparatus for crimes against humanity committed at the Al-Khatib detention center in Damascus. The court sentenced Anwar R. to life imprisonment for the torture of at least 4,000 people, having previously sentenced Eyad al-Gharib to four and a half years in prison for complicity in the same acts (Oberlandesgericht Koblenz, 2021, 2022). It was the world's first criminal trial for state-sponsored torture in Syria, and the first proceeding anywhere based entirely on the universal jurisdiction principle against officials of the Syrian regime (European Center for Constitutional and Human Rights [ECCHR], 2022; Kaleck & Kroker, 2018).

The Koblenz case is particularly relevant to this article because it illustrates both the potential and the limits of domestic universal jurisdiction as a substitute for ICC action. Syria has not ratified the Rome Statute, and a possible Security Council referral was vetoed by China and Russia in 2014, so national European courts, including those of Germany, France, Austria, Norway, and Sweden, became the only available avenue for prosecuting those responsible for atrocities committed during the Syrian conflict. Legal scholars have noted, however, that this kind of proceeding depends heavily on procedural chance: the length of the sentence, and even the possibility of prosecution at all, hinges on the country where the perpetrator happens to reside or be apprehended, adding a further layer of inequality in how victims are treated depending on which forum ultimately hears their case (Kaleck & Kroker, 2018).

3. Literature Review on Selectivity and Politicization

Concerns about the selectivity of international criminal justice are neither new nor unique to the cases examined in

this article. Bower (2019) has documented how states such as Sudan and Kenya actively challenged the ICC's legitimacy on the grounds of an alleged disproportionate targeting of African leaders, in what specialized scholarship calls the debate over the Court's 'African bias.' This debate, far from settled, has in recent years expanded into a broader discussion of the Court's ability to act effectively against non-African powers, as shown by the Ukraine and Gaza cases examined in this article.

Along similar lines, Broache et al. (2023), in a special issue marking the ICC's first twenty-five years, map out the Court's main institutional challenges, including the persistent tension between its universal vocation and its structural dependence on state cooperation. García Iommi (2023) adds a complementary perspective by examining the continuity, rather than the change, in patterns of state support for the Court since the Rome Conference, suggesting that much of today's criticism regarding politicization was already present, albeit with different intensity, from the institution's earliest years.

These scholarly contributions help situate the case studies in this article within a broader debate: the ICC's selectivity is not simply a situational phenomenon tied to the conflicts in Ukraine, Gaza, or Sudan, but a structural feature of the international criminal justice system, one that combines a universalist legal framework with a compliance architecture deeply dependent on the political will of the most powerful states.

Beyond these contributions, a broader body of scholarship has theorized selectivity as inherent in the very design of international criminal justice. deGuzman (2012) argues that, in the absence of determinate gravity criteria, the selection of situations and cases at the ICC necessarily involves discretionary, expressive choices about whose suffering international justice will acknowledge. Nouwen and Werner (2010) go further, contending on the basis of the Uganda and Sudan situations that the Court's interventions are inevitably enlisted in political struggles that define friends and enemies, so that the aspiration to a purely apolitical international criminal justice is illusory. From socio-legal and peace-process perspectives, respectively, Clarke (2009) and Kersten (2016) document the distributional consequences of those choices in African situations. This contestation, moreover, remains an active political force rather than a closed historiographical debate: in June 2026, Niger, Burkina Faso, and Mali deposited their instruments of withdrawal from the Rome Statute, having jointly characterized the Court, in their September 2025 announcement, as a selective instrument directed against less powerful states (Amnesty International, 2026).

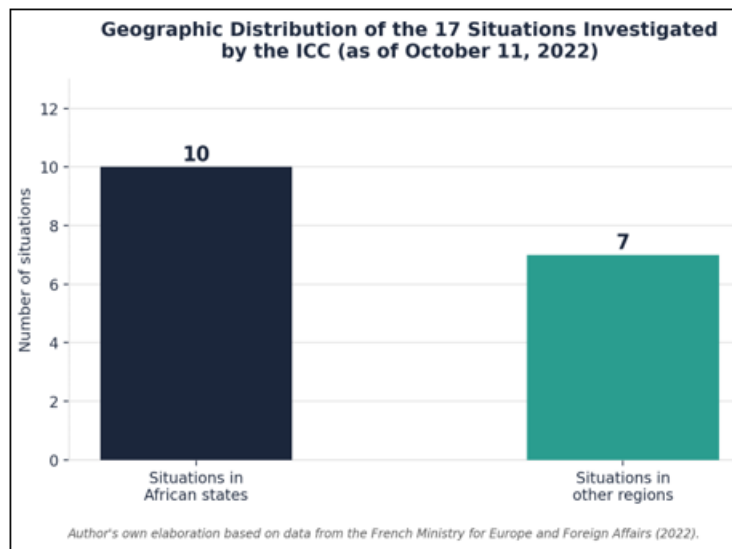


Figure 2: Geographic distribution of the 17 situations investigated by the ICC as of October 11, 2022 (author's own elaboration based on data from the Ministry for Europe and Foreign Affairs of France, 2022).

Figure 2 provides quantitative evidence for the academic debate over the ICC's so-called African bias reviewed in this section. Of the 17 situations investigated by the Court through October 2022, 10 involved African states (Burundi, Ivory Coast, Darfur/Sudan, Kenya, Libya, Mali, Central African Republic I and II, Democratic Republic of the Congo, and Uganda), while 7 involved situations elsewhere (Afghanistan, Bangladesh/Myanmar, the State of Palestine, the Philippines, Georgia, Ukraine, and Venezuela). Although this proportion has shifted noticeably with the addition of the Ukraine and Gaza situations in recent years, the historical record confirms that the criticism regarding a disproportionate concentration of the Court's judicial activity on the African continent has, at least in part, empirical grounding (Bower, 2019). Because the underlying dataset closes in October 2022, the figure documents the historical record rather than the Court's current docket; it should also be read alongside the June 2026 withdrawal instruments deposited by Niger, Burkina Faso, and Mali, which show that the contestation associated with that historical concentration remains politically active (Amnesty International, 2026).

4. Methodology

This study adopts a qualitative, doctrinal, and comparative approach, drawing on primary sources (Security Council resolutions, official ICC decisions and press releases, the Rome Statute) and indexed secondary academic sources, mainly from Dialnet and specialized international law journals (*Revista Española de Derecho Internacional*, *Anuario Español de Derecho Internacional*). Four situations were selected, Ukraine, Gaza/Palestine, Sudan/Darfur, and the Philippines, because they represent the most legally significant and widely reported situations before the ICC in the 2023-2026 period. An additional analysis was incorporated of how universal jurisdiction has been applied domestically in Spain, Argentina, and Germany, in order to

contrast the Court's performance against that of national jurisdictions exercising a related jurisdictional title.

4.1 Limitations of the Study

This article has at least three methodological limitations worth stating explicitly. First, because the facts concerning Ukraine, Gaza, Sudan, and the Philippines described in Sections 5.1 through 5.4 mostly took place in 2024, 2025, and 2026, peer-reviewed academic literature on them remains scarce; this article therefore relies primarily on official ICC decisions and press releases, United Nations documents, national court judgments, and expert legal commentary, but several specific figures, such as the exact number of active arrest warrants, come from a single institutional source and could not be independently cross-checked.

Second, this study does not draw on primary sources in Russian, Hebrew, Arabic, or Tagalog, which limits direct access to the official positions of Russia, Israel, Sudan, and the Philippines regarding the proceedings brought against them. Third, the very selection of the four case studies, justified by their legal and media relevance, reproduces to some degree the same visibility-driven criterion that this article identifies as a source of selectivity in the ICC's own conduct²; this tension is not resolved here but is acknowledged as a limitation inherent in any case study that, like the present one, must select situations from a much wider universe of conflicts that receive insufficient international attention, such as South Sudan, Yemen, or Ethiopia. A related caveat is that all four situations selected had already produced arrest warrants, so the sample cannot capture an earlier and equally consequential form of selectivity: decisions not to investigate, or to deprioritize, certain suspects, of which the 2021 deprioritization of the Afghanistan investigation with respect to non-Taliban actors, discussed in Section 7.1, is the clearest example.

²This is the same reflexivity concern noted above with respect to the arrest-warrant figures: relying on the most visible situations to build a case study risks reproducing the very selection bias under critique.

5. Findings: Case Studies

5.1 Ukraine

Following the Russian invasion launched on February 24, 2022, a total of 43 States Parties jointly referred the Ukraine situation to the ICC Prosecutor, which, unlike a *proprio motu* investigation, freed Prosecutor Karim Khan from having to seek prior authorization from the Pre-Trial Chamber. As Escobar Hernández (2022) explains, the invasion restored the Court to a central role in the international criminal justice system, though she cautions that the real scope of what the ICC can deliver in such a complex conflict should not be overstated.

Ukraine itself, after accepting the Court's jurisdiction *ad hoc* through two declarations under Article 12(3), ratified the Rome Statute with effect from January 1, 2025, becoming the 125th State Party, albeit with a declaration under Article 124 excluding, for seven years, the Court's jurisdiction over war crimes allegedly committed by its own nationals (International Criminal Court, 2025b). The most significant structural obstacle nonetheless persists with respect to the crime of aggression: Russia is not a State Party, neither state has ratified the Kampala amendments, and Article 15 bis(5) of the Statute excludes the Court's jurisdiction over that crime when committed by nationals or on the territory of non-States Parties, so the act of aggression itself remains beyond the Court's reach in this conflict. Bollo Arocena (2023) documents in detail how, despite this, the Pre-Trial Chamber issued an arrest warrant against President Vladimir Putin in March 2023 for the unlawful deportation of children, though its execution remains contingent on his leaving Russian territory for a state willing to cooperate. Ambos (2022) further notes that the collective state referral gave the Prosecutor's Office a stronger procedural position than it would have had under a *proprio motu* investigation, precisely because it removes the prior judicial review otherwise required under Article 15.

In response to this competence gap over aggression, the Council of Europe launched a Special Tribunal for the Crime of Aggression against Ukraine in 2025, an institutional innovation that extends the *ad hoc* tribunal model that emerged after the dissolution of Yugoslavia and the Rwandan genocide. As a symmetrical response, Russia has issued arrest warrants against ICC judges and, in December 2025, a Moscow court went further by convicting the ICC Prosecutor and eight judges in absentia, with sentences of up to fifteen years, episodes that show how far the conflict has pushed political confrontation into the very institutional fabric of international criminal justice (UNRIC, 2025; United Nations Office of the High Commissioner for Human Rights [OHCHR], 2026).

5.2 Gaza / Palestine

On November 21, 2024, ICC Pre-Trial Chamber I unanimously rejected the jurisdictional challenges brought by Israel and issued arrest warrants against Prime Minister Benjamin Netanyahu and then Defense Minister Yoav Gallant for war crimes and crimes against humanity, including starvation as a method of warfare, allegedly

committed between October 8, 2023, and May 20, 2024 (International Criminal Court [ICC], 2024). The Chamber grounded its territorial jurisdiction in Palestine's status as a State Party since 2015, allowing the Court to exercise jurisdiction over conduct occurring in Gaza and the West Bank regardless of Israel's non-membership in the Statute and its refusal to recognize the Court's jurisdiction.

Israel appealed these decisions repeatedly before the Appeals Chamber, which in April 2025 partially reversed the original decision on the jurisdictional challenge for insufficient reasoning, without this affecting, as the Chamber itself clarified, the validity or continued force of the arrest warrants, which remain fully enforceable (Al-Haq, 2025). New Israeli requests to annul or suspend the warrants were rejected in July and October 2025, on the grounds that suspending an investigation under Article 19(7) of the Statute applies only to admissibility challenges, not jurisdictional ones. On December 15, 2025, the Appeals Chamber also rejected, by majority, Israel's appeal seeking a new notification under Article 18(1) of the Statute, confirming that the investigation opened in 2021 already encompasses the events that followed October 2023 (International Criminal Court Appeals Chamber, 2025).

What distinguishes this case from Ukraine is the response of a third state not directly involved in the conflict. Through an executive order issued in February 2025, whose list of designations was successively expanded in June, August, and December of that year, the United States imposed economic sanctions and banking restrictions against ICC judges and officials, including, since August 2025, French judge Nicolas Guillou, over their involvement in the investigations concerning Israel, a measure the Court itself described as an attack on its capacity to operate independently (UNRIC, 2025). Organizations such as Amnesty International have noted that these sanctions harm the interests of victims across every situation before the Court, including Darfur, Libya, the Philippines, Ukraine, and Venezuela, and not only in the Palestine situation (Amnesty International, 2025b). In April 2025, Hungary also hosted Netanyahu on its territory despite the outstanding arrest warrant, and days later announced its intention to withdraw from the Rome Statute (UNRIC, 2025). That withdrawal, initially due to take effect on June 2, 2026, was ultimately rescinded in May 2026, when a new Hungarian government notified the United Nations of its decision to remain a State Party (International Criminal Court, 2026c).

5.3 Sudan (Darfur)

On March 31, 2005, the Security Council adopted, for the first time in its history, a referral to the ICC under Article 13(b) of the Rome Statute: Resolution 1593 (2005), which classified the Darfur situation as a threat to international peace and security (United Nations Security Council, 2005). The resolution itself, however, included a clause exempting nationals of non-States Parties from the Court's jurisdiction for acts connected to Council-authorized operations, departing from the Statute's general regime and, according to legal scholars, casting doubt on the Security Council's own coherence in referring a matter whose legal treatment it then proceeded to limit.

Sudan, which is not a State Party to the Rome Statute, has systematically failed to comply with its cooperation obligations under the resolution. Former president Omar al-Bashir, indicted in 2009 for war crimes and crimes against humanity and in 2010 for genocide, remained in office without being arrested for more than a decade, carrying out his public duties as usual. The Coalition for the International Criminal Court (2015) documented that, ten years after the referral, neither the Security Council nor UN member states had provided meaningful political or technical support to the Prosecutor's work, while serious crimes continued to be committed on the ground. The only substantive procedural progress in two decades has come in the case of Ali Muhammad Ali Abd-Al-Rahman (known as 'Ali Kushayb'), who surrendered voluntarily in 2020 after fleeing to the Central African Republic: on October 6, 2025, Trial Chamber I found him guilty of 27 counts of crimes against humanity and war crimes committed in Darfur, the first and, to date, only judgment to result from the 2005 Security Council referral, and on December 9, 2025, it sentenced him to 20 years of imprisonment, with appeals against the conviction and the sentence still pending (International Criminal Court, 2025a). The contrast is telling: the Court delivered a verdict precisely in the one Darfur case in which it obtained custody of the accused.

Amnesty International (2020) has repeatedly noted that Sudan's lack of cooperation, combined with the ICC's own lack of an enforcement mechanism, a structural deficit already noted in Section 2.2, makes international justice the only available avenue for Darfur's victims, yet one that remains structurally weakened by a lack of political will.

5.4 The Philippines: The Duterte Case, a Counterexample of Cooperation

The case of former Philippine president Rodrigo Duterte introduces into this article a particularly valuable counterexample for comparative analysis. The ICC Prosecutor's Office opened a preliminary examination in 2018 into the so-called 'war on drugs' in the Philippines, following reports of thousands of extrajudicial killings committed between 2011 and 2019, first while Duterte was mayor of Davao and later as president of the Republic (International Federation for Human Rights [FIDH], 2025). In response, Duterte unilaterally withdrew the Philippines from the Rome Statute, a withdrawal that took effect on March 16, 2019. The Court nonetheless retained jurisdiction over conduct committed while the Philippines was still a State Party, following a criterion already applied in other situations: a state's withdrawal from the Statute does not retroactively erase the Court's jurisdiction over crimes committed during its period of membership (Parliamentarians for Global Action [PGA], 2025).

On March 11, 2025, Philippine authorities arrested Duterte in Manila and, the following day, surrendered him to the ICC in The Hague, in execution of the arrest warrant issued by Pre-Trial Chamber I and transmitted through the International

Criminal Police Organization (Interpol). It was the first time a Southeast Asian head of state or government was transferred to the Court, and a case in which, unlike Ukraine, Gaza, or Darfur, a State Party cooperated fully and swiftly with the ICC (PGA, 2025)³. The proceedings have nonetheless faced delays typical of due-process safeguards. In September 2025 the defense requested an indefinite suspension, citing the defendant's alleged cognitive decline, which led to the formation of an independent panel of experts in forensic psychiatry, neuropsychology, and neurology; on the basis of their assessment, Pre-Trial Chamber I found on January 26, 2026, that Duterte was able to effectively exercise his procedural rights and was therefore fit to take part in the pre-trial proceedings (International Criminal Court, 2026d).

The confirmation-of-charges hearing opened on February 23, 2026, in The Hague, where the Prosecutor argued that Duterte bore responsibility, as an indirect co-perpetrator, for murder and attempted murder as crimes against humanity; the hearing concluded on February 27, 2026 (International Criminal Court, 2026a). Shortly afterward, the Appeals Chamber confirmed the Court's jurisdiction over the former president, rejecting the defense's request to have the case dismissed (International Criminal Court Appeals Chamber, 2026). On April 23, 2026, Pre-Trial Chamber I unanimously confirmed all three counts of crimes against humanity against Duterte and committed him to trial before a Trial Chamber, with the trial scheduled to open on November 30, 2026 (International Criminal Court, 2026b).

One analytically relevant element of this case, though it should be interpreted with caution, is that Philippine cooperation may not have stemmed solely from sustained institutional commitment to the ICC, but also from domestic political rivalry between President Ferdinand Marcos Jr.'s government and the Duterte family. Vice President Sara Duterte, the former president's daughter, publicly characterized the surrender as an act of political persecution against her father, and legal scholars have analyzed the arrest as inseparable from the escalating feud between the Marcos and Duterte families (Araneta-Alana, 2025; Schuldts, 2025), a framing that has since circulated widely in public debate. It should be noted, however, that this interpretation rests largely on statements from the defendant's own family, a party with an evident interest in portraying the process as politically motivated, and should therefore be treated as a plausible hypothesis rather than conclusive proof of the Philippine authorities' true motives. With that caveat in mind, the case suggests that state cooperation with the ICC can be triggered not only by normative commitment to international criminal justice but also by short-term domestic political calculation, a hypothesis revisited, with the same caveat, in the discussion section.

6. Comparative Analysis

The tables below, prepared by the author based on the primary and doctrinal sources cited in the preceding sections,

cross-checked, wherever possible, against the Court's own press releases and independent press coverage cited elsewhere in this section.

³Parliamentarians for Global Action (PGA) is a parliamentary advocacy network, not a judicial body or an official ICC source. Its statements are useful as journalistic and institutional summaries of the case, but specific dates and legal characterizations have been

summarize the main points of comparison among the four case studies before the ICC and the three domestic universal jurisdiction experiences examined in Section 2.4.

Table 1: Comparative overview of four situations before the International Criminal Court (author's own elaboration).

Situation	Triggering mechanism	Legal basis and obstacles	State of cooperation	Outcome as of July 2026
Ukraine	Collective referral by 43 States Parties (2022) and Ukraine's ad hoc acceptance of jurisdiction (2014-2015); Ukraine ratified the Statute effective 2025	Russia is not a State Party; the ICC lacks jurisdiction over the crime of aggression (Arts. 15 bis/ter)	None from Russia; a parallel Special Tribunal was created within the Council of Europe (2025)	Arrest warrant against Putin remains in force; not executed
Gaza / Palestine	State referral and recognized territorial jurisdiction over Palestine (State Party since 2015)	Israel is not a State Party and has repeatedly challenged jurisdiction (Art. 19); challenges rejected	Israeli rejection; United States sanctions against ICC judges and prosecutors (2025)	Warrants against Netanyahu and Gallant remain in force; not executed
Sudan (Darfur)	UN Security Council referral, Resolution 1593 (2005)	Sudan is not a State Party; the resolution exempts non-States Parties' nationals from jurisdiction for acts related to Council-authorized operations	Virtually none since 2007; no effective political backing from the Security Council	Al-Bashir remains at large; Abd-Al-Rahman, who surrendered voluntarily (2020), was convicted and sentenced to 20 years (2025)
Philippines (Duterte case)	Proprio motu preliminary examination (2018); the investigation continued despite the Philippines' withdrawal from the Statute (2019)	The Philippines was a State Party between 2011 and 2019; the Court retains jurisdiction over conduct predating the withdrawal	Full cooperation: arrest and surrender by Philippine authorities in March 2025	Duterte in ICC custody; all charges confirmed and case committed to trial (April 2026); trial scheduled to open on November 30, 2026

This table points to a general pattern: cooperation has been minimal or nonexistent in Ukraine, Gaza, and Sudan alike, though the underlying causes should not be treated as identical. In Russia and Israel, non-compliance stems from an active geopolitical capacity: both states have allies willing to block diplomatic consequences or even sanction the Court itself. In Sudan, by contrast, Al-Bashir's impunity cannot be explained by an equivalent blocking capacity; it stems instead from the Security Council's own neglect and lack of follow-through after referring the case in 2005 and then failing to

exert political or technical pressure for its enforcement (Coalition for the International Criminal Court, 2015). These are, in short, two distinct causal mechanisms that produce a superficially similar outcome (impunity) and should not be treated as though they were one and the same. The Philippine case, meanwhile, shows that full cooperation is possible when the territorial state has no domestic political incentive to shield the accused, even when that state has formally withdrawn from the Rome Statute.

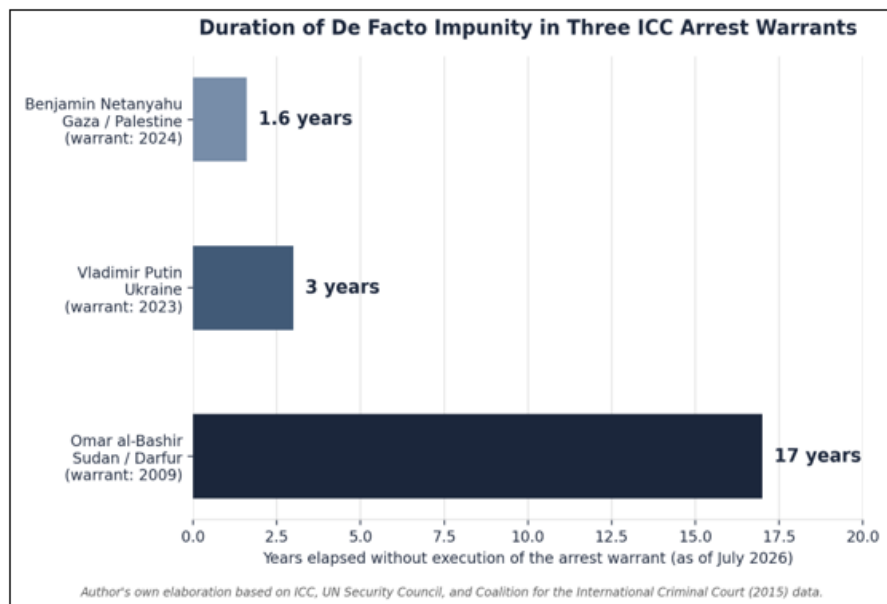


Figure 3: Years elapsed without execution of the arrest warrant in each case, as of July 2026 (author's own elaboration based on ICC, UN Security Council, and Coalition for the International Criminal Court, 2015, data).

Figure 3 shows the wide gap in the effective execution of the arrest warrants examined. The warrant against Omar al-Bashir has remained unenforced for seventeen years, the warrant against Putin for more than three years, and the

warrants against Netanyahu and Gallant for over a year and a half. Two caveats are in order: the data are right-censored, since every warrant remains unexecuted as of the time of writing, and the elapsed time since issuance partly reflects the

age of each warrant rather than the intensity of non-compliance, so the figure should be read as descriptive rather than as a standardized measure of impunity. This disparity does not reflect differences in the gravity of the crimes

charged; it reflects each state's differing capacity to withstand international pressure and the differing intensity, or absence, of effective diplomatic sanctions for non-compliance.

Table 2: Domestic universal jurisdiction: Spain, Argentina, and Germany (author's own elaboration)

Country	Legal basis	Landmark case	Outcome and limitations
Spain	Article 23.4 of the Organic Law of the Judiciary (1985), narrowed by the 2009 and 2014 reforms	The Pinochet case (1990s) and the trial of a Salvadoran military officer over the Jesuit massacre	A historical benchmark, though its scope is now tightly limited by connection requirements to Spain
Argentina	Judicial application of the universal jurisdiction principle in the absence of a unified special statute	Investigations into crimes committed under the Franco dictatorship and other human rights cases	Serves as a regional complement, though it faces cooperation and extradition obstacles similar to other forums
Germany	Code of Crimes against International Law (Völkerstrafgesetzbuch, 2002), which incorporates the Rome Statute into domestic law	The Koblenz trial against Anwar R. and Eyad al-Gharib for crimes against humanity in Syria (2020-2022)	The world's first trial for state-sponsored torture in Syria; life imprisonment and a four-and-a-half-year sentence, respectively, though with limited redress for victims far from the forum

Comparing these domestic experiences shows that national universal jurisdiction is a valuable complement to the ICC's jurisdictional gaps, most notably in the Syrian case, where the Court has no jurisdiction at all; its structural limitations, which largely mirror the Court's own, are analyzed in Section 7.2.

7. Discussion

7.1 Selectivity and Politicization of International Criminal Justice

The comparative analysis reveals a consistent pattern: the ICC's effectiveness does not depend primarily on the legal soundness of its decisions, which have in substance withstood repeated challenges in all four cases examined, even where, as with the Appeals Chamber's partial reversal of April 2025 in the Palestine situation, appellate scrutiny required the reasoning of a first-instance decision to be revisited, but on extra-legal variables: the geopolitical weight of the targeted state, the existence of allies willing to retaliate against the Court, and the degree of international media attention the victims receive. The academic literature has raised this concern with particular clarity, warning of the risk that international criminal justice may respond selectively to some conflicts and not to others of comparable gravity (Bower, 2019; Broache et al., 2023; García Iommi, 2023). South Sudan illustrates the point: a state also outside the Rome Statute where, according to the United Nations Commission on Human Rights in South Sudan (2026), widespread and systematic attacks against civilians that may amount to war crimes and crimes against humanity do not attract the same international mobilization as Ukraine or Gaza.

This selectivity cannot be attributed solely to the Court, whose conduct in the cases examined has been legally consistent, but rather to the system of state cooperation in which it operates. The ICC depends on States Parties to enforce its arrest warrants, and this dependence exposes it to the same power imbalances that international criminal law is meant to transcend. Bower (2019) and García Iommi (2023) agree that this pattern is not new but a structural feature present since the Court's earliest years, one whose visibility has simply grown as more conflicts involve powers with a genuine capacity for political resistance.

The clearest counterpoint concerns a decision not examined among the four case studies precisely because it never produced arrest warrants against the relevant actors: in September 2021, the ICC Prosecutor announced that the resumed Afghanistan investigation would focus on crimes allegedly committed by the Taliban and the Islamic State–Khorasan Province and would deprioritize other aspects of the investigation, which in practice removed United States personnel from the Office's active focus (International Criminal Court Office of the Prosecutor, 2021). Whatever the resource-based justification offered, the episode shows that selectivity operates not only downstream, in the enforcement of warrants, but also upstream, in the prosecutorial definition of whom to investigate at all, and it partially corrects the selection bias acknowledged in Section 4.1, since it documents the same pattern in a case that produced no warrant.

7.2 Domestic Universal Jurisdiction as a Fragmented Complement

The cases of Spain, Argentina, and Germany examined in Section 2.4 confirm that domestic universal jurisdiction can serve as a valuable complement to the ICC's jurisdictional gaps, as it does paradigmatically in the Syrian case, but it also reproduces, at the national level, much the same structural limitations that affect the Court: dependence on the political will of the state exercising jurisdiction, growing legislative restrictions under diplomatic pressure from third states, and limited redress for victims who live thousands of kilometers from the court that ultimately hears their case. The resulting fragmentation, with courts in different countries applying widely different evidentiary standards and sentences to substantially similar conduct, poses an additional challenge of normative coherence for international criminal law as a whole.

7.3 Sanctions Against the Court as a Form of Interstate Coercion

The episode of United States sanctions against ICC judges and prosecutors, described in Section 5.2, is qualitatively different from the mere passive non-cooperation seen in the cases of Russia and, for different reasons, Sudan. It amounts to an active form of political coercion aimed at constraining

the Court's judicial functioning as a whole. According to the Court itself and organizations such as Amnesty International, its effects extend well beyond the Palestine situation and threaten the institution's ability to operate independently across every open situation (Amnesty International, 2025a, 2025b; UNRIC, 2025). Russia's symmetrical response, issuing arrest warrants against ICC judges and ultimately convicting the Prosecutor and eight judges in absentia in December 2025 (OHCHR, 2026), suggests that the Court has itself become an additional geopolitical battleground, raising serious questions about its institutional survival in the medium term.

7.4 The Duterte Case as an Explanatory Anomaly

Far from contradicting this article's central hypothesis, the Philippine case refines it: state cooperation with the ICC does not depend solely on the territorial state's lack of blocking capacity, but also on the presence of domestic incentives favoring cooperation. In Duterte's case, political rivalry between his family and the Marcos Jr. government helps explain, at least in part, the speed and firmness with which Philippine authorities executed the arrest warrant, in notable contrast to Italy, an ICC State Party that in January 2025 arrested in Turin, and two days later released and returned to Libya, Osama Elmasry Njeem, a Libyan official wanted by the Court for alleged crimes against humanity and war crimes, a failure to surrender that prompted non-compliance proceedings under Article 87(7) of the Statute (International Criminal Court, 2025c). This pattern suggests that cooperation with international criminal justice can be, in practice, just as selective and politically contingent within States Parties themselves as the Court's own choice of which situations to pursue.

7.5 Reform Proposals

These findings point to at least three lines of institutional reform that specialized scholarship and the ICC's own organs have begun to explore. The first is strengthening the cooperation mechanism set out in Articles 86 through 102 of the Rome Statute. The existing response to non-compliance, a judicial finding under Article 87(7) followed by referral to the Assembly of States Parties or, for Council-referred situations, to the Security Council, has produced no tangible consequence despite the repeated findings issued in the Darfur situation alone, which suggests that meaningful change requires either statutory amendment or, at a minimum, a standing Assembly procedure attaching predetermined institutional responses to such findings. The second is a firmer collective response to extraterritorial sanctions imposed by non-States Parties against Court officials, in line with what Amnesty International (2025b) urged at the 24th session of the Assembly of States Parties, held in The Hague from December 1 to 6, 2025; concrete proposals under discussion include extending instruments such as the European Union's Blocking Statute (Regulation No. 2271/96) to shield Court officials and cooperating persons from the effects of third-state sanctions (Laucci, 2025). The third is closer coordination between the ICC and national jurisdictions exercising universal jurisdiction, building on existing structures such as the European Union's Genocide Network hosted at Eurojust, so that the fragmentation described in

Section 7.2 does not lead to an inefficient duplication of efforts but rather to genuine complementarity that broadens real accountability for victims.

8. Conclusions

This study demonstrates that the principal challenge facing contemporary international criminal justice is not the absence of legal norms but the uneven implementation of existing ones. The comparative analysis of Ukraine, Gaza, Sudan, and the Philippines, together with the examination of domestic universal jurisdiction in Spain, Argentina, and Germany, shows that the effectiveness of the International Criminal Court depends largely on state cooperation and broader political conditions. Although the Rome Statute provides a robust legal framework, its practical impact remains constrained by selective compliance and unequal enforcement. Two findings of this study give that general diagnosis its specific contemporary content. The Philippine case shows that cooperation can be swift and decisive when domestic political incentives align with international obligations, which locates the deficit less in the Court's institutional design than in the incentive structures of states; and the sanctions imposed on the Court's judges and prosecutors, together with the in absentia convictions handed down in Moscow in December 2025, mark a qualitative escalation from passive non-cooperation to active interstate coercion against an international judicial institution. Strengthening cooperation mechanisms, improving coordination between the ICC and national jurisdictions, and promoting consistent political support for international accountability would enhance the credibility and effectiveness of the international criminal justice system while advancing its universal objectives.

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