

# THE POWER OF INTERNATIONAL TRIBUNALS: LIMITATIONS OF THE INTERNATIONAL CRIMINAL COURT

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## ABSTRACT

*The establishment and functioning of international tribunals have been crucial in addressing grave violations of international humanitarian law and promoting accountability for war crimes, genocide, and crimes against humanity.<sup>2</sup> These tribunals play a significant role in ensuring that perpetrators of these crimes are held accountable, and justice is served. Two prominent cases that have garnered international attention and raised questions about the power and effectiveness of international tribunals are the Russia-Ukraine conflict and the Israel-Palestine conflict. Therefore, this article examines the impact of the International Criminal Court (ICC) building efforts in post-conflict rule of law-based societies, with emphasis on the Russia-Ukraine conflict and the Israel-Palestine conflict.*

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<sup>2</sup> Rita Mutayaba, 'The International Criminal Court - Its Impact and the Challenges It Faces in Fulfilling Its Mandate' *SSRN* (2013) <<https://ssrn.com/abstract=2295911>> accessed 24 February 2024.

## INTRODUCTION

In recent years, the world has witnessed the devastating consequences of conflicts and atrocities, particularly in the cases of the Russia-Ukraine conflict and the Israel-Palestine conflict. These conflicts have resulted in numerous human right violations and raised questions about the role of international tribunals in promoting justice and accountability.<sup>3</sup> The International Criminal Court (ICC), as a global institution, has the power to investigate and prosecute individuals responsible for grave international crimes. However, the effectiveness and impact of the International Criminal Court in these cases have been a subject of debate.

## LIMITATIONS OF THE POWERS OF THE INTERNATIONAL CRIMINAL COURT: AN ANALYSIS

International tribunals, such as the International Criminal Court, hold significant power and authority in addressing grave violations of international humanitarian law. They can investigate, prosecute, and hold accountable individuals responsible for war crimes, genocide, and crimes against humanity.<sup>4</sup> These tribunals serve as important mechanisms for promoting justice, ending cultures of impunity, and contributing to transitioning to societies based on the rule of law. In the aftermath of conflicts, national institutions may be weakened or corrupted, making it necessary for international tribunals to step in and ensure justice is served.

While the International Criminal Court has made significant contributions, shedding light on violations of international humanitarian law and human rights abuses in conflicts such as the Russia-Ukraine conflict and the Israel-Palestine conflict, the challenges faced in exerting its power and authority cannot be overlooked.

One of the primary challenges is the limited jurisdiction of the International Criminal Court. The Court's jurisdiction is restricted to crimes committed by individuals from states that have ratified

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<sup>3</sup> William W Burke-White, 'The Domestic Influence of International Criminal Tribunals: The International Criminal Tribunal for the Former Yugoslavia and the Creation of the State Court of Bosnia & Herzegovina' *University of Pennsylvania Carey Law School* (2008) 178 <[https://scholarship.law.upenn.edu/faculty\\_scholarship/178/](https://scholarship.law.upenn.edu/faculty_scholarship/178/)> accessed 10 February 2024.

<sup>4</sup> 'International Criminal Court' <<https://www.icc-cpi.int/>> accessed 28 February 2024.

the Rome Statute<sup>5</sup>. This limitation becomes evident in conflicts where key perpetrators may not be from states that are signatories to the statute as the ICC's jurisdiction is limited to crimes committed within the territory of a state party or by nationals of a state party. As in the case of Russia's involvement in the Ukraine conflict, neither Ukraine nor Russia is party to the Rome Statute hence, the ICC's jurisdiction is not automatically triggered in this conflict. Additionally, the ICC's jurisdiction can also be authorized by the United Nations Security Council. However, the Security Council's veto power possessed by certain permanent members can hinder the court's ability to investigate and prosecute crimes in politically sensitive conflicts. This limitation has been evident in the case of the Ukraine-Russia conflict, where Russia has used its veto power to block efforts by the Security Council to refer the situation to the ICC.

Furthermore, even if the ICC were to obtain jurisdiction in the conflict, there are challenges in gathering evidence and ensuring cooperation from relevant parties. These challenges can include the reluctance of the parties involved to cooperate with the court's investigations, the destruction or concealment of evidence, and the difficulties in accessing the conflict zone safely. The reliance on state cooperation poses a significant challenge for the International Criminal Court. In both the Russia-Ukraine conflict and the Israel-Palestine conflict, obtaining cooperation from relevant states, particularly from those whose nations are implicated in the crimes, has proven to be a daunting task. The political influence of these states further complicates the court's ability to fully address the crimes committed in these conflicts.

Also, the International Criminal Court's effectiveness is hindered by the complexities of navigating its jurisdiction in politically sensitive and complex conflicts. The Israel-Palestine conflict, for example, involves ongoing disputes over the status of Palestine as a state, and the involvement of powerful political actors adds another layer of complexity to the court's efforts to hold key perpetrators accountable. Despite these challenges, the International Criminal Court's involvement has been crucial in drawing international attention to the atrocities committed and providing a platform for victims to seek justice. However, addressing the limitations and

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<sup>5</sup> United Nations, 'Rome Statute of the International Criminal Court' (*ohchr*) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court>> accessed 28 February 2024.

challenges faced by the court in exerting its power and authority in complex international conflicts remains a pressing issue.

## CONCLUSION

In conclusion, the International Criminal Court plays a crucial role in shedding light on violations of international humanitarian law and human rights abuses in complex international conflicts such as the Russia-Ukraine conflict and the Israel-Palestine conflict. It has provided a platform for victims to seek justice and has drawn international attention to the atrocities committed. However, the court faces significant challenges in exerting its power and authority, including limited jurisdiction, complexities in politically sensitive conflicts, and reliance on state cooperation. Addressing these limitations and challenges will be essential for the International Criminal Court to effectively promote justice and accountability in post-conflict societies and contribute to the transitioning of societies into those operating by the principles of rule of law.