The Future of the International Criminal Court under Political Influence
A Critical Analytical Study
مستقبل المحكمة الجنائية الدولية في ظل التأثير السياسي: دراسة تحليلية نقدية



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Abstract:
This study addresses the future of the International Criminal Court in light of the mounting political pressures surrounding its work, more than two decades after it began operating as the first permanent international criminal judicial body, without ever fully freeing itself from the pressures exerted by major powers and certain member States. The first chapter addresses the Court's legal and institutional framework: its establishment under the Rome Statute, its subject-matter jurisdiction and the complementarity principle underlying it, and the mechanisms for triggering proceedings before it, including the Security Council's referral .

Keywords: International Criminal Court; Rome Statute; politicisation; Security Council; African withdrawal.

ملخص:
تتناول هذه الدراسة مستقبل المحكمة الجنائية الدولية في ظل الضغوط السياسية المتصاعدة المحيطة بعملها، بعد أكثر من عقدين من مباشرتها عملها بوصفها أول هيئة قضائية جنائية دولية دائمة، دون أن تتمكن من التحرر كليًا من الضغوط التي تمارسها القوى الكبرى وبعض الدول الأعضاء. يتناول الفصل الأول الإطار القانوني والمؤسسي للمحكمة: نشأتها بموجب نظام روما الأساسي، واختصاصها الموضوعي ومبدأ التكامل الذي يقوم عليه، وآليات تحريك الدعوى أمامها، بما في ذلك صلاحيات الإحالة والتأجيل المخولة لمجلس الأمن، تليها الضمانات النظرية لاستقلالها القضائي وحدود هذه الضمانات في غياب جهاز تنفيذي خاص بها. أما الفصل الثاني فيقدّم تحليلاً نقديًا لأبرز مظاهر التأثير السياسي في ممارسة المحكمة، بدءًا من عدم انضمام القوى الكبرى، والتشريعات الأمريكية الحمائية.
كلمات مفتاحية: المحكمة الجنائية الدولية؛ نظام روما الأساسي؛ التسييس؛ مجلس الأمن؛ الانسحاب الأفريقي؛

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INTRODUCTION

The adoption of the Rome Statute in 1998 constituted a watershed moment in the history of international criminal law, crowning a long process of attempts to establish a permanent international criminal judiciary transcending the exceptional, ad hoc character of earlier international criminal tribunals, from Nuremberg and Tokyo to the ad hoc tribunals for the former Yugoslavia and Rwanda. The drafters of the Statute wagered that the establishment of a permanent court, endowed with jurisdiction independent of the political will of States, would constitute an effective guarantee for ending impunity for the most serious international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.

Yet the Court's practice, since its Statute entered into force in 2002, has revealed a profound gap between this founding ambition and the reality of its day-to-day operation. The Court has not succeeded in freeing itself from the influence of the international balance of power — whether through the refusal of major powers such as the United States, China, and Russia to accede to its Statute, the pressures and direct sanctions imposed on its officials whenever its investigations approached the interests of these powers, or the mounting crisis of confidence among African States, which view the Court as a biased

instrument targeting their leaders exclusively. This crisis reached its peak in an unprecedented event: the vote by States Parties in July 2026 to remove Prosecutor Karim Khan from office — the first such precedent in the Court's history — raising serious questions as to the Court's future capacity to safeguard its judicial independence.

The topicality of this subject is heightened by the fact that this institutional crisis has coincided with an escalating pace of highly politically sensitive cases before the Court, from the arrest warrant issued against Russian President Vladimir Putin in 2023, to the arrest warrants issued against Israeli Prime Minister Benjamin Netanyahu and his former Minister of Defence in 2024, followed by unprecedented American sanctions against the Court itself. From this emerges the central problem of the study, formulated as follows: to what extent do political considerations affect the work of the International Criminal Court, and what are the implications of this for its future as an independent international judicial institution?

In order to answer this question, the study is divided into two chapters. The first chapter addresses the legal and institutional framework of the International Criminal Court and the principle of its judicial independence, across two sections; the second chapter, across a third and fourth section, is devoted to analysing the

manifestations of political influence on the Court's work and assessing its future through a critical analytical study.

1. Chapter One: The Legal and Institutional Framework of the International Criminal Court and the Principle of its Judicial Independence

1.1 Section One: The Establishment of the International Criminal Court and the Foundations of its Jurisdiction

Analysing the future of the International Criminal Court first requires examining its legal establishment and the foundations of its subject-matter jurisdiction, before setting out the mechanisms for triggering proceedings before it and the role of the United Nations Security Council in that regard.

First Requirement: The Rome Statute and the Court's Subject-Matter Jurisdiction

The Rome Statute of the International Criminal Court was adopted on 17 July 1998 at a diplomatic conference held in Rome, and entered into force on 1 July 2002, following the completion of the required number of ratifications, thereby making the Court the first permanent international criminal judicial body in the history of international law.[1] The Rome Statute confines the Court's subject-matter jurisdiction to four international crimes regarded as the most serious of concern to the international community as a whole: genocide, crimes against humanity, war crimes, and the crime of aggression — jurisdiction over the latter was not actually

activated until 2018, following agreement on its definition and the conditions for the exercise of jurisdiction over it.

The Court operates on the principle of complementarity with national criminal jurisdictions, meaning that it does not supplant national judicial systems but intervenes only in a complementary capacity whenever the State concerned is shown to be unable, or genuinely unwilling, to investigate or prosecute the perpetrators of these crimes. This principle reflects the drafters' concern to respect the judicial sovereignty of States while ensuring that perpetrators of serious international crimes do not escape punishment whenever national systems fail to discharge their judicial function in good faith.

Second Requirement: Mechanisms for Triggering Proceedings before the Court and the Role of the Security Council

The Rome Statute identifies three routes through which the Court's jurisdiction may be triggered: referral of a situation by a State Party concerning crimes that appear to have been committed on its territory or by one of its nationals; referral of a situation by the United Nations Security Council acting under Chapter VII of the UN Charter; and the Prosecutor's proprio motu initiation of an investigation on the basis of information available to him, subject to prior authorisation from the Court's Pre-Trial Chamber.[2] The Security Council referral mechanism is significant in that it

confers jurisdiction on the Court even with respect to non-States Parties — as occurred in the cases of Darfur, Sudan, and Libya, both referred to the Court by the Security Council despite the fact that neither Sudan nor Libya has acceded to the Rome Statute.

Yet this very mechanism harbours the most serious avenue of political influence over the Court's work: Article 16 of the Rome Statute empowers the Security Council to request the deferral of the commencement or continuation of any investigation or prosecution before the Court for a renewable period of twelve months, by way of a resolution adopted under Chapter VII. This power grants the Council's permanent members, by virtue of their veto, indirect leverage enabling them to obstruct the course of international criminal justice whenever it conflicts with their strategic interests, irrespective of the gravity of the crimes under investigation.

1.2 Section Two: Guarantees of the Court's Judicial Independence and their Practical Limits

First Requirement: The Theoretical Guarantees of Judicial Independence

The Rome Statute surrounds the International Criminal Court with a series of theoretical guarantees intended to safeguard its judicial independence from any external influence. Foremost among these is the election of judges and the Prosecutor by the Assembly of States Parties according to objective criteria relating

to competence, integrity, geographical representation, and gender balance, together with the grant of functional immunity during the exercise of their duties, precluding any attempt to influence them or hold them accountable for their judicial decisions save through precisely defined internal disciplinary mechanisms.

The Rome Statute also establishes the principle of non-retroactivity ratione temporis, such that the Court has jurisdiction only over crimes committed after its Statute entered into force, and precisely defines the conditions for the exercise of jurisdiction over nationals of non-States Parties — which, in principle, is confined to situations referred by the Security Council or to situations in which nationals of such States commit crimes on the territory of a State Party. This is intended to protect the principle of State sovereignty against any arbitrary expansion of the Court's jurisdiction beyond what States have expressly consented to by acceding to its Statute.

Second Requirement: The Limits of these Guarantees in the Absence of a Dedicated Enforcement Apparatus

Despite these theoretical guarantees, the International Criminal Court, unlike national courts, remains devoid of any enforcement apparatus or police force of its own capable of independently executing its decisions. It relies entirely on the cooperation of States Parties, and at times non-States Parties, in executing arrest warrants, surrendering accused persons, and

gathering evidence.[3] This dependence on the will of States makes the Court's effectiveness hostage to the willingness of States to cooperate with it — a willingness that varies considerably according to the nature of the political relations between the State concerned and the parties to the conflict under investigation.

Compounding this structural shortfall is the issue of the Court's own financing: its budget depends on the assessed contributions of States Parties, under a system closely resembling that applied to the United Nations budget, exposing it to indirect financial pressure whenever certain major contributing States delay payment of their financial obligations, or threaten to do so in protest against particular prosecutorial policies. This is compounded by the Court's partial reliance on additional voluntary contributions from certain States and international and regional organisations to fund specific activities, such as legal aid for victims and witness protection programmes — funding that may carry parallel political or diplomatic agendas which indirectly affect the Court's operational priorities and the allocation of its resources among the various situations before it.

The impact of this structural shortfall is clearly evident in the difficulty of executing a large number of arrest warrants issued by the Court: a number of wanted persons continue to move freely between States Parties, none of which dares execute the warrant against them, in order to avoid diplomatic or economic friction

with the State to which that person belongs. This empties the mechanisms of theoretical judicial independence of their practical substance, and ultimately makes the Court's capacity to achieve justice hostage, in the final analysis, to the international balance of political power rather than to the requirements of law alone.

2. Chapter Two: Manifestations of Political Influence on the Court's Work and an Assessment of its Future — A Critical Analytical Study

2.1 Section Three: Manifestations of Political Influence in the Court's Practice

Having examined the Court's legal and institutional framework and the theoretical guarantees of its independence, the analysis now turns to the principal manifestations of actual political influence on its work, from the non-accession of the major powers to the mounting African crisis of confidence.

First Requirement: The Non-Accession of the Major Powers and American Protective Legislation and Sanctions

The refusal of the major powers — foremost among them the United States, China, and Russia — to accede to the Rome Statute remains one of the clearest manifestations of the structural shortfall in the universality of the Court's jurisdiction. The United States has been particularly concerned to shield its nationals and military personnel from any potential prosecution before the Court: in 2002 Congress enacted the American Service-Members'

Protection Act, known in the legal literature as the 'Hague Invasion Act', which authorises the President to use all means necessary, including military force, to free any American citizen or ally detained by the Court.[4] This legislation clearly reflects the scale of the structural tension between the sovereignty of the major military powers and the Court's ambition to exercise comprehensive universal jurisdiction.

This tension reached its peak in recent years when, on 6 February 2025, President Donald Trump signed an executive order authorising the freezing of the assets of Court officials and barring their entry into United States territory, in response to the Court's issuance, on 21 November 2024, of two arrest warrants against Israeli Prime Minister Benjamin Netanyahu and his former Minister of Defence on charges of war crimes and crimes against humanity in the Gaza Strip.[5] These sanctions were subsequently extended to Prosecutor Karim Khan personally, and were further expanded during 2025 to encompass his two deputies and eight of the Court's judges — an unprecedented step that drew widespread criticism from a number of European governments, which expressed solidarity with the targeted judges and their continued support for the Court's independence.

Second Requirement: The African Crisis of Confidence and Successive Waves of Withdrawal

The African continent, despite being proportionally the most heavily represented among the States Parties to the Rome Statute, has been the source of the deepest crisis of confidence confronting the Court, against a backdrop of recurring accusations that the Court is biased against African leaders. Burundi announced its withdrawal from the Court in October 2016, followed by South Africa and the Gambia, which issued similar announcements the same week, although the latter two States subsequently reversed their decisions.[6] Burundi grounded its actual withdrawal in the claim that the Court had become an instrument for pressuring and destabilising the governments of poorer States at the instigation of major powers — rhetoric that would later be echoed by other African States.

This wave intensified further during 2025 and 2026, when the Sahel States of Mali, Burkina Faso, and Niger, members of the Alliance of Sahel States, announced their successive withdrawal from the International Criminal Court, on the ground that the Court had become a political tool in Western hands, serving geopolitical stakes rather than impartial international criminal justice.[7] Niger thereby became, after the Philippines and Burundi, the third State actually to leave the Court following completion of the withdrawal procedure — a development that some observers have described as carrying the risk of a domino effect that could

drive further African States to leave the Court in future, threatening to progressively weaken its global representativeness.

2.2 Section Four: A Critical Assessment of the Court's Future and Prospects for its Reform

First Requirement: The Crisis of Prosecutor Karim Khan's Removal as a Decisive Turning Point

The removal of British Prosecutor Karim Khan — elected to the office in 2021 as the third Prosecutor in the Court's history — constituted an unprecedented turning point in the Court's institutional trajectory. On 24 July 2026, the Assembly of States Parties voted, by a majority of eighty-two States out of one hundred and twenty-five member States, to remove him from office, on the basis of a report concluding that he had committed serious professional misconduct relating to allegations of an improper relationship with one of his assistants — allegations that Khan categorically denied, announcing his intention to challenge the legality and integrity of the decision before the available legal mechanisms.[8] This was the first instance in the Court's history in which a sitting Prosecutor has been removed from office.

The circumstances surrounding this removal sparked wide-ranging controversy over its political dimensions, the vote having come only a few months after the imposition of direct American sanctions on Karim Khan following his issuance of the arrest warrants against Netanyahu and Gallant, and after an internal

judicial body within the Court itself had reportedly concluded — according to Khan's lawyers — that the findings of the investigation conducted by the United Nations Office of Internal Oversight Services had not established misconduct or a breach of duty in the strict legal sense.[9] This led his defence team to describe the removal decision as having been adopted by an executive vote taken against the backdrop of sanctions imposed on the Prosecutor and of immense political pressure to which the Court itself was subject — raising a fundamental question mark over the extent of the independence of the Court's institutional decision-making from external pressure.

Second Requirement: Reform Proposals to Insulate the Court from Politicisation

In light of the foregoing manifestations of mounting politicisation, it appears necessary to reconsider a number of the structural imbalances afflicting the International Criminal Court system, foremost among them the Security Council referral mechanism itself. A segment of international legal scholarship proposes restricting the use of the veto by permanent members whenever the matter concerns the referral or deferral of situations involving genocide and serious crimes against humanity, so as to enshrine an ethical principle precluding the use of what amounts to a purely political privilege to obstruct the course of

international criminal justice in the most heinous crimes known to humanity.

The matter also calls for strengthening the Court's own mechanisms of transparency and internal accountability, so as to prevent any repetition of a scenario in which individual accusations — even where legitimate in themselves — are exploited as a pretext for settling political scores against officials whose judicial decisions have discomfited influential international powers, by ensuring a disciplinary process entirely independent of any direct or indirect political pressure. The expansion of the Court's global membership, by encouraging major powers that have not yet acceded to do so in future, remains an indispensable long-term strategic wager for conferring genuine universal legitimacy on its work, one that would progressively narrow the margin of geographical and political selectivity that has dogged its reputation since its inception.

It should also be recalled, in this context, that addressing the Court's crisis cannot be confined to purely formal institutional reforms alone, but also calls for a deeper legal and political debate on the dialectical relationship between law and politics in the field of international criminal justice — given that the Court's very establishment was itself originally the product of a political compromise among the States signatory to the Rome Statute, which makes it illusory to expect its work ever to be completely

and finally freed from any political dimension, particularly in cases touching senior officials of States of significant international influence. The realistic wager therefore lies not in the total elimination of the political dimension — a goal difficult to achieve in any international legal system founded on the will of sovereign States — but rather in limiting its adverse impact on the independence of individual judicial decision-making, and in ensuring equal treatment among the various States and individuals subject to the Court's jurisdiction, irrespective of their political or geographical weight.

Conclusion

This study has addressed the future of the International Criminal Court in light of mounting political influences, examining in its first chapter the Court's legal and institutional framework, the theoretical guarantees of its judicial independence, and their practical limits, before analysing, in its second chapter, the principal manifestations of actual political influence on its practice, culminating in a critical assessment of the removal of Prosecutor Karim Khan as a decisive turning point in the Court's history, together with reform proposals to insulate it from politicisation in future.

The study has arrived at a number of findings, the most significant of which are the following:

• The Security Council's referral mechanism and its power to defer investigations under Article 16 of the Rome Statute constitute the most serious avenues of institutional political influence over the Court's work.

• The absence of a dedicated enforcement apparatus renders the Court entirely dependent on the cooperation of States, frequently emptying the theoretical guarantees of its independence of their practical substance.

• The refusal of the major powers to accede to the Rome Statute, together with the accompanying protective legislation and direct sanctions against Court officials, undermines the universality of its jurisdiction.

• The mounting African crisis of confidence, renewed by the wave of Sahel State withdrawals during 2025–2026, threatens to progressively weaken the Court's global representativeness.

• The removal of Prosecutor Karim Khan in July 2026, in circumstances surrounded by suspicions of politicisation, represents a decisive turning point calling for a fundamental reassessment of the Court's system of guarantees of judicial independence.

In light of the foregoing, the study recommends the following:

• Restricting the use of the veto within the Security Council in matters relating to the referral or deferral of investigations into genocide and serious crimes against humanity.

• Strengthening the Court's mechanisms of transparency and internal accountability so as to guarantee the independence of any internal disciplinary process from external political pressure.

• Intensifying diplomatic efforts to encourage major powers that have not yet acceded to the Rome Statute to do so in future.

• Opening a constructive dialogue with African States that have withdrawn, or are threatening to withdraw, in order to address the actual shortcomings in the Court's work and avert a gradual erosion of its global membership.

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