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Why Justice Stops Where Power Begins: The ICC in a Divided International System

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Abstract

The International Criminal Court (ICC) was created to rise above politics and end impunity for the world's most serious crimes. Two decades later, its record shows a marked geographical and political imbalance. Nearly all full investigations and prosecutions have targeted states in the Global South, especially in Africa, while cases involving actors from the Global North or powerful non-Western regions have rarely moved beyond preliminary review. This article applies the theoretical lens of Structural Realism to explain why global justice advances only where enforcement is politically feasible. Drawing on comparative cases from both hemispheres, including Sudan, Kenya, and

Mali in the Global South and Afghanistan, Iraq-United Kingdom, and Palestine/Israel in the Global North and Middle East, the study argues that the ICC mirrors rather than transcends the hierarchies of the international order. The Court's dependence on state cooperation, financial support, and Security Council authorization ties its authority to the same powers it may one day wish to prosecute. Justice therefore stops where political and military power begin. The article concludes that genuine universality in international criminal justice will remain elusive until global inequalities of power and governance are addressed.

Keywords: International Criminal Court, Structural Realism, Global Justice, Global North, Global South, International Law

1. Introduction

The goal of creating a universal system of international criminal justice reached its institutional peak with the establishment of the International Criminal Court (ICC) in 2002 under the Rome Statute. For the first time, a permanent judicial body possessed authority to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression regardless of nationality or rank (Rome Statute, 1998). Many observers hailed the ICC as the embodiment of global moral progress and as a decisive step beyond the ad hoc tribunals that followed the conflicts in Rwanda and the former Yugoslavia (Bosco, 2014; Clark, 2018) ^[2, 5].

However, two decades after its creation, the Court's ambition to represent universal justice contrasts sharply with the regional and political distribution of its cases. Of the more than seventeen situations formally opened since 2002, the majority concern African states and nearly all involve actors from the Global South (Ssenyonjo, 2021) ^[21]. At the same time, reports of similar human rights violations involving powerful Western and non-Western nations, including the United States and its allies in Afghanistan and Iraq, British operations in Basra, Israel's action in Palestinian territories, Russia's involvement in Georgia, and China's treatment of ethnic minorities, have often been set aside, delayed indefinitely or abandoned at preliminary stages (Human Rights Watch [HRW], 2022; Scharf, 2021; Degterev, 2019) ^[10, 20, 7].

This unequal pattern of attending to legal matters has heightened criticism that the ICC targets weaker states while sparing stronger ones (Mamdani, 2008; Mutua, 2015) ^[14, 16]. The African Union has repeatedly condemned what it perceives to be a double standard, noting that African leaders have faced prosecution for crimes while politically influential countries remain untouched. Although supporters of the ICC have argued that many African cases were based on self-referrals, this explanation has not done enough to change the idea that structural inequality still shapes how the ICC works and delivers justice.

The present article reexamines this debate by treating the ICC not simply as a legal body but as a reflection of the international system that produced it. Using the lens of Structural Realism, also known as Neorealism, the study explains why the pursuit of justice often remains uneven. According to Waltz (1979) ^[23], because there is no central government or world police in global politics, the international space becomes an anarchic or lawless environment where states operate mainly to survive by

protecting themselves and pursuing power. Institutions that emerge from this kind of arrangement would naturally inherit these same anarchy and inequalities. They will only function well when their goals and objectives align with the interests of the most powerful states (Mearsheimer, 2001; Gilpin, 1981) ^[15, 8].

From this perspective, the ICC's uneven record is not entirely surprising. It mirrors the structure of how world politics is played. Justice moves where there is minimal resistance, and halts where power pushes back.

This analysis aims at comparing two main patterns of ICC's activities. The first pattern includes strong prosecutions mainly directed at the Global South, as seen in cases like Sudan, Kenya, and Mali where the Court has exercised its authority extensively. The second pattern observed in ICC operations shows a different approach, which is: delayed, limited or cautious investigations when powerful states or their close allies are involved. This has been evident in cases involving the Global North, Asia, and the Middle East, including Iraq and the United Kingdom, Afghanistan, and Palestine/Israel. These examples hereby prove that the ICC enforcement tends to weaken as a state's political and economic power increases.

In this research, I applied the comparative qualitative approach. I collected data from the ICC official records, United Nations Security Council (UNSC) documents, academic publications, and reports from human rights organizations, including, Human Rights Watch (2022) ^[10] and Amnesty International (2018) ^[1]. The results show a clear pattern between ICC's court decisions and the overall balance of power in global power relations.

At the heart of this research lies an important question: Why is the ICC interested in pursuing prosecutions more aggressively in the Global South while acting with caution in cases involving the Global North and other powerful regions?

The argument presented here is that the ICC operates and has a similar structure like international politics, in the sense that it is anarchic and there is no central power enforcing rules to states. Secondly, it depends on member-states for funding and most funding comes from powerful states, reliance on Security Council referrals, and the absence of major world powers like the United States from its membership hence shielding some states from accountability.

In advancing this analysis, the article contributes to broader debates about the intersection of law and power. It shows that moral ideals of justice exist within a global system that favors power and influence. The following section reviews the theoretical foundations of Structural Realism and applies them to the practice of contemporary international justice.

2. Theoretical Framework: Structural Realism and Global Justice

Structural Realism, which is also known as Neorealism, provides a helpful way to understand how institutions like the International Criminal Court (ICC) operates, in a world where power is unevenly distributed. This theory was propounded by Kenneth Waltz (1979) ^[23] in his book, *Theory of International Politics*, the theory describes the international system as anarchic, meaning that it is lawless and there is no single authority which serves as a world police that governs all states. Therefore, in this system,

every state must depend on its own strength and resources to protect its interests and ensure its survival.

According to Waltz (1979) ^[23], it is not the character of a state that determines its behaviour in the international system. Similarly, a country's choices are shaped by the external pressures that arise from their positions in the global hierarchy of power and influence. Power, whether economic, military, or diplomatic, is the principal currency and determinant of the safety of a state. This perspective differs from liberal institutionalism, which is a school of thought that believes that international organizations helps to promote cooperation and reduce conflict through shared rules, norms and mutual interdependence (Keohane, 1984) ^[13]. Structural Realism, on the other hand, argues that interest, and only interest determines where the pendulum swings to. Hence, it sees cooperation as temporal and lasts only when it benefits each state's national interests. In practice, this means that global institutions like the ICC often end up reflecting the will of the most powerful and influential states (Mearsheimer, 2001; Gilpin, 1981) ^[15, 8].

From a realist angle, international institutions are not neutral organisations, they were created and maintained by powerful states as a means to enforce control. Mearsheimer (2001) ^[15]. These institutions work well only when powerful states permit them to and in the same vein, fail when their goals clash with the interests of powerful actors.

If this reasoning is applied to international justice, the International Criminal Court (ICC) begins to look less like an independent court and more as a reflection of global power structure. This is because the Court's structure and operations depend entirely on the cooperation of states. It has no police to arrest defaulters, it has no independent source of funding, and then, there is no authority solely to enforce its judgement. It can only investigate and prosecute depending on whether states are willing to provide evidence, allow it to make arrests, or even approve extraditions. As Ssenyonjo (2021) ^[21] rightly pointed out, the ICC's achievements and setbacks are dependent on the support it receives from powerful governments, especially those in the Global North.

The financial dependence of the ICC further exposes it to political pressure and limits its ability to act independently because over half of its annual budget comes from the European Union countries, along with contributions from influential countries like Japan and Canada (Clark, 2018) ^[5]. These same countries also wield influential in the United Nations Security Council, which has the power to refer and defer cases under Articles 13(b) and 16 of the Rome Statute. Realist thinkers also help to explain how power shapes the link between law and enforcement. In global politics, it is a country's influence and power that decides who gets to define what justice is, when and where laws apply. Waltz (1979) ^[23] reminds us that, in a system without a central authority, the enforcement of law ultimately depends on the resources and willingness of individual states or coalitions. The ICC's dependence on state cooperation follows that same pattern. Although the Court can issue arrest warrants, it cannot execute them on its own without the cooperation of the state involved. When a case threatens national or regional interests, cooperation quickly declines because the states involved would first of all, be focused on deciding if that decision reached will serve their country's interest first.

Bosco (2014) ^[2], studied the ICC's first decade, and he described its pattern as "calculated compliance." He explained it to mean that the ICC tends to avoid direct confrontation with major powers, instead they focus on pursuing cases that helps them grow their visibility and relevance. This selective engagement is in line with Mearsheimer's (2001) ^[15] claim that international institutions can survive only when their boundaries are in tandem with the desires of dominant states.

Structural Realism has therefore helped to explain why global justice sometimes feels selective. Thus, it is important to understand that the ICC's strong presence in the Global South and its weak approach in the Global North are not just signs of bias rather they are symptoms of structural imbalance. According to Mamdani (2008) ^[14] and Mutua (2015) ^[16], they likened global justice as a long-standing hierarchy whereby the Global North acts as judge because they own the power, and have the money to fund the ICC while the South becomes the defendant because they do not matter in the grand scheme of things. He who pays the piper dictates the tone. Structural Realism helps explain that this pattern continues not necessarily out of deliberate injustice but because law itself is limited by those who control the means of enforcement. Viewing the ICC through this lens is a paradox. The Court should be a symbol of equal justice among all countries, yet it operates in a system built on inequality. Without an equal distribution of power, it is unrealistic for anyone to expect international law to produce uniform outcomes across regions. Institutions are shaped by their political environments, and justice within an unequal global order will inevitably follow power rather than challenge it because again, he who pays the piper dictates the tone.

3. Mapping Global Selectivity: The ICC in the Global South and Beyond

The International Criminal Court (ICC) has a history of applying international criminal justice unevenly, and its style of justice is based on a country's geographical location or influence in the international system. It was established in 2002, however, since then, most of the Court's comprehensive investigations and prosecutions have taken place in countries within the Global South. This tendency has led to the arguments and questions about the place of equity, fairness and universality of the ICC's mission. Although the Court presents itself as an impartial judge, its focus on certain regions have so far shown that its operations are heavily influenced by global power relations and political limitations.

The Court opened its first three cases in Uganda, the Democratic Republic of Congo, and the Central African Republic. It is important to note that the governments of these countries voluntarily requested the ICC to look into their dealings. Subsequently, the ICC handles cases in Darfur in Sudan, Kenya, Côte d'Ivoire, Libya, and Mali, each involving African political or military leaders (Ssenyonjo, 2021) ^[21]. Although these referrals were partly a result of Africa's early enthusiasm for the Court, they gradually created the perception that the ICC equates global justice with African compliance (Clark, 2018) ^[5].

According to the Court's 2023 activity report, more than two thirds of its investigations remain situated in Africa or the broader Global South (ICC, 2023). In contrast, situations outside these regions have either been confined to

preliminary examination or have encountered political barriers. For example, the Court's investigation into Russian and Georgian forces during the 2008 war over South Ossetia produced arrest warrants only for mid-level separatist actors, while higher-level political figures remained untouched (Degterev, 2019) ^[7].

The ICC's hierarchy of engagement can be grouped into three broad categories. The first category comprises active enforcement mainly in Africa and parts of the Middle East, where governments lack the power or alliances to resist external scrutiny. The second category consists of cautionary or stalled investigations concerning powerful non-Western states such as Russia, the Philippines, and Israel. The third, and most significant for understanding Selective Realism, is non-engagement toward the Global North, where potential cases related to U.S. or coalition activities have been either closed or deprioritised.

One clear example of the second category is the Afghanistan situation. In 2017 the Prosecutor sought authorization to investigate war crimes committed by Taliban, Afghan National Security Forces, and U.S. personnel. After years of resistance, the ICC formally opened its investigation in 2020. But thereafter, the new Prosecutor, Karim A. A. Khan KC, later limited the investigation to crimes committed by only the Taliban and Islamic State fighters. According to Human Rights Watch (2022) ^[10], this decision was wrong because the double standard made an already ugly situation worse by ignoring possible abuses by Western soldiers.

The same thing happened with the United Kingdom's case. The ICC's initial investigation into the numerous claims of abuses by British troops in Iraq from 2003 to 2008, lasted ten years without leading to any formal charges.

In December 2020, the Office of the Prosecutor officially closed the review, citing national accountability mechanisms and insufficient evidence of prosecutorial neglect (ICC Office of the Prosecutor [OTP], 2020) ^[12]. Critics claimed that this outcome reflected political pragmatism rather than legal rigour (Bosco, 2014) ^[2]. The fact that Britain is a major financial contributor to the Court's budget and an influential member of the United Nations Security Council reinforces the Realist interpretation that enforcement correlates inversely with political and economic strength.

The situation involving Palestine and Israel provides another instructive example of selective enforcement. Following Palestine's accession to the Rome Statute in 2015, the ICC gained jurisdiction over alleged crimes committed in the occupied Palestinian territories. In 2021 the Court's Pre-Trial Chamber confirmed the Prosecutor's authority to investigate crimes committed by both Israeli and Palestinian actors. Though official permission was taken, the probe has mostly been a case of show off of force between the two blocs. Western government's diplomatic objections and Israel's refusal to cooperate stalled the progress of the investigation (Scharf, 2021) ^[20]. This case goes on to specifically show how geopolitical alliances can affect the law: states with significant military might and international support often do not have to answer to the ICC.

The same is happening in Asia and the Middle East. For instance, the ICC began investigating crimes linked to President Rodrigo Duterte's "war on drugs" in the Philippines, after reports of thousands of extrajudicial killings by civil society groups (Amnesty International, 2018) ^[1]. In response, Manila pulled out from the ICC, which led the Court to invoke residual jurisdiction under

Article 127(2) of the Rome Statute. This case shows how important it is for states to cooperate and participate in the delivery of international justice. Withdrawal from the ICC to face domestic political pressure, can protect national leaders from prosecution. This result aligns with the Structural Realist school of thought which postulates that sovereignty and relative power determine the boundaries of international law (Mearsheimer, 2001; Gilpin, 1981) ^[15, 8].

The regional examples above suggest that the ICC's level of engagement is often a reflection of the political costs of enforcement.

The Court maintains robust engagement in the Global South, where cooperation is either self-selected or easily coerced, but retreats from action in cases that risk confrontation with powerful members of the global hierarchy. Bosco (2014) ^[2] has characterised this pragmatic restraint as the ICC's strategy of survival in a world of power politics. The Prosecutor and judges must always find a balance between doing what is right and keeping the court running, which is dependent on continued financial and political assistance from key countries. The ICC's membership structure also shows how uneven the level of collaboration is. Though there are 123 States Parties to the Rome Statute as at 2024 but there are still large gaps of inequalities between the world's most powerful countries. The United States, China, Russia and India are not part of the Court. Their absence greatly waters down the ICC's powers and makes people assume that international criminal law only works when it is politically convenient. Waltz (1979) ^[23] notes that in an anarchic international system, weaker states are more likely to accept conditions that stronger states can avoid. This captures the ICC's dilemma: it can be an efficient tool where power is weakest and do very little where it encounters strong resistance.

In Africa, people have lost interest in the ICC now because the double standards have become obvious. At first, African states and the Court collaborated because they were hopeful they could get fair justice. However, over time, the recurrent prosecutions of African leaders together with the lack of similar actions for similar offenses in other states has made people less trusting of the workings of the ICC. The African Union's resolutions in 2013 and 2016 called for collective resistance to perceived discrimination and explored the creation of a regional court with overlapping jurisdiction (Murithi, 2009) ^[17]. These developments confirm that structural inequality at the global level produces counterreactions at the regional level.

This geographic and political selectivity underscores the connection between global power structures and legal authority, providing the foundation for the case studies that follow.

4. Comparative Case Studies: Examples of Enforcement and Restraint

The International Criminal Court (ICC) has not applied international justice equally in all regions. When you look at how it acts in the Global South, and compare it with how it acts in situations involving important countries in the Global North, you can see how global hierarchies affect the enforcement of international law. The experiences of Sudan, Kenya, and Mali shows the active implementation of international criminal law in relatively weak or cooperative states. In contrast, the investigations relating to Afghanistan, Iraq and the United Kingdom, as well as Palestine or Israel,

shows a pattern of caution that fits Structural Realism's view of power and interest as key drivers of institutional behaviour.

4.1 Sudan: Coercive Justice Without Enforcement Capacity

In 2003, there was conflict in Darfur, Sudan, which resulted in the widespread civilian deaths, displacement of people, and gross violations of human rights. In March 2005, the United Nations Security Council (UNSC) referred the case to the ICC with Resolution 1593. This referral gave the Court jurisdiction even though Sudan was not a party to the Rome Statute (Nouwén, 2012) ^[18]. The Prosecutor later indicted numerous high ranking officials, including President Omar al-Bashir, for genocide, crimes against humanity, and war crimes (Mamdani, 2008) ^[14]. The warrant against a sitting head of state was a big deal, but it also showed how much the Court depended on cooperation that it could not get. Sudan refused to comply with the ICC's orders, insisting that the referral infringed upon its national sovereignty. The African Union also criticized the decision, and warned that it could destabilize the region. China and Russia, which had both political and economic interests in Sudan, criticized the enforcement measures and saved Khartoum from receiving additional sanctions (Degtarev, 2019) ^[7]. Because of this, President al-Bashir kept travelling to different African countries until he was ousted in 2019, and he was never arrested.

Structural Realism helps explain that this lack of enforcement is a reflection of the Court's limitations within an anarchic international system. Waltz (1979) ^[23] contends that institutions cannot act independently of the states that sustain them, since power and authority remain decentralized. The ICC's inability to detain al-Bashir therefore represented not a moral failure but a structural reality. Justice was constrained by the absence of coercive power and the competing interests of influential states.

4.2 Kenya: Legal Contestation and Political Resistance

Kenya's case shows how domestic government and regional alliances can make international law less effective. After the 2007 presidential election, which resulted in widespread violence, and left more than a thousand people dead while displacing hundreds of thousands. National efforts were made to investigate and prosecute those responsible, but it failed. The ICC then launched its own inquiry in 2010. Six high ranking political figures, including Uhuru Kenyatta and William Ruto, were charged with crimes against humanity (Branch, 2017) ^[3].

Initially, many citizens supported international prosecution, but that changed after Kenyatta and Ruto were elected president and deputy president in 2013. Their leadership criticized the ICC trials as attacks on Kenyan sovereignty. Kenya also gained support from the African Union, which approved resolutions requesting that the cases be put on hold. (Clarke, 2018) ^[6].

The process collapsed in 2016 after the withdrawal of witnesses, and the Prosecutor's complaints of threats and intimidation and lack of evidence. Structural Realism interprets this outcome as proof that institutions work are more efficient when they align with political interests. Kenya is a key regional partner in counterterrorism and peacekeeping, hence Western powers would prefer its political stability to unending judicial battles (Gilpin, 1981)

[8]. The ICC's retreat therefore was a response to the changes in the balance of power rather than procedural shortcomings.

4.3 Mali: Cooperation Amid Weak Capacity

Mali provides an example of enforcement based on cooperative referral by a weak state. In 2012 the government requested the ICC's intervention regarding crimes committed by rebel groups in the north. The Court quickly accepted the referral and prosecuted Ahmad al-Faqi al-Mahdi for the destruction of historical and religious sites in Timbuktu (Ssenyonjo, 2021) [21].

The prosecution worked especially because it aligned with Mali's domestic interest in strengthening state authority. For the ICC, the case demonstrated its operational capacity and resulted in conviction with little political opposition. Waltz's (1979) [23] helps to explain why such collaboration was possible. He noted that enforcement succeeds when international and national interests are in alignment. States that lack the power to reject external intervention often accept judicial intervention, allowing the ICC to operate at a cheap political cost.

4.4 Afghanistan: Retrenchment Under Pressure

The ICC's experience in Afghanistan demonstrated the limitations of international justice when the interest of powerful governments are at stake. In 2017, the Prosecutor requested an authorization to investigate crimes committed by Taliban militia, Afghan security troops, and U.S. soldiers. The Appeals Chamber granted approval in 2020, prompting a strong reaction from the United States, which then imposed sanctions on ICC officials and questioned its legitimacy.

In 2021, the ICC backtracked. Prosecutor Karim A. A. Khan KC announced that the inquiry would be restricted solely to crimes committed by the Taliban and Islamic State, thereby excluding alleged human rights abuse perpetuated by the U.S. and coalition forces (Human Rights Watch [HRW], 2022) [10].

For Structural Realists, this reversal reveals how political power dictates the boundaries of international law. The United States' position on top of the hierarchy in global politics severely trampled upon ICC's independence. The enforcement was stopped once it challenged the US, which goes on to prove that institutions adjust their agendas to ensure their survival within hierarchical arrangements (Mearsheimer, 2001) [15].

4.5 Iraq-United Kingdom: Closure Through Complementarity

The allegations of abuse by British troops in Iraq between 2003 and 2008 remained under ICC review for nearly 15 years. The Office of the Prosecutor finished its initial investigation in December 2020. It found credible evidence of war crimes but concluded that the United Kingdom was both willing and able to pursue its own investigations. This decision met the complementarity principle under the Rome Statute (ICC Office of the Prosecutor [OTP], 2020) [12].

Bosco (2014) [2] and Clark (2018) [5] both opined that this deference of the ICC was motivated by political caution rather than by purely legal rationale because the United Kingdom is a significant financier of the institution and has diplomatic influence within ICC structures, therefore it was impossible that they would directly oppose each other.

Complementarity thus served as a legal instrument for

preserving the delicate balance between law and power. The decision further confirmed Structural Realism's prediction that institutions evade direct confrontation with major contributors and adjust to maintain their continued cooperation (Waltz, 1979) [23].

4.6 Palestine and Israel: Stalemate at the Edge of Power

The ICC's jurisdiction over suspected crimes in the occupied Palestinian territories began in 2015 after Palestine acceded to the Rome Statute. In 2021, the Pre-Trial Chamber affirmed the Court's power to investigate alleged offenses committed by both Israeli and Palestinian soldiers (Scharf, 2021) [20]. Regardless of this formal approval, not much has changed as Israel does not recognize the Court's jurisdiction, and strong opposition from the United States and several European governments has slowed down the investigation.

The stagnation of this case explains the constraints described by Structural Realism. It is impossible to enforce against a state that is militarily strong and protected by diplomacy without the cooperation of other major actors in the international system. As Gilpin (1981) [8] notes that without a central authority that can force people to follow the rules, such paralysis is an expected outcome.

The Palestine and Israel investigation underscores the principle that legal authority diminishes in proportion to state power.

4.7 Comparative Synthesis

A consistent pattern can be identified in these six case studies. It is evident that the ICC only showed its legal might in the Global South, especially in states with weak resistance capabilities or where the prosecution serves the interest of powerful actors. On the other hand, the ICC is careful not to be harsh toward the Global North or on states backed by powerful alliances.

Sudan, Kenya, and Mali represent enforcement that is predicated on opportunity and weakness, while Afghanistan, Iraq-United Kingdom, and Palestine or Israel exemplify cases of selective caution grounded in systemic power imbalances.

The hierarchy of enforcement aligns perfectly with the Structural Realist understanding of international order. Mearsheimer (2001) [15] and Gilpin (1981) [8] note that institutions operate within established power structures rather than altering them. The ICC's experience supports the argument: law is applied where compliance is possible and deferred where defiance can be backed by strength. Justice, therefore, is a case of the geographical distribution of power rather than moral universality.

5. Discussion and Implications

The comparative analysis of case studies confirms that the International Criminal Court (ICC) enforces international justice according to the structure of power in global politics. The Court's strong engagement in the Global South contrasts sharply with its cautious approach toward cases that involve the Global North or other powerful states. This pattern validates the main principles of Structural Realism and demonstrates that international law functions within the boundaries of political feasibility rather than as an autonomous moral order (Waltz, 1979; Mearsheimer, 2001; Gilpin, 1981) [23, 15, 8].

5.1 The ICC as a Product of Global Hierarchy

Structural Realism provides an explanation for why justice stops where power begins. According to Waltz (1979) ^[23], the anarchic nature of the international system compels states to pursue self-help and to prioritise survival. Institutions created by these states, including the ICC, cannot transcend this logic. The Court lacks its own enforcement mechanism and must rely on state cooperation for arrests, funding, and jurisdiction. Its behaviour therefore mirrors the structure of the environment that sustains it. As Bosco (2014) ^[2] notes, international justice is bounded by pragmatism; the Court acts decisively only where cooperation is probable and opposition limited.

The ICC's selective performance reflects both political dependency and systemic inequality. Wealthy nations in North America and Western Europe fund the majority of the Court's budget, while poor or conflict-ridden nations in the Global South provide most of its defendants. This arrangement reproduces hierarchies that Structural Realism anticipates. The contrast between enforcement in Africa and restraint elsewhere is not evidence of bias or incompetence alone but the predictable result of an institution embedded in global power relations (Clark, 2018; Ssenyonjo, 2021) ^[5, 21].

5.2 Power, Sovereignty, and Legal Capacity

According to the Realist school of thought regarding state sovereignty, powerful states often resist external pressure because they wield strong legal backing and diplomatic ties. In contrast, weaker states depend on international collaboration for legitimacy and support. This difference explains why countries like the United States can thwart prosecution by invoking the principle of complementarity or outright non-membership, while weaker states like Mali or The Central African Republic may willingly refer cases to the ICC themselves. (ICC Office of the Prosecutor [OTP], 2020) ^[12]. One is strong, the other weak.

For Realists, these outcomes are natural features of sovereignty in an anarchic international system. Gilpin (1981) ^[8] argued that the global stability does not depend only on uniform legality of all states but on a distribution of benefits deemed acceptable by powerful state actors. The ICC, therefore, serves as a platform where international hierarchies are expressed through the legal system, thereby preserving the supremacy of powerful states while justifying intervention in weaker states.

5.3 Legitimacy and the Crisis of Universalism

The Court's systemic selectivity has broader consequences for its perceived legitimacy. African leaders have repeatedly denounced the ICC as an instrument of the West, while civil society organisations in Africa and Latin America call for reform rather than withdrawal. Kamari Clarke (2018) ^[6] describes this backlash as the "Pan-Africanist pushback," a movement that implies both resistance to domination and the desire for more equitable institutions. From a Structural Realist viewpoint, this challenge represents a rational attempt by weaker actors to balance against dominant authority.

The crisis of universalism arises precisely because the ICC's enforcement coincides with the distribution of power. Mamdani (2008) ^[14] and Mutua (2015) ^[16] argue that the moral language of global justice disguises a hierarchical order in which the Global North prosecutes and the Global South obeys. The ideal of equality before international law

will remain largely symbolic.

5.4 Theoretical and Policy Implications

At the theoretical level, these findings reaffirm the continuing relevance of Structural Realism in explaining the politics of international institutions. Scholars who view global governance through liberal or constructivist lenses often emphasise the role of shared norms, yet the ICC demonstrates how norms are bounded by material power. Legal mechanisms operate within an unequal system and therefore reproduce its asymmetries (Keohane, 1984; Buzan & Lawson, 2015) ^[13, 4].

Policymakers should consider the systemic nature of selective justice while developing international and regional reforms. The Court's dependence on Western donors could be reduced with diversification of funding from Asia, Africa, and Latin America. Expanding the leadership representation can also reduce the perception that justice is Western-controlled, thereby enhancing legitimacy. The African Court of Justice and Human Rights, established under the Malabo Protocol of 2014, provides accountability measures for a more balanced political environment (Murithi, 2009) ^[17].

Finally, more transparency in decisionmaking within the Office of the Prosecutor could help lessen the accusations of double standards.

5.5 Toward a Realist Understanding of Reform

Structural Realists have kicked against expectation that global institutions will rise above the current power structures from which they originated from. Instead, it proposes a realistic understanding of how international justice can evolve through incremental changes in the balance of power. According to Waltz (1979) ^[23], emerging powers can alter the current balance. The growing influence of the Global South through platforms like BRICS and the G20 may eventually reshape the political environment in which the ICC operates. Only when power itself becomes more equitably distributed can the enforcement of justice be said to be universal.

6. Conclusion and Recommendations

The analysis in this article illustrates how the International Criminal Court's (ICC) scope and structure is determined by the global inequality in which it operates. Structural Realism approach has shown that the distribution of political, economic, and military power corresponds with the delivery of international justice. The Court's aggressive pursuit of cases in the Global South, and its restraint towards the pursuit of cases in the Global North and other powerful states, underscores the central argument that international law is not autonomous but rather, a part of the power hierarchies of the international system (Waltz, 1979; Mearsheimer, 2001; Gilpin, 1981) ^[23, 15, 8].

6.1 Summary of Findings

The comparative case studies of Sudan, Kenya, and Mali reveal that the ICC enforces international criminal law most easily in states where governments are weak, dependent, or cooperative. On the other hand, the cases of Afghanistan, Iraq-United Kingdom, and Palestine-Israel shows that the Court withdraws or delays investigation when enforcement is in conflict with the interest of powerful states and their allies. This gap perfectly aligns with the Structural Realist

assumption that institutions mirror, rather than correct, the inequalities embedded in the system that sustains them.

The Court's reliance on funding from Western governments, together with its dependence on the Security Council of the UN for referrals, further binds its mandate to the same entities that control global politics. Its legitimacy crisis among African and other Southern states highlights the consequences of operating within an imbalanced order. Justice, in effect, advances until it confronts power, then, it pauses.

6.2 Theoretical Conclusions

Structural Realism emphasizes that international institutions cannot function in isolation of power. Anarchy and unequal capabilities of states creates a situation in which cooperation and enforcement are dependent on the consent of strong states. The ICC's experience supports Waltz's (1979) ^[23] principle that international organizations act in accordance with the logic of their environment. Mearsheimer (2001) ^[15] similarly argues that such institutions survive by serving the strategic interests of dominant actors. The ICC's selective effectiveness therefore is not an institutional failure but a predictable outcome in a system defined by sovereignty and inequality.

6.3 Policy Recommendations

The Realist Approach makes the following recommendations which are aimed at advancing a more equitable and credible system of international justice.

First, the ICC should diversify its funding sources and structure of governance. With wider fiscal participation from countries in Asia, Africa, and Latin America, it would drastically reduce its over dependence on a few Western donors and reduce suspicions of bias (Ssenyonjo, 2021) ^[21]. In the same vein, increasing regional representation in the Office of the Prosecutor and the judiciary would further strengthen legitimacy and broaden political support.

Secondly, the ICC should work closely with other regional judicial institutions like the African Court of Justice. This will build synergy between local and international accountability policies by addressing regional crimes faster and getting member states to take responsibility (Murithi, 2009) ^[17]. Similarly, instead of competing with the ICC, regional courts can then serve as intermediate justice platforms, which would reduce political tension and improve enforcement in specific situations.

Third, the institutionalisation of transparency in prosecutorial decisions is sacrosanct. What this means is that there should be a clear explanation of why certain cases progressed and others are deferred. This would help acknowledge the political constraints within the system while preserving its credibility. Even if selectivity cannot be eliminated, openness about its causes would promote honesty and trust.

Fourth, international legal studies and policy discussions must acknowledge that reform initiatives will only be successful if they are supported by more extensive changes in global distribution of power. According to Gilpin (1981) ^[8], stable reform in international systems follows major changes in resources or capability balances. The rise of new actors in the Global South, the BRICS and G20, has already begun to challenge older hierarchies. Therefore, advocating for a more multipolar order may gradually extend the scope of justice beyond its current geographic and political

limitations.

7. References

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