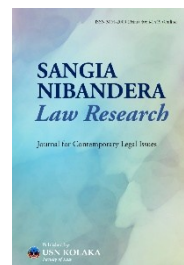


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The Limits of International Justice: International Criminal Court Effectiveness in Genocide Cases

*Batasan Keadilan Internasional: Efektivitas Mahkamah
Pidana Internasional dalam Kasus Genosida*

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Abstract

This article examines the limits of international justice by assessing the effectiveness of the International Criminal Court (ICC) in prosecuting genocide. Despite its establishment as a permanent tribunal to end impunity for the most serious international crimes, the ICC faces persistent structural, political, and legal challenges that constrain its performance. Drawing on legal effectiveness theory, this study analyzes the extent to which the ICC fulfills its mandate in genocide cases by evaluating key factors such as jurisdictional limitations, state cooperation, evidentiary barriers, and prosecutorial strategy. Using a normative juridical method combined with selected case studies, the article demonstrates that the ICC's effectiveness is uneven

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and often dependent on external political will rather than purely legal mechanisms. While the Court has contributed to the development of international criminal law and symbolically reinforced accountability norms, its practical impact on deterring and prosecuting genocide remains limited. The reliance on state cooperation, selective enforcement, and geopolitical considerations frequently undermines its authority and reach. The article argues that the ICC's challenges are not merely institutional but reflect broader tensions within the international legal order. Strengthening the Court's effectiveness requires not only procedural reforms but also deeper commitment from states and international actors to uphold accountability for genocide. Ultimately, the ICC represents both a significant achievement and a constrained instrument of international justice.

Keywords

International Criminal Court, genocide, legal effectiveness, international justice, state cooperation

Abstrak

Artikel ini mengkaji batas-batas keadilan internasional dengan menilai efektivitas Mahkamah Pidana Internasional (ICC) dalam menuntut kejahatan genosida. Meskipun dibentuk sebagai lembaga permanen untuk mengakhiri impunitas atas kejahatan internasional paling serius, ICC menghadapi berbagai tantangan struktural, politik, dan hukum yang membatasi kinerjanya. Dengan menggunakan teori efektivitas hukum, penelitian ini menganalisis sejauh mana ICC menjalankan mandatnya dalam kasus genosida melalui evaluasi faktor-faktor utama seperti keterbatasan yurisdiksi, kerja sama negara, hambatan pembuktian, dan strategi penuntutan. Dengan metode yuridis normatif yang dipadukan dengan studi kasus terpilih, artikel ini menunjukkan bahwa efektivitas ICC bersifat tidak merata dan sering kali bergantung pada kehendak politik eksternal, bukan semata-mata mekanisme hukum. Meskipun ICC berkontribusi terhadap perkembangan hukum pidana internasional dan memperkuat norma akuntabilitas secara simbolik, dampak praktisnya dalam mencegah dan menuntut genosida masih

terbatas. Ketergantungan pada kerja sama negara, penegakan yang selektif, serta pertimbangan geopolitik kerap melemahkan otoritas dan jangkauannya. Artikel ini berargumen bahwa tantangan ICC tidak hanya bersifat institusional, tetapi juga mencerminkan ketegangan yang lebih luas dalam tatanan hukum internasional. Penguatan efektivitas ICC memerlukan reformasi prosedural sekaligus komitmen yang lebih kuat dari negara dan aktor internasional untuk menegakkan akuntabilitas atas genosida. Pada akhirnya, ICC merupakan capaian penting sekaligus instrumen keadilan internasional yang terbatas.

Kata Kunci

Mahkamah Pidana Internasional, genosida, efektivitas hukum, keadilan internasional, kerja sama negara

A. Introduction

The establishment of the International Criminal Court (ICC) through the Rome Statute of 1998 represents a landmark development in the institutionalization of international criminal justice. As the first permanent court with jurisdiction over genocide, crimes against humanity, war crimes, and aggression, the ICC was designed to overcome the limitations of ad hoc tribunals and to end impunity for the most serious crimes of concern to the international community.¹ Scholars such as Cryer et al.² argue that the ICC embodies a “normative shift” toward global accountability and the judicialization of international relations. However, despite its ambitious mandate, the Court has faced persistent criticism regarding its practical capacity to deliver justice. The gap between its normative aspirations and operational realities raises fundamental questions about whether the ICC can effectively fulfill its foundational promise. This tension between idealism and institutional constraint forms the central concern of contemporary ICC scholarship and

¹ Schabas, William A. *The International Criminal Court: A Commentary on the Rome Statute*. 2nd ed. Oxford: Oxford University Press, 2017.

² Cryer, Robert, Hakan Friman, Darryl Robinson, and Elizabeth Wilmshurst. *An Introduction to International Criminal Law and Procedure*. 4th ed. Cambridge: Cambridge University Press, 2019.

provides the basis for reassessing its effectiveness in genocide prosecution.

Genocide occupies the highest threshold of atrocity crimes under international law and represents a core test of the ICC's legitimacy. Defined under Article 6 of the Rome Statute and the 1948 Genocide Convention, it requires proof of specific intent (*dolus specialis*) to destroy, in whole or in part, a protected group. This high evidentiary threshold has been identified by scholars such as William Schabas (2009) as one of the principal legal obstacles to successful prosecution. The Court's jurisprudence, including cases such as *Prosecutor v. Jean-Pierre Bemba* and *Prosecutor v. Omar al-Bashir*, demonstrates the difficulty of securing convictions for genocide charges, even in situations involving widespread atrocities. As Ambos notes, the ICC often relies on alternative charges such as crimes against humanity due to evidentiary limitations.³ This raises concerns regarding doctrinal dilution and the practical marginalization of genocide within ICC practice, despite its symbolic centrality in international criminal law.

Empirically, the ICC's track record in prosecuting genocide remains limited, which has fueled scholarly debate regarding its effectiveness. Although several situations under investigation—such as Darfur (Sudan), Myanmar, and the Central African Republic—involve alleged genocidal conduct, successful genocide convictions remain absent or highly constrained. Clark⁴ argues that this reflects not only legal complexity but also institutional weakness in enforcement capacity. The case of *Prosecutor v. Omar al-Bashir* is particularly illustrative, where despite the issuance of arrest warrants for genocide, the inability to apprehend the accused exposed the Court's dependence on state cooperation. Similarly, in the Myanmar/Bangladesh investigation, jurisdictional constraints have limited prosecutorial reach. These cases highlight a structural gap between the ICC's jurisdictional authority and its practical

³ Ambos, Kai. *Treatise on International Criminal Law, Volume I: Foundations and General Part*. Oxford: Oxford University Press, 2013.

⁴ Clark, Janine Natalya. "The 'crime of crimes': genocide, criminal trials and reconciliation." *Journal of Genocide Research* 14, no. 1 (2012): 55-77.

enforcement mechanisms. Scholars such as Bosco⁵ emphasize that without state cooperation, the ICC functions as a “court without police,” undermining its ability to translate legal judgments into actual accountability.

A key structural limitation affecting ICC effectiveness is its dependence on state cooperation for arrests, evidence collection, and enforcement of judicial decisions. Article 86 of the Rome Statute obliges states to cooperate fully with the Court, yet compliance remains inconsistent. As Akhavan observes, political interests often override legal obligations, particularly in cases involving sitting heads of state or politically sensitive conflicts.⁶ The non-arrest of Omar al-Bashir, despite multiple ICC warrants, exemplifies the Court’s enforcement deficit. Similarly, cooperation failures in situations such as Kenya have demonstrated how political resistance can obstruct judicial proceedings. Scholars like Cryer⁷ argue that this dependency undermines the ICC’s independence and creates selective enforcement dynamics. The gap between legal obligation and political reality thus represents a fundamental challenge to the Court’s operational effectiveness. Without robust enforcement mechanisms, the ICC risks being perceived as symbolically powerful but practically constrained in addressing genocide.

Political dynamics within the international system further complicate the ICC’s ability to prosecute genocide effectively. The Court operates within a decentralized global order where powerful states often influence enforcement outcomes. As Koskenniemi⁸ argues, international law is inherently “politically contingent,” and the ICC is not immune to geopolitical pressures. The situations in Darfur and Libya illustrate how Security Council referrals are shaped by political compromise, often limiting the scope of accountability. Moreover, the selective referral

⁵ Bosco, David. *Rough Justice: The International Criminal Court in a World of Power Politics*. Oxford: Oxford University Press, 2014.

⁶ Akhavan, Payam. “The Rise, and Fall, and Rise, of International Criminal Justice.” *Journal of International Criminal Justice* 11, no. 3 (2013): 521–532.

⁷ Cryer, Robert, Hakan Friman, Darryl Robinson, and Elizabeth Wilmshurst. *An Introduction to International Criminal Law and Procedure*. 4th ed. Cambridge: Cambridge University Press, 2019.

⁸ Koskenniemi, Martti. *The Politics of International Law*. Oxford: Hart Publishing, 2011.

mechanism under Article 13(b) of the Rome Statute has been criticized for reinforcing perceptions of bias, particularly in relation to African states.⁹ This perception was central to the African Union's repeated objections to ICC proceedings. The result is a legitimacy challenge that affects cooperation and compliance. Thus, political fragmentation within the international system constitutes a structural constraint on the ICC's ability to prosecute genocide in a consistent and impartial manner.

Legal and evidentiary challenges also significantly affect the ICC's performance in genocide cases. Proving genocidal intent remains one of the most difficult tasks in international criminal law. As Ambos¹⁰ emphasizes, the requirement of specific intent distinguishes genocide from other international crimes and imposes a high evidentiary burden on prosecutors. In practice, this has led the ICC to rely on indirect evidence, patterns of conduct, and contextual inference, which may not always meet judicial thresholds. The *Al Bashir* case demonstrates the difficulty of linking political leadership directly to genocidal intent. Similarly, in the *Kenya Situation*, the collapse of cases due to insufficient evidence illustrates prosecutorial limitations. Schabas¹¹ notes that these challenges are exacerbated by the destruction of evidence in conflict zones and limited access to crime scenes. Consequently, evidentiary constraints represent a persistent gap between legal theory and prosecutorial reality in genocide adjudication.

From a theoretical perspective, legal effectiveness theory provides a useful framework for evaluating the ICC's performance. According to Soekanto's theory of legal effectiveness, the success of law depends on legal substance, enforcement mechanisms, institutional structure, and societal factors. Applying this framework to the ICC reveals multiple layers of constraint affecting genocide prosecutions. Scholars

⁹ Branch, Adam. "Uganda's Civil War and the Politics of ICC Intervention." *International Journal of Transitional Justice* 11, no. 2 (2017): 250–268.

¹⁰ Ambos, Kai. *Treatise on International Criminal Law, Volume I: Foundations and General Part*. Oxford: Oxford University Press, 2013.

¹¹ Schabas, William A. *The International Criminal Court: A Commentary on the Rome Statute*. 2nd ed. Oxford: Oxford University Press, 2017.

such as Nollkaemper¹² argue that international courts must be assessed not only by normative design but also by their ability to generate compliance and behavioral change. Within this framework, the ICC demonstrates partial effectiveness: while it contributes to norm development, its enforcement capacity remains weak. This theoretical lens highlights the distinction between formal legal authority and substantive effectiveness. The gap between these dimensions is particularly evident in genocide cases, where political resistance and evidentiary limitations reduce the Court's operational impact.

Despite its limitations, the ICC has made notable contributions to the development of international criminal law and accountability norms. As Stahn¹³ observes, the Court has played a central role in institutionalizing individual criminal responsibility for mass atrocities. Its jurisprudence has strengthened victim participation mechanisms and expanded procedural rights in international proceedings. However, scholars remain divided on its deterrent effect. Drumbl¹⁴ argues that international criminal tribunals often produce symbolic rather than behavioral deterrence, particularly in contexts of ongoing violence. In genocide cases, the ICC's impact appears largely normative rather than preventive. The absence of clear evidence of deterrence in situations such as Myanmar or Darfur reinforces this critique. Thus, while the ICC contributes to legal development, its practical capacity to prevent or effectively prosecute genocide remains contested.

The persistence of genocide and mass atrocities in the contemporary international system underscores the limitations of existing accountability mechanisms. Despite the presence of legal frameworks such as the Genocide Convention and institutions like the ICC, serious violations continue to occur in various regions. The Rohingya crisis in Myanmar, the Darfur conflict in Sudan, and allegations of atrocities in Syria

¹² Nollkaemper, André. "International Adjudication of Global Public Goods: The Role of the International Court of Justice." *European Journal of International Law* 23, no. 3 (2014): 769–782.

¹³ Stahn, Carsten. *A Critical Introduction to International Criminal Law*. Cambridge: Cambridge University Press, 2018.

¹⁴ Drumbl, Mark A. *Atrocity, Punishment, and International Law*. Cambridge: Cambridge University Press, 2007.

demonstrate the continuing relevance of genocide as a lived reality rather than a historical exception. In addition, Sands¹⁵ argue that international criminal justice operates within a fragmented enforcement system that lacks centralized authority. This fragmentation limits the ICC's capacity to respond effectively to ongoing atrocities. Moreover, emerging challenges such as cyber-enabled propaganda and digital evidence manipulation further complicate prosecution efforts. These developments highlight a growing gap between evolving forms of violence and the ICC's institutional capacity to address them.

This article therefore critically examines the limits of international justice by assessing the effectiveness of the ICC in prosecuting genocide. It seeks to bridge doctrinal analysis and empirical evaluation by exploring structural, political, and legal constraints affecting the Court's performance. Drawing on legal effectiveness theory and case-based analysis, the study evaluates whether the ICC fulfills its mandate under the Rome Statute. It further engages with scholarly debates on legitimacy, enforcement, and deterrence to assess the Court's overall contribution to international criminal justice. By focusing on genocide cases, the article highlights the tension between normative aspirations and institutional realities. Ultimately, it argues that while the ICC represents a significant achievement in international law, its effectiveness remains constrained by structural dependencies and political limitations, revealing fundamental boundaries of international justice in addressing the gravest crimes.

B. Method

This study employs a normative juridical research method, focusing on the analysis of legal norms, principles, and doctrines governing the International Criminal Court (ICC) within the framework of international criminal law. The primary legal materials include the Rome Statute of the International Criminal Court (1998), relevant international treaties, ICC jurisprudence, and authoritative decisions related to genocide cases. Secondary

¹⁵ Sands, Philippe. *East West Street: On the Origins of Genocide and Crimes Against Humanity*. London: Weidenfeld & Nicolson, 2016.

materials consist of scholarly books, peer-reviewed journal articles, and academic commentaries by leading experts such as Schabas (2017), Cryer et al. (2019), and Ambos (2013), which provide critical insights into the interpretation and application of international criminal law. In addition, this study adopts a doctrinal approach to examine how legal rules are constructed, interpreted, and implemented in practice, particularly in relation to the prosecution of genocide. Case studies such as *Prosecutor v. Omar al-Bashir* and the Darfur situation are utilized to illustrate the practical application and limitations of ICC mechanisms.

Furthermore, this research integrates a conceptual and analytical framework based on legal effectiveness theory to evaluate the ICC's performance. This approach allows for an assessment not only of the formal validity of legal norms but also of their practical implementation and impact. The analysis is conducted through qualitative content analysis, focusing on identifying patterns of enforcement challenges, state cooperation, evidentiary limitations, and political constraints affecting ICC proceedings. By combining doctrinal legal analysis with evaluative theoretical perspectives, this study provides a comprehensive understanding of the gap between normative aspirations and practical outcomes in genocide prosecution. This methodological design enables a critical examination of the ICC's effectiveness within the broader context of international justice and accountability.

C. Results and Discussion

1. Jurisdictional, Structural, and Political

Constraints of the ICC in Genocide Prosecutions

One of the most fundamental constraints on the effectiveness of the International Criminal Court (ICC) in prosecuting genocide lies in its jurisdictional design under the Rome Statute. Although the ICC was established as a permanent international judicial institution, its jurisdiction is not universal but based on state consent, as outlined in Articles 12 and 13 of the Rome Statute (1998). The Court may only exercise jurisdiction where crimes occur on the territory of a State Party, involve nationals of a State Party, or are referred by the United

Nations Security Council. Schabas¹⁶ argue that this consent-based structure creates an inherent contradiction between the ICC's universalist aspirations and its treaty-based limitations. As a result, many situations involving alleged genocide fall outside the Court's automatic reach, thereby limiting its ability to act as a truly global mechanism of accountability.

This jurisdictional limitation becomes particularly significant in genocide cases, where atrocities frequently occur in non-State Parties or in politically sensitive contexts. The situation in Myanmar regarding the Rohingya population illustrates this gap clearly. Although the ICC was able to assert jurisdiction partially through the cross-border element into Bangladesh (a State Party), its reach remains limited and indirect. As Cryer et al.¹⁷ note, the ICC's jurisdictional architecture forces prosecutors to rely on legal creativity to overcome structural barriers. This fragmented jurisdiction weakens the Court's ability to respond promptly and comprehensively to ongoing genocidal acts, reinforcing perceptions that international justice is selective and reactive rather than preventive.

Beyond jurisdictional limitations, the ICC's structural dependence on state cooperation significantly undermines its effectiveness. Under Part IX of the Rome Statute, the Court has no independent enforcement mechanism and must rely entirely on states to arrest suspects, gather evidence, and execute judicial orders. Akhavan¹⁸ describes this dependency as one of the ICC's "core structural vulnerabilities," particularly in politically contested cases. The failure to arrest Sudanese President Omar al-Bashir, despite multiple ICC warrants, exemplifies this limitation. Several states, including ICC members, hosted him without executing the warrant, thereby directly undermining the Court's authority and raising serious concerns about enforcement credibility.

¹⁶ Schabas, William A. *The International Criminal Court: A Commentary on the Rome Statute*. 2nd ed. Oxford: Oxford University Press, 2017.

¹⁷ Cryer, Robert, Hakan Friman, Darryl Robinson, and Elizabeth Wilmschurst. *An Introduction to International Criminal Law and Procedure*. 4th ed. Cambridge: Cambridge University Press, 2019.

¹⁸ Akhavan, Payam. "The Rise, and Fall, and Rise, of International Criminal Justice." *Journal of International Criminal Justice* 11, no. 3 (2013): 521–532.

The Darfur situation further highlights the enforcement gap between legal mandate and political reality. Although the United Nations Security Council referred the situation in Sudan to the ICC under Resolution 1593 (2005), cooperation from states remained inconsistent. Bosco¹⁹ argues that such referrals create an illusion of enforcement capacity without ensuring actual compliance. The inability to execute arrest warrants in Darfur-related genocide allegations demonstrates that legal authority alone is insufficient without political and logistical backing. This reinforces the argument that the ICC operates more as a dependent institution within the international system rather than an autonomous enforcement body.

Political dynamics within the international system further complicate ICC effectiveness in genocide prosecutions. As Koskeniemi²⁰ observes, international law is inherently embedded within political structures, meaning judicial institutions cannot operate independently of geopolitical interests. The ICC has frequently been criticized for disproportionately focusing on African situations, leading to accusations of bias and selective justice. The African Union's repeated objections to ICC proceedings reflect broader concerns about legitimacy and political neutrality. Such tensions reduce state cooperation and weaken the Court's capacity to pursue genocide cases effectively.

The issue of selectivity is particularly damaging in genocide-related prosecutions, where consistency and impartiality are essential for legitimacy. Branch²¹ argues that ICC interventions are often shaped by political feasibility rather than legal necessity. For example, while some situations receive intensive judicial attention, others involving powerful non-member states remain outside ICC scrutiny. This perceived imbalance undermines the universality of international criminal justice and raises questions about whether the ICC can function as a neutral arbiter of genocide cases in a politically fragmented global order.

¹⁹ Bosco, David. *Rough Justice: The International Criminal Court in a World of Power Politics*. Oxford: Oxford University Press, 2014.

²⁰ Koskeniemi, *The Politics of International Law*.

²¹ Branch, "Uganda's Civil War and the Politics of ICC Intervention."

In addition to structural and political constraints, evidentiary challenges significantly affect genocide prosecutions. Proving genocide requires establishing specific intent (*dolus specialis*), which is one of the highest thresholds in international criminal law. Ambos²² emphasizes that this requirement distinguishes genocide from other international crimes and creates substantial prosecutorial difficulties. In conflict zones, obtaining reliable evidence of intent is often extremely challenging due to ongoing violence, witness intimidation, and destruction of records. These difficulties directly impact the ICC's ability to secure convictions for genocide.

The *Prosecutor v. Omar al-Bashir* case illustrates these evidentiary and procedural challenges. Although the ICC issued charges including genocide, crimes against humanity, and war crimes, the inability to arrest the accused prevented full judicial examination of the evidence. Similarly, in the Kenya Situation, genocide-related charges were initially considered but later dropped due to insufficient evidence linking high-level suspects to specific intent. Schabas²³ notes that such outcomes reflect not only evidentiary gaps but also structural weaknesses in investigative capacity.

From a theoretical perspective, legal effectiveness theory provides a useful framework for understanding these limitations. According to Soekanto's model, the effectiveness of law depends on legal substance, enforcement mechanisms, institutional capacity, and societal support. Applied to the ICC, this framework reveals that while legal norms on genocide are well-developed, enforcement mechanisms remain weak. Nollkaemper²⁴ similarly argues that international courts must be assessed based on their ability to generate compliance rather than merely articulate legal principles. In this regard, the ICC demonstrates partial effectiveness at best.

The analysis demonstrates that the ICC's limitations in prosecuting genocide are multidimensional, involving

²² Ambos, Kai. *Treatise on International Criminal Law, Volume I: Foundations and General Part*. Oxford: Oxford University Press, 2013.

²³ Schabas, William A. *The International Criminal Court: A Commentary on the Rome Statute*. 2nd ed. Oxford: Oxford University Press, 2017.

²⁴ Nollkaemper, "International Adjudication of Global Public Goods: The Role of the International Court of Justice."

jurisdictional restrictions, structural dependence on states, political interference, and evidentiary barriers. While the Court plays an important normative role in developing international criminal law, its practical effectiveness remains constrained. As Stahn²⁵ observes, the ICC operates within a fragile enforcement environment where legal authority does not always translate into judicial outcomes. These constraints highlight a fundamental tension between the ideals of international justice and the realities of global political order, which continues to shape the Court's capacity to address genocide effectively.

2. Evidentiary Thresholds, Prosecutorial Challenges, and Legal Complexity in Genocide Cases

A further critical dimension affecting the effectiveness of the International Criminal Court (ICC) in prosecuting genocide lies in the stringent evidentiary and legal thresholds required under international criminal law. Unlike other international crimes, genocide requires proof of *dolus specialis*, or specific intent to destroy, in whole or in part, a protected group, as codified in Article 6 of the Rome Statute and the 1948 Genocide Convention. This elevated mens rea standard has been widely recognized by scholars such as Schabas (2009) and Ambos (2013) as one of the most demanding requirements in international criminal jurisprudence. While this high threshold is designed to distinguish genocide from other atrocity crimes, it simultaneously creates significant prosecutorial difficulties, particularly in complex conflict environments where direct evidence of intent is rarely available.

In practice, the ICC often relies on circumstantial evidence to infer genocidal intent, including patterns of conduct, systematic targeting, and contextual indicators. However, as Cryer et al. argue, the reliance on inferential reasoning increases the risk of evidentiary insufficiency and judicial uncertainty.²⁶

²⁵ Stahn, Carsten. *A Critical Introduction to International Criminal Law*. Cambridge: Cambridge University Press, 2018.

²⁶ Cryer, Robert, Hakan Friman, Darryl Robinson, and Elizabeth Wilmshurst. *An Introduction to International Criminal Law and Procedure*. 4th ed. Cambridge: Cambridge University Press, 2019.

The Court must carefully balance legal rigor with evidentiary feasibility, often resulting in prosecutorial caution. This is evident in several ICC cases where genocide charges were either not pursued or ultimately not confirmed due to insufficient evidence. The difficulty of proving intent beyond reasonable doubt remains one of the most persistent barriers to effective genocide adjudication.

The *Prosecutor v. Omar al-Bashir* case provides a clear illustration of these evidentiary complexities. Although the ICC issued arrest warrants charging genocide in Darfur, the Court has not been able to fully adjudicate the evidentiary basis of these charges due to the accused's continued evasion of arrest. Akhavan notes that this situation demonstrates a structural paradox: *the ICC may establish reasonable grounds for genocide charges at the pre-trial stage, yet remain unable to test these allegations in full judicial proceedings.*²⁷ Consequently, the evidentiary record remains incomplete, limiting both legal clarity and jurisprudential development.

Similarly, in the Kenya Situation, initial allegations of genocide were considered during the preliminary examination phase but were ultimately not confirmed in formal charges. The Office of the Prosecutor (OTP) cited insufficient evidence linking political leaders to specific genocidal intent. As Bosco observes, such prosecutorial withdrawals highlight the ICC's cautious approach to overcharging in politically sensitive contexts.²⁸ While this strategy preserves procedural integrity, it also reflects the limitations of evidence-gathering in environments where state cooperation is limited or obstructed.

Evidentiary challenges are further exacerbated by the ICC's reliance on external actors for investigation and documentation. Unlike domestic criminal justice systems, the ICC does not possess its own investigative police force and must depend on national authorities, non-governmental organizations, and international missions for evidence collection. Stahn²⁹ argues

²⁷ Akhavan, Payam. "The Rise, and Fall, and Rise, of International Criminal Justice." *Journal of International Criminal Justice* 11, no. 3 (2013): 521–532.

²⁸ Bosco, *Rough Justice: The International Criminal Court in a World of Power Politics*.

²⁹ Stahn, *A Critical Introduction to International Criminal Law*.

that this fragmented investigative structure weakens the coherence and reliability of evidentiary material. In genocide situations, where access to crime scenes is often restricted due to ongoing violence or political obstruction, the quality and availability of evidence are significantly compromised.

Witness protection and security concerns also present substantial obstacles in genocide prosecutions. Victims and witnesses are often exposed to intimidation, retaliation, or displacement, which undermines their willingness to testify. As Drumbl highlights, the vulnerability of witnesses in mass atrocity contexts creates a “*fragile evidentiary environment*” that complicates judicial proceedings.³⁰ The ICC’s witness protection mechanisms, while institutionally developed, are often insufficient in high-risk environments, thereby limiting the depth and reliability of testimonial evidence.

In addition, the complexity of establishing command responsibility in genocide cases further complicates prosecution strategies. The ICC must demonstrate not only the occurrence of genocidal acts but also the linkage between such acts and high-level perpetrators. Ambos emphasizes that proving effective control and knowledge within hierarchical structures is particularly challenging in decentralized or fragmented armed conflicts.³¹ This evidentiary burden often leads to lengthy proceedings and, in some cases, unsuccessful prosecutions due to insufficient linkage evidence.

The Darfur and Myanmar situations further illustrate how evidentiary limitations intersect with contextual complexity. In Darfur, widespread violence, destruction of infrastructure, and restricted access to affected populations have hindered comprehensive documentation of genocidal acts. In Myanmar, jurisdictional constraints combined with limited access to primary crime scenes have made it difficult to establish a complete evidentiary record. Schabas³² argues that these conditions reveal a structural mismatch between the ICC’s

³⁰ Drumbl, *Atrocity, Punishment, and International Law*.

³¹ Ambos, *Treatise on International Criminal Law, Volume I: Foundations and General Part*.

³² Schabas, *The International Criminal Court: A Commentary on the Rome Statute*.

evidentiary expectations and the realities of contemporary mass atrocities.

From a theoretical perspective, these challenges can be understood through the lens of legal effectiveness theory, which emphasizes the relationship between normative standards and practical enforceability. Nollkaemper argues that international criminal law often operates in environments where evidentiary perfection is unattainable, requiring courts to navigate between legal certainty and practical limitation.³³ Within this framework, the ICC's cautious prosecutorial approach can be seen as a response to systemic evidentiary constraints rather than institutional weakness alone.

Evidentiary and prosecutorial challenges represent a central limitation in the ICC's ability to effectively prosecute genocide. While the Court maintains high legal standards to preserve judicial integrity, these same standards create significant barriers to successful convictions. As the analysis demonstrates, the gap between legal requirements and evidentiary realities continues to shape the ICC's performance. This tension underscores the broader structural limits of international criminal justice, where the pursuit of accountability for genocide is often constrained by the very legal rigor designed to uphold it.

3. Political Legitimacy, State Cooperation, and the Normative Limits of International Justice

Beyond jurisdictional and evidentiary constraints, the effectiveness of the International Criminal Court (ICC) in prosecuting genocide is profoundly shaped by issues of political legitimacy and state cooperation. Although the ICC is formally an independent judicial institution, its operational capacity is deeply embedded within a decentralized international political order. As Koskeniemi³⁴ argues, international law cannot be separated from political structures, and judicial institutions inevitably reflect underlying power relations. In genocide cases, where political stakes are exceptionally high, the willingness of

³³ Nollkaemper, "International Adjudication of Global Public Goods: The Role of the International Court of Justice."

³⁴ Koskeniemi, *The Politics of International Law*.

states to cooperate with the Court often determines whether legal proceedings can move forward. This dependence raises fundamental questions about whether international justice can be effectively administered in the absence of universal political commitment.

State cooperation remains one of the most decisive factors influencing ICC performance. Under Part IX of the Rome Statute, states are legally obliged to cooperate fully with the Court, including executing arrest warrants and providing evidentiary support. However, as Akhavan notes, compliance is frequently selective and politically conditioned.³⁵ The persistent failure to arrest Omar al-Bashir, despite multiple ICC warrants for genocide and crimes against humanity, illustrates the fragility of this cooperation regime. Several states, including ICC member states, allowed his travel without enforcement action, thereby directly undermining the Court's authority. This pattern demonstrates that legal obligations alone are insufficient to guarantee compliance in politically sensitive genocide cases.

The role of the United Nations Security Council further complicates the ICC's political environment. While the Security Council can refer situations to the ICC under Article 13(b) of the Rome Statute, such referrals are subject to the political interests of its permanent members. Bosco argues that Security Council referrals often reflect compromise rather than consistent enforcement of international criminal justice.³⁶ The Darfur referral in 2005 (Resolution 1593) exemplifies this dynamic, where enforcement expectations were not matched by sustained political or logistical support. This disconnect between referral authority and enforcement capacity weakens the ICC's ability to address genocide effectively.

Perceptions of selectivity and bias further undermine the ICC's legitimacy and, consequently, its effectiveness. The Court's focus on African situations has generated sustained criticism from the African Union, which has accused the ICC of disproportionately targeting weaker states while avoiding

³⁵ Akhavan, Payam. "The Rise, and Fall, and Rise, of International Criminal Justice." *Journal of International Criminal Justice* 11, no. 3 (2013): 521–532.

³⁶ Bosco, *Rough Justice: The International Criminal Court in a World of Power Politics*.

politically sensitive cases involving powerful countries. Branch argues that such perceptions, whether fully justified or not, significantly affect state cooperation and compliance.³⁷ When states perceive international justice as uneven or politicized, their willingness to assist ICC investigations decreases, thereby directly impacting the Court's ability to prosecute genocide.

This legitimacy deficit is particularly damaging in genocide cases, where the moral authority of international justice is crucial. As Stahn observes, the ICC relies not only on legal authority but also on normative legitimacy to function effectively.³⁸ When this legitimacy is questioned, enforcement becomes increasingly difficult. The reluctance of some states to arrest indicted individuals or provide evidentiary assistance reflects broader concerns about sovereignty, political neutrality, and perceived external interference. These dynamics illustrate the fragile balance between legal authority and political acceptance in the enforcement of international criminal justice.

Geopolitical interests also play a significant role in shaping ICC outcomes. Powerful states that are not parties to the Rome Statute often influence international responses to genocide situations through diplomatic pressure, strategic alliances, or selective engagement with international institutions. As Simpson (2013) notes, international criminal justice is often constrained by the realities of global power politics, where legal principles may be subordinated to strategic interests. This structural inequality limits the ICC's ability to act consistently across different geopolitical contexts, particularly in genocide prosecutions involving politically sensitive actors.

The impact of non-cooperation extends beyond enforcement failures to affect the deterrent function of the ICC. Drumbl argues that international criminal tribunals rely heavily on perceived inevitability of punishment to generate deterrence.³⁹ However, when high-profile suspects evade arrest or trial, the credibility of deterrence is weakened. The continued mobility of individuals subject to ICC warrants, including in genocide-related cases, undermines the Court's symbolic

³⁷ Branch, "Uganda's Civil War and the Politics of ICC Intervention."

³⁸ Stahn, *A Critical Introduction to International Criminal Law*.

³⁹ Drumbl, *Atrocity, Punishment, and International Law*.

authority and reduces its capacity to influence future behavior of potential perpetrators.

From a normative perspective, these challenges highlight a broader tension between sovereignty and accountability in international law. While the ICC represents a move toward supranational justice, it remains dependent on sovereign states for implementation. As Nouwen and Werner⁴⁰ argue, this creates a paradox in which the Court seeks to transcend state sovereignty while simultaneously relying on it for survival. In genocide cases, where political sensitivity is particularly high, this paradox becomes even more pronounced, limiting the Court's transformative potential.

Legal effectiveness theory further illuminates this structural limitation by emphasizing the role of societal and political compliance in determining legal success. Soekanto's framework suggests that law is effective only when supported by institutional enforcement and social acceptance. In the context of the ICC, both dimensions are unevenly developed. While normative support for preventing genocide is widely recognized, practical cooperation with enforcement mechanisms remains inconsistent. This gap underscores the structural fragility of international criminal justice in politically contested environments.

Therefore, the ICC's effectiveness in prosecuting genocide is significantly constrained by issues of political legitimacy, state cooperation, and structural dependence on international political actors. While the Court has contributed to the development of global accountability norms, its operational capacity remains limited by the realities of state sovereignty and geopolitical interests. As this analysis demonstrates, the limits of international justice are not solely legal or evidentiary but deeply political in nature. These constraints reveal that the ICC operates within a complex system where law and politics are inseparably intertwined, shaping both the possibilities and boundaries of genocide prosecution in the contemporary international order.

⁴⁰ Nouwen, Sarah MH, and Wouter G. Werner. "Doing justice to the political: The international criminal court in Uganda and Sudan." *European Journal of International Law* 21, no. 4 (2010): 941-965.

D. Conclusion

This study has critically examined the effectiveness of the International Criminal Court (ICC) in prosecuting genocide by focusing on its structural, evidentiary, and political limitations. The analysis demonstrates that although the ICC constitutes a major institutional advancement in international criminal justice, its practical effectiveness remains constrained. Jurisdictional limitations under the Rome Statute, dependence on state cooperation, and the absence of independent enforcement mechanisms significantly weaken the Court's ability to ensure accountability. Case studies such as *Prosecutor v. Omar al-Bashir* and the Darfur situation illustrate how non-cooperation by states can obstruct arrest and prosecution processes, even in cases involving serious allegations of genocide. In addition, the high evidentiary threshold required to establish genocidal intent further complicates prosecutions, often resulting in limited or incomplete judicial outcomes.

Furthermore, the study highlights that political dynamics within the international system play a decisive role in shaping ICC effectiveness. Selective cooperation, geopolitical interests, and perceptions of bias undermine the Court's legitimacy and reduce compliance by states, thereby affecting enforcement capacity. From the perspective of legal effectiveness theory, the ICC demonstrates partial normative success in developing accountability standards for genocide but remains limited in practical implementation. Overall, while the ICC has significantly contributed to the evolution of international criminal law, its effectiveness in prosecuting genocide continues to be restricted by structural dependencies and political realities, reflecting the broader limits of international justice in addressing the most serious international crimes.

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F. Competing Interest

The authors state that there is no conflict of interest in the publication of this article.

G. Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

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