BEYOND IMPARTIALITY: HOW GEOPOLITICS AND MEDIA SHAPE ACCOUNTABILITY BEFORE THE INTERNATIONAL CRIMINAL COURT

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ABSTRACT

This paper explores how a nation's geopolitical standing and its portrayal in global media shape its exposure to and accountability for international war crimes. While international criminal tribunals aim for impartial justice, this research suggests that geopolitical leverage and prevailing media narratives influence prosecutorial focus, public perception, and ultimately, justice outcomes. A comparative case study of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) is conducted. This analysis examines how differing levels of international support, strategic interests of powerful states, and the framing of conflicts by global news outlets contributed to varying investigation, indictment, and conviction patterns. The ICTR, established in response to a genocide with limited immediate Western strategic interests, faced distinct challenges compared to the ICTY, which addressed atrocities in a region more central to European and NATO concerns. The paper delves into how media portrayals, often simplifying complex conflicts into narratives of clear victims and perpetrators, can create public pressure and influence international political will. This impacts the perceived legitimacy and effectiveness of these tribunals. By dissecting these intertwined dynamics, this research sheds light on the complexities and potential biases within the international justice system. It highlights the persistent tension between the pursuit of universal accountability and the realities of global power politics and media influence.

Keywords - International Criminal Law, ICC, accountability, war crimes, justice, international tribunals, United Nations etc.

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Introduction

"Obligations Erga omnes 'bind all subjects of international law for the purposes of maintaining the fundamental values of the international community', so that their breach enables all relevant States 'to take action'."[1] In 2002, the International Criminal Court (ICC) was established to prosecute individuals for international crimes such as genocide, war crimes, and crimes against humanity. However, its legitimacy and effectiveness have been called into question regarding its focus on African states. The central puzzle is the disparity in international prosecution of African cases compared to similar crimes in other regions. States with negative media portrayals, weaker geopolitical leverage, and limited influence in supranational forums, such as the African Union, are more susceptible to international prosecution due to reduced diplomatic repercussions. Conversely, states with greater geopolitical weight or regional power status are shielded from similar scrutiny.

This paper discusses how *a country's media portrayal and its geopolitical position affect its exposure to international prosecution.* It examines the African Union's 2013 resolution opposing the prosecution of current heads of state and Kenya's 2016 threat to withdraw from the Rome Statute. The study considers postcolonial dynamics and global justice in relation to the International Criminal Court's dependence on the Security Council and state referrals. Using a postcolonial legal realist framework informed by Antony Anghie and B.S. Chimni, it compares case studies of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) to explore how legal narratives are shaped by actors such as the ICC, the UNSC, the African Union, and state media. Both United Nations ad hoc tribunals prompted different geopolitical responses: Rwanda's leadership reluctantly complied under regional and donor pressure, whereas Serbian leaders in the former Yugoslavia negotiated cooperation as part of EU accession negotiations.

The Role of the International Criminal Court in Africa

"International law is playing a crucial role in helping legitimize and sustain the unequal structures and processes that manifest themselves in the growing north-south divide".[2] Of the

[1] Gioia, F. (2006). State Sovereignty, Jurisdiction, and 'Modern'International Law: The Principle of Complementarity in the International Criminal Court. *Leiden Journal of International Law*, *19*(4), 1095-1123.
[2] Chimni, B. S. (2003). Third world approaches to international law: a manifesto. In *The third world and international order* (pp. 47-73). Brill Nijhoff.

first nine situations under formal investigation by the ICC, eight were in Africa. These included Uganda (2003), the Democratic Republic of Congo (2004), the Central African Republic (2004 and 2014), Sudan (2005), Kenya (2010), Libya (2011), Côte d'Ivoire (2011), and Mali (2012). The ninth concerning Georgia was initiated in 2016, which marked a departure from African cases. Each case followed one of the three procedural avenues as defined in the Rome Statute. self-referral by a state party under Article 14, referral by the United Nations Security Council under Article 13(b), or *proprio motu* (initiation by the Prosecutor) under Article 15.

On 16 December 2003, the government of Uganda referred its first case to the ICC regarding the Lord's Resistance Army led by Joseph Kony. The Office of the Prosecutor opened a formal investigation in July 2004, and arrest warrants were issued in July 2005 for Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo, and Dominic Ongwen.[3] Lukwiya and Odhiambo were confirmed dead, while Ongwen was captured and transferred to the ICC in 2015. His trial began in December 2016, and in February 2021, he was found guilty of 61 counts of war crimes and crimes against humanity. Kony, however, has remained at large.

The Democratic Republic of the Congo submitted a referral to the ICC on 19 April 2004, and the prosecutor formally opened an investigation in June 2004 into crimes committed during the armed conflict in the Ituri region and eastern DRC.[4] Thomas Lubanga Dyilo, leader of the Union of Congolese Patriots, was arrested and transferred to The Hague in 2006. His trial began in 2009, and he was convicted in 2012 of conscripting and enlisting child soldiers. Germain Katanga, another Congolese militia leader, was arrested in 2007 and convicted in 2014 of war crimes and crimes against humanity. Bosco Ntaganda, associated with the Patriotic Forces for the Liberation of Congo, surrendered in 2013 and was transferred to the ICC, where he was convicted in 2019 of 18 counts of murder, rape, and sexual slavery.[5]

The Central African Republic referred two cases to the ICC, one in 2004 and another in 2014. The ICC opened investigations into both cases, leading to the arrest and transfer of several

[3] Ssenyonjo, M. (2007). The International Criminal Court and the Lord's Resistance Army leaders: prosecution or amnesty?. *Netherlands International Law Review*, *54*(1), 51-80.
[4] Musila, G. (2014). Between Rhetoric and Action: The Politics, Processes and Practice of the ICC's Work in the Democratic Republic of the Congo (DRC). *Processes and Practice of the ICC's Work in the Democratic Republic of the Congo (DRC)(January 16, 2014)*.
[5] Kazembe, M. C. (2025). International Justice in Rwanda, the DRC, and Beyond: A Critical Analysis. *Available at SSRN 5163809*.

individuals, with trials ongoing.[6] The ICC investigated Sudan's situation in Darfur, issuing arrest warrants for several officials, including President Omar al-Bashir, for genocide, crimes against humanity, and war crimes.[7] The ICC also investigated post-election violence in Kenya, targeting several prominent figures, but the cases were eventually dropped due to insufficient evidence and non-cooperation.[8]

The UNSC referred Libya's situation to the ICC in 2011, leading to arrest warrants for Gaddafi, his son, and Al-Senussi.[9] Côte d'Ivoire accepted ICC jurisdiction twice, resulting in investigations into the 2010–2011 post-election conflict and arrest warrants for former President Gbagbo, his wife, and Blé Goudé.[10] Mali referred its situation to the ICC in July 2012, requesting an investigation into crimes committed during the armed conflict that began in January of that year. The Prosecutor opened an investigation in January 2013, and in 2015, the ICC issued an arrest warrant for Ahmad al-Faqi al-Mahdi, a member of the Ansar Dine militant group, charged with destroying cultural heritage sites in Timbuktu. He was transferred to The Hague in September 2015, pleaded guilty in August 2016, and was sentenced to nine years in prison.[11]

Uganda, the DRC, and the Central African Republic provided access and facilitated arrests, while Sudan refused cooperation and refused to surrender indicted individuals. Some African Union member states failed to arrest Omar al-Bashir during his visits due to diplomatic immunity, prompting the ICC to refer non-cooperation to the Assembly of States Parties and the UN Security Council.[12] While national courts ruled in favour of cooperation, executive branches overruled them.

The African Union (AU) has consistently objected to the International Criminal Court (ICC) investigating African leaders, citing bias. The AU has proposed legal reforms and expanding

[6] Ndiyun, R. K. (2023). The Special Criminal Court and the challenge of criminal accountability in the Central African Republic. *SN Social Sciences*, *3*(9), 147.
[7] Hossain, M. P. (2024). Assessing the International Criminal Court's response to genocide: a reference to the case of Al-Bashir. *The International Journal of Human Rights*, *28*(4), 648-670.
[8] Helfer, L. R., & Showalter, A. E. (2017). Opposing international justice: Kenya's integrated backlash strategy against the ICC. *International Criminal Law Review*, *17*(1), 1-46.
[9] Mancini, M. (2011). The day after: prosecuting international crimes committed in Libya. *The Italian Yearbook of International Law Online*, *21*(1), 85-109.
[10] Tumukunde, R. (2018). An analysis of challenges faced in the prosecution of African Heads of State at the ICC.
[11] Cole, D. M. (2017). From the Hague to Timbuktu: The Prosecutor v. Ahmad Al Faqi Al Mahdi; A Consequential Case of Firsts for Cultural Heritage and for the International Criminal Court. *Temp. Int'l & Comp. LJ*, *31*, 397.
[12] Schmetz, D. (2025). *The Diplomatic Crisis between the International Criminal Court (ICC) and the African Union (AU)* (Master's thesis).

the African Court of Justice and Human Rights, which would grant immunity to sitting heads of state.[13]

Burundi withdrew from the ICC in 2017 but the ICC retained jurisdiction over crimes committed while Burundi was a State Party. South Africa and Gambia also attempted to withdraw but later reversed their decisions.[14] Fattou Bensuda, the ICC prosecutor, defended the Court's 2013 jurisdictional decisions. She said most African cases were initiated through self-referrals, UNSC referrals, or proprio motu investigations. Out of the first 8 cases prosecuted, 5 were self-referrals, 2 by the UNSC, and 1 proprio motu.

The ICC & The Global North

States in the global north accused of international crimes have largely avoided scrutiny compared to those in the global south. Georgia became the first non-African situation investigated by the ICC. The Prosecutor sought authorisation to investigate crimes committed during the August 2008 conflict between Georgia and Russia in South Ossetia.[15] The Pre-Trial Chamber authorised the investigation in January 2016, and arrest warrants were issued in January 2019 for former South Ossetian officials Mikhail Mindzaev, Gamlet Guchmazov, and David Sanakoev, all of whom remain at large. The charges include unlawful confinement, torture, hostage-taking, and unlawful transfer of civilians.

In 2002, the US Congress passed the American Service-Members' Protection Act, also known as the Hague Invasion Act. This act authorises the use of all necessary means to release US personnel detained by or on behalf of the ICC. It also restricts US cooperation with the Court and bars military assistance to countries that are party to the Rome Statute unless they have signed bilateral immunity agreements exempting US citizens from ICC prosecutions.[16] US military interventions in Iraq and Afghanistan have been accused of numerous war crimes and breaches of international humanitarian law. Following the 2003 invasion of Iraq, reports of civilian casualties, torture, and mistreatment of detainees emerged. The Abu Ghraib prison

[13] Vilmer, J. B. J. (2016). The african union and the international criminal court: Counteracting the crisis. *International Affairs*, *92*(6), 1319-1342.
[14] Whitely, T., & Ivanov, I. (2020). The International Criminal Court, Elite Theory, and African States Withdrawal Notifications: South Africa, The Gambia, and Burundi. *Undergraduate Scholarly Showcase*, *2*(1).
[15] Bezhanishvili, M. (2018). Situation in Georgia–A Unique Case before the International Criminal Court. *Iv. Javakhishvili Tbilisi State University Journal of International Law*.
[16] Murphy, S. D. (2002). American Servicemembers' Protection Act. *American Journal of International Law*, *96*(4), 975-977.

abuse scandal, where US soldiers were photographed torturing prisoners, is a notable example. Criticisms arose from the limited scope and failure of US military justice system investigations and trials to prosecute senior officials. However, no formal investigation has been launched into the conduct of US personnel in Iraq by the ICC.[17] In Afghanistan, the ICC's Appeals Chamber authorised the Prosecutor to investigate war crimes and crimes against humanity committed since May 2003, including US forces and CIA operatives' torture of detainees in black sites. In response, the Trump administration imposed sanctions and visa restrictions on ICC officials, including the Prosecutor, in June 2020. However, these measures were condemned by human rights organisations and later rescinded by the Biden administration in 2021.[18]

In 2005, the ICC opened a preliminary examination into alleged war crimes by armed forces in the UK. However, the examination was closed in 2006 due to insufficient evidence. In 2014, new evidence led to the reopening of the examination. In 2020, the Office of the Prosecutor concluded that there was a reasonable basis to believe that British troops had committed war crimes, but an investigation was not pursued due to existing UK proceedings. [19]

Russia, a major power, signed the Rome Statute in 2000 but withdrew its signature in 2016 after the ICC classified the annexation of Crimea as an international armed conflict and occupation.[20] Despite numerous reports of human rights abuses in Chechnya, the ICC hasn't reviewed these allegations due to a lack of a UNSC referral. Russia has refused to cooperate with the investigation in Georgia, and no Russian military or political figures have been indicted despite allegations against multiple actors. In 2023, the ICC issued arrest warrants for President Vladimir Putin and Maria Lvova-Belova for the unlawful deportation of Ukrainian children to Russia during the 2022 invasion, but enforcement is unlikely as Russia doesn't recognise the Court's jurisdiction and maintains political and military support domestically and

[17] Gioia, F. (2006). State Sovereignty, Jurisdiction, and 'Modern'International Law: The Principle of Complementarity in the International Criminal Court. *Leiden Journal of International Law*, *19*(4), 1095-1123.

[18] Jones, N. (2022). Sanctioning the ICC: Is This the Right Move for the United States?. *Wis. Int'l LJ*, *39*, 175.
[19] Kuhrt, N., & Kerr, R. (2021). The International Criminal Court, preliminary examinations, and the Security Council: Kill or cure?. *Journal of Global Faultlines*, *8*(2), 172-185.
[20] Miles, A. (2024). Russia and the (De) colonization of International Law.

from allied states. No apprehension has occurred, and Russia has denounced the ICC's actions as illegitimate.[21]

China faces allegations of violating international law for its treatment of Uyghur Muslims in Xinjiang. Independent reports, including those from the UN Office of the High Commissioner for Human Rights, Human Rights Watch, Amnesty International, and the Uyghur Tribunal, allege forced sterilisations, mass detentions, and re-education programmes targeting ethnic and religious minorities. Any referral under Article 14 would face a veto due to China's permanent seat on the Security Council and geopolitical influence.[22]

Despite lacking the geopolitical influence of major powers, states can still avoid ICC jurisdiction through diplomatic ties. Following a preliminary examination in 2015, the ICC authorised an investigation in 2021 into war crimes in the occupied Palestinian territories, including East Jerusalem, Gaza, and the West Bank. The investigation covered crimes committed by Israeli military forces, Palestinian armed groups, and Israeli settlers. Israel and the US strongly opposed the probe, with Israel claiming Palestine lacked sovereignty and the Court lacked competence, while the US condemned the probe and reaffirmed support for Israel. No arrest warrants have been issued, and the investigation continues.[23]

The Politics of Disparate Accountability in International Criminal Law

Permanent members of the UN Security Council wield the veto power, which is a primary tool for deflecting accountability. In Syria, despite evidence of war crimes by both government forces and armed opposition groups, Russia and China vetoed the 2014 draft resolution to refer the situation to the ICC.[24] Similarly, in 2014, the UN Commission of Inquiry recommended referring the situation of North Korea to the ICC, but no such referral occurred due to anticipated vetoes from Russia and China's ties with Pyongyang.[25]

[21] Selvarajah, S., & Fiorito, L. (2023). Media, public opinion, and the ICC in the Russia–Ukraine war. *Journalism and Media*, *4*(3), 760-789.
[22] Waller, J., & Albornoz, M. S. (2021). Crime and no punishment? China's abuses against the Uyghurs. *Georgetown Journal of International Affairs*, *22*(1), 100-111.
[23] Kiswanson, N. (2023). Palestine, Israel, and the International Criminal Court. In *Prolonged Occupation and International Law* (pp. 253-288). Brill Nijhoff.
[24] Gabrielyan, N. (2017). *The role of the UN Security Council in Syrian Crisis (2011-2016)* (Doctoral dissertation).
[25] Cho, J. H., & Paik, M. J. (2019). A deliberately delayed or forgotten issue: North Korean human rights as an international legal problem. *International Area Studies Review*, *22*(1), 3-20.

The ICC lacks jurisdiction over a state that hasn't ratified the Rome Statute, like Sri Lanka. Despite credible evidence of extrajudicial killings, enforced disappearances, sexual violence, and indiscriminate shelling during Sri Lanka's civil war, no ICC proceedings have taken place because Sri Lanka hasn't ratified the Rome Statute. The Security Council hasn't proposed a referral, as efforts have focused on domestic transitional justice and international fact-finding due to Sri Lanka's economic and security partnerships with regional and global powers like China, India, and the US, given its strategic location along vital Indian Ocean shipping routes.[26]

States with less geopolitical influence have various mechanisms for prosecution. International law is the primary language for expressing domination in the era of globalization. In 2018, the Philippines formally notified the UN of its withdrawal from the Rome Statute, a year after the ICC began investigating President Rodrigo Duterte's anti-drug campaign, which was linked to several extrajudicial killings documented by human rights groups and UN officials. However, the ICC ruled in 2021 that it retained jurisdiction over crimes committed while the Philippines was still a State Party and authorised an investigation. The Philippine government denies wrongdoing and refuses to cooperate.[27] Article 127 states that a state may withdraw from the Statute but is not discharged from its obligations before withdrawal, including cooperation in the Court's investigations and proceedings. The ICC authorised an investigation into crimes against the Rohingya in Myanmar, including persecution and deportation in 2019. Many victims were deported to neighboring Bangladesh, a State Party. However, Myanmar's officials' prosecution capacity is limited by non-cooperation.[28]

Voluntary cooperation is a preferable alternative to external pressures when states have fewer structural tools to deflect jurisdiction. International law has expanded to include non-European societies, reflecting the 'Expansion of International Society'.[29] The ICC's implementation depends on states' willingness to conduct credible investigations and prosecutions. Powerful states obstruct proceedings through domestic mechanisms and geopolitical weight, shielding

[26] Kalanadan, S. (2020). Combating Impunity in Sri Lanka: Searching Beyond the United Nations. *Journal of International Criminal Justice*, *18*(5), 1207-1228.
[27] Villarico, J. E. S., Tobing, C. I., Rizkytama, G. R., Zakiya, N. L., Amaliyah, J., Nurhasanah, S., ... & Ibrahim, M. (2024). Controversy of Usurpation of Jurisdiction: ICC and Philippines. *Media Hukum Indonesia (MHI)*, *2*(4), 420-424.
[28] Zahed, I. U. M. (2021). Responsibility to protect? The international community's failure to protect the Rohingya. *Asian Affairs*, *52*(4), 934-957.
[29] Anghie, A. (2006). The evolution of international law: colonial and postcolonial realities. *Third world quarterly*, *27*(5), 739-753.

states with diplomatic ties to them. However, states in the global south like Myanmar and the Philippines lack the leverage and diplomatic ties to delay or avoid investigations.

In many African states, legal institutions face political and material constraints that limit their ability to investigate international crimes. Limited funding, lack of specialised personnel, and insufficient infrastructure hinder their adherence to international criminal law's evidentiary and procedural standards. Colonialism is central to the formation of international law, particularly its founding concept, sovereignty. This affects developing countries where an overdeveloped state relies on an underdeveloped nation. Cooperation with the ICC offers technical assistance, legitimacy in post-conflict reconstruction, and control for affected states. This is especially important for states seeking to avoid external imposition and influence. For example, Uganda's referral of the LRA allowed it to pursue eluding armed actors. However, cooperation is vulnerable to domestic political volatility and shifting international alliances.

The ICC's ability to independently verify a state's unwillingness or inability under Article 17 of the Rome Statute is affected by legal proceedings and political circumstances that states can manipulate to avoid scrutiny. The Office of the Prosecutor relies on contested or incomplete information in its evidentiary assessments, and cooperation is constrained by national political considerations. States can limit witness access, deny extradition requests, or restrict court information dissemination, justified by the absence of bilateral agreements or conflicting constitutional provisions.

Unpacking Geopolitical Power & International Criminal Accountability: Case Study of The Tribunals in Rwanda & Yugoslavia

The UNSC established the International Criminal Tribunal for Rwanda (ICTR) in 1994 and the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 under Chapter VII of the UN Charter. Both tribunals prosecuted individuals responsible for international humanitarian law violations in Rwanda from 1994 and the former Yugoslavia from 1991.[30] Anghie (2006) argues that international law has always been driven by a civilizing mission to govern and transform non-European peoples, and the current war on terror is an extension of

[30] Mutabazi, E. (2014). The Appropriateness of the Establishment of the International Criminal Tribunals for the Former Yugoslavia and Rwanda Revisited. *Tuma L. Rev.*, *3*, 153.

this project.[31] The ICTR was in Arusha, Tanzania, while the ICTY was in The Hague, Netherlands. Both institutions shared the same Appeals Chamber and applied similar legal statutes derived from customary international law and treaties, including the Geneva Conventions and the Genocide Convention. They were ad hoc judicial bodies with limited temporal mandates and no enforcement powers. They relied on state cooperation for arrest warrants, transfers, and evidence access.

Rwanda's cooperation with the ICTR was influenced by international donor pressure. After the 1994 genocide, it relied heavily on foreign aid for reconstruction, humanitarian assistance, and governance support. Key donors, including the US, EU, World Bank, and various UN agencies, pledged significant financial aid on the condition that Rwanda demonstrate a commitment to international norms, including cooperation with the ICTR. Rwanda's cooperation was seen as a benchmark for post-genocide accountability and governance.[32] However, the government initially expressed reservations about the ICTR, objecting to its location outside Rwanda, exclusion of capital punishment, and lack of consultation. Rwanda was the only country to vote against the UNSC Resolution 955 that created the ICTR.[33] Later, it permitted the tribunal to conduct investigations and trials, allowing ICTR personnel to operate in the country's territory. Despite tensions, donor states pressured Rwanda to resume cooperation, linking aid to tribunal compliance. Rwanda's cooperation resumed, though selective and politically conditioned. It sought to portray itself as a responsible international actor by framing its post-genocide governance as a model of reconciliation, stability, and development, and compliance with international legal norms, including ICTR cooperation, was part of this narrative in communications with Western donor states and international institutions.

In contrast, Serbia's cooperation with the ICTY was mainly driven by its desire to join the EU. After the Yugoslav Wars, Yugoslavia faced international isolation and economic hardship. In the early 2000s, EU countries and institutions made clear that progress in Serbia's EU accession process would depend on full cooperation with the ICTY, especially regarding the arrest and

[31]Anghie, A. (2006). The evolution of international law: colonial and postcolonial realities. *Third world quarterly*, *27*(5), 739-753.
[32] Mackintosh, A. (1996). The International Response to Conflict and Genocide: Lessons from the Rwanda Experience. *J. Refugee Stud.*, *9*, 334.
[33] Hola, B., & Smeulers, A. (2016). Rwanda and the ICTR: Facts and Figures. In *The Elgar Companion to the International Criminal Tribunal for Rwanda* (pp. 44-76). Edward Elgar Publishing.

transfer of indicted war criminals.[34] The ICTY indicted over 160 individuals for crimes committed during the Yugoslav conflicts, including high-ranking political, military, and paramilitary leaders from both sides. Notable indictments involved Serb officials like Slobodan Milošević, Radovan Karadžić, and Ratko Mladić. Despite a controversial decision by the Serbian government, Milošević was transferred to The Hague in 2001 under pressure from the US and EU, which threatened to withhold financial aid and block Serbia's entry into international financial institutions.[35]

Between 2001 and 2011, Serbia arrested and extradited most of the remaining ICTY indictees, with EU accession negotiations playing a key role.[36] The EU's Stabilisation and Association Process made cooperation with the ICTY a precondition for candidate status and integration, and the EU's Chief Prosecutor Carla Del Ponte frequently reported its status to the European Council. Delays in arresting high-profile fugitives like Karadžić and Mladić led to the suspension or postponement of accession talks, with the European Commission halting talks in 2006 due to lack of cooperation in apprehending Mladić. These talks resumed after credible progress. Karadžić was arrested in Belgrade in 2008, and Mladić in 2011, both during intense diplomatic engagement between Serbia and EU representatives. Despite a strong domestic political opposition that viewed the tribunal as biased against Serbs and questioned its legitimacy, Serbia complied with ICTY demands.[37]

Domestic legal reforms in both Rwanda and Serbia were affected by their obligations to the tribunals. Rwanda reformed its judiciary and penal code to facilitate the transfer of cases from the ICTR to domestic courts. In 2007, it abolished the death penalty to meet ICTR requirements.[38] Serbia enacted legislation to enable the arrest and extradition of indictees and established a War Crimes Chamber to try war crimes cases domestically.

The outcomes of compliance differed. Rwanda largely avoided ICTR prosecutions of RPA officials, resulting in only a handful of RPA members being indicted and none being tried. By

[34] Stojanovic, J. (2009). EU Political Conditionality and Domestic Politics: Cooperation with the International Criminal Tribunal for the Former Yugoslavia in Croatia and Serbia. *PhD diss., Central European University*.
[35] Ivkovic, S. K. (2001). Justice by the International Criminal Tribunal for the former Yugoslavia. *Stan. J. Int'l L.*, *37*, 255.
[36] Teshigahara, R. The EU accession and Transitional Criminal Justice in Serbia and Croatia.
[37] Ponte, C. D. (2006). Investigation and prosecution of large-scale crimes at the international level: the experience of the ICTY.
[38] Horovitz, S. (2015). International Criminal Courts in Actions: The ICTR's Effect on Death Penalty and Reconciliation in Rwanda. *Geo. Wash. Int'l L. Rev.*, *48*, 505.

contrast, Serbia arrested and transferred nearly all indicted individuals, including former heads of state and senior military commanders. The perception of imbalance in indictments remained a source of domestic contention, but the legal outcome reflected greater enforcement of tribunal authority. Initially, ICTR outreach efforts in Rwanda created distance between the tribunal and affected communities. Systematic outreach programs began in 1999, but their effectiveness was mixed, and many Rwandans remained unaware of the tribunal's proceedings due to their location outside the country. Conversely, the ICTY had a robust outreach program from its early years, collaborating with media, educational initiatives, and regional civil society groups. Its European location facilitated interaction with legal professionals, scholars, and journalists, leading to better documentation and public access to trials.[39]

After both tribunals closed, the International Residual Mechanism for Criminal Tribunals (IRMCT) took over residual functions. Rwanda continued to cooperate with the IRMCT in locating fugitives, while cooperation from some Balkan states, like Serbia, was uneven.[40] The ICTR and ICTY differed in their use of plea bargaining. The ICTY employed plea agreements more frequently, with over 20 defendants pleading guilty for reduced sentences or testimony, while the ICTR used plea bargaining less often due to the Rwandan government's resistance to leniency for genocide suspects and the moral gravity of the 1994 atrocities.[41] Hybrid courts, such as the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the Special Panels for Serious Crimes in East Timor, shared jurisdictional goals with the ICTR and ICTY. [42]

Hybrid tribunals were structurally distinct from the ICTR and ICTY because they were embedded in domestic legal systems, unlike the former, which were wholly international and operated independently of national courts. Hybrid tribunals partially staffed by local judges applied a mix of international and domestic law.[43]

[39] Cisse, C. (1997). The International Tribunals for the Former Yugoslavia and Rwanda: Some Elements of Comparison. *Transnat'l L. & Contemp. Probs*, *7*, 103.
[40] McIntyre, G. (2011). The International Residual Mechanism and the Legacy of the International Criminal Tribunals for the Former Yugoslavia and Rwanda. *Goettingen J. Int'l L.*, *3*, 923.
[41] Kovarovic, K. (2011). Pleading for Justice: The Availability of Plea Bargaining as a Method of Alternative Resolution at the International Criminal Court. *J. Disp. Resol.*, 283.
[42] Nouwen, S. M. (2006). 'Hybrid courts' The hybrid category of a new type of international crimes courts. *Utrecht Law Review*, 190-214.
[43] Dame, F. (2015). The Effect of International Criminal Tribunals on Local Judicial Culture: The Superiority of the Hybrid Tribunal. *Mich. St. Int'l L. Rev.*, *24*, 211.

Mapping Difference: ICTR v. ICTY

The ICTY's focus was within the European Court of Human Rights, which provided a pre-existing legal framework for discourse on rights violations and the rule of law, lacking an equivalent on the African continent at the time of the ICTR's creation. The African Court on Human and Peoples' Rights did not issue its first judgment until 2009, years after the ICTR had begun operations and well after the ICTY had established procedural norms. In terms of institutional budget and staffing, UN General Assembly financial records show that the ICTY consistently received a larger operating budget and higher personnel allocations than the ICTR despite comparable caseloads during overlapping periods. For instance, audited reports from the UN Office of Internal Oversight Services for the 2004–2008 budget cycles showed that ICTY staffing levels in legal support services, translation units, and outreach departments exceeded those of the ICTR by notable margins.[44]

These figures show concrete differences in investigating, translating evidence, processing witness statements, and engaging with the public. The disparity isn't due to procedural differences, as both tribunals followed similar rules and evidence. It's because donor states in the UN prioritised political issues, which affected case duration, number of indictments, and outreach. Data from the UN Secretariat's judicial election records shows that while both tribunals aimed for geographical diversity, the ICTY's bench was more Western European and North American, especially in the early years. The ICTR had more appointments from the Global South, including Africa, Asia, and Latin America. However, leadership positions were often held by judges from permanent UN Security Council countries or major donor states. This shaped the doctrines used to assimilate non-Europeans into the 'universal' system, including the concept of sovereignty and law itself, influenced by colonial power dynamics.

The ICTY recruited investigators from former war crimes units and NATO military justice systems, while the ICTR had a more internationally diverse staff with experience in large-scale transnational investigations. Internal UN reports from the late 1990s and early 2000s show that this affected evidence collection speed and methodology, especially in cases involving chain-

[44] Cavallaro, J. L., & O'Connell, J. (2020). When prosecution is not enough: How the International Criminal Court can prevent atrocity and advance accountability by emulating regional human rights institutions. *Yale J. Int'l L.*, *45*, 1.

of-command liability, as seen in trial timetables, motion response times, and evidentiary hearings. These are quantifiable indicators of operational disparity, not just case complexity.

European states were more responsive to ICTY requests, especially for arrest warrants and asset freezing, compared to the ICTR. Several states enacted domestic laws for direct cooperation, while the ICTR lacked consistent legislation, leading to stalled extradition requests due to treaty or political issues. UN enforcement agreements transferred ICTY convicts to Western Europe and Scandinavia, while ICTR convicts were sent to African states like Mali, Benin, and Senegal under bilateral agreements. While monitored by the UN, local infrastructure and national standards shaped the conditions of imprisonment.

An empirical content analysis of sentencing decisions in the UN's Judicial Decisions Archive shows that ICTY judgments frequently used terms related to breach of international order, European security, and normative deterrence, while ICTR decisions emphasised reconciliation, national trauma, and community restoration. Corpus analysis supports the observation that judicial discourse in the two tribunals engaged different conceptual vocabularies due to their geopolitical environments. Reports from the UN Office of Legal Affairs reveal that the ICTY provided higher rates of witness relocation, security detail allocation, and psychological counselling per capita than the ICTR, which correlates with differences in tribunal budget, host-state agreements, and available NGO infrastructure, as published in annual tribunal performance reviews.

Public broadcasting archives show that the ICTY proceedings were regularly televised and accompanied by press briefings in multiple languages. In contrast, ICTR media access was often limited to delayed transcripts and selective footage distributed through internal UN channels. The ICTY had real-time streaming and public gallery capacity, as evidenced by tribunal administrative logs and broadcast contracts. ICTY decisions are also referenced more frequently in judgments of other international courts, such as the International Criminal Court and regional human rights courts. A review of ICC Pre-Trial and Trial Chamber rulings between 2002 and 2020 shows a higher incidence of ICTY case law references compared to ICTR decisions.

Tribunal mandates reveal an early alignment between legalistic and humanitarian justifications for international prosecution. In Africa, restoring the rule of law or rebuilding state capacity suggests a presumed deficiency in domestic legal authority. In contrast, Europe uses terms like

upholding international norms or ensuring consistency with human rights commitments, implying a continuity with existing legal frameworks. Yet, "Western law is itself shaped and transformed by imperialism and Empire."[45]

Public statements and press releases from the International Criminal Court (ICC) often reinforce these dichotomies. In African cases, the ICC often emphasises humanitarian imperatives and the lack of domestic capacity to try major crimes. In situations like the Central African Republic or Mali, the ICC stresses the need to assist states facing internal conflict and judicial breakdown. These communications often use phrases like grave concern for victims, urgent need for international assistance, and failure of national accountability mechanisms. In contrast, European investigations like those in Georgia or Ukraine before 2022 focus on upholding treaty-based obligations and international security frameworks, emphasising compliance with international law and protecting civilians in armed conflict.

African and European state actors use the term sovereignty differently. In the AU, it's used to resist judicial overreach. AU resolutions and summit declarations aim to limit politicised interventions or selective justice targeting the continent. Sovereignty is juxtaposed with a demand for procedural equity. European states rarely invoke sovereignty to resist ICC investigations. Instead, they discuss it about enforcement capacity, which is the ability to prosecute crimes domestically. Public statements from European justice ministries or parliamentary debates highlight sovereign responsibility to investigate and prosecute, positioning the ICC as a backstop mechanism.

The ICC portrays self-referrals from African states as cooperative actions, emphasising voluntary engagement and commitment to justice. However, self-referrals are criticized as tactical moves to internationalize internal conflict and marginalize political adversaries, suggesting they entrench power disparities. The ICC avoids labelling non-African states as obstructive, even when they refuse to cooperate, while African states are criticized for undermining justice. The portrayal of self-referring states in ICC investigations varies by region. In the UK and France, ICC involvement is seen as upholding a rule-based order, while in Africa, it is often viewed as intrusive or politicized. Despite similar rights violations, non-

[45] Hammoudi, A. (2013). Re-Constituting the Hegemony of Western Law in the Third World: A Postcolonial Critique of Twining's 'General Jurisprudence'. *Transnational Legal Theory*, *4*(4), 527-548.

African states are less likely to be labelled as failing, highlighting double standards in international discourse.

UNSC resolutions that refer African situations to the ICC include language about threats to international peace and security and gross human rights violations. In contrast, the UNSC fails to refer non-African situations, despite recommendations or reports, and veto-wielding states justify this by citing procedural concerns or sovereignty. The absence of formal consequences contributes to a discourse of tolerance or exceptionalism.

Conclusion

A critical comparative examination of the ICTR and ICTY reveals how a nation's geopolitical standing and global media portrayal can significantly influence the pursuit and delivery of justice for international war crimes. In Rwanda, the initial, delayed, and comparatively less robust international response, coupled with a media narrative that often struggled to convey the full scope and nature of the genocide, reflected a lack of significant Western strategic interests. The ICTR's establishment and operational trajectory were undeniably influenced by a geopolitical landscape that prioritised other regions. Consequently, the victims, predominantly from a less geopolitically significant state, experienced a slower and less globally prioritised path to justice.

In contrast, the former Yugoslavia, situated at Europe's doorstep and involving powers with vested geopolitical interests, saw the rapid establishment of the ICTY. Media coverage, frequently depicting a clear aggressor-victim dichotomy (though often oversimplified), galvanised public and political will for intervention and accountability. This sustained media attention, coupled with strategic geopolitical considerations, facilitated greater cooperation from states and a more robust prosecutorial mandate. The ICTY still faced considerable challenges, but the disproportionate resources, political backing, and media focus on it compared to the ICTR highlight a tangible disparity in the international community's commitment to accountability based on perceived relevance and strategic importance.

While both tribunals delivered crucial judgments and significantly contributed to the development of international criminal law, their journeys demonstrate that the "impartial" scales of justice can be subtly yet profoundly tilted by external forces. This suggests that true universal accountability for war crimes remains elusive as long as geopolitical expediency and

the framing power of media continue to exert such potent influence. Future efforts to strengthen international criminal justice must therefore address not only legal frameworks but also the underlying political and informational dynamics that can either accelerate or impede the pursuit of justice. This ensures that all victims of atrocity crimes receive equitable attention and the full weight of international law, regardless of their nation's standing or the media's gaze.

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