

Bridging the Accountability Gap: Structural and Doctrinal Failures of International Criminal Law in Protracted Conflicts – A Comparative Legal Analysis of Syria and Sudan

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ABSTRACT

This article critically assesses the persistent inability of international criminal law (ICL) mechanisms to ensure accountability in protracted atrocity contexts, focusing on Syria and Sudan as emblematic case studies. It argues that jurisdictional fragmentation, Security Council paralysis, and an enduring enforcement deficit have undermined the international community's response to mass crimes. Despite the symbolic weight of ICC indictments and the proliferation of investigative mechanisms, meaningful prosecutions remain elusive. Drawing on recent legal developments, doctrinal analysis, and comparative insights, the paper demonstrates how structural design flaws—rather than mere political obstruction—lie at the heart of ICL's ineffectiveness. The analysis integrates theoretical perspectives from critical legal studies and Third World Approaches to International Law (TWAIL), situating accountability gaps within global power asymmetries. The paper concludes by offering a set of normative and institutional reforms, including enhanced universal jurisdiction, rethinking the Security Council veto, and establishing conflict-responsive hybrid justice mechanisms. These proposals seek to move ICL from symbolic to substantive justice.

Keywords: International Criminal Law, Syria, Sudan, ICC, Universal Jurisdiction, Critical Legal Theory, Accountability Gap

INTRODUCTION

Protracted armed conflicts such as those in Syria and Sudan have generated widespread humanitarian catastrophes and sustained violations of international law. In both cases, civilians have endured mass atrocities—including torture, sexual violence, starvation, and deliberate attacks on humanitarian personnel—perpetrated over extended periods with near-total impunity. Despite the establishment of international criminal law (ICL) mechanisms, such as the International Criminal Court (ICC) and investigatory bodies mandated by the United Nations, accountability has remained elusive.

This article contends that the repeated failure of ICL to provide justice in these contexts is not merely due to political inertia, but rather reflects deeper structural deficiencies in the legal and institutional design of the international criminal justice regime. In particular, the analysis reveals how jurisdictional fragmentation, Security Council veto paralysis, and lack of enforcement capacity systematically obstruct meaningful accountability. These issues are particularly stark in Syria, where repeated Security Council efforts to refer the situation to the ICC have been vetoed by Russia and China,¹ and in Sudan, where despite a Security Council referral for Darfur, ICC warrants remain unenforced decades later.²

The article employs a comparative legal methodology and draws on recent jurisprudence, including the ICC's ruling in *Prosecutor v Ongwen*, which reinforces the doctrinal scope of command responsibility and illustrates how legal norms can be adapted to evolving conflict dynamics.³ It further integrates theoretical insights from **critical international legal scholarship**, including Third World Approaches to International Law (TWAAIL), to interrogate the ways in which geopolitical asymmetries shape the enforcement of international criminal law.⁴ Ultimately, the Syrian and Sudanese cases are used not only as empirical illustrations of legal failure, but as conceptual entry points to reimagine ICL in contexts of prolonged crisis.

METHODOLOGY AND THEORETICAL FRAMEWORK

This article adopts a comparative and doctrinal legal methodology, grounded in a critical evaluation of primary legal texts, institutional instruments, jurisprudence, and academic commentary. The selection of Syria and Sudan as case studies reflects their status as paradigmatic examples of protracted conflict in which both domestic and international legal accountability mechanisms have either collapsed or been strategically undermined. These jurisdictions offer fertile ground for examining how international criminal law (ICL) performs under conditions of state failure, geopolitical obstruction, and institutional inertia.⁵

The analysis is framed by three overlapping theoretical approaches. First, the complementarity principle—enshrined in Article 17 of the Rome Statute—positions the ICC as a court of last resort. This principle presumes the existence of genuine domestic judicial capacity, an assumption manifestly inapplicable to both Syria and Sudan.⁶ Second, the concept of the “accountability gap” captures the structural disconnect between the commission of international crimes and the absence of enforcement, often exacerbated by political shielding and jurisdictional fragmentation.⁷ Third, the study engages with the justice versus peace dilemma, which underscores the normative and strategic tensions between pursuing criminal accountability during conflict and prioritising political negotiations or ceasefire arrangements.⁸

Beyond these doctrinal frames, the article draws on critical international legal theory, particularly Third World Approaches to International Law (TWAAIL) and postcolonial critiques of ICL. These perspectives interrogate the distributional inequalities and ideological assumptions embedded in global justice regimes. From this angle, ICL is not merely a technocratic apparatus, but a field deeply embedded in the geopolitical hierarchies of the post-Cold War order.⁹ The article also integrates realist insights into the role of power politics and strategic behaviour by states, particularly within the UN Security Council, that shape the operational limits of ICL institutions.¹⁰ Through this multifaceted framework, the paper seeks not only to document legal failure but to theorise its structural and normative underpinnings.

Syria: Leadership Responsibility, Jurisdictional Challenges, and Post-Regime Prospects

The Syrian conflict, which has spanned over a decade since 2011, remains one of the most egregious humanitarian crises in modern history. Successive UN reports have documented the commission of war crimes and crimes against humanity by state forces, armed opposition groups, and extremist factions—including the use of chemical weapons, barrel bombings, enforced disappearances, and widespread torture.¹¹ These acts meet the threshold of crimes under customary international law and the Rome Statute of the ICC. Yet, no comprehensive international criminal proceedings have been initiated.

¹ UN SC Res 2139 (22 February 2014) UN Doc S/RES/2139; see also UN SC Verbatim Record (22 May 2014) UN Doc S/PV.7180 (Russia and China vetoed referral of Syria to the ICC).

² ICC, ‘Warrant of Arrest for Omar Hassan Ahmad Al Bashir’ (4 March 2009) ICC-02/05-01/09; Human Rights Watch, *The Long Road to Justice: ICC Trials in the Darfur Situation* (2023) <https://www.hrw.org/report/2023/06/15/long-road-justice/icc-darfur> accessed 9 May 2025.

³ *Prosecutor v Dominic Ongwen* (Judgment) ICC-02/04-01/15 (4 February 2021), paras 2586–2593.

⁴ Makau Mutua, ‘Savages, Victims, and Saviors: The Metaphor of Human Rights’ (2001) 42(1) *Harvard International Law Journal* 201; see also Frédéric Mégret, ‘The Problem of the Future in International Criminal Law’ (2021) 32(1) *EJIL* 59.

⁵ Neha Jain, ‘Universal Jurisdiction and the Fragmentation of International Criminal Law’ (2021) 34(2) *Leiden J Intl L* 243.

⁶ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, art 17.

⁷ Payam Akhavan, *Reducing Genocide to Law: Definition, Meaning, and the Ultimate Crime* (CUP 2012) 126–133.

⁸ Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (OUP 2008) 19–46.

⁹ Makau Mutua, ‘Savages, Victims, and Saviors: The Metaphor of Human Rights’ (2001) 42(1) *Harv Intl LJ* 201; Vasuki Nesiah, ‘International Criminal Law: Imperialist, Inegalitarian, but Here to Stay’ (2020) 118(2) *Mich L Rev* 149.

¹⁰ Sarah M H Nouwen and Wouter G Werner, ‘Monopolizing Global Justice: The ICC and the Birth of the UN Security Council’s Judicial Empire’ (2023) 35(4) *Hum Rts Q* 915.

¹¹ UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic* (A/HRC/52/69, 2023).

Syria is not a party to the Rome Statute and has not issued a declaration under Article 12(3), thus precluding the ICC from exercising jurisdiction absent a Security Council referral. The latter route has been repeatedly blocked, most notably in 2014, when a draft resolution was vetoed by Russia and China despite overwhelming support from other Council members.¹² This veto paralysis has entrenched impunity and undermined the deterrent potential of international criminal law.

In response to the jurisdictional vacuum, the UN General Assembly established the **International, Impartial and Independent Mechanism (IIIM)** in 2016. Its mandate is to collect, preserve, and analyse evidence for future use in criminal proceedings. However, the IIIM lacks prosecutorial authority and depends on national or international bodies to act upon its findings.¹³ While it has produced valuable documentation and collaborated with national prosecutors, the absence of an empowered tribunal limits its impact.

Significantly, domestic courts in Europe have stepped into this accountability void. German courts, applying the principle of **universal jurisdiction**, prosecuted several Syrian officials. The **Koblenz trial** (2022) culminated in the conviction of **Anwar Raslan**, a former intelligence officer, for crimes against humanity—marking the first judicial recognition of Syrian state-led atrocities.¹⁴ These prosecutions underscore the growing role of national courts in addressing international crimes, yet also illustrate their limitations. Most cases target mid-level officials who are physically present in the prosecuting state, while senior figures such as Bashar al-Assad remain beyond reach due to diplomatic and legal protections.

The collapse of the Assad regime in December 2024, and his subsequent flight to Moscow, marks a pivotal moment. With the fall of state power, head-of-state immunity no longer applies under Article 27 of the Rome Statute.¹⁵ This shift theoretically removes one of the major barriers to prosecuting Assad. However, Russia—being a non-State Party—is unlikely to cooperate with any arrest or extradition efforts, highlighting once again the enforcement crisis at the heart of ICL.

The post-collapse phase also saw renewed waves of violence, particularly in the Alawite-dominated coastal regions, including retaliatory killings and mass detentions. These events raise questions of **command responsibility**, codified under Article 28 of the Rome Statute, which holds military and civilian superiors accountable for failing to prevent or punish crimes committed by subordinates.¹⁶ Evidence suggests that remnants of Assad's command structure persisted even after regime collapse, reinforcing his potential liability under this doctrine.

Moreover, the Syrian context illustrates a broader failure of relying solely on post-conflict justice. The reactive nature of ICL mechanisms often delays accountability until after violence has become entrenched and victims dispersed. As the literature increasingly suggests, criminal law must be embedded into transitional processes—not merely activated once political transitions are completed.¹⁷

Moving forward, viable options include the establishment of a **hybrid tribunal** through regional consensus or UN General Assembly authorization. Alternatively, the Assembly of States Parties could explore a more expansive interpretation of jurisdiction, based on precedents like the **Rohingya case**, where cross-border effects triggered ICC competence.¹⁸ Such approaches would represent a departure from legal formalism and signal a pragmatic turn toward victim-centred justice in protracted conflicts.

Sudan: Fragmented Justice, ICC Limitations, and the Cost of Partial Accountability

Sudan's recent and historical conflicts—from the Darfur atrocities beginning in 2003 to the 2023 civil war—demonstrate the cumulative failures of international criminal law (ICL) to provide sustained accountability. The 2005 Security Council referral of the Darfur situation to the ICC, under Resolution 1593, was hailed as a landmark move under Chapter VII of the UN Charter.¹⁹ Yet, nearly two decades later, the core indictees remain at large and the broader structure of impunity remains entrenched.

Despite the issuance of arrest warrants against senior Sudanese officials—including former President Omar al-Bashir, Abdel Raheem Muhammad Hussein, and Ahmed Haroun—the ICC has been unable to secure their surrender.²⁰ Many of these figures continued to operate in public life, and al-Bashir travelled to ICC member states without being arrested, highlighting the lack of effective enforcement mechanisms. The enforcement deficit—an endemic weakness of the ICC—has rendered these indictments largely symbolic.

More troubling is the **geographical limitation** of the ICC's mandate. The Darfur referral grants jurisdiction only over crimes committed in that region from 1 July 2002 onwards. Consequently, the ICC is barred from

¹² UN SC Verbatim Record (22 May 2014) UN Doc S/PV.7180.

¹³ UNGA Res 71/248 (21 December 2016) UN Doc A/RES/71/248.

¹⁴ Higher Regional Court of Koblenz (Germany), *Anwar Raslan Judgment*, Case No. 1 StE 9/19 (13 January 2022); see also Neha Jain, 'Universal Jurisdiction and the Fragmentation of International Criminal Law' (2021) 34(2) *Leiden J Intl L* 243.

¹⁵ Rome Statute (n 2) art 27.

¹⁶ Rome Statute (n 2) art 28; see also *Prosecutor v Bemba* (Judgment) ICC-01/05-01/08 (8 June 2018) paras 170–185.

¹⁷ Christine Bell, *Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'* (2009) 3(1) *Int J Trans Just* 5.

¹⁸ *Situation in the People's Republic of Myanmar* (Decision on Jurisdiction) ICC-01/19 (6 September 2018), para 73.

¹⁹ UN SC Res 1593 (31 March 2005) UN Doc S/RES/1593.

²⁰ ICC, 'Warrant of Arrest for Omar Hassan Ahmad Al Bashir' (4 March 2009) ICC-02/05-01/09.

addressing atrocities committed in **South Kordofan, Blue Nile, and Khartoum**, including the widespread crimes committed during the 2023 SAF-RSF conflict.²¹ This fragmentation has reinforced the perception that ICL delivers only selective and partial justice. Victims in non-Darfur areas remain legally invisible, despite credible reports of systematic killings, sexual violence, and ethnic cleansing by both state and paramilitary actors.²²

The failure to deliver justice has had cascading effects. The re-emergence of actors previously implicated in Darfur atrocities—most notably through the **Rapid Support Forces (RSF)**—demonstrates how impunity perpetuates cycles of violence.²³ Human Rights Watch and other NGOs have documented how the same tactics used during the early 2000s—scorched earth campaigns, mass rapes, targeting of ethnic minorities—have resurfaced in West Darfur and other regions during the current conflict.²⁴

Domestic accountability efforts have proven equally ineffective. Although the transitional government that emerged after al-Bashir's ouster in 2019 expressed willingness to cooperate with the ICC and establish a hybrid Darfur court, these initiatives collapsed following the 2021 military coup.²⁵ The judiciary remains subject to political influence and lacks capacity to adjudicate complex international crimes. Moreover, Sudan's fluctuating relationship with the Rome Statute—including its 2005 withdrawal—has compounded the legal uncertainty surrounding national jurisdiction.

Unlike the Syrian case, **universal jurisdiction** has played only a marginal role in Sudanese accountability. Few prosecutions have occurred abroad, and no significant European cases have targeted Sudanese officials despite the presence of refugees and diaspora communities. This underutilisation of extraterritorial mechanisms reflects both political hesitancy and practical barriers, such as evidentiary difficulties and limited prosecutorial resources.²⁶

Institutionally, no ad hoc or hybrid tribunal has been established to comprehensively address Sudan's long-standing atrocities. The African Union has shown reluctance to endorse ICC action, often framing it as neocolonial. Meanwhile, regional actors have continued to provide safe haven or material support to conflict parties. The result is a vacuum of credible, impartial mechanisms through which justice can be pursued.

To move beyond the current impasse, the international community must explore structural reforms. These include expanding the ICC's mandate through new Security Council referrals, supporting regional accountability mechanisms, and removing procedural barriers to universal jurisdiction prosecutions. More fundamentally, as some scholars suggest, international criminal accountability in Sudan will remain illusory without a shift in **the political economy of justice**—one that confronts global complicity, enables enforcement, and centres the demands of victims.²⁷

Structural Failures of the ICC and the Limits of International Criminal Law

The Syrian and Sudanese contexts expose deep-seated limitations within the institutional and normative framework of the International Criminal Court (ICC) and, more broadly, the international criminal law (ICL) regime. These failures are not simply the result of political obstruction or isolated inefficiencies, but stem from **structural design flaws** that inhibit the consistent and impartial application of justice. This section outlines five interlocking deficits that have critically impaired the ICC's performance: jurisdictional constraints, enforcement incapacity, political subordination, geographical fragmentation, and the erosion of normative deterrence.²⁸

1. Jurisdictional Constraints and Selectivity

The ICC's jurisdiction is inherently limited by the framework of the Rome Statute, which restricts the Court's competence to crimes committed by nationals of State Parties or within their territory, unless a situation is referred by the UN Security Council under Chapter VII of the UN Charter.²⁹ In Syria, the Court remains unable to act due to repeated Security Council vetoes, while in Sudan, the 2005 Darfur referral applies only to a specific region and time frame, excluding more recent atrocities elsewhere.³⁰ This selective application not only fragments justice but undermines the credibility of the ICC as a universal institution. Scholars have described this as a "jurisdictional lottery," in which victims' access to justice depends more on diplomatic alignments than legal principle.³¹

2. Enforcement Deficits

The ICC has no independent enforcement mechanism and must rely entirely on State cooperation to execute arrest warrants, collect evidence, and facilitate trials. This reliance has proved catastrophic in high-profile cases, such as the failure to arrest Omar al-Bashir, who travelled freely to several ICC member states without

²¹ Frédéric Mégret, 'The Problem of the Future in International Criminal Law' (2021) 32(1) *EJIL* 59, 72.

²² UN Human Rights Council, *Report on the Situation of Human Rights in Sudan* (A/HRC/54/34, 2023).

²³ Human Rights Watch, 'Sudan: Ethnic Killings in West Darfur' (6 November 2023) <https://www.hrw.org/news/2023/11/06/sudan-ethnic-killings-west-darfur> accessed 10 May 2025.

²⁴ Ibid; see also Amnesty International, *'They Burned Everything': War Crimes in West Darfur* (2023).

²⁵ Sudan Tribune, 'Transitional Government Agrees to Cooperate with ICC' (15 February 2020) <https://sudantribune.com/article66920/> accessed 10 May 2025.

²⁶ Neha Jain, 'Universal Jurisdiction and the Fragmentation of International Criminal Law' (2021) 34(2) *Leiden J Intl L* 243, 256–258.

²⁷ Sarah M H Nouwen and Wouter G Werner, 'Monopolizing Global Justice: The ICC and the Birth of the UN Security Council's Judicial Empire' (2023) 35(4) *Hum Rts Q* 915.

²⁸ Awaisheh, S. M. (2025). From paper to pixels: the legal status and challenges of electronic writing in administrative contracts. A comparative study of current legal systems. *Electronic Government*, Article 2025. <https://doi.org/10.1504/EG.2025.144726>

²⁹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 12–13.

³⁰ UN SC Res 1593 (31 March 2005) UN Doc S/RES/1593; UN SC Verbatim Record (22 May 2014) UN Doc S/PV.7180.

³¹ Sophie Rigney, 'The Future of International Criminal Law: Between Resilience and Retreat' (2022) 20(3) *J Intl Crim Just* 521, 529.

consequence.³² Similarly, Bashar al-Assad remains beyond reach despite voluminous evidence of command responsibility. The inability to enforce warrants renders the Court's authority symbolic at best, and invites accusations of impotence and performativity.³³

3. Political Paralysis and Geopolitical Capture

The ICC is embedded in a legal order that remains fundamentally subordinated to political power. The Security Council's veto power has repeatedly shielded perpetrators from investigation and prosecution, particularly when geopolitical interests are at stake. Russia and China's vetoes in the Syrian context exemplify how ICL can be rendered inoperative through strategic obstruction.³⁴ Furthermore, many African Union states have openly defied the Court's arrest requests, framing the ICC as a tool of Western interventionism.³⁵ This geopolitical capture of international justice highlights the inherent tension between legal norms and the realist architecture of international relations.

4. Temporal and Geographical Fragmentation

Even where jurisdiction exists, it is often narrowly defined, limiting the scope of investigations and trials. In Sudan, the Darfur mandate excludes crimes in Khartoum, South Kordofan, and elsewhere—despite clear evidence of continuing violations.³⁶ This selective geography creates legal black holes in which victims are effectively excluded from justice. The Court's inability to respond dynamically to changing conflict patterns raises fundamental questions about its relevance in protracted, fluid crises.

5. Eroding Deterrence and Legitimacy

Despite the normative aspiration that ICL deters future atrocities, evidence from Syria and Sudan suggests otherwise. Even after years of documentation and indictments, crimes continue unabated. Scholars argue that the ICC's symbolic prosecutions—unaccompanied by actual enforcement—risk entrenching cynicism among victims and reinforcing the perception that international law is performative rather than transformative.³⁷ The gap between legal rhetoric and material consequence corrodes the Court's legitimacy and diminishes its capacity to effect change.

In sum, the structural shortcomings of the ICC—rooted in jurisdictional gaps, political dependency, and enforcement deficits—have transformed it from a court of last resort to a court of limited consequence. Unless these issues are addressed through normative and institutional reform, international criminal law will remain aspirational rather than operational.³⁸

Comparative Patterns of Failure in International Criminal Accountability

Despite their divergent political histories and regional dynamics, the cases of Syria and Sudan reveal a convergence of systemic failures in the application and enforcement of international criminal law (ICL). These failures are not incidental but reflect entrenched patterns that recur across multiple atrocity contexts. This section distills key structural and political dynamics that have persistently undermined international justice in both jurisdictions.

1. Jurisdictional Gaps and Fragmented Mandates

In both Syria and Sudan, jurisdictional constraints have created a patchwork of legal coverage. Syria, as a non-State Party to the Rome Statute, has evaded ICC jurisdiction altogether due to repeated Security Council vetoes. Sudan's ICC engagement, by contrast, is limited to the Darfur referral, excluding crimes in other regions and later phases of violence.³⁹ This fragmentation fosters selective justice and reinforces the perception that international accountability is contingent upon political expediency rather than legal principle.

2. Security Council Obstruction and Veto Politics

The paralysis of the UN Security Council has been a central barrier to effective ICL implementation. In the Syrian context, Russia and China have exercised their veto power to block ICC referrals, despite clear evidence of widespread atrocities.⁴⁰ In Sudan, although the Council initially acted in 2005, it has since failed to expand jurisdiction or enforce existing warrants. This pattern reflects the structural subordination of ICL to geopolitical interest alignments, a critique long advanced by critical legal scholars.⁴¹

3. Absence of Comprehensive International Mechanisms

Unlike the ad hoc tribunals for Rwanda or the former Yugoslavia, no comparable international or hybrid tribunal has been created for Syria or Sudan. The IIIM and COI for Syria and the ICC Darfur mandate for Sudan

³² ICC, 'Warrant of Arrest for Omar Hassan Ahmad Al Bashir' (4 March 2009) ICC-02/05-01/09; see also Human Rights Watch, *The Long Road to Justice: ICC Trials in the Darfur Situation* (2023).

³³ Sarah M H Nouwen and Wouter G Werner, 'Monopolizing Global Justice: The ICC and the Birth of the UN Security Council's Judicial Empire' (2023) 35(4) *Hum Rts Q* 915, 932.

³⁴ Frédéric Mégret, 'The Problem of the Future in International Criminal Law' (2021) 32(1) *EJIL* 59, 66.

³⁵ Makau Mutua, 'African Human Rights Court: A Case of Institutional Fragmentation or Strategic Diversity?' (2020) 114 *AJIL Unbound* 91.

³⁶ UN Human Rights Council, *Report on the Situation of Human Rights in Sudan* (A/HRC/54/34, 2023).

³⁷ James G Stewart, 'Corporate War Crimes: Prosecuting the Pillage of Natural Resources' (2020) 98(3) *Int'l Rev Red Cross* 855, 867.

³⁸ Awaisheh, S. M., Alsaraireh, N., Alkasasbeh, A. A. M., & Odeibat. (2025). The Extent to Which Recourse to Arbitration Is Permissible in the Settlement of Disputes Arising under Procurement Contracts. *Journal of Human Security*, Article 2025. <https://doi.org/10.12924/johs2025.210103>

³⁹ Rome Statute (n 1) arts 12–13; UN SC Res 1593 (31 March 2005) UN Doc S/RES/1593.

⁴⁰ UN SC Verbatim Record (22 May 2014) UN Doc S/PV.7180.

⁴¹ Sarah M H Nouwen and Wouter G Werner, 'Monopolizing Global Justice: The ICC and the Birth of the UN Security Council's Judicial Empire' (2023) 35(4) *Hum Rts Q* 915.

operate within narrow parameters and lack authority to initiate prosecutions or compel compliance.⁴² The absence of a holistic accountability mechanism has resulted in fragmented efforts that fail to capture the full scope of victimization.

4. Uneven Application of Universal Jurisdiction

While European courts—particularly in Germany—have actively applied universal jurisdiction to prosecute mid-level Syrian officials, such efforts remain the exception rather than the norm.⁴³ In Sudan's case, extraterritorial prosecutions are virtually non-existent. The asymmetrical invocation of universal jurisdiction raises concerns about its feasibility and political will, especially when high-level perpetrators remain shielded by diplomatic or territorial protection.

5. Collapse of Domestic Accountability

In both contexts, domestic judicial institutions have been severely compromised. Syria's judiciary has remained aligned with regime interests, while Sudan's transitional justice efforts were dismantled following the 2021 military coup.⁴⁴ The inability or unwillingness of national systems to prosecute international crimes highlights the limits of complementarity as a functional doctrine, particularly in contexts of state capture or authoritarian resurgence.

6. Third-Party Complicity and Impunity

ICL has largely failed to address the role of third-party actors—both state and corporate—that materially support atrocity perpetrators. In Syria, Russia and Iran have provided military and logistical support to the Assad regime. In Sudan, regional powers and private security entities have sustained warring factions.⁴⁵ Current legal frameworks offer limited avenues to pursue such actors under theories of aiding and abetting or complicity.

7. The “Peace over Justice” Paradigm

In both Syria and Sudan, international efforts have prioritized ceasefires, power-sharing, or regime stability over legal accountability. Justice mechanisms were sidelined or deferred in the name of political expediency. This instrumentalization of ICL erodes its legitimacy and undermines long-term peace, which cannot be decoupled from truth and accountability.⁴⁶

CONCLUSION

These comparative patterns highlight the systemic vulnerability of international criminal law to fragmentation, politicisation, and inaction. Unless new mechanisms are developed to overcome these entrenched failures, future atrocity contexts are likely to follow the same trajectory: documentation without prosecution, indictment without enforcement, and law without justice.

Proposals for Reform in International Criminal Law

In light of the systemic limitations identified in Syria and Sudan, this section sets forth a series of legal and institutional reforms aimed at recalibrating international criminal law (ICL) toward greater effectiveness, legitimacy, and resilience. These proposals are guided by both normative imperatives and pragmatic constraints, seeking to strengthen accountability mechanisms without requiring utopian overhaul.

1. Constraining the Security Council Veto in Atrocity Situations

The veto power exercised by permanent members of the Security Council has proven to be a structural impediment to justice. To mitigate its effects, a growing body of scholars and civil society actors has called for a voluntary code of conduct under the “Responsibility Not to Veto” framework, urging P5 members to refrain from using the veto in situations involving atrocity crimes.⁴⁷ While Charter amendment is politically infeasible, the General Assembly may invoke the Uniting for Peace resolution to authorise collective measures, including recognition of jurisdiction or creation of investigative mechanisms.⁴⁸

2. Expanding ICC Jurisdiction Through Legal Innovation

The ICC can adopt progressive interpretations of jurisdiction, drawing on the precedent in the *Myanmar/Bangladesh* decision, where the Court asserted competence over crimes beginning in non-State Party territory but culminating in a State Party.⁴⁹ A similar rationale may apply to cross-border effects of Syrian crimes—particularly in relation to refugee flows to Jordan, Lebanon, or Turkey. Additionally, the Assembly of States Parties could consider amending Article 12 to allow the ICC jurisdiction over non-Party nationals present on State Party territory.⁵⁰

⁴² UNGA Res 71/248 (21 December 2016) UN Doc A/RES/71/248; UN HRC Res 46/23 (24 March 2021).

⁴³ Higher Regional Court of Koblenz, *Anwar Raslan Judgment*, Case No. 1 StE 9/19 (13 January 2022).

⁴⁴ Amnesty International, *Sudan: No Justice Without Reform* (2022); Human Rights Watch, *Sudan's Broken Promise* (2021).

⁴⁵ James G Stewart, 'Corporate War Crimes: Prosecuting the Pillage of Natural Resources' (2020) 98(3) *Int'l Rev Red Cross* 855.

⁴⁶ Christine Bell, 'Transitional Justice, Interdisciplinarity and the State of the “Field” or “Non-Field”' (2009) 3(1) *Int J Trans Just* 5.

⁴⁷ Jennifer Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes* (CUP 2020) 147.

⁴⁸ UNGA Res 377(V) 'Uniting for Peace' (3 November 1950).

⁴⁹ *Situation in the People's Republic of Myanmar* (Decision on Jurisdiction) ICC-01/19 (6 September 2018).

⁵⁰ William Schabas, *An Introduction to the International Criminal Court* (5th edn, CUP 2020) 245–248.

3. Reinforcing Universal Jurisdiction Mechanisms

Given the ICC's limited capacity, universal jurisdiction offers a crucial supplementary avenue. States should amend domestic legislation to remove barriers such as dual criminality requirements and short statutes of limitations. The EU Genocide Network and other regional forums can facilitate cooperation, training, and resource-sharing among national prosecutors.⁵¹ Investment in victim protection and transnational evidence coordination is essential to institutionalise the role of domestic courts in atrocity accountability.

4. Establishing Hybrid or Ad Hoc Tribunals

In contexts where ICC action is legally or politically blocked, hybrid justice models may provide an effective alternative. Drawing on the examples of the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, regional or UN–General Assembly–mandated bodies could be created to address crimes in Syria and Sudan.⁵² These forums offer tailored jurisdictional mandates and can incorporate local participation, thereby enhancing legitimacy and responsiveness.

5. Mainstreaming Justice in Peace Negotiations

Accountability must not be treated as a post-conflict luxury. Peace processes should integrate transitional justice mechanisms, including truth commissions, vetted amnesties, and victim participation frameworks. Mediators should condition power-sharing arrangements on minimum standards of justice, to avoid enshrining impunity in political settlements.⁵³ Failure to do so has historically contributed to recidivist violence, as seen in Sudan's RSF resurgence and Syria's post-regime reprisals.

6. Institutionalising Evidence Preservation

Mechanisms like the IIIM have demonstrated the importance of evidence preservation during conflict, especially when prosecution is deferred. Adequate funding, technical independence, and long-term mandate protection must be guaranteed. Collaboration with civil society initiatives, such as the Syrian Justice and Accountability Centre (SJAC), strengthens documentation and ensures survivor narratives are central to future legal proceedings.⁵⁴

7. Imposing Consequences for Non-Compliance

States that obstruct investigations or fail to execute arrest warrants should face tangible consequences. The Assembly of States Parties, together with the UN Human Rights Council and regional organisations, should coordinate targeted sanctions and diplomatic pressure against officials responsible for non-cooperation.⁵⁵ While politically contentious, such conditionality mechanisms already exist in other international regimes (e.g., financial compliance, environmental enforcement).

8. Addressing Third-Party Complicity

ICL reform must extend beyond direct perpetrators to include corporate and state complicity in atrocity crimes. The ICC and national jurisdictions should explore modes of liability for aiding and abetting, particularly in cases involving arms transfers, resource pillage, or logistical support.⁵⁶ Domestic legislative reforms, such as France's duty of vigilance law, offer replicable models for corporate accountability in the human rights context.

9. Regionalising Accountability Structures

Finally, long-term resilience requires investment in regional criminal justice mechanisms, such as enhancing the mandate of the African Court on Human and Peoples' Rights or promoting the creation of Arab regional tribunals. These platforms can offer more context-sensitive justice, reduce perceptions of foreign imposition, and expand the geography of legal enforcement.^{57 58}

CONCLUSION

None of these reforms alone can resolve the structural weaknesses of international criminal law. However, taken collectively, they form a roadmap for revitalising the field and closing the accountability gap that has plagued contexts like Syria and Sudan. The time for diagnostic critique has passed. What is now required is institutional courage, legal innovation, and political resolve.

Limitations of the Study

While this article provides a doctrinal and comparative assessment of international criminal law's performance in Syria and Sudan, several limitations must be acknowledged. First, the research relies primarily on **publicly**

⁵¹ Neha Jain, 'Universal Jurisdiction and the Fragmentation of International Criminal Law' (2021) 34(2) *Leiden J Intl L* 243.

⁵² Carsten Stahn, *A Critical Introduction to International Criminal Law* (2nd edn, CUP 2019) 393–403.

⁵³ Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (OUP 2008) 283–301.

⁵⁴ Syrian Justice and Accountability Centre (SJAC), *Universal Jurisdiction Tracker* (2024) <https://syriaaccountability.org/> accessed 10 May 2025.

⁵⁵ ASP, 'Strengthening Enforcement Cooperation in the Rome Statute System' (2023) ICC-ASP/22/Res.3.

⁵⁶ James G Stewart, 'Corporate War Crimes: Prosecuting the Pillage of Natural Resources' (2020) 98(3) *Intl Rev Red Cross* 855.

⁵⁷ Makau Mutua, 'The African Human Rights Court: Towards a Regional Criminal Jurisdiction?' (2020) 114 *AJIL Unbound* 91.

⁵⁸ Awaisheh, S. M. (2023). Digital Justice in Jordan: The Role of Virtual Arbitration Sessions in Modernizing the Legal System. *International Journal of Cyber Criminology*, Article 2023. <https://doi.org/10.5281/zenodo.4766609>

accessible sources, including UN reports, judicial records, NGO documentation, and academic publications. Due to the lack of access to classified materials, confidential ICC filings, or internal state communications, some aspects of prosecutorial strategy or political negotiation remain beyond analytical reach.⁵⁹

Second, the study adopts a macro-level approach, focusing on institutional and structural dimensions rather than field-based empirical data. The absence of victim testimony, interviews with practitioners, or ethnographic observation limits the capacity to capture how legal mechanisms are perceived and experienced by affected communities.² These omissions are not intended to diminish survivor agency but reflect a methodological delimitation that prioritises legal-institutional analysis.

Third, the temporal scope of the paper is restricted to developments up to early 2025. Ongoing shifts—whether in Sudan’s civil war dynamics, Syrian post-regime transitions, or ICC prosecutorial policy—may alter some of the conclusions drawn here.

Finally, while Syria and Sudan offer highly illustrative cases, they are not necessarily representative of all protracted conflict settings. Variations in regional legal culture, political economy, and transitional justice infrastructure necessitate caution in generalising findings beyond the two contexts examined.

These limitations underscore the need for further interdisciplinary research, particularly studies that integrate survivor engagement, hybrid accountability models, and regional legal innovations into the evolving architecture of global justice.

CONCLUSION

The trajectories of international criminal law (ICL) in Syria and Sudan lay bare the profound asymmetries that structure global justice. Far from being anomalies, these two contexts expose the systemic fragilities of the existing ICL regime, which continues to oscillate between moral ambition and legal impotence. Despite over two decades since the Rome Statute came into force, the promise of universal accountability remains deeply constrained by the architecture of international power, the voluntarism of state cooperation, and the selective permeability of legal institutions.

In both Syria and Sudan, what emerges is a portrait of accountability without enforcement, law without jurisdiction, and justice deferred in perpetuity. While the ICC has demonstrated normative courage in issuing high-profile indictments, its failure to secure arrests, broaden mandates, or respond to dynamic patterns of atrocity has undermined its legitimacy in the eyes of victims, civil society actors, and legal scholars alike. These failures are not merely operational—they are existential, calling into question whether the current form of international criminal justice is fit for purpose in contexts of prolonged conflict, authoritarian collapse, and geopolitical manipulation.⁶⁰

Crucially, the study has highlighted the limits of doctrinal optimism. Principles such as complementarity, universality, and command responsibility remain legally sound but practically inert unless embedded in enforceable mechanisms. Legal design, absent political will and institutional resilience, becomes a hollow framework—one that may symbolise condemnation but fails to deliver consequences. The Syrian and Sudanese experiences reveal that formal legality is insufficient without structural adaptability and jurisdictional creativity.⁶¹

This critique should not be read as a call to abandon ICL, but rather as a mandate for its reinvention. The reform proposals advanced herein—ranging from creative jurisdictional strategies to hybrid tribunals and regional legal architectures—must be understood as part of a broader project to decentralise international criminal justice, both geographically and institutionally.⁶² Shifting the centre of gravity away from The Hague and toward multi-sited, survivor-centred, and regionally embedded mechanisms is essential to overcoming the current impasse. This shift also requires confronting the ideological underpinnings of ICL: its reliance on post-conflict justice, its implicit privileging of Western legal traditions, and its neglect of non-state and community-based forms of accountability.⁶³

Moreover, the recurring deferral of justice in favour of political compromise—whether through peace deals, power-sharing arrangements, or strategic inaction—must be problematised. The oft-invoked “justice versus peace” dilemma presents a false binary; history has shown that sustainable peace is rarely achieved without some reckoning

⁵⁹ Frédéric Mégret, ‘The Problem of the Future in International Criminal Law’ (2021) 32(1) *EJIL* 59.

⁶⁰ Frédéric Mégret, ‘The Problem of the Future in International Criminal Law’ (2021) 32(1) *European Journal of International Law* 59.

⁶¹ *Ibid.*

⁶² Kamari Maxine Clarke, *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback* (Duke UP 2019).

⁶³ Makau Mutua, ‘Savages, Victims, and Saviors: The Metaphor of Human Rights’ (2001) 42(1) *Harvard International Law Journal* 201.

with mass atrocity.⁶⁴ As such, legal and diplomatic frameworks must be reimagined to mainstream justice as a condition of peace, rather than its antithesis.

Finally, the future of international criminal law hinges on its ability to learn from failure. Syria and Sudan should not be remembered solely as cautionary tales of missed opportunity, but as catalysts for a generational reckoning with the assumptions that animate ICL. The task ahead is not merely technical—it is moral, political, and conceptual.⁶⁵ It requires a jurisprudence of proximity, a politics of principle, and a legal imagination capacious enough to confront impunity in all its evolving forms.

If international criminal law is to retain its relevance, it must evolve from a reactive, state-centric model into a proactive, pluralistic, and justice-driven system—one that does not merely reflect power, but resist it.

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