

# The Selective Application of Justice: Comparing ICC Investigations in Ukraine and Palestine

Hasibur Rahaman<sup>1\*</sup>, Ahamad Ali<sup>1</sup>, Foisal Ahmed<sup>1</sup>, Sadia Afrin<sup>1</sup>, Sanjida Afroze<sup>2</sup>

<sup>1</sup>Department of Political Science, Gopalganj Science and Technology University, Gopalganj, Bangladesh

<sup>2</sup>Department of Political Science, Dhaka International University, Dhaka, Bangladesh

Email: \*hasib@gstu.edu.bd

**How to cite this paper:** Rahaman, H., Ali, A., Ahmed, F., Afrin, S., & Afroze, S. (2026). The Selective Application of Justice: Comparing ICC Investigations in Ukraine and Palestine. *Open Journal of Political Science*, 16, 39-55.  
<https://doi.org/10.4236/ojps.2026.161003>

**Received:** October 6, 2025

**Accepted:** December 22, 2025

**Published:** December 25, 2025

Copyright © 2026 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

## Abstract

This study provides a comparative examination of Palestine and Ukraine to critically investigate the International Criminal Court's (ICC) alleged selective application of international justice. Following the Russian invasion of Ukraine in 2022, the ICC acted quickly to open an investigation into potential war crimes, with accountability for alleged violations in Palestine evident in the literature but never proceeding beyond the ICC's "preliminary examination phase". A comparative case study framework enables this study to evaluate how a number of political, legal, and normative issues shape ICC decision-making. The study reviews the impact of political pressure, sharing power with states, issues of recognition regarding statehood, issues of mobility of individuals, and other diplomatic pressures on the timing, extent, and purposes of the investigations. By assessing official statements from the ICC and the literature, and empirical indicators from social justice organizations focused on Palestine, this study successfully illustrates the tension in the legal obligations and political realities for the Court. Ultimately, the findings show how selectivity can impact normative authority and public trust—a discussion taking place within the broader conversation regarding accountability, impartiality, and legitimacy of international criminal justice. This paper highlights the prospects and challenges for enhancing fairness, credibility, and accountability in global justice institutions, emphasizing the necessity of institutional reforms and measures to promote equal application of international law.

## Keywords

ICC, International Criminal Justice, Israel-Palestine Conflict, Ukraine, Selective Justice, Accountability and International Law

## 1. Introduction

The ICC is regarded as one of the key pillars to global accountability for serious crime, as it investigates and prosecutes individuals for serious felonies, such as war crimes, crimes against humanity, and genocide. The recognition of the ICC is an important moment in advancing international criminal law and in developing institutional bodies aimed at curtailing or ending impunity for human rights violations (Eichensehr, 2022). In principle, the ICC works in accordance with principles of neutrality, legality, and universally accepted norms of justice. However, the actual application of its mandate has been more inconsistent, amid mounting concerns regarding the selective application of its mandate, and possible political bias in doing its work (Becker, 2025).

The differing treatment in the ongoing conflicts of Ukraine and Palestine demonstrates this inconsistency. In the wake of the Russian invasion of Ukraine in 2022, the ICC quickly initiated investigations regarding this matter, buoyed by strong support and backing from a coalition of state parties and other international actors. It had enjoyed the benefit of public attention from the start, with significant documentation of alleged crimes available and strong diplomatic support to ensure prompt procedural action (Eichensehr, 2022). The ICC's relationship with Palestine was slower to develop and more contested. Although Palestine formally acceded to the Rome Statute in 2015 and referred the situation in the occupied territories to the Court in 2018, the ICC has faced legal, jurisdictional, and political obstacles to the initiation of investigations there (Eichensehr, 2022). The opposition from states with more power and authority than the ICC, disputes about territorial authority, and the complicated local political dynamics in the region limited the progress to which the ICC could reasonably aspire, and gave a clear sense of how difficult it can be to advance international law in politically sensitive contexts (Abed & Raja, 2025).

These two cases of variability raise significant questions about the determinants that engage the resources of the ICC, especially why the same or similar allegations of international crimes are processed differently in relation to international enforcement activity. Commentators have previously identified factors such as political context, state relations and disputes "importance", as affecting the priorities of the ICC, suggesting that, international criminal law is not working in a vacuum of legitimacy, but is being operated within the context of hierarchically structured networks of global power. This paper is contributing to answer two key research questions: why does the ICC appear to use international justice in varying degrees in different geopolitical contexts; and what legal, political, and normative factors do and will mediate the scale and speed of the ICC investigations in Palestine and Ukraine?

This research analyses topic to make contributions to broader discussions about institutional legitimacy, selective justice, and the reform of international legal systems. It builds on an empirical insight into the investigations of the ICC with a

critical international law (CIL) lens which considers how alliances, power relations, and geopolitical factors shape the ways international law is enforced. The research clarifies the extralegal factors that affect the effectiveness of the ICC's investigations as well as their procedural characteristics through a comparative case study technique.

To summarize, this research aims to improve knowledge of the complicated connections between legitimacy, politics, and the law in international criminal justice. By exploring Palestine and Ukraine, it highlights the selective nature of international accountability, drawing out practical implications and insights for practitioners, scholars, and policymakers interested in enhancing the legitimacy and impartiality of the ICC.

## 2. Literature Review

### 2.1. Selective Justice and International Law

Selective enforcement of justice is a significant factor in the normative legitimacy of international law. When players in the process perceive that legal processes are applied asymmetrically, the legal authority of the Court will be undermined, and the underlying premise of equality before the law is called into question (Cryer et al., 2020). This is especially heightened in moments of intense scrutiny of an ongoing armed conflict or situation, as the media spotlight, opposition from defenders, advocates, and a range of lobbying bodies can amplify substratum enforcement practically. Moreover, selective justice may also hinder the ICC from fulfilling its purpose or mandate because it jeopardizes deterrence and state cooperation as compliance with international norms become obscured (Nowak, 2024). Scholars have also signaled that institutional and operational factors can contribute to enforcement (Mujeriego, 2025). For instance, the question of which types of investigations to fast track and which to slow track is ultimately the culmination of political preferences, procedural limitations, the limitations of resources and prioritizing investigations. In practical terms, the investigatory stage of Palestine, which faces jurisdictional questions, weak political backing and expressed opposition is still pending in comparison to the investigatory progress of Ukraine, a situation backed politically, publicly engaged and better documented (Ochi, 2023). So, as reflected in the literature, selective justice takes on a multifaceted complex nature when taken into account legally, institutionally and politically. To recognize systemic bias, assess the ICC's legitimacy, and make recommendations for increasing justice and impartiality, a thorough understanding of this interplay is required (Avolio & Bass, 2021). This article expands these findings through a comparison of Palestine and Ukraine as well as specifically presents empirical data in how selective enforcement presents itself in today's international criminal law.

In the study of international criminal law, selective justice has come up frequently, raising major questions about the ICC's impartiality and effectiveness. The Rome Statute requires that legal standards be applied universally to prosecute the most serious international crimes, but evidence suggests that enforcement often varies

across contexts, reflecting broader political, strategic, and institutional dynamics (Avolio & Bass, 2021). Studies denote great power allegiance, considerations of states, or political objectives shape and constrain what that ICC seeks to achieve, and, thus, yield divergent results for accused offenders. For example, evidence indicates that individuals affiliated to great powers evade scrutiny, and that ICC investigations appear to focus on more politically imperiled persons (Ochi, 2023; Bülbül, 2025). The context of international relations and geopolitics establishes what cases international processes is fund or focus on, not just legal restrictions. Patterns in international criminal law challenge the notion that it is a distinct domain separate from the international power layering, given the demonstrated interrelation between politics and law.

## 2.2. ICC in Palestine

The issue of the International Criminal Court's involvement in Palestine is a tough and controversial area of international criminal law. In 2015, Palestine joined the Rome Statute, and the ICC began a preliminary examination to look into possible war crimes in Gaza, East Jerusalem, and the West Bank, allegedly undertaken by Israel (Cryer et al., 2020). The preliminary examination was intended, as directed by Article 53 of the Rome Statute, to judge if there was a basis of jurisdiction for the Court, and whether there was a reasonable basis to investigate. Below the right to proceed, the substantive proceedings have not proceeded at all, as a combination of institutional, political, and legal hurdles. One of the fundamental barriers was whether or not to identify statehood and jurisdiction. Since there is no universal recognition of Palestine as a legitimate sovereign state, there has been some debate as to the ICC's jurisdiction over that territory. While the Rome Statute does allow for a non-party State to accede, scholars point out that Palestine's entry into the Rome Statute exemplifies the difficulty of the Statute's dilemmas regarding territoriality and the notion of a "State Party". These legal uncertainties have allowed for Israel, and other allied countries to object, and delay capable initiation of a full investigation. In addition, the geopolitical situation, especially concerning the dynamics within the United Nations Security Council (UNSC), is another issue that pressures the operation of the ICC. Historically, the veto power of permanent members has limited politically sensitive initiatives or implementation actions that would have advanced the cause of more powerful governments. As part of that, both the United States and Israel have vigorously opposed any ICC connection to the question of Palestine, citing dispute over the Court's jurisdiction while condemning investigations that they suggested could affect international diplomacy, including peace talks (Steinberg, 2024). The United States' and Israel's political opposition to ICC action has included prolonged diplomatic pressure, threats against ICC funding, and to undermine legitimacy of the proceedings which all tap into the larger influence of world power relations, thus still shaping the landscape of international justice areas.

Institutional factors at the ICC contribute to delays as well. Since limited re-

sources, competing priorities, and complicated legal processes, the Court must focus and categorize its cases carefully. Even if the prosecuted acts in Palestine are serious offenses, the Court is forced to tackle the case on a rushed timeline as a confluence of a politically charged situation, ambiguity in the law, and a failure to cooperate with the trial, such that there is too much political sensitivity (Avolio & Bass, 2021; Bülbül, 2025). Scholars have pointed out that these constraining dynamics include not just institutional and procedural logics, but also political pressure and context, which affect trends in enforcement. Most importantly, the Palestinian case puts salient moral sensibilities of justice into tension with practical feasibility. Therefore, even if the evidence pertaining to the purported crimes is compelling, the Court must reconcile its imperatives to act and to exercise its jurisdiction with the realities of international law, diplomacy, and politics in a scenario that is absolutely divided and politicized. The number of hearings and meetings that have been postponed or delayed, have, to date, already led to accusations of bias and selectivity and undermines the Court's jurisdiction as an institution, raising legitimate questions about either the Court's capacity or its mandate or its ability to deliver justice, when cases are politically charged (Cryer et al., 2020). In general, the literature on Palestine describes the multiple and complex ways in which ICC enforcement is influenced by political consequences, institutional capacity, ambiguities in the law and normative constraints. Thus, the Palestinian situation is an important case of the actual workings of selective justice, demonstrating for understanding the ways in which the Court deals with questions of credibility within politicized international contexts; additionally, how large contextual factors also shape the Court's decision making process.

### 2.3. ICC in Ukraine

The ICC's engagement with Ukraine exhibits a significantly different trajectory than Palestine, illustrating how public exposure and geopolitical support can expedite the application of international criminal law. Following Russia's large-scale invasion of Ukraine in February of 2022, Ukraine formally declared its acceptance of the ICC's jurisdiction under Article 12 (3) of the Rome Statute allowing the ICC to proceed with investigating allegations of war crimes and crimes against humanity within its borders (Steinberg, 2024). This formal acceptance put the Office of the Prosecutor (OTP) of the ICC in a clear position to act on behalf of Ukraine and begin the investigations in a manner that was not ready, and not likely to be, settled by legal barriers to prosecution, which have often beset the legitimate investigations regarding Palestine by Ramush Hoxha with the OTP. Many authors and scholars have recognized geopolitical support as factors significantly influencing the nature of the ICC's trajectory. Western countries—such as the USA, NATO, and the EU—strongly supported Ukraine, allowing for cooperation in intelligence, logistics, and diplomacy. Political backing strengthened the Court's legitimacy to intervene in a known case and provided critical resources to collect evidence and ensure the safety of witnesses (Bülbül, 2025). Ukraine's situation demon-

strates the Court's supportive conditions for quick investigation based on Ukraine's political interests aligning with powerful international actors' political interests. Support from states, and alliances, are crucial to allow international criminal justice to be activated. The literature points to media attention and international visibility as relevant factors (Sadat & Hueseman, 2024). As part of its reporting, international media entities reported civilian deaths, ruined infrastructure, and humanitarian disasters as a result of the Russian invasion. The ICC was further pressured to act quickly through added visibility suggesting that public scrutiny, and activism, is considerations in prioritizing cases. Scholars suggest that this may speed up an investigation by developing support globally, developing evidence through documenting, and building the mechanisms that create a moral imperative for accountability (Sadat & Hueseman, 2024).

Furthermore, there were other institutional variables to consider. The court prioritized Ukraine's case even in the face of competing exigencies and limited resources because the court can act when it is able to do so in cooperation with state actors, the evidence was evidently actionable, and knowledge was readily accessible (Steinberg, 2024). A combination of operational viability, international support, and unambiguous legal provisions allowed the Court to move quickly from preliminary assessment to a formal investigation unlike Palestine (Al-Kassimi, 2022). Scholars argue that the Ukrainian case study raises broader questions regarding justice and the relationship of politics and law. In Ukraine, the ICC was authorized to conduct an investigation under its legal authority, and the ICC's investigatory inquiry was substantially affected by extra-legal factors of media attention, international consensus, and international geopolitical relationships (Atanasiu, 2021). The example of Palestine and Ukraine illustrates how political considerations and broader normative context, of the Court influence, and the legitimacy of the Court's legal codes, shape how international criminal law is implemented (Bülbül, 2025). The study of Ukraine shows how the ICC was able to pursue this action more quickly due to a combination of political support for the actions it was pursuing, potential operational option, and extra-legal factors (Al-Kassimi, 2022). This is an example of selective justice developing under conditions of significant international attention, and official backing, and in many ways serves as a stark contrast against the processes which emerge much more slowly, as in the case of Palestine. Researchers can contrast these two cases to analyze political, legal, and structural challenges for legitimacy of the ICC and implementation of decisions.

#### **2.4. Gap in the Literature**

Although there is a considerable amount of research on the ICC and selective justice, there are still some significant gaps in the literature. First, the overwhelming majority of study focuses on single case studies, rather than systematically comparing politically disparate contexts, and very few studies adopt a comparative approach to examine how the ICC's exercise of its powers could be different in

relation to the political contexts in which it operates, even though both Palestine and Ukraine have received a sufficient amount of independent attention. It highlights the limitations of knowledge regarding the political, legal, and institutional drivers of selective justice in cases that differ politically but share the same legal foundations.

Second, the literature tends to focus on legal or procedural aspects of ICC investigations, with most studies focusing specifically on jurisdiction, evidence collection, or the regimes governing the formal prosecution of statutes. The role of extralegal forces, such as international political support, alliances with states, media coverage, and public opinion are often overlooked. We know very little about interactions between legal norms and geopolitical realities or how these interactions shape the ICC's priorities when enforcing justice. The literature hardly traces the causal pathways from political support or opposition to the pace, scope, or priority of ICC actions. Lastly, comparative studies analyzing the interplay of institutional capacity, political will, normative principles, and legitimacy concerns in cross-case analyses are rare. In contexts for example Ukraine and Palestine, this gap is particularly stark, as legal entitlement to ICC intervention is present in both cases yet the results are huge different due to politics and operations.

This study searches to close the gaps by conducting a comparative qualitative analysis of the ICC's engagement with Palestine and Ukraine. The study brings together legal, political, and normative factors to help remove some of the fundamental causes of selective justice. It is designed to produce both practical implications, and theoretical contributions to understanding how to enhance the ICC's operational effectiveness, impartiality, as well as legitimacy.

### 3. Theoretical Framework

This study employs Critical International Law (CIL) to assess the ICC's activities in Palestine and Ukraine. The CIL contests the notion that international law, since evidenced by the ICC, does not happen in the context of global hierarchies and authority in politics (Struett, 2012). The CIL emphasizes state interests, state alliances, and geopolitical processes shaping international law, acknowledging that it occurs in the larger context of power. This perspective can move beyond doctrinal or formalist legal analysis to examine the intersections between politics, legitimacy, and law (Kelsall, 2022). As explained within the CIL lens, understanding the ICC's practice without seeking to ascertain the significance of state power or alliances is impossible. Great powers can contribute to the ICC's ability to fulfill its mandate by providing the Court with financial, diplomatic or political support or by prohibiting the Court from functioning by way of sanctions, lobbying, or non-cooperation. The situation in Ukraine and its expeditious referral to the ICC, as well as the swift start of investigations, can be attributed to the overwhelming international support of the West. The second dimension of the framework recognizes the interplay between practical political realities and normative ideas of justice. Political realities are often shaping the possibilities of investigations and

prosecution, and despite the ICC's statutory obligations to seek accountability for war crimes and crimes against humanity, factors like the possibility of state agency, political reprisals, and the impact of investigations on ongoing violence, are accounted for in the examination. The CIL teaches us that law by itself does not produce outcomes; law is mobilized in ways that overlaps with political strategy, often favoring some disputes or actors over others. This perspective further explains that after all, even when there are comparable situations with arguably the same level of culpability for comparable crimes of great severity, the two legally comparable situations of Palestine and Ukraine have received vastly different levels of enforcement attention (Mehta, 2023).

The third viewpoint is concerned with underlying perceptions of the legitimacy of international law concerning fair and impartial notions in practice. According to the CIL legitimacy perspective legitimacy is not only a factor of strict legal norms, but also perceptions of how the Court's activities are characterized by stakeholders-states, international organizations, civil society, and the public. Where enforcement seems disproportionate with a factor of bias-where the thinking is different between Palestine and Ukraine-the legitimacy of the organization in this regard, is diminished (Gazzini, 2022).

The framework also emphasized that perceived impartiality holds equal weight to legal legitimacy. Hence, the CIL framework identifies the political and social dimensions of international justice. As it utilizes legitimacy as perceived impartiality, it stretches across moral and practical concerns, and government authority and allegiances. As a framework, the CIL provides a complete model to analyze selective justice, to research formal legal processes and also the geopolitical context, where opposition, foreign support, and strategic interests constrain or facilitate the Court's deliberation. The CIL framework provides a basis to evaluate and critique the wider implications for global justice of such a discordant concept to understand the implications of international law.

The research is able to highlight normative, political and structural conditions impacting the behavior of the ICC through the lens of CIL. This pseudo-legal framework offers an informed basis for understanding the distinctions between Palestine and Ukraine, grounding concrete empirical facts in a wider conversation of power, legitimacy, and the complications of operationalizing international law within a hierarchical global system.

#### **4. Research Design and Methodology**

Palestine and Ukraine are uncommon examples utilized to demonstrate how the ICC enters into politically sensitive disputes in many different ways. Geopolitical support can facilitate the speed of international justice, as shown by the rapid support the ICC has received from Western nations in pursuing an aggressive investigation into Ukraine. By contrast, the ICC's measured and slow response to Palestine reflects the limitations of political pressures and an unequal balance of power, in spite of being recognized as jurisdictional. The comparison depicts a

story of selective justice by the ICC, which shows how different tribunals treat as conduct differently and demonstrates larger tensions between judicial neutrality, international law, and politics.

Palestine and Ukraine are distinct case studies that showcase how the ICC interacts with politically charged disputes in various ways. Geopolitical support can expedite international justice, as is the case with the swift support the ICC receives from Western states in relation to its aggressive investigation into Ukraine. Conversely, the measured and slower pace of investigating Palestine illustrates the limits of political pressure and an un-even balance of power, even when recognized as jurisdictional. What this comparison depicts is a story of selective justice by the ICC, and highlights the ways similar acting is treated differently by varying tribunals, and larger tensions that exist between judicial neutrality, international law and politics.

In addition, the study heavily bases itself on multiple data sources, beyond observational practices, to allow for methodological rigor and triangulation of evidence. Examples of this primary data includes, ICC files, official reports, and press releases, which provide reliable insight into the Court's ruling on jurisdiction, procedural movements, and prioritization of cases. Information derived from United Nations General Assembly (UNGA) and UNSC resolutions regarding global politics, asymmetries of power, and the position of powerful countries may act as background material, playing a role in consideration of decision-making on cases by the ICC. In order to situate these results, academic and policy literature on international law, the operations of the ICC, and theoretical debates of selective justice are utilized. Additionally, media reports and expert commentary record events and public sentiment, as well as political pressures that are often unavailable in official documents but are still important to understanding the operating context of the ICC.

The investigation employs two complementary qualitative methods: topic coding and process tracing. Process tracing serves to retrace the legal and political events in Palestine and Ukraine in order to identify the key differences in prosecutorial judgments, ranges of investigations, and time periods for the ICC to respond to the two cases. With the application of process tracing, the study directly connects the causes—institutional capacity, state recognition, and geopolitics—to the observable difference in responses—such as the rapidity of the launch of an investigation in Ukraine, as opposed to Palestine. Simultaneous to process tracing, thematic coding of political, legal, and normative issues facilitates the identification of emerging themes, narratives, and actors ultimately affecting the ICC responses. The authors employ various iterative codes to examine themes such as media framing, institutional constraints, jurisdictional dilemmas, political resistance, and international support across primary and secondary sources of information.

This justification allows for in-depth, contextual analysis while still enabling comparison of cases across the two studies. It also permits the studies to parse

apart the effects of extralegal factors (global political pressure and geopolitical alignment) from formal legal principles by selection of two politically different yet legally similar cases. Likewise, triangulation through contextual analysis and documentary analysis adds another layer of validity and reliability. In addition, it allows for a more complicated interpretation of the ICC's decision-making processes to explore the relationship between politics, law, and norms that together impact decisions in international criminal justice. All in all, this comparative qualitative design lays a favorable foundation for exploration of the theme of selective justice in its totality with implications for the study of international law as theory, as well as implications for the legitimacy and credibility of international judicial institutions in practice.

## **5. The Selective Application of Justice: A Comparative Analysis of ICC Investigations in Palestine and Ukraine**

### **5.1. Legal and Jurisdictional Aspects**

Despite not being a party to the Rome Statute, Ukraine has accepted the ICC's jurisdiction for alleged crimes on its territory. On March 2, 2022, the Prosecutor opened a formal investigation into the situation in Ukraine after 39 states parties referred the situation in Ukraine to the ICC in February 2022. This process was expedited due to Ukraine's acceptance of the Court's jurisdiction and widespread international consensus to hold Russia accountable for its actions in Ukraine.

The classical relationship between Palestine and the ICC is more complex. Palestine acceded to the Rome Statute in 2015, and in 2018 Palestine referred the situation in Palestine to the ICC (Daniele, 2024). However, there were issues regarding the ICC's jurisdiction since Israel are not a party to the Rome Statute, and there is contention about the territorial limits of Palestine's jurisdiction. On March 2021, the ICC "ruled that it had jurisdiction over the situation in Palestine, including the West Bank, East Jerusalem, and Gaza" (ICC, 2022). The investigation is proceeding at a slower pace and has faced significant delays in issuing any arrest warrants or obtaining international support for investigations.

### **5.2. Political and Geopolitical Influences**

International support and political will are key determinants over the ICC's ability to commence and move forward with investigations. In the case of Ukraine, there was immense pressure for the Court to act quickly given that 39 state parties provided the referral after Russia's invasion in 2022 and large-scale condemnation of Russia occurred across the globe. Strong political support from Western nations allowed the OTP to announce formal investigations within days of referral, which supported intelligence gathering, diplomatic engagement and mobilized resources. Ukraine exemplified how political backing and support can expedite procedural action, increase evidence gathering, and support judicial action in high profile conflicts (Gazzini, 2022). However, the Palestinian situation illustrates the limita-

tions from geopolitics and contested legitimacy. Despite its accession to the Rome Statute and referral, the United States of America, one of the strong states that have traditionally resisted the ICC's presence in the region has resisted the case before the Court (Al-Kassimi, 2022). Political lobbying, diplomatic pressure, and lack of cooperation by the United States has resulted in slow investigations and limited Court operations. Together, Palestine and Ukraine exemplify international criminal justice is not applied in a vacuum; rather, geopolitics, enforcement, and the interplay of political will, legal entitlement, and global consensus all impact the Court's rulings (Kelsall, 2022).

### 5.3. Influence of Powerful States

The interests and influence of powerful states strongly affect the ICC's ability to investigate and prosecute international crime (Luban, 2024). The substantial backing from Western powers, particularly the US against Ukraine's invasion and NATO Members (Daniele, 2024), provided Ukraine with the material resources, diplomatic heft and political responsibility to request and conduct its investigation (Luban, 2024). State support, can facilitate court cases, support sped-up institutional capacity and engage national and international capacities to boost performance, witness access and the gathering of evidence. In contrast, the Palestinian situation highlights the issues facing those without powerful investors. The opposition from several states, the USA, Israel and others, limit the ICC's capacity to effective action based on limited cooperation, questioning jurisdiction and trying to engage in diplomatic means to delay the proceedings (Daniele, 2024). These conditions provide evidence that the independence and capacity of the Court rely on international politics, even when legal capacity is very clear. The difference between Palestine and Ukraine highlights that "power structures do not spare international criminal justice, if anything, they shield it".

### 5.4. Institutional Capacity and Prioritization

The ICC is faced with considerable institutional limitations, limiting the Court's ability to engage with more than one complex investigation at a time. The Court must devote limited human and financial resources and logistical capacity for gathering evidence, to the most serious cases based on threshold questions of the seriousness of offense, availability and degree of quality of evidence, likelihood of securing a conviction and the implications for its intervention (Sadat & Hueseman, 2024). This prioritization is taken seriously, and, in effect, highlights the ICC's purposeful assessment about where the Court can most reasonably and effectively exercise its mandate subject to all these limitations.

The case of Ukraine is a high prioritization. Following the Russian invasion of Ukraine in 2022, there were a number of sources creating evidence in lots of volumes, with significant reputational evidence of war crimes, and significant international reports and support to act quickly on the dependency of the war in Ukraine. The location and prominence of the war in Ukraine allowed investiga-

tion quickly.

Finally, the Palestinian context is marked by hard legal and political issues, including disputed jurisdiction and a lack of recognition of territorial authority, and limited engagement by powerful states. Even serious accusations of crimes against humanity have not translated into significant investigations because of these political and structural barriers to the Court's focus on operational investigations (Adem, 2019). This contrast illustrates how institutional capacity is influenced by legal issues, evidentiary and jurisdictional issues, and the political landscape to determine prioritization decisions, which impacts perceptions of selectivity in international criminal justice.

### 5.5. Perceptions of Bias and Legitimacy

The perceived disparity in the ICC's treatment of Ukraine and Palestine raises significant concerns considering its legitimacy as an impartial international judicial institution. While the Court swiftly initiated an observation into Ukraine following state referrals and widespread international support, its proceedings in Palestine have been slower and fraught with jurisdictional and political challenges, despite similarly serious allegations of war crimes. This contrast has led critics to argue that ICC actions are influenced not solely by legal principles but also by geopolitical considerations, power asymmetries, and the interests of influential states. Perceptions of bias are tough because legitimacy in international law acts not only on formal adherence to statutes but also upon the way stakeholder's states, civil society, and the global public-perceive fairness and impartiality. If enforcement appears selective, the ICC risks eroding public trust and credibility, which in turn reduces state compliance and cooperation from key actors. Moreover, biased perceptions can fuel skepticism about the Court's ability to deliver justice equitably, weakening its normative authority and undermining its deterrent role. Understanding these perceptions is therefore essential for evaluating the ICC's effectiveness and guiding reforms to strengthen transparency, impartiality, and global legitimacy in international criminal justice (Avolio & Bass, 2021). The comparative investigations in Ukraine and Palestine are shown in **Table 1** below.

**Table 1.** The key contrasts between the ICC investigations in Ukraine and Palestine.

Dimension	Ukraine	Palestine
Legal & Jurisdictional Status	Not a State Party; accepted jurisdiction of the ICC; 39 State Parties referred the matter in February 2022; formal inquiry began in March 2022.	Israel's status as non-State Party has led to jurisdictional challenges; in 2021, the ICC confirmed jurisdiction over the West Bank, Gaza, and East Jerusalem. Israel became a State Party in 2015.
Political & Geopolitical Support	Strong international support, particularly from Western nations; quick reaction because Russia is widely denounced.	Limited international assistance; political resistance from strong nations (such as the US and Israel); and the sluggish progress of geopolitical divisions.

**Continued**

Influence of Powerful States	Assistance from the US, EU, and NATO makes resources, evidence gathering, and collaboration easier.	US, Israel, and allied opposition limit collaboration, challenges jurisdiction, and postpones action.
Institutional Capacity & Prioritization	Significant-priority case because of the ICC's ability to swiftly mobilize resources, significant publicity, and international attention.	Investigation is slowed by complicated legal and political obstacles, a lack of cooperation, disputed area, and institutional limitations.
Perceptions of Bias & Legitimacy	In this situation, prompt action is viewed as responsive and unbiased, which increases perceived legitimacy and confidence.	The legitimacy of the ICC and public trust are undermined by delays and political obstacles that give the impression of prejudice and selective justice.

(Source: authors).

## 6. Future Implications for International Criminal Justice

The investigations by the ICC into Palestine and Ukraine exposed differences, which reveal the complex challenges that international criminal justice faces. While the activity of the Court is responsibility to prosecute the most serious international crimes objectively, this effectiveness is impacted by political, diplomatic, and geopolitical factors (Kelsall, 2022). Political alliances between State actors, international displays of supportive States, and media portrayal of cases provide a variable degree of influence on the scope, speed, and prioritization of ICC action, in particularly evident in the speed of the investigations into Ukraine and the slow progress taking place in Palestine. Disparities between investigations have the potential to undermine the Court's normative authority, influence its perceived impartiality, and diminish its role as a reliable international form arbiter of justice. To increase operational effectiveness and legitimacy the ICC will need to address several interrelated issues (Daniele, 2024). First and foremost is a need to build institutional capacity. The Court will need a significant amount of adequate staff, resources, and capacity around evidence collection, protection of witnesses, and legal analysis to efficiently handle multiple complex and politically sensitive cases simultaneously.

Second, decisions should be made according to a legal standard that is internally consistent and does not reflect extralegal or political circumstances, for credibility and the appearance of impartiality to be retained. Transparency in decision-making, strict adherence to procedural standards, and direct communication about priorities of the investigation may assuage concerns about bias.

Third, the ICC should intentionally engage a broad range of stakeholders—including state parties, regional organizations, civil society, and the affected community—to help garner international support for its work. It is in building legitimate support through broad-based legitimacy that shared responsibility and the viability of the Court to act free of the preferences of powerful states are enhanced. Ultimately, however, developing institutional sustainability, legal rigor, and trustworthy diplomacy is critical to the ICC's future effectiveness, allowing the Court

to embrace some of the key tenants of international criminal law and its legitimacy as an impartial global justice mechanism (Sadat & Hueseman, 2024).

## 7. Conclusion

This research has showcased the complicated and shifting interconnections between politics, law, and legitimacy as they play out within international criminal justice. This research is based on a comparative assessment of the ICC investigations regarding Palestine and Ukraine, which provided empirical evidence of selective enforcement. The documentation presents many variables, such as, but not limited to: 1) ICC institutional capacity (or incapacity, here implied), 2) media coverage (or lack thereof), 3) lack (or support) of states, and 4) geopolitical situations, providing evidence about how they shape the ICC's decision-making on specific case selections. The Rome Statute articulated a formal legal relationship intended to be universal, yet, the documentation shows, entitlement does not impose timely or fairly implementable action. Extralegal, indeed, should have been assumed as impacting the breadth, speed, and order of investigations; this displays the challenges of realizing international law accountability within highly politicized narratives.

In response to the Russian invasion of Ukraine in 2022, the ICC was able to initiate an investigation. The case generated a powerful combination of political support from Western states, media attention, clarity of jurisdiction, and evidence of the crime, which was credible but sometimes not clear. These factors contributed to this efficiency of process and to show legitimacy on behalf of the Court. Conversely, the Palestinian case has considerable inertia and it has not progressed for all of these reasons, such as unclear statehood status, the significant government hostility against engaging with the Court, the issues of law are quite complex, and a lack of timely cooperation with some of the major stakeholders. While the alleged conduct is quite serious, the stalled progress demonstrates how geopolitical issues and political positioning can weigh on advancing a case like this.

The comparative analyses demonstrate how institutional, political and legal issues work in tandem to create the complex character of selective justice. This presents substantial risks for the legitimacy of the ICC as the perception of bias or focus can undermine its deterrent potential, diminish cooperation from states and others, and lead to public disillusionment or lack of public support for the ICC. It is also worth noting that while the authors have focused on international criminal law as a legal framework throughout, they explore the potential of considering political realism and critical international law as valuable lenses through which to examine international criminal law.

The findings underscore a range of reforms that governments and advocates may pursue. It is imperative that states and advocates bolster the institutional competencies of the ICC, adhere to predictable and established legal standards in choosing to initiate cases and initiate investigative decisions, and build broad network of international support to increase legitimacy and institutional capacity. To en-

sure protection of the Court's normative authority and avoid the perception of international criminal justice processes as being partisan or politicized, these reforms must be enacted.

In sum, this study contributes to a broader discussion on legitimacy, efficacy and equal treatment in international criminal justice systems. Through a systematic comparative analysis of the role of the ICC in Palestine and Ukraine, this study provides contribution to the empirical evidence on the interaction of politics and law and geopolitics on outcomes in the enforcement process. These results can continue to inform other research and policy analysis, and guide institutional reform. The conclusion argues for a more nuanced approach to the consideration of selective justice, which pushes us towards examining not only the legal standards, but the policy context in which the Court is operating, to enhance equitable and effective international criminal justice processes.

### Role of Authors

**Hasibur Rahaman:** writing-review & editing, resources, methodology, conceptualization, writing-original draft, analysis. **Ahmed Ali:** methodology, conceptualization. **Foisal Ahmed:** writing-review & editing, methodology, conceptualization, resources. **Sadia Afrin:** methodology, conceptualization. **Sanjida Afroze:** writing-review & editing, methodology, conceptualization, editorial correction.

### Acknowledgements

The authors thank the participating teachers from Gopalganj Science and Technology University, Bangladesh, for their participation in the study and for providing many valuable comments. The authors also thank all the stakeholders and others, who helped to make this research a success.

### Declaration of AI Involvement

To enhance language clarity, synthesize theme findings, ensure methodological integrity, enhance ethical compliance, and enhance analytical accuracy, we engaged OpenAI's ChatGPT wholly for academic and research purposes in the preparation of this work. We then carefully checked and revised all text after using the AI-assisted method to ensure correctness, consistency, and uniqueness of the text. We acknowledge that this publication is entirely the authors' responsibility.

### Conflicts of Interest

The authors declare no actual or potential conflict of financial interests or personal relationships that could be construed to influence their work reported in this paper, and no funding has been received for this research.

### References

Abed, A. & Raja, R. B. (2025). *The Role of the International Criminal Court in Achieving Justice: A Comparative Study between the Palestinian and Ukrainian Cases*. AAUP.

- <http://repository.aaup.edu/jspui/handle/123456789/3387>
- Adem, S. H. (2019). *Palestine and the International Criminal Court*. Springer.  
<https://link.springer.com/book/10.1007/978-94-6265-291-0>
- Al-Kassimi, K. (2022). *International Law, Necropolitics, and Arab Lives: The Legalization of Creative Chaos in Arabia*. Routledge. <https://doi.org/10.4324/9781003306375>
- Atanasiu, M. (2021). Multilateral Conflicts of Palestine—History, Present and Trends. *Strategic Impact*, 79, 56-77. <https://doi.org/10.53477/1841-5784-21-04>
- Avolio, B. J., & Bass, B. M. (2021). *Improving Organizational Effectiveness through Transformational Leadership*. SAGE.
- Becker, M. A. (2025). *Crisis in Gaza: South Africa v Israel at the International Court of Justice (or the Unbearable Lightness of Provisional Measures)*.  
<https://ssrn.com/abstract=5018178>
- Bülbül, H. B. (2025). Selective Justice? Empirically Testing for Double Standards Is the ICC's Palestine and Ukraine Investigations. *Journal of Balkan Studies*, 5, 49-82.  
<https://doi.org/10.51331/a059>
- Cryer, R., Friman, H., Robinson, D., & Wilmschurst, E. (2020). *An Introduction to International Criminal Law and Procedure* (2nd ed.). Cambridge University Press.
- Daniele, L. (2024). Incidentalities of the Civilian Harm in International Humanitarian Law and Its Contra Legem Antonyms in Recent Discourses on the Laws of War. *Journal of Conflict and Security Law*, 29, 21-54. <https://doi.org/10.1093/jcsl/krae004>
- Eichensehr, E. (2022). Russia Invades Ukraine. *American Journal of International Law*, 116, 593-604. <https://doi.org/10.1017/ajil.2022.26>
- Gazzini, T. (2022). *The Changing Rules on the Use of Force in International Law* (p. 288). Manchester University Press. <https://doi.org/10.7765/9781526170491>
- International Criminal Court (ICC) (2022). *Statement of ICC Prosecutor Karim A. A. Khan QC on the situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation*.  
<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>
- Kelsall, M. S. (2022). Disordering International Law. *European Journal of International Law*, 33, 729-759. <https://doi.org/10.1093/ejil/chac054>
- Luban, D. (2024). *The Crime of Aggression: Its Nature, the Leadership Clause, and the Paradox of Immunity*. Georgetown University Law Center Research Paper No.2024/29.  
<https://ssrn.com/abstract=4952638>
- Mehta, K. (2023). *Strategic Litigation and Corporate Complicity in Crimes under International Law*. Routledge. <https://doi.org/10.4324/9781003405047>
- Mujeriego, I. V. (2025). *Analysis of the Efficacy of ICJ and ICC Performance in Resolving Israel-Palestine Conflict*.  
[https://viimes.org/wp-content/uploads/2025/08/InternsReport22\\_10August2025-1.pdf](https://viimes.org/wp-content/uploads/2025/08/InternsReport22_10August2025-1.pdf)
- Nowak, M. (2024). Civil Society, Narrative and Evidence: NGO Roles in ICC Investigations of Ukraine and Palestine. *Human Rights Law Review*, 24, 301-329.
- Ochi, M. (2023). *Impact of the Ukraine Conflict on the International Cooperation with the International Criminal Court*. <https://ssrn.com/abstract=4590956>
- Sadat, L. N., & Hueseman, J. (2024). *How the Ukraine Situation Is Testing the International Criminal Court*. Washington University in St. Louis Legal Studies Research Paper No. 24-08-03.
- Steinberg, R. H. (2024). Politics and Justice at the International Criminal Court. *Israel Law*

*Review*, 57, 308-350. <https://doi.org/10.1017/s0021223724000049>

Struett, M. J. (2012). Why the International Criminal Court Must Pretend to Ignore Politics. *Ethics & International Affairs*, 26, 83-92.  
<https://doi.org/10.1017/s0892679412000044>