



THE ROLE AND CHALLENGES OF INTERNATIONAL CRIMINAL COURT AT A RECENT WAR-TIMES

N. Jaswanth Rao

**B.A LLB, LL.M, (Ph.D) Research Scholar, School of Law,
Raffles University Neemrana Rajasthan.**

ABSTRACT :

International Criminal Court (ICC) is been governed by an international treaty called 'THE ROME STATUTE', the ICC is the world's first permanent international criminal court. It investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression.

KEYWORDS : *International Criminal Court (ICC), genocide, war crimes, crimes against humanity.*



INTRODUCTION :

Through international criminal justice, ICC aims to hold those responsible for their crimes and to help prevent these crimes from happening again. India is not a party to Rome Statute along with US and China. Recently Malaysia has ratified the Rome Statute and became the 124 State party to the ICC. History On 17 July, 1998 Rome Statute was adopted by 120 States in direction of creating a more just world.

On 1 July, 2002 Rome Statute took effect upon ratification by 60 states, officially establishing the ICC. Since it has no retroactive jurisdiction, the ICC deals with crimes committed on or after this date. After 2010 amendments – the Rome Statute also sets new standards for victims' representation in the Courtroom, and ensures fair trials and the rights of the defence.

Today the 'Rome Statute' serves as the ICC's guiding legal instrument, which is elaborated in such other legal texts as the Elements of Crimes, Rules of Procedure and Evidence and more. Facts and Figures as of today the International criminal court has over 900 staff members from approximately 100 States. It has 6 official languages: English, French, Arabic, Chinese, Russian and Spanish.

The ICC Liaison Office to the United Nations in New York and 6 ICC Country Offices and Field Presences in Kinshasa and Bunia (Democratic Republic of the Congo, "DRC"); Kampala (Uganda); Bangui (Central African Republic, "CAR"); Abidjan (Côte d'Ivoire); Bamako (Mali); and Kyiv (Ukraine). Headquarters: The Hague, the Netherlands. 2025 budget: €195,481,500. There have thus far been 32 cases before the Court, with some cases having more than one suspect.

ICC judges have issued 60 arrest warrants. Thanks to cooperation from States, 21 people have been detained in the ICC detention centre and have appeared before the Court. 31 people remain at large. Charges have been dropped against 7 people due to their deaths. ICC judges have also issued 9

summons to appear. The judges have issued 11 convictions and 4 acquittals. It has 2 working languages: English and French.

ICC Headquarters at The Hague, the Netherlands. There have thus far been 27 cases before the Court, with some cases having more than one suspect. 16 people have been detained in the ICC detention centre. Organisation Structure The Assembly of States Parties provides management oversight for the Court, including electing judges and the Prosecutor and approving the ICC's budget.

FOUR ORGANS OF THE ICC

1. Presidency conducts external relations with States, coordinates judicial matters such as assigning judges, situations and cases to divisions, and oversees the Registry's administrative work.
2. Judicial Divisions (18 judges in 3 divisions) Pre-Trial, Trial and Appeals – conduct judicial proceedings.
3. Office of the Prosecutor conducts preliminary examinations, investigations, and prosecutions.
4. Registry conducts non-judicial activities, such as security, interpretation, outreach, support to Defence and victims' lawyers etc. Trust Fund for Victims provides assistance, support and reparations to victims.

The ICC has field offices in several of the countries in which investigations are being conducted. The ICC detention centre is used to hold in safe, secure and humane custody those detained by the ICC. The International Committee of the Red Cross (ICRC) is the Detention Centre's inspecting authority and as such has unrestricted access and examine, on unannounced visits.

JURISDICTION AND WORKING OF COURT

The Rome Statute, grants the ICC jurisdiction over four main crimes: The crime of Genocide Crimes against Humanity War crimes Crime of Aggression The Court may exercise jurisdiction in a situation where genocide, crimes against humanity or war crimes were committed on or after 1 July 2002, The crimes were committed by a State Party national, or in the territory of a State Party, or in a State that has accepted the jurisdiction of the Court; The crimes were referred to the ICC Prosecutor by the United Nations Security Council (UNSC) pursuant to a resolution adopted under chapter VII of the UN charter.

As of 17 July 2018, a situation in which an act of aggression would appear to have occurred could be referred to the Court by the Security Council, acting under Chapter VII of the United Nations Charter, irrespective as to whether it involves States Parties or non-States Parties. The ICC is intended to complement, not to replace, national criminal systems; it prosecutes cases only when States do not are unwilling or unable to do so genuinely. The ICC has no jurisdiction over the United States or Israel, as neither country is party to the Rome Statute or a member of the ICC. Neither country has ever recognized the ICC's jurisdiction, and both nations are thriving democracies with militaries that strictly adhere to the laws of war.

Imposing Sanctions On The International Criminal Court Executive Order by “¹DONALD J. TRUMP”, President of the United States of America, on 6th Feb 2025, find that the International Criminal Court (ICC), as established by the Rome Statute, has engaged in illegitimate and baseless actions targeting America and our close ally Israel.

The ICC has, without a legitimate basis, asserted jurisdiction over and opened preliminary investigations concerning personnel of the United States and certain of its allies, including Israel, and has further abused its power by issuing baseless arrest warrants targeting Israeli Prime Minister Benjamin Netanyahu and Former Minister of Defence Yoav Gallant.

The ICC has no jurisdiction over the United States or Israel, as neither country is party to the Rome Statute or a member of the ICC. Neither country has ever recognized the ICC's jurisdiction, and both nations are thriving democracies with militaries that strictly adhere to the laws of war.

¹ <https://www.whitehouse.gov/presidential-actions/2025/02/imposing-sanctions-on-the-international-criminal-court/#:~:text=The%20ICC%20has%20no%20jurisdiction,to%20the%20laws%20of%20war.>

The ICC's recent actions against Israel and the United States set a dangerous precedent, directly endangering current and former United States personnel, including active service members of the Armed Forces, by exposing them to harassment, abuse, and possible arrest. This malign conduct in turn threatens to infringe upon the sovereignty of the United States and undermines the critical national security and foreign policy work of the United States Government and our allies, including Israel.

Furthermore, in 2002, the Congress enacted the American Servicemembers' Protection Act of 2002 (22 U.S.C. 7421 *et seq.*) to protect United States military personnel, United States officials, and officials and military personnel of certain allied countries against criminal prosecution by an international criminal court to which the United States is not party, stating, "In addition to exposing members of the Armed Forces of the United States to the risk of international criminal prosecution, the Rome Statute creates a risk that the President and other senior elected and appointed officials of the United States Government may be prosecuted by ICC." (22U.S.C.7421(9)).

The United States will impose tangible and significant consequences on those responsible for the ICC's transgressions, some of which may include the blocking of property and assets, as well as the suspension of entry into the United States of ICC officials, employees, and agents, as well as their immediate family members, as their entry into our Nation would be detrimental to the interests of the United States.

ICC is not a UN organization but it has a cooperation agreement with the United Nations. When a situation is not within the Court's jurisdiction, the United Nations Security Council can refer the situation to the ICC granting it jurisdiction. The Hague-based ICC seeks to investigate and prosecute those responsible for grave offenses such as genocide, crimes against humanity, and war crimes. There are 124 member countries, but dozens of governments are not ICC parties, including China, India, Israel, Russia, and the United States.²

This has been done in the situations in Darfur (Sudan) and Libya. Other Facts related to Legal Process The ICC does not prosecute those under the age of 18 when a crime was committed. Before the Prosecutor can investigate, he/she must conduct a preliminary examination considering such matters as sufficient evidence, jurisdiction, gravity, complementarity, and the interests of justice. When investigating, the Prosecutor must collect and disclose both incriminating and exonerating evidence. The defendant is considered innocent until proven guilty. The burden of proof lies with the Prosecutor. During all stages of proceedings (Pre-Trial, Trial and Appeals), the defendant has the right to information in a language he or she fully understands, thus the ICC proceedings are conducted in multiple languages, with teams of interpreters and translators at work. Pre-Trial judges issue warrants of arrest and ensure there is enough evidence before a case can go to trial. During the Pre-Trial phase, the defendant is referred to as a suspect.

Once the case is committed to trial, since at that point the charges have been confirmed, the defendant is referred to as the accused. Trial judges hear the evidence from the Prosecutor, Defence, and the Victims' lawyers, render a verdict, and if a person is found guilty, the sentence and decision on reparations.

Appeals judges render decisions on appeals from the Prosecutor or Defence. If a case is closed without a verdict of guilt, it can be reopened if the Prosecutor presents new evidence. Limitations As a judicial institution, the ICC does not have its own police force or enforcement body; thus, it relies on cooperation with countries worldwide for support, particularly for making arrests, transferring arrested persons to the ICC detention centre in The Hague, freezing suspects' assets, and enforcing sentences. This State cooperation is problematic for several reasons.

It means that the ICC acts inconsistently in its selection of cases, is prevented from taking on hard cases and loses legitimacy. It also gives the ICC less deterrent value, as potential perpetrators of war crimes know that they can avoid ICC judgment by taking over government and refusing to cooperate. There is insufficient checks and balances on the authority of the ICC prosecutor and judges. ICC has been accused of being a tool of Western imperialism and biased in favour of powerful countries

² <https://www.icc-cpi.int/about/how-the-court-works>

against weak states. ICC cannot impose a death sentence; it can impose lengthy terms of imprisonment of up to 30 years or life when so justified by the gravity of the cases.

The ICC court has no retrospective jurisdiction as it can deal only with crimes committed after 1st July 2002 when the 1998 Rome Statute came into force. ICC has automatic jurisdiction only for crimes committed on the territory of a state which has ratified the treaty; or by a citizen of such a state; or when the United Nations Security Council refers a case to it. Procedural and substantive deficiencies leading to delays and frustration, have questioned the efficacy of the court. It also faces scarcity of human resources and funds. India and ICC India did not signed the Rome Statute, and thus, is not a member of ICC because of following reasons:

State sovereignty National interests Difficulty in collection of evidences Problem to find impartial prosecutors Crime definition Way Forward States should actively encourage cooperation with ICC and support human rights defenders working towards international justice and the fulfilment of the ICC's mandate.

To enhance its credibility the court needs to broaden its ambit by including more permanent members of UN and by strengthening of investigations and prosecutions. ICC role is very important as international justice can contribute to long-term peace, stability and equitable development in post-conflict societies. Having said so it is also important to know that the ICC actively works to build understanding and cooperation in all regions through seminars and conferences worldwide.

THE CRIMES

The Court's founding treaty, called the Rome Statute, grants the ICC jurisdiction over four main crimes.

First, the crime of genocide is characterised by the specific intent to destroy in whole or in part a national, ethnic, racial or religious group by killing its members or by other means: causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group.

Second, the ICC can prosecute crimes against humanity, which are serious violations committed as part of a large-scale attack against any civilian population. The 15 forms of crimes against humanity listed in the Rome Statute include offences such as murder, rape, imprisonment, enforced disappearances, enslavement – particularly of women and children, sexual slavery, torture, apartheid and deportation.

Third, war crimes which are grave breaches of the Geneva conventions in the context of armed conflict and include, for instance, the use of child soldiers; the killing or torture of persons such as civilians or prisoners of war; intentionally directing attacks against hospitals, historic monuments, or buildings dedicated to religion, education, art, science or charitable purposes.

Finally, the fourth crime falling within the ICC's jurisdiction is the crime of aggression. It is the use of armed force by a State against the sovereignty, integrity or independence of another State. The definition of this crime was adopted through amending the Rome Statute at the first Review Conference of the Statute in Kampala, Uganda, in 2010.

On 15 December 2017, the Assembly of States Parties adopted by consensus a resolution on the activation of the jurisdiction of the Court over the crime of aggression as of 17 July 2018.

Adding another dangerous twist to the Israel-Hamas War and its impact, the International Criminal Court (ICC) has announced that it has issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant, as well as Mohammed Deif, a commander from the genocidal terror group Hamas.

³The Court's Pre-Trial Chamber I **said that it had issued the warrants** for Netanyahu and Gallant for "crimes against humanity and war crimes committed from at least 8 October 2023 until at

³ <https://www.ajc.org/news/what-you-need-to-know-about-the-icc-and-the-israel-hamas-war#:~:text=However%2C%20the%20ICC%20does%20not,Court%20to%20consider%20this%20case.>

least 20 May 2024," which is the date that ICC Chief Prosecutor Karim Khan announced he would be seeking the arrest warrants.

The court said it had found reasonable grounds to believe that Netanyahu and Gallant "each bear criminal responsibility for the following crimes as co-perpetrators for committing the acts jointly with others: the war crime of starvation as a method of warfare; and the crimes against humanity of murder, persecution, and other inhumane acts."

In a separate statement, ⁴the ICC also issued an arrest warrant for Deif, who Israel says was killed in an airstrike on July 13. ICC Chief Prosecutor Khan had previously sought warrants for Hamas terror leaders **Yahya Sinwar**, the mastermind of the October 7 massacre, and **Ismail Haniyeh** for the war crimes and crimes against humanity of extermination, murder, taking of hostages, rape and sexual violence, torture, and other inhumane acts following the October 7 terror attack on Israel. However, Khan dropped the legal proceedings against them after their deaths on July 21 and Oct. 16. AJC CEO Ted Deutch **slammed** the ICC's decision to issue warrants from Netanyahu and Gallant.

"Equating the leaders of a democratic state exercising its right to self-defense with a terrorist organization responsible for the rape, murder and mutilation of over 1,200 innocent people, the kidnapping of 251, and the continued captivity of 101, is an intentional distortion of justice, morality, and international law founded on virulent anti-Israel animus." Here's what you need to know about the ICC, its history and powers, and how this will affect the Israel-Hamas war.⁵ Palestine became an ICC member in 2015 and gave the court a mandate back to June 13, 2014, to address serious crimes committed on its territory or by its nationals since that date, including the 2014 hostilities in Gaza.

In May 2018, Palestine formally asked the ICC prosecutor to investigate and affirmed its commitment to cooperate with the court. Israel signed but has not ratified the ICC treaty, and in 2002, it announced that it did not intend to become a court member.

The **International Criminal Court investigation in Ukraine** or the *Situation in Ukraine* is an ongoing investigation by the Prosecutor of the International Criminal Court (ICC) into "any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person" during the period starting "from 21 November 2013 onwards", on an "open-ended basis", covering the Revolution of Dignity, the Russo-Ukrainian War including the 2014 annexation of Crimea by Russia, the war in Donbas and the Russian invasion of Ukraine.

The ICC prosecutor commenced these investigations on 2 March 2022, after receiving referrals for the situation in Ukraine from 39 ICC State Parties. On 1 January 2025, Ukraine became the 125th member of the International Criminal Court.

On 22 February 2023, Karim Ahmad Khan requested Pre-Trial Chamber II to issue warrants for the arrest of Vladimir Putin, president of the Russian Federation, and Maria Lvova-Belova, the Presidential Commissioner for Children's Rights in Russia, on the basis of "reasonable grounds" that they "bear criminal responsibility for the unlawful deportation and transfer of Ukrainian children from occupied areas of Ukraine to the Russian Federation, contrary to article 8(2)(a)(vii) and article 8(2)(b)(viii) of the Rome Statute". Khan stated that "at least hundreds of children" had been deported to Russia, and that Putin had issued presidential decrees making it easier to give the children Russian citizenship. Khan's office interpreted the events as "an intention to permanently remove [the] children from their own country".⁶

⁴ Read AJC's Statement

American Jewish Committee Appalled by ICC's Issuance of Arrest Warrants Against Israelis

⁵ <https://www.hrw.org/news/2024/11/21/palestine-icc-warrants-revive-hope-long-delayed-justice#:~:text=Palentine%20became%20an%20ICC%20member,the%202014%20hostilities%20in%20Gaza.>

⁶ *Karim Ahmad Khan (17 March 2023), Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against President Vladimir Putin and Ms Maria Lvova-Belova, Wikidata Q117194521, archived from the original on 17 March 2023*

On 17 March 2023, the Pre-Trial Chamber issued arrest warrants for Putin and Lvova-Belova.⁷ On 5 March 2024, the ICC issued arrest warrants for senior military officials Viktor Sokolov and Sergey Kobylash, on reasonable grounds of suspecting them of the war crimes of directing attacks at civilian objects and of causing excessive incidental harm to civilians or damage to civilian objects (Articles 8(2)(b)(ii) and 8(2)(b)(iv) of the Rome Statute) and of the crime against humanity of inhumane acts under article 7(1)(k). As of March 2024, the details of the warrants were kept secret to protect witnesses and protect the investigation.⁸

On 24 June 2024, the ICC issued arrest warrants for Russian politician and military officer Sergei Shoigu and Russian army general Valery Gerasimov.⁹ The 125 member states of the ICC¹⁰ are obliged to detain and transfer any of the indicted individuals if any of them set foot on their territory.¹¹

Aggression is an international crime in international law. It is closely related to the prohibition of force in international law under Article 2(4) of the UN Charter, but aggression is a crime with specific criteria. This briefing outlines the definition of aggression, as agreed by the UN General Assembly in 1974. The General Assembly declared in Article 1 of the definition what aggression is and lists some of the acts that could amount to aggression as including:

- Invasion, occupation, or annexation of another state's territory.
- Bombardment of another state's territory.
- Blockades of ports or coasts.
- Attacks by one armed force against another.

In situations where there is an agreement between two states that provides for the presence of forces within the territory of the receiving state. A use of force in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement.

Allowing a state's own territory to be used to launch such attacks by another state against a third state. The sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out armed acts of such gravity as to amount to the acts listed above, or its substantial involvement therein.

The International Criminal Court (ICC) cannot exercise jurisdiction over the crime of aggression unless both the victim and the aggressor state has ratified and accepted the Court's jurisdiction over that crime, or where the UN Security Council refers the situation to the Court. Neither Russia nor Ukraine are parties to the Rome Statute, and Russia is able to veto any decision at the UN Security Council.

⁷ Hofmański, Piotr (March 17, 2023). "ICC arrest warrants in the situation of Ukraine: Statement by President Piotr Hofmański" (video). youtube.com. International Criminal Court.

[^] "ICC issues arrest warrant for Putin on war crime allegations". Al Jazeera. 17 March 2023. Archived from the original on 17 March 2023. Retrieved 17 March 2023.

[^] Corder, Mike; Casert, Raf (17 March 2023). "ICC issues arrest warrant for Putin over Ukraine war crimes". Associated Press. Archived from the original on 17 March 2023. Retrieved 17 March 2023.

[^] Michaels, Daniel (17 March 2023). "U.N. Court Issues Arrest Warrant for Russia's Putin And Another Kremlin Official". The Wall Street Journal. Archived from the original on 17 March 2023. Retrieved 17 March 2023

⁸ International Criminal Court press release about arrest warrants against Sergei Kobylash and Viktor Sokolov, International Criminal Court, 5 March 2024, Wikidata Q124748309, archived from the original on 5 March 2024

⁹ Situation in Ukraine: ICC judges issue arrest warrants against Sergei Kuzhugetovich Shoigu and Valery Vasilyevich Gerasimov, International Criminal Court, 25 June 2024, Wikidata Q126902384, archived from the original on 25 June 2024[^]

¹⁰ Deutsch, Anthony; Berg, Stephanie van den (20 March 2023). "Explainer: What does the ICC arrest warrant mean for Putin?". Reuters. Archived from the original on 14 May 2023. Retrieved 23 March 2023.

¹¹ https://en.wikipedia.org/wiki/International_Criminal_Court_investigation_in_Ukraine#Arrest_warrants

Ukraine did submit a declaration in 2015 to accept the jurisdiction of the Court over any acts of genocide, crimes against humanity or war crimes that may be committed within the territory of Ukraine since 20 February 2014 onwards. However, the Prosecutor of the ICC has noted that this does not apply to the crime of aggression, and that the crime of aggression cannot apply to the current situation in Ukraine.

Because the ICC does not have jurisdiction over the crime of aggression in Ukraine, a number of politicians and experts signed a combined statement and declaration calling for a “Special Tribunal for the punishment of the crime of aggression against Ukraine”.¹²

- Proposals for a Special Tribunal for Ukraine relate directly to the specific crime of aggression, and is separate to international investigations ongoing by the International Criminal Court relating to alleged war crimes and other international crimes that may have been committed following Russia’s invasion of Ukraine.
- After Russia invaded Ukraine on 24 February 2022, some states were quick to label this as an act of aggression in their immediate reactions. On 2 March 2022 the UN General Assembly passed a Resolution titled “Aggression against Ukraine”. Among other statements, it said that the General Assembly “Deplores in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter.

The State Party has not opted out of the ICC’s jurisdiction over aggression, under the new Article 15 bis (4) The ICC’s Assembly of States Parties adopted Resolution ICC-ASP/16/Res.5 (PDF) on 14 December 2017, activating the crime of aggression for those states that ratify the Kampala Amendments, to take effect on 17 July 2018.¹³

The International Criminal Court (ICC) cannot exercise jurisdiction over the crime of aggression unless both the victim and the aggressor state has ratified and accepted the Court’s jurisdiction over that crime.¹⁴ Alternatively, the UN Security Council is able to refer any situation to the Court, but this would be subject to Russia’s veto. Russia signed but did not become a full party to the International Criminal Court and withdrew from the process of joining the ICC in full in 2016.¹⁵

Ukraine is also not a member state, but did submit a declaration in 2015 to accept the jurisdiction of the Court over any acts of genocide, crimes against humanity or war crimes that may be committed within the territory of Ukraine since 20 February 2014 onwards.¹⁶ The Prosecutor of the ICC has noted that this does not apply to the crime of aggression, and that the crime of aggression cannot apply to the current situation in Ukraine.¹⁷ The International Criminal Court (ICC) has been involved in addressing grave international crimes during conflicts, and its role in recent wars, such as the Russia-Ukraine conflict and the Israel-Hamas war, is critical in ensuring accountability for atrocities and deterring future violations of international law. Below is a deep exploration of the ICC’s role in these two major conflicts.

¹² <https://commonslibrary.parliament.uk/research-briefings/cbp-9968/>

¹³ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, since amended. (PDF)

¹⁴ 3 See Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, since amended, Article 15 bis and Article 15 ter. (PDF)

¹⁵ “Russia withdraws from International Criminal Court treaty”, BBC News [online], 16 November 2016 (accessed 24 February 2022).

¹⁶ Ukraine, Letter Dated 8 September 2015 from the Minister of Foreign Affairs of Ukraine to the Registrar of the International Criminal Court, 8 September 2015.

¹⁷ [researchbriefings.files.parliament.uk/documents/CBP-9968/CBP-9968.pdf](https://commonslibrary.parliament.uk/documents/CBP-9968/CBP-9968.pdf)

Russia-Ukraine War: The ICC's Role and Challenges

The Russia-Ukraine war, which began in 2014 and escalated dramatically in 2022 with Russia's full-scale invasion of Ukraine, has witnessed numerous alleged war crimes and atrocities committed by both sides. However, Russia's actions have garnered particular attention due to the scale and nature of violations attributed to its forces, including widespread civilian harm, targeting of civilian infrastructure, forced deportations, and reports of executions and torture.

1. Investigations and Warrants

Since Russia's 2022 invasion, the ICC has launched investigations into possible war crimes committed by Russian forces in Ukraine. The court's jurisdiction covers crimes like **war crimes**, **crimes against humanity**, and **genocide** under the Rome Statute. In March 2023, the ICC issued an arrest warrant for Russian President Vladimir Putin and Maria Lvova-Belova, Russia's Commissioner for Children's Rights, for their roles in the **forcible deportation of Ukrainian children** to Russia.

The ICC's jurisdiction is critical in this context because Russia, as a non-signatory of the Rome Statute, is not legally obligated to cooperate with the ICC's investigations. Despite this, Ukraine, although not a member of the ICC, accepted the court's jurisdiction over its territory. This decision enables the ICC to investigate crimes committed within Ukraine, even though Russia is outside the court's jurisdiction. This highlights a key limitation: while the ICC can investigate, it must rely on the cooperation of state parties or the support of international bodies (e.g., the UN Security Council, though Russia's veto power as a permanent member complicates matters).

2. Challenges to Enforcement

One significant challenge for the ICC's role in the Russia-Ukraine war is the lack of enforcement power. The court cannot arrest suspects on its own and depends on state cooperation to apprehend those under investigation or arrest warrants. Russia's refusal to cooperate makes it difficult for the ICC to execute warrants, as Russian officials are unlikely to be arrested by third-party countries willing to enforce the court's decisions. This reality exposes the limitations of the ICC, as it is often powerless against non-cooperating states with political or military power, like Russia.

3. Geopolitical Implications

The ICC's involvement in the Russia-Ukraine conflict also has broader geopolitical implications. Many states, particularly in Europe and the West, have advocated strongly for accountability, emphasizing that allowing impunity for high-level political and military leaders would set a dangerous precedent. However, Russia's strong stance against the ICC, coupled with its support from countries like China, complicates the court's ability to act freely. This has led to political tensions, as Russia has repeatedly claimed that the ICC is biased and politically motivated, particularly due to its focus on Russia and not on alleged violations by Ukrainian forces.

4. Humanitarian Focus

Beyond legal accountability, the ICC's investigations in Ukraine play a key role in documenting human rights violations and war crimes, providing critical evidence for future accountability measures or peace agreements. The court's role in ensuring justice, even if it cannot immediately prosecute all perpetrators, is essential for long-term peacebuilding and reconciliation in Ukraine and in establishing norms against impunity for war crimes.

ISRAEL-HAMAS CONFLICT: THE ICC'S ROLE AND CONSIDERATIONS

The Israel-Hamas conflict, particularly since the escalation of violence in Gaza, has raised complex legal and humanitarian questions. The ICC has jurisdiction over war crimes committed in the occupied Palestinian territories, including Gaza and the West Bank. The ongoing conflict between Israel and Hamas has involved allegations of war crimes by both parties, including indiscriminate attacks on civilians, targeting civilian infrastructure, and the use of human shields by armed groups in Gaza.

1. ICC's Investigations into Palestine

In 2015, the Palestinian Authority, a non-member of the ICC, formally accepted the court's jurisdiction, allowing for investigations into war crimes committed within its territory, which includes Gaza. This opened the door for the ICC to investigate actions by both Israeli and Palestinian actors. In 2021, the ICC formally launched an investigation into alleged war crimes committed during the 2014 Gaza conflict and subsequent escalations, including alleged Israeli airstrikes on civilian areas and Hamas' rocket attacks targeting Israeli civilians.

2. Investigating Israel's Actions

The ICC's preliminary investigations into Israeli actions in Gaza have led to widespread criticism from Israel, which argues that the court lacks jurisdiction over Israeli personnel. Israel contends that it has an independent judicial system capable of prosecuting its own military personnel for any unlawful actions, thus rendering the ICC unnecessary in this regard. Additionally, Israel is not a party to the Rome Statute, and thus not legally bound by its jurisdiction. Nevertheless, the ICC's investigation into Israel's actions remains a critical aspect of its role in the conflict, as it helps provide legal scrutiny to ensure accountability, especially for actions that could be classified as war crimes.

3. Investigating Hamas' Actions

On the other side, Hamas, which controls the Gaza Strip and has engaged in attacks on Israeli civilians, is also subject to ICC scrutiny. The group's use of rockets aimed at civilian targets and its alleged use of human shields have raised concerns regarding violations of international humanitarian law. However, since Hamas is not a state, it cannot be a direct subject of ICC jurisdiction in the same way that Israel can be. Nevertheless, the ICC's investigation into crimes committed by Palestinian armed groups could potentially involve bringing individual leaders of Hamas to justice for their actions, provided sufficient evidence exists.

4. The ICC's Legal and Political Hurdles

The ICC faces significant political challenges in the Israel-Hamas conflict, primarily due to the broader international context of the Israeli-Palestinian dispute. Many Western countries, including the United States, have expressed their opposition to the ICC's investigations, viewing it as politically motivated. The ongoing complexity of the Israeli-Palestinian conflict means that pursuing legal action through the ICC is seen by some as not only a legal matter but also a politically charged issue with deep ramifications for the peace process.

The political nature of the conflict also makes enforcement of ICC rulings highly challenging. As with the Russia-Ukraine war, Israel's lack of recognition of the ICC's authority severely limits the court's ability to take direct action, such as issuing arrest warrants or securing convictions for Israeli officials.

5. Peace and Accountability

While the ICC's role in the Israel-Hamas conflict is fraught with political complexities, it still holds a critical place in ensuring justice for victims. By investigating war crimes, the court can contribute to documentation and accountability, providing a historical record of atrocities committed during the conflict. Though immediate enforcement of justice might not be feasible in such a volatile and politically charged environment, the ICC's involvement is vital for long-term peacebuilding, holding perpetrators accountable, and discouraging future violations.

CONCLUSION: THE ICC'S LIMITATIONS AND POTENTIAL

In both the Russia-Ukraine war and the Israel-Hamas conflict, the ICC faces significant challenges, including limited jurisdiction, lack of enforcement power, and the complexity of political and military dynamics. The absence of full cooperation from key states like Russia and Israel significantly impedes the court's ability to act effectively. However, the ICC remains a critical institution for holding individuals accountable for war crimes, crimes against humanity, and genocide.

Though the road to justice may be slow and often blocked by geopolitical realities, the ICC's role is essential in reinforcing the rule of law on the international stage. In the face of such complex and ongoing conflicts, the court provides an important symbol of the international community's commitment to justice, even when political realities create significant obstacles. The hope is that through continued investigations, international pressure, and diplomatic efforts, accountability can eventually be achieved, contributing to broader peace and stability in the regions affected by these wars.

Overall, the ICC's role is to provide a legal and impartial mechanism for justice in the face of the widespread suffering caused by wars. Its efforts are critical in the ongoing pursuit of international human rights, but it faces ongoing challenges in effectively enforcing its mandates.