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ASYMMETRIC STATE RESPONSES TO PALESTINE AND UKRAINE: SELECTIVITY IN INTERNATIONAL CRIMINAL LAW ENFORCEMENT

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Abstract: *The International Criminal Court opened an investigation in Ukraine within days of Russia's 2022 invasion, while its Palestine file took six years to move from preliminary examination to investigation. Existing accounts tend to describe this gap as a managerial or procedural problem. This article asks what causes the asymmetry in state responses to the two situations and how it affects the credibility of the principle of universality in international criminal law. Using normative legal research with statutory, comparative, and conceptual approaches, it compares the legal procedures, resources, and official discourse surrounding both situations against the Rome Statute and the scholarship on selectivity and legitimacy. It finds that the Ukraine investigation accelerated through a referral by 43 States Parties and earmarked Western funding, whereas the Palestine investigation stalled under contested statehood, territorial jurisdiction, and great-power diplomatic pressure, reinforced by veto politics in the UN Security Council. It argues that these differences reflect a structural dependence of the Court on state cooperation and voluntary resources, which converts geopolitical alignment into prosecutorial priority. The article contributes a framework linking Cryer's account of selectivity with Franck's theory of legitimacy, and it proposes reforms to funding, case-selection transparency, and domestic universal jurisdiction.*

Keywords: Double Standards; International Criminal Court; Legitimacy; Palestine; Ukraine

1. Introduction

Crimes against humanity are a category of international law that refers to acts such as mass killing and the infliction of torture upon persons, committed as an attack against other people or against a particular population. Scholars of international relations have widely characterized crimes against humanity as acts of extreme cruelty carried out on a very large scale, directed at diminishing the human race as a whole (Dailmunthe, 2024, p. 353).

Disputes of this kind tend to escalate into more aggressive conduct, and those who commit such acts increasingly exceed every limit, up to the gravest offences. The gravest of these consists of the large-scale slaughter of a particular ethnic group, causing numerous victims and material as well as immaterial losses, and international law designates it as the crime of genocide (Prasetyo, 2020, p. 116).

International criminal law enforcement rests, in principle, on universal jurisdiction and on equality before the law. In the contemporary geopolitical landscape, however, observers frequently question the effectiveness and objectivity of international legal institutions such as the International Criminal Court (ICC). The question becomes acute when one compares the response of the international community, and of Western

states in particular, to two conflicts involving alleged crimes against humanity that have captured worldwide attention: Russia's invasion of Ukraine and Israel's prolonged occupation of Palestine.

Russia's invasion of Ukraine in February 2022 marked a turning point that showed how powerful the machinery of international law can be when collective political will drives it. The war did not unfold in a vacuum. It shook global politics and international markets, brought new challenges into international relations, and will produce long-term effects on the world economy, since the invasion became a global event with major implications for every state (Oktaviani, 2024, p. 595).

Within days of the invasion, the ICC Prosecutor received referrals from dozens of States Parties, a record in the Court's history. The speed of evidence gathering, the allocation of special grants, and the eventual issuance of arrest warrants against senior state officials demonstrated that international law can operate at an accelerated pace when the interests of legal institutions align with those of the states that dominate the global system.

The Israeli-Palestinian conflict, which has lasted for decades, reflects a deep social phenomenon in which political, religious, economic, and cultural differences collide in a territory that many regard as sacred. The conflict has caused significant loss of life and has also produced social, economic, and psychological harm for the communities involved. Many actors in the international community, including states of the Arab world and global peace movements, have sought a peaceful settlement (Nanda et al., 2024, p. 899).

The situation in Palestine, however, also serves as a cracked mirror of the promise of justice. Although the occupation and alleged systematic violations of the Geneva Conventions have been documented for decades, proceedings at the ICC have moved slowly and have encountered bureaucratic obstacles and extraordinary political pressure. A sharp contrast emerges when states that loudly demand accountability in Ukraine use the veto or diplomatic pressure to obstruct comparable legal steps in Palestine. This inconsistency gives the impression that international criminal law enforcement is transactional and selective.

The disparity has sparked debate about the integrity of international criminal law. If the law is enforced selectively according to the geopolitical interests of great powers, it loses its moral binding force and becomes a mere instrument of foreign policy. The asymmetry wounds the sense of justice of victims in Palestine and threatens the legitimacy of a global legal order that is supposed to be impartial.

For the international order, the asymmetry poses an existential problem that exceeds legal technicalities. It reinforces the perception that international law is caught in double standards, in which the status of the alleged perpetrator or its political alliances determines the intensity of enforcement. A law enforced selectively on the basis of geopolitical interest risks reverting into an instrument of power rather than an instrument of justice.

World politics now faces increasingly complex global challenges, ranging from geopolitical tension to deepening humanitarian violations. The responses of individual states reflect their foreign policy priorities and also shape the direction of international relations, so that understanding these patterns of reaction is essential for dissecting contemporary global politics. Although the international community frequently calls for the enforcement of humanitarian principles, the actions of Western states, including the United States, the United Kingdom, and the European Union, show highly varied approaches that at times appear contradictory (Alfian, 2024, p. 30).

The scholarly literature has long recognized that international criminal justice is selective. Cryer (2005) shows that selectivity runs through the entire history of the international criminal law regime, from Nuremberg to the ad hoc tribunals, and he treats it as a structural feature of a system that depends on states for jurisdiction, resources, and enforcement rather than as an occasional lapse. Bosco (2014) traces how the ICC, from its creation, has adapted its docket to avoid direct confrontation with the major powers. Recent empirical work has begun to test the double-standards claim directly by comparing the Court's handling of Palestine and Ukraine (Bülbül, 2025; Raja, 2025). What remains underdeveloped is an account that connects the procedural mechanics of the two investigations to a theory of legitimacy, explaining why selective enforcement damages the authority of international criminal law as a whole and not only the interests of the victims who are left waiting.

On the basis of this reality, the present study dissects how national interests and power dynamics generate double standards in international criminal law enforcement. By comparing the legal procedures and the political discourse surrounding both conflicts, it maps the root causes of the asymmetry in state responses and its implications for the future of international justice. The aim is to help ensure that international criminal law does not become "law for those without powerful allies" but offers equal justice to all nations. Accordingly, the article addresses two questions: what factors cause the asymmetry in responses to the Palestine and Ukraine conflicts in the enforcement of international criminal law, and how does this asymmetry affect the credibility of the principle of universality in international criminal law?

2. Method

This study uses normative legal research, understood as legal research conducted at the level of norms, rules, principles, theories, philosophies, and legal provisions in order to find solutions to problems arising from legal gaps, conflicts of norms, or vague norms (Rizkia, 2023, p. 121). The authors chose this approach because the study analyzes the causes of the unequal reactions of states to the international crimes committed in Palestine and Ukraine and their relationship with the provisions of international criminal law, without requiring the collection of empirical field data.

To examine the asymmetry closely, the study combines three approaches. The statutory approach examines the formal rules of the 1998 Rome Statute, the powers of the ICC Prosecutor, and other international legal instruments such as the Geneva Conventions (Marzuki, 2017, p. 55). The comparative approach, which forms the core of the analysis, compares the legal responses, investigative procedures, and official statements of

international institutions concerning Ukraine and Palestine in order to identify the points of asymmetry. The conceptual approach generates ideas through the analysis of legal materials, producing an understanding of the legal terms under examination (Tahir et al., 2023, p. 94).

The legal materials fall into three categories. Primary legal materials comprise the Rome Statute, resolutions of the UN Security Council and General Assembly, and decisions and warrants of the ICC. Secondary legal materials comprise law journals, reference books, official reports of international organizations such as Amnesty International and Human Rights Watch, and relevant scholarly articles. Tertiary legal materials, such as legal dictionaries and encyclopedias, provide guidance on and explanation of the primary and secondary materials (Soekanto, 2015, p. 26). The authors collected these materials through library research, gathering, identifying, and analyzing the legal materials relevant to the research topic.

3. Analysis and Discussion

Having set out the theoretical and methodological foundations, the discussion now turns to the manifestations of asymmetric international responses in the two situations. The analysis compares procedural data at the ICC and also examines the geopolitical interests that underlie the different treatment of Ukraine and Palestine.

3.1. Selectivity and Legitimacy in International Criminal Justice

Any assessment of the asymmetry between Ukraine and Palestine requires a standard against which to measure it. Two bodies of theory supply that standard. The first concerns selectivity. Cryer (2005) distinguishes between the inevitable selectivity of any prosecutorial system, which can never pursue every crime, and the illegitimate selectivity that arises when the choice of situations and suspects tracks the identity of the perpetrator or the interests of powerful states rather than legally relevant criteria. On this view, the existence of selection does not by itself discredit the ICC. What discredits it is selection that cannot be justified by reasons the Court is willing to state publicly and apply consistently.

The Rome Statute offers one such reason in the criterion of gravity. DeGuzman (2008) argues that gravity is central to the legitimacy of the ICC, since it is the principal legal ground on which the Court can explain why it pursues some situations and not others; yet she also shows that the Statute leaves gravity largely undefined, giving the Prosecutor wide discretion. In later work, deGuzman (2012) proposes that the Court should select cases for their expressive value, that is, for the message they send about the global community's condemnation of particular harms. This expressive account sharpens the problem examined here: if case selection communicates which victims the international community considers worthy of protection, then a visible disparity in speed and resources between two situations of comparable gravity communicates a hierarchy of victims.

The second body of theory concerns legitimacy. Franck (1990) explains the compliance pull of international rules through their legitimacy, which depends on their determinacy, symbolic validation, coherence, and adherence to a hierarchy of rules. Coherence

matters most for the present inquiry: a rule commands respect when it is applied consistently to like cases, and it loses that respect when its application appears to depend on who the parties are. Selective enforcement therefore damages more than the outcome of an individual case, because it erodes the pull toward compliance that gives international law its authority in the absence of centralized coercion.

Nouwen and Werner (2010) add a further dimension. Drawing on the ICC's interventions in Uganda and Sudan, they argue that the Court cannot stand outside politics, because the act of naming certain actors as "enemies of mankind" is itself a political act that strengthens one side of a conflict and delegitimizes the other. Their analysis helps explain why the label of "war criminal" can function as a diplomatic resource, as the discussion of the Ukraine situation below shows. Taken together, these works suggest that the asymmetry between Ukraine and Palestine should be evaluated on three questions: whether the difference in treatment can be explained by legally relevant criteria such as gravity and jurisdiction; whether the Court and states applied their stated rules coherently; and whether the Court's choices served to name enemies in ways aligned with the interests of powerful states.

These standards also have limits that the analysis must respect. Defenders of the Court rightly point out that a permanent tribunal with finite resources will always leave some grave situations unaddressed, and that holding it to a standard of perfect consistency would condemn any international prosecutor to failure. Cryer (2005) accepts this point and for that reason locates the problem in the criteria of selection rather than in selection as such. The present article adopts the same position. It does not claim that the ICC should have treated Palestine and Ukraine identically in every procedural respect, since the two situations differ in their jurisdictional history and in the cooperation available on the ground. It asks whether the differences in speed, resources, and political support can be traced to criteria that the Rome Statute recognizes, or whether they track the alignment of the alleged perpetrators with the states on which the Court depends.

3.2. Procedural Comparison: The Speed and Scale of Investigation

The disparity in the duration of the ICC's investigations into the situations in Palestine and Ukraine has sparked heated debate about the objectivity and independence of the Court. In Ukraine, proceedings accelerated extraordinarily: within days of Russia's full-scale invasion in February 2022, ICC Prosecutor Karim Khan announced his decision to proceed with opening a formal investigation (International Criminal Court, 2022).

Unprecedented political mobilization made this speed possible. Forty-three States Parties referred the situation, and under Article 14 of the Rome Statute a state referral allows the Prosecutor to proceed without the authorization of the Pre-Trial Chamber that a *proprio motu* investigation requires. Western states also supported the investigation logistically and financially. Led by the European Union and the United Kingdom, they voluntarily contributed additional funds amounting to millions of euros and seconded experts, including senior investigators and digital forensic specialists, to strengthen the capacity of the Office of the Prosecutor (OTP) (European Commission, 2022). The deployment of the largest investigative team in the Court's history enabled

the collection of evidence of war crimes in real time in the conflict zone, supported by cooperation with the Joint Investigation Team (JIT) under the auspices of Eurojust, a level of collaboration that no other investigation has received.

The situation in Palestine, by contrast, has followed a highly bureaucratic and legalistic path, marked by systemic political obstacles for almost a decade. Although Palestine formally acceded to the Rome Statute and became a State Party in April 2015, the OTP needed six years merely to complete the preliminary examination before opening a formal investigation in March 2021 (Quigley, 2021, p. 89).

The principal obstacle lies in jurisdictional complexity, which the debate over Palestine's status as a "state" under international law has deliberately compounded, together with the challenge of defining the territorial boundaries of the occupied territory with precision under Article 12(3) of the Rome Statute, which provides:

> "If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9." (Rome Statute of the International Criminal Court, 1998, art. 12(3))

The statehood question deserves a fair statement of both sides, because it marks the point at which legal argument and political resistance overlap. Kontorovich (2013) argued, before Palestine's accession, that the Court would enter uncharted territory by exercising jurisdiction over a contested entity and over the nationals of a non-party state, and that the novelty of these questions counselled caution. Such arguments carry legal weight, and they explain part of the delay. They do not explain why the same institutions that treated jurisdictional caution as decisive in Palestine showed no comparable hesitation in Ukraine, where the Prosecutor moved from announcement to investigation within days. The asymmetry therefore lies less in the existence of legal difficulties than in the willingness of states and institutions to invest political and material resources in overcoming them.

The active rejection of the Court by Israel, a non-party state with dominant military power, together with diplomatic pressure and economic sanctions from the United States, created logistical obstacles that were nearly impossible to overcome, ranging from the denial of visas to ICC personnel to threats against the safety of witnesses and human rights defenders on the ground.

This disparity ultimately reflects the influence of hegemonic interests over the operation of global justice, in which the effectiveness of law often moves in step with the interests of great powers. In the Ukraine situation, an almost absolute moral and political consensus existed among the principal States Parties of the Global North, which regarded the Russian invasion as a violation of law and also as an existential threat to the rules-based international order (Al Jazeera, 2024).

In the Palestinian context, by contrast, the question of war crimes is often trapped in diplomatic ambivalence and in political narratives that are sharply polarized within the UN Security Council, which creates the impression of double standards in international

law enforcement. The lopsided allocation of resources to Ukraine, compared with the meagre progress and funding of the Palestine file and of situations in other countries of the Global South, reinforces the criticism that the Court's priorities can be shaped by the voluntary contributions and political will of the great powers. This temporal disparity is therefore more than a matter of legal procedure or managerial constraint. It reflects a structural challenge in which institutions of international justice must negotiate with an anarchic and selective geopolitical reality, which is precisely the structural selectivity that Cryer (2005) describes.

3.3. The Role of the Great Powers

3.3.1. Veto Politics in the UN Security Council and the Construction of Impunity

The relationship between the ICC and the UN Security Council under Article 13(b) of the Rome Statute opens a wide gap for political intervention through the veto power of the permanent members. In the Palestinian context, the United States has historically and consistently used its veto to block resolutions that condemn Israeli conduct, and also resolutions that could have referred the situation to the ICC earlier or imposed significant economic sanctions (Sefriani, 2016, p. 348). The use of the veto effectively creates a "legal shield" that produces impunity for Israel, forcing the ICC to rely on Palestine's accession process, which took years, in order to acquire jurisdiction.

In the Ukraine situation, by contrast, although Russia used its veto to block direct Security Council action against itself, Western states manoeuvred through the "Uniting for Peace" mechanism in the UN General Assembly and through a mass referral by ICC States Parties. This shows that the effectiveness of international law depends heavily on whether the alleged perpetrator is an ally or an adversary of a veto-holding state. As the Indonesian international law scholar Sefriani observes, international law enforcement is often discriminatory and selective because of the dominance of the great powers within the structure of the United Nations (Kusumaatmadja, 2015, p. 204).

Bosco (2014) describes the same dynamic from the perspective of the Court's institutional history. He shows that the major powers, including those that never joined the Statute, came to treat the ICC as a tool that could be used against adversaries while ensuring that it did not threaten themselves or their close partners, and that the Court, dependent on their cooperation, learned to avoid confrontation. The veto thus operates on two levels: formally, it determines whether the Security Council refers or defers a situation under Articles 13(b) and 16; informally, it signals to the Prosecutor which investigations will receive political support and which will meet resistance. The deferral power in Article 16 is particularly significant in this respect. It permits the Security Council, by a resolution adopted under Chapter VII of the UN Charter, to suspend an investigation or prosecution for renewable periods of twelve months. Because any such resolution requires the concurrence or abstention of the permanent members, the provision gives each of them a structural capacity to shield an ally that no other State Party possesses, while leaving the Court without a corresponding means to compel the Council to act against a protected party. The Statute thereby writes the inequality of the Charter into the architecture of international criminal justice.

3.3.2. The "War Criminal" Narrative as a Diplomatic Instrument

The framing of the two conflicts differs fundamentally, and this framing functions as a diplomatic instrument. In the Ukraine situation, the Western bloc used the label of "war criminal" applied to the Russian leadership, including the rapid issuance of an arrest warrant against Vladimir Putin, to isolate Russia comprehensively from the global financial and diplomatic system (Mearsheimer, 2022). The narrative was constructed on a massive scale to delegitimize Russian aggression morally in the eyes of the international community. This is the political function of criminal labelling that Nouwen and Werner (2010) identify: the designation of an adversary as an enemy of humankind strengthens the coalition that opposes it and narrows the space for negotiation.

In the Palestinian case, however, the great powers show a strong tendency to prioritize the stability of strategic alliances in the Middle East over the pursuit of criminal justice. Western states often regard the ICC investigation in Palestine as a disruption of peace negotiations or of regional stability. As a result, the ICC Prosecutor faces considerable diplomatic pressure to proceed cautiously or to postpone decisive legal steps against Israeli officials in order to preserve security and intelligence relations. This reinforces the argument that international law is often managed so as not to damage the long-term geopolitical interests of hegemonic states (Chomsky & Pappé, 2015, p. 78).

3.3.3. The Paradox of "Self-Defence" Rhetoric

The greatest paradox in contemporary international law enforcement lies in the rhetoric of the right to self-defence. World leaders vocally classified attacks on civilian infrastructure, hospitals, and electricity networks in Ukraine as indisputable war crimes and crimes against humanity (Mauna, 2015, p. 621). In the context of Gaza, however, military action causing equal or greater destruction is often justified through an expansive doctrine of self-defence, even though the principles of proportionality and distinction in international humanitarian law are difficult to satisfy.

This rhetorical inconsistency creates the perception that the value of civilian lives depends on their geographic location and political alliances. A military operation that targets civilian infrastructure may be condemned as a crime against humanity in one territory, while similar action with a greater number of victims in another territory is justified as a consequence of proportionate self-defence (Amnesty International, n.d.). The Indonesian legal scholar Romli Atmasasmita notes that without a single objective standard, the ICC risks becoming a "political instrument" for powerful states to punish their adversaries while exempting themselves or their close allies (Atmasasmita, 2010). In Franck's (1990) terms, this double standard violates the requirement of coherence: the same rule of distinction and proportionality is invoked with full force in one setting and suspended in another, and the rule loses part of its compliance pull in both.

3.4. Structural Constraints in the Rome Statute and ICC Jurisdiction

The comparison in section 3.2 points to a deeper structural feature of the Rome system. The difference between the two situations does not arise only from the political will of states at a given moment. It is built into the way the Statute allocates the powers to trigger, fund, and enforce investigations, and it reflects unequal access to global justice.

The triggering mechanisms illustrate the point. A state referral under Article 14 allows the Prosecutor to proceed directly, whereas a *proprio motu* investigation under Article 15 requires judicial authorization, and an investigation in a contested territory also invites jurisdictional litigation. States that enjoy broad diplomatic support can mobilize referrals quickly, as the 43 referrals in the Ukraine situation show, while situations that lack such support must pass through the slower and more contestable routes. The procedural design of the Statute thus translates differences in political support into differences in procedural speed.

The most fundamental structural weakness of the ICC is its total dependence on state cooperation, since the Court has no police force of its own. Under Part 9 of the Rome Statute, the ICC cannot carry out arrests or surrenders without the assistance of the national authorities of States Parties (Mauna, 2015, p. 621). If powerful states refuse to cooperate or actively obstruct the process, the Court's mandate to end impunity becomes ineffective. As Romli Atmasasmita emphasizes, without fair political consensus and an independent mechanism of enforcement, the ICC risks becoming a political instrument that is sharp against developing states but blunt before global hegemonic powers (Atmasasmita, 2010).

The funding model compounds this dependence. When States Parties earmark voluntary contributions for a particular situation, they relieve the OTP's budgetary constraints in that situation while leaving others under-resourced. Even if no donor explicitly directs prosecutorial decisions, the resulting distribution of investigative capacity mirrors donor priorities. DeGuzman's (2008) concern that gravity remains too indeterminate to discipline case selection becomes concrete here: where the legal criterion is open-ended, material resources fill the space it leaves, and the order in which situations advance comes to reflect who is willing to pay.

3.5. The Impact of the Asymmetry on the Legitimacy of International Law

3.5.1. The Erosion of Trust in the Global South and Perceptions of Eurocentrism

The erosion of trust among states of the Global South is a direct consequence of the Court's long history of focusing on jurisdictions outside the Western bloc. From the Court's early years, critics spoke of an "African bias", since almost all of the first suspects came from that continent (Bülbul, 2025, p. 110). Although the ICC argues that this focus resulted from the states' own referrals, public perception continues to see a selectivity that dares to target only leaders of developing states lacking strong diplomatic protection.

The acceleration of the Ukraine investigation, financed and staffed with the support of the European Union and the United States, even though the United States has consistently refused to become a State Party to the Rome Statute, has reinforced the accusation that the ICC functions as a "Eurocentric" institution (Raja, 2025, p. 88). It gives the impression that the machinery of international law will be mobilized to its full extent only when the security and interests of Europe are threatened. Developing states have begun to regard the ICC as an institution that "wakes from its sleep" when it must

serve the national security agenda of the developed states of the Northern Hemisphere, rather than as a neutral universal court.

The fact that voluntary contributions from Western states are often earmarked specifically for the Ukraine situation aggravates this sentiment. The practice raises concerns about the independence of the OTP, since donors may implicitly dictate investigative priorities through financial assistance. For many states in Asia, Africa, and Latin America, the phenomenon suggests that international justice carries a "price tag" and is available only to those backed by the Western bloc, which widens the gap between the promise of universal justice and the reality of discriminatory enforcement.

As Sefriani observes, this discrimination in international law enforcement fuels widespread scepticism, as states of the Global South come to feel that their sovereignty is more exposed to international legal intervention than that of Western states (Sefriani, 2016, p. 345). The resulting perception portrays the ICC as an instrument of "selective justice" that is sharp when serving particular geopolitical interests but reluctant to touch strategic allies in other conflicts such as Palestine. If this perception continues to grow without a genuine rebalancing of investigations, a wave of withdrawals from the Rome Statute becomes a real threat capable of paralyzing the Court in the future.

3.5.2. Threats to Universality and the Collapse of Moral Authority

Universality is the spirit of international law: for a rule to bind, it must apply equally to every legal subject regardless of political power or geographical position, in accordance with equality before the law (Cryer et al., 2019, p. 125). If the ICC proves "sharp" and responsive only toward the political adversaries of the West, as in the Russian case, while remaining "blunt", slow, and procedurally hesitant toward the West's strategic allies, as in the case of the occupation of Palestine, international law will lose its moral authority. Physical force cannot impose such authority; it must grow from a consistent perception of justice.

Once moral authority collapses, the rules-based order is no longer seen as a set of values that protects all of humanity fairly, but as diplomatic rhetoric deployed opportunistically. When the principles of international law are applied only to cases that are politically "convenient", the essence of international criminal justice disappears. A paradox then emerges in which law that should restrain the abuse of power becomes a tool through which hegemonic power suppresses its adversaries while protecting its own interests.

This threat to universality also allows violating states to delegitimize every international legal action as a "political attack". When the ICC seeks to prosecute a leader in the future, that leader can readily point to the Palestine situation as proof of the Court's unfairness. Such inconsistency destroys the credibility of international judges and prosecutors, since their decisions are no longer seen as pure legal interpretation but as decisions shaped by the map of global alliances and by pressure from the UN Security Council.

The remedy for this loss of authority does not lie in the pursuit of an apolitical court. Nouwen and Werner (2010) show that the ICC acts politically whenever it names a

perpetrator, and that the aspiration to stand above politics may itself conceal the political effects of the Court's choices. Franck's (1990) theory points to a more attainable standard: legitimacy depends on coherence, which a court can pursue by applying the same criteria to like situations and by explaining its decisions in terms that others can test. On this reading, the Court's legitimacy in the eyes of the Global South depends less on whether it can escape the influence of power, which it cannot, than on whether it can demonstrate that its priorities follow the gravity of crimes and the interests of victims rather than the preferences of its most generous supporters.

According to the criminal law scholar Romli Atmasasmita, if a global judicial institution loses its moral standing because it is no longer seen as objective, the binding force of international criminal law will decline into a mere "law of the defeated" or "victor's justice" (Atmasasmita, 2010, p. 112). International norms would then be widely ignored because they would be seen as lacking intrinsic legitimacy. The loss of moral authority would leave a lasting wound on the global justice system that could take decades to heal unless the Court shows the courage to investigate violations by Western allies with the same intensity as in the Ukraine situation.

3.5.3. The Normalization of Violations and the Risk of Selective Impunity

The asymmetry in investigations sends a dangerous signal that may normalize future violations of international law through an implicit message of selective impunity. It suggests to global actors that grave crimes such as war crimes, crimes against humanity, or genocide may be tolerated, or their prosecution postponed indefinitely, provided that the perpetrators possess strong political bargaining power. The condition amounts to a "green light" for human rights violations committed under the umbrella of strategic alliances that appear untouchable by the Rome Statute.

This risk creates a precedent in which military power and economic position become the decisive factors in securing lifelong immunity. If a head of state sees that proceedings against counterparts elsewhere are abandoned or slowed for geopolitical reasons, that leader will assume the same latitude to violate international humanitarian law in pursuit of national ambitions. The deterrent function that was among the principal purposes of establishing the ICC is thereby destroyed, since potential perpetrators will calculate that legal risk can be negotiated through diplomatic channels.

This normalization also affects the perception of victims around the world. When victims in Ukraine see arrest warrants issued promptly against those who committed war crimes against them, while victims in Palestine must wait for decades without certainty, a hierarchy of human suffering emerges. The hierarchy conveys the message that human life and dignity are worth more in one place than in another. From the perspective of the sociology of law, this condition breeds apathy toward international law and pushes oppressed communities to seek justice through non-legal or violent means as they lose faith in global institutions.

As Bassiouni (1996) argued, accountability for international crimes is a condition of durable peace, and the impunity granted in the name of political settlement tends to encourage further violations. Selective impunity extends this logic: it tells other states that they may act unilaterally in breach of international law as long as they secure the

right protectors. Such normalization will erode global human rights standards and produce a world in which the protection of civilians becomes an empty promise dependent on the map of geopolitical alliances rather than on legal justice. Without consistent enforcement, the post-Holocaust promise of "Never Again" will lose its meaning and give way to a reality in which international law serves as diplomatic cosmetics for the interests of the great powers.

4. Conclusion

The article set out to identify the causes of the asymmetric response to the Palestine and Ukraine situations and to assess its effect on the universality of international criminal law. On the first question, the comparison shows that the gap cannot be reduced to the legal difficulty of the Palestine file. Statehood and territorial jurisdiction posed real legal questions, and Kontorovich's caution deserves a hearing, but the institutions that treated these questions as grounds for years of delay in Palestine moved within days in Ukraine once 43 States Parties had referred the situation. The decisive variables were political and material: the willingness of States Parties to trigger proceedings through Article 14, the earmarking of voluntary contributions and seconded personnel, the shield that the veto provides under Articles 13(b) and 16, and the Court's dependence under Part 9 on states that are themselves parties to the alliances at stake. The asymmetry is therefore structural, in the sense that the Rome system converts geopolitical alignment into prosecutorial priority through its own rules on triggering, funding, and cooperation.

On the second question, the article's contribution lies in reading this structural selectivity through Franck's requirement of coherence and deGuzman's expressive account of case selection. Read together, they show why the damage extends beyond the victims in Palestine: when like situations receive unlike treatment, the rules of distinction, proportionality, and individual responsibility lose their compliance pull everywhere, the label of "war criminal" becomes a diplomatic resource against adversaries, and states of the Global South gain a ready argument to resist the Court. This explains the erosion of trust and the risk of withdrawals discussed above more precisely than an appeal to double standards alone.

The analysis supports three reforms. The OTP should restrict earmarked voluntary contributions and channel all financial assistance from States Parties into an independently managed general fund, so that the allocation of investigative resources follows the gravity of crimes and the needs of victims. The Court should publish consistent and reviewable timelines and reasons for advancing or delaying situations, so that jurisdictional and bureaucratic obstacles such as those in the Palestine situation cannot serve as a pretext for the systemic postponement of justice, and the relationship between the Court and the Security Council, particularly the reach of the veto over referral and deferral, should be revisited. States Parties, finally, should make fuller use of universal jurisdiction in their domestic courts as a second line of accountability when the Court is slowed or obstructed by the great powers. By investigating violations by the strategic allies of the West with the same intensity applied to their adversaries, the ICC can restore its moral authority as an impartial guardian of humanity. Further research

could test these conclusions against other situations before the Court and examine whether the reforms proposed here would survive the political economy of the Assembly of States Parties.

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