



**ANALYSIS OF THE CHALLENGES OF APPLYING THE JURISDICTION OF THE
INTERNATIONAL CRIMINAL COURT TO THE CRIME OF GENOCIDE
AGAINST NON-PARTIES IN ORDER TO REALIZE GLOBAL LEGAL JUSTICE**

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ABSTRACT

The crime of genocide is a serious violation that threatens humanity. This study aims to examine the application of the International Criminal Court's authority over non-party states along with analyzing its law enforcement challenges. This study uses a normative legal method through a statutory approach as well as a conceptual approach. The research results indicate two main conclusions. First, the court still has the authority to try genocide crimes in non-party states through referrals from the United Nations Security Council, expansion of incident territorial boundaries, specific state willingness, as well as through perpetrator citizenship ties. Second, the implementation of this authority faces various major obstacles such as the protection of state sovereignty, absence of local government cooperation, global political interest bias, up to evidence-gathering system weaknesses. To overcome these problems, the world requires a change in the referral system, an increase in interstate cooperation, while simultaneously strengthening domestic laws so perpetrators of crimes against humanity cannot escape prison sentences.

Keywords: International Criminal Court, Genocide Crimes, Non-Party States, Legal Authority, Global Justice.

I. INTRODUCTION

The International Criminal Court is a world judicial institution established to uphold justice for all mankind. The institution was established on the basis of a written agreement known as the Rome Statute. The main purpose of the establishment of this judicial institution is to ensure that every perpetrator of extraordinary crimes cannot escape from the snares of the law. The crimes handled by this court are not ordinary crimes, but heinous acts that destroy the peace of the people of the earth. This court is tasked with hearing high-ranking officials,



military commanders, and state leaders who are proven to have ordered mass killings.¹

One of the most serious types of crimes under the authority of this court is the crime of genocide. Genocide is the act of killing, torturing, or destroying a certain group of people intentionally. The groups targeted by this crime are usually differentiated based on their ancestral origin, race, skin color, and religious beliefs. The act of exterminating a group of people is considered the most cruel act in the world. Therefore, the international community agrees that the perpetrators of genocide must be pursued, arrested, and then tried as severely as possible regardless of their official position.

The exercise of the court's authority generally runs smoothly if the crime occurs in the territory of a country that has signed the Rome Statute. Countries that have participated in the agreement are obliged to hand over the perpetrators of crimes to the world court. However, a very big legal problem would arise if the act of genocide took place on the territory of a country that refused to take part in the Rome Statute. Countries that do not participate are referred to as non-party countries.

In the face of non-party countries, the world's courts often find themselves at a dead end. Non-state states usually strongly reject the intervention of international courts on the grounds of protecting their country's sovereignty. They argue that foreign courts have no right to interfere in their domestic security affairs. This refusal creates a major obstacle to law enforcement, so many victims of genocide are forced to harbor disappointment because the perpetrators continue to live freely untouched by the law.

Departing from these complicated problems, this research was compiled to discuss more deeply about the limits of the legal authority of the world courts. This paper focuses on answering two main problem formulations, namely:

1. How is the International Criminal Court's authority in prosecuting genocide crimes that occurred in the territory of a non-party state?
2. What are the law enforcement challenges faced by the International Criminal Court

¹ Rahmawati, T., Aliyah Shiva, K., Salsabilla, N., Afifany Susanta Putry, S., Mulia, R., & Jevis Saleh, W. (2025). The Role of the International Criminal Court (ICC) in the Enforcement of International Criminal Law Against the Crime of Genocide. *INNOVATIVE: Journal Of Social Science Research*, 5(Icc), 252–265.



against non-state parties and the steps to resolve them?

II. RESEARCH METHODS

This research was prepared using normative legal research methods. The normative legal research method is a series of actions to examine literature materials to find clarity on a legal rule. This research is centered on the study of written documents, scientific theories, and the principles of international law that apply today. The researcher did not conduct a data search by interviewing the public directly in the field.

The approach applied includes a legislative approach along with a legal concept approach. Through a legislative approach, researchers directly examine the text of world rules such as the Rome Statute. The legal concept approach is used to decipher various special terms such as the authority of the court, the crime of genocide, along with the principle of sovereignty of an independent state.

Legal materials are obtained directly from the official regulatory text published by the world body. Meanwhile, supporting materials were obtained through international criminal law textbooks, journal articles, and various writings by legal experts. All of the reading materials are collected, sorted, and then explained in easy-to-understand official language to provide a complete picture of global legal protection.

III. RESULTS AND DISCUSSION

3.1. Regulation of the Authority of the International Criminal Court in Prosecuting the Crime of Genocide in the Territory of a Non-Party State

The International Criminal Court is the world's only permanent tribunal to try extraordinary crimes. It has a handbook that governs the boundaries of its powers in great detail. The power to try a person in law is called the term jurisdiction. Based on the basic rules, the court is only allowed to work if the crime meets the requirements of the scene, time of the



incident, and the type of crime that is mutually agreed.²

The crime of genocide ranks highest in the list of crimes supervised by this court. Genocide is not just an ordinary murder, but a neatly orchestrated evil plan by the ruling government. The main intention is to erase the existence of an ethnicity, race, or religious group from the face of the earth. Given the dangers of this crime, the world agrees that genocide is a common enemy of all humanity. There is no single reason that can be used to justify the act of killing these people.³

As a general rule, the world court only has the right to arrest the perpetrator if the crime of genocide occurred on land owned by the participating country. A participating country is a country that has given official consent subject to court rules. However, many countries with poor human rights records deliberately do not want to become participating countries. They chose to be a state rather than a party so that their generals would be immune from the threat of international prison sentences. This condition makes the world court seem powerless to face atrocities in the country.

However, the Rome Statute guidebook has apparently prepared several ways out to overcome this legal loophole. The first way out is through a formal referral from the United Nations Security Council. The Security Council is the highest body in the world tasked with maintaining peace on earth. If this body considers that a massacre in a non-party country has threatened world security, it has the right to issue a warrant. This warrant gives full permission to the international court to immediately intervene to conduct an investigation in the country.⁴

The granting of permission by the Security Council is coercive and binding on all countries in the world. Once a referral warrant has been issued, a non-state can no longer refuse the arrival of international investigators. A clear example of the application of this rule occurred in the case of bloody wars on the African continent a few years ago. Although the perpetrator country rejected the rules of the world court, a referral letter from the United Nations managed

² Rome Statute 1998, Article 27 on the denial of immunity in the prosecution of international crimes.

³ Prasetyo, M. H. (2020). The crime of genocide in the perspective of international criminal law. 7(November), 115–138.

⁴ Prasetyo, R., Farhan Agung, M., & Putri, H. (2024). Analysis of State Jurisdiction in International Criminal Law against the Crime of Genocide. *Journal of Law and Social Sciences*, 2(2), 56–63. <https://doi.org/10.51903/hakim.v2i2.1731>.



to force the court to issue an arrest warrant for the country's president.

The second way out that the world court has is the expansion of the interpretation of the boundaries of the territory of the incident. A crime of genocide often does not occur only in one place. Often, military forces expel certain groups of people until they are forced to run across the border to neighboring countries. If the crime starts in a non-party country but the victims fall on the land belonging to the participating country, then the world court has the right to hear the matter.

The implementation of the expansion of the boundaries of the area of the incident is a smart breakthrough in international criminal law. The Court considers that the crime of forced eviction is a continuous crime. As long as some of the victim's suffering touches the land of a state that obeys the rules of the court, then the whole evil act falls within the reach of the authority of the world's judges. This approach ensures that humanitarian criminals cannot take refuge behind their own national borders.

A third way out is provided through a specific state readiness mechanism. Sometimes, a non-party country feels that its domestic court system has been destroyed by civil war. The country can then send a provisional consent letter to the world court to deal with one particular genocide case. This temporary willingness mechanism allows the court to enter the trial of the perpetrator without forcing the country to become a permanent participant for life.

The fourth way out is through the citizenship of the perpetrators. The world court has the authority inherent in the perpetrator. If a warlord who commits genocide in a non-party country turns out to have citizenship from the participating country, then the commander can still be arrested. The perpetrator's citizenship is the opening key for the court to drag him to the green table, wherever the crime he committed.⁵

All of these solutions prove that the world's courts are not completely out of ways to uphold justice. The court continues to use smart legal thinking so that no area on this earth becomes a safe place for genocide perpetrators. This effort shows the seriousness of the world

⁵ Fikri Dwi Fadillah, & Muhammad Zirly Annadziif. (2024). The Crime of Genocide in the Perspective of International Criminal Law. *Journal of Law and Socio-Politics*, 2(2), 56–65. <https://doi.org/10.59581/jhsp-widyakarya.v2i2.2801>.



community in defending the fate of the oppressed who do not receive protection from their own governments. International law exists as a last resort for those whose voices are silenced by the power of arms.

However, this world court continues to work by upholding the complementary principle. This principle means that the world court will only move if the original government in that country really does not want to act honestly. If the government of a non-party country suddenly changes its mind and is willing to try its own generals fairly in its capital, then the world court will retreat in order. The world court does not intend to usurp the duties of the local courts, but simply to ensure that the crime is truly punished.⁶

The entire rule of authority is a tangible manifestation of the progress of international criminal law civilization. The International Criminal Court has built a strong global safety net. Through the approval of references by world bodies, the expansion of the interpretation of the scene, and the use of citizenship, the gap for genocide perpetrators to escape has become narrower. This legal order provides great hope for the realization of justice for all inhabitants of the earth without exception.

The application of the law to a non-party state also requires proof of a special intention for absolute destruction. The world court is obliged to ensure that the actions of the government of the non-party country really have the intention of eliminating a group of nations. Proving this special intent is a strong basis for the world's judges to issue arrest warrants. The absence of evidence of special intent will reduce the degree of crime to an ordinary crime against humanity.

The success of the implementation of all these solutions is highly dependent on cooperation between countries. The international court does not have its own police force to forcibly pick up suspects in a non-party country. Therefore, neighboring countries that have become participants are obliged to provide arrest assistance. This assistance includes intercepting suspect aircraft when crossing the airspace of participating countries.

Violations of the territorial boundaries of non-party countries often provoke diplomatic

⁶ Prasetyo, M. H. (2020). The crime of genocide in the perspective of international criminal law. 7(November), 115–138.



outrage. Non-party state rulers usually accuse the court of acting beyond the limits of its authority. Despite the strong criticism, the court still adheres to the highest human values that know no borders. Global humanitarian law is positioned higher than the perverse principle of absolute sovereignty.⁷

The presence of this court also provides a stage of justice for victims from non-state countries. The survivors of the massacre finally have a safe place to tell their suffering before the world's judges. This acknowledgment of suffering restored their human dignity that had been trampled on by tyrannical rulers. The voices of the victims are the main evidence to imprison the dictator.

The courage of the world court to undermine the immunity of non-parties has recorded the golden history of legal civilization. The new world order no longer allowed cruelty to hide behind the shield of sovereignty. The designers of mass atrocities now have to live in fear because they realize that the hand of global justice could reach them at any time. The spirit of humanitarian protection has defeated the arrogance of the armed powers.⁸

3.2. Law Enforcement Challenges Faced by the International Criminal Court and Steps to Resolve Them

The implementation of the authority of the world court in arresting the perpetrators of genocide is not as easy as reading a legal manual. The International Criminal Court must face a thick wall in the form of protection of state sovereignty. The concept of sovereignty gives every independent country the absolute right to manage its own household without the intervention of foreigners. Adhering to this principle, many non-party countries arrogantly refuse to hand over their citizens to the world's courts.⁹

Countries that reject this often accuse the world court of being a political tool of western

⁷ Rahim, A. (2017). The Urgency of the Ratification of the Rome Statute is a form of the existence of the International Criminal Court in the settlement of cases of human rights violations. *Al Himayah Journal*, 1(1), 1-24.

⁸ Sari, H. (2023). Human Rights Conflict and State Sovereignty: A Review of Contemporary Issues. *Journal of Interdisciplinary Studies Perspectives*, 22

⁹ Anditya, A. W., & Mudiparwanto, W. A. (2023). Legal Consequences of the Right of Referral and the Deferral Rights of the Security Council Against the International Criminal Court. *Tirtayasa Journal of International Law*, 1(2), 159-173.



countries. They consider that the interference of international investigators is only a covert way to topple a legitimate government. As a result of this very deep suspicion, the local government usually ordered its national police not to provide any assistance to court officers. This refusal of cooperation is the root cause of the failure of many efforts to enforce the law on crimes against humanity.

The most obvious obstacle felt by the court was the absence of its own arrest police force. The International Criminal Court is simply an institution that contains judges and public prosecutors. They rely heavily on the generosity of police from the local country to put handcuffs on the hands of the perpetrators. When the government of a non-party refuses to issue an arrest warrant, then a warrant from a world judge will only end up being a piece of paper without coercive power.

The lack of support from the local government also complicates the process of finding evidence on the ground. To prove the crime of genocide, court investigators had to visit the site of mass graves, examine the remains of the village's destruction, and then interview hundreds of surviving victims. If the local government prohibits the entry of foreign investigators, then the collection of evidence becomes very impossible. Without strong evidence, the court prosecutor will not dare to try the perpetrator in court for fear that his charges will be rejected by the panel of judges.¹⁰

In addition to obstacles from local governments, the world court also has to deal with the dirty game of global politics. Referrals from the United Nations Security Council are indeed the most powerful weapon to penetrate non-party countries. However, this peace body is controlled by five major states that have the privilege of annulling decisions. This privilege of revocation is often used by giant states to protect the small countries that are friends of its federation.

If a dictator who committed genocide was a close friend of one of the giant states holding the privilege, then the investigation referral letter would definitely be thwarted in the meeting room. This political protection game makes international law look very biased. The International Criminal Court is often sneered at for daring to punish criminals from poor

¹⁰ Mufty, A. M., S., M., & S.H., M. (2025). International Criminal Law. Tahta Media Group



countries on certain continents, while war criminals from wealthy developed countries are allowed to escape prosecution.¹¹

The rejection from some developed countries is even shown openly through the creation of anti-court laws. There are giant countries that issue domestic rules that allow the use of military force to release their soldiers if they are arrested by the world court. The hostile attitude of the countries that hold the largest armed power on earth greatly diminishes the authority of the international judicial institutions. The absence of support from giant countries weakens the world's trust in global justice.

This series of work obstacles had a very bad impact on the victims of genocide. The court's failure to arrest the main perpetrators has extended the chain of hatred in the disputed area. Victims who see their family's killers still roaming free will feel that the world has forgotten them. This deep disillusionment often triggers the victim group to assemble forces and then take revenge in blood, so that the cycle of violence will never reach an end.¹²

In order to save the authority of international criminal law, the world community must immediately devise concrete settlement steps. The most urgent first step is to improve the decision-making system in the world peace body. Major countries should be forced to make self-containment deals. The agreement contains a promise that the five giant nations will not use their cancellation privileges if the issue is related to the crime of genocide. The evil of human destruction can no longer be used as a bargaining chip for the politics of the trade federation.¹³

The second step in the solution is to strengthen the legal system in each country's country through the application of the principle of universal justice. This basis allows every country on earth to arrest the perpetrators of genocide who happen to be on vacation in their country. If

¹¹ Oktaviana, M. (2021). International Criminal Court (ICC) jurisdiction in the enforcement of gross human rights violations by Omar Hassan al-Bashir in Darfur, Sudan. *Belli Ac Pacis (International Journal of Law)*, 7(2), 59–67.

¹² Rahim, A. (2017). The Urgency of the Ratification of the Rome Statute is a form of the existence of the International Criminal Court in the settlement of cases of human rights violations. *Al Himayah Journal*, 1(1), 1-24.

¹³ Iara Okta Yanti, Dwi Putri Lestatika, W. E. S. (2025). Enforcement of international criminal law in countries that are not signatories to the Rome Statute: implications for state sovereignty and efforts to achieve global justice. *Journal of Law and Citizenship*, 12(6).



the genocide suspect from a country that is not a fugitive party then hides in the participating country, then the participating country is required by law to immediately arrest the perpetrator. The perpetrators can then be tried in the country or immediately handed over to the headquarters of the world court.

The third step of completion is the improvement of the diplomatic cooperation approach. The world court and participating countries must be more active in providing profit encouragement for non-party countries so that they want to be open. The provision of economic assistance and the improvement of trade relations can be used as a condition for the country to cooperate in handing over the perpetrators of genocide. The combination of the firmness of international law and the flexibility of the diplomatic approach is believed to be able to soften the hearts of stubborn rulers.¹⁴

All obstacles in the form of state sovereignty, the absence of arrest forces, and political interest bias are indeed very difficult for the task of the world court. However, this should not dampen the spirit of humanitarian law enforcement. The International Criminal Court remains the last light of hope for the millions of victims of genocide. Through the improvement of the referral system, the application of universal authority, as well as the improvement of negotiations between nations, the noble ideal of removing the immunity of human criminals from the face of the earth will certainly be gloriously realized.

Another challenge stems from the limited financial budget of the court. Investigating the crime of genocide in a non-party country sucks up fantastic costs. Investigators must hire international forensic experts, find local language translators, and finance the transfer of key witnesses to safety. Lack of funding from participating countries often slows down the trial process.

The world court must also fight against the spread of fake news designed by non-state parties. Guilty governments usually deploy cyber forces to tarnish the good name of international judges. They spread the false narrative that the world court is conducting a new style of colonialism. This kind of slander aims to weaken the local community's support for the

¹⁴ Christianiti, D. W. (2015). Jurisdiction of the International Criminal Court (ICC) against Non-Citizens of the Rome Statute and its Impact on Indonesia. *Journal of Law*, 2(1).



law enforcement process.

In order to fend off the fake news attack, the court must cooperate with human rights groups in the country. This civil society group plays an important role as an extension of the court to provide legal education to local residents. They work covertly to spread the truth while collecting evidence of the massacre. The involvement of civil society strengthens the position of the courts in the eyes of the small people.¹⁵

Additional settlement measures include freezing all assets belonging to genocide perpetrators stored abroad. The court can ask all banks in the world to lock the secret accounts of generals from countries other than those countries. This total impoverishment would paralyze the dictator's military power. The confiscated property can then be distributed as recovery money for the victims of the massacre.

The series of challenges that lie ahead should not break the spirit of global justice enforcement. The International Criminal Court must continue to improve the weaknesses of its system while expanding its network of intercontinental cooperation. The success of hearing a single ruler of a non-party state will send a wave of harsh warnings to all corners of the earth. Humanitarian justice will always find a way to destroy tyranny, no matter how strong the political shield that protects it.¹⁶

IV. CONCLUSION

A. Conclusion

First, the International Criminal Court actually has various legal ways to try the perpetrators of genocide even though the incident took place on the land of a non-party state. These various solutions include the issuance of a letter of reference from the United Nations Security Council, the use of the expansion of the victim's territorial boundaries to the participating country, the receipt of a special judicial willingness letter, and the use of the perpetrator's citizenship relationship. All of these rules of authority are deliberately designed

¹⁵ Rizal, M., Laitupa, S., Palestina, F. A., Surayda, H. I., Hidayat, D. N., Pramudianto, A., Rosita, D., Putra, D. A., Anita, A. A., & others. (2025). Contemporary International Law. And the Library of Congress. <https://books.google.co.id/books?id=0w5LEQAAQBAJ>. Page 144

¹⁶ Situngkir, D. A. (2018). The Existence of State Sovereignty in the Exercise of the Jurisdiction of the International Criminal Court. *Lex Librum : Journal of Legal Sciences*, 4, 659–672



in such a way that global humanitarian law can still be enforced in order to remove all forms of immunity for the destroyers of civilization.

Second, the implementation of the arrest of perpetrators in non-party countries must face an extraordinarily thick wall of obstacles. This difficulty stems from the refusal of local governments to take refuge behind the principle of state sovereignty, the absence of court-owned arrest police, to the emergence of political protection from giant countries that hold the right to annul decisions in the world peace body. Failure to break through this obstacle has a negative effect on the prolongation of the suffering of the victims, thus demanding an improvement of the world's decision-making system as well as the implementation of universal arrest in other participating countries.

B. Suggestions

In order to maximize the protection of human rights in the future, it is strongly recommended to major countries to immediately agree on restrictions on the use of the right to annul decisions if a deliberation concerns the crime of genocide. The International Criminal Court must be more courageous in using the interpretation of the expansion of the boundaries of the area of the incident so that the perpetrators of crimes cannot take refuge easily. To the governments of countries in the world, it is recommended to improve the criminal rules in their countries in order to be able to arrest foreign humanitarian criminals who cross their territory. Finally, for legal experts, it is highly recommended to continue to oversee the reform of international criminal law to ensure that justice truly touches the victims whose voices are silenced by tyrannical rulers.

BIBLIOGRAPHY

- Rahmawati, T., Aliyah Shiva, K., Salsabilla, N., Afifany Susanta Putry, S., Mulia, R., & Jevis Saleh, W., 2025. *The Role of the International Criminal Court (ICC) in the Enforcement of International Criminal Law against the Crime of Genocide*. INNOVATIVE: Journal of Social Science Research, Vol. 5.
- Rome Statute, 1998. *Article 27 concerning the Denial of Immunity in the Prosecution of International Crimes*.
- Prasetyo, M. H., 2020. *The Crime of Genocide in the Perspective of International Criminal Law*.
- Prasetyo, R., Farhan Agung, M., & Putri, H., 2024. *Analysis of State Jurisdiction in International Criminal Law against the Crime of Genocide*. Journal of Law and Social



- Sciences, Vol. 2, No. 2.
- Fikri Dwi Fadillah, & Muhammad Zirly Annadziif, 2024. *The Crime of Genocide in the Perspective of International Criminal Law*. Journal of Law and Socio-Politics, Vol. 2, No. 2.
- Rahim, A., 2017. *The Urgency of the Ratification of the Rome Statute: The Existence of the International Criminal Court in the Settlement of Human Rights Violation Cases*. Al Himayah Journal, Vol. 1, No. 1.
- Sari, H., 2023. *Conflicts of Human Rights and State Sovereignty: A Review of Contemporary Issues*. Journal of Interdisciplinary Studies Perspectives.
- Anditya, A. W., & Mudiparwanto, W. A., 2023. *Legal Consequences of the Rights of Referral and the Deferral Rights of the Security Council against the International Criminal Court*. Tirtayasa Journal of International Law, Vol. 1, No. 2.
- Mufty, A. M., 2025. *International Criminal Law*. Tahta Media Group.
- Oktaviana, M., 2021. *International Criminal Court (ICC) Jurisdiction in the Enforcement of Gross Human Rights Violations by Omar Hassan Al-Bashir in Darfur, Sudan*. Belli Ac Pacis (International Journal of Law), Vol. 7, No. 2.
- Iara Okta Yanti, Dwi Putri Lestarika, & W. E. S., 2025. *Enforcement of International Criminal Law in Countries Not Signatories to the Rome Statute: Implications of State Sovereignty and Efforts to Achieve Global Justice*. Journal of Law and Citizenship, Vol. 12, No. 6.
- Christianti, D. W., 2015. *Jurisdiction of the International Criminal Court (ICC) against Non-Citizens of the Rome Statute and its Impact on Indonesia*. Journal of Legal Science, Vol. 2, No. 1.
- Rizal, M., Laitupa, S., Palestina, F. A., Surayda, H. I., Hidayat, D. N., Pramudianto, A., Rosita, D., Putra, D. A., Anita, A. A., et al., 2025. *Contemporary International Law*. And the Library of Congress.
- Situngkir, D. A., 2018. *The Existence of State Sovereignty in the Implementation of the Jurisdiction of the International Criminal Court*. Lex Librum: Journal of Legal Science, Vol. 4.