



The Role of the Office of the Prosecutor of the International Criminal Court in Advancing International Criminal Justice

Hussain Dad Kamran; Hussain Sharifi Ziraksar

Faculty Member, Khatam Al-Nabieen University – Ghazni Branch, Afghanistan and PhD Candidate in Criminal
Law and Criminology, Ahl Al-Bayt International University, Tehran, Iran

Faculty Member, Faculty of Law and Political Science, Jami University, Herat, Afghanistan, and PhD Candidate in
Criminal Law and Criminology, Ahl Al-Bayt International University, Iran

<http://dx.doi.org/10.18415/ijmmu.v12i11.7216>

Abstract

The Office of the Prosecutor constitutes one of the principal organs of the International Criminal Court (ICC). As a vital pillar of the Court, it plays a significant role in advancing the provisions of the Rome Statute. Unlike crimes addressed within the framework of domestic legal systems—which undoubtedly carry a lower degree of gravity—international crimes are characterized by their exceptional seriousness. Accordingly, the ICC exercises complementary jurisdiction over the four core international crimes. The commission of such crimes is of such magnitude that it threatens global peace and security and profoundly shakes the conscience of humanity. In this context, the Office of the Prosecutor of the ICC is mandated to safeguard international peace and security alongside the United Nations and to ensure the enforcement of international criminal justice. Given its independent nature, the Office neither receives instructions from external bodies nor acts upon them. It is obliged to respond to communications and to investigate crimes falling within the jurisdiction of the Court. This function underscores its crucial role in the administration of justice to such an extent that, even where the gravity of crimes and the protection of victims' interests warrant prosecution, the Prosecutor may decline to proceed with an investigation if doing so would jeopardize the proper administration of international criminal justice. In view of the Office's significance, the Prosecutor and his or her deputies must embody high moral standards and possess considerable scholarly expertise regarding both substantive and procedural aspects of international crimes. Only then can they secure global peace and security, enforce international criminal justice, and, where possible, contribute to the prevention of future crimes. Nonetheless, the Office faces various challenges in advancing international criminal justice. These include the discretion of States Parties to surrender suspects either to the Court or pursuant to existing extradition agreements, the practical limitations of the principle of complementarity, restrictions on access to territories where crimes have occurred, difficulties in collecting evidence, and other related obstacles.

Keywords: *Office of the Prosecutor; Prosecutor; International Criminal Court; International Criminal Justice*

Introduction

Throughout history, human societies have consistently witnessed grave and atrocious crimes arising from armed conflicts and hostilities. These crimes have ranged from inter-ethnic or inter-group violence—such as that between the Hutus and Tutsis—to large-scale conflicts between states, most notably during the First and Second World Wars. The severity of some of these crimes was such that they posed a serious threat to the very survival of humanity at the time.

Accordingly, in order to safeguard the continuity of human society and prevent the recurrence of such atrocities, it became imperative to hold the perpetrators and those responsible accountable and to bring them before judicial mechanisms. This objective could not have been achieved without the cooperation of states and the collective will of the international community. A manifestation of such collective determination can be observed in the establishment of tribunals such as those of Nuremberg, Tokyo, Rwanda, and the former Yugoslavia. Although temporary in nature, these tribunals were created under the authority of the United Nations Security Council to prosecute individuals responsible for crimes such as crimes against humanity and war crimes.

Following the establishment of these temporary tribunals, and as a result of extensive efforts by states, the permanent International Criminal Court (ICC) was created. The purpose of this Court was to ensure that the principal perpetrators of atrocities such as genocide, war crimes, crimes against humanity, and the crime of aggression—which gravely endanger the survival of humankind—would be brought to trial and would no longer remain shielded by impunity or the doctrine of state sovereignty. Thus, the foremost priority was to hold such individuals accountable, and secondly, where possible, to prevent the commission of similar crimes in the future. Accordingly, international criminal justice signifies that individuals who commit gross violations of human rights and international humanitarian law—namely, the perpetrators of the most serious international crimes, regardless of their status or rank—must be held responsible for their actions.

From this perspective, the concept or system of international criminal justice has undergone numerous stages of development and, consequently, requires a historical examination. Within this framework, some theorists have identified the Nuremberg Tribunal as the guiding model for international criminal justice, while others have regarded the judgment of the International Military Tribunal in October 1946 as the turning point in the emergence of such a system. Although characterizing the Nuremberg and Tokyo Tribunals as “victors’ justice” has a longstanding presence in legal doctrine and in the early debates of international criminal law (Reza Sadeghi, 2022, p. 25), certain scholars maintain that the origins of international criminal justice can be traced back even earlier.

Accordingly, with the establishment of the International Criminal Court (ICC) on 1 July 2002 in Rome, Italy, the Court was organized into four principal organs: the Presidency, the Chambers, the Registry, and the Office of the Prosecutor, each entrusted with functions explicitly defined in the Rome Statute. Among these, the Office of the Prosecutor constitutes one of the Court’s four fundamental pillars and bears a critical role in the realization of international criminal justice. With the growing incidence of both domestic and international crimes, the preservation of international criminal justice has become increasingly imperative, regarded as a priority for the survival and continuity of human society.

In this context, the role of the ICC Office of the Prosecutor in advancing and ensuring international criminal justice is of particular importance. This organ not only examines and applies the relevant legal provisions but also, in pursuing and prosecuting cases within its jurisdiction, fosters cooperation with other international organizations. Accordingly, this study will examine the role of the Office of the Prosecutor in the realization of international criminal justice, while also addressing the challenges and obstacles confronting this institution.

The Role of the Office of the Prosecutor in Advancing International Criminal Justice

The Office of the Prosecutor constitutes the sole organ of the International Criminal Court (ICC) entrusted with receiving communications regarding crimes within the Court's jurisdiction, conducting investigations into such crimes, and prosecuting cases before the Court. Whenever such a weighty responsibility is placed upon an institution—whether domestic or international—concerns may arise regarding potential influences from natural or juridical persons at the international level, which could compromise the proper administration of justice.

Accordingly, Article 42 of the Rome Statute delineates the core functions of the Office of the Prosecutor, including its independence, the reception and examination of communications concerning alleged crimes, the investigation of offenses falling within the Court's jurisdiction, and the prosecution of cases before the Court. Through the framework established under Article 42, the Office of the Prosecutor can effectively play a prominent role in ensuring the realization of justice.

Independence of the Office of the Prosecutor

Independence, in its literal sense, refers to self-sufficiency and freedom from dependence on others, while in political terminology it denotes immunity from external influence and control. From a legal perspective, particularly in Western countries, independence is commonly equated with the terms *independence* or *autonomy* (Fazaeli, 2013, p. 180). Although numerous definitions of independence have been proposed, from which various characteristics can be inferred, it can generally be understood to encompass three essential features: first, impartiality; second, acceptance of judicial decisions by the majority; and third, freedom from undue influence or interference. Whenever the independence of an institution or organ is discussed, it should embody these three characteristics.

Thus, independence signifies protection from political or executive influence and control (Ahmadi, 2017, pp. 68–69). The philosophical foundations of independence can be traced to thinkers such as Baron de Montesquieu. In *The Spirit of the Laws*, he argued that without the independence of the judiciary from the legislative and executive branches, freedom cannot be meaningfully ensured. If the judiciary becomes part of the legislature, the continuation of citizens' liberties is exposed to arbitrary control, as the legislator effectively becomes the judge. Similarly, if the judiciary is subordinated to the executive branch, judges may act in ways that contravene justice and exhibit harshness (Montesquieu, 2012, p. 128).

The Prosecutor of the Nuremberg Tribunal, in one of his indictments, referred to violations of the Court's independence in Germany by one of the defendants. However, for the first time, the ¹ independence and impartiality of the judiciary were explicitly enshrined in the Universal Declaration of Human Rights on 10 December 1948. According to Article 10 of this Declaration: "*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*" Consequently, the principle of judicial independence has received strong recognition across all legal systems worldwide and is undoubtedly regarded as a general principle of law.

This principle constitutes one of the fundamental human rights. As the International Criminal Tribunal for the former Yugoslavia (ICTY) Trial Chamber noted in the *Furundžija* case: "*The principle that an accused must be tried before an independent and impartial tribunal is an integral part of the right to a fair trial and a fundamental right of the accused, recognized by all*" (Kasseh, 2008, p. 486). Given that judicial independence is a core element in the pursuit and realization of criminal justice at both

¹ - Trials of War Criminals before Nuernberg Military Tribunals under Control Council Law NO. 10, October 1946-April 1949, Volume III, Washington, 1951, p. 31.

domestic and international levels, the establishment of a permanent tribunal—the International Criminal Court—marked a significant evolution beyond the temporary post-World War II tribunals.

Under Article 42 of the Rome Statute of the ICC, *“The Office of the Prosecutor shall be an independent organ of the Court and shall act independently in the performance of its functions.”* Here, the emphasis is first placed on the organizational independence of the Office of the Prosecutor as one of the Court’s principal organs, which safeguards it from any form of external influence or control. Second, the independence of the Office in its operations ensures that the Prosecutor retains full discretion in matters such as investigating and pursuing crimes within the Court’s jurisdiction. By exercising this independence, the Office of the Prosecutor can rigorously and thoughtfully investigate, pursue, and examine crimes under the Court’s jurisdiction—a factor that is critically important in advancing international criminal justice.

Responsibility for Receiving Communications and Investigating Crimes within the Court’s Jurisdiction

Pursuant to Article 42 of the Rome Statute of the International Criminal Court (ICC), the Office of the Prosecutor *“shall be responsible for receiving referrals and any communications and evidence concerning crimes within the jurisdiction of the Court.”* Accordingly, the Office receives information and evidence and subsequently examines it. Matters falling outside the Court’s jurisdiction are not pursued or investigated by this organ.

Upon receiving information regarding alleged violations of the Statute and crimes within the Court’s jurisdiction, the Prosecutor, in accordance with Article 53(1) of the Rome Statute, shall initiate an investigation only if there exists a reasonable basis to proceed with the case based on the information at hand.

Thus, the Office of the Prosecutor functions as the primary body for collecting information and determining whether to commence or refrain from initiating investigations. Under Article 15(2) of the Rome Statute, *“The Prosecutor shall analyze the information received and may, for this purpose, seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources, and may receive written or oral testimony before the Court.”* Investigation are as The key factors that influence the Prosecutor’s decision to initiate an i² follows:

First, whether the information provided to the Prosecutor establishes a reasonable basis to believe that a crime within the jurisdiction of the International Criminal Court (ICC) has been committed or is ongoing; in other words, the information must convince the Prosecutor that one of the crimes listed in Article 5³ of the Rome Statute has occurred or is occurring.

Second, whether the case is admissible under the provisions of Article 17 of the Rome Statute. Article 17 refers to the preamble, paragraph 10, and Article 1 of the Statute. According to Article 1, the Court exercises complementary jurisdiction; therefore, if the conditions enumerated in Article 17 are met, the Court does not have jurisdiction:

²- “Article 15: “2- “The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.”

³ - “Article 5: Crimes within the jurisdiction of the Court

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole.

The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression."

- a) If the case is being investigated or prosecuted by a State with jurisdiction, unless that State is genuinely unwilling or unable to carry out the investigation or prosecution.
- b) If an investigation or prosecution has already been conducted by a State with jurisdiction and that State is unwilling to prosecute the person concerned, unless such unwillingness genuinely stems from an inability or unwillingness of the State.
- c) If the person has already been tried for conduct constituting the alleged offense, and a subsequent trial is prohibited under Article 20(3) of the Statute.
- d) If the case is not of sufficient gravity to justify further action.

However, pursuant to Article 17(2), the Prosecutor may intervene if it is determined that the proceedings are not or were not conducted independently or impartially, or are being conducted in a manner inconsistent with the purpose of ensuring criminal justice for the individual concerned. This includes cases where the proceedings have been unduly delayed to the extent that they no longer correspond with the objectives of international criminal justice, or where a State intentionally manipulates the process to shield the accused from accountability for crimes listed in Article 5. Additionally, if the Prosecutor determines that the accused is present in a State with a collapsed judicial system or a State incapable of apprehending the individual, the Office of the Prosecutor may intervene and initiate investigations independently.

Third, if, considering factors such as the gravity of the alleged crime and the interests of the victims, there is evidence that proceeding with the case would not serve the cause of justice, the Prosecutor may also refrain from initiating an investigation. The foremost concern in investigations and proceedings before the International Criminal Court (ICC) is the realization of international criminal justice (Sack & Schaefer; translators: Behnam Yousafian & Mohammad Esmaeili, 2016, pp. 81–85). This principle is of such significance that it is explicitly addressed in Article 53(1)(c) of the Rome Statute. Accordingly, if the Prosecutor determines that, despite all aspects of the alleged crime—such as the occurrence of a grave offense and recognition of the victims’ interests—proceeding with the investigation or prosecution would not be in the interest of justice or would not contribute to its preservation, the Prosecutor shall refrain from initiating proceedings. The Prosecutor must record the reasons for not commencing the investigation and, in accordance with Article 14 of the Statute, notify the United Nations Security Council and, pursuant to Article 13(b), the Pre-Trial Chamber and the referring State.

Thus, the role of the Office of the Prosecutor in advancing international criminal justice, as derived from Article 53(1)(c), demonstrates that proceeding with an investigation is contingent upon the promotion of justice (Shari’at Bagheri, 2018, p. 81). If pursuing the case would undermine justice or fail to contribute to it, the Prosecutor may abstain from investigation and report the matter as appropriate.

Under Article 53(4) of the Rome Statute, the Prosecutor may, at any time, revise a decision regarding the initiation of an investigation or prosecution if new facts or information emerge. Specifically, if new information indicates that the investigation would promote or safeguard international criminal justice, establish the commission of a grave crime, protect victims’ interests, or provide sufficient grounds to prosecute, the Prosecutor may reconsider a prior decision and reopen the investigation.

Accordingly, the ICC, as a permanent court, is responsible for prosecuting crimes that gravely threaten human survival, as enumerated in Article 5 of the Rome Statute. Pursuant to Article 13, the Prosecutor may initiate an investigation into an alleged Article 5 crime in three circumstances:

1. When a State Party refers a situation in which one or more crimes appear to have been committed, pursuant to Article 14;

2. When the United Nations Security Council refers such a situation under Chapter VII of the UN Charter;
3. When the Prosecutor initiates an investigation *proprio motu* under Article 15.

This provision is particularly significant because, in the first two scenarios, powerful States—such as Russia, the United States, or China, which possess veto rights—may obstruct the Security Council from referring a situation to the Court. In this context, the third scenario grants the Prosecutor the discretion to initiate investigations independently upon receiving credible information regarding crimes within the Court’s jurisdiction.⁴

Attributes of the Prosecutor and Their Impact on the Advancement of International Criminal Justice

The administration of the Office of the Prosecutor is vested in the Prosecutor, who is assisted by one or more Deputy Prosecutors. The Prosecutor is elected by an absolute majority through a secret ballot of the Assembly of States Parties, and the Deputy Prosecutors are similarly appointed based on a list submitted by the Prosecutor. The term of office for the Prosecutor and Deputy Prosecutors is nine years, unless a shorter term is determined at the time of appointment. Re-election is not permitted under the provisions of the Rome Statute (Collective Authors, 2014, pp. 210–211), ensuring that the Prosecutor and Deputies remain impartial and are not influenced by prospects of reappointment in subsequent terms.

According to Article 42(2) of the Rome Statute, the Prosecutor and Deputy Prosecutors must come from different States. This provision not only allows for the inclusion of experts from diverse member States but also ensures that the Office has a comprehensive understanding of legal systems across different jurisdictions. Since the promotion and realization of international criminal justice have always been central concerns of the international community, the Prosecutor, as the principal authority responsible for pursuing violations of justice, must possess specific qualities to effectively advance justice, in accordance with Article 42(3).

Accordingly, the Prosecutor and Deputy Prosecutors must exhibit high moral character and possess substantial expertise and experience in criminal prosecution or judicial proceedings. They are required to have a thorough knowledge and command of at least one of the Court’s working languages.

Article 42(3) of the Rome Statute underscores the intertwining of ethical and professional qualifications. Ethical integrity is paramount, as it significantly influences the Prosecutor’s decisions regarding the initiation, quality, and conduct of investigations into international crimes. Therefore, the Prosecutor and Deputies must first demonstrate outstanding ethical standards, followed by extensive knowledge and experience in both substantive and procedural aspects of international criminal law. As noted in Article 50(2) of the Statute, the working languages of the Court are English and French.⁵

The Rules of Procedure and Evidence shall determine the matters for which other official languages may be used as working languages of the Court.⁶ Therefore, in accordance with the provision set forth in Article 42(3) of the Rome Statute, the Prosecutor and Deputy Prosecutors are required to have proficiency in at least one of the Court’s working languages, English or French. Given that the primary

⁴- Article 15: Prosecutor. “1- The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court. 2-... .”

⁵- Article 50: “2- The working Languages of the Court shall be English and French... .”

⁶- This provision stems from Article 50(1) of the Rome Statute, which establishes Arabic, Chinese, English, French, Russian, and Spanish as the official languages of the Court. The Court’s judgments and other decisions relating to the disposition of its principal issues shall be published in all official languages. The Presidency shall determine, in accordance with criteria set out in the Rules of Procedure and Evidence, which decisions are to be considered as relating to the disposition of the Court’s principal issues for the purposes of this provision.

concern in criminal proceedings—particularly in the international sphere involving serious crimes—is effective communication, under Article 50(3) of the Statute, the Court may, upon the request of any party to the proceedings or any State permitted to participate, allow the use of languages other than English or French, provided that such use is deemed appropriate.⁷

In addition to the aforementioned provisions, under Article 42(5) of the Rome Statute, the Prosecutor and Deputy Prosecutors must refrain from engaging in any occupation that could be incompatible with their duties in prosecuting accused persons or that might raise doubts regarding their independence. They are also required to abstain from any other professional engagements. This precaution ensures that the Prosecutor or Deputies are not threatened or influenced by external parties through other professional activities, which could compromise the impartial administration of justice.

Furthermore, under Article 42(7), if the impartiality of the Prosecutor or Deputy Prosecutors in resolving a matter is reasonably questioned for any reason, they shall not participate in that matter. According to this provision, the Prosecutor and Deputy Prosecutors are prohibited from intervening in any matter previously presented before the Court under any capacity, or in any related criminal case in domestic courts involving the person under investigation or prosecution.

Finally, recognizing that the administration and advancement of criminal justice is a fundamental concern (Kraus, 2015, pp. 25–30), Article 42(8)(a) provides that the person under investigation or prosecution may, at any time, request the recusal of the Prosecutor or a Deputy Prosecutor on the grounds specified in the aforementioned Article.⁸

Therefore, while the Prosecutor and Deputy Prosecutors must be proficient in at least one of the Court's working languages (English or French), they are also required to possess high ethical standards and substantial expertise in both the substantive and procedural aspects of criminal proceedings. In addition, they must refrain from holding any other professional occupation alongside their roles in the Office of the Prosecutor to ensure that their independence and the administration of justice are not compromised.

The Necessity and Importance of Advancing International Criminal Justice

With the increasing prevalence of conflicts worldwide—both among national groups and between States—violations of international norms and regulations have become an escalating concern. Accordingly, individuals who breach international law, particularly the provisions of the Rome Statute of the International Criminal Court (ICC), must be held accountable and brought to trial to ensure that their prosecution contributes to peace among nations and the maintenance of global security.

Pursuant to Article 5 of the Rome Statute, the ICC does not have jurisdiction over all crimes; rather, its jurisdiction is limited to offenses that cause severe harm to the human community, such as war crimes, crimes against humanity, genocide, and the crime of aggression. Given that these crimes are often perpetrated by individuals in positions of power, global cooperation is essential to effectively confront and hold accountable those responsible. The following sections will examine these issues in further detail.

Maintaining Global Peace and Security

Following the two World Wars and the horrific crimes committed during and after them in various parts of the world—including in the former Yugoslavia, Rwanda, and by the Khmer Rouge—

⁷- Article 50: “3- At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a Language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.”

⁸ - Article 42: “8. (a) The person being investigated or prosecuted may at any time request the disqualification of the prosecutor or a Deputy Prosecutor on the grounds set out in this article.”

these offenses were of such extreme severity that they threatened global peace and security. In response, temporary tribunals were established under the mandate of the United Nations Security Council to address and prosecute these atrocities (Mousizadeh & Azarpandari, 2022, pp. 27–31).

However, the protection of global peace and security required more comprehensive and sustained measures. Accordingly, at the time of the establishment of the International Criminal Court (ICC)⁹, the States Parties to the Rome Statute highlighted their principal concerns in the preamble, emphasizing the safeguarding and promotion of international peace and security. This emphasis, although previously articulated in detail under Chapter VII of the United Nations Charter, was reaffirmed and expanded upon in the context of the ICC.

Through the third paragraph of the preamble to the Rome Statute of the International Criminal Court (ICC), one of the Court's fundamental purposes is explicitly identified as the protection and maintenance of international peace and security. This is because the crimes under the Court's jurisdiction inherently threaten global peace and security, and the preamble emphasizes this point. Accordingly, if the offenses listed in Article 5 of the Statute are committed by an individual or a State and remain unaddressed, the international community would inevitably face fear and instability. This community consists of both powerful and weaker States, and in the absence of adherence to the Rome Statute and the United Nations Charter, powerful States could gradually dominate weaker States, undermining their sovereignty.

As Article 5 of the Statute specifies, the Court's jurisdiction is limited to crimes that concern the international community: of aggression, genocide, war crimes, and crimes against humanity—which, if committed, would threaten global peace and security—it is essential to hold perpetrators accountable under international criminal law. Through such prosecution, justice is served, and international peace and security can be restored.

Prevention of International Crimes

Throughout World War I and II, human society endured significant losses, most notably the collapse of global peace and security and widespread violations of human rights. Countless individuals were exposed to violence and danger due to the objectives of wartime policymakers. In response, in 1945, the international community moved toward recognizing and safeguarding fundamental human rights and promoting global peace and security. This effort was institutionalized through the United Nations Charter, which established the UN with the purpose of “maintaining international peace and security” and “preventing and removing any act of aggression or peace-threatening conduct.”

The United Nations has multiple responsibilities, among which crime prevention is of paramount importance. Criminal behavior represents a social and behavioral challenge that threatens public order and security (Barani, 2013, p. 34). The UN's crime-prevention policies are primarily implemented through the preparation and adoption of international instruments, both general and specific in nature. The general approach to crime prevention is reflected in instruments such as the 1948 Universal Declaration of Human Rights, through which the UN recognizes certain human rights—such as the right to education—as mechanisms to prevent crime.

The specific approach to crime prevention entails targeted guidance within international instruments, providing States with recommendations and obligations to prevent criminal behavior. Through this approach, the UN addresses crime prevention based on legal, criminological, and sometimes victim-oriented criteria. For example, the UN Guidelines for the Prevention of Juvenile Delinquency (the

⁹- Preamble”...Recognizing that such grave crimes threaten the peace, security and well-being of the world... .”

¹⁰- Article 5: “The jurisdiction of the Court shall be Limited to the most serious crimes of concern to the international community as a whole... .”

Riyadh Guidelines) issued in 1985 offer a specialized framework addressing various aspects of crime prevention, encouraging States that adopt these instruments to implement preventive policies within the recommended guidelines.

In practice, the UN coordinates the adoption of preventive measures among member States to establish cohesive crime-prevention systems, thereby promoting a unified and effective approach to reducing criminal behavior globally (Niyazpour, 2023, pp. 32–33). Pursuant to Article 2 of the Rome Statute, which explicitly defines the relationship between the International Criminal Court (ICC) and the United Nations, this relationship is of significant importance. Notably, under Article 13(b) of the Statute, the UN Security Council—one of the principal organs of the United Nations—may refer to the Prosecutor a situation in which one or more crimes appear to have been committed, based on Chapter VII of the UN Charter.¹¹

Therefore, preventive measures against crimes have been defined as far as possible under the United Nations Charter. However, what is particularly significant is the prevention of the crimes listed in Article 5 of the Rome Statute of the International Criminal Court (ICC). It is evident that situational and legislative prevention is especially emphasized with respect to the four core crimes under the Court's jurisdiction.

The Statute provides for the possibility of addressing these crimes from three perspectives: referral by the UN Security Council, referral by a State Party, and the initiation of investigations by the Prosecutor.¹² This framework minimizes the likelihood that the four core crimes will go unaddressed. Moreover, given that these crimes threaten international peace and security, they generally attract the attention of States, which are unlikely to abandon efforts to combat them. Consequently, this mechanism serves as an effective component in preventing the commission of the four core crimes.

Cooperation of States with the Office of the Prosecutor in Advancing International Criminal Justice

Undoubtedly, conducting criminal investigations at the international level requires the identification and collection of evidence. In this process, the International Prosecutor relies on the cooperation of States, as suspects, victims, and potential witnesses often reside within the territory of one or more sovereign States. The Prosecutor of the International Criminal Court (ICC) holds no inherent authority or mandate to exercise official powers within the territory of a State without its consent.

State cooperation may take two forms: First, at the Prosecutor's request, local judicial authorities—such as national prosecutors and investigating judges, in accordance with domestic law—may carry out all necessary actions requested by the International Prosecutor. These actions can include interrogating suspects, interviewing victims and witnesses, conducting local investigations, and collecting written documents or other evidence. Second, local authorities may grant the International Prosecutor permission to conduct investigations within their territory and, if necessary, assign national judicial officers—such as judges, prosecutors, and other competent officials—to assist in these investigations.

¹¹- Article 13: "(b) A situation in which one or more of such crimes appears to have been committed is referred to the prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations."

¹²- Article 13: Exercise of jurisdiction "The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15."

The second form of cooperation reflects a more explicit international orientation and considerably expands the powers of the International Prosecutor. The choice between these two forms of cooperation largely depends on how States approach the issue. For example, regarding the International Criminal Tribunal for the former Yugoslavia, certain States—such as Italy, France, Australia, and Spain—enacted implementing legislation that empowered local authorities to gather evidence and carry out necessary actions on behalf of the Tribunal’s Prosecutor. Conversely, other States—such as Germany, Switzerland, Finland, and Austria—permitted the Prosecutor to independently perform at least part of their functions within their territory (Kesse, 2008, pp. 508–509).

State cooperation is of critical importance in advancing international criminal justice. When one of the four core crimes under the jurisdiction of the Court is committed in the territory of a State Party or a non-State Party, the Prosecutor must travel to the location of the crime to collect evidence, documents, physical traces, interview witnesses, examine the suspect’s situation, inspect the crime scene, and perform other necessary investigative actions. Accordingly, the cooperation of States in this regard is considered essential, and it is explicitly emphasized in the Rome Statute under Article 87(1)(a).¹³

Pursuant to Article 87(4) of the Rome Statute, a State from which the Court requests cooperation must ensure the confidentiality of the request, unless disclosure is deemed necessary to give effect to the request. Regarding cooperation requests, particularly judicial assistance, the Court may take measures to protect information and ensure the physical and psychological safety of victims, potential witnesses, and their family members. The Court may also request that information provided under this provision be transmitted in a manner that safeguards the physical and psychological integrity of victims, potential witnesses, and their families.

The provisions of Article 87 both encourage States Parties to provide general cooperation and impose specific obligations upon them. However, if a State refuses or fails to fulfill these obligations, the Court has no direct means of enforcement and may only report such non-cooperation to the Assembly of States Parties or the UN Security Council (Kesse, 2008, p. 510). Accordingly, it is imperative that States themselves implement their obligations and, in some cases, proactively cooperate with the Court to advance international criminal justice.

Challenges and Strategies in Advancing International Criminal Justice

The Office of the Prosecutor, as one of the principal organs of the International Criminal Court (ICC), plays a pivotal role in advancing international criminal justice. Given that perpetrators of international crimes are often high-ranking State officials or other powerful individuals, enforcing justice against them is inherently challenging, and holding them accountable is not easily achievable. Accordingly, the following section examines the key challenges faced by the Office of the Prosecutor in promoting international criminal justice, followed by a discussion of potential strategies and solutions.

3-1. Challenges in Advancing International Criminal Justice by the Office of the Prosecutor

First, the Rome Statute of the International Criminal Court (ICC) does not explicitly clarify whether the collection of evidence, compliance with subpoenas, and execution of orders should be carried out directly by the Prosecutor’s agents, possibly with the assistance of national authorities, or whether these tasks are the responsibility of the executive and judicial authorities of the State, acting upon the Prosecutor’s request. The emphasis in the Statute on adherence to domestic law suggests that the drafters intended to consider this latter approach.

Second, pursuant to Article 1 of the Rome Statute, the Court’s jurisdiction is fundamentally based on the principle of complementarity. Under this principle, States may assert their primary right to exercise

¹³- Article 87: “1- (a) The Court shall have the authority to make requests to States Parties for cooperation... .”

jurisdiction and invoke domestic public law to challenge the Court's authority. Such claims can create obstacles to cooperation between the ICC and States or at least disrupt the proceedings. Consequently, when the Court encounters these challenges, the Office of the Prosecutor—responsible for investigation and prosecution—faces a more difficult and complex task in executing justice.

Third, under Articles 90(6) and 90(7) of the Rome Statute, if an individual from State A (a non-State Party to the ICC) commits a crime and is present in State B (a State Party to the ICC) which has previously entered into a treaty on the surrender of criminals with State A, the Court's request does not automatically prevail. State B retains discretion to either surrender the individual to the ICC or extradite them to State A. This provision may appear problematic, as it was initially assumed that obligations under the Rome Statute would take precedence over other bilateral or multilateral treaties. This raises a tension between the Statute's objective—to advance international criminal justice and uphold global peace—and the discretion afforded to States under domestic or treaty obligations. In practice, the Rome Statute appears to defer to national authorities when international justice encounters limitations imposed by domestic legal frameworks.

Strategies to Strengthen the Role of the Office of the Prosecutor in Advancing International Criminal Justice

First, although the collection of evidence and compliance with subpoenas and orders are primarily responsibilities of State authorities under the Rome Statute, in many cases international criminal justice may be compromised through this arrangement. Perpetrators often possess such significant power that, initially, it is difficult to bring them within the reach of international criminal justice, and even if this is possible, collecting sufficient evidence to establish all crimes committed may be extremely challenging. In many instances, State officials involved in such cases may be subject to threats, bribery, or other forms of coercion. Therefore, these tasks should be conducted directly by the agents of the Office of the Prosecutor, who can independently gather evidence and thereby effectively safeguard international criminal justice.

If direct involvement is not feasible, the Office of the Prosecutor should develop close and deep relationships with relevant States, because evidence collection in the event of crimes requires cooperation between the Office's agents and the authorities of the country where the crime occurred. Strengthening this cooperation is thus of paramount importance in advancing international criminal justice.

Second, while the principle of complementarity under the ICC Statute—respecting domestic legal systems—is significant, it can sometimes pose challenges to justice. The tension between domestic and international justice may lead some States to prioritize their national legal proceedings over international criminal justice. To address this, Article 93's provisions allowing exceptions under the pretext of national security should be limited, and States should be obliged to cooperate fully. Moreover, if the Court's complementary jurisdiction is suspended in order to enforce international criminal justice, resistance based on differences in domestic penal codes, religious punishments, or similar arguments becomes untenable. What matters today is the protection of human life, which should take precedence through the enforcement of international criminal justice, rather than being undermined by domestic legal justifications.

Third, the ICC could have explicitly stipulated that the Assembly of States Parties reach agreement on countermeasures or authorize States to implement such measures individually if no consensus is reached. Additionally, provisions could have been included to allow the Security Council to take action and impose enforcement measures, even in cases not referred to the Court by it. It remains unclear why the Security Council, when States fail to cooperate—particularly in situations that threaten international peace—cannot act under Chapter VII of the UN Charter, even regarding cases referred by States or initiated by the Prosecutor. While the Rome Statute does not exclude this possibility, its explicit

inclusion could have reinforced mechanisms for ensuring compliance and strengthening the Office of the Prosecutor in advancing international criminal justice.

Conclusion

The implementation of international criminal justice is of paramount importance for the maintenance of global peace and security, and the Office of the Prosecutor plays a crucial role in advancing this objective. Perpetrators of the crimes enumerated in Article 5 of the Rome Statute of the International Criminal Court are typically States or powerful individuals, who may attempt to influence the Court. For this reason, the Office of the Prosecutor has been granted independence under Article 42, ensuring that it neither receives instructions from external sources nor acts under external pressure. The Office is responsible for receiving communications regarding international crimes and conducting investigations into these crimes.

However, not all information concerning crimes within the Court's jurisdiction is automatically subject to investigation. The matter must have a reasonable basis for acceptance. If a crime has occurred and, while investigating, victims can be compensated but international criminal justice cannot be secured or may be jeopardized, the Office of the Prosecutor may refrain from conducting an investigation.

Furthermore, the Office always proceeds with investigations in compliance with Article 17 of the Statute. If obstacles outlined in Article 17 exist, the Office does not have the jurisdiction to proceed. Given the seriousness of international crimes that threaten humanity, it is imperative that international criminal justice be enforced. The effective functioning of the Office of the Prosecutor requires that the Prosecutor and their deputies possess ethical standards befitting their office, comprehend the significance of their role in advancing international criminal justice, and hold advanced academic qualifications in criminal law with relevant substantive and procedural experience. Additionally, they must be proficient in at least one of the Court's official working languages, English or French.

The maintenance of global peace and security is always intertwined with the enforcement of international criminal justice. Alongside the United Nations, the Office of the Prosecutor is one of the most critical institutions in advancing this goal. Ensuring peace and security is not only achieved through the prosecution and punishment of perpetrators within the Court's jurisdiction, but the provisions of the Statute also serve as preventive mechanisms against the commission of international crimes. According to Article 13 of the Rome Statute, one of the three avenues for pursuing perpetrators is that the Prosecutor may initiate investigations independently, ensuring that the power of States cannot shield perpetrators from justice.

Nevertheless, the cooperation of States is indispensable for the Office of the Prosecutor to execute international criminal justice. Crimes occur within the territories of States, and the Office relies on their collaboration to conduct thorough investigations, collect evidence, interview witnesses, and transfer perpetrators to the Court. One major challenge facing the Office is the lack of cooperation from States. Complementarity also restricts the Office's intervention, as the ICC can only exercise jurisdiction when a State requests it or is unwilling or unable to prosecute. Another challenge arises when the Court's request is subordinate to that of a non-member State in the context of extradition agreements, allowing the State where the crime occurred to choose whether to surrender the accused to the Court or to another State with an existing extradition treaty.

Therefore, international criminal justice should not be compromised by the principle of complementarity, even in cases involving differences in domestic or religious penalties. The Court should retain the right to intervene and conduct comprehensive investigations whenever a crime within its jurisdiction occurs in any State, because these crimes are not solely domestic in nature—they threaten global security and peace.

References

1. Barani, M. (2013). *Pishgiri az jara'em-e jahani (taahod-e beyn-ol-melali-e dolat-ha)* [Prevention of global crimes (International obligations of states)]. Tehran: Nashr-e Mizan.
2. Sadeghi, M. R. (2022). *Sistem-e edalat-e keshvari beyn-ol-melali: Sakhtar, kashti-ha va chalesh-ha* [International criminal justice system: Structure, shortcomings, and challenges]. Tehran: Nashr-e Shahr-e Danesh.
3. Sack, K., & Schiazeri, K. (2016). *Hoghugh-e beyn-ol-melali-ye keshvari* [International criminal law] (B. Yousofian & M. Esmaeili, Trans.). Tehran: Nashr-e Samt.
4. Shariat Bagheri, M. J. (2018). *Asnad-e Divan-e Keshvari Beyn-ol-Melali* [Documents of the International Criminal Court]. Tehran: Nashr-e Jangal.
5. Fazeli, M. (2013). *Dadrasi-ye adilane dar mahakemat-e keshvari beyn-ol-melali* [Fair trial in international criminal courts]. Tehran: Nashr-e Shahr-e Danesh.
6. Krause, N. (2015). *Introduction to criminal law and criminal justice in England and Wales* (A. Etemadi, Trans.). Tehran: Nashr-e Majd.
7. Casse, A. (2008). *International criminal law* (H. Piran, A. Amir Arjamand, & Z. Mousavi, Trans.). Tehran: Nashr-e Jangal.
8. Montesquieu, B. de. (2012). *The spirit of the laws* (A. Mohammadi, Trans.). Tehran: Nashr-e Amir Kabir.
9. Mousazadeh, R., & Azarpandari, A. R. (2022). *Bayesteha-ye hoghugh-e beyn-ol-melal-e keshvari* [Essentials of international criminal law]. Tehran: Nashr-e Mizan.
10. Niyazpour, A. H. (2023). *Pishgiri az jorm* [Crime prevention]. Tehran: Nashr-e Dadgostari.
11. *Trials of War Criminals before Nuernberg Military Tribunals under Control Council Law No. 10, October 1946–April 1949* (Vol. III). (1951). Washington, DC: U.S. Government Printing Office.
12. Rome Statute of the International Criminal Court. (n.d.). Retrieved from <https://www.icc-cpi.int>.
13. Charter of the United Nations. (n.d.). United Nations. Retrieved from <https://www.un.org>.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).