



WEAPONIZING NON-COOPERATION: THE USA'S ILLEGITIMATE COURT COUNTERACTION ACT (H.R. 23) AND ITS ASSAULT ON INTERNATIONAL CRIMINAL JUSTICE.

By Her Honour Judge Sedinam Awo Kwadam (Mrs.),
Circuit Court 7 Accra, Ghana.

LLM. Candidate, International Criminal Law and Justice,
Ghana Institute of Management and Public Administration (GIMPA),
Accra, Ghana.

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ABSTRACT

The United States' passage of the Illegitimate Court Counteraction Act (H.R. 23) which authorises sanctions against ICC officials involved in investigations or prosecutions of U.S. nationals or allies and restricts U.S. cooperation with the International Criminal Court (ICC), including the sharing of intelligence, logistical and financial support is a significant development with far-reaching implications for the enforcement of international criminal law and justice, as well as the credibility of the ICC. This paper examines the Act's diverse implications, with a particular emphasis on its influence on the ICC's capacity to investigate and prosecute grave international crimes, including the crime of genocide, crimes against humanity, war crimes, and the crime of aggression when they involve U.S. nationals and nationals of allied states. The paper argues that the Act challenges the fundamental principle of state cooperation that underpins the ICC's operations and effectiveness by actively restricting cooperation with the ICC while establishing legal barriers to its functioning. Moreover, it has the potential to establish a precedent that could encourage other nations to prioritize national interests over international accountability and cooperation, consequently compromising global efforts to combat impunity.

This paper examines the historical evolution of the relationship between the ICC and the United States, tracing a trajectory from initial support and cooperation during the Court's founding to periods of strategic rejection and opposition, often influenced by alternating presidential administrations. It further analyzes the potential geopolitical ramifications of the Act on the global fight against impunity, the operational mandate of the ICC, and the broader framework of international legal norms. In conclusion, this paper emphasizes the importance of strengthening our dedication to accountability and the rule of law, rather than undermining these foundational principles. It calls for a critical yet more optimistic assessment of the United States' position on international criminal justice and urges the ICC to remain resolute in fulfilling its mandate to investigate and prosecute crimes under its jurisdiction, thereby advancing the global campaign against impunity.

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INTRODUCTION

The ICC, a cornerstone of the global endeavour to combat impunity for the most serious international crimes, including the crime of genocide, war crimes, crimes against humanity, and the crime of aggression, was established by the Rome Statute (RS) in 1998. The Rome Statute came into force on July 1, 2002, resulting in the establishment of the first permanent international criminal court. The United States was not one of the 76 nations that had ratified the Rome Statute as of that date. Rather, the United States responded to the ICC's establishment by Congress' enactment of the American Servicemembers' Protection Act of 2002 (ASPA) which Republican legislators had pursued for several years. The ASPA had been introduced by House Majority Whip Tom DeLay (R-Tex.), which was signed into law on August 2, 2002. The Act's primary objective was to prevent the United States from actively participating in the ICC's proceedings and to discourage other nations from supporting or cooperating with the Court in any capacity. The United States, a non-party to the Rome Statute, has consistently opposed the ICC's jurisdiction over its nationals. This opposition consequently culminated in the passage of the Illegitimate Court Counteraction Act (H.R. 23) under President Donald Trump in February 2025. Given that the effective functioning of the International Criminal Court (ICC) depends on the cooperation of states, the Act's authorization of sanctions against ICC officials and its restrictions on U.S. cooperation with the Court present serious concerns regarding the future of international criminal justice. The Illegitimate Court Counteraction Act, according to this paper, impedes the ICC's capacity to fulfil its mandate by impeding state cooperation, which is a fundamental tenet for the enforcement of international criminal law and the administration of international criminal justice. It also investigates the more extensive consequences of U.S. unilateralism on the legitimacy and efficacy of international institutions. The paper commences by examining the legal and political context of the ICC and U.S. opposition, which is followed by an examination of the Act's primary provisions and implications. The paper then, explores the historical development of the relationship between the ICC and the United States, highlighting a progression from initial support and collaboration during the Court's establishment to phases of strategic disengagement, frequently shaped by shifts in presidential administrations and also addresses the significance of state cooperation in the context of international criminal justice and concludes with a call for a critical yet constructive and optimistic reassessment of the United States' stance on international criminal justice while emphasizing the importance of the ICC's steadfast commitment to its mandate of investigating and prosecuting crimes within its jurisdiction, thereby contributing to the global effort to combat impunity.

I. The Legal and Political Context of the ICC and U.S. Opposition

1. The ICC's Mandate and Jurisdiction

The ICC was established to permanently address the accountability gap for international crimes, particularly in situations where national courts are unwilling or unable to investigate or prosecute. The principle of complementarity, enshrined in Paragraphs 6 and 10 of the Preamble and Article 1 of the Rome Statute, ensures that the ICC acts as a court of last resort, intervening only when states fail to, as a result of their unwillingness or inability, investigate and prosecute individuals responsible for the crimes under the Statute. However, the ICC's capacity to effectively investigate and prosecute crimes is inherently dependent on state cooperation, which encompasses responsibilities such as arresting suspects, providing evidence, and facilitating access to witnesses. Even though the ICC's jurisdiction is limited to crimes committed on the territory of a state party or by a national of a state party unless a situation is referred by the United Nations Security Council (UNSC), the ICC's reliance on state cooperation has often been a source of tension particularly with powerful states like the United States.

State cooperation is essential for the ICC's effectiveness. Without the support of states, the ICC cannot access evidence, secure the arrest of suspects, or protect witnesses. The Rome Statute explicitly requires states to cooperate with the Court, emphasizing the collective responsibility of the international community to combat impunity. However, many states fail to comply with the Court's requests for cooperation. In the Sudan-Darfur Omar Al Bashir case for instance, despite the issuance of an arrest warrant for Al Bashir, multiple states refused to cooperate with the ICC in effecting his arrest and surrender. The effectiveness of the ICC is significantly undermined by its lack of enforcement mechanisms, which makes it heavily reliant on the cooperation of states. A notable example of this limitation is the Kenyan government's failure to support the ICC during the prosecution of former President Uhuru Kenyatta. Despite the serious nature of the charges against him, Kenya did not provide the ICC with critical witnesses or evidence, thereby obstructing the judicial process and ultimately hindering accountability. Similarly, the case of Bosco Ntaganda, a Congolese warlord, highlights the ICC's dependence on external pressure to secure justice. Ntaganda, who was accused of heinous crimes, was only arrested and surrendered after significant international pressure was exerted on the Democratic Republic of Congo (DRC). These examples underscore the ICC's vulnerability when states choose not to cooperate. Without its own enforcement mechanisms, the court relies entirely on the goodwill and active participation of member states to investigate, arrest, and prosecute individuals accused of international crimes. When states refuse to comply, the ICC's ability to administer justice is severely compromised, creating a substantial obstacle in the fight against impunity for war crimes, crimes against humanity, and genocide. This reliance on state cooperation remains one of the most critical challenges to the ICC's mandate of delivering international criminal justice.

Consequently, the Illegitimate Court Counteraction Act wholly and effectively undermines the ICC's ability to fulfil its mandate by obstructing U.S. cooperation and the cooperation of allied states. For example, the Act prohibits the sharing of intelligence, which is often critical for building cases against high-level perpetrators. It also restricts the ICC's access to U.S. territory, limiting its ability to conduct investigations of U.S. nationals.

2. U.S. Opposition to the ICC

The United States has long been skeptical of the ICC, citing concerns over sovereignty, politicization, and the potential prosecution of U.S. nationals. Although the U.S. signed the Rome Statute in 2000, it never ratified the treaty and subsequently "unsigned" it under the Bush administration. The Bush administration actively opposed the Court, fearing that US citizens might end up facing prosecution in The Hague for war crimes. This fear ultimately culminated in the passing of the American Service-Members' Protection Act (ASPA) of 2002, often referred to as the "Hague Invasion Act," which authorized the use of military force to free U.S. personnel detained by the ICC in the Hague and prohibited U.S. cooperation with the Court.

The Illegitimate Court Counteraction Act (H.R. 23) represents a continuation of this policy, further entrenching U.S. opposition to the ICC. The Act reflects the U.S. government's broader skepticism of international institutions and its commitment to protecting its citizens from perceived overreach by foreign courts.

I. The Illegitimate Court Counteraction Act (H.R. 23): Key Provisions and Implications

1. Overview of the Act

The Illegitimate Court Counteraction Act authorizes sanctions against ICC officials involved in investigations or prosecutions of U.S. nationals or allies. It also restricts U.S. cooperation with the ICC, including the sharing of intelligence and logistical support.

Key provisions of the Act include the following:

a) Section 1 of the Act provides the “Short title” of the Act, which may be cited as the “Illegitimate Court Counteraction Act”

b) Section 2 of the Act reiterates findings by Congress as stipulated below:

i) **Non-membership of the United States and Israel:** The United States and Israel are not parties to the Rome Statute, which means the ICC has no legitimacy or jurisdiction over them.

ii) **Condemnation of the ICC's actions against Israeli officials:** The ICC's Prosecutor Karim Khan is condemned for announcing the arrest warrant application for Israeli Prime Minister Benjamin Netanyahu and Minister of Defense Yoav Gallant. The ICC Pre-trial chamber is also strongly condemned for issuing arrest warrants for Benjamin Netanyahu and Yoav Gallant.

iii) **Protection of U.S. and allied officials:** The Act emphasizes the USA's need to protect U.S. military personnel and officials, as well as those of allied countries, from ICC prosecution taking into account the Bipartisan American Servicemembers' Protection Act (ASPA) enacted in 2002.

iv) **Reiterating the need to protect U.S. and allied officials:** The Act describes the ICC's actions against Israel, including investigations and arrest warrants against Israeli officials, as illegitimate, baseless, and set a harmful precedent threatening the U.S., Israel, and all non-consenting U.S. partners. It also reaffirms the obligation of the United States to oppose any measures taken by the International Criminal Court (ICC) against the United States, Israel, or any other ally of the United States that has not consented to the jurisdiction of the ICC or is not a party to the Rome Statute, which statute established the ICC.

c) Section 3 of the Act stipulates Sanctions as encapsulated below:

i) **Sanctions on ICC Personnel:** The Act mandates sanctions on foreign persons, including individuals and entities, who assist the ICC in investigating, arresting, detaining, or prosecuting protected persons. These sanctions serve as a deterrent against the ICC's actions against U.S. and allied personnel.

ii) **Protected Persons:** The term “protected persons” encompasses U.S. citizens, U.S. entities, individuals present in the United States, and citizens or lawful residents of allied countries that are not parties to the Rome Statute or have not consented to ICC jurisdiction. This broad definition aims to shield a wide range of individuals from ICC prosecution.

iii) **Types of Sanctions:** The President is required to impose two main types of sanctions on those who engage in or materially assist in actions against protected persons:

(a) **Visa-blocking sanctions:** These sanctions prohibit the issuance of visas and deny entry to the United States for the sanctioned individuals.

(b) **Property-blocking sanctions:** These sanctions block the property and interests in property of the sanctioned individuals within the United States, effectively freezing their assets.

iv) **Family Members:** The Act also extends visa-blocking sanctions to the immediate family members of sanctioned individuals. This measure aims to increase pressure on the sanctioned individuals by impacting their families as well.

d) Section 4 of the Act provides:

i) **Rescission of Appropriated Funds:** The Act rescinds all funds previously appropriated for the ICC and

ii) **Prohibition on Future Appropriations:** The Act prohibits the use of any future funds to support the ICC. This financial measure underscores the U.S. government's stance against the ICC's actions and its refusal to provide any form of support.

e) Section 5 of the Illegitimate Court Counteraction Act (H.R.23) provides definitions for key terms used throughout the legislation. These definitions establish the scope and applicability of the Act's provisions. The defined terms include:

i) **Admitted Alien:** As per section 101 of the Immigration and Nationality Act (8 U.S.C. 1101), this term refers to an individual who has been lawfully granted entry into the United States.

ii) **Ally of the United States:** This encompasses governments of NATO member countries and major non-NATO allies, as defined in section 2013(7) of the American Service-Members' Protection Act (22 U.S.C. 7432(7)).

iii) **Appropriate Congressional Committees:** These are specified as the House Committees on Foreign Affairs, Financial Services, and the Judiciary, along with the Senate Committees on Foreign Relations, Banking, Housing, and Urban Affairs, and the Judiciary.

iv) **Foreign Person:** An individual or entity that is not a U.S. person.

v) **Immediate Family Member:** This term includes the spouse, parent, sibling, or adult child of a foreign person.

vi) **International Criminal Court (ICC) and Rome Statute:** Both terms are defined as per section 2013 of the American Service-Members' Protection Act (22 U.S.C. 7432).

vii) **Protected Person:** This category includes:

(a) Any U.S. person; this covers current or former U.S. Armed Forces members, elected or appointed U.S. officials, and individuals employed by or working on behalf of the U.S. government.

(b) Foreign persons; this covers persons who are citizens or lawful residents of U.S. allies who have not consented to ICC jurisdiction or are not parties to the Rome Statute. This includes current or former members of such allies' armed forces.

viii) **United States Person:** An individual who is either a U.S. citizen or a lawful permanent resident of the United States; an entity established under U.S. law or the laws of any U.S. jurisdiction, including its foreign branches; or any person located within the United States.

2. Legal and Policy Implications

The Act raises considerable legal and policy concerns, that have far-reaching implications for the global pursuit of justice and the international legal system. It undermines the ICC's capacity to effectively investigate and prosecute international crimes and challenges its independence. The Act induces a chilling effect by imposing sanctions on ICC officials, thus discouraging and preventing the Court from pursuing cases involving U.S. nationals or allies. This not only undermines the ICC's authority but also conveys a message to other nations that powerful states can obstruct justice without repercussion. These actions have the potential to undermine the Court's credibility as an impartial arbiter of international criminal law and justice.

Secondly, the Act is in complete contrast to the United States' obligations under international law, which encompasses the duty to cooperate with international institutions and the principle of good faith. Historically, the United States has been a proponent of accountability for international crimes by advocating for the prosecution of international crimes, congratulating international bodies for ensuring accountability and providing technical and legal, as well as financial support. Indeed, the United States has been one of the biggest funders of both international human rights organisations and the ICC itself, providing support in the areas of finance, technology and human resources. Whenever the international community has sought to hold individuals accountable for the most serious crimes of international concern, the United States has given its unwavering support. The passing of the Illegitimate Court Counteraction Act by the United States therefore represents a significant departure from that tradition. *The United States as the leader of global democracy and advocate for human rights is at risk of jeopardising its moral and diplomatic credibility on the global stage by failing to adhere to its obligations under this established international legal and diplomatic framework.* This could result in a deterioration of trust among allies and partners, who may begin to doubt the United States' commitment to upholding the rule of law.

Additionally, the Act establishes a pernicious precedent for other states, potentially inspiring them to circumvent accountability by implementing analogous measures. For instance, the Court's capacity to fulfil its mandate could be greatly compromised if other nations emulate the United States and impose sanctions on ICC officials. This would not only undermine the ICC but also encourage authoritarian regimes and other actors to protect themselves from international scrutiny and accountability for the gravest crimes as encapsulated within the Rome Statute. *A fragmented system in which powerful states act with impunity and weaker states are left to endure the brunt of accountability mechanisms could result from the erosion of the international legal order.*

Additionally, the Act erodes the mechanisms intended to hold perpetrators of international crimes accountable, thereby undermining the global fight against impunity. The ICC was established to address atrocities that frequently transcend national borders and necessitate a coordinated international response, including genocide, war crimes, and crimes against humanity. The Act has the potential to establish a vacuum in which perpetrators can operate without fear of repercussions and with impunity by impeding the ICC's work. This could incite and inspire such actors to perpetrate additional atrocities, as they are aware that the mechanisms for accountability have been systemically undermined and eroded.

Lastly, the Act undermines public confidence in the international legal system. The international community's support and cooperation are crucial for the efficacy of the ICC, which is a fundamental component of the global justice system. When a major power, such as the United States, adopts measures to undermine the Court, it sends a loud message that the international legal system is vulnerable to political interference and manipulation

In summary, the Act not only presents immediate obstacles to the ICC's operations but also has long-term repercussions for the international legal system. The Act undermines the progress made in the fight against impunity and the pursuit of global justice by undermining the Court's independence, conflicting with international legal obligations, setting a dangerous precedent, and eroding public trust. To address these concerns, it will be necessary for states to reaffirm their dedication to the principles of international law and to acknowledge the significance of multilateral cooperation in the preservation of justice and accountability.

II. The Broader Implications of U.S. Unilateralism

1. U.S. Support and Opposition for the ICC: Chronological Overview

Support

The following key milestones highlight the United States' engagement with and support for the ICC:

- **February 1, 1995:** The United States sent a delegation of legal experts from the Departments of State, Justice, and Defense to participate in the Ad Hoc Committee on the Establishment of an International Criminal Court. This marked the first formal gathering of states to discuss and negotiate the creation of a permanent international criminal tribunal. Meetings were held in Spain, Germany, and Italy. The U.S. remained actively involved in subsequent negotiations, culminating in the 1998 Rome Conference.
- **March 25, 1996 – April 3, 1998:** The U.S. played an active role in most sessions of the U.N. Preparatory Committee for the Establishment of the ICC. The committee drafted the statute that would later be presented at the Rome Conference, laying the foundation for the ICC's legal framework.
- **March 25, 1998:** During a visit to Rwanda, President Bill Clinton publicly endorsed the creation of a permanent international criminal court, emphasizing its necessity by stating, "Rwanda and the difficulties we have had with this special tribunal underscore the need for such a Court. And the United States will work to see that it is created."
- **June 15 – July 17, 1998:** At the Rome Conference, nearly 160 countries convened to negotiate the Rome Statute. The U.S. actively contributed to drafting key provisions and participated in deliberations, alongside monitoring and reporting efforts by non-governmental organizations.
- **July 17, 1998:** The Rome Statute was adopted by a vote of 120 in favor, 7 against, and 21 abstentions. Although the U.S. ultimately voted against its adoption, it played a significant role in shaping the Statute. The conference also established a Preparatory Commission to draft essential operational documents for the ICC.
- **June 30, 2000:** The U.S. participated in the Preparatory Commission's adoption of the draft Rules of Procedure and Evidence and Elements of Crimes, ensuring they aligned with international due process standards.

- **December 31, 2000:** On the final day for signatures, U.S. Ambassador-at-Large for War Crimes Issues David Scheffer signed the Rome Statute on behalf of President Clinton. However, Clinton declined to submit the treaty for Senate ratification, expressing a desire to observe the Court's operation before committing to its jurisdiction.
- **November 2009:** Under the Obama administration, the U.S. formally opened diplomatic relations with the ICC by attending its first Assembly of States Parties (ASP) meeting in an observer capacity.
- **May 31 – June 11, 2010:** The U.S. observer delegation participated in the ICC Review Conference in Kampala, Uganda, which adopted the definition of the crime of aggression.
- **January 3, 2013:** President Obama expanded the U.S. State Department's Rewards for Justice Program to include rewards of up to \$5 million for information leading to the arrest of ICC fugitives. Initial targets included Joseph Kony, Okot Odhiambo, Dominic Ongwen (LRA), and Sylvestre Mudacumura (FDLR).
- **March 22, 2013:** The U.S. facilitated the transfer of Bosco Ntaganda to the ICC after his voluntary surrender at the U.S. Embassy in Kigali, Rwanda. Ntaganda faced charges of war crimes and crimes against humanity in the Democratic Republic of the Congo.
- **January 7, 2015:** Dominic Ongwen, a senior commander of the Lord's Resistance Army (LRA), was arrested and transferred to U.S. custody in the Central African Republic. Despite having no formal obligation to assist the ICC, the U.S. offered a \$5 million reward leading to the arrest of Joseph Kony, Ongwen, and two other LRA lieutenants subsequently and facilitated Ongwen's transfer to the Court to face charges of war crimes and crimes against humanity.
- **March 18, 2023:** President Joe Biden strongly endorsed the ICC's arrest warrant for Vladimir Putin, calling it "justified" and highlighting its importance in holding leaders accountable for war crimes. He emphasized that Putin has "clearly committed war crimes," particularly in Ukraine, where Russia's actions have violated international law and targeted civilians. Biden viewed the warrant as a critical step in sending a powerful message against impunity, reinforcing the global demand for justice. President Biden's support reflected his commitment to upholding international norms and human rights through collaborative efforts. For President Biden, the warrant symbolizes a pivotal moment in the fight for accountability, underscoring the international community's resolve to confront and address atrocities at the highest levels.

Opposition

The United States has consistently expressed opposition to the ICC through various actions, including the following:

- **March 26, 1998:** Senator Jesse Helms, then-Chairman of the Senate Foreign Relations Committee, publicly opposed the establishment of a permanent ICC, declaring that any proposal for its creation was "dead on arrival" in the U.S. Senate.
- **July 17, 1998:** The United States voted against the adoption of the Rome Statute at the Rome Conference, citing concerns over the Court's jurisdiction and the potential prosecution of U.S. nationals without adequate safeguards.

- **November 29, 1999:** President Bill Clinton signed into law the Foreign Relations Authorization Act, which prohibited U.S. financial support for the ICC and barred the extradition of U.S. citizens to countries that might surrender them to the Court.
- **May 6, 2002:** Under Secretary of State John R. Bolton sent a letter to U.N. Secretary-General Kofi Annan, formally rejecting the Rome Statute and declaring that the United States would not ratify the treaty or recognize obligations arising from its previous signature.
- **August 2, 2002:** President George W. Bush enacted the American Servicemembers' Protection Act (ASPA), which restricted U.S. cooperation with the ICC and authorized military action to free any American detained by the Court.
- **October 17, 2006:** U.S. President George W. Bush enacted legislation repealing specific provisions of the American Service-members Protection Act. These provisions had previously restricted military education and training assistance to ICC State Parties that had not entered into Bilateral Immunity Agreements with the United States.
- **January 28, 2008:** U.S. President George W. Bush enacted legislation repealing specific provisions of the American Servicemembers' Protection Act. These provisions had previously limited the allocation of direct foreign military assistance to ICC State Parties that had not entered into Bilateral Immunity Agreements with the United States.
- **September 10, 2018:** National Security Advisor John Bolton in a speech denounced the ICC as "illegitimate" and announced sanctions, visa restrictions, and other measures to deter ICC investigations into U.S. personnel or allies and threatens to arrest ICC Judges.
- **March 15, 2019:** U.S. Secretary of State Michael Pompeo announced the implementation of a policy imposing visa restrictions on individuals directly involved in any ICC investigation targeting U.S. personnel. These restrictions also extended to individuals who took steps to initiate or advance such investigations. Secretary Pompeo further stated that the policy could be applied to deter the ICC from pursuing investigations involving allied personnel without their respective states' consent. He urged the ICC to reconsider its approach regarding the Afghanistan investigation. Subsequently, ICC Prosecutor Fatou Bensouda confirmed that her U.S. visa had been revoked.
- **June 11, 2020:** The Trump administration announced that it had imposed economic sanctions and expanded visa restrictions targeting ICC officials involved in investigations concerning U.S. or allied personnel.
- **September 2, 2020:** The U.S. Office of Foreign Assets Control (OFAC) designated the ICC Prosecutor and a senior staff member as "specially designated nationals," thereby subjecting them to travel and economic sanctions pursuant to Executive Order 13928, issued on June 11, 2020. The ICC condemned these sanctions as "another attempt to interfere with the Court's judicial and prosecutorial independence," emphasizing that such measures were unprecedented against an international judicial institution and its civil servants. The Court asserted that the sanctions undermined its critical mission to address grave crimes of concern to the international community. In response, the ICC Prosecutor reaffirmed that these actions would not deter the Court from fulfilling its mandate, declaring that the sanctions would "not stop" its ongoing efforts to pursue justice.

- **April 2, 2021:** President Joe Biden revoked Executive Order 13928, effectively lifting the sanctions against ICC officials. Secretary of State Antony Blinken affirmed the administration's commitment to engaging constructively with the ICC, despite ongoing disagreements regarding specific cases.
- **February 6, 2025:** President Donald Trump signed the Illegitimate Court Counteraction Act (H.R. 23) into law. The Act seeks to sanction the ICC, its officials and any other person or entity that supports the ICC in investigating and prosecuting US persons and their allies.

The aforementioned instances provide compelling evidence of the United States' sustained engagement and tangible support for the ICC over the years. Despite occasional policy shifts and political differences, these actions highlight moments where the U.S. not only demonstrated its willingness to engage with the ICC but also actively contributed to its operations and objectives. From facilitating the arrest and transfer of high-profile fugitives to endorsing initiatives aimed at bringing perpetrators of grave international crimes to justice, the U.S. has played a pivotal role in strengthening the ICC's mandate. These examples underscore a broader commitment to the principles of accountability and the global fight against impunity, even amidst challenges and disagreements.

However, critics argue that the U.S.'s engagement with the ICC has often been inconsistent and driven by self-interest rather than a genuine commitment to international justice. They point to periods of hostility, such as the imposition of sanctions on ICC officials and the refusal to ratify the Rome Statute, as evidence of a broader unwillingness to subject its own nationals to the Court's jurisdiction. This ambivalence, they argue, undermines the credibility of U.S. support and raises questions about its long-term commitment to upholding the rule of law on an international scale. While the U.S. has undeniably contributed to advancing the ICC's mission in certain contexts, its selective engagement and reluctance to fully embrace the Court highlight the complexities of its relationship with international criminal justice.

2. Sovereignty vs. International Criminal Accountability

The tension between national sovereignty and international accountability lies at the heart of the debate over the ICC. While states have a legitimate interest in protecting their sovereignty, the international community has an equally compelling interest in holding perpetrators of atrocities accountable. The Rome Statute and its institutional embodiment, the ICC, represent a groundbreaking effort to hold individuals accountable for the most egregious international crimes; the crime of genocide, war crimes, crimes against humanity, and the crime of aggression. However, these mechanisms have frequently encountered resistance from states keen to safeguard their sovereignty, a principle deeply rooted in the modern international order. Sovereignty is a foundational principle of international law, enshrined in the United Nations Charter and widely recognized as essential for maintaining peace, security, and stability among states. It grants nations supreme authority over their territories and the right to self-determination, free from external interference. For many states, the idea of an international criminal tribunal exercising jurisdiction over their nationals or intruding into domestic legal systems represents a potential erosion of this fundamental principle. ICC's creation marked a paradigm shift in international law, moving accountability beyond the state-level responsibility of individuals, including heads of state. At its core, the Rome Statute has the principle of complementarity which ensures that state sovereignty remains inviolable while enabling the ICC to pursue its mandate of administering international criminal justice. By prioritizing national jurisdictions in handling crimes, the complementarity principle underscores the ICC's role as a court of last resort, intervening only when states are unwilling or unable to investigate or prosecute serious international offences.

The ICC thus cannot be said to be a threat to sovereignty. In fact, the ICC can be described as the birthchild of the sovereignty of the individual states who through the adoption and ratification of the Rome Statute established the Court. This birthing process is analogous to state parties voluntarily transferring certain aspects of their sovereign authority to support the establishment, legitimacy, and jurisdictional authority of the International Criminal Court (ICC). Despite the safeguards provided by complementarity, the ICC's work has often been met with criticism and resistance. Powerful states, such as the United States, Russia, and China, have refused to ratify the Rome Statute, citing concerns over sovereignty and potential political bias. The United States, for example, has taken legislative measures like the ASPA to shield its nationals from ICC's jurisdiction. Moreover, several African states have accused the ICC of disproportionately targeting their continent, alleging that its investigations and prosecutions reflect political biases rather than impartial justice. These concerns have fueled calls for withdrawal from the Rome Statute by some African nations, further complicating the Court's mission.

While sovereignty remains a cornerstone of international law, its unchecked assertion can create an environment of impunity for grave crimes, particularly when states are either complicit in or actively sanction such atrocities. This complicity often results in a demonstrable unwillingness or inability to prosecute those responsible. Moreover, states lacking the requisite legal frameworks, technical expertise, or resources to effectively investigate and adjudicate these crimes may also fail to deliver justice for victims and hold perpetrators accountable. The ICC addresses these critical gaps by functioning as a court of last resort under the principle of complementarity. When domestic systems are unwilling or unable to act, the ICC provides an independent mechanism for accountability, ensuring that those responsible for the most serious violations of international law are brought to justice. Through its mandate, the ICC not only delivers redress for victims but also reinforces the rule of law and aims to deter future atrocities, fostering a global order grounded in justice and accountability.

Undoubtedly, reconciling sovereignty with international criminal accountability requires a delicate balance. The ICC and its supporters must continue to emphasize the Court's role as a complementary institution rather than an encroachment on state authority. *Building trust in the ICC's impartiality, addressing perceptions of bias, and fostering greater cooperation with non-member states are essential steps toward enhancing its legitimacy and effectiveness. At the same time, states must recognize that sovereignty carries responsibilities as well as rights. Upholding the principles of justice and accountability for grave crimes strengthens the international order and protects the integrity of sovereignty itself.* The relationship between sovereignty and international criminal accountability is complex and often contentious, but it is not irreconcilable. The Rome Statute and the ICC provide a framework for balancing these competing imperatives, though their success depends on sustained cooperation and mutual respect between states and international institutions. As the world continues to grapple with atrocities and impunity, finding common ground between sovereignty and accountability remains a crucial endeavour in the pursuit of global justice.

3. The Role of Power Politics in International Criminal Law

The Act underscores the consequences of power politics when determining the implementation of international criminal law. The United States, as an international superpower, has the power to defy the ICC's jurisdiction and dictate the actions of nations around the globe. This dynamic subverts the concept of equality under the law and brings to question the legitimacy of international organizations. The United States has used its influence on the United Nations Security Council (UNSC) to obstruct ICC investigations against its allies, notably Israel.

The politicization of international criminal justice compromises the ICC's independence and diminishes public trust in the Court's capacity to administer unbiased justice.

The paradox of this dynamic is strikingly demonstrated when contrasting the United States against a nation such as my country, Ghana. Ghana, a nation without veto power on the UNSC and limited resources, lacks the military might, technology, logistics and global influence to purport to shield itself or its friends from the ICC's probe such as by passing an Act, akin to the American Service-Members' Protection Act often referred to as the "Hague Invasion Act," which authorized the use of military force to free U.S. personnel detained by the ICC. Ghana is a state party to the Rome Statute and has committed to adhering to the ICC's jurisdiction and obligations. Consequently, Ghana is expected to cooperate with the ICC in the investigation and prosecution of serious international violations such as genocide, war crimes, and crimes against humanity. Complementarity serves as a fundamental tenet of the Rome Statute. The ICC functions as a final recourse, stepping in only when a state is either "unwilling or unable" to prosecute crimes occurring within its jurisdiction. For Ghana, this principle guarantees that its domestic legal system is prioritized in addressing cases of serious crimes. However, Ghana's ability to do so may be constrained by its capacity, resources, or expertise, making the ICC a necessary mechanism in certain situations. Ghana's cooperation with the ICC is both a duty and a pragmatic situation shaped by its standing in the framework of international law. The principle of complementarity establishes that Ghana holds the primary duty to prosecute crimes; however, its constrained resources and diminished influence prevent it from evading ICC jurisdiction as more powerful nations might with ease.

This creates a paradoxical analogy: Ghana represents a compliant actor adhering to fixed international norms, akin to a disciplined student bound by the rules of a classroom, while the United States exemplifies a dominant actor, akin to an unruly but influential student who not only flouts the rules but also dictates their enforcement. The compliant actor must conform, while the dominant actor selectively determines which rules apply, thereby undermining the authority of the governing body and the equitable functioning of the system.

This disparity between states such as Ghana and the United States underscores the potential for power imbalances to erode the credibility of international justice and weaken the ICC's claim to uphold universal accountability and equitable treatment under international law. Such imbalances raise critical questions about the ICC's efficacy and the broader framework of international law in delivering impartial justice, particularly when the principles of fairness and equality are compromised by geopolitical realities.

The active and leading role played by the United States in the process leading to the adoption of the Rome Statute and the establishment of the ICC contrasts sharply with its subsequent shifts in posture, culminating in the hostile measures epitomized by H.R. 23 in 2025. This marked shift reflects a stark departure from the principles the U.S. initially supported and raises questions about the proportionality and legitimacy of its approach.

Assuming, without conceding, that the U.S. had legitimate grounds to seek legislative protection for its nationals, service members, and allies against potential ICC actions, the formulation of H.R. 23 appears excessively broad and punitive. The Act's inclusion of sweeping sanctions that extend even to the close family members of ICC staff exemplifies a disproportionate response, undermining fundamental principles of justice and fairness. Such provisions evoke the analogy of using a sledgehammer to kill a fly; an unnecessarily heavy-handed measure that risks collateral harm and contradicts established norms of international law.

This criticism aligns with the response to the Bill from Senate Democrats, who largely opposed the measure because it was overly broad. On January 28, 2025, Senate Democrats blocked a Republican-led effort to impose sanctions on the ICC in protest of its arrest warrants for Israeli Prime Minister Benjamin Netanyahu and his former defence minister over Israel's campaign in Gaza. While the Chamber voted 54-45 in favour of the Bill, it fell short of the 60 votes needed to advance in the 100-member Senate. Democrats acknowledged their agreement with certain aspects of the Bill but emphasized its overly broad strokes, which risked alienating key U.S. allies and imposing sanctions on lower-level ICC workers in the Netherlands. Senator Jeanne Shaheen, the ranking Democrat on the Foreign Relations Committee, noted that the party attempted to negotiate a compromise with Republicans but was ultimately unable to do so. From a legal and academic perspective, the breadth of H.R. 23 raises such significant concerns. The extraterritorial scope and harshness of its provisions, particularly the targeting of family members of ICC staff, conflict with principles of proportionality, necessity, and non-discrimination under domestic and international legal frameworks. The opposition within the Senate underscores the importance of measured policymaking that balances national interests with the need to uphold the rule of law, maintain alliances, and respect human rights. A more constructive approach would involve addressing specific concerns through diplomatic engagement with the ICC and the broader international community, rather than resorting to sweeping and punitive legislative measures like that contained in the H.R. 23.

Reaffirming Justice and Cooperation: The Enduring Role of the ICC in a Shifting Global Landscape

The Illegitimate Court Counteraction Act poses a profound challenge to the enforcement of international criminal law and justice, striking at the heart of the ICC's legitimacy. By obstructing state cooperation, it undermines the Court's ability to investigate and prosecute the gravest crimes, particularly those involving U.S. nationals and allies. Worse still, it sets a perilous precedent, encouraging other states to evade accountability through similar tactics.

However, such challenges are not insurmountable. The international community must steadfastly reaffirm its commitment to accountability and cooperation. The United States, as a historic advocate for the protection of human rights, promotion of justice and the rule of law, should reconsider its stance, finding a way to reconcile its unique concerns with the global imperative to combat impunity. Only through sustained collaboration can the world uphold the principles that ensure the protection of human dignity and the rule of law, thereby safeguarding world peace and security.

The ICC, for its part, must remain resilient. It is clear that U.S. positions toward the Court have often reflected the political principles of the administration in power. History demonstrates that the U.S.' relationship with the ICC is cyclical, characterized by alternating phases of resistance and support. The current phase of tension, as embodied by the Illegitimate Court Counteraction Act, is not unprecedented. Encouragingly, past patterns suggest that this "hate" phase may eventually give way to renewed engagement.

As the international community navigates this challenging period, it is essential to remember the inspirational legacy of U.S. leadership in global justice. After World War II, the United States, alongside its allies, championed the establishment of international legal mechanisms to combat impunity and secure peace. These efforts laid the groundwork for a unified commitment to justice that endures to this day. The ICC, its officials, and its allies must not lose hope in the capacity of the United States to rediscover this legacy.

The world must hold firm in its resolve to bring those responsible for the most heinous international crimes to justice through the procedures of the ICC, the only permanent international criminal court.

While the U.S. may oscillate between support and opposition, one principle must remain constant: the unwavering commitment of the international community to justice, accountability, and the rule of law. This commitment transcends political shifts, ensuring that the world's collective pursuit of justice remains steadfast and that no individual is above the law. Together, the international community and the ICC must continue to champion the ideals of fairness, cooperation, and hope for a more just, peaceful and secure world for all.



**HER HONOUR JUDGE
SEDINAM AWO KWADAM (MRS.)**