

PIERCING THE JUDICIAL ROBE: THE ICC’S HISTORIC INDICTMENT OF THE TALIBAN CHIEF JUSTICE AND ITS IMPLICATIONS FOR GLOBAL JUDICIAL ACCOUNTABILITY; AN EXPOSÉ AND CAUTION TO JUDICIAL ACTORS.

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This Paper is dedicated to Her Ladyship the Late Justice Rita Agyeman-Budu (Mrs.) J.*

ABSTRACT

This paper examines the International Criminal Court’s (ICC) unprecedented indictment of Abdul Hakim Haqqani, the Taliban’s Chief Justice, for crimes against humanity, marking the first time a sitting judicial officer has been held criminally liable under Article 7(1)(h) of the Rome Statute. The case signals a jurisprudential shift by affirming that judicial office offers no immunity when the bench is used to institutionalize human rights abuses, particularly gender persecution. The paper explores three transformative implications: the extension of individual criminal responsibility to judicial actors under Article 25; the novel application of command responsibility (Article 28(b)) to civilian judicial hierarchies; and the redefinition of the relationship between state sovereignty and peremptory norms of international law. By analyzing historical precedents such as the Nuremberg Judges’ Trial and the International Criminal Tribunal for Rwanda (ICTR), the paper posits that the ICC’s action against Haqqani strengthens the emerging norm of judicial accountability, with far-reaching consequences for courts operating under authoritarian regimes. This indictment marks both a legal milestone and a moral reckoning in the evolution of international criminal justice.

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I. INTRODUCTION

The International Criminal Court's (ICC) issuance of arrest warrants on 8 July 2025 for Abdul Hakim Haqqani, the Taliban's Chief Justice,¹ and Supreme Leader Hibatullah Akhundzada² represents nothing less than a revolution in international criminal jurisprudence.³ For the first time in the Court's history, a sitting judicial official stands accused not as an accessory or witness, but as a principal perpetrator of crimes against humanity under Article 7(1)(h)⁴ of the Rome Statute, specifically for institutionalizing gender persecution through the Taliban's legal system.⁵ This unprecedented action fundamentally disrupts three entrenched doctrines of international law: the presumption of judicial immunity, the traditional limitation of command responsibility to military contexts, and the artificial separation between domestic legal sovereignty and international human rights norms.

The indictment, arising from the Taliban's systematic dismantling of women's rights following their return to power in 2021, including bans on education, employment, and public participation, all enforced through judicial rulings.⁶ What makes this case jurisprudentially transformative is its recognition that judicial robes, when weaponized to codify oppression, become instruments of international crimes. The ICC's action builds upon, but also radically extends, precedents such as the Nuremberg Judges Trials and jurisprudence from the International Criminal Tribunal for Rwanda in the Kanyarukiga case, by affirming that non-

¹ Abdul Hakim Haqqani (also Abdul Hakim Ishaqzai, b. 1967) is the Chief Justice under the Taliban's *de facto* regime in Afghanistan. A founding member and key ideologue of the movement, he held the same post during the 1996–2001 Taliban rule and led the group's negotiation team in Doha prior to their 2021 return to power.

² Mullah Hibatullah Akhundzada (b. 19 October 1967) is the reclusive *de facto* supreme leader of Afghanistan under Taliban rule. Appointed in 2016, he assumed full control of the group's religious, political, and military structures, consolidating power after the Taliban's return in August 2021. His leadership remains largely opaque, with minimal public appearances and communications.

³ International Criminal Court (ICC), 'Statement of the ICC Office of the Prosecutor on the Issuance of Arrest Warrants in the Situation in Afghanistan' (International Criminal Court 8 July 2025) <https://www.icc.cpi.int/news/statement,icc,office,prosecutor,issuance,arrest,warrants,situation,afghanistan> accessed 13 July 2025.

⁴ **Article 7(1)(h) comprehensively provides thus:** For the purpose of this Statute, "*crime against humanity*" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (h) *Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;*

⁵ While judicial actors have previously faced prosecution, the Haqqani warrant marks the first such indictment under the Rome Statute. See *US v Altstötter* (Judges' Trial) (1947) 3 TWC 1; cf *Prosecutor v Kamuhanda* (ICTR,99,54A), Judgment, 22 Jan 2004. Find here; Case Briefs, 'The Justice Case' (Case 3), United States v. Josef Altstoetter et al | Case Brief for Law Students | Case briefs' (Casebriefs.com 2020) <https://www.casebriefs.com/blog/law/international-law/international-law-keyed-to-damrosche/chapter-16/the-justice-case-case-3-united-states-v-josef-altstoetter-et-al/> accessed 13 July 2025 and United Nations International Residual Mechanism for Criminal Tribunals, 'ICTR-02-78 | United Nations International Criminal Tribunal for Rwanda' (Irmct.org 2015) <https://unictr.irmct.org/en/cases/ict-02-78> accessed 13 July 2025.

⁶ Heather Barr, 'The Taliban and the Global Backlash against Women's Rights' (*Human Rights Watch* 6 February 2024) <https://www.hrw.org/news/2024/02/06/taliban.and.global.backlash.against.womens.rights> accessed 13 July 2025. See also Amnesty International, *Afghanistan: A Human Rights Crisis Under Taliban Rule* (2024) <https://www.amnesty.org/en/location/asia.and.the.pacific/south.asia/afghanistan/report.afghanistan/> accessed 13 July 2025.

military and political actors can bear direct responsibility when they become theatres of persecution.⁷

This paper proceeds through four interlocking arguments. First, it demonstrates how the Rome Statute's jurisdictional framework, specifically Articles 12 and 17, surmounts the challenges posed by the Taliban's unrecognized regime status. Second, it analyzes the doctrinal innovation of applying command responsibility under Article 28(b) of the Rome Statute to civilian judicial hierarchies. Third, it evaluates the evidentiary strategy linking Haqqani's judicial rulings to the broader system of gender apartheid.⁸ Finally, it assesses the indictment's normative and ethical implications for global judicial practice, particularly in authoritarian contexts where courts operate as instruments of repression.⁹

The significance of this case transcends Afghanistan. It offers a novel legal framework for addressing judicial complicity in contexts such as Iran's morality courts and Myanmar's military tribunals. The ICC's action exemplifies what Bassiouni terms "*the criminalization of state legal apparatus*", a recognition that when domestic legal systems are repurposed to violate *jus cogens* norms, as in the present case, gender equality, their architects forfeit any claim to immunity.¹⁰

Practically, the indictment tests the ICC's ability to hold non-cooperative regimes accountable. Although physical arrest may be unlikely, the issuance of arrest warrants activates potent symbolic mechanisms, including INTERPOL Red Notices, asset freezes under UN Security Council Resolution 2615,¹¹ and the further delegitimization of Taliban claims to governmental authority. As Mégret notes, this form of "*accountability through stigmatization*" can shift international norms even in the absence of immediate prosecution.¹²

Structurally, the paper is organized as follows. Section II examines the ICC's jurisdictional basis, focusing on Afghanistan's Rome Statute accession and the doctrine of continuing jurisdiction under Article 127(2). Section III dissects the legal architecture of the gender persecution charges, drawing parallels between Taliban edicts and apartheid-era legal frameworks. Section IV assesses the innovatively applied doctrine of command responsibility to judicial hierarchies, and Section V assesses enforcement challenges and alternative accountability mechanisms. Section

⁷ Theo C van Boven, 'Non-State Actors: Introductory Comments (1997)' in Fons Coomans and others (eds), *Human Rights from Exclusion to Inclusion: Principles and Practice—An Anthology from the Work of Theo van Boven* (Kluwer Law International 2000) 363, 368; Paola Gaeta, 'The Dayton Agreements and International Law' (1996) 7 *European Journal of International Law* 147.

⁸ Gender apartheid refers to state policies or entrenched practices that systematically oppress individuals, typically women, based on gender, amounting to institutionalized subjugation. Though not yet codified as a standalone international crime, such conduct may fall under gender, based persecution prosecutable by the ICC under Article 7(1)(h) of the Rome Statute.

⁹ In authoritarian regimes, courts often function as tools of repression rather than protectors of justice. Judicial independence is compromised, with judges subject to executive control. Vague laws on national security or blasphemy are weaponized to silence dissent, while show trials and fair trial violations, such as denial of counsel or reliance on coerced evidence, are common.

¹⁰ Bassiouni argues that states, like individuals, can commit systemic harms warranting criminal liability, challenging the notion that legality shields state conduct from ethical and juridical scrutiny. He outlines criteria for state criminalization and critiques the tension between positivist legal protections and emerging international accountability norms. See M. Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Application* (CUP 2011).

¹¹ United Nations Security Council, 'S/RES/2615(2021) | Security Council' (*Un.org*2021) <https://main.un.org/securitycouncil/en/content/sres26152021> accessed 17 July 2025.

¹² Mégret F, 'The Anxieties of International Criminal Justice' (2016) 29 *Leiden Journal of International Law* 197

VIII provides advice to Judges worldwide about the implications of the indictment. The conclusion reflects on the broader normative implications of this case for judicial ethics and international justice in an age of authoritarian legalism.

Ultimately, the Haqqani indictment marks the definitive end of what may be termed “*judicial exceptionalism* or *judicial immunity*”, the belief that legal judicial privilege insulates actors from responsibility. In doing so, it answers Arendt’s call for the ICC to confront “*the banality of legal evil*”, the bureaucratic processes by which atrocity is legalized and normalized.¹³

The robe may conceal the judge, but henceforth, it cannot conceal the crime.

II. ICC Jurisdiction and the Afghanistan Context

Afghanistan’s formal accession to the Rome Statute in 2003 constituted a definitive acceptance of the ICC’s jurisdiction over core international crimes committed within its territory, as enshrined in Article 12(2)(a) of the Statute.¹⁴ This jurisdictional nexus persists as a matter of treaty law irrespective of subsequent governmental changes, a principle of critical importance following the Taliban’s 2021 resurgence. The ICC’s engagement with Afghanistan commenced with a preliminary examination in 2006, evolving into a full investigation authorized in March 2020.¹⁵ While the initial prosecutorial strategy adopted a comprehensive approach, encompassing alleged crimes by the Taliban, Afghan national forces, and international military contingents (including U.S. personnel), the Taliban’s seizure of power precipitated a strategic recalibration toward the regime’s systemic human rights violations.¹⁶

The Taliban’s current status as a non-recognized *de facto* authority presents no jurisdictional barrier under the Rome Statute’s framework. Article 127(2) establishes an irrevocable temporal jurisdiction over crimes committed during a state’s membership period, creating what Cassese

¹³ Hannah Arendt’s concept of the “*banality of evil*” captures how ordinary individuals, devoid of overt malice, can commit grave atrocities by uncritically following authority and legal norms. Developed during her coverage of Adolf Eichmann’s trial, Arendt was struck by his bureaucratic detachment and lack of remorse, not as a sadistic figure, but as a thoughtless functionary. His case illustrated that evil can stem not from fanaticism, but from a failure to think morally within systems of legal obedience. See Yale University Press Blog, ‘The Banality of Evil: Hannah Arendt’, Yale University Press London Blog⁵ June 2013) <https://yalebooksblog.co.uk/2013/06/05/the-banality-of-evil-hannah-arendt/> accessed 14 July 2025. See Also PBS, ‘How Hannah Arendt Developed the Concept of “the Banality of Evil”’ (Pbs.org¹² June 2025) <https://www.pbs.org/video/hannah-arendt-developed-concept-of-the-banality-of-evil-during-the-eichmann-trials-jmc2hd/> accessed 14 July 2025.

¹⁴ ‘Afghanistan | International Criminal Court’ ([asp.icc.cpi.int](https://asp.icc.cpi.int/states/parties/asian/states/afghanistan)) accessed 14 July 2025 See Also, International Criminal Court (ICC) Project, ‘Afghanistan’ (*International Criminal Court Project*¹⁵ February 2024) <https://www.aba.icc.org/country/afghanistan/> accessed 14 July 2025.

¹⁵ International Criminal Court, ‘Situations under Investigation’ (*International Criminal Court*²⁰²⁴) <https://www.icc.cpi.int/situations/under-investigations> accessed 14 July 2025. See Also International Criminal Court (ICC), ‘Decision on the Prosecutor and Victims’ Requests for Leave to Appeal the “Decision pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Islamic Republic of Afghanistan”’ (*International Criminal Court*²⁰¹⁹) https://www.icc.cpi.int/court/record/icc_02/17_62 accessed 17 July 2025.

¹⁶ Human Rights Watch, ‘Afghanistan: Events of 2022’ (*Human Rights Watch*²⁰ December 2022) <https://www.hrw.org/world/report/2023/country/chapters/afghanistan> accessed 14 July 2025.

termed “a permanent jurisdictional footprint”.¹⁷ This provision ensures that subsequent political upheavals¹⁸ or attempts at treaty repudiation¹⁹ cannot extinguish accountability for Rome Statute violations occurring between 2003–2021. Crucially, the ICC’s jurisdictional trigger depends on territorial control²⁰ rather than diplomatic recognition, a position reinforced by the International Law Commission’s *Draft Articles on State Responsibility*, which prioritize effective governance over formal legitimacy (Art. 4).²¹

This legal architecture carries profound implications for the Haqqani prosecution, should it materialize. First, under the principle of continuity of obligations, Afghanistan’s treaty commitments survive the Taliban’s non-recognition, as affirmed in the ICJ’s *Namibia Advisory Opinion* (1971) regarding South Africa’s illegal occupation.²² Second, under the non-retroactivity shield, the ICC’s jurisdiction remains strictly confined to post-2003 crimes, avoiding *ex post facto* concerns under Article 24 while capturing the Taliban’s post-2021 conduct as a continuation of pre-existing patterns.²³ Third, the principle of **positive complementarity** allows the ICC to intervene when a state is **unwilling or unable** to genuinely investigate or prosecute international crimes.

In this case, the Taliban’s systematic dismantling of Afghanistan’s judicial institutions, documented by UN Special Rapporteur Richard Bennett,²⁴ shows a clear “**unwillingness**” to **prosecute** crimes, satisfying the ICC’s **admissibility criteria under Article 17(1)(a)**.²⁵ This justifies ICC’s jurisdiction where no credible domestic accountability mechanisms exists.

¹⁷ Cassese, A. (2008). *International Criminal Law* (2nd ed.). Oxford.

¹⁸ Lindsay Maizland, ‘The Taliban in Afghanistan’ (*Council on Foreign Relations* 19 January 2023) <https://www.cfr.org/background/taliban.afghanistan> accessed 17 July 2025.

¹⁹ IN, ‘Taliban Rejects ICC Jurisdiction, Declares 2003 Rome Statute Accession Void’ (*Jurist.org* 23 February 2025) <https://www.jurist.org/news/2025/02/taliban.rejects.icc.jurisdiction.declares.2003.rome.statute.accession.void/> accessed 17 July 2025

²⁰ per *Lubanga* ICC, 01/04/01/06, 1486 21, 10, 2008 1/60 CB T OA13 International Criminal Court (ICC), ‘Judgment on the Appeal of the Prosecutor against the Decision of Trial Chamber I Entitled “Decision on the Consequences of Nondisclosure of Exculpatory Materials Covered by Article 54(3)(E) Agreements and the Application to Stay the Prosecution of the A”’ (*International Criminal Court* 2025) https://www.icc.cpi.int/court_record/icc.01/04/01/06,1486 accessed 14 July 2025.

²¹ International Law Commission, ‘*Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries 2001*’ (2001) https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf accessed 14 July 2025.

²² ICJ, ‘*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwith*’ (*www.icj.org* 1971) <https://www.icj.cij.org/case/53> accessed 14 July 2025.

²³ Put simply, the International Criminal Court (ICC) can only deal with crimes committed **after 2003**, when its rules came into effect. This rule, called **nonretroactivity**, ensures people aren’t punished for things that weren’t crimes at the time. However, the Taliban’s actions after **2021** can still be investigated because they are seen as part of a continuing pattern of abuse that started after 2003. So, while the ICC can’t look at older crimes from before its founding, it can still hold the Taliban accountable for ongoing violations that fit within its timeline.

²⁴ Office of the United Nations High Commissioner for Human Rights, ‘OHCHR | Special Rapporteur on Afghanistan’ (*OHCHR*) <https://www.ohchr.org/en/special/procedures/sr.afghanistan> accessed 14 July 2025.

²⁵ United Nations, ‘Document Viewer’ (Un.org 2025) <https://docs.un.org/en/A/HRC/51/6> accessed 14 July 2025.

The jurisdictional analysis gains further nuance when considering the Vienna Convention on the Law of Treaties (Art. 70).²⁶ Afghanistan's attempted withdrawal in 2025,²⁷ later voided for procedural defects,²⁸ could not erase pre-existing obligations.²⁹ This interpretation finds reinforcement in the ICC Appeals Chamber's *Jordan Referral re Al-Bashir*, which affirmed that successor regimes inherit accountability frameworks from predecessor governments.³⁰

From a comparative perspective, the situation in Syria illustrates a contrasting case. Unlike Afghanistan, Syria's non-accession to the Rome Statute limits ICC jurisdiction to Security Council referrals,³¹ which have been politically blocked since 2014.³² Meanwhile, Myanmar provides a more instructive analogue: the Court's Article 12(2)(a) territorial jurisdiction over Rohingya deportations to Bangladesh, creates a jurisdictional reasoning that could inform future Afghanistan proceedings.³³

However, emerging challenges remain. Evidence collection under Taliban rule is significantly obstructed by lack of access to crime scenes, necessitating reliance on open-source intelligence such as the UN Analytical Support and Sanctions Monitoring Team reports and remote witness testimony, as pioneered in *Prosecutor v. Ongwen*.³⁴ In parallel, the defence may raise claims of

²⁶ United Nations, 'Vienna Convention on the Law of Treaties' (1969) 1155 Vienna Convention on the Law of Treaties https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf accessed 14 July 2025.

²⁷ Ayaz Gul, 'Taliban Withdraw Afghanistan from International Criminal Court' (Voice of America 20 February 2025) <https://www.voanews.com/a/taliban-withdraw-afghanistan-from-international-criminal-court/7981683.html> accessed 14 July 2025.

²⁸ *Rome Statute Article 127* governs the process by which a State Party may withdraw from the jurisdiction of the International Criminal Court. Subparagraph (1) provides that a State may withdraw by submitting written notification to the UN Secretary-General, with such withdrawal taking effect one year from the date of receipt, unless a later date is specified. However, subparagraph (2) makes clear that withdrawal does not absolve the State of any obligations incurred while it was a party, including financial obligations or cooperation duties in ongoing proceedings. It further affirms that withdrawal does not affect the Court's jurisdiction over crimes committed prior to the withdrawal's effective date, nor does it halt proceedings already under the Court's consideration. Accordingly, withdrawal is prospective, not retroactive, and does not shield a State or its nationals from accountability for crimes committed during its membership.

²⁹ The Taliban's rejection of the International Criminal Court's (ICC) authority and the Rome Statute's jurisdiction is primarily symbolic, given that Afghanistan's status as a state party remains unchanged as of 2025. While Article 127 of the Rome Statute permits withdrawal, it requires a formal written notification to the UN Secretary-General and becomes effective only after a one-year delay. Crucially, such withdrawal does not nullify the Court's jurisdiction over crimes committed while the state was a party. As Afghanistan has not formally withdrawn, the ICC retains full jurisdiction over crimes committed on Afghan territory since 2003, when it acceded to the Rome Statute, including those allegedly perpetrated by Taliban leaders. Therefore, the Taliban's repudiation has no legal effect on the Court's authority to investigate and prosecute international crimes within its mandate.

³⁰ International Criminal Court (ICC), 'Judgment in the Jordan Referral Re Al-Bashir Appeal' (*International Criminal Court*) <https://www.icc.cpi.int/court/record/icc,02/05,01/09,397,0> accessed 14 July 2025.

³¹ One way the ICC can gain jurisdiction over a situation is through a referral by the United Nations Security Council (UNSC) under Article 13(b) of the Rome Statute.

³² Vote details and statements <https://docs.un.org/en/S/PV.7180> accessed 17 July 2025. See Also, Proposed ICC referral <https://docs.un.org/en/S/2014/348> accessed 17 July 2025.

³³ International Criminal Court, 'Bangladesh/Myanmar' (*Icc,cpi.int* 2019) <https://www.icc.cpi.int/bangladesh-myanmar> accessed 14 July 2025.

³⁴ International Criminal Court (ICC), 'Trial Judgment' (*International Criminal Court* 2021) <https://www.icc.cpi.int/court/record/icc,02/04,01/15,1762,red> accessed 14 July 2025.

judicial independence, akin to those floated in *Gbagbo*,³⁵ such claims must be rebutted through evidence establishing Haqqani's functional control over subordinate courts.

Ultimately, this jurisdictional architecture does more than validate the ICC's ongoing prosecutions; it crystallizes a critical precedent for holding non-state judicial actors accountable in similarly complex contexts, such as Yemen or Ethiopia. By grounding its authority in binding treaty obligations rather than the shifting sands of political recognition, the Court reinforces the primacy of legal accountability over political expediency, an imperative that grows ever more urgent amid the accelerating fragmentation of the international order.

III. Legal and Evidentiary Foundations of the Haqqani Indictment

The ICC Prosecutor has meticulously documented how Haqqani, as the Taliban's Chief Justice, institutionalized gender apartheid through a comprehensive legal architecture that systematically excluded women and girls from education, employment, and public participation.³⁶ These were not incidental abuses but calculated policies enforced through binding judicial rulings that transformed Taliban edicts into enforceable state law.³⁷

The ICC's case against Haqqani breaks new ground by alleging that he did not merely apply existing laws, but actively shaped the legal framework of persecution. As the head of the Taliban's judiciary, Haqqani authored legal opinions that provided pseudo-religious justification for draconian gender policies, effectively creating a veneer of legality for systematic oppression.³⁸

This dual role, as both architect and enforcer of discriminatory laws, establishes what might be termed '*doctrinal commission*', where legal reasoning itself becomes an instrument of international crimes.

The Court's approach finds strong precedent in international jurisprudence, particularly the Nuremberg Tribunal's judgment in *United States v Altstötter* also known as '*The Justice Case*'³⁹

³⁵ International Criminal Court (ICC), 'Judgment on the Appeal of Mr. Laurent Koudou Gbagbo against the Decision of Pre-Trial Chamber I on Jurisdiction and Stay of the Proceedings' (*International Criminal Court* 2025) https://www.icc.cpi.int/court_record/icc,02/11,01/11,321,0 accessed 14 July 2025.

³⁶ International Criminal Court, 'Situations under Investigation' (*International Criminal Court* 2024) https://www.icc.cpi.int/situations_under_investigations accessed 14 July 2025.

³⁷ Dhojnacki, 'How the Taliban Is Using Law for Gender Apartheid, and How to Push Back' (*Atlantic Council* 29 May 2025) https://www.atlanticcouncil.org/content_series/inside_the_talibans_gender_apartheid/how_the_taliban_is_using_law_for_gender_apartheid_and_how_to_push_back/ accessed 14 July 2025. See Also, Amnesty International, 'Gender Apartheid Must Be Recognized as a Crime under International Law' (*Amnesty International* 17 June 2024) https://www.amnesty.org/en/latest/news/2024/06/gender_apartheid_must_be_recognized_international_law/ accessed 14 July 2025.

³⁸ International Commission of Jurists and Amnesty International, 'Taliban's War on Women' (2023) 15,18 https://www.icj.org/wp-content/uploads/2023/05/The_Talibans_war_on_women_the_crime_against_humanity_of_gender_persecution_in_Afghanistan_FINAL_VERSION.pdf

³⁹ Judgment of the U.S. Military Tribunal III (The Justice Case), 1947, reprinted in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, Vol. III (U.S. Government Printing Office, 1951)

which established that judges who weaponize legal systems to facilitate persecution lose any claim to judicial immunity.⁴⁰

The historical parallels between Haqqani's actions and those of Nazi jurists are particularly instructive. Like Roland Freisler's People's Court in Nazi Germany,⁴¹ which perverted legal processes to eliminate political opponents,⁴² the Taliban judiciary under Haqqani has instrumentalized Sharia principles to codify misogyny.⁴³

However, the ICC's approach advances beyond Nuremberg by applying these principles to contemporary theocratic authoritarianism, thereby updating the 'justice case' paradigm for 21st-century challenges. Significantly, the indictment also draws implicit parallels to more recent jurisprudence, including the ICTR's conviction of Rwandan officials for using administrative systems to enable genocide.⁴⁴

This case also raises profound questions about the limits of judicial independence in international law. While judicial immunity traditionally protects judges from liability for acts performed in their official capacity, the ICC's position reflects the emerging view that such protection cannot extend to participation in the Rome Statute crimes. As the Special Court for Sierra Leone held in *Prosecutor v Taylor*, the principle of sovereign equality '*does not prevent the prosecution of those who commit international crimes*'.⁴⁵

By applying this logic to a sitting judge, the ICC dramatically expands the potential scope of judicial accountability.

The doctrinal implications are far-reaching. First, the case establishes that systematic discrimination implemented through formal legal channels can constitute persecution under international criminal law. Second, it creates precedent for holding judicial actors directly liable when they move beyond mere application of law to active participation in its criminal design. Finally, it bridges the gap between traditional command responsibility and civilian judicial hierarchies, suggesting that senior judges may bear responsibility for the actions of subordinate courts.⁴⁶

As this prosecution unfolds, it will likely spark vigorous debate about judicial ethics in authoritarian contexts and the proper boundaries of international judicial intervention. However, the ICC's foundational premise remains compelling: when judges become architects of oppression rather than guardians of justice, they forfeit the protections traditionally afforded to

⁴⁰ Trials of War Criminals Before the Nuremberg Military Tribunals, vol III (1951) 974,982)

⁴¹ Roland Freisler (1893–1945), President of Nazi Germany's People's Court (Volksgerichtshof), was infamous for presiding over show trials that sentenced thousands, including resistance members, to death. Known for his aggressive courtroom demeanor and ideological use of law, he epitomized the Nazi regime's perversion of justice.

⁴² Richard J Evans, *The Third Reich in Power, 1933,1939* (reprint, Penguin Press HC 2005) 73 73–78 https://books.google.com.gh/books/about/The_Third_Reich_in_Power_1933_1939.html?id=M8fu0Q7lj9oC&redir_esc=y accessed 14 July 2025.

⁴³ Amnesty International, *Death in Slow Motion*, p. 14.

⁴⁴ Supra Note at 7

⁴⁵ SCSL,03,01,T, Judgment (2012) para 42

⁴⁶ *Prosecutor v Delalić* (IT,96,21,T) Judgment (1998) para 346 International Criminal Tribunal for the former Yugoslavia, 'Delalic et Al., Judgement' (www.icty.org) <https://www.icty.org/x/cases/mucic/tjug/en/> accessed 14 July 2025.

their office. This principle, now being tested in The Hague, may well redefine the relationship between judicial function and international criminal liability for generations to come.

IV. Judicial Liability under the Rome Statute

Article 25 of the Rome Statute establishes individual criminal responsibility for persons who ‘commit, order, solicit, or induce’ international crimes, or who ‘aid, abet, or otherwise assist’ in their commission.⁴⁷ Critically, the provision contains no *exceptio judicis*, no carve-out for judicial officers. This omission is deliberate, reflecting the Statute’s foundational principle that formal legal authority cannot immunize perpetrators when such authority is instrumentalized for oppression.⁴⁸

Abdul Hakim Haqqani’s alleged conduct, formulating gender-apartheid edicts, presiding over tribunals imposing cruel punishments, and lending pseudo-legal legitimacy to the Taliban’s systemic persecution, places him squarely within Article 25’s framework. His role transcends passive adjudication; as the architect of a judicial apparatus designed to entrench crimes against humanity, he meets the threshold for liability as both a principal perpetrator under Article 25(3)(a) and an enabler under Article 25(3)(c).

This interpretation finds robust support in international jurisprudence. The ICTR’s landmark *Prosecutor v Kanyarukiga* judgment convicted a Rwandan judicial official for repurposing court procedures to expedite genocidal killings, holding that ‘the robe confers no sanctity when the courtroom becomes a slaughterhouse.’⁴⁹ The tribunal emphasized that judges incur liability not merely for failing to prevent crimes, but for actively ‘weaving a veneer of legality around criminal acts.’⁵⁰ This aligns with the Nuremberg Tribunal’s condemnation of Nazi jurists in *United States v Altstötter*, where the court rejected the defence of ‘judicial neutrality’ when verdicts served ideological annihilation.⁵¹

Contemporary scholarship reinforces this trajectory. Cassese observes that modern international criminal law increasingly treats ‘legalistic camouflage’ as an aggravating factor, given its power to normalize atrocities.⁵² This doctrinal shift reflects a recognition that judicial complicity often magnifies harm by transforming raw violence into institutionalized oppression. The Haqqani case thus represents not an expansion of Article 25 but its logical application: when judges become ‘violence-launderers’, converting persecution into precedent, they forfeit the protections of judicial independence.⁵³

The implications are profound. This jurisprudence erodes the positivist fiction that lawfulness derives solely from state sanction. By holding judicial actors accountable, the ICC affirms that

⁴⁷ Rome Statute 1998, art 25(3)

⁴⁸ Schabas William A, *The International Criminal Court* (Oxford University Press 2016) 432
<https://academic.oup.com/oxford.law.pro/book/57464> accessed 14 July 2025.

⁴⁹ Supra note at 7

⁵⁰ Ibid

⁵¹ *United States v Altstötter* (1947) 3 TWC 954, 978

⁵² Antonio Cassese, *Cassese’s International Criminal Law; Antonio Cassese et Al.* (Oxford University Press 2013) 158.

⁵³ Kathryn Sikkink, *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton University Press, 2017) 112.

legality must align with *jus cogens* norms, a principle already implicit in the *Furundžija* prohibition on officials invoking domestic law to justify torture.⁵⁴

V. Extending Command Responsibility to the Judiciary

A significant legal innovation in the Haqqani indictment lies in the novel application of Article 28(b) of the Rome Statute, which imposes command responsibility on civilian superiors for failing to prevent or punish crimes committed by their subordinates. While this doctrine has historically been confined to military contexts, exemplified by cases such as *Prosecutor v Delalić*⁵⁵ and *Prosecutor v Blaškić*,⁵⁶ its extension to judicial hierarchies marks a doctrinal watershed. The ICC's approach aligns with emerging interpretations of superior responsibility under customary international law, which increasingly rejects rigid distinctions between military and civilian chains of command.⁵⁷

Haqqani's liability under Article 28(b) hinges on three key elements: (1) his effective control as Chief Justice over subordinate judges and court officials; (2) his knowledge, or constructive knowledge, of their role in enforcing gender persecution through arbitrary detentions, public floggings, and extrajudicial executions; and (3) his demonstrable failure to intervene or discipline such conduct. The indictment posits that Haqqani's oversight of the Taliban's judicial apparatus was not merely administrative but operational, as lower courts functioned as instruments of systemic repression under his authority.⁵⁸ This reasoning reflects the ICTY's holding in *Čelebići* that superior responsibility applies wherever a leader exercises 'material ability' to prevent or punish crimes.⁵⁹

The doctrinal implications are insightful. By applying Article 28(b) to a judicial figure, the ICC affirms that hierarchical accountability transcends formal titles, attaching instead to *de facto* control over perpetrators. This challenges traditional notions of judicial immunity, reframing it not as an absolute shield but as a conditional privilege contingent on adherence to fundamental norms.⁶⁰ The move also responds to critiques of the ICC's perceived '*military bias*' in prior

⁵⁴ *Prosecutor v Furundžija* (IT,95,17/1), Judgment (1998) [155] Refworld United Nations High Commissioner for Refugees, 'Prosecutor v. Anto Furundzija (Trial Judgement)' (*Refworld*) <https://www.refworld.org/jurisprudence/caselaw/icty/1998/en/20418> accessed 15 July 2025.

⁵⁵ ICTY, Trial Chamber, IT,96,21,T, 16 November 1998 Adolphus Karibi, Whyte and others, 'UNITED NATIONS' (1998) https://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf accessed 15 July 2025.

⁵⁶ ICTY, Trial Chamber, IT,95,14,T, 3 March 2000 Claude Jorda and others, 'UNITED NATIONS International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 the PROSECUTOR v. TIHOMIR BLA[KI] JUDGEMENT the Office of the Prosecutor: Defence Counsel' (2000) <https://www.icty.org/x/cases/blaskic/tjug/en/bla.tj000303e.pdf> accessed 15 July 2025.

⁵⁷ *Bemba Gombo*, ICC,01/05,01/08, 21 March 2016, para 408 Sylvia Steiner, Joyce Judge and Kuniko Ozaki, 'Public with Annexes I, II, and a to F Judgment pursuant to Article 74 of the Statute' (2016) https://www.icc.cpi.int/sites/default/files/CourtRecords/CR2016_02238.PDF accessed 15 July 2025.

⁵⁸ See Court records <https://www.icc.cpi.int/sites/default/files/CourtRecords/0902ebd180a915c8.pdf>

⁵⁹ *Prosecutor v Delalić et al.*, ICTY, Trial Chamber, IT,96,21,T, 16 November 1998, para 378, 'Judgement' (www.icty.org 16 November 1998) <https://www.icty.org/x/cases/mucic/tjug/en/> accessed 16 July 2025. See also *Prosecutor v Stakić*, ICTY, Trial Chamber, IT,97,24,T, 31 July 2003, paras 459–62, International Criminal Tribunal for the Former Yugoslavia (ICTY. 2017) <https://www.icty.org/en/case/stakic> accessed 16 July 2025.

⁶⁰ *Kvočka et al.*, ICTY, Trial Chamber, IT,98,30/1,T, 2 November 2001, para 316 International Criminal Tribunal for the Former Yugoslavia' (Icty.org 2017) <https://www.icty.org/en/case/kvocka> accessed 16 July 2025.

command responsibility cases, signaling that civilian institutions, including courts, are equally capable of perpetrating or enabling international crimes.⁶¹

Critically, this expansion finds support in comparative jurisprudence. The ICTR's conviction of *Siméon Nchamihigo*⁶² for using judicial processes to incite genocide, and the Extraordinary Chambers in the Courts of Cambodia's (ECCC) findings on Khmer Rouge tribunal officials,⁶³ demonstrate that judicial actors have long been held accountable when courts become vehicles of oppression. The ICC's innovation lies in systematizing this principle through the Rome Statute's framework, rendering it applicable beyond *ad hoc* tribunals.

However, challenges remain. A contentious issue lies in the contrast between military commanders in illiberal regimes, where courts may operate under coercion, and the typical civil judiciary, where superior judges seldom wield direct disciplinary authority over their subordinates.⁶⁴

The ICC will need to carefully distinguish between coerced compliance and active complicity, a tension evident in dissenting opinions to *Bemba*'s command responsibility conviction.⁶⁵

Nonetheless, the Haqqani indictment represents a bold step toward closing the 'accountability gap' for civilian leaders who weaponize legal systems. As the Princeton Principles on Universal Jurisdiction underscore, the absence of explicit judicial authority over troops does not negate liability where systemic crimes are foreseeable and unaddressed (Principle 6(a)).⁶⁶

In conclusion, the invocation of Article 28(b) against Haqqani redefines the boundaries of superior responsibility, asserting that judicial hierarchies are neither morally nor legally exempt from scrutiny. This development not only reinforces the ICC's mandate to confront '*crimes of law*', where legislation and adjudication facilitate atrocities, but also warns judges globally that

⁶¹ Mettraux 2009, *The Law of Command Responsibility*, 127–29

⁶² International Criminal Tribunal for Rwanda (ICTR), 'ICTR,01,63 | United Nations International Criminal Tribunal for Rwanda' (*Irmct.org* 2015) <https://unictr.irmct.org/en/cases/ict.01.63> accessed 16 July 2025. *See Also*, Refworld United Nations High Commissioner for Refugees, 'The Prosecutor v. Siméon Nchamihigo (Judgement and Sentence) | Refworld' (*Refworld*2023) <https://www.refworld.org/jurisprudence/caselaw/ict/2008/en/63761> accessed 16 July 2025.

⁶³ *Case 002/02*, ECCC, Trial Chamber, 002/19,09,2007/ECCC/TC, 16 November (2018), https://legal.un.org/ola/media/info_from_lc/mss/speeches/MSS,Phnom,Penh,November,2018,ECCC,2,2,summary_of_judgement.pdf accessed 16 July 2025.

⁶⁴ Unlike many jurisdictions where judicial oversight is fragmented or limited, Ghana stands as an exception due to its robust framework of supervisory jurisdiction, derived from both constitutional and statutory provisions. Under Article 141 of the 1992 Constitution and statutes such as the Courts Act 1993 (Act 459), Ghana's superior courts, particularly the High Court and Supreme Court, exercise broad authority to review, correct, or quash decisions of lower courts, tribunals, and quasi-judicial bodies. This ensures compliance with due process, prevents abuses of power, and guarantees the proper application of the law. While many legal systems restrict higher courts to appellate functions, Ghana's model explicitly empowers them to intervene *suo motu* (on their own motion) or upon application.

⁶⁵ ICC,01/05,01/08,3636, Anx2, 8 June 2018, International Criminal Court (ICC), 'Dissenting Opinion of Judge Eboe Osuji' (*International Criminal Court* 2015) <https://www.icc.cpi.int/court/record/icc.01/05.01/13,1089,anx> accessed 16 July 2025.

⁶⁶ The International Commission of Jurists (ICJ), 'Princeton Principles on Universal Jurisdiction | ICJ' (*International Commission of Jurists* May 2024) <https://www.icj.org/resource/princeton.principles.on.universal.jurisdiction/> accessed 16 July 2025

complicity in repression, even under the guise of legal formalism, may incur individual criminal liability.⁶⁷

VI. The Challenge of Enforcement and the Power of Symbolism

Despite the robust legal foundation of the ICC's indictment against Abdul Hakim Haqqani, grounded in the Rome Statute's provisions on crimes against humanity⁶⁸ and reinforced by precedents from Nuremberg to the ICTR, the practical realities of enforcement present significant obstacles. The Taliban, as a non-recognized *de facto* regime with no cooperation agreements with the ICC, is highly unlikely to surrender its Chief Justice voluntarily.⁶⁹

Moreover, the absence of a standing ICC enforcement apparatus or UN Security Council-backed intervention mechanism, unlike the ad hoc tribunals for Yugoslavia and Rwanda, leaves the Court reliant on state parties for arrest, creating what Cassese termed 'the accountability gap' in international criminal justice.⁷⁰

Yet this enforcement dilemma does not negate the indictment's legal and normative significance. The ICC has developed a repertoire of symbolic enforcement mechanisms that, while non-coercive, exert substantial pressure on perpetrators and affirm the Court's moral authority.

Interpol Red Notices,⁷¹ targeted financial sanctions under UN Security Council Resolution 2253 concerning Taliban-linked individuals,⁷² and regional travel bans under instruments like the EU's Taliban sanctions regime⁷³ collectively constrain the accused's mobility and international legitimacy.

These tools serve three constitutive functions in the international legal order:

Normative signalling: The indictment reinforces the jus cogens status of gender persecution and crimes against humanity, affirming that judicial actors cannot invoke domestic legalism to evade accountability.⁷⁴

⁶⁷ Mégret 2015, 13 edition, 'Journal of International Commission of Jurists' Page 85

⁶⁸ Rome Statute 1998, art 7(1)(h)

⁶⁹ Gissou Nia, 'What's next for the ICC case' 'Five questions (and expert answers) about the ICC arrest warrants against Taliban leaders for crimes against women and girls' dhojnacki, 'Five Questions (and Expert Answers) about the ICC Arrest Warrants against Taliban Leaders for Crimes against Women and Girls' (*Atlantic Council* 9 July 2025) <https://www.atlanticcouncil.org/blogs/new-atlanticist/five-questions-and-expert-answers-about-the-icc-arrest-warrants-against-taliban-leaders-for-crimes-against-women-and-girls/> accessed 16 July 2025.

⁷⁰ Antonio Cassese, *Cassese's International Criminal Law; Antonio Cassese ... Et Al.* (Oxford University Press 2013) 158.

⁷¹ Interpol 2022, art 82

⁷² United Nations Security Council, 'S/RES/2253 (2015) | Security Council' (*Un.org* 2015) [https://main.un.org/securitycouncil/en/s/res/2253.\(2015\)](https://main.un.org/securitycouncil/en/s/res/2253.(2015)) accessed 16 July 2025.

⁷³ Council Regulation (EU) 2022/334

⁷⁴ Akande D, 'The Legal Nature of Security Council Referrals to the ICC' (2009) 7 *Journal of International Criminal Justice* 333

Victim-centric justice: By publicly documenting crimes and identifying perpetrators, the warrant validates victims' experiences, a function the ECtHR has recognized as essential to reparative justice.⁷⁵

Deterrent scaffolding: The cumulative effect of multilateral sanctions creates what Nouwen calls 'complementary coercion', where non-judicial measures compensate for the ICC's enforcement deficits.⁷⁶

The Haqqani case exemplifies what legal theorists describe as 'accountability through attrition', a process where persistent institutional condemnation gradually erodes the impunity of perpetrators.⁷⁷

While critics dismiss unenforced warrants as 'toothless symbolism',⁷⁸ the historical record suggests otherwise. The decade-long pursuit of Serbia's Milošević, initially seen as unenforceable, demonstrates how sustained legal and political pressure can ultimately compel compliance.⁷⁹ Similarly, the ICC's indictment of Sudan's al-Bashir,⁸⁰ though unexecuted, radically constrained his international engagements,⁸¹ underscoring Mégret's contention that 'the shadow jurisdiction of the ICC alters the strategic calculus of even the most recalcitrant regimes'.⁸²

In this light, the Haqqani warrant represents not enforcement failure, but the maturation of international criminal law's expressive dimension. As the ICJ affirmed in *Belgium v Senegal*,⁸³ the very existence of an indictment obliges states to 'refrain from acts which would defeat the object and purpose' of accountability.

For judges complicit in oppression worldwide, this creates an inescapable dilemma: the robe may shield them today, but the ICC's lengthening shadow ensures their impunity grows ever more provisional.

VII. Repercussions for Judicial Ethics and the Global Bench

The ICC's indictment of Abdul Hakim Haqqani necessitates a fundamental re-evaluation of

⁷⁵ *Mocanu v Romania* (2015) 60 EHRR 19, para 317). ECHR, 'HUDOC, European Court of Human Rights' (*Coe.int* 6 October 2005)

[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22Mocanu%20v%20Romania%22\].%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\].%22itemid%22:\[%22001-146540%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Mocanu%20v%20Romania%22].%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22].%22itemid%22:[%22001-146540%22]}) accessed 16 July 2025.

⁷⁶ D Nouwen, *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan* (Cambridge University Press 2021) 214.

⁷⁷ Kathryn Sikkink, *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton University Press, 2017) 89.

⁷⁸ Posner EA, 'The International Criminal Court: A Critical Review' (2009) 2009 *University of Illinois Law Review* 1223 See Also, Richard A Posner, 'The Perils of Global Legalism' (2009) 122 *Harvard Law Review*.

⁷⁹ Kerr R, *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics and Diplomacy* (OUP 2004)

⁸⁰ *Prosecutor v Al Bashir* (ICC,02/05,01/09

⁸¹ 'Decision Regarding Omar Al Bashir's Potential Travel to the United States of America' (*International Criminal Court*, 2025) https://www.icc.cpi.int/court_record/icc,02/05,01/09,162 accessed 17 July 2025

⁸² Mégret F, 'The Anxieties of International Criminal Justice' (2016) 29 *Leiden Journal of International Law* 572

⁸³ International Court of Justice (ICC), 'Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)' (*www.icj.cij.org* 20 July 2012) <https://www.icj.cij.org/case/144> accessed 17 July 2025.

judicial ethics in both authoritarian regimes and transitional justice contexts. While conventional legal theory positions judges as neutral arbiters operating within an autonomous judicial sphere,⁸⁴ the Taliban's co-option of Afghanistan's judiciary demonstrates how judicial institutions can be weaponized to institutionalize oppression.

This paradigm shift reveals that in contexts of systemic repression, judicial 'neutrality' operates as a form of constructive complicity.⁸⁵ The Haqqani case establishes that when judges knowingly enforce laws designed to perpetrate crimes against humanity, particularly the Taliban's gender apartheid regime, they transition from passive legal interpreters to active participants in international crimes.⁸⁶

This jurisprudential development carries profound implications beyond Afghanistan's borders. Judicial actors operating within repressive legal frameworks, including Iran's Revolutionary Courts enforcing mandatory hijab laws,⁸⁷ Myanmar's judiciary legitimizing military atrocities,⁸⁸ and Russian courts rubber-stamping the persecution of political dissidents,⁸⁹ must now confront the erosion of judicial immunity under international law.

The ICC's application of Article 25(3)(b) Rome Statute (aiding and abetting) to judicial conduct creates a deterrent effect that transcends territorial boundaries, potentially activating universal jurisdiction mechanisms in third states.⁹⁰

Moreover, this jurisprudence reinvigorates domestic accountability possibilities. The Bangladesh International Crimes Tribunal's prosecution of Jamaat-e-Islami leaders for the 1971 atrocities⁹¹ demonstrates how domestic courts can address judicial complicity in historical crimes.⁹²

The Haqqani precedent empowers bar associations and judicial oversight bodies to sanction judges who enforce manifestly unjust laws. Drawing on the UN Basic Principles on the Independence of the Judiciary, specifically, Principle 7's caveat that judicial immunity cannot shield participation in crimes.⁹³

Critically, this development reconstructs the moral architecture of judicial power. By collapsing the false dichotomy between legal positivism and natural law in extreme cases, the ICC affirms that judicial actors bear affirmative duties to resist laws that violate *jus cogens* norms.⁹⁴ This aligns with emerging transnational judicial ethics standards, particularly the Bangalore Principles, prohibiting the implementation of discriminatory laws.⁹⁵

⁸⁴ Dworkin R, *Law's Empire* (Harvard University Press 1986) 11,15

⁸⁵ Arendt, Eichmann in Jerusalem (1963) 135,137

⁸⁶ Prosecutor v Furundžija (IT,95,17/1) [1998] ICTY para 216

⁸⁷ Report of the UN Special Rapporteur on Iran (A/HRC/49/75, 2022) para 42

⁸⁸ UN Independent Investigative Mechanism for Myanmar (A/HRC/49/CRP.2, 2022) 18,21

⁸⁹ ECtHR Case of Navalny v Russia (App nos 29580/12 et al) [2022] paras 89,94

⁹⁰ Arrest Warrant of 11 April 2000 (DRC v Belgium) [2002] ICJ Rep 3, Separate Opinion of Judge Van den Wyngaert paras 56,59

⁹¹ British Broadcasting Corporation (BBC), 'Bangladesh Islamist Sentenced to Death for 1971 War Crimes' *BBC News* (18 February 2015) <<https://www.bbc.com/news/world-asia-31515635>> accessed 17 July 2025.

⁹² Mégret, 'The Politics of International Criminal Justice' (2002) 13 EJIL 1261, 1282,1285

⁹³ UN Basic Principles on the Independence of the Judiciary (1985), Principle 7

⁹⁴ Fuller, *The Morality of Law* (1969) 33,39

⁹⁵ The Preamble to the Bangalore Principles of Judicial Conduct recalls the Charter of the United Nations, wherein Member States affirm, inter alia, their determination to establish conditions under which justice can be maintained

The Haqqani indictment thus serves as both legal precedent and ethical clarion call, redefining judicial legitimacy not by procedural regularity alone, but by substantive commitment to human dignity.⁹⁶

VIII. A Warning from The Hague: Judicial Office Is No Shield Against Criminal Responsibility

The ICC's indictment of Taliban Chief Justice Abdul Hakim Haqqani marks a historic turning point in international law, decisively ending the era of judicial exceptionalism. For the first time, a sitting Chief Justice stands accused not as a passive enforcer of unjust laws, but as a principal perpetrator of crimes against humanity, legally equating the judicial gavel with the executioner's sword, recognizing the courtroom itself as a potential site of international crimes.

This landmark case shatters the long-standing presumption that judicial office confers immunity from prosecution, establishing instead that judges who institutionalize persecution through rulings, legal doctrines, or court systems may be held criminally liable under Articles 25 and 28(b) of the Rome Statute. The message from The Hague is unequivocal: judicial robes, once considered sacrosanct, provide no protection when courts become instruments of oppression.

This precedent carries profound implications for judges worldwide, particularly those operating under authoritarian regimes. Judicial independence, a cornerstone of the rule of law, does not equate to impunity for complicity in atrocities. From the Nuremberg Judges' Trial to the ICTR's prosecution of Rwandan officials, history demonstrates that courts weaponized to enforce crimes against humanity transform judges into potential defendants. The Haqqani indictment amplifies this principle, extending command responsibility to civilian judicial hierarchies and affirming that senior judges bear accountability for the crimes of courts under their authority.

Judges in Iran's morality courts, Myanmar's military tribunals, Russia's judiciary, and similar systems must now confront an existential dilemma: enforce manifestly unjust laws at the risk of future prosecution, or uphold fundamental human rights despite regime pressure. International law no longer recognizes a distinction between legal formalism and criminality when domestic rulings violate *jus cogens* norms like the prohibition against gender apartheid. Even in the absence of immediate arrest, ICC warrants activate powerful deterrent mechanisms, INTERPOL Red Notices, asset freezes, and universal jurisdiction prosecutions, that erode the impunity of complicit judges.

In this new era of accountability, judicial actors must adopt ethical resistance strategies. The Bangalore Principles of Judicial Conduct and UN standards explicitly require judges to refuse implementation of discriminatory or inhumane laws. Where direct defiance is impossible, documentation of coercion, strategic refusal, or even resignation may become moral and legal imperatives. The Haqqani precedent serves as both a warning and a guide: the courtroom can no longer sanitize atrocity. Judges worldwide must choose: will they be guardians of justice or defendants in The Hague? The age of judicial impunity has ended.

and to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without discrimination.

⁹⁶ Dyzenhaus, *The Constitution of Law* (2006) 45,47

IX. Conclusion: The Collapse of Judicial Exceptionalism

This International Criminal Court's (ICC) unprecedented indictment of Abdul Hakim Haqqani, Chief Justice of the Taliban, fundamentally alters the architecture of accountability, sending a clear signal to judges worldwide, but specifically in Authoritarian regimes, that their decisions may now carry not only moral but also legal consequences before international tribunals.⁹⁷

Haqqani's indictment constitutes both a legal milestone and a normative shift. It affirms that international criminal responsibility extends beyond those who wield physical violence to those who operationalize repression through legal institutions.⁹⁸

The ICC has, by indicting Abdul Hakim Haqqani, dismantled the dangerous fiction that judicial robes can conceal criminal conduct, establishing that when courts become engines of persecution, their architects become legitimate subjects of international prosecution.⁹⁹

By charging Haqqani not as a passive actor but as a principal architect of gender apartheid and systemic persecution, the ICC has not only shattered the long-standing presumption of judicial immunity but also pierced the judicial robe of immunity.¹⁰⁰ Further, by equating the gavel with the sword, the ICC acknowledges that courtrooms can become tools of oppression. Judges who create or sustain legal systems that violate fundamental rights may now face prosecution under international law.

Haqqani's case expands liability under Article 25 (individual responsibility) and Article 28(b) (command responsibility), traditionally reserved for military superiors, and applies it boldly to judicial hierarchies. This expansion of liability is grounded in the Rome Statute's framework, Article 7(1)(h) on persecution, Article 25 on individual responsibility, and Article 28(b) on command responsibility, now applied boldly to judicial hierarchies.¹⁰¹

The doctrinal implications are significant: the Court has recognized that judges who preside over institutions implementing mass violations cannot claim detachment from their consequences.¹⁰²

This precedent builds upon earlier jurisprudence, such as the Nuremberg Judges' Trial¹⁰³ and the ICTR's prosecution of Rwandan judicial officials,¹⁰⁴ but it goes further by applying these principles to an active head of judiciary in a non-international conflict, an evolution noted by Robinson in his critique of the identity crisis in international criminal law.¹⁰⁵

⁹⁷ Chinkin C, 'Gender and International Criminal Law' in William A Schabas (ed), *The Cambridge Companion to International Criminal Law* (CUP 2016), See Also, Bassiouni MC, *Crimes Against Humanity: Historical Evolution and Contemporary Application* (CUP 2011)

⁹⁸ Charles Taylor, SCSL,03,01, para 475

⁹⁹ Cassese A, *International Criminal Law* (3rd edn, OUP 2013)

¹⁰⁰ ICC,02/22, Decision on Arrest Warrants, 8 July 2025

¹⁰¹ Ambos K, *Treatise on International Criminal Law: Volume I – Foundations and General Part* (OUP 2013)

¹⁰² Delalić et al., 1998, para 354

¹⁰³ Altstötter et al., 1951

¹⁰⁴ Kanyarukiga, 2010

¹⁰⁵ Robinson D, 'The Identity Crisis of International Criminal Law' (2008) 21 *Leiden Journal of International Law* 925

It aligns legal accountability with evolving human rights norms, especially concerning gender equality and the non-derogable right to due process.¹⁰⁶ Crucially, it punctures the myth that state-sanctioned legality necessarily implies legitimacy, a fiction often invoked by regimes in Iran, Myanmar, and North Korea to justify institutionalized oppression.¹⁰⁷

From a theoretical standpoint, the Haqqani indictment exemplifies what Fletcher and Ohlin describe as the “moral grammar of criminal law,” affirming that judicial actors bear positive obligations to resist institutional injustice.¹⁰⁸ Their failure to do so may constitute not just ethical failure but criminal culpability, a response to Mégret’s reflection on the anxieties of international justice when confronting systemic evil.¹⁰⁹

While enforcement obstacles remain, particularly the ICC’s lack of custody over the accused, the legal and symbolic ramifications are immense.¹¹⁰ The issuance of an arrest warrant triggers international cooperation mechanisms, exposes the accused to travel and financial restrictions, and creates an enduring legal record that delegitimizes both the individual and the regime.¹¹¹

More broadly, this moment redefines the role of courts in international justice. The indictment affirms that judicial authority, when used to entrench persecution and deny redress, loses its claim to immunity. As Kelsen argued, legal validity collapses when authority is rooted not in normativity but in coercion. Luban’s critique of functional immunity similarly holds that judicial roles, when weaponized to violate the principles of humanity enshrined in the Martens Clause and the Rome Statute, cannot shield their holders from responsibility. Under emerging doctrines of international law, including ICCPR Article 2(3), immunity must yield where it obstructs victims’ access to justice.

Ultimately, this prosecution affirms the foundational legal maxim that **no one is above the law**. Judicial complicity in atrocity, whether in Kabul, Tehran, or Pyongyang, can no longer hide behind a veil of legality. The Haqqani indictment thus inaugurates a new chapter in international criminal law: one where courts are no longer presumed neutral, and where judges who become enforcers of tyranny may be held to account under universal norms. As Koskeniemi reminds us, international law must function as a “gentle civilizer”, not merely restraining state violence, but recalibrating the moral compass of legal authority itself.¹¹²

In this light, the ICC’s action transcends mere legal procedure, resonating as a solemn reminder that the primordial essence of any legal system lies not in the preservation of order for its own sake, but in the unwavering pursuit of justice.

The indictment of the Taliban Chief Justice signals a pivotal transformation in the moral architecture of international law; an era in which the guardians of justice themselves are no longer immune from scrutiny, and the robes of judicial authority can no longer shield those who

¹⁰⁶ Chinkin C, ‘Gender and International Criminal Law’ in William A Schabas (ed), *The Cambridge Companion to International Criminal Law* (CUP 2016)

¹⁰⁷ Luban D, *Legal Ethics and Human Dignity* (CUP 2007)

¹⁰⁸ Fletcher GP and Ohlin JD, *Defending Humanity: When Force is Justified and Why* (OUP 2008)

¹⁰⁹ Mégret F, ‘The Anxieties of International Criminal Justice’ (2016) 29 *Leiden Journal of International Law* 197

¹¹⁰ Nouwen SMH, *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan* (CUP 2013)

¹¹¹ deGuzman MM, ‘Choosing to Prosecute’ (2012) 33 *Michigan Journal of International Law* 265

Journal of International Criminal Justice, ‘Enforcing ICC Arrest Warrants Against Non-State Actors’ (2023)

¹¹² Koskeniemi M, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (CUP 2001)

betray the ideals they are sworn to uphold. For when the law becomes a sanctuary for impunity, it risks devolving into an instrument of its own undoing.

Herein lies the profound irony: the Judge, in whom the law is instantiated, must also be its most scrupulous subject.

The legitimacy of law does not emanate from the symbolic capital of judicial vestments nor from the ceremonial authority of robes and benches, but from its steadfast fidelity to timeless ideals personified by Dike; the embodiment of principles of fairness, equality, reasoned judgment and natural justice.

To suggest otherwise is to reduce law to a Schmittian instrument of sovereign exception: a sterile, hollow formalism, emptied of moral legitimacy and stripped of its eudaimonic purpose.

By daring to hold a judge accountable, the ICC affirms that even those in whose hands the law is entrusted, and in whose bosom it is said to dwell, remain bound by its sovereign command. In doing so, it reclaims the sanctity of justice and reminds the world that the majesty of the law resides not in the robe that signifies power, but in the unwavering commitment to the principles that robe represents.

A legal system severed from moral integrity is but an empty shell. For justice to be true and enduring, no one, not even its most exalted arbiters, may stand above its reach.