

## **Polycentric International Criminal Justice: Adjusting to Emerging Shifts in the Global Order**

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### **Abstract**

Emerging shifts in the global order profoundly impact international criminal justice. However, the picture is not only one of destructive effects on accountability for core international crimes. While transformations in power structures trigger an extraordinary crisis for the ICC, they simultaneously promote decentralised accountability, fostering the transformation of international criminal justice into a polycentric system. Current evolutionary trends in international criminal justice – re-nationalisation, hybridisation and regionalisation – directly reflect these shifts, better aligning with the emerging sovereign, pluralistic and fluid world order. However, the distinctive features of international criminal justice and the shortcomings of decentralised accountability caution against abandoning too soon the universal level of international criminal law enforcement represented by the ICC. The Court – despite a limited and non-central role – must remain one of the hubs within the polycentric system.

### **Keywords**

International criminal law, Crisis, Power structures, Decentralisation, Polycentricity

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## **1. Introduction**

The contemporary world is frequently described as an era of permacrisis. Emerging shifts in the global order precipitate a period of instability and devastating armed conflicts. Core international crimes around the world are on the rise, and thus, accountability remains a vital tool in ending violence and maintaining international peace and security. Nevertheless, the emerging global order challenges the functioning and survival of the international criminal justice system.

Yet, international criminal justice has been historically forged by global crises. This unveils its inherent connections with the realm of political dynamics. The present crisis of international criminal justice may also serve as the catalyst for revolutionary change and further progress. However, it is necessary to uncover the underlying political and social realities to unblock the catalyst potential of this crisis.

The present article aims to conceptualise the evolutionary trends we observe in the domain of international criminal justice through the lenses of emerging global shifts. It thus takes on the perspective of the 'role of power within the law' and embraces an interdisciplinary methodology combining legal and international relations analyses.

## **2. International Criminal Justice and the Crisis Narrative**

The notion of permacrisis – understood as an 'an extended period of instability and insecurity resulting from a series of catastrophic events'<sup>1</sup> – presents multidimensional links with international criminal justice.

On the one hand, the current situation of permacrisis is a direct consequence of ongoing shifts in the global order. Periods of transformation in the global order – like the one we live in today – generally exacerbate instability by undermining previous power structures. In turn, instability paves the way to the outbreak of recurrent crises. These crises, especially when in the form of armed conflicts, lead to the commission of heinous acts of violence, including core international crimes, as is evident in Ukraine, Palestine, Sudan, and, unfortunately, many other situations. Victims of these atrocities deserve justice, and their quest to obtain it renews the centrality of international criminal justice.

On the other hand, the narrative of a permanent crisis has long permeated international criminal justice. International criminal law has been forged in global crises, from World War II through the Rwandan genocide to the war in Ukraine.<sup>2</sup> However, the narrative of crisis has

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<sup>1</sup> 'Permacrisis', *Collins English Dictionary* (Collins 2025).

<sup>2</sup> Joseph Powderly, 'International Criminal Justice in an Age of Perpetual Crisis' (2019) 32 *Leiden Journal of International Law* 1, 3-4.

also been progressively normalised in this domain. Such a normalisation risks leading to a sense of ‘crisis fatigue’, to a static and unproductive rhetoric, a defensive posture that negates transformations.<sup>3</sup>

As Powderly emphasises,<sup>4</sup> it is paramount to distinguish between ordinary and extraordinary crises in international criminal justice. Only in this way can the extraordinary crises’ potential as a catalyst for development be unblocked. To achieve this objective, it is key to study international criminal justice in its political and social context to uncover the deep roots of its crises and identify innovative avenues for further development.<sup>5</sup>

Through an interdisciplinary perspective, which places international relations alongside legal analysis, this article argues that emerging shifts in the global order are progressively eroding the liberal underpinning of the international systems and thus represent an extraordinary crisis for international criminal justice, one that could dictate a reconfiguration of the entire system of enforcement of international criminal law.

### 3. An Existential Threat to the International Criminal Court

First and foremost, emerging global shifts undermine the universal level of enforcement of international criminal law represented by the International Criminal Court (ICC or the Court). The Court is a ‘giant without arms and legs’ as it is dependent on states’ cooperation and funding. The Court cannot deliver except for the continuous support of states, primarily its states parties. Accordingly, the ICC is, by design, subject to political influences.

Opposition to the ICC is not a new phenomenon but has rather marked the existence of the Court since its inception. However, the current global scenario testifies to an escalation of the challenges to the Court, which now seem more existential than ever. Voices openly discussing the ICC’s possible death are growing louder.<sup>6</sup> In early 2025, President Trump adopted an executive order (re-)imposing sanctions on the ICC.<sup>7</sup> This executive order establishes a legal framework that confers upon the US, a state non-party, the power to make the Court fail because it potentially extends the sanctions’ scope to any physical or legal person who has –

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<sup>3</sup> *ibid* 4-5.

<sup>4</sup> *ibid* 8-10.

<sup>5</sup> Elies van Sliedregt, ‘International Criminal Law: Over-Studied and Underachieving?’ (2016) 29 *Leiden Journal of International Law* 1.

<sup>6</sup> See e.g. Thierry Cruvellier, ‘Thinking about the Death of the ICC and What Comes Next’ (JusticeInfo.net, 7 February 2025) <<https://www.justiceinfo.net/en/141309-thinking-about-death-icc-what-comes-next.html>> accessed 18 September 2025.

<sup>7</sup> The White House, *Imposing Sanctions on the International Criminal Court* (Presidential executive order of 6 February 2025).

also loosely or indirectly – supported ICC’s activities.<sup>8</sup> The 2025 sanctions regime is more worrying than the previous one also because it mirrors a similar legislative initiative in the US Congress that has received bipartisan support.<sup>9</sup> Simultaneously, various states parties are undermining the effectiveness of ICC’s decisions, by publicly expressing their intention not to arrest ICC suspects based on their presumed personal immunities,<sup>10</sup> or by failing to surrender alleged perpetrators found in the state’s territory.<sup>11</sup>

The above challenges shall not be seen in isolation, as an extemporary low peak in states’ support to the Court driven by domestic factors, but rather as the consequence of times of geopolitical upheaval leading towards a transformation in the world order. The ICC was created and grew in times of liberal internationalism. Today, however, the liberal order is in retreat, contested harshly not only from the outside but also from the inside. Its retreat undermines prospects of ICC’s survival. The emerging global order entails a crisis of liberal values and a progressive retrenchment in absolute sovereignty,<sup>12</sup> underlying the growing resistance to international courts, including the ICC, whose investigations and prosecutions are frequently perceived as an illegitimate interference in a state’s internal affairs. The related crisis of multilateralism exacerbates the situation,<sup>13</sup> undermining the functioning of existing international organisations (IOs) by hindering their ability to reform and enhance their resilience to global instability. In the ICC’s context, the crisis of multilateralism precludes prospects of strengthening the role of the Assembly of State Parties as the political organ protecting the Court’s judicial activities.

Given the foregoing, it is not surprising that the ICC emerges as an IO at high risk according to an analysis models for IOs’ death.<sup>14</sup> Relatively young IOs, with broad but not universal membership and a highly political and narrow mandate – like the ICC – have higher mortality rates in times of global order transformation.

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<sup>8</sup> Devika Hovell, ‘Punishing Sanctions: A Call to Arms Against Fortress America’ (*EJIL: Talk!*, 25 February 2025) <<https://www.ejiltalk.org/punishing-sanctions-a-call-to-arms-against-fortress-america/>> accessed 18 September 2025.

<sup>9</sup> US Congress, *H.R. 8282 – Illegitimate Court Counteraction Act* (118<sup>th</sup> Congress – 2023-2024); See Roll Call 242 for Bill H.R. 8282 (*Clerk*, 4 June 2024) <<https://clerk.house.gov/Votes/2024242>> accessed 18 September 2025.

<sup>10</sup> For example, France, Germany, Italy and other states have clearly stated that they would not arrest Israel’s Prime Minister Netanyahu should he step foot on their territory.

<sup>11</sup> See e.g., Maria Crippa and Matteo Colorio, ‘As Rome Mutinies, Justice for Libya Fades’ (*Opinio Juris*, 31 January 2025) <<https://opiniojuris.org/2025/01/31/as-rome-mutinies-justice-for-libya-fades/>> accessed 18 September 2025.

<sup>12</sup> Amitav Acharya, ‘After Liberal Hegemony: The Advent of a Multiplex World Order’ (2017) 31 *Ethics & International Affairs* 271, 278.

<sup>13</sup> Josep Borrell, ‘Multipolarity without Multilateralism’ (*European Union External Action Blog*, 24 September 2023) <[https://www.eeas.europa.eu/eeas/multipolarity-without-multilateralism\\_en](https://www.eeas.europa.eu/eeas/multipolarity-without-multilateralism_en)> accessed 18 September 2025.

<sup>14</sup> Mette Eilstrup-Sangiovanni, ‘What Kills International Organisations? When and Why International Organisations Terminate’ (2021) 27 *European Journal of International Relations* 281.

#### 4. Decentralising Accountability for Core International Crimes

Nowadays, it is possible to observe three major evolutionary trends in international criminal justice, progressively moving accountability for core international crimes away from the central and global level towards decentralisation. First, re-nationalisation:<sup>15</sup> domestic jurisdictions are assuming a more prominent role in investigating and prosecuting core international crimes. Second, hybridisation:<sup>16</sup> *sui generis* and *ad hoc* jurisdictions or investigative mechanisms are being established to address specific situations. Third, regionalisation: there are still no regional courts with jurisdiction to try core international crimes, but regional institutions or more informal partnerships at the regional level are assuming a critical role in promoting accountability. These evolutionary trends, taken together, result in a diverse array of actors entering the international criminal justice landscape. Accountability for core international crimes is thus progressively evolving into a polycentric system,<sup>17</sup> where multiple courts, mechanisms, and institutions at various levels operate without a fixed hierarchy or unifying legal framework.

None of these phenomena is unprecedented.<sup>18</sup> However, previous peaks in national, hybrid, and regional accountability were reached at a time when the ICC was not yet operational. Since 2002, the ICC was perceived for many years as the sole centre of the international criminal justice architecture, serving as a sort of panacea for all core international crimes committed worldwide thereafter.<sup>19</sup> Today, the evolutionary trends of re-nationalisation, hybridisation and regionalisation are entering an era of renewed centrality, despite the existence of the ICC, due to emerging transformations in the global order. Indirectly, the extraordinary crisis of the ICC, threatening its very survival, significantly accelerates the shift away from the central level of enforcement and strengthens the drive towards decentralised accountability.

However, these emerging trends in international criminal justice are not only an indirect reaction to an ICC's crisis but also a direct reflection of global governance dynamics. The global order is progressively turning into a decentralised and polycentric system. Power is

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<sup>15</sup> Muriel Ubéda-Saillard, 'The Evolving System of International Criminal Justice' in Carsten Stahn and Rafael Braga Da Silva (eds), *The International Criminal Court in Its Third Decade* (Brill | Nijhoff 2023) 425, 439.

<sup>16</sup> *ibid.*

<sup>17</sup> Christoph Burchard, 'Complementarity as Global Governance' in Carsten Stahn and Mohamed M El Zeidy (eds), *The International Criminal Court and Complementarity* (Cambridge University Press 2011) 167.

<sup>18</sup> Máximo Langer and Mackenzie Eason, 'The Quiet Expansion of Universal Jurisdiction' (2019) 30 *European Journal of International Law* 779 (for re-nationalisation); Patryk I Labuda, 'International Law after the Russo-Ukrainian War: From the Zeitenwende to Multipolarity' (2025) 27 *Max Planck Yearbook of United Nations Law Online* 587, 608–609 (for regionalisation).

<sup>19</sup> Carsten Stahn, 'Re-Imagining the ICC in a Multipolar World' in Carsten Stahn and Rafael Braga Da Silva (eds), *The International Criminal Court in Its Third Decade* (Brill | Nijhoff 2023) 562, 569.

diffusing,<sup>20</sup> eroding the putative American unipolarity and leading to the emergence of multiple great and middle powers, capable of influencing global affairs and asserting significant regional influence. Power is simultaneously disaggregating as different types of power (economic, military and soft powers) are shifting independently.<sup>21</sup> Ongoing reconfiguration of power structures will not, however, lead to the recreation of rigid spheres of influence. On the contrary, the emerging global order is characterised by fluidity in alliances and partnerships. For one, geography is no longer a dominant factor, as globalisation and technological advancement foster the emergence of cross-area partnerships.<sup>22</sup> Further, disaggregation promotes an asymmetrical distribution of power, with power asymmetries developing on an issue-specific basis.<sup>23</sup> Coalitions will diverge depending on the subject matter, their memberships will evolve over time, and also middle- and non-power states can assume their leadership.

Accordingly, the global order is increasingly characterised by issue-specific sub-systems with variable geometry membership.<sup>24</sup> Such a fluid configuration of the global order might present new opportunities for cooperation.<sup>25</sup> Cooperation will become more challenging at the global level but could flourish within issue-specific sub-systems through regional or cross-continent partnerships of like-minded states.<sup>26</sup> The progressive re-nationalisation, hybridisation and regionalisation of international criminal justice should be understood as a direct consequence of these global dynamics. These evolutionary trends represent fluid and flexible mini-lateral solutions for international criminal justice in the face of the crisis of multilateralism.

Furthermore, decentralised accountability for core international crimes better aligns with several other prominent features of the emerging global order. Domestic and regional accountability is a manifestation rather than an infringement of the more absolute conception of sovereignty that is gaining ground. In addition, sub-global accountability frameworks allow for better adjustment to different perspectives on justice, punishment and reparations, pushed by rising pluralism.

## **5. The Future of International Criminal Justice as a Sub-System**

Emerging shifts in the global order have a profound impact on international criminal justice. As outlined above, the picture is not only one of a destructive effect on the accountability system for core international crimes. While ongoing transformations in the power structures trigger an

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<sup>20</sup> William W Burke-White, 'Power Shifts in International Law: Structural Realignment and Substantive Pluralism' (2015) 56 *Harvard International Law Journal* 1, 17-19.

<sup>21</sup> *ibid* 19-22.

<sup>22</sup> Sanjay Mishra, 'The Fluidity of World Order and Break from Past: Opportunities and Challenges' (2023) 46 *Social Development Issues* 45.

<sup>23</sup> Burke-White (n 20) 22-24.

<sup>24</sup> *ibid* 29.

<sup>25</sup> Mishra (n 22) 63.

<sup>26</sup> Burke-White (n 20) (a multi-hub order will push legal processes from the global level to separate, issue-specific and flexible sub-systems); Borrell (n 13).

extraordinary crisis for the ICC, they simultaneously promote the re-emergence of decentralised accountability and advance the transformation of international criminal justice into a polycentric system.

Looking into the future, international criminal justice should reconfigure to adapt to a transformed global order. The ICC will face increasingly severe challenges to its operations and will likely see its impact further reduced. The Court will no longer be at the centre of the international criminal justice architecture and will have to confront numerous obstacles before a case is prosecuted before its chambers. In this context, lowering the expectations and asking the Court to deliver only what is feasible in a state-centric international system is advisable.<sup>27</sup> Otherwise, the ICC risks being declared failed or dead before its time. Meanwhile, it is critical to promote a proactive – rather than defensive – attitude towards emerging global shifts. As anticipated, the international criminal justice project could preserve its relevance and further grow through *ad hoc* and flexible partnerships at the sub-global level, which represent opportunities for issue-specific enhanced cooperation. In other words, international criminal justice as a global public good could continue to be provided as a ‘single best-effort good’,<sup>28</sup> thanks to the commitment of small groups of states, possibly even gathered under the leadership of small- and medium-powers taking advantage of power disaggregation.<sup>29</sup>

This reliance on decentralised accountability, however, comes with its own shortcomings. Accountability for core international crimes before domestic and hybrid courts entails the risk of an over-focus on low-level perpetrators (especially from non-state actors) to the detriment of the responsibilities of those in the leadership. Not only political unwillingness but also personal immunities stand in the way of accountability for those highest in command before domestic courts. International criminal justice thus risks dissipating its counter-hegemonic potential through the persistence of double standards in its enforcement.<sup>30</sup> In addition, it is only the ICC, with its potentially universal jurisdiction, that provides the necessary anchor to a universalistic vision of the fundamental rights international criminal law stands to protect. Finally, the proliferation of centres of activity (national and hybrid courts, and regional initiatives) risks fragmenting substantive international criminal law. Whereas institutional fragmentation – inherent in a polycentric system – can be mitigated through coordination frameworks, substantive fragmentation poses a more serious danger to the system’s integrity.

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<sup>27</sup> Frédéric Mégret, ‘Rethinking the International Criminal Court as the court of its state parties’ in Emma Palmer *et al* (eds), *Futures of International Criminal Justice* (Routledge 2021) 36.

<sup>28</sup> See Sean Butler, ‘Visions of World Order: Multipolarity and the Global “Constitutional” Framework’ (2018) 11 ESIL Conference Paper Series 1, 20.

<sup>29</sup> Burke-White (n 20) 23-24, 26-29.

<sup>30</sup> See Patryk I Labuda, *International Criminal Tribunals and Domestic Accountability: In the Court’s Shadow* (Oxford University Press 2023) 9-10, 19.

Against this backdrop, the importance of preserving the global level of international criminal justice emerges, notwithstanding its extraordinary crisis. In the peculiar sub-system of international criminal justice, the role of the ICC – although limited – remains fundamental. The Court should remain one of the hubs in a polycentric system of international criminal justice. To that effect, it is critical for the ICC to embrace complementarity to reconstruct its role in a transformed global order. A constructive and cooperative approach to complementarity would allow the Court to preserve its role in polycentricity by functioning as a hub for decentralised accountability efforts and as an effective partner for national authorities.<sup>31</sup> The Office of the Prosecutor's new *Policy on Complementarity and Cooperation* of April 2024<sup>32</sup> is a step in the right direction.<sup>33</sup>

## 6. Conclusion

Emerging shifts in the global order cast both positive and negative outlooks on international criminal justice. On the one hand, they precipitate an extraordinary crisis for the ICC. On the other hand, they promote decentralised accountability for core international crimes, fostering the transformation of international criminal justice into a polycentric system. An ICC crisis does not inevitably equate to a crisis of the entire system of international criminal justice.

Nonetheless, decentralisation comes with its shortcomings. Hence, it remains important for the integrity of the sub-system of international criminal justice that the project of a universal international criminal court is not abandoned too soon. The ICC, albeit with a reformed and somewhat less central role, remains a key actor.

The emerging polycentric system of international criminal justice represents a less-than-ideal scenario, where impunity for the commission of core international crimes will continue to be the rule and where double standards will remain in place. However, this is meant to be a realistic rather than an idealistic account of the present and future of international criminal justice. The troubled global context does not allow us to foresee more than this mixed picture. Whether more favourable times for international criminal justice will return remains to be seen. The hope is that they will, but it is too early to anticipate when and at what cost.

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<sup>31</sup> An essential tool in this domain is reverse cooperation ex Article 93(10) Rome St. In addition, it would be important for the Court to subscribe to a 'radical' understanding of complementarity. See Kevin Jon Heller, 'Radical Complementarity' (2016) 14 *Journal of International Criminal Justice* 637.

<sup>32</sup> ICC-OTP, *Policy on Complementarity and Cooperation*, April 2024.

<sup>33</sup> Elies van Sliedregt, 'A New ICC Policy on Complementarity? Let's Fast Forward to Universal Jurisdiction Allocation' (*Just Security*, 12 August 2024) <<https://www.justsecurity.org/98221/icc-policy-complementarity-universal-jurisdiction/>> accessed 18 September 2025.