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Mongolia and the Rome Statute: Legal Challenges and Strategic Responses in the ICC Framework

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[Abstract]

This paper analyzes the legal and geopolitical implications of Vladimir Vladimirovich Putin's 2024 visit to Mongolia, which triggered one of the first cases where a State Party to the Rome Statute of the International Criminal Court was found non-compliant under Article 87(7) for failing to arrest a sitting head of state subject to an ICC warrant. The study examines the intersection of international law and geopolitical realities, highlighting how major powers' non-membership in the International Criminal Court (ICC) creates uneven standards for compliance. It argues that Mongolia's inability to appeal the ICC decision reflects not only diplomatic constraints but also gaps in domestic legal and institutional mechanisms—particularly under Article 97, which allows states to formally notify the Court of cooperation difficulties. Drawing on comparative analysis of the Omar al-Bashir case and Germany's implementation model, the paper identifies legal reforms needed to embed complementarity principles and establish clear institutional frameworks. It concludes that strengthening national legal systems is essential for smaller states to navigate between legal obligations and geopolitical pressures, ensuring both compliance and sovereignty protection.

[Keywords]

International Criminal Court, Rome Statute, State cooperation, Head-of-state immunity, complementarity, sovereignty, diplomacy, compliance, mechanism, geopolitics, legal framework, accountability.

I. Introduction

On 2 September 2024, Vladimir Vladimirovich Putin visited Mongolia to participate in commemorative events marking the 85th anniversary of the Battle of Khalkhin Gol, attracting considerable international attention. Earlier, on 17 March 2023, the International Criminal Court issued an arrest warrant against him on allegations of war crimes, specifically the unlawful deportation and transfer of children from occupied territories of Ukraine.

Subsequently, on 24 October 2024, the ICC Pre-Trial Chamber II determined that Mongolia had failed to comply with its obligation to cooperate under Article 87(7) of the Rome Statute of the International Criminal Court (Case No. ICC-01/22). The matter was referred to the Assembly of States Parties without the possibility of appeal. This decision represents one of the first instances in which a State Party failed to execute an arrest warrant against a sitting head of state, thereby underscoring the tension between international criminal law obligations and broader state interests.

This study examines the interaction between Articles 27, 87(7), 97, and 98 of the Rome Statute, with particular attention to the potential conflict between these provisions and customary international law concerning head-of-state immunity. It further provides a comparative analysis of the Omar Al-Bashir case and Germany's domestic implementation practices, arguing that Mongolia's situation cannot be explained solely by strategic considerations, but also reflects deficiencies in domestic legal and institutional frameworks.

Methodology. This research is grounded in a doctrinal legal methodology, drawing upon the Rome Statute, relevant ICC jurisprudence, and principles of customary international law.

The objective of this study is to analyze Mongolia's situation within the framework of the Rome Statute through a doctrinal approach, with a view to identifying legal challenges in the implementation of State Party cooperation obligations. In particular, it evaluates the tension between Article 27 and Article 98 concerning head-of-state immunity and customary international law, and assesses the application of cooperation mechanisms under Articles 87(7) and 97 in the Mongolian context.

In addition, the study compares the cases of Omar Al-Bashir and Anwar Raslan in order to highlight differences between international and domestic enforcement of criminal responsibility, and to identify the legal and institutional challenges Mongolia faces in strengthening the implementation of the Rome Statute.

Mongolian scholars have examined the legal framework of the International Criminal Court at the theoretical and academic level. Foundational contributions by G.Seseer[1] have clarified the core concepts, principles of criminal law, and procedural structure of the Rome Statute of the International Criminal Court, thereby shaping the basic understanding of international criminal law. Subsequent scholarship has primarily focused on the legal significance of the Rome Statute and its compatibility with Mongolia's domestic legal system. In this regard, V.Oyumaa[2] has analyzed its theoretical foundations and position within international law, while studies conducted by the National Legal Institute of Mongolia[3] have provided comparative assessments with national legislation. Other scholars, including B.Odongerel[4], G.Erdenebat[5], and M.Uyanga[6], have addressed issues of domestic implementation, particularly the alignment with criminal and criminal procedure law, whereas B.Tserenbaltav[7] and J.Enkhsaikhan[8] have examined the functioning of the ICC and Mongolia's

1 G.Seseer, *Олон улсын эрүүгийн шүүхийн эрх зүйн зарим асуудал: Тайлбар товхимол (Some Legal Issues of the International Criminal Court: An Explanatory Pamphlet)*, (Ulaanbaatar: Khaan Printing, 2002) [in Mongolian].

2 V.Oyumaa, "Олон улсын эрүүгийн шүүхийн дүрмийн эрх зүйн учир холбогдол (The Legal Significance of the Rome Statute of the International Criminal Court)", www.legaldata.mn, 2002, (accessed 2026.03.23) [in Mongolian].

3 The National legal institute of Mongolia, "Шүүх эрх мэдлийн хүрээний хууль тогтоомж ба Холбогдох олон улсын гэрээний зөрчилдөөний талаар судалж, шүүх эрх мэдлийн хүрээнд олон улсын эрх зүйн хэм хэмжээг хэрэглэх арга замыг тодорхойлох (Study on Conflicts between Judicial Legislation and Relevant International Treaties and the Application of International Legal Norms within Judicial Authority)", Compilation of Research Reports (2003-2009) Vol. I, 2009, 700-714, www.nli.gov.mn [in Mongolian].

4 B.Odongerel, "Олон улсын эрүүгийн шүүхийн дүрмийг Монгол Улсын Эрүүгийн байцаан шийтгэх хуультай харьцуулан үзэх нь (A Comparative Analysis of the Rome Statute of the International Criminal Court and the Criminal Procedure Code of Mongolia)", *Mongolian state and law*, №3 (2008). [in Mongolian].

5 G.Erdenebat, "Монгол улсын эрүүгийн хууль тогтоомжийг олон улсын эрүүгийн шүүхийн ромын статуттай нийцүүлэх асуудал (Harmonizing Mongolia's Criminal Legislation with the Rome Statute of the International Criminal Court)", *Gemtiin Yavdaltai Temtsekh Asuudal*, №3 (2004), 17-21. [in Mongolian].

6 M.Uyanga, "Олон улсын Эрүүгийн шүүхийн Ромын дүрмийг үндэсний хэмжээнд хэрэгжүүлэх асуудал (Implementation of the Rome Statute of the International Criminal Court at the National Level)", *NUM Law review*, №2-3 (2007), 209-216. [in Mongolian].

7 B.Tserenbaltav, "Олон улсын эрүүгийн шүүхийн үйл ажиллагаанд прокурорын гүйцэтгэх үүрэг (The Role of the Prosecutor in the Activities of the International Criminal Court)", *Mongolian journal of law*, №1 (2004), 58-60. [in Mongolian].

8 J.Enkhsaikhan, "Олон улсын эрүүгийн эрх зүйн хөгжил, хандлага, Монгол Улсын оролцоо (Developments and Trends in International Criminal Law and Mongolia's Participation)", *Mongolian journal of law*, №1 (2004), 61-66. [in Mongolian].

participation. Additional studies by E.Tselmuun[9], G.Batbayar[10] and others have explored jurisdictional issues, the principle of complementarity, and questions of legal harmonization, while research by A.Manduul[11] has addressed the broader application of international legal norms at the national level.

Overall, while previous studies have addressed the legal foundations of the Rome Statute, its domestic implementation, and issues of legislative compatibility, there remains a relative lack of focused analysis on head-of-state immunity, the tension between Articles 27 and 98, and the practical application of cooperation mechanisms under Articles 87(7) and 97, particularly in light of contemporary case studies.

This study seeks to address the identified gap by examining the legal ambiguities and conflicts arising in the implementation of State Party cooperation obligations under the Rome Statute of the International Criminal Court, with particular reference to Mongolia. It focuses on the tension between the exclusion of official capacity immunity under Article 27 and the recognition of head-of-state immunity under customary international law, as well as the practical application of cooperation mechanisms under Articles 87(7) and 97.

In essence, the study centers on how to interpret and reconcile conflicting obligations: on the one hand, the duty of a State Party to execute arrest requests under the Rome Statute, and on the other, the obligation to respect immunities under customary international law.

To this end, the study pursues the following objectives:

- To analyze the relationship and tension between Articles 27 and 98 of the Rome Statute and head-of-state immunity under customary international law;
- To examine the legal content, scope, and limitations of cooperation mechanisms under Articles 87(7) and 97;

[9] E.Tselmuun, "Олон улсын эрүүгийн шүүхийн харьяаллын асуудал ба нэмэлт хөшүүргийн зарчим (Jurisdiction of the International Criminal Court and the Principle of Complementarity)", Bachelor's thesis, National University of Mongolia, 2021, www.e-library.num.edu.mn [in Mongolian].

[10] G.Batbayar, "Монгол улсын хууль тогтоомжийг Олон Улсын Эрүүгийн Шүүхийн «Ромын Дүрэм (Issues of Harmonizing Mongolian Legislation with the Rome Statute of the International Criminal Court)"-д нийцүүлэх зарим асуудал" Master's thesis, National University of Mongolia, 2005, www.e-library.num.edu.mn [in Mongolian].

[11] A.Manduul, "Үндэсний хэм хэмжээг олон улсын хүмүүнлэгийн эрх зүйд нийцүүлэх нь Дайны гэмт хэрэг: Женевийн конвенцын ноцтой зөрчлийн хүрээнд (Aligning National Norms with International Humanitarian Law: War Crimes: within the Framework of Grave Breaches of the Geneva Conventions)" Bachelor's thesis, National University of Mongolia, 2020, www.e-library.num.edu.mn [in Mongolian].

- To assess Mongolia's situation within this legal framework and identify the legal and institutional factors affecting the implementation of its cooperation obligations.

II. Main part

The Rome Statute is one of the most important international legal instruments created as a result of the tragic historical events of the 20th century. Serious international crimes such as those committed during World War II, the Rwandan genocide, and the Balkan conflicts remained unpunished and were addressed only within the limited framework of temporary tribunals, clearly demonstrating the need for a permanent and stable international court mechanism.

As a result of negotiations initiated under the auspices of the United Nations in the mid-1990s, on July 17, 1998, 120 states adopted the Rome Statute in Rome, and on July 1, 2002, the International Criminal Court (ICC) was officially established. This event opened a significant new chapter in the field of international criminal law. The main objective of the Rome Statute is to ensure that the most serious crimes — genocide, war crimes, crimes against humanity, and the crime of aggression — do not go unpunished.

To achieve this, the Rome Statute incorporates the principle of complementarity, which means that "the international court will not intervene if the national judicial system is capable of functioning." At the same time, it has been noted that this principle may operate unevenly in practice, particularly where powerful states rely on domestic proceedings to avoid ICC jurisdiction.

The first investigations and prosecutions were mainly focused on Africa. For example, the case of Thomas Lubanga Dyilo was the first conviction by the ICC for the recruitment and use of children in armed conflict, marking a historic beginning of the Court's actual judicial activity.[12]

However, as the Court's activities expanded, its weaknesses also became more apparent. The ICC has no enforcement power of its own — no police or military — so it must rely entirely on the cooperation of member states to enforce its decisions. Even if an arrest warrant is issued, if a state does not surrender the suspect, the Court has no direct mechanism to enforce it.

[12] "ICC First verdict: Thomas Lubanga guilty of conscripting and enlisting children under the age of 15 and using them to participate in hostilities", 2012, *https://www.icc-cpi.int/news/icc-first-verdict-thomas-lubanga-guilty-conscripting-and-enlisting-children-under-age-15-and*, (accessed 2025.10.15)

Since the adoption of the Rome Statute, the Court's jurisdiction has expanded. In 2010, the Kampala amendments included the crime of aggression, and their implementation in 2018 further broadened the Court's scope. Nevertheless, actual enforcement still depends directly on the will and cooperation of member states. In recent years, the inclusion of "ecocide," or severe environmental destruction, as an international crime has been actively discussed, reflecting the evolution of the Rome Statute in response to contemporary global challenges.[13][14][15]

The structure of the participating states is diverse. While many countries in Europe, Africa, and South America are active members, major powers such as the United States, China, and Russia remain outside the membership due to considerations of national sovereignty and strategic interests. This is one of the main factors limiting the Court's actual influence.[16]

In such circumstances, small and medium-sized states face the strategic challenge of not only fulfilling their legal obligations but also maintaining foreign policy balance. Mongolia's case is a clear example of this. As a State Party, Mongolia has a legal obligation to implement the Court's decisions, yet its geopolitical environment, the influence of major powers, and the realities of diplomatic relations create practical obstacles to implementation.

Although the Rome Statute established an international criminal accountability system, it has several structural weaknesses in terms of actual implementation. First, the ICC has no enforcement body of its own, so it relies entirely on member states to arrest and surrender suspects. This creates a situation where, despite the legally binding nature of the Court's decisions under international law, their practical implementation depends on the political context of individual states.

The clearest example of this is the case of Sudanese President Omar al-Bashir. In 2009, the ICC issued an arrest warrant for a sitting head of state for the first time in its history.[17] Al-Bashir was charged with genocide,

[13] Cansu Atilgan Pazvantoglu, "Ecocide as a Separate Crime under the Rome Statute: A Legal Analysis of the Discourse", *Environmental Policy and Law 55,* №2-3 (2025), 57-67. *journals.sagepub.com*

[14] Rebecca Root, "Climate crisis: push for ecocide to be added to Rome Statute", *www.ibanet.org*, 2024, (accessed 2025.10.15)

[15] Daniel Bertram, "The First Ecocide Treaty", *www.ejiltalk.org*, 2025, (accessed 2025.10.15)

[16] Yahli Shereshevsky, "Complementarity (Un)Fairness: Powerful States and their Ability to Avoid ICC Proceedings by Conducting Domestic Investigations", *Journal of International Criminal Justice,* Volume 23 (2), 2025, Pages 227-248

[17] ICC, Appeals Chamber, The Prosecutor v Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-397, Judgment, 6 May 2019, https://www.icc-cpi.int/court-record/icc-02/05-

war crimes, and crimes against humanity related to the Darfur conflict, and the case was referred to the ICC by the United Nations Security Council. However, in the more than ten years following the issuance of the warrant, he traveled to several member states, yet none of them arrested him. For example, South Africa, Uganda, and Kenya— all ICC member states—failed to carry out their obligation to arrest him, demonstrating how weak the "soft enforcement mechanism" under Article 87(7) is in practice. In Al-Bashir's case, the Court referred the matter to the Assembly of States Parties, but the states involved faced no tangible consequences. This illustrates that political negotiations and geopolitical realities can override the Court's legal decisions.

A similar situation has emerged in Mongolia's case. After Vladimir Vladimirovich Putin's visit to Mongolia in 2024, the ICC Pre-Trial Chamber II found that Mongolia had "failed to cooperate" under Article 87(7), referred the matter to the Assembly of States Parties, and issued a decision denying the right to appeal—leaving a serious precedent for a member state.[18] This was one of the first instances where a member state was deemed to have failed to comply with its legal obligation while an arrest warrant for a sitting head of state was in force, and the case was referred to the Assembly without appeal, drawing significant attention.[19]

When comparing the Al-Bashir case with Mongolia's situation, both similarities and differences emerge. The commonality lies in the fact that in both cases, there was a valid arrest warrant for a head of state, and the member state failed to enforce the ICC's arrest decision. The difference is that in Al-Bashir's case, the issue was overshadowed by political calculations for years and resulted in little consequence, whereas in Mongolia's case, the ICC referred the matter directly to the Assembly and denied the right to appeal. This indicates a relatively sharper and more decisive approach by the Court—a new pattern in its practice.

A more detailed legal analysis of these two cases reveals important distinctions. In the al-Bashir case, the referral by the United Nations Security Council enabled the Court to interpret Sudan as being subject to obligations functionally similar to those of a State Party, thereby allowing the broader application of Article 27 and excluding head-of-state immunity.

01/09-397-0.

[18] ICC, Pre-Trial Chamber II, Situation in Ukraine, ICC-01/22-90 Decision on the finding under article 87(7) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties, 24 October 2024, https://www.icc-cpi.int/court-record/icc-01/22-90.

[19] ICC, Pre-Trial Chamber II, Situation in Ukraine, ICC-01/22-111, Decision on Mongolia's requests for leave to appeal, temporary stay of the proceedings and related matters, 29 November 2024, https://www.icc-cpi.int/court-record/icc-01/22-111.

By contrast, in the case of Vladimir Putin, the Russian Federation is not a party to the Rome Statute, and no Security Council referral exists, making the application of Article 27 more legally contested.

Procedural differences are also evident. In the al-Bashir case, some States Parties engaged with the Court and expressed their legal positions, whereas Mongolia did not appear to invoke the consultation mechanism under Article 97. This may have contributed to the Court's finding of non-cooperation.

At the same time, both cases demonstrate structural weaknesses in the ICC's cooperation regime. A finding of non-compliance under Article 87(7) does not entail direct enforcement measures but instead shifts the matter to political bodies. As a result, implementation often depends on political considerations rather than legal obligation.

These developments must also be understood within the broader normative nature of the Rome Statute. As noted by Alexander Skander, the Statute was originally envisioned as a universal code of criminal responsibility but evolved into a treaty-based instrument due to political resistance. In this sense, the Rome Statute may be regarded as a "hybrid" legal instrument: formally binding (*de jure*) while functioning in practice (*de facto*) as an influential source of international legal norms. Moreover, in certain cases, such as referrals by the United Nations Security Council, its provisions may extend to non-member states, reflecting an emerging *erga omnes* character.[20]

Similarly, Dikran Zenginokuzcu argues that obligations under the Rome Statute should be understood as responsibilities owed to the international community as a whole. [21] However, in practice, state cooperation remains uneven and often conditioned by political considerations.

In this context, a study conducted by the National Legal Institute of Mongolia (2009) emphasized that failure to align domestic legislation with international obligations creates a risk of non-compliance and cannot be justified by reference to national law. It further noted that non-cooperation may trigger institutional responses, including referral to the Assembly of States Parties.

Another important factor is that small and medium-sized states face heavy foreign policy pressure when it comes to implementing the Court's decisions, while major powers face comparatively less pressure. Countries

[20] Alexandre Skander Galand, "The Nature of the Rome Statute of the International Criminal Court (and its Amended Jurisdictional Scheme)", *Journal of International Criminal Justice*, №5 (17), 2019, 934. academic.oup.com

[21] Dikran M. Zenginkuzucu, "Enforcement of the Cooperation Obligation with the ICC for the Accountability under International Criminal Law". *Journal of International Criminal Justice*, №1 (2), 13-14. researchgate.net

such as the United States, the People's Republic of China, and the Russian Federation, which have not joined the Rome Statute, use their non-member status as a geopolitical shield, remaining outside the Court's jurisdiction. At the same time, these powers have criticized the ICC as a political tool and, in some cases, openly opposed it, which further narrows the decision-making space of member states.

For Mongolia, as a State Party to the Rome Statute, failure to comply with the Court's decision carries three potential negative consequences. First, by denying the right to appeal, the ICC has conferred on Mongolia the status of a "non-cooperating State Party" under its decision. Second, since the issue will now be discussed not as a legal matter but within the framework of the Assembly, Mongolia will be required to defend its position in an environment of diplomatic pressure. Third, this situation may have long-term negative impacts on international trust, reputation, and cooperative relations.

These circumstances highlight the systemic limitation of the Rome Statute's implementation—namely, the absence of an independent enforcement mechanism and complete reliance on the cooperation of member states. While the Court has the authority to issue binding decisions, their actual implementation depends on the voluntary cooperation of states, which weakens its effectiveness and results in unequal enforcement depending on political and geopolitical circumstances.

This vulnerability is most clearly illustrated by the stance and policies of major powers. In particular, the United States, the People's Republic of China, the Russian Federation, and India, although not parties to the Rome Statute, occupy central positions in the global geopolitical balance, giving them significant direct and indirect influence over the practical implementation of the Court's decisions.

The United States signed the Rome Statute in 1998 but withdrew its signature in 2002. This decision was linked to its strategic policy of protecting national sovereignty, as well as military and diplomatic interests. Under Article 98, the U.S. signed bilateral agreements with many countries to prevent the surrender of American citizens, systematically avoiding the Court's jurisdiction. In 2020, the U.S. imposed economic and visa sanctions on ICC prosecutors and judges, and in 2025, similar sanctions were reimposed. According to researchers, the U.S. is expected to adopt even broader, more strategic sanctions in the future. This reflects a consistent policy of exerting overt political pressure on the Court. This position is also grounded in a broader constitutional critique of the ICC. As argued by John Bolton, the Court represents an institution that combines legislative, executive, and judicial functions in a manner inconsistent with

the constitutional principles of the United States, particularly the separation of powers. From this perspective, the ICC is viewed not only as a challenge to sovereignty but also as a structural risk to the U.S. constitutional order.[22]

The People's Republic of China has never joined the Rome Statute, viewing the Court as posing a potential threat to its sovereignty. While the country does not deny the concept of international justice, it refuses to accept the jurisdiction of external courts. For example, regarding calls for investigations into the situation in the Xinjiang Uyghur Autonomous Region, China dismissed them as "without legal basis" and refused to participate in the Court's processes.

The Russian Federation signed the Rome Statute in 2000 but withdrew its signature in 2016. Following investigations related to the Russo-Georgian War and the Russian invasion of Ukraine, Russia denounced the ICC as a political tool. In 2023, after the ICC issued arrest warrants for Vladimir Vladimirovich Putin and Maria Lvova-Belova, Russia severed its relations with the Court completely.

Similarly, India is not a State Party to the Rome Statute. It has consistently refused to accept the Court's jurisdiction due to concerns about national sovereignty and strategic foreign policy considerations. As one of the world's most populous countries with significant military and regional geopolitical influence, India's absence from the ICC membership strongly limits the Court's effective reach.

Together, the United States, China, Russia, and India account for about 27% of the world's land area and over 40% of its population. Since none of these four powers are members of the ICC, the Court's jurisdiction cannot extend to the majority of the world's population and territory. Scholars point out that this is one of the key strategic factors undermining the ICC's legitimacy, operational scope, and practical impact.

The common characteristics of these powers can be summarized as follows:

1. Preserving their strategic maneuvering space by remaining outside the Court's jurisdiction,

2. Neutralizing ICC decisions through political pressure or non-compliance,

3. Employing "lawfare," that is, using legal mechanisms as instruments of political strategy.

This situation has contributed to the emergence of a double standard in the implementation of the Court's decisions. For smaller states, compliance

[22] John R. Bolton, "The Risks and Weaknesses of the International Criminal Court from America's Perspective", *Law and Contemporary Problems*, 64(1), 2001, page 174.

with ICC rulings tends to be strictly expected, whereas for major powers, such decisions are often mitigated by political considerations, effectively creating a form of de facto immunity.

Against this background, Mongolia's case represents a notable development in the practice of the International Criminal Court. While instances of non-compliance have previously resulted in limited practical consequences, the approach taken in Mongolia's case appears comparatively stricter. In particular, the decision to refer the matter to the Assembly of States Parties without granting the right to appeal indicates a more assertive institutional response.

This development is not only relevant to Mongolia but may also affect the confidence of other States Parties in the Court. States that disagree with the Court's approach to head-of-state immunity, or those that may face a potential finding under Article 87(7) in the future, may begin to question the consistency and fairness of the Court's procedures. Such concerns, as noted in the literature, risk weakening institutional trust and may have long-term implications for the legitimacy of the ICC.[23]

For Mongolia, being found to have "failed to cooperate" under Article 87(7) is not merely a matter of diplomatic consequence; it has also exposed structural weaknesses in its domestic legal framework. As a state operating within a sensitive geopolitical environment and seeking to maintain a balanced foreign policy, Mongolia must ensure that the Rome Statute is implemented in a manner that is both legally coherent and diplomatically calibrated.

In this regard, the decision of the ICC Pre-Trial Chamber II to deny Mongolia's appeal highlights not only a foreign policy challenge but also the absence of an effective domestic legal mechanism capable of utilizing the consultation procedure under Article 97. This provision allows States Parties to formally engage with the Court when difficulties in cooperation arise. Had Mongolia possessed adequate legal and institutional mechanisms to provide such explanations in advance, the situation surrounding Vladimir Vladimirovich Putin's 2024 visit might have been addressed without resulting in a finding of non-cooperation or the denial of the right to appeal.

Accordingly, it becomes necessary to examine comparative approaches to the domestic implementation of the Rome Statute. The effectiveness of implementation depends largely on each state's legal system and institutional capacity. While some states confine its application to the sphere of international law, others have incorporated it directly into

[23] Kazuki Goto, "The Conclusion of Mongolia's Proceedings before the International Criminal Court: Implications on Non-Cooperation", www.ejiltalk.org, 2025, (Accessed: 2025.10.15)

their domestic legal systems and established corresponding enforcement mechanisms. A prominent example of such an approach is Germany.

Germany is widely regarded as one of the most advanced examples of domestic implementation of the Rome Statute of the International Criminal Court. Rather than treating its obligations as merely formal, Germany has institutionalized them through concrete legislative and judicial measures. In 2002, following the entry into force of the Rome Statute, Germany enacted the Code of Crimes against International Law (*Völkerstrafgesetzbuch*, VStGB), which directly incorporates the core crimes defined in the Statute—genocide, crimes against humanity, and war crimes—into its domestic legal system.

This legislation enables German courts to exercise jurisdiction over international crimes regardless of where they were committed or the nationality of the perpetrator or victim, thereby operationalizing the principle of universal jurisdiction. By embedding the Rome Statute into its domestic legal framework and establishing corresponding institutional mechanisms, Germany provides a practical example of the effective implementation of the principle of complementarity.

A prominent illustration of this mechanism in practice is the case of Anwar Raslan.[24][25] Raslan, a former officer of the Syrian intelligence services, was accused of committing serious human rights violations during the Syrian civil war. After arriving in Germany in 2014, he became subject to investigation, and in 2022, the Higher Regional Court in Koblenz found him guilty of crimes against humanity. This case stands as a concrete example of how international criminal accountability can be pursued at the national level in the absence of direct involvement by the International Criminal Court.

The Raslan case is significant for several reasons. First, it represents one of the relatively rare instances in which international crimes were prosecuted in a third state with no direct territorial or nationality link to the offence. Second, it demonstrates that a State Party can independently initiate and conduct proceedings based on the principles of the Rome Statute, thereby reinforcing the complementary role of national jurisdictions. Third, it shows that effective implementation of the Rome Statute is not limited to major powers, but is achievable for states that possess sufficient legal and institutional capacity.

[24] Higher Regional Court of Koblenz, Germany, 13 January 2022, case no 1 StE 9/19, judgment in the case of Anwar Raslan, https://internationalcrimesdatabase.org/Case/3328/Appeals-Judgment-in-the-Case-of-Anwar-Raslan/.

[25] Federal Court of Justice of Germany, 20 March 2024, case no 3 StR 454/22, appeal judgment in the case of Anwar Raslan (appeal), https://internationalcrimesdatabase.org/Case/3328/Appeals-Judgment-in-the-Case-of-Anwar-Raslan/.

A key legal aspect of the case was the application of universal jurisdiction. German courts exercised jurisdiction over acts committed entirely outside their territory, recognizing that the alleged conduct formed part of a widespread and systematic attack against the civilian population. In doing so, the court applied the legal criteria set out in Article 7 of the Rome Statute at the domestic level.

Another important issue concerned the applicability of functional immunity (*immunity ratione materiae*). The defense argued that the acts in question had been carried out in an official capacity and should therefore be protected from foreign jurisdiction. However, the German court rejected this argument, holding that international crimes cannot be shielded by official capacity. This position reflects the broader development of international criminal law, although it should be understood as a case-specific judicial interpretation rather than a universally settled rule.

The case also highlighted the importance of evidentiary flexibility in prosecuting international crimes. The court accepted reports from United Nations mechanisms and documentation produced by human rights organizations as evidence under certain conditions. This demonstrates that effective prosecution of international crimes often requires a more flexible approach to evidence, particularly where crimes are committed in conflict settings. At the same time, such practices remain dependent on the procedural rules of the domestic legal system.

Taken together, the Anwar Raslan case illustrates the practical realization of the principle of complementarity. It confirms that the primary responsibility for prosecuting international crimes lies not only with the ICC, but also with national courts. However, the ability to exercise such jurisdiction is not equally available to all states and depends on factors such as legislative frameworks, institutional capacity, and access to evidence.

In this regard, Germany's experience should not be viewed as a universally transferable model, but rather as a context-specific example of effective implementation. It highlights both the potential and the limitations of domestic enforcement of international criminal law. Accordingly, the Raslan case may be understood as a significant precedent that clarifies the practical content of the complementarity principle under the Rome Statute.

Following Germany, countries such as the Netherlands, Norway, and Sweden have also incorporated key provisions of the Rome Statute of the International Criminal Court into their domestic legal systems and maintain a high level of cooperation with the International Criminal Court. These states have also, to varying degrees, adopted the principle of universal jurisdiction, enabling their national courts to address cases involving international crimes. This serves as an important mechanism

supporting the practical enforcement of the Court's mandate.

The experience of Germany and several European countries demonstrates that effective implementation of the Rome Statute depends not merely on formal membership, but on the full integration of its principles into domestic law, supported by adequate institutional capacity.

Mongolia joined the Rome Statute in 2002 and ratified it in 2003, marking its initial step toward participation in the international criminal justice system. At the time, Mongolia was regarded as a state supportive of international accountability and the principles of justice. However, in the years since accession, the incorporation of the Statute's principles into the domestic legal system has remained limited, which helps explain the challenges observed in the present situation.

First, Mongolia lacks a comprehensive domestic legal framework that explicitly criminalizes genocide, crimes against humanity, war crimes, and the crime of aggression as defined in the Rome Statute. Although certain provisions of the Criminal Code may partially address elements of these crimes, there is no systematic and coherent legal structure that reflects the full scope and intent of the Statute or enables its effective application at the judicial level.

Second, limited institutional capacity presents a significant obstacle to practical implementation. The effective functioning of the Rome Statute requires competent prosecutorial bodies, law enforcement agencies, and judicial institutions capable of investigating international crimes, collecting evidence, and executing cooperation obligations, including arrest and surrender procedures. In Mongolia, however, specialized institutional structures, trained personnel, and methodological frameworks in these areas remain underdeveloped, while the broader political environment remains sensitive. These factors constrain the country's ability to address international crimes at the domestic level.

Under these circumstances, Mongolia's participation in the international criminal justice system cannot rely on formal membership alone. It requires comprehensive domestic legal reform, strengthened institutional capacity, and a carefully calibrated political and diplomatic approach. Together, these elements constitute a critical direction for Mongolia's future legal development strategy.

III. Conclusion and recommendations

The International Criminal Court was established to create a system of international criminal accountability and to ensure that the most serious crimes—genocide, war crimes, crimes against humanity, and the crime of aggression—do not go unpunished. However, the effectiveness of this

system depends primarily on the voluntary cooperation of States Parties. While this constitutes a powerful mechanism for supporting international criminal justice, the absence of an independent enforcement structure renders it highly dependent on political conditions.

Mongolia's designation as having "failed to cooperate" under Article 87(7) of the Rome Statute of the International Criminal Court, following the 2024 visit of Vladimir Vladimirovich Putin, clearly illustrates this structural limitation. The case demonstrates that small and medium-sized States Parties face significant risks of political and diplomatic pressure when their domestic legal and institutional frameworks are not sufficiently developed to manage competing international obligations.

In this context, the most effective strategy for Mongolia is not to rely on institutional reform within the ICC, but rather to strengthen its domestic legal system. This includes fully operationalizing the principle of complementarity at the national level, establishing a formal mechanism for utilizing consultations under Article 97, and creating an integrated institutional framework to coordinate cooperation with the Court.

Although the non-participation of major powers continues to limit the scope and equality of international criminal justice, smaller States Parties retain the capacity to protect their legal interests and international reputation through the effective use of legal mechanisms. In this regard, Mongolia's experience represents not only a national challenge but also a precedent that may influence future practice within the ICC system.

Going forward, Mongolia should strengthen its legal capacity as a State Party, align its diplomatic positions with legal reasoning, and position itself as a credible and strategically engaged participant in international cooperation. Such an approach will not only enable more effective participation in the international criminal justice system but also provide the most sustainable means of navigating external political pressures.

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