

THE CASE FOR AN INTERNATIONAL COURT FOR TRANSNATIONAL CRIMES

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ABSTRACT

Transnational crimes have increased significantly in scale, complexity and geographical reach, frequently transcending national borders and creating substantial challenges for the effective exercise of criminal jurisdiction. The cross-border nature raises important questions concerning jurisdiction, prosecution and the capacity of individual states to investigate and bring perpetrators to justice. These challenges have generated proposals for the establishment or expansion of international judicial mechanisms to address transnational crimes. However, attempts to extend the jurisdiction of existing international criminal institutions, particularly the International Criminal Court (ICC), have faced significant opposition due to definitional uncertainties, concerns regarding institutional legitimacy, limited enforcement mechanisms and the risk of overwhelming international courts that are already constrained. The question this paper aims to consider therefore is: whether it is necessary for yet another court to come into being in view of the existing International Criminal Court and other mechanisms? In so doing, this study examines whether transnational crimes should fall within the jurisdiction of an international criminal court and evaluates the suitability of existing international judicial mechanisms in addressing such crimes. The study adopts doctrinal and analytical methodologies to examine relevant legal principles, international instruments, judicial decisions and scholarly literature. The study contributes to scholarship by critically interrogating the increasingly fluid distinction between transnational crimes and core international crimes and by advancing a regional judicial model as a more practical alternative to expanding the jurisdiction of existing international criminal courts. The study finds that, although transnational crimes may intersect with crimes against humanity, the legitimacy, jurisdictional and enforcement challenges confronting international criminal courts make further expansion problematic. It therefore recommends the establishment of a regional criminal court, in each region, with clearly defined jurisdiction and effective mechanisms for enforcing its judgments, thereby promoting credible, accessible and effective justice for transnational crimes.

KEYWORDS: Overlapping jurisdiction, international court, transnational crimes, multiplicity of courts, State sovereignty

1. INTRODUCTION

In recent years, there has been a proliferation of international courts. There are about fifty international courts in existence.¹ This is important because international courts and tribunals provide judicial precedent as a source of international law.² The need to prevent the increasing incidence of transnational crime has led the African Union to expand the jurisdiction of the African Court of Justice and Human and Peoples' Rights through the Malabo Protocol. Following this amendment, the Court's jurisdiction has been expanded to deal with matters including³ unconstitutional change of government,⁴ piracy, terrorism, mercenarism, corruption, money laundering, trafficking in persons, trafficking in drugs, trafficking in hazardous wastes and illicit exploitation of natural resources.

The question, then, is whether it is necessary for yet another court to come into being in view of the existing International Criminal Court and other mechanisms? In answering this question, this paper considers whether the jurisdiction of the International Criminal Court covers transnational crimes. The paper also considers the arguments and perspectives of different schools of thought and, finally, makes recommendations concerning the establishment of a regional court. A number of scholarly voices have arisen to discuss the question of transnational crimes and the need or otherwise of an international court. Neil Bolster, for example has drawn a conceptual distinction between transnational criminal law and international criminal law⁵. It is the belief of the author that transnational criminal law is primarily concerned with offences whose prevention and punishment require cooperation between States while international criminal law directly imposes criminal responsibility on individuals.

On the other hand, Moses Phooko's⁶ questions whether or not the International Criminal Court has been effective in fulfilling its mandate since its establishment in 2002. In so doing, he considers the non-execution of ICC arrest warrants as well as inadequate State cooperation or

¹ Roger P Alford, 'The Proliferation of International Courts and Tribunals: International Adjudication in Ascendance' (2002) 94 American Society of International Law Proceedings 160 <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?params=/context/law_faculty_scholarship/article/1026/&path_info=The_Proliferation_of_International_Courts_and_Tribunals__Internat.pdf> accessed 25 July 2026

² Statute of the International Court of Justice, Art 38(1)(d)

³ Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights 2014 (Malabo Protocol), Art 28A

⁴ It is indeed to be wondered whether unconstitutional change of government is not a matter within the local province of a State and not a transnational crime. Neil Bolster, 'Transnational Crimes Jurisdiction of the Criminal Chamber of the African Court of Justice and Human and Peoples' Rights' in Charles C Jalloh, Kamari M Clarke and Vincent O Nmehielle (eds), *The African Court of Justice and Human and Peoples' Rights in Context: Development and Challenges* (Cambridge University Press 2019) 336–361 <<https://www.cambridge.org/core/books/african-court-of-justice-and-human-and-peoples-rights-incontext/transnational-crimes-jurisdiction-of-the-criminal-chamber-of-the-african-court-of-justice-and-humanand-peoples-rights/A28A393BF76EF48183BDB06F5B4C1938>> accessed 25 July 2026

⁵ Neil Bolster, 'Transnational Crimes Jurisdiction of the Criminal Chamber of the African Court of Justice and Human and Peoples' Rights' *ibid*

⁶ Moses Retselisitsoe Phooko, 'How Effective the International Criminal Court Has Been: Evaluating the Work and Progress of the International Criminal Court' (2010) 1(1) Notre Dame Journal of International and Comparative Law <<https://scholarship.law.nd.edu/ndjicl/vol1/iss1/6>> accessed 2 August 2026

the limited number of convictions. The weakness of the ICC is likely linked to the fact that it does not possess its own conventional police force.

Harmen van der Wilt argues that the distinction between transnational crimes as well as international crimes is rather fluid as transnational crimes such as human trafficking or drug offences often spills over and affects crimes against humanity- which is an international crime⁷. This is because transnational crimes can have international dimensions or have an effect across several jurisdictions or consequences that individual States may be unable to address effectively.

The contribution of this paper to knowledge as distinct from existing literature on this subject is that this paper does not merely propose regionalisation as a sole end but the use of regionalisation as an institutional response to the combined problems of judicial proliferation, jurisdictional overlap and enforcement deficits in the adjudication of transnational crimes.

In examining existing international courts and tribunals, it becomes apparent that enforcement remains a perennial concern. This is largely as a result of the question of state sovereignty and the co-operation of states in enforcing the judgments of courts.

2. DEFINITION OF TERMS

2.1 INTERNATIONAL CRIME

International crime is an act that international law deems universally criminal.⁸ They are crimes that are considered as so egregious that they are seen as offenses against humanity as a whole, rather than just against a particular nation.⁹ Examples of these crimes have been stated to be: war crimes, crimes against humanity, genocide, and aggression.¹⁰ As would be shown shortly, the universality of these crimes is the major distinction between international crimes, transnational crimes and domestic crimes. International crimes are also known as “core crimes” or “core international crimes”. This is reflected in the jurisdiction of the International Criminal Court as provided for in the Rome Statute. Article 5 of the Rome Statute provides that the jurisdiction of the ICC is limited to the most serious crimes of concern to the international community as a whole.

2.2 TRANSNATIONAL CRIME

Transnational crime means crime that occurs across, beyond or through multiple nations.¹¹ It means self-perpetuating associations of individuals who operate transnationally for the purpose

⁷ Harmen van der Wilt, ‘Legal Responses to Transnational and International Crimes: Towards an Integrative Approach?’ in Harmen van der Wilt and Christophe Paulussen (eds), *Legal Responses to Transnational and International Crimes: Towards an Integrative Approach* (Edward Elgar Publishing 2017) 3–26 <https://pure.uva.nl/ws/files/29034364/Legal_Responses_to_Transnational_and_International_Crimes_Legal_responses_to_transnational_and_international_crimes.pdf> accessed 25 July 2026

⁸ Kevin J. Heller, What Is an International Crime? (A Revisionist History), *HARV. INT’L L.J.* (2017) Vol. 58, No. 2 <https://journals.law.harvard.edu/ilj/wp-content/uploads/sites/84/HLI205_crop.pdf> accessed 17 August, 2026

⁹ LSD, “Legal Definitions - international crime” *LSD Law* (United States, July 2026) <<https://definitions.lsd.law/international-crime>> available at: 17 August, 2026/

¹⁰ Kevin J. Heller *ibid*

¹¹ Erik Jensen, “Transnational Crime” (2016) ILEI Working Paper

of obtaining power, influence, monetary, or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption or violence or through a transnational organization structure and the exploitation of transnational commerce or communication mechanisms.¹² The term ‘transnational crime’ is often used interchangeably with transnational organised crime.

2.4 TRANSNATIONAL COURT AND REGIONAL COURTS

In this paper, transnational courts and regional courts would be loosely used interchangeably. This is because the distinction is rather fluid. It has been suggested that a distinction between transnational courts and regional courts is that unlike the regional courts, individuals have access to transnational courts.¹² But this is a rather shallow distinction because the ECOWAS Community Court of Justice allows individuals to approach the court by Article 10 of its Supplementary Protocol as would be shown shortly below.

3 DISTINCTION BETWEEN CORE INTERNATIONAL CRIMES AND TRANSNATIONAL CRIMES

There is a difference between crimes of international concern¹³ and transnational crimes. While some¹⁴ have stated that these differences are merely arbitrary and not necessarily crucial, whether or not this view is correct remains to be seen. The United Nations Convention against Transnational Organized Crime and the Protocols provides, by virtue of Article 3, that an offence is transnational in nature if:

- a. It is committed in more than one State;
- b. It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- c. It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- d. It is committed in one State but has substantial effects in another State.

This differs from international crimes, which are regarded as crimes of international concern. In the Rome Statute, the jurisdiction of the International Criminal Court is limited to crimes that are of the most serious concern.¹⁵ These include genocide, crimes against humanity, war crimes and the crime of aggression.¹⁶ A scholar has defined international crime as follows: “In its strictest possible sense, international criminal law would be the law applicable in an

<<https://share.google/dsfZCvOkemcnaO2gH>> accessed 17 August, 2026¹²
10 USC § 284(i)(6)

¹² Makhmudova Shakhruzoda Abrorovna, “THE RELATIONSHIP BETWEEN REGIONAL COURTS AND THE INTERNATIONAL COURT OF JUSTICE IN TERMS OF JURISDICTION” (2024) International Journal of Education, Social Science & Humanities. <<https://doi.org/10.5281/zenodo.11034819>> accessed 17 August, 2026

¹³ Neil Boister, ““Transnational Criminal Law”?” (2003) 14(5) European Journal of International Law 953–976 <<https://www.ejil.org/pdfs/14/5/453.pdf>> accessed 25 July 2026

¹⁴ *ibid*

¹⁵ Preamble to the Statute. The reason for this is to avoid trivializing the role and functions of the Court and interfering with the jurisdiction of national courts. Report of the Preparatory Committee on the Establishment of an International Criminal Court, UN Doc A/51/22 (1996), UNGAOR, 51st Sess, Supp No 22, 26

¹⁶ Rome Statute of the International Criminal Court 1998, art 5

international criminal court having general jurisdiction to try those who commit acts which international law proscribes and which it provides should be punished”.¹⁷

Another difference between international crimes and transnational crimes is that, in the former, the jurisdiction of the court is universal,¹⁸ while in the latter, the jurisdiction of the court is subject to the territory of the state that chooses to take responsibility.²⁰

Further, the state is involved in the commission of international crimes, which often makes their prosecution and punishment all the more difficult,¹⁹ while transnational crimes are predominantly profit-driven. It has been said that transnational crimes are essentially a domestic affair in the sense that the crimes are outlawed in suppression conventions, where states Parties are essentially mandated to proscribe such conduct in their domestic legislation.²² A further distinction that has been drawn between international crimes and transnational crimes is that the abhorrence for the former is greater than that of the latter.²⁰

Whether these differences are substantial and not merely procedural is a matter for argument. It is argued by some that a number of acts classified as transnational crimes can equally be classified as international crimes. Srisombat Chokprajakchat is of the view that such transnational crimes as terrorism, human trafficking, corruption and transnational corruption, depending on their severity and impact, could be considered crimes against humanity.²¹ Another scholar²² argues that the jurisdiction of the ICC should also be extended to reach transnational crimes and questions the arbitrary distinctions. For example, he argues that there is no difference between the crime of enslavement²³ or slavery (which is under the jurisdiction of the International Criminal Court) and the transnational crime of human trafficking (which is not under the jurisdiction of the International Criminal Court). Furthermore, transnational crime can facilitate the commission of core international crimes, as drug trafficking may raise illicit funds to commit war crimes or genocide.²⁴

¹⁷ Neil Boister (n 14)

¹⁸ Princeton Principles on Universal Jurisdiction (Program in Law and Public Affairs, Princeton University 2001) ²⁰Neil Boister (n 14) 963

¹⁹ Ibid; Harmen van der Wilt, ‘Legal Responses to Transnational and International Crimes: Towards an Integrative Approach?’ in Harmen van der Wilt and Christophe Paulussen (eds), *Legal Responses to Transnational and International Crimes: Towards an Integrative Approach* (Edward Elgar Publishing 2017) 3– 26

<https://pure.uva.nl/ws/files/29034364/Legal_Responses_to_Transnational_and_International_Crimes_Legal_responses_to_transnational_and_international_crimes.pdf> accessed 25 July 2026 ²²Harmen van der Wilt (n21)

²⁰ Ibid

²¹ Srisombat Chokprajakchat, ‘Review Mechanism UNTOC: Definition of Transnational Crime’ (UNODC) <https://www.unodc.org/documents/organized-crime/reviewmechanism/CDICTA_SS.pdf> accessed 25 July 2026

²² Harmen van der Wilt (n21)

²³ Rome Statute of the International Criminal Court 1998, Art 7(1)(c)

²⁴ Harmen van der Wilt (n21)

4 THE EXISTING INTERNATIONAL COURT AND THE USEFULNESS SO FAR

A problem with the International Court of Justice is that only countries that have accepted the Court's compulsory jurisdiction can bring a case before the Court.²⁵ Furthermore, the jurisdiction of the International Court of Justice is limited to disputes between States. However, the jurisdiction of the International Criminal Court is much more expansive in that individuals can approach the Court. This is in contradistinction to the International Court of Justice, which does not permit individuals to approach the Court. This is likely because the jurisdiction of the International Court of Justice is either contentious or advisory;²⁶ neither form of jurisdiction makes allowance for an individual to approach the Court. Accordingly, individuals affected by transnational crimes cannot approach the International Court of Justice for relief. Only states parties to the Statute may bring proceedings before the Court. It was as a result of these limitations that the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia and other special courts, including the Special Court for Sierra Leone, came into being.

5. ARGUMENTS IN FAVOUR OF AN INTERNATIONAL COURT FOR TRANSNATIONAL CRIMES

The case for an international judicial mechanism with jurisdiction over transnational crimes is founded principally on the inadequacy of purely domestic responses to criminal conduct that increasingly transcends territorial boundaries. The cross-border character of such offences may place them beyond the effective reach of individual States, particularly where the planning, financing, execution and consequences of criminal conduct occur in different jurisdictions. An international court could, in this regard, provide a centralised judicial mechanism through which offenders whose activities transcend national borders may be brought to account. Its existence could also contribute to the preventive and deterrent functions of criminal justice by signalling that the territorial fragmentation of criminal activity would not necessarily shield perpetrators from prosecution²⁷.

The preventive rationale was particularly evident in the historical advocacy for an international criminal jurisdiction. The experience of Trinidad and Tobago³¹, which was confronted with increasing problems associated with drug trafficking, was among the circumstances that informed the movement towards the establishment of an international criminal court. The underlying argument was that transnational criminal organisations could exploit weaknesses in domestic institutions and operate across jurisdictions in ways that frustrate conventional mechanisms of law enforcement²⁸. An international court, insulated from the immediate influence of national institutions, could potentially provide an additional layer of accountability

²⁵ H E Ambassador Mohan Maithri Pieris, Philippe Gautier and Catherine Amirfar, 'The International Court of Justice: How Effective Is It?' (Presentation at the Inter-Parliamentary Union, New York, 24 April 2024) <<https://share.google/fVnOXU9g5tZccN39u>> accessed 25 July 2026

²⁶ Statute of the International Court of Justice, Articles 34, 35, 36 and 65

²⁷ Judge Sang-Hyun Song, 'Past Achievements and Future Challenges of the ICC' (Keynote Speech for the 20th Anniversary of the Rome Statute, The Hague, 17 July 2018) <<https://www.icc-cpi.int/sites/default/files/itemsDocuments/20a-ceremony/20180717-sang-speech.pdf>> accessed 25 July 2026 ³¹ UNGA Res 44/39 (4 December 1989)

²⁸ Neil Boister, 'Treaty Crimes, International Criminal Court' (2009) 12(3) New Criminal Law Review 341 <<https://www.jstor.org/stable/10.1525/nclr.2009.12.3.341>> accessed 2 August 2026

and thereby strengthen the deterrent effect of criminal law. The significance of such a mechanism would be particularly pronounced in developing and underdeveloped States where organised criminal groups may possess financial resources, political influence or institutional connections capable of undermining domestic enforcement²⁹.

Closely connected to the foregoing is the argument that an international court could fill institutional and enforcement gaps within national jurisdictions. Where national institutions lack the resources, independence or capacity to investigate and prosecute sophisticated transnational criminal networks, a supranational judicial institution could provide an alternative avenue for accountability³⁰. This consideration is not entirely novel to international criminal law. The principle of complementarity underlying the jurisdiction of the International Criminal Court recognises that national courts have the primary responsibility for investigating and prosecuting crimes, while international intervention becomes relevant where a State is unwilling or unable genuinely to undertake such proceedings³¹. The same rationale could potentially support an international mechanism for transnational crimes where domestic institutions are unable to respond effectively to the scale or complexity of the criminal activity.

The argument for international intervention is further strengthened by the increasingly fluid relationship between transnational crimes and core international crimes. Although the two categories are conceptually distinguishable, developments in contemporary criminality demonstrate that transnational criminal activities may contribute to, facilitate or develop into conduct capable of constituting international crimes. Drug trafficking³², for example, may generate violent conflicts between organised criminal groups, resulting in widespread violence, torture³³ or other conduct that may, depending upon the circumstances, fall within the scope of international criminal law. The events following the killing of the Mexican drug cartel leader, “El Mencho”, in February 2026, have been cited as an illustration of the manner in which organised criminal activity may generate extensive violence³⁴ and allegations of torture³⁵. This interconnectedness challenges an overly rigid distinction between transnational and international crimes and raises the question whether the existing institutional architecture adequately reflects the realities of contemporary criminality.

An international court could also address the jurisdictional difficulties created by the inherently cross-border nature of transnational crimes. Where an offence involves several States, questions may arise as to which jurisdiction should investigate, prosecute and ultimately determine the criminal responsibility of the perpetrators³⁶. The State in which the conduct was planned may assert jurisdiction; the State in which the conduct was executed may do likewise;

²⁹ Harmen van der Wilt (n21)

³⁰ Ibid, arts 17 and 53

³¹ Rome Statute of the International Criminal Court 1998, Preamble

³² Harmen van der Wilt (n21)

³³ Rome Statute of the International Criminal Court 1998, Art 7(1)(f)

³⁴ AFP, AP and Reuters, ‘Mexico Descends into Violence after Cartel Leader “El Mencho” Killed’ (Al Jazeera, 23 February 2026) <<https://www.aljazeera.com/gallery/2026/2/23/mexico-erupts-in-violence-after-army-kills-jalisco-cartel-boss-el-mencho>>

³⁵ Quentin Sommerville, “‘Fear Is Everywhere’: BBC Reports from Mexican City Turned into War Zone by Drug Cartel Feud’ (BBC, 25 February 2026) <<https://www.bbc.com/news/articles/cx2g3vmde0eo>> accessed 27 July 2026

³⁶ United Nations Convention against Transnational Organized Crime 2000, Art 3

and another State may claim jurisdiction because it suffered substantial consequences from the offence. These competing claims may create fragmented proceedings, conflicting decisions and difficulties in securing effective cooperation. A supranational judicial institution could provide a common forum for addressing such jurisdictional complexities and, potentially, reduce the fragmentation that characterises the prosecution of cross-border criminality.

6. CHALLENGES

Notwithstanding these considerations, the establishment of an international court with jurisdiction over transnational crimes presents substantial legal and institutional difficulties. One of the most significant is the problem of overlapping jurisdiction³⁷. The proliferation of international and regional courts has already produced a complex judicial landscape in which different institutions may exercise jurisdiction over related factual circumstances or legal questions. The experience of international adjudication, including proceedings involving the International Court of Justice³⁸ and the International Criminal Tribunal for the former Yugoslavia³⁹, demonstrates the possibility of divergent approaches⁴⁰ to questions of jurisdiction, responsibility and attribution. A similar difficulty could arise within Africa where the International Criminal Court, the ECOWAS Community Court of Justice and the African Court of Justice and Human and Peoples' Rights may, in different circumstances, exercise jurisdiction affecting the same State or individuals. Differences in jurisdictional mandates, evidentiary standards and procedural rules could consequently produce competing proceedings or inconsistent outcomes. The establishment of an additional international court may therefore intensify the very institutional fragmentation it seeks to remedy.

A related concern is the enforcement of judicial decisions⁴⁵. The effectiveness of international criminal justice ultimately depends upon cooperation by States, particularly because international courts generally lack the coercive apparatus available to domestic law enforcement institutions. The difficulty becomes more pronounced where international jurisdiction is invoked precisely because a State is unwilling or unable to prosecute. If the domestic authorities are unable or unwilling to undertake the initial investigation or prosecution, their capacity or willingness to enforce an international court's subsequent orders may equally be limited. The experience of the International Criminal Court demonstrates the practical significance of this problem. The difficulties encountered in executing arrest warrants, including the warrant issued against former Sudanese President Omar Al-Bashir, illustrate the extent to which international criminal justice may depend upon State cooperation. The absence of effective enforcement mechanisms would therefore risk reducing an international court's judgments to formal declarations without corresponding practical effect.

³⁷ Karin Oellers-Frahm, 'Multiplication of International Courts and Tribunals and Conflicting Jurisdiction: Problems and Possible Solutions' (2001) 5 Max Planck Yearbook of United Nations Law <mpunyb_oellers_frahm_5.pdf> accessed 3 August 2026

³⁸ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) [1986] ICJ Reports 14

³⁹ Prosecutor v Tadic, Judgment of the Appeals Chamber (1999) 38 International Legal Materials 1518

⁴⁰ Charles N Brower, 'Evidence before International Tribunals: The Need for Some Standard Rules' (1994) 28 International Lawyer 47 <<https://scholar.smu.edu/til/vol28/iss1/4>> accessed 2 August 2026 ⁴⁵ Harmen van der Wilt (n21)

The legitimacy of an international criminal institution also presents a significant challenge. International courts derive much of their authority from the perception⁴¹ that they operate impartially, consistently and independently of political considerations. The International Criminal Court has faced sustained criticism concerning the perceived concentration of its activities in Africa⁴², while the role of the United Nations Security Council in referring situations to the Court has generated further debate concerning equality and selectivity in the application of international criminal justice. Whether or not such criticisms accurately describe the Court's overall practice, their existence demonstrates the importance of institutional legitimacy to the effectiveness of international adjudication⁴³. A new international court could encounter similar difficulties if its jurisdiction were perceived as selective or insufficiently representative.

The limited institutional powers of international courts constitute another obstacle. Unlike national law-enforcement agencies, international courts ordinarily do not possess an independent police force with which to execute arrest warrants or compel compliance with judicial orders. The prosecution of transnational crimes may also require investigative powers extending beyond conventional criminal adjudication, including the ability to trace financial transactions, freeze assets, seize property and confiscate the proceeds of crime. These powers are particularly relevant to transnational offences such as money laundering⁴⁴ and organised criminal activity. Where an international court lacks the necessary investigative and coercive mechanisms, its capacity to address the underlying criminal structures may be significantly constrained. The establishment of another court without corresponding enforcement⁴⁵ and investigative capacity would therefore risk reproducing existing institutional deficiencies.

Geographical and evidentiary considerations further complicate the establishment of an international court. Transnational criminal proceedings may depend heavily upon evidence located across several jurisdictions, including witnesses, documentary records, electronic evidence and financial information. The geographical distance between the court and the locus in quo may make the collection, preservation and presentation of such evidence more difficult and expensive⁴⁶. Local courts may, by contrast, possess greater familiarity with the relevant institutions, communities, languages and legal processes. The effectiveness of an international judicial mechanism must therefore be assessed not only by reference to its formal jurisdiction

⁴¹ Moses Retselisitsoe Phooko, 'How Effective the International Criminal Court Has Been: Evaluating the Work and Progress of the International Criminal Court' (2010) 1(1) *Notre Dame Journal of International and Comparative Law* <<https://scholarship.law.nd.edu/ndjicl/vol1/iss1/6>> accessed 2 August 2026; Harmen van der Wilt (n21) 20

⁴² Johan D van der Vyver, 'Prosecuting the President of Sudan: A Dispute between the African Union and the International Criminal Court' (2011) 2 *African Human Rights Law Journal* 683–698 <<https://www.ahrlj.up.ac.za/van-der-vyver-j-d>> accessed 2 August 2026

⁴³ Hasan Basri Bulbul, 'Selective Justice? Empirically Testing for Double Standards in the ICC's Palestine and Ukraine Investigations' (2025) 5 *Journal of Balkan Studies* (Special Issue) <<https://doi.org/10.51331/A059>> accessed 2 August 2026

⁴⁴ Harmen van der Wilt (n21)

⁴⁵ Moses Phooko (n46) 187, 197

⁴⁶ Jacob Katz Cogan, 'The Problem of Obtaining Evidence for International Criminal Courts' (2000) 22 *Human Rights Quarterly* 404–427 <https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1399&context=fac_pubs> accessed 2 August 2026

but also by its practical capacity to obtain and evaluate evidence from the locations in which transnational crimes occur⁴⁷.

The sheer incidence and complexity of transnational crimes present a further institutional concern. Unlike the relatively limited category of core international crimes traditionally falling within the jurisdiction of international criminal tribunals, transnational crimes encompass a broad range of activities. An expansive jurisdiction could consequently expose an international court to a volume of cases beyond its investigative, prosecutorial and judicial capacity. The concern is particularly relevant to proposals for an African criminal jurisdiction, where the proposed offences cover a wide range of conduct and questions have been raised concerning the clarity and scope of certain definitions. Without carefully delineated jurisdiction and adequate institutional resources, an international court could become overburdened and thereby reproduce some of the difficulties associated with existing international criminal institutions.

The establishment of an international criminal jurisdiction also raises enduring questions concerning national sovereignty. International criminal adjudication necessarily involves some degree of limitation upon the exclusive authority traditionally associated with territorial State jurisdiction. These concerns are reflected in the theoretical distinction between monism and dualism⁴⁸ concerning the relationship between international and domestic law⁴⁹. Although the principle of complementarity seeks to preserve the primary responsibility of national courts⁵⁰, international criminal jurisdiction necessarily permits intervention in circumstances where domestic institutions fail to act. The challenge, therefore, is not simply whether sovereignty should prevail over international accountability⁵¹, but how an appropriate equilibrium can be maintained between respect for domestic jurisdiction and the need to prevent serious transnational criminality from escaping effective prosecution.

The question of locus standi is similarly important⁵⁷. Traditional international adjudication has generally been structured around States as the principal subjects of international law. The International Court of Justice, for instance, does not permit individuals to institute proceedings before it. Regional judicial institutions have, however, demonstrated that greater individual access is possible. Article 10 of the ECOWAS Community Court of Justice's Supplementary Protocol permits individuals to approach the Court in specified circumstances, while the International Criminal Court is expressly concerned with individual criminal responsibility. Given that transnational crimes are frequently perpetrated by individuals and organised criminal groups and may cause direct harm to individuals and communities, the design of any future judicial mechanism must address the extent to which victims and affected persons can obtain access to justice. The proposed African criminal jurisdiction, which also contemplates

⁴⁷ Bolster (n4); Harmen van der Wilt (n21) 21

⁴⁸ Shrome Garg, 'Monist vs Dualist Theory of International Law' (2003) 5(2) International Journal of Legal Science and Innovation <<https://www.ijlsi.com/wp-content/uploads/Monist-vs.-Dualist-Theory-of-InternationalLaw.pdf>> accessed 27 July 2026

⁴⁹ *ibid*

⁵⁰ Claims Settlement Declaration 2, Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (Claims Settlement Declaration), 19 January 1981

⁵¹ Prosecutor v Tadic, Decision on Jurisdiction (Appeals Chamber) (1995) 105 International Law Reports 453 ⁵⁷ Statute of the International Court of Justice, Art 34

corporate responsibility⁵², illustrates the possibility of developing a broader conception of accountability.

Another difficulty concerns the gravity of transnational crimes. The jurisdiction of international criminal courts has traditionally been justified by reference to crimes regarded as sufficiently grave to constitute matters of international concern⁵³. It may therefore be questioned whether every category of transnational crime possesses the degree of gravity necessary to justify international adjudication⁶⁰. The proposal to extend the jurisdiction of the International Criminal Court to drug trafficking⁵⁴ illustrates this difficulty. Arguments in support of such an extension emphasised the scale of drug trafficking, the involvement of organised criminal structures, the violence associated with trafficking networks and their potential impact upon political and economic institutions. Nevertheless, the proposal was not adopted. The question of gravity consequently remains an important consideration in determining which transnational crimes, if any, should fall within the jurisdiction of an international criminal court.

Finally, the treaty structure governing the expansion of international criminal jurisdiction presents an additional difficulty. The adoption of an amendment to the Rome Statute would not necessarily result in universal acceptance of the expanded jurisdiction by all States Parties. States may differ in their willingness to accept amendments extending the jurisdiction of the Court, thereby producing a fragmented system in which some States recognise the additional jurisdiction while others do not. This possibility raises questions concerning the universality, predictability and practical effectiveness of any attempt to incorporate transnational crimes into the jurisdiction of an existing international criminal court.

7. RECOMMENDATIONS

The foregoing analysis suggests that the creation of another universal international court may not, in itself, constitute an adequate response to the challenges posed by transnational crimes. The proliferation of international judicial institutions, overlapping jurisdiction, enforcement difficulties, questions of legitimacy and the continuing dependence of international courts upon State cooperation all counsel against treating institutional creation as an automatic solution to transnational criminality. The more sustainable approach may be to strengthen existing judicial structures and address the institutional deficiencies that currently limit their effectiveness. Within the African context, particular attention should therefore be directed towards strengthening the existing regional framework for international criminal justice⁵⁵. The proposed expansion of the jurisdiction of the African Court of Justice and Human and Peoples' Rights through the Malabo Protocol provides an existing institutional foundation upon which a regional response to transnational crimes could be developed. Although the Protocol has not yet entered into force, strengthening the existing framework may be preferable to establishing an entirely new institution. Such an approach would reduce further judicial proliferation while

⁵² Malabo Protocol, Art 46C

⁵³ Rome Statute of the International Criminal Court 1998, Preamble ⁶⁰
Neil Boister (n33)

⁵⁴ Ibid

⁵⁵ Neil Boister (n33)

permitting African States to develop mechanisms that respond to the continent's particular legal, institutional and socio-economic circumstances⁵⁶.

A regional approach may also provide an opportunity to address some of the legitimacy concerns associated with international criminal justice. A regional court established and supported within the African institutional framework could potentially promote greater regional ownership of criminal accountability while remaining subject to clearly defined legal standards. This does not mean that a regional institution would automatically avoid the difficulties experienced by the International Criminal Court. Rather, its legitimacy and effectiveness would depend upon the clarity of its mandate, independence of its judicial processes, adequate resources and genuine commitment by Member States to cooperation and enforcement.

Of particular importance is the question of access to the Court. Any regional criminal jurisdiction should provide meaningful avenues through which individuals affected by transnational crimes can seek justice. The exclusion of individuals from direct access may significantly weaken the victim-centred character of the proposed system. The existing position under the proposed African criminal jurisdiction, which identifies States Parties and specified African Union organs and officials as entities capable of submitting cases, contrasts with the ECOWAS model under which individuals may approach the Community Court of Justice in specified circumstances. The latter model demonstrates that regional judicial institutions can accommodate individual access within their procedural frameworks. Appropriate provision should therefore be made for individual standing, particularly where transnational crimes result in direct and substantial harm to individuals or communities.

Ultimately, however, the effectiveness of any regional or international criminal jurisdiction will depend upon the existence of credible enforcement mechanisms. Jurisdiction without enforcement is unlikely to provide meaningful accountability. The institutional framework should therefore incorporate clear obligations concerning cooperation in investigations, production and preservation of evidence, arrest and surrender of suspects, execution of judicial orders and implementation of judgments. Particular attention should be paid to preventing the recurrence of the enforcement difficulties experienced by the International Criminal Court. The effectiveness of the proposed African criminal jurisdiction should consequently be assessed not merely by the breadth of offences within its jurisdiction but by the practical mechanisms available to ensure that its decisions are implemented.

The preferred institutional response should therefore be understood not as a simple choice between the creation of a new international court and reliance upon existing domestic institutions. Rather, the more fundamental question is how existing international and regional mechanisms can be strengthened, coordinated and made more accessible and enforceable. In this respect, strengthening the proposed criminal jurisdiction of the African Court of Justice and Human and Peoples' Rights, while ensuring individual access and robust enforcement mechanisms, offers a possible regional response to the institutional challenges associated with transnational crimes. Such an approach would shift the debate from the proliferation of

⁵⁶ Ibid

international courts towards the development of judicial mechanisms that are sufficiently accessible, legitimate and effective to address the realities of contemporary transnational criminality.

8. CONCLUSION

In light of the foregoing, it is obvious that the solution to the problem of transnational crimes is not the creation of new courts. This is particularly so in light of the performance of existing international courts. It might be a wiser course of action to instead strengthen the existing structures by expanding their jurisdiction and ensuring that their judgments are enforceable. Alternatively, the establishment of a regional court could help to mitigate the challenges associated with an international court. This paper contributes to the existing body of knowledge by critically reassessing the conventional distinction between core international crimes and transnational crimes. This paper also examines the institutional implications of bringing transnational crimes within international criminal jurisdiction. Rather than advocating for a further expansion of the jurisdiction of the International Criminal Court or the creation of another universal criminal tribunal, the paper advances a regionalised approach to transnational criminal justice. In particular, it proposes the strengthening of the proposed criminal jurisdictions of the African Court of Justice and Human and Peoples' Right, while addressing the existing deficiencies in enforcement. The paper therefore shifts the debate from the mere expansion of international criminal jurisdiction to the more fundamental question of which judicial structure can provide accessible, legitimate and enforceable justice for transnational crimes.