

The International Criminal Court and Artificial Intelligence: Case Study and Global Legal Challenges

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Abstract: *The International Criminal Court is the beginning of international criminal jurisdiction for certain serious crimes. The Court is a new institution in international law, different from those of the same type created ad hoc for certain countries. Although the Rome Statute was adopted on 18 July 1998, it entered into force on 1 July 2002 and only began operating in March 2003. In practical terms, the ICC is the main forum for international criminal justice, with the role of trying the most serious crimes affecting the international community as a whole: genocide, crimes against humanity, war crimes and the crime of aggression.*

In a global context marked by complex armed conflicts, transnational crimes and challenges to the protection of fundamental rights, the ICC faces constant legal difficulties in exercising its jurisdiction, collecting evidence, protecting witnesses and ensuring fair trials. Specifically, the issue of the relationship between international criminal law, state sovereignty and the imperatives of protecting fundamental rights is becoming increasingly relevant in the face of contemporary armed conflicts. Thus, these challenges must be analysed in light of the Court's fruitful case law, supplemented by the study of a relevant case that illustrates the tensions between international criminal law, geopolitical realities and new investigative technologies. At the end of the analysis, in addition to these classic obstacles, technological developments introduce new dimensions to the investigation of international crimes. The use of Artificial Intelligence in the analysis of digital evidence, in the identification of perpetrators or in the monitoring of armed conflicts opens up both opportunities and legal risks that are difficult to anticipate. In the objective dimension of reality, it is necessary to reflect on how the Court can adapt its instruments and procedures to respond responsibly to emerging challenges without compromising standards for the protection of fundamental rights.

Keywords: the International Criminal Court; Artificial Intelligence; case study; global legal challenges.

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Introduction

In the architecture of contemporary international law, the legal norms governing the behaviour of subjects of international law, whether states, international organisations or individuals, form the foundation of the global legal order. The obligation to comply with these rules derives not only from the conventional commitments undertaken by states, but also from their imperative nature, *jus cogens*, when they protect fundamental values such as human dignity, peace and international security. When these norms are violated, there is a need to restore the legal order, a process achieved either through mechanisms of international accountability of states or, notably, through the engagement of individual criminal responsibility in cases of the most serious crimes. Thus, in this sense, the International Criminal Court (ICC) stands out as a permanent judicial institution, created by the Rome Statute of 1998, with the vocation of trying individuals responsible for committing the most serious crimes affecting the international community as a whole: genocide, crimes against humanity, war crimes and the crime of aggression (Ambos, 2013). By enshrining the principle of personal criminal responsibility and strengthening the concept of universal criminal justice, the ICC has become a benchmark in efforts to maintain international legal order and reaffirm the fundamental values of humanity (Akanke, 2020).

Recent history has provided new opportunities for activating the mechanisms of international criminal justice. In the heart of Europe, where conflict seemed to be a closed chapter of the 21st century, a conflagration has reignited, bringing back to the forefront tragedies long believed to be over. In this bloody landscape, where fundamental rights have been trampled upon and entire populations have been torn from their homes, a judicial act of historic gravity has been issued by the International Criminal Court: for the first time before this court, the leader of a permanent member state of the UN Security Council was called to account, accused of war crimes in the context of the illegal deportation of civilians from occupied territories (Parliament of Romania, 1998). This moment, which can be considered a veritable *punctum temporis* in the evolution of international criminal law, reaffirms the principle of *nemo est supra leges* and the perpetual need for justice, regardless of the position of the person called to answer.

In parallel with these classic legal challenges, international criminal justice today faces dilemmas generated by the rapid evolution of technology. Artificial intelligence, a tool with remarkable potential in the investigation of international crimes, raises complex questions regarding the legality of its use, respect for procedural guarantees and the protection of fundamental rights.

Thus, analysing the integration of emerging technologies into the mechanisms of the International Criminal Court becomes not only timely but necessary in an ever-changing global legal landscape.

Arrest warrant issued by the International Criminal Court against Vladimir Putin for alleged war crimes, pursuant to the Rome Statute.

In the context of current geopolitical challenges and escalating armed conflicts, international criminal law plays an essential role in protecting the fundamental values of humanity and punishing those who commit acts of extreme gravity, contrary to the universal norms of international humanitarian law. In this regard, a landmark moment in the jurisprudence of the International Criminal Court was the issuance, on 17 March 2023, of an arrest warrant for the President of the Russian Federation, Vladimir Putin. He was accused of committing war crimes, consisting mainly of the illegal deportation of Ukrainian children from the territory of the state in conflict and their transfer to the territory of the Russian Federation, in flagrant violation of the applicable rules of international law (ICC, 2023).

The International Criminal Court was able to exercise its jurisdiction on the basis of Article 12(3) of the Rome Statute, under which Ukraine made two declarations accepting the Court's jurisdiction, even though it is not a party to the Statute.

Following these steps, the Court decided to open a formal investigation, resulting in charges being brought against the Russian president and the Russian Federation's children's rights commissioner, Maria Alekseyevna Lvova-Belova, for the same acts.

The decision to declassify the arrest warrants was taken in order to prevent the continuation of such crimes and to send a strong message to the international community about the Court's commitment to combating impunity, regardless of the political status of the person concerned. The Russian Federation's response was not long in coming, with Moscow vehemently denying the accusations and downplaying the legal effects of the Court's decision, citing its non-status as a party to the Rome Statute. In addition, the issue of immunity from jurisdiction *ratione personae* enjoyed by heads of state under customary international law was revisited in the debate, but the Court's previous case law, particularly in the Omar Al Bashir case, ruled that no such immunity exists before international courts.

Against this tense backdrop, the issue of the possible use of Article 16 of the Rome Statute arose, which allows the UN Security Council to request the suspension of an investigation or prosecution for a period of 12 months if its continuation could jeopardise international peace and security. This

provision reflects, in a nuanced manner, the interaction between legal and political considerations in international criminal justice mechanisms (European Parliament, 2023).

The arrest warrants issued against the two Russian officials are not only a particularly important legal precedent, but also an expression of the international community's desire to reaffirm the fundamental principles of international law and to protect, even in contexts of armed conflict, the inalienable rights of individuals, especially the most vulnerable groups, such as children.

The influence of artificial intelligence on the administration of justice.

Artificial intelligence (AI) is emerging as one of the most influential and transformative technologies of the 21st century, promising not only to increase efficiency and improve accuracy in various fields, but also to facilitate expanded and equitable access to justice. In the legal sphere, the use of AI opens up significant prospects, with the ability to support decision-making processes, making them faster, better informed and, as far as possible, more objective. Thus, these technologies can contribute substantially to combating serious phenomena such as financial crime, terrorism or online exploitation of minors (European Parliament, 2021).

Specifically, rapid technological advances, particularly in the fields of artificial intelligence and autonomous robots, are giving rise to legal issues of unprecedented complexity, calling into question the traditional foundations of criminal law. Classic concepts, built on the premise that only human beings can be active subjects of crime, are becoming increasingly difficult to apply in situations where technology acts autonomously, unpredictably and, sometimes, with particularly serious legal and social consequences. In specialist doctrine, there is a growing conviction that the current conceptual framework of criminal law is insufficient to respond adequately to these challenges, and that a thorough reassessment of its limits and principles is necessary (European Parliament, 2021).

In this regard, specialists propose an evolutionary approach, structured in three successive stages. The first phase aims to adapt existing case law and legislation to new technological realities, followed by a second stage in which a strict liability regime will be established and, under certain conditions, limited legal capacity will be recognised for autonomous entities. In the final stage, a substantial reform is expected to be adopted, which would involve the legal recognition of a form of personality for these entities, under the title of "electronic entities". We are undoubtedly in the first stage of this process at present, but signals from the international legislative environment,

such as European Parliament resolutions and debates within the United Nations, indicate a trend towards transition to the second phase.

The current criminal law framework classifies robots and artificial intelligence systems as mere tools, lacking free will or discernment. This analogy, although functional in the context of conventional technologies, is becoming increasingly difficult to sustain as advanced AI systems are no longer limited to the mechanical execution of human commands, but are developing the ability to learn, make decisions and, in certain situations, initiate actions without direct human intervention. Real-life events such as the fatal accident caused by an autonomous vehicle in 2018 or the automatic purchase of prohibited substances by an algorithm have highlighted significant gaps in legislation and the absence of clear legal criteria for accountability (Sebe, 2009).

Regulatory bodies such as the National Transportation Safety Board (NTSB) in the United States have identified major shortcomings in the safety standards applicable to autonomous vehicles and have made recommendations in this regard, but these have not yet been transposed into binding legal rules. At the same time, there are symbolic but conceptually relevant initiatives at the international level, such as Saudi Arabia granting citizenship to the robot Sophia, which reflects the growing trend towards the legal conceptualisation of these autonomous entities.

In terms of doctrine, G. Hallevy proposes an interesting theory, arguing that artificial intelligence could, under certain conditions, become an active subject of a crime, as long as all the constituent elements provided for by law are met. The author advocates a formalistic approach, in the sense that if the act meets the legal requirements of a crime, it should attract criminal liability, regardless of the nature of the entity that committed it. However, this view has been challenged by other authors, as it does not provide minimum criteria for granting criminal capacity and risks leading to absurd conclusions, in which even ordinary objects, such as a smart light bulb or an automatic coffee machine, could theoretically become subjects of criminal law, which is contrary to both legal logic and the social purpose of criminal law.

Conclusions

In summary, the architecture of contemporary international law is based on the set of legal norms that regulate the behaviour of subjects of international law, norms that have, in certain cases, acquired a mandatory character, *jus cogens*, protecting fundamental values such as human dignity, peace and international security. The obligation to comply with them ex

consensu gentium, but also by virtue of their universal normative force, is the foundation of the world legal order.

Against this backdrop, the International Criminal Court has established itself as the main guarantor of individual criminal responsibility for the most serious crimes, contributing decisively to the consolidation of the concept of international criminal justice. The issuance, *pro primo*, of an arrest warrant for a head of state who is a permanent member of the UN Security Council, in the case of the President of the Russian Federation, constitutes not only a legal milestone, but also a concrete reaffirmation of the principle of *nemo est supra leges*. This judicial act illustrates the capacity of the international legal order to exercise its authority even in the most sensitive geopolitical contexts, *fiat justitia, ruat caelum*.

At the same time, rapid technological advances, particularly in the field of artificial intelligence, are generating *sui generis* legal issues, necessitating a reassessment of traditional concepts of criminal liability. As autonomous systems acquire the ability to decide and act independently, the traditional distinction between author and instrument is becoming increasingly difficult to uphold to the letter. Thus, *de lege ferenda*, the idea of recognising, under certain conditions, a limited legal capacity for autonomous entities is taking shape, following a phased development of the law: from the adaptation of case law to the establishment of a regime of strict liability and, finally, to the legal enshrinement of forms of electronic legal personality.

Therefore, international criminal law is at a turning point, faced with both the perpetuation of serious crimes in conflict zones and the unprecedented challenges of the digital age. In this regard, the balance between the fundamental values of *universi iuris gentium* and the imperatives of normative and jurisprudential adaptation to contemporary technological realities will determine, in *tempore*, the directions of evolution of the international legal order. *Quo vadis*, international criminal justice, remains a legitimate question, but one that needs to be formulated within the parameters of the new global reality.

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