



Exemption from Criminal Responsibility and Immunity from Punishment in International Crimes Before the International Criminal Court

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Abstract

This study aims to elucidate the legal framework governing the exemption from criminal responsibility and immunity from punishment under the Rome Statute by analyzing its theoretical foundations, legal structure, and the jurisprudence of the International Criminal Court (ICC). Employing a descriptive-analytical methodology, the research examines the content of ICC documents, legal books and articles, and landmark cases such as Thomas Lubanga (ICC-01/04-01/06, 2012), Dominic Ongwen (ICC-02/04-01/15, 2021), Germain Katanga (ICC-01/04-01/07, 2014), and Omar al-Bashir (ICC-02/05-01/09, 2019) to assess the Court's legal system and judicial practice. A comparative approach is also adopted to contrast national and international legal frameworks. The findings indicate that the Court adopts a conservative stance regarding exceptions by strictly interpreting Articles 31 to 33, emphasizing both objective and subjective criteria to prevent misuse of defenses. The distinction between justification for criminal conduct (such as self-defense) and exemption from punishment (such as duress) plays a pivotal role in the Court's jurisprudence. However, legal ambiguities—such as the definition of “imminent threat” or the “absence of a reasonable alternative”—alongside practical obstacles like lack of state cooperation and evidence-gathering limitations, pose serious challenges. International legal doctrine, underscoring the need to restrict exceptions, has proposed more coherent criteria for future legal development. The results of the study suggest that while the Rome Statute provides a structured legal framework for exemption from criminal responsibility and immunity from punishment, it still requires reforms to resolve legal ambiguities, enhance international cooperation, and increase the Court's legitimacy.

Keywords: exemption from criminal responsibility, immunity from punishment, self-defense, duress, international legal doctrine

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1. Introduction

Exemption from criminal responsibility and immunity from punishment, as deeply rooted concepts in the philosophy of criminal law, acquire exceptional complexity and sensitivity within the context of international crimes. Crimes under the

jurisdiction of the International Criminal Court (ICC), due to their organized nature, vast scale, and profound impact on global peace and security, demand a legal framework that ensures accountability while preventing any form of impunity or misuse of legal defenses (Schabas, 2017). However, the recognition of exceptions such as self-defense, duress, or superior orders can challenge this principle and potentially undermine public confidence in international criminal justice. For instance, in the case of *Dominic Ongwen* (ICC-02/04-01/15, 2021), claims of mental illness and duress were raised but ultimately rejected by the Court through a strict interpretation of the provisions of the Rome Statute. This case reflects the theoretical and practical difficulties in evaluating such defenses.

Moreover, the tension between Article 27 of the Rome Statute—which nullifies personal and functional immunities of state officials—and Article 33—which conditionally recognizes superior orders as a defense—raises fundamental questions regarding the internal coherence of the ICC’s legal regime (Ambos, 2013).

Historical developments in international law clearly reveal that major international criminals have rarely been held accountable for their actions. Often, the only effective means of punishment has emerged through their defeat in international conflicts. Nevertheless, certain legal provisions have occasionally resulted in de facto impunity or exemption from proportionate punishment for international offenders (Ahmadi, 2016).

The central challenge here is to explore the rationale behind such exemptions from punishment and the dismissal of responsibility for perpetrators of international crimes. What principles and rules enable offenders to evade justice by invoking international legal frameworks? Addressing this issue requires attention to key doctrines that have facilitated such legal constructs (Abbasi, 2021).

In other words, international crimes occur on a vast scale and often involve a large number of individuals, both directly and indirectly. This involvement may manifest through roles such as perpetration, causation, complicity, command responsibility, incitement, and group membership. International tribunals have made significant efforts to hold all participants accountable in pursuit of justice. These efforts include recourse to concepts like "membership in a criminal organization," "conspiracy," and the "joint criminal enterprise" theory (Khaleghi, 2015).

Therefore, in light of the above, the central concern of this study is to investigate how exemption from criminal responsibility and immunity from punishment in international crimes are addressed under the Rome Statute and ICC jurisprudence, considering both existing international legal standards and judicial practices.

2. Conceptual Framework

This section presents theoretical definitions of key terms to enhance understanding and conceptual clarity throughout the research.

2.1. Definition and Nature of Criminal Responsibility

International criminal responsibility refers to the accountability of individuals for committing international crimes, including genocide (Article 6 of the Rome Statute), crimes against humanity (Article 7), war crimes (Article 8), and aggression (Article 8 bis). Article 25 defines responsibility in individual terms and emphasizes the principle of individual criminal responsibility, holding persons accountable for their actions regardless of their political, military, or social status. This principle has its roots in the Nuremberg (1945–1946) and Tokyo (1946–1948) trials, where senior officials were held liable for international crimes (Ardabili, 2014).

Unlike domestic criminal law, which may focus on organizational or institutional responsibility, international criminal law prioritizes individual liability, enabling the ICC to prosecute perpetrators irrespective of state or military hierarchies. This approach not only facilitates criminal justice but also acts as a deterrent to future crimes. For example, in the *Tadić* case (ICTY, 1997), the tribunal examined the defendant's role in a paramilitary group, highlighting the complexity of establishing individual liability. The case demonstrated that even lower-level participants may be held responsible for international crimes, provided that the elements of the offense are established.

Nevertheless, the complex nature of international crimes—often committed in the context of armed conflict or authoritarian regimes—poses serious challenges for defining and enforcing criminal responsibility. These include proving intent in

orchestrated crimes, determining roles within the chain of command, and dealing with practical limitations such as lack of state cooperation, all of which will be examined in later sections.

2.2. *Definition of Exemption from Responsibility*

Exemption from responsibility refers to situations where an individual is relieved from criminal liability due to the presence of legally recognized defenses. Article 31 of the Rome Statute provides a limited and strictly defined set of defenses aimed at preventing abuse and shielding from accountability. These include self-defense, duress, intoxication, mental disorder, among others, each subject to specific conditions.

Exemptions are rarely accepted in international criminal law since the primary aim of the ICC, as emphasized in the Statute's preamble, is to ensure accountability and end impunity. For instance, in the *Ongwen* case (ICC, 2021), the accused invoked duress and mental illness, yet the Court scrutinized these claims cautiously to avoid broadening the scope of exemption. This strict approach is rooted in the legacy of the Nuremberg trials, which categorically rejected defenses such as "following orders" (Ambos, 2013).

Nonetheless, the Rome Statute attempts to strike a balance between fairness and accountability by recognizing narrowly defined defenses. In practice, however, this balance faces significant challenges, such as establishing the conditions for defenses, varied judicial interpretations, and the expectations of victims, all of which require detailed legal and evidentiary analysis.

2.3. *Immunity from Punishment*

Unlike exemption from responsibility, which pertains to the adjudication phase of crime, immunity from punishment relates to the sentencing phase (Article 78 of the Rome Statute). This concept includes the reduction or elimination of punishment due to factors such as cooperation with the Court, personal circumstances of the accused (e.g., age, health, or family status), or restorative justice considerations.

Although the Rome Statute does not explicitly provide for complete immunity from punishment, the Court's jurisprudence reflects limited flexibility. For example, in the *Lubanga* case (ICC, 2012), the Court considered the defendant's cooperation and personal conditions during sentencing, but did not eliminate the punishment entirely. This reflects the ICC's attempt to balance justice and fairness while being constrained by legal limits.

In the *Katanga* case (ICC, 2014), despite the defendant's request for mitigation based on cooperation, a significant sentence was imposed to reinforce deterrence. This underscores the complexities surrounding immunity from punishment and the necessity for a precise framework to govern its application.

Legal scholars such as Schabas argue that immunity from punishment can advance restorative justice goals, but must be implemented with full regard for the rights of victims (Schabas, 2017).

3. **Theoretical Foundations for Accepting or Rejecting Immunities**

3.1. *Philosophical Foundations*

The acceptance or rejection of immunities in international criminal law is based on multiple philosophical foundations, each offering a distinct perspective on criminal justice. Retributive justice emphasizes the punishment of perpetrators as a response to crime and criticizes immunities for undermining this principle. For example, granting immunity to a military officer based on "superior orders" may conflict with this perspective by weakening justice for victims (Ahmadi, 2016). In contrast, restorative justice focuses on reconciliation, social rehabilitation, and the empowerment of victims, thereby justifying immunities in cases such as cooperation with the Court or testimony against other defendants. For instance, in the *Katanga* case (ICC, 2014), the defendant's cooperation was considered a mitigating factor, aligning with the goals of restorative justice.

Pragmatic theories also support immunities when they contribute to practical objectives such as peace or the prevention of future crimes. For example, during peace negotiations in Uganda (2006–2008), the proposal of immunity for certain members of the Lord's Resistance Army was introduced as an incentive to end the conflict (Abbasi, 2021). These diverse philosophical

approaches highlight the complexity of the issue and underscore the necessity of balancing justice with practical outcomes. This tension is also reflected in international legal doctrine, where scholars such as Schabas advocate for flexibility, while others like Cassese prefer a more rigid approach (Ardabili, 2014; Schabas, 2017).

3.2. *Ethical Foundations*

From an ethical standpoint, the acceptance of immunities aligns with the principle of fairness, particularly in cases involving coercion or reasonable ignorance. For instance, a soldier who commits a war crime under threat of death may be considered less morally culpable, and their exemption from punishment may be consistent with ethical principles. This view is rooted in Kantian moral philosophy, which emphasizes free will and moral responsibility. However, global ethics—rooted in human rights documents such as the Universal Declaration of Human Rights—emphasize the necessity of accountability for heinous crimes. Broad immunities may undermine victim trust and exacerbate perceptions of injustice.

This tension was evident in the *Ongwen* case (ICC, 2021), where victims demanded full punishment while the defendant claimed coercion. The case illustrates the need for a balanced approach that considers both fairness and victim rights. Scholars like Bassiouni argue that immunities should be granted only in consultation with victim representatives to enhance their moral legitimacy (Ahmadi, 2016). This analysis highlights the ethical complexities of immunities and the need for a coherent framework to manage them.

3.3. *Legal Foundations*

Legally, the Rome Statute adopts a restrictive approach to immunities. Article 31 narrowly defines defenses with strict conditions: self-defense must be proportionate and necessary; duress must involve imminent threat; and intoxication or mental disorder must entirely impair volition. Article 33 also constrains the “superior orders” defense under highly limited conditions. These restrictions align with international instruments such as the Geneva Conventions and the Nuremberg Charter, which emphasize accountability. For example, the Nuremberg Charter completely rejected the “just following orders” defense, a stance that the Rome Statute modifies with caution (Ardabili, 2014).

This legal framework demonstrates an attempt to prevent impunity and ensure justice while offering limited flexibility for fairness. For instance, Article 32 allows for the review of factual or legal mistakes under specific circumstances. Yet in cases such as *Kunarac* (ICTY, 2001), the Court assessed such defenses with caution to prevent abuse. This demonstrates the delicate balance between fairness and accountability within the ICC’s legal system. Scholars such as Kress recommend that the Court develop more precise standards for evaluating defenses to avoid inconsistency (Brouman, 2016).

3.4. *Theoretical Conflicts*

The core theoretical conflict lies in balancing justice with fairness. Broad immunities may result in impunity and erode victim trust, while blanket rejection of immunities may lead to perceived injustice. For instance, recognizing coercion as a defense in war crimes cases may open the door to exploitation by perpetrators, while rejecting it outright could unjustly penalize those acting under severe duress. This tension is reflected in international legal doctrine. Cassese argues that immunities should be interpreted in a way that does not undermine accountability, while Schabas advocates greater flexibility for restorative justice purposes (Ardabili, 2014; Schabas, 2017).

This dilemma was also evident in the *Lubanga* case (ICC, 2012), where the Court attempted to strike a balance between justice and fairness by considering mitigating factors. This analysis points to the need for a coherent framework that accounts for both the Court’s objectives—ending impunity, deterrence, and victim protection—and fairness principles. Examining such conflicts deepens the understanding of the theoretical and practical complexities surrounding immunities.

3.5. *Critical Analysis*

A critical analysis of immunities reveals that their broad application may conflict with the Court’s foundational goals. For example, extensive immunities can diminish public confidence in the ICC and weaken its legitimacy, especially in communities

affected by international crimes. This concern was apparent in the *Katanga* case (ICC, 2014), where victims criticized the reduced sentence resulting from the defendant's cooperation. Nevertheless, limited flexibility—such as in cases of restorative justice or cooperation—is necessary to achieve practical outcomes like peace and reconciliation.

In the *Lubanga* case, the Court moderated the sentence in an attempt to reconcile accountability with fairness. This analysis suggests that immunities must be applied within strict standards and with consideration for victims' rights to maintain the balance between justice and fairness. Scholars like Kress propose that the Court establish a clearer framework for assessing immunities to avoid inconsistent interpretations (Brouman, 2016). This critical perspective highlights the need to reassess the immunity regime to strengthen the legitimacy and effectiveness of the ICC.

4. Identifying the Role of Immunity in Exemption from Punishment in International Crimes

Immunity in international law is recognized as a barrier to the criminal prosecution of state officials or specific individuals and can indirectly influence exemption from punishment in international crimes. Immunities are generally classified into two primary types: *personal immunity*, which protects high-ranking state officials such as heads of state, prime ministers, or foreign ministers from prosecution during their term of office, and *functional immunity*, which shields official acts of state representatives from prosecution in foreign courts (Akande, 2011). Within the framework of the Rome Statute, Article 27 explicitly states that neither personal nor functional immunity precludes the jurisdiction of the International Criminal Court (ICC) over international crimes. This article, designed to end impunity for those responsible for grave crimes such as genocide, war crimes, and crimes against humanity, represents a significant development in international criminal law (Schabas, 2017).

Nevertheless, in practice, immunities continue to pose challenges to criminal prosecution, particularly in cases where states fail to cooperate with the Court or refuse to enforce its rulings due to political considerations. The role of immunity in exemption from punishment manifests indirectly through procedural and political obstacles.

For instance, in the *Omar al-Bashir* case (ICC-02/05-01/09, 2009), the then-President of Sudan remained shielded from arrest and surrender to the Court due to personal immunity, despite the ICC issuing an arrest warrant for charges of genocide, war crimes, and crimes against humanity in Darfur. The Court emphasized that Article 27 renders personal immunity ineffective before the ICC. However, the refusal of cooperation from both member and non-member states—such as Sudan and certain African countries—disrupted the delivery of justice (ICC-02/05-01/09, 2019, para. 127).

This case underscores the tension between Article 27 of the Rome Statute and the traditional norms of international law concerning the immunity of officials, which continue to play a significant role in international relations (Akande, 2011). The ICC responded by issuing decisions that reiterated the obligation of member states to cooperate with the Court and disregard immunities. Yet, due to the lack of robust enforcement mechanisms, these decisions often proved ineffective.

Although immunity is not explicitly listed as a defense under Articles 31 to 33 of the Rome Statute, it can practically lead to exemption from punishment, as accused individuals remain beyond the Court's reach. Legally, immunity differs fundamentally from the defenses outlined in Articles 31 to 33, as it pertains to the jurisdiction of the Court, whereas those defenses relate to the individual's criminal responsibility. However, in practice, immunity may have similar effects to exemption, in that perpetrators avoid prosecution (Habibzadeh, 2017).

International criminal law doctrine stresses that Article 27 of the Rome Statute marks a crucial step toward eliminating immunities in international crimes, though political and diplomatic challenges continue to obstruct full implementation of this principle (Ardabili, 2014). For instance, some states argue that official immunity is necessary to preserve political stability and diplomatic relations, whereas the ICC and proponents of international criminal justice maintain that immunities must not hinder the prosecution of serious crimes.

This tension was clearly evident in the *al-Bashir* case, in which the African Union urged member states to ignore ICC rulings and honor al-Bashir's immunity (Akande, 2011). In response, the ICC reaffirmed the obligation of states to cooperate. However, the absence of widespread political support limited the impact of these decisions.

From a practical standpoint, immunity can act as an indirect barrier to justice—especially when accused individuals reside in states that do not cooperate with the Court. For example, in the *Saif al-Islam Gaddafi* case (ICC-01/11-01/11, 2011), the accused remained at large in Libya, a non-state party to the Rome Statute, thus avoiding arrest despite facing charges of crimes

against humanity. This case illustrates the limitations faced by the Court in executing its rulings against individuals enjoying political or territorial immunity (Wurff & Hosseini, 2019).

International legal scholarship proposes that to mitigate the effects of immunity, the ICC should strengthen its cooperation with international organizations such as the United Nations and utilize diplomatic pressure to encourage compliance with its rulings (Schabas, 2017). Additionally, some scholars believe that the development of new international legal norms—such as the Responsibility to Protect (R2P) principle—can contribute to reducing immunities and reinforcing the enforcement of international criminal justice. For example, R2P may serve as a basis for pressuring states to cooperate with the ICC and overlook official immunities, particularly in cases involving atrocities such as genocide or crimes against humanity.

Future research should explore legal and political strategies for enhancing state cooperation with the ICC and reducing the impact of immunities. For instance, developing stronger enforcement mechanisms, such as international sanctions against non-cooperating states, could support the implementation of ICC rulings. Moreover, strengthening collaboration with regional organizations such as the African Union or the European Union could reduce political tensions and promote wider acceptance of Article 27 of the Rome Statute (Tahmasbi, 2023).

In conclusion, while immunity may indirectly lead to exemption from punishment, the ICC, through its emphasis on Article 27 and development of judicial precedents, has attempted to overcome this obstacle. These efforts reflect the Court's commitment to ending impunity and upholding international criminal justice. However, the success of this mission ultimately depends on broader international cooperation (Ardabili, 2014).

5. Clarifying Territorial Jurisdiction and the Relationship Between the Severity of Crimes and Exemption from Punishment in International Crimes

Territorial jurisdiction is one of the fundamental pillars of the International Criminal Court's jurisdiction, as codified in Article 12 of the Rome Statute. According to this article, the Court may exercise jurisdiction over crimes committed on the territory of State Parties or states that have accepted the jurisdiction of the Court (Schabas, 2017). Territorial jurisdiction plays a critical role in enabling prosecution and assessing the admissibility of defenses under Articles 31 to 33, as it determines whether the Court can entertain a case at all.

The relationship between the gravity and scale of crimes and exemption from punishment is also significant from both legal and practical standpoints. More severe crimes, such as genocide or crimes against humanity, are generally subject to stricter scrutiny when it comes to accepting legal defenses (Wurff & Hosseini, 2019). This section explores the role of territorial jurisdiction, how local conditions affect defenses, and the impact of the gravity of crimes on the likelihood of exemptions.

The ICC's territorial jurisdiction enables it to prosecute crimes committed within the territory of State Parties, even when the accused are nationals of non-member states. For example, in the *Dominic Ongwen* case—pertaining to crimes committed in Uganda (a State Party)—the ICC exercised jurisdiction under Article 12 to prosecute war crimes and crimes against humanity (ICC-02/04-01/15, 2021). In this case, the defendant claimed duress, arguing that the wartime conditions and threats from the Lord's Resistance Army (LRA) leadership compelled him to commit the crimes.

The Court examined the local conditions of the crime scene, including the intensity of the conflict, the organizational structure of the LRA, and the available evidence, ultimately concluding that Ongwen, as a senior commander, had decision-making power and alternative options to avoid committing the crimes. He failed to demonstrate imminent threat, absence of alternatives, and proportionality of action (ICC-02/04-01/15, 2021, para. 267).

This case illustrates how territorial jurisdiction enables the Court to assess defenses thoroughly. However, local conditions such as armed conflict or political instability may complicate such evaluations (Wurff & Hosseini, 2019).

Local conditions at the crime scene can directly influence claims of duress, necessity, or self-defense. In regions experiencing armed conflict, such as Uganda or the Democratic Republic of Congo, chaos, lack of communication infrastructure, and social pressure may lead to such claims. Yet, the Court applies stringent standards and refuses to accept these defenses without compelling evidence.

For instance, in the *Germain Katanga* case, the defendant argued that he was unaware of the illegality of his attacks due to the wartime context in Congo and claimed a factual mistake. The Court reviewed territorial conditions—including reports from

humanitarian organizations, witness testimony, and military records—and concluded that the accused was aware of the civilian nature of the victims, rejecting his claim of mistake (ICC-01/04-01/07, 2014, para. 214).

The Court's approach reflects an awareness of territorial context when assessing defenses, but emphasizes both objective and subjective criteria, such as the existence of imminent threat or the accused's reasonable belief, to avoid unsubstantiated claims (Schabas, 2017).

For example, in a hypothetical scenario where a soldier claims he committed a crime due to lack of accurate information in a war zone, the Court would first examine objective evidence (e.g., military reports, witness accounts) and then assess the soldier's subjective belief in the information's accuracy. The Court also considers conflict intensity, information access, and command structure to ensure the defense aligns with the reality of the situation (Habibzadeh, 2017).

The severity and scale of crimes also play a critical role in whether defenses are accepted. Grave crimes such as genocide or crimes against humanity—due to their extreme nature, far-reaching consequences, and large number of victims—are generally subject to stricter standards in accepting defenses.

Article 33 of the Rome Statute clearly states that orders to commit genocide or crimes against humanity cannot be defended on the grounds of obedience due to their manifest illegality (Ardabili, 2014). This limitation illustrates how the severity of crimes impacts the admissibility of defenses, as egregious violations of international norms render claims of ignorance or coercion highly implausible.

In the *Jean-Pierre Bemba* case, the Court emphasized that the scale of atrocities—such as civilian massacres and mass looting—made it impossible to accept the defense of superior orders, as the acts were obviously unlawful (ICC-01/05-01/08, 2016, para. 198). The Court analyzed evidence including the number of victims, the intensity of violence, and social impacts, concluding that the accused, as commander, was aware of the illegality of his actions.

International legal doctrine supports this view, asserting that factors such as victim count, violence level, and long-term effects can justify stricter thresholds for defense admissibility. In large-scale crimes like genocide, the Court tends to scrutinize claims of duress, self-defense, or mistake more rigorously, as their acceptance may lead to impunity and undermine international criminal justice.

Practically speaking, the severity of crimes also affects evidence collection and defense evaluation. In conflict zones like Uganda or Congo, gathering evidence to confirm or refute defenses is difficult due to insecurity, infrastructure breakdown, and social pressures.

In the *Thomas Lubanga* case, the Court faced major challenges collecting evidence, as the conflict in Congo restricted access to witnesses and documents. Despite this, the Court relied on international reports, witness testimony, and available documentation to conclude that the accused was aware of the illegality of his conduct and that his claim of self-defense was inadmissible (ICC-01/04-01/06, 2012, para. 305).

This case highlights how territorial conditions and crime severity impact judicial proceedings, compelling the Court to overcome practical barriers while applying strict standards to defense claims (Wurff & Hosseini, 2019).

In a hypothetical scenario where a defendant claims lack of evidence led to their criminal behavior, the Court would examine available sources such as UN or NGO reports, and also indirect evidence like crime patterns, to avoid accepting unsubstantiated defenses.

Legally, the severity of crimes influences how Articles 31 to 33 are interpreted. In grave crimes like genocide, the Court tends to enforce stricter standards for accepting defenses such as duress or mistake, given the specific intent and systematic planning involved.

In the *Katanga* case, the Court reiterated that the severity of crimes, such as attacks on civilians, made the acceptance of defenses like factual mistake difficult, as it was presumed that the accused was aware of the illegality of such acts (ICC-01/04-01/07, 2014, para. 214). The Court considered the number of victims, the level of violence, and social impacts, ultimately finding that the accused was aware of the unlawful nature of his actions and that his defense was inadmissible.

This approach is aimed at preserving the principle of accountability and preventing impunity for perpetrators of grave international crimes (Schabas, 2017).

International criminal doctrine affirms that crime severity is a determining factor in evaluating defenses, as egregious violations are so manifestly illegal that claims of ignorance or coercion are scarcely credible (Ardabili, 2014).

From a comparative perspective, the gravity of crimes influences defense admissibility in national legal systems as well. For example, in common law jurisdictions, the severity of the offense may lead to stricter standards for defenses like duress or self-defense. This approach is even more pronounced in international criminal law due to the extraordinary nature of ICC crimes, which often involve mass harm and flagrant violations of global norms (Habibzadeh, 2017).

6. The Consequences of Exemption and Dismissal of Criminal Responsibility and Their Implications

6.1. The Impact of Exemptions on Global Justice

Exemptions affect not only individual cases but also the broader concept of global justice. The acceptance of exemptions may be seen as a sign of flexibility by the ICC; however, it can simultaneously weaken international justice standards. For instance, in the *al-Bashir* case (ICC, 2009), failure to enforce the arrest warrant due to political pressure and exemption proposals damaged the ICC's legitimacy in the face of accusations of political bias. This case illustrates the influence of exemptions on global perceptions of international criminal justice.

Bassiouni argues that exemptions must align with global human rights standards to preserve the Court's legitimacy (Ahmadi, 2016). This analysis emphasizes the need for a strategic approach to granting exemptions—one that upholds fairness while reinforcing the ICC's role in the international justice system. For instance, the Court can enhance public trust by increasing transparency in decision-making and consulting victim representatives. This highlights the importance of coordination between the aims of criminal justice and global justice standards.

6.2. The Impact of Exemptions on Deterrence

One of the primary goals of the ICC is to deter international crimes. However, exemptions may undermine this goal. Broad acceptance of exemptions could reduce the deterrent effect of the Court, as potential perpetrators may believe they can evade responsibility.

For example, in the *Katanga* case (ICC, 2014), sentence reduction due to the accused's cooperation triggered criticism that such a decision weakened the deterrent message. Conversely, scholars such as Schabas argue that limited exemptions can actually support deterrence, since cooperation from defendants may aid in identifying and prosecuting additional perpetrators (Schabas, 2017). This tension highlights the need to balance flexibility with deterrence. The ICC can preserve its deterrent impact by granting exemptions within transparent standards and maintaining a strong emphasis on accountability. This analysis reflects the complexity of how exemptions influence the Court's core objectives.

6.3. Victims' Rights Within the ICC Framework

Victims' rights are a central pillar of the ICC, enshrined in Articles 68 (victim protection) and 75 (reparations) of the Rome Statute. Victims are entitled to participate in criminal proceedings, receive reparations, and benefit from justice. However, exemptions may compromise these rights.

In the *Katanga* case (ICC, 2014), sentence reduction due to the defendant's cooperation was criticized by victims who felt it undermined justice. This demonstrates the inherent tension between exemptions and victims' rights.

Scholars such as Moffett argue that the ICC should establish mechanisms for greater victim participation in decisions related to exemptions to enhance its legitimacy (Benzing, 2011). For instance, the Court could hold consultative meetings with victim representatives to ensure exemption-related decisions respect their rights. This approach would not only strengthen the ICC's legitimacy but also support restorative justice.

6.4. The Impact of Exemptions on the Legitimacy of the Court

Exemptions can affect the legitimacy of the ICC by fueling accusations of politicization or inefficiency. For example, in the *al-Bashir* case (ICC, 2009), exemption proposals arising from political pressure led to widespread criticism portraying the Court as politically influenced.

This case illustrates how exemptions shape public perceptions of the ICC. Schabas contends that exemptions must be applied transparently and in accordance with human rights standards to preserve the Court's legitimacy (Schabas, 2017). For instance, the ICC could publish detailed reports explaining the rationale behind exemptions to foster public trust. This analysis highlights the need for a strategic approach that balances fairness with the Court's standing in the global justice architecture and aligns the ICC's objectives with global expectations.

6.5. *Balancing Exemptions and Victims' Rights*

Striking a balance between exemptions and victims' rights is one of the ICC's most significant challenges. For example, in the *Lubanga* case (ICC, 2012), the Court attempted to mitigate the impact of sentence reduction by providing reparations to victims. However, financial and logistical constraints limited the effectiveness of these efforts.

Bassiouni recommends that the Court develop monitoring mechanisms to assess how exemptions affect victims and ensure their rights are upheld (Ahmadi, 2016). For instance, the ICC could establish an independent committee to evaluate the impact of exemptions on victims. Achieving this balance requires coordination among the goals of criminal justice, restorative justice, and victims' rights—mandating a holistic approach from the Court. This analysis demonstrates the complexities of managing exemptions and the need for a multi-dimensional strategy to ensure justice.

6.6. *The Impact of Exemptions on Social Reconciliation*

Exemptions can influence social reconciliation in post-conflict societies. For example, South Africa's Truth and Reconciliation Commission (1995–1998) used exemptions to encourage confessions from apartheid-era perpetrators, contributing to societal healing—though it was also met with criticism.

In the ICC context, exemptions may help reduce social tensions, but must be applied with sensitivity to victims' rights. In the *Lubanga* case (ICC, 2012), reparations helped reduce societal tensions, but sentence reduction drew criticism. Moffett suggests that exemptions should be accompanied by reparations and victim empowerment programs to promote reconciliation (Benzing, 2011). This analysis indicates the need for a comprehensive approach to exemptions that ensures both peace and justice.

6.7. *The Impact of Exemptions on Public Trust*

Public trust in the ICC is essential to its success. Exemptions may erode this trust, especially in communities affected by international crimes. For instance, in the *Katanga* case (ICC, 2014), sentence reduction due to the defendant's cooperation was widely criticized by victims and human rights organizations, who argued that the decision weakened confidence in the Court.

Moffett argues that the ICC should strengthen public trust through greater transparency and victim involvement in decision-making processes (Benzing, 2011). For example, the Court could host public forums to explain the reasoning behind exemptions. Such an approach not only boosts public confidence but also enhances the ICC's legitimacy. This analysis underscores the importance of public trust in the ICC's success and the need for careful management of exemptions.

7. **The Approach of International Criminal Law Doctrine to Exemption and Dismissal of Responsibility**

7.1. *Theoretical Perspectives*

The doctrine of international criminal law adopts a cautious and restrictive stance toward exemption from responsibility and immunity from punishment. Antonio Cassese, in his work on international criminal law, argues that exemptions must be interpreted in a way that does not undermine the principle of accountability. He considers defenses such as duress or superior orders acceptable only in exceptional circumstances and upon proof of the absence of full volition. Drawing on the Nuremberg Trials, Cassese asserts that the "superior orders" defense should not become a tool for escaping justice (Ardabili, 2014).

William Schabas, in his introduction to the ICC, emphasizes the deterrent and restorative justice aims of the Court. He believes that certain exemptions—such as sentence reduction for cooperation—can serve the Court's objectives but should

never result in impunity for perpetrators of serious crimes. By analyzing the *Lubanga* case, Schabas demonstrates how the defendant's cooperation contributed to the realization of restorative justice (Schabas, 2017).

Christian Kreß, in his analysis of the crime of aggression, underscores the need for narrowly interpreting the defenses under Article 31. He argues that broadly accepting defenses such as self-defense may open the door to abuse by perpetrators of war crimes (Brouman, 2016). These viewpoints reflect the diversity of doctrinal approaches, but they all converge on the importance of limiting exemptions to preserve the integrity of international criminal justice.

Moreover, scholars such as Bassiouni stress that the application of exemptions must also respect the rights of victims (Ahmadi, 2016).

7.2. *The Impact of Doctrine on the Rome Statute*

The doctrine of international law has played a significant role in shaping Articles 31, 32, and 33 of the Rome Statute. Cassese's views on limiting the "superior orders" defense are clearly reflected in Article 33, which only allows this defense under strict conditions. The provision is inspired by the Nuremberg jurisprudence and Cassese's doctrinal analyses, aimed at preventing abuse.

Likewise, Schabas's contributions regarding restorative justice have informed the Court's approach to sentencing, where factors such as the defendant's cooperation are considered. This is evident in the *Katanga* case (ICC, 2014), in which the Court referenced restorative justice doctrine when adjusting the sentence.

Kreß, through his analysis of Article 31 defenses, has contributed to the development of precise standards for evaluating such claims. This interaction between doctrine and legislation highlights the significance of theoretical analysis in shaping legal norms and underscores the role of doctrine as a bridge between theory and practice. For instance, doctrinal input during the Rome Conference (1998) helped to shape a coherent legal framework for exemptions (Ambos, 2013).

7.3. *Comparative Analysis of Doctrine*

International legal doctrine contains two principal schools of thought: liberal approaches, which accept exemptions under specific circumstances, and strict approaches, which reject them due to the risk of fostering impunity.

The liberal approach, exemplified in the works of Schabas, emphasizes flexibility in the context of restorative justice and holds that exemptions may contribute to peace and reconciliation. For example, Schabas argues that sentence mitigation in the *Lubanga* case helped achieve restorative justice goals (Schabas, 2017).

In contrast, the strict approach, represented by Cassese and Kreß, focuses on the necessity of accountability and the limitation of exemptions. Cassese stresses that defenses such as duress must not lead to impunity (Ardabili, 2014). This strict approach has been dominant in cases such as *Lubanga* and *Katanga*, where the Court evaluated exemptions with caution.

Comparative analysis shows that while the strict doctrine prevails in ICC jurisprudence, the liberal approach serves a complementary role in post-conflict contexts, such as peace negotiations. The diversity of views reflects the theoretical complexity of exemptions and the need for a coherent framework that ensures both fairness and accountability.

7.4. *Doctrinal Challenges*

One of the central challenges within the doctrine is balancing exemptions with victims' rights. For instance, granting exemption due to cooperation with the Court may erode victims' trust, especially in communities devastated by international crimes. This tension was visible in the *Ongwen* case (ICC, 2021), where victims demanded full punishment, while the defendant claimed duress and psychological disorders.

Another challenge lies in the influence of political pressure on the acceptance of exemptions, which can compromise the Court's legitimacy. In the *al-Bashir* case (ICC, 2009), proposals for exemption emerged under political pressure and led to widespread criticism.

The doctrine recommends that exemptions be applied within the framework of restorative justice and with full respect for victims' rights. However, this balance is difficult to maintain in practice. Scholars like Bassiouni suggest that the ICC should

establish monitoring mechanisms to oversee the implementation of exemptions and enhance transparency and legitimacy (Ahmadi, 2016). These challenges demonstrate the need for closer coordination between doctrinal insights and judicial practice.

7.5. *Doctrinal Recommendations*

The doctrine of international criminal law offers several proposals to reform the exemption regime. Cassese suggests that the Court should develop a clearer framework for assessing defenses to avoid inconsistent interpretations (Ardabili, 2014). Schabas emphasizes strengthening the role of victims in the criminal process and proposes that exemptions be applied in consultation with victim representatives (Schabas, 2017).

Kreß also advocates revisiting Article 31 to impose stricter limits on defenses such as self-defense (Brouman, 2016). Bassiouni recommends establishing oversight mechanisms to ensure that the impact of exemptions on victims is monitored and their rights upheld (Ahmadi, 2016).

These recommendations represent the doctrine's efforts to improve the exemption system and align it with the ICC's objectives. Furthermore, some scholars advocate that the ICC should draw lessons from ad hoc tribunals like the ICTY and ICTR to develop more coherent standards. These suggestions serve as guidance for the ICC and future research in the field.

7.6. *The Influence of Doctrine on the ICC's Jurisprudence*

International criminal law doctrine has influenced not only the drafting of the Rome Statute but also the jurisprudence of the International Criminal Court. For example, Cassese's analysis of the "superior orders" defense was referenced in the *Blaškić* case (ICTY, 2000), where the tribunal rejected the defense due to the manifest illegality of the order (Ardabili, 2014). Similarly, Schabas's views on restorative justice contributed to the Court's consideration of mitigating factors in sentencing in the *Lubanga* case (ICC, 2012), showing how doctrine serves as guidance for ICC judges and highlights the importance of theoretical analysis in interpreting and applying the law.

Nonetheless, challenges persist—such as variations in doctrinal interpretation by different judges—which can lead to inconsistency in jurisprudence. For example, in the *Katanga* case, some judges adopted a more liberal approach toward exemptions, while others favored a stricter interpretation. This illustrates the need for closer alignment between doctrine and judicial practice (Ambos, 2013).

7.7. *The Role of Doctrine in Shaping Global Criminal Justice Discourse*

International legal doctrine has shaped not only the ICC but also the broader discourse on global criminal justice. Theoretical contributions by scholars such as Cassese and Schabas have influenced the development of international human rights and criminal justice standards. For instance, Cassese's views on the principle of non-immunity have been cited in UN documents and international conferences (Ardabili, 2014). Schabas's analysis of restorative justice has contributed to strengthening the role of victims in both national and international justice systems (Schabas, 2017).

This impact reflects the role of doctrine as a driving force in shaping not only legal norms but also ethical and social values. Nevertheless, challenges such as divergent doctrinal interpretations and the influence of political pressure can complicate this discourse. These realities highlight the need for greater coordination between academic doctrine and international legal institutions.

8. Conclusion

The legal framework governing the dismissal of criminal responsibility and exemption from punishment in international crimes—especially under the Rome Statute of the International Criminal Court—is among the most complex and sensitive areas in international criminal law. It aims to strike a delicate balance between the fundamental principle of individual accountability and the necessity of protecting defendants' rights. Codified in Articles 31 through 33 of the Statute, the system

provides a narrowly defined legal structure for addressing grave crimes such as genocide, war crimes, crimes against humanity, and the crime of aggression.

This framework, while allowing limited exceptions such as self-defense, duress, necessity, mental disorder, involuntary intoxication, and mistake of law or fact, is designed to preserve accountability and restrict the scope of permissible defenses. The ICC has adopted a strict interpretive stance toward these provisions, thereby reinforcing the principle of individual criminal responsibility.

The Court's jurisprudence, particularly in cases such as *Lubanga*, *Ongwen*, and *Bemba*, reflects a commitment to evaluating defenses through both objective and subjective criteria. However, legal, practical, and political challenges—including conceptual ambiguity, difficulties in evidence collection, and political interference—continue to hinder the full realization of this legal regime.

The distinction between justification and exemption plays a central role: while justification (e.g., self-defense or necessity) negates the criminality of the act itself, exemption from punishment (e.g., mental disorder or duress) affirms the act's illegality but relieves the perpetrator from sentencing. The ICC has applied this distinction to preserve legal coherence and fairness in adjudication.

Territorial jurisdiction and the severity of crimes further shape the evaluation of defenses, as local contexts and the egregious nature of the crimes demand stricter admissibility standards. To improve this system, the Court should develop clearer criteria for evaluating ambiguous defenses, enhance cooperation with international institutions, and strengthen its legitimacy by addressing accusations of partiality.

Future research should explore how emerging challenges—such as environmental or cyber-related crimes—affect the application of this system and identify solutions to reinforce the enforcement of international criminal justice. Ultimately, while the framework for exemption and dismissal of responsibility in the Rome Statute represents a major step toward ending impunity and achieving international justice, its success depends on broader global cooperation.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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