

# Duties and Powers of the Prosecutor of the International Criminal Court in Different Stages of Proceedings

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## Abstract

The establishment of the International Criminal Court (ICC) represents a symbol and embodiment of certain fundamental values and aspirations shared among all peoples of the world and, as such, constitutes a victory for all humanity. The ICC is not a panacea for all human suffering; it does not end conflicts, it does not restore life to victims, it does not return former welfare and comfort to survivors, and it does not bring all perpetrators to justice. However, the Court can assist in preventing some conflicts, reducing the number of victims, and holding certain perpetrators accountable. In this respect, the ICC, like other legal and international institutions, can help us build a more humane civilization. Considering the above, the central question raised in this study is: How can the Prosecutor of the International Criminal Court address non-international armed conflicts? This study, using a descriptive-analytical method, evaluates the hypothesis that the ICC Prosecutor may counter non-international armed conflicts through the United Nations Security Council and the adoption of relevant resolutions, as well as propose practical solutions. This is because, under Article 13 of the Rome Statute, one of the conditions for the Court to exercise jurisdiction is the referral of a situation to the Prosecutor by the Security Council. Among the main objectives of this research is to examine the duties and challenges faced by the Prosecutor of the ICC with regard to war crimes committed in non-international armed conflicts.

**Keywords:** International Criminal Court, Prosecutor, Duties and Powers

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## 1. Introduction

One of the most controversial subjects discussed during the work of the Preparatory Committee, as well as in the sessions of both the general and specialized committees of the Rome Diplomatic Conference, was the issue of the Prosecutor's Office, particularly the role of the Prosecutor. Like any other criminal court, the International Criminal Court (ICC) requires a prosecutorial body, headed by a judge bearing the title "Prosecutor," who is responsible for overseeing and administering this powerful judicial institution. The Office of the Prosecutor, as one of the most important organs of the Court (Article 34 of the

Rome Statute), is, in essence, the beating heart of this global judicial organization and performs its duties independently (Zakavi & Babaei, 2015).

Article 42 of the Rome Statute, under the title “The Office of the Prosecutor,” contains significant provisions regarding this component of the Court’s judicial structure. According to paragraph (1) of this article, the Office of the Prosecutor is responsible for receiving referrals of situations by State Parties or the Security Council, as well as any significant information related to crimes under the Court’s jurisdiction. Undoubtedly, the existence of a strong and independent Prosecutor’s Office at the core of the ICC is a fundamental necessity for a global system of criminal justice, as the investigation and prosecution of the gravest international crimes is entrusted to this organ (Mir Mohammad Sadeghi, 2010; Zakavi & Babaei, 2015).

In Iran’s domestic law, the Prosecutor, Deputy Prosecutor, and Assistant Prosecutor occupy parallel hierarchical positions within the Prosecutor’s Office, with the Prosecutor at the top. The deputies and assistants follow both the administrative instructions and even the judicial opinions of the Prosecutor. The head of the Prosecutor’s Office, i.e., the Prosecutor, is responsible for the detection of crimes, the prosecution of accused individuals, the institution of criminal actions from the perspective of divine rights, the protection of public rights and Islamic limits (hudud), the execution of sentences, and the handling of non-litigious matters in accordance with legal regulations (Khaleghi, 2015).

The actions of the Prosecutor in cases involving private crimes begin upon the complaint of a private plaintiff. Likewise, in international criminal courts—from the Nuremberg Tribunal to the International Criminal Court—the Prosecutor has headed the prosecutorial body and has been inherently responsible for investigation and prosecution. The Prosecutor’s Office is administered by the Prosecutor, who bears both judicial and administrative responsibilities within it. From a legal standpoint, the office of the Prosecutor, as the organ initiating investigations, is one of the key pillars of the Court (Christian & Ghasemi, 2004).

According to Article 14 of the Nuremberg Charter, each of the four signatory states to the London Agreement was to appoint one Chief Prosecutor to the Tribunal. Thus, the Nuremberg Tribunal had four Prosecutors, each tasked with forming a committee to investigate and prosecute war criminals under their jurisdiction. Furthermore, under Article 15, the Chief Prosecutors personally and jointly carried out tasks such as interrogating defendants and witnesses, preparing indictments, and performing other investigative duties (Azimi, 1962).

Just as stipulated in the Statutes of the Nuremberg and Tokyo Tribunals, in the International Criminal Tribunal for the former Yugoslavia (ICTY), the phase of gathering information and initiating investigations and prosecutions was assigned to the Prosecutor. According to paragraph (1) of Article 16 and Article 18 of the ICTY Statute, the Prosecutor was responsible for prosecuting individuals who violated international humanitarian law from 1991 onwards (Anto et al., 2008). Similarly, under Article 15 of the Statute of the International Criminal Tribunal for Rwanda (ICTR), the Prosecutor was tasked with investigating and prosecuting individuals responsible for gross violations of international humanitarian law committed in Rwanda between January 1, 1994, and December 31, 1994 (Anto et al., 2008).

In the same manner, within the International Criminal Court and pursuant to Article 53 of the Rome Statute, the Prosecutor is the authority responsible for investigating and prosecuting crimes within the Court’s jurisdiction. The Prosecutor is obligated to commence investigations after reviewing and evaluating the information available unless it is determined that there is no reasonable basis to proceed under the Statute. It is evident that holding the position of Prosecutor within the world’s foremost institution of criminal justice requires fulfilling both the substantive and formal qualifications prescribed by the Statute of the Court (Barzegar Qaramalki, 2002).

## **2. The Process of Establishing the International Criminal Court**

Establishing peace and security in the world has always been one of humanity’s greatest aspirations throughout history. The promise of such a state of peace in the future has been made to people by many religions. Human society has also made extensive efforts to achieve this ideal, or at least to reduce the level of crime and insecurity across the globe (Al-Habib, 1999). Heinous crimes have long been observed on the international stage and have provoked various responses. Thus, in order to ensure global peace and security, holding perpetrators of international crimes accountable before judicial or quasi-judicial institutions is essential. This process enables the realization of justice, quells the desire for revenge in victims, and even prepares

them to resume peaceful lives alongside former perpetrators—a matter that is crucial for countries that have experienced intense internal conflicts. Crimes that provoke such global sensitivity, and which all states consider themselves obligated to address, can be examined across several historical periods (Nou Peyvast, 2008).

The evolutionary process leading to the establishment of the International Criminal Court (ICC) can be divided into two distinct phases:

### 2.1. Before World War II

To better understand the ICC, a review of its historical background is helpful. When international criminal law is discussed, most people recall the Nuremberg Tribunal, while in fact, humanity's efforts to denounce and punish war criminals trace back to ancient times and have been documented across various civilizations, as examined below.

#### 2.1.1. From Antiquity to 1918

The idea of establishing an international criminal court dates back over 100 years. Based on historical evidence, the earliest international criminal prosecution is believed to be the trial of *Conradin von Hohenstaufen* in 1268 CE for initiating an aggressive war (Schwarz, 1968). However, some scholars argue that courts for prosecuting war crimes existed as early as 405 BCE in ancient Greece (Eheri, 1999). Others have referred to similar legal proceedings in ancient China, Japan, and Persia (Wiliam, 2001). A concept resembling today's ICC—with supranational jurisdiction—emerged in 1474 CE with the tribunal of *Peter von Hagenbach*, who was prosecuted for crimes that would today be classified as crimes against humanity (Anto et al., 2008).

The trial of *Peter von Hagenbach* in 1474 is recognized as the first truly international prosecution. He was found guilty of brutal acts and beheaded. Appointed by Charles the Bold (Duke of Burgundy) as the governor of Breisach, von Hagenbach immediately created a reign of terror involving killings, expropriations, and oppressive taxation. After Burgundy's defeat in 1474, von Hagenbach was captured and a criminal tribunal composed of 27 judges from the Holy Roman Empire convened in Breisach, Germany, to try him for violating divine and human laws. He was accused of allowing his soldiers to kill enemy civilians and loot their property. This trial marked the first attempt to establish an international criminal tribunal (Shabath & Mirabasi, 2005).

The road to Rome was long and often contentious. The first proposal for establishing a permanent international criminal court to adjudicate grave violations of human values was made by *Gustave Moynier*, a Swiss national and one of the founders of the International Committee of the Red Cross. He proposed a five-member court to prosecute violations of the 1864 Geneva Convention, particularly in response to crimes committed during the Franco-Prussian War (Ardabili, 2007).

Indeed, the atrocities of the 1870–1871 Franco-Prussian War motivated Moynier to make this proposal. However, his suggestion clashed with the principle of state sovereignty and the domestic nature of criminal law, leading to its rejection. He later reiterated his proposal at the 1895 session of the Institute of International Law in Cambridge, but it was again rejected for ignoring national jurisdiction. Another attempt occurred in the early 20th century when the 1907 Hague Conference states agreed to create an international prize court to adjudicate issues involving seized ships. However, the court never materialized due to the failure of its founding document to be implemented. Until World War I, states only claimed jurisdiction over a limited number of crimes, regardless of where the crime was committed or the nationality of the perpetrator or victim.

#### 2.1.2. From 1918 to 1945

Following World War I, the idea of establishing an international criminal court gained more traction. The Allied Powers contemplated the creation of such a court to try atrocities committed by the Axis Powers, particularly Germany. In fact, as early as 1915, discussions on prosecuting war criminals had begun in the United States. The idea became more prominent with the proposal of *Theodore S. Woolsey*, a Yale University professor, advocating for an international criminal court to prosecute German atrocities (matthe, 1995).

The Treaty of Versailles, signed in 1919 between the Allied and Associated Powers and Germany, included provisions for the creation of a special international court to try Kaiser Wilhelm II for initiating the war (Christian & Ghasemi, 2004). The treaty also established a commission to identify those responsible for the war and determine their punishment. In March 1919, this fifteen-member commission reported on the Central Powers' responsibility for initiating the war, their violations of the laws of war, and crimes against humanity. Kaiser Wilhelm II was deemed responsible and efforts were made to prosecute him (Jafari, 2009). However, due to political considerations and the leniency of European powers, Wilhelm II was never prosecuted. The Netherlands refused to extradite him, and trials for other war criminals were transferred to Germany's Supreme Court. In practice, the Allies showed little will to prosecute the perpetrators of war crimes (Bigzadeh, 1996).

According to Articles 228–230 of the Versailles Treaty, the result was a compromise whereby Germany was to try its own soldiers—approximately 900 listed by the Allies. Eventually, only 40 cases were considered, and trials were conducted for 12 individuals, most of whom were acquitted or given light sentences (Azimi, 1962).

Importantly, even the victorious powers who founded these tribunals were skeptical of them. They struggled to distinguish whether these trials were acts of retribution against the defeated or genuine judicial processes (Javanmard, 2010). Despite the failure to establish a functioning international tribunal as envisioned by the Treaty of Versailles, the proposals by the Commission on Responsibilities and the provisions of the treaty marked a turning point in the globalization of criminal justice.

Another unsuccessful attempt to establish an international criminal court came in 1937 when the League of Nations prepared a draft convention to combat terrorism. This initiative followed the assassination of King Alexander I of Yugoslavia and the French Foreign Minister in Marseille by a radical Croatian nationalist in 1934. France pushed the League to give terrorism international legal status (Ardabili, 2007). This led to the adoption of the 1937 Convention on the Prevention and Punishment of Terrorism.

Attached to the convention was a protocol proposing the creation of an international criminal court to prosecute individuals accused of acts banned under the convention. This proposal, prepared by legal scholar *Vespasian V. Pella*, was approved by the League of Nations. However, due to the Spanish Civil War and the aggressive actions of Germany, Italy, and Japan, the project failed. The lack of state support led to its eventual abandonment (olasolo, 2005).

These failures, along with global issues such as the arms trade, drugs, international terrorism, and even commercial crimes, later prompted the international community to consider the creation of specialized international tribunals.

## 2.2. *After World War II*

With the outbreak of World War II, the idea of establishing an international criminal court once again gained attention. Post-war developments were significant both in terms of internationalizing criminal justice processes and in expanding the list of international crimes to include crimes against humanity and crimes against peace. During World War II, the Allied powers made their intention to prosecute war criminals clear through several declarations. At the beginning of the 20th century, the events of the Second World War drove the victorious states toward the creation of international courts to try war criminals. By the end of the century, growing global awareness of fundamental human rights and increased violations of human rights and humanitarian law created the conditions for asserting international criminal jurisdiction on a case-by-case basis (Akhtari, 2016).

This section examines several temporary and ad hoc measures:

### 2.2.1. *Temporary and Ad Hoc Mechanisms*

International criminal courts can be divided into seven main categories, discussed as follows:

#### 2.2.2. *The Nuremberg International Military Tribunal*

Given the massive atrocities committed by the German military after the start of World War II over a span of seven years in European countries, the Allied powers (France, the United Kingdom, the United States, and the Soviet Union) warned the leaders of Nazi Germany that once the war ended, criminal courts would be established to prosecute their crimes and that they

would be severely punished. To ensure that the Nazi leadership would take this warning seriously and moderate their widespread atrocities, the Allies formed the *United Nations War Crimes Commission* in 1942. The commission was tasked with collecting evidence of war crimes, identifying perpetrators and witnesses, and preparing reports on Nazi military atrocities.

After the unconditional surrender of the German army on May 8, 1945, the victorious Allies, in accordance with the Potsdam Agreement—which stated that military tribunals would be established to punish Nazi leaders and war criminals—signed the London Agreement on August 8, 1945, establishing the *Nuremberg International Military Tribunal* to prosecute those responsible for the most horrific crimes against humanity (Vahedi, 2010).

### 2.2.3. *The Tokyo International Military Tribunal*

Following the establishment of the Nuremberg Tribunal to prosecute war criminals in the European theater of World War II, the Allied powers initiated another tribunal in the Far East to prosecute Japanese war criminals. General Douglas MacArthur, the Supreme Commander of the Allied Forces in the Far East, established this court in Tokyo through a declaration on January 19, 1946. The official name of this tribunal was the *International Military Tribunal for the Far East*. Unlike the Nuremberg Tribunal—where four prosecutors jointly issued indictments—this tribunal appointed a single prosecutor selected by MacArthur, acting on behalf of the eleven signatory states of the Japanese surrender terms.

The tribunal began its work on May 3, 1946, and issued its final verdict on November 4, 1948. The Japanese defendants were prosecuted for initiating war, committing crimes against peace, and crimes against humanity. Ultimately, seven individuals were sentenced to death, sixteen to life imprisonment, one to twenty years in prison, and another to seven years.

### 2.2.4. *The Eichmann Trial*

Following the 1942 Wannsee Conference, where senior Nazi officials planned the “Final Solution” to exterminate the Jewish people, Adolf Eichmann emerged as the chief architect of transporting Jews from Germany and various parts of Europe to death camps. He was responsible for mass deportations of Jews and Poles to extermination camps over six years.

On the night of May 11, 1960, Eichmann was captured by an Israeli commando team in the suburbs of Buenos Aires, Argentina. Nine days later, he was secretly transferred to Israel. On April 11, 1961, he appeared for the first time before a court in Jerusalem. The Prosecutor read an indictment charging him with fifteen counts, most significantly crimes against humanity and war crimes during the Nazi era. Eichmann was sentenced to death and executed by hanging on June 1, 1962. A major shortcoming of the Jerusalem tribunal was its failure to move beyond the concept of “crimes against specific ethnic groups” and frame the prosecution within the broader category of crimes against humanity.

### 2.2.5. *The International Criminal Tribunal for the Former Yugoslavia (ICTY)*

The idea of establishing an international criminal tribunal for the former Yugoslavia emerged organically from different parts of the world—including the European Community, especially Germany and France, and the United States—in response to the atrocities committed during the Balkan conflicts. These conflicts evoked strong emotions reminiscent of the final days of World War II (Anto et al., 2008).

The formation of this tribunal was facilitated by the consensus among UN Security Council members in the post–Cold War era. Furthermore, the influence of international civil society in pushing this agenda cannot be ignored (Ardabili, 2007). In 1993, in response to grave breaches of international humanitarian law committed in the territory of the former Yugoslavia since 1991, the *International Criminal Tribunal for the Former Yugoslavia* was established by the UN Security Council under Resolutions 808 (February 22, 1993) and 827 (May 25, 1993).

The widespread violations of humanitarian law in the former Yugoslavia—particularly “ethnic cleansing”—were deemed a threat to international peace and security by the Security Council. Thus, invoking its powers under Chapter VII of the UN Charter, the Council created the ICTY as a subsidiary organ to assist in maintaining and restoring peace in the region (Khalili Salehi, 2020).

#### 2.2.6. *The International Criminal Tribunal for Rwanda (ICTR)*

In 1990, a new regime led by *Habyarimana* replaced the former Tutsi minority government in Rwanda and began the relentless slaughter of the Tutsi people. These horrific crimes continued from 1990 to 1994. Notably, even members of the Hutu majority—the ruling ethnic group—were not spared if they opposed the dictator’s brutality. Although they shared ethnicity with the ruling dictator, their opposition to his atrocities and criticism of the mass killing of Tutsis made them targets. These crimes, characterized as acts of ethnic cleansing, included genocide at the forefront, followed by widespread rape and looting of Tutsi property in the most brutal and extensive manner.

While these crimes—reportedly resulting in the near-extirpation of half the Tutsi population—were ongoing, international organizations largely remained passive. It wasn't until April 6, 1994, when *Habyarimana's* plane crashed upon his return from Tanzania, that global attention intensified. Although the Rwandan Patriotic Front (RPF), backed by the United States, was accused, the death of the dictator did not stop the mass killings. His successors continued the same genocidal policies against Tutsis and dissenting Hutus alike. Eventually, the RPF—with U.S. support—toppled the regime. Fearing retaliation, large numbers of Hutus fled Rwanda. However, the new Tutsi-led government then perpetrated severe crimes against the Hutus in turn.

In the face of continued mass violence and widespread violations of international humanitarian law, the United Nations Security Council finally intervened—albeit belatedly—at the request of Rwanda’s new government. Through Resolution 955 dated November 8, 1994, the Council established the *International Criminal Tribunal for Rwanda* in Arusha, Tanzania (Tahmasbi, 2009).

This second ad hoc international tribunal was tasked with prosecuting acts of genocide and other serious violations of international humanitarian law committed in Rwanda and neighboring states during 1994 (Shabath & Mirabasi, 2005). The Tribunal’s jurisdiction covered crimes committed by Rwandan nationals between January 1 and December 31, 1994 (Tahmasbi, 2009). The first indictment was issued on November 28, 1995, against eight defendants, and the trials began in January 1997.

#### 2.2.7. *The Special Court for Sierra Leone*

In 2000, three hybrid courts were established or became operational based on agreements between the United Nations and host states. These included the *Serious Crimes Panels* in East Timor (March), the *Extraordinary Chambers* in Cambodia (July), and the *Special Court for Sierra Leone* (August). A decade of civil conflict in Sierra Leone and the brutal acts committed by rebel groups and some non-state armed forces against civilians prompted the international community—following the pleas of the Sierra Leonean government and people—to help establish a new generation of criminal courts in collaboration with Sierra Leone’s democratic government (Malek Al-Ketab Khiabani, 2010).

Unlike earlier courts, which were fully international, these hybrid or mixed tribunals were created through partnerships between the United Nations and the governments of the affected states. They arose from requests by the concerned states and represented a new model of international justice. A key reason for their formation was that the crimes in their jurisdiction occurred before the Rome Statute of the International Criminal Court came into force (Akandi & Aghaei Jannat-Makani, 2011). The Special Court for Sierra Leone was established on January 16, 2002, but its jurisdiction covered crimes committed between 1991 and 2001 (Pourbafrani, 2004).

The obstacles and prolonged internal conflict in Sierra Leone led the national government to seek UN assistance to prosecute those responsible for international crimes. With the UN’s support, the Special Court for Sierra Leone was eventually established and became a notable example of a successful hybrid international criminal tribunal.

#### 2.2.8. *Establishment of the International Criminal Court*

After the founding of the United Nations, one of the earliest legal matters to gain attention was the establishment of a permanent international criminal court (Najafi Abrandabadi & Khazaei, 1996). The Rome Statute, which established the International Criminal Court (ICC), was the culmination of years of effort by the International Law Commission and various

UN-affiliated institutions. It was also a response to structural shifts in the international system, ongoing atrocities, and the absence of legal mechanisms to confront such crimes (Jean-Marc & Seif Afjeh, 2001).

While the Nuremberg and Tokyo tribunals had prosecuted some war criminals after World War II, these ad hoc efforts failed to satisfy the broader demands of justice. The momentum for a permanent ICC began to build slowly. In September 1987, *Mikhail Gorbachev*, Secretary General of the Soviet Communist Party, proposed in a letter to the UN Secretary-General the formation of a UN-supervised tribunal to investigate acts of international terrorism. On August 21, 1989, the official representative of Trinidad and Tobago requested the UN to consider the establishment of an international criminal court to investigate drug trafficking and other transnational crimes.

In response, and after three reports by the International Law Commission, the UN General Assembly adopted a resolution on November 25, 1992, requesting the Commission to continue its work on drafting a statute for an international criminal court. In 1995, the General Assembly adopted another resolution creating a *Preparatory Committee* to draft a convention on the establishment of the ICC for consideration at a diplomatic conference.

On December 16, 1996, based on the Commission's recommendation, the UN General Assembly adopted a resolution to convene a *Diplomatic Conference of Plenipotentiaries* in 1998, tasked with reviewing and finalizing the ICC statute (Safari, 2000). During the preparatory meetings, delegates from governments and international organizations exchanged views to formulate a treaty establishing the ICC. The Preparatory Committee worked through specialized working groups and submitted a draft statute comprising 13 parts and 128 articles.

Eventually, from June 15 to July 17, 1998, a diplomatic conference was held at the headquarters of the Food and Agriculture Organization (FAO) of the United Nations in Rome. The statute specified that the treaty would enter into force once ratified by 60 states—a high threshold intended to ensure a minimum degree of universality for the new institution (Tavernier & Kalantarian, 2003). Under Article 126 of the Statute, the treaty entered into force on the first day of the month after 60 days had passed since the sixtieth ratification, acceptance, approval, or accession. The Rome Statute remained open for signature at the UN headquarters in New York until December 31, 2000, and finally came into effect in July 2002, thereby officially establishing the *International Criminal Court* (Nou Peyvast, 2008).

### 3. Structure and Organization of the International Criminal Court (ICC)

The International Criminal Court (ICC) is an independent institution possessing international legal personality and is **not** a formal organ of the United Nations. The most fundamental dimension of any institution is its organizational structure. The ICC's institutional framework consists of the following principal organs:

1. The Judicial Organ
2. The Office of the Prosecutor
3. The Registry (Administrative Organ)
4. The Presidency

Each of these organs has its respective duties, which are discussed below.

#### 3.1. The Judicial Organ of the Court

Article 34 of the Rome Statute enumerates the organs of the Court, one of which is the Judicial Organ. Its main responsibility is to investigate and adjudicate cases referred to the chambers or submitted to the Appeals Chamber. This organ, therefore, comprises the judges and divisions of the Court.

##### 3.1.1. Divisions of the Court

One of the structural innovations of the Rome Statute is its provision for **three divisions**: the Pre-Trial Division, the Trial Division, and the Appeals Division. Once the judges are elected, the Court is organized according to paragraph (b) of Article 34 as follows:

- a) Pre-Trial Division

- b) Trial Division
- c) Appeals Division

The judicial functions in each division are carried out by designated Chambers. The assignment of judges to these divisions is based on the nature of each division's responsibilities.

### 3.1.2. *Judges of the Court*

The ICC does not have a fixed number of judges, but it must include **at least 18 judges**, who serve under the President of the Court to ensure the proper implementation of the Statute. According to paragraph 2 of Article 36, the **Presidency** may propose an increase in the number of judges, with the justification for such an increase detailed in the proposal. Although the number of judges cannot be reduced below 18, the Assembly of States Parties may approve an increase by a two-thirds majority, after which new judges are elected at the next session. The same process applies for reducing the number of additional judges if needed, but the number must never fall below 18 ([Mir Mohammad Sadeghi, 2010](#)).

#### **a) Ethical Qualifications:**

Judges must possess high moral character, impartiality, and integrity, and be qualified for appointment to the highest judicial offices in their respective countries. In addition to these ethical and general qualities, they must have recognized competence in criminal law and procedure, and practical experience in criminal proceedings. Alternatively, they must have expertise in relevant areas of international law, such as international humanitarian law or human rights law, and have held judicial positions relevant to the work of the Court. Judges must be fluent in at least one of the Court's working languages—English or French, as per Article 50 of the Statute.

#### **b) Rights and Privileges:**

Judges enjoy full independence in the exercise of their functions and must formally declare at the commencement of their duties that they will fulfill their responsibilities with impartiality and full awareness, in accordance with the Statute. To perform these duties, they are entitled to certain privileges and immunities, including those afforded to heads of diplomatic missions under the Vienna Convention of April 9, 1961 ([Albert & Falsafi, 2007](#)). Even after completing their mandate, they retain judicial immunity regarding acts performed in their official capacity. Privileges and immunities can only be lifted by an absolute majority vote. Salaries, benefits, and allowances are determined by the Assembly of States Parties.

#### **c) Judicial Duties:**

Judges are elected as full-time members of the Court and must be fully committed to the execution of their duties from the start of their mandate. They must formally declare, in a public session, that they will act with full impartiality and knowledge. Judges are prohibited from engaging in activities that could compromise their judicial duties or independence. They must not hold positions in any legislative, executive, or judicial body of their home state during their term. If any conflict arises, it is resolved by a majority vote of the judges. Judges must remain independent in performing their duties, though this principle is subject to certain limitations, such as recusal due to perceived or actual bias.

#### **d) Removal of Judges:**

Under Article 46 of the Statute, a judge may be removed from office for serious misconduct or inability to perform their duties, upon the proposal of two-thirds of the other judges and approval by two-thirds of the Assembly of States Parties. Lesser misconduct is addressed in accordance with the Court's Rules of Procedure and Evidence, and may result in written reprimands or fines. Grounds for removal include:

1. Serious breach of duties as prescribed in the Statute or procedural rules.
2. Inability to fulfill duties assigned under the Statute ([Mir Mohammad Sadeghi, 2010](#)).

### 3.2. *The Office of the Prosecutor*

The Office of the Prosecutor (OTP) is a critically important organ of the ICC. Similar to the independent prosecution offices of the ICTY and ICTR, the ICC has a wholly autonomous Prosecutor's Office led by the Prosecutor and supported by one or more Deputy Prosecutors, all of whom work full-time.

The authority for the Prosecutor to initiate investigations independently was a key issue discussed by state delegations at the Rome Conference. The OTP is an independent organ, managed solely by the Prosecutor, who is assisted by Deputy Prosecutors. Members of the OTP do not take orders from any external body. However, they may begin an investigation or prosecution only with authorization from the Pre-Trial Chamber.

The OTP includes legal advisors with specialized expertise, particularly in areas such as sexual violence, gender-based violence, and child abuse. The Prosecutor holds a powerful mandate to initiate judicial investigations *sua sponte*.

The Prosecutor and Deputy Prosecutors must be individuals of high moral character, with recognized competence in criminal law or criminal procedure. They must also have full fluency in at least one of the Court's working languages. Additionally, they must come from different nationalities and work full-time.

The Prosecutor is elected by absolute majority vote of the Assembly of States Parties via secret ballot (Samadi, 2007). Both the Prosecutor and their Deputies serve non-renewable terms of 9 years and must make a formal public declaration to fulfill their duties with impartiality and full understanding of the Statute before assuming office.

They are barred from engaging in any other profession or undertaking any activity that could undermine their judicial duties or raise doubts about their independence.

### 3.3. The Registry of the Court

The non-judicial affairs of the International Criminal Court (ICC) are managed by the Registrar, who operates under the authority of the Presidency and, when necessary, with the assistance of a Deputy Registrar. The Registry, as the Court's administrative organ, consists of the Registrar, a Deputy Registrar, and a number of staff members. It is responsible for handling non-judicial functions, including administrative services and general management of the Court. The Registrar heads the Registry and performs duties under the oversight of the Presidency (Barzegar Qaramalki, 2002).

The Registry also includes a *Victims and Witnesses Section*, which provides protection, counseling, and support. This section is staffed by professionals experienced in responding to trauma, including sexual violence, and is mandated to advise the Prosecutor and the Court in adopting appropriate protective and supportive measures.

#### a) Conditions and Process of Appointing the Registrar:

The Registrar and their Deputy must possess high moral character and professional capability, including fluency in at least one of the Court's working languages. The Registrar is elected for a five-year term by an absolute majority of the judges through a secret ballot, taking into account possible recommendations from the Assembly of States Parties. Re-election for one additional term is permitted. The Deputy Registrar is appointed based on the Registrar's recommendation and in accordance with the same procedure, for a term of five years or less as determined by an absolute majority vote.

#### b) Rights and Duties:

The Registrar and Deputy Registrar enjoy all privileges and immunities provided under the 1961 Vienna Convention on Diplomatic Relations. Even after their mandate, they remain immune from legal process for words, writings, and acts carried out in their official capacity. Other Registry staff, like the staff of the Office of the Prosecutor, benefit from necessary privileges, immunities, and facilities as outlined in the Agreement on the Privileges and Immunities of the ICC. Salaries and benefits for the Registrar and their Deputy are set by the Assembly of States Parties.

The Registry also includes a section dedicated to assisting victims and witnesses, enabling sound decision-making and providing protective measures and other forms of support in coordination with the Office of the Prosecutor. This section includes experts in assisting victims, particularly of sexual violence, to support the Prosecutor and the Court in making informed decisions.

Among the Registry's core functions—particularly as the liaison between the Court and states—are the following:

- Receiving confirmation of the Court's jurisdiction from non-party states when required;
- Distributing proposals by the Presidency to states regarding increases in the number of judges;
- Recruiting qualified staff for the Registry, ensuring, like the judicial body, representation of diverse legal systems and respect for geographical and gender balance (Mir Mohammad Sadeghi, 2010).

The removal of the Registrar and Deputy Registrar is addressed in Article 46 of the Rome Statute. According to this article, if the Registrar or their Deputy commits a serious breach of duties or is unable to perform their functions, they may be dismissed

by an absolute majority vote of the judges. The individual subject to removal has the right to receive documentation supporting the allegations and to present any exculpatory evidence to the decision-making body.

### 3.4. The Presidency

#### a) Composition of the Presidency:

Every institutional body needs a leadership structure for task distribution and oversight. Accordingly, one of the core organs of the ICC is the Presidency, which comprises the President, First Vice-President, and Second Vice-President. Together, they form the Presidency of the Court (Bigzadeh, 2003).

These officials are elected by an absolute majority of the judges for a three-year term, or until the end of their judicial mandates if earlier. They are eligible for one re-election. The three judges who form the Presidency are expected to perform their duties on a full-time basis upon election. Either of the Vice-Presidents may assume the President's functions in their absence or disqualification.

#### b) Functions of the Presidency:

Although the Registry handles administrative tasks, the Presidency ensures the proper functioning of the Court and supervises the work of the other organs. The Presidency bears responsibility for the effective operation of the Court and is also entrusted, under the Statute, with the following specific tasks:

- Temporarily transferring judges between the Pre-Trial and Trial Divisions;
- Assigning judges to a specific Trial Chamber for a particular case;
- Appointing replacement judges when others are unable to continue serving in the Trial Chamber;
- Participating in meetings of the Assembly of States Parties and its Bureau.

## 4. Duties and Powers of the Prosecutor at the Commencement of Investigations

The *complementarity principle* of the ICC's jurisdiction in international proceedings, the formal procedures for accepting a situation before the Court, the Prosecutor's evaluation of information, and the timing of jurisdictional exercise are among the crucial issues addressed in this section.

Pursuant to the complementary nature of the Court's jurisdiction—as emphasized in the Preamble and Article 1 of the Rome Statute—it is stated: “Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions” (Delkhosh, 2011). Complementing this, paragraph 1 of Article 17 of the Statute provides that the Court shall consider a case inadmissible if:

1. The case is being investigated or prosecuted by a state with jurisdiction over it;
2. The state with jurisdiction has decided not to prosecute the person concerned;
3. The person has already been tried for conduct constituting the crime under investigation (as governed by Article 20 on *ne bis in idem*).

An exception to this rule exists when the Court determines that the concerned state is unwilling or unable genuinely to carry out the investigation or prosecution. In such instances, despite national action or inaction, the Court may declare the case admissible. Hence, judgments issued by the ICC are considered *res judicata* in an absolute sense, while national judgments only carry such finality if they meet the standards of fairness as determined by the ICC (Zakavi & Babaei, 2015).

A central question in the debate over the Court's complementary jurisdiction is whether this principle is based on the priority of national jurisdiction or priority of national proceedings. The correct interpretation is that complementarity hinges on the latter, since the ICC does not defer automatically to national jurisdiction unless national proceedings have actually commenced. In simpler terms, under Article 17, the Court considers a case inadmissible only if it is already being investigated or prosecuted by competent national authorities (Sowari, 2011).

Thus, only those complaints are subject to admissibility procedures where the referring party is either a State Party or the Prosecutor acting *proprio motu*. In both cases, the foundation of the ICC's jurisdiction rests on the presumed consent of the concerned state. Under the principle of complementarity, it must be confirmed that no national court has asserted jurisdiction over the alleged perpetrators.

However, if a situation is referred by the United Nations Security Council under Article 13(b) of the Statute, the admissibility procedures are inapplicable. This is because such referrals are grounded in the Council's universal jurisdiction mandate, and thus constitute an exception to the complementarity rule (Karimi, 2011).

Second, the Prosecutor must determine that there is a reasonable basis to initiate an investigation and that complaints referred either by a State Party or initiated *sua sponte* are supported by strong evidence (Jafari, 2009).

According to the Rome Statute, in evaluating submitted information, the Prosecutor is obliged to analyze the seriousness of the evidence. The Prosecutor shall proceed to investigate unless it is determined that there is no reasonable basis under the Statute. To decide whether to proceed, the Prosecutor must assess:

1. Whether the available information provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;
2. Whether the Court has jurisdiction over the situation;
3. Whether, in light of the gravity of the crime and interests of victims, initiating an investigation would serve the interests of justice.

If the Prosecutor concludes that there is insufficient basis for proceeding—especially where doing so would not serve the interests of justice—he or she must inform the Pre-Trial Chamber of this decision (Rajabi, 2015). Notably, the Court can only prosecute crimes committed after the Rome Statute and its procedural rules entered into force (Karimi, 2011).

#### 4.1. Initiation of Investigations Upon Referral by a Competent State

The most straightforward method for triggering an ICC investigation is via referral of a situation by a competent state, i.e., a State Party to the Rome Statute. In this case, the referring state must either be directly affected—as the location of the crime, as the nationality of the accused or the victims, or as the state where the accused has been arrested. According to Article 14, States Parties may submit complaints even against named suspects, and request that the Prosecutor initiate investigation and prosecution through the Office of the Prosecutor (Hosseini, 2016).

#### 4.2. Initiation of Investigations Upon Referral by the UN Security Council

According to Article 13(b) of the Rome Statute, the UN Security Council may, under Chapter VII of the UN Charter, refer a situation to the Prosecutor where one or more crimes under the ICC's jurisdiction appear to have been committed. This power is based on the Council's authority to maintain international peace and security. In such cases, where the situation qualifies as a threat to peace, breach of peace, or act of aggression under Article 39 of the Charter, the Council can formally request the Prosecutor to investigate crimes committed within the referred situation.

In these referrals, the Prosecutor does not need the consent of the states concerned to proceed. Investigations are initiated solely based on the Council's decision and outside the constraints of the complementarity principle (Akhtari, 2016).

#### 3.3. Initiating Investigations *Proprio Motu* by the Prosecutor

One of the most powerful aspects of the International Criminal Court (ICC) is that the Prosecutor may initiate an investigation not only upon referrals from the Security Council or States Parties, but also based on information independently obtained from non-governmental organizations, intergovernmental bodies, or other reliable sources. According to Article 15(1) of the Rome Statute:

“The Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.”

The Prosecutor must assess the gravity and credibility of the information and may request further details from States, UN organs, intergovernmental or non-governmental organizations, or any credible source. The Prosecutor may also collect evidence through written or oral testimony before the ICC (Eslami & Kazemi Abedi, 2016).

If the Prosecutor finds reasonable grounds to proceed, he or she must seek authorization from the Pre-Trial Chamber. Additionally, under Article 15(3), victims of crimes may submit representations to the Pre-Trial Chamber in accordance with the Rules of Procedure and Evidence (Mohammadnasl, 2006). If the Chamber determines that a reasonable basis exists and

that the case falls within the Court's jurisdiction, it shall authorize the investigation—without prejudice to any subsequent jurisdictional or admissibility decisions (Mohammadnasl, 2006).

#### 4.3. *The Prosecutor: Scope of Powers and Responsibilities in Investigation and Prosecution*

A neutral and competent Prosecutor is a fundamental requirement for an independent and effective international criminal court. The mere existence of a permanent ICC is not sufficient without a Prosecutor who possesses the authority and independence to initiate, investigate, and prosecute the most serious international crimes. Such a Prosecutor is essential for preventing atrocities and deterring violations under the Court's Statute (Rajabi, 2015).

According to Article 13(a), when a situation is referred to the Court and the Prosecutor determines that a reasonable basis exists, or initiates an investigation under Article 13(c) and Article 15, the Prosecutor must notify all States Parties and any states that would ordinarily exercise jurisdiction over such crimes. Notification may be confidential, and the Prosecutor may withhold certain details to protect individuals, preserve evidence, or prevent the escape of suspects, as per Article 18 of the Statute.

Within one month of receiving the Prosecutor's notification, a state may inform the Court that it is investigating its nationals or others within its jurisdiction for conduct that constitutes crimes under Article 5. In such cases, the Prosecutor must defer to that state's investigation unless the Pre-Trial Chamber, at the Prosecutor's request, authorizes continued ICC investigation (Vahedi, 2010).

This admissibility process serves as a procedural safeguard to curb prosecutorial overreach, ensuring that the initiation of investigations complies with legal prerequisites, and guards against politicization or bias in the exercise of prosecutorial discretion (Karimi, 2011).

From a legal perspective, one of the ICC's critical powers lies in the Prosecutor's ability to act upon information received from non-governmental organizations and other reliable sources. This is essential in cases where States or the Security Council are unwilling or politically constrained from referring a situation. In such cases, the Prosecutor may proceed on the basis of victim complaints or other credible information (Delkhosh, 2011). As such, the Prosecutor is obligated to begin investigations unless it is determined that no reasonable basis exists under the Statute.

#### 4.4. *Prosecutorial Duties Regarding the Rights of the Accused, Victims, and Witnesses During Investigations*

The responsibilities of the Prosecutor in protecting the rights of the accused, ensuring support for witnesses and victims, and implementing special measures for vulnerable groups are outlined below.

##### 4.4.1. *Duties Toward Protecting the Rights of the Accused*

To safeguard the rights of the accused and ensure clarity in the charges brought against them, each individual is entitled to a public and fair trial within a reasonable timeframe before an independent and impartial tribunal. Before launching investigations aimed at indicting an individual, the Prosecutor must collect and organize all relevant evidence, and provide it to the accused at an appropriate stage after proper notification and summons.

The accused has the right to a trial overseen by unbiased judges and must be informed of the progress of investigations. Furthermore, during investigations, the accused has the right to a fair hearing, including being present during procedural stages, and to be represented by legal counsel who may respond to accusations and examine the evidence.

The Prosecutor must also provide opportunities for the accused to:

- Respond to allegations;
- Consult with legal advisors;
- Be assisted by a defense counsel and interpreter;
- Attend witness interviews and cross-examine them (Eslami & Kazemi Abedi, 2016).

The Rome Statute commendably emphasizes equality of arms by placing both the Prosecutor and the accused on equal procedural footing. This ensures that the defense has access to all necessary tools for a fair trial. Importantly, the burden of

proof lies entirely on the Prosecutor; the accused is presumed innocent and cannot be compelled to incriminate themselves or produce evidence against themselves (Khaleghi, 2015).

#### 4.4.2. *Duties of the Prosecutor in Protecting the Rights of Victims and Witnesses*

Under both customary and conventional international law, individuals involved in criminal investigations—such as suspects, witnesses, and victims—possess certain fundamental rights. The Rome Statute elaborates on these rights with considerable detail, particularly in the context of victim and witness protection (Sowari, 2011). According to **Rule 85** of the ICC Rules of Procedure and Evidence, victims are defined as individuals who have suffered harm as a result of the commission of crimes within the Court's jurisdiction. Victims may also include organizations or institutions that have suffered direct harm to property dedicated to religious, educational, artistic, scientific, charitable, or humanitarian purposes—such as historical monuments or hospitals.

The Office of the Prosecutor, along with the Pre-Trial and Trial Chambers, is required to consider the rights and needs of victims and witnesses—especially children, the elderly, persons with disabilities, and survivors of sexual or gender-based violence—when executing their responsibilities under the Statute and procedural rules (Sowari, 2011).

#### 4.4.3. *Protective Measures Undertaken by the Prosecutor for Victims and Witnesses*

Upon the proposal of the Prosecutor, the defense, or at the request of a victim or witness, the Chambers may order protection measures for those at risk due to their testimony. As per Rule 87 of the Rules of Procedure and Evidence, protective measures may only be imposed after obtaining the consent of the person concerned (Rajabi, 2015).

The Pre-Trial Chamber may hold closed preliminary hearings to determine whether measures are necessary to prevent disclosure of the identity or location of a victim, witness, or another at-risk person. These measures may include:

1. Removing identifying information (e.g., names, addresses) from public records;
2. Restricting parties—such as the Prosecutor, defense counsel, or other participants—from disclosing protected information to third parties;
3. Allowing testimony via electronic means, including audio-visual technology such as video conferencing, voice masking, or closed-circuit television;
4. Allowing the use of pseudonyms by victims or witnesses at risk;
5. Conducting portions of proceedings in closed sessions (Hosseini, 2016).

Witnesses are entitled to privileges, immunities, and facilities essential to ensuring their testimony before the Court. These protections extend to travel arrangements, including:

- Immunity from arrest and detention;
- Immunity from prosecution for oral or written testimony given before the Court;
- Immunity from the seizure of personal luggage and documents related to testimony;
- Exemption from immigration restrictions;
- Facilitation of repatriation;
- And general protection from acts of reprisal (Akhtari, 2016).

#### 4.5. *The Prosecutor's Role in Preparing and Submitting the Indictment*

Under the ICC's procedural framework, the Prosecutor prepares an indictment upon concluding investigations—provided there is sufficient evidence to establish a reasonable basis to believe that a crime within the Court's jurisdiction has been committed by the suspect. The indictment must include the suspect's personal details, as well as a summary of the facts and charges.

According to Article 61 of the Rome Statute, the Prosecutor submits the indictment, containing the alleged crimes and relevant facts, to the Court once investigations are complete (Fayouzi, 2007). Notably, the Statute does not allow the Prosecutor

to unilaterally dismiss a case due to lack of sufficient evidence. Instead, if the Prosecutor concludes that the evidence is inadequate to proceed to trial, he or she must inform the Pre-Trial Chamber and submit the supporting rationale.

If a case was referred by the UN Security Council or a State Party, the Prosecutor must also notify the referring entity. The Pre-Trial Chamber may, on its own initiative or at the request of the referring party, review the Prosecutor's decision and may request reconsideration (Javanmard, 2010).

According to Article 53(3)(b) of the Statute, the Pre-Trial Chamber may only override the Prosecutor's decision not to prosecute if it finds that the decision was based on:

1. The gravity of the crime;
2. The interests of victims;
3. The age or physical incapacity of the alleged perpetrator;
4. The role of the suspect in the commission of the crime (Delkhosh, 2011).

In summary, the Prosecutor's discretion is not absolute and remains subject to judicial oversight to ensure fairness, transparency, and adherence to international legal standards.

## 5. The Prosecutor and the Decision Not to Prosecute or Not to Initiate an Investigation

One of the commendable aspects of the Rome Statute of the International Criminal Court (ICC) is that the Prosecutor is not authorized to unilaterally decide that there is insufficient evidence to proceed with a case based on preliminary investigations. Should the Prosecutor reach such a conclusion, they must report the matter to the Pre-Trial Chamber and submit the reasoning and supporting evidence for the decision. If the situation has been referred to the Court by the United Nations Security Council or a State Party, the referring authority must also be notified (Articles 53(1) and 53(2), Rome Statute of the ICC).

The Pre-Trial Chamber, either on its own initiative or upon the request of the Security Council or a referring State, may review the Prosecutor's decision and may request reconsideration (Article 53(2), Rome Statute). Therefore, the Prosecutor's decision is not final and remains subject to judicial review.

This procedural framework appears entirely justified for several reasons:

1. It establishes a general standard for the Prosecutor's decision to file or not file charges.
2. It obliges the Prosecutor to provide justification for decisions not to prosecute.
3. It confirms the authority of the Pre-Trial Chamber to reject the Prosecutor's conclusion.

Without these provisions, the powers of the Prosecutor could become unrestrained. By contrast, the current framework ensures limitations and oversight to prevent abuse, bias, or arbitrariness (Barati, 2003).

According to Article 53(3)(b) of the Statute, the Pre-Trial Chamber may only reverse a decision not to prosecute if the Prosecutor's decision is based on considerations such as:

1. The gravity of the crime,
2. The interests of victims,
3. The age or physical incapacity of the alleged perpetrator,
4. The role of the suspect in the commission of the crime.
5. This ensures that even the Pre-Trial Chamber's authority is appropriately limited, minimizing the potential for misuse or politicization (Zakavi & Babaei, 2015).

When the Prosecutor decides not to initiate an investigation or to discontinue prosecution, they must promptly notify the referring State(s) or the Security Council in writing, in accordance with Article 53(1).

If the Prosecutor reaches such a conclusion independently, the decision—along with the legal reasoning—must be submitted in writing to the Pre-Trial Chamber.

Similarly, if the Prosecutor finds insufficient grounds for prosecution, they must immediately notify the referring States and the Security Council.

According to Rule 107(1) of the ICC Rules of Procedure and Evidence, any State with jurisdiction, the referring State, or the Security Council (if the referral was made under Article 13(b)) may appeal the Prosecutor's decision within 90 days of notification to the Pre-Trial Chamber. Additionally, the Pre-Trial Chamber may, on its own motion, review the decision not to proceed with an investigation or prosecution (Article 53(3), Rome Statute) (Khaleghi, 2015).

## 6. Conclusion

In sum, as demonstrated throughout this article, the Rome Statute has devised an institutional framework aimed at ensuring the effective functioning of the Court, consistent with its jurisdictional principles and procedural safeguards. With the adoption of the Statute, a new hope emerged among States and victims of international crimes that perpetrators would no longer enjoy impunity under the guise of state sovereignty or official immunity.

Under Article 5 of the Statute, the ICC holds jurisdiction over the most serious international crimes, namely: genocide, crimes against humanity, war crimes, and the crime of aggression. Importantly, the Court prosecutes natural persons only, and currently lacks jurisdiction over legal entities.

However, a significant limitation of the Court remains its narrow subject-matter jurisdiction. Crimes such as international terrorism and drug trafficking are still excluded from its jurisdiction. It is hoped that the Assembly of States Parties, in future reviews of the Statute, will expand the Court's jurisdiction to include such crimes.

The success of the Court in investigating and prosecuting international crimes largely depends on the performance of the Office of the Prosecutor, especially the Prosecutor's leadership. The Prosecutor's main duties—outlined throughout this study in reference to the Rome Statute—can be summarized as follows:

1. Assessing situations referred by States Parties or the Security Council involving crimes under ICC jurisdiction.
2. Initiating investigations based on credible information about one or more crimes within the Court's competence.
3. Evaluating the relevance of received information and requesting additional information from States, the United Nations, intergovernmental or nongovernmental organizations, or reliable sources.
4. Requesting authorization from the Pre-Trial Chamber to open investigations, providing full documentation.
5. Conducting interviews with suspects, victims, and witnesses.
6. Collecting evidence and verifying documents.
7. Investigating crimes in a State's territory with or without its consent (subject to Pre-Trial Chamber approval).
8. Taking measures to preserve confidentiality and protect witnesses.
9. Appealing acquittals or sentencing decisions and responding to appeals by convicted individuals.
10. Requesting a retrial or responding to retrial requests based on newly discovered evidence.
11. Defending the indictment during trial.

Given the Prosecutor's pivotal role in ensuring justice and uncovering the truth, it is imperative that the Assembly of States Parties exercise utmost diligence in selecting highly qualified candidates for this position. Only then can the ICC fulfill its historic mandate to end impunity and ensure that no perpetrator of international crimes escapes justice.

The establishment of the International Criminal Court marks a historic achievement in international law and justice. If properly supported and governed, it can ensure the continuation of accountability for serious crimes, regardless of time or location—provided that the States Parties remain committed to its integrity, particularly in the selection of judges and prosecutors.

## 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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