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THE ROLE OF INTERNATIONAL CRIMINAL COURTS IN MODERN WARFARE – A CRITICAL ANALYSIS

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Abstract

The form of warfare in the 21st century has been transformed radically, and it has long since surpassed the state-versus-state armed conflict formula. The modern-day wars are becoming more asymmetric, with non-state entities becoming a major focus, and these may include things like terrorist groups, insurgents, and private military contractors. Moreover, the advent of cyber conflict, autonomous weapons systems, and the strategy of hybrid warfare (when conventional and unconventional warfare are mixed together) have immensely transformed the environment of armed conflict and, in particular, the ways of responsibility attribution, conflict classification, and implementation of responsibility mechanisms.⁴

Key Words – International Criminal Court in Modern Warfare and the Geneva Convention

In the age of rapidly changing armed conflicts, ensuring accountability for war crimes, genocide, and crimes against humanity has become increasingly challenging as well as essential. Ongoing political instability, inadequate domestic justice systems, and ineffective enforcement mechanisms in many conflict-affected regions often allow perpetrators to evade responsibility. These challenges highlight the importance of a robust international institution that can effectively uphold international law and promote justice on a global scale.

Established by the International Criminal Court through the Rome Statute, the Court marks a significant milestone in the development of international criminal justice. As the first permanent international tribunal with jurisdiction over individuals, it seeks to ensure accountability for the most serious crimes of concern to the international community, irrespective of the offender's nationality. Its mandate extends to genocide, crimes against humanity, war crimes, and the

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⁴ Mary Ellen O'Connell, *The Art of Law in the International Community* 183–87 (2019).

crime of aggression, offences that are widely recognised as core violations of international law.⁵ The ICC is based on the principle of complementarity, intervening only where national systems are incapable, do not want or do not have the ability to seriously prosecute offenders. This is respectful to State Sovereignty with a sense of justice for serious crimes not to be left unpunished. Jurisdiction can be activated by referrals from State Parties, United Nations Security Council resolution or proprio motu investigations initiated by the Prosecutor under Articles 12 and 13 of the Rome Statute. In contemporary conflicts increasingly shaped by non-state actors, cyber warfare, and transnational violence, the ICC serves as a vital mechanism for enforcing international humanitarian law.⁶

However, the Court has some serious structural and political issues. Its jurisdiction is not universal and it is not ratified by major powers such as the United States, Russia, and China, which leaves significant loopholes in terms of accountability in the event that the State's nationals or actions are responsible. Moreover, ICC has no independent enforcement mechanism and depends absolutely on State cooperation in making arrests, collecting evidence and enforcing sentences.

Geopolitical pressures also threaten the consistency and impartiality of prosecutions. States may withdraw cooperation or apply diplomatic pressure to shield their allies, undermining the Court's credibility. Meanwhile, modern warfare introduces complex legal questions around drone strikes, cyber operations, and algorithmic decision-making that existing legal frameworks were never designed to address. Issues of attribution, proportionality, and command responsibility become far more difficult to establish in these contexts.

Although the ICC has played an important role in advancing international criminal law and promoting accountability for serious crimes, its ability to deliver justice is often hindered by persistent structural, legal, and political challenges. These limitations continue to affect the Court's effectiveness and have sparked growing calls for meaningful reforms to strengthen its role in the international justice system.

⁵ Antonio Cassese, *International Criminal Law* 3–9 (3d ed. 2013).

⁶ Rome Statute of the International Criminal Court art. 1, July 17, 1998, 2187 U.N.T.S. 90.

Review of Literature

The academic discussion of the operation of the International Criminal Court (ICC) is indicative of a subtle mixture of hopefulness about its normative benefits and uncertainty about its feasible constraints. The Court itself has been extensively studied since its inception in the Rome Statute, through a legal, political and institutional lens.

In its attempt to stem impunity against international crimes, early scholarship by Antonio Cassese perceives the ICC as a turning point in the history of international criminal law. Cassese makes it clear that ICC is a change that comes as a transition between a haphazard set of tribunals and a permanent mechanism of accountability. He, however, at the same time appreciates inherent structural weaknesses, particularly the fact that the Court relies on the cooperation of the states to enforce its decisions and has limited capacity to monitor its decisions.⁷

In the same vein, a close examination of the jurisdictional framework of the ICC is given by William A. Schabas. As Schabas stresses, the principle of state consent automatically limits the jurisdiction of the Court, so it cannot touch upon a number of powerful states. He also highlights the political limitations of the interventions of the United Nations Security Council, especially concerning the case referrals and deferrals, which potentially undermine the perceived impartiality of the Court.⁸

The contribution of Philippe Sands is furthering the debate and putting international criminal law into the greater framework of modern conflicts in the world. Sands discusses ways in which changing warfare patterns, such as hybrid warfare and transnational violence, are threatening the traditional legal categories. He says that institutions such as the ICC are necessary, though they need to evolve in order to cope with new forms of violence that are likely to blur the line between war and peace.⁹

Politically, David Bosco offers a critique of the realities of the operations of the ICC. Bosco states that geopolitics plays a crucial role in the functioning of the Court since it depends greatly on the cooperation of the states to make arrests and enforce the strategy. He notes that the ICC

⁷ Antonio Cassese, *International Criminal Law* 350–56 (3d ed. 2013).

⁸ William A. Schabas, *An Introduction to the International Criminal Court* 73–85 (6th ed. 2020).

⁹ Philippe Sands, *East West Street: On the Origins of Genocide and Crimes Against Humanity* 398–405 (2016).

has received selective compliance when states only tend to support the Court when it serves their political interests. This reliance, as Bosco sees it, prevents the Court from operating as an effective institution, one that is autonomous and universally applicable.¹⁰

Along with these fundamental articles, there is more extensive academic literature that emphasises the dual nature of ICC as a legal and political institution. One drawback has been identified by scholars to be an uneven practical impact of the Court in its contribution to the development of international criminal jurisprudence. This can be seen especially in situations when the influential states or regions are involved in the conflict, and the political opposition and the absence of cooperation weaken their influence.¹¹

Altogether, the current literature indicates that the ICC has a high normative bearing to foster accountability and to influence the international legal norms. Its applicability in handling the crimes that develop out of contemporary warfare is, however, limited by the jurisdictional restraint, implementation difficulties, and political factors.

RESEARCH GAP:

Although numerous insights into the structure and operation of the ICC have been written about, little focus has been placed on its contribution to the solutions of the emergent types of warfare. Specifically, the issue of the ICC being involved in cyber warfare, drone attacks, autonomous weapons technology and non-state wars are not approached in specific analysis. These new dimensions of war pose new legal and operational issues that are poorly investigated in the existing literature.

Study Objectives

1. To examine the role and jurisdiction of ICC in contemporary warfare.
2. To understand how well the ICC prosecutes international crimes.
3. To explore issues that confront the ICC in modern conflicts.
4. To propose changes to enhance international criminal justice.

¹⁰ David Bosco, *Rough Justice: The International Criminal Court in a World of Power Politics* 112–20 (2014).

¹¹ Carsten Stahn, *A Critical Introduction to International Criminal Law* 45–52 (2019).

Research Questions

1. What is the approach of the ICC concerning the crimes associated with contemporary warfare?
2. What are the shortcomings of the ICC in enforcing accountability?
3. What are the impacts of political and jurisdictional limitations on the operation of ICC?
4. What changes do we need to make the ICC more effective?

Research Methodology

The present study adopts a doctrinal, black-letter law, approach to examine the role and effectiveness of the International Criminal Court (ICC) in addressing the challenges posed by modern warfare. This methodology is particularly suited to legal research as it involves a detailed analysis of legal principles, statutory provisions, judicial decisions, and established norms of international criminal law.

The research is primarily based on an extensive review of primary legal sources, including the Rome Statute, ICC judgements, orders, and other official documents. These materials provide the foundation for understanding the Court's jurisdiction, powers, and procedural framework. Particular attention is given to the manner in which the ICC interprets and applies its legal mandate in contemporary conflict settings, where the nature of warfare continues to evolve and present new legal challenges.

In addition to primary materials, the research incorporates secondary sources including peer-reviewed journal articles, scholarly books, reports, and commentaries published by international organisations. These sources provide theoretical insights and critical perspectives on the functioning, legitimacy, and limitations of the ICC within the broader international legal and political framework.

The research further adopts a comparative and analytical approach by examining relevant case laws and international practices concerning accountability for war crimes. The study is qualitative and descriptive in nature, emphasising legal reasoning, interpretation, and critical evaluation rather than empirical or statistical analysis.

Discussion / Analysis

Jurisdiction of the ICC in Modern Warfare

Under the Rome Statute, the ICC has jurisdiction over four core international crimes, namely crimes against humanity, genocide, the crime of aggression, war crimes.¹² These offences are highly relevant in modern conflicts, which routinely involve mass civilian casualties, indiscriminate weapons, forced displacement, and systematic human rights violations.¹³

Despite its wide-ranging mandate, the ICC faces important jurisdictional limitations. In most cases, the Court can exercise jurisdiction only over crimes committed on the territory of States Parties or by their nationals, which means that many serious international crimes may fall outside its direct authority. Although the United Nations Security Council can refer situations involving non-member states to the Court, this process is often influenced by political considerations and the interests of powerful states. As a result, concerns have been raised about the consistency and impartiality of the ICC's enforcement efforts.¹⁴

The complementarity principle further complicates matters, as states may conduct superficial investigations to shield perpetrators from ICC intervention. These limitations are particularly acute in modern warfare, where non-state actors, transnational networks, and technologies such as drone strikes and cyber operations create complex questions of attribution and legal responsibility that the Court struggles to address.¹⁵ The absence of major powers from the Rome Statute system further undermines the ICC's universality, reinforcing perceptions of selective accountability in international criminal justice.

Challenges in the Modern Warfare Context

a) Non-State Actors

One defining feature of modern armed conflict is the growing dominance of non-state actors, terrorist organisations, insurgent groups, and transnational militias. Unlike conventional state armed forces, these actors operate through fragmented command structures, fluid membership, and cross-border networks, creating serious legal and operational challenges for the ICC in establishing jurisdiction and pursuing prosecutions.¹⁶

The ICC was established under the Rome Statute in 1998 and officially began functioning on 1

¹² Rome Statute of the International Criminal Court, 1998, Art. 5.

¹³ Ibid., Arts. 7–8.

¹⁴ William A. Schabas, *An Introduction to the International Criminal Court*, Cambridge University Press, 6th edn., 2020, pp. 84–90.

¹⁵ Yoram Dinstein, *Non-International Armed Conflicts in International Law*, Cambridge University Press, 2014, pp. 210–218.

¹⁶ Antonio Cassese, *International Criminal Law*, Oxford University Press, 3rd edn., 2013, pp. 72–78.

July 2002. It has jurisdiction over four of the most serious international crimes namely, crimes against humanity, genocide, the crime of aggression, and war crimes. In the context of modern warfare, Article 8, which deals with war crimes, is particularly important. It covers a range of offences, including the deliberate targeting of civilians, torture, unlawful killings, sexual violence, the recruitment of child soldiers, and attacks on humanitarian workers.

Although the ICC prosecutes individuals rather than states, effective accountability for non-state actors still depends heavily on state cooperation, particularly for arrests, extraditions, and evidence gathering. In territories where governance has collapsed or is severely weakened, enforcing such cooperation becomes practically impossible. Furthermore, determining whether a conflict qualifies as international or non-international carries significant legal consequences, as it directly affects which provisions of international humanitarian law apply.

A further complication arises from the tendency of non-state leaders to operate outside formal hierarchies, deliberately distancing themselves from direct orders to evade command responsibility. This makes prosecuting senior figures, often those most culpable for grave atrocities, considerably more difficult.

b) Technological Warfare

The nature of modern warfare is being defined by the rapid generations of technologies, such as drone warfare, cyber operations, artificial intelligence and autonomous weapons systems. These changes are concerning the traditional legal frameworks, which were constructed on actors that could be identified physically and on territorially bounded conflicts.¹⁷

Cyber attacks such as these pose considerable challenges in attribution and may be conducted by various actors who will act anonymously across jurisdictions. Determining intent, culprits and attributing acts to individuals are usually difficult undertakings that make it difficult to prosecute. Likewise, drone attacks, particularly remote-controlled ones, have doubts regarding proportionality, distinction, and responsibility in terms of international law.

Autonomous weapons take the matter a step higher by bringing the issue of decision making systems with minimum or no human intervention. This creates unanswered legal dilemmas on liability, whose responsibility is it, the programmer, the commanding officer, the deploying state or the manufacturer. These new types of warfare are not expressly covered in the Rome Statute and therefore offer interpretative gaps that inhibit the capacity of the ICC to react

¹⁷ Yoram Dinstein, *Non-International Armed Conflicts in International Law*, Cambridge University Press, 2014, pp. 210–216.

appropriately.¹⁸

c) State Sovereignty and Non-Cooperation

State cooperation remains one of the most fundamental yet persistently unreliable pillars of the ICC's operation. The Court possesses no independent enforcement apparatus, it cannot execute arrests, gather evidence, or enforce sentences without the active assistance of governments. In practice, however, such cooperation has repeatedly proven inconsistent, particularly in politically sensitive situations where state interests' conflict with the demands of international justice.

The fact that key world superpowers like the United States, Russia and China are not signatories to the Rome Statute further undermines the scope of the Court. The ICC is mostly reliant on outside processes, including referrals by the United Nations Security Council, in cases concerning such states, which themselves are politically limited.¹⁹

d) Political Influence

ICC exists in a wider global political context and the functioning is bound to be influenced. The influence of the United Nations Security Council's power to refer matters to the Court and deferring investigations is one of the most crucial sources of political power.

Considering that there are strong states in the Security Council that can veto, the outcomes on judgment on ICC referrals tend to have more to do with geopolitical motives than with legal ones. This leads to discrimination in justice where some of the conflicts are treated and other conflicts are ignored.

Further, the political pressure may affect the desire of the states to collaborate with the ICC. States can decline to implement arrest warrants or give evidence in a scenario where this will be against their strategic or diplomatic interests. This compromises the image of the ICC as an autonomous and unbiased organization.

Enforcement Limitations

One of the International Criminal Court's most significant structural challenges is its lack of an independent enforcement mechanism. The Court is a normative and judicial rather than an executive body; it is not able to personally arrest suspects, search premises, seize documents,

¹⁸ William A. Schabas, *An Introduction to the International Criminal Court*, Cambridge University Press, 6th Edn., 2020, pp. 90-98.

¹⁹ Rome Statute of the International Criminal Court, 1998.

or order witnesses to appear. The effectiveness of these measures ultimately depends on the cooperation of the State Parties to the Rome Statute.²⁰ This design is meant to observe the current state sovereignty, and therefore, leaves a continuous discrepancy between what the law stipulates and how it should be applied in practice.

1. Ongoing Failure to Execute Arrest Warrants.

The most apparent enforcement bottlenecks are arrest and surrender. In cases where suspects may live in non-cooperating states or be under their protection by home authorities, ICC warrants may take years to execute. This not only procrastinates but also undermines the credibility of the Court and the rights to prompt justice of victims. In other cases, even after indictment, indicted persons travel internationally without being arrested, an uneven adherence even among States Parties.

2. Relying on Political Will.

Cooperation is, at the end of the day, a political decision. When such assistance might raise diplomatic conflict or regional stability issues or create domestic politics problems, states might reject it. The lack of any serious consequences should the request of the Assembly of States Parties, or in exceptional instances, the UN Security Council be ignored is the reason why there exist few consequences to ignoring ICC requests; this low accountability level undermines deterrence.²¹

3. Restraint in the Working Conflict Zones.

In the persistent hostilities, the control becomes even more problematic due to a lack of security and territorial fragmentation. Governments can be unable to control areas in which suspects stalk, or themselves, are involved in the war. Often, access is limited to investigators and requests for cooperation are postponed or rejected due to security requirements. This often leads to the undermining of the basic investigative procedures, such as site investigations, excavations, and chain of custody maintenance.

4. Evidentiary Issues and Witness Protection.

The cases at the ICC rely heavily on evidence, but contemporary conflicts create volatile,

²⁰ Rome Statute of the International Criminal Court, 1998, Arts. 86–89.

²¹ William A. Schabas, *An Introduction to the International Criminal Court*, Cambridge University Press, 6th

contentious evidentiary spaces. There is a risk of tampering with and loss of digital evidence; destruction of physical evidence; intimidation, expulsion, or trauma to witnesses. Although there are witness protection steps that the Court has, the success of these steps remains a state support. Porous protection systems discourage witnessing and have the ability to defeat prosecutions.

5. Lack of control over Non-States and Non-Parties.

In the context of crimes being committed or perpetrated by non-state actors or in non-member states, the enforcement becomes, to a greater degree, weakened. The ICC is unable to enforce cooperation on non-parties and non-state armed groups are not subject to the treaty obligation. It establishes safe havens for suspects and restricts the jurisdiction of the Court at the very place where the most accountability is required.

6. Financial/Logistical constraints.

It would take time and resources (lasting funding, expertise in the field) along with logistical support to carry out complex international investigations, involving forensics, cyber analysis, satellite imagery and so forth. Financial constraints may delay investigation, restrict the prosecutor's plan, or handicap operations in the field. These practical limitations play off with the lack of cooperation to further postpone proceedings.

7. Enforcement and Post-Conviction Dependence of Sentences.

The ICC uses the goodwill of states to implement the prison sentences even after conviction. Access to such states is limited, and the transfers will be on a bilateral basis. This reliance highlights the point that enforcement is external to the Court, at all levels, from arrest to imprisonment.²²

These limitations combine to issue a credibility challenge. When well-known suspects or those who are not cooperating remain open, or cases fail because of a lack of cooperation the views of prejudiced or inefficient justice are escalated. This, in its turn, undermines the deterring power of the ICC in the conditions of modern war, when it is of primary importance to guarantee fast and definite responsibility.

Synthesis

The ICC lacks enforcement not because of an insignificant operational problem, but is a

²² Antonio Cassese, *International Criminal Law*, Oxford University Press, 3rd edn., 2013, pp. 352–358.

structural aspect of its design. In modern wars, featured by mobile actors, disputed lands, and geopolitical ambitions, this interdependence on foreign collaboration is the determinant of the results. Enforcement of compliance measures, development of the scope of cooperation and the utilisation of complementary national and regional systems are therefore necessary, in case the mandate of the Court can be translated into realised justice.

Case Laws / Case Analysis

PROSECUTOR V. THOMAS LUBANGA DYILO

The Prosecutor v. Thomas Lubanga Dyilo case is widely regarded as a landmark decision in the history of the ICC, as it resulted in the Court's first conviction. Lubanga, a militia leader from the Democratic Republic of the Congo, was found guilty of recruiting, enlisting, and using children under the age of fifteen to participate in armed conflict. The case marked a significant step in the development of international criminal law, particularly in strengthening accountability for the use of child soldiers in warfare.²³

The significance of this case extends beyond the conviction itself, as it has also contributed to the development of international criminal law. The ICC illuminated the aspects of crime involving child soldiers and strengthened the premise that even non-state forces may be personally liable for war crimes. It also showed how the Court was determined to deal with the crimes of vulnerable populations of conflict zones.

Meanwhile, procedural and operational challenges were revealed in the case. The case was a long one, and matters emerged relating to the disclosure of evidence and the credibility of the witness. The use of mediators in the collection of testimonies casts doubt on the credibility of evidence. All these notwithstanding, the case was a significant milestone, and it affirmed the legitimacy of the ICC as a working court.

PROSECUTOR V. OMAR AL-BASHIR

The case of Omar Al-Bashir, the former President of the Sudan, sheds light on the conflict between international criminal justice and state sovereignty. Such allegations were made against al-Bashir in relation to the Darfur conflict, as he was accused of committing crimes against humanity, genocide, and war crimes. His indictment marked a historic moment for the ICC, as he became the first sitting head of state to be charged by the ICC.²⁴

²³ Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Judgment, International Criminal Court (2012).

²⁴ Prosecutor v. Omar Hassan Ahmad Al-Bashir, ICC-02/05-01/09, International Criminal Court (2009).

The case highlights the limitations of the enforcement of the ICC. Al-Bashir was not arrested until many years later, despite arrest warrants being issued against him, so much so that he could travel around countries which were signatories to the Rome Statute. This showed how the Court did not have the power to enforce, and it revealed the difference between the law and the way it is applied in practical applications.

Legal issues of the case involved hard-to-determine head-of-state immunity. Although the ICC insisted that this immunity did not prevent prosecution under international law, some other states were reluctant to carry out the warrants on arrests as they claimed to have, and still, there are conflicting duties under the Foreign and domestic laws. In general, the Al-Bashir case shows that political motives and non-cooperation can also seriously weaken the working of international criminal justice mechanisms.

SITUATION IN AFGHANISTAN

The case that ICC is investigating into what is happening in Afghanistan is a multi-layered and politically sensitive case of contemporary warfare. There are claims of war crimes and crimes against humanity perpetrated by several parties, among them the Taliban, Afghan government troops, and foreign military officers.²⁵

Such a scenario underscores the jurisdictional and political problems of the ICC, especially with respect to dealing with superpowers like the United States, which is not a member state. Nevertheless, despite the fact that Afghanistan is a State Party to the Rome Statute, the exercise of jurisdiction is complicated by the international character of foreign nationals and the problem of international cooperation.

The probe has been met by strong opposition, such as political pressure and a failure to cooperate, and this has slowed down the process. It also shows how hard it is to do investigations in active war zones, and access to evidence and witnesses is minimal.

Notably, the Afghanistan case shows how the ICC has tried to prosecute crimes in asymmetric wars where the clash is between the state and non-state, hence putting international criminal law to the test in modern situations of war.

SITUATION IN UKRAINE

The ICC's involvement in the conflict between Ukraine and Russia represents one of the most significant contemporary applications of international criminal law. In response to the ongoing

²⁵ Situation in Afghanistan, ICC-02/17, International Criminal Court.

conflict, the Court has launched investigations into alleged crimes against humanity, war crimes, and other serious violations of international law. These investigations reflect the ICC's continuing efforts to ensure accountability for atrocities committed during armed conflicts and demonstrate its relevance in addressing modern challenges to international justice.²⁶

The case shows that the ICC remains applicable to present-day warfare when it concerns such an overwhelming usage of military force and so many civilian victims. In a shift in investigative practices, the investigation has been greatly relying on the contemporary forms of evidence, such as digital records, satellite images, and open-source intelligence.

The situation, however, points to major limitations too. The Rome Statute does not apply to Russia, and limits the ability of the ICC to execute arrest warrants against its citizens. Also, there are geopolitical tensions, which determine the degree of international cooperation, which characterises the ongoing role of politics in international criminal justice.

Conclusion / Suggestions

The International Criminal Court represents a significant milestone in the development of international criminal justice, reflecting a collective global commitment to ending impunity for the world's most serious crimes. Its establishment under the Rome Statute marked an important shift towards a rules based international order, where individuals can be held accountable for violations of international law, not just States. By placing personal responsibility at the centre of international justice, the ICC has strengthened the principle that no one is above the law, regardless of their position or status.

At the same time, this study finds that the ICC's effectiveness in dealing with contemporary armed conflicts remains significantly limited. The Court's jurisdictional restrictions prevent it from intervening in many situations involving key actors, while its functioning depends heavily on the cooperation of states. Moreover, political considerations often influence its operations, creating additional challenges for the Court. These institutional limitations continue to hinder the ICC's ability to deliver timely, consistent, and universal justice.

The changing nature of warfare has further complicated the ICC's role. Modern conflicts increasingly involve non-state actors, cross-border operations, and advanced technologies, creating new legal and practical challenges that the existing framework of international criminal

²⁶ Situation in Ukraine, International Criminal Court, 2022 onwards.

law does not fully address. As a result, the Court often struggles to respond effectively to these evolving realities.

Nevertheless, the importance of the ICC cannot be measured solely by the number of convictions it secures. Its broader contribution lies in shaping international legal norms, promoting accountability, and reinforcing the principle that serious violations of human rights and international humanitarian law should not go unpunished. Through its work, the Court continues to influence the development of international justice and strengthen the global commitment to ending impunity for the gravest crimes.

Looking ahead, the continued relevance and effectiveness of the ICC will depend on its ability to adapt to the changing nature of armed conflict and overcome its institutional limitations. Expanding its jurisdictional reach, strengthening its enforcement mechanism, and reducing the influence of political considerations are essential steps towards improving the Court's effectiveness. Meaningful reforms in these areas would enable the ICC to better fulfil its mandate and maintain its credibility as a key institution of international justice in an increasingly complex and evolving global landscape.



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