

CAN ART.16 OF THE ROME STATUTE AID THE PEACE PROCESS IN UKRAINE: AN EXPLORATORY ANALYSIS OF THE ART.16 DEFERRAL AND THE RUSSIA-UKRAINE CONFLICT

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Abstract

The active International Criminal Court arrest warrants against senior Russian officials present a structural challenge for any Russia-Ukraine peace settlement: the Rome Statute contains no amnesty provision, and Article 16 — the sole mechanism for deferring active proceedings — depends on Security Council action that Russia can veto or weaponize. This article examines what legal avenues exist to address ICC proceedings within a peace agreement, and whether any can substitute for or circumvent Article 16. Three avenues are analysed: the override of Rome Statute cooperation obligations through a Chapter VII resolution under Article 103 of the UN Charter; prosecutorial discretion under Article 53; and amnesty provisions in a bilateral or multilateral peace treaty. Each is found to be challenging, by Security Council voting dynamics, by jus cogens constraints on Chapter VII power, by the procedural stage at which proceedings stand, and by irreconcilable conflicts with existing cooperation obligations. The article concludes that the Rome Statute's resistance to unconditional legal guarantees is not an institutional deficiency but proof of structural resilience, and that the Russia-Ukraine situation forces into view what maintaining that design costs, in peace, institutional credibility, and the long-term authority of international criminal law.

INTRODUCTION

The International Criminal Court (ICC) has issued multiple active warrants against senior Russian officials in connection with the military operation in Ukraine, including against President Vladimir Putin.¹ Simultaneously, peace negotiations have advanced through multiple channels, including rounds in Abu Dhabi and Geneva in early 2026.² Any agreement that addresses the legal exposure of Russian officials to ICC prosecution must contend with a fundamental constraint: the Rome Statute contains no provision for amnesty, and the ICC

¹ Canadian Bar Association (2025, March) A Reflection Three Years Later – Arrest Warrants Have Been Issued by the ICC against President Vladimir Putin and Ms. Lvova-Belova available at: <https://www.cba.org/Sections/Criminal-Justice/Member-Articles/A-reflection-three-years-later> accessed on 05.03.2026 at 18:13.

² Caspian Post (2026, January) Second Round of Russia–Ukraine–US Talks: What to Expect From Abu Dhabi available at: <https://caspianpost.com/analytics/second-round-of-russia-ukraine-us-talks-what-to-expect-from-abu-dhabi> accessed on 05.03.2026 at 18:15.

Prosecutor has refused in prior situations to withdraw arrest warrants at the request of parties engaged in peace negotiations.³

The Rome Statute (RS) provides one mechanism for suspending active ICC proceedings in the interest of international peace and security. Article 16 permits deferral for a renewable twelve-month period upon request by the Security Council (SC), acting under Chapter VII of the Charter of the U.N.⁴ In December 2025, ICC Deputy Prosecutor Niang confirmed publicly that Article 16 represents the only legal avenue for deferring ICC proceedings.⁵ Yet the institutional conditions under which Article 16 was designed to operate have deteriorated significantly: US sanctions on ICC personnel through Executive Order 14203,⁶ Russian domestic legislation rejecting ICC warrants,⁷ a UN financial crisis the Secretary-General describes as an “imminent collapse”,⁸ and peace negotiations conducted through architectures at the periphery of the UN legal framework, most notably the Board of Peace.⁹

This generates a challenge that existing scholarship has not yet addressed. The literature on Art. 16 has examined its textual scope,¹⁰ its contested invocation through SC Resolutions 1422 (2002) and 1487 (2003)¹¹, and the normative limits on SC discretion in the face of atrocity crimes.¹² Separately, scholars have also analysed the legal framework for a Russia-Ukraine

³ The ICC Prosecutor refused to withdraw arrest warrants against leaders of the Lord's Resistance Army (LRA) at the request of the Ugandan government during peace negotiations. See also ICC Office of the Prosecutor, *Policy Paper on the Interests of Justice*, September 2007, p. 9.

⁴ *Rome Statute of the International Criminal Court* (1998), 2187 UNTS 3, Art. 16.

⁵ Deutsch, A. and van den Berg, S. (2025, December) “*Putin Arrest Warrant Will Stand Even if US-Led Peace Talks Agree Ukraine Amnesty*”, *Reuters*”, available at: <https://www.reuters.com/world/europe/putin-arrest-warrant-will-stand-even-if-us-led-peace-talks-agree-ukraine-amnesty-icc-prosecutors-say-2025-12-05/> accessed on 05.03.2026 at 18:16.

⁶ Exec. Order No. 14203, “*Imposing Sanctions on the International Criminal Court*”, 90 Fed. Reg. 10243, 12 February 2026.

⁷ Modern Diplomacy (2025, December) “*Legalizing Defiance: A New Law Lets Russia Dismiss ICC Arrest Warrants*” available at: <https://moderndiplomacy.eu/2025/12/29/legalizing-defiance-a-new-law-lets-russia-dismiss-icc-arrest-warrants/> accessed on 05.03.2026 at 18:21.

⁸ Nichols, M. (2026, January) “*UN Chief Guterres Warns of Imminent Financial Collapse*”, *Reuters*”, available at: <https://www.reuters.com/world/un-chief-guterres-warns-imminent-financial-collapse-2026-01-30/> accessed on 05.03.2026 at 18:22.

⁹ “*The Times of Israel*” (2026, January) Full text: Charter of Trump's Board of Peace available at: <https://www.timesofisrael.com/full-text-charter-of-trumps-board-of-peace/> accessed on 05.03.2026 at 18:25.

¹⁰ R. Laval, “*A Vicious Storm in a Teacup: The Action by the United Nations Security Council to Narrow the Jurisdiction of the International Criminal Court*”, in *Criminal Law Forum*, no. 14/2003, p. 195. See also C. Stahn, “*The Ambiguities of Security Council Resolution 1422 (2002)*” in *European Journal of International Law*, no. 14/2003, p. 85.

¹¹ *SC Res. 1422 (2002)*, adopted 12 July 2002, UN Doc. S/RES/1422 (2002); *SC Res. 1487 (2003)*, adopted 12 June 2003, UN Doc. S/RES/1487 (2003).

¹² J. Trahan, “*Veto and the UN Charter: the obligation to act in accordance with the 'Purposes and Principles' of the United Nations*”, in *Journal on the Use of Force and International Law*, no. 9(2)/2022, p. 243. See also J. Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*, Cambridge University Press, Cambridge 2020.

peace agreement, including the invalidity of treaties procured by coercion and the implications of *jus cogens* norms.¹³ What remains unexamined is the intersection: what legal avenues exist to address ICC proceedings within a peace settlement when Art.16 may not find its way through the SC?

The article addresses the following research question: what legal avenues exist to address ICC proceedings in a Russia-Ukraine peace settlement, and how could Art.16 of the Rome Statute be invoked through the Security Council? The article employs doctrinal, systemic, institutional, and normative analysis. Doctrinal analysis establishes the content and scope of the relevant norms; systemic integration under Art. 31(3)(c) of the Vienna Convention on the Law of Treaties governs their interpretation where the Charter and Rome Statute impose conflicting obligations or where peremptory norms constrain Chapter VII power; institutional analysis addresses SC voting mechanics and the political economy of enforcement, because Art. 16's design is inseparable from the conditions under which it must operate; and normative analysis engages the question of what the Statute's structural resistance costs and whether its design warrants reconsideration.¹⁴

1. ART. 16 AND CRYSTALIZING DEFERRAL

Art.16 RS' procedural architecture provides the basis. It requires affirmative SC action, a resolution, adopted under Chapter VII, which requires a prior determination under Art.39 of the Charter that a situation constitutes a threat to the peace, breach of the peace, or act of aggression.¹⁵ The provision was inserted a concession to states that demanded limited political control over prosecutorial action, on the understanding that there may be circumstances where the exercise of jurisdiction would interfere with the SC's conflict-resolution mandate.¹⁶ The deferral is renewable only by a new resolution adopted under the same conditions, so that SC inaction automatically restores ICC jurisdiction.

The Chapter VII requirement raises a threshold question that becomes critical in the Russia-Ukraine context. In the present situation, two competing characterisations of the “threat” stand out. If the SC determines that the Russian military operation itself constitutes the threat

¹³ Fox, G. (2024, December) “*A Legal Framework for a Russia-Ukraine Peace Agreement*”, EJIL: Talk! (blog of the European Journal of International Law), available at: <https://www.ejiltalk.org/a-legal-framework-for-a-russia-ukraine-peace-agreement/> accessed on 05.03.2026 at 18:17.

¹⁴ *Vienna Convention on the Law of Treaties* (1969) 1155 UNTS 331, Art. 31(3)(c).

¹⁵ *Charter of the United Nations* (1945), Art. 39.

¹⁶ D. Sarooshi, “*Aspects of the Relationship between the International Criminal Court and the United Nations*”, in *Netherlands Yearbook of International Law*, no. 32/2001, p. 38–39.

to the peace, this legitimates the breach of Art.2(4) of the Charter and acknowledge the grave breaches of law committed by Russia,¹⁷ legitimising the ICC's authority against Russian conduct, an outcome likely to draw a veto.

Alternatively, if the ICC arrest warrants are characterised as the threat to peace, on the assumption that they obstruct negotiations, this has great pejorative implications for accountability of Grave human Rights Violations and sits in antithesis with the normative logic of the RS. The Preamble affirms that "the most serious crimes of concern to the international community as a whole must not go unpunished" and recognises a relationship between accountability and the prevention of future crimes.¹⁸ Treating the Court's exercise of its core mandate as itself a threat to peace would place the SC in direct normative tension with the treaty it is invoking, a dilemma neither SC practice nor existing literature has addressed, because Art. 16 has never been invoked where pending warrants coexist with active peace negotiations in an ongoing armed conflict.

Those resolutions granted blanket prospective immunity to peacekeeping personnel from non-party states, in circumstances bearing little resemblance to the present: no active investigation, no pending warrants, no identified suspects.¹⁹ The resolutions attracted substantial scholarly criticism. Stahn identified fundamental ambiguities in Resolution 1422's legal basis, questioning whether the blanket, categorical nature of the deferral was consistent with Art.16's requirement of a specific situation warranting Chapter VII action.²⁰ Lavalley characterised the SC's action as an attempt to narrow ICC jurisdiction that exceeded the provision's intended scope.²¹ A third renewal was abandoned in 2004 after growing opposition, including from states parties that regarded the resolutions as an abuse of Art. 16's exceptional character.

Art. 16 requires sustained SC consensus over an indefinite period. Fox identifies the structural leverage this creates in the Russia-Ukraine context: Russia could condition a ceasefire on an initial deferral, then threaten re-escalation if the deferral is not renewed, producing a

¹⁷ UN General Assembly (2022), "*Aggression against Ukraine*", UN Doc A/RES/ES-11/1 (2 March), para. 2.

¹⁸ *Rome Statute*, supra note 3, Preamble, paras. 3–5.

¹⁹ *SC Res. 1422* (2002), adopted 12 July 2002, UN Doc. S/RES/1422 (2002), para. 1; *SC Res. 1487* (2003), adopted 12 June 2003, UN Doc. S/RES/1487 (2003), para. 1. Both resolutions were demanded by the United States as a condition for the renewal of existing UN peacekeeping missions. See D. Akande, "*The Jurisdiction of the International Criminal Court over Nationals of Non-Parties: Legal Basis and Limits*", in *Journal of International Criminal Justice*, no. 1/2003, p. 618

²⁰ C. Stahn, "*The Ambiguities of Security Council Resolution 1422 (2002)*", in *European Journal of International Law*, no. 14/2003, p. 85.

²¹ R. Lavalley, "*A Vicious Storm in a Teacup: The Action by the United Nations Security Council to Narrow the Jurisdiction of the International Criminal Court*", in *Criminal Law Forum*, no. 14/2003, p. 195.

perpetual cycle of coercive dependency between the peace process and the deferral mechanism.²² Fox further notes that all P5 members would need to join the peace framework and commit to voting for renewal annually, a requirement that becomes almost impossible to guarantee given the rotating composition of non-permanent members whose support is also needed.²³

The voting dynamics of any deferral resolution arise against the background of the good faith obligation under Article 2(2) of the UN Charter. The ICJ affirmed in the *Conditions of Admission* advisory opinion that members exercising their voting power must do so in good faith, in accordance with the Purposes and Principles of the Organisation, and in a manner that does not involve a breach of the Charter.²⁴ Kolb elaborates that good faith sets a limit on the admissible exercise of discretion and prohibits a state from making its vote contingent on conditions not inherently connected with the sense and purpose of the Charter provision being applied.²⁵ The ICJ also confirmed that powers granted by the charter are not unlimited and fall within the paradigmatic lines of the Charter itself.²⁶

Trahan applies this framework directly to the veto, arguing that permanent members hold no power beyond what the Charter confers, and that nothing in the Charter excludes voting or veto use from the requirement of adherence to the UN's purposes and principles. On this reasoning, a P5 member that benefits directly from a deferral it can perpetuate or terminate through its own veto is exercising a Charter power in its own interest rather than on behalf of the membership that conferred that power under Article 24(1).²⁷ This suggests an exercise of discretion that the good faith obligation, as interpreted by the ICJ and leading scholarship, is designed to constrain.

The objection that this remains *lex ferenda* rather than *lex lata* has reasonable grounds: no court has invalidated a veto on good faith grounds, and state practice does not yet reflect a sense of legal obligation. But the normative architecture is in place. The ICJ's reasoning in *Conditions of Admission* does not exempt any Charter power from the good faith constraint,

²² Fox, *supra* note 13.

²³ *Ibid.*

²⁴ *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, Advisory Opinion, ICJ Reports 1948, p. 57, at 64. Cited in A. Peters, "The Security Council's Responsibility to Protect", in *International Organizations Law Review*, no. 8/2011, p. 43–44.

²⁵ R. Kolb, "Purposes and Principles, Article 2(2)," in B. Simma et al. (eds.), *The Charter of the United Nations: A Commentary*, 3rd edition, Oxford University Press, Oxford 2012, vol. 1, p. 173, para. 23.

²⁶ *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter) (Advisory Opinion) [1962] ICJ Rep 151, 168; Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion) [1971] ICJ Rep 16, 45.*

²⁷ Trahan, *supra* note 12.

and Trahan's extension to the veto follows from that logic without requiring new law. What is missing is not the legal basis but the institutional will to apply it. The Russia-Ukraine situation, where a P5 member would use the veto to shield itself from prosecution for conduct the SC could characterize as a threat to peace, thus providing factual conditions under which the *lex ferenda* might turn to *lex lata*.

Article 16's own logic, the Chapter VII threshold, the absence of precedent for its application to active proceedings against a P5 member, and the veto-renewal dynamic, suggest that invoking the mechanism in the Russia-Ukraine context would require satisfying legal conditions that have never been tested and that challenge the provision's design at multiple points. This does not foreclose the possibility of invocation entirely, but it establishes that Art. 16 cannot be treated as a readily available instrument.

2. LEGAL AVENUES FOR ADDRESSING ICC PROCEEDINGS IN A PEACE SETTLEMENT

2.1. Article 103 of the UN Charter and the Override of Rome Statute Obligations

If Art. 16 is unlikely to operate as designed, the question shifts from suspending the Court's proceedings to altering the legal terrain on which it enforces them. Article 103 of the UN Charter provides that obligations under the Charter prevail over obligations under any other international agreement.²⁸ The distinction from Art. 16 is structural as Art. 16 requests the ICC to pause its own proceedings; Art. 103 does not speak to the Court at all. A Chapter VII resolution endorsing a peace agreement could override cooperation obligations under Part 9 of the RS, not pausing the Court but altering the legal terrain on which states enforce its mandate, justifying non-compliance via Arts. 25 and 103 of the Charter.²⁹

There is precedent for an such an endeavour. SC has precluded Libya from exercising its rights under the Montreal Convention, enhanced Iraq's obligations under the Non-Proliferation Treaty, departed from the Hague Regulations' criteria for the beginning and end of occupation,

²⁸ A complementarity challenge under Art. 17 is not analysed here. art. 17(1)(a) permits the Court to find a case inadmissible where a state with jurisdiction is genuinely investigating or prosecuting. Russia's December 2025 legislation formally rejecting ICC warrants forecloses this avenue: domestic proceedings undertaken to shield individuals from criminal responsibility fail the genuineness test under Art. 17(2)(a). See Modern Diplomacy, *"Legalizing Defiance: A New Law Lets Russia Dismiss ICC Arrest Warrants"*, 29 December 2025

²⁹ Rome Statute *supra* note 3, part.9.

and altered UNCLOS provisions on piracy.³⁰ Akande's analysis of SC referrals argues the same logic in reverse: when the SC referred the Darfur situation to the ICC, it implicitly subjected Sudan, a non-party, to the RS, because a decision to refer a situation to the Court implies a decision that the Court act within its Statute.³¹ If the SC can extend RS obligations to non-parties through Chapter VII, the proposition that it can suspend them for states parties through the same mechanism is at least doctrinally coherent.

The Art. 103 path thus offers a different legal target, namely state cooperation rather than Court jurisdiction, but it does not escape the institutional constraints analysed in Section 2. Any Chapter VII resolution requires the same voting procedure, and Russia's permanent seat guarantees that no resolution addressing its own conduct can pass without its consent.

Second, there is a material distinction between altering valid treaty obligations and overriding obligations that serve the enforcement of peremptory norms. Forlati argues the Council can impose agreements on states provided it does not transgress jus cogens, while Fox observes that if Council power is indeed limited by peremptory norms, then a Chapter VII resolution cannot cure a peace agreement that violates them. The prohibition of genocide, crimes against humanity, and war crimes, the very crimes for which the ICC warrants against Russian officials were issued, are widely recognised as having peremptory status.³² An Article 103 override shielding individuals from prosecution for jus cogens violations would face the same bona fide obligations per VCLT, the SC cannot use Chapter VII powers to produce a result that conflicts with norms hierarchically superior to the Charter itself.

Third, the ICC is not a UN organ. Art. 1 of the R.S provides that the jurisdiction and functioning of the Court shall be governed by the provisions of the Statute.³³ A Chapter VII resolution purporting to suspend ICC proceedings without using the mechanism the Statute itself provides would amount to legislating the Court's jurisdiction through a route the Rome

³⁰ For the relevant Security Council interventions and their corresponding treaty frameworks, see: UN Security Council (1992) *Resolution 748*, UN Doc. S/RES/748 and the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (1971) 974 UNTS 177; UN Security Council (1991) *Resolution 687*, UN Doc. S/RES/687 and the *Treaty on the Non-Proliferation of Nuclear Weapons* (1968) 729 UNTS 161; UN Security Council (2003) *Resolution 1483*, UN Doc. S/RES/1483, UN Security Council (2004) *Resolution 1546*, UN Doc. S/RES/1546 and the *Hague Convention (IV)* (1907) 187 CTS 227; UN Security Council (2008) *Resolution 1816*, UN Doc. S/RES/1816 and the *United Nations Convention on the Law of the Sea* (1982) 1833 UNTS 3.

³¹ Dapo Akande, "The Legal Nature of Security Council Referrals to the ICC and its Impact on Al Bashir's Immunities", in *Journal of International Criminal Justice*, vol. 7, no. 2/2009, pp. 340–341.

³² See Fox supra note 13 and International Law Commission, *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)*, UN Doc. A/77/10, 2022, Conclusion 23, Annex: non-exhaustive list including "the prohibition of genocide" and "the prohibition of crimes against humanity."

³³ Rome Statute, supra note 3.

Statute does not recognise. Even if all 193 UN members accepted the resolution's authority, the ICC Prosecutor and Pre-Trial Chamber would face no statutory basis to give it effect. This is a systemic impediment as Art. 103 operates within the Charter's hierarchy of norms, but the Rome Statute constitutes an autonomous legal regime whose internal hierarchy the Charter cannot unilaterally rearrange.

Furthermore, considering The Board of Peace. The structure cannot, as a matter of law, override R.S obligations. A Board of Peace resolution endorsing amnesty for Russian officials would have no more legal effect on ICC cooperation obligations than any other multilateral political commitment. But legal irrelevance in the formal sense does not preclude institutional significance. If the Board of Peace negotiates the terms of a Russia-Ukraine settlement and enough states comply with its framework in practice, the ICC's enforcement capacity would be constrained not by law but by the political economy of cooperation, as the Court has limited enforcement capacity outside state and SC cooperation.³⁴ The gap between legal obligation and practical enforcement, already seen in the Al-Bashir precedent, where multiple states parties hosted al-Bashir in defiance of ICC arrest warrants, with the ASP proving unable to impose meaningful consequences for non-cooperation.³⁵ The Putin warrant is already following the same trajectory: states parties have hosted him without executing the warrant, while an ICC's referral of non-cooperation to the ASP has small chances of producing enforcement action.

2.2. Prosecutorial Discretion under Article 53

Art.53 of the R.S. empowers the Prosecutor to decline to initiate an investigation where, taking into account the gravity of the crime and the interests of victims, there are substantial reasons to believe the investigation would not serve "the interests of justice."³⁶ Unlike Art. 16, this mechanism requires no Security Council action and no Chapter VII resolution, it is internal to the Rome Statute's own architecture. The appeal is obvious: it sidesteps the veto problem entirely.

The appeal is also illusory. Art. 53 is foreclosed on two independent grounds, one temporal and one substantive.

³⁴ ICC Assembly of States Parties (2016, November) Resolution ICC-ASP/15/Res.5, International Criminal Court, available at: <https://www.legal-tools.org/doc/991a13/pdf/> accessed on 05.03.2026 at 18:19, paras. 14-15

³⁵ Ibid.

³⁶ Rome Statute supra note 3, art.53 para.1(c) and art art.53.para.2(c)

Art. 53(1)(c) applies to the decision whether to initiate an investigation; Art. 53(2)(c) to whether to proceed to prosecution after investigation. In the Ukraine situation, the Prosecutor has not merely initiated an investigation but obtained arrest warrants from the Pre-Trial Chamber under Art. 58.³⁷ Art. 53 governs the front end of the prosecutorial process, not the back end. Once warrants are in force, the Prosecutor has no statutory discretion to withdraw them unilaterally, only the Pre-Trial Chamber can review prosecutorial decisions under Art. 53, and on grounds internal to the Statute.³⁸

The Office of the Prosecutor has consistently interpreted Art. 53's "interests of justice" criterion as excluding considerations of international peace and security. The OTP's 2007 Policy Paper states that "the broader matter of international peace and security is not the responsibility of the Prosecutor; it falls within the mandate of other institutions."³⁹ . The position was tested in practice during the Uganda situation, where the government demanded that the Prosecutor withdraw arrest warrants against Lord's Resistance Army leaders on the ground that they impeded peace negotiations. The Prosecutor refused.⁴⁰ The claim that ICC proceedings obstruct peace has, in other words, already been advanced and rejected as a basis for prosecutorial restraint, in circumstances materially analogous to those now unfolding in the Russia-Ukraine context.

2.3. Amnesty Provisions in a Multilateral Peace Treaty

The parties to a peace agreement could include provisions granting amnesty to Russian officials or committing the parties not to cooperate with ICC arrest warrants, operating outside the R.S entirely preventing the practical enforcement of warrants.

There are obstacles at multiple levels. The Rome Statute contains no provision for amnesty. The normative ideal in international law runs strongly against impunity for international crimes: treaties defining such crimes impose obligations on states with jurisdiction to investigate and prosecute, and U.N bodies have argued that amnesties for international crimes themselves violate human rights treaty obligations.⁴¹ The UN Secretary-General has declared

³⁷ International Criminal Court, "*Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*", 17 March 2023.

³⁸ Fox *supra* note 13.

³⁹ ICC Office of the Prosecutor, *Policy Paper on the Interests of Justice*, September 2007, p. 9

⁴⁰ International Criminal Court (2005) *The Prosecutor v. Joseph Kony: Warrant of Arrest for Joseph Kony issued on 8 July 2005 as amended on 27 September 2005*. Case No. ICC-02/04-01/05-53.

⁴¹ UN Human Rights Committee (HRC) (2004) General Comment No. 31 [Revised General Comment No. 15]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May, CCPR/C/21/Rev.1/Add. 13. Geneva: United Nations, p. 5, para. 18. And UN General Assembly (1989) Principles

that UN-endorsed peace agreements can never promise amnesties for genocide, war crimes, crimes against humanity, or gross violations of human rights.⁴² A peace agreement purporting to grant amnesty for conduct that has already been the subject of ICC arrest warrants would cut directly against this trajectory.

Art. 86 imposes a general obligation to cooperate fully with the Court for state parties.⁴³ An amnesty provision committing a state party to refuse ICC cooperation would create a direct conflict of obligations: the state would owe cooperation under the RS and would also owe non-cooperation under the new peace agreement. Under general treaty law, *lex posterior* does not automatically resolve the conflict because the RS obligation remains in force; nor does *lex specialis*, because a peace agreement's amnesty provisions would not constitute a more detailed regulation of the same subject matter as the RS cooperation regime, but rather a direct contradiction of it. Systemic integration under Art. 31(3)(c) suggests that the RS cooperation regime and a hypothetical amnesty treaty address the same subject matter from competing normative premises, creates an interpretive paradigm conflict.

The state faces international responsibility regardless of which obligation it honours.⁴⁴ A peace agreement would not void the RS obligation of state parties but could give rise to a material breach committed by the nonperforming state party agent. Neither withdrawal nor desuetude offers an exit. Art. 127(2) preserves cooperation obligations for proceedings commenced before withdrawal takes effect.⁴⁵ Desuetude requires general and consistent non-performance accompanied by *opinio juris*, a threshold that 124 actively participating states parties make almost impossible to meet.

Even if a peace agreement would commit its parties to voting for Art. 16 deferrals indefinitely, this obligation binds only the signatories. The rotating composition of the SC's non-permanent members means new states must be persuaded to support each annual renewal, and the obligation to vote in favour cannot be imposed on states not party to the peace agreement. It would be structurally challenging for the amnesty to deliver what it promises: legal certainty. It can create a political commitment among treaty parties, but it cannot control

on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 15 December, A/RES/44/162. New York: United Nations, Principle 19.

⁴² United Nations Secretary-General, "Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice", March 2010, para. 10.

⁴³ Rome Statute, supra note 17, art.86.

⁴⁴ Vienna Convention on the Law of Treaties (1969), Art. 30; see also ILC, *Fragmentation of International Law*, UN Doc. A/CN.4/L.682, 13 April 2006, para. 345.

⁴⁵ Rome Statute supra note 3, art.127(2).

the voting process on which the only legal mechanism for suspending ICC proceedings depends. The result is a gap between the political promise of the peace agreement and its potential legal capabilities.

3. CONCLUSION

3.1. The legal terrain

Each avenue examined faces different challenges. Art.16 requires satisfying Chapter VII threshold conditions that may either implicate Russia as aggressor or characterise the Court's own mandate as a threat to peace, and then sustaining annual renewal through a veto held by the deferral's principal beneficiary. Art. 103 targets cooperation obligations rather than Court jurisdiction directly, but shares Art. 16's dependence on SC voting dynamics and encounters the additional constraint that the obligations at stake serve the enforcement of peremptory norms, which the Council cannot override through the same Chapter VII power it would invoke. Article 53 seems foreclosed at this procedural stage: the investigation is open, arrest warrants are in force, and the OTP has consistently excluded peace and security considerations from its interests-of-justice analysis. Bilateral amnesty provisions generate political commitments but cannot extinguish RS cooperation obligations or bind non-signatory SC members to annual deferral votes.

What the analysis establishes is not that ICC proceedings will inevitably prevent a peace agreement, but that the R.S's architecture is structurally resistant to the kind of unconditional legal guarantee that Russia would require as a condition for settlement, while the UN framework provides no alternative that fully avoids the SC voting procedure and the veto (rather than outright impunity). The tension between accountability and peace, which the Statute's drafters sought to manage through Art. 16, has in the Russia-Ukraine context become a dynamic in which the mechanism's own design generates the leverage it was meant to resolve.

3.2. What the structural resistance costs, and what it is for

The good faith constraint on veto use, as argued in Section 2, is suggested to be closer to *lex ferenda*. But the factual conditions for a legal challenge are materialising. Were an Art. 16 resolution vetoed by Russia in the circumstances Fox identifies, Russia simultaneously holding the renewal mechanism as coercive leverage, the argument that this constitutes an exercise of Charter powers for private interest rather than collective benefit would have a concrete basis. The ICJ's *Conditions of Admission* framework, argued by Kolb and applied to the veto by

Trahan, provides the normative architecture for an advisory opinion framing the question in those terms. The political will to pursue it is a separate matter. Under current conditions, US sanctions on the Court, the Board of Peace as parallel architecture, the UN's financial crisis, the incentive is limited.

This raises the deeper question the Russia-Ukraine situation forces into view: whether Art. 16's design should be reconsidered, whether by transferring deferral authority to the Assembly of States Parties, removing the veto from the equation, or conditioning deferral requests on Prosecutorial certification of genuine peace negotiations. These are reform proposals that deserve sustained attention in the short future.

None of this, however, leads to the conclusion that the Statute's resistance to unconditional guarantees is a flaw. Art. 27's irrelevance of official capacity and the Preamble's commitment against impunity were drafted for precisely this scenario. The structural resistance is the design. What the Russia-Ukraine situation forces is not how to engineer around it, but what it costs, in peace, in institutional credibility, and in the long-term authority of international criminal law, to maintain it under conditions its drafters did not fully anticipate.

The realist objection would be that this structural resistance suggest the ICC's enforcement framework was never designed for confrontation with a P5 member, and that insisting on the design's integrity when it cannot deliver accountability amounts to impunity at the expense of peace. However, accepting that the Statute's commitments yield whenever a sufficiently powerful state demands it would not reveal a design flaw but create one, converting Art. 27's irrelevance of official capacity into a principle conditional on the official's geopolitical weight. That cost is real. So is the cost of abandoning the design the moment a P5 member demands it.

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