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The ICC's Independence Under Sanctions By States Non-Party To The Rome Statute: The Assembly Of States Parties As An Institutional Safeguard

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ABSTRACT

The unilateral sanctions imposed by the United States on officials of the International Criminal Court (ICC) in August 2026 raise legal questions concerning actions by a non-party state against ICC officials and the Court's institutional functions. This study analyses ICC institutional independence, the privileges and immunities of ICC officials, and the authority of the Assembly of States Parties (ASP) in responding to external pressure. The study employs normative legal research using statutory and conceptual approaches. The analysis examines the Rome Statute, the Agreement on the Privileges and Immunities of the International Criminal Court (APIC), ASP resolutions, and official documents on sanctions against ICC officials. The findings indicate that Article 4 of the Rome Statute establishes the ICC's international legal personality and legal capacity, while Article 48 and the APIC establish a treaty-based framework for privileges and immunities applicable to states bound by those instruments. Because the United States is not a party to either the Rome Statute or the APIC, these provisions cannot establish a breach of treaty obligations by the United States. This study proposes the Rome Statute Institutional Protection Mechanism as a model for strengthening institutional protection through the ASP's authority under Article 112(4) to establish subsidiary bodies. The mechanism comprises three principal functions: coordinating collective responses by States Parties, protecting the continuity of the ICC's institutional functions, and cooperation among States Parties in responding to external pressure while preserving the independence of the ICC's judicial functions.

Keywords: Assembly of States Parties, International Institutional Law, Institutional Independence, International Criminal Court, Unilateral Sanctions.

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1. INTRODUCTION

The establishment of the International Criminal Court (ICC) under the 1998 Rome Statute by the international community was a significant development in the realm of global justice. This permanent judicial institution was conceived with the primary mandate to adjudicate the most egregious crimes of international concern (United Nations, 2025c). The ICC has been officially constituted as an international organisation (Bordin, 2026), and it possesses international legal personality and legal capacity pursuant to Article 4 of the Rome Statute (ICC, 2025). This provision establishes the Court's legal personality and capacity rather than directly establishing a general rule of judicial independence. The institutional independence of the ICC is instead relevant to the ability of the Court and its organs to perform their judicial and institutional functions without improper external interference (Cortell & Peterson, 2022). However, this autonomy was subject to a direct challenge in August 2026 when the United States government implemented asset freezes and financial transaction restrictions targeting ICC President Tomoko Akane and Senior Trial Lawyer Abdoulaye Seye (International Criminal Court, 2026b). These measures give rise to a legal question concerning the extent to which a State that is not party to the Rome Statute may adopt measures affecting ICC officials and the institutional functioning of the Court. The

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United States government has utilised a range of coercive measures to indicate its non-recognition of the ICC's jurisdiction over nationals of non-State party to the Rome Statute (Reed, 2026). The imposition of unilateral sanctions against Akane and Seye has given rise to a significant legal question concerning the relationship between external coercive measures, the institutional independence of the ICC, and the ability of its officials to perform their functions (Reed, 2026).

The coercive actions by third states in the Akane and Seye cases have been demonstrated to have a destabilising effect on the established legal order. This situation gives rise to both a dual-norm conflict and a vague-norm scenario within the domain of International Institutional Law (Hirsch & Dixon, 2020). The principle of *pacta tertiis nec nocent nec prosunt* holds that international agreements neither impose obligations nor confer rights on third states (United Nations, 1969). Based on this doctrine, the United States rejects the ICC's jurisdiction and declines cooperation obligations concerning its nationals. However, the application of this principle necessitates a distinction between the treaty-based obligations of States Parties and other rules of international law that may independently bind a non-party State (Daugirdas, 2020). Conversely, targeted asset freezes and financial restrictions against Akane and Seye raise questions concerning the extent to which such measures may affect the functional privileges and immunities of ICC officials under Article 48 of the Rome Statute and the Agreement on the Privileges and Immunities of the ICC. Article 48 stipulates the privileges and immunities that shall be accorded in the territory of each State Party (United Nations, 2025c). In contradistinction, the APIC establishes a separate treaty framework for the privileges and immunities of the Court and its officials (United Nations, 2004). It is evident that as the United States is not a party to the Rome Statute or the APIC, the provisions of these treaties cannot, in and of themselves, establish a binding treaty obligation with regard to the United States. This conflict reveals a significant ambiguity regarding the extent to which the functional immunity of international officials can withstand coercive actions by non-State party. This calls for further examination to determine whether any applicable rule of customary international law or other source of international obligation may govern such measures.

The threats posed to judicial independence and functional immunity by non-State party have been examined from various normative angles. As demonstrated in the academic discourse on the legal standing of non-State party, political resistance from major powers is predominantly oriented towards considerations of jurisdictional legality as opposed to territorial claims (Schabas, 2016). Within the paradigm of economic coercion, the imposition of financial sanctions on international judicial officers functions as a political instrument that capitalises on systemic vulnerabilities in the international enforcement framework (Mertens, 2026). Concurrently, extant analyses of the Assembly of States Parties (ASP) under Article 112 of the Rome Statute frequently circumscribe its function to administrative oversight, budgeting, and managerial control, thereby underutilising the ASP's potential as an institutional bulwark against coercive measures from non-State parties (Muzakki et al., 2025). Nevertheless, the characterisation of sanctions as a violation of international law requires the identification of a specific international legal norm applicable to the sanctioning State, particularly where that State is not party to the Rome Statute. It is therefore essential that the analysis differentiates between treaty-based obligations and customary international law, as well as other applicable rules of international law.

The majority of extant literature addresses the jurisdictional legality of the ICC over non-State parties. However, there is a paucity of research on how international institutional law responds to unilateral sanctions targeting international judicial officials, particularly regarding the ASP's institutional mandate as a safeguard when third states obstruct ICC officials in the performance of their duties. Furthermore, the Rome Statute's internal regulations do not provide explicit institutional safeguards against external sovereign entities penalising ICC personnel (International Criminal Court, 2026a). In this particular context, the study considers the Rome Statute Institutional Protection Mechanism not as an existing mechanism established by the Rome Statute, but rather as a proposed institutional model. The institutional basis of the ASP is examined through Article 112 of the Rome Statute, particularly Article 112(4), which permits the ASP to establish subsidiary bodies as may be necessary within the institutional framework of the Court. In order to address this gap, the study offers two principal contributions. Firstly, it establishes a conceptual framework, termed the Rome Statute Institutional Protection Mechanism, which methodically evaluates the ASP's capacity to orchestrate collective responses to non-State-party coercion. The proposed mechanism is designed around three functions: firstly, the coordination of collective responses among States Parties; secondly, the provision of institutional protection to support the continuity of ICC functions; and thirdly, the cooperation among States Parties in responding

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to external pressure. Secondly, it provides an original evaluation of the ASP's legal and practical capacity to serve as an institutional safeguard, offering new insights into how joint resilience can be fostered within the ICC framework. This approach elucidates the hitherto unexplored institutional dimensions of international judicial protection and advances academic analysis of the evolution of institutional independence in response to contemporary challenges.

These developments emphasize the vital need for International Institutional Law to adopt a more adaptable framework (Olsson & Verbeek, 2018). Recent doctrinal shifts have been observed, indicating a shift from a focus on personal immunity to a greater emphasis on institutional resilience (Banteka, 2019). Contemporary reforms in international judicial law emphasise the necessity for international organisations to establish collaborative resilience mechanisms to protect judicial integrity against financial and administrative threats posed by non-State (Dunoff & Pollack, 2017). A reorientation of research focus from jurisdictional debates to the Rome Statute's Institutional Protection Mechanism is imperative to address these challenges. This perspective redefines the ASP as an institutional safeguard that coordinates collective legal and political responses among States Parties to protect the functional independence of ICC organs from non-State-party sanctions (Holesch et al., 2025). The proposed mechanism, however, would not authorise the ASP to invalidate or directly impose consequences upon measures adopted under the domestic law of a non-State Party. Its function would instead be limited to institutional coordination, protection, and cooperation among States Parties within the framework of the Rome Statute, and without interference with the Court's judicial functions. In view of the economic sanctions and financial restrictions imposed by the United States on ICC President Tomoko Akane and Senior Trial Lawyer Abdoulaye Seye, the present research considers two central questions. Firstly, the analysis will evaluate the ICC's institutional independence and the privileges and immunities of its officials under International Institutional Law when its officials are subjected to third-State sanctions. Secondly, it analyses the ASP's legal capacity under Article 112, particularly Article 112(4), to provide institutional protection defending the ICC's judicial mandate against extrastatutory coercion. The study aims to contribute to the advancement of the conceptual understanding of International Institutional Law through normative legal research and the application of statutory and conceptual approaches.

2. RESEARCH METHOD

The research method used in this study is normative legal research, which involves the analysis of primary and secondary legal materials, including international legal instruments and academic literature. Normative legal research examines legal norms and authoritative legal materials to identify and assess the law applicable to a particular legal issue (Sukmawan & Damayanti, 2025). The analytical framework under consideration comprises two primary approaches: the statute approach and the conceptual approach (Negara, 2023). The statute approach is a method of legal analysis that focuses on binding international legal instruments, general principles, and normative provisions. It is particularly focused on the 1998 Rome Statute of the International Criminal Court (ICC) and the Agreement on the Privileges and Immunities of the ICC. The Rome Statute is examined primarily to identify the legal personality, institutional functions, jurisdictional framework, and institutional authority of the ICC and the Assembly of States Parties (ASP). Furthermore, the Agreement on the Privileges and Immunities of the ICC is examined specifically to assess the treaty-based privileges and immunities applicable to the Court and its officials. The ASP Resolutions are examined in order to identify the exercise and implementation of the ASP's institutional functions and powers under the Rome Statute. The examination of official documents pertaining to sanctions imposed on ICC officials is undertaken for the purpose of ascertaining the measures that have been enacted, the officials who have been targeted, and the legal basis and scope of these measures, as stipulated by the relevant authorities. The conceptual approach utilises international legal doctrine to examine fundamental concepts (Yanova et al., 2023), including institutional independence, international legal personality, functional immunity, institutional integrity, non-cooperation, and international organisation responsibility. The conceptual approach is also used to distinguish the existing legal framework applicable to the circumstances under examination from the institutional model proposed by the study.

Legal materials are generally be classified into three tiers:

1. **Primary Legal Materials:** The following binding legal sources are to be considered: firstly, the 1998

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Rome Statute; secondly, the Agreement on the Privileges and Immunities of the ICC; and thirdly, the Assembly of States Parties Resolutions (ASP Resolutions). The selection of these materials is based on their direct connection with the legal issues examined, particularly the legal status and functions of the ICC, the privileges and immunities of its officials, and the institutional authority of the ASP.

2. **Secondary Legal Materials:** The following texts are offered for explanatory purposes: firstly, articles published in peer-reviewed journals; secondly, treatises written for legal professionals; and thirdly, media reports from international news outlets. Peer-reviewed journal articles and legal treatises are utilised to examine interpretations and doctrinal debates concerning ICC institutional independence, privileges and immunities, the legal position of non-State Parties, customary international law, and the institutional role of the ASP. International media reports are used as supplementary materials to provide factual and contextual information concerning the sanctions, including reported statements, developments, and implementation of the measures. It is evident that such reports are not accorded the status of independent legal authority for determining the existence or content of an international legal obligation.
3. **Tertiary Legal Materials:** Reference tools that provide context for primary and secondary sources, such as legal dictionaries and encyclopedias.

The collection of data is dependent on library research, with a particular emphasis on written materials related to unilateral sanctions and the institutional functions of the ASP. The selection of the collected materials is based on a number of factors, including their relevance to the research questions, the authority of the source, the authenticity of the document, and its direct relationship to the legal issue under examination. Official legal instruments and documents are prioritised in establishing the content and status of applicable legal rules, while academic literature is used to interpret and assess those rules and their application. The data is analysed using qualitative descriptive analysis and deductive reasoning to synthesise international legal instruments, documentary evidence, and secondary literature. The determination of the international legal norms applicable to a State that is not party to the Rome Statute begins with the identification of whether the relevant obligation arises from a treaty to which that State is bound. In instances where the relevant treaty does not bind the State, the principle of *pacta tertiis nec nocent nec prosunt* is considered in determining the treaty's applicability. The analysis then examines whether the relevant rule may independently apply as customary international law or arise from another applicable source of international law. In the context of customary international law, its applicability is determined by the existence of general practice that is recognised as law (*opinio juris*). This approach contrasts with the assumption that a rule contained in the Rome Statute or the APIC automatically binds a non-party State. The analysis of the applicable legal framework is distinguished from the Rome Statute Institutional Protection Mechanism proposed by this study, which is treated as a prospective institutional model (*lex ferenda*) rather than as an existing rule of law (*lex lata*).

3. RESULT AND DISCUSSION

3.1. Institutional Independence of the ICC Under Third-State Sanctions Coercion

The August 2026 escalation of unilateral measures by the United States—imposing asset freezes and financial access restrictions on ICC President Tomoko Akane and Senior Trial Lawyer Abdoulaye Seye—constitutes a critical stress test for International Institutional Law (International Criminal Court, 2026b). The United States has grounded its coercive policies in its non-recognition of the ICC's jurisdiction over nationals of non-State party. The legal evaluation of these measures, however, commences with the legal relationship between the United States and the instruments governing the ICC. The United States is not a signatory to the Rome Statute, and consequently the treaty-based obligations contained within the Statute cannot simply be applied to the United States as though it had consented to them (Chrisan, 2015). This is consistent with the prevailing principle articulated in Article 34 of the Vienna Convention on the Law of Treaties 1969, which stipulates that a treaty cannot establish obligations or rights for a third State without its explicit consent. The principle of *pacta tertiis nec nocent nec prosunt* thus establishes a fundamental point of departure for determining the applicability of the Rome Statute to a non-State Party. This limitation, however, concerns the treaty effect of the Rome Statute and does not by itself determine whether conduct affecting an international organisation is legally permissible. The distinction is of significance because the same legal rule may exist independently of a treaty as customary international law (Daugirdas, 2020). Article 38(1)(b) of the Statute of the International

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Court of Justice acknowledges international custom as a source of international law, while the International Law Commission has elucidated that the identification of customary international law necessitates both a general practice and acceptance of that practice as law (*opinio juris*) (Odermatt, 2017). Consequently, it would be erroneous to presume that a rule contained in the Rome Statute binds the United States merely because it appears in the Statute. Rather, its applicability beyond the treaty framework would require an independent basis in customary international law or another applicable source (Chasapis Tassinis, 2025).

This distinction also clarifies the legal significance of the ICC's institutional status. Article 4(1) of the Rome Statute establishes that the Court is endowed with international legal personality and the legal capacity requisite for the execution of its functions and the realisation of its objectives. The provision establishes the ICC as an international legal person, but it does not itself constitute a general prohibition on external interference. The legal basis for the independence of the Court's judicial and prosecutorial functions is more specifically delineated in Articles 40 and 42. Article 40 stipulates that judges must exercise their functions with independence, while Article 42 establishes the Office of the Prosecutor as a distinct organ that functions autonomously and does not seek or act on instructions from an external source. The legal personality of the Court and the independence of its organs therefore operate as distinct but complementary elements of the institutional structure created by the Rome Statute. This issue assumes particular significance when sanctions are directed at individual officials as opposed to the Court as a legal entity. The August 2026 designations are of particular significance in this respect, given that the measures were directed against persons performing functions entrusted to them within the ICC. The ICC has asserted that the sanctions imposed on Judge Tomoko Akane and Senior Trial Lawyer Abdoulaye Seye represent a "flagrant attack" on the independence of the Court. The ICC has further emphasised that measures directed towards judges, prosecutors and staff have the potential to undermine the rule of law and hinder the Court's capacity to fulfil its mandate. The Presidency of the Assembly of States Parties similarly characterised the measures as attempts to impede the Court and its personnel in the exercise of their mandated functions. While these institutional statements do not inherently constitute a violation of international law, they do offer pertinent evidence of the institutional impact attributed to the measures by the organisation and its States Parties.

The subsequent inquiry, therefore, concerns whether these measures can legally be characterised as affecting the privileges and immunities applicable to ICC officials. Article 48(1) of the Rome Statute stipulates that the Court is to be granted privileges and immunities in the territory of each State Party, to the extent that is necessary for the fulfilment of its purposes. Article 48(2) further stipulates that judges, the Prosecutor, Deputy Prosecutors and Registrar are to be granted privileges and immunities equivalent to those accorded to heads of diplomatic missions when engaged on or with respect to the business of the Court. This includes immunity from legal process in respect of official acts. Article 48(3) stipulates that necessary privileges and immunities are to be extended to relevant staff in accordance with the Agreement on the Privileges and Immunities of the International Criminal Court (APIC). The APIC serves to reinforce the functional character of these protections. The preamble and operative provisions of the Statute establish privileges and immunities in connection with the proper functioning of the Court, while Article 15 onwards provide specific protections for judges, the Prosecutor, officials and other persons connected with the Court. The Agreement also elucidates that the privileges and immunities are bestowed not for the personal advantage of the individuals concerned, but rather in the interests of the administration of justice. This functional character is of significance insofar as the legal purpose of immunity is connected to the independent performance of institutional functions.

However, the terms of the treaty impose a jurisdictional limitation on this argument. Article 48 expressly refers to privileges and immunities in the territory of each State Party, while the APIC is itself a treaty applicable to its States Parties. Consequently, it can be concluded that neither Article 48 nor the APIC, by virtue of their status as a treaty, can be regarded as establishing a direct treaty obligation for the United States. It is evident that the United States' non-participation in the Rome Statute and APIC framework precludes the automatic characterisation of sanctions as a breach of treaty-based immunity. The legal analysis must instead distinguish between treaty-based immunity, customary international law, and the broader institutional consequences of the sanctions. This distinction is of particular importance because the nature of the sanctions does not correspond precisely to the traditional formulation of functional immunity. Functional immunity is a legal doctrine that ordinarily protects public officials from legal process in relation to acts performed in their official capacity. Asset freezes and restrictions on access to financial services operate through a different legal mechanism, in that

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they restrict property, transactions, or access to financial systems rather than directly subjecting an official to judicial or administrative jurisdiction over an official act. However, it is important to note that such measures have the potential to adversely impact the practical conditions under which an official performs their functions. The existence of that practical effect is relevant to institutional independence, but it is not sufficient, without further legal analysis, to establish a violation of functional immunity.

The Rome Statute itself provides further evidence that protection against interference with court officials is an integral component of its institutional architecture. Article 70(1)(d) places within the Court's jurisdiction certain conduct intended to impede, intimidate, or corruptly influence an official of the Court in order to prevent or improperly influence the performance of official duties, while Article 70(1)(e) addresses retaliation against an official on account of duties performed. It is evident that the provisions outlined herein underscore the recognition of interference with the performance of official functions within the legal structure of the Rome Statute. However, it should be noted that they do not establish a general prohibition applicable to every State, irrespective of treaty status. Article 70 operates within the jurisdictional framework of the Statute, and therefore cannot independently be used to impose a treaty-based criminal obligation upon the United States as a non-State Party. The limits of the cooperation regime further reinforce this conclusion. Article 86 imposes the general obligation to cooperate upon States Parties, while Article 87 expressly regulates requests for cooperation to States Parties. The Rome Statute, therefore, contains a structured cooperation system, but does not provide the Court with a general enforcement mechanism through which it can compel a non-State Party to withdraw domestic sanctions or to recognise obligations arising solely from the Statute.

The remaining legal question is therefore whether a relevant prohibition may arise independently from customary international law. The 2018 Conclusions on the Identification of Customary International Law, as established by the International Law Commission, posit the necessity of two concomitant elements for the identification of such law: firstly, the existence of general practice, and secondly, *opinio juris* (International Law Commission, 2018). It is acknowledged that relevant evidence may include diplomatic correspondence, official statements, legislative and executive practice, national court decisions, treaty provisions, and other forms of State practice (International Law Commission, 2018). Consequently, the existence of a customary rule protecting international organisations or their officials against particular forms of external economic measures cannot be inferred merely from the existence of Article 48 or APIC (Liu, 2024). It is imperative that this notion is evidenced through the broader practice and legal conviction of States. However, the broader law of international organisations provides a significant conceptual foundation for understanding why institutional protection may extend beyond the text of a constituent treaty. In recognition of the injuries sustained in the service of the United Nations, the International Court of Justice determined that an international organisation possesses both the international personality and the capacity necessary to perform its functions on the international plane. The Opinion also addressed the protection of agents in the performance of their duties. While the Opinion pertains to the United Nations rather than the ICC, its reasoning is pertinent to the broader relationship between international legal personality, institutional functions, and the protection of international agents. However, it does not establish that every measure directed at an official of an international organisation constitutes an internationally wrongful act.

When considered collectively, these regulations result in a more precise characterisation of the sanctions imposed in August 2026. The measures give rise to a substantial issue of institutional interference, given that they were directed against ICC personnel carrying out functions connected with the Court's mandate (Hovell, 2025). The ICC and the ASP Presidency officially described these measures as affecting the Court's ability to perform those functions (United Nations, 2025b). However, the legal conclusion is more limited in scope. The sanctions cannot be declared unlawful solely on the basis of Articles 4 or 48 of the Rome Statute because the United States is not a State Party. Furthermore, the sanctions cannot be characterised as a violation of customary functional immunity without evidence establishing the relevant customary rule. The analysis therefore suggests that the sanctions may highlight a discrepancy between the institutional protections recognised within the Rome Statute system, and its limited ability to regulate coercive measures adopted by a non-State party. This lacuna provides the foundation for the consideration of institutional responses within the framework of the Rome Statute system. Instead of extending the substantive obligations of the Statute to a non-State Party, such responses would serve to strengthen the ability of States Parties and ICC organs to maintain the Court's functions when external measures create operational difficulties. Consequently, the

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question shifts from the legality of the third-State measure itself to the institutional capacity of the ASP to protect the continuity and independence of the Court.

3.2. The Assembly of States Parties (ASP) and the Institutional Capacity to Protect ICC Functions

ASP functions as the legislative and management oversight body under Article 112 of the Rome Statute (United Nations, 2025c). Article 112 provides a specific institutional framework for this role. Under Article 112(2), the Assembly provides management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court, considers and decides the Court's budget, considers questions relating to non-cooperation under Article 87(5) and (7), and performs other functions consistent with the Statute and the Rules of Procedure and Evidence. The provision therefore gives the ASP institutional and administrative authority, while keeping judicial and prosecutorial decision-making within the respective organs of the Court (Broache & Reed, 2023).

The institutional competence of the ASP is particularly relevant to the financial and administrative dimensions of external pressure (Andonova, 2025). Article 112(2)(d) assigns the Assembly authority to consider and decide the budget of the Court (United Nations, 2025c), while Article 112(2)(g) allows it to perform other functions consistent with the Statute and the Rules of Procedure and Evidence. These provisions do not authorise the ASP to regulate the domestic conduct of a non-State Party, but they provide a basis for measures concerning the institutional resources and administration of the Court itself. The distinction preserves the boundary between institutional support and interference with judicial functions (Reed, 2026). Institutional resilience under the Rome Statute can therefore be understood through several interrelated legal components (Kotsakis, 2024).

Table 1. Institutional Resilience Factors of the ICC

Primary Factor	Legal Basis	Institutional Function
International legal personality	Article 4 Rome Statute	Establishes ICC as an international legal person with necessary legal capacity
Judicial independence	Article 40 Rome Statute	Protects the independent performance of judicial functions
Prosecutorial independence	Article 42 Rome Statute	Protects independent investigation and prosecution
Privileges and immunities	Article 48 Rome Statute and APIC	Protects the Court and relevant officials within the applicable treaty framework
Protection of official functions	Article 70 Rome Statute	Protects the administration of justice against specified forms of interference
State cooperation	Articles 86–87 Rome Statute	Provides the treaty-based cooperation framework for States Parties
ASP institutional authority	Article 112 Rome Statute	Provides management, budgetary and institutional oversight
Subsidiary bodies	Article 112(4) Rome Statute	Permits the establishment of subsidiary bodies within the Statute
Institutional financing	Article 112(2)(d)	Supports continuity of Court operations

Source: Compiled by the author from the 1998 Rome Statute and Official ASP Documents (2026).

The relationship among these factors is sequential rather than merely cumulative. Article 4 provides the legal personality necessary for the Court to operate as an international institution; Articles 40 and 42 protect the independence of the organs responsible for adjudication and prosecution; Article 48 and APIC provide privileges and immunities within the applicable treaty framework; Articles 86 and 87 establish cooperation obligations for States Parties; and Article 112 provides the institutional framework through which States Parties exercise collective administrative and financial authority. The resulting framework provides several layers of institutional protection, but each layer has a different legal scope (Duxbury, 2024). The existence of these different layers also explains why the ASP cannot simply be treated as an enforcement body against third States. Its authority is primarily exercised within the Rome Statute system. Where the problem concerns the finansial or administrative

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continuity of the Court, the Assembly possesses relevant institutional competence. Where the issue concerns judicial decisions or prosecutorial determinations, however, the principle of institutional independence requires the ASP to refrain from directing those functions. The appropriate role of the Assembly therefore lies in strengthening the institutional conditions under which independent judicial and prosecutorial functions can continue to operate.

The practical relevance of Article 112(4) becomes apparent in this context. Article 112(4) provides that the Assembly may establish subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court in order to enhance its efficiency and economy (Giesen et al., 2026). This provision has already been used to establish the Independent Oversight Mechanism (IOM), which operates as a subsidiary body of the ASP (United Nations, 2025a). Its mandate is specifically concerned with oversight through inspection, evaluation and investigation. The existing IOM is therefore important not because it already performs the functions contemplated by the proposed RS-IPM, but because it demonstrates that Article 112(4) has been used as a legal basis for creating a subsidiary institutional mechanism (ICC, 2025). The IOM's established mandate should nevertheless not be conflated with the proposed protection mechanism. An oversight body concerned with inspection, evaluation and investigation serves a different institutional purpose from a mechanism designed to coordinate responses to external measures affecting Court personnel and operations. Against this legal and institutional background, the RS-IPM is proposed as a prospective mechanism rather than an existing ICC institution. Its legal basis would potentially be connected to Article 112(4), but the provision does not itself establish an RS-IPM or define such a mandate. A formal decision of the Assembly would therefore be necessary to establish the body, determine its composition and reporting structure, specify its functions, and provide for its financing. The scope of those functions would also need to remain consistent with the Rome Statute and could not be used to create substantive obligations for non-State Parties.

The proposed RS-IPM may consequently be organised around three complementary pillars.

1. **Coordination Pillar:** The Coordination Pillar would provide a structured forum for communication and coordination among States Parties when external measures affect the Court or its personnel. Its function would be to facilitate common positions, exchange information concerning operational consequences, and coordinate diplomatic or institutional responses where appropriate. Such coordination would not amount to collective enforcement against a non-State Party; rather, it would strengthen the ability of States Parties to act consistently within their own legal competences.

2. **Protection Pillar:** The Protection Pillar would focus on measures that can be adopted within the legal authority of States Parties to mitigate the consequences experienced by affected ICC personnel. These could include legal assistance, administrative support, financial arrangements, or other measures directed toward maintaining the capacity of personnel to perform their official functions. The pillar would therefore concern practical institutional protection rather than the creation of a new form of immunity binding upon third States.

3. **Cooperation Pillar:** The Cooperation Pillar would strengthen coordination among States Parties concerning the continuity of ICC operations. It could include arrangements for maintaining access to financial and institutional resources, facilitating administrative cooperation, and reducing operational vulnerabilities arising from external measures. Its legal basis would remain the existing cooperation framework of the Rome Statute and the domestic authority of participating States Parties.

The three pillars therefore represent proposed functions of the RS-IPM rather than existing powers of the ICC or ASP. Their common objective would be to strengthen institutional resilience while maintaining the separation between administrative support and judicial decision-making. This distinction is important because the legitimacy of the mechanism would depend upon its ability to protect the conditions necessary for independent adjudication without allowing the ASP to influence individual cases or prosecutorial decisions. The proposed mechanism would also have clear legal limits. Article 112(4) permits the establishment of subsidiary bodies, but it does not authorise the Assembly to amend the substantive rights and obligations established by the Rome Statute through an ordinary institutional decision (ICC, 2025). If an RS-IPM were designed merely as a coordination, support, or administrative mechanism within the existing authority of the Assembly, Article 112(4) could provide a potential institutional basis. If, however, its mandate were intended to impose new

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binding obligations upon States Parties or non-State Parties, modify privileges and immunities, or create new substantive treaty obligations, a separate legal instrument or amendment procedure would be required.

3.3. General Discussion and Effects for International Criminal Justice

The preceding analysis demonstrates that the problem created by third-State sanctions cannot be reduced to a simple question of whether sanctions against ICC officials are lawful or unlawful. The legal structure is more accurately understood as involving three interconnected levels. The first concerns the international legal personality of the ICC under Article 4. The second concerns the independence of its judicial and prosecutorial organs under Articles 40 and 42, together with the privileges and immunities applicable under Article 48 and APIC. The third concerns the institutional capacity of the States Parties, acting through the ASP, to preserve the conditions necessary for the Court to continue performing those functions. Each level has a distinct legal basis and should not be treated as interchangeable (Bordin & Odermatt, 2024). Firstly, Article 4 establishes the ICC as an international legal entity with the legal capacity required to fulfil its functions. This is consistent with the broader principle recognised by the International Court of Justice in the Reparation for Injuries Advisory Opinion, in which the Court recognised that an international organisation must possess the necessary international personality and capacity to perform its functions (Collins, 2023). For the ICC, however, the scope of this capacity is defined by the Rome Statute. While Article 4 supports the Court's institutional status, it does not, in isolation, establish a general prohibition against all forms of external economic or political pressure. Secondly, the Rome Statute contains express provisions concerning institutional independence. Article 40 safeguards the independence of judges, and Article 42 stipulates that the Office of the Prosecutor must act independently and forbids its members from seeking or acting on instructions from external sources. Article 48 then provides the Court and specified officials with privileges and immunities within the treaty framework. These provisions demonstrate that independence and immunity are related yet legally distinct concepts. Independence relates to how judicial and prosecutorial functions are carried out, while immunity relates to the legal protection afforded to the Court and its officials in circumstances defined by applicable legal instruments. Meanwhile, the August 2026 sanctions illustrate the limits of these treaty-based protections when the measures originate from a state outside the Rome Statute system. The ICC and the Presidency of the ASP have publicly characterised these measures as an attempt to hinder the Court and its personnel in performing their mandated functions. These statements provide significant evidence of the institutional consequences perceived by the Court and States Parties. However, they do not substitute for an independent determination of whether a rule of international law binding upon the United States has been violated.

The distinction is particularly important for functional immunity. Article 48(2) protects judges, the Prosecutor, Deputy Prosecutors and Registrar from legal process in respect of words spoken or written and acts performed in their official capacity, while the APIC provides additional protections for relevant personnel. The wording of these provisions demonstrates that functional immunity is closely connected to official acts and legal process. Financial sanctions may have serious practical consequences for officials, but the legal character of an asset freeze is not identical to the exercise of jurisdiction over an official act. Consequently, the sanctions may raise concerns regarding the practical independence of ICC personnel without automatically constituting a violation of Article 48 or APIC. The possibility of a customary rule must likewise be approached with caution. The ILC's 2018 Conclusions require both general practice and *opinio juris* for the identification of customary international law. Evidence that States have repeatedly protected international organisations or their officials may be relevant, but it must be shown that such practice is accompanied by a belief that the conduct is legally required. The existence of privileges and immunities in the Rome Statute and APIC therefore cannot, by itself, establish a customary prohibition on sanctions adopted by a non-State Party.

The available legal framework therefore suggests that the August 2026 sanctions do not automatically constitute an internationally wrongful act, but rather reveal a structural limitation in the protection available to the ICC against coercive measures originating outside the Rome Statute system (Gulati & Webb, 2023). The Rome Statute contains detailed provisions concerning independence, immunity and cooperation, yet those provisions operate principally within a treaty framework accepted by States Parties. Where a third State has not accepted that framework, the ICC cannot simply transpose those treaty obligations onto that State. This limitation does not render the institutional framework ineffective. Rather, it shifts the emphasis from direct regulation of the third State to the resilience of the institution itself. The Rome Statute already provides the ASP with

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management, budgetary and institutional authority under Article 112, including the power to establish subsidiary bodies under Article 112(4). The experience of the IOM demonstrates that this provision can support the creation of institutional mechanisms through formal decisions of the Assembly.

The RS-IPM proposed in this study therefore represents a form of institutional *lex ferenda*. It does not purport to be an existing ICC mechanism, nor does it seek to give the ASP authority to invalidate sanctions imposed by the United States. Its purpose is narrower: to provide a possible institutional structure through which States Parties could coordinate responses, support affected personnel, and strengthen the operational resilience of the Court (Amnesty International, 2025). Its legal foundation would need to be established through an appropriate ASP decision under Article 112(4) insofar as its functions remain within the Assembly's existing authority. Functions that would create new substantive obligations or alter the treaty rights and obligations of States would require a separate legal basis. The significance of the proposal therefore lies not in creating a new enforcement power against non-State Parties, but in reducing the institutional vulnerability that arises when external measures target personnel responsible for carrying out the Court's mandate. Such an approach preserves the distinction between the legal responsibility of the State adopting the measure and the institutional responsibility of States Parties to maintain the functioning of the Court (Klabbers, 2017). It also allows the ASP to strengthen institutional resilience without assuming powers over judicial or prosecutorial decision-making. The findings ultimately suggest that the protection of ICC independence requires a combination of legal protection and institutional resilience. The Rome Statute provides the normative foundation for the Court's legal personality, judicial and prosecutorial independence, privileges and immunities, cooperation, and ASP governance. The experience of the August 2026 sanctions demonstrates, however, that these protections do not provide a complete response to measures adopted by non-State Parties. The proposed RS-IPM is therefore advanced as a prospective institutional mechanism through which the States Parties could address this gap while remaining within the limits of the Rome Statute.

4. CONCLUSION

This study finds that unilateral economic and administrative sanctions imposed by the United States against officials of the International Criminal Court (ICC) raise significant concerns regarding the institutional independence and operational capacity of the Court. Article 4 of the Rome Statute 1998 establishes the ICC as an international legal person with the capacity necessary to perform its functions, while Articles 40 and 42 protect the independence of judges and the Prosecutor in the exercise of their functions. Article 48 of the Rome Statute 1998 and the Agreement on the Privileges and Immunities of the International Criminal Court (APIC) provide a treaty-based framework for the privileges and immunities of ICC officials. However, because the United States is not a State Party to the Rome Statute, the sanctions cannot, on the basis of the Rome Statute or APIC alone, be conclusively characterised as a violation of functional immunity. The findings instead demonstrate that the principal legal concern lies in the potential impact of external measures on the institutional independence and operational capacity of the ICC. Accordingly, the sanctions should not be characterised automatically as an internationally wrongful act or as a direct violation of functional immunity solely on the basis of Article 48 or APIC, but they demonstrate a structural vulnerability in protecting the Court's institutional functions against measures adopted by non-State Parties.

The study further finds that the Assembly of States Parties (ASP) possesses institutional, administrative, and financial capacities under Article 112 of the Rome Statute that can contribute to strengthening the ICC's institutional resilience, although the ASP does not possess authority to impose obligations on non-State Parties or directly prevent third States from adopting unilateral measures. Article 112(4) may provide a potential institutional basis for establishing a subsidiary mechanism concerned with coordination, institutional support, and protection of the Court's operational capacity, subject to a formal decision of the ASP and the limits of the Rome Statute. On this basis, the proposed Rome Statute Institutional Protection Mechanism (RS-IPM) is presented as a research proposal rather than an existing mechanism under the Rome Statute. The proposed mechanism seeks to strengthen collective responses among States Parties through coordination, institutional protection, and cooperation, while not creating new treaty obligations for non-State Parties, altering the existing privileges and immunities regime, or expanding the substantive authority of the ASP beyond the Rome Statute.

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Statement on AI Usage
The authors declare that no Generative AI technology or AI assistance tools were used during the preparation, drafting, or analysis of this manuscript.

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