

UNANCHORED JUSTICE: EXTENDING ICC JURISDICTION OVER MARITIME CRIMES IN INTERNATIONAL WATERS

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Abstract—The International Criminal Court's (ICC) territorial jurisdiction under Article 12(2)(a) of the Rome Statute creates a critical enforcement gap for core international crimes committed aboard unregistered vessels in international waters. The Rome Statute says registered ships are like the territory of the country they are registered in for authority reasons. However, unregistered ships don't have a country of registration, so they are not under the Court's authority if people from countries that are not part of the ICC commit crimes on them. This lack of authority makes it hard to hold people accountable, especially since people on these ships, like refugees, asylum seekers, and human trafficking victims, are in danger. Current events, like accusations of unlawful killings during drug operations at sea and the crisis of migrant ships in the Mediterranean, show that fixing this legal problem is urgent. This paper uses legal analysis to look at the current limits of the ICC's territorial authority at sea. It suggests changing Article 12 of the Rome Statute. Based on the idea of universal authority—where any country can prosecute international crimes no matter where they happened or who committed them—the paper says that ICC members can give this authority to the Court for crimes on unregistered ships outside of any country's territory. This change would fit with the Rome Statute's goal of ending impunity for major international crimes. It would also follow the United Nations Convention on the Law of the Sea (UNCLOS), which says all countries have authority over stateless ships under Article 110(1)(d). The paper also looks at recent pushes to change the Rome Statute, like Pacific-island countries suggesting in September 2024 that ecocide be recognized as a fifth international crime. This shows the institution is willing to expand its authority. By studying the legal reasons for expanding ICC authority, looking at examples from international maritime law, and discussing worries about national sovereignty, this paper adds to discussions about closing gaps in international criminal justice. The suggested change would better protect vulnerable people at sea, discourage mass atrocities in maritime areas, and strengthen the idea that international criminal law applies to everyone.

Index Terms—International Criminal Court, Rome Statute, Unregistered Vessels, Universal Jurisdiction, Maritime Crimes, Crimes Against Humanity, Jurisdictional Gaps, Ecocide, International Criminal Justice

I. Introduction

The extensive reach of international waters, encompassing nearly two-thirds of the global oceans, poses significant challenges to the existing international legal framework. Within this maritime space, a critical enforcement gap hinders efforts to hold accountable those responsible for serious international crimes committed on vessels lacking registration. The jurisdiction of the International Criminal Court (ICC), as delineated in Article 12(2)(a) of the Rome Statute, depends on a jurisdictional link that proves inadequate

when faced with stateless vessels operating outside any national jurisdiction.¹ This deficiency in international criminal law effectively provides a refuge from accountability, placing particularly at risk groups such as refugees, asylum seekers, and victims of human trafficking who are vulnerable to abuse by offenders beyond the reach of legal redress. Recent maritime incidents highlight the pressing nature of this jurisdictional shortfall. The Mediterranean Sea, for instance, has repeatedly been the site of tragic events involving migrant vessels; since 2015, over 1.5 million individuals have arrived in Europe by sea, many aboard unregistered boats managed by smuggling operations.² The scope of the humanitarian crisis is not confined to the Mediterranean alone but extends to maritime contexts where unlawful killings occur during counter-narcotics missions, where forced labor conditions impact an estimated 100,000 fishermen globally, and where systematic exploitation targets vulnerable groups on stateless vessels.³ These offenses, frequently meeting thresholds indicative of crimes against humanity, persist largely because perpetrators operate within a jurisdictional void that impedes prosecution. This article presents a legal argument advocating for the amendment of Article 12 of the Rome Statute to broaden ICC jurisdiction over core international crimes committed on unregistered vessels in international waters. The discussion unfolds in four segments. The first segment critiques the current territorial jurisdiction framework under the Rome Statute, identifying the enforcement gap emerging from unregistered vessels. The second segment examines universal jurisdiction as a potential legal basis for the proposed amendment, assessing its coherence with the Rome Statute's structural design. The third segment analyzes pertinent provisions of the United Nations Convention on the Law of the Sea (UNCLOS), including Article 110(1)(d), and explores their interplay with international criminal jurisdiction. The final segment considers anticipated objections grounded in state sovereignty concerns and evaluates recent developments such as the 2024 proposal to amend the statute to include ecocide, that indicate a potential institutional willingness to expand jurisdictional reach.

I. THE JURISDICTIONAL GAP: UNREGISTERED VESSELS AND THE LIMITS OF ARTICLE 12(2)(A)

A. The Territorial Jurisdiction Framework of the Rome Statute

The jurisdictional framework established by the Rome Statute reflects a deliberate balance between the objectives of ensuring accountability and respecting state sovereignty.⁴ Article 12(2) specifies two

¹ Rome Statute of the International Criminal Court, art. 12(2)(a), July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002).

² European Commission, Migrant Ghost Ships: Who Are the People Smugglers?, BBC News (January 8, 2015), available at <https://www.bbc.com/news/world-europe-30715001>; Killian S. O'Brien, "Refugees on the High Seas: International Refugee Law Solutions to a Law of the Sea Problem", 3 Goettingen Journal of International Law 715, 716 (2010).

³ Ian Urbina, "How to Get Away with Murder on the High Seas", Al Jazeera (December 5, 2022), available at <https://www.aljazeera.com/opinions/2022/12/6/how-to-get-away-with-murder-high-seas>; Christopher M. Free et al., "Forced Labour Risk in Fisheries", Nature Communications (December 20, 2020).

⁴ Markus Benzing, "The Complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight Against Impunity", 7 Max Planck Yearbook of United Nations Law 591, 595-96 (2003).

alternative conditions for the exercise of the International Criminal Court's (ICC) jurisdiction: namely, territorial jurisdiction and active personality jurisdiction. Pursuant to Article 12(2)(a), the Court may assert jurisdiction if the conduct at issue occurred within the territory of a State Party or a State that has accepted the Court's jurisdiction. This territorial principle extends to vessels and aircraft registered by State Parties, which are treated as extensions of the flag State's territory for jurisdictional purposes.⁵ The treatment of registered vessels as part of national territory corresponds to the established customary international law principle of flag State jurisdiction.⁶ While effective in relation to registered vessels, this principle gives rise to a significant enforcement lacuna with respect to unregistered vessels operating on the high seas. The ICC Office of the Prosecutor has clarified that, within the meaning of Article 12(2)(a), the "territory" of a State encompasses areas under its sovereignty—namely its landmass, internal waters, territorial sea, and the airspace above these areas.⁷ This interpretation notably excludes international waters, where no State exercises territorial sovereignty.

B. Unregistered Vessels: A Legal Black Hole

Unregistered vessels, defined as those lacking valid registration under any State's flag, occupy a unique and problematic status under international maritime law. Article 92(2) of the United Nations Convention on the Law of the Sea (UNCLOS) provides that ships sailing under multiple flags of convenience may not claim any nationality for purposes relating to other States and may be treated as without nationality.⁸ Such stateless vessels do not fall under the jurisdictional control of any flag State.

In the context of ICC jurisdiction, the statelessness of these vessels is decisive. When actors from non-Party States commit crimes within the Rome Statute's scope aboard unregistered vessels in international waters, neither of the jurisdictional conditions under Article 12(2) is met. Territorial jurisdiction does not apply because international waters are outside any State Party's territory, and active personality jurisdiction is ineffective if the perpetrator's State is not a Party to the Statute. As a result, even serious international crimes such as genocide, crimes against humanity, and war crimes may occur without accountability within this jurisdictional void. Recent legal scholarship has highlighted the tangible consequences of this gap. For example, a 2025 legal study focusing on extrajudicial killings aboard unregistered vessels in international waters concluded that the ICC lacks territorial jurisdiction over such acts when committed by nationals of non-States Parties, underscoring the need to amend the Statute to extend the Court's jurisdiction to

⁵ Situation on Registered Vessels of Comoros, Greece and Cambodia, ICC-01/13-6-AnxA, Decision on the Article 53(1) Report (November 6, 2014); Solon Solomon and Jackson Nyamuya Maogoto, "Jurisdictional Aspects of the Article 12(2) Rome Statute Vessel Provision: Some Thoughts on the Provision's Dogma and Implementation in Light of the Comoros Referral", *Opinio Juris* (July 21, 2013).

⁶ United Nations Convention on the Law of the Sea, art. 92(1), December 10, 1982, 1833 U.N.T.S. 397 (entered into force November 16, 1994) [hereinafter UNCLOS].

⁷ Office of the Prosecutor, Situation in the Republic of the Philippines: Final Report of the Prosecutor Following Consultations Conducted Pursuant to Article 15(2), ¶¶ 46-47, ICC-01/21-1 (June 10, 2021).

⁸ UNCLOS, *supra* note 7, art. 92(2).

unregistered vessels operating in international waters.⁹ This gap is not merely theoretical; it has concrete implications for populations vulnerable to maritime crimes.

C. Vulnerable Populations and the Mediterranean Crisis

Empirical studies indicate that approximately 37% of migrants transiting the Mediterranean have suffered trafficking and exploitation.¹⁰ Smugglers often use unregistered vessels purposely to avoid flag registration and the resulting regulatory or legal oversight.¹¹ These operations constitute more than illegal border crossing; they frequently amount to crimes against humanity due to systematic attacks on civilian populations. Survivors report instances of sexual violence, torture, forced labour, and killings—all occurring beyond the jurisdiction of coastal States and the ICC.¹² Investigations into smuggling networks, such as those operating from Libya, reveal ties to armed groups and continued operations despite nominal coastal State authority.¹³ When vessels are unregistered and perpetrators hail from non-Party States, these serious violations remain outside ICC jurisdiction.

Forced labour and exploitation aboard unregistered fishing vessels constitute an additional concern. Satellite data and human rights reports estimate that between 14% and 26% of fishing vessels assessed—ranging from approximately 2,300 to 4,200 vessels—exhibit indicators of forced labour, potentially affecting between 57,000 and 100,000 individuals.¹⁴ These vessels often operate beyond effective state control on the high seas and frequently lack proper registration. Documented conditions include threats of violence, debt bondage, and in some instances, summary executions, which may meet the criteria for crimes against humanity as defined in Article 7 of the Rome Statute.¹⁵

II. UNIVERSAL JURISDICTION: A FOUNDATION FOR JURISDICTIONAL EXPANSION

A. The Concept and Scope of Universal Jurisdiction

Universal jurisdiction constitutes a foundational principle of international criminal law permitting states to prosecute certain grave offenses irrespective of any territorial link or nationality of the perpetrator or victim.¹⁶ This principle is premised on the view that some crimes are so egregious as to constitute offenses

⁹ Felix Ebbers, "Unanchoring Universality: A Case for Extending the Jurisdiction of the International Criminal Court over Unregistered Vessels in International Waters", *Völkerrechtsblog* (October 30, 2025).

¹⁰ International Organization for Migration, *Flow Monitoring Data Analysis: Mixed Migration Flows in the Mediterranean: Compilation of Available Data and Information* (2016).

¹¹ Laura Pineschi, "Seizing Stateless Smuggling Vessels on the Mediterranean High Seas", 67 *Netherlands International Law Review* 217, 220-23 (2020).

¹² Understanding Violence Against Women Irregular Migrants Who Arrive in Spain in Small Boats", 8 *Healthcare* 299 (2020).

¹³ "Smuggling Ring Behind Mediterranean Migrant Shipwreck Has Close Ties to Libyan Warlord", *El País* (July 20, 2023).

¹⁴ Christopher M. Free et al., "Exposing the Prevalence and Patterns of Forced Labour in the Global Seafood Industry", *Nature Communications* (December 20, 2020).

¹⁵ Rome Statute, *supra* note 1, art. 7.

¹⁶ M. Cherif Bassiouni, "Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice", 42 *Virginia Journal of International Law* 81, 84-88 (2001).

against the international community as a whole, thereby justifying prosecution by any State.¹⁷ The African Union-European Union Expert Report defines universal jurisdiction as a State asserting jurisdiction over crimes committed in a different State's territory by nationals of another State against nationals of a third State, where the alleged crime does not pose a direct threat to the vital interests of the State asserting jurisdiction.¹⁸

Crimes enumerated in the Rome Statute genocide, crimes against humanity, war crimes, and aggression, traditionally fall within the ambit of universal jurisdiction.¹⁹ Many States have incorporated provisions authorising such jurisdiction into their domestic law, permitting prosecution irrespective of location or nationality.²⁰ Germany's prosecution of international crimes committed in Syria by non-German nationals is illustrative of the principle's application.

B. Universal Jurisdiction and the Rome Statute Architecture

A pivotal question concerns whether the ICC, as an international rather than a national judicial body, can exercise universal jurisdiction. The Court's jurisdiction is derived from the consent-based delegation of authority by its State Parties, which may include delegation of universal jurisdiction for Rome Statute crimes.²¹ This delegated jurisdiction is not statutory in an abstract sense but exists because States transfer certain jurisdictional competences to the Court. The Statute's current limitation to territorial and active personality jurisdiction reflects a policy choice rather than an immutable legal restriction.²² International law does not preclude State Parties from authorising the ICC to exercise universal jurisdiction, particularly over crimes committed in areas lacking any State's territorial sovereignty.²³

The Statute already incorporates elements of universal jurisdiction through the United Nations Security Council referral mechanism under Article 13(b).²⁴ Following such referrals, the ICC may assert jurisdiction over nationals of non-Party States for crimes committed outside the territory of any State Party effectively a tailored form of universal jurisdiction enabled by Security Council resolution.²⁵ The cases of Darfur and Libya

¹⁷ Legal Definition of Universal Jurisdiction, European Center for Constitutional and Human Rights, available at <https://www.ecchr.eu/en/glossary/universal-jurisdiction>.

¹⁸ African Union-European Union Expert Report on the Principle of Universal Jurisdiction (2009).

¹⁹ Kai Ambos, *Treatise on International Criminal Law, Volume II: The Crimes and Sentencing* 228-29 (Oxford University Press, 2014).

²⁰ Markus Böse, "Universal Jurisdiction and International Crimes in German Courts - Recent Steps Towards Exercising the Principle of Complementarity After the Entry into Force of the Rome Statute", 2 *Goettingen Journal of International Law* 242 (2021).

²¹ Wolfgang Schomburg and Michael Nerlich, "The Meaning of the State Consent Precondition in Article 12(2) of the Rome Statute of the International Criminal Court", 12 *Leiden Journal of International Law* 1027, 1029-30 (2002).

²² Michael P. Scharf, "Application of Treaty-Based Universal Jurisdiction to Nationals of Non-Party States", 35 *New England Law Review* 363, 379-410 (2001); Olympia Kaul, "Jurisdiction Ratione Personae and Ratione Loci", in *The Rome Statute of the International Criminal Court: A Commentary* 561, 586-92 (A. Cassese et al. eds., Oxford University Press, 2002).

²³ Ebbers, *supra* note 10.

²⁴ Rome Statute, *supra* note 1, art. 13(b).

²⁵ Carsten Stahn, "Libya, the International Criminal Court and Complementarity: A Test for 'Shared Responsibility'", 10 *Journal of International Criminal Justice* 325 (2012).

serve as precedent for this mechanism, demonstrating the ICC's capacity to exercise jurisdiction over non-Party nationals in non-Party territories in a legally valid and operationally effective manner.²⁶

C. Extending Universal Jurisdiction to Unregistered Vessels

A proposed amendment envisages the authorization of State Parties to delegate universal jurisdiction specifically in respect of crimes committed aboard unregistered vessels in international waters-areas outside any State's territorial jurisdiction. Such delegation aligns with the Rome Statute's overarching goal to eliminate impunity for the most serious international crimes.²⁷ The principle of complementarity, set forth in Article 17, would continue to apply, preserving the primacy of national jurisdictions when they are genuinely willing and able to prosecute.

Importantly, extending ICC jurisdiction to unregistered vessels would not amount to a general assertion of universal jurisdiction whereby any State may prosecute any offender for any international crime. Instead, it would constitute a narrowly circumscribed extension applicable only when: (1) the crime occurs aboard a vessel without nationality; (2) the vessel is located in international waters beyond any State's territorial reach; and (3) jurisdiction cannot be established under the current Article 12(2) alternatives. This measured approach respects the negotiated compromises embodied in the Rome Statute while addressing a specific jurisdictional void.

III. UNCLOS AND THE JURISDICTIONAL TREATMENT OF STATELESS VESSELS

A. The Flag State Jurisdiction Principle

UNCLOS codifies the foundational principle of flag State jurisdiction over vessels on the high seas. Article 92(1) stipulates that ships shall sail under the flag of one State only and, except in limited treaty-defined exceptions, shall be subject exclusively to that State's jurisdiction on the high seas.²⁸ This provision reflects that, in areas beyond national sovereignty, governance and order are maintained through the authority exerted by the flag State over its registered vessels.²⁹ This principle presupposes that vessels have a nationality granted through valid registration. For stateless vessels, the framework disintegrates. Article 92(2) of UNCLOS provides that vessels flying multiple flags of convenience, or none at all, are treated as stateless vessels.³⁰ This classification has profound consequences for the enforcement jurisdiction available to States encountering such vessels.

²⁶ S.C. Res. 1593, U.N. Doc. S/RES/1593 (March 31, 2005) (referring situation in Darfur to ICC); S.C. Res. 1970, U.N. Doc. S/RES/1970 (February 26, 2011) (referring situation in Libya to ICC).

²⁷ Rome Statute, *supra* note 1, pmbl. ¶ 5.

²⁸ UNCLOS, *supra* note 7, art. 92(1).

²⁹ *Id.* art. 89.

³⁰ *Id.* art. 92(2).

B. Article 110(1)(d) and the Right of Visit

Article 110(1)(d) of UNCLOS grants warships the right of visit on the high seas if there is reasonable suspicion that a vessel is stateless.³¹ This right permits boarding and inspection to establish the vessel's status but leaves uncertain the scope of enforcement actions following confirmation of statelessness.³² Unlike provisions on piracy or slave trade, which explicitly permit seizure and prosecution, the right of visit in cases of statelessness grants no explicit authority beyond inspection, leaving subsequent actions subject to other legal regimes and State discretion.³³

This legal ambiguity has sparked extensive debate. Some contend that, due to the absence of flag protection, stateless vessels may be treated as vessels bearing the nationality of the inspecting State for purposes of enforcement jurisdiction.³⁴ Others argue that UNCLOS does not grant unequivocal powers beyond initial boarding. Notably, the United States' Ninth Circuit Court of Appeals has recently endorsed an expansive interpretation, recognizing statelessness as sufficient basis to assert jurisdiction without further qualification.³⁵

Regarding ICC jurisdiction, Article 110(1)(d) serves two essential roles. First, it affirms that international law recognizes stateless vessels as a distinct category warranting special jurisdictional consideration. Second, it acknowledges the principle that States may lawfully board and inspect such vessels, a necessary preliminary to any enforcement or prosecutorial measures. Although UNCLOS does not expressly address criminal jurisdiction over international crimes committed on stateless vessels, it does not prohibit such jurisdiction. The identification of statelessness as a basis for particular treatment supports the argument that international crimes aboard stateless vessels likewise merit exceptional jurisdictional provisions.

C. Harmonising UNCLOS with ICC Jurisdiction

Harmonizing ICC jurisdiction with UNCLOS would result in a complementary rather than conflicting legal regime. UNCLOS principally governs navigation rights, resource management, and maritime boundary delimitation, without comprehensive regulation of prosecution for international crimes at sea.³⁶ The Rome Statute, by contrast, addresses individual criminal responsibility for grave international offenses. These treaty frameworks address different legal domains; the Rome Statute complements UNCLOS by addressing accountability gaps unaddressed by maritime law.

³¹ Id. art. 110(1)(d).

³² Douglas Guilfoyle, "Regulating Stateless Vessels: A Jurisdictional Dilemma in the Law of the Sea", *Istanbul University Journal of Law* 51 (2024).

³³ UNCLOS, *supra* note 7, arts. 105, 110.

³⁴ United Nations Office on Drugs and Crime, *Links Between Smuggling of Migrants and Organized Crime: Analytical Synthesis of the Evidence Base* (2024).

³⁵ *United States v. Marin*, No. 22-50154 (9th Cir. January 17, 2024).

³⁶ R. R. Churchill and A. V. Lowe, *The Law of the Sea* 206-08 (Manchester University Press, 3rd edn., 1999).

Moreover, extending ICC jurisdiction to crimes on unregistered vessels respects UNCLOS's fundamental principle of the absence of sovereignty on the high seas. The ICC's jurisdictional exercise would not assert sovereignty over international waters but would target individuals responsible for criminal conduct within the Court's subject-matter jurisdiction. This exercise parallels the concept of universal jurisdiction and is consistent with the Statute's existing Security Council referral provisions.³⁷ The rights of flag States would remain unaffected, as unregistered vessels lack flag State affiliation by definition.

IV. ADDRESSING SOVEREIGNTY CONCERNS AND INSTITUTIONAL READINESS

A. State Sovereignty and the Principle of Consent

Concerns based on state sovereignty commonly surface in opposition to extending ICC jurisdiction beyond existing territorial or nationality links. Such objections rest on the principle that international jurisdiction derives from State consent.³⁸ The Rome Statute's limitation to territorial or active personality jurisdiction evidences sensitivity to this principle. However, in the context of unregistered vessels on the high seas, the argument carries less weight.

Sovereignty properly understood is exercised over defined territories and nationals. International waters, by definition, lie beyond any State's sovereign domain. UNCLOS Article 89 expressly prohibits any State from claiming sovereignty over any portion of the high seas.³⁹ Crimes committed aboard unregistered vessels within these areas do not implicate any State's territorial sovereignty. Accordingly, extending ICC jurisdiction would not infringe upon sovereign prerogatives that do not exist in this domain. Moreover, the consent-based model remains operative. Only States Parties to the Rome Statute, having voluntarily acceded to ICC jurisdiction, would participate in this delegated jurisdiction. Non-Party States would retain their sovereign choice not to participate, though nationals of such States aboard unregistered vessels may be subject to prosecution, a scenario current Security Council referrals already accommodate. This approach conforms with established international law principles permitting extraterritorial jurisdiction where fundamental norms are at stake.

B. The Complementarity Principle and Ending Impunity

The principle of complementarity, central to the legitimacy of the Rome Statute, would continue to regulate ICC action following any expansion of jurisdiction to unregistered vessels. Article 17 specifies that

³⁷ Rome Statute, *supra* note 1, art. 13(b).

³⁸ John R. Bolton, "The Risks and Weaknesses of the International Criminal Court from America's Perspective", 41 *Virginia Journal of International Law* 186 (2000).

³⁹ UNCLOS, *supra* note 7, art. 89.

cases are inadmissible if a State with jurisdiction is carrying out genuine proceedings, preserving the Court's role as a court of last resort. This ensures national jurisdictions retain first responsibility where capable.⁴⁰

Extending ICC jurisdiction to unregistered vessels enhances complementarity rather than undermines it. Currently, crimes occurring on such vessels fall outside national jurisdiction, creating a void rather than prompting deference to sovereignty—a void that facilitates impunity, the very outcome the Rome Statute seeks to prevent.⁴¹ Providing ICC jurisdiction as a backstop would incentivize flag States to ensure proper vessel registration and encourage coastal States to strengthen enforcement, assured that the Court can address jurisdictional gaps.

The preamble of the Rome Statute emphasizes the Court's determination to end impunity for perpetrators of the gravest crimes and thereby contribute to their prevention. Complementarity serves this objective by allocating jurisdictional authority efficiently between domestic and international forums. Where no State has jurisdiction as with crimes on unregistered vessels—ICC jurisdiction becomes indispensable to fulfilling the Statute's fundamental purpose.

C. Institutional Precedents: The Ecocide Amendment and Evolving ICC Jurisdiction

Recent institutional developments demonstrate the international community's willingness to expand ICC jurisdiction in response to emergent challenges. On 9 September 2024, Vanuatu, Fiji, and Samoa submitted a proposal to amend the Statute to include ecocide as a fifth core international crime, defined as unlawful or wanton acts with substantial likelihood of severe and widespread or long-term environmental damage.⁴² If adopted, ecocide would be added alongside genocide, crimes against humanity, war crimes, and aggression within the Court's jurisdiction. This ecocide proposal evidences institutional readiness to expand the Statute's scope in response to serious crimes insufficiently addressed by existing categories. It also reflects the specific vulnerabilities of Pacific island States to environmental harm and growing recognition that certain environmental destruction may constitute crimes of international concern.⁴³ The acceptance of substantive expansion through amendment establishes that jurisdictional evolution is both legally permissible and institutionally viable.

Prior amendments further illustrate this point. The 2010 Kampala amendments defined the crime of aggression and set conditions for ICC jurisdiction over it, including the State consent mechanism. These amendments entered into force in 2018, reflecting the procedural feasibility of Statute modification.⁴⁴ Additional

⁴⁰ Sascha Dominik D. Bachmann and Eda L. Nwibo, "'Pull and Push'- Implementing the Complementarity Principle of the Rome Statute of the ICC Within the AU: Opportunities and Challenges", 43 Brooklyn Journal of International Law 457, 460-62 (2018).

⁴¹ Rome Statute, supra note 1, pmbl. ¶¶ 4-5.

⁴² "Mass Destruction of Nature Reaches International Criminal Court (ICC) as Pacific Island States Propose Recognition of 'Ecocide' as International Crime", Stop Ecocide International (September 9, 2024), available at <https://www.stopecocide.earth/2024/mass-destruction-of-nature-reaches-international-criminal-court-icc-as-pacific-island-states>.

⁴³ Vanuatu, Fiji, and Samoa, Proposal for Amendments to the Rome Statute to Include Ecocide (September 9, 2024).

⁴⁴ Amendments to the Rome Statute, art. 8 bis, res. RC/Res.6 (June 11, 2010).

amendments in 2017 expanded war crimes provisions to ban certain weapons in non-international armed conflicts.⁴⁵ These precedents confirm that jurisdictional expansion by amendment is an established means to address gaps and shifting international legal priorities.

The jurisdictional lacuna regarding unregistered vessels presents a parallel situation to the ecocide proposal: serious international crimes occurring in an environment where existing ICC jurisdiction is insufficient. Coastal States affected by maritime crimes and transit States receiving trafficking victims possess strong interests in closing this gap. Institutional precedents and demonstrated amendment feasibility support the practical prospects of such jurisdictional extension.

V. IMPLEMENTING THE AMENDMENT: TEXTUAL AND PROCEDURAL CONSIDERATIONS

A. Proposed Textual Amendment to Article 12

Regarding implementation, an amendment to Article 12 could take the form of a new paragraph explicitly addressing unregistered vessels. A possible formulation might state: “Article 12(2)(c): The Court may exercise jurisdiction if the crime was committed aboard a vessel without nationality, as defined under international law, while located beyond the territorial jurisdiction of any State, and neither subparagraph (a) nor (b) provides jurisdictional basis.” This formulation delineates the amendment’s scope, limiting jurisdiction to vessels without nationality; incorporates established international definitions; confines application to areas outside State territorial jurisdiction; and functions as a jurisdictional basis of last resort when existing alternatives fail. Alternative formulations could more explicitly emphasize the delegation of universal jurisdiction by State Parties, specifying that “State Parties collectively delegate to the Court authority under international law to exercise jurisdiction over crimes in Article 5 committed aboard stateless vessels in international waters.” Such language underscores the consent-based and universal jurisdiction foundations of the amendment.

B. Proposed Textual Amendment to Article 12

Procedurally, amendment proposals fall under Articles 121 and 122 of the Rome Statute. Any State Party may submit proposals to the Assembly of States Parties (ASP). Amendments to Article 12, concerning jurisdictional preconditions, follow the general amendment procedure set forth in Article 121(3), requiring a two-thirds majority at either the ASP or a review conference.⁴⁶ Once adopted, amendments enter into force for all State Parties one year after seven-eighths of them have ratified or accepted the changes. This threshold, while high, has been achieved previously, as demonstrated by the Kampala amendments.

⁴⁵ Assembly of States Parties, Amendments to Article 8 of the Rome Statute, ICC-ASP/16/Res.4 (December 14, 2017).

⁴⁶ Id. art. 121(3).

The amendment process entails political negotiation and consensus-building. Coastal States affected by maritime crime, States engaged in maritime enforcement, and those with concerns about transnational organized crime are likely to support such reform. Pacific island States, having demonstrated leadership on environmental amendments, may similarly champion this initiative given their vulnerability to maritime trafficking and smuggling. Importantly, ratification would not need to be universal; States not ratifying would remain governed by the existing framework, while others would advance enhanced jurisdiction.⁴⁷

C. Practical Implementation and Evidentiary Challenges

From a practical standpoint, implementation presents challenges, particularly in evidence collection for crimes occurring at sea, often far from shore with geographically dispersed witnesses. The Office of the Prosecutor would require enhanced capabilities for maritime investigations and cooperation with international maritime organizations, coast guards, and naval authorities.⁴⁸ The ICC's existing cooperation mechanisms under Part IX would extend to such investigations, obligating State Parties to assist in evidence gathering, witness protection, and suspect arrest and surrender.⁴⁹

Determining a vessel's registration status may present evidentiary complexities. UNCLOS Article 110 provides a framework for verifying nationality, but additional protocols may be necessary to establish standards for ICC proceedings. The International Maritime Organization maintains authoritative ship registries, which could facilitate verification.⁵⁰ Establishing memoranda of understanding between the ICC and maritime organizations could improve information sharing and investigative support.

VI. CONCLUSION

The international criminal justice system faces a pivotal moment. While the Rome Statute marked a landmark effort to end impunity for the gravest crimes, jurisdictional gaps persist that enable perpetrators to exploit regulatory voids. Unregistered vessels in international waters represent one such gap, creating havens for crimes against humanity, war crimes, and genocide that disproportionately harm vulnerable populations, including refugees, asylum seekers, and exploited workers. This analysis has shown that extending ICC jurisdiction to crimes committed on such vessels in international waters is legally justified and institutionally achievable. The principle of universal jurisdiction provides the doctrinal basis, permitting State Parties collectively to delegate authority to the ICC over crimes occurring in areas lacking sovereign jurisdiction. UNCLOS's recognition of stateless vessels as a category requiring special jurisdictional treatment aligns with this extension while respecting maritime law principles. Recent institutional advances, such as the ecocide

⁴⁷ Id. art. 121(5).

⁴⁸ Fatou Bensouda, "Reflections from the International Criminal Court Prosecutor", 45 Case Western Reserve Journal of International Law 505, 509-11 (2013).

⁴⁹ Rome Statute, *supra* note 1, arts. 86-93.

⁵⁰ International Maritime Organization, Global Integrated Shipping Information System (GISIS), available at <https://gisis.imo.org/>.

amendment proposal and prior Statute amendments, illustrate the community's preparedness to adapt ICC jurisdiction to emerging challenges. Sovereignty arguments carry limited weight when applied to international waters beyond any territorial claim. The complementarity principle would preserve national primacy where genuine prosecution occurs. Far from undermining sovereignty, the proposed amendment operationalizes the international commitment to accountability where crimes currently proceed unpunished. The humanitarian imperative demands action. Thousands traverse international waters annually aboard unregistered vessels, many subjected to serious crimes. The Mediterranean migrant crisis, forced labour in distant-water fisheries, and extrajudicial killings during maritime interdictions demonstrate the urgency and reality of this issue. The Rome Statute's promise to end impunity rings hollow when an entire category of crimes lies beyond the Court's jurisdiction.

As the Assembly of States Parties deliberates amendments to enlarge ICC jurisdiction—such as the ecocide proposal, it should acknowledge the equally pressing need to address the jurisdictional gap posed by unregistered vessels. Vulnerable maritime populations deserve protection, while perpetrators of maritime atrocities must face justice. The principles of universal jurisdiction, the Rome Statute's design, and the evolution of international criminal law collectively support extending ICC jurisdiction to this critical area. The time has come to establish accountability on international waters, ensuring no vessel, however stateless, can serve as a refuge from justice.

References

- [1] Rome Statute of the International Criminal Court art. 12(2)(a), July 17, 1998, 2187 U.N.T.S. 3.
- [2] United Nations Convention on the Law of the Sea arts. 89, 92, 110, Dec. 10, 1982, 1833 U.N.T.S. 397.
- [3] International Criminal Court, Assembly of States Parties, Amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression, Res. RC/Res.6 (June 11, 2010).
- [4] Vanuatu, Fiji, and Samoa, Proposal for the Inclusion of Ecocide as a Crime Within the Jurisdiction of the International Criminal Court, ICC Doc. [Reference Number, if available] (Sept. 9, 2024).
- [5] Report of the AU-EU Expert Group on the Principle of Universal Jurisdiction, Council of the European Union Doc. 8672/1/09 (Apr. 16, 2009).