



Factsheet on the International Court of Justice (ICJ) and the International Criminal Court (ICC)

Center for Business and Law Organization

10 December 2025 — International Human Rights Day

I. Introduction

This factsheet provides a clear, side-by-side comparison of the [International Court of Justice \(ICJ\)](#) and the [International Criminal Court \(ICC\)](#), outlining their distinct jurisdictions, mandates, and legal frameworks. It also presents legal arguments based on two primary questions:

- 1) Can the ICJ intervene and exercise its “contentious jurisdiction” to resolve the reescalation of the [longstanding border dispute](#) between the Kingdom of Cambodia (Cambodia) and the Kingdom of Thailand (Thailand)?
- 2) Is there a legal basis for Cambodian citizens or CSOs to [file a complaint](#) to the Office of the Prosecutor (OTP) of the ICC against Thai leaders, considering that Thailand has not ratified the Rome Statute?

Notably, the date of publishing also marks the [International Human Rights Day](#) (10 December 2025). As conflict [rages](#) globally, and tensions remain high within Southeast Asia between Cambodia and Thailand and in war-torn Myanmar, the international rule of law and human rights are being increasingly tested. Therefore, the role of both international judicial mechanisms in paving an avenue for the right to justice, the protection of civilian rights, and fundamental freedoms take on heightened significance. A clear and important distinction to acknowledge is that the ICJ’s primary function is settling dispute between states, while the ICC seeks to establish individual criminal liability of high-ranking officials for the most serious international crimes, including genocide, crimes against humanity, war crimes, and the crime of aggression.

To provide some regional context, in May 2025, border clashes between Cambodia and [Thailand reescalated](#). This prompted Cambodia, in June 2025, to [ask](#) the ICJ to exercise its contentious jurisdiction, arguing the World Court remains the most legitimate and impartial forum for resolving the dispute. Thailand, however, has continued to [reject](#) recourse to the ICJ, maintaining a preference for bilateral engagement. Despite ASEAN-mediated peace talks and the [signing](#) of the Kuala Lumpur Peace Agreements in October 2025, hostilities [reignited](#) on 7 December 2025, when Thai airstrikes struck Cambodian territory. In addition, 18 Cambodian combatants remain detained by Thai authorities since 29 July (considered to be prisoners of war), drawing condemnation and raising concerns under international humanitarian law (IHL) and other international treaty obligations. These developments warrant discussion on the role of international mechanisms, such as the ICJ, ICC, and United Nations Security Council (UNSC) as potential

legal avenues for the pursuit of justice beyond bilateral and regional mechanisms which has been the primary subject of recourse thus far in the 2025 dispute.

II. Distinguishing the Mandates of the ICJ and ICC

A detailed breakdown of the distinct roles, jurisdiction, procedure, composition and enforcement powers of each Court is provided below.

	International Court of Justice (ICJ)	International Criminal Court (ICC)
<i>When was it established?</i>	1945, by the UN Charter and the Statute of the International Court of Justice.	2002 by the Rome Statute Treaty
<i>Location</i>	The Hague, the Netherlands	The Hague, the Netherlands
<i>Member states</i>	193 States Member States of the UN	<u>125</u> Countries party to the Rome Statute
<i>What is the court's relation to UN?</i>	Principal judicial organ of the United Nations (UN)	Independent international organisation; not a UN organ, but it operates under a cooperation agreement with the UN Security Council (UNSC) .
<i>What is the composition of the Court?</i>	15 judges elected to nine-year terms of office by the United Nations General Assembly and Security Council. It may not include more than one judge of any nationality. The Court has its own secretariat, the Registry, which acts both as a service helping in the administration of justice and as the secretariat of an international organization.	• The Presidency (President and two Vice Presidents elected from among the 18 judges) • The Office of the Prosecutor (OTP) (Prosecutor, who is assisted by a Deputy Prosecutor, both elected by the Assembly of States Parties) • The Judicial Divisions(Eighteen judges make up the three Divisions of the Court: PreTrial, Trial and Appeals) • The Registry (provide administrative and operational support to the judiciary and to OTP) • The Assembly of States Parties (ASP) (oversight and legislative body and is composed of representatives of the

		States)
What are the roles of the Court?	Examine questions of <i>state responsibility</i> through a <u>dual role</u>: 1) to settle, in accordance with international law the legal disputes submitted to it by States (contentious function); 2) to give advisory opinions on legal questions referred to it by duly authorized UN organs and agencies (advisory function).	Seeks to establish <i>individual criminal liability of high-ranking political leaders</i> in situations where there are allegations of four main crimes outlined under Article 5 of the Rome Statute: • Genocide; • Crimes against humanity; • War crimes; or • Crime of aggression
What is the basis of the Court's jurisdiction?	Only States may be Parties in contentious proceedings before the Court. In line with the principle of <u>State consent</u>, the Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the <u>following ways</u>: (a) Special agreement (b) Matters provided for in treaties and conventions (c) Compulsory jurisdiction in legal dispute (d) Forum prorogatum (e) The Court itself decides any questions concerning its jurisdiction The Court has <u>no jurisdiction</u> to deal with applications from individuals, non-governmental organizations, corporations or any other private entity.	The Court can exercise jurisdiction, in accordance with the principle of <u>complementarity</u>, and pursuant to (<u>Art 12 (2) Rome Statute</u>) where: – Any of the most serious international crimes listed above are committed on the territory of a Rome Statute state party, or – The accused is a national of a state party. Court can <u>accept referrals</u> of situations from the UN Security Council involving non-States parties to the Rome Statute and exercise its jurisdiction over those situations under <u>Art 13 (b) Rome Statute of the International Criminal Court (1988)</u> However, ICC decisions in <u>2018</u> and <u>2019</u> from Pre-Trial Chambers I and III clarified that the Court may exercise jurisdiction over international crimes when <i>part</i> of the criminal conduct takes place on the territory of a signatory.
Who can refer a situation to the court?	Only the 193 Member States of the UN are eligible to appear before the Court in contentious cases. Any state may bring a case against another state, provided there is a basis for ICJ jurisdiction.	• Anyone (<u>individual, group, State, or intergovernmental or non-governmental organization</u>) may

	In advisory opinions, process permits a list of international organizations to send questions to the ICJ concerning international law, which the ICJ will answer by writing a legal opinion, which are non-binding but accepted as customary international law.	<i>send information</i> under an Article 15 Communication • The UN Security Council acting under Chapter VII of the Charter of the United Nations. However, only the OTP can formally trigger a case before the Divisions (Pre-Trial Chamber) if the OTP believes there is a sufficient merit for a case
How are member judges elected?	Elections are held every three years for a third of the seats. The Members of the Court do not represent their governments but are independent.	18 judges are elected by the Assembly of States Parties and serve 9-year, non-renewable terms.
What are the procedural steps?	The procedure followed by the Court in contentious cases is defined in its Statute, and in the Rules of Court adopted under the Statute. The proceedings include a written phase, in which the parties file and exchange pleadings, and an oral phase consisting of public hearings at which agents and counsels address the Court. After the oral proceedings the Court deliberates in camera and then delivers its judgment at a public sitting. A case can take many years.	After crimes occur, the procedure is as follows: 1. Preliminary examinations (OTP determines whether there is sufficient evidence of crimes of sufficient gravity falling within the ICC's jurisdiction, and whether opening an investigation would serve the interests of justice and of the victims. 2. Investigations (gathering evidence and requesting the issue of an arrest warrant) 3. Pre-Trial Stage 4. Trial Stage When a complaint is lodged, the OTP aim to inform communication senders on this initial determination as soon as possible, in writing. The investigation can take as long as needed to gather the required

		evidence. After hearing the Prosecution, the Defence, and the Legal representative of victims, the judges decide (usually within 60 days)
<i>What are the enforcement powers?</i>	Under Article 94 of the UN Charter, adjudicatory proceedings are binding on the parties, although the court is unable to enforce its decisions. Should one of the States involved fail to comply with it, the other party may have recourse to the Security Council of the United Nations. The Court can order reparations. It's advisory opinions are not legally binding, but authoritative and are often followed by states.	Can impose terms of imprisonment, fines and forfeiture of assets derived from the crimes. • Can order reparations to victims (including restitution, compensation and rehabilitation). • No police force; states parties are expected to cooperate, including executing arrest warrants
<i>Appeal rights?</i>	The judgment is final and without appeal.	Prosecutor and the Defence have the right to appeal a Trial Chamber's decision on the verdict and sentence.

III. Can the ICJ intervene and exercise its “contentious jurisdiction” to resolve the current border dispute between Cambodia and Thailand?

The Court has twice previously exercised its **contentious jurisdiction** in relation to the [long-time border dispute](#) between Cambodia and Thailand:

- In [1962](#), the ICJ ruled that Cambodia held sovereignty over the Preah Vihear Temple alone, requiring Thailand to withdraw its military presence.
- In [2013](#), the Court [clarified](#) its 1962 judgment after a request for interpretation from Cambodia, determining that Cambodia held sovereignty over the entire promontory surrounding the temple. This acted almost as “an enforcement measure” of the originally 1962 case.
- Thailand agreed to comply with both of these rulings — signaling the legitimacy of the Court and ability to perform its adjudicatory function between the two neighboring states.

In June 2025, Cambodia asked the ICJ to rule again on four disputed areas along the 800-kilometer shared border: the [Ta Moan Thom](#), [Ta Moan Toch](#), and [Ta Krabei](#) temples, as well as [an area](#) close to the triborder junction with Laos. Thailand, however, has publicly refused to accept jurisdiction of the Court, as it has done so since 1960. The Thai Government, in response to Cambodia's request to the ICJ has stated that it is “of the view that [recourse to a third party \(e.g. the ICJ\)](#) may not always be conducive”. In other words, the Thai government refuses to accept the jurisdiction of the ICJ (yet again) and has repeatedly expressed its preference for bi-lateral and/or regional negotiations. However, the failure of these agreements to effectively prevent the reescalation of hostilities may warrant stronger international action to remediate

the dispute. On 9 December, following Thai airstrikes on Cambodian territory, the Ministry of Interior of Cambodia urged the UN to ‘*take legal and principled legal action*’ against the ‘*brutal and reckless crimes committed by the Thai government and military which constitute grave violations of the UN Charter, the UDHR, the CAT, and ASEAN Charter*’. The reported shelling of temple structures in December 2025 have also [warranted UNESCO](#) to highlight the importance of upholding international law, citing the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, and the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage.

In light of bilateral agreements failing in their function, and in consideration of the previous two rulings of the Preah Vihear case, it is reasonable to argue that Cambodia has strong legal grounds to argue to the ICJ to intervene. On the question of exercising jurisdiction, while Thailand’s current refusal to accept the jurisdiction of the Court poses an obstacle, the ICJ under Article 36, paragraph 6, of the Statute provides that in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court. Furthermore, jurisdiction may be exercised in accordance with “matters provided for in treaties and conventions”. Therefore in principle, the ICJ may exercise jurisdiction if there were strong legal grounds that Thailand had gravely violated the UN Charter, UDHR, or other international treaties and conventions which it has ratified.

Though, the question of “whether it can exercise jurisdiction?” and “whether it will act to intervene?” are separate, and the answer to the latter remains unclear. Ultimately, a final border demarcation supported by ICJ clarification remains a legitimate, alternative avenue for redress and justice, and at the very least intervention would hold political and symbolic significance.

ICJ Emblematic Cases:

The case of [South Africa v. Israel](#), brought under the Genocide Convention, is an emblematic example of the ICJ having political and symbolic significance. Other cases such as [Gambia v. Myanmar](#) and [Canada and Netherlands v. Syria](#) is a further reflection of the collective commitment to upholding international norms by States, and the perceived legitimacy of the ICJ in its ability to resolve disputes between States or to address the responsibility of States under questions of international law.

IV. Is there a legal basis for Cambodian citizens or CSOs to file a complaint to the OTP of the ICC against Thai leaders even if Thailand is not a state party?

In short - Yes. Under Article 15 of the Rome Statute permits any individual, NGO, CSO or organization to submit a communication to the OTP. There is a plethora of case precedent of civil society bringing a complaint to the OTP, including:

- In January 2025, Reporters without Borders [filed a complaint](#) with the OTP for crimes against humanity, accusing Belarusian leader Lukashenko of having "systematically persecuted" journalists over a period of five years.
- In 2020, two Uighur activist groups filed a complaint to the OTP at the ICC against Chinese officials alleging the [officials engaged in genocide and crimes against humanity](#) against the Uighur minority population in Xinjiang.

A 35-page complaint to the OTP by Moon Pich, a member of Cambodian civil society, alleges serious war crimes committed by Thai leaders. The complaint asks the OTP to acknowledge receipt of the communication, open a preliminary examination, and investigate the command responsibility of Thai political and military leaders under [Article 28](#) of the Rome Statute. Thailand's reported deployment of fighter jets, heavy artillery, drones, toxic smoke and advances into non-combat civilian zones have raised concern over the blatant disregard for the loss of civilian life, and disrespect for IHL norms. The prolonged detention of combatants by Thailand, have also been the subject of legal scrutiny as to whether or not it violates IHL. Under the Geneva Convention III, Article 118 states that: "*Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.*" The combatants have remained under detention since the cessation of hostilities following the Kuala Lumpur Peace Agreements — which provided for release of the combatants — signed by both States on 26 October 2025. It is arguable that this timeframe exceeds a reasonable timeframe beyond "without delay". Furthermore, Thailand has linked the release of combatants to political negotiations, which is prohibited under IHL.

Nevertheless, whether or not the complaint results in preliminary examinations, or further action, is the discretion of the OTP. As governed by *the Rome Statute*, the Prosecutor exercises discretion by considering jurisdiction, admissibility (including the tests of 'complementarity' and 'gravity'). Decisions are also made in consideration of 'the interests of justice' and 'reconciling available evidence' of alleged crimes. In summary, any individual holds the legal right to file a complaint against Thai leaders, but the *likelihood* of the selection procedure following an enclosed communication under Article 15 rests on the '[unpredictable exercise](#)' of prosecutorial discretion, and the weight and legitimacy of any given evidence.

How can the ICC exercise its jurisdiction considering Thailand has not ratified the Rome Statute?

ICC decisions in [2018](#) and [2019](#) from Pre-Trial Chambers I and III clarified that the Court may exercise jurisdiction over international crimes committed by high-ranking officials of a non-State Party, if they are a signatory to the Statute, and *part of* the criminal conduct takes place on the territory of a **State Party**. For example, despite Myanmar not being a State Party to the Rome Statute, in the [application for an arrest warrant for Min Aung Hlaing](#), a Myanmar junta leader, the alleged crimes were committed in *part* in the territory of Bangladesh (a State Party to the ICC) and the ICC could exercise jurisdiction. Similarly, the ICC was able to exercise jurisdiction when issuing an [arrest warrant](#) for Russian leader Vladimir Putin as part of the alleged crime occurred on the territory of Ukraine, a State Party to the Rome Statute. In the case of Palestine, [the Chamber issued warrants of arrest for Israeli leaders Benjamin Netanyahu and Yoav Gallant](#), after finding reasonable grounds to believe that during the relevant time, IHL applied as both States were two High Contracting Parties to the 1949 Geneva Conventions — as are Cambodia and Thailand.

Hence, while Thailand has not ratified the Rome Statute it has been a [signatory](#) since 2000. Thailand is a contracting state of the 1949 Geneva Conventions, among other international treaties. Therefore, the ICC could reasonably exercise its jurisdiction, if:

- there is evidence to prove that the [purported crimes](#) were committed at least *in part* on the territory of Cambodia (an ICC State Party).
- allegations of war crimes under Art. 5 of the Rome Statute can be corroborated by the OTP; or

- evidence is corroborated and convinces the OTP that a violation of IHL (such as under the Geneva Conventions) or one of the serious main crimes outlined in Article 5 of Rome Statute has been committed.

A situation may also be [referred](#) by the UNSC, in accordance with [Art 13 \(b\) of the Rome Statute](#).

For more details, please contact us via info@bhre-center.org.

Note to Editors:

Center for Business and Law Organization (BHRE Center) is an independent Cambodian environmental and human rights organization — officially registered in October 2025 — working to promote and protect environmental and human rights in business, nurturing the principle of human rights and environmental due diligence, and advancing corporate accountability in Cambodia and broader region of Southeast Asia, where the contexts are relevant, by strengthening the rule of law and ensuring full and fair access to justice.

In a democratic society, we find it essential to respect differences and to value the ideas of all individuals. If Cambodia is to become a more just and free society, which is what BHRE Center's envisions, more emphasis must be placed on public participation and the enjoyment of fundamental human rights and freedoms. The future of a truly democratic Cambodia, as the Constitution sets out, requires public debate — positive or critical — which can be carried out without self-censorship or fear of retaliation. BHRE Center's research, analyses and publications therefore intend to nurture public debates and policy consideration on environmental and human rights standards in business based upon national and international legal frameworks.