

“Enforcing International Humanitarian Law : The Contribution of National and International Criminal Justice Systems”

« دور القضاء الجنائي الوطني والدولي في قمع انتهاكات القانون الدولي الانساني »

SADOK BOUZIANE Nassima, BOUHAYA Wassila

Faculty of Law- Algiers 1 University, oumamiry@gmail.com

Faculty of Law – University of Tipaza , nourelimen256@gmail.com

Received: 23/11/2025

Accepted: 03/12/2025

Published: 06/12/2025

Abstract:

The aim of this article is to explore national and international judicial mechanisms and assess their effectiveness and efficiency in reducing violations of international humanitarian law. Most international treaties emphasize that the primary responsibility lies with states, particularly regarding the obligation to activate the role of the domestic judiciary in addressing violations of international humanitarian law through criminal repression. It can be achieved by adopting effective punitive measures at a national level, including criminal procedures, integrating penalties into the penal code, statutes of limitations, and forms of individual criminal responsibility. It needs to be effectively implemented until it can no longer serve the purpose, there, can be introduced as a complementary role: the International Criminal Court. Mainly in cases where the state is unable to prosecute and punish violators of international humanitarian law.

Keywords :

Criminal justice, national courts, international courts, international crimes, international humanitarian law.

ملخص:

إنّ الهدف من هذا المقال "هو البحث عن الآليات القضائية الوطنية والدولية ومدى فعاليتها ونجاعتها للحد من انتهاكات القانون الدولي الإنساني ، اذ أنّ المعاهدات الدولية معظمها تؤكد أن الدور الأساسي يكمن في مسؤولية الدول و ضرورة تفعيل دور القضاء الداخلي في الحد من انتهاكات القانون الدولي الانساني من خلال القمع الجنائي وذلك باتخاذ تدابير عقابية فعالة للقمع الجنائي على الصعيد الوطني من بينها الإجراءات الجنائية ووسائل إدراج العقوبة في قانون العقوبات والتقدم، وأشكال المسؤولية الجنائية الفردية الى أن نصل الى الدور التكميلي للمحكمة الجنائية الدولية في حالة عجز الدولة عن عقاب منتهكي القانون الدولي الانساني.

كلمات مفتاحية:

القضاء الجنائي، المحاكم الوطنية، المحاكم الدولية، الجرائم الدولية، القانون الدولي الإنساني.

INTRODUCTION

The judiciary—whether national or international—is a fundamental safeguard against impunity for perpetrators of violations of international humanitarian law. Given the seriousness of war crimes and the concern of the international community regarding threats to international peace and security, it is essential to establish mechanisms at the national level, as states hold the primary jurisdiction to suppress violations of international humanitarian law. This principle is primarily affirmed in the **Geneva Conventions of 1949** and the **Rome Statute**, which states that the International Criminal Court, established under this statute, is *complementary* to national criminal jurisdictions. Its objective is also to examine the jurisdictional rules governing both national and international courts in deterring perpetrators of violations of international humanitarian law.

The importance of this topic lies in the fact that war crimes are international crimes that require effective mechanisms to ensure that perpetrators do not escape punishment—whether through national courts, as the primary competent authorities, or through international courts, which serve as complementary mechanisms to Justice.

Problematic Questions

1. What is the main role of national courts in deterring violations of international humanitarian law?
2. What is the main role of international courts in deterring perpetrators of violations of international humanitarian law?

To address this topic, the analytical method is adopted to examine the jurisdiction of national courts, as the original holders of authority over war crimes, and the role of international courts—both *ad hoc* and permanent—in ensuring that perpetrators of violations of international humanitarian law do not escape accountability.

Section I: The Role of National Criminal Justice in Suppressing Violations of International Humanitarian Law

The basis of national jurisdiction under international humanitarian law lies in the common Articles 49, 50, 129, and 146 of the four **Geneva Conventions of 1949**¹, which contain similar provisions to those found in **Article 85(1)** of the **Additional Protocol I of 1977**², stating the following:

¹ The Four Geneva Conventions of 1949

² Additional Protocol I to the Geneva Conventions of August 12th 1949, related to the protection of victims of international armed conflicts.

“The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of this Convention, as defined in the following article. Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided that such Party has made out a *prima facie case*. Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of this Convention other than the grave breaches defined in the following article.”

The accused shall, in all circumstances, benefit from guarantees of a fair trial and adequate defense that are no less favorable than those provided under Article 105 and subsequent articles of the **Third Geneva Convention of 1949** concerning the treatment of prisoners of war.

I- Methods and Standards for Criminalizing Violations of International Humanitarian Law in National Legislation

States differ in their adoption of criminal policies that align with their national interests and the higher interests of humanity when determining their jurisdiction over violations of international humanitarian law—which constitute international crimes. This can be explained as follows:

1. Methods of Criminalizing Violations of International Humanitarian Law in National Legislation

Various approaches may be used to criminalize violations of international humanitarian law, particularly when resorting to general or specific criminalization. These approaches include:

a. Special legislation:

This consists of enacting an independent law dedicated to punishing grave breaches of international humanitarian law.

b. Incorporation into existing criminal legislation:

This includes inserting such crimes into existing penal codes or into special military justice laws. It is worth noting that integrating criminalization provisions, general rules of criminal responsibility, and criminal procedures into a **single legal framework**

compatible with the specific requirements of international law significantly facilitates the work of legal practitioners in states that adopt this approach³.

The option of integrating these provisions into existing legislation—regardless of whether it requires specifying their placement within a separate section, chapter, or as additions to existing criminal lists—also raises the issue of determining their proper legal position. In particular, whether they should be included in the **general penal code** or in the **military penal code**. Several countries have adopted this approach, including:

- **Spain**, in its Basic Law No. 95/10 of 23 November 1995, and in its Military Penal Code of 9 January 1985.
- **Switzerland**, which incorporated grave breaches of the Geneva Conventions in Chapter VI of the Swiss Military Penal Code, using wording identical to that of the conventions.
- **Jordan**, through Military Penal Code No. 30 of 2002.
- **Algeria**, which incorporated war crimes into the Military Justice Law through Ordinance No. 28/71 of 22 April 1974.
- **Yemen**, through its Military Penal Code of 25 July 1998, which includes a specific chapter on war crimes committed in non-international armed conflicts⁴.

c. Incorporation by reference:

This approach consists of enacting a brief law composed of a single article, granting broad discretion regarding the applicable penalties. The United Kingdom is among the states that adopted this approach, through its law of **31 July 1978**, whose first article refers directly to the Geneva Conventions and their Additional Protocols⁵.

2. Standards of National Criminal Jurisdiction over Violations of International Humanitarian Law

States rely on **four principles** to determine their criminal jurisdiction over violations of international humanitarian law—which constitute international crimes.

a. The Territorial Principle

³ Chérif Atlam, *International Humanitarian Law in Contemporary Armed Conflicts: The Prosecution of War Crimes Between Reality and Expectations*, foreword by Omar Mekki, International Committee of the Red Cross Publications, 2020, p. 271.

⁴ Bouhaya Wassila, *The Role of the International Committee of the Red Cross in the Development and Strengthening of International Humanitarian Law*, Doctoral Thesis, International Criminal Law, Saad Dahlab University – Blida, Faculty of Law, Department of Public Law, December 2011, p. 291.

⁵ Bouhaya Wassila, *The Role of the International Committee of the Red Cross in the Development and Strengthening of International Humanitarian Law*, op. cit., p. 291.

This is one of the principles that most clearly reflects the sovereignty of a state over its territory and its population. A state possesses full and absolute authority over everything within its territory, which enables it to exercise its sovereignty and judicial jurisdiction over all persons present within that territory and over all crimes committed therein. Consequently, individuals and crimes occurring on that territory fall under the jurisdiction of national courts and national law.

The territorial principle thus means the application of the national criminal law to crimes committed within the territory of the state—regardless of the nationality of the perpetrator or the nature of the protected interest. The state exercises primary jurisdiction over all persons within its territory because it holds sovereignty over it; therefore, all acts committed within that territory fall under its national criminal law. In contrast, the state’s criminal law does **not** apply outside its borders, even if its own nationals committed the criminal acts abroad. It is widely accepted in many national legal systems and is considered the **primary basis** upon which states assert jurisdiction over crimes committed within their territory. Examples include:

- **French law**, under Article 113 of the Penal Code
- **Egyptian law**, under Article 1 of the Penal Code
- **Italian law**, under Article 6
- **Belgian law**, under Article 1⁶

The Algerian legislator, following other foreign criminal legislations, has adopted the territorial principle. The Penal Code provides that *the Penal Code applies to crimes committed within the territory of the Republic*.

Similarly, the Algerian Code of Criminal Procedure states that:

“A crime shall be considered committed within Algerian territory when any act constituting one of its essential elements takes place inside Algeria.”

Accordingly, the Algerian Penal Code applies within the territory of the Algerian State, and its provisions apply to all individuals who commit acts classified as crimes under this law—whether they are Algerian nationals or foreigners.

b. The Objective (Protective) Principle

Also referred to in some legislations as the *principle of protection* or the *principle of passive personality*, this principle refers to the jurisdiction of national courts extending to crimes that harm the interests of the state or the safety and security of its territory,

⁶ Belmennani Asma, The Jurisdiction of the National Judge in Prosecuting Violations of International Humanitarian Law, Afaq 'Ilmiyya Journal, vol. 11, no. 04, Tamanrasset University Center (Algeria), 2019.

regardless of the nationality of the perpetrator or the location where the crime was committed. Therefore, the state is competent to prosecute such crimes based on the objective principle. This principle is enshrined in national laws to enable states to extend their criminal jurisdiction to include crimes committed outside their territory that affect their essential and fundamental interests—crimes that neither the territorial principle nor the personal principle can adequately address. Examples include Egyptian legislation in Article 2 of the Penal Code and French legislation in Article 113(10) of the Penal Code.

Article 588 of the Algerian Code of Criminal Procedure provides that *any foreigner who commits outside Algerian territory, as a principal offender or accomplice, a felony or misdemeanor against the security of the Algerian State, or who commits counterfeiting of currency or legally circulating national financial instruments, may be prosecuted and tried under Algerian law if he is arrested in Algeria or if the government obtains his extradition.*

Thus, the Algerian legislator has confined this principle to crimes threatening international security, the safety of the Algerian State, and crimes related to counterfeiting currency and financial instruments, considering these among the most serious offenses.

c. The Personal Principle

This principle in criminal law, in its simplest form, means that punishment shall apply only to the offender whose responsibility for the crime is established, and not to any other person—even if they are closely related to the offender. Punishment is imposed solely on the person convicted, whether as a principal or accomplice. Therefore, no penalty may extend to anyone other than the actual offender, regardless of their relationship to him. This reflects one of the fundamental principles of criminal science: only the perpetrator is punished for the crime⁷.

Thus, a person is punished criminally only for acts that he personally committed. The personal principle of punishment is linked to the personal principle of responsibility: only those who committed the crime may be held accountable. For example, the relatives of the offender cannot be held liable unless they participated in the offense as principal offenders or accomplices. Accordingly, the person who committed the crime is solely responsible, provided the elements of criminal responsibility are fulfilled and no grounds for exemption apply, and the penalty applies exclusively to that person.

⁷ Djillali Fatal, The Principle of Criminal Liability in Light of Sharia and Positive Law, Annals of the University of Algiers 1, vol. 37, no. 202304, p. 89.

d. The Universal Jurisdiction Principle

This principle means that offenders should be prosecuted regardless of their nationality or the location where the act was committed. It aims to punish perpetrators of grave breaches based on the universality of jurisdiction—meaning prosecution is allowed regardless of the location of the act, or the nationality of the perpetrator or the victim⁸.

Universal jurisdiction assigns competence to prosecute the offender to the courts of the state where the offender is found, irrespective of where the crime occurred, the nationality of the perpetrator or victim, whether the act is criminalized under foreign law, or whether the offender has been previously tried or punished abroad. Under this principle, a state may exercise jurisdiction over certain crimes committed outside its territory, recognized by the international community as harmful not only to the interests of a specific state but to the international community as a whole. Consequently, any state has the right to arrest and punish the offender under its own legislation, even if the crime was committed abroad and regardless of the nationality of the perpetrator⁹.

It is essential to distinguish between *violations* and *grave breaches*. Grave breaches require universal repression. According to the International Committee of the Red Cross, universal jurisdiction over grave breaches ensures that such breaches do not go unpunished, and the obligation to extradite contributes to universal enforcement¹⁰.

These provisions of the four Geneva Conventions apply only to war crimes committed in international armed conflicts and therefore do not apply to crimes that may occur in non-international armed conflicts.

The basis of universal jurisdiction is also found in the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, adopted in 1984. According to this Convention :

1. Each State Party shall take measures to establish its jurisdiction over offenses referred to in Article 4 in the following cases:
 - a) When the offense is committed in any territory under its jurisdiction, or aboard a ship or aircraft registered in that state.
 - b) When the alleged offender is a national of that state.

⁸ Prof. Maria Teresa Dutli, National Measures for the Implementation of International Humanitarian Law, in Studies in International Humanitarian Law, foreword by Prof. Moufid Chihab, Dar Al-Mustaqbal Al-Arabi, 2000, p. 546.

⁹ Hicham Fakhra, Procedural Means to Suppress Serious Violations of International Humanitarian Law, Journal of Legal Studies and Research, University of Médéa (Algeria), vol. 05, no. 1, 2020, p. 17.

¹⁰ Dr. Abdelkader Houba, The Role of National Criminal Justice in Suppressing Violations of International Humanitarian Law Rules, Journal of Legal and Political Sciences, vol. 09, no. 03, December 2018, University of Algiers, p. 796.

- c) When the victim is a national of that state, if the state considers it appropriate.
2. Each State Party shall likewise take measures to establish jurisdiction when the alleged offender is present in any territory under its jurisdiction and the state does not extradite him in accordance with Article 8 to any of the states mentioned in paragraph 1.
3. This Convention does not exclude any criminal jurisdiction exercised under domestic law.

Under this Convention, national courts acquire jurisdiction to punish perpetrators of torture simply by virtue of the presence of the offender in their territory. It is also worth noting that war crimes, crimes against humanity, and genocide often involve acts of torture, making this Convention applicable in such situations¹¹.

II-National Judicial Experiences in Suppressing Violations of International Humanitarian Law and Related Challenges

Before examining international experiences, it is necessary to address Algerian legislation and its role in suppressing violations of international humanitarian law, as well as examples from other states.

1. The Algerian National Experience in Suppressing Violations of International Humanitarian Law

Article 242 of the **Military Justice Law of 1971**, as amended in 2018, states:

“Crimes under the jurisdiction of the military courts shall be punished in accordance with the provisions of this Book, without prejudice to criminal penalties for acts constituting felonies or misdemeanors under general law, particularly those that contravene the laws and customs of war and international conventions.”

2. National Judicial Experiences in Suppressing Violations of International Humanitarian Law

2.1 Incorporation of International Humanitarian Law Conventions into National Legislation

¹¹ Abdelkader Houba, General Theory of International Humanitarian Law: Analytical, Legal and Doctrinal Study, Research Series Sharia and Law, No. 2, Publications of the Laboratory of Doctrinal and Judicial Studies, University of El Oued – Algeria, no date, p. 208.

Several states have incorporated the provisions of international humanitarian law conventions into their national laws, including Belgium, Canada, Switzerland, and Jordan.

a. Belgium:

Belgium amended its 1993 law in 1999 by adding the crime of genocide as the first paragraph of Article 1, inserting crimes against humanity as the second paragraph, and adding other crimes against humanity in the third paragraph.

b. Germany:

In 2002, the German legislator enacted a new law titled the **Code of Crimes Against International Law (VStGB)**, which incorporates all crimes listed in the Rome Statute, provisions on complicity, incitement, aiding and abetting, command responsibility, and the non-applicability of statutory limitations to such crimes.

c. Canada:

Canada enacted a special law in 2000 regarding crimes falling within the jurisdiction of the International Criminal Court and cooperation with the Court, known as the *Crimes Against Humanity and War Crimes Act*.

d. England:

English law adopted the same approach by enacting a special statute titled the *International Criminal Court Act 2001*.

2-2 Obstacles to Suppressing Violations of International Humanitarian Law by National Criminal Courts

- **Lack of political will** in many states to adopt the principle of universal jurisdiction.
- **The predominance of political interests over humanitarian considerations**, which leads to numerous challenges and problems.
- **Lack of specialized courts and qualified experts** able to investigate and adjudicate serious international crimes such as violations of international humanitarian law.
- **Difficulties in tracking and investigating crimes** whose victims often number in the hundreds or thousands, and whose perpetrators are likewise very numerous.
- **The collision of national criminal justice with the high-ranking status** of many perpetrators of such crimes, which creates significant obstacles to prosecution and punishment.
- **Lack of cooperation between states** in extraditing convicted or wanted criminals under international treaties and the principle of reciprocity.

- **Failure to obtain judicial assistance and various forms of international cooperation**, especially when pursuing nationals of a state considered an ally or friendly partner.

Section 2: The Role of International Criminal Justice in Deterring Violations of International Humanitarian Law

The legal mechanisms of international criminal justice constitute a fundamental pillar in suppressing violations of international humanitarian law. These mechanisms have evolved over time: from special military tribunals, such as the Nuremberg and Tokyo Tribunals, to ad hoc international criminal courts such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and for Rwanda (ICTR). With combined international efforts and a global need for peace and security, a permanent court—the International Criminal Court—was ultimately established.

I- The Role of Special and Ad Hoc Criminal Tribunals in Prosecuting Violators of International Humanitarian Law

Ad hoc international criminal tribunals are mechanisms established for a specific period and purpose, designed to prosecute individuals who violated the rules of international humanitarian law.

1. The Role of Special Criminal Tribunals

After the end of World War II, the victorious powers sought to prosecute German and Japanese war criminals. As a result, two military tribunals were established:

1-1 The International Military Tribunal at Nuremberg

After the war, a conference was held in London in 1945 involving representatives of the Allied Powers, which concluded with the agreement to establish an international military tribunal to prosecute major German war criminals¹². Article 1 of the Charter established a military judiciary for prosecuting war criminals. According to Article 2, the Tribunal consisted of four judges, each appointed by one of the four signatory states (the United States, the Soviet Union, Britain, and France), with each judge having a deputy. The same applied to the prosecution, which consisted of four prosecutors with four deputies¹³. The establishment of the Nuremberg Tribunal marked the emergence of international criminal justice by abolishing the immunity of heads of state and affirming that both superiors and subordinates are jointly responsible

¹² Abdelmalek Azzouzi, *The Conflict of Legal Systems and the Development of International Criminal Law: From Nuremberg to the Gaza Crimes Trial*, *Critical Journal of Law and Political Sciences*, Faculty of Law and Political Sciences – University of LiZi Wezou, Algeria, vol. 19, no. 03, 2024, p. 460.

¹³ Bouhaya Wassila, *Course on Law and International Criminal Justice*, printed material for 3rd year Public Law students, University Center of Tipaza (Algeria), p. 80, 2022-2023.

for their actions¹⁴. Following orders from superiors did not exempt defendants from responsibility, although it could serve as a mitigating factor depending on the Tribunal's assessment¹⁵. Its judgments were final, not subject to appeal, and it had the power to impose the death penalty or any punishment it deemed appropriate.

1-1-1 Tribunal Judgments

Trial proceedings began on 20 November 1945 in Nuremberg, although Article 22 designated Berlin as the Tribunal's official seat. The trials continued until 31 August 1946. The Tribunal convicted 24 defendants out of 42; three were acquitted, twelve were sentenced to death by hanging, three received life imprisonment, and the rest were sentenced to terms ranging from ten to twenty years¹⁶.

2. The International Military Tribunal for the Far East (Tokyo)

Unlike Nuremberg, this tribunal was not established by an international treaty—due, in the view of some scholars, to political considerations. The Allies, following the European model, intended to prosecute Japanese war criminals. Thus, the Potsdam Declaration of 26 July 1945 expressed the Allies' determination to prosecute Japanese perpetrators.

The United States drafted the Tribunal's Charter, which provided for a bench of eleven judges presided over by an American judge who wielded broader powers than those of the Nuremberg Tribunal, where judicial powers were equal among judges. The Tribunal was based in Tokyo, and on 3 April 1946, the Far East Commission issued a political decision concerning the arrest and punishment of war criminals.

The Commission's Resolution (Article 6(b)) authorized the Supreme Commander of the Allied Forces to establish an investigative authority to gather evidence, analyze information, and take necessary steps to arrest suspects of war crimes or crimes against humanity¹⁷.

In our view, both the Nuremberg and Tokyo Tribunals constituted significant precedents in the development of international criminal law—especially in classifying international crimes and in abolishing the immunity of leaders, by affirming that superiors and

¹⁴ Same reference

¹⁵ Prof. Dr. Ali Ahmed Al-Chérifi, *International Criminal Law*, Arab Democratic Center for Strategic, Political and Economic Studies, Berlin (Germany), 1st edition, 2025, p. 95.

¹⁶ Bouhaya Wassila, *Course on Law and International Criminal Justice*, op. cit., p. 80.

¹⁷ Ali Youssef Shoukri, *International Criminal Justice in a Changing World*, Dar Al-Thaqafa Publishing and Distribution, Amman, 2000, p. 38.

subordinates bear equal responsibility for criminal acts¹⁸. Following orders did not exempt defendants from responsibility, although it could be considered in mitigation.

2 -Ad Hoc International Criminal Tribunals

Following internal armed conflicts in the former Yugoslavia and Rwanda, the UN Security Council intervened to suppress violations of international humanitarian law in their territories. Parties to these conflicts committed violations of Common Article 3 of the 1949 Geneva Conventions and Additional Protocol II of 1977. The roles of both tribunals are outlined below:

2-1 The International Criminal Tribunal for the Former Yugoslavia (ICTY)

After a request was submitted to the Secretary-General to urgently establish a commission of impartial experts to study and analyze the information submitted pursuant to Resolution 771 (1993), as well as other violations committed in the territory of the former Yugoslavia, the commission attempted to fulfill its mandate despite deliberate obstacles.

The commission succeeded in documenting crimes committed against civilians in Bosnia and Herzegovina, including mass rape, genocide, and ethnic cleansing, particularly targeting Muslims. Evidence collected included the discovery of mass graves of genocide victims. This evidence was then transmitted to the Tribunal's Prosecutor in April and August 1994¹⁹.

The UN Security Council issued Resolution No. 808 on 22 February 1993, requesting the establishment of an international tribunal within 60 days to try persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, particularly those related to ethnic cleansing. Consequently, the UN Secretariat issued a decision containing the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY)²⁰. The Security Council also issued Resolution 827 in 1993, announcing the creation of this tribunal and assigning it the mandate to consider crimes committed in the territory of the former Yugoslavia since 1991, although it did not precisely specify the date of entry into force.

On 25 May 1993, the Security Council reaffirmed its previous decision to establish an international tribunal tasked with prosecuting natural persons—excluding international

¹⁸ Ayachi Bouziane, *International Humanitarian Law Rules and Sovereignty*, Doctoral Thesis in Public Law, Faculty of Law of Ben Aknoun, University of Algiers, 2013-2014, op. cit., p. 283.

¹⁹ Omraoui Maria, *Journal of Law and Human Sciences*, p. 219.

²⁰ Same reference, page 219.

organizations—suspected of serious violations of international humanitarian law committed between 1 January and the date to be determined²¹.

The Statute of the Tribunal granted its members various privileges, immunities, and qualifications. The Tribunal’s seat was established in The Hague, the Netherlands.

The jurisdiction of the International Criminal Tribunal for the former Yugoslavia was defined in four areas, as indicated in Articles 1–9 of its Statute: territorial jurisdiction, temporal jurisdiction, subject-matter jurisdiction, and personal jurisdiction.

1. Territorial jurisdiction

The Tribunal’s jurisdiction is limited to prosecuting those accused and responsible for serious violations of international humanitarian law committed in the territory of the former Socialist Federal Republic of Yugoslavia, including its land territory, airspace, and territorial waters²².

2. Temporal jurisdiction

Article 1 of the Statute specifies that the Tribunal has the authority to prosecute persons responsible for serious violations of international humanitarian law committed in the former Yugoslavia since 1991, in accordance with the provisions of the Statute.

3. Subject-matter jurisdiction

The Tribunal’s jurisdiction must not conflict with that of national courts, nor infringe upon national sovereignty. However, the ICTY has primacy over national courts when prosecuting individuals accused of crimes and breaches of international humanitarian law. It may at any stage request national courts to defer to its competence in cases involving violations committed during international armed conflicts²³⁻²⁴.

The Tribunal has jurisdiction over the following crimes:

A. War crimes:

Serious violations of the 1949 Geneva Conventions.

B. Genocide:

Any act listed in Article 4(1) of the Statute committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.

²¹ Same reference, page 219.

²² Article 8 of the Statute of the Court of Yugoslavia.

²³ Moria Castillo, *The Jurisdiction of the International Criminal Tribunal for the Former Yugoslavia*, R.G.D.I., vol. 98/1994/1, p. 64.

²⁴ Omar El-Hussein, *Protection of Civilians During Armed Conflicts in Light of International Humanitarian Law*, Dar Al-Jamia Al-Jadida, Alexandria, 2017, p. 145.

C. Crimes against humanity:

As defined in Article 5 of the ICTY Statute, committed against civilian populations during armed conflicts—whether international or internal²⁵.

4. Personal jurisdiction

Article 7(1) of the Statute establishes individual criminal responsibility: “Any person who planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation, or execution of a crime referred to in Articles 2 to 5 of the present Statute shall be individually responsible for the crime.”

No person is exempt from criminal responsibility, regardless of official capacity—whether head of state, government official, or senior officer. Such status does not constitute grounds for reducing punishment. This principle was applied in the case of Slobodan Milošević, the former President of Yugoslavia, who appeared before the Tribunal.

Tribunal composition and procedures

The Statute of the Tribunal organized its structure and functioning.

Decisions of the Tribunal :

- The Prosecutor submitted the first indictment against *Nikolić* for forcibly transferring large numbers of Bosnian Muslims—deemed a crime of forcible displacement.
- Indictments were brought against leaders of the Bosnian Serbs as individuals and commanders with authority in the conflict in Bosnia and Herzegovina, for genocide, crimes against humanity, violations of the laws and customs of war, and serious breaches of the 1949²⁶ Geneva Conventions.
- On 14 December 1999, the Trial Chamber issued a judgment against **Goran Jelisić**, sentencing him to 40 years for violations of the laws and customs of war and crimes against humanity, while acquitting him of genocide. The Appeals Chamber upheld the judgment on 5 July 2001²⁷.

2–2. The International Criminal Tribunal for Rwanda (ICTR)

²⁵ Article 05 of the Statute of the Court of Yugoslavia.

²⁶ Ayet Abdelmalek Nadia, Course on Law and International Criminal Justice, printed material for 3rd year Public Law students, Djillali Bounehama University, Khemis Miliana, Faculty of Law and Political Sciences, Department of Law, p. 87, 2022-2023.

²⁷ Chérif Atlam, International Humanitarian Law: Guide for Academic Circles, published by the International Committee of the Red Cross, August 2015, p. 229.

Rwanda, an East African country, witnessed one of the most horrific genocides in human history: between 6 April 1994 and 4 July 1994, over 800,000 Rwandans were killed, the majority of whom were Tutsi—the minority targeted by the Hutu in their effort to eliminate them and seize political power.

Due to the scale and brutality of the atrocities, a temporary international criminal tribunal was established to prosecute those responsible for the genocide²⁸.

Rwandan media played a major role in sustaining the genocide, particularly through radio and television broadcasts that openly incited the population to commit massacres²⁹.

The tribunal was established by the UN through Security Council Resolution 955 of 8 November 1994. Its aim was to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda, as well as Rwandans responsible for such violations in neighboring countries, between 1 January and 31 December 1994. The Tribunal’s Statute was adopted, and its seat was located in Arusha, United Republic of Tanzania, pursuant to Security Council Resolution 977 of February 1995³⁰.

ICTR jurisdiction:

Subject-matter jurisdiction:

Includes genocide and crimes against humanity, as stated in Article 2 of the Statute.

Personal jurisdiction:

Covers all natural persons responsible for violations of international humanitarian law, regardless of their rank or position.

Territorial jurisdiction:

Covers the territory of Rwanda, including its land, airspace, and—in relation to crimes committed by Rwandan citizens—the territories of neighboring states.

Temporal jurisdiction:

Covers the period from 1 January to 31 December 1994³¹.

Tribunal structure and landmark judgments:

²⁸ Hammoum Jafar, *Ad Hoc International Criminal Justice and Its Role in Developing International Criminal Law*, *Journal of Legal and Political Research and Studies*, no. 3, Algeria, p. 149.

²⁹ Mestari Adel, *The International Criminal Court for Rwanda*, *Al-Fikr Journal*, no. 3, Faculty of Law and Political Sciences, Mohamed Khider University, Biskra, Algeria, p. 251.

³⁰ Omar El-Hussein, *Protection of Civilians During Armed Conflicts in Light of International Humanitarian Law*, *Dar Al-Jamia Al-Jadida*, Alexandria, 2017, p. 147.

³¹ Article 7 of the Statute of the Court.

- **December 1998:** The Tribunal convicted the mayor of Taba, *Jean-Paul Akayesu*, for acts of sexual violence, torture, and murder. He was held liable as a direct instigator.
- **December 1998:** The Tribunal convicted the former Rwandan Prime Minister *Jean Kambanda*, sentencing him to life imprisonment for genocide, conspiracy, incitement to genocide, and crimes against humanity. These were the first convictions for genocide by an international tribunal since the adoption of the Genocide Convention.
- **27 January 2000:** *Alfred Musema* was sentenced to life imprisonment for mass murder and rape.
- **1 June 2000:** Belgian journalist *Georges Ruggiu* was convicted for direct and public incitement to commit genocide and sentenced to 12 years³².

It should be noted that other special and temporary international tribunals have been created through agreements between the concerned state and the United Nations. Examples include:

- the Special Tribunal for Lebanon (created in 2007 to prosecute those responsible for the assassination of Prime Minister Rafik Hariri), and
- the Special Court for Sierra Leone (established on 12 January 2002 to prosecute those responsible for war crimes and crimes against humanity committed since 30 November 1996)³³.

Section Two: The International Criminal Court (ICC)

After the end of the Cold War in 1989 and in order to overcome the limitations of ad hoc tribunals, the UN General Assembly asked the International Law Commission in 1995 to study the substantive and administrative issues related to the establishment of a permanent international criminal court. However, the Commission did not conduct negotiations or drafting³⁴.

In 1996, the International Law Commission was replaced by the Preparatory Committee for the Establishment of an International Criminal Court, which held continuous meetings and completed a draft Statute and a final document on 3 April 1998³⁵.

³² Mestari Adel, *The Criminal Court for Rwanda*, Al-Fikr Journal, no. 3, Faculty of Law and Political Sciences, Mohamed Khider University, Biskra, Algeria, p. 261.

³³ Ahmed Si Ali, *Studies in International Humanitarian Law*, Dar Al-Akademias, Casablanca – Algiers, 1st edition, 2011, p. 649.

³⁴ Prof. Dr. Ali Ahmed Al-Chérifi, *International Criminal Law*, Arab Democratic Center for Strategic, Political and Economic Studies, Berlin (Germany), 1st edition, 2025, p. 127.

³⁵ Mahmoud Sherif Bassiouni, *The International Criminal Court: Its Origins and Statute, with a Study of the History of International Investigative Commissions and Former International Criminal Tribunals*, Rose El-Youssef Printing, Cairo, 2002, p. 2.

A unified and acceptable text was finalized and submitted to the UN Diplomatic Conference of Plenipotentiaries. The Statute was adopted at the conference held at the headquarters of FAO in Rome from 15 June to 17 July 1998, by majority vote after consensus failed³⁶.

After lengthy negotiations, the court was adopted, with entry into force scheduled five years later. Indeed, on 1 July 2002, after the required number of ratifications, the Statute entered into force—despite U.S. opposition, as the United States sought to subordinate the Court to the authority of the Security Council through its veto power.

1. Nature of the ICC (Complementarity with national courts)

The principle of complementarity appears in paragraph 10 of the Preamble to the Rome Statute, confirming that the International Criminal Court “shall be complementary to national criminal jurisdictions.” Article 1 reiterates this principle.

Complementarity means that the ICC may intervene only when national judicial systems are unwilling or unable to genuinely carry out investigations or prosecutions. Thus, the Court does not replace national courts; it intervenes only in the most serious cases when national systems are absent or ineffective³⁷.

Paragraph 6 of the Preamble affirms the duty of every state to exercise criminal jurisdiction over those responsible for international crimes.

Article 1 of the Rome Statute provides:

“An International Criminal Court (‘the Court’) is hereby established. The Court shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute. The Court shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.”

2 – Jurisdiction of the Permanent International Criminal Court

Its jurisdiction consists of **subject-matter jurisdiction**, **personal jurisdiction**, **temporal jurisdiction**, and **territorial jurisdiction**.

2-1 Types of Jurisdiction

A. Subject-matter jurisdiction

³⁶ Prof. Dr. Ali Ahmed Al-Chérifi, *International Criminal Law*, p. 127.

³⁷ Ali Youssef Shoukri, *International Criminal Justice in a Changing World*, Dar Al-Thaqafa Publishing and Distribution, Amman, 2000, p. 130.

This refers to the list of crimes that fall within the Court’s authority to investigate and prosecute. Article 5 of the Rome Statute limits the Court’s jurisdiction to the most serious crimes³⁸ of concern to the international community as a whole, a principle reaffirmed in paragraph 9 of the Preamble.

Article 5 of the Rome Statute lists the crimes within the Court’s jurisdiction:

1. The crime of genocide
2. Crimes against humanity
3. War crimes
4. The crime of aggression

Violations of international humanitarian law falling under the Court’s authority—including war crimes, genocide, and crimes against humanity—are not subject to any statute of limitations.

B. Temporal and territorial jurisdiction

According to Article 11 of the Rome Statute, the Court’s jurisdiction applies only to crimes committed after the entry into force of the Statute, in accordance with the principle of non-retroactivity. Therefore, the Court has no jurisdiction over crimes committed before the Statute entered into force.

For states that join the Statute, the ICC’s jurisdiction applies only to crimes committed after their accession. The Statute entered into force once 60 states had ratified it—specifically on the first day of the month after the 60th day following the deposit of the 60th instrument of ratification³⁹.

For states that join after the Statute has entered into force, the Statute becomes effective for them on the first day of the month following 60 days after the deposit of their instrument of ratification. A state may also choose, upon becoming a party, to postpone the application of the Court’s jurisdiction over war crimes for seven years.

The Statute entered into force on 1 July 2002 after 60 ratifications. Currently, more than 121 states have ratified the Statute, which was amended in June 2010⁴⁰.

³⁸ Prof. Dr. Hamnia Ali, Jurisdiction of the International Criminal Court, *Al-Fikr Journal*, Faculty of Law and Political Sciences, no. 14, p. 360.

³⁹ Prof. Dr. Abdelkader Houba, General Theory of International Humanitarian Law: Analytical, Legal, and Doctrinal Study, Research Series Sharia and Law, Publications of the Laboratory of Doctrinal and Judicial Studies, University of El Oued – Algeria, no date, p. 233.

⁴⁰ Dr. Bouhaya Wassila, Guarantees for the Administration of Criminal Justice Before the International Criminal Court, *Sawt Al-Qanoun Journal*, Djillali Bounehama University, Khemis Miliana, Algeria, no. 7, Part 1, 2017, p. 361.

As for territorial jurisdiction, it covers crimes committed on the territory of State Parties or on the territory of states that have accepted the Court’s jurisdiction by filing a declaration with the Registrar.

C. Personal jurisdiction

The Court prosecutes persons who were at least 18 years old at the time the crime was committed and who are responsible for serious violations of international humanitarian law.

Individual criminal responsibility applies to any person who contributed to the commission of crimes within the Court’s jurisdiction, regardless of official capacity or rank—whether a head of state, government official, or subordinate soldier, and regardless of whether the contribution was as principal perpetrator, instigator, or commander.

The Court enjoys international legal personality and possesses the legal capacity necessary to perform its functions and duties.

3 – Ways in which the Court exercises its jurisdiction

The Court may exercise its jurisdiction in the following situations:

1. **Referral by a State Party** to the Prosecutor.
2. **Referral by the UN Security Council** acting under Chapter VII of the UN Charter.
3. **Initiation of an investigation by the Prosecutor proprio motu**, based on information regarding crimes within the Court’s jurisdiction⁴¹.

Applicable Law

In exercising its jurisdiction, the Court applies:

1. **Primarily:**
 - This Statute
 - The Elements of Crimes
 - The Rules of Procedure and Evidence
2. **Secondarily, where appropriate:**

⁴¹ Prof. Dr. Abdelkader Houba, *General Theory of International Humanitarian Law: Analytical, Legal, and Doctrinal Study*, Research Series Sharia and Law, Publications of the Laboratory of Doctrinal and Judicial Studies, University of El Oued – Algeria, no date, p. 233.

- Applicable treaties
- Principles and rules of international law, including those governing armed conflict

3. Failing that:

- General principles of law derived from national legal systems, including the laws of states that would normally have jurisdiction over the crime, provided these principles are not inconsistent with the Statute or international law.

The Court may apply principles and rules of law as interpreted in its previous decisions.

Interpretation

The interpretation and application of the law under this article must be consistent with internationally recognized human rights and free from any discriminatory treatment based on sex, age, race, color, language, or religion.

3 – The ICC’s Experience in Suppressing Crimes Related to Violations of International Humanitarian Law

Since the Rome Statute entered into force on 1 July 2002, the Court has received four referrals to date. Three referrals were made by State Parties: the Democratic Republic of the Congo, Uganda, and the Central African Republic. The fourth, and the first of its kind, was made by the UN Security Council concerning the Darfur region of Sudan.

The State of Palestine submitted its first formal referral to the ICC Prosecutor on 25 June 2015 to support the preliminary examination into crimes committed on Palestinian territory, including East Jerusalem, since 13 June 2014. The Prosecutor later announced the opening of an investigation after issuing a 60-page report explaining the legal basis for the Court’s jurisdiction over crimes committed in Palestine⁴².

The report clearly defines the Court’s territorial jurisdiction over Palestine, making the initiation of criminal investigation more likely than ever—despite ongoing rejection and pressure by the occupying state and the United States.

The Sabra and Shatila Massacres

The Sabra and Shatila Palestinian refugee camps in Lebanon witnessed mass killings over three consecutive days—16, 17, and 18 September 1982—with thousands of victims.

⁴² Shorouk Taysir Abdelghani Abu Dabbous, *Difficulties in Implementing International Humanitarian Law*, Master’s Thesis, Faculty of Law, Middle East University, Jordan, June 2020, p. 111.

Despite these grave violations, no one was held accountable before Lebanese or international courts.

Where is international justice in holding perpetrators accountable?

The ICC can be an effective mechanism for enforcing international humanitarian law if it applies its Statute objectively and without political interference.

4 – Obstacles to Suppressing Crimes Related to Violations of International Humanitarian Law by the ICC and Their Impact on Achieving Criminal Justice

A. Legal obstacles related to the Statute

These include the Court’s inability to exercise jurisdiction over crimes committed on the territory of non-State Parties, as well as obstacles associated with Security Council referral and deferral powers, which may undermine the Court’s independence.

B. Material and administrative obstacles

These include the Court’s lack of an international police force to track and arrest perpetrators of international crimes and violations of humanitarian law, as well as the absence of an international prison system for enforcing sentences.

C. Political obstacles

The Court’s work is often influenced by political considerations and international interests rather than the higher interests of humanity. This is evident in the Court’s inability to exercise jurisdiction over violations of international humanitarian law in Palestine, including grave crimes being committed against civilians in Gaza.

CONCLUSION

In conclusion, after examining national courts, international ad hoc tribunals, and the International Criminal Court, as well as their role in deterring violations of international humanitarian law, we find that there are indeed national and international judicial mechanisms capable of holding violators accountable and protecting civilians from the horrors of war. Despite the shortcomings that affect these mechanisms, their effective implementation on the ground—whether through national courts or the International Criminal Court, which is meant to function as a court of law free from political considerations or any other influence—would allow the international community to achieve justice. Yet the Palestinian people continue to die, and their rights continue to be violated before the eyes of the world, despite the existence of an International Criminal Court.

Bibliography

Legal Texts and International Instruments

1. The Four Geneva Conventions of 1949.
2. Protocol I Additionnal to the Geneva Conventions of August 12th 1949, related to the protection of victims of international armed conflicts.
3. Protocol II Additionnal to the Geneva Conventions of June 8th 1977, related to the protection of victims of non-international armed conflicts.
4. The Rome Statute of the International Criminal Court 1998.
5. Ordinance No. 71-28 of 22 April 1971 establishing the Military Justice Code, Official Journal of the People's Democratic Republic of Algeria, No. 38, Year 8, issued on 11 May 1971, as amended and supplemented by Law No. 18-14 of July 2018.
6. Ordinance No. 71-28 of 22 April 1971 on the Military Justice Code, Official Journal of the People's Democratic Republic of Algeria, No. 47, Year 55, issued in August 2018.

References:

Books

1. Ahmed Si Ali, *Studies in International Humanitarian Law*, Dar Al-Akademia, Casablanca – Algiers, 1st edition, 2011.
2. Abdelkader Houba, *General Theory of International Humanitarian Law: An Analytical Jurisprudential Study*, Series of Research on Sharia and Law, Laboratory of Jurisprudential and Judicial Studies, University of El Oued, Algeria, n.d.
3. Aloui Ali Ahmed Al-Sharafi, *International Criminal Law*, Arab Democratic Center for Strategic, Political, and Economic Studies, Berlin, Germany, First Edition, 2025.
4. Ali Youssef Shukri, *International Criminal Justice in a Changing World*, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2002.
5. Maria Theresa Dottli, *National Measures for the Implementation of International Humanitarian Law*, in *Studies in International Humanitarian Law*, Preface by Professor Mufid Shahab, Dar Al-Mustaqbal Al-Arabi, 2000, p. 546.
6. Mahmoud Sherif Bassiouni, *The International Criminal Court: Its Origin and Statute with a Study of the History of International Investigative Committees and Previous International Criminal Tribunals*, Rose Al-Youssef Press, Cairo, 2002.
7. Sherif Atlam, *International Humanitarian Law: A Guide for Academic Circles*, International Committee of the Red Cross, August 2015.
8. Sherif Atlam, *International Humanitarian Law in Contemporary Armed Conflicts: Punishment of War Crimes between Reality and Aspiration*, Preface by Omar Al-Makki, International Committee of the Red Cross, 2020.
9. Omar Al-Hussein, *Protection of Civilians during Urgent Conflicts in Light of International Humanitarian Law*, Dar Al-Jamiah Al-Jadida, Alexandria, 2017, p. [page].

Theses / Dissertations

1. Ayachi Bouziane, *Rules of International Humanitarian Law and Sovereignty*, PhD Dissertation, Public Law, Faculty of Law Ben Aknoun, University of Algiers, 2013–2014.
2. Bouhaya Wasila, *The Role of the International Committee of the Red Cross in the Development and Promotion of International Humanitarian Law*, PhD Dissertation, Specialization in

International Criminal Law, Saad Dahlab University – Blida, Faculty of Law, Public Law Department, December 2011, p. 291.

Articles

1. Abdelkader Houba, *The Role of National Criminal Justice in Repressing Violations of International Humanitarian Law*, *Journal of Legal and Political Sciences*, Vol. 9, Issue 3, December 2018, University of Algiers.
2. Abdelmalek Azzouzi, *Conflict of Legal Systems and the Development of International Criminal Law from Nuremberg to the Gaza Trials*, *Critical Journal of Law and Political Science*, Faculty of Law and Political Science, University of Lizi Ouzou, Algeria, Vol. 19, Issue 3, 2024.
3. Bouhaya Wassila, *Guarantees for Achieving Criminal Justice before the International Criminal Court*, *Journal of Law Voice*, University of Djilali Bounaama – Khemis Miliana, Algeria, Issue 7, Part 1, 2017.
4. Belmnani Asma, *National Judicial Authority in Accountability for Violations of International Humanitarian Law*, *Afak Ilmiya Journal*, Vol. 11, Issue 4, Tamanrasset University Center, Algeria, 2019.
5. El-Jilali Fetal, *The Principle of the Personal Nature of Criminal Punishment in Light of Sharia and Law*, *Annals of the University of Algiers*, Vol. 37, Issue 4, 2023.
6. Hamoum Jaafar, *Temporary International Criminal Justice and its Role in the Development of International Criminal Law*, *Al-Haqiqa Journal*, Issue 33, Algeria.
7. Hicham Fakhar, *Procedural Means for Repressing Serious Violations of International Humanitarian Law*, *Journal of Legal Studies and Research*, Vol. 5, Issue 1, University of Médéa, Algeria, 2020.
8. Mestari Adel, *The International Criminal Tribunal for Rwanda*, *Al-Fikr Journal*, Issue 3, Faculty of Law and Political Science, Mohamed Khider University, Biskra, Algeria, p. 251.
9. Mousouni Salima, *Temporary International Criminal Justice: Study of the ICTY*, *Al-Haqiqa Journal*, Issue 33, Algeria.
10. Shorouq Taysir Abdul Ghani Abu Dubous, *Difficulties in Applying International Humanitarian Law*, Master's Thesis, Faculty of Law, Middle East University, Jordan, June 2020.

Educational Publications / Student Textbooks

1. Ait Abdelmalek Nadia, *Lectures on International Law and Criminal Justice*, printed for third-year undergraduate students (Public Law), Faculty of Law and Political Science, Djilali Bounaama University – Khemis Miliana, Algeria 2022/2023.
2. Bouhaya Wasila, *Lectures on International Criminal Law*, printed for third-year Public Law students, Tipaza University Center, Algeria 2022/2023.

French Reference

1. Moria Castillo, *The Competence of the International Criminal Tribunal for the Former Yugoslavia (ICTY)*, *Revue Générale de Droit International*, Volume 98, 1994.