

Upholding Justice: The Function of International Criminal Law in Human Rights Protection

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Abstract

The research emphasizes how international criminal law serves as a safeguard against the most serious violations of human dignity. It identifies grave offenses—including genocide, war crimes, crimes of aggression, and crimes against humanity—as punishable acts under international norms. Through both ad hoc tribunals and the permanent International Criminal Court, this body of law ensures that individuals responsible for such atrocities are subject to justice. In this way, international criminal law functions not only as a tool for punishment but also as a deterrent to future human rights violations.

Keywords: Global Justice, Human Rights Protection, International Tribunals, Atrocity Crimes, Legal Sanctions.

Introduction

Throughout history, humanity has endured some of the most brutal atrocities, leaving behind tragedies that defy description. In response, the international community has sought to establish mechanisms aimed at preventing the recurrence of such crimes, with the ultimate goal of safeguarding human dignity through justice and security. Grave breaches of humanitarian norms—including genocide, war crimes, crimes against humanity, and acts of aggression—have long shaken the conscience of the world. From the misconduct attributed to Kaiser Wilhelm II, to the atrocities committed by the Axis Powers during the Second World War, and later to the mass killings in the conflicts of the former Yugoslavia and Rwanda, humanity has repeatedly witnessed widespread

violations. Further examples can be found in the genocides and large-scale violence across parts of Africa and the Arab world. These events have compelled the international community to establish institutions capable of ensuring accountability, culminating in the creation of the International Criminal Court (ICC), which prosecutes individuals for crimes falling within its jurisdiction. Under its Statute, perpetrators are held personally responsible and subjected to punishment. Consequently, international criminal law has emerged as a central mechanism in addressing and deterring human rights violations.

Significance of the study

The study derives its significance from the urgent need to limit human rights abuses and to ensure that perpetrators are held accountable under the law. International criminal law plays a vital role in achieving these objectives, which are directly tied to the preservation of peace and coexistence among peoples. Persistent violations of human rights undermine stability, while genuine peace—an aspiration of all generations—cannot be realized unless global and regional organizations effectively fulfill their founding purposes. Since peace and security

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are essential for the survival of the international community, strengthening mechanisms of accountability remains a pressing concern.

Objectives of the study

This study aims to:

- Examine the persistence of human rights violations in the international community and assess the global response to such abuses.
- Explore the role of the international community in alleviating the suffering caused by grave crimes, particularly those committed during the two World Wars, subsequent ethnic and civil conflicts, and under systems of racial discrimination.
- Define the concept of international crime, analyze its various forms, and assess how international criminal law addresses these violations through international jurisdiction.

Research hypothesis

The central hypothesis of this study is that international criminal law contributes significantly to preventing and mitigating human rights violations by criminalizing such acts and prosecuting offenders through international criminal courts. These judicial mechanisms remain the most effective means of ensuring accountability and combating impunity at the global level.

Methodology

The study employs a descriptive and analytical approach, classifying and examining different types of international crimes, their legal elements, and their implications as violations of human rights. Furthermore, it analyzes the stance of international criminal law regarding these violations and the mechanisms established to address them.

Structure of the study

Introductory Section: Concept and sources of international criminal law.

Topic I: Criminalization of human rights violations under international criminal law.

- Requirement 1: Definition of international crimes.
- Requirement 2: Crimes punishable under international criminal law.

Topic II: Mechanisms of international criminal law in protecting human rights.

- Requirement 1: Ad hoc international criminal tribunals.
- Requirement 2: The permanent International Criminal Court.

Conclusion

Concept of international criminal law

International criminal law can be understood as a body of legal norms, largely rooted in custom, that seeks to preserve peace, justice, and civilization. It does so by imposing sanctions on those who breach international law and by adopting preventive measures designed to deter future violations. This branch of law primarily deals with crimes that threaten the international order—such as war crimes, crimes against humanity, and genocide—by prescribing penalties for offenders and organizing legal responses to acts that endanger global security. In this sense, it forms a specialized field within criminal law, but one that operates on a transnational level to address offenses that exceed national boundaries. Its scope is broad, extending to both the punishment of individuals and the codification of criminal conduct in the international arena.

Sources of international criminal law

The foundations of international criminal law are drawn from both primary and subsidiary sources.

1. Primary sources

- **Treaties:** International conventions and agreements serve as the most direct source of international criminal law, functioning within the global system much like statutes do within domestic legal systems. Treaties such as the Rome Statute provide the legal framework for defining and prosecuting international crimes.
- **Customary International Law:** Alongside treaties, custom plays a central role. Many treaty provisions are themselves codifications of long-standing customary practices. Customary law, though unwritten, emerges from consistent state practice accompanied by a sense of legal obligation and is widely recognized as binding.
- **General Principles of International Law:** These principles, acknowledged in the Rome Statute, further demonstrate the interconnectedness of international criminal law with broader international law. They

encompass both codified and uncoded norms, with custom often serving as their foundation.

2. Subsidiary sources

- **Judicial Decisions:** While international court rulings do not create binding precedent in the same way as common law systems, they remain influential. The jurisprudence of bodies such as the International Criminal Court provides guidance in interpreting and applying existing rules of international criminal law.

- **Scholarly Writings:** The analyses of prominent jurists and legal scholars have significantly shaped the development of international law. Their contributions help clarify principles, refine legal concepts, and build theoretical frameworks that enrich the field.

- **General Legal Principles:** Borrowed from domestic legal systems and universally recognized, principles such as justice and fairness are applied when no specific treaty or customary rule exists. They ensure that international criminal law retains coherence with the broader ideals underpinning legal systems worldwide.

In sum, international criminal law rests upon a complex network of legal sources, blending codified agreements, customary practices, judicial interpretations, and scholarly contributions. Together, they provide the structure through which the international community confronts crimes that undermine human rights and threaten collective peace and security.

International criminal law and the criminalization of human rights violations

This part of the study examines how international criminal law addresses human rights violations. It is divided into two main requirements: the first explains the concept of international crime and its elements, while the second identifies the categories of crimes that fall within the jurisdiction of international criminal law.

First requirement: The concept and elements of international crime

1. The concept of international crime

Scholars and jurists have offered multiple definitions of international crime. Some describe it as *any act or omission that contravenes the rules of international criminal law, carried out by a state, organization, or even non-governmental entity, and directed against the*

interests protected by international law, particularly human rights. Such conduct disrupts international public order and therefore warrants criminalization and punishment [1].

Others argue that international crime is *an act or omission already recognized as criminal by the international community, prosecuted and punished in its name.* According to this view, the existence of a permanent international criminal court is essential to ensure that such acts are punished immediately after commission; otherwise, many harmful acts may escape accountability [2, 3].

Paulus, reporting for the International Law Commission, defines it as *acts committed by states, or permitted by them, in violation of international law that incur international responsibility.* In a similar sense, individuals who commit such violations are morally responsible under international law [4].

Lombois emphasizes that international crimes are *serious violations of public international law that threaten the collective interests of the international community and disturb global order across multiple states* [5]. Similarly, Karvin underlines that these are *acts contradicting international law, entailing international responsibility, and characterized by their exceptional seriousness* [6].

From these definitions, it becomes evident that international crime constitutes a direct attack on values and interests that international law seeks to protect. Its seriousness lies in its threat to the entire international community, whether defined through unwritten custom (such as the prohibition of aggressive war) or codified treaties (e.g., the Genocide Convention). Without proper mechanisms for criminalization and prosecution, such crimes can lead to catastrophic consequences for humanity [7].

2. The elements of international crime

International crimes share several foundational elements with domestic crimes, namely the **legal, material,** and **moral** elements, but they also include a distinct **international element** [8].

- **The Legal Element:** For an act to be criminal, there must be a legal provision prohibiting it. This reflects the principle of legality: no act may be criminalized or punished without a clear legal basis. In international criminal law, this principle is codified in the Rome Statute, particularly Article 22, which specifies that a person cannot be held criminally liable unless the act, at

the time of commission, fell within the jurisdiction of the Court [9].

- **The Material Element:** This refers to the prohibited conduct—the external behavior that causes harm or threatens internationally protected interests. The material element requires an observable act (or omission) by the perpetrator that results in or risks significant harm. In some cases, a specific harmful result must also be achieved for the crime to be complete [10].

- **The Moral Element:** Crimes require intent. This involves both knowledge of the facts that constitute the crime and the will to commit it. Thus, the mental state of the perpetrator is indispensable to establishing liability.

- **The International Element:** What distinguishes international crimes from ordinary offenses is their international dimension. This arises when crimes are committed under state authority, planned by governments or coalitions, or carried out by individuals acting on behalf of states. The international element underscores the scale and impact of the crime, showing that it is not merely a domestic issue but one that threatens international peace and order [11].

Second Requirement: International Crimes Punishable under International Criminal Law

The protection of human rights lies at the core of international criminal law, and the Rome Statute specifically enumerates the crimes that fall within its jurisdiction. These crimes are universally recognized as posing a grave threat to humanity and to the international order. They can be summarized as follows:

1. Genocide

Genocide refers to intentional acts aimed at destroying, in whole or in part, a particular national, ethnic, racial, or religious group. Such acts may include killing members of the group, inflicting severe physical or psychological harm, preventing births, or forcibly transferring children to another group. These actions are enumerated in Article 6 of the Rome Statute [12].

The crime of genocide has inflicted profound losses on humanity throughout history, prompting collective international action to eradicate it. The 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* established that genocide constitutes a crime under international law whether committed in times of war or peace. Building on the Nuremberg principles, this convention solidified the notion that individuals can be

held criminally accountable at the international level for acts of genocide [13].

Over time, the principles of the Genocide Convention have become binding norms of positive international law. The International Court of Justice has reaffirmed in several cases that acts of extermination, forced displacement, and similar conduct may, in certain circumstances, constitute crimes against humanity, regardless of the political system in which they occur [14].

2. War crimes

War crimes encompass serious breaches of the laws and customs governing armed conflict, including deliberate attacks on civilians, destruction of property without military necessity, misuse of armistices, deployment of prohibited weapons, and mistreatment of prisoners of war. These violations are codified in Article 8 of the Rome Statute, drawing heavily on the Geneva Conventions of 1949 [15].

Historically, the concept of war crimes predates modern codifications. From the writings of Sun Tzu in ancient China to the principles of Manu in India and the later contributions of Roman and European jurists, the notion that warfare must be regulated has long existed. Islamic scholarship also played a vital role, with jurists such as Muhammad al-Shaybani articulating a coherent framework for the conduct of war [16].

Early efforts at codification include the Brussels Conference of 1874, The Hague Conventions of 1907, and the Geneva Convention of 1864. The first documented war crimes trial dates to 1474, when Peter von Hagenbach was prosecuted and executed for atrocities during wartime. Today, war crimes are among the most well-established categories of international offenses, attracting both individual responsibility and international jurisdiction [12].

3. Aggression

The crime of aggression was one of the last offenses to be formally defined in international criminal law, reflecting the difficulty of achieving consensus on its scope. It is included in Article 5 of the Rome Statute, but its application was delayed pending agreement on its definition and conditions of jurisdiction under Articles 121 and 123.

The United Nations General Assembly, in Resolution 3314 (1974), described aggression as the use of armed

force by a state against the sovereignty, territorial integrity, or political independence of another state, in violation of the UN Charter. While the resolution provided illustrative examples, it left discretion with the Security Council to determine whether particular acts constituted aggression [16].

A second approach, supported by countries such as Germany, defines aggression as planning, preparing, or waging a war of aggression, or participating in a collective plan for such war, thereby framing it as a *crime against peace* [17].

The UN Charter further expanded this scope by prohibiting not only the use of force but also the threat of force, reaffirmed in subsequent General Assembly resolutions such as the 1970 Declaration on Principles of International Law (Resolution 2625). Recent scholarship has also explored the concept of “non-military aggression,” though prevailing interpretations of Article 2(4) of the UN Charter limit the definition to armed force, excluding political or economic pressure [18].

Fourth: Crimes against humanity

Crimes against humanity are defined as severe and inhumane acts committed against individuals or groups based on political, racial, national, religious, ethnic, cultural, or gender grounds. Such acts must occur within the framework of a widespread or systematic attack against civilian populations, carried out with knowledge of the attack. The Rome Statute lists specific forms of conduct that constitute these crimes.

Although the concept was implicitly recognized earlier, crimes against humanity were formally articulated after the Second World War. Article III of the Nuremberg Tribunal Statute explicitly granted the tribunal authority to prosecute individuals responsible for atrocities committed in support of the Axis Powers [19]. Later, the statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda reaffirmed and expanded this definition, listing acts such as murder, extermination, enslavement, imprisonment, rape, persecution on political, ethnic, or religious grounds, and other inhumane conduct [20].

Article 7 of the Rome Statute of the International Criminal Court (ICC) further consolidates this definition, clarifying that crimes against humanity involve prohibited acts committed in the context of a widespread or systematic attack against civilians, with awareness of the attack [21]. Intentional killing, for instance, qualifies

as such a crime when committed under a state policy or by groups acting on behalf of the state [22].

The acts enumerated under Article 7 include:

- Extermination
- Enslavement
- Forced transfer or expulsion of populations
- Arbitrary imprisonment or deprivation of liberty contrary to international law
- Torture
- Sexual violence (including rape, sexual slavery, forced prostitution, forced pregnancy, and forced sterilization)
- Persecution of groups or populations for political, racial, national, ethnic, cultural, or religious reasons
- Enforced disappearances
- Apartheid
- Other inhumane acts deliberately causing great suffering or serious harm to physical or mental health

Second Topic: The means of international criminal law in protecting human rights

International criminal law provides mechanisms for safeguarding human rights through judicial bodies. These mechanisms can be grouped into two categories: temporary international tribunals and the permanent International Criminal Court (ICC).

First Requirement: Temporary international tribunals

1. The international criminal tribunal for the former yugoslavia (ICTY, 1993)

A. Establishment and Structure

The ICTY was established in 1993, with its seat in The Hague, Netherlands. According to Article 31 of its Statute, the tribunal comprises three main organs [2]:

- **The Chambers**, consisting of two Trial Chambers and an Appeals Chamber
- **The Office of the Prosecutor**
- **The Registry**, providing administrative support to both Chambers and the Prosecutor

The tribunal and its officials enjoy privileges and immunities under the 1946 UN Convention on Privileges and Immunities [9].

B. Jurisdiction

The Statute of the ICTY outlines four dimensions of jurisdiction:

1. **Subject-matter jurisdiction** – covering grave breaches of the 1949 Geneva Conventions, violations of

the laws and customs of war (e.g., use of toxic weapons, destruction of towns, looting), genocide, and crimes against humanity [9].

2. **Personal jurisdiction** – limited to natural persons (Article 6 of the Statute), excluding states and legal entities such as organizations and corporations [23].

3. **Territorial jurisdiction** – restricted to the territory of the former Socialist Federal Republic of Yugoslavia.

4. **Temporal jurisdiction** – covering crimes committed since January 1, 1991, until the Security Council determines that peace and security have been restored in the region [24].

2. *The international criminal tribunal for rwanda (ICTR)*

A. Establishment and structure

The ICTR was initially located in Kigali, Rwanda, before being relocated to Arusha, Tanzania. Article 10 of its Statute establishes three principal organs, which mirror the ICTY's structure [2]:

- **The Chambers**, with two Trial Chambers and an Appeals Chamber
- **The Office of the Prosecutor**
- **The Registry**

Continuation: The International Criminal Tribunal for Rwanda (ICTR)

A. Institutional structure

The Registry serves as the administrative arm of the tribunal, assisting both the Chambers and the Prosecutor. Notably, the ICTR and the ICTY share a single Appeals Chamber, as stipulated in Article 12 of the ICTR Statute, which provides that appeals against ICTR judgments are heard before the Appeals Chamber of the ICTY. Similarly, Article 15 of the ICTR Statute specifies that both tribunals initially shared the same Prosecutor [25]. Although created under separate Security Council resolutions, the two tribunals were linked institutionally through this arrangement, raising criticism. Scholars argued that appointing a single Prosecutor for two tribunals separated by over a thousand miles was impractical, as it was unreasonable to expect one officeholder to manage investigations in both The Hague and Arusha effectively. Moreover, sharing one Appeals Chamber caused difficulties, since the substantive laws of the two tribunals were not identical, and ICTY judges alternated in presiding over the Appeals Chamber, unlike

ICTR judges. These structural imbalances often disadvantaged the ICTR [3].

To address these problems, the Security Council later created a separate Prosecutor's Office for the ICTR, with functions parallel to those of the ICTY Prosecutor, particularly in the areas of investigation and prosecution [26].

B. Jurisdiction

The ICTR's jurisdiction was defined along three dimensions:

1. Subject-matter jurisdiction: The ICTR Statute empowered the court to prosecute individuals responsible for [27]:

- Genocide
- Crimes against humanity
- War crimes
- Violations of Common Article 3 of the 1949 Geneva Conventions and Additional Protocol II of 1977, including: violence against life and person, collective punishment, hostage-taking, terrorism, outrages upon personal dignity, pillage, executions without due process, and threats of such acts [4].

2. Personal jurisdiction: Like the ICTY, the ICTR's jurisdiction extended only to natural persons. Article 6 of its Statute makes clear that states and legal entities such as organizations, associations, and corporations fall outside its authority [23].

3. Territorial and temporal jurisdiction: The court's territorial jurisdiction covered the entire territory and airspace of Rwanda, as well as the territory of neighboring states where crimes related to the conflict were committed. Its temporal jurisdiction extended from January 1, 1994, to December 31, 1994 [9].

Second Requirement: The Permanent International Criminal Court (ICC)

A. Establishment and purpose

International law scholars have long emphasized that certain crimes — including war crimes, genocide, and crimes against humanity — must be criminalized due to the grave threat they pose to peace, security, and human dignity. War crimes, for example, not only involve violations of the laws of armed conflict but also constitute profound breaches of human rights, such as

mistreatment of prisoners, killing of the wounded, and abuse of hostages.

Despite the existence of international and regional mechanisms throughout the twentieth century to safeguard human rights, atrocities such as genocide and crimes against humanity continued to claim millions of victims. Only a small number of perpetrators were ever tried in national courts. Ad hoc international tribunals also proved inadequate, as they were often subject to political pressures and shaped by the balance of power within the United Nations. Consequently, the need for a **permanent, independent judicial body** became evident. Such a court would prosecute perpetrators of the gravest international crimes without being bound to specific conflicts or political agendas [28].

This vision materialized with the adoption of the **Rome Statute of the International Criminal Court** in 1998. The Statute entered into force on July 1, 2002, after being ratified by 60 states. Article 4 of the Statute grants the Court international legal personality and the authority to carry out its judicial functions. The ICC may exercise jurisdiction not only within the territories of member states but also on the territory of non-member states if a special agreement exists or if jurisdiction is conferred by the United Nations Security Council [29].

The ICC, headquartered in The Hague, represents a milestone in international justice. Unlike temporary tribunals, it is a **permanent institution** tasked with investigating and prosecuting genocide, crimes against humanity, war crimes, and, since the Kampala amendments, the crime of aggression. It intervenes only when national judicial systems are **unwilling or unable** to prosecute.

B. Jurisdiction of the international criminal court

The jurisdiction of the ICC, as defined in the Rome Statute, is outlined across five main dimensions:

1. Subject-Matter jurisdiction

Article 5 of the Rome Statute specifies that the ICC has jurisdiction over only the “most serious crimes of concern to the international community as a whole.” These include genocide, crimes against humanity, war crimes, and the crime of aggression. Detailed definitions and elements of these crimes are provided in Articles 6, 7, and 8 of the Statute.

2. Complementary jurisdiction

The ICC functions on the principle of complementarity. The Preamble of the Rome Statute explicitly affirms, in paragraph ten, that “*the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions.*” In other words, the ICC does not replace domestic courts but intervenes only when national systems are **unwilling or unable** to prosecute.

Article 17 of the Statute sets out the criteria for admissibility. A case may be deemed admissible before the ICC if:

- The state with jurisdiction over the matter is unwilling to investigate or prosecute;
- The state lacks the capacity to conduct genuine proceedings; or
- The state has initiated proceedings but delays them unjustifiably, with the intent to shield the accused.

Thus, the ICC respects national sovereignty while ensuring accountability where domestic systems fail [30].

3. Temporal jurisdiction

The ICC’s jurisdiction is **non-retroactive**, consistent with the general principle of criminal law prohibiting ex post facto application. Accordingly, the Court may only consider crimes committed **after the Statute entered into force** on July 1, 2002.

For states that ratify the Statute after that date, the ICC’s jurisdiction applies only to crimes committed after the Statute’s entry into force for that specific state. However, a state may lodge a declaration with the Court accepting jurisdiction over crimes committed prior to ratification. Importantly, crimes within the ICC’s jurisdiction are not subject to statutes of limitations, reinforcing their gravity and the need for accountability.

4. Personal jurisdiction

The ICC’s jurisdiction extends solely to natural persons. Article 25 of the Rome Statute affirms the principle of individual criminal responsibility, holding persons accountable for crimes falling within the Court’s jurisdiction, regardless of official capacity. While individuals bear criminal responsibility, this does not absolve states of liability under international law. States remain accountable for internationally wrongful acts and may be required to provide reparations [30].

5. Territorial jurisdiction

The ICC's territorial jurisdiction covers crimes committed on the territory of any state party to the Rome Statute or by a national of a state party. Where crimes are committed in a non-party state, the Court may exercise jurisdiction only if that state consents or if jurisdiction is referred by the United Nations Security Council.

This arrangement reflects the principle of state consent in treaty law, as the ICC was created by an international treaty. States parties actively participate in the Court's governance, including the election of judges through the Assembly of States Parties, underscoring the ICC's status as an extension of international cooperation rather than an external imposition.

Notably, the Statute disallows reservations, requiring states to accept it in its entirety. However, Article 124 provided a temporary exception: upon joining, a state could declare that it would not accept the Court's jurisdiction over war crimes (Article 8) for a period of seven years. This transitional clause sought to encourage wider ratification while safeguarding the Court's long-term jurisdictional integrity [30].

Conclusion

Human rights remain a universal concern for all nations, as they represent the foundation of freedom, dignity, justice, and equality. International criminal law recognizes that these rights must be safeguarded both in times of peace and during armed conflict. However, protecting them is a profound challenge, as violations such as killing, torture, slavery, and other inhumane acts continue to threaten human life and dignity. Human rights are therefore not only a legal obligation but also a shared moral responsibility of the international community.

This study has shown that the activation and continual development of international criminal law mechanisms through international criminal tribunals has become essential in an era marked by recurring conflicts and wars. These tribunals were established in response to grave violations against humanity, often aggravated by advances in military technology and warfare. Consequently, the international community has been compelled to strengthen accountability by prosecuting perpetrators of international crimes before international criminal courts, particularly the International Criminal Court (ICC).

Results

1. The Rome Statute serves as the constitutional foundation of the ICC, establishing its jurisdiction, operational framework, and authority to prosecute the most serious crimes of concern to the international community, namely genocide, crimes against humanity, war crimes, and the crime of aggression.
2. The establishment and continued work of the ICC significantly contribute to the protection of human rights by deterring grave violations and holding perpetrators accountable, thereby reinforcing global justice and security.

Recommendations

1. Encourage non-signatory states to the Rome Statute to respect its underlying principles and work toward accession, thereby strengthening the universality and effectiveness of the ICC.
2. Ensure that the ICC's mandate is applied consistently and impartially across all regions, without exception, so that perpetrators of serious human rights violations are held accountable regardless of geographic or political considerations.
3. Academic institutions, research centers, and universities should integrate international criminal law into their curricula, dedicating specialized courses and research programs to highlight the ICC's role, its jurisdiction, and the legal as well as political challenges it faces.

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