

International Criminal Law and its Contribution to Human Rights Safeguards: Beyond Borders Defending the Defenseless

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Abstract: To protect human rights, holding people accountable and demanding compensation from countries is necessary. International criminal law tools, such as the Nuremberg Verdict of the International Military Tribunal (IMT) and the Charter, protect several rights outlined in the Universal Declaration of Human Rights. The 1949 Geneva Conventions expanded the scope of the universality principle to include war crimes, and the rights protected by the numerous human rights covenants are in line with the specific serious violations. International criminal law is essentially a supplement to human rights, acting as a means of enforcement to determine personal responsibility and punish individuals who infringe on these rights. Human rights legislation and the ensuing legal framework for defending the rights of the accused. It clarifies the extent to which human rights are protected in international criminal courts and points out certain obstacles that might result in individual rights being violated and endanger the core idea of a “fair trial”. The paper discusses the extension of the notion of a fair trial to international criminal proceedings and suggests possible ways to overcome these problems within the framework of the international criminal justice system. It also explores the connections between international criminal courts and human rights monitoring systems, looking at the potential effects on individual rights of accusatorial and inquisitorial aspects of the international criminal process.

Keywords: Human Rights. War Crimes. Humanity. ICC. Legal Landscapes.

Summary: **1** Introduction – **2** Significance and Objectives of Paper – **3** Crimes Affecting Internationally – **4** Tribunals of International Criminal Law – **5** Difference between the International Criminal Court and the International Court of Justice – **6** Principles Relating to International Criminal Law – **7** Conclusion and Future Scope – References

1 Introduction

Rights or laws are determined in a statute to secure the rights that are in danger of suffering violation. As an individual/military personnel/state it carry a

ton of rights with us and these rights can be violated by anyone or any other nation arbitrarily, which is against a law of nature. Earlier in India when the rights of a person belonging to Kingdom X were violated by the member of Kingdom X/Y or by Kingdom Y itself, then the king of Kingdom X took matters in hand to uphold dharma even beyond boundaries. At present a body of guidelines regulating interactions between sovereign states and other international organizations is known as international law. To uphold peace, settle disputes, and encourage collaboration on a worldwide scale, it includes treaties, customs, and conventions. International law is divided into Private International law and Public International law. Private international law addresses matters like jurisdiction and the implementation of foreign judgments and concentrates on settling conflicts involving people or entities from other nations. Comparatively, International relations between sovereign states and other entities are covered by public international law. The law of the sea, treaties, and human rights are among its topics. The area of public international law is subdivided into international criminal law. Public international law is defined as legislation that deals with the state's acts and how they treat each other, which may include disputes or relationships. The focuses on what states owe to each other but International criminal law deals with what individuals owe to each other. Also, if it talks about more jurisprudence then it can also be said that it focuses on the cosmopolitanism view, where a person thinks of himself as a citizen of the world. As International criminal law is part of International law hence its sources are similar to the International Court of Justice present in article 38(1) of the statute or Public International Law. As conventions or treaties, customary law or custom, General rules of law, Judicial decisions, and Learned writings.¹

In simple words, it can define as International criminal law as a crime that is done by an individual or a state towards a member of another state or a state itself, moreover which is affecting the public at large and generating feelings of fear and terror.² The corpus of rules and regulations known as international criminal law deals with transnational crimes, most often including serious crimes like genocide, war crimes, and crimes against humanity. Through international tribunals like the International Criminal Court (ICC) or ad hoc tribunals created for particular wars, it seeks to hold people accountable for these acts.³ The dedication of the international community to justice and accountability for the most egregious

¹ Nugroho, C. (2024). Responsibilities of the Government of Indonesia Regarding Human Rights Enforcement in the Perspective of International Law (Study of Cases of Armed Criminal Groups (KKB) in Papua). *PROIROFONIC*, 1(1), 31-41.

² Singh, B., & Kaunert, C. (2024). Integration of Cutting-Edge Technologies such as Internet of Things (IoT) and 5G in Health Monitoring Systems: A Comprehensive Legal Analysis and Futuristic Outcomes. *GLS Law Journal*, 6(1), 13-20.

³ Gutiérrez Gallo, C. (2023). The Principle of Positive Complementarity In International Criminal Law And Its Convergence With Domestic Transitional Systems: The Case Of Colombia.

crimes is reflected in the creation of international criminal law.⁴ The offender can be punished via the International Criminal Court only if he is beyond the age of 18 years or 18 years at the time of committing the crime. International criminal law is all related to the Human Rights of an individual or community or state. It can be punished when any wrong has been done against basic fundamental rights.⁵

The situations occasionally occur that highlight the significance of international criminal law in maintaining global justice. Such case was the March 20, 2003, *US invasion of Iraq*, which came right after the Taliban regime in Afghanistan was toppled. The United States claimed that Iraq was in possession of WMDs and had ties to Al Qaeda. The United States was determined to meet its demands despite resistance from countries like China, France, and Russia, and on October 27, 2002, it forced the UN to pass a resolution against Iraq. The resolution threatened severe repercussions if Iraq did not follow the instructions of the UN weapons inspectors.⁶ On November 17, 2002, inspections were carried out, but no evidence of WMDs was discovered. Disregarding this, the United States launched an invasion of Iraq on March 20, 2003, which led to several events, such as the apprehension of an Iraqi general, the murder of a Colonel, the seizure of the Tigris River, the takeover of the Baghdad Airport, killed two sons of Saddam Hussain and the eventual arrest of Saddam Hussein on December 13, 2003.⁷ The United States then had to deal with threats from Iraqis, and crime rates rose. Charges were filed with the UN in response to reports of human rights abuses by the United States against Iraqi detainees, including torture, sexual assault, and maltreatment. In addition, Saddam Hussein was found guilty of crimes against humanity and war crimes and was given the death penalty.⁸

As people living in a world where everyone has different wants. Some believe in secularism but some strictly believe in their own religion only. Moreover, some believe in dictatorship and some believe in democracies. Hence different people have different beliefs. The conflict in thoughts leads to disturbance which can be exaggerated by anyone (by utilizing the benefit from the broad spectrum of rights).

⁴ Shepitko, V. Y., & Shepitko, M. V. (2021). The role of forensic science and forensic examination in international cooperation in the investigation of crimes. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(1), 179-186.

⁵ Segate, R. V. (2021). Cognitive bias, privacy rights, and digital evidence in international criminal proceedings: Demystifying the double-edged al revolution. *International Criminal Law Review*, 21(2), 242-279.

⁶ Costello, C., & Mann, I. (2020). Border justice: migration and accountability for human rights violations. *German Law Journal*, 21(3), 311-334.

⁷ Pons, W. I., Lord, J. E., & Stein, M. A. (2022). Disability, human rights violations, and crimes against humanity. *American Journal of International Law*, 116(1), 58-95.

⁸ Shelton, D. (2021). *International crimes, peace, and human rights: the role of the International Criminal Court*. BRILL.

The most common example of a disturbance-causing person is terrorists.⁹ There are many instances where attacks on the nations have been made, where civilians got killed or hurt to set an agenda. So, particularly notable incidents include the September 2001 attack on the Twin Towers and the July 2005 attack on London, in which numerous explosions caused catastrophic effects and resulted in over a thousand injuries and forty-five fatalities. Al-Qaida alone is also accountable for attacks on Tunisia and Indonesia in 2002, Turkey in 2003, and Spain in 2004. Following the Fiyadeen attack on the Indian Parliament in December 2001 and in addition, there was an attack on Mumbai in 2006 that left Indians shaken by seven consecutive bombs, among many other instances.

These are only a few examples where it can affirm that laws are necessary to address any horrible crimes similar to them. However, in today's world, people would stop at nothing to establish their correctness.¹⁰ In the past, there were only traditional means to commit crimes; but, with the development of science and technology, including computers and other high-tech machinery, as well as physics, chemistry, and biology, new crimes relating to science and technology are emerging.¹¹ As a result, criminality is rising daily and this is a significant issue in the modern globe and need to be curtailed as soon as feasible by the International Criminal Court.¹²

2 Significance and Objectives of Paper

The world is full of new inventions, technologies as well and nuclear weapons, and world has the some old human beings with greed, hatred as well a superiority complex. Hence Studying International criminal law with human rights is the need of the time because the superior will always want to suppress the inferior and the desire to suppress may lead to the violation of fundamental rights of an individual.¹³ This research helps to know about the laws that make people answerable for serious transgressions, which promotes a more equitable and compassionate global community. Comprehending and reinforcing these associations can augment

⁹ Mammadli, I. (2023). International Organisations and Accountability for Human Rights Abuses: Obstacles Caused by Jurisdictional Immunity. *Baku St. UL Rev.*, 9, 66.

¹⁰ Robinson, D. (2020). *Justice in Extreme Cases: Criminal Law Theory Meets International Criminal Law*. Cambridge University Press.

¹¹ Koh, N. S., Ituarte-Lima, C., & Hahn, T. (2022). Mind the compliance gap: how insights from international human rights mechanisms can help to implement the convention on biological diversity. *Transnational Environmental Law*, 11(1), 39-67.

¹² Pinto, M. (2020). Historical trends of human rights gone criminal. *Hum. Rts. Q.*, 42, 729.

¹³ Kalpouzos, I. (2020). International criminal law and the violence against migrants. *German Law Journal*, 21(3), 571-597.

the safeguarding of human rights worldwide, advocating for responsibility and equity.¹⁴ This paper has the following objectives to:

- analyze the role of International criminal law in the protection of Human rights.
- highlight the Crimes which are affecting the globe.
- analyze the working of International Criminal Tribunals.
- explore the principles on which International tribunals are working.
- suggest how the laws can be improved.

3 Crimes Affecting Internationally

Certain crimes are against the will of women, children a particular community Religious beliefs, historic preservation as well as ancient scriptures or monuments.¹⁵ But in today's world, many people also have a habit of destroying public property or the livelihood of civilians as grocery shops, barber shops, fire in factories, etc. As, majorly it termed these crimes as Genocide, War Crimes, Crimes Against Humanity, Torture, and Enforced Disappearances.¹⁶

3.1 Genocide

The term “genocide” was made up by a Polish lawyer named Raphaël Lemkin in 1944 in his book *Axis Rule in Occupied Europe*. It comes from the Greek word “genos”, which means race or tribe, and the Latin word “cide”, which means killing. In 1946, the United Nations declared genocide a crime under international law. This idea became a formalized crime in the 1948 Genocide Convention, agreed upon by 153 countries as of April 2022.¹⁷ According to the International Court of Justice, whether or not a country has officially accepted this convention, they are still bound by the rule that genocide is a crime in international law. The court emphasizes that the prohibition of genocide is a fundamental, non-negotiable norm in international law, and no exceptions are allowed.¹⁸

Under the Rome statute of ICC, Article 6 defines “*genocide*” as certain destructive acts carried out to totally or partially eliminate a national, ethnic, racial,

¹⁴ Hussain, N., Khan, A., & Chandio, L. A. (2023). Legal Safeguards against Mob Justice: An Analysis of Blasphemy Laws in Pakistan and International Human Rights Norms. *Al-Qamar*, 13-26.

¹⁵ Smith, R. K. (2022). *International human rights law*. Oxford University Press.

¹⁶ Jalloh, C. C. (2020). *The International Law Commission's First Draft Convention on Crimes Against Humanity: Codification, Progressive Development, or Both?* *Case W. Res. J. Int'l L.*, 52, 331.

¹⁷ Mettraux, G. (2020). *International Crimes: Law and Practice: Volume II: Crimes Against Humanity*. Oxford University Press.

¹⁸ Minha, D. (2020). *The Possibility of Prosecuting Corporations for Climate Crimes Before the International Criminal Court: All Roads Lead to the Rome Statute?* *Mich. J. Int'l L.*, 41, 491.

or religious group.¹⁹ These destructive behaviors include the following: eliminating group members by killing them; seriously hurting them physically or psychologically; purposefully establishing living conditions that result in the physical destruction of the group; putting policies in place to prevent births within the group; and forcibly removing children from one group and placing them in another.²⁰ The statute's main goal is to recognize and criminalize acts that intentionally cause harm or even the eradication of entire groups based on race, nationality, ethnicity, or religion.²¹

3.2 Crime Against Humanity

Though its exact history is unknown, some believe the phrase “crimes against humanity” has its roots in the late 18th and early 19th centuries, when it was associated with problems such as slavery and the horrors of colonialism. Academics disagree as to when it first appeared during Leopold II's Congo Acts or after the Allied proclamation in 1915 opposing Armenian massacres.²² Over time, certain nations' domestic laws and international institutions like the International Criminal Court have evolved and defined crimes against humanity; other nations have not yet made them illegal. The Rome Statute under Article 7 defines “crime against humanity” as specific acts committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack. These acts, when committed as part of a widespread or systematic attack against civilians, constitute crimes against humanity under the Rome Statute, and perpetrators can be held accountable by the International Criminal Court (ICC).²³ There are detailed explanations with examples:

The systematic killing of civilians in a conflict zone without lawful justification (Murder), Deliberate and systematic extermination of a targeted group through mass killings or other means (Extermination), Forcibly subjecting individuals to conditions resembling slavery, such as forced labor or human trafficking (Enslavement), Forcibly displacing a specific ethnic or religious group from their homes as part of a systematic campaign (Deportation or forcible transfer of population), Unlawful detention or imprisonment of civilians without due process or legal basis

¹⁹ May, R., & Wierda, M. (2021). *International criminal evidence* (Vol. 9). Brill.

²⁰ Leslie, D., Burr, C., Aitken, M., Cows, J., Katell, M., & Briggs, M. (2021). *Artificial intelligence, human rights, democracy, and the rule of law: a primer*. arXiv preprint arXiv:2104.04147.

²¹ Greenawalt, A. K. (2021). What is an international crime?

²² Zarnsky, S. (2021). Why seeing should not always be believing: Considerations regarding the use of digital reconstruction technology in international law. *Journal of International Criminal Justice*, 19(1), 213-225.

²³ Pereira, R. (2020, June). After the ICC Office of the Prosecutor's 2016 Policy Paper on Case Selection and Prioritisation: Towards an International Crime of Ecocide? In *Criminal Law Forum* (Vol. 31, pp. 179-224). Springer Netherlands.

(Imprisonment or other severe deprivation of physical liberty), Systematic infliction of severe physical or mental pain as a means of intimidation or punishment (Torture),²⁴ Widespread sexual violence against a civilian population as a tool of warfare or control (Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity), Targeted discrimination or violence against a specific group based on their political beliefs, ethnicity, or other protected characteristics (Persecution on political, racial, national, ethnic, cultural, religious, gender or other grounds), Abducting individuals and concealing their fate or whereabouts often with the intent to eliminate dissent moreover It can be when someone is taken by the government or a political group, and they don't admit to it or provide any information about where the person is.²⁵ The goal is to keep them away from the law for a long time (Enforced disappearance of persons), Institutionalized discrimination and segregation based on racial or ethnic grounds, as historically seen in South Africa (The crime of apartheid) and Other inhumane acts intentionally causing great suffering such as Deliberate infliction of severe physical or mental harm on a civilian population, not covered by the aforementioned acts.²⁶

The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb") ICC-02/05-01/20 is the case where the International Criminal Court dealt with the crime against humanity Situation in Darfur, Sudan, On June 9, 2020, Ali Muhammad Ali Abd-Al-Rahman voluntarily turned himself into the International Criminal Court (ICC) in the Central African Republic. He appeared before the ICC for the first time on June 15, 2020. 31 charges of war crimes and crimes against humanity in Darfur, Sudan, between August 2003 and at least April 2004, according to the prosecution, were brought against him. The hearing to confirm the charges was held on May 24 and 26, 2021. Trial Chamber I's trial got underway on April 5, 2022, and is still going on today. In the hearing, the prosecution called 56 witnesses to testify on its behalf. The Trial Chamber rejected the Defense's motion to exonerate Abd-Al-Rahman on four of the thirty-one allegations on April 19, 2023.²⁷

The other instance where Al Hassan Ag Abdoul Aziz is charged with taking part in the activities of the Islamic court in Timbuktu. He is allegedly a member of Ansar Eddine and the de facto head of the Islamic police. He was accused of committing crimes against humanity between April 1, 2012, and January 28,

²⁴ D'Alessandra, F., & Sutherland, K. (2021). The promise and challenges of new actors and new technologies in international justice. *Journal of International Criminal Justice*, 19(1), 9-34.

²⁵ Altunjan, T. (2021). *Reproductive violence and international criminal law*. TMC Asser Press.

²⁶ Beresford, A., & Wand, D. (2020). Understanding bricolage in norm development: South Africa, the International Criminal Court, and the contested politics of transitional justice. *Review of International Studies*, 46(4), 534-554.

²⁷ Sosa, L. (2021). Beyond gender equality? Anti-gender campaigns and the erosion of human rights and democracy. *Netherlands Quarterly of Human Rights*, 39(1), 3-10.

2013, when armed groups attacked Timbuktu, Mali, in a broad and organized manner. Torture, rape, sexual slavery, forced marriages, persecution, and war crimes carried out during an armed conflict within the same time frame are among the claimed crimes.²⁸ These war crimes include deliberate attacks on places of worship and historical sites, brutal treatment, outrages against human dignity, the imposition of penalties without due process, rape, and sexual slavery. The Chamber released a schedule on December 6, 2023, stating that the Trial Judgment, as per Article 74 of the Statute, would be publicly announced on January 18, 2024. Further the Single Judge on 22nd of Jan 2024 ORDERS the Registry to set new decisions, taking into account the Chamber's Directions set out above. This case is cited as *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud ICC-01/12-01/18*.²⁹

3.3 War Crimes

It is a crime that is committed by one state's military against another state's military personnel or civilians, it has two key parts i.e. The action happens in the setting of an international or non-international armed conflict (Contextual element), it involves intent and knowledge about both the specific act and the context in which it occurs (Mental element). The Rome Statute under Article 8(2) defines 'war crime'.³⁰ The court has jurisdiction over war crimes, particularly if they are committed as a component of a larger scheme, policy, or mass violation of similar offenses. "War crimes" are defined by this act as grave breaches of the Geneva Conventions of August 12, 1949. These violations include killing people on purpose, torturing them, causing them great suffering, destroying property without cause, making prisoners serve the enemy, wilfully denying prisoners of war or protected individuals their right to a fair trial, forcibly deporting or transferring people, and kidnapping hostages.³¹ The listed violations of international armed conflict under established international law include: attacking civilian structures, attacking unarmed civilians, attacking humanitarian or peacekeeping missions, attacking undefended areas, injuring combatants who have surrendered, misusing flags or emblems, transferring civilian populations into occupied territories, attacking religious or cultural sites, subjecting people to cruel experiments,

²⁸ Bergsmo, M. (Ed.). (2021). *Human rights and criminal justice for the downtrodden: essays in honour of Asbjørn Eide*. Brill.

²⁹ McDonald, G. K., & Swaak-Goldman, O. (Eds.). (2022). *Substantive and Procedural Aspects of International Criminal Law: Documents and Cases (Volume II)*. Brill.

³⁰ Jessberger, F., Meloni, C., & Crippa, M. (Eds.). (2023). *Domesticating International Criminal Law: Reflections on the Italian and German Experiences*. Taylor & Francis.

³¹ Prakasa, S. U. W. (2021). *Ecocide crimes & omnibus law: Review of international law and its implications on Indonesia law*. *Dinamika Hak Asasi Manusia*, 12(2), 14-20.

refusing to give quarter, destroying property without a military need, suspending legal rights, Forcing people from an enemy nation to fight against their own country, looting, using forbidden weapons, causing unnecessary harm, committing acts that humiliate and degrade individuals, engaging in sexual violence, using civilians to avoid military actions, attacking using symbols from the Geneva Conventions, using starvation as a war tactic, and enlisting or involving children under fifteen in armed conflicts.³²

The famous case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi ICC-01/12-01/15* where the Head of “Hisbah” till September 2012, Ahmad Al Faqi Al Mahdi was connected to the Islamic Court of Timbuktu’s operations and is thought to be connected to Ansar Eddine and Al Qaeda. On September 28, 2015, an arrest warrant was issued for him. Al Mahdi was found guilty of participating in a war crime that involved premeditated attacks on sacred and historical structures in Timbuktu, Mali, in June and July of 2012. He received a nine-year prison sentence, with the time he served in custody being subtracted. On September 27, 2016, the guilty judgment and sentence were announced. His prison sentence was shortened by two years on November 25, 2021, and it is scheduled to end on 18/9/22. Judges also issued a Reparations Order for victims, which is final.³³

In the case of *The Prosecutor v. Thomas Lubanga Dyilo ICC-01/04-01/06*; The Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo (UPC/FPLC) leader Thomas Lubanga Dyilo was issued an arrest order on February 10, 2006. On March 14, 2012, he was found guilty of war crimes including enlisting and using minors under the age of 15 as troops. He was given a 14-year prison sentence on July 10, 2012, and on December 1, 2014, the Appeals Chamber upheld this ruling. On December 19, 2015, Lubanga was taken to a jail in the Democratic Republic of the Congo to finish his sentence. On March 15, 2020, he was freed from prison after serving 14 years. On August 7, 2012, the victim compensation process was launched.³⁴

3.4 Crime of Aggression

Under Rome Statute’s Article 8 bis3, “*crime of aggression*” refers to someone in a powerful position planning, preparing, starting, or carrying out an aggressive act on behalf of a country. This act must significantly violate the United

³² Jessberger, F., & Geneuss, J. (Eds.). (2020). Why punish perpetrators of mass atrocities?: purposes of punishment in international criminal law. Cambridge University Press.

³³ Ligthart, S., Douglas, T., Bublitz, C., Kooijmans, T., & Meynen, G. (2021). Forensic brain-reading and mental privacy in European Human Rights Law: Foundations and challenges. *Neuroethics*, 14, 191-203.

³⁴ Palmer, E. (2020). Adapting International Criminal Justice in Southeast Asia: Beyond the International Criminal Court. Cambridge University Press.

Nations Charter in terms of its nature, seriousness, and scale. Moreover when a country uses military force against another country in a way that goes against the rules of the United Nations. This includes things like invading another country, attacking with weapons, blocking their ports, or allowing one's territory to be used for attacking another country. Even if there's no formal declaration of war, these actions are considered acts of aggression according to a resolution from the United Nations General Assembly in 1974.³⁵

This can be seen in the Situation of *the Gulf War of 1991* when the forces of Iraq invaded Kuwait on the 2nd of August 1990, here President of Iraq (President Saddam Hussain) was showing full determination to capture Kuwait, moreover, Iraq burned many oil wells as well as poured tons of petrol in water bodies which caused great harm to environment or life in water. But capturing Kuwait was not at all an easy task as America and the UN with the support of other nations were forcing Iraq to stay back or retreat. Later on, Kuwait was free from Iraq on 28th February 1991 and Iraq paid compensation for the loss as well as got permission to sell its oil over humanitarian grounds.³⁶

3.5 Ethnic Cleansing

International law does not formally recognize ethnic cleansing as a distinct crime. The term “etničko čišćenje” came about as a result of the violence in the former Yugoslavia in the 1990s. Its precise origins and purpose of use are still unknown, though. “Ethnic cleansing” was never clearly defined and was not a crime, even though it is referenced in ICTY rulings, Security Council resolutions, and General Assembly resolutions.³⁷

4 Tribunals of International Criminal Law

Firstly as an international tribunal, there was an existence of a Nuremberg Tribunal which comprised of 4 permanent judges from the United States, United Kingdom, USSR as well as France with 4 Alternates. An international military tribunal for the Far East was set up in January 1946, which comprised judges from 11 states.³⁸

³⁵ Megret, F. (2023). Immunities of Foreign Officials for International Crimes: The Dilemmas of Strategic Litigation. *Journal of Human Rights Practice*, 15(1), 66-83.

³⁶ Schwobel-Patel, C. (2021). *Marketing global justice: The political economy of international criminal law*. Cambridge University Press.

³⁷ Altunjan, T. (2021). The International Criminal Court and sexual violence: Between aspirations and reality. *German Law Journal*, 22(5), 878-893.

³⁸ Sun, N., Esom, K., Dhaliwal, M., & Amon, J. J. (2020). Human rights and digital health technologies. *Health and Human Rights*, 22(2), 21.

After the Nuremberg and Tokyo tribunals, *The International Tribunal for the Former Yugoslavia* (ICTY) By Security Council resolution 827, S/RES/827(1993) was founded in 1993 to prosecute individuals accountable for grave breaches of international humanitarian law that have occurred on former Yugoslavian territory since 1991. It was the first international war crimes tribunal as well as the first war crimes court established by the UN.³⁹ The International Criminal Tribunal for the former Soviet Union was based in The Hague and ended on December 31, 2017. As earlier there were many crimes were taking place in the region of the former Yugoslavia, such as torture, sexual violence, arbitrary killing of persons, harm to non-military property as well as harm to the holy buildings or scriptures that were related to the religious value of an individual. ICTY also provides an advocate to a person who is not capable of representing himself in the case (people such as a child or any incapacitated major human). The tribunal also consists of 16 permanent justices as well as 12 in number known as Ad Litem.⁴⁰

Under 2 to 5 articles of the ICTY's statute over which it has its jurisdiction i.e. crimes not in favor of Humanity, not obliging the concepts of 1949's Geneva Convention as well as not following the rules of war, trying to destroy the community's existence like once Hitler done to Jews while sending them to Gas Chambers, etc. Moreover, if someone is helping to commit or encouraging any other person to commit these above-mentioned crimes he will also be liable for the crime regardless of their official post.⁴¹ This has been explained in Article 7 of the statute.

Ironically the provision of double jeopardy is a strictly prohibited provision for every state as if anyone is punished under ICTY for any serious crime that is affecting human rights then the domestic court would not be able to punish the same person for the same crime on the other hand if the person has been punished according to domestic law for serious crimes against humanity then again ICTY may start an trial against him or may punish an individual too.⁴²

The ICTY has changed the perspective of the society at large while giving landmark judgments such as encouraging sexual offenses by Duško Tadic who was the SDS leader in Kozarac and a member of the paramilitary forces, sentenced to 20 years of imprisonment. Furthermore, Rape may also amount to an act of genocide, if the requisite elements are met, and may be prosecuted accordingly,

³⁹ Purshouse, J. (2020). 'Paedophile hunters', criminal procedure, and fundamental human rights. *Journal of Law and Society*, 47(3), 384-411.

⁴⁰ Ogbe, R. S. (2023). The Criminalization of the Violation of International Human Rights. *RUNJJIL*, 3, 1.

⁴¹ Kilonzo, J. M. (2024). The potential for rights-based third-generation disarmament, demobilisation and reintegration programmes in Cabo Delgado. *Mozambique's Cabo Delgado Conflict: International Humanitarian Law and Regional Security*.

⁴² Tsilonis, V. (2024). The Definition of International Crime. In *The Jurisdiction of the International Criminal Court* (pp. 1-30). Cham: Springer International Publishing.

this statement has been said by the tribunal in the case where the main accused was the commander of the Croatian Defence Council (HVO) in BiH Anto Furundzija and gave other judgments too for the sake of humanity, hereafter, the end of the era i.e. ICTY have been ended as it was Ad hoc tribunal (temporary) with a great closing ceremony on 21st December 2017 where many dignitaries such as King Willem-Alexander (king of the Netherlands), Carmel Agius (President of ICTY), Antonio Guterres (UN Secretary-General), Mr. Halbert Sykes (Minister of Foreign affairs, Netherlands), HE. Ms. Pauline Krikkee (Mayor of the Hague City) came together and celebrated the occasion. Finally, it was dissolved on 31st December 2017.⁴³

The Security Council created the International Criminal Tribunal for Rwanda (ICTR) in 1994 by passing resolution 955 (S/RES/955(1994)). The properties of this tribunal were quite similar to the ICTY. This has been set up to control the situation between ethnic Tutsi (800000 were killed in 100 days) and politically moderate Hutus by gangs of Hutu extremist troops and police under government control in Rwanda. The Rwandan tribunal's statute is appended to resolution 955. The International Criminal Tribunal for Rwanda is situated in Arusha, Tanzania.⁴⁴

Articles 2 and 3 & 4 describe the situation where ICTR came into existence. Where Genocide comes under Article 2, the crimes such as murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on various grounds, or other acts against inhumanity. The tribunal was set up with 16 Judges as well as 9 Ad Litem Judges. The ICTY AND ICTR were sharing the same Appeal chamber. The tribunal gave many landmark judgments such as, 'Rape and sexual assault can be regarded as Genocide' Jean-Paul Akayesu (former Bourgmestre (mayor) of Taba Commune), 'Conspiracy to Commit Genocide is also a crime' was held in the case of Protais Zigiranyirazo (former Member of Parliament, a former Prefect of Kibuye and Ruhengeri, and the brother-in-law of the late Rwandan President Juvenal Habyarimana).⁴⁵

The tribunal was given a deadline of December 31, 2014, by the UN Security Council, to prepare for its discontinuation and handover of its duties to the International Residual Mechanism for Criminal Tribunals (IRMCT or Mechanism), which took over for the ICTR branch on July 1, 2012. Finally, it was dissolved on 31st December 2015.⁴⁶

⁴³ Hasan, A., & Buheji, M. (2024). A World Losing Its Legitimacy-Gaza from Collective Punish till Ethnic Cleansing & Genocide. *International Journal of Management (IJM)*, 15(1), 2024.

⁴⁴ Benyera, E. (2024). Child victim, loyal war spirit medium or war criminal: shifting the geography and logic of historical accountability in Dominic Ongwen's ICC trial. *African Identities*, 22(1), 197-212.

⁴⁵ Sosnowski, M., & Klem, B. (2024). Legal identity in a looking-glass world: documenting citizens of aspirant states. *Citizenship Studies*, 1-18.

⁴⁶ Montasari, R. (2024). The Impact of Facial Recognition Technology on the Fundamental Right to Privacy and Associated Recommendations. In *Cyberspace, Cyberterrorism and the International Security in*

In compliance with *Security Council Resolution 1966: Establishment, Statute, and Transitional Arrangements, S/RES/1966 (2010)*, the Security Council established the *International Residual Mechanism for Criminal Tribunals (IRMCT)* on December 22, 2010. It is required to carry out some crucial tasks that the ICTR and the ICTY were formerly responsible for. In Arusha, Tanzania, on July 1, 2012, and in The Hague, Netherlands, on July 1, 2013, the IRMCT commenced operations. It continued to function even after the tribunals were closed, running concurrently with the ICTR and the ICTY. The ICTY opened for business in 2017 after the ICTR disbanded in 2015.⁴⁷

Under the Rome Statute on 1st July 2002, the *International Criminal Court* came into existence, after its recognition by the 60 countries. Now, it has 123 nations as States Parties among all 33 are African States, 19 are Asia-Pacific States, 18 are from Eastern Europe, 28 are from Latin American and Caribbean States, and 25 are from Western Europe and other States. Moreover, the states that are party to the treaty are known as State Actors and the rest are known as Non-State Actors. The ROME STATUTE INTERNATIONAL CRIMINAL COURT consists of 128 articles and 13 parts. It is a permanent court as earlier ones were Ad hoc tribunals only. The Court has 6 official languages i.e. English, Arabic, Russian, French, Chinese, and Spanish Moreover Working languages are English and French. Its permanent seat is in Hague, Netherlands but it can have a seat anywhere else too if it is needed at the time.⁴⁸

Under Article 5 crimes are mentioned to which it is dealing with i.e. Genocide, Crimes against Humanity, War Crimes as well as Aggression. The Court can only handle cases for crimes that occurred after the rules in this Statute were established. If a country joins this agreement after it starts, the Court can only address crimes in that country that happened after it joined, unless that country officially states otherwise. If the Court needs approval from a non-member country, for instances such as the crime happened in a specific country or, if it occurred on a ship or plane, the country where that vehicle is registered; or if the person accused of the crime is a citizen of a specific country. That country can agree by officially declaring it to the Registrar. Once agreed, the country must fully cooperate with the Court promptly and without exception, following the guidelines in Part 9 (INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE). Moreover as per

the Fourth Industrial Revolution: Threats, Assessment and Responses (pp. 259-270). Cham: Springer International Publishing.

⁴⁷ Singh, B. (2019). Profiling Public Healthcare: A Comparative Analysis Based on the Multidimensional Healthcare Management and Legal Approach. *Indian Journal of Health and Medical Law*, 2(2), 1-5.

⁴⁸ Cliquennois, G., & Snacken, S. (2024). The Ability of Human Rights to Limit the State's Power to Punish in Europe: Connecting Prison and Mental Health Policies through the Concept of "Transpolities". *Law & Social Inquiry*, 1-25.

Article 26 of the statute, one won't be liable for punishment if he is under the age of 18 years.⁴⁹

Now the major question arises in everyone's mind, Are the International Court of Justice and the International Criminal Court are same? They both are different. The International Criminal Court (ICC) is a permanent criminal court that was created to try people for the most serious crimes that affect the entire world, including war crimes, crimes against humanity, crimes against humanity, and aggression. While maintaining a working connection with the UN, it runs its operations apart from it. Here the Rome Statute's guiding principles serve as the foundation for the ICC's authority, not the nations' approval. On the other hand, the International Criminal Court ICJ is the main court system of the United Nations, sometimes referred to as the World Court. It resolves legal conflicts between states and provides advisory views on legal matters presented to it by the Security Council, General Assembly, or other UN bodies with specific expertise. Also, its jurisdiction is predicated on the parties' agreement it also calls for the consent of the parties.⁵⁰

5 Difference between the International Criminal Court and the International Court of Justice

(continua)

International Criminal Court	International Court of Justice
An individual can be prosecuted by the International Criminal Court (ICC).	An international civil court called the ICJ adjudicates disputes between nations.
Signed on 31 December 2000 Force on July 1, 2002.	Established in June 1945 and forced in April 1946.
The Rome Statute of the International Criminal Court has 123 state parties in total.	193 Member States parties in total.
The Hague, Netherlands, is the permanent home of the ICC. Additionally, it might arrange to sit in other nations when needed.	The Peace Palace is the permanent home of the ICJ in The Hague, Netherlands. There is no provision for having a seat at another place.

⁴⁹ Schilling-Vacaflor, A., & Gustafsson, M. T. (2024). Integrating human rights in the sustainability governance of global supply chains: Exploring the deforestation-land tenure nexus. *Environmental Science & Policy*, 154, 103690.

⁵⁰ Mantouvalou, V. (2024). *Advancing human rights, capabilities and non-domination at work*. Oxford University Press (OUP).

(conclusão)

International Criminal Court	International Court of Justice
Every nation around the Globe can ratify the treaty of the ICC.	Cases may include only UN members and those states that have agreed to be parties to the Court's statute or that have acknowledged its jurisdiction under specific guidelines.
As specified in the court's treaty, the ICC will prosecute anybody from state parties to it: suspected of crimes against humanity, war crimes, and genocide.	The cases that the ICJ handles involve legal disagreements between sovereign governments including governmental accountability, territorial limits, and transgressions of international law.
The onus of establishing the accused's guilt beyond a reasonable doubt rests with the prosecution.	The onus of proof rests with the applicant state. After that, the replying state may make its case. Moreover, presumably, sufficient evidence is the usual threshold of proof.
The "principle of complementarity", as it is known, assigns states the primary duty and responsibility to prosecute the most serious international crimes; the ICC may intervene only as a last resort if the states neglect to carry out their obligation. The ICC cannot move forward unless there are sincere attempts to ascertain the truth and to bring those accountable for any acts of genocide, crimes against humanity, or war crimes that have occurred.	The ICJ can only deal with Contentious cases and advisory procedures to organs of the UN and other specialized agencies.
The eighteen judges that make up the ICC are chosen by The Assembly of States Parties to the Rome Statute. Elections are spaced out to maintain stability, and judges are appointed to nine-year mandates.	The fifteen judges that make up the ICJ are chosen by the Security Council and the General Assembly of the UN. Elections for five seats are held every three years, and judges are appointed to nine-year tenure.
The right to nominate judges and prosecutors to the International Criminal Court (ICC) will be denied to nations who do not sign/ratify the treaty. Additionally, the ability to participate in budget and administrative decision-making will be taken away from them.	If the nation is not the party or member of the UN then he can't go to ICJ for any help.

6 Principles Relating to International Criminal Law

The crimes that fall under the ambit of heinous crimes against humanity can be treated under Universal jurisdiction which means if the crime is against the world it is punishable and the court will punish the guilty one. As we know tribunals like ICC are not recognized by the globe, then other principles came

into the picture to provide justice. Principles such as “*The nationality or active Personality principle*” according to which if a citizen of a treaty-abiding state relocates to a non-state party, he will likewise be held accountable for any crimes he commits there.⁵¹ Thereafter “*The passive personality Principle*” permits states, under certain conditions, to assert their authority to prosecute a foreign national for crimes committed overseas that have an impact on their inhabitants. Thereafter “*The Protective Principle*”, acknowledges that a sovereign may enact laws making actions taken outside of its borders illegal if such actions have an impact on the sovereign in question. According to that theory, a country can enact laws that criminalize any activity that interferes with the operation of the government or jeopardizes the security of the state, regardless of the location or perpetrator of the conduct.

As all know setting limitations is always important to do things in a sufficient time. These limitations also give realization the people to act against wrong as soon as possible not only to compensate for their loss but also for the sake of others (i.e. the wrong which has happened to them would not affect anyone else). There are the principles can be, “*The time bar may apply to prosecution*”, according to which if a crime has been done and there is no complaint against it in a specific time provided by the statute then the decision cannot be rendered or any public action could be taken. Thereafter “*The limitation may apply only to the application of the sentence itself*”, In this scenario, the fact that a specific period had passed would mean that the criminal penalty could not be imposed.

Some crimes are so serious moreover not only the presence of the individual to whom it is committed but also The future of an individual and long long-lasting effect on the whole community. Because they are not just affecting the physical state of an individual but deep down destroying the capacity to think in the manner which they truly want to. Let’s take the example of gang rape of women as a crime against women during the war between two communities in a state.⁵² Now this will definitely affect the different women to whom it is committed, but it will also affect the women in the locality or worldwide furthermore the feeling of fear in them and inequality in society will increase. On the contrary, it does not always seem easy to make a complaint against them at an appropriate time. Hence to compensate for the loss there is a principle i.e. “*The absence of statutory Limitations for certain crimes in international law*”. According to this principle, it is irrelevant when the

⁵¹ Bondarchuk, N. (2024). Environmental rights protection in Ukraine: a call for reform and learning from the EU and Romania experience. Scientific Collection «InterConf», (187), 146-152.

⁵² Vadi, V. (2024). Gravity and Grace: Sustainable Development, Foreign Investments and Cultural Heritage in International Investment Law. In Cultural Heritage, Sustainable Development and Human Rights (pp. 360-381). Routledge.

crime has happened and when you are making a complaint against it, as the complaint to file against the crime is not time-barred. In Article 29 of the Rome statute of the International Criminal Court, it is mentioned that crimes like war crimes, Crimes against humanity, Genocide, and Aggression are the crimes where the provisions of limitation will not be applied.⁵³

Is Adultery a crime in India? No, it is not a crime in India but it is a crime in UAE, Iran, Saudi Arabia, etc. Hence it is not punishable in India, moreover, it's wrong and comes under mala-in-se (wrong that affects the society but is not punishable by law), another example of the same can be Live-in Relationships, according to society it's not okay to share a shelter by man and women before marriage but it is not punishable under law.⁵⁴ On the other hand, mala prohibition came into the picture, according to which the act is considered as wrong because the law states that otherwise according to society it's not a big issue. To explain this there are some examples such as smoking in public places, Abortion of 5 month child, Drug use, bribery, obscenity, etc. Hence "*Nullum crimen, nulla poena Sine lege*" is the principle that says that if there is no law then there is no crime. Suppose no act says theft is an offense, then there is no point in considering it as a crime. This principle's goal is to make sure that laws are unambiguous so that people may fairly anticipate the legal ramifications of their decisions.⁵⁵ Articles 22 & 23 of the ICC Statute have a specific clause on the legality principle. Moreover, this principle believes that if the wrong is committed before the enactment of a law against the wrong, then the law will not be able to punish the person who has done the wrong before enactment; this is known as the principle of *Non-retroactivity*. Furthermore, an individual should have full right to know about his specific act, whether the act he is doing is right or not; this is known as the principle of specificity at last a precise interpretation of the concept is necessary; this is known as the principle of Prohibition of Analogy.⁵⁶

The principle of "*Ne bis in idem*" says that if someone is punished for a crime then he won't be punished again for the same crime. This principle is against double jeopardy. On an international level if someone is punished by ICC then he won't be punished for the same charges in Domestic Court, as per Article 20 (3)

⁵³ Sassoli, M. (2024). International humanitarian law: Rules, controversies, and solutions to problems arising in warfare. Edward Elgar Publishing.

⁵⁴ Machado, H., Neiva, L., Granja, R., & Silva, S. (2024). Ethical, legal, and social challenges of next-generation sequencing technologies (NGS) in forensic criminal identification. In Next Generation Sequencing (NGS) Technology in DNA Analysis (pp. 551-569). Academic Press.

⁵⁵ Sassoli, M. (2024). IHL and other branches of international law. In International Humanitarian Law (pp. 458-527). Edward Elgar Publishing.

⁵⁶ Gupta, A., Biermann, F., van Driel, E., Bernaz, N., Jayaram, D., Kim, R. E., ... & Wewerinke-Singh, M. (2024). Towards a Non-Use Regime on Solar Geoengineering: Lessons from International Law and Governance. *Transnational Environmental Law*, 1-32.

(a). Moreover, ICTY & ICTR were also against double jeopardy and following this principle as per Article 10(2)(b) & Article 9(2) (b) respectively.

“*Individual criminal responsibility & Command responsibility*” – These principles sound exactly like each other as they correspond as well as stand as a form of criminal responsibility but they are not similar. Individual responsibility arises not only when someone commits serious crimes like war crimes, genocide, and crimes against humanity, but also when someone tries to commit these crimes, lends support, abets another person, creates blueprints for strategies, and researches possible avenues for committing these crimes. In contract When a crime is committed while carrying out the commission of the crime or when a duty is neglected because of a directive from a higher authority, or when that higher authority is unable to exert enough control over its subordinates to prevent them from acting in a way that leads to the commission of the crime, then the higher authority will bear responsibility for the acts even for which he didn't contribute personally.

The actions of those who are necessary for a State's administration to be protected by personal immunity, Functional immunity protects official acts of State representatives performing their duties for the State and keeps those acts protected even after their term in office ends, whether they are performed in their personal or official capacity. The principle is “*Personal and functional Immunity*”, but ICC doesn't recognize this principle and makes the person punish irrespective of their position in a government department. The relevant Articles of Rome statute in support of the statement is Article 27 under which everyone is subject to the stated regulations (the Statute) without receiving any preferential treatment because of their official function. These regulations apply to everyone, including Heads of State, members of the government, legislators, elected representatives, and government officials. They will still be held accountable for their actions regardless of their official position, and their status will not shield them from punishment. These standards apply to the everyone equally and hold them all accountable., Article 88 under which States Parties shall guarantee that all of the types of cooperation listed under this Part i.e. part IX (INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE) have processes available under their national laws. In the same part there is a provision of WAIVER OF IMMUNITY AND CONSENT TO SURRENDER explained in Article 98 under which if a court wants a country to hand over someone or help in a way that would go against that country's international obligations regarding the protection of individuals or property from another country (diplomatic immunity), the court can't move forward. This is to ensure that the requested State doesn't violate its legal responsibilities under international law. However, there's a condition for the court to proceed: it can only do so if it manages to get the cooperation of the third country whose person or

property is involved. This cooperation is needed to obtain an agreement from the third State to waive the usual immunity protections. In essence, the court needs the third country to agree to set aside the usual legal shields so that the requested State can comply with the court's request without breaking international law.

7 Conclusion and Future Scope

There should be more strict laws regarding crimes done with the help of cyber or artificial intelligence. The seriousness of these crimes can be seen as no one is alert or having an idea of what is going to be next. There are a total of 195 countries in the world but only 108 are part of the Rome Statue of International Criminal Court. The maintenance and enhancement of consistency, simplicity, and efficiency in safeguarding human values based on international human rights are significantly influenced by institutions such as the International Court of Justice (ICJ), as discussed in the previous module, along with other international courts like the International Criminal Court (ICC) and international criminal tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), among others. These institutions, collectively with other International Quasi-Judicial Bodies, play a crucial role in this endeavour. Following World War I, the concept of establishing a permanent international criminal court was proposed. However, due to various reasons, none of the envisaged tribunals at that time came to fruition. Subsequent to World War II, two ad hoc international military tribunals, namely the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East, were established to prosecute individuals responsible for war crimes, crimes against peace, and crimes against humanity. These tribunals notably challenged the notion of State Sovereignty as a shield against crimes in international law. The Nuremberg Tribunal emphasized that "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced." Hence, the policymakers should make some changes in the statute so that every nation could join this. Crimes like terrorism, nuclear crimes, cybercrime as well as crimes with the help of science should also be included in section 5 of the Rome Statue of International Criminal Court. There should be strict punishment for crimes affecting the environment and lives other than human beings. ICC should take the matter in hand before giving authority to domestic courts to save time and avoid bias. Determining the scope of modifications to human rights legislation and the ensuing procedural framework with the intention of strengthening the defense of defendants' rights is the main discussion. It clarifies the broad range of human rights protection in international criminal tribunals and points out possible problems that can jeopardize people's

rights and the idea of a “fair trial.” Potential solutions to these problems within the framework of the international criminal justice system are suggested in this chapter. It explores how the idea of a fair trial might be extended to cover criminal trials conducted abroad. The chapter also examines the different connections between international criminal courts and human rights monitoring mechanisms, evaluating the extent to which accusatorial and inquisitorial aspects of international criminal process affect people’s rights.

Resumo: Responsabilizar pessoas e exigir compensação de países é necessário para proteger os direitos humanos. Ferramentas do direito penal internacional, como o Veredito de Nuremberg do Tribunal Militar Internacional (TMI) e a Carta, protegem vários direitos estabelecidos na Declaração Universal dos Direitos Humanos. As Convenções de Genebra de 1949 expandiram o escopo do princípio da universalidade para incluir crimes de guerra, e os direitos protegidos pelos inúmeros pactos de direitos humanos estão alinhados com as graves violações específicas. O direito penal internacional é, essencialmente, um complemento aos direitos humanos, atuando como um meio de aplicação para determinar a responsabilidade pessoal e punir os indivíduos que infringem esses direitos. A legislação de direitos humanos e o subsequente arcabouço legal para a defesa dos direitos dos acusados clarificam como os direitos humanos são protegidos nos tribunais penais internacionais bem como aponta certos obstáculos que podem violar os direitos individuais e colocar em risco a ideia central de um “juízo justo”. O artigo discute a ampliação da noção de julgamento justo para os processos criminais internacionais. Além disso, sugere possíveis maneiras de superar esses problemas dentro do sistema de justiça penal internacional e explora as conexões entre os tribunais penais internacionais e os sistemas de monitoramento de direitos humanos, analisando os potenciais efeitos sobre os direitos individuais dos aspectos acusatórios e inquisitoriais do processo penal internacional.

Palavras-chave: Direitos Humanos. Crimes de Guerra. Humanidade. TPI. Cenários Jurídicos.

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