

Enforcement of International Criminal Law Regarding Crimes in Armed Conflict

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Abstrak: *Armed conflicts whether international in scope or confined within the territory of a single state consistently leave behind severe human rights violations. This article provides an in-depth analysis of the normative framework and institutional mechanisms available under international criminal law to address war crimes, crimes against humanity, and genocide. Employing a normative juridical and comparative approach, the study examines the effectiveness of prosecutions before the International Criminal Court (ICC), ad hoc tribunals, and non-litigation mechanisms such as Truth and Reconciliation Commissions. The findings indicate that a significant gap remains between international legal norms and their implementation in practice, primarily due to geopolitical interests that frequently interfere with judicial processes. This study recommends strengthening the institutional capacity of the ICC, reforming the United Nations Security Council referral mechanism, and enhancing synergy between litigation and non-litigation approaches as an integrated strategy to combat impunity in the era of contemporary armed conflicts.*

Keywords: *War Crimes, International Jurisdiction, Conflict Impunity*

INTRODUCTION

In situations of armed conflict, international criminal law plays a crucial role as an instrument for protecting victims and as a mechanism for holding perpetrators of serious violations criminally accountable.¹ The crimes covered include war crimes, crimes against humanity, genocide, and the crime of aggression.²

The momentum for the development of modern international criminal law emerged after the Second World War through the International Military Tribunals at Nuremberg

and Tokyo, which established the principle that individuals may be held criminally responsible for international crimes regardless of their official capacity.³

The subsequent stage of development was marked by the establishment of the International Criminal Court (ICC) under the Rome Statute of 1998, which entered into force on 1 July 2002.⁴ The ICC was established as a permanent judicial institution with jurisdiction over the most serious international crimes, drawing upon the experiences of the ad hoc tribunals, namely the International Criminal

¹ Antonio Cassese, *International Criminal Law*, 3rd ed. (Oxford: Oxford University Press, 2013), 3–12

² Rome Statute of the International Criminal Court, art. 5.

³ Charter of the International Military Tribunal (Nuremberg Charter), 8 August 1945, arts.

6–7; Antonio Cassese, *International Criminal Law*, 23–31.

⁴ Rome Statute of the International Criminal Court, art. 126.

Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).⁵

However, the ICC does not replace national courts. Rather, it operates under the principle of complementarity, whereby national jurisdictions retain primary authority to prosecute international crimes, while the ICC exercises its jurisdiction only when a State is unwilling or genuinely unable to carry out investigations or prosecutions effectively.⁶

Armed conflicts, whether international or non-international in character, almost invariably result in widespread human suffering.⁷ International Humanitarian Law (IHL), primarily embodied in the four Geneva Conventions of 1949 and their Additional Protocols of 1977, establishes legal protections for civilians, the wounded and sick, prisoners of war, and persons who are not, or are no longer, participating directly in hostilities.⁸

Nevertheless, violations of these legal provisions continue to occur on a widespread and systematic scale, thereby giving rise to individual criminal responsibility under international law.⁹ The enforcement of international criminal law continues to face numerous challenges, including jurisdictional limitations, dependence upon State cooperation

in the arrest and surrender of suspects, the refusal of several major powers to become parties to the Rome Statute, and the persistent dilemma of balancing criminal justice with peace-building efforts in post-conflict societies.¹⁰

Meanwhile, international law has continued to evolve through the strengthening of the doctrine of the Responsibility to Protect (R2P), which affirms that every State bears the primary responsibility to protect its population from genocide, war crimes, crimes against humanity, and ethnic cleansing, while the international community has a collective responsibility to take appropriate action when a State manifestly fails to fulfill that obligation.¹¹

Against this background, this article addresses two principal issues. First, how does international criminal law regulate and define crimes committed during armed conflict, particularly war crimes and crimes against humanity as codified in the Rome Statute of 1998?¹²

Second, to what extent are the enforcement mechanisms of the International Criminal Court (ICC) and national courts operating under the principle of complementarity capable of ensuring effective and equitable criminal accountability?¹³

⁵ International Criminal Tribunal for the former Yugoslavia, Statute of the ICTY (1993); International Criminal Tribunal for Rwanda, Statute of the ICTR (1994); William A. Schabas, *An Introduction to the International Criminal Court*, 6th ed. (Cambridge: Cambridge University Press, 2020), 17–29.

⁶ Rome Statute of the International Criminal Court, Preamble, arts. 1 and 17.

⁷ International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (Geneva: ICRC, 2019), 1–8.

⁸ Geneva Conventions of 1949; Additional Protocol I to the Geneva Conventions (1977); Additional Protocol II to the Geneva Conventions (1977).

⁹ Rome Statute of the International Criminal Court, arts. 7–8.

¹⁰ William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, 2nd ed. (Oxford: Oxford University Press, 2016), 35–52.

¹¹ United Nations General Assembly, 2005 World Summit Outcome, UN Doc. A/RES/60/1 (24 October 2005), paras. 138–140.

¹² Rome Statute of the International Criminal Court, arts. 7–8.

¹³ Rome Statute of the International Criminal Court, arts. 17–20; Carsten Stahn, *A Critical Introduction to International Criminal Law* (Cambridge: Cambridge University Press, 2019), 139–161.

Employing a normative juridical approach through doctrinal legal research, library-based legal analysis, and comparative legal analysis. The first approach is the conceptual approach, which is used to examine various fundamental concepts in international criminal law, such as command responsibility, the principle of complementarity, and universal jurisdiction.

The analysis is carried out by referring to legal theories and expert opinions developed in the academic literature. The second approach is the statutory approach. This approach is carried out through the review of various international legal instruments relevant to the research, including the 1998 Rome Statute, the 1949 Geneva Convention, the 1977 Additional Protocol, and various UN Security Council resolutions relating to the establishment and implementation of international criminal courts.

Furthermore, this research also applies a historical approach to understanding the development of international criminal law from the establishment of the Nuremberg Trials to the establishment of the International Criminal Court (ICC). This approach helps explain the evolution of international law enforcement norms and mechanisms over time.

In addition, a case study approach is used, focusing on the analysis of various international criminal court decisions. This approach aims to examine the contribution of judicial decisions such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for

Rwanda, and the International Criminal Court to the formation and development of international criminal law.

METHOD

This study employs a normative legal research methodology using a legislative approach, a conceptual approach, and a comparative approach. The legal sources used in this study include primary, secondary, and tertiary sources.

DISCUSSION

A. Effectiveness of International Criminal Law Enforcement Against Crimes in Armed Conflicts

The enforcement of international criminal law constitutes one of the essential instruments in achieving justice for victims of international crimes committed during armed conflicts.¹⁴ Armed conflicts, whether international or non-international in nature, frequently give rise to various forms of serious violations of international humanitarian law and human rights.¹⁵ These violations include war crimes, crimes against humanity, genocide, and the crime of aggression.¹⁶ These four categories of crimes are classified as core international crimes because of their extensive impact on human life, international security and stability, as well as world peace.¹⁷ Therefore, the international community, through various legal instruments, has sought to establish mechanisms capable of ensuring that every perpetrator of international crimes can be held legally accountable.¹⁸

¹⁴ William A. Schabas, *An Introduction to the International Criminal Court*, 6th ed. (Cambridge: Cambridge University Press, 2020), 1–16.

¹⁵ International Committee of the Red Cross, *Geneva Conventions of 12 August 1949* (Geneva: ICRC, 1949); International Committee of the Red Cross, *Additional Protocol I* (1977).

¹⁶ Rome Statute of the International Criminal Court, adopted 17 July 1998, entered into force 1 July 2002, arts. 5–8 bis

¹⁷ Gerhard Werle and Florian Jeßberger, *Principles of International Criminal Law*, 4th ed. (Oxford: Oxford University Press, 2020), 31–45.

¹⁸ Antonio Cassese and Paola Gaeta, *Cassese's International Criminal Law*, 4th ed. (Oxford: Oxford University Press, 2022), 45–62

The development of international criminal law demonstrates a paradigm shift from the concept of state responsibility to individual criminal responsibility.¹⁹ Whereas in the past violations of international law were regarded solely as the responsibility of states, following the Second World War the principle emerged that individuals who commit serious violations of international law may also be prosecuted and subjected to criminal punishment.²⁰ This principle was first implemented through the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East, which prosecuted military leaders and state officials responsible for various crimes committed during the World War II. These experiences subsequently laid the foundation for the development of the modern international criminal justice system.²¹

A significant milestone in this development was the adoption of the Rome Statute of 1998, which established the International Criminal Court. The Court is the first permanent international judicial institution vested with jurisdiction to prosecute individuals alleged to have committed the most serious international crimes. Unlike ad hoc tribunals established solely to address specific conflicts, the ICC possesses a permanent character, thereby providing greater legal certainty and strengthening the system of international criminal law enforcement.²²

The existence of the International Criminal Court reflects the application of the principle of individual criminal responsibility, namely that every person who commits an international crime may be held directly accountable regardless of their office, rank, or official position. This principle affirms that heads of state, government officials, military

commanders, and other actors do not enjoy immunity if they are proven to have committed international crimes. Accordingly, international criminal law upholds the principle of equality before the law as part of the effort to achieve international justice

In addition, the International Criminal Court also applies the complementarity principle. This principle grants primary authority to states to investigate and prosecute perpetrators of international crimes. The ICC will exercise its jurisdiction only when the state concerned is proven to be unable or unwilling genuinely to prosecute the perpetrators. Thus, the ICC does not replace national judicial systems but instead functions as a complementary institution to ensure that perpetrators of international crimes do not enjoy impunity.

In practice, the International Criminal Court has handled numerous cases related to armed conflicts in Uganda, the Democratic Republic of the Congo, the Central African Republic, Sudan, Libya, Mali, and Ukraine. Various judgments delivered by the Court demonstrate that the ICC has made a tangible contribution to upholding the principle of accountability. One of the landmark cases is that of Thomas Lubanga Dyilo, who was sentenced for recruiting and using children under the age of fifteen as soldiers during the armed conflict in the Democratic Republic of the Congo. This judgment became an important precedent for the protection of children's rights during armed conflicts and reinforced the prohibition against the use of child soldiers under international humanitarian law.²³

Another significant case is that of Bosco Ntaganda, who was found guilty of multiple war crimes and crimes against humanity, including murder, torture, rape, sexual slavery,

¹⁹ Cassese and Gaeta, Cassese's International Criminal Law, 87–101.

²⁰ Werle and Jeßberger, Principles of International Criminal Law, 145–160.

²¹ Robert Cryer et al., An Introduction to International Criminal Law and Procedure, 4th ed.

(Cambridge: Cambridge University Press, 2019), 24–38.

²² Cryer et al., An Introduction to International Criminal Law and Procedure, 151–165

²³ International Committee of the Red Cross, Customary International Humanitarian Law, Vol. I (Cambridge: Cambridge

and the recruitment and use of child soldiers. This judgment demonstrates that international criminal law not only protects civilians from physical attacks but also provides protection to women and children as the groups most vulnerable during armed conflicts.²⁴

Nevertheless, the effectiveness of international criminal law enforcement continues to face various challenges. The first challenge concerns the limitations of the ICC's jurisdiction. Under the provisions of the Rome Statute of 1998, the Court may exercise jurisdiction only over crimes committed within the territory of a State Party, committed by nationals of a State Party, or referred by the United Nations Security Council. Consequently, many alleged international crimes cannot be prosecuted immediately if the state concerned has not ratified the Rome Statute or refuses to accept the jurisdiction of the ICC.²⁵

Another challenge is the ICC's dependence on state cooperation. The Court does not possess its own police force or independent enforcement mechanism; therefore, the implementation of investigations, the arrest of suspects, the collection of evidence, and the enforcement of judgments depend entirely upon the cooperation and support of states. As a result, many arrest warrants cannot be executed promptly.²⁶

The case of Omar al-Bashir is one of the most frequently cited examples illustrating the weaknesses in the enforcement of ICC decisions. Although arrest warrants were issued against him in 2009 for alleged genocide, war crimes, and crimes against humanity committed in Darfur, Omar al-Bashir was still able to visit several countries without being promptly arrested. This situation demonstrates that the

success of international criminal law enforcement depends not only on the existence of an international judicial institution but is also significantly influenced by the political will of member states.²⁷

Besides juridical constraints, international political factors also exert a significant influence on the effectiveness of international criminal law enforcement. Several states with considerable political and military power have not become parties to the Rome Statute of 1998, giving rise to criticism regarding the unequal application of international criminal law. Furthermore, the referral mechanism through the United Nations Security Council is often influenced by the political interests of its permanent members, who possess the power of veto. This situation may hinder the process of enforcing the law against perpetrators of international crimes.²⁸

Although it continues to face various challenges, the existence of international criminal law provides significant benefits. The enforcement of international criminal law is not only intended to punish perpetrators but also to acknowledge the suffering of victims, strengthen respect for international humanitarian law, prevent impunity, and create a deterrent effect so that similar crimes will not recur in the future. Therefore, the effectiveness of international criminal law enforcement should be viewed as part of the collective efforts of the international community to maintain peace, security, and the protection of human rights.²⁹

B. Challenges and Prospects of International Criminal Law Enforcement in Armed Conflicts

²⁴ Cassese and Gaeta, Cassese's International Criminal Law, 343–356.

²⁵ Schabas, An Introduction to the International Criminal Court, 102–116.

²⁶ Cryer et al., An Introduction to International Criminal Law and Procedure, 492–509.

²⁷ Schabas, An Introduction to the International Criminal Court, 217–223.

²⁸ Charter of the United Nations, arts. 24, 27, and Rome Statute, art. 13(b).

²⁹ Schabas, An Introduction to the International Criminal Court, 223–229.

The enforcement of international criminal law in armed conflicts is a complex process because it is influenced by legal, political, security, and technological factors. This complexity has increased with the emergence of various forms of modern conflict that no longer involve only states but also non-state armed groups, terrorist organizations, mercenaries, and private military companies. These changes in the nature of armed conflict have created new challenges in determining the parties responsible and identifying the appropriate legal mechanisms for prosecution.

One of the principal challenges is the principle of state sovereignty. Under international law, every state has the right to regulate its internal affairs without external interference. Consequently, some states continue to regard investigations and prosecutions conducted by international institutions as a form of intervention in their sovereignty. As a result, not all states are willing to surrender suspects, grant access to international investigators, or assist in the evidentiary process.³⁰

Another challenge arises from the dynamics of international politics. Political interests frequently prevail over the interests of law enforcement. Major powers such as the United States, Russia, and China have not yet become parties to the Rome Statute of 1998.³¹ This situation limits the scope of the jurisdiction of the International Criminal Court and creates the perception that the application of international criminal law has not yet become fully universal. Moreover, the exercise of the veto power within the United Nations Security Council frequently obstructs the referral of cases to the ICC, particularly when the conflict is closely related to the political interests of major powers.

Another challenge is the difficulty of obtaining evidence in conflict zones. Wartime conditions often result in the loss or destruction of documents, the displacement of witnesses, the death of victims, and the inaccessibility of crime scenes to investigators. In some cases, investigations can only commence after the conflict has ended, by which time much of the evidence has been damaged or can no longer be used effectively. These circumstances significantly complicate the evidentiary process before the court.

In addition, establishing command responsibility presents a distinct challenge. Prosecutors must be able to prove that a commander knew or should have known that crimes were being committed by subordinates but failed to take the necessary measures to prevent the crimes or punish the perpetrators.³² Establishing such responsibility requires military documents, witness testimony, and a comprehensive analysis of the command structure throughout the armed conflict.

On the other hand, technological advancements offer new opportunities to enhance the effectiveness of international criminal law enforcement. Digital evidence, such as satellite imagery, drone recordings, mobile phone photographs and videos, social media content, geolocation data, and digital forensic technology, is increasingly utilized during investigations. Such evidence assists investigators in reconstructing criminal events, identifying perpetrators, and strengthening the evidentiary basis presented during trial.

The prospects for international criminal law enforcement have also improved as the international community has become increasingly aware of the importance of protecting human rights. International

³⁰ Malcolm N. Shaw, *International Law*, 9th ed. (Cambridge: Cambridge University Press, 2021), 441–458.

³¹ William A. Schabas, *An Introduction to the International Criminal Court*, 6th ed.

(Cambridge: Cambridge University Press, 2020), 71–84.

³² Rome Statute of the International Criminal Court, art. 28.

organizations, non-governmental organizations, mass media, academics, and civil society now play active roles in documenting violations of international humanitarian law.⁵² Such documentation constitutes an invaluable source of information for investigation and prosecution processes.

Looking ahead, the effectiveness of international criminal law enforcement requires stronger cooperation among states, greater harmonization of national legislation with international legal standards, enhanced capacity of national judicial institutions, and broader political support for the International Criminal Court. Furthermore, the utilization of modern technology, improved protection for witnesses and victims, and the development of international cooperation mechanisms will become essential factors in strengthening the international criminal justice system.³³

Accordingly, although international criminal law enforcement continues to face various juridical, political, and technical challenges, its future prospects remain positive. Stronger commitment from states, sustained support from the international community, and continuing technological advancements are expected to improve the effectiveness of law enforcement so that the fundamental objectives of international criminal law namely, achieving justice, providing protection for victims, and preventing the recurrence of international crimes can be realized more effectively.³⁴

CONCLUSION

This study demonstrates that international criminal law has established a comprehensive legal framework for addressing serious crimes committed during armed conflicts, including war crimes, crimes against

humanity, genocide, and the crime of aggression. These crimes are regulated through various international legal instruments, particularly the Rome Statute of the International Criminal Court and the Geneva Conventions, which collectively reinforce the principles of individual criminal responsibility and accountability for grave violations of international humanitarian law.

The findings further reveal that the International Criminal Court, together with ad hoc international tribunals and national courts operating under the principle of complementarity, has significantly contributed to combating impunity. Nevertheless, the effectiveness of international criminal law enforcement remains constrained by jurisdictional limitations, dependence on state cooperation, political considerations within the United Nations Security Council, evidentiary challenges in active conflict zones, and the limited participation of several major powers in the Rome Statute system.

Despite these challenges, developments in international cooperation, digital evidence technologies, forensic investigation, and increasing global commitment to human rights provide encouraging prospects for strengthening international criminal justice. Future efforts should prioritize enhancing institutional cooperation between international and domestic judicial bodies, reforming referral mechanisms, expanding state participation in international criminal justice institutions, and improving the protection of victims and witnesses. Through these measures, international criminal law can more effectively fulfill its fundamental objectives of ensuring justice, preventing impunity, protecting civilians, and maintaining international peace and security.

³³ Antonio Cassese and Paola Gaeta, *Cassese's International Criminal Law*, 4th ed. (Oxford: Oxford University Press, 2022), 373–389.

³⁴ Gerhard Werle and Florian Jeßberger, *Principles of International Criminal Law*, 4th ed. (Oxford: Oxford University Press, 2020), 33–46.

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