
COMPREHENSIVE ANALYSIS OF WAR CRIMES UNDER INTERNATIONAL CRIMINAL LAW

Diya Dalwadi, LL.M. (Criminal and Security Laws), Gujarat National Law University,
Gandhinagar.

ABSTRACT

This paper provides a comprehensive analysis of the conceptual, historical, and procedural frameworks governing war crimes within international criminal law (ICL). It defines war crimes as serious breaches of international humanitarian law (IHL) that attract individual criminal responsibility, emphasizing the "constitutive" nexus between the prohibited conduct and the existence of an armed conflict. The study traces the evolution of this legal regime from early codifications like the 1863 Lieber Code to the transformative Nuremberg and Tokyo Trials, which shifted the focus of liability from states to individuals.

Central to the research is an exploration of foundational principles, including the principle of legality (*nullum crimen sine lege*), the doctrine of command responsibility, and the "holy trinity" of IHL: distinction, proportionality, and military necessity. The paper categorizes substantive offenses such as grave breaches, the use of prohibited weapons, the conscription of child soldiers, and sexual and gender-based violence. By examining landmark jurisprudence, including *Tadić*, *Lubanga*, *Akayesu*, and *Bemba*, the analysis illustrates how modern tribunals have adapted to the complexities of internal strife and "remote" command structures.

Finally, the paper addresses contemporary challenges, specifically the "crisis of credibility" caused by enforcement gaps and the tension between state sovereignty and universal justice. It concludes by advocating for strengthened positive complementarity and the integration of restorative justice mechanisms to ensure the impartial administration of international justice.

Keywords: War Crimes, International Humanitarian Law, Geneva Conventions, Rome Statute, Individual and Command Responsibility.

1. Introduction

1.1. The Conceptual Framework of War Crimes

International criminal law (ICL) is built on the understanding that certain forms of violence are so grave that they cannot be confined within national borders. These acts do not merely violate domestic law; they offend the conscience of the international community as a whole. War crimes form one of the core categories of such international crimes. They refer to serious breaches of international humanitarian law (IHL) committed in the context of armed conflict, and they attract individual criminal responsibility. What distinguishes war crimes from other international offences is their essential connection to an armed conflict. This nexus is not incidental but constitutive. Unlike crimes against humanity, which may be committed even in times of

so-called “peace” provided they are part of a widespread or systematic attack against a civilian population, war crimes are legally confined to situations of hostilities. Their very definition depends upon the existence of an armed conflict, without which the conduct, however grave, would fall outside the category of war crimes.

This conceptual framework serves a dual purpose, first, it seeks to impose meaningful limits on the conduct of hostilities, affirming that even in war there are boundaries that must not be crossed, and secondly, it reinforces the idea that the “elementary dictates of humanity” do not disappear when states resort to force. The law does not deny the harsh reality that armed conflict inevitably brings injury, destruction, and death. However, it insists that such harm cannot be arbitrary, excessive, or inflicted without military necessity. Violence in war may be tragic, but it cannot be gratuitous, indiscriminate, or disproportionate.¹

1.2 Historical Evolution: From Ancient Codes to Modern Tribunals

The development of war crimes law reflects a long and evolving effort to restrain the brutality of armed conflict. Although earlier civilizations and medieval codes of chivalry articulated moral expectations about conduct in war, these norms lacked consistent legal structure and enforcement. The move toward formal codification began in the nineteenth century, most

¹ *Martens Clause*, How Does Law Protect in War?: Online Casebook, https://casebook.icrc.org/a_to_z/glossary/martens-clause (last visited Feb 25, 2025).

notably with the 1863 Lieber Code adopted during the American Civil War.² This marked one of the first systematic attempts to translate humanitarian principles into binding military regulations. It was followed by the Hague Conventions of 1899 and 1907, which laid down clearer legal standards governing the means and methods of warfare, including provisions relating to the treatment of prisoners of war and the protection of civilian populations.³⁴

The devastation of the twentieth century, and especially the atrocities committed during the Second World War, marked a decisive turning point in the evolution of war crimes law. Responsibility for violations was no longer treated solely as a matter between states; instead, individuals themselves became the primary bearers of criminal liability. The Nuremberg and Tokyo Trials were central to this shift. They rejected the notion that acting under “superior orders” or holding an official position could automatically shield a person from responsibility, affirming that even heads of state and senior officials could be prosecuted for war crimes. The adoption of the 1949 Geneva Conventions further strengthened this framework.⁵⁶⁷⁸ By

introducing the “grave breaches” regime, the Conventions imposed clear obligations on states to search for and prosecute individuals responsible for the most serious violations, regardless of nationality. In doing so, they embedded the principle of universal jurisdiction into the enforcement architecture of international humanitarian law, signalling that certain crimes are

² *Instructions for the Government of Armies of the United States in the Field* (Lieber Code), General Orders No. 100 (Apr. 24, 1863), available via ICRC *International Humanitarian Law Treaties* database, <https://ihl-databases.icrc.org/en/ihl-treaties/liebercode-1863>.

³ *Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land*, The Hague, July 29, 1899, available at *International Committee of the Red Cross – IHL Treaties Database*, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899> (last accessed Feb. 28, 2026).

⁴ *Convention (IV) respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land*, The Hague, Oct. 18, 1907, available at *International Committee of the Red Cross – IHL Treaties Database*, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907> (last accessed Feb. 28, 2026).

⁵ *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Aug. 12, 1949, 75 U.N.T.S. 31, available at *International Committee of the Red Cross – IHL Treaties Database*, <https://ihl-databases.icrc.org/en/ihl-treaties/gc-i-1949> (last accessed Feb. 28, 2026).

⁶ *Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, Aug. 12, 1949, 75 U.N.T.S. 85, available at *International Committee of the Red Cross – IHL Treaties Database*, <https://ihl-databases.icrc.org/en/ihl-treaties/gc-ii-1949> (last accessed Feb. 28, 2026).

⁷ *Convention (III) relative to the Treatment of Prisoners of War*, Aug. 12, 1949, 75 U.N.T.S. 135, available at *International Committee of the Red Cross – IHL Treaties Database*, <https://ihl-databases.icrc.org/en/ihl-treaties/gc-iii-1949> (last accessed Feb. 28, 2026).

⁸ *Convention (IV) relative to the Protection of Civilian Persons in Time of War*, Aug. 12, 1949, 75 U.N.T.S. 287, available at *International Committee of the Red Cross – IHL Treaties Database*, <https://ihl-databases.icrc.org/en/ihl-treaties/gc-iv-1949> (last accessed Feb. 28, 2026).

of concern to the international community as a whole.⁹

1.3 The Legal Distinction Between Jus ad Bellum and Jus in Bello

An important conceptual distinction in the study of war crimes is the separation between *jus ad bellum* the legality of resorting to force, and *jus in bello*, the body of law governing conduct during armed conflict. War crimes fall exclusively within the latter domain. This distinction is not merely technical; it serves a foundational humanitarian purpose. International humanitarian law applies equally to all parties to a conflict, regardless of whether their cause is considered lawful or whether they are labelled as the aggressor.¹⁰

By separating the justification for going to war from the rules that regulate how war is fought, the law preserves its neutrality and universality. If compliance with humanitarian standards depended on the perceived righteousness of a party's objectives, those standards would quickly erode. The decoupling of these two spheres ensures that no belligerent can claim exemption from the rules of warfare on the basis that its cause is just, thereby safeguarding minimum humanitarian protections even in deeply contested conflicts.¹¹

2. Principles of International Criminal Law

2.1. The Principle of Legality (Nullum Crimen Sine Lege)

The principle of legality '*nullum crimen/nulla poena sine lege*' forms one of the foundational safeguards of international criminal justice. At its core, it ensures that no individual may be prosecuted or punished for conduct that was not criminalised at the time it was committed. This requirement is applied rigorously in international tribunals, not only to uphold fairness to the accused but also to preserve the credibility and legitimacy of the legal system itself. The principle contains several important components. The rule against retroactivity prohibits the creation or application of criminal norms that operate backward in time. Closely related is the requirement of specificity, which demands that crimes be defined with sufficient clarity and

⁹ *Grave breaches*, in ICRC Online Casebook: How Does Law Protect in War? (International Committee of the Red Cross), https://casebook.icrc.org/a_to_z/glossary/grave-breaches (last visited Feb. 28, 2026) (providing overview of the concept of grave breaches under the Geneva Conventions and Additional Protocol I).

¹⁰ Carsten Stahn, "'*Jus ad bellum*,' '*jus in bello*' . . . '*jus post bellum*'? – Rethinking the Conception of the Law of Armed Force", 17 *European Journal of International Law* 921 (2006), <https://www.ejil.org/pdfs/17/5/111.pdf> (pdf) (DOI: 10.1093/ejil/chl037).

¹¹ Jasmine Moussa, *Can Jus Ad Bellum Override Jus in Bello? Reaffirming the Separation of the Two Bodies of Law*, 90 *INT. REV. RED CROSS* 963 (2008).

precision so that individuals can reasonably foresee the legal consequences of their actions. In addition, the prohibition of analogy prevents courts from stretching existing legal definitions to cover new forms of conduct without a clear legal basis. Together, these safeguards ensure predictability, constrain judicial discretion, and reinforce the rule-of-law character of international criminal proceedings.¹²

2.2. Individual Criminal Responsibility and Modes of Liability

One of the most significant developments in international criminal law has been the shift from collective to individual responsibility. Rather than treating atrocities solely as wrongs attributable

to states, modern ICL focuses on holding natural persons criminally accountable for their actions. This individualisation of guilt represents a decisive break from earlier approaches that relied primarily on state responsibility or collective sanctions. Importantly, this principle ensures that the organised and often bureaucratic nature of international crimes does not become a shield for impunity. Atrocities are rarely the work of isolated actors; they typically involve coordinated systems, chains of command, and institutional structures. By attributing liability to both those who execute crimes on the ground and those who design, direct, or facilitate them, international criminal law prevents individuals, whether ‘cogs’ in the machinery or its engineers, from

evading accountability behind the veil of collective action.

Article 25 of the Rome Statute¹³ establishes a well-structured framework, laying down different modes by which criminal liability may be determined:

- Direct Commission: When a person performs the physical act of the crime.
- Joint Perpetration: Committing a crime according to a common plan or enterprise.
- Ordering, Inducing, or Instigating: Designing and launching the criminal activities of

¹² Gillian MacNeil, *The Prohibition on Retroactive Criminal Law in International Criminal Law*, in LEGALITY MATTERS: CRIMES AGAINST HUMANITY AND THE PROBLEMS AND PROMISE OF THE PROHIBITION ON OTHER INHUMANE ACTS 27 (Gillian MacNeil ed., 2021), https://doi.org/10.1007/978-94-6265-443-3_3.

¹³ Rome Statute of the International Criminal Court art. 25, July 17, 1998, 2187 U.N.T.S. 90.

others.

- Aiding and Abetting: Providing substantial assistance that contributes to the commission of the crime.
- Attempt: Taking a substantial step toward the commission of a crime, even if the result is not achieved.

2.3. Command Responsibility: Failure to Act and the Duty of Superiors

Command responsibility, often referred to as superior responsibility, differs fundamentally from the direct modes of liability outlined in Article 25. It is a form of liability grounded in omission rather than active participation. The doctrine recognises that those in positions of authority, whether military commanders or civilian leaders, bear a distinct legal obligation to exercise control over their subordinates and to ensure compliance with international humanitarian law. Codified in Article 28 of the Rome Statute, command responsibility arises when three core elements are satisfied.¹⁴

- The superior must have had effective control over the perpetrators. This does not depend solely on formal rank or title; rather, it requires proof that the individual had the actual material ability to prevent or punish the commission of crimes.
- The mental element varies depending on the nature of the superior's role. In the case of military commanders, the standard is comparatively stringent: they may be held responsible if they knew, or should have known, that crimes were being committed or were about to be committed. This "should have known" threshold reflects the expectation that commanders remain adequately informed about the conduct of their forces. For civilian superiors, the standard is framed slightly differently, generally requiring actual knowledge or at least a conscious disregard of clear information indicating criminal activity.
- Finally, liability attaches where the superior failed to take all necessary and reasonable measures within their power to prevent the crimes, repress them, or submit the matter

¹⁴ Rome Statute of the International Criminal Court art. 28, July 17, 1998, 2187 U.N.T.S. 90.

for investigation and prosecution. The doctrine therefore does not punish mere status; it penalises the failure to act where there was both authority and a legal duty to do so.

The meaning of “necessary and reasonable measures” continues to generate significant debate in international criminal law. Much of the controversy centres on how demanding this standard should be in practice and how it ought to be assessed by trial and appellate chambers. This tension became particularly visible in the appellate proceedings in *Prosecutor v. Jean-Pierre Bemba Gombo*, where the court closely scrutinised the scope of a commander’s duty to act. A key issue in that case was whether a commander operating at a distance from the troops on the ground faces structural and logistical constraints that may affect what can realistically be expected of them. The Appeals Chamber examined whether such “remote control” situations limit the range of measures available to a superior and, consequently, whether liability should be assessed with sensitivity to those practical barriers.¹⁵ The debate illustrates how the seemingly straightforward requirement of taking “all necessary and reasonable measures” is, in reality, deeply fact-sensitive and central to the evolving contours of command responsibility.¹⁶

2.4. The Doctrine of Protection from Double Jeopardy (Ne Bis In Idem)

The principle of *ne bis in idem* safeguards individuals from being prosecuted or punished more than once for the same conduct. At its core, it protects defendants from repeated or abusive proceedings and reinforces the finality and stability of judicial decisions. By preventing multiple trials for the same offence, the rule upholds fairness and guards against arbitrary or politically motivated state action. In the international criminal law context, however, this protection is not absolute. Under the framework of the International Criminal Court, particularly Article 20 of the

Rome Statute of the International Criminal Court, the principle is qualified by what is often described as an exception for sham or bad-faith proceedings. If a domestic trial was conducted with the purpose of shielding the accused from genuine criminal responsibility, or if it lacked

¹⁵ *Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08 (International Criminal Court), *Case Information Sheet* (July 26, 2016), <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/BembaEng.pdf> (last visited Feb. 28, 2026).

¹⁶ Fiona O'Regan, *Prosecutor vs. Jean-Pierre Bemba Gombo: The Cumulative Charging Principle, Gender-Based Violence, and Expressivism*, 43 *Geo. J. Int'l L.* 1323 (2012).

independence and impartiality, international jurisdiction may still be triggered.¹⁷ This qualification reflects the broader logic of complementarity: national courts are given priority, but their proceedings must be genuine. Where they are merely an appearance, the ICC or relevant ad hoc tribunals may step in to ensure that accountability is not undermined by procedural manipulation.¹⁸

2.5. Core Principles of IHL: Distinction, Proportionality, and Military Necessity

The legality of specific military actions is assessed through three cardinal principles that form the ‘holy trinity’ of the modern laws of war:

- **Principle of Distinction:** All parties must distinguish between combatants and civilians. Attacks directed against civilians or civilian objects are strictly prohibited and constitute war crimes.¹⁹
- **Principle of Proportionality:** This rule limits the destructive secondary effects of an attack. It prohibits attacks where the incidental loss of life or property is clearly excessive in relation to the concrete and direct military advantage anticipated.²⁰
- **Military Necessity:** This principle allows for measures indispensable for securing the ends of war, but only those which are consistent with IHL. It is not a wildcard; it does not permit cruelty, revenge, or the targeting of innocent inhabitants.²¹

3. Analysis of the Topic: War Crimes

3.1. Definitions and Jurisdictional Thresholds

A war crime is legally understood as a grave breach of the laws and customs governing armed conflict. The adjective “serious” is not merely descriptive but carries technical significance: a

¹⁷ Rome Statute of the International Criminal Court art. 20, July 17, 1998, 2187 U.N.T.S. 90.

¹⁸ William A. Schabas, | *The International Criminal Court: A Commentary on the Rome Statute* | *Oxford Law Pro* | *Oxford Academic*, OUP ACADEMIC (Sept. 22, 2016), <https://academic.oup.com/oxford-law-pro/book/57464/chapter/473865587>.

¹⁹ Asa Kasher, *The Principle of Distinction*, 6 JOURNAL OF MILITARY ETHICS 152 (2007).

²⁰ Gardam JG. Proportionality and Force in International Law. *American Journal of International Law*. 1993;87(3):391-413. doi:10.2307/2203645.

²¹ Schmitt, M.N. (2011). Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance. In: *Essays on Law and War at the Fault Lines*. T.M.C. Asser Press. https://doi.org/10.1007/978-90-6704-740-1_3.

violation rises to the level of a war crime when it threatens protected persons or objects, or when it infringes values regarded as fundamental by the international community.

The authority of the International Criminal Court to prosecute such offences is set out in Article 8 of the Rome Statute of the International Criminal Court. Article 8(1) specifies that the Court's jurisdiction applies "in particular" where war crimes are committed as part of a plan or policy, or on a large scale.²² Although this wording does not expressly exclude isolated incidents, it signals that the Court is primarily concerned with addressing the most serious and systematic manifestations of wartime criminality.

3.2. Conflict Classification: International (IAC) vs. Non-International (NIAC)

The classification of armed conflict is the gateway to determining which set of rules applies.

- **International Armed Conflict (IAC):** These involve armed confrontation between two or more states. They are governed fully under the 1949 Geneva Conventions and its Additional Protocols
- **Non-International Armed Conflict (NIAC):** These occur between governmental authorities and organized armed groups, or amongst such groups within a single state. The threshold for a NIAC requires "protracted violence" and a certain degree of organization within the non-state groups to distinguish the conflict from riots or isolated acts of banditry.²³

The *Tadić* Appeals Chamber famously declared that what is inhumane in international wars cannot be inadmissible in civil strife, leading to a "harmonization" of the law where many customary rules now apply equally to both IAC and NIAC.²⁴

3.3 Substantive Categories of War Crimes

3.3.1. Crimes Against Protected Persons and the Grave Breaches Regime

²² *Rome Statute of the International Criminal Court* art. 8, July 17, 1998, 2187 U.N.T.S. 90.

²³ Miloš Hrnjaz & Janja Simentić Popović, *Protracted Armed Violence as a Criterion for the Existence of Non-International Armed Conflict: International Humanitarian Law, International Criminal Law and Beyond*, 25 J CONFLICT SECURITY LAW 473 (2020).

²⁴ *Prosecutor v. Duško Tadić*, Case No. IT-94-1 (Int'l Crim. Trib. for the former Yugoslavia, Trial Judgement & Appeals Judgement), <https://ucr.irmct.org/scasedocs/case/IT-94-1#eng> (last visited Feb. 28, 2026).

The 1949 Geneva Conventions established a list of "grave breaches" that create an absolute liability for States to prosecute or extradite the perpetrators. These crimes, codified in Article 8(2)(a) of the Rome Statute for IAC, include:²⁵

Crime Element	Target / Protected Status	IHL Source
Wilful Killing	Civilians, Wounded, POWs	GC I-IV, Art. 50/51/130/147
Torture or Inhuman Treatment	Persons in power of adversary	GC I-IV, Art. 50/51/130/147
Biological Experiments	Protected persons	GC I-IV, Art. 50/51/130/147
Taking of Hostages	Civilians and Non-combatants	GC IV, Art. 147
Unlawful Deportation	Civilian population	GC IV, Art. 147

In the case of NIAC, Article 8(2)(c) incorporates the core protections of Common Article 3, prohibiting violence to life and person, outrages upon personal dignity, and sentences passed without regular judgment.²⁶

3.3.2. Prohibited Methods and Means of Warfare: Weapons and Tactics

International criminal law prohibits the use of weapons and methods of warfare that are by their very nature indiscriminate or that inflict superfluous injury or unnecessary suffering. The underlying idea is that even in armed conflict, the choice of means must be justifiable. Certain weapons are outlawed because they cannot be directed at specific military targets or because they cause harm that exceeds any legitimate military advantage. Historically, these prohibitions have included poisoned weapons, asphyxiating gases, and expanding (dum-dum) bullets.²⁷²⁸ Over time, the regulatory framework has evolved to address technological advances in warfare. As a result, the ban now extends to weapons such as blinding laser systems and munitions designed to produce fragments that are undetectable in the human body. Together, these restrictions reflect the continuing effort of international humanitarian law to adapt to new

²⁵ Rome Statute of the International Criminal Court art. 8(2)(a), July 17, 1998, 2187 U.N.T.S. 90.

²⁶ Rome Statute of the International Criminal Court art. 8(2)(c), July 17, 1998, 2187 U.N.T.S. 90.

²⁷ Protocol on Blinding Laser Weapons (Protocol IV) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Oct. 13, 1995, 1380 U.N.T.S. 370 (entered into force July 30, 1998).

²⁸ Maartje Abbenhuis, Branka Bogdan & Emma Wordsworth, *Humanitarian Bullets and Man-Killers: Revisiting the History of Arms Regulation in the Late Nineteenth Century*, 104 INT. REV. RED CROSS 1684 (2022).

forms of weaponry while maintaining its core humanitarian objectives.

Further, the law prohibits :

- Attacking undefended places, such as bombarding dwellings or villages that are not military objectives.
- Improper use of emblems, such as misusing the Red Cross, Red Crescent, or UN symbols to deceive the enemy, resulting in death, injury or destruction
- Starvation, or intentionally depriving civilians of objects indispensable to their survival, such as food or medical supplies.

3.3.3. Crimes Against Children and the Conscripting of Child Soldiers

The Rome Statute places particular emphasis on the protection of children in situations of armed conflict. It expressly criminalises the conscription or enlistment of children under the age of fifteen into armed forces or groups, as well as their active use in hostilities.²⁹³⁰ This reflects a clear recognition that children occupy a uniquely vulnerable position in wartime and require heightened legal safeguards. In its landmark decision in *Prosecutor v. Thomas Lubanga Dyilo*, the Court clarified that “active participation” is not limited to direct combat or fighting on the front lines. The term also encompasses roles that expose children to real danger, such as serving as couriers, bodyguards, or guards at military installations. By interpreting the provision in this broader way, the Court ensured that the law captures the full spectrum of exploitative practices that draw children into conflict, thereby strengthening the protective shield intended for some of the most vulnerable victims of war.³¹

3.3.4. Sexual and Gender-Based Violence as War Crimes

For much of the twentieth century, sexual violence in armed conflict was minimised or treated as an unfortunate but inevitable “by-product” of war, at times even cynically described as part of its “spoils.” Contemporary international criminal law has decisively rejected that narrative.

²⁹ *Rome Statute of the International Criminal Court* art. 8(2)(b)(xxvi), July 17, 1998, 2187 U.N.T.S. 90.

³⁰ *Rome Statute of the International Criminal Court* art. 8(2)(e)(vii), July 17, 1998, 2187 U.N.T.S. 90.

³¹ *The Prosecutor v. Thomas Lubanga Dyilo*, Case Information Sheet, Situation in the Democratic Republic of the Congo, Case No. ICC-01/04-01/06, <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/LubangaEng.pdf> (last visited Feb. 28, 2026) (providing overview of case facts and procedural history).

It now recognises acts such as rape, sexual slavery, enforced prostitution, and forced pregnancy as distinct and prosecutable war crimes, rather than incidental excesses of undisciplined troops.

Jurisprudence from the ad hoc tribunals played a crucial role in this shift. In *Prosecutor v. Dragoljub Kunarac et al.*, the International Criminal Tribunal for the former Yugoslavia clarified that sexual enslavement constitutes a form of enslavement in which the victim’s sexual autonomy is systematically stripped away through coercion and terror. The case firmly established that such conduct is not merely opportunistic abuse but a structured and punishable crime under international law.³²

Similarly, in *Prosecutor v. Jean-Paul Akayesu*, the International Criminal Tribunal for Rwanda recognised that sexual violence can amount to genocide when committed with the intent to destroy, in whole or in part, a protected group. The judgment underscored that rape and related acts may be used deliberately to fracture the biological or social foundations of a community. Together, these decisions transformed the legal treatment of conflict-related sexual violence, affirming both its gravity and its central place within the architecture of international criminal accountability.³³

3.4 The Evolution of the Rome Statute: The Kampala Amendments and Beyond

The Rome Statute is an evolving instrument, subject to amendments that reflect the evolving consensus of the international community. Some of the major amendments are found as follows:

Amendment Subject	Adopted Year	Key Change
Crime of Aggression	2010 (Kampala)	Defined the resort to illegal force as a core crime.
Expansion of Prohibited Weapons in NIAC	2010 (Kampala)	Criminalized poison, gas, and bullets in civil wars.

³² *Prosecutor v. Dragoljub Kunarac, Radomir Kovac & Zoran Vukovic*, Case No. IT-96-23-T, Judgment, (Int’l Crim. Trib. for the former Yugoslavia, Feb. 22, 2001).

³³ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998) (Trial Chamber), <https://unictr.irmct.org/sites/unictr.org/files/case-documents/ict-96-4/trial-judgement/en/980902.pdf> (last visited Feb. 28, 2026).

Biological Weapons	2017 (New York)	Added microbial/biological agents to the list of war crimes.
Blinding Lasers	2017 (New York)	Prohibited weapons designed to cause permanent blindness.
Starvation in NIAC	2019 (The Hague)	Harmonized the war crime of starvation for internal conflicts.

4. Landmark Jurisprudence and Case Analysis

4.1. Prosecutor v. Tadić: Internationalizing Internal Strife

The *Tadić* case was the inaugural trial of the ICTY and remains perhaps the most influential decision in the history of ICL. Its primary legal contribution was the clarification of the jurisdictional scope of war crimes in internal conflicts. Before *Tadić*, there was significant debate

about whether IHL violations in a civil war could be prosecuted as "war crimes" under customary international criminal law. The Appeals Chamber bridged this gap, ruling that

"elementary considerations of humanity" apply regardless of the conflict's character. Additionally, the case established the "overall control" test to determine when a foreign state's influence over a militia internationalizes a conflict, a standard later adopted by the ICC.³⁴

4.2. Prosecutor v. Lubanga: The First ICC Milestone

The judgment in *Prosecutor v. Thomas Lubanga Dyilo* marked a historic moment as the first decision ever issued by the International Criminal Court. The case arose out of the conflict in the Ituri region of the Democratic Republic of Congo and centred on the recruitment and use of child soldiers. In its ruling, the Court clarified that conscripting or enlisting children under the age of fifteen is a distinct offence from actively using them in hostilities, thereby giving clearer legal shape to the crime of child recruitment. Beyond its doctrinal significance, the case also helped define the ICC's emerging victim-centred orientation. Victims were permitted to

³⁴ *Prosecutor v. Duško Tadić*, Case No. IT-94-1 (Int'l Crim. Trib. for the former Yugoslavia, Trial Judgement & Appeals Judgement), <https://ucr.irmct.org/scasedocs/case/IT-94-1#eng> (last visited Feb. 28, 2026).

participate actively in the proceedings, rather than remaining mere witnesses, and the Court ultimately ordered reparations aimed at supporting their rehabilitation and reintegration.³⁵

4.3. Prosecutor v. Akayesu: Redefining Sexual Violence

The judgment in Prosecutor v. Jean-Paul Akayesu is widely regarded as a landmark in the legal recognition of sexual violence during armed conflict. For the first time, an international tribunal explicitly held that rape could constitute an act of genocide. This marked a profound shift in how international law understood the gravity and function of sexual violence in situations of mass atrocity. In examining the atrocities committed during the Rwandan genocide, the Court found that Tutsi women were deliberately and systematically targeted for rape. These acts were not incidental or opportunistic; they were used as tools of destruction, aimed at breaking victims physically and psychologically and undermining the biological and social fabric of the group. By recognising sexual violence as capable of forming part of the genocidal process itself, the judgment transformed the legal narrative surrounding such crimes. In doing so, the case also helped break the long-standing silence that had historically marginalised gender-based violence in conflict. It affirmed that these harms were neither secondary nor peripheral, but central to understanding the full scope of atrocity crimes.³⁶

4.6. Prosecutor v. Bemba: The Complexity of Remote Command

The *Bemba* case centered on the liability of Jean-Pierre Bemba for crimes committed by his MLC troops in the Central African Republic. While the Trial Chamber initially convicted him based on command responsibility, the Appeals Chamber reversed the decision in 2018 in a controversial 3-2 split. The majority held that the Trial Chamber failed to account for the "logistical difficulties" Bemba faced as a remote commander. This acquittal sparked fierce debate about whether leaders can escape liability simply by being physically distant from the active war zone, and whether the ICC is setting an unworkably high threshold for "necessary and reasonable measures".³⁷

³⁵ *The Prosecutor v. Thomas Lubanga Dyilo*, Case Information Sheet, Situation in the Democratic Republic of the Congo, Case No. ICC-01/04-01/06, <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/LubangaEng.pdf> (last visited Feb. 28, 2026) (providing overview of case facts and procedural history).

³⁶ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998) (Trial Chamber), <https://unictr.irmct.org/sites/unictr.org/files/case-documents/ict-96-4/trial-judgement/en/980902.pdf> (last visited Feb. 28, 2026).

³⁷ *Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08 (International Criminal Court), Case

5. Contemporary Challenges and Thematic Critiques

5.1. Jurisdictional Hurdles and State Sovereignty

The primary tension in ICL remains the conflict between the supreme authority of the state and the universal duty of justice. While the principle of complementarity respects national sovereignty by giving states the first opportunity to prosecute, it creates an adversarial relationship when states are unwilling to investigate their own leaders. Many world powers have not ratified the Rome Statute, creating gaps where their nationals are largely immune to ICC jurisdiction unless referred by the UN Security Council.³⁸

5.2. The Enforcement Gap: Non-Cooperation and Political Defiance

The ICC possesses no independent enforcement arm and relies entirely on states for the execution of arrest warrants. This dependence has led to a "crisis of credibility," as evidenced by the unexecuted warrants for figures like Omar Al-Bashir and, more recently, the mixed reactions to warrants issued in the situations of Ukraine and Palestine.^{39 40} Political interests and strategic alliances frequently override legal commitments, leaving the Court unable to bring suspects to justice.

6. Conclusion and Suggestions

The journey of international criminal law from a moral aspiration to a functional judicial system has been marked by remarkable achievements and sobering failures. To bridge the gap between the promise of global justice and the reality of impunity, the following suggestions are proposed:

6.1. Reimagining the Assembly of States Parties (ASP)

The ASP must be re-centered as an active enforcer rather than a passive observer. This

Information Sheet (July 26, 2016), <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/BembaEng.pdf> (last visited Feb. 28, 2026).

³⁸ Complementarity in Crisis: Uganda, Alternative Justice, and the International Criminal Court, OPINIO JURIS (Nov. 4, 2009), <https://opiniojuris.org/2009/11/04/complementarity-in-crisis-uganda-alternative-justice-and-the-international-criminal-court/>.

³⁹ *Prosecutor v. Omar Hassan Ahmad Al Bashir*, Case No. ICC-02/05-01/09, Warrant of Arrest for Omar Hassan Ahmad Al Bashir (Mar. 4, 2009).

⁴⁰ *Situation in Ukraine*, Case No. ICC-02/23, Decision on the "Prosecution's Request for a Warrant of Arrest Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova" (Mar. 17, 2023).

necessitates the implementation of diplomatic and financial penalties for non-cooperative states.

6.2. Institutionalizing Restorative and Transitional Justice

The ICC should evolve beyond a purely retributive model by integrating restorative justice features. This includes supporting alternative resolution mechanisms (ARMs) such as truth and reconciliation commissions, which can often achieve healing and communal repair that criminal trials alone cannot. The research calls for, not only a victim-centered approach, but rather to assume a prevention perspective, seeking to actively ensure that tensions do not escalate to war.

6.3. Strengthening Positive Complementarity and Global Cooperation

The Court must strengthen its partnership with national judicial systems. The complementarity should involve sharing evidence, technical training, and forensic assistance to empower states to prosecute lower-level perpetrators domestically. Additionally, the expansion of universal jurisdiction cases in domestic courts, such as the German trials for Syrian officials, represents a vital parallel track to closing the impunity gap.

Ultimately, the future of international criminal law depends on the collective will to transcend political compromise in favor of a principled, consistent, and impartial administration of justice for the gravest crimes against humanity.

Bibliography

Primary Legal Instruments and Official Documents

- Rome Statute of the International Criminal Court, July 17, 1998, 2187 UNTS 3.
- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 UNTS 31.
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 UNTS 85.
- Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 UNTS 135.
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 UNTS 287.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 UNTS 3.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 UNTS 609.
- Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations respecting the Laws and Customs of War on Land, Oct. 18, 1907.
- London Charter of the International Military Tribunal, Aug. 8, 1945, 82 UNTS 279.
- Elements of Crimes, International Criminal Court, Doc. No. ICC-PIOS-LT-03-002/11_Eng.
- Kampala Amendments to the Rome Statute of the International Criminal Court, June 10, 2010.

Scholarly Works

- Abbenhuis, Maartje, Branka Bogdan & Emma Wordsworth, *Humanitarian Bullets and Man-Killers: Revisiting the History of Arms Regulation in the Late Nineteenth Century*, 104 Int'l Rev. Red Cross 1684 (2022).
- *Complementarity in Crisis: Uganda, Alternative Justice, and the International Criminal Court*, Opinio Juris (Nov. 4, 2009), <https://opiniojuris.org/2009/11/04/complementarity-in-crisis-uganda-alternative-justice-and-the-international-criminal-court/>.
- Gardam, Judith G., *Proportionality and Force in International Law*, 87 Am. J. Int'l L. 391 (1993).
- *Grave Breaches*, in ICRC Online Casebook: How Does Law Protect in War?, https://casebook.icrc.org/a_to_z/glossary/grave-breaches (last visited Feb. 28, 2026).
- Hrnjaz, Miloš & Janja Simentić Popović, *Protracted Armed Violence as a Criterion for the Existence of Non-International Armed Conflict: International Humanitarian Law, International Criminal Law and Beyond*, 25 J. Conflict & Sec. L. 473 (2020).
- *Instructions for the Government of Armies of the United States in the Field* (Lieber Code), General Orders No. 100 (Apr. 24, 1863).
- Kasher, Asa, *The Principle of Distinction*, 6 J. Mil. Ethics 152 (2007).
- MacNeil, Gillian, *The Prohibition on Retroactive Criminal Law in International Criminal Law*, in *Legality Matters: Crimes Against Humanity and the Problems and Promise of the Prohibition on Other Inhumane Acts* 27 (Gillian MacNeil ed., 2021).
- *Martens Clause*, in ICRC Online Casebook: How Does Law Protect in War?, https://casebook.icrc.org/a_to_z/glossary/martens-clause (last visited Feb. 25, 2025).
- Moussa, Jasmine, *Can Jus Ad Bellum Override Jus in Bello? Reaffirming the Separation of the Two Bodies of Law*, 90 Int'l Rev. Red Cross 963 (2008).
- O'Regan, Fiona, *Prosecutor vs. Jean-Pierre Bemba Gombo: The Cumulative Charging*

Principle, Gender-Based Violence, and Expressivism, 43 *Geo. J. Int'l L.* 1323 (2012).

- Schabas, William A., *The International Criminal Court: A Commentary on the Rome Statute* (Oxford University Press, 2016).
- Schmitt, Michael N., *Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance*, in *Essays on Law and War at the Fault Lines* (T.M.C. Asser Press, 2011).
- Stahn, Carsten, “*Jus ad bellum*,” “*jus in bello*” . . . “*jus post bellum*”? – *Rethinking the Conception of the Law of Armed Force*, 17 *Eur. J. Int'l L.* 921 (2006).