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CRITICALLY EXAMINING THE EVOLUTION OF INTERNATIONAL CRIMINAL LAW: ACHIEVEMENTS, CHALLENGES AND CONTEMPORARY ADAPTATIONS.

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Abstract

International Criminal Law (ICL) has evolved from the post-Second World War prosecutions at Nuremberg and Tokyo into a permanent legal framework under the Rome Statute of 1998. This development established individual criminal responsibility for serious international crimes and strengthened the institutional mechanisms for accountability. The ad hoc tribunals for the former Yugoslavia and Rwanda further developed international criminal jurisprudence, while the International Criminal Court (ICC) introduced a permanent system based on complementarity and victim participation. Nevertheless, ICL continues to face challenges relating to selective prosecution, state sovereignty, political influence and inadequate enforcement. Emerging concerns such as cyber warfare, artificial intelligence and environmental destruction further test the adequacy of the existing framework. This article critically examines the evolution of ICL, evaluates its institutional achievements and limitations, and considers reforms necessary to ensure effective and impartial international criminal justice.

Keywords: International Criminal Law, International Criminal Court, Rome Statute, Individual Criminal Responsibility, Complementarity, Selective Justice, Ecocide.

1. Introduction

International Criminal Law (ICL) is a branch of international law that imposes criminal responsibility directly upon individuals for serious violations of international legal norms. Unlike traditional international law, which primarily regulates relations between states, ICL recognises that individuals, including political and military leaders, may be held accountable for international crimes.¹

¹ Antonio Cassese, International Criminal Law (Oxford University Press, 2nd edn., 2008).

The evolution of ICL has been shaped by the Second World War, the atrocities in the former Yugoslavia and Rwanda, and the establishment of the International Criminal Court (ICC). The Nuremberg and Tokyo Tribunals established the foundations of individual criminal responsibility, while the adoption of the Rome Statute in 1998 marked a decisive step towards a permanent system of international criminal justice.² Despite these achievements, ICL continues to face problems of selective enforcement, limited jurisdiction and political interference. This article critically examines its historical development, institutional achievements and contemporary challenges, arguing that although the framework has advanced considerably, its promise of equal justice remains incompletely realised.

2. Historical Foundations: The Nuremberg and Tokyo Tribunals

2.1 Nuremberg and Tokyo

The International Military Tribunal at Nuremberg was established under the London Charter of 8 August 1945 to prosecute leading Nazi officials for crimes against peace, war crimes and crimes against humanity.³ It established the principle that individuals could be held criminally responsible under international law irrespective of their official positions.

Article 7 of the London Charter rejected official capacity as an automatic defence, while Article 8 provided that superior orders did not necessarily absolve an accused of responsibility. These principles challenged the traditional assumption that state authority could shield individuals from accountability.⁴

The International Military Tribunal for the Far East, established in 1946, extended these principles to Japanese leaders responsible for crimes committed during the Second World War.

2.2 Critical Evaluation

The tribunals were criticised as examples of victor's justice because they prosecuted the defeated powers without subjecting comparable conduct by the victorious Allies to equivalent scrutiny. They also raised questions concerning *nullum crimen sine lege*, the principle that criminal liability must have a sufficiently established legal basis.

Nevertheless, United Nations General Assembly Resolution 95(I) of 1946 affirmed the

² Rome Statute of the International Criminal Court, 1998, preamble.

³ Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal, 8 August 1945.

⁴ *Ibid.*, arts. 6–8.

principles recognised by the Nuremberg Charter and Tribunal.⁵ The tribunals established the enduring principle that sovereignty and official authority cannot automatically protect individuals responsible for international crimes.

The Cold War subsequently restricted further institutional development. Although the Genocide Convention of 1948 and the Geneva Conventions of 1949 strengthened international law, the establishment of a permanent criminal court remained unrealised for several decades.

3. Revival of International Criminal Law: The Ad Hoc Tribunals

The end of the Cold War and the atrocities committed in the former Yugoslavia and Rwanda renewed international efforts to combat impunity.

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by Security Council Resolution 827 in 1993.⁶ In *Prosecutor v. Tadić* (1995), the Tribunal contributed to clarifying the application of international humanitarian law to internal armed conflicts.⁷ In *Prosecutor v. Krstić* (2001), it examined the Srebrenica massacre and affirmed the genocidal character of the crimes established in that case.⁸

The International Criminal Tribunal for Rwanda (ICTR), established by Security Council Resolution 955 in 1994, made an equally important contribution.⁹ In *Prosecutor v. Akayesu* (1998), the Tribunal delivered the first international conviction for genocide and recognised that rape and other forms of sexual violence could constitute acts of genocide when the required elements, including genocidal intent, were established.¹⁰

The tribunals also developed principles concerning command responsibility, evidence and witness protection.

However, they faced criticism for their high costs, lengthy proceedings and dependence on state cooperation. Their creation by the Security Council also raised concerns about political

⁵ G.A. Res. 95(I), Affirmation of the Principles of International Law Recognized by the Charter of the Nürnberg Tribunal, U.N. Doc. A/RES/95(I) (11 December 1946).

⁶ S.C. Res. 827, U.N. Doc. S/RES/827 (25 May 1993).

⁷ *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (ICTY Appeals Chamber, 2 October 1995).

⁸ *Prosecutor v. Krstić*, Case No. IT-98-33-T, Judgment (ICTY Trial Chamber, 2 August 2001).

⁹ S.C. Res. 955, U.N. Doc. S/RES/955 (8 November 1994).

¹⁰ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment (ICTR Trial Chamber, 2 September 1998).

selectivity. Despite these limitations, they demonstrated the feasibility of international criminal prosecutions and laid the groundwork for a permanent institution.

Hybrid tribunals, such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, subsequently combined international and domestic elements. They sought to improve local participation and connect international justice more closely with affected communities, although problems of delay, cost and political influence persisted.¹¹

4. Institutionalisation: The Rome Statute and the ICC

4.1 Establishment and Principal Features

The Rome Statute was adopted on 17 July 1998 and entered into force on 1 July 2002, establishing the ICC as a permanent international criminal court.¹² Article 5 identifies four core crimes: genocide, crimes against humanity, war crimes and the crime of aggression. The Court's jurisdiction over aggression became operational in 2018, subject to special jurisdictional restrictions.

A defining feature of the ICC is the principle of complementarity under Article 17. The Court generally intervenes when states with jurisdiction are unwilling or genuinely unable to carry out the relevant proceedings. This arrangement seeks to balance international accountability with state sovereignty.¹³

Articles 25 and 28 address individual criminal responsibility and the responsibility of commanders and other superiors. Article 15 permits the Prosecutor to initiate investigations proprio motu, subject to statutory conditions and judicial authorisation.

The Rome Statute also recognises victims' participation under Article 68(3) and provides for reparations under Article 75. These provisions represent an important development from earlier tribunals, where victims primarily participated as witnesses.¹⁴

4.2 Landmark Cases and Critical Assessment

In *Prosecutor v. Thomas Lubanga Dyilo* (2012), the ICC delivered its first conviction for conscripting, enlisting and using children under fifteen in hostilities. The case strengthened

¹¹ Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 16 January 2002; Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, 6 June 2003.

¹² Rome Statute of the International Criminal Court, 1998, arts. 5 and 126.

¹³ Ibid., art. 17

¹⁴ Ibid., arts. 68(3) and 75.

international protection for children affected by armed conflict.¹⁵

The proceedings concerning Omar Al-Bashir, former President of Sudan, revealed the difficulties of enforcing arrest warrants against senior political leaders. Despite warrants issued in 2009 and 2010, his arrest was not secured for many years.¹⁶

The ICC's permanent status, codified framework and victim-centred provisions constitute significant achievements. However, several major powers, including the United States, China, Russia and India, are not parties to the Rome Statute. The Court's jurisdiction is also subject to the conditions established under Articles 12 and 13.

Furthermore, the ICC has faced criticism for its historical concentration on African situations. Although its investigations have expanded geographically, concerns about unequal enforcement remain. Institutional permanence has therefore not eliminated the influence of political power on international criminal justice.¹⁷

5. Contemporary Challenges and Adaptation

5.1 Selective Justice and State Sovereignty

Selective enforcement remains a major challenge. The ICC cannot automatically exercise jurisdiction over every international crime, particularly where neither the relevant territorial nor nationality connection nor another recognised jurisdictional basis exists.

Security Council referrals under Article 13(b) introduce a further political dimension because permanent members may exercise their veto powers. The failure to refer the situation in Syria to the ICC illustrates how geopolitical disagreements can obstruct accountability.

This tension demonstrates the difficulty of achieving universal justice within an international system based primarily on sovereign states.

5.2 Enforcement and State Cooperation

The ICC has no independent police force and depends on states to execute arrest warrants, obtain evidence and surrender suspects. The Al-Bashir proceedings and the arrest warrant issued against Vladimir Putin in March 2023 demonstrate the limitations of this system. The latter concerns alleged war crimes involving the unlawful deportation and transfer of children

¹⁵ 15. Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, Judgment pursuant to Article 74 of the Statute (ICC Trial Chamber I, 14 March 2012).

¹⁶ Prosecutor v. Omar Hassan Ahmad Al Bashir, Case No. ICC-02/05-01/09, Warrant of Arrest (ICC Pre-Trial Chamber I, 4 March 2009); Second Warrant of Arrest (ICC Pre-Trial Chamber I, 12 July 2010).

¹⁷ William A. Schabas, *An Introduction to the International Criminal Court* (Cambridge University Press, 6th edn., 2020).

from occupied areas of Ukraine.¹⁸

These examples show that judicial decisions alone cannot guarantee accountability. Effective international criminal justice requires consistent state cooperation and stronger compliance with legal obligations.

5.3 Ukraine and Palestine

The Ukraine situation has tested the capacity of existing institutions to address alleged international crimes. Ukraine accepted the ICC's jurisdiction through declarations under Article 12(3), permitting the Court to exercise jurisdiction over qualifying crimes within the relevant territorial scope.¹⁹

However, restrictions concerning the crime of aggression have prompted proposals for a special tribunal. This illustrates the gap between the aspiration to prosecute serious international crimes and the jurisdictional limits of the existing system.

The Palestine situation similarly raises questions concerning territorial jurisdiction, alleged crimes by different parties and the independence of international judicial institutions. Both situations demonstrate that international criminal justice continues to operate amid substantial political resistance.

5.4 Ecocide and Environmental Criminality

The growing demand to recognise ecocide as an international crime reflects increasing concern about severe environmental destruction. The Rome Statute does not currently contain a standalone offence of ecocide, although certain forms of environmental destruction may constitute war crimes when the relevant legal elements are satisfied.²⁰

In June 2021, an independent expert panel proposed a definition of ecocide involving unlawful or wanton acts committed with knowledge of a substantial likelihood of severe and either widespread or long-term environmental damage.²¹

Supporters argue that criminalising ecocide could strengthen accountability for exceptionally serious environmental harm. Critics, however, raise concerns about legal certainty, the appropriate threshold of criminal liability and the distinction between criminal conduct and

¹⁸ International Criminal Court, "Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova" (17 March 2023).

¹⁹ Rome Statute of the International Criminal Court, 1998, art. 12(3); International Criminal Court, Situation in Ukraine, official situation materials.

²⁰ 20. Rome Statute of the International Criminal Court, 1998, art. 8(2)(b)(iv).

²¹ Independent Expert Panel for the Legal Definition of Ecocide, Commentary and Core Text (Stop Ecocide Foundation, June 2021).

harmful but lawful economic activity.

The debate demonstrates the potential for ICL to adapt to emerging global concerns, although recognising a new crime would require the appropriate legal process under the Rome Statute.

5.5 Cyber Warfare, Artificial Intelligence and Victim-Centred Justice

Cyber operations targeting hospitals, electricity networks and other civilian infrastructure raise difficult questions concerning international criminal responsibility. Depending on the circumstances, such conduct may fall within existing offences, particularly war crimes, if the required legal elements are established.

Artificial intelligence and autonomous weapons systems further complicate questions of intent, foreseeability, attribution and individual responsibility. These developments call for clearer legal interpretation, improved investigative methods and stronger international cooperation.

Meanwhile, victim participation and reparations remain important achievements of contemporary ICL. In the Lubanga case, the ICC issued a reparations order in 2012. Nevertheless, delays and limited resources can prevent victims from receiving timely and meaningful relief.

Positive complementarity, which encourages genuine domestic prosecutions, offers another avenue for development. Germany's prosecution of Syrian officials in the Koblenz proceedings, culminating in a landmark conviction in 2022, illustrates how national courts can contribute to international accountability through universal jurisdiction where legally permitted.²²

6. Scholarly Critiques and Necessary Reforms

Scholarly analysis highlights the tension between legal ideals and political realities. Antonio Cassese's work emphasised the development of international criminal norms while recognising enforcement difficulties. M. Cherif Bassiouni made major contributions to the codification and institutional development of ICL, while William A. Schabas examined the development of international criminal institutions and their legal challenges.²³

Mahmood Mamdani's criticism of the ICC's engagement with Africa raises broader questions about unequal enforcement and the influence of global power relations.²⁴

²² Higher Regional Court of Koblenz, Trial against Syrian Regime Official Anwar R., Judgment of 13 January 2022 (Germany).

²³ M. Cherif Bassiouni, *Introduction to International Criminal Law* (Martinus Nijhoff Publishers, 2nd rev. edn., 2013); William A. Schabas, *An Introduction to the International Criminal Court* (Cambridge University Press, 6th edn., 2020).

²⁴ Mahmood Mamdani, *Saviors and Survivors: Darfur, Politics, and the War on Terror* (Pantheon Books, 2009)

These critiques demonstrate that the legitimacy of ICL depends not merely on codifying offences but also on applying them consistently and impartially.

Several reforms are therefore necessary. States should improve cooperation with the ICC in relation to arrests, evidence and surrender requests. The international community should explore ways to reduce political obstruction in Security Council action concerning mass atrocities. Domestic institutions should be strengthened to investigate and prosecute international crimes genuinely.

Furthermore, the international community should examine the adequacy of the Rome Statute in addressing ecocide, cyber operations and emerging technologies, while preserving legality and fair-trial guarantees. Victim participation and reparations also require stronger practical support.

7. Conclusion

International Criminal Law has evolved from the post-war prosecutions at Nuremberg and Tokyo into a complex framework supported by ad hoc tribunals, hybrid institutions and the permanent ICC. This development has strengthened individual criminal responsibility, advanced international criminal jurisprudence and improved recognition of victims' rights.

Nevertheless, selective enforcement, jurisdictional restrictions, political resistance and inadequate state cooperation continue to undermine its effectiveness. Emerging concerns involving cyber warfare, artificial intelligence and environmental destruction further demonstrate the need for continued legal development.

The statement that ICL has evolved remarkably while continuing to adapt to contemporary global challenges is therefore substantially correct. However, this evolution is neither uniform nor complete. Its future legitimacy will depend on impartial enforcement, effective cooperation and the ability to respond to serious new forms of criminality.

Ultimately, international criminal justice remains an unfinished project. Its success must be measured not merely by institutional expansion or the codification of crimes, but by its ability to deliver fair, consistent and meaningful accountability for victims across different regions and political contexts.