

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

POLITICIZED JUSTICE AND JUDICIAL LIMITATIONS: DECONSTRUCTING THE ENFORCEMENT GAP IN THE INTERNATIONAL CRIMINAL COURT.

AUTHORED BY - HANUMANT WAGHMODE

ABSTRACT

We have strong international laws and courts designed to stop human rights abuses, but massive atrocities still occur and perpetrators often evade justice in real life. The objectives of this paper are to examine the historical evolution of international criminal justice, and analyse the real-world gap between legal ideals and enforcement, and suggest practical ways to enhance the effectiveness of these mechanisms.

Looking at the historical development, we can see how global accountability has changed over time. Initially, justice was ad-hoc and seen in the post WW-II Nuremberg and Tokyo Tribunals. Later, the idea shifted to the 1990s ad-hoc tribunals like the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Rwanda (ICTR) created in response to mass ethnic cleansing. Finally, it evolved into a permanent institution with the adoption of the Rome Statute and the creation of the International Criminal Court (ICC).

The present status of international criminal justice is very complex and full of friction. On one hand, these mechanisms have successfully codified global human rights norms and established landmark jurisprudence, such as the *Tadić* and *Lubanga* judgements addressing command responsibility, war crimes, and victim reparations. But on the other hand, the reality on the ground reveals severe limitations. International courts suffer from an enforcement deficit because they lack an independent police force and rely entirely on sovereign states for arrest and compliance, while also facing widespread criticisms regarding geopolitical bias and selective prosecution.

This leads to the main research area, if international criminal mechanisms are legally empowered to enforce human rights and end impunity, why are they so heavily constrained and practically limited in stopping ongoing atrocities? This paper will try to find answers to this question and provide some suggestions to improve current system.

Keywords: International criminal justice mechanisms, Human rights abuses, Atrocities, Impunity, International Criminal Court (ICC), Enforcement deficit, Geopolitical bias.

1. INTRODUCTION

Today's global system of law is based upon a moral goal to prevent and punish atrocities that are considered to be an affront to humanity, and in response to the many breaches of human rights that have occurred throughout the twentieth century, the international community created an extensive set of laws and institutions to bring perpetrators to justice. The framework of these laws was formed by numerous multilateral treaties, the Geneva Conventions, conventions on international human rights law, and finally the ICC itself, which was established by the Rome Statute of 1998¹. Together these institutions helped to shift the traditional Westphalian view of absolute national sovereignty by creating a system which holds individuals accountable for the most serious crimes known as genocide, war crimes, crimes against humanity and aggression. Nevertheless, the gap between the rhetoric and the reality is enormous. Despite the legal perfection of international law, all too often, mass atrocities have been taking place in geopolitical fault lines. The people who commit them, ranging from dictator generals to warlords, have escaped prosecution due to a combination of political, systemic, and enforcement challenges.

This research paper contains a detailed and critical analysis of the international criminal jurisprudence. The research paper tries to assess its real-life efficiency in terms of preventing and reducing human rights violations, analyses the conflicts between idealistic tendencies and pragmatic power politics, studies the most significant cases, and suggests some improvements.

2. HISTORICAL EVOLUTION OF INTERNATIONAL CRIMINAL JUSTICE

The trajectory of international criminal justice has not been linear; rather, it has evolved through distinct historical epochs, each reacting to the institutional and political failures of its predecessor:

A) The Pre-World War II Phase

Before the twentieth century, the responsibility for atrocities committed during wars was determined by domestic laws or by military regulations, to which only a few attempts were made to subject individuals to international law. One of the first documents that attempted to regulate specific features of the Civil War was the Lieber Code of 1863². It aimed to improve

¹ The Rome Statute of the International Criminal Court, 1998, art. 86.

² Instructions for the Government of Armies of the United States in the Field (Lieber Code), 1863

the conditions for the Union soldiers and set out rules for the treatment of Union and Confederate soldiers, civilians, prisoners of war, and property. Although it was not a complete code of international law, it did make a significant contribution by introducing the principle of responsibility of individuals for acts performed during the war.

Another event that contributed to the study of the criminal policy of nations was the Versailles Treaty of 1919³. According to article 227, Kaiser Wilhelm II commits “a supreme offence against international morality and the sanctity of treaties”⁴. This clause was also significant for the development of the concept of the responsibility of states, heads of state, and officials for the violation of international law. Since, despite the phrasing of this article of the treaty, the former Kaiser was granted asylum in the Netherlands by the Dutch government, who refused to surrender him to the tribunal. Thus, despite the fact that the idea of Versailles was not realized, this formula provided a basis for subsequent discussions of the criminal responsibility of states and their officials for crimes against peace, humanity, and international law. In this sense, the Versailles precedent is also linked with the future development of the concept of the personal criminal liability of states.

B) The Post-WWII Phase: Nuremberg and Tokyo Military Tribunals

The modern era of international criminal law is generally traced to the creation of the International Military Tribunal (IMT) at Nuremberg⁵, and the International Military Tribunal for the Far East (IMTFE) in Tokyo⁶, set up after the Second World War. Established under the London Charter of 1945⁷, the tribunals marked a crucial step forward in the development of international criminal law. For the first time on such a scale and with such significance, individuals holding the highest political, military and governmental authority were brought before foreign tribunals and tried for their actions previously considered exclusively state matters. The Nuremberg Tribunal acknowledged jurisdiction over not only crimes against peace and war but also crimes against humanity. Thus, it created the precedent that the violation of international law by senior personnel of a state could result in personal criminal liability.

The tribunals’ proceedings carried considerable legal and political controversy. The tribunals faced criticism due to the fact that the accusations were built on the laws passed after the fact,

³ Treaty of Peace between the Allied and Associated Powers and Germany (Treaty of Versailles), 1919

⁴ Treaty of Versailles, 1919, art. 227.

⁵ Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (London Charter), Aug. 8, 1945, 82 U.N.T.S. 279.

⁶ Charter of the International Military Tribunal for the Far East (Tokyo Charter), Proclaimed at Tokyo, Jan. 19, 1946, 4 Bevans 20

⁷ Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (London Charter), Aug. 8, 1945, 82 U.N.T.S. 279.

thus violating the principle of *nullum crimen sine lege*⁸. The tribunals were also regarded as “victor’s justice” by critics who believed that they served as a tool for victors to judge their enemies. Nonetheless, despite the controversy and despite the fact that the proceedings of the tribunals were far from being completely fair, they are regarded as a major step forward by international law. They set the crucial precedent of the individual criminal responsibility for international crimes. The tribunals asserted that no one could rely on their position, authority or state affiliation as a protection against international law.

The principles laid down by the tribunals later influenced the establishment of other international criminal tribunals and courts, including the International Criminal Court (ICC)⁹. I can also present you with a visual chart representing the development of the law from Versailles to Nuremberg and the ICC.

C) The Cold War Phase

Soon after the Second World War and the trials of the Nuremberg and Tokyo tribunals, the development of international law faced serious challenges during the Cold War. The new bipolar world, which prioritized the confrontation between the socialist and capitalist blocs, significantly limited the response capability of the international community towards human rights violations. Although the United Nations were created to ensure international peace and security, many of their decisions were obstructed due to the persistent ideological differences between the superpowers. For instance, the United Nations Security Council (UNSC)¹⁰, which became the critical authority over international affairs, was paralyzed by frequent P5 (United States, Soviet Union, UK, France, and China) disagreements.

The latter were reluctant to approve any UNSC resolutions or collective military action without securing the strategic geopolitical interests. During the Cold War, ad-hoc international tribunals lost much of their authority to prosecute international crimes, particularly when it involved the socialist camp. Therefore, many international crimes, especially those occurring in Asia, Africa, and Latin America, went unpunished. Multiple conflicts, such as proxy wars, civil wars, military interventions, and massacres, were not subjected to international judicial control¹¹. In addition, the lack of a permanent international court impeded the international community’s ability to punish states for human rights violations on a case-by-case basis. Overall, the Cold

⁸ Rome Statute of the International Criminal Court, 1998, art. 22 (*Nullum crimen sine lege*).

⁹ Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3.

¹⁰ Charter of the United Nations, 1945, art. 24.

¹¹ William A. Schabas, *An Introduction to the International Criminal Court* 1–15 (Cambridge University Press, Cambridge, 4th edn., 2011)

War created a major obstacle in the international criminal law development, as enforcing international law depended on the political environment and was no longer universal.

D) Ad-Hoc Tribunals

The breakup of the Soviet Union, along with the horrific resurgence of ethnic cleansing, sexual violence, and genocide in the former Yugoslavia as well as Rwanda, led to a renewed push for international criminal justice. To prosecute individuals responsible for these atrocities, the United Nations Security Council (UNSC) through its mandate under Chapter VII of the UN Charter created two ad hoc international criminal tribunals.:

- **The International Criminal Tribunal for the Former Yugoslavia (ICTY)¹²:** Established in 1993 under Resolution 827; headquarters in The Hague, tasked with prosecuting serious violations of international humanitarian law that took place in the territory of the former Yugoslavia from 1991.
- **The International Criminal Tribunal for Rwanda (ICTR)¹³:** Established by Resolution 955 in 1994, located in Arusha, Tanzania, for the prosecution of genocide and other grave crimes committed in Rwanda and its neighbouring countries in 1994.

These tribunals demonstrated the ability of international courts to carry out complex and exacting trials and also to develop a considerable amount of jurisprudence on key issues in international criminal law. They made important contributions to the law on command responsibility, on the specific intent (*dolus specialis*) required to commit genocide, and on the use of sexual violence as an instrument of war and as an international crime.

E) Hybrid and Mixed Tribunals

Acknowledging the high costs and the remoteness of purely international tribunals, the international community began to create hybrid or mixed courts, which combined international and local judges. Such a Special Court for Sierra Leone (SCSL)¹⁴ was established in 2002 in Sierra Leone under an agreement between the United Nations and Sierra Leonean authorities. Thus, by working in Sierra Leone and having both international and local judges, such a tribunal aims to ensure accessibility to all members of society and to guarantee the support of the local community.

¹² Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993).

¹³ Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, U.N. Doc. S/RES/955 (Nov. 8, 1994).

¹⁴ Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Jan. 16, 2002, 2178 U.N.T.S. 138

The Extraordinary Chambers in the Courts of Cambodia (ECCC)¹⁵ also unites judges, prosecutors, and lawyers from Cambodia and international experts. The tribunal was established to try the main Khmer Rouge leaders and those responsible for crimes against humanity in 1975-1979. It focuses on restoring the dignity of the victims and tries to give them a chance to obtain reparations and compensation for the damage. This allows the ECCC to create a tribunal that will unite both international and local judges, involve living victims in the judicial process, and ensure the rule of law in Cambodia.

A similar structure to the ECCC is the Special Tribunal for Lebanon (STL). By analysing these tribunals, it is possible to notice that states are moving towards adjustable international criminal justice, which is more localized and closer to the people. Having both international and local judges, they try to ensure the rule of law and help countries realize their own criminal policy. However, such tribunals have several problems, including costs, political interference, structural complexity, and the difficulty of balancing the interests of states and citizens. Thus, hybrid courts are a promising and viable option for ensuring international criminal justice with local characteristics.

F) The Rome Statute and the International Criminal Court (ICC)

Seeking to replace the ad hoc and reactive system of international criminal tribunals, states convened in Rome for the United Nations Diplomatic Conference of Plenipotentiaries in 1998¹⁶. On 17 July 1998, the conference adopted the Rome Statute of the International Criminal Court (ICC) a milestone in the evolution of international criminal law. Taking force on 1 July 2002, the Statute formally established the ICC as the first ever permanent international criminal court under a multilateral treaty.

The establishment of the ICC represented a change in approach from the creation of ad hoc tribunals in response to major atrocities to a more permanent and proactive international mechanism for pursuing international crimes. The Court's jurisdiction encompassed the core crimes of genocide, crimes against humanity, war crimes and, subject to certain conditions the crime of aggression. Meanwhile, the Rome Statute sought to preserve the primacy of national courts through the principle of complementarity. The ICC, as an international court, was designed to intervene only when national jurisdictions proved incapable of prosecuting international crimes. Its remit focused on individuals who bore the greatest responsibility for

¹⁵ Agreement between the United Nations and the Royal Government of Cambodia on the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, June 6, 2003, 2329 U.N.T.S. 117

¹⁶ United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, June 15–July 17, 1998, *Official Records*, U.N. Doc. A/CONF.183/13 (Vol. I–III).

international crimes, thus seeking to ensure that official position did not shield the guilty from prosecution.

3. HUMAN RIGHTS ABUSES AND CORE INTERNATIONAL CRIMES

While there is a range of different human rights violations, not all of which will amount to international crimes, international criminal law is concerned with those which are of the most serious, widespread or systematic nature and which have been adopted by the international community of states as normative.

At the most serious level are violations of peremptory norms (*jus cogens*)¹⁷ which are accepted by the international community as normative and which no state can legitimately derogate from.

Genocide:

Genocide is defined in Article 6¹⁸ of the Rome Statute and is 'acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group'

These acts include "killing members of the group", "causing serious bodily or mental harm to members of the group", "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction", "imposing measures intended to prevent births within the group" and "forcing the group to undergo a process of forced transfer".

The essential ingredient in an act of genocide is *dolus specialis*, in other words, that the accused has had the specific intention to destroy, in whole or in part, a given group.

Crimes Against Humanity:

Crimes against humanity are defined in Article 7¹⁹ of the Rome Statute and include "act of persecuting a civilian population, including murdering, causing serious bodily or mental harm to members of the civilian population, or other acts of a similar sort committed with knowledge of the civilian nature of the population being attacked"

These acts take place as part of a widespread or systematic attack against a civilian population. Included within this definition are murder, extermination, enslavement, deportation or forcible transfer, imprisonment, torture, persecution, enforced disappearance, apartheid, sexual violence including rape, sexual slavery and forced pregnancy.

¹⁷ Vienna Convention on the Law of Treaties, 1969, art. 53, 1155 U.N.T.S. 331.

¹⁸ Rome Statute of the International Criminal Court, 1998, art. 6

¹⁹ Rome Statute of the International Criminal Court, 1998, art. 7

Crimes against humanity differ from genocide in that they can be committed in peacetime as well as in times of war but all such acts must form part of a widespread or systematic attack in order to be considered as falling within this category of international crimes.

War Crimes:

War crimes are defined in Article 8 of the Rome Statute and include "serious violations of international humanitarian law committed against civilians during an armed conflict" The basis for this definition lies particularly in the Geneva Conventions of 1949 and their Additional Protocols.

Acts which may constitute war crimes include wilful killing, torture, cruel treatment or torture, attacking civilians or civilian objects, attacking protected medical personnel, pillage, unlawful destruction or appropriation of property, and the recruitment or use of children under the age of fifteen. It should be noted that it is the context within which the violations of international humanitarian law take place which constitutes the crucial criterion for determining whether a given act constitutes a war crime.

The Crime of Aggression:

The crime of aggression is defined in Article 8²⁰ of the Rome Statute and includes "planning, preparation, initiation or execution of an act of aggression committed by a person in a position effectively to exercise control over, or direction of, the political or military action of a State". An act of aggression may take place by means of invasion, bombardment, military occupation, annexation or annexation by means of force.

The act in question must be such that, by its nature, gravity and scale, it constitutes "a manifest violation of the Charter of the United Nations". Unlike genocide, crimes against humanity and war crimes, the crime of aggression is concerned with the conduct of states and with the responsibility of political authorities for the gravest forms of violations of international law.

4. ANALYSIS OF PRACTICAL IMPACT OF INTERNATIONAL CRIMINAL JUSTICE MECHANISM:

The effectiveness of international criminal justice mechanisms is continually constrained by significant structural limitations and complex political realities.

²⁰ Rome Statute of the International Criminal Court, 1998, art. 8

The Enforcement Deficit and Absence of Coercive Machinery:

Unlike domestic legal systems that have a police force at their disposal, investigative agencies, prosecutors, and correctional departments, international criminal tribunals do not have coercive enforcement tools at their disposal. According to Article 86 of the Rome Statue, the International Criminal Court (ICC) relies on states to cooperate in executing its sentences. This includes arresting suspects, providing evidence, protecting witnesses, and delivering convicted criminals to the jail in The Hague.

The problem of non-cooperation occurs when states refuse to comply with ICC requests to apprehend and surrender individuals to the Court. This issue emerges when states do not want to deliver specific political figures, particularly sitting presidents, to the Court. The case of Sudanese President Bashir shows how states can frustrate the Court's authority. The Court cannot enforce its ruling, and Bashir continues to evade accountability. By and large, the jurisdiction of the ICC is undermined whenever states do not cooperate with its investigations, obstructing justice and diminishing the Court's role in delivering international justice.

Geopolitical Bias, Selectivity, and Sovereign Immunity:

International criminal justice does not exist in a political vacuum. Critics often argue that institutions such as the ICC are inherently politicized, representing geopolitical biases. During its crucial formative years, the court's docket was skewed towards cases taking place on the geographical territory of the developing world (Uganda, DRC, CAR, Sudan/Darfur), while atrocities committed by or with the support of any of the permanent UNSC members (or states otherwise under their geopolitical umbrella) were effectively beyond the jurisdiction of international prosecutors due to their status as non-ratifiers (UNSC veto powers: U.S., China, Russia) or the protection afforded to them by the UNSC veto. This perceived ineptitude to act against powerful geopolitical actors weakens the legitimacy and perceived universality of international criminal justice.

The Limits in Creating Deterrence:

The main reason for the existence of international criminal courts is the deterrence effect that is, the fact that the prospect of international prosecution and punishment will prevent potential tyrants, megalomaniacs, and warlords from committing crimes against humanity. However, practice shows that sometimes it works in the reverse way: the expectation of an international trial functions as an additional stimulus to tyranny. Individuals who have designs on power and consider that their tenure in office should be total and uninterrupted feel that the best way to

avoid international prosecution is to enact the most radical and violent measures a scorched-earth policy. On the other hand, the implementation of retributive justice fails to provide a framework within which warring factions could negotiate a cessation of hostilities. As a result, bloodshed and brutality are prolonged, inflicting additional suffering on the civilian population.

5. LANDMARK JUDGEMENTS

Prosecutor v. Duško Tadić (ICTY Appeals Chamber, 1995/1999)²¹

Tadić can be considered the most important ruling in the history of modern international criminal law. The Appeals Chamber of the ICTY set out the major criteria for the characterization of armed conflicts (criteria for the distinction between international and non-international armed conflicts). Moreover, the ruling laid down the doctrine of individual criminal responsibility, thus defining the doctrine of Joint Criminal Enterprise (JCE). This doctrine changed the way prosecutors approach the prosecution of group responsibility for the commission of atrocities.

Prosecutor v. Thomas Lubanga Dyilo (ICC Trial Chamber I, 2012)²²

This case being the first judgment of the ICC, created a lot of important precedents, which have been followed by the ICC in its future work. Trial Chamber I declared Congolese militia leader Thomas Lubanga Dyilo guilty of committing the war crimes of recruiting, conscripting, and using children under the age of fifteen to take part in hostilities. Thus, the case has added to the legal body of regulations on the recruitment and use of child soldiers as well as to the establishment of ICC policy on victim participation. The case was applied to Rule 89 of the Rules of Procedure and Evidence and to the reparation framework of Article 75 of the Rome Statute and thereby set an example showing that the role of victims in international criminal cases should be meaningful and not limited to passive witness statements regarding the offender.

Prosecutor v. Jean-Pierre Bemba Gombo (ICC Appeals Chamber, 2018)²³

The Bemba appeal judgment provided new insight on the strict standards required for superior/command responsibility under Article 28 of the Rome Statute. Was Thomas Lubanga responsible? Well, in the Bemba case, the Trial Chamber had convicted Jean-Pierre Bemba

²¹ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Appeals Chamber Judgment, July 15, 1999.

²² *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Judgment pursuant to Article 74 of the Statute (Trial Chamber I), Mar. 14, 2012.

²³ *Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08 A

Gombo for crimes committed by forces under his effective control and command in the Central African Republic, holding that he had not taken all necessary and reasonable steps within his capacity to prevent or suppress the crimes. But then the Appeals Chamber had set aside the conviction and acquitted him. Through the decision, the evidentiary difficulty experienced by the prosecutors while attempting to prove the criminal responsibility of military superiors for crimes committed by subordinates was highlighted, especially where the accused was at some geographical distance from the place where the crimes were committed. The judgment also pointed out the need for establishing the requirements of command responsibility, rather than taking the superiority alone into consideration.

6. RECOMMENDATIONS

- 1. Strengthening Multilateral Enforcement and Sanctions Systems:** There is a need for international society to enhance the development of secondary enforcement systems, which can be through diplomatic efforts, sanctions on trade, and multilateral asset freeze systems, among others, and these should be in conjunction with the UN system. This will help put pressure on those states that do not cooperate with international courts, especially where there are arrest warrants and indicted individuals, and encourage their cooperation with international law.
- 2. Operationalizing Positive Complementarity and Domestic Capacity Building:** According to article 17 of the Rome Statute, national judicial systems remain primarily responsible for investigation and prosecution of international crimes through the principle of complementarity, in which the ICC operates. It is thus appropriate that international bodies, donors, and legal institutions make significant efforts in capacity building, training, and development of legal infrastructure especially in developing countries and post-conflict regions. The development of national judicial systems will ensure that States can carry out effective investigation and prosecution of genocide, crimes against humanity, and war crimes, and relieve the pressure on international courts.
- 3. Reforming UN Security Council Veto Dynamics:** Reforming the Use of the Security Council Veto: The veto authority of the five permanent members of the United Nations Security Council (P5) can pose major political obstacles to collective action and in some cases even prevent referrals to the International Criminal Court (ICC). This is particularly worrying in cases of alleged mass atrocities and major violations of international humanitarian law. To overcome this institutional challenge, the P5

members could consider adopting a voluntary code of conduct that would limit the use of the veto in the case of genocide, crimes against humanity, and war crimes. Alternatively, more radical institutional reforms could be initiated that would restrict the use of veto for P5 members in cases of large-scale atrocities.

- 4. Expanding Victim-Centric Reparations and Witness Protection:** In my opinion, international tribunals should make sure to sufficiently finance victim trust funds and provide protection to witnesses. This will ensure that not only the wrongdoers are punished, but also that victims of atrocities are properly supported and protected, which in my opinion will make international courts more effective.

7. CONCLUSION:

The evolution of international criminal mechanisms has profoundly altered the structure of global governance by effectively tearing down the absolute protection provided by state sovereignty and developing an emerging universal benchmark of accountability. Starting from the innovative military trials of Nuremberg, up to the formation of the International Criminal Court, and culminating in the wealth of case-law generated by ad-hoc and hybrid tribunals, international criminal law has enshrined human rights standards and historical memory. Nevertheless, as has been evidenced in the course of this complete analysis, these bodies continue to be severely limited by their enforcement weakness, geopolitical selectivity, and dependence upon state compliance. The absolute deterrence of human rights violations is still an aspirational goal rather than a concrete reality. Finally, although international criminal tribunals are unable to stop wars and tyrants in their tracks, they remain essential tools for delegitimization, establishing an immutable historical record, and maintaining the moral conscience of mankind.

References:

1. The Rome Statute of the International Criminal Court
2. Instructions for the Government of Armies of the United States in the Field (Lieber Code), 1863.
3. Treaty of Versailles, 1919, art. 227.
4. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (London Charter), Aug. 8, 1945, 82 U.N.T.S. 279.

5. Charter of the International Military Tribunal for the Far East (Tokyo Charter), Proclaimed at Tokyo, Jan. 19, 1946, 4 Bevans 20.
6. Charter of the United Nations, 1945, art. 24.
7. Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993).
8. Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, U.N. Doc. S/RES/955 (Nov. 8, 1994).
9. Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Jan. 16, 2002, 2178 U.N.T.S. 138.
10. Agreement between the United Nations and the Royal Government of Cambodia on the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, June 6, 2003, 2329 U.N.T.S. 117.
11. United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, June 15–July 17, 1998, *Official Records*, U.N. Doc. A/CONF.183/13 (Vol. I–III).
12. Vienna Convention on the Law of Treaties, 1969, art. 53, 1155 U.N.T.S. 331.
13. William A. Schabas, *An Introduction to the International Criminal Court* 1–15 (Cambridge University Press, Cambridge, 4th edn., 2011).
14. *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Appeals Chamber Judgment, July 15, 1999.
15. *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Judgment pursuant to Article 74 of the Statute (Trial Chamber I), Mar. 14, 2012.
16. *Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08 A.