



RESEARCH ARTICLE

# The Activation of Certain Mechanisms for Implementing International Humanitarian Law Internationally

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ARTICLE INFO	ABSTRACT
Received: Jul 19, 2024 Accepted: Sep 10, 2024	The research analytically addresses the mechanisms for implementing international humanitarian law at the international level, focusing on the roles of courts and organizations in general, specifically the International Criminal Court and the United Nations. Additionally, it examines the work of councils and committees at the international level, such as the Human Rights Council and the International Committee of the Red Cross, to assess the effectiveness of these mechanisms in performing their duties. This analysis is conducted considering the significant challenges arising from the use of violence and excessive force by some states, the blatant disregard for international bodies, and the attacks on those who uphold them. The research also explores the expectations and concludes that the bodies have played roles that can be described as weak, considering the anticipated outcomes. It emphasizes the importance of what these organizations could achieve, concluding that the solution lies in restructuring these bodies to guarantee better and uphold the application of international humanitarian law at the international level practically and effectively.
<b>Keywords</b>	
International Criminal Court United Nations International Committee of the Red Cross Human Rights Council International Humanitarian Law	

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## INTRODUCTION

Undoubtedly, the proper and effective implementation of international humanitarian law is a goal everyone aspires to—governments and the people. This is because some governments have no interest in applying the rules of international humanitarian law for several reasons, most notably arms traders, those opposed to peace, and psychologically disturbed individuals who take pleasure in torture and inflicting pain on others. Therefore, we aim to shed light on the effectiveness of the mechanisms used to implement international humanitarian law on the international level, especially after some states and officials have failed to enforce these rules, disrespecting them and even attacking the honorable judges who serve on international judicial bodies that adhere to the rules of international humanitarian law when issuing their rulings.

A major issue lies in the increasing number of violations of international humanitarian law and the excessive use of force in armed conflicts without mercy. We have relied on an analytical approach to study the mechanisms to implement international humanitarian law. Our main question is: Are the current mechanisms for applying international humanitarian law effectively or not? In addition, there are several sub-questions: What are the mechanisms used to apply the rules of international

humanitarian law? What are the recent breaches of international humanitarian law? What procedures should be developed to ensure international humanitarian law's realistic and practical implementation?

Before conducting this study, several related attempts were made, including the master's thesis by Ghneim Qantas Al-Mutairi at the Middle East University, Jordan, in 2010, titled "Mechanisms for the Application of International Humanitarian Law". The thesis examined the international humanitarian law (IHL) application at the national level, the obligations for its incorporation into domestic law, and the mechanisms for its global application. It highlighted the roles of international criminal courts and governmental and non-governmental organizations. The study concluded that IHL is binding and criminal, punishing those who violate it, especially for international crimes as defined in Article 5 of the Rome Statute of the International Criminal Court (1998). IHL includes mechanisms to ensure its implementation nationally, through state legislation and education, and internationally, where the ICC and the UN play critical roles in ensuring compliance and addressing violations, including using sanctions under Chapter VII of the UN Charter.

A study published in the Moroccan Journal of Local Administration and Development by Dr. Khalid Ali Al-Khafaji, along with researchers Azhar Hameed and Ghasaq Khalil, titled "International Humanitarian Law and Contemporary Challenges" (Issue No. 185, June 2021), The study concluded that the international community needs a clear, comprehensive, and practical redefinition of the security doctrine, which often overlaps with military and intelligence practices, affecting the application of IHL. It recommended that the UN General Assembly and Red Cross experts critically review local laws in conflict areas. The study also called for strengthening the role of international humanitarian organizations, notably the Red Cross, in promoting humanitarian efforts during armed conflicts and urged the UN General Assembly to provide financial, logistical, and research support to the Red Cross. Additionally, it emphasized the need for governments to include provisions in their constitutions to enforce IHL.

The master's thesis by Wasim Jaber Al-Shanti, titled "The Effectiveness of Mechanisms for the Application of International Humanitarian Law," at the Islamic University of Palestine in 2016, examined the effectiveness of mechanisms in reducing violations of international humanitarian law (IHL). The study stressed that all parties to IHL conventions must take necessary steps to ensure that authorities and individuals under their control comply with IHL rules. It highlighted that modern conflicts reveal states' disregard for IHL provisions. Despite existing mechanisms at national and international levels, a lack of political will and practical capacity has hindered their effectiveness. The study pointed out the inefficiency of punitive mechanisms in the Geneva Conventions and their protocols, emphasizing that it is unrealistic to expect states to prosecute their own leaders or military personnel for war crimes committed under their orders. Key recommendations include amending the Geneva Conventions to clarify how states can enforce IHL and recognizing the International Criminal Court as a primary mechanism for punishing IHL violations. The study also called for activating the Palestinian National Committee for International Humanitarian Law to fulfill its mandate, especially in raising awareness about IHL.

A study by Marco Sassòli, titled "The Implementation of International Humanitarian Law: Current and Inherent Challenges," The University of Geneva, Yearbook of International Humanitarian Law, 2007, vol. 10, discusses the implementation of International Humanitarian Law (IHL) faces several challenges. Some are inherent, as IHL applies to armed conflicts and requires a situation to be classified before it can be used. Existing mechanisms for enforcement either do not function effectively or have limitations. In specific conflicts, like asymmetric ones, and with certain actors, such as armed groups, it is tough to ensure compliance with IHL. Additionally, there is a more dangerous challenge related to perception. The gap between the promises of protection offered by law through doctrine and jurisprudence and the systematic non-compliance reported by media and

NGOs undermines the law's credibility and the willingness to respect it. The author advocates ways to bridge this gap.

### **Mechanisms for Implementing International Humanitarian Law at the International Level**

International humanitarian law has faced challenges due to the political and international changes occurring on the global scene since the beginning of the third millennium, especially with the rise of extremist groups, the escalation of global terrorism, and the terrorism practiced by many states through the excessive use of lethal weapons. These challenges hinder the primary objective of applying international humanitarian law, which is to ensure respect for and adherence to legal rules that guarantee the protection of people's lives from the horrors of war. (Al-Khafaji, Hameed, & Khalil, 2021)

We aim to examine the most important mechanisms used to implement these rules to assess their effectiveness:

#### **The International Criminal Court (ICC)**

As part of the effort to punish perpetrators of serious violations, the adoption of the Rome Statute of the International Criminal Court 1998 was aimed at ensuring that perpetrators of international crimes do not escape punishment. The Rome Statute established a distinct criminal legal system, as international crimes, from nature, represent violations of international legal rules. International criminal law seeks to provide criminal protection for these rules and impose punishment on those who violate them (Ahmed & Toufik, 2019).

The efforts of the international community to establish an international criminal judiciary to deter violators of the most heinous crimes against human rights culminated in the creation of the International Criminal Court (ICC) in 1998. This was done to address the shortcomings of previous ad hoc tribunals and to fill a significant gap in international humanitarian law: the absence of a permanent international criminal body to protect the rules and principles of international humanitarian law and punish those violating its provisions. The ICC became one of the most critical mechanisms created by the international community to suppress violations of international humanitarian law. The court's role lies in applying international humanitarian law by addressing severe breaches of its rules. Many of the acts that fall within the jurisdiction of the ICC, particularly war crimes, are criminalized based on international agreements such as the Four Geneva Conventions of 1949. The Rome Statute, in its Article 8, explicitly defines war crimes to include serious violations of the four Geneva Conventions of 1949. Several international treaties, which are sources of international humanitarian law, have also referenced crimes against humanity, and these crimes have been codified in the Rome Statute of the ICC. These conventions have played a significant role in codifying such crimes by the ICC, the most important being the 1949 Geneva Conventions. Article 8 of the Rome Statute explicitly addresses war crimes, and its provisions are almost identical to those found in the Geneva Conventions of 1949 and their additional protocols concerning such crimes. In Article 8(a), war crimes are defined as grave breaches outlined in Article 3 of the 1949 Geneva Conventions and as severe violations under the First and Second Additional Protocols to the Geneva Conventions, which are part of the international law of armed conflicts. Additionally, Article 8(b) defines war crimes as severe violations of customary international law, affirming the role of customary international law as a source of international humanitarian law in the court's view. Furthermore, Article 3(c) of the Rome Statute confirms the ICC's jurisdiction over violations mentioned in the standard Article 3 of the four Geneva Conventions, committed during non-international armed conflicts, and the crime of aggression (Nakhlah, 2024).

By analyzing the provisions of the Rome Statute of the International Criminal Court (ICC), we can observe how this statute aims to apply a degree of effectiveness to the rules of international humanitarian law across its various articles. The international humanitarian law conventions form

the substantive aspect of the ICC's jurisdiction. This is evident through the extension of the court's jurisdiction to cover the most significant violations of international humanitarian law, including genocide, crimes against humanity, and war crimes. The Rome Statute explicitly outlines in Article 8 all acts that constitute war crimes, leaving no room for doubt that the ICC is a court of international humanitarian law. Genocide is one of the most heinous crimes that can be committed against humanity, and it has been recognized as a crime that can threaten international peace and security. The world witnessed genocide before and during World War II, where governments committed mass extermination against groups for racial, ethnic, or national reasons, intending to eliminate them. In response, the United Nations General Assembly 1946 issued a resolution defining this crime and its perpetrators as violating the purposes of the UN and classifying it as an international crime subject to international jurisdiction and deserving the harshest punishment. Through this resolution, the General Assembly called on member states to enact the necessary laws to prevent and punish the perpetrators of this crime. Following this resolution, the Economic and Social Council took steps to prepare a draft international convention on the prevention and punishment of the crime of genocide. The UN approved this draft in 1948, which has since become a source of international law. The Rome Statute of the ICC, in its Article 6, also prohibits genocide and defines it as committing any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group as such: 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 in whole or in part, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group. (Shehab & Al-Amin, 2016).

Therefore, the International Criminal Court has jurisdiction over crimes occurring in the territory of each State that becomes a party to the Rome Statute. If the State on whose territory the crime occurred is not a party to this constituent regime, The rule is that that court has jurisdiction only if the State accepts the court's jurisdiction over the crime. This is an application of the principle of the relative effect of treaties. Still, this principle, if justified in international criminal justice, maybe a means of obstructing criminal justice. Weakness in the global legal instrument is sufficient for any State aggressor or intending to aggression not to enter a party to this system and does not accept the Court's jurisdiction to consider the crimes that are the subject of the attack for its nationals to escape punishment for those crimes, as for spatial jurisdiction. (Al Kalbani, 2010)

The International Criminal Court has issued numerous rulings that apply the rules of international humanitarian law, among the most significant of which are: Slobodan Milošević, the former president of Yugoslavia, was tried at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague in 2002. On March 7, 2023, the International Criminal Court (ICC) issued arrest warrants for Russian President Vladimir Putin and Maria Lvova-Belova for crimes related to Ukraine. Similarly, in 2024, the court issued arrest warrants for Sergei Kubyash and Viktor Sokolov for crimes in Ukraine; in May 2023, the court convicted two Serbian security officials, Jovica Stanišić and Franko Simatović, for their roles in crimes committed during the Bosnian war, sentencing them to 15 years in prison. In December 2022, the court upheld the conviction of Dominic Ongwen, the former commander of the Lord's Resistance Army (LRA); in July 2023, the court opened an investigation into war crimes in Sudan, particularly in West Darfur. The court had previously issued an arrest warrant in 2009 for former Sudanese President Omar al-Bashir for crimes against humanity and genocide. Similarly, the ICC has jurisdiction over the alleged deportation of the Rohingya from Myanmar; in 2011, the United Nations Security Council referred the situation in Libya to the ICC, leading to an arrest warrant for Abdullah al-Senussi on charges of crimes against humanity, Alongside Putin and al-Bashir, other fugitives include Saif al-Islam Gaddafi, Joseph Kony of the LRA, and leaders of the Sudanese Janjaweed militia. Notable trials include that of Radovan Karadžić, sentenced to life imprisonment in 2019, and Laurent Gbagbo, acquitted of crimes in 2020. Former Liberian President Charles Taylor was sentenced to 50 years in prison for his role in the Sierra Leone civil war. ((ICC), 2024)

## **The United Nations**

The United Nations has played a crucial role in addressing crimes that threaten international security, especially after the atrocities of the World Wars. It has established legal frameworks and specialized bodies to protect human rights, particularly during armed conflicts. Key initiatives include the creation of the International Law Commission in 1947 and adopting treaties like the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Hague Convention for the Protection of Cultural Property, and the Convention against Torture (1984). The UN also facilitated the establishment of the International Criminal Court (ICC) in 1998. The UN Security Council has created ad hoc international tribunals of severe crimes, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994. The Council also passed resolutions regarding the conflict in Darfur, including Resolution 1593 (2005), which referred those accused of war crimes in Darfur to the ICC. Additionally, it created the Special Tribunal for Lebanon in 2007 to investigate the assassination of Lebanese Prime Minister Rafic Hariri. However, the Security Council's authority to establish such tribunals has faced criticism, as some argue that international tribunals should be established through international law or treaties, not Security Council resolutions. Critics claim that the UN Charter does not explicitly grant the Council the power to create judicial bodies. Furthermore, it is argued that temporary tribunals, such as those for Yugoslavia and Rwanda, do not necessarily promote long-term international peace and security, and some conflicts, like those in the Congo or Cambodia, did not receive the same judicial attention. Despite these criticisms, the Security Council justifies its actions under Chapter VII of the UN Charter, which allows it to take necessary measures when peace and security are threatened. (Al-Shazly, 2014).

## **The Human Rights Council**

The establishment of the Human Rights Commission is credited to international efforts made during the conferences that led to the creation of the United Nations. Since 1946, the Economic and Social Council established the Human Rights Commission through Resolution (5)(1). Initially, the Commission's role was limited to drafting international human rights law agreements due to member states' resistance to external interference in their internal affairs. However, the Commission's mandate evolved, and starting in 1967, it was given the authority to promote and protect human rights. In 1993, a special session was granted to address severe violations committed by states against their citizens and the citizens of opposing parties in conflicts. Despite this expanded role, the Commission struggled to implement these responsibilities due to its weak legal standing effectively. The replacement of the Human Rights Commission by the Human Rights Council, through General Assembly Resolution (60/251) on March 15, 2006, was in response to the circumstances of the time, which required the creation of a Human Rights body under the General Assembly. Unlike the Human Rights Commission, which was a subsidiary of the Economic and Social Council, the Human Rights Council operates as a subsidiary body of the General Assembly (Bougfala, 2015).

The main goal of the Human Rights Council is to address cases of human rights violations and provide recommendations on them. It also deals with situations of armed conflict, albeit from a human rights perspective. The first resolution of the Council's first special session addressed humanitarian law, even though its title was "The Human Rights Situation in the Occupied Palestinian Territory." Many of the Council's sessions have dealt with cases of armed conflict, mainly in the Middle East. When these situations, such as those currently affecting Sudan, Somalia, or Israel and the Occupied Palestinian Territories, are addressed within the scope of international humanitarian law, the Council provides a forum for discussions that otherwise might not have taken place regarding the applicable law during armed conflicts. States and public opinion alike closely follow these discussions. Despite

the Council's proceedings often being highly politicized and focused on human rights, they can still have a deterrent effect, fulfilling a function of naming and shaming. One of the Council's key innovations is the Universal Periodic Review (UPR), which reviews the human rights situation in 193 UN member states. Resolution 1/5 specifically empowers the UPR to review compliance with international humanitarian law, among other things. The review process has addressed this law on several occasions, and it has also been referenced in different mechanisms, such as the Council's new Advisory Committee, which acts as the Council's "think tank," providing expertise and advice on specific human rights issues. Other mechanisms include special procedures and a complaint procedure that allows individuals and organizations to bring human rights violations to the Council's attention. The Human Rights Council continues to work with the UN's special procedures mechanisms, including working groups, special rapporteurs, and representatives assigned by the Council to review specific situations. These mechanisms should undoubtedly consider the interaction between human rights and international humanitarian law in their work (Pfanner, 2009)

### **The International Committee of the Red Cross (ICRC)**

The ICRC plays a crucial role in protecting war victims practically. Its primary mission is to provide protection and assistance to victims of armed conflicts, carrying out tasks assigned under the Geneva Conventions and working towards the faithful application of international humanitarian law in armed conflicts. The ICRC is also responsible for investigating any complaints based on allegations of violations of this law and, always, as a neutral organization conducting humanitarian work, it strives to ensure protection and assistance for military personnel and civilians affected by such events, especially during international and non-international armed conflicts and internal strife. The ICRC's core internal position regarding its mission and activities emphasizes the dual nature of its work—field assistance to victims of armed conflicts on the one hand and the development and promotion of international humanitarian law and humanitarian principles on the other. This duality is part of the institution's identity. There are over a hundred references to the ICRC in the 1949 Geneva Conventions and their additional protocols, most of which recommend actions to be taken. Other tasks are left to the ICRC's discretion, and its actions are shaped by needs and circumstances, reflecting its right to initiative. The ICRC's various missions are often referred to as its role as the "guardian" of international humanitarian law rather than as its guarantor, as the high contracting parties are required to fulfill that role under their obligations in the standard Article 1. They must also provide the ICRC with all possible facilities to enable it to carry out its humanitarian tasks to secure protection and assistance for conflict victims. The International Criminal Tribunal for the Former Yugoslavia (ICTY) recognized the specific role of the ICRC in implementing international humanitarian law in the "Simic" case, upholding the ICRC's immunity from testifying in court to preserve its ability to perform this role. The ICRC has taken various measures to ensure the implementation of international humanitarian law before the outbreak of wars, increasing protection for war victims and accelerating compliance with the rules. For instance, the ICRC has actively supported national implementation measures and efforts to raise awareness of relevant laws. It has established an advisory services department at headquarters and in the field to explore various measures for incorporating international humanitarian law into national systems. ICRC staff members review national legislation, military doctrines, education and training, and sanctions systems, proposing any necessary changes to align them with states' obligations under humanitarian treaties. The ICRC focuses on key groups, including actors capable of significantly influencing legislative structures, military doctrines, training, and disciplinary and penal sanctions systems. These actors include authorities, political parties, the judiciary, armed groups, national Red Cross and Red Crescent societies, media, the private sector, religious groups, academia, NGOs, and international organizations. These actors can have a positive (or negative) impact on the lives and dignity of people affected by armed conflicts. They may facilitate or obstruct the ICRC's access to the affected populations (Ahmed, Abd Al-Rahim, & Ahmed, 2017).

The International Committee strives diligently to apply international humanitarian law faithfully to persuade countries and other concerned parties to accept and comply with the applicable rules of international humanitarian law in each situation. The obligations arising from these rules vary depending on the classification of the problem as an international armed conflict, and this classification also determines whether a country is obligated to accept the Committee's offer of services. Most victims in international armed conflicts enjoy the status of protected persons, with specific obligations on states toward them and the International Committee of the Red Cross alike, while the law applicable in internal conflicts does not impose the same constraints on the warring parties. The Committee has formally drawn the attention of parties engaged in traditional international disputes to the basic rules of international humanitarian law. The memorandums sent by the Committee remind these parties of the relevant principles and regulations, including those relating to the conduct of hostilities and the protection of people affected by war. The legal classification of a situation as an armed conflict helps highlight the obligations of warring parties, provides a framework for the Committee's operations, and offers guidance to its field delegates. The ultimate and overarching goal of the Committee is to ensure that victims benefit from treatment that at least complies with humanitarian rules in internal conflicts (Pfanner, 2009).

The International Committee of the Red Cross (ICRC), as the founding body of the International Red Cross and Red Crescent Movement, has been closely linked to the development of international humanitarian law considering the evolving and increasing international and internal armed conflicts. Their legal experts work diligently to develop, promote, and explain international humanitarian law through commentaries and contribute to its dissemination. As per its statute, the ICRC supervises the accurate implementation of the four Geneva Conventions of 1949 and the two Additional Protocols of 1977, which require collaboration with all contracting parties. This kind of work cannot result from unilateral action, be achieved quickly, or be limited to a specific area. Apart from armed conflict scenarios, the ICRC makes tremendous efforts to gather as much information as possible about national measures to implement international humanitarian law. Due to its proximity to the application of this law and its operations in conflict areas as recognized in the provisions of the Geneva Conventions, the ICRC holds a distinguished position, enabling it to provide observations and initiatives to the warring parties and contracting states. The ICRC plays a unique role during its legal assistance and protection missions as it is in constant contact with victims and parties to the conflict. Through its delegations, it draws the authorities' attention to any perceived violations of international humanitarian law, whether in the form of prohibited actions or omissions of legally required acts. Delegates strive to gather facts meticulously and make concrete suggestions to avoid violations. Given that its statute allows it to receive complaints from parties to the conflict or third parties, the ICRC undertakes the necessary efforts with the concerned authorities. Typically, these efforts are conducted confidentially with the officers accused of violating international humanitarian law, but it may appeal under certain conditions. Recently, such appeals have increased, especially in specific conflicts (Al-Shazly, 2014).

From the above, we conclude that the International Committee of the Red Cross (ICRC), an international non-governmental organization and the custodian of international humanitarian law, plays a significant and primary role in spreading the culture of international humanitarian law among civilians and the military.

**The Reality of Mechanisms Implemented to Enforce International Humanitarian Law on the International Level**

The international mechanisms for enforcing international humanitarian law mentioned above operate irregularly for several reasons. Therefore, a more detailed look at the role assigned to each in implementing this branch of law is warranted.

**The Reality of the International Criminal Court**

Despite the international community now having an independent international judicial body that seeks to balance the sovereignty of international law, respect for state sovereignty, and establish international criminal legitimacy, some negatives and gaps have marred its statute. The statute is considered a collective international agreement subject to the legal rules governing treaties, as it binds only those states that have ratified or acceded to it according to Articles (14) and (15) of this agreement. The statute, being a post-international treaty, entails the application of all rules applicable to international treaties, such as those related to interpretation and spatial and temporal application, unless otherwise specified. Thus, invoking issues of intervention in internal affairs and infringement of sovereignty are unreasonable justifications given that the International Criminal Court is an institution. (Fakhry, 2024).

Given that states, in this case, are dealing with an international judicial body that they participated in establishing as a party state, supported by paragraph (9) of the preamble that states the court is complementary to national criminal jurisdiction and that the state's parties established it under an agreement that explicitly stated the court has complementary authority, thus making state sovereignty the basis for its jurisdiction. Consequently, the court cannot exercise its jurisdiction unless the national court is ineffective. This principle, provided by the Rome Statute, aims to prevent its politicization. Despite these features, the effectiveness of achieving justice faces several obstacles, particularly those related to the inconsistencies within the International Criminal Court's (ICC) Statute. The treaty's nature subjects the Rome Statute to the principle of relativity of treaties, as the obligations arising from it bind only the state's parties and not non-parties. This allows for a broad opportunity for impunity from severe international crimes. Thus, the court's jurisdiction over non-party states contradicts the principle of universality of punishment for international crimes, which the ICC seeks, resulting in the impunity of non-party state nationals for crimes they commit. The ICC was established by a treaty binding only on its parties, so the court has no jurisdiction unless the state accepts the court's jurisdiction over that crime by the principle of relativity of the treaty's effect. On another point, there is a contradiction between the non-recognition immunity principle and international cooperation provisions. The first principle involves abolishing immunity before international criminal accountability, as per Article 27. In contrast, the second consists in respecting absolute state sovereignty as stated in Article 98 of the Statute, which poses an obstacle and a contradiction with the application of Article 27. This opened the way for the exploitation of Article 98 to maneuver and circumvent the Statute's provisions. ((ICC), 2024)".

The Statute of the International Criminal Court establishes a comprehensive legal system for criminal law, as international crimes inherently violate international legal norms that international criminal law seeks to protect and punish offenders for. The jurisdiction of the International Criminal Court is limited to the most severe crimes, which constitute its subject matter jurisdiction, as stipulated in Article 5 of the Statute. These crimes take four forms: genocide, crimes against humanity, war crimes, and the crime of aggression. Although the Rome Statute included the crime of aggression within its jurisdiction, this provision remained inactive due to the compassionate political nature of this crime. The States Parties to the Rome Treaty reached an agreement to activate the "crime of aggression" after their annual general conference held from December 4 to 14, 2017, in New York. This agreement enshrines the amendments adopted in 2010 to establish a specific definition of the "crime of aggression," its elements, and the conditions required for the Court to exercise its jurisdiction in this area. Despite the clear jurisdiction of the Court in this regard, Articles 15 bis (6), (7), and (8) maintained the role of the Security Council, which often leads to the Court's work being hindered, particularly regarding the powers of referral and deferral. This is especially significant given the substantial role that political considerations play in initiating international criminal proceedings, which results in a selective application of international criminal justice. Consequently, the Statute has narrowed the Court's jurisdiction to only the most severe crimes that genuinely threaten the international community. As for the remaining less severe crimes, it was deemed appropriate to allow relevant international tribunals to exercise their jurisdiction over them. The Court is also



required to assess the seriousness and gravity of the crime based on the standards and criteria outlined in its procedural rules and rules of evidence. (Ahmed and Tawfiq , 2019)

The omission of inserting 12 other international crimes like terrorism and offenses defined by international treaties resulted from this. Despite including these crimes in the Rome Statute draft, they were not adopted in the final wording. This clearly illustrates the prioritization of political considerations and personal interests over the international community's interests, allowing certain countries to dominate international decisions. Although the International Criminal Court statute enables state parties to to add other crimes according to Articles (121-123), this is constrained by several conditions that limit the potential to expand the court's jurisdiction. Furthermore, any amendment to the statute will only be binding on the states that agree to it, as stipulated in Article 5/121. Additionally, the limitation of the court's jurisdiction to crimes committed after the statute's entry into force is inconsistent with the requirements of international criminal justice, which dictates that international crimes cannot become obsolete, leaving their perpetrators immune from accountability and punishment. Moreover, allowing states to refuse the court's jurisdiction regarding war crimes under Article 124 of the statute—which permits parties to the statute to expressly declare their non-acceptance of the court's jurisdiction for seven years from the commencement of this system—raises transitional severe concerns. This provision effectively excludes the court's jurisdiction for an extended period. NGOs and advocates for fundamental human rights have described the content of this article as "shameful," as it grants the state parties to the convention the right to suspend and not implement its provisions for seven years. Consequently, this article is seen as a dangerous legal constraint, even though the principle of complementarity provides concerned states with adequate guarantees through their domestic legal actions against individuals accused of the crime of recruiting children in armed conflicts. The danger of this constraint lies in the fact that a seven-year period is relatively long, during which atrocious acts may be committed on the territory of that state or by its nationals (Phooko, 2011).

A close examination of the Statute reveals that the deficiencies that allow the rules of jurisdiction, whether complementary, temporal, or personal—as well as issues related to admissibility, could be among the most significant internal obstacles affecting the Statute itself, thus opening a door for evasion of international criminal prosecution. The Statute of the International Criminal Court was adopted after embodying the principle of respecting the sovereignty of States Parties, which is evident in the tenth paragraph of the Rome Statute, stating that the role of the Court is merely to complement national jurisdictions. Article 1 of the Statute further affirms this. The content of Article 17 of the Statute, which includes criteria for applying the principle of complementarity, has garnered widespread criticism due to its restrictive nature and the suspension of the Court's jurisdiction based on these criteria. Moreover, it has been criticized for not being a deterrent to the most serious crimes affecting the international community. This is evidenced by the contradiction between the texts of Articles 1 and 17 of the Statute, as the latter ties the Court's jurisdiction to the importance of national jurisdiction regarding crimes that are fundamentally within the purview of the International Criminal Court. The issue also arises with amnesty, as the Court's Statute does not clarify the general amnesty, raising concerns if national courts issue decisions granting amnesty under domestic laws, which poses an obstacle to the Court's complementary jurisdiction. Article 17 of the Statute, related to the admissibility of cases, does not consider general amnesty as a situation that removes a case from the jurisdiction of national courts to fall under the jurisdiction of the International Criminal Court, except in cases specified in paragraph 2 of the same article. The same issue is reflected in Article 20, which does not allow the Court to retry a person who has already been tried before a national court unless a situation from those specified in paragraph 3 of the same article arises (Kaul, 2007).

The authority granted to the UN Security Council under Article 16 of the ICC's Statute can hinder the Court's complementary jurisdiction by preventing it from prosecuting individuals for crimes within its scope, particularly if political pressures lead to deferral investigations. This limits the Court's

ability to act effectively, especially when cases fall outside national jurisdiction. Article 17 of the Statute outlines cases where the Court may deem a case inadmissible, restricting its jurisdiction over serious crimes of international concern, even in cases involving non-state Parties. The principle of non-retroactivity, as outlined in Article 11, prevents the Court from prosecuting crimes committed before its establishment, which contrasts with Article 29, which states that such crimes have no statute of limitations. The Statute's jurisdiction, particularly Article 26, excludes individuals under 18 from criminal responsibility, which creates a contradiction with the reality of recruiting individuals aged 15 to 18 for war crimes. This exclusion allows these individuals to evade prosecution. Additionally, Article 33 will enable defenses based on obedience to superior orders, and Article 31 provides general exemptions from criminal responsibility, which have been criticized for undermining international humanitarian and human rights law; the ICC's subject matter jurisdiction is limited to the most serious crimes: genocide, crimes against humanity, war crimes, and aggression. Although the Rome Statute includes the crime of aggression, it remained inactive due to political sensitivities until 2017, when States Parties agreed to activate it. The Court's jurisdiction over the crime of aggression is subject to conditions, and it can only act when national courts are ineffective, as part of the preventive measures in the Rome Statute. (Ahmed & Toufik, 2019).

Despite the importance of establishing the International Criminal Court, its credibility and effectiveness depend on its role in punishing international crimes. The refusal of several influential countries to ratify the Rome Statute may indicate a double standard in enforcing international criminal law, which could undermine the court's credibility and prioritize political considerations. Additionally, several obstacles have rendered the court's role ineffective in providing fair protection for victims of violations of international humanitarian law. One of the main challenges is the principle of national sovereignty, as some countries find it difficult to accept being subjected to an international judiciary where they must be held accountable for their violations of international obligations. The court's complementary jurisdiction hinders the prosecution of international crime perpetrators, as the court only conducts investigations or prosecutions when a state is unwilling or genuinely unable to carry out such actions. Establishing mock and farcical trials by states for citizens accused of committing international crimes may prolong the litigation process before the court. Furthermore, granting the Security Council the authority to intervene and halt investigation and prosecution procedures poses a significant threat to the court's effectiveness and independence. This empowerment of the Security Council could allow those who oppose the court to disrupt its work and deal with perpetrators of crimes inconsistently. Additionally, the court's lack of enforcement forces to pursue, arrest, and bring defendants to justice leaves the possibility of offenders escaping punishment open, diminishing its effectiveness in implementing its decisions (Nakhlah, 2024).

It was clear from the Security Council's referral to the International Criminal Court, in the case of Sudan about Security Council resolution 1593 (2005), in which it referred the situation in Darfur to the International Criminal Court, despite the State of Sudan was not a party to the Statute of the Court but a member of the United Nations. Despite the resolution's importance to ending severe violations of human rights and human rights in Darfur selectivity and the interference of political considerations in its promulgation, this is reflected in paragraph 6, which provides an opportunity for non-Sudanese criminals to escape prosecution even if they are contributors to such heinous crimes. Proposal (France) attempted to reduce the chance of permanent members' rejection of the draft. It should be noted that including such a paragraph in Security Council referral resolutions poses a real challenge to the International Criminal Court in demonstrating its independence and impartiality and clarifies the Court's relationship with the Security Council. To move away from suspicions, the Tribunal must treat referral decisions by the Security Council as merely drawing the Tribunal's attention to the fact that there is a threat to international peace and security, regardless of the directives and dictates contained in Security Council resolutions. (Almakhzomi, 2009).

### **The Reality of the United Nations**

The United Nations was established after the failure of the League of Nations to prevent the outbreak of World War II. Today, we are experiencing challenges that are far more difficult than those during World War II in every aspect, especially concerning the qualitative leap in using weapons and their immense destructive power. Additionally, the policies of states in modern warfare and the approaches they adopt have not been witnessed in the world before, with one of the most significant being the scorched earth policy. Therefore, what is the role of the United Nations, and what is the justification for its existence considering these violations and the rules of international law? Law students are now calling for the cancellation of courses on public international law, international humanitarian law, and international organizations due to their feelings about the futility of these subjects, considering what they observe on the international stage and the inability of international law practitioners to ensure the application of these international legal rules. We have all witnessed some individuals tearing up the United Nations Charter during televised official meetings of the organization. What is the justification for the continued existence of this organization, given the abysmal failure it suffers due to the voting system and the veto power that allows countries with ambitions and scenarios to achieve their interests with no regard whatsoever for collective security, legitimate defense, or the right to self-determination? Peacekeeping forces are attacked, international organizations are bombed, the Secretary-General of the United Nations is prevented from entering certain countries as he is considered an undesirable person, and judges of the International Court of Justice (the best and most honorable judges in the world) are accused of corruption due to their rulings not serving the interests of certain criminal states. The United Nations has faced a catastrophic failure in protecting international humanitarian law because the Security Council is responsible for enforcing these rules, and its voting system hinders the fair application of international humanitarian law. If we look at the General Assembly of the United Nations, which is characterized by a voting system that is somewhat neutral and fair, its role remains weak due to its authority being limited to issuing non-binding recommendations and lacking the mechanisms to implement its decisions, or instead recommendations, as the intervention of the Security Council is always required, given its authority to issue binding resolutions and take military or non-military measures based on Chapter VII of the United Nations Charter (Al-Mutairi, 2010)

### **Reality of the Human Rights Council**

Since establishing the Human Rights Council in March 2006, there have been doubts regarding its relationship with the Third Committee of the General Assembly concerned with social, humanitarian, and cultural issues. Both subsidiary bodies of the General Assembly are responsible for promoting and implementing human rights at the global level. However, neither hesitates to cite humanitarian law to support its recommendations, and countries are also divided to the extent to which the Council, and above all, the special procedures established by the former Human Rights Commission and adopted by the Council, should consider international humanitarian law. Some nations fear that the selective treatment of certain armed conflict cases, especially in the Middle East, may politicize the Council further, while others, aware of their strong position within this forum, support discussions on applying international humanitarian law within the Council. Regardless of the decision, the Council should not take over the functions of the various human rights bodies established under treaties, as they contribute some degree of impartiality to a often politicized discussion, and the Human Rights Council does not systematically perform its work. (Pfanner, 2009).

### **Reality of the International Committee of the Red Cross**

Despite the role assigned to the International Committee of the Red Cross in implementing the rules of international humanitarian law, it does not stand above the parties or possess any legal authority that has not been conferred upon it. Applying international humanitarian law requires the Committee to attempt to prevent and rectify violations through its role as a neutral and independent humanitarian intermediary between the warring parties. It is not within its mandate to exercise any repressive or judicial powers to uphold the rights of victims; in fact, this Committee refrains from

even seeking the identities of those who commit these violations. Its primary contribution is to help prevent international crimes and reduce the number of victims of armed conflicts. (Al-Shazly, 2014).

## **DISCUSSION**

The practical experiences of the International Criminal Court (ICC), the United Nations, the Human Rights Council, and the International Committee of the Red Cross have revealed numerous challenges in applying international humanitarian law (IHL). A close relationship exists between the ICC and the UN, particularly with the Security Council, arising from two key aspects: the powers granted to the Security Council under the ICC Statute and the global challenges facing the ICC, such as difficulties enforcing its authority over states. The relationship between the ICC and the Security Council has raised legal and practical issues, particularly regarding the powers of referral and deferral granted to the Council. Often influenced by political considerations, these powers allow certain powerful states to protect their interests, leading to selective application of international justice and impunity for serious crimes.

The Security Council's power to refer cases to the ICC under Article 13(b) is intended to help maintain international peace and security. Still, it is often exercised against weaker states and influenced by political bias. Article 16 of the Statute, which allows the Security Council to defer investigations or trials for a renewable one-year period, poses a severe threat to the Court's independence by allowing a political body to override judicial processes. This power can lead to the paralysis of the ICC, as it prevents the Court from acting against those accused of serious crimes, such as child recruitment in armed conflicts.

The ICC's reliance on the Security Council, especially regarding deferrals, undermines the Court's credibility and fairness. Trials can be delayed, evidence lost, and perpetrators may escape punishment. This dependency also allows the Security Council to dictate international criminal justice based on political considerations, as seen in establishing special courts for Yugoslavia and Rwanda. Such practices undermine the ICC's core mission and authority, hindering its ability to operate independently and transparently.

In this unjust international policy context, the selective application of international criminal law rules will continue even after the ICC's establishment. The implications of potential conflicts between the ICC and the Security Council regarding the Court's jurisdiction must be addressed. Reforming the legal system, particularly veto power, and reinforcing the Court's authority over states are crucial for the ICC's success as an international criminal justice institution. (Ahmed & Toufik, 2019).

Regarding Security Council resolution 1593, which referred the situation in Darfur to the International Criminal Court as the first case to be referred to the Court by the Security Council, some believe that the best solution is to put an end to such violations and to ensure that the perpetrators and those responsible do not go unpunished, The need to confer jurisdiction over such crimes on the International Criminal Court s rights ", given its independence, impartiality and impartiality, without being restricted by a United Nations decision that limits its implementation to the provisions of the resolution.

The Statute of the Criminal Court does not include an explicit provision criminalizing weapons of mass destruction as a war crime, as it links the criminalization of all weapons of mass destruction to the fact that they have been criminalized by a multilateral international convention, thereby allowing the States possessing such a peace to invoke the absence of such a convention. One of the most important things to be taken of the Statute of the Court about war crimes is the provision of article 124, which allows a State that becomes a party to the Statute to declare that it does not accept the Court's jurisdiction over war crimes committed by its citizens or committed on its territory for seven years beginning on the date of the entry into force of the Statute for that State. This contradicts Article 120 of the Statute, which does not permit any reservations to the Statute. The provision of Article

(124) is logically inadmissible for excluding him from the trial, which is one of the most critical crimes in Article VIII for which the Court was established. Almahzomi, 2009).

Most cases referred to the Court reveal the discriminatory nature of the selection of situations or armed conflicts of a non-international nature, which have caused the commission of international crimes within the jurisdiction of the Court, and remarkably. Those issues are confined to internal or non-international armed conflicts that have arisen in the countries of the continent of Africa. Those States are beginning to feel primarily targeted by the Court's international criminal justice machinery. Unsurprisingly, some African States parties to the Statute of the Criminal Court have decided to withdraw from this Statute. International criminal responsibility ", notwithstanding the prevailing belief that the decision to withdraw these States from the Statute of the Court was a preventive measure that avoided international criminal accountability by its Presidents, political and military leaders Since their countries are constantly vulnerable to armed conflicts and violence, the continent's civil wars are rife. (Nizar Al-Anbeki, 2019)

It is felt that the greatest threat to the Tribunal's future is the Security Council's role in referring to the Tribunal's prosecutor by Article (13), paragraph 2, of the Statute of the Tribunal when the Security Council acts by Chapter VII of the Charter of the United Nations. The Council quickly presented the evidence when it acted selectively on the situation in Darfur, Sudan, referred to earlier, thereby reducing the Court's credibility and fundamentally affecting its commitment to cooperate.

As for the Human Rights Council and the International Committee of the Red Cross, all countries must recognize their role in implementing the rules of international humanitarian law and restructure their statutes to grant them the powers needed to perform their roles effectively. Given their efforts, which are acknowledged by all, the International Committee of the Red Cross needs technical capabilities on the one hand and increased financial support on the other to achieve its goals fully.

Undoubtedly, the practical and genuine application of International Humanitarian Law is the goal that everyone aspires to, not just governments but also the people. Some governments might not be interested in applying the rules (IHL) due to various reasons, primarily arms dealers, opponents of peace, and those with psychological disorders who enjoy torture and inflicting pain on others.

Given this, it is imperative to take decisive steps to save what can be saved by introducing new legislative texts, developing war-related laws, and collaborating with local communities. A working group of International Humanitarian Law experts should be formed to codify customary (IHL) to address the challenges of asymmetrical conflicts. This committee can work under the supervision of the International Committee of the Red Cross (ICRC), after which the high contracting parties can be invited to enrich the discussion and sign the finalized texts.

Additionally, expert committees should be formed to draft new texts primarily related to Rules of conduct during war within the framework of occupation ,Texts on the use of drones and internationally prohibited weapons ,Standards for criminalizing violations of the principles of proportionality and distinction ,Agreement on the definition of the crime of aggression and activation of criminalization within the framework of the ICC ,Organizing an international campaign led by peace activists and humanitarian organizations to pressurize states parties to the Rome Statute.

Creating a database in conflict or potential conflict zones around local civil society organizations that are community-accepted and can be worked with is also essential. Symbols that provoke religious sensitivities must be avoided, and the ICRC must adopt a comprehensive global emblem while distancing itself from religious emblems.

In the coming years, the Human Rights Council should function as a principal body equivalent to the Economic and Social Council and the Security Council to make independent decisions without referring to a higher body. The role of the Human Rights Council is an extension of the Human Rights Committee, with the authority to rationalize the mechanisms inherited from the Committee. The

Council has done much in this regard, including amending the authority of special procedures, establishing the Advisory Committee on Human Rights, and the Universal Periodic Review mechanism, which effectively provides pre- and post-monitoring of state commitments and pledges. It also activated its special sessions responding to most international crises, investigating violations committed by states against their citizens during disturbances and tensions or against citizens of parties to the conflict during international and non-international armed conflicts through fact-finding missions.

It is of the utmost importance to work swiftly towards the creation of legislative norms requiring the jurisdiction of the Court in respect of crimes provided for in the Court's system regardless of the consent of States and irrespective of whether or not the State to which the offender belongs adheres to the Court's system, in support of the principle of the primacy of international law over national law and thereby without prejudice to the national sovereignty of States.

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