

The role of the international criminal court in the implementation of the international humanitarian law: An applied study



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ABSTRACT

This study seeks to clarify the importance of the International Criminal Court as a criminal mechanism in the application of international humanitarian law, and its effectiveness in limiting violations of this law by punishing the perpetrators of these violations as a permanent court, as well as its role in laying the foundations for international criminal justice. It has become necessary to clarify the importance of the Court and its effective role in the application of international humanitarian law, due to the presence of massive and brutal violations of human rights during armed conflicts as well as under the belligerent occupation. Previous legal studies dealt with the issue of the implementation of international humanitarian law, but it is accepted that they focused on the historical aspect of the emergence of international humanitarian law, and they focused on the theoretical aspect of the issue of mechanisms for implementing international humanitarian law more than the practical aspect and therefore did not adequately address the criminal mechanism represented in The establishment of the International Criminal Court and this is the basis on which our study is based. The previous studies lacked the application that enriches any study in this field. This is what we emphasized in our study and given the importance of the topic of the role of the International Criminal Court in the implementation of international humanitarian law and also considering the recentness of some mechanisms for the implementation of international humanitarian law, the studies that dealt with this topic remain insufficient, and many aspects of the study on this topic are still an area for research and study One of these aspects that have not been adequately researched and specifically the criminal mechanism for the implementation of international humanitarian law represented in the International Criminal Court, and this study comes to enrich the practical aspect of the implementation of international humanitarian law.

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1. Introduction

The phenomenon of conflict is one of the hard facts in humans (individuals) and community (groups at all levels of human existence since the emergence of life on earth. This conflict led to damage to persons whether militaries or civilians and civilian objects. Consequently, a legal branch of international law which is IHL came into existence.

Perhaps the reason that originally led to the emergence of IHL is that it came in response to a

moral and a human objective against the cruelty of human beings which has made the history of humanity to be full of conflicts with only less space for peace. Additionally, the IHL represents the good side of human behavior. As a result of this, the bodies that apply IHL are characterized by religious nature such as the International Committee of the Red Cross (ICRC).

The IHL is one of the modern international laws that emerged as a result of international and internal wars characterized by serious acts and crimes, bloodshed and destruction of all human values and ethical principles leading intellectuals, jurists, politicians, national and international bodies, and many countries in the world to demand to reduce the effects of wars and not to violate human principles and values.

The international community created the IHL to alleviate or mitigate the sufferings of atrocities and

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wars and deter perpetrators of international crimes. The IHL is a customary rule and convention that regulate humanitarian problems in international and non-international armed conflicts. Any party has the right to choose the means of warfare and methods and the protection of persons and properties in armed conflicts.

The spread of violations and crimes in armed conflicts in the present time by the conflicting parties is a serious and dangerous matter that requires the need to examine the role of the ICC as a criminal mechanism for the implementation of the IHL in order to identify international efforts to establish the ICC. It is an attempt to find the needed solutions to increase the effectiveness of the ICC. Many legal studies and research papers published in recent years have studied IHL and the mechanisms of its implementation.

For many years, it has been common to call the name "IHL" on that part of the general international law that draws human feeling and focuses on the protection of the individual.

The term IHL seems to combine two different ideas. The one is legal and the second one is ethical.

The creation of a global mechanism for international criminal justice that would serve as a complementary justice for the national judiciary consolidated in the ICC, the entry into force of the statute of the ICC in a period of over more than 10 years, was a clear turning point in the history of the IHL. The ICC is responsible for the prosecution and punishment of perpetrators of international crimes including serious violations of the principles of the IHL that arise the concern to the international community. This court has materialized a firm international collective will, strong determination and international cooperation, and a deterrent to anyone who violates IHL or commits crimes that threaten international peace and security. Those crimes, which have long exposed millions of children, women, and men in many parts of the world to atrocities that have shaken the conscience of humanity, cannot go unpunished.

Undoubtedly, the study of the role of the ICC in the application and implementation of the IHL is an indispensable work. States have a responsibility to the ICC through approving, acceptance, or joining the Statute of the Court and the implementation of IHL.

This study contributes to clarifying the concept of the IHL and identifying the crimes that violate it, the extent of the effectiveness of the ICC as a permanent court in establishing the collars of criminal justice. The study of the role of the ICC in the implementation of the IHL has become necessary because of the massive and brutal violations of human rights during armed conflicts and also in military occupations.

The importance of the study can be enumerated in the following:

- The emphasis of the necessity of the implementation of the IHL

- Highlighting the role of the ICC in the implementation of the IHL and its effectiveness in reducing violations of the IHL through the punishment of perpetrators of violations.
- Raising international responsibility for violations of IHL.
- Clarification of the concept of integrity and its place in relation to national legal systems, the ICC, and victims.

The study aims at emphasizing the following:

1. The IHL must be implemented.
2. International criminal responsibility of individuals for international acts and crimes committed by them, punishing them so as not let them be in a case with impunity.
3. The mechanism of the international community to address violations of human rights through the creation of a permanent international judicial body aimed at combating international crime.
4. The role of the ICC in the implementation of the IHL has become necessary because of the existence of serious violations of human rights during armed conflicts in various parts of the world.

The ICC embodies the procedural rules that contribute to establishing criminal responsibility and govern by the enforcement of the law on the perpetrators of crimes within its jurisdiction. Accordingly, the study tries to answer the following main question: What is the role of the ICC in the implementation of the IHL? The study tries to answer this question through the answer of the following sub-questions:

1. To what extent are the states committed to the implementation of the IHL?
2. Where is the failure in the implementation of the provisions of the IHL?
3. Did the mechanisms of the implementation of the IHL alleviate the sufferings of humanity from the scourge of armed conflicts?
4. What is the extent of international responsibility for the violations of the IHL?

The study is based on three basic hypotheses as follows:

1. Deficiencies and shortcomings in the organization and application of the rules of the IHL lead to their ineffectiveness.
2. The role of the ICC in punishing violators of the IHL is an implementation of the IHL.
3. The extent to which States are committed to the implementation of the IHL and the international responsibility for its non-implementation.

The studies that treated the implementation of the IHL and its mechanisms in general: Hamadeh (2015) found the following:

- Today, the international community is facing a war of genocide of civilians and isolation, killing and displacing in more than one Arab country and the society stays by itself without moving.
- The need to expedite the prosecution of war criminals, human annihilation, and the arrest and punishment of whoever is fugitive from justice.
- Expanding the responsibility of human rights violations in peacetime and during armed conflicts.

Al-Shunty (2016) found the following:

- The necessity of amending the four Geneva Conventions and the conventions should stipulate the means that states can use for the purpose of respecting IHL.
- Activation of the Palestinian National Commission on IHL.
- Presenting a request by the Palestinian Authority to the United Nations to establish a special criminal court to try Israeli officials for serious violations of IHL.

This study focused more on the theoretical aspect of the topic of mechanisms of the application of the IHL than on the practical side. So, the study has not adequately addressed the criminal mechanism of the ICC and its role in the implementation of IHL that is the topic under study in this research paper.

The previous studies relevant to this research topic are still not enough because of the importance of the topic. This makes it in need of more studies. The aspects which have not been adequately discussed include the criminal mechanism for the implementation of IHL represented by the ICC. This study enriches the practical aspect of the IHL.

To cover this topic, some points will be covered. These include the following:

- The nature of the IHL and the extent to which states are committed to its implementation.
- The ICC as a criminal mechanism for the implementation of the IHL.
- The international responsibility for violations of the IHL.

2. The nature of the international humanitarian law and the extent to which states are committed to its implementation

The IHL is closely linked to human beings. This is what makes the IHL enjoys its status or place. The freedom of millions of human beings depends solely on the existence of the IHL because it does not deal with normal matters but with the issues of life and death that are of fundamental concern to every human being (Baktieh, 1984).

The history of IHL is associated with two common approaches: (1) a story of oppression and imperialism, and (2) the humanization of war and law (Alexander, 2015).

The concept "international humanitarian law" (IHL) refers to the understanding of *jus in Bello*,

which means the laws concerned with the conduct of war (Dinstein, 2016). International humanitarian law is apparently supervised and promoted by the International Committee of the Red Cross (ICRC). It is claimed by the ICRC that IHL is an important aspect of international law that rules relations between countries (Gary, 2016).

Without the implementation and adherence to the IHL provisions, the IHL becomes a mere expression of ideal ideas. So, in order to give effect to the rules of IHL and ensure their respect, international conventions in general, and the four Geneva Conventions in particular, provide for a set of mechanisms and guarantees that make it binding all states parties to respect humanitarian rules. One of these mechanisms is what is preventive that is represented in states commitment of respect of the rules of IHL, the publication of the IHL provisions. The other part is monitoring which is represented in the protecting state, international committees, and truth commissions (fact-finding committees), and the role assigned to monitoring or control states, the state responsible to monitor the implementation of the IHL. There is also a punitive deterrent role represented in the obligation of states parties to include in their national legislation rules and provisions relating to the arrest, prosecution, and extradition of perpetrators of serious violations of IHL to the concerned party for punishment in accordance with the principle of universal jurisdiction. Society has spared no effort to punish violators of IHL by establishing international criminal tribunals operating under the rules of individual international criminal responsibility.

A humanitarian focus to the Geneva part juxtaposed to the Hague law, which was a promoter of the methods of warfare. However, it is deemed that both laws preliminary focus on humanitarian aspects and; thus, overlap (Alexander, 2016).

2.1. Definition of the international humanitarian law

Several definitions have been received regarding international humanitarian law, as it has been defined as a set of principles and provisions governing the methods and methods of warfare, as well as protection for the civilian population, and the sick and injured combatants of prisoners of war (Ramesh, 2000).

The focal point of the international humanitarian law is to empower and guard individuals who are not participating in fighting (medics, aid workers, and civilians) and can no longer fight (sick, prisoners of war, shipwrecked troops, and wounded). ICRC (2015a) and Their ICRC (2010) Overview.

In fact, the term International Humanitarian Law is a modern term. The term "the law of war" and "the law of armed conflict" were used to refer to the International Humanitarian Law (Al-Zamali, 1997).

The documents and reports indicate that the first one who used the term IHL to refer to this law is the International Committee of the Red Cross (ICRC)

through its documentation to the 1977 Conference of governmental experts to promote the development and update of the laws and Customs used in armed conflicts (Makhzoumi, 2009).

There is no agreed definition of what International Humanitarian Law is. The International Humanitarian Law witnessed several distinct phases of development to reach a set of humanitarian principles and provisions regarding armed conflicts and protection for civilian and military victims.

One side of the jurisprudence gives a broad definition of IHL, whereas others give it a narrow meaning. Scholars (jurists) did not agree on what is meant by IHL. Thus, the jurisprudence differed in the definition of what was meant by IHL, so there is no uniform definition of the term (IHL). The IHL has become the most comprehensive branch of international law, particularly with regard to the protection of individuals because of the tremendous progress in IHL during the second half of the twentieth century (Schindler, 1999).

There were numerous jurisprudences attempts that dealt with setting a definition of the IHL. The international jurisprudence took three aspects in this respect: First: The term IHL is limited to a set of rules related to the protection of the individual during the armed conflict which is called "Geneva law" and is synonymous with it. The second one combines the Geneva rules and Hague rules that define the rights and duties of belligerents in managing military operations, and it also limits the means of harming the enemy, which is known as "The Hague Law". The Third one: Human rights rules applied in peace time are included in the term IHL and the Geneva and Hague law (Pictet, 1969), these definitions will be clarified as follows:

2.1.1. Definition of the international humanitarian law in the western jurisprudence

One side of the jurisprudence thinks that IHL is "the whole body of legal principles that are designed to provide protection to victims of armed conflicts in both international and non-international that States have to respect". As for the Jurist, Baktieh, Jan, he defined the IHL as "the big sector of general international law that inspires human feeling and focuses on protecting the individual" (Baktieh, 1984).

Some others defined it as "a set of principles and provisions governing the means and methods of warfare as well as protection of the civilian population, the sick and wounded of the captured combatants (Ramesh, 2000).

The International Committee of the Red Cross (ICRC), in the broad sense of the definition of IHL, defined it as the "body of international rules of the Convention or of customary origin that specifically aimed at resolving humanitarian problems arising directly from armed conflicts whether international or non-international; For humanitarian reasons, the parties to the armed conflict have the right to use their means and methods of warfare and to protect

persons and property that are damaged or likely to be affected by the conflict.

2.1.2. Definition of the international humanitarian law in the Arabic jurisprudence

Abu Alwafa (2006) defined the IHL as "a set of rules aimed at making war more humane both in relation to the fighting parties and for persons not involved in armed conflict or to the military objects and targets".

Abdul Ghani (1991) believed that IHL is not limited to the rules contained in the Hague Conventions and the four Geneva Conventions and the two protocols thereto, but goes beyond all humanitarian rules derived from any other international agreement or from the principles of international law, and also established custom, principles of humanity and general conscience.

Al-Zamali (1997) defined it as "a branch of general international law whose rules of customary and written rules aimed at protecting the affected persons in the event of armed conflict and its consequences of pain and to protect properties that are not directly related to military operations.

Dissimilarly to the previous definitions, Shukri (2005) considered the IHL as a branch of the international human rights law whose purpose is to protect the people affected in armed conflicts.

Other scholars also defined it as "the set of international rules put under the international conventions and principles specifically designed to resolve humanitarian problems arising directly from international or non-international armed conflicts which assign for humanitarian considerations the right of the parties in a conflict to resort to their chosen methods and means of warfare and protect persons and property affected by conflicts" (Shatnawi, 2001).

We can define the IHL as "a set of international legal principles, convention and customary that are applied in times of international and non-international armed conflicts that aim at restricting conflict parties to the choice of methods and means of warfare to protect persons and properties in such conflicts".

2.1.3. Characteristics of the international humanitarian law

Based on the previous definitions of the IHL, a set of characteristics unique to this law and its rules can be concluded as follows:

1. It is a branch of the general international law but it is a distinct branch having its characteristics and features that make it unique in its sources, the nature of its rules, and the scope of its application.
2. It is inherent or relevant to the law of war or armed conflicts between states. Wherever the law of war is applied, the IHL is applied. The application of the IHL begins before and at the

beginning of the armed conflict, during armed military conflict and it only stops with the complete end of the war effects (Al-Fatlawi, 2007).

3. Its rules represent absolute obligations (Baktieh, 1984). Although initially, they appeared as an international custom. However, it has evolved into universal international treaties which function as the order of all states of the world. According to Article 53 of the conventions of Treaties Laws of the year 1969, the peremptory rule is that which the international community accepts and recognizes by all its states as a rule that may not be violated, and it can only be changed by a new rule of general international law that has the same character.
4. It should be activated before incidence and to the same degree after the occurrence of the damage. The IHL is the preventive legal rule that prevents the action from occurring, and not only after it occurred.
5. Its application is not limited to international armed conflicts, but also to armed conflicts that are not of an international nature.
6. Violation of the rules of IHL constitutes a responsible international punishment. The international trial has been established to prosecute or try violators of the rules of IHL for war crimes.

2.2. The extent to which states have committed themselves to the implementation of international human law

The rules of international humanitarian law are peremptory of Jus cogens. It is not permissible to agree to violate them because they regulate an important aspect and establish a fundamental obligation to protect the fundamental interests of the international community. In view of the technical development in the field of military industry and its management methods, the number of violations committed has increased markedly. But violating the legal rule does not mean its lack of existence, so a distinction must be made between the existence of the legal rule and its effectiveness because the violation affects the effectiveness of the legal rule and not its existence, and this applies to all branches of law, including international humanitarian law.

The association of states with an international treaty or with certain legal rules actually requires them. Therefore, the first common article in the four ICRC (2021a) stipulated that (the parties undertake to respect the agreement and ensure its respect in all cases), but in the case of withdrawal from the agreements, that withdrawal is not It has any effect on the obligations established by the principles of international law arising from the established norms between civilized nations, from humanitarian laws, and from the dictates of the public conscience.

Respect means that states are obligated to do everything to ensure respect for the rules on the part of their bodies and also on the part of all those

within their jurisdiction. As for ensuring respect, this means that states, whether or not they are involved in a conflict, must take all possible steps to ensure respect for the rules on the part of everyone, especially on the part of the parties to the conflict.

Thus, international agreements impose an official and express duty on the states of each of its parties to respect these agreements and to make others respect them, and this obligation cannot be dissolved from it except through its full implementation in accordance with Article 26 of the Vienna Conventions of the Law of Treaties of 1969, special Under the law of treaties, which stipulates that (the contract is the law of the contractors) (Hindi, 2001).

In addition to this general obligation imposed on the state during the occurrence of armed conflict, IHL imposes other obligations on states with its conventions, which take the form of taking measures and measures it deems necessary and necessary to ensure the effective implementation of its provisions, which are measures taken in peacetime and war (Anhlik, 1984).

The barbarism of the repeated wars and the dire effects that they left on humanity made the international community seek to establish binding legal norms in order to protect humanity, to clarify criminal acts that affect human dignity and physical and mental integrity, and to determine the punishment for those who committed it, which led to accelerated objective development in the field of applying the principle Criminal accountability for serious violations of the rules of international humanitarian law (Frag, 2000).

There is no doubt that this increased interest of the international community in providing effective implementation of international humanitarian law is due to the vigilance of the international collective conscience that was invaded by the media by realizing the reality of the devastating effects of human societies on the realities of the phenomenon of the use of unlimited violence in international armed conflicts.

In a speech before the International Human Rights Council on 28 February 2017, Mr. Peter Maurer (Peter, 2017), the President of the International Committee of the Red Cross, summarized the state's compliance with the implementation of international humanitarian law, saying that when the law is respected, it is easy to bring peace, stressing that international human rights law and international law Humanity is the product of established political skill, manifested through time and different cultures, to develop practical tools to protect people, prevent human suffering, and ensure that more societies enjoy security and prosperity (Peter, 2017).

IHL seeks to reduce the pain caused by armed conflict The initiator's path as quickly as possible to provide protection and provide the necessary assistance to the groups covered by the protection, and for the effectiveness of the legal rules that provide this protection to be effective, there must be mechanisms that ensure good implementation of it

because it is not possible to embody the rules of international humanitarian law in the ground unless there are mechanisms It strives to ensure its implementation, and it has become necessary to implement international humanitarian law at the national level, in accordance with the provisions of Article 26 of the Vienna Convention on the Law of Treaties, as it cannot be expected to respect the law automatically without explicitly interfering with national efforts to implement and support implementation measures (Kamal, 2011).

The effectiveness of any legal system depends on the extent to which its rules are actually applied. This issue is of particular importance in the field of IHL because it is applied in armed conflicts that a field in which human lives are constantly exposed to danger or risk, and when this law is not applied effectively, the losses resulting from it often leaves irreparable harm and is difficult to repair and remedy because if the adoption of legal principles that respect the humanity during armed conflict is a benefit in itself, it will undoubtedly become useless unless these rules are embodied or reflected on the ground.

Preventive mechanisms for the application of the IHL are the first of the mechanisms provided for in the four Geneva Conventions. Preventive measures are the first to be undertaken by states to give effect to the IHL since prevention is the most successful means of preventing loss of life, reducing war losses, and targeting civilians. These mechanisms are aimed at the commitment of states to abide by the provisions of international law, to promote its dissemination, and to publicize its rules.

The international community has adopted a group of mechanisms that may help to achieve the desired goal of protecting the minimum standards of human dignity, as well as attempting to minimize violations of the rules of the IHL (Al-Zamali, 1997).

Among the guarantees that enhance respect for international humanitarian law and affirm the protection of victims of armed conflict are the provisions of Articles (07, 07.07, 08) common to the four Geneva Conventions, that persons protected should not, in any case, waive some or all of the rights Granted to them (Abdul-Ghani, 1991).

The states are primarily responsible for the implementation and application of the IHL; (ICRC, 2021b: Article 1; ICRC, 1977a). The rules and provisions of this law cannot be envisaged on the ground unless national efforts are made to take the necessary measures and actions to ensure the implementation of the principles of the IHL. It is inconceivable that the rules and provisions of this law will be applied on the ground unless there are national efforts to take necessary measures and measures necessary to ensure the implementation of the rules of IHL

According to the principle that the contract is the law of the contractors, this common first article imposes a contractual obligation on all states parties to respect IHL on their territories, and to take the necessary measures in the face of any other toxic

contracting party that does not respect this law, and since most of the countries of the world are parties to agreements The four Geneva of 1949 and there is a steady increase in the number of states parties to the first additional protocol of 1977, and the International Court of Justice has affirmed that all states parties to armed conflict or other states parties not involved in armed conflict have a responsibility to respect and ensure respect for the provisions of IHL.

In order to activate the rules of this law, the first work that states should do is to take preventive measures in peacetime or during an armed conflict in order to alleviate and reduce the scourge of wars and protect the people affected by such conflicts (Hrlibrary, 2021). Prevention is the best way to save thousands of lives, prevent destruction and minimize damage.

The obligation to respect IHL includes in all cases the obligation of persons addressing the international humanitarian law to take all measures required by this law, and the obligation to act in all cases in accordance with the principles and rules of this law, and these conditions are not limited to wartime, there are various obligations assumed by states at a time Peace, including the obligation to spread IHL and incorporate it into local legal systems. The state's commitment here includes the commitment of its agencies and the people who work for it, and the armed forces of a country are not only obligated to comply with this law within the borders of the state but also while they are waging war abroad (Goueili, 2010).

The obligation of states to ensure respect for IHL lead to another obligation represented in the commitment of states to amend their legislation and enact internal laws in line with international rules. So, this process is one of the most important steps needed to implement the IHL because it translates the true and good intention of states to respect the rules of this law. This idea is based on international instruments (deed) related to IHL especially what came in the text of the first common article of the four Geneva Conventions and Article 80 of the First Additional Protocol on the commitment of all states to take the necessary measures and procedures to respect these agreements and this protocol. See the text of a common article I of the four Geneva Conventions and Article 80 of Protocol I. The customary rule of international law states that international law is higher than domestic law and the principle of non-contradiction of the positions of states internally and internationally. Consequently, states are required to review their domestic legislation either by amending the texts of their laws in such a way as not to contravene the rules of IHL or the obligation to repeal any legislation, decree, or resolution that is contrary to its international obligations deriving from the rules of IHL, in particular, those contained in the Geneva Conventions and other rules of this Act. Such offenses constitute, in themselves, international crimes punishable by criminal responsibility and not

to be claimed that the act is in conformity with domestic legislation.

States are also obligated not to enact any legislation contrary to the rules of the IHL. Article 49 of the Geneva Conventions. States are required to enact the necessary legislation to implement them. As a result of this, they are required not to enact any legislation contrary to the Geneva Conventions or other rules of the IHL. It is the case of the Alabama ship judgment of 1867 between the United States of America and Britain, where the Court of Arbitration found Britain to be condemned and held internationally responsible for its neutrality during the American Civil War and refused pay claiming that it had no legislation governing non-neutrality. The State may not excuse the absence of legislation to establish compliance with the rules of the IHL or to criminalize violations of the Geneva Conventions or to determine their principles and rules because such payment is already contrary to its obligations already referred to above, that legislative action must be taken to implement those principles and rules.

The four Geneva Conventions of the year 1949 and the two Protocols thereto of the year 1977 and other relevant conventions have formed the cornerstone of the rules of IHL. Thus, it can be emphasized that IHL no longer requires rules to regulate its subjects and principles as far as it needs effective mechanisms for the dissemination, implementation, and respect of its rules at the national and international levels. This requires mechanisms for implementation and monitoring, preventing the scourge of war and protecting the people affected by it.

The preventive mechanisms of the IHL have a preventive role to prevent serious violations of the provisions of the IHL if the states and organizations concerned to do so because prevention is the best way to save thousands of lives and prevent destruction at the lowest cost as well as the regulatory mechanisms of this law. This enables organizations and states to monitor the extent to which states respect their obligations during armed conflicts.

In order to ensure respect for the provisions of IHL, states have the right to take action and measures against states that violate humanitarian law to compel them to respect their international obligations. The measures include: using diplomatic pressures, the public exposure of such violations, the boycott of a state which violates the provisions of IHL, and so on.

States that must commit themselves to the search and force of their military, civil and judicial bodies and of anyone under their jurisdiction to respect international humanitarian principles and to give all appropriate orders and instructions to the organs involved in the war effort especially the armed forces, to apply humanitarian rules and urge them to respect protected persons and property (Sassoli, 2002).

Responsibility can also involve behavior by private actors facilitated by such omissions. Finally, the obligation to "ensure respect" in Common Article 1 of the Geneva Conventions can also be seen as establishing a standard of due diligence in relation to private actors if they find themselves subject to the jurisdiction of a State, or even in connection with a breach of IHL by States and non-state actors abroad that can be affected by a State (Sassoli, 2002).

It should be noted that the conventions of the IHL provided for a range of preventive and control mechanisms but the problem remained as to the effectiveness of those mechanisms in reducing violations of IHL.

The four Geneva Conventions of 1949 and the first additional Protocol thereto of 1977 stipulate that parties to an international armed conflict must undertake to respect and ensure respect for those treaties and conventions. Each party to the conventions must commit itself to do everything necessary to ensure that all authorities and persons under its control comply with the rules of the IHL (Pfanner, 2009). If the States and organizations concerned to do so, prevention is the best way to save thousands of lives and prevent destruction at the lowest cost, and so are the regulatory mechanisms of this law that enable organizations and States parties to monitor the extent to which States respect their obligations during armed conflicts.

This obligation stems from the well-known principle of international law: "The principle of the fulfillment of the Covenant" because, upon signature and ratification of the Geneva Conventions and their additional Protocols, States have undertaken to ensure respect for these Conventions by their respective authorities. It is recognized that the binding element of the international legal norm distinguishes it from the rules of ethics and morals that States observe in their international relations without legally binding on them. Article 1 of the four Geneva Conventions stipulates that the Contracting Parties undertake to respect the provisions of the Conventions. Common article 1 of the four Geneva Conventions states: "The High Contracting Parties undertake to respect and ensure respect for this Convention in all cases" (ICRC, 2021a). The first additional Protocol also stipulates that States Parties undertake to act together, or individually, in cases of serious breaches of this Protocol, in cooperation with the United Nations and in accordance with its Charter (ICRC, 1977a: Article 89).

A jurisprudential disagreement has been raised about the nature of the obligation of States to respect the rules of IHL. Some jurists believe that the nature of such respect, under article 1 of the 1949 Geneva Conventions, is an obligation that must be respected in the State and its organs. Others consider that article 1 does not impose obligations on States to respect the rules of the IHL embodied in the Geneva Conventions. The International Court of Justice has resolved this disagreement in its advisory opinion of 8/7/1996 regarding the legality of nuclear weapons,

in which, it asserted that a large number of applicable rules of the IHL during armed conflict are so essential that all States must respect them, whether or not they have ratified the conventions. (Abdul Karim, 2009).

The obligation of States is not only limited to their commitments of the content of the Convention but goes or extends to ensuring respect for the convention and this is stipulated in Article 1 common to the four Geneva. Accordingly, a contracting State may call upon another State to desist from violating IHL (Atelem, 2001). With respect to this issue, the ICRC stated that the duty to "ensure respect" is not limited to the behavior of the parties of the conflict, but includes the need for States to do their utmost to ensure respect for IHL without exception and to exert their influence to avoid and end violations of IHL and do not encourage other parties are to commit violations.

The position of the Security Council was similar to that of the International Committee which stated in one resolution: "It calls upon the States parties to the Fourth Geneva Convention to ensure that Israel respects its duty in accordance with article I of the Convention" (UNSC, 1990).

Accordingly, all States have the right to demand respect for IHL by parties to any dispute that occurs. (IHL, 2021).

3. The international criminal court (ICC) as a criminal mechanism for the implementation the international humanitarian law

At the international level, criminal justice is of great importance in resolving disputes among States and establishing appropriate penalties for international perpetrators of international crimes and violations of IHL. International criminal law is a fundamental link with the IHL and it represents the prevention of the most serious violations of humanitarian principles and rules.

The IHL is no longer merely literary and moral texts, but it has evolved and intermitted with another modern science of law, namely, international criminal law, both complementary to each other. A serious violation of the principles of the IHL leads to prosecuting the perpetrator of the violation by international criminal law in the light of the rules of IHL.

The idea of international criminal justice is one of the foundations that was noted or adopted after stages in particular after the Second World War, in which the most heinous international crimes have been committed against individuals, vulnerable groups as well as civilian objectives have been committed. However, this initiative did not decrease the international crimes and all that would affect human rights leading to the establishment of some temporary and mixed international tribunals without defining the acts that are considered international crimes.

The idea of establishing the ICC was not a modern one because the call for the establishment of such a

court preceded the emergence of a contemporary international organization which called for the need to find an international justice that would punish the crimes committed. The Swiss jurist Moynier called against the law of peoples. In a report to the War wounded Assistance Committee in 1872, he proposed the establishment of a five-member tribunal, two of which would be appointed by the parties to the war and three by neutral States. But his proposal failed because of ignoring the national judiciary which, until then, was the sole jurisdiction.

The idea of international criminal justice has evolved through considerable efforts by the international community which was an important stage in the international criminal law during and after the Second World War and what came with it in the creation of international criminal tribunals that was specially created to prosecute German and Japanese war criminals. These criminal tribunals constituted the cornerstone of the establishment of the Permanent International Criminal Court. By establishing the Permanent International Criminal Court, a new phase in the evolution of the rules of IHL appeared because any legal system that is effective and fully complied with its provisions requires an independent and permanent judiciary that works to ensure respect for these provisions and shall establish the responsibility of all those who are outside them.

3.1. The evolution of the international criminal court (ICC) and its functions

The ICC was established to consider international crimes among States, as well as to eliminate the wars and conflicts that are prevalent in many parts of the world, on the one hand, and on the other, the urgent need to establish a criminal international law. This is the course (road) of the ICC which in turn urges States to renounce war as a means of settling international disputes by imposing sanctions on States that commit the crime of aggression or violate the principles of IHL, and to deter all those who violate those rules by applying sanctions. The fact that achieving these objectives satisfies a sense of justice; If the penalty is applied in a way that does not involve duality of treatment, apart from external influences that can affect judgments rendered by the ICC to ensure justice (Al-Shazli 2002).

Following the history of the development of international criminal justice, it is concluded that the interim or temporary international criminal tribunals, in particular the Nuremberg and Tokyo Tribunals, have played a prominent role in developing the idea of the international criminal responsibility of individuals for serious violations of the principles of the IHL. This has played a major role in establishing the principles of international criminal law on the ground. However, the Tribunals were the will of the victor and the victor in the war often does not establish any consideration of the principles and guarantees of a fair trial, as well as that of the Tribunals for Yugoslavia and Rwanda

which were an important positive precedent toward the establishment of the international criminal justice and the accountability of perpetrators of serious violations of IHL. However, they were created by the Security Council which means that the reasons for maintaining peace prevail over the grounds of law and justice. Additionally, the Security Council has no legal right to form international courts (Bozian, 2014).

Because of the criticisms of the Second World War trials, there was an important desire to establish a permanent international judicial body to try persons accused of serious violations of the rules of the IHL. This desire was crystallized by the efforts of the United Nations General Assembly in the period following the trials of Nuremberg and Tokyo. The United Nations General Assembly initiated the invitation of the International Law Commission in 1947 to prepare a draft code of crimes against the peace and security of mankind and then invited the Commission itself in 1948.

Considering the possibility of establishing a permanent international judicial body to try those accused of crimes against the peace and security of mankind or the extent to which the ICC can be established within the framework of the International Court of Justice (Mahmoud and Youssef, 2003).

The international courts have been established since the appearance of the modern international system for the purpose of settling disputes between states and sometimes between other international actors. However, it was the Nuremberg trials after the Second World War that led mainly to the establishment of special courts to hear criminal cases against individuals in respect of core international crimes, namely genocide, war crimes, and crimes against humanity.

The international community succeeded in the last decade of the last century in establishing the ICC and the Netherlands City of the Hague was chosen as the seat or headquarter of the Court.

The establishment of the ICC was an explicit acknowledgment that impunity is unacceptable for the world's most serious crimes-genocide, war crimes, and crimes against humanity-and that it poses a threat to peace and democracy across the globe. Therefore, in the beginning, a decision was taken that the ICC would not accept any immunity or pardon for anyone who was even the most senior.

It can be stated that that the Rome Statute sent the most important message about the rule of law-the message that no one is above the law.

As stated in the Statute of the International Criminal Court, States have the primary responsibility for the prosecution of international crimes. Under the ICRC (2021b) and additional Protocol I 1977; States are required to prosecute or extradite persons accused of war crimes to their national courts in order to be tried elsewhere. In this sense, the ICC may not exercise complementary jurisdiction over international crimes, that is, it may not hear any case, except when the State is unable or

unwilling to prosecute suspects. It may also initiate a case when requested by the Security Council under Chapter VII of the Charter of the United Nations.

The ICC exercises jurisdiction over war crimes, crimes against humanity, and genocide. This includes the most serious violations of the IHL covered by the ICRC (2021a) and ICRC (1977a; 1977b) whether committed during an international or non-international armed conflict. The Statute includes specific war crimes such as all forms of sexual violence committed during armed conflict and the use of children under 15 to participate in hostilities. With regard to genocide, the ICC reiterates the definition of crime contained in the 1948 Convention on the prevention and punishment of the crime of genocide. The Convention defines genocide as acts committed (such as murder) with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.

The ICC also has jurisdiction over crimes against humanity which include a series of acts committed as part of a widespread or systematic attack against the civilian population.

The crime of aggression that was referred to in the statute at the time of the establishment of the Court was not defined but the definition would be within the jurisdiction of the ICC when it was determined.

Unlike other international tribunals, the ICC may take action against individuals but not against States. However, the Statute of the ICC does not contain any reference exempted States from fulfilling their obligations under existing IHL or customary international law.

The ICC derives its independence by obtaining a guarantee that no one, whatever their nature, will interfere in its judicial proceedings, obstruct its decisions, or object to its decisions, and the independence of its judges. They shall be subject in the exercise of their work only to the dictates of law and conscience without any other consideration, which has also been the fate of all subsequent calls, proposals, and projects for the establishment of an international criminal court. The projects adopted and advocated by many scientific bodies and international conferences, for example, the efforts of the Law Society, the efforts of the Inter-Parliamentary Union (IPU), and those of the International Society of Criminal Law (Ibrahim 1997).

In accordance with the provisions of the Statute, the convention was formally implemented on 1 July 2002. The ICC is the only international tribunal competent to prosecute and punish persons found guilty of international crimes. This makes the ICC different from the International Court of Justice (ICJ). The ICJ has jurisdiction only over States whereas the ICC has jurisdiction over individuals only (UN, 2021).

At this fact, courts rules refer to the fact that national courts should consider serious violations but the ICC is complementary to these national jurisdictions as provided for that in the Rome Statute. Hence, the term used repeatedly to refer to

the Rome Statute, "integration." Through the ICC proceedings, it has become clear that integration is one of the most important—if not the most important—concepts in the Rome Statute and in the global fight for an end to impunity for serious crimes.

Following the mass genocides of Rwanda and the former Yugoslavia in the late 1990s, the governments of the two states met with a view to establishing an independent and permanent ICC with the authority to hold the perpetrators most responsible for serious crimes accountable, regardless of their places or positions.

The essence of the new system that emerged from the Rome Statute lies in the fact that serious crimes cases must be dealt with primarily in national courts. The ICC is considering certain cases under very specific circumstances because it is considered as the "last resort" court. The Rome Statute stipulates or states that the ICC is complementary to national criminal jurisdiction (ICRC, 2021b).

The adoption of this complementary nature is for the four reasons:

- The accused shall be protected in the event of prosecution in the national courts.
- It respects national sovereignty in the exercise of national criminal jurisdiction.
- It may lead to better effectiveness because the ICC cannot hear all cases of serious crimes.
- The burden is placed on states to carry out their duties under both national and international law, conducting the necessary investigations and deciding on the alleged serious crimes and, therefore, the complementary system is not only concerned in the matter of effectiveness but also both law, policy and public morality.

That the ICC has a fundamental jurisdiction that means that it has the power to hear any case even national authorities are trying to decide it. This system was followed in both the international military Tribunal in Nuremberg in 1945, the International Military Tribunal for the Far East in 1946, the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda that was established in the late 1990s.

The idea of criminal justice exists at the heart of sovereignty. One of the constituent concepts of sovereign power lies in the state's forcible seizure of police power to arrest and the court's power to prosecute and to punish." However, the rudder was likely in favor of the calls for a complementary system. This is mainly because states adhered to the concept of sovereignty. The International Criminal Court, in its capacity as a voluntary treaty body, works on reconciling or aligns between the signatory states of its statute.

The effectiveness of such courts may have been the other reason why national courts have been given priority. The presence of the courts to hear in the cases in close proximity to the alleged victims, perpetrators, and crime theaters, as well as the use

of locally spoken languages, would facilitate their work and would lower their costs.

Many who work on issues of rule of law and transitional justice believe that one of the main reasons for favoring national action over those of the international community, whenever possible, is its ability to restore public confidence in national institutions that have disappointed citizens, as always during conflicts or repressive policies.

In fact, all that falls under the concept of complementarity is in fact related to questions of admissibility: In a clearer sense, whether or not a case is admissible in the ICC or not. In order to resolve the inadmissibility of a case, the National Authority should indicate that it was in the process of considering a case that was very similar to that brought before the International Criminal Court. The most important provisions of the Rome Statute dealing with this issue are found in articles 7, 8, 9, 10, and 53. Perhaps, the most important one is the "admissibility issues" found in article 17 which was stated for cases where the case was not admitted. (ICRC, 2021b: Article 17).

In the case of the national authorities try to hear the case itself, article 17 sets out two exceptions to these admissibility rules: The unwillingness of the authorities to conduct fair proceedings or inability to do that. Article 17 aims at establishing a rule that would resolve the problem of conflicts of jurisdiction between the ICC and the National Court on the one hand. Many who work on issues of the rule of law and transitional justice believe that one of the main reasons that have given priority to national action to those international institutions, whenever possible, is their ability to restore public confidence in national institutions that have disappointed citizens, as always during conflicts or repressive policies.

For example, if the state informs the court that it has already started the investigation in the case itself and has decided not to prosecute, article 17, paragraph (1) (b), is applied. In this case, these facts must be verified by answering the following question: Have investigations been conducted in the same case, and has the state decided not to prosecute the accused?

If the answer of one of the two questions mentioned above is negative, i.e. the case under consideration in the ICC is not considered admissible or if the answer of the question is positive (yes), then it must go on to determine why the state has decided not to prosecute the accused, is it unwilling or unable to do so?

Judges of the ICC assess the willingness and ability of the State to take genuine action. They rely on the evidence and information provided to the Court by a State with jurisdiction over any national investigation or prosecution of the accused himself/herself. In case that judges determine that the reason for the state's decision not to prosecute is because of its unwillingness or inability to do so, the case is admissible for consideration in the International Criminal Court.

This selection of the "case itself" raises important questions concerning the discretionary authority that national authorities are supposed to have with regard to the details they include in the case when an action under consideration by the ICC is challenged on the basis of admissibility. "If the national authority abided by the foundations laid by the Rome Statute to urge it to abide by them (to prosecute serious crimes in good will), everyone will be brought to justice even those with political power and influence."

3.2. The jurisdictions of the international criminal court

The role of the ICC is complementary to the role of the national judiciary, and this is achieved by complementary jurisdiction, or what is called the principle of complementarity between the ICC and the national judiciary. On international crimes, the role of the court is merely a complement to state courts (Gabriele, 2002).

The jurisdictions of the ICC are of three types.

3.2.1. Substantive jurisdiction

Article 5 of the statute of the International Criminal Court states that the substantive jurisdiction of the court relates to the following crimes (ICRC, 2021b; Article 5/1):

- Genocide crimes
- Crimes against humanity
- War crimes
- Crime of aggression

The court exercises jurisdiction over the crime of aggression whenever a judgment in this regard is adopted in accordance with articles 121 and 123 defines the crime of aggression and sets the conditions under which the court exercises its jurisdiction in relation to this crime. This provision must be consistent with the relevant provisions of the Charter of the United Nations (ICRC, 2021b: Article 5/2.)

3.2.2. Temporal jurisdiction

The ICC shall be permitted to consider such crimes committed after the entry of its system into force of and against States which have become parties to them. The ICC has adopted the rule of non-retroactivity of the criminal law, and this is confirmed by Article 24/1 of the court system as it stipulates: A person is not criminally responsible under this statute for behavior prior to the entry into force of the system. (ICRC, 2021b; Article 24/1).

3.2.3. Personal jurisdiction

The court has jurisdiction over any individual accused of a crime that falls under the jurisdiction of

the International Criminal Court except for anyone who was under the age of eighteen at the time the crime was committed against him (ICRC, 2021b; Article 26).

The ICC Statute S expressly considers that immunity cannot be invoked in relation to crimes for which it has jurisdiction.

Article 27 of the Basic Law states that the Court has jurisdiction "on all persons equally, without any discrimination on the basis of official status. In particular, the official characteristic of a person, whether he is the head of state or government, or a member of a government or parliament, an elected representative, or a government employee, does not in any way exempt him from criminal liability under this statute, nor does it in itself constitute A reason to reduce the sentence.

This article affirms the principles emanating from the previous principles established by the Nuremberg Tribunal and the international criminal tribunals for the former Yugoslavia and Rwanda and grants them a permanent and compulsory legal status. It also reaffirms the provisions adopted in this field in a number of international agreements.

The Criminal Court shall consider offenses committed by individuals after the age of 18 years and after the entry into force of its Statute against their States (Darwish, 2015).

The Court could automatically exercise jurisdiction over offenses committed in the territory of any Member State or committed by persons belonging to any Member State. Member States may cooperate with the Court including the extradition of suspects when requested by the Court. Signatory States have the right to participate in and vote on the proceedings of the Assembly of the Member States, which is the governing body of the Court.

It can be said that the most important characteristic of the International Criminal Court is that the crimes that fall within its jurisdiction are not subject to a statute of limitations, due to the gravity of the international community and humanity in general, and for the accused not to escape punishment simply because of his ability to hide from view until the time of the statute of limitations. Article 29 of the Statute of the Court affirmed this principle. (ICC statute).

3.3. The role of the ICC as a criminal mechanism for the implementation of the IHL

It is indisputable that the ICC is a historic achievement of humanity because it is the first tribunal established to prosecute individuals who have committed serious violations of the IHL and international crimes that threaten international peace and security. Many attributed the frequent serious violation of the IHL to the weakness of the international criminal law, lack of a mechanism by which those responsible for such violations can be prosecuted, brought to legal accountability, and punished.

The ICC has come to crystallize the considerable international efforts made to approve an international system acceptable to the International Community with a view to overcoming obstacles to the prosecution of crimes affecting and threatening the integrity of the human entity. States approved the Statute of the Court in 1998 after having found that the measures and mechanisms available to prosecute perpetrators of violations of the IHL are not sufficient to ensure that the provisions of the IHL are not violated, in the absence of the political will of the parties concerned to do so, the establishment of the ICC was a definite attempt to fill a major gap in the international legal system in general and in the IHL in particular.

The question remains: How effective the ICC is in reducing violations of IHL, preventing international crimes, and applying justice to all international criminals, especially as the war has increased in many countries.

3.4. Obstacles related to the jurisdiction of the international criminal court

Unfortunately, the future does not seem bright for the International Criminal Court, though the increasing number of States ratifying the Statute of the Court. However, there is a range of obstacles to meet the aspirations to provide effective and fair protection to victims of violations of humanitarian law. The constraints that limit the ICC to exercise its jurisdictions include the following:

1. The principle of national sovereignty is one of the main obstacles to the work of the Court (ICC) because it is difficult for some States to be convinced of international jurisdiction to appear before the court to be held accountable for violations of their international obligations. Some States consider their responsibility for certain international acts as a form of interference in their international affairs. This is the principle prohibited in all international conventions and norms (Itani, 2009). If the States parties to the Rome Charter are expected to amend their national laws to comply with the provisions of the Court's political system, the notion of sovereignty has prevented these amendments from being realized (Alghamdi, 2013).
2. The complementary jurisdiction of the ICC is one of the most significant existing obstacles to the work of the Court because it deters it from prosecuting perpetrators of international crimes by establishing fabricated (in form only) courts for its citizens accused of international crimes, and that is what Israel has done repeatedly.
3. Giving the Security Council the right to intervene to suspend the ICC investigation and prosecution procedures by the statute of the ICC has seriously threatened the effectiveness and independence of the ICC because granting such powers to the Security Council would enable those who wait to violate or criticize the ICC laws to interfere with

its work and to deal with the perpetrators of crimes in a duality. This would certainly impede the work of the ICC.

4. The fact that the ICC does not have its own forces to prosecute, arrest and imprison the accused. This makes the possibility of impunity for the perpetrators stronger and reduces the effectiveness of the ICC in implementing its decisions.

3.5. Cases referred to the international criminal court

On the basis of the submissions of States parties or the United Nations Security Council, or on ICC initiative with the authorization of the judges, the Office of the Prosecutor shall conduct investigations through the collection and examination of evidence, the interrogation of persons under investigation, and the interrogation of victims and witnesses for the purpose of finding evidence of a suspect's innocence or guilt. The Office of the Prosecutor shall investigate the conditions of criminalization and exemption (innocence) in the same way or equally.

The Office of the Prosecutor requests the cooperation and assistance of States and international organizations, and also sends investigators to areas where alleged crimes have occurred to collect evidence that investigators must ensure that victims and witnesses are not at risk.

There are 12 cases referred to the ICC. Table 1 shows these cases.

In the past nineteen years, the failure of the ICC work was very clear. This is clear in the fact that it has, until today, dealt only with cases related to African countries, and it forgets or ignores what is happening in other parts of the world such as Palestine, Iraq, Syria, and other countries. It is important to recognize that the purpose of the ICC is only to establish international legitimacy. It must act as a deterrent to those who commit such heinous crimes in order to prevent serious harm to humanity. This court must be one of the pillars of international criminal justice so that the perpetrators of these terrible crimes do not escape punishment. At this stage (globalization) makes the economics of the world close to each other, the world cannot ignore the universality of criminal justice with regard to these crimes

The ICC has provided a glimmer of hope to the victims of oppression and injustice in the world. It is true that it does not deal with State cases as in the case of the International Court of Justice because its jurisdiction is limited only to individual cases. However, this does not greatly diminish the importance of this court especially as war crimes, crimes against humanity and genocide are crimes whose responsibility can be limited to those who have issued orders to commit them, or to the field commanders who have supervised the execution of these crimes. In comparison to the International Court of Justice whose jurisdiction is limited to disputes between States, the ICC is filling the gap as

long as it allows war criminals and authoritarian leaders to commit their crimes against other peoples or their peoples without justice.

Table 1: 12 cases referred to the ICC

Situations under investigation	Situation referred to the ICC by	ICC investigations opened Date	Current t focus	Current regional focus
The Democratic Republic of the Congo	The DRC Government	June 2004	Alleged war crimes and crimes against humanity committed in the context of armed conflict in the DRC since 1 July 2002 when the Rome Statute entered into force	Eastern DRC, in the Ituri region and the North and South Kivu Provinces
Uganda	by the Government of Uganda	July 2004	Alleged war crimes and crimes against humanity committed in the context of a conflict between the Lord's Resistance Army (LRA) and the national authorities in Uganda since 1 July 2002 (when the Rome Statute entered into force)	Northern Uganda Darfur, Sudan
Darfur, Sudan	The United Nations Security Council	June 2005	Alleged genocide, war crimes, and crimes against humanity committed in Darfur, Sudan, since 1 July 2002 (when the Rome Statute entered into force)	Darfur (Sudan), with Outreach to refugees in Eastern Chad and those in exile throughout Europe.
The central African Republic	The CAR Government: December 2004	May 2007	Alleged war crimes and crimes against humanity committed in the context of a conflict in CAR since 1 July 2002, with the peak of violence in 2002 and 2003. (See CAR II for the situation in CAR from 2012 onward).	Throughout CAR
Kenya	ICC Prosecutor opens proprio motu investigation	March 2010	Alleged crimes against: humanity committed in the context of post-election violence in Kenya in 2007/2008.	Six of the eight Kenyan Provinces: Nairobi, North Rift Valley, Central Rift Valley, South Rift Valley, Nyanza Province and Western Province
Libya	The United Nations Security Council	March 2010	Alleged crimes against humanity and war crimes committed in the context of the situation in Libya since 15 February 2011	Throughout Libya in, inter alia, Tripoli, Benghazi, and Misrata
Côte d'Ivoire	April 2003 – Rome Statute ratification: 15 February 2013	October 2011	Alleged crimes within the jurisdiction of the Court committed in the context of post-election violence in Côte d'Ivoire in 2010/2011, but also since 19 September 2002 to the present	Throughout Côte d'Ivoire, including, the capital of Abidjan and western Côte d'Ivoire
Mali	The Government of Mali	January 2013	Alleged war crimes committed in Mali since January 2012	Mainly in three northern regions, Gao, Kidal, and Timbuktu, with certain incidents in Bamako and Sévaré, in the south
Central African Republic II	The CAR Government: May 2014	September 2014	Alleged war crimes and crimes against humanity committed in the context of renewed violence starting in 2012 in CAR. (CAR I regarding the 2002/2003 conflict in CAR).	Throughout CAR
Georgia	ICC Prosecutor authorized to open Proprio Motu investigation: 27 January 2016		Alleged crimes against humanity and war crimes committed in the context of an international armed conflict between 1 July and 10 October 2008	According to the Prosecution's request for authorization to investigate: in and around South Ossetia
Burundi	ICC Prosecutor authorized to open Proprio Motu investigation: 25 October 2017		Alleged crimes against humanity committed in Burundi or by nationals of Burundi outside Burundi from 26 April 2015 until 26 October 2017	Both in and outside of Burundi
Bangladesh/Myanmar			Alleged crimes of deportation, persecution, and any other crime within the ICC jurisdiction committed, against the Rohingya people or others, violence which occurred in Rakhine State, Myanmar, and any other crimes under the ICC's jurisdiction sufficiently linked to these events	

It is indisputable that the ICC is one of the most important mechanisms formulated by the international will to suppress violations of humanitarian law after the world found that the measures and mechanisms available in the Geneva Conventions were insufficient to ensure respect for the provisions of the IHL. This led to the establishment of the ICC to remedy the shortcomings of the earlier courts and to fill a significant gap in the international legal system in general, and in IHL in particular. This is represented in the absence of a permanent international criminal institution, the protection of the rules of IHL, and the punishment of offenders and accused in accordance with the general rules of that court. Thus, the establishment of the ICC by the international community has

brought about a significant shift in the mechanisms of IHL which are a powerful deterrent to anyone who has committed an international violation or crime if the Court is dealt with such violations away from political considerations and pressures.

To conclude from what has been reviewed above, the establishment of the ICC has constituted and proved to be an unprecedented step in humanitarian history that would create an international judicial authority to ensure the rule of international law and the application of the provisions of the IHL. However, it is too early to judge its effectiveness and its capacity. The Statute, of the ICC states that the Court has an international legal personality and the legal authority necessary to exercise its functions and to achieve its objectives and the Court may exercise its

jurisdiction and authority over the territory of Member States and on the territory of any other State under a special convention concluded with the concerned States. Article 4 of the ICC statute states that: "The legal status and powers of the court:

1. The court shall have an international legal personality, and it shall have the necessary legal capacity to exercise its functions and achieve its purposes.
2. The court may exercise its functions and powers, as stipulated in this statute in the territory of any state party, and it may, and under a special agreement with any other state, exercise it in the territory of that state" (ICRC, 2021b; Article 4).

4. International responsibility for violating the international human law

One of the most important legal obligations arising from a violation of the rules of international humanitarian law is the obligation to ensure accountability for the perpetrators of those violations. As noted by the United Nations Secretary-General, respect for the rule of law requires that "all persons, institutions, entities, and the public and private sectors, including the state itself, are accountable to the laws that are publicly promulgated, which apply equally to everyone and in which they are governed by an independent judiciary, consistent with international human rights norms and standards. This principle also requires taking measures to ensure adherence to the principles of the rule of law, equality before the law, responsibility before the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoiding arbitrariness, and procedural and legal transparency (UN, 2004)

The concept of responsibility is an essential part of the implementation and respect for the law. A right is often linked to a mutual obligation. In case of a breach of this obligation, the person who has committed such an act may be held liable in civil or criminal matters. Responsibility is often individual particularly in international criminal law. Representatives of States benefit from judicial immunity except for matters relating to war crimes, crimes against humanity, and genocide. A special type of responsibility applies to States in the event of violations of their international obligations to another State. State responsibility is caused by the acts of its agents, especially its armed forces, as well as by individuals and groups who actually carry out acts under its effective control. The ICC is specialized to examine these situations and obliging States to pay compensation.

This responsibility is linked to the obligation, its existence has no meaning without bearing it from the legal person who is bound by this obligation and who is under the legal rule, especially if this obligation is of the kind of collective obligation under which the State is committed to the

international community as a whole where each State has an interest in raising international responsibility against it.

4.1. The state's responsibility for violating the international human law

It is known that the obligation to respect international humanitarian law means that the state is obligated to do everything in its power to ensure that the rules of international humanitarian law are respected by its organs and all those subject to its jurisdiction (Goueili, 2003).

The obligation to ensure respect for international humanitarian law by the parties to a conflict also applies to third states. The most high-profile contributions to this implementation effort are made through the United Nations, regional organizations, and non-governmental organizations, even though they are given no specific role, or only a marginal one, under the terms of that body of law. Their pronouncements can also refer directly to international humanitarian law. Under Article 89 of ICRC (1977a), in situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter. Formally, this provision does not allow them to act in situations other than international armed conflicts. Article 1 common to the four Geneva Conventions, in which the contracting States undertake to ensure respect for the law, goes further in that it also covers internal conflicts and addresses the entire international community, represented by its world body (Pffanner, 2009).

International humanitarian law, without its respect and observance of its provisions, becomes merely an expression of ideal ideas. Hence, it is incumbent upon all states that contribute to its development and promotion, because it has a general interest in developing and respecting its rules. Any violation of its rules affects the entire international community. This is in view of the peremptory nature of its rules, and it must be noted here that any treaty inconsistent with its provisions is null and void in accordance with the text of article 53 of the Vienna Convention on the Law of Treaties, and that articles (6, 6, 6, 7) common to the Geneva Conventions have not permitted the Contracting States to Any other agreements that adversely affect the victims of armed conflict are concluded or restrict the rights granted to them under the aforementioned agreements (Hrlibrary, 2021).

The International Human Law provides for many obligations that establish the international responsibility for States in the case of violations. This responsibility is different from that of the individual responsibility of state agents varies even if they are acting on orders.

With regard to the responsibility of States to fail to respect the obligations contained in the IHL, it could be brought before the International Court of

Justice by other Governments which had been damaged in respect of such violations and could result in compensation. The failure of States to prosecute perpetrators of war crimes, crimes against humanity, and genocide at the national level could be within the jurisdiction of the International Criminal Court. The ICC jurisdiction, in a particular situation, has arisen from State ratification of the Statute of the ICC or by a binding resolution of the United Nations Security Council when that State is unwilling or unable to prosecute alleged perpetrators (ICRC, 2021b; Article 17).

In fact, the reality is that there are serious violations of the principles of IHL in all contemporary or modern wars and conflicts characterized by the use of lethal weapons, which often do not allow a distinction between military and civilian objectives on the one hand. On the other hand, the behavior of many disputing countries is characterized by ignoring and violating IHL. Philip Rifman summarized the paradox between the comprehensiveness of the rules of IHL and the weakness of its effectiveness in daily reality: "In all, IHL includes at least 50 conventions. Contrary to the hopes of many humanitarian activists, this does not guarantee it equally, either a broad range or a better application." (Philippe, 1999).

States parties to the Geneva Conventions undertake to respect and ensure respect for the Geneva Conventions in all circumstances (ICRC, 2021b; Article 1, Protocol 1, Article 80-2). A number of material obligations that arise from this obligation are as follows:

1. States are obliged to disseminate the text of humanitarian law conventions to the widest extent between armed forces and civilians. (ICRC, 2021a: Geneva Convention 1; Article 47; Geneva Convention 2; Article 48; Geneva Convention 3; Article 127; Geneva Convention 4; Article 144; ICRC, 1977a: Articles 83-1, 87-2; ICRC, 1977b: Article 19). For example, the State should incorporate the provisions and regulations of humanitarian law into its military laws, the instructions to its armed forces, and the Code of military discipline, and it should ensure that its military leaders know these provisions
2. The political and military authorities are obliged to take all necessary measures to ensure respect for the obligations under humanitarian law. (ICRC, 2021a: Geneva Convention 1; Article 49; Geneva Convention 2; Article 50; Geneva Convention 3; Article 129; Geneva Convention 4; Article 146; ICRC 1977a: Articles 80-1; 86 and 87).
3. States undertake to enact any necessary legislation to impose effective criminal penalties for persons who commit, or order to commit, flagrant violations (ICRC, 2021a: Geneva Convention 1; Article 49; Geneva Convention 2; Article 50; Geneva Convention 3; Article 129; Geneva Convention 4; Article 146).

4. States are obliged to search for persons alleged to have committed or ordered serious violations and refer them to their courts (ICRC, 2021a: Geneva Convention 1; Article 49; Geneva Convention 2; Article 50; Geneva Convention 3; Article 129; Geneva Convention 4; Article 146; ICRC, 1977a: Articles 86). This is done irrespective of the nationality of the accused who may be a member of the armed forces.

States are responsible for all acts committed by members of their armed forces. Furthermore, if a State violates humanitarian law, it may be held liable and obliged to pay compensation (ICRC, 1977a: Article 91). A State itself or any other State may not be exempt from any liability it bears in respect of violations of the Geneva Conventions committed by its authorities, citizens, or on its behalf (ICRC, 2021a: Geneva Convention 1949; Geneva Convention 1; Article 51; Geneva Convention 2; Article 51; Geneva Convention 3; Article 131; Geneva Convention 4; Article 148).

The rules of customary humanitarian law derive the following obligations with respect to the acts of States in international and non-international armed conflicts.

The state is responsible for violations of IHL in the context of armed conflict if it can be attributed to such violations as:

- violations committed by its organs, including its armed forces
- violations committed by persons or entities empowered to exercise elements of government authority
- violations committed by persons or groups that in fact act on their instructions, under their direction or are subject to their control
- Violations committed by individuals or groups recognized and adopted by the state as one of its actions (rule 149).

The State responsible for violations of IHL is under an obligation to compensate fully for losses or damages caused by violations (rule 150).

States shall investigate war crimes allegedly committed by their nationals or armed forces or on their territory and, where appropriate, prosecute suspects. It must also investigate other war crimes within its jurisdiction and, where appropriate, prosecute suspects (rule 1). Finally, States must do their utmost to cooperate to the extent possible with each other to facilitate the investigation of war crimes and the prosecution of the suspect (rule 161).

In many cases, the International Court of Justice supported the fact that the conduct of a State organ always gave rise to the responsibility of that State, without having to prove that the group acted on the orders of the State or that it had overtaken it.

Both international and regional jurisdictions recognize that proving state responsibility for violations of international humanitarian law should lead to the state taking measures to compensate for

the damage it has caused and to prevent future violations. These measures range from paying compensation to victims and their families and providing assurances of non-repetition, to adopting legal mechanisms to prevent future violations. There is no doubt that the state is obligated to pay compensation for any violation of international humanitarian law, but many national courts have rejected the right of victims to seek compensation on the basis of international humanitarian law. In the case of *Bosnia and Herzegovina v. Serbia and Montenegro*, the International Court of Justice concluded that Serbia had violated its obligations to prevent genocide and prosecute the perpetrators. The court decided that Serbia was "to take effective steps to ensure full fulfillment of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, the transfer of individuals accused of this crime or any other act to try them before the International Criminal Tribunal for the Former Yugoslavia, and full cooperation with the court. Application of the Convention" Preventing and punishing the crime of genocide (GHL, 2007).

The decisions of the Court shall indicate the degree of full, effective, or public control necessary to establish as the acts of an armed non-State group attributable to a State

The ICC could be an effective means of implementing IHL if the provisions of its statute were applied and sanctions were implemented against criminals. Its work was based on objective criteria and not on political wishes or interests. Thus, a violation of certain principles of IHL constitutes an international crime or constitutes such grave breaches as are provided for in the Geneva Conventions and additional Protocol I (ICRC, 2021a: Geneva Convention 1; Article 50; Geneva Convention 2; Article 51; Geneva Convention 3; Article 130; Geneva Convention 4; Article 147; ICRC, 1977a: Article 85). Since IHL conventions are multilateral collective treaties that give rise to legal relations between several States, it is not always easy to identify the State or States which have been affected by the violation of the Agreement, thus giving rise to the possibility that any of these States may raise the responsibility of the State in violation of these conventions, in particular, the breach that had occurred in connection with an obligation arising from one of the peremptory norms which constituted the universal principles recognized by the entire international community and which were generally recognized as binding rules of international law. It could be noted that most international jurisprudence believed that the rules of IHL were peremptory. The IHL supports this view when it separates conventions concluded by States that have a negative impact on the situation of persons protected in the case of international and non-international armed conflicts (Sassoli, 2002).

This is possible in the international law project if some differences between a breach of a certain State's own interest and a breach of public or social interest. The breach in the first one enables the

affected States to institute an international liability claim whereas the second (the public or social interest) is the State's responsibility to defend it before the International Court of Justice as the judicial organ of the international community. There is another aspect of the jurisprudence that considers article 42 of the draft articles on State responsibility prepared by the International Law Commission guarantees the right of the injured State to invoke international responsibility if the breach is related to it alone. Whereas a group of States or society as a whole may invoke responsibility against the State in breach of the same obligations of fundamental nature of the violation of the treaty would change the position of all other States, such as disarmament treaties. This jurisprudence adds that IHL treaties do not belong to such treaties although their obligations must be taken into account by all States because it is the hostile party to an international armed conflict or the State on whose territory the victims have committed a violation of IHL or the national State to which the victims belong Can be considered as damaged.

4.2. Responsibility of individuals for violating the international human law

The international community considered some grave or serious violations of international humanitarian law to be very serious of what must be regulated within the framework of international criminal law, International Criminal Law is a set of international rules designed to prohibit certain types of behavior and hold persons who engage in such behavior criminally responsible for their actions. (Antonio, 2008) and the determination of individual criminal responsibility for such acts.

Individual criminal responsibility is essential to ensure accountability for violations of international humanitarian law. The International Military Tribunal at Nuremberg made its famous observation that "crimes against international law are committed by persons rather than abstract entities, and that the provisions of international law can only be enforced by punishing those individuals who commit those crimes." Since the 1990s the international community has intensified its efforts to find mechanisms through which individuals responsible for serious violations of international humanitarian law can be brought to justice.

The ICC Statute included the most comprehensive and up-to-date definition of relevant international crimes whose components primarily constitute violations of international humanitarian law (ICRC, 2021b: Articles 6, 7, 8).

Article (25/3) of the statute of the International Criminal Court is the latest codification of individual responsibility for international crimes, which states that: "According to this statute, a person is criminally responsible and subject to punishment for any crime within the jurisdiction of the court." The text includes a set of one of the criminal acts for which

the commission, command, or incitement to commit is a crime.

The accountability of the military commander or someone acting on behalf of him, for criminal responsibility when forces under his or her effective command and control commit international crimes because this military commander, or the person acting as military commander does not carry out his or her duty so that he or she does not exercise proper control of these forces especially if it is proved to be the military commander or the person acting on his place knew or assumed that he knew because of the circumstances at the time that the forces under his command or control committed or were about to commit any crime within the jurisdiction of the court or if the military commander or the commander in chief had not taken all necessary and reasonable measures authorized to him/her to prevent or suppress the commission of such offenses, or for the purpose of accountability to the competent authorities to investigate and prosecute the perpetrators of such crimes (ICRC, 2021b: Article 28a).

The accountability of the President for crimes within the jurisdiction of the Court, committed by subordinates under his or her effective authority and control as a result of his or her failure to exercise and control over such subordinates in the following cases:

- a. if the President has knowingly made any information or ignored consciously any information that clearly indicates that his subordinates commit or are about to commit such crimes.
- b. if these offenses or crimes relate to activities within the effective responsibility and control of the President
- c. if the President has not taken all necessary and reasonable measures within his authority to prevent or suppress the commission of such crimes or to bring the matter before the competent authorities for investigation and prosecution (ICRC, 2021b: Article 28b).

This article recognized the responsibility of the military commander and the civilian chief for the acts of their subordinates and held them responsible for international crimes committed by subordinates even if they did not order the commission of such crimes. It also made a distinction between the responsibility of the military commander and the civilian president with regard to knowing or not.

As for the first one, he must exert extra effort to remain aware of the activity of its forces, perhaps because of the nature of the military work. As for the civil president, the statute did not require him to know all the actions of his subordinates. For example, committing war crimes outside the scope of the work does not make it liable even if he knows it and does not take the necessary measures (Alzayat, 2011). As for the necessary and reasonable measures for repression and prevention, some

believe that the military commander must provide the following conditions (Haykal, 2000):

1. Monitoring the effectiveness of the reporting system
2. Using punishment or taking corrective action in case of the knowledge of violations of IHL.

It is worth noting that if a person is convicted under international law of committing grave violations of international humanitarian law, this does not absolve the state from liability and vice versa. Article (25/4) of the ICC statute states that: "No ruling affects in this system it relates to individual criminal responsibility in the responsibility of states under international law". (ICRC, 2021b: Articles 25/4).

We can say that IHL holds leaders criminally responsible when:

1. They issue orders to their subordinates that violate IHL
2. They allow their subordinates to commit such violations of International Human Law
3. They fail to punish those who violate IHL on their own personal initiative
4. They do not prevent such a violation in case they knew or had information that enabled them to conclude that such a violation was or would be committed (ICRC, 2021a: Geneva Convention 1, Article 49, Geneva Convention 2, Article 50, Geneva Convention 3, Article 129, Geneva Convention 4, Article 146; ICRC, 1977a: Article 86-2).

There is no question that the armed forces are primarily responsible for respecting international humanitarian law. There is no doubt that their knowledge of international humanitarian law is a precondition for respecting and implementing it. It is not enough for a combatant to know how to carry a weapon and how to use it. Article 87 of ICRC (1977a) emphasized the importance of disseminating the rules of international humanitarian law among members of the armed forces (ICRC, 1977a: Article 87).

After reviewing the responsibility of individuals for violations of international humanitarian law, we draw the most important principles with regard to individual criminal responsibility, namely:

- Individuals are criminally responsible for the international crimes they commit.
- Individuals bear criminal responsibility for any international crime and are subject to punishment.
- Any person has the right to refuse to enforce any warrant contrary to law.
- Military commanders are criminally responsible for international crimes committed pursuant to their orders, and outside the scope of their orders, under the principle of commanders' responsibility.

It can be concluded from this that if the mandatory system of the conventions of IHL is complex and diverse, on the one hand, with respect to obligations accepted by States because of their importance for the protection of human life and dignity, on the other, they often arise between the parties to the conflict, thus making one party bring a claim of responsibility toward the other and, if so the same applies to certain rules of IHL. However, we believe that the rules of IHL are of a peremptory (imperative) norm. This enables all states to raise a claim of responsibility when they are violated because they represent fundamental obligations of the international community as a whole.

5. Results

It can be concluded that the greatest challenge facing the IHL in the world has been to respect the legal norms contained in the conventions regulating this law, and to ensure that it is respected by States and organizations requires effective preventive, supervisory, and penal mechanisms to ensure respect for it and to ensure the application of its provisions. The recent conflicts revealed that the States did not respect the provisions of the IHL. Although the four Geneva Conventions and their Protocols contain a set of provisions that oblige signatory States to disseminate widely the norms of the conventions in times of peace and war, issuing of legislation necessary to apply the IHL and to criminalize serious violations contained in the conventions is an obligation on the States parties, not taking any measures by State parties in many conflicts any measures to compel a State which violated the provisions of the IHL to respect the IHL led to serious violations of the IHL rules.

In conclusion, we affirm that the establishment of the ICC is a powerful impetus for the implementation of the IHL in order to respect the principles of human rights and to call upon States to make their efforts concerted. Cooperation in particular in order to implement the arrest warrants issued by the ICC against international criminals, anyone who postponed the rule of law in the world, and for ensuring lasting respect for international criminal justice. Each of the parties to the IHL conventions must adhere to all that is necessary to ensure that all authorities and persons under its control comply with its rules.

The court is a criminal mechanism for the implementation of the IHL if the provisions of its statute are applied and the penalties are applied against offenders and its work is in accordance with objective criteria and not political desires. The fact that the Statute of the ICC gives the Security Council the right to intervene in order to suspend the investigation and prosecution procedures is a serious risk to the effectiveness and independence of the Court.

Each of the parties to the conventions of IHL must abide by all that is necessary to ensure compliance by all authorities and persons under their control

with the norms of IHL and States parties must urge and compel their military, civil and judicial organs and everyone under their jurisdiction to respect the IHL norms. A State must also respect IHL even if it was not respected by the other State in dispute. A State shall not justify its failure to respect humanitarian norms that the other State (in dispute) had initiated violations because respect for treaties of a humanitarian nature does not depend on reciprocity.

Granting such powers to the Security Council would enable those who stand against the court to interfere with it and its work, and to deal with the perpetrators of crimes in a duality that would certainly impede the Court's work. The effectiveness of this judicial body lies in the elimination of international crimes by combining national criminal jurisdictions with the international criminal court. Therefore, we believe that the replacement of the Security Council as an accredited mechanism for the referral of any case in violation of the IHL and human rights to the General Assembly of the United Nations because of the nature of the General Assembly of the United Nations membership which reflects a large number of members of the international community, decisions are taken by the voting system and on an equal basis between States without any privilege granted to one State over the other, the legitimacy of the decision to refer any case to the court would be contained and unquestionable, the decision would represent a group of members of the international community. This makes the credibility of the resolution is therefore possible or higher.

Despite the struggle of mankind for a permanent international justice in the International Criminal Court, though its system is marked by some legal gaps and difficulties surrounding this Court, the role of this Court cannot be detracted as the fundamental pillar of the international judicial system that aims to protect human rights and to deter all violations by preventing injustice and not leaving international criminals to go unpunished.

6. Conclusion

At the conclusion of this study we present a set of recommendations that we consider important to confirm the role of the ICC in implementing international humanitarian law and achieving international criminal justice, namely:

1. Expanding the substantive jurisdiction of the court to have the jurisdiction to consider other serious crimes such as the crime of terrorism, illegal trafficking in drugs and weapons, and cybercrime.
2. The need to amend Paragraph 6 of 15 of the Statute of the International Criminal Court, which relates to the requirement for a Security Council resolution to be issued to directly address crimes of aggression.
3. The necessity of abolishing the texts of articles that do not respond to the requirements of

international criminal justice, including Article 16 of the statute of the court, which granted the UN Security Council the power to postpone the investigation and prosecution for a period of 12 months, in order to prevent the effects of the crime from fading away, and to prevent the court from carrying out its duties.

4. Including the death penalty among the penalties adopted in the Statute of the International Criminal Court, as a deterrent punishment that limits the increase in international crimes, and so that the punishment is commensurate with the gravity of the crimes that fall within the jurisdiction of the Court.
5. The need to prosecute the perpetrators of international crimes objectively, free from any political influences.
6. Establishing effective enforcement mechanisms to achieve the principle of extradition of perpetrators of international crimes, in order to avoid impunity, in order to achieve international criminal justice, and to ensure the supremacy of international criminal law.

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Compliance with ethical standards

Conflict of interest

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