



## **Attribution of Criminal Responsibility Lessons from International Criminal Court and Tribunals**

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### **ABSTRACT**

This article explores the evolving concept of criminal responsibility within the context of international criminal law, drawing on lessons from the jurisprudence of the International Criminal Court (ICC) and various international tribunals. By examining the application of International Humanitarian Law (IHL) in non-international armed conflicts, particularly through the case of Libya, the article delves into how international law has progressively expanded its scope to hold non-state actors accountable for serious crimes. The discussion reflects on the transition of individual criminal responsibility from natural law principles, as reintroduced by the Nuremberg Trials, to its solidification as positive law under the Rome Statute. The article also addresses the gradual erosion of the non-intervention principle and the rise of international regulation over conduct traditionally managed by domestic law. It highlights how international criminal law navigates complex jurisdictional issues and contextual elements to impose liability, regardless of the perpetrator's state affiliation, while recognizing the relevance of the actor's status in determining crimes such as Crimes against Humanity or war crimes involving Prisoners of War. The dynamic and adaptable nature of international law is showcased in its ability to respond to global shifts and values.

**Keywords:** International criminal law, criminal responsibility, non-state actors, International Criminal Court (ICC).

### **INTRODUCTION: THE EVOLUTION OF INTERNATIONAL CRIMINAL LAW**

Despite the persistent dominance of the state-centric model in the current international legal system, the aftermath of World War II brought about a significant shift (Bardavid, 2002). A notable aspect of this transformation was the emergence of the principle that certain breaches of international law could result in individual criminal responsibility. In addition to holding states accountable, individuals perpetrating serious violations of international law could now be subject to criminal prosecution and punishment.

The development of this principle was motivated by the necessity to establish effective enforcement mechanisms. As articulated by the International Military Tribunal at Nuremberg, "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced" (Mrázek, 2018, p.223). While the International Military

Tribunal lacked a firm legal foundation for endorsing the concept of individual criminal responsibility, subsequent acceptance by the international community arguably rectified any deficiency in its legal basis.

The International Military Tribunal had at least two potential approaches to establish individual criminal liability for breaches of international law (Owa, et al., 2023). One approach considered individual criminal responsibility as contingent upon a state's violation of international law. After confirming a violation, the adjudicator could then assess whether the violation was grave enough to warrant criminal responsibility for both the individual and the state. Another jurisprudential strand drew on remnants of the natural law system, suggesting that certain rules of the "law of nations" were directly applicable to individuals. According to this theory, it was not necessary to first establish that a state had committed a violation of international law. Although this approach may have had a weaker foundation in the positive law of the time, it seems to be the stance adopted by the Tribunal.

Once the link between state responsibility and individual responsibility is severed, the significance of distinguishing between state and non-state actors diminishes significantly. The importance of this distinction was rooted in a perception of international law where the state was the exclusive subject of legal obligation. It mattered in that context because the actions of state actors were generally attributable to the state, whereas the actions of non-state actors were typically not. When individuals are recognized as directly bound by rules of international law, it becomes a matter of policy choice for those shaping the law to decide whether they want to address rules to all individuals or only to individuals within certain categories or contexts. The issue is no longer one of legal coherence but rather a discretionary consideration of why specific criminal activities should be regulated by international law.

### **The International Military Tribunal Charter primarily took a context-based approach.**

Although the Charter acknowledged the individual as a subject of international obligations, it still mirrored the existing substance of international law, primarily focused on inter-state transactions. Moreover, the Charter constrained the Tribunal's personal jurisdiction to those "acting in the interests of the European Axis countries" \* Sadat, 2010, p. 32). Consequently, various aspects of the International Military Tribunal's jurisdiction narrowed the potential defendants to those with some connection to the state.

The jurisdictional scope of the International Military Tribunal primarily focused on acts of state-sponsored violence. The tribunal was empowered to prosecute three distinct categories of crimes: Crimes Against Peace, War Crimes, and Crimes Against Humanity. The inclusion of Crimes Against Peace and War Crimes was widely accepted, given their clear transnational dimensions involving armed force between states or abuses committed by individuals on behalf of a state against citizens of another state. These acts naturally fell within the established inter-state framework of international law. However, the inclusion of Crimes Against Humanity, encompassing inhumane acts during an attack on any civilian population, marked a ground-breaking moment in international law. The use of the term "any" underscored that such crimes could occur even within a single state, and the definition did not necessitate any connection between the perpetrator and the state. Despite the bold step of incorporating this crime, a jurisdictional element was introduced to temper this innovation.

Acknowledging the pioneering nature of their approach, the drafters exercised caution by imposing a nexus requirement. Prosecution for Crimes Against Humanity was contingent on the acts being "in execution of or in connection with any crime within the

jurisdiction of the Tribunal.” In essence, a connection to a traditional inter-state violation was essential for the Tribunal to assert jurisdiction over this newly defined category of crimes.

Each crime category, therefore, demanded some association with state-sponsored violence, either as a substantive element or a jurisdictional prerequisite. This alignment was further underscored by the Charter’s limitation of personal jurisdiction to individuals “acting in the interests of the European Axis countries” (Donovan & Roberts, 2006, p. 43). Consequently, even though individual non-state actors could be prosecuted for their involvement in international law violations, demonstrating some connection to the state remained crucial in determining whether they fell within the Tribunal’s jurisdiction (United States v. Krupp., 1949). However, subsequent developments have diminished the significance of whether a given perpetrator had any connection to a state.

### **Armed Non-State Actors in the Legal Framework and Practice of the ICC**

International criminal law has traditionally centered on state actors, with a focus on mass atrocities arising from international armed conflicts involving opposing states (Drumbl, 2007). During the Second World War, non-state armed groups played a marginal role, and discussions on the applicability of laws of war to conflicts not of an international character and non-state armed groups were prolonged due to sovereignty concerns. In contemporary conflicts, the landscape has evolved significantly, with classical state against-state confrontations becoming less common. Non-state armed groups now actively participate in armed conflicts, and the international community recognizes that mass atrocities can occur beyond the context of armed conflicts, affecting civilian populations in times of peace.

International humanitarian law and international criminal law have adapted to address modern mass violence, leading to a blurred distinction between international conflicts and those of a non-international character. Crimes against humanity, expanding since Nuremberg, have gained autonomy, no longer requiring a direct link to an “armed conflict” (Dinstein, 2021). They encompass a wide range of criminal acts committed on a widespread or systematic scale by both state officials and private individuals during both peace and war. These legal developments offer a sufficient foundation to address most atrocities, irrespective of the perpetrators. However, despite these advancements, the practical and political challenges surrounding the investigation, arrest, and prosecution of those responsible for such crimes remain formidable.

### ***Non-State Actors in the Jurisdiction of the International Criminal Court***

The cases presented before the International Criminal Court (ICC) reflect the evolving legal landscape and underscore the practical challenges faced in addressing such matters. Predominantly, the ICC has dealt with situations arising from conflicts not of an international character, including instances of post-election violence unrelated to ongoing conflicts. Consequently, the majority of individuals brought before the Court are non-state actors.

To date, all individuals convicted by the ICC have been leaders or prominent members of militias and other non-state armed groups. Notable examples include Mr. Thomas Lubanga (The Prosecutor v. Thomas Lubanga Dyilo., 2012) and Mr. Germain Katanga (The Prosecutor v. Germain Katanga., 2014), leaders of militia groups in the Democratic Republic of the Congo (DRC); Mr. Jean-Pierre Bemba, a former Vice-President of the DRC, convicted for failing to prevent or punish crimes committed by his subordinates in the Central African Republic; and Mr. Al Mahdi, a former prominent figure of the AlQaeda associated group Ansar Dine, convicted for the destruction of religious and cultural buildings in Timbuktu, Mali (The Prosecutor v. Al Mahdi., 2016).

Moreover, on going trials involve alleged leaders or members of non-state militias in the DRC and Uganda (*The Prosecutor v. Bosco Ntaganda.*, 2006). The legal foundation for these proceedings is provided by several provisions in the Rome Statute of the International Criminal Court, representing a significant advancement in holding non-state actors accountable for situations of violence. While the ICC has jurisdiction over genocide, war crimes, and crimes against humanity, it lacks jurisdiction over “terrorism,” a term excluded from the Rome Statute. Nevertheless, this omission has not hindered the prosecution of individuals associated with various non-state groups for acts defined as war crimes or crimes against humanity.

### **War Crimes and Non-State Actors**

Drawing from the legal precedents established by the ad hoc tribunal for the former Yugoslavia and the Statute for the Rwanda Tribunal (*The Prosecutor v. Duško Tadić.*, 1995), the Rome Statute marks a significant advancement in multilateral treaties by acknowledging, for the first time, that acts committed in armed conflicts of a non-international character may constitute war crimes. While upholding the traditional distinction between the two types of conflicts, the Rome Statute encompasses an extensive list of war crimes applicable to non-international conflicts, closely resembling the list of prohibited acts in international conflicts. The Kampala Review Conference in 2010 further contributed to blurring this distinction by introducing amendments that extend prohibitions in non-international armed conflicts to include the use of certain weapons already banned under the Rome Statute for international armed conflicts (Watkin & Norris, 2012). These amendments, ratified by thirty-two States as of today, will become effective one year after the deposit of their instruments of ratification or acceptance.

In response to the prevalent forms of criminality in recent conflicts, the Rome Statute innovatively addresses sexual offenses, constituting war crimes in both types of conflicts and crimes against humanity. The statutes encompass not only rape but also offenses such as forced pregnancy, enforced prostitution, sterilization, sexual slavery. The work of the ICC demonstrates that accountability for leaders of non-state armed groups committing such crimes is not merely a theoretical concept. The ICC has played a crucial role in showcasing the practical possibility of holding leaders accountable for war crimes, emphasizing the gravity of these offenses and the need for legal consequences.

In 2016, Mr. Jean-Pierre Bemba received a sentence of 18 years for crimes of rape, to be served concurrently with a 16-year sentence for crimes of murder (Fathonah & Anwar, 2023). The Trial Chamber emphasized the severe nature and consequences of sexual crimes, particularly those against children, a stance acknowledged by the State parties in the Rome Statute. The Chamber noted that the instances of rape in Mr. Bemba’s case were of utmost gravity, considering both the cultural context and the enduring damage to the victims, their families, and communities. Currently, both the conviction judgment and the sentence are under appeal before the Appeals Chamber. Similar charges of rape and sexual slavery have been levied against non-state actors in other cases. Notable instances include Mr. Bosco Ntaganda, the alleged former deputy chief of staff of a rebel armed group in eastern DRC, currently facing trial, and Mr. Dominic Ongwen, the alleged former brigade commander of the Lord Resistance Army, a militia group in Northern Uganda, whose trial commenced on December 6, 2016 (*The Prosecutor v. Bosco Ntaganda.*, 2014).

The Rome Statute, addressing war crimes in both types of conflicts, prohibits the enlistment and conscription of children under the age of 15, as well as their active participation in hostilities (Oddenino, 2013). This prohibition applies to all armed groups

involved in non-international armed conflicts, not just the state's armed forces. This provision has been instrumental in addressing victimization in certain contexts. In the first case tried by the Court, the Lubanga case, the relevant armed conflict in eastern DRC was determined not to be of an international character (*The Prosecutor v. Lubanga.*, 2012, para 567). Mr. Thomas Lubanga, the leader of a rebel armed group involved in this conflict, was convicted for enlisting, conscripting, and using children under the age of 15 to participate actively in hostilities (Adamu, 2023).

The need to sanction such conduct remains urgent, as emphasized in the July 2016 report of the Special Representative of the UN Secretary-General for Children and Armed Conflict. The report highlighted a continuous rise in violations against children in armed conflict, including enlistment, recruitment, and use in hostilities, particularly in Iraq and South Sudan.

### **Crimes Against Humanity and Non-State Actors**

Regarding the definition of crimes against humanity, the requirement of a link between these crimes and armed conflict was eliminated after Nuremberg, evolving in subsequent practices and legal instruments. This link was not incorporated into the Rome Statute, allowing for the punishment of crimes against humanity irrespective of the context, as long as the criminal acts form part of a widespread or systematic attack against a civilian population. However, the Rome Statute does stipulate that such attacks must be committed “pursuant to or in furtherance of a State or organizational policy to commit such attack.” The concept of an “organization” for crimes against humanity remains ambiguous, with on going discussions and chambers of the Court grappling with its interpretation.

In the pre-trial phase, a minority perspective has suggested that the “organization” referred to in Article 7(2)(a) of the Rome Statute must exhibit some characteristics akin to a State, essentially endowing the private organization with State-like or quasi-State abilities (Rodenhäuser, 2020). Nonetheless, to date, chambers have not followed this path and have not mandated any specific structure for the organization. Instead, they have held that the policy may be linked to groups governing a specific territory or to an organization capable of executing a widespread or systematic attack against the civilian population. The Katanga trial judgment identified capacities for action, mutual agreement, and coordination as essential features defining an “organization” capable of executing an attack. This approach was deemed consistent with the evolving law on crimes against humanity and aligned with the purpose and objectives of the Rome Statute, namely, the prosecution of the most serious crimes (*Prosecutor v. Germain Katanga.*, 2014, para, 1117).

A similar approach was adopted by another trial chamber in the recent trial judgment in the Bemba case (*The Prosecutor v. Bemba Gombo.*, 2018, para. 158). However, in a separate opinion, one judge expressed concerns about the risk of relying on how the attack unfolded to infer the existence of the “organization.” Ongoing deliberations and judicial opinions contribute to the ongoing discourse on this intricate aspect of defining “organization” in the context of crimes against humanity. The Rome Statute also classifies as war crimes attacks directed against protected cultural property in both types of conflict. The case of Ahmad Al Mahdi, sentenced to 9 years in 2016, serves as an illustration of the applicability of such war crimes to non-state actors. Associated with Al-Qaeda-linked groups controlling Timbuktu, Mali, in 2012, Mr. Al Mahdi pleaded guilty to the war crime of attacking protected objects, involving the destruction of ten buildings with religious and historical significance (Gerstenblith, 2016). The Trial Chamber considered the crime of significant gravity, taking into account

the symbolic, emotional, and religious value of the buildings, as well as the discriminatory religious motive behind the destruction.

### **Genocide and Non-State Actors**

Concerning the crime of genocide, Article 6 of the Rome Statute mirrors the definition outlined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Odello & Łubiński, 2020). Notably, this definition imposes no limitations on the categories of persons who can commit an act of genocide or participate in its commission. Article IV of the Convention explicitly stipulates the punishment of all persons involved in committing genocide, whether they are “constitutionally responsible rulers, public officials, or private individuals.” This expansive definition theoretically allows for the crime of genocide to be perpetrated by members of a non-state armed group. However, in practice, charges of genocide have only been brought before the Court against a state actor. The legal landscape remains open to future cases that may involve non-state actors accused of committing genocide, representing an area where further developments in international criminal law may unfold (The Prosecutor v. Al Bashir., 2010).

In summary, the Rome Statute equips the Court with legal tools to address wrongdoings by non-state armed groups in both war and peace. However, practical challenges in locating, arresting, and transferring non-state actors, often operating across large areas in different countries, pose significant hurdles. Cases like those of Mr. Ntaganda and Mr. Ongwen, where arrest warrants were among the first issued, highlight the complexities. Their voluntary surrender years later required intricate arrangements, involving cooperation from several states and entities. Beyond practical challenges, the Court is limited by treaty constraints and cannot address all non-state actors. The lack of universal ratification hampers the Court’s mandate, preventing intervention in situations where core international crimes go unaddressed by national authorities. Only a UN Security Council referral or ad hoc acceptance of jurisdiction by concerned countries allows the Court to act.

The Prosecutor’s office has received numerous communications on alleged crimes by ISIS in Syria and Iraq since 2014 (Janaby & Alfatlawi, 2021). However, jurisdictional limitations, as of 2015, hindered a preliminary examination due to the Court’s lack of territorial jurisdiction over Syria and Iraq, and the perceived lack of responsibility among nationals of States Parties to the Rome Statute. These challenges may compromise the Court’s effectiveness and legitimacy, potentially fostering perceptions of selective justice. The key solution lies in universal participation, urging all states to join the Rome Statute, enabling the Court to address all crimes and victims impartially.

### **The Role of Criminal Courts in Developing Criminal Law**

In recent years, international criminal law has undergone rapid evolution, primarily driven by the establishment of various international criminal courts since the early 1990s. Notable among them are the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda, and the International Criminal Court, all possessing the authority to prosecute individuals, including non-state actors, for crimes within their jurisdiction.

#### ***The Yugoslav Tribunal and Individual Criminal Responsibility***

The subject matter jurisdiction of the ICTY encompasses war crimes, genocide, and crimes against humanity. As highlighted earlier, each of these crimes can be perpetrated by nonstate actors, and the Tribunal has successfully convicted several individuals falling into this category (Prosecutor v. Limaj., 2004). By the time of the Tribunal’s

establishment, it became evident that genocide and crimes against humanity could transpire within a single state, and non-state actors could be responsible for such acts. The definition for genocide directly draws from the 1948 Genocide Convention, while the definition for Crimes Against Humanity is influenced by the work of the International Military Tribunals and the International Law Commission.

The contextual elements for Crimes Against Humanity are outlined in Article 5 of the ICTY Statute. It characterizes crimes against humanity as certain inhumane acts “committed in armed conflict, whether international or internal in character, and directed against any civilian population (S.C., 1993, Res. 827). The Tribunal interprets this language to necessitate a nexus between an individual’s inhumane act and a broader attack, distinguishing Crimes Against Humanity from ordinary crimes (Prosecutor v. Tadic., 1999). Just as War Crimes are differentiated from ordinary crimes by their connection to armed conflict (Prosecutor v. Tadic., 1999), and genocidal acts are distinct due to the specific intent required for their commission, Crimes Against Humanity involve a nexus requirement.

The war crimes provisions of the ICTY Statute retain a semblance of the traditional interstate structure of international law. The drafters faced the challenge of determining which violations of international humanitarian law (IHL) would lead to individual criminal responsibility. The first category of war crimes in the Statute encompasses “grave breaches” outlined in the 1949 Geneva Conventions, indicating the drafters’ intent to subject these breaches to criminal sanctions. The ICTY Appeals Chamber initially held that grave breaches could only occur in international armed conflict (Fischer, 2000). To ascertain the nature of the conflict, the Appeals Chamber relied on the law of state responsibility, elevating the significance of the actor’s relationship to the state. Simultaneously, it expanded the threshold for attributing the conduct of certain non-state actors to the state, suggesting that overall control of a hierarchically-organized non-state entity could assimilate it into a state organ, making all its conduct attributable to the state. The second category of war crimes in the ICTY Statute broadly covers “violations of the laws or customs of war,” leaving the judges to determine which IHL violations would constitute war crimes.

In the Tadic decision, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) established a framework for determining which norms of international humanitarian law (IHL) would lead to individual criminal responsibility and could thus be prosecuted before the Tribunal (Rauter & Rauter, 2017). The key criteria outlined were the nature of the norm itself, the severity of the violation, and the international community’s interest in its repression. The Appeals Chamber emphasized in the same decision that Article 3 of the ICTY Statute potentially covered all of humanitarian law, including the law applicable to non-international armed conflicts. Consequently, serious violations of Common Article 3 of the 1949 Geneva Conventions could be prosecuted under the ICTY Statute, regardless of whether individuals were charged under Article 2 or Article 3.

Irrespective of the specific Statute article, the Prosecutor must not only establish the existence of the relevant armed conflict type (either international or non-international) but also demonstrate a nexus between the alleged offense and the armed conflict, making international humanitarian law applicable. The ICTY has defined this nexus as a close relationship between the act and the armed conflict, where the act was committed in furtherance of the conflict or under the guise of an armed conflict. Factors considered in this determination include the perpetrator’s combatant status, the victim’s affiliation with the opposing party, whether the act furthers a military campaign’s ultimate goal, and whether the crime occurs as part of or in the context of the perpetrator’s official duties (Prosecutor v. Kunarac., 2001).

While an individual's status as a state official may be relevant in establishing jurisdiction, it is not strictly required for the Tribunal to prosecute crimes. The focus has shifted from whether an individual is a state actor to whether their act is sufficiently connected to a context justifying international regulation. State affiliation is just one factor among many considered in this assessment.

### ***The Rwanda Tribunal and Individual Criminal Responsibility***

The subject matter jurisdiction of the International Criminal Tribunal for Rwanda (ICTR) encompasses the same three categories: War Crimes, Genocide, and Crimes Against Humanity (ICTR., 1994, Art.2). Notably, the ICTR was established in the context of an internal conflict. Consequently, the war crimes provisions of the ICTR Statute were confined to violations of the law of non-international armed conflict, specifically Common Article 3 and Additional Protocol II to the 1949 Geneva Conventions. Given its focus on an internal conflict, the subject matter jurisdiction of the Rwanda Tribunal placed less emphasis on the issue of state affiliation. The ICTR has provided additional clarity on the nexus requirements for War Crimes and Crimes Against Humanity, contributing valuable insights to the evolving international jurisprudence on genocide (Nsereko, 2001). In elucidating the nexus for Crimes Against Humanity, the Semanza Trial Chamber emphasized that while the act need not occur at the same time or place as the attack, or share identical features, it must, at an essential level, form part of the attack (Prosecutor v. Semanza., 2003). The act does not necessarily have to be directed against the same population as the broader attack, but its characteristics, aims, nature, or consequences must objectively be part of the discriminatory attack (Prosecutor v. Semanza., 2003).

Another dimension of this nexus lies in the mens rea requirement for Crimes Against Humanity. The association with a widespread or systematic overarching attack elevates these offenses to matters subject to international regulation. The Bagilishema Trial Chamber clarified that a specific mental factor is required to establish the nexus between an underlying offense and the broader criminal context, transforming an ordinary crime into an attack on humanity itself. The accused must mentally include their act within the greater dimension of criminal conduct, knowing that their offense forms part of the broader attack (Prosecutor v. Bagilishema., 2001). To satisfy this mens rea element, the defendant must be aware of the attack, having knowledge and some understanding of the relationship between their acts and the attack.

The requisite nexus between an act and an attack is thus established by proving that some aspect of the attack forms the circumstances around a certain act, making that act part of the attack. While the existence of a policy may assist in demonstrating this aspect, it is not strictly required. Ultimately, the prosecutor must establish that, given the context and circumstances of an act, the act cannot reasonably be seen as random or isolated. Regarding the mens rea, the nexus between an act and an attack is partly established by demonstrating the perpetrator's knowledge of the attack, without the necessity of proving that the accused had legally determined the attack as a crime against humanity at the time of committing the act.

### ***The International Criminal Court***

The Rome Statute of the International Criminal Court (ICC) represents the most comprehensive codification of international criminal law to date. Similar to the ad hoc tribunals, the ICC has jurisdiction over war crimes, genocide, and crimes against humanity. Additionally, the ICC has jurisdiction over the crime of aggression, a jurisdictional extension not present since the International Military Tribunals. However,



the definition of the crime of aggression remains undefined, pending agreement by the Assembly of States Parties on a suitable definition.

Like the ad hoc tribunals, the ICC addresses these crimes with a universal scope, applicable to all individuals but constrained by contextual elements. War crimes, for instance, require a nexus to armed conflict, with some provisions specifying a connection to international armed conflict and others to non-international armed conflict. The Statute introduces the requirement that the Court shall have jurisdiction over war crimes (ICC., 1998, Art.8), especially when committed as part of a plan, policy, or large-scale commission of such crimes, potentially raising the contextual bar.

For Crimes Against Humanity, the contextual elements involve their commission “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” Although broader than the definitions in the ICTY and ICTR statutes by not including armed conflict or discriminatory elements, the ICC Statute narrows the definition by mandating the existence of a policy. The statute defines “attack directed against any civilian population” as “a course of conduct involving the multiple commission of acts... pursuant to or in furtherance of a State or organizational policy to commit such attack” (Bou, 2010, p. 547). While the ICC Statute’s definition of genocide does not expressly outline contextual elements, they are arguably implicit in the mens rea requirement for the crime. Furthermore, the ICC Elements of Crimes specifies that the conduct must occur in the context of a manifest pattern of similar conduct directed against the group or be conduct that could itself effect such destruction. Each category of crimes involves contextual elements linking the specific act to a broader context warranting international regulation. The commission of these crimes may require a connection to an organized power structure, marking a shift away from a focus on the state to a more pragmatic consideration of power.

Simultaneously, the jurisprudence of these international courts continues to evolve, expanding the reach of international criminal law. The broad nexus tests for war crimes and crimes against humanity mean that individual perpetrators need not necessarily be part of a specific power structure; their conduct need only be in some way related to that power structure or its activities.

## **CONCLUSION**

The International Military Tribunal, by reintroducing a natural law concept in an era dominated by positivism, played a pivotal role in transforming the principle of individual criminal responsibility into positive law. The international community’s explicit endorsement of the Nuremberg principles and their codification in the Rome Statute underscored the acceptance of individual criminal responsibility as a subject of positive international law. With the recognition of individuals as subjects of positive international law, the imperative of state affiliation no longer stands as a prerequisite for analytical coherence. The central question shifts to whether international law should directly govern the conduct of non-state actors—an arena traditionally within the purview of domestic legal systems. As the non-intervention principle gradually weakens and international law extends its reach into internal affairs, the international community confronts the crucial decision of which activities warrant regulation under international criminal law. Both the international community and the successors of the International Military Tribunal have predominantly embraced a context-based approach. Consequently, most international crimes apply universally to all individuals, but their scope is circumscribed by contextual elements.

In contemporary international criminal law, there exists no mandatory condition for a perpetrator to be a state actor. However, the status of an individual remains potentially relevant. Although international criminal law doesn’t exclusively address state actors, the

perpetrator's status may hold significance in establishing contextual elements. For instance, it could determine whether a conflict qualifies as international for prosecuting grave breaches or establish a policy for prosecuting Crimes Against Humanity under the Rome Statute. Additionally, the status of the perpetrator may be relevant in crimes based on the victim's status (e.g., crimes against Prisoners of War) or in establishing certain modes of liability, such as command responsibility grounded in a superior-subordinate relationship. The dynamic nature of international law is evident in its capacity to evolve in response to the shifting realities of the international landscape and the evolving values of the global community. Nowhere is this dynamism more evident than in the continuous development of international criminal law.

## REFERENCES

- Adamu, A. (2023). The Relevance of the International Criminal Court and Its Possible Deterrent Effects of International Crimes. *American Journal of Law*, 5(1), 132-163.
- Bardavid, J. (2002). The Failure of the State-Centric Model of International Law and the International Criminal Court. *NY Int'l L. Rev.*, 15, 9.
- Bou, V. (2010). Chapter Thirty-Two. Crimes Against Humanity In Contemporary International Law. In *The Diversity of International Law* (pp. 547-579). Brill Nijhoff.
- Dinstein, Y. (2021). *Non-international armed conflicts in international law*. Cambridge University Press.
- Donovan, D. F., & Roberts, A. (2006). The emerging recognition of universal civil jurisdiction. *American Journal of International Law*, 100(1), 142-163.
- Drumbl, M. A. (2007). *Atrocity, punishment, and international law*. Cambridge University Press.
- Fathonah, R., & Anwar, M. (2023). The Jurisdiction of the International Criminal Court in Trying War Crimes: A Case Study of Jean-Pierre Bemba Gombo. *International Journal of Multicultural and Multireligious Understanding*, 10(2), 453-459.
- Fischer, H. (2000). Grave breaches of the 1949 Geneva Conventions. In *Substantive and Procedural Aspects of International Criminal Law* (pp. 63-93). Brill.
- Gerstenblith, P. (2016). The Destruction of Cultural Heritage: A Crime Against Property or a Crime Against People?. *John Marshall Review of Intellectual Property Law*, 15(336).
- Janaby, M. G., & Alfatlawi, A. A. (2021). UN Efforts to Make isis Accountable for International Crimes: the Challenges Posed by Iraq's Domestic Law. *International Criminal Law Review*, 21(6), 1103-1134.
- Mrázek, J. (2018). International Criminal Court, War Crimes and Crimes against Humanity. In *The Rome Statute of the ICC at Its Twentieth Anniversary* (pp. 65-82). Brill Nijhoff.
- Nsereko, D. D. N. (2001). Genocidal conflict in Rwanda and the ICTR. *Netherlands international law review*, 48(1), 31-65.
- Oddenino, A. (2013). The enlistment, conscription and use of child soldiers as war crimes. In *War Crimes and the Conduct of Hostilities* (pp. 119-135). Edward Elgar Publishing.
- Odello, M., & Łubiński, P. (2020). *The Concept of Genocide in International Criminal Law*. Routledge.
- Owa, D. O. E., Odey, D. S. A., Nabiebu, D. M., Alobo, D. E. E., Ipuole, R., & Owa, W. E. (2023). Nigeria's External Relations: Dynamics And Challenges. *Journal of Namibian Studies: History Politics Culture*, 33, 3019-3038.

- Rauter, T., & Rauter, T. (2017). Methodological Approaches to Customary International Law by International Criminal Tribunals. *Judicial Practice, Customary International Criminal Law and Nullum Crimen Sine Lege*, 125-172.
- Rodenhäuser, T. (2020). The legal protection of persons living under the control of non-State armed groups. *International Review of the Red Cross*, 102(915), 991-1020.
- Sadat, L. N. (2010). Understanding the complexities of international criminal tribunal jurisdiction. In *Routledge Handbook of International Criminal Law* (pp. 197-210). Routledge.
- Watkin, K., & Norris, A. J. (Eds.). (2012). *Non-international Armed Conflict in the Twenty-first Century* (Vol. 88). Government Printing Office.
- Worugji, I. N., & Ugbe, R. O. (2016). The Supreme Court has cleared the customary law inhibitions on the inheritance rights of women in Nigeria. *International Journal of Law*, 2(3), 27-32.