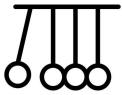


TURKEY'S UNHEARD VOICES

# **International Criminal Law: Prosecution of War Crimes and Genocide**

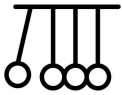
**LAW**

**DENİZ TAMER**



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## Abstract

In our modern world, International Criminal Law (ICL) plays a crucial role in addressing serious international crimes, such as war crimes and genocide, while ensuring accountability for perpetrators and justice for victims. Unlike other branches of law, ICL is unique in its evolution through international treaties, customary norms, and institutional decisions, particularly those of the International Criminal Court (ICC) and ad hoc tribunals. War crimes regard serious international and military transgressions, violating customs of war and moral values, while genocide is the intentional destruction of a national, ethnic, racial, or religious group. Any action defined as a war crime under the 1899, 1907 Hague Convention and the 1949 Geneva Convention or genocide under the 1948 Genocide Convention is deemed for trial and justice. Prosecution of these crimes faces significant legal and political challenges, including issues of both legal and law enforcement jurisdiction, state cooperation, and the question of binding. Despite these obstacles, international efforts continue to strengthen systems for accountability and justice while also preventing future atrocities, and promoting global justice.

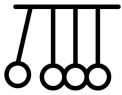
This report examines the legal framework, historical examples, and contemporary challenges in prosecuting war crimes and genocide, legal binding of the International Court of Justice (ICJ) and ICC while prosecuting in different countries.

## Introduction to International Criminal Law

International Criminal Law (ICL) plays a key component in maintaining international peace, justice and order, regardless of whether you are a diplomat, politician, civilian or business person. ICL is the legal foundation in addressing international transgressions on a much major scale. International crimes jeopardize peace, security, and the welfare of communities; ICL establishes the legal framework to hold offenders accountable and guarantee justice for victims. The significance of ICL is in its capacity to operate beyond national confines, promoting international collaboration in the prosecution of offenses that frequently surpass borders and impact world peace.

The principal objective of ICL is to avert impunity by ensuring that persons who perpetrate severe offenses, including war crimes, genocide, and crimes against humanity, are tried and held accountable for their conduct. By holding guilty parties accountable, ICL affirms the international commitment to the preservation of fundamental human rights while fostering the values of justice, equity, and human dignity.

Over time, a mix of institutional actions, customary standards, and international treaties have influenced the development of ICL. The drafting of international agreements such as the Geneva and Hague Conventions, which outline the fundamental values of warfare and the safeguarding of civilians during hostilities, is considered to be a major turning point



in the evolution of ICL. Furthermore, the body of ICL stands to benefit from the contributions of customary international law, which results from consistent state conduct and legal judgments and influence domestic as well as global legal actions. The comprehension and implementation of ICL in modern legal systems have been further enhanced by institutional rulings made by courts and tribunals, especially the International Criminal Court (ICC) and ad hoc tribunals.

Through ensuring that even the most atrocious offenses are not left unpunished, ICL has developed into an essential resource for advancing justice and accountability in the contemporary world. ICL's continuous evolution shows how dedicated the international community is to protecting the rule of law, stopping offenses in the future, and ensuring that everyone lives in a just world.

## Key Concepts in International Criminal Law

Serious transgressions of the laws and customs of war that take place during armed conflict are known as war crimes. Targeting people, attacking civilian infrastructure, employing forbidden weapons, torturing or inhumanly treating prisoners of war, and many other prohibited acts that contravene the rules of war are included in this category of crimes. Anyone who participates in or directs such actions during a conflict is subject to war crimes, which go beyond acts carried out by members of the armed forces.

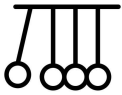


War crimes often involve breaches of established customs of war, which are designed to protect those who are not directly involved in combat. The key principles governing these customs include: The obligation to distinguish between combatants and civilians, ensuring that the violence used is proportionate to the military objective, and prohibiting actions that cause unnecessary suffering or destruction. These three general points fall under the principles called: Distinction,

proportionality and humanity.

In any circumstances that these principles are violated, such as intentionally attacking civilian populations, using chemical weapons, or committing acts of torture, individuals will have both undermined legal norms and fundamental moral values of humanity.

The prosecution of war crimes and genocide is primarily governed by several key legal frameworks, including the Hague Conventions of 1899 and 1907, the Geneva Conventions of 1949, and the Genocide Convention of 1948. These treaties establish



guidelines for protecting civilians, executing disputes, and preventing and punishing genocide.

The International Criminal Court (ICC), established by the Rome Statute in 2002, serving as the fundamental in order to prosecute individuals accused of committing international transgressions, war crimes, genocide or any act against humanity, fixating their



primary focus to for prosecuting individuals accused of committing war crimes, genocide, and crimes against humanity, focusing on guaranteeing responsibility in cases when national courts are reluctant or unable to bring charges.

Furthermore, although its primary focus is on settling disputes between states, the International Court of Justice (ICJ) is also essential in interpreting and applying international law, including in situations where states are charged with violating

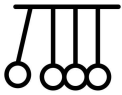
the Genocide Convention or aiding and abetting war crimes.

Together, these legal frameworks and courts form a comprehensive system of international justice aimed at holding perpetrators accountable for the most serious crimes under international law.

## Prosecution and Legal Framework

Under the rules of international law, the prosecution of war crimes and genocide adheres to a formal judicial procedure intended to hold those responsible for these grave crimes accountable. Investigations are the first step in the legal process and are usually started by the International Criminal Court (ICC), ad hoc courts, or national governments, frequently with assistance from international organizations such as the United Nations. People who are suspected of perpetrating genocide or war crimes may be charged and their cases taken to trial if enough evidence has been obtained. Justice is served while respecting international norms thanks to the legal system's emphasis on the defense of the accused's rights, adherence to due process, and the principles of a fair trial.

Under the circumstance that national courts are unable or unwilling to take action, the International Criminal Court (ICC) is a crucial instrument of prosecution of not only war crimes and genocide, but all international transgressions. The ICC was founded by the Rome Statute in 2002 and functions according to the principles of international law, which states



that it will only intervene in criminal cases when a state is incapable or unwilling to do so. The court has jurisdiction over individuals rather than states. The ICC's legal procedures are

designed to provide impartial trials, accurate evidence analysis, and a chance for the accused to present their case.

In previous cases, ad hoc tribunals are known to have been arranged to handle particular cases of mass crimes in addition to the ICC. Two notable examples are the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for Former Yugoslavia (ICTY). The United Nations established these tribunals in order to bring charges against those who perpetrated crimes against humanity, genocide, and war crimes during the 1990s hostilities in Rwanda and the Balkans. These tribunals were temporary in character and concentrated on certain historical events, but they followed comparable legal procedures to the ICC.

The first step of these hearings are the investigation and indictment of the accused in the judicial process as stipulated by international conventions and treaties. Trials are held after the indictment, during which the prosecution presents evidence, the accused is given the right to a fair defense, and victims may be given the chance to testify depending on the scenario. The judges, usually being specialists in international law, consider the evidence, provide decisions regarding the accusations, and, if necessary, issue penalties, which may include incarceration. In the majority of situations, appeals are possible, enabling additional legal assessment. International law uses these legal processes to bring those responsible for war crimes and genocide accountable and to guarantee justice for the victims of these crimes.

## Challenges in Prosecuting War Crimes and Genocide

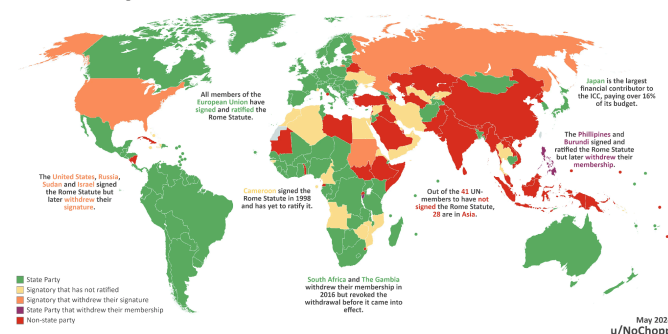
The accomplishment of justice on the global scene is made more difficult by the many legal and political roadblocks that the prosecution must overcome. One of the primary legal obstacles is jurisdiction, as international courts like the International Criminal Court (ICC)

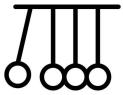
can only prosecute cases within their jurisdictional boundaries, leading to challenging issues regarding which court or tribunal has jurisdiction to hear a case, especially when crimes are committed in nations that are not signatories to international treaties or conventions or when the accused are citizens of non-signatory states.

Alongside political and legal gridlocks, questions regarding law enforcement are oftentimes left without conclusions. International criminal tribunals rely on state authorities to apprehend and surrender suspects. Due to political obstacles, such as states' refusal to cooperate and

### Which countries accept the International Criminal Court?

countries that have signed the Rome Statute





extradite offenders to international courts, many war criminals and genocide perpetrators are still at roaming freely due to their political power or wealth. This is particularly relevant

when those accused are safeguarded by state sovereignty or possess an extensive amount of political power. The success of international prosecution systems depends on state cooperation, although political interests, diplomatic concerns, and national security worries frequently obstruct this cooperation.

Another controversial topic is whether or not court rulings are binding. International court rulings may not be recognized or upheld by certain nations, especially if those findings are thought to be against their national interests. This calls into question the effectiveness of international law in requiring governments to abide by the rulings of organizations such as the International Court of Justice (ICJ) or the ICC, and it weakens the global reach of justice.

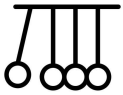
Finally, amongst many obstacles, evidence gathering or witness decisions are significantly more difficult on an international level as it is harder to oblige individuals to attend court hearings regardless of which in physical venue or online due to safety and jurisdiction concerns. Furthermore, while the legal frameworks for prosecuting genocide and war crimes are well-established, some states lack the ability or inclination to implement international decisions, which results in inconsistent enforcement and execution of punishments. These obstacles underline the need for more international collaboration and reform in the prosecution of transnational crimes as well as the difficulty in attaining complete global justice.

## International Efforts for Accountability and Justice

The international community has placed a high priority on initiatives to improve justice and accountability in the prosecution of war crimes and genocide. Important legal precedents for holding offenders accountable have been established by the creation of crucial ad hoc tribunals. Additionally, nations are now able to prosecute individuals for international crimes regardless of where they were committed because of the growing exercise of universal jurisdiction by national courts. To further global accountability mechanisms, it is still essential to fortify these legal frameworks and guarantee the efficient application of international decisions.

Alongside many others, the main objectives of international criminal law, in addition to prosecution, is to stop atrocities in the future. Organizations like the United Nations (UN) and regional human rights authorities strive to address the underlying causes of conflicts that result in mass atrocities because legal mechanisms alone are insufficient. In order to stop war crimes and genocide before they happen, early warning systems, diplomatic interventions, and peacekeeping operations are essential. Furthermore, encouraging human rights education, transitional justice procedures, and reconciliation initiatives aids in societies' healing from past crimes and strengthens their defenses against similar ones in the future.

The long-term viability of international criminal law depends on advancing global justice and international collaboration. To improve legal cooperation, exchange intelligence,



and make it easier for war criminals to be extradited, nations must cooperate. While international organizations, non-governmental organizations (NGOs), and advocacy groups

continue to press for improved enforcement of human rights legislation, treaties like the Rome Statute give a legal basis for such collaboration. The world community can prevent future crimes, defend the rule of law, and strive toward a future where war crimes and genocide are successfully prosecuted and averted by encouraging more international collaboration and dedication to justice.

## Contemporary Issues in International Criminal Law

The question of binding regarding the International Criminal Court (ICC) and the International Court of Justice (ICJ) is one of the most important concerns in the field of international criminal law. Although both courts are essential to maintaining international justice, there are several obstacles to their executive methods of enforcement. Although the ICJ is in charge of resolving disputes between nations, provides legally binding rulings and nature, execution is dependent on states' willingness to abide by them because the court lacks direct enforcement authority. Although the United Nations Security Council (UNSC) does have the permit to step in when a state disregards an ICJ decision, effective enforcement is frequently constrained by political factors. However, because it relies on state assistance for arrests and extradition, the ICC also has trouble carrying out its decisions. The Rome Statute is not ratified by several strong states, such as the US, China, and Russia, which further reduces the ICC's international influence.

The difficulty of pursuing crimes in many nations is another significant obstacle. The structure in which international criminal law functions is fractured, and disputes about jurisdiction and sovereignty frequently make it difficult to prosecute criminals. Investigations and trials may be hampered by disparate legal systems, divergent national interests, and political pressures. Some nations create legal loopholes that enable criminals to avoid justice by refusing to accept foreign court decisions or extradite suspects. Furthermore, it is still challenging to gather evidence and witness accounts from war areas because of the continuous violence, governmental limitations, and fear of reprisals that frequently make it impossible to properly document crimes. These difficulties draw attention to the continuous effort to develop an internationally recognized and practically enforceable system of criminal justice. Effective prosecution of war crimes and genocide still depends on bolstering international collaboration, enhancing enforcement systems, and resolving political barriers.