



Obstacles to the Implementation of International Humanitarian Law In light of contemporary Armed

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Abstract:

International Humanitarian Law (IHL) constitutes the core legal framework designed to protect individuals affected by armed conflicts. Its effectiveness, however, remains closely tied to the willingness and capacity of parties to a conflict to comply with its rules. Whenever these rules are disregarded, the humanitarian consequences intensify, and the suffering caused by hostilities becomes more profound and difficult to mitigate.

Like any legal system, IHL derives its true value from its implementation in practice. This reality is particularly pressing in situations of armed conflict, where human lives are placed in immediate and continuous danger. Inadequate enforcement not only weakens the authority of the law but also contributes directly to grave and often irreversible harm.

Contemporary armed conflicts have evolved significantly under the influence of rapid political, technological, and strategic transformations. These shifts have altered the character of warfare and introduced new complexities into the application of IHL. As a result, a growing gap has emerged between the normative standards established by the law and the realities observed on the ground. This gap is frequently reinforced by competing political interests, shifting alliances, and the changing dynamics of modern warfare.

In light of these developments, this study explores the principal challenges obstructing the effective implementation of International Humanitarian Law. It seeks to identify structural and practical limitations within the existing legal framework and to examine the factors that sustain serious violations in contemporary conflicts. Through this analysis, the study aims to contribute to a more nuanced understanding of these obstacles and to encourage reflection on pathways toward more effective compliance.

Keywords: *International Humanitarian Law; Contemporary Armed Conflicts; International Accountability; Gap Between Legal Norms and Implementation*

Résumé :

Les règles du droit international humanitaire (DIH) constituent un cadre fondamental visant à assurer la protection nécessaire des personnes directement affectées par les conflits armés, à condition que les parties au conflit respectent et appliquent effectivement ces règles. Lorsque ces normes sont violées, les souffrances humanitaires s'intensifient considérablement, rendant la gestion des conséquences des hostilités plus complexe et difficile.

L'efficacité de tout système juridique dépend essentiellement du degré d'application concrète de ses règles. Cette exigence revêt une importance particulière dans le domaine du droit international humanitaire, en raison de sa nature intrinsèquement liée aux situations de conflit armé, où les vies humaines sont exposées à un danger grave et permanent. En l'absence d'une mise en œuvre effective de ces règles, les dommages qui en résultent sont souvent graves et irréparables, aggravant ainsi les tragédies humanitaires.

Toutefois, un défi majeur ne saurait être ignoré: les transformations rapides qui affectent les différents domaines de la vie contemporaine ont profondément modifié la nature des conflits armés actuels. Ces évolutions ont complexifié l'application des règles du DIH, en raison du décalage manifeste entre les exigences du cadre juridique et l'ampleur des crimes et violations commis. Ces obstacles trouvent souvent leur origine dans la divergence des intérêts des parties



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au conflit et de leurs alliés, ainsi que dans les caractéristiques propres aux conflits contemporains.

Dans cette perspective, la présente étude vise à mettre en lumière les principaux obstacles entravant la mise en œuvre des règles du droit international humanitaire. Elle s'attache à identifier les lacunes et les faiblesses structurelles qui limitent son efficacité, tout en analysant les facteurs expliquant la persistance des violations graves dans les conflits armés contemporains, afin de contribuer à une meilleure compréhension de ces défis et à la recherche de solutions appropriées.

Mots-clés: *Droit international humanitaire; Conflits armés contemporains; Responsabilité internationale; Écart entre le texte juridique et son application.*

Introduction:

International Humanitarian Law (IHL) constitutes a cornerstone of public international law and represents one of the oldest customary legal frameworks designed to introduce a humanitarian dimension to armed conflicts, whether interstate or intrastate. In recent years, armed conflicts have assumed a markedly different character from traditional warfare, taking on unfamiliar and complex forms. This evolution is largely driven by rapid technological advancements that have reshaped the global balance of power.

Consequently, questions have arisen regarding the capacity of IHL to address contemporary challenges and its adequacy in regulating human behavior amid modern armed conflicts. The effectiveness of IHL fundamentally depends on the practical commitment of states and the international community to implement its rules—a critical requirement given the persistent threats to human life and property in contemporary warfare.

In response to these challenges, the international community has endeavored, through treaties and conventions, to establish mechanisms that ensure the enforcement of IHL provisions, uphold compliance, and impose obligations to address serious violations affecting the dignity and rights of individuals and communities. Given the inherently high-risk nature of armed conflict, examining these enforcement mechanisms naturally raises a central question:

What obstacles impede the effective implementation of IHL rules in the context of evolving modern armed conflicts?



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This study seeks to identify the gaps and structural weaknesses in the current enforcement instruments, as well as the barriers preventing them from achieving their intended purpose. It also aims to uncover the underlying factors that contribute to the persistence of serious violations of IHL principles, particularly in modern armed conflicts, where breaches of the laws of war have intensified, often in blatant disregard of international legal norms.

Accordingly, this study is divided into two main sections:

- **Section One:** Challenges facing the application of International Humanitarian Law at the international level
- **Section Two:** Obstacles hindering the implementation of International Humanitarian Law at the national level.

1.-Section One: Challenges Facing the Application of International Humanitarian Law at the International Level:

Undoubtedly, international mechanisms play a pivotal role in ensuring the implementation of the principles of International Humanitarian Law (IHL) and in contributing effectively to the enforcement of its provisions, with the aim of reducing widespread violations in the context of armed conflicts. Nevertheless, The challenge persists, manifested in the limited effectiveness of these mechanisms. represents a profound problem confronting the rules of IHL. This issue stems from a combination of apparent and latent factors, which will be analyzed and examined in detail below.

1.1- Subsection One: The Dominance of Major Powers over the United Nations and the Charter's Inadequacy in Addressing Modern Armed Conflicts:

There is no doubt that the United Nations has played a significant role in promoting and developing the rules of IHL and in facilitating their practical application. Its efforts have yielded a series of legal instruments that constitute substantial contributions in this field, such as the **Convention on the Prevention and Punishment of the Crime of Genocide (1948)**, the **Convention on Certain Conventional Weapons (1980)**, and the **Declaration on the Protection of Women and Children in Times of Disaster and Armed Conflict (1974)**.

However, despite these achievements, some observers view the United Nations as essentially a legal instrument established by the victorious major powers after World War II, designed to assert their influence and control the international system through legal and diplomatic means rather than direct military intervention. This dominance has often raised concerns about the organization's impartiality and its ability to respond effectively to the complex realities of contemporary armed conflicts.

The major powers holding permanent membership in the Security Council possess the authority to exercise the right of veto, foremost among them the United States. This prerogative grants them extensive capacity to influence the direction of the international organization and to shape the affairs of the international community as a whole. For instance, the United States may wage war against any state it perceives as threatening its interests and commit grave violations without the Security Council being able to adopt a resolution condemning it, as it would undoubtedly resort to



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the veto to obstruct any attempt to censure its conduct. Indeed, this prerogative has even been employed to safeguard the interests of its allies, such as the Zionist entity, this privilege confers upon the major powers a form of absolute authority that impedes the realization of international justice and weakens the deterrent mechanisms necessary for the maintenance of international peace and security)¹(.

The factual record provides numerous examples demonstrating the United States' use of the veto in pursuit of its own interests, with little regard for humanitarian considerations. Prominent among these examples are its continued support for the Israeli entity despite the daily human rights violations in the occupied Palestinian territories, as well as its military intervention in Iraq in 2003 in cooperation with the United Kingdom. Such practices highlight a clear state of inequality. among states with respect to the application of international humanitarian law and constitute a significant obstacle to the balanced implementation of its principles and rules, thereby undermining the credibility of the international legal order and eroding the foundations of humanitarian justice.

Building upon the foregoing, it may be argued that although the Security Council constitutes one of the most significant international deterrent mechanisms in confronting violations of international humanitarian law, practical experience has demonstrated its partiality and shortcomings in impartiality. This bias is reflected, *inter alia*, in the imposition of economic sanctions that at times conflict with

¹ - Azzat Zaha Tareq, (2005), *Contemporary International Organizations*, 1st ed., Dar Al-Nahda Al-Arabiyya, Cairo, Egypt, pp. 102–103.

fundamental humanitarian principles. Such sanctions are designed to influence state sovereignty and compel compliance with international obligations. However, they often produce severe consequences, the burden of which is borne primarily by civilians, thereby raising questions as to the extent of their compatibility with the very essence of international humanitarian law and posing ethical challenges regarding the sustainability of international justice² and the Practical realities clearly illustrate these challenges.

On another level, the Security Council enjoys broad discretionary powers enabling it to determine which situations constitute a threat to international peace and security, in the absence of precise and clearly defined criteria within the Charter of the United Nations. This latitude allows it to expand or restrict the scope of its intervention in accordance with the interests of major powers in conflict regions. Rather than employing military measures to ensure international peace and security and to safeguard the rules of international humanitarian law, such measures are frequently instrumentalized to protect the political and economic interests of powerful states, thereby ensuring the continuation of their influence in those regions.

Moreover, the failure to update the Charter of the United Nations in line with evolving international realities exacerbates these challenges. The current international system is characterized by the predominance of a single pole – the United States – which exercises extensive influence on the global stage. This development has contributed to a decline in the effectiveness of international organizations in resolving global conflicts. It has also affected the role of the

² - Lahrech Abdel Rahman, (2001), International Economic Sanctions, Algerian Journal of Legal, Economic and Political Sciences, Vol. 39, No. 2, p. 83.



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United Nations and other international organizations, as the justifications for intervention in armed conflicts have expanded beyond traditional grounds to include new considerations, such as “international terrorism,” a concept employed by major powers and the international organization as a pretext for military intervention. This expansion has, in numerous instances, resulted in human rights violations and the neglect of humanitarian norms.

It has become evident that this transformation in the international order has adversely affected the application of international humanitarian law, rendering the international organization unable to keep pace with contemporary developments, thereby impeding the implementation of its fundamental rules and weakening its capacity to protect human rights.

The transformations characterizing contemporary armed conflicts further reveal the inadequacy of the Charter of the United Nations in adapting to these developments³(, making its amendment an urgent necessity. With the emergence of the concept of the “war on terror,” led by the United States, the latter has invoked this doctrine to justify military interventions in various states, in addition to establishing military bases on the territories of other countries, poised for intervention at any time, while disregarding humanitarian rules and ethical principles. This approach not only calls into question the neutrality of international humanitarian law but also poses significant challenges to international peace and

³-Ahsan Kamal, (2011), Mechanisms for the Implementation of International Humanitarian Law in Light of the International Changes of Contemporary International Law, Master’s Thesis in Law, Faculty of Law and Political Sciences, Mouloud Mammeri University of Tizi Ouzou, pp. 75–76.

security, underscoring the need for profound reform of the mechanisms and provisions of the international system to ensure their alignment with contemporary global realities.

1.2- Subsection Two: Obstacles Confronting International Non-Governmental Organizations in the Field of International Humanitarian Law:

Although international non-governmental organizations (INGOs) strive to pursue noble objectives – namely extending assistance and rescuing those affected by armed conflicts – the obstacles they encounter in practice render the achievement of their humanitarian goals exceedingly difficult. These challenges are reflected in the evolving and diversified nature of contemporary conflicts (First), the deliberate obstruction of humanitarian aid by certain parties to the conflict (Second), and finally the issue of securing adequate funding to sustain humanitarian efforts (Third).

1.2.1- First: Transformations in the Nature of Armed Conflicts and the Emergence of New Forms of Warfare

Independent humanitarian organizations play a vital role in mitigating violations, particularly in light of their increasing frequency. Their presence in conflict zones is essential to ensure the provision of humanitarian assistance and to promote compliance with the rules of international humanitarian law. However, numerous difficulties limit their capacity to reach all affected populations, especially amid the growing multiplicity of crises in the present era, which constrains their ability to meet medical and relief needs across all regions⁽⁴⁾.

⁴-For further details, see: Qasimi Youssef, (2012), Current Challenges Facing International Humanitarian Organizations, paper presented at the National



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Furthermore, the emergence of international terrorism constitutes a new challenge that does not recognize any established international legal framework and relies on unlawful means aimed at harming innocent civilians.

In the contemporary era, wars are no longer confined to armed confrontations between regular armies operating under centralized command. Rather, many armed conflicts now arise as a consequence of the collapse of central authority within states. As a result, armed conflicts have become more dangerous and complex, thereby increasing the difficulty of achieving peaceful settlements on the one hand, and narrowing the scope for the effective application of international humanitarian law on the other, due to the emergence of new actors seeking to engage in conflicts to advance particular interests and objectives.

This situation has been confirmed by realities on the ground in several states, such as Somalia, Sudan, Iraq, Libya, and Syria in recent years, among others. These developments have led to the proliferation of centers of power and decision-making authority, thereby contributing to the growing complexity and fragmentation of the implementation of international humanitarian law.

1.2.2- Second: Obstacles Imposed by Warring Parties on the Flow of Humanitarian Assistance.

Humanitarian aid convoys during armed conflicts are exposed to severe and inhumane challenges, including looting, assault, and sabotage, which prevent assistance from

Conference on: Mechanisms for the Implementation of International Humanitarian Law between Text and Practice, 12–13 November, Faculty of Law, Abderrahmane Mira University, Bejaia, Algeria, pp. 1–6.

reaching its intended beneficiaries. Despite ongoing efforts, international humanitarian law often appears powerless in the face of such violations, thereby weakening its capacity to fulfill its primary objective of protecting victims.

For example, in 1992, a tragic incident occurred when a convoy belonging to the International Committee of the Red Cross was attacked and looted during the conflict in Bosnia and Herzegovina. An armed group seized a shipment of medical supplies destined for a hospital in Sarajevo. The attack resulted in the death of one committee member and varying injuries to all members of the convoy.

On the other hand, bureaucratic procedures constitute an additional obstacle to the delivery of humanitarian assistance. Many states impose strict inspection measures on the contents of convoys, fearing potential security threats that may be concealed within such aid. In certain cases, these restrictions extend to the closure of border crossings and the complete obstruction of convoy passage, thereby exacerbating the humanitarian situation in affected areas.

Moreover, some parties deliberately delay the issuance of permits allowing humanitarian organizations to enter their territories, as certain states perceive such humanitarian activities as infringing upon their national sovereignty. In addition, some states resort to closing border crossings – as previously indicated – to prevent the arrival of aid and to obstruct the transfer of the wounded to safe areas for medical treatment, thereby intensifying the suffering of affected populations.

In an effort to confront these challenges, the United Nations has reinforced the principle of the “right to humanitarian assistance,” initially recognized in the 1929 Geneva Convention and subsequently reaffirmed in the four



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Geneva Conventions of 1949 and Additional Protocol I. This principle has been reflected in resolutions of the United Nations General Assembly, such as Resolution No. 45/100 and Resolution No. 64/182, both of which provide for the establishment of humanitarian corridors or emergency channels to facilitate the delivery of assistance to victims of natural disasters and similar emergencies.

Nevertheless, the prior consent of the concerned state remains an essential prerequisite for the provision of humanitarian assistance. This raises a fundamental question: may such assistance be imposed upon states that refuse it? An examination of the aforementioned General Assembly resolutions reveals that they contain no provision authorizing the imposition of humanitarian aid against the will of states. On the contrary, both resolutions emphasize the importance of respecting the sovereignty of affected states and their primary role in organizing, coordinating, and implementing humanitarian assistance operations, while ensuring that their sovereignty is not violated under any circumstances. The overarching objective remains the protection of humanity without encroaching upon the sovereign rights of states.

1.2.3- Third: The Problem of Financing Humanitarian Action

International organizations face enormous financial difficulties, as contemporary humanitarian action requires vast resources to respond to the escalating severity of crises and conflicts. Adequate and sustainable funding constitutes one of the most significant challenges confronting humanitarian work in the modern era. The proliferation of global crises – such as armed conflicts and natural disasters – has placed unprecedented pressure on the resources of

humanitarian organizations. As humanitarian needs continue to expand, funding shortfalls emerge as a principal obstacle to the effective implementation of their programs.

The funding crisis stems from several factors, including heavy reliance on governmental donations, which are often affected by economic and political crises, as well as the limited engagement of the private sector in supporting humanitarian initiatives. Moreover, the political priorities of certain donor states may lead them to redirect funding away from protracted or chronic crises toward emergencies that receive greater media attention.

In addition, these organizations frequently depend on grants provided by certain states that impose conditions requiring funds to be allocated to specific purposes or geographic areas. This places organizations in a dilemma: either accept such conditions and compromise their independence, or refuse them and consequently forgo essential funding—potentially leading to withdrawal from conflict zones⁵. For example, in 1988, the International Committee of the Red Cross withdrew from its relief operations in Ethiopia due to governmental obstruction of its activities. At times, humanitarian organizations may even be compelled to compromise their neutrality under pressure from conflicting parties, thereby weakening their humanitarian image and affecting their credibility and reputation.

This situation has exacerbated the funding gap in humanitarian action, forcing organizations to make difficult decisions regarding the prioritization of assistance. In response to limited resources, humanitarian actors have been

⁵- Qasimi Youssef, (2012), *op. cit.*, p. 3.



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compelled to reassess their priorities and determine which sectors, activities, and geographic areas can be covered, given the growing scale of humanitarian needs. They have consequently focused on emergencies and the most urgent cases, resulting in a reduction in the number of beneficiaries. As a result, millions of individuals in need have been excluded from assistance and left to confront their crises without adequate support. These difficult choices underscore the profound impact of funding shortages and highlight the urgent necessity of developing innovative and sustainable solutions to bridge this gap and ensure that aid reaches all those entitled to it.

1.3- Subsection Three: The Shortcomings of the Protecting Power System:

The Protecting Power system constitutes one of the mechanisms provided for in the 1949 Geneva Conventions to ensure compliance with the rules of international humanitarian law. However, this mechanism is rarely activated by parties to armed conflicts. This reluctance is largely attributable to states' concerns about assuming the role of a Protecting Power, for fear of becoming entangled in political, legal, or diplomatic disputes with the belligerent parties.

In addition, the extensive responsibilities inherent in this role represent a significant burden, particularly in light of the increasing frequency and intensity of contemporary armed conflicts, which require substantial resources and capacities to meet the growing demands of protection.

The Protecting Power system has demonstrated limited effectiveness within the context of contemporary armed

conflicts. It appears impractical to designate a state to assume this role in situations of armed conflict, whether such conflicts occur within the territory of a single state—between governmental forces and dissident groups or among rival armed factions—or between two or more independent states.

Despite the fact that such conflicts frequently involve flagrant violations of the principles of international humanitarian law⁶, this mechanism seems ill-equipped to keep pace with the evolving nature of modern warfare. This reality underscores the necessity of re-examining and reforming the Protecting Power system in order to render it more responsive and adaptable to changing circumstances.

1.4- Subsection Four: Challenges Facing the International Criminal Court:

The pursuit of a consensual formula during the drafting of the Rome Statute of the International Criminal Court resulted in leaving many of the Court's principal operational elements insufficiently defined, producing provisions characterized by ambiguity and a lack of precise delineation⁷. The Statute thus emerged with certain gaps and deficiencies. Among the most significant of these is the conferral upon the

⁶-Patrice Buirette, Philippe Lagrange, (2008), *International Humanitarian Law*, La Découverte Publishing, Paris, p. 66.

⁷- The drafting of the Rome Statute of the International Criminal Court witnessed a divergence in the views of states. This divergence can be divided into two main trends:

- **The first trend**, led by the United States of America, sought to strengthen state sovereignty vis-à-vis the Court and to limit its powers to the narrowest possible scope.
- **The second trend** worked diligently to enhance the powers of the Court in contrast to, and sometimes at the expense of, state sovereignty.

⁸- Al-Humaidi Ahmed Qasim, (2005), *The International Criminal Court*, Part 2, Human Rights Information and Training Center, Republic of Yemen, p. 114.



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Security Council of exclusive authority to refer situations to the Court under Chapter VII of the United Nations Charter. This prerogative weakens the Court's independence and undermines its credibility, given that the political influence of the Security Council – previously discussed – runs counter to the judicial character that the Court is intended to embody.

Furthermore, the Security Council possesses the power to intervene in the course of any case under adjudication at any stage of the proceedings. This raises concerns regarding the potential exploitation of such authority for political purposes serving the interests of permanent member states, including the shielding of their nationals implicated in international crimes from appearing before justice⁽⁸⁾. These powers may pose a threat to the Court's impartiality and the independence of its decisions, thereby calling into question the effectiveness of the International Criminal Court as an autonomous judicial body under the dominance of the Security Council.

In addition to the foregoing, it is essential to underscore what may be regarded as one of the most significant obstacles to the effective application of international humanitarian law in general, and to the prosecution of its violators in particular: namely, the policy of double standards and the absence of equality in the treatment of states and subjects of international law. This reality is clearly reflected in the historical record of prosecutions of war criminals and perpetrators of international crimes constituting violations of international humanitarian law. In many instances, tribunals were established to prosecute only the defeated parties, as occurred

in the trials of Japanese and German war criminals, whereas no comparable measures were taken against U.S. President Harry Truman, who authorized the dropping of the first atomic bombs on Hiroshima and Nagasaki in 1945. Indeed, the prospect of holding him judicially accountable was not even seriously contemplated, thereby raising the fundamental question of whether justice can truly be achieved during or after war.

A careful examination of the history of armed conflicts reveals limited judicial experiences conducted by victors against the vanquished, despite the fact that genuine justice requires the punishment of all perpetrators, irrespective of their affiliation or power, provided that sufficient evidence establishes their guilt, and without discrimination between the strong and the weak. This principle is reflected in the four Geneva Conventions, which impose upon High Contracting Parties the obligation to prosecute war criminals, whether before their own national courts or through the extradition of the accused to a concerned state under specified conditions, without regard to the nationality of the offender.

2. Section Two: Obstacles Impeding the National Implementation of the Rules of International Humanitarian Law:

Domestic mechanisms entrusted with the implementation of international humanitarian law encounter numerous challenges that hinder their ability to perform their functions effectively. These difficulties stem from the diversity of their institutional forms and the variation in their respective mandates and fields of operation. Moreover, questions continue to arise regarding the effectiveness of such mechanisms in light of the increasing incidence of serious



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violations of the fundamental principles of international humanitarian law, particularly amid the growing complexity of contemporary armed conflicts. This situation necessitates a careful examination of the obstacles that impede their operation, most notably:

2.1- Subsection One: The Delay of States in Acceding to and Ratifying Treaties in the Field of International Humanitarian Law and in Amending Their National Legislation:

The legal regime governing treaties is premised upon the principle of State sovereignty in determining the timing of signature and ratification; no State may be compelled to assume treaty obligations except by its own consent. This principle, however, undermines the effectiveness of numerous international humanitarian conventions, as such instruments generally do not prescribe a binding time frame for ratification. Instead, States retain discretion in determining when to ratify, a delay that may result in the loss of individual rights and the impunity of perpetrators. In such circumstances, a State that has not ratified the relevant treaties is not legally bound to prosecute crimes arising from violations of the rules of international humanitarian law.⁹

By way of illustration, the Rome Statute of the International Criminal Court has encountered significant difficulties relating to State ratification. The Statute requires States seeking accession to undertake domestic legislative reforms to ensure conformity with its provisions. Such reforms may conflict with certain constitutional principles,

⁹ - Youssef Amal, (2010), Lessons in Public International Law, 1st ed, Dar Belqis Publishing, Algeria, p. 29.

including the principle of criminal sovereignty. For example, Algeria has limited its engagement to signing the treaty without proceeding to ratification since 2000, reportedly in order to avoid reopening sensitive matters, such as the cases of “the disappeared” during the period of internal violence known as the “Black Decade.”⁽¹⁰⁾

Furthermore, the issue of legislative harmonization constitutes a significant factor contributing to States’ delay in ratifying international treaties. The process of amending domestic legislation to ensure conformity with international obligations is inherently complex and often protracted.

A particular difficulty arises with respect to aligning domestic criminal legislation with international humanitarian standards. International legal provisions are generally formulated in broad and abstract terms, in contrast to national criminal laws, which define offences with precision and specificity. This normative disparity may hinder the capacity of domestic judges to effectively apply and enforce the provisions of international conventions, as exemplified by the 1949 Geneva Conventions.

2.2- Subsection Two: The Weakness of the System of Judicial Cooperation Among States

The initiation of criminal proceedings against perpetrators of violations of international humanitarian law necessitates the effective implementation of the principle of mutual Judicial assistance among States, as an international obligation that is not governed solely by customary practice but must be established through binding international

¹⁰ - Ashraf Abdel Aziz Al-Zayat, (n.d.), *The International Responsibility of Heads of State: An Applied Study on the Referral of Al-Bashir to the International Criminal Court*, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, p. 284.



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agreements. This is particularly so because elements essential to criminal investigations frequently lie outside the territorial jurisdiction of the State conducting the proceedings, thereby requiring structured cooperation between the competent judicial authorities of the States concerned.

However, when States are reluctant to receive investigative commissions – particularly where inquiries implicate high-ranking public officials – or refuse to exchange information concerning perpetrators of international crimes, such conduct obstructs investigative processes and undermines the effectiveness of criminal prosecutions.⁽¹¹⁾

Although certain international treaties have addressed aspects of inter-State judicial cooperation, some governments continue to withhold the requisite legal assistance in specific cases, such as those relating to terrorism, on the grounds that such acts are deemed, according to their interpretation, to possess a political character. For example, upon acceding to the 1999 International Convention for the Suppression of the Financing of Terrorism, Belgium entered reservations concerning the provision of legal assistance and extradition in terrorism-related cases it classifies as politically motivated, notwithstanding that such acts may clearly entail violations of the fundamental principles of international humanitarian law.

¹¹ - Vander Meersch Damien, (1999), Prosecution and Adjudication of Offences under Humanitarian Law in Belgian Law, in: Current Developments in International Humanitarian Law, Revue de droit international, Vol. 45, p. 169.

2.3- Subsection Three: The Absence of the Application of the Principle of Universal Jurisdiction

The principle of universal jurisdiction constitutes one of the most significant mechanisms for ensuring compliance with the rules of international humanitarian law. The effective operation and enforcement of this principle before national criminal courts require the existence of genuine political will on the part of States, in addition to its incorporation into domestic legislation.

The absence of the application of this principle at the present time constitutes one of the most significant obstacles to the effective enforcement of the rules of international humanitarian law. It enables numerous perpetrators of international crimes arising from violations of these rules to evade accountability and impedes domestic judicial proceedings aimed at their criminal prosecution.⁽¹²⁾

This situation is primarily attributable to the lack of national legislative provisions conferring jurisdiction upon domestic courts to adjudicate such categories of crimes.

Pursuant to the principle of universal criminal jurisdiction, the absence of its effective implementation enables individuals accused of international crimes to challenge the competence of domestic courts to prosecute them, thereby resulting in the suspension or termination of proceedings against them.

This issue arose notably in the case of Hissène Habré, who contested the decision to prosecute him, arguing that the Senegalese judiciary lacked jurisdiction to adjudicate

¹² - For further details on the principle of universal jurisdiction, see: Rabia Nadia, (2011), *The Principle of Universal Jurisdiction in National Legislations*, Master's Thesis in Law, Faculty of Law, Mouloud Mammeri University, Tizi Ouzou, Algeria.



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international crimes on the basis of universal jurisdiction. Indeed, on 4 July 2002, the Indictment Chamber in Dakar rendered a decision dismissing the complaint concerning crimes allegedly committed outside Senegalese territory.

Similarly, the French judiciary dismissed a claim brought by Bosnian victims against Djafar Elver, whom they accused of committing grave breaches in Serbia. Although the applicants relied upon the 1949 Geneva Conventions – which recognize universal jurisdiction in respect of such violations – the French Court of Cassation upheld the decision of the Court of Appeal to dismiss the case, citing the absence of any domestic legislation recognizing universal criminal jurisdiction.

Accordingly, the effective application of this principle requires the enactment of national legislation expressly conferring jurisdiction upon domestic courts to prosecute perpetrators of such crimes. In the absence of such legislative measures, individuals implicated in international crimes will remain beyond the reach of international humanitarian law.

In addition to the foregoing, States that have adopted the principle of universal jurisdiction and incorporated it into their domestic legal systems encounter multiple challenges in its practical application. Among the most significant of these challenges is the issue of the statutory limitation of international crimes, which constitutes one of the principal legal defenses that accused persons may invoke to obstruct or terminate criminal proceedings at the national level. Defendants may be entitled to rely on statutory limitation periods, particularly where the State concerned has neither ratified the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against

Humanity nor incorporated the rule of non-applicability of statutory limitations to the most serious international crimes into its domestic legislation.⁽¹³⁾

Another impediment to the application of the principle of universal jurisdiction—and, consequently, to the enforcement of international humanitarian law—concerns the issue of criminal immunity granted to certain perpetrators of international crimes by virtue of their official positions. In its Judgment of 14 February 2002 in the *Arrest Warrant (Democratic Republic of the Congo v. Belgium)* case, the International Court of Justice affirmed that incumbent State officials enjoy immunity from criminal jurisdiction during their tenure in office. This ruling has enabled numerous international figures to invoke official immunity before foreign criminal courts.

Illustrative examples include former Prime Ministers of Israel, such as Ariel Sharon and Ehud Barak, who have relied upon official immunities to avoid appearing before foreign or international judicial authorities in cases involving allegations of serious humanitarian crimes.

These legal barriers—whether related to statutory limitations or immunities—underscore the necessity of revisiting both national and international legal frameworks in order to strengthen the effectiveness of international criminal justice. Ensuring accountability for those responsible for the gravest crimes and preventing impunity requires the adoption of legislative measures that remove legal constraints hindering the application of international humanitarian law and close loopholes that afford protection to perpetrators of war crimes.

¹³ - Rabia Nadia, (2011), op. cit., p. 112.



Conclusion:

Notwithstanding the diversity of mechanisms entrusted with the implementation of the rules of international humanitarian law – whether at the national or international level – their effectiveness remains limited and has fallen short of achieving the desired outcomes in practice. Armed conflicts continue to escalate, accompanied by an increase in grave violations of international humanitarian law. This situation is attributable to the interplay of political, economic, and social factors, compounded by the evolving nature of contemporary conflicts, the weakness of international accountability mechanisms, the absence of justice, competition over natural resources, the proliferation of armed non-State actors, and the persistence of double standards in the application of international law. Collectively, these factors have contributed to the complexity of the current landscape and the exacerbation of civilian suffering.

In conclusion, this shortcoming may be attributed to several factors, which may be summarized as follows:

1. The lack of political will on the part of certain States to accede to humanitarian treaties. Even where accession occurs, such States often delay the domestic implementation of treaty provisions, invoking the mechanisms provided therein as a pretext for resisting what they perceive as interference in their internal affairs.
2. The challenge of harmonizing domestic legislation with the standards of international humanitarian law enshrined in international conventions, as many States encounter legal and

administrative difficulties in aligning their national laws with their international obligations.

3. The weakness of international coordination in combating international crimes, given that the absence of effective cooperation among States—particularly with respect to investigations and the exchange of information concerning suspects—undermines the proper administration of justice.
4. The lack of specialized expertise within domestic judicial institutions in addressing international crimes, which require a precise and thorough understanding of international humanitarian law, thereby negatively affecting the judiciary's capacity to deliver justice effectively.
5. The invocation by certain States of the principle of sovereignty to resist the intervention of humanitarian organizations, particularly in situations of internal armed conflict, thereby preventing such organizations from providing assistance and protection to victims.
6. The dominance of major powers within the organs of the United Nations, and within the Security Council in particular, which may result in decisions serving their strategic interests and reinforcing the phenomenon of double standards, thereby aggravating humanitarian crises rather than resolving them.

Accordingly, the study proposes several recommendations , including:

1. The rules of international humanitarian law should be incorporated into the educational curricula of both civilian and military institutions, with a view to fostering a culture of respect for others, promoting international peace, and nurturing generations that reject war and violence.



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2. The United Nations, through all its organs and institutions, bears a fundamental responsibility for ensuring compliance with the rules of international humanitarian law. It should maintain strict neutrality in addressing armed conflicts and encourage States to strengthen international criminal justice while providing the necessary support to victims worldwide without discrimination. A significant portion of this responsibility rests with the Security Council, as the executive organ vested with the authority and capacity to act promptly in order to halt violations.
3. There is an urgent need to reform the institutional structure of the United Nations, particularly the Security Council, in order to achieve equitable representation and enhance its operational effectiveness. Such reform may be realized through:
 - Either the abolition of the veto power, which has increasingly become an instrument employed by the five permanent members to advance their interests in the absence of clear legal constraints, or, at a minimum, the establishment of strict regulations governing its use and preventing its abuse;
 - The expansion of permanent membership of the Security Council through the inclusion of additional States representing diverse regions and peoples, thereby ensuring more inclusive and equitable representation.

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