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THE COLLISION BETWEEN LAW AND POWER: SADDAM HUSSEIN AND THE IMPLEMENTATION DICHOTOMY OF INTERNATIONAL HUMANITARIAN LAW

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I. ABSTRACT

Saddam Hussein's case remains a milestone in today's development of International Humanitarian Law (IHL), alongside International Criminal Law. His political and military activities, from the Iraq-Iran war, persecuting the Kurds through the Anfal Campaign, up to annexing Kuwait, underlined the deficiency of international instruments designed to impede aggression by states and protecting civilians' lives. Although International Humanitarian Law strongly condemned those crimes, like Genocide, Acts of Aggression, and Chemical Warfare, the selectiveness of the application proved the superiority of political power over cosmopolitan justice. The prosecution of Saddam in front of the Iraqi High Tribunal was rich in symbolic weight; it was supposed to underline how the judicial process was torn between the demand for legal justice and the will of political vindictiveness, acting more as an example of victor's justice rather than impartial international justice. This research opines that the trial of Saddam demonstrates structural deficiency in the international justice system in the sense that while international law codifies well, it remains sensitive in equal application. Through a comparison of the ICTY under Milosevic, the SCSL under Charles Taylor and the foundational Nuremberg trials, this paper reveals the enduring demand for comprehensive reform in global criminal justice system. The recommended reforms advocate curbing the veto powers of Security Council in atrocity offences, advancing the jurisdiction of ICC to a universal extent, instituting a neutral implementation structure, recognizing new global offences like Weapons of Mass Destruction (WMD) and Ecocide, and developing hybrid tribunals to ensure both state sovereignty and international justice. Finally, this research finds that the case of Saddam Hussein exposes both the potential and restraint of international justice since the authority of law is bound by political will. The advancement of IHL and ICL must ensure that no future

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dictator is subjected to a verdict governed by political dominance rather than authority of justice.

II. KEYWORDS

International Humanitarian Law (IHL), Saddam Hussein, Iraqi High Tribunal, Victor's justice, Jus ad Bellum.

III. INTRODUCTION

Although history is known to have witnessed countless authoritarian leaders, but the influence of Saddam Hussein on global affairs along with that of the reshaping of International Law stands out as exceptionally important.² Emerging from the turbulent environment of Tikrit, where he rose from a marginalized child to one of the most dominant and influential rulers in the world of Middle East. The regime of Hussein depicted relentless ambition and violent repression which culminated aggressive wars, severe violation of human rights along with that of a historical legacy which still continues to question the enforceable capacity of International Law.

The rise of Saddam from tight control in Iraq to his aggressive behaviour through military action and the chemical warfare outside the boundaries of Iraq illustrates the weakness of International Law in dealing with undeterred might. Although history has witnessed numerous authoritarian leaders, the influence of Saddam Hussein on global affairs and on the development of International Humanitarian Law (IHL) remains particularly significant. Rising from a marginal background in Tikrit to become one of the most dominant rulers in the Middle East, Saddam Hussein's regime was marked by aggressive militarism, systematic repression, and repeated violations of international legal norms. His governance illustrates the persistent tension between the normative strength of international law and its fragile enforcement mechanisms.

The leadership pattern set forth by Saddam Hussein was characterized by expansionist military policies and a disregard for humanitarian obligations. This was demonstrated on 22 September 1980, when Iraq initiated armed hostilities against

² Jeb Sharp, 'History of Iraq part II: the rise of Saddam Hussein' (*The World*, 16 January 2014) <https://theworld.org/stories/2014/01/16/history-iraq-rise-saddam-hussein> accessed 1 September 2025

Iran, marking the formal commencement of the Iran-Iraq War. The conflict resulted in extensive civilian and military casualties and constituted a *prima facie* violation of *jus ad bellum*, which strictly prohibits wars of aggression under international law. The subsequent use of chemical weapons during the conflict further contravened *jus in bello* principles and the 1925 Geneva Protocol.

Beyond external aggression, Saddam Hussein's regime inflicted grave violations upon its own population, most notably during the Anfal Campaign against the Kurdish population and the chemical attack on Halabja in 1988. Despite these actions being widely condemned under international humanitarian and criminal law, the international community's response remained inconsistent and often politically contingent. This selective enforcement underscores a fundamental contradiction in international law strong normative articulation coupled with weak and uneven implementation.³

In Iran-Iraq War, aggressive policies through chemical warfare bans and nerve agents exemplified a direct infraction of the Geneva Protocol signed in 1925 and that of 'jus in bello', most specifically norms that involve conflict regulations for international warfare. Saddam had his aggressive intentions for foreign battle arenas and his own citizens when, in 1988, he gave an order to his military to conduct bombing attacks involving chemical weapons against the Kurdish population in the town of Halabja. On the other hand, at the level of international relations, his scuds were behind the bombing of Israel during the Gulf War. The instance of Saddam Hussein throws a challenge to the global community to note his extensive violations of international law. Despite his actions were unambiguously condemned through the legal doctrines "jus ad bellum" and "jus in bello", yet failure of global community to take strict measures revealed the deficiencies of global justice.

The stance of the international community toward Saddam wavered for years, which includes sometimes forgiving, sometimes selective punishment and tactical cooperation. This erratic stance revealed the weakness of global governance when confronted with geopolitical strain. Saddam's ability to be in power for decades,

³ Geneva Protocol (adopted 4 May to 17 June 1925, entered into force on 8 February 1928) 94 LNTS 65

despite his several breaches of international law, demonstrates the contradiction of war legislation to be strong in language but weak in implementation.

This research presented here is that the legacy of Saddam Hussien acts as a case study in abbreviating the twofold nature of international war legislation, which involves both its achievements and its shortcomings too. His invasive aggression of neighbouring nations, deployment of chemical weapons and his campaign of genocide perfectly suits all the violations of international legislative frameworks like Geneva Conventions, UN Charter and Genocide Convention. Concurrently, the inability of global community to prevent or effectively impose meaningful consequences on the actions of Saddam until his downfall in 2003 Iraq war depicts a deficit of deep enforcement in International Law.

The case of Saddam shows that intentions of war legislations are right in defining prohibited conducts but most of the time fail to consistently carry out liability against powerful violators. This research entity is divided into four distinct sections. Firstly, it will analyse the major military conflicts of Saddam Hussein, which includes Iran-Iraq War, invasion of Kuwait, missile attacks on Israel as well as Genocide caused upon the Kurds under the legal doctrines of "jus ad bellum" and "jus in bello" analysis. Secondly, the research will discuss trial of Hussein conducted by Iraqi Special Tribunal and examine its position in international justice along with analysing whether the proceedings met fundamental principles of the procedures of a fair trial. The third section will explore the systematic weaknesses in international law and enforcement mechanisms through which Saddam was able to retain his power for many years despite his continuing violations.

In the last section, the research will put forward recommendations for the improvement of international war laws, drawing a focus on the need to bridge between the set legal norms and their actual enforcement. Hussein is remembered not only as a tyrant who terrorized his people but as a case test of international war law that exposed its strengths in setting legal norms as also revealing its weaknesses in its implementation. Through a look into his actions and the subsequent legality around

it, some worthwhile lessons can be drawn for the strengthening of international justice.

A. Research Questions

1. To what extent did the actions of Saddam Hussein constitute violations of *jus ad bellum* and *jus in bello* under international law?
2. How did geopolitical considerations influence the international community's response to these violations?
3. What does the trial of Saddam Hussein reveal about the effectiveness and limitations of existing international justice mechanisms?

B. Research Methodology

1. **Research Design:** This study adopts a doctrinal and analytical research design, supplemented by a comparative approach. The doctrinal method is employed to examine existing legal principles governing International Humanitarian Law (IHL) and International Criminal Law (ICL), while the analytical approach is used to critically evaluate their practical application in the case of Saddam Hussein. A comparative method is further applied to contrast Saddam Hussein's prosecution with other international trials, including those conducted before international and hybrid tribunals.
2. **Sources of Data:** The research is based on both primary and secondary sources. Primary sources include international treaties and conventions such as the United Nations Charter, Geneva Conventions, Rome Statute of the International Criminal Court, judgments of international and hybrid tribunals, and United Nations Security Council resolutions. Secondary sources comprise scholarly books, peer-reviewed journal articles, reports of international organizations, and commentaries by legal scholars on international humanitarian and criminal law.
3. **Method of Data Collection:** Data has been collected through systematic library-based and database-oriented research, including the examination of international legal instruments, judicial decisions, and authoritative

academic literature. Online legal databases, official United Nations documents, and reports published by recognized human rights organizations have also been consulted to ensure doctrinal accuracy and contemporaneity.

4. Analytical Framework: The analysis is conducted within the framework of *jus ad bellum* and *jus in bello*, assessing the legality of state conduct during armed conflict and the corresponding accountability mechanisms. The study further applies principles of international criminal responsibility, command responsibility, and selective enforcement to evaluate the structural limitations of global justice mechanisms. By integrating legal norm analysis with case-based evaluation, the framework highlights the dichotomy between codified international law and its implementation in politically sensitive contexts.

C. Literature Review

Existing scholarship on the prosecution of Saddam Hussein situates his trial as a critical reference point in debates on the politicization of international criminal justice. Scholars examining the proceedings before the Iraqi High Tribunal emphasize concerns relating to due process, judicial independence, and the perception of victor's justice, arguing that the trial reflected the dominance of political considerations over neutral legal adjudication.

A substantial body of literature critiques structural weaknesses within the international criminal justice system, particularly the selective enforcement of accountability for international crimes. Academic analyses highlight the role of geopolitical interests, especially those mediated through the United Nations Security Council, in determining when and against whom international criminal mechanisms are activated.

Comparative studies of war crimes tribunals, including the Nuremberg Trials, the International Criminal Tribunal for the former Yugoslavia, and the Special Court for Sierra Leone, underscore variations in procedural fairness, jurisdictional legitimacy, and enforcement capacity. These comparisons reveal that tribunals with stronger

international oversight tend to exhibit greater compliance with fair trial standards than domestically constituted or hybrid courts operating in post-conflict environments.

Scholarly discourse on International Humanitarian Law further identifies persistent gaps in enforcement mechanisms, noting that while substantive legal norms governing genocide, war crimes, and crimes against humanity are well codified, their implementation remains inconsistent. This literature collectively supports the view that the Saddam Hussein trial exemplifies the broader implementation dichotomy within international humanitarian and criminal law, where legal norms are robust in theory but uneven in practice.

IV. THE POLITICAL AND LEGAL FRAMEWORK OF THE GOVERNANCE OF SADDAM HUSSEIN

A. Political Rise and Centralization of Power (A Law-Oriented Evaluation)

The political rise of Saddam Hussein to become the President of the Republic of Iraq in 1979 represented both a political turning point and triggered a political era that would confront the legal foundations of international law.⁴ The authoritarian measures he used to maintain control includes purges, extrajudicial killings and coerced loyalty, implicating legal consequences that stay relevant to modern-day discussion on state sovereignty and criminal culpability. Under the leadership of Saddam Hussein, Ba'ath Party of Iraq established a regime which treated dissent as a crime, making political opposition an act of treason, leading to widespread imprisonments, executions along with that of the enforced disappearances for silencing the critics.⁵

From the viewpoint of international criminal law, systematic nature of these violations clearly falls within the established standards for crime against humanity, a standard given recognition under customary international law and later expressly formalized

⁴ Samson Cain, 'Living History: The Regime of Saddam Hussein' (*World History Trends*, 7 April 2024) <https://www.worldhistorythreads.com/p/living-history-the-regime-of-saddam> accessed 3rd September 2025

⁵ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force on 1 July 2002) 2187 UNTS 3 art 7

in Article 7 of the Rome Statute of International Criminal Court. While the ICC came into existence in 2002, the barring of systematic or widespread assaults on civilians had been codified through the judgments of Nuremberg, Tokyo as well as ad hoc tribunals. This highlights the most significant essential legal issue about whether these abuses can give rise to a legal responsibility in the international community. The Iraqi case under Saddam Hussein demonstrates how sovereignty cannot constitute a limit for states, which exercise violence against its citizens, as the internal repression of the Saddam Hussein Government marks a transition from the traditional nation outlined in the Westphalian model to a progressive legal system that bases itself on the system of International Human Rights.

B. Nationalist Policies & Regional Dominance (Direct Confrontation with International Legal Norms)

The political philosophy of Saddam Hussein was focused on Arab nationalism which portrayed Iraq as the centre of power and leadership of the Arab world. Although such nationalism in itself was illegal *per se*, but his aggressive foreign policy being entrenched in this ideology frequently breached the legal principles of international law.⁶ The 1980 Iran invasion conducted by Saddam, rationalized through grounds of territorial disputes and curbing of Shia revolutionary expansion represented a *prima facie* breach of Article 2(4) of the UN Charter, which disallows the use of armed aggression against coercive force.⁷

Although Iraq invoked Article 51 of the UN Charter to legitimize actions as self-defence, global jurists classify the war as an act of aggression as Iraq initiated the opening strikes. The eight-year conflict, causing massive loss of lives, highlighted the limits of international mechanisms formulated to safeguard the legal principles of "jus ad bellam". Lack of firm global opposition revealed the vulnerability of legal mechanisms when confronted with geopolitical priorities. In legal terms, the deployment of chemical weapons and nerve agents by Saddam Hussein against

⁶ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI art 2(4)

⁷ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI art 51

Iranian military as well as Kurdish civilians during the Anfal Campaign of 1987-1988 amounted to a flagrant contravention of the 1925 Geneva Protocol to which Iraq was a member state. In addition to breaching treaty provisions, these attacks breached core norms of customary international humanitarian law, which includes banning indiscriminate form of warfare, the duty to protect civilians along with the absolute disallowing of the occurrence of genocide.⁸

The intentional and widespread killings of Kurdish communities, which occasioned a loss of tens of thousands of human lives, can legally be justified as both crime against humanity and Genocide as defined by the Convention on the Prevention and Punishment of the Crime of Genocide 1948. In contrast to the Iran-Iraq dispute, where more complex contested interpretations initially arose, the 1990 Iraqi invasion of Kuwait represented a flagrant violation of international law.⁹ The UN Security Council responded effectively to this crisis by adopting Resolution 660 and Resolution 678 to enable military intervention to ensure the sovereignty of Kuwait.

The issue of invasion by Iraq embodied the role of collective security involving the UN Charter, reaffirming the quality of the prohibition of aggression to be considered as *jus cogens*. The justification of Saddam on the basis of historical claims to Kuwait was baseless according to law, as legal principle of "uti possidetis juris" affirms the preservation of colonial-era borders unless both states have mutual consent otherwise. The nationalist project of Saddam transcended ideology, repeatedly violating the essential pillars of international legal order, which includes prohibition of aggressive war, humanitarian protections as well as the legal conducts of military conflicts.

C. Cold War Influence and the Politicization of Legal Enforcement

The international power dynamics of the cold war not only shaped Saddam's rise with opportunities to solidify his command over the nation but also revealed the vulnerabilities of international law.¹⁰ During the Iraq-Iran war, both the western and

⁸ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277

⁹ UNSC Res 660 (2 August 1990) UN Doc S/RES/660, UNSC Res 678 (29 November 1990) UN Doc S/RES/678

¹⁰ Britannica Editors, 'Iran-Iraq War 1980-1988' *Britannica* (Fall edn, 2025)

<https://www.britannica.com/event/Iran-Iraq-War> accessed 5 September 2025

eastern superpowers had common interests to support the Iraq regime to counter the Iranian revolution. In spite of the fact that the use of chemical weapons by the Iraq government under the leadership of Saddam had become a well-documented reality, the powerful states like the United States, the Soviet Union, and France, continued to support Iraq government with arms, money, as well as intelligence.

It becomes quite important to observe the same situation with a juridical approach to understand the credibility of the support given to the Iraq government. Since international law is a hindrance to illegal aggression, as well as the use of chemical warfare, without any exemption, it is still a puzzle to raise a relevant question of why Iraq was effectively protected from any concrete consequences in the 1980s. Of course, the true problem is not in international law but in creating a system of enforcement, where without any political support, international law is selectively enforced. The Iraq invasions of Kuwait in 1990 created a new era in international governance because, as a result of the cold war, world superpowers came together as one, making it possible for a rapid reaction by the United Nations Security Council.

The Gulf War created a historical precedent, in which international law was efficiently enforced in respect to joint interests in geopolitics, but sanctions imposed on Iraq created a serious problem in international law. These sanctions have lasted well over a decade and have led to humanitarian crises in which many scholars have argued that certain international laws regarding the principle of proportionality have been breached in relation to the right to life or health that is afforded to everybody under international human rights law. The case of Saddam Hussein in relation to international jurisprudence shows how international law deals with illegal aggression by states in regard to both punitive measures in international human rights law.

D. Role of Saddam Hussein in the Development of International Criminal Law

The trial and execution of Saddam Hussein are the most significant and enduring points where international law and reality met. He was arrested by U.S. troops who invaded Iraq in 2003 and afterwards prosecuted for Iraqi High Tribal Council crimes against humanity for the mass murder of 148 Shia civilians from Dujail in 1982. Although it seems it was a domestic court, there were strong linkages with

international courts and jurisdictions, and the court adopted provisions from International Criminal Tribunal for Rwanda (ICTR), International Criminal Tribunal for former Yugoslavia (ICTY), and Rome Statute. The trial of Saddam Hussein marked significant moments for international law.

He became the first ousted state leader in modern history to be executed after a conviction for crimes against humanity.¹¹ The case reconfirmed the doctrine that state leaders do not enjoy immunity when charged with serious international crimes, in line with post-Second World War Nuremberg Trial precedents and later enunciated under Article 27 of the Rome Statute. Besides symbolic significance, the trial was also hedged with criticism regarding the absence of independence of the Tribunal, fairness of the proceedings, and a sense that this smacked of "victor's justice" in view of the overriding role of foreign powers. Be that as it may, the trial still constituted a milestone judgment in international criminal jurisprudence and points out both its merits and its systemic limitations.

The legacy of Saddam Hussein will remain a standing footprint in the annals of international law, demonstrating the difficulty of applying "jus ad bellum", "jus in bello," and humanitarian law. Still, his trial marked that leaders can be tried, and it will be part of forging an ongoing debate as to whether the adjudication of crimes should be pursued through national courts, regional tribunals, or international legal mechanisms.

V. ANALYZING THE MILITARY CONFLICTS OF SADDAM HUSSEIN AND THEIR SIGNIFICANCE IN INTERNATIONAL HUMANITARIAN JURISPRUDENCE

A. The Iraq-Iran Military Conflict (1980-1988)

The Iraq-Iran armed conflict (1980-1988) is regarded as among the deadliest conflicts of the late 20th century, is lawfully crucial not only for its massive human casualties but also for the vital doctrinal dilemmas it raised about aggressive war making,

¹¹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force on 1 July 2002)
2187 UNTS 3 art 27

deployment of chemical weapons and the systematic limitations of the international enforcement bodies. The decision of Saddam Hussein to invade Iran in September 1980 breached the foundational prohibition of unlawful aggression according to the UN Charter, while its systematic deployment of chemical weapons further defied both 1925 Geneva Protocol along with that of the universally recognized norm of customary international law. However, the conflict also highlighted shortcomings of international law, as the Security Council was unable to function efficiently for the reason of the existence of influence of cold war politics. This discussion analyses the conflict through a legal perspective to reveal how the gap between legal codification and practical enforcement shaped evolution of modern international law.

B. Infringement of Article 2(4) of the UN Charter (Prohibition of Unlawful Aggression)

According to international law, one of the most entrenched principles Article 2(4) of the UN Charter, which explicitly forbids states from using threat or force against another state's territorial and political independence.¹² This rule has acquired the rank of "jus cogens", binding all member states without any exception. The invasion of Iran initiated by Iraq on 22 September 1980 constitutes an act of unlawful aggression. Iraq defended its aggression by stating two primary arguments, at first Iran had disregarded the treaty provisions under 1975 Algiers Agreement governing the jurisdictional control and navigational rights over Shatt al-Arab Waterway, and secondly the unlawful involvement of Iran in Iraq's internal integrity manifested through material sponsorship of Kurdish insurgencies.¹³

In accordance with Article 51 of the UN Charter, right of self-defence arises solely in response to an actual armed assault. Border conflicts or allegations of destabilization remain insufficient in providing legal grounds formed armed conflict. Since Iran had not launched any prior armed strike against Iraq, the decision of Saddam to invade

¹² George K. Walker, 'The Tanker War, 1980-88: Law and Policy' (International Law Studies – Volume 7) <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1443&context=ils> accessed 5 September 2025

¹³ Majid Takht Ravanchi, 'The U.N. Security Council's Approach towards Iraq:1980-2003' https://ciatext.cc.columbia.edu/journals/irfa/v1i2/f_0021946_18129.pdf accessed 5 September 2025

amounted to an illegal war of aggression under international law.¹⁴ The United Nations Security Council through Resolution 619 (1991), finally declared Iraq as the instigator of the conflict after more than a decade of the initial invasion, revealing the limitations of the global community to uphold the Charter provisions in situations shaped by geopolitical interests of the global powers.

C. Unlawful Deployment of Chemical Weapons (The Halabja Massacre and Its Wider Legacy)

The unlawful act of Iraq's invasion already contravened fundamental principles of international law but the repeated and widespread deployment of chemical weapons compounded these contraventions and escalated the accountability of Iraq under international humanitarian law.¹⁵

1. Codified Lawful Barriers: In accordance with the 1925 Geneva Protocol, states are forbidden from the wartime use of poisonous gases and analogous substances in military conflict.¹⁶ Iraq joined the agreement in 1931, and by the time of the Iraq-Iran Conflict (1980), the prohibition was firmly established as a binding principle of Customary International Human Rights Law.¹⁷ In addition, Marten's clause of the Hague Conventions of 1899 and 1907, which establishes that even in the non-existence of written treaty provisions, the customary obligations stemming from humanity and the collective conscience of humanity endure as guiding legal boundaries for state interaction. In effect, Iraq's deployment of chemical weaponry such as mustard gas and nerve agents, not only violated the mandatory treaty obligations but also defied the "jus cogens" norms acknowledged in international law.

¹⁴ UNSC Res 619 (9 August 1988) UN Doc S/RES/619

¹⁵ Dave Johns, 'The Crimes of Saddam Hussein 1988 Halabja' (FRONTLINE WORLD, 24 January 2006) https://www.pbs.org/frontlineworld/stories/iraq501/events_halabja.html accessed 6 September 2025

¹⁶ Geneva Protocol (adopted 4 May to 17 June 1925, entered into force on 8 February 1928) 94 LNTS 65

¹⁷ Emily Crawford, 'The Modern Relevance of the Martens Clause' (2011) Sydney Law School Legal Studies Research Paper No 11/27, 1

2. Halabja (A Landmark Case of Mass Atrocity): In March 1988, the Halabja Massacre epitomized the darkest chapter of Iraq's chemical warfare when Iraqi armed forces from military aircrafts deployed chemical weapons against the Kurdish community, claiming the lives of an estimated 3,000 to 5,000 Kurdish residents and inflicting horrific injuries on suffering survivors.¹⁸ This massacre contravened the prohibitions codified in the Geneva Protocol but also meets the ingredients of crimes against humanity as well as war crimes as described in Article 7 and 8 of frameworks of Rome Statute of International Criminal Court.

3. Inadequacy of Valid Lawful Justification: Iraq argued that its use of chemical weaponry was a necessary antidote to the overwhelming infantry strategies of Iran and also claimed of Iran's non-compliance with the protocol. Under international humanitarian law, use of weapons of mass destruction cannot be authorized as counterattack under any situation. Throughout the conflict, International Committee of the Red Cross (ICRC) constantly reminded that prohibition of chemical weaponry was unconditional and could not be suspended under any situations.

D. Global Indifference and Incapability of UN Security Council

Although flagrant violations of international law, the collective reaction from the world community remained cautious and insufficient. Inquiry missions authorized by the UN Secretary General in 1984, 1986, and 1988 substantiated the deployment of chemical weapons during the conflict.¹⁹ Although UN Security Council approached through Resolutions 582 and 588 in criticizing the deployment of chemical weapons in abstract language without expressly nominating Iraq as the lawbreaking state. This lack of response was largely dominated by Cold War dynamics. Western Nations, like the United States regarded Iraq as a bulwark against expansion of rising revolutionary agenda of Iran. The USSR preserved its alliance with Iraq by furnishing the steady

¹⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force on 1 July 2002) 2187 UNTS 3 arts 7; 8

¹⁹ UNSC Res 582 (24 February 1986) UN Doc S/RES/582, UNSC Res 588 (8 October 1986) UN Doc S/RES/588

flow of military equipment. Arab nations like Saudi Arabia and Kuwait played a significant role in contributing economic lifelines to Iraq.

Ultimately, power politics often outweighed codified obligations, and the Security Council charged under Chapter VII to act as an impartial arbiter, fell short to perform its commitments.

1. Principles of Codified System versus Ground-Level Implementation: The Iraq-Iran war became the living example of the difference between the codified principles and their application. According to the codified principles, the UN Charter declared aggression as illegal acts. In turn, Geneva Protocol fully condemned the application of chemical weapons. However, from a practical standpoint, Iraq became involved in both aggression and the application of the forbidden strategies of war without showing any concern for responsibility. The mentioned weakness made international law less authoritative; in other words, it became vulnerable to selective application. In his turn, Antonio Cassese generally stated that selective implementation of international law in accordance with geostrategic thinking makes mentioned legal scheme less legitimate as a universal application instrument.

2. Legal Ramifications and Crucial Lessons for International Law: Despite the major implementation gaps of international law during the Iraq-Iran conflict, it ultimately served as a catalyst that spurred significant progress in global justice system:

- **Categorizing Aggression as a Crime in International Law:** The attack carried out by Iraq proved to have great implications in making sure that aggression is formally recognized as crime in international law. This led to the 2010 Kampala Amendment that made it possible to try aggression case at the ICC.
- **Strengthened Treaty Mechanism Related to Chemical Weapons:** The inability of the international mechanism for accountability to deliver a positive response following the Halabja Massacre underlined the urgent

need for more credible enforcement of principles of international law. The widespread chemical atrocities throughout conflict between Iraq and Iran provided a significant catalyst for the CWC 1993 and the establishment of the OPCW—an entity that made sure verification and enforcement mechanisms that were lacking in the 1925 Geneva Protocol are incorporated into international law.

- **Leadership Liability of State Leaders:** Even though Saddam Hussein avoided prosecution globally for his involvement in the Iraq and Iran conflict, his later trial in front of the Iraqi Special Tribunal in which he was tried as the accused for the crime against humanity proved the turning point in the international juridical awareness because it indicated that the rule for absolute immunity for past and ongoing leaders of a state has become no longer unchallenged at the international law framework.
- **Ongoing Debates on Restructuring UN Security Council:** The inability of UN Security Council to act efficiently during the Iraq-Iran conflict illustrates a strong example of institutional reconfiguration. Many scholars argue that the veto authority of permanent five members whenever mass atrocities take place, thereby prioritizing the implementation of international fundamental principles of international justice over geopolitical interests.

E. The Anfal Campaign Against the Kurdish People [1986-1989] (A Case of Genocide)

The Anfal Campaign orchestrated by the administration of Saddam Hussien during the period of 1986 to 1989 against the Kurdish population of northern Iraq, is regarded as landmark case of Genocide under international law in the late twentieth century.²⁰ Commanded by Ali Hassan al-Majid, the campaign involved elements of systematic executions, demolitions of Kurdish villages, deployment of chemical weaponry as well as compulsory relocations of population. In accordance with the investigations

²⁰ Hiltermann Joost, 'The 1988 Anfal Campaign in Iraqi Kurdistan' (*SciencesPro*, 3 February, 2008) <https://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/1988-anfal-campaign-iraqi-kurdistan.html> accessed 10th September 2025

by Human Rights Watch (HRW), supported by the findings of United Nations concluded that these atrocities fulfilled the threshold of genocide as classified under the global legal framework.

- 1. Strategies of Oppression:** The campaign constituted deliberate assaults on the Kurdish civilian population disguised as measures of counter insurgencies. In 1988, Halabja endured the most infamous case, where the forces of Saddam deployed chemical weapons on all over the towns which resulted in the death of thousands of people within twenty-four hours. In addition to chemical strikes, large number of Kurdish civilians were detained by the Iraqi forces which were segregated on the basis of gender and age before relocating them to detention camps. The massive eradication of thousands of Kurdish villages was aimed not only suppress the guerrilla fighters but also to obliterate the rural foundations, cultural heritage as well as the identity of the Kurdish community.
- 2. Legal Characterization of Genocide in Accordance with International Law:** In accordance with 1948 Genocide Convention, genocide refers to actions undertaken with intent to eradicate completely or partially, a national, ethnical, racial or religious community.²¹ Applying these principles, the Anfal campaign legally qualifies this definition of Genocide:
 - **Killing members of Group:** Eyewitnesses and official Iraqi documents prove the widespread killings of Kurdish civilians.
 - **Causing serious bodily or mental harm:** Widespread deployment of chemical weaponry on civilian populations.
 - **Deliberately inflicting conditions of life calculated to bring about physical destruction:** Compulsory deportations to unsuitable encampments, eradication of food supplies, and calculated deprivation of basic needs.

²¹ *Convention on the Prevention and Punishment of the Crime of Genocide* (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277

Orders personally signed by Ali Hassan al-Majid in conjunction with the systematic and widespread enforcement of the campaign, clearly confirm the administration's specific purpose of annihilating a portion of the Kurdish community. The decisive intent is the vital factor that situates Anfal in the classification of genocide, exceeding the conventional limitations of war crimes or crimes against humanity.

3. Failure to comply with principles of International Humanitarian Law: In addition to the Genocide Convention, the Anfal operation violated a number of tenets embodied within the Geneva Convention of 1949 and its associated protocols:

- The prohibition on strikes on civilians was violated in a direct manner, as whole Kurdish villages were destroyed through bombing and chemical attacks.²²
- The ban on forcible relocation was violated by the large number of Kurds deported to government-run relocation camps administered by the Iraqi government.²³
- The prohibition of chemical weapons, progressively accepted under customary international law antedating the 1993 Chemical Weapons Convention, was grossly violated.²⁴

These violations prove that the Anfal campaign is a manifestation of genocide that was accompanied by large-scale war crimes and crimes against humanity.

4. Judicial Rulings and Liability: The international community, at the outset disinclined to address the crimes of Saddam during the 1980s, has ultimately affirmed that the Anfal campaign was determined to be genocide. In 2005, a Dutch court provided its judgment against Frans van

²² Protocol I, Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art

²³ Protocol II, Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609, art 17., Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 49.

²⁴ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (adopted 3 September 1992, entered into force 29 April 1997) 1974 UNTS 45, art I.

Anraat, who furnished chemical weaponry to Iraq, the judgment officially acknowledged the Anfal campaign as genocide, thereby implementing universal jurisdiction. The Iraqi High Tribunal in 2007, convicted Ali Hasan al-Majid along with that of the other perpetrators for genocide due to their association in the Anfal campaign, affirming that the crimes aligned with legal definition of Genocide codified within the Genocide Convention.

5. Implications for International Legal Frameworks: The Anfal case represents an invaluable legal precedent regarding how cases of violences committed by states against their citizens can be handled through international law. It highlights three fundamental lessons:

- Crime of genocide is not confined to World War II or ethnic persecution history of Europe; it can take place wherever a state deliberately targets the eradication of a group.
- Documentary evidence was pivotal, as the research of HRW and exhumation of mass graves substantiated the claim of genocide.
- It was political will that finally proved to be the determining factor notwithstanding the irrefutable proof of largescale atrocities, global stakeholders in the late 1980s placed geopolitical interests above concrete measures, postponing liability until the collapse of Saddam's administration.

F. Iraq's Military Aggression Towards Kuwait [1990-1991]: (A Landmark Example of Crime of Aggression)

The August 1990 invasion carried out against Kuwait by Iraq is probably one of the most visible and concrete cases identified as a crime of aggression falling inside the remit of modern international law.²⁵ Contrary to cases where war has broken out through territorial disputes and resultant desperate humanitarian needs, Iraq's military aggression against Kuwait basically took the form of a brutal endeavour to snuff out a sovereign state.

²⁵ Daniel Chardell, 'The Origins of the Iraqi Invasion of Kuwait Reconsidered' [2023] 6(3) Texas National Security Review 51

1. Doctrinal Principle (The Forbiddance of Aggressive War): According to Article 2(4) of the UN Charter, states are not permitted to threaten or use force against political sovereignty of other states.²⁶ The charter framework recognizes only two exceptions, which includes self-defence being codified under Article 51 or collective measures when Security Council give approval to use of force as per Chapter VII.²⁷ The invasion by Iraq did not fall under the ambit of legal exceptions, as neither Kuwait commenced any military aggression against Iraq nor any initial authorization was passed by the Security Council which allows intervention. Iraq's act of annexation was not just an ordinary border conflict; it was a calculated attempt to obliterate the independent statehood of Kuwait. By present standards, Iraq's invasion is classified as a paradigmatic case of the "crime of aggression", subsequently incorporated under Article 8 bis of Rome Statute through the 2010 Kampala Amendments as including "planning, preparation, initiation and execution" of an illegal use of military force that amounts to a clear violation of Charter framework.

2. Saddam's Defensive Arguments (Claims of Oil Manipulation and Territorial Integration): The administration of Saddam defended its invasion by accusing Kuwait of exploiting oil resources from Rumaila oil fields of Iraq through slant drilling as well as violating the oil production limits established by OPEC (Organization of the Petroleum Exporting Countries), that resulted a collapse in the oil prices and devastated the economic stability of Iraq. Saddam justified the invasion by claiming economic grievances and reaffirming the sovereign heritage of Iraq over the territory of Kuwait. According to international law, Iraq's arguments were firmly rejected as economic hardship cannot legitimize use of military force. The International Court of Justice clearly struck down use of armed intervention as a means of resolving international disputes, instead

²⁶ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI art 51

²⁷ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI art 2 (4)

following the dictates of Article 33 of UN Charter, which requires use of peaceful proceedings for negotiation and settlement. The fact is, the latter claim of Iraq had no valid basis in juridical validity, thus only acting as a political shield in disguise.

3. Cohesive Stand of Security Council Against Aggression: The response of Security Council to Iraq's aggression was exceptional for its efficiency and collective decision making:

- **Resolution 660:** It strongly denounced the invasion and ordered Iraq to withdraw all its forces, without condition or delay, from Kuwait.²⁸
- **Resolution 661:** Enforced wide ranging financial sanctions against Iraq.²⁹
- **Resolution 662:** Formally invalidated Iraq's effort to absorb Kuwait as having no lawful effect.³⁰
- **Resolution 664:** Ordered Iraq to immediately free all foreign hostages who were illegally held during the occupation.³¹
- **Resolution 678:** Member states were empowered to implement "all necessary means" if Iraq failed to leave Kuwait by the mandated timeframe of 15th January 1991.³²

The seriousness of Resolution 678 provided a definitive Chapter VII authorization for the military action and directly setting the stage for Operation Desert Storm in January 1991. This highlighted that the Security Council could efficiently enforce the ban on aggression only when the permanent members find mutual ground. While the Iraq-Iran conflict exposed the stagnation of the Security Council, the Kuwait invasion highlighted the efficiency of collective enforcement when legal norms and political calculations enable swift enforcement.

4. Environmental Destruction in Warfare (A Step Toward Recognizing Ecocide as a Crime): While the invasion itself was the foremost legal

²⁸ UNSC Res 660 (2 August 1990) UN Doc S/RES/660

²⁹ UNSC Res 661 (6 August 1990) UN Doc S/RES/661

³⁰ UNSC Res 662 (9 August 1990) UN Doc S/RES/662

³¹ UNSC Res 664 (18 August 1990) UN Doc S/RES/664

³² UNSC Res 678 (29 November 1990) UN Doc S/RES/678

violation, the way in which Iraq occupied and subsequently withdrew from Kuwait and invited additional violations under international humanitarian law. Among the most infamous acts of Iraq was its intentionally setting up of fire on more than 600 oil wells of Kuwait during its withdrawal, resulting in one of the greatest environmental calamities ever brought about through acts of mankind in history. The damage to the environment resulted in significant negative outcomes across the region.

- Extensive oil leaks into the Persian Gulf caused intense damages to marine ecology.
- The dense fumes generated by the blazing oil wells contaminated the atmosphere, thereby giving rise to hazardous health problems for the people in the Gulf region.
- Toxic chemicals seeped into the soil making vast regions of land unsuitable for agriculture or human use for an extended period.

³³In accordance with Article 35(3) and Article 55 of Additional Protocol I to the Geneva Conventions bans methods of warfare anticipated to produce significant, widespread and lasting destruction to the natural environment. Although Iraq was not a signatory to Additional Protocol I, but its provisions are generally considered as binding under international customary law. Legal experts argue that whether these actions should be labelled as “ecocide”, a fifth international crime within the same framework which already recognizes four global crimes as genocide, war crimes, crime against humanity and aggression. Although ecocide lacks official acknowledgement in international law, the actions of Iraq serve as a landmark precedent in the movement to establish environmental damage during wartime as a crime.

5. Impunity and Shortcomings in International Justice Mechanisms:

Although violation of international law by Iraq left no doubt of illegal aggression, the judicial mechanisms for prosecution were rarely employed. Instead of prosecuting Saddam and his top officials for acts of aggression,

³³ Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 35(3), art 55.

Security Council focused on reestablishing the independence of Kuwait and safeguarding the regional stability in the Gulf. International Criminal Court (ICC) was still not founded, and the Nuremberg precedent for holding political leaders liable for crime of aggression had not been re-applied. Saddam Hussein was ultimately brought for trial before the Iraqi Special Tribunal in 2006, where he was charged solely for crime against humanity and the invasion of Kuwait was excluded from his trial. This is especially significant because it shows that there is a problem with international law in that while aggression is clearly an unmistakable act, the capacity to organize prosecution of responsible leaders is consistently inadequate.

6. Judicial Implications/Critical Lessons: Iraqi invasion of Kuwait has important teachings and flaws within implementation of international law.

- **Strong Principles vs. Loosely Applied:** Although illegality in aggression had been clearly formulated, but its application was dependent upon a weak consensus of the major powers.
- **Where Politics Cooperate, The Rule of Law Gains Strength:** The example of Kuwait shows that having the P5 membership to the census enables Security Council to act promptly to make strength of collective action through global legal instruments more credible.
- **Protection of the Environment during a Warring Period:** The severe destruction of the Iraqi environment heightened global debate and discussion on the need to ensure environmental accountability and formally recognize ecocide, classified as a serious crime against international law.
- **Flaws in Leadership Prosecution:** Despite the Kuwait invasion by Iraq being one of the overt cases of aggression, the fact that neither Saddam nor his top officers faced prosecution showed the importance of the need for the existence of a permanent judiciary such as the ICC to prosecute the political leadership behind illegal wars.

G. The Scud Missile Attacks of Iraq on Israel [1991] are demonstrated as an attack on civilians

Undoubtedly, the 1991 Gulf War can be remembered most for the invasion of Kuwait by Iraq and the steep counterstrategy eventually launched by the different allied forces, which compelled Saddam to retreat.³⁴ But for Israel, a state standing outside the battleground, this conflict unfolded an episode of profound existential dread. From January to February 1991, Iraqi forces under the administration of Saddam Hussein launched 39 scud missiles targeting the urban centres of Israel, pushing millions of civilians to seek safety in sealed shelters due to the looming threat of biological and chemical attacks. Though these strikes accomplished negligible military advantage, but their psychological influence was strong, underlining critical legal concerns about civilian targeting under International Humanitarian Law.

1. Historical Background (Regional Wars of Iraq and the Redirection towards Israel): Entering the beginning of 1990s, Saddam Hussein faced both political marginalization and military restrictions. The prolonged eight-year conflict with Iran had massively weakened the economy of Iraq and the 1990 annexation of Kuwait brought together the largest international coalition of states to confront him. Confronted with tremendous global pressure, Saddam aimed his aggression on Israel, a nation remained neutral in the Gulf war, yet seen by him as both a historical enemy as well as potential means to divide Arab unity. The opposition of Iraq towards Israel was entrenched, as Bagdad consistently siding with Arab states during the conflicts of 1948, 1967 and 1973 even though Iraq lacked direct adjoining territory with Israel. The historical enmity deepened in June 1981, when Israel executed sudden airstrike that demolished the Osirak nuclear reactor of Iraq. The strike crushed the plans of Saddam for a nuclear program and amplified his antagonism toward Israel. In 1991, Saddam viewed a potential strategic benefit in striking Israel, anticipating

³⁴ Noam Weissman, 'The Gulf War: Why did Iraq launch missiles at Israel?' (*Unpacked*) <https://unpacked.media/the-gulf-war-why-did-iraq-launch-missiles-at-israel/> accessed 15 September 2025

that Israeli retaliation might compel Arab states, several of which had hesitantly aligned with the U.S. led coalition to pull out, thereby reducing international opposition against his administration. When Saddam threatened to 'make fire eat half of Israel', his words were more than symbolic, it was a conscious move to exploit the historical weakness of Israel and the profound anxieties regarding the national security of its population.

2. Strategic Scud Missile Deployment of Iraq against Israel: Beginning January 17, 1991, the coalition forces initiated their attack on Iraq. Just two days afterward, Saddam fired the first Scud missile targeting Israel, and over a six-week duration, a total 39 missiles were fired mainly focused on Tel-Aviv and Haifa. Even though most of the scud missiles were largely conventional, yet the threat of biological or chemical payloads weighed heavily, especially given the previous deployment of chemical weapons by Iraq against Kurdish communities in 1980s. Israeli administration implemented wide ranging precautionary safeguards, distributing gas masks and atropine injectors to the whole population, while teaching families to convert rooms into improvised safe zones with the help of plastic sheeting. Although the missiles inflicted limited physical harm and low fatalities, yet the attacks had a serious psychological impression on the civilians as it forced countless civilians to endure nightly panic, never knowing whether the next siren would signal conventional bombing or chemical assaults.

3. Legal Scrutiny of the Missile Campaign in Accordance with International Humanitarian Law:

- **The Absolute Ban on Civilian Targeting:** The Scud missile attack carried out by Saddam Hussein against Israel was definitely violation of Article 51 of the Additional Protocol I to the Geneva Convention, which states an absolute ban on the deliberate targeting during an

armed conflict against civilians.³⁵ The missile attacks lacked any military logic as they targeted an urban area with a sole aim of terrorizing the civilians, leading to destabilization within the Israeli State and provoking a retaliatory attack. The missile attacks fitted the definition of terrorized attacks against civilians, which is illegal from the perspective of International Humanitarian Law.

- **Non-Discriminate Use of Weaponry:** Despite use of conventional weaponry, these missiles also lacked accurate target details, resulting in indiscriminate destruction to densely populated urban centres. As per Article 51(4) of Additional Protocol I, weaponry cannot be precisely targeted to strike legal targets, as was grossly infringed during the Scud Missile Attack by Saddam.
- **Illegal Expansion of Conflict to a Non-Participating State:** Since Isarel remained a non-participant in the Gulf conflict, the missile campaign starkly violated IHL norms of neutrality and immunity to civilians. By dragging a non-participant state into the conflict, Saddam breached the IHL principle that safeguards civilians of non-participant states from the conflict's impact. This incident exposed the vulnerability of global legal safeguards when aggressors deliberately pull third-party states into military conflict.

4. Non-Retaliation (A Calculated Strategy of Israel): Although faced with largescale internal demands for a forceful counterattack, the then Prime Minister of Isarel, Yitzhak Shamir opted against the launching of a military counterstrike. The measured response of Israel coupled with diplomatic efforts from the United States, ensured that the potential breakdown of the delicate Arab coalition confronting Iraq. From a strategic perspective, Shamir's decision to remain restrained, even under existential danger, had long-term dividends for both Israel's international credibility and its

³⁵ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 51.

territorial security. Viewed through the legal lens, the restraint of Israel maintained principle of proportionality, evading possibility of massive threats against civilians in whole region. This incident represents one of the more striking examples of political restraint that conformed both to strategic wisdom and the norms of humanitarian law.

- **Additional Implication of International Humanitarian Law:** Scud missile campaign of 1991 has shown how International Humanitarian Law is always a challenging issue in modern warfare, particularly where civilians are exploited to gain political and physiological supremacy. There are three implications of the conflict regarding International Humanitarian Law:
- **Enforcement of the Norm on Civilians' Immunity in the Gulf War:** The Gulf War proved the prohibition on targeting civilians is absolute, irrespective of any political considerations, to which any state is subject. It could thus be inferred that the Gulf.
- **Threats to Non-Combatant States:** The missile strike campaign has exposed the loopholes within the provisions of the law of international humanitarian to states that are beyond the conflict yet threatened by direct aggression.
- **Weaponization of Psychological Trauma:** This was evident in the rocket attacks carried out by Saddam in that the simple instilling of fear in the civilians, even if amounting to a few deaths, still amounts to an abuse of international law.

VI. THE TRIAL OF SADDAM HUSSEIN BEFORE THE IRAQI SPECIAL TRIBUNAL: A CRITICAL ASSESSMENT OF DOMINANT STATE JUSTICE IN THE CONTEXT OF GLOBAL JUSTICE MECHANISMS

A. Establishing Lawful and Political Liability After Invasion of Iraq and Capture of Saddam Hussein (2003)

After the Invasion of Iraq and subsequent capture of Saddam Hussein in 2003, a pressing debate was sparked on the most suitable judicial framework for his trial.³⁶ As the coalition of the United States faced the reality of the possibility of either holding the trial through the national courts or through the international body like the ICC, the formation of the Iraqi Special Tribunal constituted a radical departure from the rule of law principles formulated from the tribunals set up following World War II to the present time. Of particular importance regarding this aspect is the reality that this particular move did not constitute a formality but expressed a political reality that questioned the ideals underlying principles of international law with regards to concepts of "victor's justice" and imperial power of United States.

B. Jurisdictional and Procedural Framework of Iraqi Special Tribunal

In December 2003, "the U.S. supported Iraqi Governing Council established Iraqi Special Tribunal, which would later be renamed as Iraqi High Criminal Court." The tribunal was established as a "hybrid" judicial entity, merging Iraqi law with considerable oversight and input of international community. Jurisdiction of the tribunal extended to Iraqi individuals for offences like genocide, war crimes and crime against humanity perpetrated in timeframe between 1968 and 2003. Although statute of IST borrowed the substantive legal definitions of genocide, crime against humanity and war crimes from Rome Statute of ICC, it functioned as a domestic tribunal applying the Iraqi criminal law. From a political and legal point of view, this tribunal empowered people of Iraq to exercise ownership over their judicial procedures, thus

³⁶ Faiz Tajul Millah, 'Saddam Hussein's Trial: The American Hegemony and a Good World Governance Tragedy' (2009) 10 Millah 246.

reinforcing the legitimacy and promoting efforts of reconciliation of the new government. Scholars argued that the design of the tribunal served as a framework for the United States to exercise decisive control over the trial proceedings, outmanoeuvring the jurisdiction of ICC which it has refused to acknowledge, and to ensure that the capital punishment, which is prohibited by the ICC is strongly endorsed for Saddam Hussein.

C. Critical Evaluation of the Tribunal's Fairness and Compliance with Global Law Compliance

Although the IST was created to uphold the standards of fair trial, it was widely condemned for procedural and substantive drawbacks that compromised its credibility in the domain of global justice. In accordance with various human rights organizations including the Human Rights Watch along with Amnesty International, trial fell short of globally accepted due process norms, the major flaws are highlighted as follows:

- 1. Political Influence:** Questions about the autonomy of the tribunal continued, as the trial conducted under the oversight of Coalition Provisional Authority with substantial financial and logistic support from the United States. The act of removing judges during the trial by the Iraqi Prime Minister further revealed the court's vulnerability to political manipulation.
- 2. Anomalies in Trial Procedure:** Reportedly, the defence attorneys received inadequate time to review the materials of prosecution, and their petitions for postponements were denied. Compounding this, the subsequent killings of three defence attorneys critically obstructed the ability of the defence to present a robust case.
- 3. Concerns Connected with Evidence & Coerced Testimony:** Under the rules of evidence in the court, coerced confessions based on pressures and testimonies from anonymous witnesses are considered evidence in the court with allegations that cannot be reviewed through cross-examination.

4. Infringement of Fundamental Life Rights: The hurried execution of former Iraqi President Saddam Hussein was criticized by human rights groups, which happened only four days after the rejection of his appeal case. The use of death penalty, which was prohibited within legal systems of international courts such as the ICC, was highly contentious.

These concerns led legal scholars to conclude that, although the trial contributed to accountability, it functioned as a form of "victor's justice", in which the verdict heavily influenced by the political priorities of the occupying power rather than neutral legal principles.

D. A Comparative Evaluation (The Iraqi Special Tribunal and its International Counterparts)

The decision to set up a national tribunal with international help in the trial of Saddam is quite different from the other major trials for war crimes in the past fifty years.

1. International Criminal Tribunal for the Former Yugoslavia (ICTY):

Prosecution of Slobodan Milosevic, the former president of Serbia was tried before an ad hoc international tribunal constituted under the authority of United Nations Security Council.

2. International Criminal Court (ICC): International Criminal Court

functions as a standing court mandated to prosecute individuals accused of offences of the highest gravity that threaten the global community. Although Iraq was not a member of Rome Statute, UN Security Council nonetheless had authority to authorize jurisdiction of ICC over the case. The United States continually resisted the proposal because of fears of possible international prosecution of its staff in the future. It also wanted to ensure that it had the freedom to control the tribunal case. The United States's decision to circumvent the ICC in favour of the IST highlighted conflict between United States's political ambitions and its efforts to create universality in international law. This particular situation served as a great exemplification of the conflict between United States's sovereignty and need for international criminal law.

VII. STRUCTURAL LIMITATIONS OF INTERNATIONAL LAW: HOW THE CASE OF SADDAM HUSSEIN SABOTAGED UNIVERSALITY OF GLOBAL JUSTICE

Development of international criminal justice is commonly recorded in aftermath of wars and exposés,³⁷ exposing a complex and fragile mechanism aimed at charging states for their actions. Relatively fewer cases expose the structural defects and strong effect of Realpolitik on international law as poignantly as the uprise and fall of Saddam Hussien. His behaviour, ranging from the Iraq-Iran war to the Iraqi invasion of Kuwait to his capture and execution, not only violated the current law but exposed deep defects in the application, implementation, as well as the jurisdiction of ICL and IHL. The path of Saddam is an essential example of how legal principles can be bypassed time and again to the pressures of internationals.

A. Selective Implementation of Facilitated by UNSC Veto Authority

The early political trajectory of Saddam Hussein most prominently revealed the shortcomings of selective enforcement, originating from the structural framework of United Nations Security Council. According to the principles of ICL, justice is meant to be both impartial and universally applied, but the practical record of 1980s demonstrated a striking contradiction of this principle. Throughout the prolonged eight-year Iraq-Iran conflict from 1980 to 1988, the government of Saddam Hussein engaged in blatant breaches of International Humanitarian Law (IHL), particularly through mass deployment of chemical weapons on Iranian military as well as his Kurdish communities, epitomized by the Halabja massacre.

Even in the face of indisputable evidence of these atrocities, the international community dominated by the western powers opted for deliberate ambiguity or total silence. The political safeguard stemmed from the UNSC veto authority operated by the Permanent Five (P5) states. Strategic considerations at that time regarded Iraq as

³⁷ Shane Darcy, 'Bridging the Gaps in the Laws of Armed Conflict? International Criminal Tribunals and the Development of Humanitarian Law' in Shane Darcy (ed), *Bridging the Gaps in the Laws of Armed Conflict? International Criminal Tribunals and the Development of Humanitarian Law* (TMC Asser Press 2010) 319.

the primary bulwark against the revolutionary and expansionist Shi'a leadership of Iran. Shielding Saddam from official reproach was seen as obligatory for sustaining geopolitical stability in the region. As a result, tools for international liability, which could have been initiated through a decisive UNSC resolution, which includes sanctions, formation of an ad hoc tribunal or a referral to an investigative authority were intentionally incapacitated.

This period attests to the existence of a huge gap that is filled only if the vetoes are in line with the strategic interests or consensus of the major influential nations. The veto mechanism that was formed with the aim of ensuring the stability of the world was transformed into a shield for the violators themselves, thus greatly weakening implementation process of the International Humanitarian Law (IHL). The politically illegal chemical warfare was shelved by the sole geopolitical consideration.

B. Continuum of Jurisdiction

The aftermath of the invasion of Iraq by United States and its allies in 2003 saw trial and execution of former Iraqi leader Saddam Hussein through the Iraqi High Tribunal, also referred to as a Hybrid National Tribunal, which was influenced by international advisors rather than an International Figure such as that offered by the ICC. The failure of the foremost international judicial institution to prosecute one of the most infamous dictators of the century exposes a deeper jurisdictional limitation embedded in the doctrine of state sovereignty. According to the Rome Statute, authority of ICC is constrained by firm imperatives.³⁸ It is allowed to proceed only when:

1. The purported offense in question occurred inside the area governed by State party.
2. Alleged perpetrator is a citizen of a nation that is a party to the treaty.
3. The case is forwarded to Prosecutor by UN Security Council, thereby sidestepping commitment of State Party essential.

³⁸ International Criminal Court, 'How the Court Works' (ICC) <https://www.icc-cpi.int/about/how-the-court> <https://www.icc-cpi.int/about/how-the-court#:~:text=The%20Court%20may%20exercise%20jurisdiction,jurisdiction%20of%20the%20Court;%20or> accessed 23 September 2025

Iraq has never been a signatory to Rome Statute, which meant that ICC could not assert jurisdiction over offenses linked to nationality or territoriality. Although the UNSC technically had the authority to make a referral, as it did in the cases of Libya and Darfur, the political realities of the invasion was largely a U.K. and U.S. led operation without UN authorization made consensus for such a referral extremely unlikely.

This deficiency highlights the fundamental division in international criminal authority. Even though the ICC aims to provide universal answerability, it operates within the voluntary participation of states. The case of Saddam Hussein shows that when a non-member state commits mass atrocities and is subject to a dividing intervention before the UNSC, this benchmark for international criminal prosecution becomes unreachable. The latter allows the most serious perpetrators to go unpunished unless military intervention imposes sanctions or changes of regime, proving the flaws of an exclusively treaty-based legal body.

C. One of the Loopholes in Accountability for Crimes of Aggression

The third crucial loophole exists within substantive criminal law, in particular in relation to Crime of Aggression. 1990 invasion of Kuwait by Saddam Hussein remained a classic example of prohibitive aggression, a *bellum omnium contra omnes*, a conflict of all against all, which grossly contravened Article 2(4) of United Nations Charter, a “fundamental prohibition of the use of force in international relations.” This was followed by a swift United Nations sponsored military intervention in the Gulf War in 1991, but Saddam was never prosecuted for crime of aggression. In his prosecution before the Iraqi High Tribunal (IHT), the proceedings concentrated solely to war crimes and crimes against humanity, most notably 1982 Dujail massacre and Anfal Operation of 1988.

The Crime of Aggression, which stood as the most far-reaching allegation applicable to a ruler for engaging in an unlawful warfare, was noticeably excluded from the judicial process. This exclusion reveals the long-running challenge of specifying, initiating and prosecuting the crime. Following the Nuremberg trials, aggression

remained in a state of stagnancy and subject to political controversies.³⁹ Although Article 5 of Rome Statute had identified the crime, yet ICC lacked both an accurate definition and a jurisdictional framework until they were resolved through the Kampala Review Conference of 2010. The Kampala Amendments in the end formalized a functional definition and particularized the criteria of jurisdiction, but it was enacted too late to hold Saddam liable.

The decision of not to indict Saddam for aggression reflects a significant deficiency within substantive mechanism of international law, an era when the legal prohibition on aggressive war stood firm under the UN Charter, yet they lacked a fully developed broadly recognized court framework to prosecute individuals liable for instigating it. This loophole made it possible for international community to deal with the problem either by diplomatic means or by governmental action, such as the expulsion of Iraq from Kuwait instead of holding Saddam responsible for initiating illegitimate warfare.

D. Implementation Deficiencies and the Role of Political Interests

The case of President Saddam Hussein exemplifies the nature and risks associated with the process of International Criminal Law (ICL) implementation. It was made clear that complete process, from investigation to executing arrest and trial, was, to a great extent, dependent on political interests and military capability. Following the standard practice laid out by underlying principle of international law, as soon as the arrest warrant was obtained from the ICC, states had no option but to comply. Finally, it was not an independent legal decision, but the result of an unsuccessful war and subsequent occupation of Iraq, which would decide the fate of Saddam.

The arrest of Saddam was not an outcome of the organized implementation of international law enforcement, but the direct aftermath of military conquest. While the arrest of Saddam was not a result of the organized implementation of international law enforcement, his arrest was a direct consequence of military conquest. The subsequent trial, by the IHT, was widely criticized for perceived defects in matters of procedural legitimacy and judicial neutrality, excerpting the difficulties of

³⁹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force on 1 July 2002) 2187 UNTS 3 art 5

administering justice in a chaotic, post-conflict environment dominated by foreign occupiers.

The ultimate outcome, his execution through a national tribunal for domestic crimes, provided political closure to the ruling authority but left a difficult precedent for ICL. The implication is clear: without an international enforcement authority, accountability of current rulers of the state is a question of geopolitics, not law. It applies in so far as states with influence are prepared to assume the political, military, and budgetary costs of the intervention in securing the detention and trial of the suspect. It makes ICL a dependent tool of the dominating geopolitics in so far as it shows the weakness of its prime constituents of impartiality.

VIII. EVALUATION THROUGH MULTIPLE CASES

A. Milosevic (ICTY) [Extended Trial Reinforced Robust International Procedural Fairness]

The trial of Slobodan Milosevic in front of International Criminal Tribunal for the former Yugoslavia (ICTY) represents a classic precedent in respect to international justice, particularly regarding procedures of impartiality in judicial trials.⁴⁰ Having been created through the United Nations Security Resolution 827 in 1993, it was conferred to the ICTY to exclusively judge genocide, war crimes, and crimes committed because of the Balkan conflict. In respect to Saddam Hussein, Milosevic trial was entirely tried in front of a purely international court, in which independence in trial procedures was assured to avoid political influences.

As a former state official, Milosevic decided to represent himself and constantly questioned the powers and fairness of the tribunal until the end of the trial that lasted for almost four years and ended with his death in 2006. However, ICTY followed the general rules of a fair trial and ensured that all vital rights of defence were granted to the defendants. In this case, these rights include being informed of the accusations and charges against them, right to be represented by a lawyer and to have the opportunity

⁴⁰ André de Nesnera, 'Analysis: Trials of Hussein, Milosevic Very Different' VOA (Washington, 30 October 2009) <https://www.voanews.com/a/a-13-2005-11-15-voa62/301328.html> accessed 18 September 2025

to defend themselves and respond to the accusations directed against them. The above rights are crucial since they enabled ICTY to be legitimate and credible and proved that international rules and standards are followed without being constrained by political considerations to effectively prosecute a former state official.

From a comparative point of view, the prosecution of Milosevic exemplifies the legal and procedural benefits of a wholly international tribunal to guarantee fairness over hybrid or nationally based tribunals. Although the trial of Saddam Hussien in Iraq incorporated legal provisions derived from global legal standards, yet domestic political environment triggered doubts in regard to integrity and neutrality of judicial process. Conversely, ICTY showed that insulating judicial processes from domestic political influences, along with robust procedural guarantees, is indispensable for ensuring the legitimacy of prosecutions of senior state leaders charged with the heinous offenses. The prosecution of Milosevic sets a precedent for evaluating the fairness and procedural integrity in future tribunals, which includes both the domestic as well as hybrid tribunals.

B. The Prosecution of Charles Taylor before the SCSL (Final Conviction and Sentenced to Imprisonment)

Charles Taylor's prosecution before Special Court for Sierra Leone (SCSL) is widely cited as one of the most highly developed frameworks for prosecuting a former state leader in accordance with international criminal law.⁴¹ In contrast to prosecution of Saddam Hussien before the Iraqi High Tribunal, which was often criticized for procedural inconsistencies and political interference, the prosecution of Taylor exemplified a more formalised and internationally governed judicial mechanism. The indictment of Taylor, issued during his presidency, challenged the boundaries of immunity *ratione personae*, which the court clarified through its international authority, in contrast to the trial of Saddam Hussein, conducted under a domestic framework, where such concerns were less prominent.

⁴¹ Simon M Meisenberg, 'Charles Taylor Case', *Max Planck Encyclopedias of International Law* (Fall edn, 2014) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e2139?p=emailAgllbm5RrhhAk&d=/10.1093/law:epil/9780199231690/law-9780199231690-e2139&print> accessed 25 September 2025

Taylor received prolonged time for the preparation of his defence, he was provided government-sponsored legal assistance, and the chance to testify, and according to the evidentiary standards consistent with global legal standards. By transferring the trial to The Hague, the proceedings were shielded from domestic political influences, a remarkable contrast to the trial of Saddam Hussein which was held in Iraq. Although both cases concluded with definitive judgments, Taylor received a sentence of imprisonment for 50 years, with implementation mechanisms developed by an international agreement for long term implementation.

Conversely, the prompt execution of Saddam Hussein curtailed appellate scrutiny and constrained doctrinal influence of the case. Consequently, the sentencing of Taylor underscores the effectiveness of hybrid courts to achieve a more reliable balance between justice and procedural fairness than national courts in post-conflict environments.

C. The Nuremberg Trials (Criminalization of Aggression and War Crimes)

At Nuremberg, International Military Tribunal (IMT) stands as the cornerstone of present day international criminal jurisprudence by both prosecuting high ranking Nazi leaders and embedding in law two essential doctrines, which includes unlawfulness of aggressive war and the individual liability of national leaders for global offenses. "Crimes against peace", which is now termed as crime of aggression, were officially tried simultaneously with crime against humanity and war crimes.⁴²

Although tribunal was shaped by geopolitical forces and often condemned as an example of "victor's justice", the jurisprudential contributions of the tribunal surpassed its political landscapes, setting lasting jurisprudential standards later codified into UN Charter, Geneva Conventions and finally Rome Statute of International Criminal Court (ICC). From a comparative point of view, Saddam Hussein's trial exemplifies both the capabilities and constraints of applying the Nuremberg precedent. Much like Nuremberg, trial of Saddam Hussein was shaped

⁴² Douglas J. Sylvester, 'The Lessons of Nuremberg and the Trial of Saddam Hussein' (2006) Arizona State University College of Law Working Paper
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=789984 accessed 30 September 2025

by priorities of triumphant nations; however, as opposed to Nuremberg, it failed to reconfigure political power into a legal precedent accepted on a universal scale.

Significantly, Saddam was not held punishable for crime of aggression for invasion of Kuwait in 1990, a textbook archetype of illegal war that Nuremberg principles aimed to outlaw. On the contrary, his case was limited to crime against humanity, which was implemented by a hybrid court with semi-international jurisdiction. The Nuremberg trial secularized military victory into long-term administrative and judicial systems, while the court trying Saddam served as a case in justice dispensation without strengthening international norms.

This course, it may be said, ultimately sheds light on the quintessential elements that guarantee legitimacy, procedural fairness and create jurisprudential value lasting in nature in international criminal law. Each of the trials demonstrates merits of internationalized or wholly international tribunals that offer impartial decision-making, uniformity of evidence rules, protection of defendants' rights, and, where relevant, the express criminalization of core crimes including aggression.

Although the trial before Iraqi High Tribunal of Saddam Hussein finally resulted in convictions for crime against humanity, the absence of full procedural protections and adequate international oversight eroded both the integrity and reinforcement of universally embraced legal principles. Thus, this comparative juxtaposition suggests a core lesson of this study, that prosecuting state leaders is not primarily a question of law but rather one related to political considerations, governmental authority, and the ability to enforce compliance.

Therefore, the evaluation of these cases has suggested that the development of international criminal law from Nuremberg cannot ensure even-handed application due to the fact that its enforcement will depend on tribunal design and willingness of leading states to pursue justice without a political bottom line.

IX. RECOMMENDED LEGAL INNOVATIONS FOR THE INTERNATIONAL REGULATION OF WARFARE

A. Paginating the UNSC Veto Right in Atrocity Cases

One of the perpetual weaknesses of the structure of global justice is that it is undermined through veto power exercised regularly by members of the UNSC. This comprises five “permanent” members of the UNSC and implies that they “veto” proceedings of legal recourse being sought over mass atrocities.⁴³ This procedural veto affects justice and is a manifestation of justice being administered through the global legal framework and is best exemplified through the case of justice being administered through the capture and trial of former President of Iraq, Saddam Hussein. Even though he was pursued and brought to justice on account of his administration of global justice, none of this could occur through UN due to its failure to mandate a just legal platform.

Secondly, comparatively speaking; while other heads of state like the decision makers of Israel in Gaza, Bashar al-Asaad of Syria were accused of crime against humanity & war crimes, United States & Russia exercised their vetoes effectively blocking them from being subjected to review by the courts of justice globally. This exemplifies the point that while applying justice for criminals depends less on the intensity of offense; instead, geopolitical ties of criminal play a very important role. In order for application of justice to remain uniform globally, a mechanism should be established which will disregard the veto powers of the UNSC for acts such as genocide, crime against humanity, war crimes, or aggression.

Responsibility to Protect (R2P) doctrine as well as veto limitation schemes advanced by Mexico and France, provide persuasive precedent, while lacking binding obligations. Institutionalizing a veto suspension would curb politically motivated exceptions and secure that prosecutions whether of Vladimir Putin, Saddam Hussein

⁴³ Oona A. Hathaway, Maggie M. Mills, and Heather Zimmerman, ‘How to Reform the UN Without Amending Its Charter’ (CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, 15 July 2024) <https://carnegieendowment.org/posts/2024/07/un-reform-security-council-charter-nonamendment-veto?lang=en> accessed 1 October 2025

or leaders assisted by Western states are strictly adhered to legal norms, not political considerations.

B. Widen the Jurisdiction of ICC (Enforce Universal Legal Authority over War Crimes)

The trial of Saddam Hussein before the Iraqi High Tribunal highlighted a key vulnerability in modern day framework of international criminal law, where liability for crimes is still limited by territorial authority or the permission of the states.⁴⁴ If Saddam had left the country as is common among dictators, the tribunal could not prosecute him without political collaboration. This underscores the critical importance to widen jurisdiction of international criminal court to encompass a fully universal model for serious infringements of international humanitarian law.

According to Rome Statute, the jurisdiction of court is generally confined to offences carried out on the land of, or perpetrated by citizens of, State Parties, except when a situation referred by Security Council. Significant weaknesses are left in this framework, most notably when dominant nations or their allies are engaged. Trial of Charles Taylor at the Special Court for Sierra Leone made it clear that the prosecution of the incumbent state leadership for the offenses committed abroad works if one looks at the temporary political support for the verdict. The matter of ICC formal powers will take care of this dependence. A lesson to be derived from the fall of Saddam Hussein indicates the root of actual justice to rest at basis of guilt for serious breach of human rights instead of mere downfall. Incorporating universal jurisdiction within the framework of the Rome Treaty may turn the ICC into a respected international court.

C. Regulatory Division (Autonomous Detention and Protocol for Execution)

The trial of Saddam Hussein very clearly reminded one of the facts that the international liability for crimes is dependent upon the political will and military

⁴⁴ Grywalsky, Christa A. "The ICC has jurisdiction where war crimes, crimes against humanity or genocide are committed within the territory of a State Party. Can it also prosecute those who plan or order such crimes, if they do so outside the territory of a State Party and if they are not nationals of a State Party?" (2004) *War Crimes Memoranda*. 189.

power.⁴⁵ His detention stemmed from military intervention and overthrow of his regime, not by an institutional legal collaboration. This situation highlights a fundamental limitation in international criminal law, namely non-existence of a dedicated implementation authority to enforce arrest warrants, accumulate evidence and enforcing judicial decisions without the reliance upon national authorities.

The present framework of International Court of Justice (ICJ) and International Criminal Court (ICC) relies upon the state compliance for the implementation of their judicial decisions under the doctrine of complementarity. When states withhold cooperation, as demonstrated by case of Omar al-Bashir that international legal system remains more in principle rather than a practical mechanism. To eliminate this structural reliance, establishing a permanent International Enforcement Unit (IEU) under the UN or ICC's supervision is crucial, with powers to implement judicial decisions in cases of heinous international crimes such as genocide, war crimes and crime against humanity.

By adopting operational design of UN Peacekeeping model yet guided by law rather than political negotiation, such a mechanism could carry out arrest warrants evenly and free from external interference. The case of Saddam Hussein reveals that justice is administered by the authority of powerful states weakens the legal objectivity, whereas a permanent enforcement framework would ensure that justice is stemmed from legal legitimacy rather than political or military dominance. This approach can lead international criminal law from an overall ethical statement to a structure with an equipped legal framework.

D. Recognition of New Categories of Global Offenses (Weapons of Mass Destruction, Ecocide and Unlawful State Aggression)

One of the problems that emerged in the trial of Saddam Hussein for crimes against humanity was lack of international criminal law on scope of various kinds of crimes

⁴⁵ Ahana Pant, 'The International Court of Justice and the Enforcement Gap: Law Without Power' (Record Of Law, 26 August 2025) <https://recordoflaw.in/the-international-court-of-justice-and-the-enforcement-gap-law-without-power/#:~:text=Conclusion%20From%20Symbolism%20to%20Substance,into%20a%20protector%20of%20justice.> accessed 3 October 2025

such as ecocide and use of Weapons of Mass Destruction and unlawful state of aggression.⁴⁶ Even though the government of Saddam had carried out significant environmental destruction during conflict between Iraq and Iran and Gulf conflict with the ignition of the Kuwait oil fields in particular, the charter of the High Tribunal in Iraq had confined its jurisdiction to the point of not including such crimes.

Such deficiency highlights the necessity of modernizing international criminal law to address evolving threats that surpass conventional warfare. Including ecocide within the Rome Statute would acknowledge that the devastation of environments is intrinsically connected to the degradation of human dignity and peril to existential security of mankind.⁴⁷ Likewise, recognizing employment of weapons of mass destruction (WMD) as separate global crime would redress a persistent legal-void, upholding culpability for acts happen beyond the established parameters of traditional battlefields. By broadening the interpretation of state aggression would enable liability for new patterns of illegal military interventions and hybrid methods of conflict that presently fall outside the current jurisdictional limitations.⁴⁸

The unlawful invasion into Kuwait by Saddam exemplified the stark reminder of aggression acting in a legal vacuum, strong legal provisions could have encouraged resolution through judicial proceedings rather than armed conflict. Expanding the reach of international law to integrate these crimes would progress justice from retribution to prevention, aligning liability with the maintenance of international peace and environmental harmony.

⁴⁶ Eleonora Raus, 'Ecocide: A New Avenue for Climate Justice?' (*World's Youth for Climate Justice*) <<https://www.wy4cj.org/legal-blog/ecocide-a-new-avenue-for-climate-justice#:~:text=The%20IEP%20defines%20ecocide%20as,conduct%20is%20unlawful%20or%20wanton>> accessed 5 October 2025

⁴⁷ Fidler, David P., "International Law and Weapons of Mass Destruction: End of the Arms Control Approach?" (2004). *Articles by Maurer Faculty*. 417. <https://www.repository.law.indiana.edu/facpub/417>

⁴⁸ Carrie McDougall 'Expanding the ICC's Jurisdiction Over the Crime of Aggression' (2024), 22 (3-4) *Journal of International Criminal Justice*, <<https://academic.oup.com/jicj/article/22/3-4/543/7906433>> accessed 5 October 2025

E. Hybrid Judicial Frameworks (Fusing Domestic Law with International Jurisdictions)

Hybrid courts, where domestic and international jurisdictions are combined, therefore achieve a balance with regard to sovereignty and international rule of law.⁴⁹ Even hybrid courts, such as Special Court for Sierra Leone and Extra Chambers in Courts of Cambodia (ECCC), have proven that shared authority can combine domestic legitimacy with international expectations for rule of law. Unlike exclusively international judicial institutions operating in remoteness from national legal system, hybrid tribunals cultivate a combined judicial mechanism that strengthens national involvement in shaping transitional justice due to the guidance and technical expertise of the international community.

Viewed through a comparative perspective, the experience of Iraqi High Tribunal shows how such an institution can achieve national jurisdiction combined with international judicial norms. Despite the trial of Saddam Hussein, which sought to demonstrate the operation of the free justice system in Iraq, it was rather hampered by political interference, flaws in the system, and a lack of adherence to the standards in global fair trials. On the other hand, the hybrid courts initiated through the cooperation of the regional as well as the global system can efficiently mitigate these challenges through the mechanisms of ensuring the operation of the court free from political interference, as well as the consistent adherence to the humanitarian laws.

To ensure the success of this strategy, the future hybrid courts can thus be initiated under the United Nations or regional authority. This collaboration would enhance the growth of national courts while upholding impartiality through external review. As seen in the precedents of Sierra Leone and Cambodia that such hybrid judicial institutions can contribute not only justice but also long-term legal reform. An effectively constructed hybrid framework functions as a cornerstone of reform, integrating international responsibility with national authority in the aftermath of conflict.

⁴⁹ Paul W. Bennet, Matthew R. Sellers, Sean C. McGuire 'Improving Hybrid Tribunal Design: Domestic Factors, International Support, and Court Characteristics', Stanford Law School 1

Collectively, the reforms proposed here from curbing the veto power of Security Council to establishing hybrid judicial institutions chart an integrated reconfiguration of the enforcement of international criminal law. Every proposed reform responds to a foundational limitation laid bare by trial of Saddam Hussein, namely shaping of justice by political expediency, limited jurisdiction, enforcement lacked autonomy and the insufficient codification of modern global offences. The central objective is to shift international criminal law from an irregular exercise of political will into a principled regime regulated by universality, stability and procedural fairness.

By safeguarding judicial mechanisms from geopolitical bias while widening their legal and territorial dimensions would enable the international law to evolve from a responding mechanism into a framework oriented toward the deterrence of mass atrocities. In essence, these proposals indicate that the integrity and efficacy of international law are based on fair implementation and application of the law, ensuring that the principle of justice in the post-Saddam era is decided by the tenets of legal accountability and not the politics of domination.

X. PHILOSOPHICAL INSIGHTS AND ETHICAL DIMENSIONS OF INTERNATIONAL LAW

A. Justice (A Question of Universality or Political Contingency)

The subject of international law is inescapably bound up in the underlying question of whether justice rests on universally valid moral propositions or if it rests on the unequal dispensation of power that governs the relations between the various powers of the world.⁵⁰ From Aristotle through to Rawls, the question of whether justice rests on universally valid moral propositions or the inequalitarian dispensation of power that regulates the relations of states and individuals to each other. Saddam Hussein shows an excellent instance of question of universality of law and power in international justice. His trial was portrayed as a triumph of justice; it was conducted under political dominance of the victors rather than by the legal principles of fairness.

⁵⁰ Komal Parnami, 'Concept of Justice Difficulties in Defining Justice' (2019) 2 (5) IJLMH <https://www.jilmh.com/wp-content/uploads/2019/11/Concept-of-Justice-Difficulties-in-Defining-Justice.pdf> accessed 7 October 2025

In the philosophical framework of John Rawls “justice as fairness” represents that the rules of justice apply uniformly to all individuals, unconditioned by hierarchy or political influence.⁵¹ As demonstrated by the trial of Saddam Hussein, international law can often echo the theory of Karl Marx that justice often functions the priorities of those who wield power, suggesting that the international legal order tend to mirror the most influential nations. The inconsistent prosecution of national leaders from states like Ukraine, Iraq and Gaza make clear that legal universalism remains bounded by the realities of global politics.

Authentic universality in justice emerges only when detached from political power, where rule of law prevails equally both over mighty and meek alike. International justice cannot operate with real impartiality and remain within the limits of political authority so long as power remains unbalanced.

B. Capital Punishment and International Justice (A Conflict Between Legal Inconsistency and Moral Necessity)

The question whether to retain or remove the capital punishment from international proceedings is a very sensitive one that comes within context of law and moral and human rights.⁵² Execution through hanging of former Iraqi President Saddam Hussein in 2006, following his conviction at the Iraqi High Tribunal for a long list of charges and crimes again resurrected this question. Although the Iraqi judicial framework supported the execution carried out against him, it goes against the well-established judicial norms and practices followed at international courts such as ICTR, ICTY, and ICC, where the capital punishment stands strictly prohibited.

This disparity goes to show how there fundamentally lies a contradiction between the satisfaction-driven accountability for a wrong committed and the modern-day humanitarian notion that the conservation of life remains ever SS-independent for the

⁵¹ Karl Thompson, ‘The Marxist Theory of Crime’ (*ReviseSociology*, 4 June 2016) <https://revisesociology.com/2016/06/04/marxist-theory-crime/#:~:text=The%20Marxist%20theory%20of%20crime%20sees%20power%20as%20being%20held,a%20state%20of%20false%20consciousness>, accessed 7 October 2025

⁵² Karl Thompson, ‘The Marxist Theory of Crime’ (*ReviseSociology*, 4 June 2016) <https://revisesociology.com/2016/06/04/marxist-theory-crime/#:~:text=The%20Marxist%20theory%20of%20crime%20sees%20power%20as%20being%20held,a%20state%20of%20false%20consciousness>, accessed 7 October 2025

guilty as well. From a comparative analysis, the abolitionist stance held at the international courts points towards an intentional shift from satisfaction-driven accountability to a rehabilitation and morality-driven accountability framework. The operational restrictions and fast-paced decision for execution adopted at the Saddam Hussein case aptly illustrated how the capital punishment affects the neutrality of international jurisprudence and thereby amalgamates justice satisfaction with political vindication.

On the contrary, however, examples such as Charles Taylor and others who have life sentences due to their involvement with the Rwandan Genocide prove that there is a value placed upon judicial caution. Within the framework of modern international law, executed sentences are no longer symbols of judicial success but failures, thereby suggesting that real justice must exceed punitive retribution and protect the collective global commitment to dignity and accountability.

C. Is International Law a Principle of Global Accountability or As a Chronicle for the Triumph of Influential States

The eternal struggle between the principle of justice and the principle of geopolitical power is still defining the never-ending struggle between principle and power. While proposed as a system of global justice, the system of international law is still relegated to practicing the geopolitical order of the powerful states that fashioned this system.⁵³ Trial of Saddam Hussein is a case in point, as it is a system of global justice in which the trial of Saddam Hussein in Iraqi High Tribunal Court was characterized not only as a system of the triumph of global justice but as a system largely affected by the political order of the U.S.-dominant Occupation inviting inspection as to its legality itself rather than its power.

Similarly, leaders from politically powerful or strategically aligned nations have often been exempt from similar prosecution, shielded by geopolitical interests and the fragmented application of international law. International law, though grounded in a strong framework of universal legal and ethical principles, often aligns itself with the

⁵³ Congyan Cai, 'New Great Powers and International Law in the 21st Century' (2013) 24 (3) TEJIL <https://academic.oup.com/ejil/article/24/3/755/481629> accessed 12 October 2025

centripetal pull of geopolitical realities. International judicial institutions such as the ICJ and ICC are often undermined whenever legal responsibility conflicts with the sovereign interests of the powerful states. As a result, international law often reflects victories of the powerful instead of restraining it. Any authentic reform should aim at making international legal frameworks immune to politics and ensure justice emanates from the impersonal force of law, not from political power of the accused, a benchmark that the post-Saddam period needs to emulate if belief in justice is to be sustained.

Taking all these philosophical discussions together, it's clear that international justice exists not merely in a moral-driven framework but not merely in response to political changes and interests, but in the intersection where there were legal ideals for the link to political sovereignty. The matter involving Saddam Hussein reminds us of all that it's not uncommon for enforcements to have political components to regulate the enforcement of legal processes. In achieving universality for international law, there has to be enforcement with regard to equal moral and legal responsibility binds every state equally. Justice may transcend the realm of words in order to become a strong foundation for the governance framework only inasmuch as the universal ethics correspond to the credibility.

XI. CONCLUSION

Saddam Hussein's case is an illuminating case study in understanding the historical progression of international war jurisprudence. It shows how there is continuing friction between the moral universality of international law and contingent nature of power politics. Yet international legal order, proclaimed in Rome Statute, the Geneva Conventions, and the customary international law, is based on founding principles of fair and impartial justice; in practice, though, its execution still depends upon the interests of the states in politics. The trial of Saddam Hussein before Iraqi High Tribunal gave a good case of how political objectives could override legal neutrality, whereby accountability risks devolving into a tool for performance of authority.

Therefore, the trial represents more than a conviction in a court of law against an authoritarian leader but instead the weaknesses in nature of international criminal

law. Truth behind existence of international law is that it reigns in theory, as opposed to an interventionist approach in administrative justice. It is apparent that the application of political wisdom in enforcement of international law undermines element of equal justice. Ineffectiveness in application of equal and independent justice by international law in the trial of Saddam permits the raising of another debate on extent to which process and mechanism in international law promote justice for all humanity rather than the application of international law in simply promoting superiority of strong nations by shielding themselves in international law while allowing the trial for the weaker ones.

However, instead, it is the shortcomings proven in the case of Saddam Hussein that does not detract from international law authority but is instead a call to requisite reformation. The reduction of veto power in mass atrocity crimes in the Security Council, increase of jurisdictional authority in the ICC, and establishment of an independent enforcement body are fundamental steps in narrowing this gap instead. The inclusion of new international crimes such as hybrid aggression and ecocide in international criminal law could mean that the search for justice is brought into concert with the differing nature of international conflicts in twenty-first-century international law. Finally, with regards to lessons to be formed in light of the case of Saddam Hussein, it is clear that in its wake, the establishment of a structure of justice is indicated that finds its force in the universal international law and its authority. International law holds the most enduring hope for humanity to anchor justice and enduring peace only when it enforces uniform jurisdiction over every nation and heads of state, free from the strategic interests or alliances.

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