

International Criminal Responsibility for Journalism-Related Crimes: Comparative Perspectives on Media Abuses, Disinformation, and Their Global Impacts

المسؤولية الجنائية الدولية عن الجرائم المتعلقة بالصحافة

(وجهات نظر مقارنة حول انتهاكات وسائل الإعلام والمعلومات المضللة وتأثيراتها العالمية)

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Abstract:

The media has been used as a tool in psychological warfare and political propaganda; however, there is no clear legal framework in international criminal law that defines and criminalizes acts related to the press and media. The purpose of this research is to explore the significant impact of journalism-related crimes and the importance of holding perpetrators criminally responsible. Utilizing the violations committed by the press and comparing them with other violations at the international level, this study will analyze some related issues and their relationship to the Rome Statute. This study emphasizes the significance of international criminal responsibility in deterring press and media crimes. The International Criminal Legal Framework is insufficient to address these problems, as there are no clear texts that directly criminalize these acts or define press crimes. Further studies are necessary on the principle of legality, including foreseeability and precision in the formulation of a crime.

Keywords: international criminal legal framework, journalism-related crimes, propaganda, freedom, gaps, responsibility.

المخلص

تم استخدام وسائل الإعلام كأداة في الحرب النفسية والدعاية السياسية؛ ومع ذلك، لا يوجد إطار قانوني واضح في القانون الجنائي الدولي يحدد ويجرم الأفعال المتعلقة بالصحافة ووسائل الإعلام. الغرض من هذا البحث هو استكشاف التأثير الكبير للجرائم المتعلقة بالصحافة، وأهمية تحميل مرتكبي الجرائم المسؤولية الجنائية. ومن خلال الاستفادة من الانتهاكات التي ترتكبها الصحافة ومقارنتها بانتهاكات أخرى على المستوى الدولي، ستحلل هذه الدراسة بعض القضايا ذات الصلة وعلاقتها بنظام روما الأساسي. وتؤكد هذه الدراسة على أهمية المسؤولية الجنائية الدولية في ردع جرائم الصحافة والإعلام. والإطار القانوني الجنائي الدولي غير كاف لمعالجة هذه المشاكل، حيث لا توجد نصوص واضحة تجرم هذه الأفعال مباشرة أو تعرف جرائم الصحافة. ومن الضروري إجراء مزيد من الدراسات بشأن مبدأ الشرعية، بما في ذلك إمكانية التنبؤ والدقة في صياغة الجريمة.

الكلمات المفتاحية: المسؤولية الجزائية الدولية، جرائم الصحافة، الدعاية، الحرية، مبدأ الشرعية، المسؤولية.

Introduction

Journalism is not a product from a specific era; its historical roots stretch from the pre-Islamic period through the Islamic period, followed by the Umayyad and Abbasid eras, extending to the Ottoman and Andalusian eras, and eventually to Europe and the rest of the world. Its historical course developed significantly in the late seventeenth century, necessitating jurists to develop texts and legislation that include freedom of the press and the imposition of censorship laws on publications to restrict their freedom. In the nineteenth century, with the rise of the free press, states began to enact laws on incitement, defamation, and the dissemination of false news. However, in the twentieth century, psychological warfare and political propaganda, such as Nazi propaganda and Radio Rwanda, transformed the media into a tool perceived as capable of reaching the level of "international crime".

However, a clear legal framework in international criminal law is lacking to define and criminalize acts related to the press and media as threats to international peace and security.

Therefore, the main issue raised in this study is as follows:

To what extent does international criminal law recognize responsibility for journalism-related crimes, particularly when media and disinformation are used as instruments of conflict or war?

Approved methodology:

The methodology adopted in this paper is a comparative analytical approach. Through this article, we aim to examine specific violations committed by the press, compare them with other international violations, and analyze their relationship to the Rome Statute. We stress the importance of international criminal responsibility to deter press and media crimes.

First Part

Historical and Conceptual Foundation

First Requirement

Background

Journalism has evolved over different eras. At one time, it involved etching on walls and engraving on panels; at other times, it involved selling manuscripts. It later developed into a profession of transmitting and publishing news in newspapers. As its scope expanded, its importance increased, and it became regulated by laws and rules, which contributed to the flourishing of its practice and the diversity of its images. Written journalism appeared in its various forms, followed by audio journalism, which became one of the most important and widespread media outlets, with news as its most prominent program. Then came visual journalism, which is one of the most important and influential media for individuals, as it broadcasts news by voice and image. With the development of technology, electronic journalism appeared, which is read via computer or phone. The press remains a fundamental freedom, as one of the forms of freedom of expression, which makes it closely linked to the freedom of society and is even one of the public freedoms that have been included in various treaties, agreements and charters of honor.¹

Second Requirement

Freedom of Expression

Freedom of opinion and expression is one of the basic rights guaranteed by human rights law, as well as by international charters and positive treaties. Humans are inherently social beings, and this social nature is achieved only through an appropriate space of freedom in the expression of conviction and inclinations. Freedom is the ability of a person to do things according to their will, to act in their affairs without harming others, and it is what distinguishes a person in terms of existence. It is also arguably the most prominent of individual rights. It should not be forgotten that freedom is a species associated with the existence of personal, intellectual, and even social rights that individuals have. The most important of these are:

¹. Abd El Illah Imed Eddine Belaid, Regulations of Journalistic Work and the Resulting Criminal Liability, Ain Temouchent Belhadj Bouchaib University, Faculty of Law, Master Thesis, 2022-2023, p 8-10.

First Sub-requirement

Personal Freedoms

This is explicitly stated in Article 12 of the Universal Declaration of Human Rights, which asserts that no one may be subjected to arbitrary interference in their private life, family affairs, housing, or correspondence, as also noted in Articles 9 and 17 of the International Covenant on Civil and Political Rights.²

Second Sub-requirement

Intellectual Freedoms

There are freedoms that allow individuals to express their thoughts and give their opinions, within the limits of the freedom of others and what public opinion allows. Freedom of belief requires protection and non-violation; freedom of assembly allows for any peaceful gathering of individuals in a public place to express their opinions, a constitutionally guaranteed right. This is stated in the Universal Declaration of Human Rights in Article 18: "Everyone has the right to freedom of thought, conscience, and religion," and in Article 19, which asserts: "Everyone has the right to freedom of opinion and expression, and this right includes his freedom to hold opinions without harassment, to seek, receive, and impart news and ideas to others by any means and regardless of borders".³

Thus, if intellectual freedom allows expression and opinion, then we question the freedom of the media as an individual's right to receive news and the flow of information.

Third Requirement

Media Abuse

The state or media abuse their power by censoring, spreading disinformation, propagandizing, or invading privacy. Unlike freedom of the press, which a right to be preserved, media abuse is a violation that should be shunned because it undermines democracy, public trust, and the moral role of journalism.⁴

² PRIVACY RIGHTS IN THE DIGITAL AGE. <https://www.aclu.org/sites/default/files/assets/jus14-report-iccpr-web-rel1.pdf>.

³ Universal Declaration of Human Rights. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁴ Nisreen Mohammed Damoush, Ahmed Abdel Razzaq Al Taie, Criminal responsibility for disinformation according to international law, Russian Law Journal, Vol. 11 No. 9s (2023).

Second Part

Media Abuse & Disinformation:(A Comparative Perspective)

First Requirement

Media Case: ICTR

The International Criminal Tribunal for Rwanda (ICTR) is the first international court of law established to prosecute high-ranking individuals for massive human rights violations in Africa. The purpose of this court is to prosecute those allegedly responsible for the 1994 Rwandan Genocide.

UN tribunal convicts 3 Rwandan media executives for their role in the 1994 genocide. Three judges of the UN International Criminal Tribunal for Rwanda, sitting in Arusha, Tanzania, announced the convictions and sentences for Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze in what has been dubbed “the media case”.

The three men were convicted of genocide, incitement to genocide, conspiracy, crimes against humanity, extermination and persecution. According to media reports, approximately 800,000 Tutsis and moderate Hutus were murdered in Rwanda between April and the middle of 1994.⁵

The ICTR stated that these convictions were the first of their kind since the Allied Tribunal at Nuremberg in 1946 sentenced Nazi publisher Julius Streicher to death for the anti-Semitic publication *Der Stürmer*.⁶

Mr. Nahimana, founder and ideologist of the Radio Television Mille Collines (RTLM), and Mr. Ngeze, chief editor of Kangura newspaper, were sentenced to life in prison. Mr. Barayagwiza, a high-ranking board member at RTLM and the founder of the Coalition for the Defense of the Republic (CDR), a political party, received a 35-year jail term. He boycotted his trial.⁷

In a broadcast on RTLM, which became known to some Rwandans as “Radio Machete”, in April 1994, Mr. Nahimana described a “war of media, words, newspapers and radio stations” to complement a war with bullets, according to the ICTR.

The presiding judge in the media case, Judge Navanethem Pillay, told Mr. Nahimana that he was fully aware of the power of radio to “disseminate hatred and violence...Without a

⁵ Rwanda genocide: 100 days of slaughter. <https://www.bbc.com/news/world-africa-26875506>.

⁶ UN tribunal convicts 3 Rwandan media executives for their ...
<https://news.un.org/en/story/2003/12/87282>.

⁷ Three Media Leaders convicted for Genocide | United Nations ...
<https://unictr.irmct.org/en/news/three-media-leaders-convicted-genocide>.

firearm, machete or any physical weapon, you caused the death of thousands of innocent civilians”.

The judges also said Kangura targeted Tutsis for persecution by regularly stereotyping them as liars, thieves or killers, and depicting Tutsi women as femme fatales who could not be trusted. One Kangura publication labelled any Hutu man who married a Tutsi woman as a traitor.

In a statement released by the ICTR, the judges said they found that the three men “used the institutions they controlled and coordinated their efforts towards the common goal: the destruction of the Tutsi population.” They added that their broadcasts and publications did not fall under the protection of the right to freedom of expression.⁸

Briefly, The ICTR prosecuted Ferdinand Nahimana and Jean-Bosco Barayagwiza, leaders of Radio Television Libre Milles Collines (RTLM), as well as Hassan Ngeze, the founder and director of Kangura newspaper. The ICTR consolidated the indictments against these three men into a single trial, which is more commonly referred to as “The Media Case” (The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze). This trial marked the first time since Nuremberg that the role of the media was examined as a component of international criminal law. In 2003, Nahimana, Barayagwiza and Ngeze were convicted on counts of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and crimes against humanity. Originally, Nahimana and Ngeze were sentenced to life imprisonment, while Barayagwiza was sentenced to 35 years. Upon appeal, Nahimana’s and Ngeze’s sentences were respectively dropped to 30 and 35 years.⁹

Second Requirement

Nuremberg Case

Julius Streicher (1885–1946) was a German politician and publisher of anti-Semitic tracts. He served for the entirety of the war and he was highly decorated. In 1919, he joined the Society for Defense and Protective Action, a right-wing association agitating against the newly founded socialist Bavarian Republic. Here, for the first time, Streicher displayed the fierce anti-Semitic rhetoric for which he would later become notorious. Soon thereafter, he helped found the Nuremberg wing of the German Socialist Party, which, despite reference to

⁸. <https://unictr.irmct.org/en/cases/ictr-99-52>.

⁹. <https://legal.un.org/avl/ha/ictr/ictr.html>.

socialism in its name, espoused right-wing ultra-nationalist, anti-Catholic, and anti-Semitic principles.¹⁰

In 1923, Streicher established his virulently anti-Semitic newspaper, *The Attacker*. In the same year, Streicher took part in Adolf Hitler's abortive Beer Hall Putsch. For these activities, Streicher was suspended from his teaching post and spent the following years leading a surrogate local organization of the outlawed Nazi Party. Between 1924 and 1932, he held a seat in the Bavarian parliament.

Following Hitler's release from prison, the Nazi leader named Streicher Gauleiter (district leader) of Middle Franconia (later Franconia). In the first months of the National Socialist regime, Streicher chaired the Central Committee to Repulse Jewish Atrocity and Boycott Agitation (*Zentralkomitee zur Abwehr der jüdischen Greuel- und Boykotthetze*). In this capacity, he helped organize the famous one-day boycott of Jewish businesses on April 1, 1933. Although Streicher's April 1 boycott effort was ultimately less productive than hoped, it formed the basis for a more enduring boycott movement of Jewish shops and businesses throughout the 1930s, based on local initiative.

In 1938, Streicher's *Stürmer* reached its high point in terms of circulation. His successful publishing house of the same name (*Stürmer-Verlag*) produced, among other works, a host of anti-Semitic children's literature, including the infamous *Giftpilz* (*The Poisonous Mushroom*).

Streicher was neither a military commander nor a senior government official but rather a media personality who ran the newspaper *Der Stürmer*, known for its anti-Jewish rhetoric. What he published in this newspaper was an explicit incitement to hatred and extermination, in which he portrayed Jews as enemies who must be disposed of.

In May 1945, Streicher was captured by US forces and convicted on the charge of crimes against humanity in a trial of major war criminals before the International Military Tribunal at Nuremberg (IMT). He was hanged in Nuremberg, his former stronghold, on October 16, 1946.¹¹

Having considered these historical examples and how international courts have faced this type of crime; we now turn to some recent examples and examine how national legislation considers these acts.

¹⁰. Canadian Journal of Communication,

<https://cjc.utppublishing.com/doi/10.22230/cjc.2018v43n4a3209>.

¹¹. <https://encyclopedia.ushmm.org/content/en/article/julius-streicher-biography>.

Third Requirement

Potential Case of Israel's Channel 14

We can consider the case of Israel's Channel 14 as a contemporary example of media incitement. The rhetoric broadcasted by the channel resembles the RTLM case in Rwanda, although it has not yet reached the international level. This could make it a potential precedent for future international accountability and a living example of how media can cross the line from freedom of expression into incitement to genocide.

First Sub-requirement

Zulat for Equality and Human Rights

Zulat, in collaboration with the Democratic Bloc and the Movement for Fair Regulation, has filed a petition with the High Court of Justice, through attorney Michael Sfard, seeking a conditional injunction (order nisi) against the Attorney General, the State Attorney, and the Israel Police. The petition demands that these authorities explain why they have not opened a criminal investigation into Channel 14 for repeated statements by the channel, its anchors, and panelists calling for genocide and crimes against humanity.

The petition argues that "Channel 14 has effectively become a platform for incitement to commit war crimes, crimes against humanity, and even genocide. This represents a deliberate editorial policy adopted and promoted by the channel. These circumstances necessitate the opening of a criminal investigation and a thorough examination of the allegations".

The petition documents numerous inflammatory statements broadcast on the channel:

- Now there really needs to be total destruction. We shouldn't be afraid of words like 'humanitarian disaster.'" – Itamar Fleishman.
- "We need to bomb indiscriminately. We distinguish [between targets], and that's not good. The Air Force should not distinguish between combatants and non-combatants." – Yaakov Bardugo.
- "Gaza is Amalek and we must destroy the Amalekites. It's a commandment to destroy Gaza because there's evil there. Expel the people." – Shimon Riklin.

According to the petition, such statements were broadcast almost daily on the channel's programs, systematically exposing even random viewers to incitement to violence, racism, and genocide. The petitioners argue that the authorities' failure to investigate these broadcasts constitutes a dereliction of their legal duty to prevent and prosecute incitement to such serious crimes.

The petition represents a significant legal challenge to both Channel 14's editorial practices and the enforcement authorities' apparent reluctance to address what the petitioners characterize as systematic incitement to serious crimes under both Israeli and international law.

The High Court has ordered the police to report within 21 days on the status of the investigation and what actions have been taken thus far.¹²

Second Sub-requirement

International Center for Transitional Justice (ICTJ)

Three Israeli human rights organizations have accused Channel 14, a right-wing Israeli TV station, of promoting incitement against Palestinians. According to a report in Haaretz, the organizations, Zulat for Equality and Human Rights, Hatzlacha, and the Democratic Bloc, allege that the channel has broadcast over 50 statements advocating violence against Palestinians in Gaza, including calls for war crimes and mass expulsions. The rights groups submitted a request to Israel's attorney general to investigate the channel for what they describe as systematic incitement. Channel 14, which aligns with Prime Minister Netanyahu's government, has not commented on the accusations.¹³

Many non-governmental organizations, including the Democratic Bloc, Human Rights Watch (HRW), Amnesty International, and ECCR, as well as international newspapers such as the New Yorker, Columbia Journalism Review, and The Guardian, reported that RTLM radio in Rwanda used systematic hate speech that contributed to the genocide. And this is what is happening in Israel: Channel 14 broadcasts a similar speech about genocide and mass bombing and continues to incite. Although the case is being appealed to the Israeli Supreme Court, it has international implications, as the International Court of Justice (ICJ) explicitly stated in its interim judgment (South Africa v. Israel – January 2024) that Israel must prevent and punish direct incitement to genocide. This opens the door for the use of Channel 14's speech as evidence before international courts.

¹². https://en.zulat.org.il/petition-re-channel-14-crimes-against-humanuty/?utm_source=chatgpt.com.

¹³. https://www.ictj.org/ar/node/36953?utm_source=chatgpt.com , 28/09/2024.

Third Part

International Criminal Responsibility

The violation of legal or professional obligations results in unlawful acts, and here the concept of liability lies. Criminal liability is considered a legal result of the commission of the crime with all its elements, represented by the existence of a full-fledged crime subject to the principle of objective legality and the possibility of attributing it materially and morally to the perpetrator, in addition to the presence of a judicial authority.¹⁴

International criminal responsibility means that any perpetrator of an act which constitutes an international offense is responsible for this act and liable to a penalty which is pronounced, as the case may be, by an international criminal jurisdiction.¹⁵

International criminal responsibility applies to any person who commits an act which constitutes a crime under international law. According to the Nuremberg tribunal, the fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who commits the act from responsibility under international law. Also, the fact that a person who committed an act which constitutes a crime and the international law acted as head of state or responsible government official does not relieve him from responsibility under international law. Moreover, acting pursuant to the orders of a government or a superior does not really leave a person free from responsibility under international law, provided a moral choice was in fact possible. The crimes hereinafter are punishable under international law and include crimes against peace, war crimes, and crimes against humanity.¹⁶

¹⁴. Abd El Illah Imed Eddine Belaid, Regulations of Journalistic Work and the Resulting Criminal Liability, p 91.

¹⁵. Sarraj Donia , Individual Criminal Responsibility Under International Criminal Law, journal of law and interscience, Volume 2, Number 2, 2023-09-01.

¹⁶. United nations, Principles of International Law Recognized in the charter of the Nuremberg Tribunal and in the Judgment of the tribunal 1950, Report of International Law Commission.

First Requirement

Individual Criminal Responsibility

Historically, only states were covered by international law. Therefore, international responsibility was considered to constitute exclusively an inter-State relationship. Individuals were naturally excluded from this classic structure, and if an individual became the victim of treatment contrary to international law on the part of a foreign state, it is his state which "takes up the cause of its national".¹⁷

Although individual criminal responsibility is a fundamental principle of international criminal law, it holds individuals accountable for their actions when they commit serious crimes that violate international law.

First Sub-requirement

The Constituent Elements of the Individual Criminal Responsibility

An individual incurs liability when acting exclusively as a private person, or those who commit crimes on their own, or as a public official of the state. That is to say, those who commit crimes within the framework of the exercise of the prerogatives of public power. Thus, this concept can include media professionals and media decision-makers. Moreover, for the international criminal responsibility of the individual to be effective, international law must not only determine the wrongful individual acts considered offences, but it must also determine the people who are criminally responsible.

Second Sub-requirement

The Implementation of the Individual Criminal Responsibility

The judicial authorities will condemn the perpetrators of serious violations undermining international humanitarian law, when the international criminal responsibility of the individual is engaged by the international criminal jurisdictions, by applying sanctions or penalties corresponding to these crimes.

The international criminal responsibility of individuals and the responsibility of states have common characteristics, particularly with regard to the violation of "jus cogens articles 53 and 64 of VCLT" of the fundamental principles of international humanitarian law.¹⁸

¹⁷ He thus becomes the subject of international responsibility through diplomatic protection. The injured individual does not have his own right on the international level, he is excluded before the international jurisdictional authorities. See: Judgment No. 10 Lotus Case (France v. Turkey) of September 7, 1927, in the case of the Permanent Court of International Justice declared that international law governs relations between independent States. Series A, No. 10, p.18.

¹⁸ Article 53 of the Vienna Convention on the Law of Treaties of 1969 provides, in fact, that a norm has the force of jus cogens when "the international community of States as a whole" recognizes it as

The role of the judge in the determination of his sentences is essential. The judge must take into consideration a set of data, of circumstances, which relate to the person of the condemned. Generally speaking, the judge must decide on a case-by-case basis, taking into account the personal situation of the accused individual.

Recidivism and premeditation constitute aggravating circumstances of the sentence that the judge must take into consideration. The judge must also determine the applicable penalty at their discretion. To the penalty of imprisonment, the judge may add a fine or the confiscation of material goods. On the other hand, the judge can decide, in certain cases, to reduce the sentence; for example, the defendant has shown a willingness to cooperate with the court in investigations and prosecutions.

International law recognizes the individual as responsible for serious violations of international humanitarian law, capable of presenting himself and appearing before an international criminal jurisdiction. On the other hand, there are various forms of exemptions from the international penal responsibility of the individual.

Third Sub-requirement

An Exemption from Individual International Criminal Responsibility

An individual can exonerate himself from responsibility if he proves that he is entitled to benefit from one of the cases of exoneration from responsibility or even more by arguing his immunity from jurisdiction linked to his official capacity. To escape international criminal responsibility, the individual must provide proof of his irresponsibility. In this sense, the individual plays a cardinal role in order to convince the judge that he has not committed the crime which is imputed to him, or that even if he has really committed it, he benefits from a motive exemption from criminal responsibility as provided for in the statutes of international criminal jurisdictions.¹⁹

a rule "from which no derogation is permitted and can only be modified by a subsequent norm of general international law having the same character". The fundamental feature of the concept of jus cogens is, therefore, the principle of the recognition of the validity of a rule that is to say of a right which imposes a certain behavior, as unavailable, by the whole of the international community. The principle is of a strictly formal type and requires, for the existence of a norm of jus cogens.

¹⁹ Articles 7 of the Statute of the Nuremberg Tribunal. 6 of the Tokyo Tribunal statute, 7/2 of the ICTY statute, 6/2 of the ICTR statute and 27/2 of the ICC statute 170. GLASER (S.) : "L'élément moral de l'infraction internationale", RGDIP, 1955, p. 537. 171 Prosecutor/Drazen ERDEMOVIC Case IT-96-22 of December 29, 1996-March 5, 1998.

Fourth Sub-requirement

The Difficulties of Incurring Individual Criminal Responsibility

Jurisdictional immunity is an obstacle to the criminal prosecution of state bodies, such as the Head of State or ministers, in application of international law designed on the inter-state model and anxious to respect the sovereign equality of states. Thus, the states are always reticent with regard to international criminal jurisdictions and do not agree to cooperate easily with these international bodies.²⁰

The non-cooperation of the states constitutes, in fact, an obstacle which prevents the normal development of the procedure and the regular functioning of the criminal justice. Adding to these difficulties, the aptitude of certain states with regard to the international criminal jurisdictions, especially the hostility shown by the United States of America towards the ICC. This hostility can be placed in the context of the ambiguous relationship that the superpower maintains with international law and more specifically with international criminal justice.²¹

Second Requirement

The Importance of International Criminal Responsibility

The presence of international courts and international criminal responsibility may reduce crimes, including those that start with disinformation or incitement, and their deterrent effect can prevent scandals before they occur or reduce them.

Media disinformation is an international crime that carries with it international criminal culpability for its perpetrators. All elements of international crime, from the legal, material, moral, and international pillars, are present in media disinformation. The legal pillar consists of the international texts found in international conventions, declarations, covenants, the Geneva Conventions of 1949 and their additional protocols, and others, which all stipulate combating media disinformation, whether in times of peace or armed conflict. The material pillar is only represented by behavior; therefore, it is an offense of behavior and not of results. For the establishment of international criminal responsibility, the law does not require the occurrence of the result but only the commission of criminal acts. As for the moral element, it necessitates the presence of criminal intent, represented by knowledge and will, both of which are present in the crime of media disinformation. We have noted the presence of an

²⁰ RUCZ (C.), « O.N.U. et le respect des droits de l'Homme », *Juris -classeur de droit international*, issue 124, 2000, p. 38.

²¹ CONDORELLI (L.), " La Cour pénale internationale : un pas de géant (pourvu qu'i soit accompli...) ", *RGDIP*, 1999, pp. 7-21.

international element in the crime of disinformation, which necessitates a culpability criterion.²²

On the other hand, the importance of International Criminal Law (ICL) norms in fostering international cooperation cannot be overstated. These norms serve as the backbone of a collective legal response to transnational crimes and serious violations of humanitarian law, which no single nation can combat effectively on its own. By establishing common legal standards and procedures, ICL norms enable countries to work together seamlessly, whether through extradition treaties, mutual legal assistance, or joint investigations. The United Nations Convention against Transnational Organized Crime (UNTOC) and the International Criminal Court (ICC) are prime examples of how these norms facilitate cooperation across borders. UNTOC provides a platform for law enforcement collaboration, while the ICC's efforts to promote cooperation, complementarity, and universality have led to significant advancements in international criminal justice. These institutions and their associated norms not only help bring perpetrators to justice but also deter future crimes by signaling an international commitment to uphold the rule of law. Ultimately, ICL norms are vital for creating a safer, more just world by encouraging nations to unite in their pursuit of justice and accountability.²³

Having touched upon international criminal responsibility, we had to ask the following question: Are there gaps in International Criminal Law?

²². <https://www.russianlawjournal.org/index.php/journal/article/view/1647>.

²³. <https://modern diplomacy.eu/2024/06/20/the-importance-of-international-criminal-law-norm-in-fostering-international-cooperation/>.

Third Requirement

Gaps in International Criminal Law

On July 1, 2002, the Rome Statute of the International Criminal Court (ICC) came into force. The establishment of the ICC can be considered a great achievement in the effort to prosecute gross violations of humanitarian law and human rights by individuals. Its purpose is to provide a permanent criminal forum, potentially with universal reach, to try war crimes and gross violations of human rights. On the other hand, internationalized courts and tribunals in Kosovo, Sierra Leone, Cambodia, and East Timor were created in the interregnum between the adoption of the Rome Statute and its entry into force.²⁴

In the context of international crimes, falsehoods — ranging from selective reporting of facts to deliberate mischaracterization of events and adversaries, or even plain fabrication and lies — constitute a breeding ground in which incitement to commit violence can thrive. While disseminating such falsehoods does not constitute a direct call to commit physical violence, it nevertheless sows the seeds for mass atrocities.

There are some other cases that confirm that the International Criminal Court may be reluctant to impose responsibility for disinformation or spreading disinformation, including the acquittal of Fritsch, the termination of the case against Mbarushimana, and the light sentence given to Jefiro.

These cases share similarities with the cases we mentioned earlier. For example, in the Streicher case, the Nuremberg courts found that the press was used to incite hatred against Jews. The case of Fritsche, a Nazi radio official, involved the dissemination of war propaganda. In Rwanda, radio was used for direct incitement to extermination. The case of Jefiro Media at RTLM, where he was condemned for his role. Mbarushimana, a political leader, was accused of using his position to influence and coordinate media in support of militias. The common element across these cases is that the media served as a major tool for crime, whether through propaganda, incitement, or the justification of violence.

Therefore, we see that the Nuremberg case confirmed that incitement through the media entails criminal liability. The Rwanda case introduced direct incitement as an independent crime. As for the cases that we mentioned recently regarding Fritsch and Mbarushimana, they showed us that the existence of a clear causal relationship between speech and crimes is an inevitable necessity, and this is one of the most prominent gaps in the Criminal Court.

²⁴. Cesare P.R. Romano (ed.), André Nollkaemper (ed.), Jann K. Kleffner (ed.), Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo, and Cambodia, 21 October 2004, <https://academic.oup.com/book/11857>.

One of the most prominent gaps is the focus of the Rome Statute on crimes of genocide, crimes against humanity, crimes of aggression and war crimes,²⁵ but without including media crimes, which in turn lead to these basic crimes and many other effects that affect diplomatic and political relations, etc.

Also among the other gaps is the problem of balancing freedom of expression and international security. This issue is explained by the author Oliveira Schiavo Grebenar in her article (When "Mere Hate Speech" Becomes a Crime Against Humanity-The Issue of Media). She clarifies that the line between hate speech or propaganda and international crime is not clear legally, which leads to the difficulty of enacting broad criminal texts without prejudice to freedom of expression. This is what we see in some news reports, such as the withdrawal of African countries from the court²⁶, or political statements opposing the implementation of arrest warrants, as we mentioned earlier, and many questions about the United States, Russia, China and other countries that are reluctant and opposed to extending the scope of the court or to accepting its jurisdiction, according to the Council of Foreign Relations.

²⁵. Article 5 of the Rome Statute, <https://www.ohchr.org/ar/instruments-mechanisms/instruments/rome-statute-international-criminal-court>.

²⁶. <https://www.aljazeera.net/news/2025/9/23>.

Conclusion

Finally, after considering the violations committed by the press, such as media attacks, disinformation and war propaganda, and comparing them with other violations mentioned in the Rome Statute, as well as referring to the relevant international judicial precedents from the Rwanda and Nuremberg courts. Studying the importance of international criminal responsibility in deterring press and media crimes, we noted that the International Criminal Legal Framework is insufficient to address these problems, especially as they directly affect national security, diplomatic relations and economic stability.

I.Results:

1. There are no clear texts that include direct criminalization of these crimes, they were satisfied only with two criminal laws at the internal level and human rights reports.
2. The absence of a definition of a law for press crime, and the international community believes that freedom of expression should not be restricted at all and that setting controls for these acts will lead to their restriction.

II. Recommendations

1. Drafting of a comprehensive international convention similar to the Budapest Convention on cybercrime.
2. Clearly defining press-related crimes and the criminal penalties resulting from them.
3. Bridging the gap between freedom of expression and international criminal responsibility to protect national security, economic stability and diplomatic relations in an increasingly interconnected world.

Conflict of Interest Statement

All authors declare that they have no conflict of interest

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