

Crimes of French Colonialism in Light of International Law and International Humanitarian Law

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Received: 10/09/2024

Published: 15/03/2025

Abstract:

This study aims to present the crimes of French colonialism in relation to the principles of international law and international humanitarian law, particularly the principle of human dignity and the principle of military necessity. The research demonstrated that colonial France violated the first principle through brutal practices, especially torture, which was a systematic policy. It also infringed upon the second principle, which emphasizes the necessity of respecting the regulations governing the use of military force, by employing prohibited weapons. The study concluded that France's crimes against the Algerian people constitute crimes against humanity, war crimes, acts of genocide, and crimes against peace. The research recommends the necessity of activating punitive mechanisms to enforce respect for international law and international humanitarian law, as well as strengthening existing institutions with monitoring and enforcement tools to protect individuals and humanity.

Keywords: international crime, war crimes, genocide, crimes against humanity, international humanitarian law, torture, military necessity.

Introduction:

French colonialism committed heinous crimes against colonized peoples, particularly the Algerian people. It violated the rules and principles of international laws and conventions that call for the respect of human dignity, prohibiting practices that harm it and regulating the use of force based on the principle of military necessity. However, colonial France was not deterred by laws or international norms, leading to numerous crimes that raised legal and ethical questions about the nature of these violations and international responsibility for them.

Importance of the Research:

The significance of this research lies in its examination from the perspective of international law and international humanitarian law, aiming to demonstrate the extent of France's violations of international conventions. It seeks to enhance legal awareness regarding colonial crimes and support accountability and recognition of these violations in favor of justice and in satisfaction of the victims.

Research Problem

The research problem revolves around the following question: To what extent are the crimes of French colonialism considered violations of the principles of international law and international humanitarian law, and how can they be classified?

Research Methodology

This research relies on a descriptive methodology to document the crimes of French colonialism and to illustrate their legal dimensions and the severity of their humanitarian impact. It also employs an analytical methodology to study these crimes according to the principles of international law and international humanitarian law, aiming to arrive at a legal characterization of these violations.

Research Plan

First: Definition and Classification of International Crimes

1. Definition of International Crime
2. Classification of International Crimes

Second: Principles of Protection from International Crimes in International Law and International Humanitarian Law

- Principle of the Sanctity of Human Dignity
- Principle of Military Necessity

Third: Violation of International Law and International Humanitarian Law by French Colonialism

- Torture as a Violation of the Principle of Protection of Human Dignity and Its Classification
- Chemical Weapons and Internationally Prohibited Arms as Violations of the Principle of Military Necessity and Their Classification

First: Definition and Classification of International Crimes

France often defended itself against accusations of aggression against the Algerian people by claiming that the events in Algeria were an internal matter with no relation to international bodies or laws. Therefore, it is necessary to clarify that its actions constitute international crimes, differing from domestic crimes.

1. Definition of International Crime: In its broad legal sense, crime refers to any violation of a rule of law across its various branches, whether from criminal law or other laws, such as commercial law. In its narrow sense, it refers to violations that breach provisions of the penal code and its supplementary laws, manifesting as either negative or positive conduct.

Thus, a crime is any unlawful act or omission stemming from a criminal intent, for which the law prescribes a penalty or security measure. In international law, a crime is defined as

any action or omission by an individual on behalf of the state or with its consent, arising from criminal intent, that affects an interest protected by international law through criminal sanctions (Adly, 2003, p. 66).

This definition highlights the elements of a crime, clarifying the material element with its components—action, omission, and criminal result represented in the infringement of the protected interest. The legal element pertains to the criminalization and punishment provisions, while the moral element relates to criminal intent.

This crime is considered international because it was committed on behalf of the state or with its consent, and the interest harmed is an interest protected by international law.

Abdullah Suleiman defines it as "any act or omission that harms major international or humanitarian interests, which is prohibited by international custom and calls for punishment in the name of the international community" (Suleiman, 1992, p. 85). Ali Majid Ibrahim defines it as "an intentional act performed by an individual or a group of natural persons acting for themselves or on behalf of a state, with assistance, consent, or encouragement from the state, that infringes upon an interest that international law safeguards, and seeks to punish anyone who commits such acts" (Ibrahim, 1999, p. 338).

Comparison Between Domestic Crimes and International Crimes

Both represent a breach of public order in society, and the perpetrator of these crimes is a natural person. Both require the existence of a moral element for criminal responsibility (Chazli, 2001, p. 214).

Regarding the differences between them, a domestic crime is committed by a natural person for their own benefit or for the benefit of others. In contrast, an international crime is committed by a natural person, often for the benefit of the state or with its encouragement or consent.

The difference also lies in the nature of the interest and the nature of the law that protects it. In the case of domestic crimes, the interest is internal and protected by domestic laws, while in international crimes, the interest is international and protected by international law, represented by customary international law and international treaties (Chazli, 2001, p. 216).

The question that arises here is: What interests are protected by international law? What is their classification?

The interests protected by international law include international peace and security, the prohibition of threats or the use of force against states, and the threat to their independence (United Nations Charter, 1945).

2. Classification of International Crimes

Legal scholars, legal texts, and various treaties use multiple terms to refer to the serious crimes committed by states against their own peoples or the peoples of other states. The crimes of interest to us are those that represent aggression by one state against another. We find crimes against peace, war crimes, and crimes against humanity. The Geneva Conventions have emphasized the differences in these concepts, stating that all states are committed to "search for those responsible for certain serious crimes, including war

crimes and crimes against humanity, and prosecute them.” The same approach was taken by the Nuremberg Court’s Basic Law, which defined them in Article 6 of its Basic Law as follows:

2.1 Crimes Against Peace: These aim to plan, prepare, initiate, or wage aggressive war, or war that violates international treaties.

2.2 War Crimes: These include:

- Killing or inhumane treatment or deportation of civilians in occupied territories for forced labor or other purposes.
- Killing or inhumane treatment of prisoners of war.
- Killing hostages and plundering public and private property.
- Destruction of cities or villages.
- Destruction not justified by military necessity.

2.3 Crimes Against Humanity:

These relate to murder, extermination, and other inhumane acts committed against civilian populations before or during war, or persecution on political, racial, or religious grounds, in connection with any crime within the court’s jurisdiction or related to that crime.

Second: Principles of Protection from International Crimes in International Law and International Humanitarian Law

The international community has worked to establish principles to protect it from international crimes and to enact laws, agreements, and treaties to regulate various armed conflicts to prevent significant harm and to criminalize and punish those responsible. Among these principles are the principle of the sanctity of human dignity and the principle of military necessity. What do these principles entail?

1. Principle of the Sanctity of Human Dignity:

This principle aims to protect individuals from the loss of life if they are not combatants or if they have ceased fighting, safeguarding their bodies and souls from physical and moral assaults. It prohibits torture and humiliation, and avoids acts of cruelty and brutality in combat as long as they do not achieve the war’s objective, which is victory. Article 27 of the Fourth Geneva Convention stipulates the protection of protected persons, their right to safeguard their persons, honor, family rights, religious beliefs, humane treatment, and special protection against all acts of violence and threats... This protection applies to non-combatants and those who surrender (Pictet, 1984, p. 51).

2. Principle of Military Necessity

The principle of military necessity refers to the use of available means and methods during armed conflicts while respecting human rights rules, prohibiting the use of brutal methods and not using necessity as an excuse. This principle is fundamental to international humanitarian law.

The use of force is addressed by both international humanitarian law and human rights law. The former is based on the principle of military necessity, while the latter aims to protect individuals from the misuse of force, thus regulating how military force is employed.

To this end, international law establishes rules governing the use of military force, such as the principle of proportionality and the principle of unnecessary suffering (Roucheau, 2012, pp. 269-273).

The principle of proportionality means that "the use of force in a defensive act must be proportional to the aggression occurring; that is, the means or methods used in defense must be appropriate to the result of the act compared to the means of aggression. Thus, targeting should only be conducted to the extent necessary" (Abdelkhaleq, 1989, p. 201).

The principle of unnecessary suffering refers to the use of weapons that cause excessive suffering to combatants (Roucheau, 2012, p. 274).

It is noteworthy that international law emphasizes these two principles to regulate acts of retaliation against aggression, ensuring that they are proportional to the act of aggression and do not cause excessive pain and suffering without justification, other than hatred and revenge. Legal texts do not address acts of aggression as justified or lawful, as unlawful acts do not have established rules or controls because they are inherently transgressions and crimes.

Third: Violation of International Law and International Humanitarian Law by French Colonialism:

Colonial France committed numerous crimes against the Algerian people that violated international norms and conventions, most notably torture, the use of military force, and the unlawful use of toxic gases.

1. Torture as a Violation of the Principle of Protection of Human Dignity and Its Classification

1.1 Torture in International Texts and French Practices

Torture is the infliction of severe pain on a person, whether physically or mentally, causing extreme suffering with the aim of achieving certain results. Acts of torture are described as inhumane acts that lead to serious consequences, and Article 51 of the Fourth Geneva Convention considers it a serious and unjustifiable violation.

Torture is prohibited by various conventions and treaties, including the Universal Declaration of Human Rights, which was issued in 1948. Article 5 states: "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment." Furthermore, Article 7 of the International Covenant on Civil and Political Rights, ratified by the United Nations General Assembly in 1966, asserts: "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."

The European Convention on Human Rights and Fundamental Freedoms, issued in Rome in 1950, also states in Article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Multiple articles in the four Geneva Conventions of 1949 prohibit torture and cruel treatment of civilians, as well as the wounded, sick, and prisoners of war during armed conflicts (Geneva Conventions, 1949). For instance, Article 17 of the Third Geneva Convention states: "...No physical or mental torture or coercion shall be inflicted on prisoners of war to obtain information of any kind, nor shall threats be made to prisoners of war to extract information from them."

Despite international bodies and various agreements and treaties criminalizing torture and mistreatment of individuals, France practiced it against the Algerian people in all its forms to suppress revolts. Roger William, the inspector general sent by François Mitterrand in

1955 to investigate allegations of torture in Algeria, acknowledged that “torture is indeed practiced in Algeria and is a common occurrence; however, due to its positive results, it must be generalized” (Maqdar, 2014, p. 84).

French officials repeatedly acknowledged the existence of torture and considered it a means to serve their interests. The previous recognition and others confirm that France disregarded international treaties that deemed torture to have multiple classifications.

1.2 Legal Classification of Torture in International Legal Texts

1.2.1 Consideration of Torture as a Crime Against Humanity

Torture is regarded as a crime against humanity under Article 6 of the Military Tribunal Statute of Nuremberg if certain conditions are met (Ben Hafaf and Sadra, 2009, p. 132):

- The perpetrator intentionally inflicts severe physical or mental pain and suffering due to one or more motives, including (Gharbi, 2001-2002, p. 87):
 - Obtaining information or confessions from the victim or another person.
 - Punishing the victim or another person for an act committed by someone else.
 - Intimidating or coercing the victim or another person.
- The perpetrator acts in an official capacity, meaning they are part of the public authority or the act is instigated or consented to by an official body.
- The torture is committed as part of a widespread or systematic attack directed against a civilian population, and the perpetrator is aware that their actions are part of this widespread and systematic attack.

1.2.2 Consideration of Torture as an Act of Genocide

Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted in 1948, and Article 6 of the Statute of the International Criminal Court define genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group” (Saad Allah, 2014, p. 168).

The aforementioned Article 2 mentions acts considered to be genocide, including causing serious bodily or mental harm to members of the group and deliberately inflicting living conditions calculated to bring about its physical destruction, in whole or in part.

This point is reinforced by Article 4 of the Statute of the Yugoslav Tribunal, which states: “The unique mental element relates to the existence of a specific intent to destroy a national, ethnic, or religious group, in whole or in part” (Statute of the Yugoslav Tribunal, 1993).

For torture to be considered an act of genocide, the “criminal intent behind the acts constituting torture must be the partial or total destruction of a group” (Ben Hafaf and Sadra, 2009, p. 133).

Complete destruction was unattainable for France due to the resilience of the Algerian people, their attachment to their land, and their courageous and ongoing resistance to colonialism. However, partial destruction through torture was practiced by France against many tribes and regions, effectively erasing the existence of villages and clans by starving, terrorizing, and forcing them to flee their areas, as well as impoverishing them. Deadly diseases spread, resulting in numerous deaths. The aim was to eliminate and exterminate the population, through fear at times and revenge at others.

Among the actions where France exceeded the principle of military force was its use of internationally prohibited weapons and deadly arms.

2. Toxic Gases and Internationally Prohibited Weapons as Violations of the Principle of Military Necessity and Their Classification

2.1 Toxic Gases and Prohibited Weapons in International Texts and French Practices

Despite being internationally banned under the 1925 Geneva Protocol, which considered the use of toxic or asphyxiating gases to be in violation of existing international agreements, and despite their prohibition in the Hague Conventions of 1907 and the four Geneva Conventions of 1949, “French authorities resorted to testing and using various toxic and incendiary gases against Algerians, turning them into testing grounds for their military inventions” (Mseika, 2022, p. 577).

Among the weapons used were internationally prohibited napalm bombs due to their danger to humans and the environment, which France employed in numerous battles documented by historians and researchers (Bougazala, 2010, p. 12). This includes anti-personnel mines, prohibited under international humanitarian law, incendiary weapons that cause pain and suffering, and nuclear weapons that inflict severe damage and unnecessary suffering due to their immense power and long-lasting radiation (Legal Series, 2024, p. 6). The use of weapons in international and non-international conflicts is not unrestricted, especially when harm is inflicted on civilians not involved in the armed conflict. According to international law, excessive military force should not be used to the point of being disproportionate to the military situation, which embodies the principle of proportionality. Under this principle, “the use of any weapon is prohibited if the damage expected from its use to combatants or non-combatants or military objectives is foreseeable” (Zarqin, 2013).

The principle of military necessity aims to achieve military objectives without exceeding limits that would harm civilian targets. “Methods of combat that result in increased suffering for the injured due to their use without justification or necessity are considered prohibited means” (Zarqin, 2013, p. 204).

France’s use of excessive force and deadly weapons constitutes international crimes for violating laws and international agreements. What is the nature of these crimes?

2.2 Legal Classification of the Use of Toxic Gases and Prohibited Weapons

2.2.1 Considering the Use of Prohibited Weapons as a War Crime

Referring to the definition of war crimes in the Nuremberg Tribunal’s Basic Law, the destruction caused by prohibited weapons such as napalm bombs and nuclear testing, which is not justified by military necessity, qualifies as a war crime. Its effects extend beyond humans to the environment.

The tribunal also classified the killing and mistreatment of prisoners of war as war crimes. Among the abhorrent actions of France was its use of prisoners in nuclear tests, violating protective provisions for combatants in armed conflicts of an international character. Article 13 of the Geneva Convention states: “Prisoners of war must at all times be treated humanely.”

Subjecting captured fighters to direct radiation exposure is considered inhumane treatment and a war crime, violating international laws. The same article emphasizes the prohibition of “endangering the health of prisoners and prohibits their use for scientific medical experiments.”

2.2.2 Considering It as a Crime Against Humanity and Genocide

The seventeen nuclear tests in the Algerian desert represent a modern form of extermination of the Algerian individual and their environment. The effects are still felt today. The waste left by France and its experiments caused the deaths of 42,000 Algerians and injured thousands more due to radiation and significant harm to both the population and the environment (Cherazi, 2012).

Historians have noted that during its nuclear tests, “France lost its humanity and used... 150 prisoners, along with a group of pregnant women, children, and the elderly as subjects... (and employed) animals such as camels, goats, dogs, donkeys, rabbits, cats... birds, and plants” (Jafal et al., 2007, p. 62).

Conclusion:

The crimes of torture and the use of toxic gases and prohibited weapons are attributable to the individual who committed them in the course of their duties, whether with the knowledge of the authority to which they belong or not. These are international crimes, as they contain an international element represented by the international interest protected by international law, which violated the sanctity of human dignity and breached the principles of international humanitarian law. They are crimes against humanity, acts of genocide, and crimes against peace. France’s responsibility for these actions is established and ongoing, as they are not subject to statutes of limitations.

Holding France accountable for its crimes and violations of international laws is a humanitarian and legal necessity. Investigating these crimes from the perspective of international law and international humanitarian law is a step towards enhancing legal awareness and urging the international community to take firm stances against violations, ensuring that perpetrators are not granted impunity, thereby strengthening global and humanitarian deterrence.

Suggestions:

While the rules of international law and international humanitarian law represent a qualitative leap in protecting individuals from abuses during armed conflicts, they lack the mechanisms to limit such abuses. Describing the act and attributing responsibility without punitive mechanisms is futile. Among these mechanisms is the necessity of freeing the International Court of Justice from the influence of the veto power and empowering the International Criminal Court with tools for monitoring and enforcement, which can be achieved by reviewing their respective laws.

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