

## The May 8, 1945 Massacres: The Problem of Non-Retroactivity in the Nuremberg Charter Between Legal Interpretation and Political Perspective

Samir Haddadi<sup>1\*</sup> , Fadila Khalfoun<sup>2</sup> 

**Abstract.** *The massacres of May 8, 1945, in Algeria (Sétif, Guelma, and Kherrata) constitute a pivotal turning point in French colonial history. Peaceful demonstrations demanding independence were met with systematic and brutal repression that resulted in the deaths of thousands of Algerians. Despite their historical significance, these events continue to generate legal and political controversy, particularly because the Nuremberg Charter, which formally established the concept of crimes against humanity, was adopted on August 8, 1945—only ninety-two days after the massacres.*

*This article examines this paradox through a dual analytical framework combining legal analysis and critical political inquiry. From a legal perspective, it investigates whether customary international law that existed prior to the Nuremberg Charter—particularly the Martens Clause of 1899—provides sufficient legal grounds to overcome the principle of non-retroactivity of criminal laws. From a political perspective, the study explores how France has selectively invoked this principle to shield its colonial crimes from accountability while disregarding the same principle during the prosecution of Nazi war criminals.*

*The study concludes that the May 8, 1945 massacres fulfilled both the material and mental elements of crimes against humanity under customary international law. Consequently, the strict application of the principle of non-retroactivity in this context reflects a selective and inconsistent interpretation of international criminal law. The article also discusses transitional justice mechanisms and state responsibility as alternative avenues for achieving recognition, accountability, and reparations.*

**Keywords:** *Crimes against humanity, transitional justice, customary international law, colonialism, non-retroactivity, Martens Clause*

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## 8 may 1945-ci il qırğınları: Nürnberq xartiyasında hüquqi təfsir və siyasi perspektiv arasında qeyri-retroaktivlik problemi

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**Xülasə.** *8 may 1945-ci ildə Əlcəzairdə (Sétif, Guelma və Kherrata) baş verən qırğınlar Fransa müstəmləkə tarixində mühüm dönüş nöqtəsi təşkil edir. Müstəqillik tələb edən dinc nümayişlər minlərlə əlcəzairin ölümünə səbəb olan sistemik və qəddar repressiyalarla qarşılandı.*

*Tarixi əhəmiyyətinə baxmayaraq, bu hadisələr, xüsusən də bəşəriyyətə qarşı cinayətlər anlayışını rəsmi olaraq təsis edən Nürnberq Xartiyası 8 avqust 1945-ci ildə - qırğınlardan cəmi doxsan iki gün sonra qəbul edildiyi üçün hüquqi və siyasi mübahisələrə səbəb olmağa davam edir.*

*Bu məqalə bu paradoksu hüquqi təhlil və tənqidi siyasi araşdırmanı birləşdirən ikili analitik çərçivə vasitəsilə araşdırır. Hüquqi baxımdan, Nürnberq Xartiyasından əvvəl mövcud olan beynəlxalq adət hüququnun, xüsusən də 1899-cu il Martens maddəsinin - cinayət qanunlarının geriyə qüvvəsi olmaması prinsipini aradan qaldırmaq üçün kifayət qədər hüquqi əsaslar təmin edib-etmədiyini araşdırır. Siyasi baxımdan, tədqiqat Fransanın müstəmləkə cinayətlərini məsuliyyətdən qorumaq üçün bu prinsipi necə seçici şəkildə tətbiq etdiyini və eyni zamanda nasist müharibə cinayətkarlarının tətbiqi zamanı eyni prinsipi necə nəzərə almadığını araşdırır.*

*Tədqiqat nəticəsində 8 may 1945-ci il qırğınlığının beynəlxalq adət hüququ çərçivəsində bəşəriyyətə qarşı cinayətlərin həm maddi, həm də mənəvi elementlərini yerinə yetirdiyi qənaətinə gəlinir. Nəticə etibarilə, geriyə qüvvəsi olmaması prinsipinin bu kontekstdə ciddi şəkildə tətbiqi beynəlxalq cinayət hüququnun seçici və ziddiyyətli şərhini əks etdirir. Məqalədə həmçinin tanınma, hesabatlılıq və təzminat əldə etmək üçün alternativ yollar kimi keçid ədalət mexanizmləri və dövlət məsuliyyəti müzakirə olunur.*

**Açar sözlər:** *bəşəriyyətə qarşı cinayətlər, keçid ədaləti, beynəlxalq adət hüququ, müstəmləkəçilik, geriyə qüvvənin olmaması, Martens bəndi*

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## Introduction

The first half of the twentieth century witnessed profound transformations in international law. The international community gradually moved from the traditional doctrine of the state's unrestricted right to wage war (*jus ad bellum*) toward the establishment of legal and moral constraints governing armed conflict. This evolution ultimately contributed to the emergence of the principle of individual criminal responsibility for serious violations of human rights. The Second World War (1939–1945) represented the most significant turning point in this process, culminating in the establishment of modern international criminal justice through the Nuremberg Tribunal.

While Europe and much of the world celebrated the Allied victory over Nazism on May 8, 1945, Algeria was experiencing one of the most tragic episodes of modern colonial history. In the cities of Sétif, Guelma, and Kherrata, peaceful demonstrations organized by Algerians demanding freedom and independence were met with unprecedented violence by French colonial authorities and armed settler militias. Ground, naval, and air forces were deployed against largely unarmed civilians, resulting in the deaths of tens of thousands of victims.

The legal study of these massacres extends beyond historical narration and seeks to determine their proper characterization under international law. At the center of this inquiry lies a significant historical and legal paradox: the May 8 massacres occurred exactly three months before the signing of the London Charter on August 8, 1945, which established the International Military Tribunal at Nuremberg and formally articulated the concept of crimes against humanity for the first time. This chronology raises a complex legal question regarding the principle of *nullum crimen sine lege* (no

crime without prior law), a cornerstone of criminal law requiring that conduct be criminalized before it can give rise to criminal liability.

Although this principle serves an important protective function against arbitrary state power, its application within international criminal law has often been selective. In some instances, it has been invoked to justify impunity for certain crimes, while in others it has been set aside in the pursuit of justice. International judicial practice demonstrates that the principle of non-retroactivity did not constitute an insurmountable obstacle in the prosecution of Nazi war criminals. Instead, courts relied upon customary international law to establish criminal responsibility. This raises an important question: why should the same principle be invoked today to prevent accountability for colonial crimes?

Accordingly, this study seeks to answer the following central research question:

Does the principle of non-retroactivity in international criminal law constitute a genuine legal obstacle to the international criminal characterization of the May 8, 1945 massacres, or does pre-Nuremberg customary international law provide a sufficient legal basis to overcome this obstacle?

Two subsidiary questions emerge from this broader inquiry:

1. To what extent do the May 8, 1945 massacres satisfy the material and mental elements of crimes against humanity under customary international law as it existed before August 1945?
2. What legal and political mechanisms are available to overcome the challenge of non-retroactivity in pursuit of accountability and reparations?

This article argues that a careful legal analysis of the facts reveals a clear correspondence between the constituent elements of crimes against humanity and the events of May 8, 1945. Furthermore, customary international law existing prior to the Nuremberg Charter provided an adequate legal basis for criminalization, rendering reliance on the principle of non-retroactivity a selective argument inconsistent with the broader objectives of international justice. The article also contends that transitional justice mechanisms and the doctrine of state responsibility offer viable legal and political alternatives for achieving recognition and redress.

To address these issues, the study is divided into two main sections. The first examines the May 8, 1945 massacres from both a historical and international legal perspective, demonstrating how the events satisfy the constituent elements of crimes against humanity under customary international law. The second analyzes the principle of non-retroactivity in international criminal law and explores possible avenues of accountability, highlighting the double standards associated with its application and evaluating transitional justice and state responsibility as alternative mechanisms for redress.

#### Section I: The May 8, 1945 Massacres Between Historical Reality and International Legal Characterization

The Legal Status of Algerians Under French Colonial Rule and the Course of the Massacres

The Legal Structure of the Colonial System: Between Law and Politics

The massacres of May 8, 1945, were neither accidental events nor spontaneous security responses. Rather, they constituted the logical outcome of a deeply entrenched colonial legal order that had evolved over more than a century of French domination in Algeria. Since the French conquest of Algeria in 1830, a dual legal system had been established, creating a profound distinction between European settlers who enjoyed full French citizenship and indigenous Muslim Algerians, who were classified as *indigènes* (natives) and subjected to a separate legal regime (Manceron, 2003).

This distinction was not merely administrative; it functioned as a mechanism of political control and economic exploitation. Indigenous Algerians were governed by the *Code de l'Indigénat*, formally

enacted in 1881, which remained influential in practice until 1944. Under this exceptional legal framework, Algerians were deprived of fundamental political and civil rights and were treated as French subjects rather than citizens. Although the Ordinance of March 7, 1944, officially abolished the *Code de l'Indigénat* and granted limited citizenship rights to a restricted segment of the Algerian population, colonial institutions and administrative practices continued to operate according to principles of racial hierarchy and segregation.

From the perspective of contemporary international legal scholarship, this system may be characterized as a form of institutionalized racial discrimination. Rather than reflecting isolated acts of prejudice, it constituted a comprehensive legal structure designed to legitimize inequality and maintain colonial domination. As Manceron (2003) argues, the *Code de l'Indigénat* was more than an exceptional legal instrument; it embodied a colonial ideology that systematically constructed the colonized population as inherently inferior and therefore subject to domination.

Moreover, the colonial judicial system itself reflected this discriminatory structure. European settlers and indigenous Algerians were often subject to different legal procedures and judicial mechanisms, resulting in unequal access to justice and undermining even the legal guarantees recognized within metropolitan French law. Consequently, the colonial legal order created conditions in which large-scale violence against Algerians could be exercised with limited legal accountability.

It is therefore essential to understand the May 8 massacres not as isolated incidents but as manifestations of a broader colonial system that normalized political exclusion, racial discrimination, and state violence.

#### *The Course of Events: Official Narratives and Historical Reality*

On the morning of May 8, 1945, Algerians participated in peaceful demonstrations in Sétif and several other cities. These demonstrations coincided with celebrations marking the Allied victory in Europe and were intended to remind France of its promises regarding self-determination and political reform. Participants carried Algerian flags and displayed slogans demanding independence and the release of nationalist leader Messali Hadj.

According to numerous historical accounts, violence erupted when a French police officer shot Bouzid Saâl, a young demonstrator who refused to lower the Algerian flag. This incident rapidly escalated into widespread unrest and served as the catalyst for a large-scale campaign of repression.

However, the demonstrations themselves did not emerge spontaneously. They were organized within the broader framework of the Algerian nationalist movement, particularly by the Algerian People's Party (*Parti du Peuple Algérien*) and the Friends of the Manifesto and Liberty movement (*Amis du Manifeste et de la Liberté*). These organizations had intensified their political demands during the final years of World War II, drawing upon international discussions concerning self-determination and anti-colonial reform. The demonstrations therefore represented a coordinated political expression rather than the disorderly uprising portrayed in official French accounts.

The French response assumed the character of collective punishment. Military forces under the command of General Raymond Duval, together with naval and air units, were deployed against civilian populations. Armed settler militias, organized under so-called "self-defense committees," actively participated in the repression. Historical records document widespread extrajudicial executions, the destruction of villages, arbitrary arrests, and efforts to conceal evidence of atrocities, including the disposal of bodies in lime kilns near Guelma (Peyroulou, 2009).

An examination of competing historical narratives reveals a persistent effort within official French discourse to minimize the organized political character of the demonstrations and portray the events as spontaneous disturbances requiring restoration of public order. Such representations have been criticized by historians as attempts to justify disproportionate repression and to obscure the political and legal responsibility of the colonial administration.

### *Casualty Figures and Historiographical Debates*

One of the most controversial aspects of the May 8 massacres concerns the number of victims. Estimates vary significantly depending on the source consulted, reflecting broader political and historiographical disputes concerning memory, accountability, and recognition.

Official French reports, including the findings of the Tubert Commission, estimated the number of Algerian victims at approximately 1,500. Other French historians have proposed figures ranging from 3,000 to 8,000 deaths. By contrast, Algerian national sources and organizations have consistently maintained that the death toll exceeded 45,000 victims.

Research conducted by historian Jean-Pierre Peyroulou (2009), particularly regarding the events in Guelma, suggests that the violence exhibited characteristics of systematic persecution carried out by settler militias with the support or acquiescence of colonial authorities. British intelligence reports produced during the period also estimated approximately 14,000 deaths and 6,000 injuries, substantially exceeding official French figures.

The divergence among casualty estimates is not merely a technical disagreement among historians. Rather, it reflects a broader struggle over historical memory and political responsibility. Lower estimates tend to support interpretations of the events as localized disturbances met with excessive but limited force, whereas higher estimates reinforce arguments that the repression constituted a systematic campaign directed against a civilian population.

From a legal perspective, however, the precise number of victims does not fundamentally determine the nature of the crime. International criminal law focuses not only on quantitative factors but also on the systematic or widespread character of the attack and the existence of a deliberate policy targeting civilian populations. Consequently, even the most conservative estimates raise serious questions regarding the legality of the colonial response.

### *International Legal Characterization of the Massacres Under Pre-Nuremberg Customary International Law*

#### *Customary International Law as a Basis for Criminalization*

The central legal issue raised by the May 8 massacres concerns whether conduct that occurred prior to the adoption of the Nuremberg Charter may nevertheless be characterized as a crime against humanity. Addressing this question requires an examination of customary international law as an independent source of legal obligation.

Article 38 of the Statute of the International Court of Justice recognizes international custom as one of the principal sources of international law. Accordingly, the absence of a treaty provision explicitly defining crimes against humanity before August 1945 does not necessarily imply the absence of applicable legal norms.

A particularly significant source in this regard is the Martens Clause, first incorporated into the Hague Convention and later reaffirmed in subsequent humanitarian instruments. The clause provides that,

in situations not specifically regulated by treaty law, civilians and combatants remain under the protection of the principles of humanity and the dictates of public conscience (Saadallah, 2005).

The legal significance of the Martens Clause extends beyond its symbolic value. It serves as a normative mechanism for addressing gaps in positive law by recognizing broader principles of humanity as sources of legal protection. This interpretation was later affirmed by the International Court of Justice, which acknowledged the independent legal significance of the clause in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (International Court of Justice, 1996).

Viewed in this context, the Martens Clause provides a compelling legal foundation for arguing that large-scale and systematic attacks against civilian populations were already contrary to international law before the formal codification of crimes against humanity in the Nuremberg Charter.

### *Historical and Political Precedents*

Additional evidence supporting the customary status of crimes against humanity can be found in earlier international practice. In their joint declaration of May 24, 1915, France, Britain, and Russia condemned the Ottoman massacres of Armenians as "crimes against humanity and civilization" (Bassiouni, 1999). This declaration demonstrates that the concept was already present within international legal discourse decades before the end of the Second World War.

Similarly, the Commission on Responsibilities established at the Paris Peace Conference in 1919 recommended the prosecution of individuals responsible for atrocities committed during World War I. Although political considerations prevented the implementation of these recommendations, the discussions themselves reflected an emerging belief that certain acts violated fundamental principles of humanity irrespective of their codification in treaty law.

These developments indicate that the concept of crimes against humanity did not suddenly emerge in 1945. Rather, it evolved gradually through state practice, diplomatic declarations, and moral-legal principles that increasingly recognized the need to protect civilian populations from systematic violence.

Consequently, the Nuremberg Charter should be understood primarily as a codification and clarification of pre-existing norms rather than the creation of entirely new legal principles.

### *Application of the Elements of Crimes Against Humanity to the Events of May 8, 1945*

When the constituent elements of crimes against humanity, as later codified in Article 6(c) of the Nuremberg Charter and subsequently elaborated in Article 7 of the Rome Statute of the International Criminal Court, are applied to the events of May 8, 1945, a striking degree of correspondence emerges.

The material element (*actus reus*) of crimes against humanity encompasses acts such as murder, extermination, persecution, and other inhumane acts committed against civilian populations. Historical evidence concerning the repression in Sétif, Guelma, and Kherrata indicates the widespread killing of civilians, the destruction of villages, arbitrary arrests, and the persecution of Algerians on both political and ethnic grounds. These actions were not isolated incidents but formed part of a broader campaign directed against a civilian population perceived as threatening colonial authority.

Equally important is the contextual element requiring that the prohibited acts be committed as part of a widespread or systematic attack against civilians. Available historical records demonstrate that the violence extended across multiple cities and rural areas over a prolonged period. The participation of

military forces, police units, administrative authorities, and armed settler militias indicates a coordinated response rather than spontaneous acts of violence. The scale of operations, together with the deployment of aircraft, naval forces, and heavy weaponry against civilian communities, strongly suggests the existence of a systematic policy of repression.

The mental element (*mens rea*) also appears to be satisfied. Crimes against humanity require knowledge that the prohibited acts form part of a broader attack directed against civilians. The organization of the repression, the targeting of nationalist demonstrators, and the discriminatory treatment of Algerians as a collective group support the conclusion that the perpetrators acted with awareness of the broader context in which their actions occurred.

Furthermore, modern international criminal jurisprudence has consistently emphasized that widespread or systematic attacks against civilians need not occur during an international armed conflict in order to constitute crimes against humanity. What is decisive is the organized nature of the attack and the deliberate targeting of civilian populations. The events of May 1945 satisfy these criteria to a considerable extent.

Consequently, the characterization of the massacres as crimes against humanity cannot be dismissed as a purely retrospective or politically motivated interpretation. Rather, it is supported by legal principles that were already emerging within customary international law before the formal adoption of the Nuremberg Charter.

#### *France Between Nuremberg and Algeria: The Political Paradox*

Perhaps the most striking aspect of the May 1945 massacres lies in the historical paradox they reveal. At the very moment when France was participating in the construction of a new international legal order based on accountability for atrocities, its colonial authorities were engaged in acts that closely resemble the conduct later condemned at Nuremberg.

France was among the victorious Allied powers responsible for drafting and approving the London Charter of August 1945, which established the International Military Tribunal and provided the first formal definition of crimes against humanity. The Nuremberg trials subsequently affirmed that such crimes were punishable not merely because of the Charter itself but because they violated pre-existing principles of international law (Cassese, 2008).

This reasoning carries important implications for the legal assessment of colonial violence. If crimes against humanity were already prohibited under customary international law before the adoption of the Nuremberg Charter, then the same legal logic applied to Nazi crimes could also be applied to colonial atrocities committed during the same period.

Yet, while the principle of customary international law was invoked to justify the prosecution of Nazi leaders, similar arguments have rarely been accepted in relation to colonial crimes. This discrepancy has led many scholars to argue that international criminal law has historically been shaped by political considerations as much as by legal principles. The selective application of legal norms raises important questions regarding equality before international law and the consistency of global accountability mechanisms.

The French case illustrates this tension particularly clearly. On the one hand, France contributed to the development of international criminal justice and promoted the prosecution of crimes against humanity in Europe. On the other hand, it has been reluctant to recognize the legal implications of comparable acts committed within its colonial territories. The result is a profound contradiction between the universalist ideals proclaimed after World War II and the realities of colonial governance.

From a broader perspective, this paradox highlights the enduring influence of colonial legacies on international law. It demonstrates that legal concepts are not applied in a political vacuum but are often shaped by power relations, historical narratives, and competing interpretations of justice. The reluctance to extend the same standards of accountability to colonial violence that were applied to European atrocities reflects a persistent asymmetry in the international legal order.

Therefore, the debate surrounding the May 8, 1945 massacres is not solely a question of historical interpretation. It also concerns the credibility of international criminal law itself. If the principles established at Nuremberg are genuinely universal, then their application cannot be restricted to certain victims, regions, or historical contexts. A consistent application of these principles requires confronting colonial violence with the same legal and moral standards applied to other crimes against humanity.

## Section II. The Principle of Non-Retroactivity in International Criminal Law and the Prospects for Accountability

### The Meaning and Limits of the Principle of Non-Retroactivity in International Criminal Law

#### The Three Dimensions of the Principle

The principle of legality, commonly expressed through the maxim *nullum crimen, nulla poena sine lege* (“no crime and no punishment without prior law”), constitutes one of the foundational principles of modern criminal justice. It is recognized in major international human rights instruments, including Article 11 of the Universal Declaration of Human Rights and Article 15 of the International Covenant on Civil and Political Rights.

At its core, the principle prohibits the retroactive application of criminal law. Individuals may not be prosecuted or punished for conduct that was not criminalized at the time it was committed. This safeguard serves several important functions.

First, it fulfills a warning function by ensuring that individuals have notice of the legal consequences of their actions. Second, it serves a political function by protecting individuals against arbitrary exercises of state power. Third, it performs a procedural function by reinforcing the rule of law and legal certainty within criminal justice systems.

In domestic legal systems, these objectives are generally uncontroversial. However, their application becomes significantly more complex in the context of international criminal law, particularly when addressing mass atrocities that shock the conscience of humanity but may not have been explicitly codified at the time of their commission.

#### *Critiquing the Principle in the Colonial Context*

The principle of non-retroactivity occupied a central position during the Nuremberg proceedings. Defense counsel for Nazi leaders argued that crimes against humanity and crimes against peace had not been formally defined under international law when the alleged acts were committed. Consequently, they contended that prosecution would violate the principle of legality.

The International Military Tribunal rejected this argument. It distinguished between written law and customary international law, emphasizing that certain acts were so fundamentally contrary to the principles of humanity that their criminal nature could not reasonably be disputed. The Tribunal concluded that the absence of a specific treaty provision did not negate the existence of broader legal norms prohibiting such conduct (Cassese, 2008).

This reasoning has had a lasting influence on the development of international criminal jurisprudence. Later tribunals increasingly recognized that customary international law may establish criminal responsibility independently of treaty obligations. As a result, international courts have often focused not solely on whether a rule was formally codified but also on whether the conduct in question was already prohibited under customary norms recognized by the international community.

The implications for the May 8, 1945 massacres are substantial. If customary international law was sufficient to overcome objections based on non-retroactivity in the prosecution of Nazi crimes, then a similar approach could potentially be adopted when evaluating colonial atrocities committed during the same historical period.

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### *The Political Critique: Double Standards in the Application of Non-Retroactivity*

From the perspective of contemporary international criminal law scholarship, the first applications of the principle of legality at the international level were highly controversial. Many legal scholars acknowledge that the Nuremberg model was not based exclusively on a strict positivist interpretation of the law. Rather, it reflected a pragmatic and moral response to unprecedented atrocities that demanded accountability.

Antonio Cassese (2008) argues that the legal reasoning employed at Nuremberg was shaped by the exceptional nature of the crimes under consideration. The Tribunal relied on customary international law and general principles of humanity to avoid allowing perpetrators of mass atrocities to escape punishment merely because of the absence of explicit treaty provisions. In this sense, the Nuremberg approach prioritized substantive justice over a rigid formalistic interpretation of legality.

This reasoning is particularly relevant to the debate surrounding the May 8, 1945 massacres. The same legal arguments used to justify accountability for Nazi crimes could be invoked in relation to colonial crimes committed during the same historical period. Nevertheless, international and domestic responses to these two categories of crimes have differed considerably.

A critical examination of this discrepancy reveals a pattern of selective application. Western states, including France, accepted the flexibility of the non-retroactivity principle when prosecuting defeated enemies after World War II. However, they have often insisted upon a strict and literal interpretation of the same principle when confronted with demands for accountability concerning their own colonial conduct.

Such inconsistency raises fundamental questions about equality before international law. If international criminal norms are genuinely universal, their application should not depend upon the identity of the perpetrators, the nationality of the victims, or the political interests of powerful states.

Moreover, crimes against humanity are generally regarded as violations of *jus cogens* norms—peremptory rules of international law from which no derogation is permitted. These norms occupy the highest position within the international legal hierarchy because they protect fundamental values shared by the international community as a whole. From this perspective, arguments based solely on technical issues of codification appear increasingly difficult to reconcile with the gravity of the underlying conduct.

The debate over the May 8 massacres therefore extends beyond legal doctrine. It reflects broader tensions concerning historical memory, post-colonial justice, and the continuing influence of power relations within the international legal system. The selective invocation of non-retroactivity may be interpreted not merely as a legal argument but as a political strategy aimed at limiting responsibility for colonial violence.

To illustrate this contrast, it is useful to compare the treatment of non-retroactivity in the context of Nuremberg and the May 1945 massacres.

**Table 1**

*Comparative application of the Principle of Non-Retroactivity*

Criterion	Nuremberg Trials (1945–1946)	May 8, 1945 Massacres
State concerned	Nazi Germany	France
Legal objection	Absence of explicit prior codification	Same argument invoked
Judicial response	Objection rejected based on customary international law	No international judicial determination
French position	Supported rejection of the objection	Relies on the objection
Geographic context	Europe	Colonial Algeria
Principal victims	European populations	Colonized Algerians

This comparison demonstrates how identical legal arguments may produce different outcomes depending on political context. The principle itself remains legally valid; however, its application has not always been consistent.

Transitional Justice and State Responsibility as Alternative Paths to Accountability  
State Responsibility. A Legal and Political Avenue

Even if practical obstacles limit the possibility of criminal prosecution—whether because perpetrators are deceased or because evidentiary difficulties have increased over time—the issue of state responsibility remains distinct from individual criminal liability. Under international law, states possess a continuing legal personality that survives changes in government and the passage of time. Consequently, international responsibility for wrongful acts does not automatically disappear because decades have elapsed since the events occurred. The International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001) establish that every internationally wrongful act attributable to a state entails international responsibility. This principle applies regardless of whether individual perpetrators can still be prosecuted. Particularly relevant is the concept of a continuing wrongful act. A wrongful situation may persist when a state continues to deny responsibility, refuses access to historical records, or fails to provide adequate remedies to victims and their descendants. Under this interpretation, the legal consequences of past violations may continue into the present.

In the case of the May 8 massacres, demands for official recognition, access to archives, public acknowledgment, and reparations may therefore be framed not merely as historical claims but as contemporary legal issues arising from an ongoing failure to address past wrongdoing. This approach offers an important alternative to criminal prosecution. Rather than focusing exclusively on punishment, it emphasizes recognition, accountability, and the restoration of historical justice.

### *Transitional Justice as a Framework for Historical Redress*

Transitional justice provides another promising framework for addressing the legacy of colonial violence. Unlike traditional criminal justice, which focuses primarily on prosecution and punishment, transitional justice seeks to confront historical injustices through a broader range of mechanisms.

According to Teitel (2000), transitional justice is founded upon four interconnected pillars:

1. The right to truth
2. The right to justice
3. The right to reparations
4. Guarantees of non-repetition

These principles aim not only to acknowledge victims' suffering but also to transform the social and political conditions that enabled abuses to occur.

Applied to the May 8 massacres, the right to truth would require unrestricted access to colonial archives and a comprehensive historical investigation. The right to justice would involve official acknowledgment of responsibility and, where possible, legal accountability. The right to reparations could include symbolic, educational, and material measures designed to address the consequences of the massacres. Finally, guarantees of non-repetition would require educational reforms and public remembrance initiatives to ensure that colonial violence is neither forgotten nor repeated.

**Table 2***Transitional Justice Mechanisms and their application to the May 8, 1945 massacres*

Pillar	Definition	Application to the Franco-Algerian Context
Right to Truth	Disclosure of historical facts	Full access to colonial archives
Right to Justice	Accountability and recognition	Official acknowledgment of responsibility
Right to Reparations	Material and symbolic compensation	Compensation programs and memorial initiatives
Guarantees of Non-Repetition	Institutional and educational reforms	Inclusion of colonial history in public education

From the standpoint of international human rights law, victims possess a right to an effective remedy. This principle is recognized in Article 8 of the Universal Declaration of Human Rights and Article 2(3) of the International Covenant on Civil and Political Rights. The United Nations Human Rights Committee has repeatedly emphasized that states must provide effective remedies for serious human rights violations, including those whose consequences continue to affect contemporary generations.

For this reason, transitional justice may represent the most realistic and constructive path toward addressing the legacy of the May 8 massacres. While criminal prosecutions may no longer be feasible, acknowledgment, truth-seeking, reparations, and institutional reform remain viable mechanisms for promoting historical justice and reconciliation.

#### *International Precedents and Lessons for the Algerian Case*

Several international examples demonstrate that acknowledgment and reparative measures concerning historical injustices are both legally and politically possible.

In 2021, Germany officially recognized the atrocities committed against the Herero and Nama peoples in present-day Namibia between 1904 and 1908 as genocide and pledged substantial financial support as part of a reconciliation process.

Similarly, in 2013, the United Kingdom formally apologized to Kenyan victims of torture during the Mau Mau uprising and agreed to provide compensation following extensive litigation before British courts.

Canada has also recognized the severe harms caused by its residential school system and has implemented compensation and reconciliation measures aimed at Indigenous communities.

These examples suggest that historical distance does not necessarily preclude acknowledgment or redress. Rather, they demonstrate that states can address past injustices through a combination of political recognition, public apology, and reparative policies.

## **Conclusion**

### *Findings and Recommendations Findings*

The analysis conducted in this study demonstrates that the legal and political debate surrounding the May 8, 1945 massacres extends far beyond historical interpretation. Rather, it concerns fundamental questions of accountability, legal consistency, and the universality of international criminal law.

### *1. Legal Finding*

From a substantive legal perspective, the May 8, 1945 massacres satisfy the principal constitutive elements of crimes against humanity as recognized in customary international law. The systematic and widespread nature of the violence, the deliberate targeting of civilian populations, and the discriminatory character of the repression collectively support such characterization. Furthermore, the existence of pre-Nuremberg legal principles, including the Martens Clause and earlier international condemnations of mass atrocities, undermines arguments that no legal basis for criminalization existed before August 1945.

### *2. Political Finding*

The strict reliance on the principle of non-retroactivity to shield colonial crimes from legal scrutiny reflects a selective application of international law. The same international community that accepted the use of customary international law to prosecute Nazi leaders at Nuremberg has generally been reluctant to apply similar reasoning to colonial atrocities. This inconsistency raises concerns regarding double standards in the administration of international justice.

### *3. Historical Finding*

A striking historical paradox emerges from the chronology of events. France participated in the establishment of the Nuremberg system and actively promoted international accountability for crimes against humanity while simultaneously facing allegations of having committed comparable acts in its colonial territories only months earlier. This contradiction continues to shape contemporary debates concerning historical responsibility and collective memory.

### *4. Procedural Legal Finding*

A distinction must be drawn between individual criminal responsibility and state responsibility. Although the passage of time and the death of alleged perpetrators may hinder criminal prosecution, these factors do not extinguish the international responsibility of the state. Under international law, states remain accountable for internationally wrongful acts, particularly where acknowledgment, truth-seeking, and reparative measures remain absent.

### *5. Practical Finding*

Transitional justice mechanisms provide the most realistic framework for addressing the legacy of the May 8 massacres. Truth commissions, archival transparency, public acknowledgment, symbolic recognition, and reparations can contribute to historical justice even when criminal proceedings are no longer feasible.

### *6. Symbolic and Political Finding*

Statements acknowledging the injustices of colonialism, while politically significant, remain insufficient in the absence of concrete legal and institutional measures. Genuine reconciliation requires formal recognition, access to historical records, meaningful reparative initiatives, and a commitment to preserving historical memory.

Overall, the findings support the conclusion that the May 8, 1945 massacres cannot be reduced to a legitimate exercise of colonial authority or a mere public-order operation. Rather, they represent a serious episode of mass violence that continues to raise unresolved legal, political, and moral questions within both Algerian and international contexts.

## *Recommendations*

### *1. International Legal Recommendation*

The Algerian state should consider pursuing avenues within the United Nations system, including support for a request to the International Court of Justice for an advisory opinion concerning the legal characterization of colonial crimes and the applicability of principles governing historical accountability.

### *2. Institutional Recommendation*

A joint independent commission on memory, truth, and historical documentation should be established. Such a body should include legal scholars, historians, archivists, and representatives of civil society from both Algeria and France and should be granted unrestricted access to relevant archival materials.

### *3. Parliamentary and Diplomatic Recommendation*

Parliamentary diplomacy and international advocacy should be strengthened in order to encourage formal recognition of the May 8 massacres and to promote dialogue concerning historical responsibility and reconciliation.

### *4. Academic Recommendation*

Researchers should continue documenting survivor testimonies, collecting archival evidence, and conducting interdisciplinary studies in accordance with international scholarly and evidentiary standards. Such efforts would contribute to preserving historical memory and strengthening future legal and historical assessments.

### *5. Human Rights Recommendation*

International human rights institutions should adopt a more comprehensive approach to transitional justice in post-colonial contexts. Greater attention should be devoted to historical colonial violence and its continuing consequences for affected societies.

### *6. Educational Recommendation*

Educational systems should incorporate balanced and evidence-based accounts of colonial history. Increased awareness of historical injustices can promote mutual understanding and contribute to the prevention of future violations.

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