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# **THE ROLE OF INTERNATIONAL CRIMINAL LAW IN PROSECUTING WAR CRIMES AND GENOCIDE**

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## **Abstract:**

International criminal law plays a crucial role in addressing the gravest offenses against humanity, namely war crimes and genocide. This research paper aims to analyse the role of international criminal law in prosecuting individuals responsible for committing these atrocities. It explores the historical development of this branch of law, from the Nuremberg and Tokyo trials to the establishment of the International Criminal Court (ICC) and other relevant tribunals and courts, and the challenges faced in prosecuting war crimes and genocide cases. The paper analyses the legal framework and definitions of war crimes and genocide, emphasizing the importance of enforcing accountability for these grave offenses against humanity. Furthermore, it explores the challenges faced in prosecuting such cases, including evidence collection and witness protection, and highlights the significance of national courts and universal jurisdiction in complementing international efforts. Through case studies and a focus on deterrence and prevention, this paper underscores the crucial role of international criminal law in fostering peace, justice, and deterrence against future atrocities on a global scale.

**Key Words:** International criminal law (ICL), genocide, war crimes, humanity, peace, justice, rights, protection, International criminal court (ICC), Rome statute.

## **Introduction:**

The world has witnessed numerous instances of war crimes and genocide throughout history. These heinous acts not only inflict immense suffering on victims but also pose a significant threat to global peace and security. International criminal law has evolved to address these atrocities and

hold perpetrators accountable on the international stage. This research paper examines the evolution and significance of international criminal law in prosecuting war crimes and genocide. War crimes and genocide stand as some of the most heinous and reprehensible acts committed by individuals during times of conflict. These egregious offenses inflict unimaginable suffering upon innocent civilians, violate fundamental human rights, and disrupt global peace and security. In response to these grave atrocities, the international community has developed a robust legal framework known as international criminal law, which seeks to prosecute and hold accountable those responsible for perpetrating such crimes.

### **War Crimes**

A war crime is a violation of the laws of war that gives rise to individual criminal responsibility for actions by combatants in action, such as intentionally killing civilians or intentionally killing prisoners of war, torture, taking hostages, unnecessarily destroying civilian property, deception by perfidy, wartime sexual violence, pillaging, and for any individual that is part of the command structure who orders any attempt to committing mass killings including genocide or ethnic cleansing, the granting of no quarter despite surrender, the conscription of children in the military and flouting the legal distinctions of proportionality and military necessity.<sup>1</sup> The concept of war crimes developed particularly at the end of the 19th century and beginning of the 20th century, when international humanitarian law, also known as the law of armed conflict, was codified.<sup>2</sup>

### **Genocide**

The crime of intentionally destroying part or all of a national, ethnic, racial, or religious group, by killing people or by other methods.<sup>3</sup>

This research paper aims to delve into the multifaceted role of international criminal law in prosecuting war crimes and genocide. By analysing the historical development, legal framework, and challenges faced, this study seeks to shed light on the critical importance of holding perpetrators accountable for their actions. Through case studies and an exploration of the role of truth and reconciliation commissions, this paper will emphasize the significance of enforcing

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<sup>1</sup> War Crime, [https://en.wikipedia.org/wiki/War\\_crime](https://en.wikipedia.org/wiki/War_crime) (last visited Sept. 6, 2023).

<sup>2</sup> War Crimes, <https://www.un.org/en/genocideprevention/war-crimes.shtml> (last visited Sept. 6, 2023).

<sup>3</sup> GENOCIDE, <https://dictionary.cambridge.org/dictionary/english/genocide> (last visited Sept 9, 2023).

accountability for past atrocities as a means to deter future offenses and foster a culture of respect for human rights and the rule of law on a global scale.

## **Historical Development of International Criminal Law:**

### **Pre-World War II Era**

- The origins of ICL can be traced back to ancient civilizations, but its modern development gained momentum after World War I with the Treaty of Versailles and the establishment of the first international criminal tribunal in Leipzig.
- The Nuremberg and Tokyo Trials after World War II marked a watershed moment in ICL, leading to the prosecution of major war criminals and the establishment of the Nuremberg Principles.

### **Post-World War II Era**

- The Genocide Convention (1948) introduced the concept of genocide as an international crime. The Nuremberg Principles were enshrined in the Charter of the International Military Tribunal (IMT), paving the way for the establishment of the International Criminal Court (ICC).

The historical evolution of international criminal law can be traced back to the aftermath of World War II, when the Nuremberg and Tokyo trials marked the first significant attempts to establish accountability for war crimes and crimes against humanity. This momentous step paved the way for the creation of international tribunals and courts aimed at addressing these violations of international law. Over the years, international criminal law has evolved and expanded to encompass genocide and other forms of mass atrocities, signifying the international community's commitment to combating impunity and promoting justice.

International criminal law (ICL) is a body of public international law designed to prohibit certain categories of conduct commonly viewed as serious atrocities and to make perpetrators of such conduct criminally accountable for their perpetration. The core crimes under international law are genocide, war crimes, crimes against humanity, and the crime of aggression.<sup>4</sup> The core principles of international criminal law are enshrined in various international conventions, treaties, and agreements, which define and prohibit war crimes, genocide, and crimes against humanity.

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<sup>4</sup> International Criminal Law, [https://en.wikipedia.org/wiki/International\\_criminal\\_law](https://en.wikipedia.org/wiki/International_criminal_law) (last visited Sept. 8, 2023).

Key among these is the 1949 Geneva Conventions, which established rules governing the treatment of victims in times of armed conflict, and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which specifically addresses the heinous act of genocide. A cornerstone in the global fight against impunity is the International Criminal Court (ICC), established in 2002 through the Rome Statute. As a permanent international tribunal, the ICC serves as a central institution for prosecuting individuals accused of committing war crimes, genocide, crimes against humanity, and the crime of aggression. The ICC's jurisdiction extends to cases within the territories of its member states or when the accused is a national of a member state, providing a crucial mechanism to address crimes where national courts may be unable or unwilling to act.

## **Principles of International Criminal Law**

### Individual Criminal Responsibility

- ICL establishes the principle that individuals, not just states, can be held criminally responsible for their actions during armed conflicts or genocidal acts.
- The development of the doctrine of "command responsibility" ensures accountability for military and political leaders who fail to prevent or punish war crimes.

### Prohibition of Impunity

- Impunity is challenged through ICL by ensuring that perpetrators of war crimes and genocide cannot evade prosecution, regardless of their rank or position.
- The principle of "no safe haven" seeks to prevent fugitive suspects from escaping justice.

## **Legal Framework and Definitions:**

This section outlines the legal framework of international criminal law concerning war crimes and genocide. It examines the key international conventions, treaties, and agreements that define and proscribe these crimes, including the 1949 Geneva Conventions and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

International criminal law plays a crucial role in prosecuting war crimes and genocide committed during armed conflicts or other situations of violence. The legal framework for prosecuting these crimes is based on a combination of international treaties, customary international law, and the

establishment of international criminal courts and tribunals. Two key instruments that form the backbone of this framework are the Rome Statute and the Genocide Convention.

## **Rome Statute of the International Criminal Court (ICC):**

The Rome Statute is the treaty that established the International Criminal Court (ICC), which is a permanent international court tasked with prosecuting individuals for the most serious international crimes. It was adopted on July 17, 1998, and entered into force on July 1, 2002.<sup>5</sup> The Rome Statute defines four main crimes falling under the jurisdiction of the ICC:

- a. Genocide: **Article 6<sup>6</sup>** of the Rome Statute defines genocide as acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. These acts include killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting conditions of life calculated to bring about the group's physical destruction, imposing measures intended to prevent births within the group, or forcibly transferring children from the group to another group.<sup>7</sup>
- b. Crimes against humanity: **Article 7<sup>8</sup>** of the Rome Statute defines crimes against humanity as a widespread or systematic attack directed against any civilian population.<sup>9</sup> Such attacks can include murder, extermination, enslavement, enforced disappearance, torture, sexual violence, and other inhumane acts of a similar character, committed as part of a widespread or systematic attack against civilians.
- c. War crimes: **Article 8<sup>10</sup>** of the Rome Statute enumerates a comprehensive list of war crimes, including grave breaches of the Geneva Conventions, such as wilful killing, torture, inhumane treatment, and unlawful deportation or transfer of civilians during international armed conflicts. It also covers serious violations of common Article 3 to the Geneva Conventions, applicable to non-international armed conflicts.

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<sup>5</sup> Dr. Ibe Okegbe Ifeakandu & Dr. Charles Emeka Ochem, *Examination of the Crime of Genocide under the Rome*, 105, Journal of Law, Policy and Globalization, 1 (2021),

<https://www.iiste.org/Journals/index.php/JLPG/article/download/55412/57228>.

<sup>6</sup> Rome Statute of the International Criminal Court, 1998, art. 6, No. 38544, 1998.

<sup>7</sup> Rome Statute of International Criminal Court, 1998, [https://legal.un.org/icc/statute/99\\_corr/cstatute.htm](https://legal.un.org/icc/statute/99_corr/cstatute.htm) (last visited Sept. 11, 2023).

<sup>8</sup> Rome Statute of the International Criminal Court, 1998, art. 7, No. 38544, 1998.

<sup>9</sup> Rome Statute of International Criminal Court, 1998, [https://legal.un.org/icc/statute/99\\_corr/cstatute.htm](https://legal.un.org/icc/statute/99_corr/cstatute.htm) (last visited Sept. 13, 2023).

<sup>10</sup> Rome Statute of the International Criminal Court, 1998, art. 8, No. 38544, 1998.

- d. Aggression: *Article 8 bis<sup>11</sup> of the Rome Statute* defines the crime of aggression, but it requires an amendment to the Statute to enter into force and to define the conditions under which the ICC can exercise jurisdiction over this crime.

### Genocide Convention:

The Convention on the Prevention and Punishment of the Crime of Genocide, adopted on December 9, 1948, and entered into force on January 12, 1951, is one of the earliest and most significant human rights treaties. It defines genocide and establishes the obligation of states to prevent and punish acts of genocide. The Genocide Convention defines genocide as acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, including killing members of the group, causing serious bodily or mental harm to members of the group, imposing measures intended to prevent births within the group, or forcibly transferring children of the group to another group.<sup>12</sup>

## **The Role of the International Criminal Court (ICC):**

The International Criminal Court (ICC) serves as a central institution for prosecuting individuals accused of war crimes and genocide. It was created in 1998, and it became operational in 2002. This section discusses the jurisdiction, structure, and procedures of the ICC, and its complementarity principle, which emphasizes the role of national courts in prosecuting these crimes. The (ICC) plays a central role in prosecuting war crimes and genocide, as well as other serious international crimes, on a global scale. The ICC is the first permanent international criminal tribunal established to hold individuals accountable for the gravest crimes of concern to the international community. Its mandate is to ensure that perpetrators of such crimes do not go unpunished and to contribute to preventing future atrocities. Here are the key aspects of the ICC's role in prosecuting war crimes and genocide:

- **Jurisdiction:**

The ICC has jurisdiction over four main types of crimes: genocide, crimes against humanity, war crimes, and the crime of aggression (subject to certain conditions). The court can exercise its jurisdiction in two ways:

- a. **State Party Referrals:** Member states of the ICC, referred to as "State Parties," can submit

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<sup>11</sup> Inserted by resolution RC/Res.6 of 11 June 2010.

<sup>12</sup> Supra note 6

cases to the court for investigation and prosecution if the crimes were committed on their territories or by their nationals.

- b. United Nations Security Council Referrals: The UN Security Council, acting under Chapter VII of the UN Charter, can refer situations of crimes to the ICC even if the responsible state is not a party to the Rome Statute (the treaty that established the ICC).

- Complementarity Principle:

*Article 17<sup>13</sup> of Rome Statute* allows ICC to operate under the principle of complementarity, which means that it can only intervene when national courts are unwilling or unable to genuinely investigate and prosecute the crimes within their jurisdictions. This principle emphasizes the role of national legal systems in addressing international crimes.

The ICC's role in prosecuting war crimes and genocide is significant because it represents the international community's commitment to justice and accountability for the most serious crimes that deeply affect humanity. However, the effectiveness of the ICC's work can be influenced by challenges such as limited resources, political considerations, and the cooperation of states in apprehending suspects and enforcing arrest warrants. Infact, the ICC has no police force of its own to arrest suspects. Instead, it relies on cooperation from member states to arrest and surrender suspects to the court. This cooperation is essential for the ICC to be effective in bringing perpetrators to justice.

In addition to the ICC, other international and hybrid tribunals have been established to prosecute war crimes and genocide committed in specific conflicts or regions, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Extraordinary Chambers in the Courts of Cambodia (ECCC).

## **Challenges in Prosecuting War Crimes and Genocide:**

This section explores the various challenges faced in prosecuting war crimes and genocide cases. These challenges may include the difficulties in collecting evidence, ensuring witness protection, dealing with non-cooperative states, and addressing the issue of immunity for high-ranking

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<sup>13</sup> Rome Statute of the International Criminal Court, 1998, art. 17, No. 38544, 1998.

officials. The ICC is currently facing significant challenges which may put the court's legitimacy into question. These challenges include a weak record of prosecutions, discord among the court's judges, and a difficult relationship with the world's great powers, such as Russia and the United States.<sup>14</sup> In many cases, the perpetrators of war crimes and genocide may have fled the scene or gone into hiding, making it difficult to locate and apprehend them. Some perpetrators of war crimes and genocide may enjoy immunity from prosecution due to their position or political connections, and addressing this impunity can be difficult. Addressing these challenges requires international cooperation, the establishment of credible and independent judicial systems, and ongoing efforts to strengthen accountability mechanisms to ensure that those responsible for war crimes and genocide are brought to justice.

## **The Role of Truth and Reconciliation Commissions:**

This section discusses the complementary role of Truth and Reconciliation Commissions (TRCs) in addressing the aftermath of war crimes and genocide. TRCs aim to promote healing, reconciliation, and social cohesion in societies torn apart by these atrocities. While TRCs themselves do not have the power to prosecute or impose criminal penalties, they can recommend legal and policy reforms and submit cases to the relevant authorities for further investigation and potential prosecution. The information gathered during the truth-seeking process can contribute to accountability efforts. It is important to note that the effectiveness of TRCs can vary depending on the specific context, the level of cooperation from authorities, and the willingness of the society to engage in the reconciliation process. While TRCs are not a panacea, they can be a crucial step towards addressing the aftermath of conflict and promoting a more just and peaceful society.

### **Case Studies**

#### 1. The ICC's Prosecution of Omar al-Bashir

- Bashir was an ex-President of Sudan, accused of serious crimes in a conflict that broke out in Darfur in 2003 and led to the deaths of 300,000.<sup>15</sup>
- This case exemplifies the challenges of prosecuting a sitting head of state for genocide and war crimes.

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<sup>14</sup> News24, <https://www.news24.com/news24/africa/news/putin-demands-more-exports-to-be-directed-to-africa-under-new-black-sea-deal-20230322> (last visited Sept. 15, 2023).

<sup>15</sup> BBC, <https://www.bbc.com/news/world-africa-51462613> (last visited Sept. 17, 2023).

- Despite an arrest warrant issued by the ICC, Omar al-Bashir remained in power for years, evading arrest.

## 2. The ICTY's Prosecution of Ratko Mladić

- Ratko Mladić, a Bosnian Serb military leader, faced prosecution for his role in the Bosnian War in 1995.
- His arrest and trial demonstrated the potential of international tribunals in holding high-ranking military figures accountable.

## **Conclusion:**

In conclusion, the research paper highlights the vital role of international criminal law in prosecuting war crimes and genocide. The establishment of international tribunals and the functioning of the ICC have contributed significantly to holding perpetrators accountable and advancing justice and peace. However, challenges remain, and continuous efforts are needed to ensure that no one is above the law when it comes to the gravest offenses against humanity. International cooperation and the commitment of states to enforce accountability are crucial in this ongoing endeavour. Despite the remarkable progress made in developing international criminal law, challenges persist in prosecuting war crimes and genocide effectively. Obtaining credible evidence and ensuring the safety of witnesses can be particularly complex in conflict zones or areas under the control of perpetrators. Moreover, the issue of immunity for high-ranking officials and the reluctance of some states to cooperate with international tribunals add to the complexity of these cases. It is important to note that while international criminal law provides a framework for prosecuting these crimes, the effective enforcement of international justice relies on the cooperation of states and their commitment to bringing perpetrators to justice. Some states may also exercise universal jurisdiction, allowing them to prosecute these crimes even if they were not committed on their territory or by their nationals. Ultimately, the pursuit of justice through international criminal law stands as an essential pillar in the quest for a more just, peaceful, and compassionate world.

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