
WAR CRIMES AND ICC PROSECUTION OF WAR CRIMES IN DARFUR, LIBYA AND UKRAINE

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ABSTRACT

War crimes represent some of the most egregious violations of international humanitarian law (IHL), committed during armed conflicts against combatants and civilians. The term "war crimes" is broadly defined as serious breaches of the laws and customs of war, which include acts such as deliberate attacks on civilians, the use of prohibited weapons, torture, and the execution of prisoners of war. The legal framework governing war crimes is primarily enshrined in the Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as in customary international law. These legal instruments provide detailed regulations on the treatment of individuals during warfare and explicitly prohibit certain actions deemed inhumane and unnecessary for military operations. The Rome Statute of the International Criminal Court (ICC) further codifies war crimes and establishes a legal basis for prosecution at the international level.¹

International humanitarian law plays a crucial role in regulating armed conflicts by establishing legal norms that balance military necessity with humanitarian considerations. It seeks to limit the effects of armed conflict by protecting individuals who are not or are no longer participating in hostilities, such as civilians, wounded soldiers, and prisoners of war.² This body of law evolved from early customs and treaties, particularly the Hague Conventions of 1899 and 1907, which laid the foundation for modern rules on warfare.³ Over the past century, the development of international tribunals, such as the Nuremberg and Tokyo Tribunals following World War II, marked a turning point in the enforcement of war crimes laws by holding individuals accountable for their actions, rather than just states.⁴

The evolution of war crimes jurisprudence has been significantly influenced by the establishment of international tribunals and the growth of customary international law. The International Criminal Tribunal for the Former

¹ Rome Statute of the International Criminal Court, 17 July 1998, 2187 U.N.T.S. 90.

² Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

³ Hague Convention (IV) Respecting the Laws and Customs of War on Land, 18 October 1907, 205 C.T.S. 277.

⁴ The Nuremberg Trials: Charter of the International Military Tribunal, 8 August 1945, 82 U.N.T.S. 279.

Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were key developments in the 1990s, reinforcing the principle of individual criminal responsibility.⁵ These tribunals contributed to the legal recognition of crimes such as genocide, crimes against humanity, and violations of the laws of war. More recently, the ICC has taken center stage in war crimes prosecution, handling cases from conflicts in Sudan (Darfur), the Democratic Republic of Congo, and Ukraine. However, challenges remain in the enforcement of war crimes law, including issues of state sovereignty, political interference, and lack of universal jurisdiction.⁶

Despite significant progress in defining and prosecuting war crimes, violations continue to occur in contemporary armed conflicts, raising concerns about the effectiveness of existing legal frameworks. As international law continues to evolve, strengthening accountability mechanisms remains a crucial objective for ensuring justice and deterrence.⁷

LIST OF ABBREVIATIONS

- **AU** – African Union
- **CAR** – Central African Republic
- **DRC** – Democratic Republic of the Congo
- **ECCC** – Extraordinary Chambers in the Courts of Cambodia
- **EU** – European Union
- **HRW** – Human Rights Watch
- **ICC** – International Criminal Court
- **ICJ** – International Court of Justice
- **ICL** – International Criminal Law
- **ICTR** – International Criminal Tribunal for Rwanda
- **ICTY** – International Criminal Tribunal for the Former Yugoslavia
- **IHL** – International Humanitarian Law
- **IMT** – International Military Tribunal (Nuremberg Trials)
- **IMTFE** – International Military Tribunal for the Far East (Tokyo Trials)
- **NATO** – North Atlantic Treaty Organization
- **NGO** – Non-Governmental Organization
- **POWs** – Prisoners of War
- **RTL** – Radio Télévision Libre des Mille Collines (Rwandan Genocide Propaganda Radio)
- **SCSL** – Special Court for Sierra Leone
- **UN** – United Nations
- **UNHRC** – United Nations Human Rights Council

⁵ U.N. Security Council Resolution 827 (1993), Establishing the International Criminal Tribunal for the Former Yugoslavia.

⁶ U.N. Security Council Resolution 955 (1994), Establishing the International Criminal Tribunal for Rwanda.

⁷ International Criminal Court, "Situation in Ukraine: ICC Prosecutor Statement," March 2022.

- **UNSC** – United Nations Security Council
- **UPR** – Universal Periodic Review
- **US** – United States
- **USSR** – Union of Soviet Socialist Republics
- **YPG** – People’s Protection Units (Syrian Kurdish Forces)

TABLE OF CASES

International Criminal Court (ICC) Cases

1. Prosecutor v. Omar al-Bashir, ICC-02/05-01/09 (2009, 2010)
2. Prosecutor v. Saif al-Islam Gaddafi, ICC-01/11-01/11 (2011)
3. Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06 (2019)
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22. Prosecutor v. Adolf Eichmann, Israeli Supreme Court (1961)
23. Prosecutor v. Augusto Pinochet, Spanish National Court (1998)
24. Democratic Republic of the Congo v. Belgium, ICJ (2002)

Research Objectives

The primary objective of this research is to analyze the legal framework governing war crimes under international humanitarian law (IHL) and assess the effectiveness of existing enforcement mechanisms. Despite the presence of comprehensive legal instruments, war crimes continue to occur, raising concerns about enforcement, political interference, and legal gaps. This research seeks to examine these challenges and propose recommendations for strengthening the prosecution of war crimes.

The specific objectives of this study are:

1. To examine the historical evolution of war crimes under international law – Understanding the development of war crimes jurisprudence through key legal instruments such as the Hague Conventions, Geneva Conventions, Nuremberg Trials, ICTY, ICTR, and the ICC.
2. To analyze the legal framework governing war crimes – A detailed examination of the Geneva Conventions (1949), Additional Protocols (1977), Rome Statute of the International Criminal Court (1998), and customary international law to understand the scope and application of war crimes laws.
3. To assess the effectiveness of international and domestic enforcement mechanisms – Evaluating the role of the International Criminal Court (ICC), ad hoc tribunals (ICTY, ICTR), hybrid courts, universal jurisdiction, and domestic courts in prosecuting war crimes.
4. To explore challenges in prosecuting war crimes – Identifying obstacles such as state sovereignty, lack of jurisdiction, political influence, limited cooperation from states, difficulties in evidence collection, and witness protection issues.

HISTORICAL EVOLUTION OF WAR CRIMES UNDER HUMANITARIAN LAW

1.1 The Hague Conventions (1899 and 1907)

The Hague Conventions of 1899 and 1907 were among the earliest international treaties aimed at regulating the conduct of war and establishing legal norms for armed conflicts. These conventions were convened in The Hague, Netherlands, with the primary objective of limiting the means and methods of warfare to reduce unnecessary suffering and destruction. They are considered foundational instruments in international humanitarian law (IHL), laying the groundwork for later treaties such as the Geneva Conventions of 1949 and the Rome Statute of the International Criminal Court (1998).⁸

Key Provisions Related to War Crimes

The Hague Conventions introduced specific restrictions on warfare, many of which are now recognized as customary international law. Key provisions include:

1. **Prohibition of Certain Weapons** – The 1899 Convention (Declaration IV,3) banned the use of expanding bullets (dum dum bullets) due to their excessive suffering effects. The 1907 Hague Convention (Convention IV, Article 23(e)) prohibited weapons that cause "superfluous injury or unnecessary suffering."⁹ This principle later influenced bans on chemical, biological, and cluster munitions in subsequent international treaties.
2. **Protection of Civilians and Non-Combatants** – The 1907 Hague Convention (Convention IV, Article 25) expressly forbade the deliberate targeting of civilians, stating that "the attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited."¹⁰ This provision introduced the principle of distinction, which remains central to international humanitarian law.
3. **Prohibition of Treachery and Perfidy** – Article 23(b) of the 1907 Hague Convention IV prohibited the killing or wounding of an enemy who had surrendered. Article 23(f)

⁸ Roberts, Adam, and Richard Guelff. *Documents on the Laws of War*. Oxford University Press, 2000.

⁹ Hague Convention (IV) Respecting the Laws and Customs of War on Land, 18 October 1907, 205 C.T.S. 277, Article 23(e).

¹⁰ Ibid, Article 25.

forbade the misuse of flags of truce, national flags, or military insignia of the enemy to deceive opponents, reinforcing the principle of honorable conduct in warfare.¹¹

4. Regulations on Occupied Territories – The Hague Regulations (1907, Articles 42–56) detailed the rights and obligations of an occupying power, including the prohibition of unnecessary destruction and the obligation to respect private property and civilian institutions.¹² These provisions influenced later war crimes prosecutions, particularly in cases involving the unlawful destruction of property and forced deportations.
5. Treatment of Prisoners of War (POWs) – The Hague Conventions laid the foundation for the humane treatment of prisoners of war, requiring that captives be treated with dignity, provided adequate food and shelter, and not subjected to violence or retaliation.¹³ These principles were later expanded in the Geneva Conventions of 1929 and 1949.

Impact on the Development of Humanitarian Law

The Hague Conventions significantly influenced the evolution of international humanitarian law, particularly in establishing legal principles that later shaped the Geneva Conventions and the Nuremberg Trials. The conventions introduced the fundamental principle that the right of belligerents to adopt means of injuring the enemy is not unlimited (1907 Hague Convention IV, Article 22).¹⁴ This principle remains central to modern rules of engagement and the laws of war.

Furthermore, the Hague Conventions laid the groundwork for individual criminal responsibility for war crimes. While the conventions themselves did not establish enforcement mechanisms, their principles were later invoked during the Nuremberg Trials (1945–46), where Nazi leaders were prosecuted for violations of the laws and customs of war. The Nuremberg Charter (Article 6(b)) referenced violations of The Hague Regulations, affirming their status as binding international law.¹⁵

The Hague Conventions also contributed to the development of the principle of command responsibility—the idea that military leaders could be held accountable for war crimes

¹¹ Ibid, Articles 23(b) and 23(f).

¹² Hague Regulations, 1907, Articles 42–56.

¹³ Hague Convention II, 1899, Chapter II: Treatment of Prisoners of War.

¹⁴ Hague Convention IV, 1907, Article 22.

¹⁵ Nuremberg Charter, Article 6(b), 1945.

committed by their subordinates. This concept later played a crucial role in post-World War II tribunals, as well as in contemporary cases before the International Criminal Court (ICC) and the International Criminal Tribunal for the Former Yugoslavia (ICTY).¹⁶

Despite their significance, the Hague Conventions had limitations. Their enforcement depended on state compliance, and no permanent international court existed at the time to prosecute war crimes. Many of the principles introduced by the Hague Conventions were not universally respected during World War I and II, leading to calls for stronger enforcement mechanisms. This gap was later addressed by the Geneva Conventions (1949) and the establishment of the ICC (2002).¹⁷

In conclusion, the Hague Conventions of 1899 and 1907 played a pivotal role in shaping international humanitarian law by establishing fundamental rules of warfare, many of which have become customary law. Their provisions on prohibited weapons, the treatment of civilians and prisoners of war, and the regulation of military occupation remain relevant today. The principles codified in these conventions continue to guide modern interpretations of war crimes and serve as a legal foundation for contemporary international criminal law.

1.2 The Geneva Conventions and Additional Protocols

The Geneva Conventions of 1949 and their Additional Protocols of 1977 form the cornerstone of modern international humanitarian law (IHL) and provide comprehensive legal protections for individuals affected by armed conflict. These treaties codify the laws of war, particularly regarding the treatment of civilians, prisoners of war, and combatants who are hors de combat (out of combat). They are universally recognized, with all 196 states being party to the Geneva Conventions, making them one of the most widely ratified treaties in history.¹⁸

The 1949 Conventions and Their Significance

The Geneva Conventions of 1949 were adopted in the aftermath of World War II, as the international community sought to prevent the recurrence of atrocities such as the Holocaust, the mistreatment of prisoners of war (POWs), and mass civilian casualties. They revised earlier conventions, particularly the Geneva Conventions of 1929, and expanded the legal protections

¹⁶ assiouni, M. Cherif. *Crimes Against Humanity in International Criminal Law*. Springer, 1999.

¹⁷ Schabas, William A. *An Introduction to the International Criminal Court*. Cambridge University Press, 2020.

¹⁸ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

afforded to victims of war. The 1949 Conventions are composed of four separate treaties, each covering different aspects of humanitarian protection:

1. First Geneva Convention – Protects wounded and sick soldiers in the field, ensuring medical personnel, hospitals, and ambulances are not targeted during hostilities.¹⁹
2. Second Geneva Convention – Extends similar protections to wounded, sick, and shipwrecked members of armed forces at sea.²⁰
3. Third Geneva Convention – Provides detailed regulations on the treatment of prisoners of war (POWs), including humane treatment, prohibition of torture, and fair trial rights.²¹
4. Fourth Geneva Convention – Protects civilians in occupied territories, prohibiting acts such as deportation, collective punishment, and the taking of hostages.²²

The significance of the 1949 Geneva Conventions lies in their universal acceptance and legal enforceability. They introduced the concept of grave breaches, which refer to serious violations such as willful killing, torture, inhumane treatment, and unlawful deportation. These breaches impose an obligation on states to prosecute or extradite individuals accused of committing such crimes, reinforcing the principle of individual criminal responsibility.²³ The Nuremberg Trials (1945–46) played a significant role in establishing this principle, and the Geneva Conventions built upon it by ensuring that war crimes were not only punishable but also preventable through legal obligations.

Additionally, the Geneva Conventions influenced subsequent war crimes prosecutions, including those by the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC). Many provisions of the Geneva Conventions have become customary international law, meaning they apply even to states that have not explicitly ratified them.²⁴

¹⁹ First Geneva Convention, Article 3, 1949.

²⁰ Second Geneva Convention, Article 12,

²¹ Third Geneva Convention, Article 4, 1949.

²² Fourth Geneva Convention, Article 27, 1949

²³ Nuremberg Charter, Article 6(b), 1945.

²⁴ Henckaerts, Jean-Marie, and Louise Doswald-Beck. *Customary International Humanitarian Law*, ICRC, 2005.

Additional Protocols I and II (1977) and Their Role in Modern War Crimes Regulation

As conflicts evolved in the post-World War II era, the Geneva Conventions were supplemented by the Additional Protocols of 1977, which addressed gaps in the protection of victims of war, particularly in non-international armed conflicts. These protocols expanded humanitarian law by clarifying rules for modern warfare, including guerrilla warfare, civil wars, and conflicts involving non-state actors.

1. Additional Protocol I (AP I) – Extends protections to victims of international armed conflicts, reinforcing the obligations of combatants to distinguish between civilians and military targets. It also prohibits indiscriminate attacks and the use of prohibited weapons such as biological and chemical weapons.²⁵ Notably, Article 51(2) of AP I explicitly states that civilians "shall not be the object of attack," reinforcing the principle of distinction and proportionality in military operations.²⁶
2. Additional Protocol II (AP II) – Addresses non-international armed conflicts, which were not adequately covered by the original Geneva Conventions. It provides legal protections for civilians and combatants in civil wars, prohibiting violence against civilians, collective punishment, hostage-taking, and acts of terrorism.²⁷ AP II was particularly groundbreaking because it established legal standards for internal conflicts, recognizing that most modern wars occur within states rather than between them.

The significance of these protocols is evident in contemporary war crimes trials, where violations of Additional Protocol I and II have been prosecuted under customary international law. For example, the ICTY relied on AP I when prosecuting war crimes committed during the Bosnian War (1992–1995), while the Special Court for Sierra Leone (SCSL) applied AP II to prosecute war crimes committed during the Sierra Leone Civil War (1991–2002).²⁸

Furthermore, the Rome Statute of the ICC (1998) incorporated many provisions from the Additional Protocols, defining war crimes that include:

- Intentionally targeting civilians and humanitarian personnel (Article 8(2)(b)(i)).

²⁵ Additional Protocol I to the Geneva Conventions, 1977, Article 51(2).

²⁶ Schabas, William A. *An Introduction to the International Criminal Court*. Cambridge University Press, 2020.

²⁷ Rome Statute of the International Criminal Court, 1998, Article 8(2)(b).

²⁸ U.S. Department of State, "U.S. Policy on the Additional Protocols to the Geneva Conventions," 1987.

- Use of prohibited weapons (Article 8(2)(b)(xx)).
- Sexual violence and enslavement as war crimes (Article 8(2)(b)(xxii)).²⁹

Despite their broad acceptance, the Additional Protocols face challenges in enforcement, as some powerful nations—including the United States, Israel, and Pakistan—have not ratified API or AP II, citing concerns about sovereignty and asymmetric warfare.³⁰ Nevertheless, many of their provisions have been recognized as binding customary law, making them applicable even to states that have not formally ratified them.

The Geneva Conventions of 1949 and their Additional Protocols of 1977 are among the most important legal instruments in international humanitarian law, shaping modern war crimes regulations and prosecutions. The Geneva Conventions established key principles, including the protection of civilians, the humane treatment of prisoners of war, and the prohibition of grave breaches. The Additional Protocols strengthened these protections, adapting them to modern conflicts, particularly civil wars and asymmetric warfare.

These legal instruments remain fundamental in prosecuting war crimes, as seen in cases before the ICC, ICTY, ICTR, and hybrid tribunals. However, enforcement challenges persist, particularly regarding state compliance, non-state actors, and evolving warfare tactics. As international humanitarian law continues to develop, ensuring state cooperation, strengthening accountability mechanisms, and adapting legal norms to emerging threats will be crucial in preventing and prosecuting war crimes effectively.

1.3 The Nuremberg and Tokyo Trials

The Nuremberg and Tokyo Trials were groundbreaking international tribunals held after World War II (WWII), marking the first major efforts to prosecute individuals for war crimes, crimes against humanity, and crimes against peace. These tribunals established critical legal precedents that have shaped modern international criminal law, particularly in defining war crimes, recognizing individual criminal responsibility, and setting the foundation for subsequent international courts and tribunals.³¹

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³⁰ Bassiouni, M. Cherif. *Crimes Against Humanity in International Criminal Law*. Springer, 1999.

³¹ Schabas, William A. *An Introduction to the International Criminal Court*. Cambridge University Press, 2020.

Legal Precedents Established by Post-WWII Tribunals

The Nuremberg Trials (1945–1946) were conducted by the Allied Powers to prosecute key members of Nazi Germany's leadership for atrocities committed during WWII. The trials were held before the International Military Tribunal (IMT) in Nuremberg, Germany, and resulted in the first international convictions for war crimes and crimes against humanity. The Charter of the Nuremberg Tribunal (1945) laid the legal foundation for the proceedings and defined the major categories of crimes:

1. War Crimes – Violations of the laws and customs of war, including murder, ill-treatment of prisoners of war (POWs), and destruction of civilian property.³²
2. Crimes Against Humanity – Widespread or systematic attacks against civilians, including extermination, enslavement, and persecution on racial, political, or religious grounds.³³
3. Crimes Against Peace – The planning and waging of aggressive war, making it the first time individuals were held criminally responsible for initiating conflict.³⁴

A significant legal precedent set by the Nuremberg Trials was that national sovereignty could not shield individuals from prosecution. Previously, only states were held responsible for violations of international law, but Nuremberg introduced the concept of direct individual accountability for war crimes. The tribunal also rejected the "superior orders" defense, affirming that following orders did not absolve individuals from responsibility for war crimes.³⁵

Similarly, the Tokyo Trials (1946–1948), formally known as the International Military Tribunal for the Far East (IMTFE), prosecuted leaders of Imperial Japan for war crimes committed during WWII, particularly in China, Korea, and Southeast Asia. Like Nuremberg, the Tokyo Tribunal recognized war crimes, crimes against humanity, and crimes against peace, convicting Japanese military and political leaders for massacres, forced labor, and the mistreatment of POWs.³⁶ The most infamous case prosecuted was the Nanjing Massacre

³² Nuremberg Charter, Article 6(b), 1945.

³³ Ibid., Article 6(c).

³⁴ Ibid., Article 6(a).

³⁵ Judgment of the Nuremberg Tribunal, 1946, para. 49.

³⁶ Totani, Yuma. *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II*. Harvard University Press, 2008.

(1937), where Japanese forces were found guilty of mass executions, sexual violence, and destruction of civilian areas.³⁷

The Nuremberg and Tokyo precedents influenced later international tribunals, including the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC). Many legal principles from these trials, including the definitions of war crimes and crimes against humanity, were incorporated into the 1948 Genocide Convention and the Rome Statute of the ICC (1998).³⁸

The Principle of Individual Criminal Responsibility

One of the most significant contributions of the Nuremberg and Tokyo Trials was the establishment of individual criminal responsibility in international law. Before these trials, only states were held accountable for violations of the laws of war. However, the Nuremberg Charter (Article 6) explicitly stated that individuals—including heads of state, military commanders, and government officials—could be prosecuted for war crimes.³⁹

The Judgment of the Nuremberg Tribunal (1946) reinforced this principle, stating:

*"Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."*⁴⁰

This principle remains a fundamental doctrine in modern international criminal law and has been invoked in subsequent war crimes prosecutions. For instance, the ICTY convicted Serbian leaders such as Slobodan Milošević and Ratko Mladić for their role in war crimes during the Balkan Wars. Similarly, the ICC has prosecuted leaders such as Charles Taylor (Liberia) and Omar al-Bashir (Sudan) for war crimes and genocide.⁴¹

Additionally, the principle of command responsibility, which holds military and political leaders responsible for crimes committed by their subordinates, was first established in these post-WWII trials. The Yamashita Standard, named after General Tomoyuki Yamashita, a

³⁷ Ibid., pp. 112–118.

³⁸ Genocide Convention, 1948, Article 4.

³⁹ Nuremberg Charter, Article 6, 1945.

⁴⁰ Judgment of the Nuremberg Tribunal, 1946, para. 53.

⁴¹ ICTY, *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54, Judgment, 2001.

Japanese commander convicted at the Tokyo Trials, affirmed that commanders can be held liable if they fail to prevent or punish war crimes committed by their troops.⁴² This doctrine has been widely applied in modern international trials, including cases before the ICC.

2. The ICC Prosecution of War Crimes in Darfur, Libya, and Ukraine

The International Criminal Court (ICC) has played a crucial role in prosecuting war crimes in Darfur (Sudan), Libya, and Ukraine, demonstrating its commitment to ending impunity for mass atrocities. However, these cases have also highlighted significant challenges, including state non-cooperation, geopolitical interference, and enforcement difficulties. The ICC's investigations and prosecutions in these regions reflect the complexities of modern war crimes trials, particularly when dealing with sitting or former heads of state, ongoing conflicts, and political resistance.⁴³

2.1 War Crimes Prosecution in Darfur (Sudan)

The ICC's investigation into war crimes in Darfur, Sudan, stems from a UN Security Council referral in 2005 (Resolution 1593), making it one of the first cases where the ICC was tasked with investigating and prosecuting a conflict referred by the UN. The war in Darfur (2003–present) involved government-backed Janjaweed militias committing mass killings, rape, forced displacement, and destruction of villages against Darfuri civilians, particularly targeting the non-Arab population.

1. Prosecutor v. Omar al-Bashir (2009, 2010) – First Sitting Head of State Indicted for War Crimes

- Omar al-Bashir, the former President of Sudan, was indicted for genocide, war crimes, and crimes against humanity, including the killing of 300,000 civilians in Darfur.
- The ICC issued two arrest warrants (2009, 2010), making him the first sitting head of state indicted by the ICC.
- Despite this, no state has arrested him, and he traveled to several ICC member states (e.g., South Africa, Jordan) without being detained.

⁴² U.S. Supreme Court, *Yamashita v. Styer*, 327 U.S. 1 (1946).

⁴³ Rome Statute of the International Criminal Court, 1998, Articles 5–8.

- Challenges:
 - Lack of state cooperation – Sudan refused to extradite him for trial, and many African states defied ICC arrest warrants.
 - Political resistance – The African Union (AU) accused the ICC of targeting African leaders unfairly.
 - Delayed justice – Even after Bashir’s ousting in 2019, his transfer to the ICC remains uncertain.
- Current Status: Still in Sudanese custody, awaiting potential transfer to the ICC.⁴⁴

2. Other Darfur Cases (Ali Kushayb, Abdel Rahim Hussein, Ahmad Harun)

- Ali Kushayb, a Janjaweed militia leader, was arrested and transferred to the ICC in 2020. He is currently on trial for war crimes and crimes against humanity.
- Abdel Rahim Hussein (Former Defense Minister) and Ahmad Harun (Former Interior Minister) remain at large, evading arrest.⁴⁵

2.2 War Crimes Prosecution in Libya

Following the 2011 Libyan Civil War and the overthrow of Muammar Gaddafi, the ICC opened an investigation into war crimes committed by Libyan forces, rebel groups, and Gaddafi loyalists. The ICC’s involvement in Libya was triggered by UN Security Council Resolution 1970 (2011), referring Libya to the ICC.

1. Prosecutor v. Muammar Gaddafi, Saif al-Islam Gaddafi, and Abdullah al-Senussi (2011)

- Muammar Gaddafi (Libyan Leader) was charged with crimes against humanity, including murder and persecution of civilians during the Libyan uprising.
- Saif al-Islam Gaddafi (Gaddafi’s Son) was also charged with war crimes for his role in suppressing anti-government protests.
- Abdullah al-Senussi (Former Intelligence Chief) was charged with ordering

⁴⁴ ICC, *Prosecutor v. Omar al-Bashir*, ICC-02/05-01/09, Arrest Warrant, 2009.

⁴⁵ ICC, *Prosecutor v. Ali Kushayb*, ICC-02/05-01/20, Judgment, 2022.

extrajudicial executions, torture, and crimes against humanity.

- Challenges:
 - Gaddafi's death in 2011 prevented trial proceedings.
 - Libya refused to extradite Saif al-Islam Gaddafi, instead trying him domestically in an unfair trial.
 - Al-Senussi was convicted in Libya, but the ICC's request for his transfer was ignored.
- Current Status:
 - Saif al-Islam remains free and has attempted to return to Libyan politics.
 - Libya's unstable political environment has prevented effective war crimes prosecutions.⁴⁶

2. Ongoing War Crimes in Libya (Post-2011)

- Libya remains in a state of conflict, with armed militias, warlords, and foreign mercenaries accused of war crimes, including massacres, torture, and extrajudicial killings.
- The ICC has faced major difficulties in investigating war crimes due to Libya's instability and lack of cooperation.⁴⁷

2.3 War Crimes Prosecution in Ukraine (2022–Present)

Following Russia's invasion of Ukraine in February 2022, the ICC launched an official investigation into war crimes committed by Russian forces, marking one of the largest war crimes investigations in ICC history. The investigation focuses on indiscriminate attacks on civilians, forced deportations, and sexual violence committed in occupied Ukrainian territories.

1. Prosecutor v. Vladimir Putin (2023) – First ICC Arrest Warrant Against a Major Power's Leader

⁴⁶ ICC, *Prosecutor v. Saif al-Islam Gaddafi*, ICC-01/11-01/11, Indictment, 2011.

⁴⁷ UN Human Rights Council, "Libya War Crimes Report," 2023.

- In March 2023, the ICC issued an arrest warrant for Russian President Vladimir Putin and Maria Lvova-Belova (Russia's Commissioner for Children's Rights) for the forced deportation of Ukrainian children to Russia.
- Legal Significance:
 - First ICC arrest warrant against a sitting head of state of a UN Security Council permanent member.
 - Reinforced the ICC's commitment to prosecuting war crimes in ongoing conflicts.
 - Highlighted the role of forced deportation as a war crime.
- Challenges:
 - Russia rejects ICC jurisdiction and refuses to cooperate.
 - Putin remains in power, making arrest unlikely unless he leaves Russia and enters an ICC member state.
 - Political opposition from countries like China and India limits enforcement.
- Current Status: Putin remains at large, but the ICC's arrest warrant has isolated him diplomatically.⁴⁸

2. Ongoing Investigations into Russian War Crimes

- The ICC is investigating evidence of war crimes, including:
 - Targeting of civilians in Mariupol, Bucha, and Kherson.
 - Mass executions and torture of prisoners of war (POWs).
 - Sexual violence, forced deportations, and destruction of civilian infrastructure.
- Challenges:
 - Access to evidence in occupied territories is limited.

⁴⁸ ICC, *Warrant of Arrest for Vladimir Putin*, ICC-01/23, 2023.

- Proving command responsibility for high-ranking Russian officials remains difficult.
- Geopolitical divisions hinder ICC actions against major powers.⁴⁹

Challenges in Prosecuting War Crimes in Darfur, Libya, and Ukraine

The ICC's prosecutions in Darfur, Libya, and Ukraine reveal several key challenges in enforcing international criminal law:

1. Lack of State Cooperation
 - Many governments refuse to extradite suspects (e.g., Sudan protecting al-Bashir, Russia rejecting ICC authority).
2. Political Resistance and Selective Justice
 - The ICC is often accused of focusing on weaker states (e.g., Sudan, Libya) while struggling to hold major powers accountable (e.g., Russia, the U.S.).
3. Ongoing Conflicts Complicate Prosecutions
 - War crimes trials are difficult to conduct while conflicts are still ongoing, as seen in Ukraine and Libya.
4. Enforcement Limitations
 - The ICC lacks its own police force and relies on member states to execute arrest warrants, which often go unfulfilled.

The ICC's prosecutions in Darfur, Libya, and Ukraine demonstrate the court's crucial role in addressing war crimes, but also expose major limitations in enforcement and political opposition. While landmark indictments against al-Bashir, Gaddafi's inner circle, and Putin have set legal precedents, challenges such as state defiance, geopolitical resistance, and ongoing conflicts continue to hinder the ICC's effectiveness. Strengthening international cooperation, improving enforcement mechanisms, and addressing political bias will be essential for the ICC's long-term success in war crimes prosecution.⁵⁰

⁴⁹ Human Rights Watch, "Ukraine War Crimes Investigations," Report, 2023.

⁵⁰ Schabas, William A. *An Introduction to the International Criminal Court*. Cambridge University Press, 2022.

Conclusion

The prosecution of war crimes under international humanitarian law is a critical yet complex aspect of global justice. Over the decades, international legal frameworks have evolved significantly, with institutions like the International Criminal Court (ICC), International Criminal Tribunal for the Former Yugoslavia (ICTY), and International Criminal Tribunal for Rwanda (ICTR) playing key roles in holding individuals accountable for crimes against humanity, genocide, and war crimes. However, despite these advancements, challenges remain in enforcement, state cooperation, political interference, and evidence collection, all of which undermine the effectiveness of international war crimes prosecution.

This research paper has examined the legal foundations, key case studies, and challenges of prosecuting war crimes, highlighting the successes and limitations of international justice mechanisms. The Hague Conventions (1899 and 1907), the Geneva Conventions (1949), and the Rome Statute (1998) provide the primary legal basis for defining and prosecuting war crimes. The Nuremberg and Tokyo Trials set early precedents, while modern tribunals have expanded legal definitions, strengthened command responsibility, and addressed gender-based war crimes. However, these institutions face significant hurdles in securing compliance from states, enforcing arrest warrants, and ensuring fair trials free from political influence.

One of the major findings of this research paper is the tension between state sovereignty and international justice. Many states resist external jurisdiction over their nationals, arguing that sovereignty grants them the exclusive right to prosecute war crimes within their borders. However, in practice, many governments fail to investigate or prosecute their own officials, necessitating international intervention to prevent impunity. The principle of complementarity, enshrined in Article 17 of the Rome Statute, attempts to balance state sovereignty with the need for accountability, but its application remains inconsistent.

Another key finding is the political nature of international war crimes prosecutions. While the ICC and other tribunals claim to be impartial, accusations of selective justice persist, particularly regarding the focus on African leaders while Western military interventions in Iraq, Afghanistan, and Syria remain largely unprosecuted. The ICC's warrant for Vladimir Putin (2023) over war crimes in Ukraine was a significant step, but critics argue that similar actions by U.S. and NATO forces have not faced equivalent scrutiny. This reinforces perceptions of geopolitical bias, making it harder to secure international cooperation in war crimes

prosecutions. The lack of state cooperation has also emerged as a major obstacle. The ICC and other courts lack enforcement mechanisms, relying on member states to execute arrest warrants. However, many states refuse to comply, as seen in the case of Omar al-Bashir (Sudan), where ICC member states such as South Africa and Jordan failed to detain him despite binding obligations. This raises serious concerns about the effectiveness of the ICC's enforcement powers and the willingness of states to prioritize international justice over political interests.

In conclusion, this research paper has demonstrated that while war crimes prosecution has made significant progress, it remains deeply flawed due to issues of state sovereignty, political interference, non-cooperation, and evidence-related challenges.