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Challenges Facing International Cooperation in Addressing War Crimes, with Reference to the Ongoing Conflicts in Ukraine and Gaza Strip

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ABSTRACT

The commission of war crimes by States in armed conflicts has become a distressingly common occurrence, resulting in devastating consequences for and profoundly affecting global conscience. In response, international jurists have sought to develop practical and appropriate solutions to minimize the occurrence of such crimes during armed conflicts. Consequently, they have succeeded in devising specialized documents which form the current international system for addressing war crimes. Recruiting a descriptive-analytical method and using library sources, this research aims to investigate the primary causes hindering the efficacy of the current system in holding perpetrators accountable. The study, also explores key international documents related to this subject matter. Findings indicate that challenges such as inadequate implementation mechanisms in these documents, the prioritization of international relations over international law by governments, the absence of participation from major military powers, and the limited use of political tools by others States against the offending States are crucial reasons behind the weakness of the current international system in addressing war crimes.

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Table of Contents

Introduction

The contemporary world has recognized the importance of maintaining global peace and security and nations are continually seeking to resolve their differences through peaceful methods. However, despite the destructive effects of past wars on mankind, certain governments still consider war as an inevitable and effective way to resolve disputes and assert their rights. The leaders' failure to acknowledge the unfortunate results of armed conflicts has compelled the rational ones to work together in order to regulate the conditions and terms of armed conflicts, reducing its destructive effects. these efforts have led to imposing some restrictions on war tools and methods.

Historically, the use of certain methods and tools in conflicts can be traced back to the past centuries, the concept of war crimes, as it exists today, developed at the end of the 19th and the beginning of the 20th century, coinciding with the formulation of the rules of International Humanitarian Law (IHL). The Hague Conventions (also known as the Peace Conventions)[1]of 1899 and 1907, prohibiting the use of unconventional and inhumane tools and methods of war, became the central rules during military conflicts. Subsequently, several other treaties have been ratified in this field, such as the four Geneva Conventions of 1949 and the two additional protocols of 1977, which focus on the protection of persons no longer participating in armed conflicts.[2] These conventions, echoing the conditions at the time of their adoption, outline various examples of war crimes. However, no single international document has been approved to comprehensively address all war crimes to date. Therefore, examples of these crimes can be found in sources of IHL, International Criminal Law (ICL) treaties, and customary law.

Unlike genocide and crimes against humanity, war crimes can be committed against a wide range of victims, including combatants or non-combatants, depending on the nature of the crime. In international armed conflicts, victims include wounded and sick members of armed forces on land and at sea, prisoners of war, and civilians. In non-international armed conflicts, protection is provided to persons not actively participating in hostilities, such as members of the armed forces who have laid down their arms and persons detained because of illness, injury, or

1 . Hague Conventions of 1899 and 1907 (peace conferences).
2 . The Geneva Conventions of 1949 and their Additional Protocols.

other reasons. In addition, in both types of conflicts, medical, religious and humanitarian sites and personnel are protected. from a broader perspective, war crimes can be divided into the following: a) Crimes against persons who need special protection; b) Crimes against humanitarian aid providers and peacekeeping operations; c) Crimes against property and other rights; d) Use of prohibited methods of war; e) Use of prohibited weapons of war. While a discussion of the various examples of war crimes falls beyond the scope of the present article, some of the significant classifications are presented. Perhaps the most comprehensive definition of war crimes in international documents can be found in the first and second clauses in Article Eight of the Rome Statute. This Article outlines various examples of war crimes under the heading of "serious and severe violations of the four Geneva Conventions."[1]

The authors of this article believe that despite the significant progress in the international criminal law system, and notwithstanding its relatively short life compared to the domestic criminal law systems, this legal system has thus far failed to meet the expectations of the world legal community in effectively preventing and controlling war crimes during armed conflicts, as well as prosecuting criminals and perpetrators of war crimes following the cessation of hostilities. Therefore, the authors intend to analyze the overall effectiveness of international cooperation by scrutinizing the international interactions and collaborations, as well as applying the international legal rules to recent wars to investigate the reasons behind the current system's inability to response properly to these crimes.

Consequently, this article seeks to find whether international cooperation in addressing war crimes has been effective so far and under diverse conditions. The authors, operating under the hypothesis of a negative answer, aim to specify the reasons for such failures, while offering guidelines for various events and occurrences during and following armed conflicts in the present era. To achieve this goal, the article begins by examining various international documents in this field, discussing and reviewing the general guidelines presented therein. Subsequently, by applying these guidelines to current global events, the authors attempt to clarify the shortcomings and inadequacies that hinder their ability to meet the needs of international community in this regard.

1. International Cooperation in Addressing War Crimes

An analysis of the procedures of the governments and the historical evolution of international law reveals that bilateral and multilateral regional or global treaties and agreements are the most significant forms of international cooperation in addressing war crimes. Conventions, treaties, and official international documents are the prominent outcomes of the cooperation of various members of the international community. These cooperative efforts have had a positive effect in advancing the goals of governments in various areas, including the prevention and prosecution of war crimes. This section presents some of the significant measures taken in this regard.

1.1. The Geneva Conventions (1949)

Compliance with humanitarian principles and rules during wars can help prevent the occurrence of war crimes. In this regard, on August 12, 1949, member States of the international community

1 . The Rome Statute of the International Criminal Court (1998).

approved rules on the protection of persons who no longer participate in conflicts in the majority of the four Geneva Conventions. These Conventions, along with their additional protocols approved on June 8, 1977, which addressed the protection of civilians and all persons affected by war, greatly influenced the framing and regulation the tools and methods of war. these international documents now form the foundation of IHL and the principles contained in them have become international customs.[1]

The term "war crime" is not explicitly mentioned in these documents, yet a series of actions and behaviors specific to war conditions been prohibited. on the other hand, recent international documents, such as the Rome Statute (which will be discussed below), often cite the prohibited acts mentioned in the Geneva Conventions as examples of war crime. These documents play a pivotal role in detecting, identifying and introducing examples of war crimes during international armed conflicts, facilitating the prosecution and trial of perpetrators by international courts. The significance of the provisions of the Geneva Conventions and their protocols can be seen in their implementation. for instance, in the current genocide in Gaza perpetrated by the Zionist regime, clear instances of non-compliance with the provisions of these documents have been observed. These violations can be referred to international courts for future follow-up. Therefore, the drafters of the Geneva Conventions, by codifying prohibited actions, behaviors, and tools of war at the international level, laid the foundation for prosecuting and punishing the perpetrators of war crimes, establishing the first legal pillars of the legal system in this area.

In addition to addressing war crimes, the text of Geneva Conventions reveal that the drafters (representatives of the contracting States) had important goals and values in mind. This shows the significance of international cooperation among member states to prevent the occurrence of these crimes. some of the important points related to these international documents are outlined beneath.

- Article 1 common to the Geneva Conventions regarding the need to respect the Convention states: "The High Contracting Parties undertake to respect the present Convention under any circumstances and ensure respect for it." It is clear that the contracting parties have paid attention to the special features of these documents by committing to comply with the provisions of the Convention at the outset. it is not merely a mutual obligation that binds parties to the contract as long as the other party fulfills its obligations. Rather, it consists of a set of unilateral commitments officially concluded before the world and on behalf of other contracting parties. Therefore, every government undertakes obligations towards itself and others. In other words, the parties to the treaty must not only respect its rules, but also guarantee respect by other governments. This unique feature of the Geneva Conventions signifies the desire for international cooperation to prevent and reduce war damages.
- The second common article regarding the implementation of the Convention points out that its provisions apply to all hostilities declared by its members, even if one par-

1 . Sharifi Kia Mohammad Ali, Ghasemi Gholam Ali, 'The role of the European Union in the promotion and development of international humanitarian law' (2023) Journal of International Law, (published online, available at: https://www.cilamag.ir/article_710232.html). (forthcoming)

ty to the conflict fails to meet the conditions of war. It also applies in cases that lead to partial or total occupation of the territory of the contracting States, even if such occupation occurs without armed resistance. this emphasis shows the drafters' recognition of the imbalance of power among different countries in armed conflicts. In addition, the Conventions do not attach much significance to the formal declaration of war or the occurrence of full-scale war between parties. Since there is a potential for damage and casualties, they stress the application of the Conventions' provisions.

- The third common article, which addresses non-international conflicts in the territory of the contracting parties, also reflects the high goals of the Conventions. In addition to their main mission of supporting war-affected individuals, by covering this category of armed conflicts the Conventions restrict governments from using force without control and supervision. The article emphasizes that regardless of the nature of the conflict or the parties involved, the main objectives of the Conventions, which is the protection of individuals, must be respected.

1.2. United Nations General Assembly Resolution 3074 (1973)

In 1973, the United Nations General Assembly (UNGA) adopted Resolution 3074, titled "Principles of International Cooperation in the Field of Detection, Arrest, Extradition and Punishment of War Crimes and Crimes Against Humanity."[1] This Resolution, building on previous resolutions in this area,[2], acknowledged the principles mentioned in the UN Charter, which promote international cooperation to maintain peace and security. Through the Resolution, the UNGA also recognized the urgent need for the trial and punishment of war criminals, with 94 votes in favor and 29 abstentions agreed on nine basic principles in this field. Though UNGA resolutions are non-binding and serve as recommendations to the international community, their impact on subsequent rule-making processes carried out by different countries should not be overlooked. some of these principles are outlined below:

- The first principle states that crimes of this nature should be investigated regardless of the place of occurrence, and if there is evidence against a person of committing these crimes, they should be tracked down, arrested and tried.[3] Two significant pillars in this principle have been agreed upon by the UNGA. Firstly, the location of the crimes is considered irrelevant and it can be interpreted as such that even if such crimes are committed by a non-member State or a country that has withdrawn front the United Nations, the international community should investigate the matter. Secondly, the mere existence of evidence against individuals regarding the commission of these crimes is considered sufficient reason to start investigations, pursue and arrest these individuals, and, if proven guilty, subject them to proportionate punishment.
- The second principle recognizes the right of every government to try its citizens who

1 . Principles of international cooperation in the detection, arrest, extradition and punishment of persona guilty of war crimes and crimes against humanity, 3074 (XXVIII).
2 . Including resolutions: 2583 (XXIV) of December 15, 1969, 2712 (XXV) of December 15, 1970, 2840 (XXVI) of December 18, 1971 and 3020 (XXVII) of December 18, 1972.
3 . A_RES_3074(XXVIII), Article 1.

have committed such crimes.[1] Evidently, this principle does not reserve this right only for the respective states of the criminals but just emphasizes the right of their respective states for prosecuting these kinds of criminals, in other words trying the war criminals is not exclusive.

- The third principle emphasizes the necessity for bilateral and multilateral cooperation between governments to prevent the occurrence of these crimes and encourages all countries to take domestic and international measures in this regard.[2] If we consider the conclusion of treaties as a form of cooperation, encouraging member states to conclude bilateral and multilateral treaties on extradition of criminals and war criminals to the jurisdiction where the crime was committed, and regarding the methods for pursuing, trying, and punishing suspects and criminals are of the focal points of this principle.
- the fourth principle emphasizes governments' cooperation in the discovery, arrest and trial of the suspects as well as the punishment of the perpetrators of war crimes.[3] Dividing the duties of governments into two separate areas- the prevention and stopping of war crimes, and the prosecution and punishment of criminals- demonstrates the General Assembly's thorough approach before, during and after the outbreak of hostilities and indicates the Assembly's serious commitment to eradicating war crimes.
- The fifth principle highlights to the necessity of cooperation between the governments in extraditing the accused and criminals of war crimes to the country where the crimes were committed, and calls on all countries to make efforts in order to facilitate this process.[4] The trial and punishment of war criminals in the country where the crimes took place can have a significant deterrent effect on potential perpetrators in that country. Furthermore, this principle aligns with the second principle, which stresses the right of the respective government to prosecute and punish these criminals.
- The sixth principle focuses on the cooperation of governments in collecting evidence and summoning witnesses necessary for the trial of war criminals and requires governments to exchange such information with each other.[5] This measure by the UNGA helps in identifying the individuals involved in the commission of the crimes and significantly facilitates the trial and punishment processes. The Assembly's primary focus in this principle is to prepare the proceedings and trials of these unique criminals.
- The seventh principle refers to Article 1 of the Declaration on Territorial Asylum adopted on December 14, 1967. This Article deprives governments of the right to grant asylum to persons who have serious reasons to be prosecuted for war crimes.[6] This action prevents the political efforts by allies of war criminals and hinders attempts to avoid trial and punishment through changing citizenship or seeking asylum.
- The eighth principle requires the member States to refrain from any action that may

1 . Ibid, Article 2.
2 . Ibid, Article 3.
3 . Ibid, Article 4.
4 . Ibid, Article 5.
5 . Ibid, Article 6.
6 . Ibid, Article 7.

disrupt in the process of investigation, prosecution, and punishment of war criminals.[1] This principle can be seen as complementary to the third and fourth principles, which urged countries to cooperate in these areas. In other words, the underpinning of this principle suggests that if a government does not intend to cooperate in the direction of the third and fourth principles, at the very least and possibly, it should not disrupt the follow-up processes of other governments.

- Finally, the ninth principle subjects all the actions of the governments in the above fields to compliance with the principles of the UN Charter and the Declaration of the Principles of International Law regarding friendly relations and cooperation between governments.[2] the obligations of the countries under this Resolution have been made conditional on complying with the provisions of the aforementioned documents. The aim is to prevent suspicious activities and ensure that governments not to violate the basic and significant principles of international law in order to achieve the goals of this Resolution.

1.3. Draft Code of Offences against the Peace and Security of Mankind (1996)

The UNGA, on December 10, 1981, considering the undeniable role of the ILC in preparing and codifying new international rules, and referring to Article 13(1) of the UN Charter, which empowers the commission to undertake studies and research to develop progressive rules in international law, requested the ILC to prioritize its work in drafting laws on crimes against the peace and security of humanity. During this request, the assembly asks the commission to consider the possibility of reviewing this draft during a five-year plan and reporting the final results in its thirty-fourth session.[3]

Subsequently, with continuous follow-up by the UNGA, the main text of the above draft code, which had been initially approved in 1991, was updated and approved in its final form in the forty-eighth meeting of the ILC in 1996. The Commission presented the draft code to the Assembly in the form of a report, consisting of 20 articles. the last Article of the draft code specified examples of war crimes, stating that any of the war crimes mentioned in the Article, when committed systematically or on a large scale, would be considered a crime against the peace and security of humanity.[4] The use of the terms systematic and widespread in the draft code emphasizes that while any crime and harm against individuals is in conflict with the spirit of law, the Commission prioritizes collective interests over individual interests in war situations. in order to limit the scope of the destructive effects of war, the draft code will be applicable only when the crime is committed with premeditation and against a large number of identified individuals.

The draft code and the interpretations provided by the Commission fail to yield a clear conception of the term “wide scale”. Additionally, it seems that Article 20 is merely a restatement

1 . Ibid, Article 8.
2 . Ibid, Article 9.
3 . Draft Code of Offences against the Peace and Security of Mankind (A/RES/36/106).
4 . Ibid, Retrieved from https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_4_1996.pdf, accessed on March 5, 2024.

of the prominent norms of IHL, and there is significant overlap among the seven categories of crimes mentioned in this Article. For instance, torture leading to death could potentially violate four clauses of this Article simultaneously.[1] Therefore, it seems that no new propositions have been added in this regard, but rather a repetition of existing international legal principles.

Secondly, the text of the draft code seems to be in contradiction with the text of the Geneva Conventions, which form the basis of contemporary IHL. Article 20 stipulates that different categories of war crimes are considered crimes against human security when committed on a large scale. However, the first paragraph of Article 20, for instance, considers acts that are in contradiction with IHL, such as torture and inhumane treatment as war crimes. While the Geneva Conventions do not make any reference to the scale of such acts and absolutely prohibit governments from engaging in such behaviors. Consequently, it seems that the draft code does not consider actions like torture as crimes against the security of mankind unless they are carried out on a large and wide scale. in other words, instead of emphasizing the absolute prohibition of actions that causes human, financial, and emotional damage, the draft code implicitly permits such acts on a smaller scale, as if the Commission considered war crimes to be forgivable as long as they are carried out on a smaller scale.

- Despite these contradictions, it is important to acknowledge the positive aspects of this draft code. Articles seven to ten of this draft are significant matters in dealing with criminals, which will be briefly discussed in the subsequent section. article 7 refers to the position of criminals in the internal system of their government and the lack of influence of such position on their criminal liability.[2] according to this Article, the official position of a person who committed the crimes outlined in this draft, even if he acted as the head of the government or a certain government, will not exempt them from prosecution or a reduction in their punishment. By addressing the highest officials of the governments, this provision has exhausted the argument made by officials of different countries and states that the position of criminals should not be act as a shield against their prosecution for committing such crimes, thereby obstructing the administration of justice.
- The first section of Article 8 grants member States the authority to exercise global jurisdiction over crimes listed in Articles 17 to 20, regardless of where and by whom these crimes were committed.[3] This provision, similar to the previous Article, respects the application of jurisdiction over any person who has committed the aforementioned crimes within any member State. However, the second section specifically designates the competence to deal with the crime of rape (the subject of Article 16) within the jurisdiction of the International Criminal Court (ICC), thereby prohibiting governments from unilaterally prosecuting their nationals for this crime. The development of jurisdictional competence of government in dealing with such crimes is undoubtedly

1 . The mentioned action seems to be a simultaneous violation of the following provisions in the draft: the first part of the first paragraph, the fourth part of the second paragraph, the fourth paragraph and also the first part of the sixth paragraph.
2 . A/RES/36/106, Article 7.
3 . Ibid, Article 8.

an important step towards preventing and addressing the commission of such crimes, and it serves to limit the maneuverability for criminals.

- Article 9 addresses the responsibility of States regarding the extradition or trial of individuals referred to in Articles 17 to 20, while safeguarding the jurisdiction of the ICC., provided that the said person is found in the territory of the member States[1]. The Article stipulates that if a person accused of committing a war crime is found in the territory of a member State, the government should either extradite the accused to his respective state or the ICC Court, or alternatively, initiate domestic proceedings against them.
- Article 10 further facilitates the conditions for the extradition of the individuals subject of this draft. It includes four paragraphs which urge the member States to: (1) include the crimes outlined in this draft in their extradition treaties with other countries; (2) consider this draft as a legal basis for extradition of the criminals if there is an absence of a bilateral treaty with the requesting country; (3) henceforth consider the crimes subject of this draft as extraditable; and (4) address the crimes mentioned in the draft as if they were committed not only in their country, but also in all other countries.[2] This provision marks an important step towards facilitating the extradition of those accused of war crimes, and with the approval of the member countries, it can potentially replace bilateral or multilateral treaties, and give the states the opportunity to pass new laws in this area and prevent delays that may lead to the destruction of evidence against defendants or an internal political maneuver hindering extradition of war criminals.

Naturally, there are concerns about aspects of these articles that cannot be disregarded; for instance, the authority that Article 8 grants to the member States to exercise jurisdiction over trials of individuals accused of rape within their jurisdictions may give rise to controversy and collusion. Furthermore, it is possible that a government which has not approved this draft (whether through a resolution or convention), based on the procedure established by other countries, claim the authority to prosecute nationals of other countries in its domestic courts.[3] Nevertheless, despite these issues, this significant international effort should not be completely discredited. it is evident to international lawyers that the rule-making process in international law is slower and more cautious than in domestic law. As the famous saying goes, sometimes one has to settle for a flawed agreement rather than opt for no agreement at all.

1.4. The Rome Statute (1998)

The Rome Statute, also known as the Statute of the International Criminal Court, recognizes four categories of war crimes: (1) gross violations of the four Geneva Conventions; (2) serious violations of customary international law in international armed conflicts; (3) serious violations of the provisions of the third common article of the Geneva Conventions, which applies to non-international armed conflicts; and (4) serious violations of laws and customs applicable to conflicts that

1 . Ibid, Article 9.
2 . Ibid, Article 10.
3 . Jean Allain, John R.W.D. Jones, 'A Patchwork of Norms: A Commentary on the 1996 Draft Code of Crimes against the Peace and Security of Mankind' (1997) Volume 8, Issue 1, European Journal of International Law 103–104.

do not have an international aspect and character. The complete list of these crimes is provided in Article 8 of the Rome Statute, but a detailed discussion of all the examples is beyond the scope of the present analysis.[1]

The serious violations raised in the first category essentially correspond to the prohibited acts outlined in the four Geneva Conventions, which include intentional killing, torture, inhumane treatment, and hostage taking or extensive destruction of property. Crimes specified in the second category originate from various previous international sources and documents, such as the 1899 Hague Resolution on fragmentation shells,[2] the 1907 Hague Rules on rules and customs of war on land,[3] the 1925 Geneva Gas Protocol,[4] and the First Additional Protocol to the Geneva Conventions of 1977.[5] The crimes specified in the third category, related to common article 3, include the prohibition of acts such as violence against the life of persons, mutilation, cruel treatment and torture.[6] Finally, the crimes specified in the fourth category are derived from various sources such as the 1907 Hague Laws and the Second Additional Protocol to the Geneva Conventions.[7]

The significance of the Rome Statute in addressing war crimes can be examined from different perspectives. One notable feature is the substantial number of States that have ratified this international document so far. According to the latest outlets of the Court, 123 States have officially joined and accepted the Court's jurisdiction over crimes listed in the Statute.[8] Another important feature that can turn this document into one of the crucial international tools in addressing war crimes is the evolution of its provisions in various fields of identification, prosecution, trial and punishment of war criminals. The relevant topics discussed in this analysis are included in the third and ninth sections of the Statute; The third section focuses on the general principles of criminal law and the ninth section is dedicated to principles related to international cooperation and judicial assistance. In this section, we will highlight some of the most important provisions found in the third part of the Statute.

- Authorizing the Court the competence to address the crimes committed by natural persons and outlines the conditions of this jurisdiction, stating that individuals who participates in or facilitates the commission of crimes falling under the jurisdiction of the Statute will be held responsible.[9] This article is one of the few rules in international law that directly affects natural persons and imposes responsibility directly on them. While individuals are generally not subjects of international law, the Rome

1 . Rome statue of the International Criminal Court (ICC), 1998, Article 8.
2 . the 1899 Hague Declaration (IV; 3) concerning Expanding Bullets.
3 . the 1907 Hague Convention respecting the Laws and Customs of War on Land.
4 . Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, Geneva 17 June 1925.
5 . Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva 8 June 1977.
6 . Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva 8 June 1977.
7 . Knut Dormann, Elements of war crimes under the Rome statute of the international criminal court (Cambridge University Press 2002) 343-345;
Retrieved from https://assets.cambridge.org/97805218/18520/sample/9780521818520ws.pdf., accessed on March 5, 2024.
8 . 'The States Parties to the Rome Statute', Available at https://asp.icc-cpi.int/states-parties., accessed on March 5, 2024.
9 . the Rome Statute, Article 25.

Statute, by establishing this international institution that addresses crimes committed by natural persons, marked a significant step towards the development of international peace and security.

- Article 27 complements the preceding paragraph, by delineating that the position, status and official capacity of individuals, whether private, governmental or international does not exempt them from criminal liability under this statute. This means that all individuals regardless of their position (even heads of State), will be held accountable for their actions before the Court.[1] Emphasizing on Article 25 without considering the significance of this Article would render this analysis incomplete. The drafters of the Statute exhibited remarkable accuracy in this section, because the history of wars is a testimony to the claim that the crimes covered by the Statute are committed by or upon the orders of heads of the independent political entities, such as governments. Consequently, the entire text of the Statute would be rendered futile if these individuals were exempt from responsibility.
- Article 28 dwells on the separate responsibility of military commanders in relation to the crimes under the Statute, holding them directly accountable for crimes committed by forces under their command.[2] The rationale behind this provision is that is that a military commander either had knowledge of the crimes being committed or failed to take reasonable measures to prevent them. In both cases, the superior commander bears responsibility. However, this responsibility is contingent upon the commander's effective control, which means that they must have been aware of the crimes and consciously ignored them, failed to take necessary measures to prevent them, or neglected to refer the issue to competent authorities for consideration. Only under these circumstances can they be held responsible for the crimes committed.
- Article 30 emphasizes the significance of a mental or psychological element[3] in establishing criminal liability. In addition to the occurrence of a crime or the presence of a material element,[4] a person must have intention and knowledge[5] to incur criminal liability. This means that the individual participated in the action with premeditated intention and had the purpose of achieving a certain result, or they created a situation where, based on their actions or the normal course of events, such a result was probable. In other words, the same criteria for intention and result considered in the domestic law are also applicable as the standards for individual responsibility in international law. This provision can help screen the main suspects in addressing a war crime. naturally, for these crimes to happen, several events must occur, and sometimes a number of individuals facilitate the process of their implementation; however, it is irrefutable that in military matters, the information is classified and not all the individuals are informed of the details. Therefore, the premise that certain individuals who participated in the commission of a crime did not have the knowledge of the final

1 . Ibid, Article 27.
2 . Ibid, Article 28.
3 . Mens rea.
4 . Actus reus.
5 . Ibid, Article 30.

result anticipated by the commanders or the main officials, or did not intend for such a result to occur, and hence should not be prosecuted and held responsible is warranted to some international legal scholars.

- Article 33 elaborates on the orders of superiors and legal provisions, stating that if a crime occurred as a result of the order of a superior or a legal authority from a higher organizational hierarchy, the perpetrator would not be absolved from responsibility whether they are military or not, unless the individual is obligated to obey orders of their superior or government, the order is not clearly illegal or the individual has no knowledge of the illegality of the order.[1] In this section, the Court considers the orders to commit genocide and crimes against humanity clearly illegal and excludes them from the scope of discussion. Therefore, like the provisions of Article 30, it can be said that, according to the Court, the obligation and coercion resulting from employment or military relations combined with the lack of knowledge of the law and the possible result of the committed act can be taken as grounds for absolving international criminal responsibility.

As mentioned above, the ninth section highlights the importance of international cooperation in areas related to the objectives of the Court. The opening article of this section requires a general commitment to cooperation from all member States in the investigation and trial of crimes under the jurisdiction of the Court. It stresses the necessity for immense cooperation with this international institution. Given the significance of this topic, we will provide a brief overview of some key provisions outlined in this section.

- Article 87 of the Statute addresses the authority of the Court regarding requests for cooperation from member States, non-member countries, or international organizations. It also outlines the mechanisms for submitting requests for cooperation to governments, as well as principles such as the confidentiality of correspondence of the Court.[2] Granting authority to the Court to pursue its goals from non-member countries and organizations is a strong point that the drafters of the Statute gave special attention to. The importance of this provision arises from the fact that, due to the sensitive nature of the Court's goals, requests for information or other forms of cooperation cannot be limited to member States. Presumably, the purpose of this Article, as perceived by its drafters, is to increase the authority of the Court in line with its inherent mission, ensuring that the Court can seek assistance from any subject of international law in preparing proceedings and addressing crimes falling within its jurisdiction, without any limitations.
- Article 88 requires the member States to establish and approve cooperation mechanisms with the Court in their national laws.[3] The implementation of this provision also facilitates the execution of the Court's requests and the governments' compliance with their obligations towards the Court. By establishing internal laws governing co-

1 . Ibid, Article 33.
2 . Ibid, Article 87.
3 . Ibid, Article 88.

operation with the Court, there is no longer a need for political votes or reliance on the interests of governments to establish communication channels. Consequently, regardless of whether the government or the ruling party, there will be greater hope for cooperation from member governments. On the other hand, this provision emphasizes that after the approval of the Statute by a government, any law that overshadows the functioning of the Court and the relationship between the said government with the Court should be dismissed.

- Article 89 addresses the process of surrendering individuals to the Court. According to this Article, member States must allow the transfer of individuals subject to the Court's jurisdiction from their territories. If the individual is found in the same territory, the same State will be responsible for the transfer.[1] In order to implement the transfer request, it must include the profile of the individual, a summary of their legal status, and a warrant for their arrest and surrender. This provision practically expands the Court's jurisdiction to member countries and considers the implementation of the transfer request issued by the Court as an obligation of the requested country, facilitated by the provisions outlined in the previous article.[2]
- Article 90 examines potential conflicts between requests for transfer from the Court and other countries.[3] According to this Article, when the reasons behind the Court's request and those of the other government regarding the transfer of individuals are the same, and the Court considers the case of the individual admissible, priority will be given to the request of the Court. This provision minimizes the possibility of political lobbying and preventing the application of the universal jurisdiction of the Court and facilitates the Court's proceedings by prioritizing the request of the Court. The only circumstances in which priority can be given to the request of a third State from the point of view of the Statute are when the Court considers the case of the individual in question inadmissible based on preliminary information or when the requested State is not a member of the Statute and is obligated, according to its previous treaties with the requesting State (third State) to surrender the individual to that State. Therefore, in other cases and when the requested State is a member of the Statute, priority is given to the request of the Court.
- Article 92 mentions the possibility of issuing a request for temporary detention by the Court.[4] The importance of this request is related to situations such as emergencies where there is a sense of urgency to arrest the accused or to protect witnesses and evidence related to the activity of the Court. The possibility of issuing this request, like

1 . Ibid, Article 89.
2 . In addition to the cases that have been stated so far regarding the extradition and trial of war criminals, we can refer to the report of the working group of the International Law Commission regarding the obligation of governments to extradite or try these criminals in 2013 and the 65th session of the commission, which is for further reading. In this context, you can refer to the following address: https://legal.un.org/ilc/reports/2013/., accessed on March 5, 2024.
3 . Ibid, Article 90.
4 . Ibid, Article 92.

the national legal systems, can have a significant impact on the prosecution and trial of war criminals.

- Article 93 refers to other forms of government cooperation with the Court regarding the investigation and trial process of criminals.[1] Upon scrutinizing the provisions of this Article, it seems that the diverse forms of cooperation considered by the drafters of the Statute are very similar to the category of judicial representation in national legal systems. Because the cooperation contemplated by the Court and outlined in this Article includes identifying individuals and their whereabouts , obtaining documents, witness testimony and expert reports, interrogating wanted people, serving judicial documents, facilitating the voluntary presence of individuals in the Court as witnesses or experts, transferring people to the headquarters of the Court, examining various places such as the location of graves and examining them, conducting searches and seizures, supporting victims and witnesses, identifying and confiscating property, assets, and instruments of crimes, and providing any other type of assistance that is not prohibited by the domestic law of the requested country and helps with the purposes of investigation and prosecution. Furthermore, the provision of such possibilities by the Statute for the member States empowers the Court to leverage the facilities and resources of member States in the same way as its central function, thus saving resources in the process of prosecuting and punishing criminals. Additionally, granting these powers to the member States seemed necessary, because for instance, in cases where the place of crime, the place where the accused are found, the residence of witnesses and informants, as well as the seat of the Court or the government that intends to prosecute criminals are different, the best way to go through the process of the case more swiftly is to delegate the powers of the Court to the member States.

The Rome Statute, like the other international documents mentioned above, dwells on issues that can be effective in addressing war crimes, but unlike them, due to its treaty structure, it has an executive sanction. In other words, it has provided practical solutions that are proportionate to the goals of the Court. However, it seems that for various reasons, such as trying to gain the consent of the international community to express agreement with the founding treaty of the Court and approve it in its internal systems, there is no guarantee of solid implementations in international law compared to national systems. Also, due to the evolutionary nature of this document, its drafters have in some cases simplified the rules and taken steps to satisfy the States. For instance, Article 98 of the Statute, regarding the cancellation of the immunity of individuals considered by the Court, states that, the Court lacks the authority to compel States to surrender individuals when such action would conflict with the State's other international obligations to a third State, unless prior consent has been obtained from that third State."[2]

Such propositions may be instrumental in creating an international consensus to join the Statute of the Court. However, to some extent, they may harm the spirit and main goals of this

1 . Ibid, Article 93.
2 . Ibid, Article 98.

international institution. Because there are two different interpretations of this provision. First, the drafters of the Statute have taken steps to respect the international obligations of governments and respect the rights enshrined in international treaties by applying this provision, and in this provision, they have given equal value to other obligations of governments in addition to their obligations to the Court. Second, the result of this respect can be the exploitation of this rule by hostile governments that violate the international rules governing armed conflicts, evading prosecution and punishment of war crimes, invoking and justifying the existence of diplomatic immunities.

Furthermore, a careful examination of the preamble of the Statute[1] reveals the scope of the views held by the contracting States and its originators. At the beginning of this document, the drafters outline the lofty and fundamental goals that have become the basis for the formation of this international institution.

In order to better understand the need for cooperation of the international community regarding the crimes covered by this document, in this section we will outline some important points concerning its goals.

- Emphasizing the bonds and common heritage of humanity, referring to such concepts, indicates that despite the existence of differences between societies, the human race is basically the same, and as a result, the provisions of the Statute are designed to support all the people of the human race and at least regarding the crimes falling within the Court's jurisdiction, exceptions cannot be made and the occurrence of these crimes in different parts of the world cannot be disregarded.
- Emphasizing the category that the crimes under the statute are the most serious crimes of concern to the international community as a whole. As a result, this category of crimes should not remain unpunished, and effective prosecution should be guaranteed by taking action at the national level and by strengthening international cooperation. This paragraph underscores the rule of fighting impunity, a commitment reiterated in the following paragraphs of the introduction. Moreover, it seems that from the point of view of the drafters of the Statute, this fight against the immunity of war criminals is only possible with the cooperation of governments at the international level and the implementation effective measures at the national level.
- Emphasizing the additional jurisdiction of the Court compared to national criminal courts, this clause raises one of the main features of the Court, stating that domestic criminal investigations and prosecutions have priority over the exercise of the Court's jurisdiction. while, it may seem that this supplementary jurisdiction is in conflict with the jurisdiction of temporary criminal courts that have primacy over national criminal courts; However, Article 17 discusses this in detail.
- Emphasizing the formation of the Court on a permanent basis in order to protect the present and the future of human generations, this paragraph refers to the permanence

1 . The preamble sets the tone of the ICC Statute. Pursuant to Article 31 of the Vienna Convention the preamble is part of the context within the ICC Statute and should be interpreted and applied.

of the Court, in contrast to the temporary nature of the Nuremberg and Tokyo military Courts, as well as the ad hoc tribunals of the former Yugoslavia and Rwanda. Will have. It seems that the drafters of the Statute deemed the existence of a permanent court necessary to deal with these crimes, considering the previously mentioned cases. In doing so, they responded to some criticisms leveled against their predecessors who were the justice of the victorious parties in the war or used the laws that have been passed on to us during the proceedings.

2. The Reasons for the Failure of the Current System in Addressing War Crimes

When examining the course of international developments and the historical process of the wars of the present age, it is practically evident that except for some cases in the previous generations of international criminal courts, the international system has taken appropriate and practical reaction in confronting war criminals. This means that except for a few specific cases where relevant courts have been formed and sometimes individuals have been tried, other tragedies that have occurred in various international conflicts in recent decades have received little attention. Additionally, not only the previous generations of criminal courts have not been given much attention to, but also, they have been targets to many criticisms. For instance, some jurists argue that Tokyo trials were victors' courts[1], only dealing with the crimes of the officials of the defeated parties, as if the purpose of holding them was only to take revenge by the countries that won the war,[2] while war crimes committed by victorious parties, such as the United States' use of atomic bombs against civilians and residential areas in Hiroshima and Nagasaki, went unpunished.

In support of this claim, reference can be made to the famous words of Winston Churchill's son,[3] the British Prime Minister during World War II, who commented on the holding of the Nuremberg and Tokyo trials: "The events of the Nuremberg and Tokyo trials showed that politicians, the society that thinks of aggressive wars in the future and plans such actions, will not be immune from punishment. But it should be remembered that the Nazi and Japanese leaders were called to trial not because they started the war, but because they failed in it."[4] Therefore, it seems that the current international law system of the world, despite the progress it has made in criminal fields, has not yet achieved sufficient deterrence in the field of committing war crimes and has failed to achieve its main goal.

This section aims to outline some of the significant reasons for the current system's failures, with a particular focus on the ICC, in addressing war crimes in recent international con-

1 . Ismaili Mahdi, Jedi Siamak and Biglou Rahim, 'Jurisdiction, Duties and Options of International Courts', (2018), 4th International Conference on Jurisprudence and Law, Advocacy and Social Sciences, Hamadan 1; https://civilica.com/doc/1001178.

2 . Chapari Mohammad Ali, Shaygan Fard Majid 'Criminal responsibility in international crimes and its confrontation with the discourse of immunity' (2016) 10(37) International Legal Research 65.

3 . Randolph Churchill.

4 . Plavski Stanila, 'review of the principles of international criminal law' (translated by Seyed Ali Azmayesh, Tehran University Press 2014) 66.

flicts, such as the crises in Ukraine and the Gaza Strip. We will briefly explore the role of each of these causes in the aforementioned conflicts.

2.1. Failure to Ensure Effective Implementation in International Instruments

Scrutinizing the various reasons behind the lack of accountability in the current system for addressing war crimes in the international law may bring to mind the suspicion that due to the nascent nature of international law and the sensitivities that arise in this branch of legal science, currently due to the lack of documents and international treaties in the field of dealing with war crimes, and this is one of the main factors for the ineffectiveness of the current international law system in this field. Therefore, criticisms can be raised about this proposition, including the fact that the number of international documents in this field does not necessarily correlate with the efficiency and implementation of these documents in the international arena.

The history of the development of international law shows the fact that States can commit themselves to the implementation of the rules of that document by simply expressing their commitment to a comprehensive document in various areas. For instance, with the entry into force of the Convention on the Law of the Sea, it practically became the fundamental law governing maritime affairs, and now most of the countries of the world follow its provisions. Therefore, the main problem lies not in the lack of resources in this field. Instead, it can be argued that the lack of provisions guaranteeing appropriate executions in the mentioned documents is the main reason. While previous international documents in this field have played a role in shaping legal texts related to war crimes, they have not effectively addressed these crimes. In this regard, General Assembly resolutions have solely served as a suggestive role, and the draft proposals presented by the ILC have laid the foundation for the formation of a treaty in this field, yet they have not had much practical effect at the time of approval. They have not done much to address these crimes. Of course, one cannot overlook the role of such documents in the development of legal texts related to war crimes over the past years, and certainly, the international community owes the efforts of the drafters to the current version of the Rome Statute, which facilitated the formation of a specialized institution in addressing these crimes. There are previous international documents in this field.

The issue of execution guarantees, in various branches of international law, has its own sensitivities, and naturally, due to the differences between the domestic legal system and the international law system, one cannot expect the same level of guarantee of execution from this system. However, regarding such crimes that harm human conscience, more was expected from the compilers of international documents. In the previous section, it was mentioned that the text of the Rome Statute itself sometimes considers the international obligations of different countries preferable to the obligations they have in dealing with such crimes, and governments can rely on the diplomatic immunity granted to the officials of other countries and refrain from submitting them to the Court.

Furthermore, in addition to the permission given to the States, the practical inability of the States to prosecute the heads of other States has also had an effect on this issue. An example of acknowledging this weakness can be seen in the words of the President of South Africa and

the then-Prime Minister of Brazil regarding the non-implementation of the arrest warrant for the President of Russia, Vladimir Putin, issued by the ICC.[1] On March 17, 2023, the Second Branch of the Court issued an arrest warrant for Vladimir Putin following accusations of committing war crimes by forcibly moving thousands of children from Ukraine to Russia, following which the leaders of several States exhibited different reactions to this decision of the Court, including the president of South Africa on July 18, 2023, in an interview with his national media, stating that the President of Russia is going to participate in the economic conference held in the coming month in South Africa, and the respective government will not arrest him, because this action is a declaration of war against the Russian Federation.[2] Similarly, the Prime Minister of Brazil announced in an interview on September 11, 2023, at the G-20 Summit that if Putin participates in the next year's Summit in Rio de Janeiro, the Brazilian government will not be able to arrest him.[3]

The failure to anticipate appropriate responses by the international community during cooperation, particularly in ensuring the security of the participating countries while prosecuting war criminals, is another neglected aspect in the planning of these cooperations. Fear of new conflicts between cooperating countries or the spread of existing armed conflicts to the territory of other States significantly impacts States' willingness to cooperate in addressing war crimes and punishing criminals. Therefore, it seems that the international community has not adequately considered providing appropriate and preferably collective guarantees to participating countries in this matter to instill confidence and facilitate progress in this direction.

2.2. The Primacy of International Relations over International Law

The intricate relationship between international relations and international law, and the impact of international relations on the development and evolution of international law, cannot be disregarded. These two concepts have historically been intertwined, with the formation and development of international law being the result of the international relations of different governments and their shared interests. Therefore, political alliances established among different governments are noteworthy. The same thing has been manifested in the behavior of different governments towards various issues so that alliances have even affected the degree of governments' adherence to their international commitments in the face of war disasters and crises, and sometimes we have witnessed a dual approach from different countries regarding the same issues.

As an instance, the dual approach of the European Union and the United States in response to the crises in Ukraine and Gaza serves as an illustrative case. From the beginning of the war in Ukraine, the European Union has imposed sanctions on Russia in various areas, through various resolutions passed by the European Commission. The Union even imposed sanctions on

1 . 'Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova', Retrieved from https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and., accessed on March 5, 2024.

2 . 'South Africa Says Arresting Putin Would be Declaration of War', Retrieved from https://abcnews.go.com/International/wireStory/south-african-leader-arresting-putin-johannesburg-month-war-101434563, accessed on March 5, 2024.; https://www.aljazeera.com/news/2023/7/18/south-africa-says-arresting-putin-would-be-declaration-of-war., accessed on March 5, 2024.

3 . 'Up Brazil's Judiciary Decides Putin Arrest if He Visits Luna', Retrieved from https://www.reuters.com/world/up-brazils-judiciary-decide-putin-arrest-if-he-visits-brazil-lula-2023-09-11/., accessed on March 5, 2024.

governments suspected of cooperating with Russia, such as Belarus and the Islamic Republic of Iran. Up until June 23, 2023, the Union had approved approximately eleven sanctions and restrictive measures in economic, military and agricultural sectors against Russia.[1] Similarly, the United States had taken various measures and condemned Russia's invasion of Ukraine. The President of the United States strongly denounced Russia's actions in the annexation of the eastern regions of Ukraine,[2] and the US Treasury Department has imposed about 100 new sanctions on Russian natural and legal entities until November 2, 2023, with the aim of cutting off the supply chain of war supplies needed for further invasion of Ukraine.[3]

However, in the case of the Gaza crisis, the European Union refrained from imposing any sanctions on the Zionist regime so far and even some high-ranking officials of the Union have supported this regime wholeheartedly on multiple occasions. For instance, the High Representative of the European Union for Foreign Affairs and Security Policy,[4] as well as members of the European Parliament,[5] expressed support for the actions of the Zionist regime, while solely emphasizing that these actions should comply with the IHL framework. Nonetheless, reports on the ongoing conflicts in the Gaza Strip clearly indicate that the Zionist regime does not have the slightest respect for these international rules.

In confirmation of this claim, it suffices to mention two points. firstly, according to numerous reports from human rights organizations like Human Rights Watch, the Zionist regime has used white phosphorus chemical bombs in densely populated areas of Gaza and Lebanon, causing severe long-term injuries to the civilians.[6] Secondly, on October 18, 2023, the Zionist regime committed a great war crime by bombing al-Ma'mdani hospital, resulting in the death of approximately 500 to 1000 civilians. Following this tragedy, the Ministry of Foreign Affairs of some Islamic countries including Iran, condemned the attack.[7] However, despite these atrocities, the unwavering support of certain countries for the horrifying actions of the Zionist regime persists, as far as the heads of five States- France, Germany, Italy, England and the United States- in a joint statement on October 9, 2023, declared their full support for the Zionist

1 . 'EU response to Russia's war of aggression against Ukraine', Retrieved from https://www.consilium.europa.eu/en/policies/eu-response-ukraine-invasion/#sanctions., accessed on March 5, 2024.

2 . 'Statement from President Biden on Russias Attempts to Annex Ukrainian Territory', Retrieved from https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/30/statement-from-president-biden-on-russias-attempts-to-annex-ukrainian-territory/., accessed on March 5, 2024.

3 . 'Treasury Hardens Sanctions With 130 New Russian Evasion and Military-Industrial Targets', Retrieved from https://home.treasury.gov/news/press-releases/jy1871#:~:text=The%20U.S.%20Department%20of%20State,effort%20and%20other%20malign%20activities., accessed on March 5, 2024.

4 . 'Israel/Palestine: what the EU stands for', Retrieved from https://www.eeas.europa.eu/eeas/israelpalestine-what-eu-stands_en., accessed on March 5, 2024.

5 . 'MEPs condemn Hamas attack on Israel and call for a humanitarian pause', Retrieved from https://www.europarl.europa.eu/news/en/press-room/20231013IPR07136/meps-condemn-hamas-attack-on-israel-and-call-for-a-humanitarian-pause., accessed on March 5, 2024.

6 . 'Israel Used White Phosphorus in Gaza and Lebanon', Retrieved from https://www.hrw.org/news/2023/10/12/israel-white-phosphorus-used-gaza-lebanon#:~:text=(Beirut%2C%20October%2012%2C%202023,answer%20document%20on%20white%20phosphorus., accessed on March 5, 2024.

7 . 'Syrian Government Denounces Barbaric Zionist Massacre at al-Mamdani Hospital in Gaza', Retrieved from https://syrianobserver.com/news/85732/syrian-government-denounces-barbaric-zionist-massacre-at-al-mamdani-hospital-in-gaza.html, accessed on March 5, 2024.;
https://en.mfa.ir/portal/newsview/732292/Iran-FM-pens-letter-to-Vatican-counterpart-calls-on-followers-of-Abrahamic-religions-to-confront-Gaza-aggression., accessed on March 5, 2024.

regime.[1] Moreover, also during the Gaza crisis, the heads of these States made frequent visits to the occupied territories as a sign of support for the Zionist regime, and certain States offered financial and military aid to the regime, as well.

In the examination of this dual policy adopted by the countries in response to the two crises and armed conflicts, and the indifferent approach of the States towards international rules in the face of the Zionist regime's current crimes in the Gaza Strip, shows the greater importance of the policies of the major States and international relations by high-ranking officials compared to the accepted rules of international law. In other words, it seems that the States' relations with each other determine their willingness to implement international rules and take a position in the face of widespread violations of the rules of armed conflict. This view can also be considered as a significant reason for the failure of the current system of dealing with war criminals. Because if the heads of the States were committed to the implementation of international rules during international conflicts and the prosecution and trial of war criminals under all circumstances, such contradictions in the conduct of the aforementioned States would cease to exist, fostering greater hope for the punishment of criminals.

2.3. Non-Membership of Certain Major Powers in the Rome Statute

The Statute of the ICC is currently the most comprehensive treaty in the field of dealing with war crimes. the drafters of this document have taken a significant step toward addressing these crimes by accurately predicting the methods and mechanisms of prosecution, trial and punishment of war criminals. However, it is noteworthy that certain influential States such as the United States, Russia, India and Pakistan are not members to this Statute. These States have a history of armed conflicts and direct or indirect involvement in numerous wars. The non-membership of the Zionist regime[2] in the Statute is also of great importance.[3] To explain the significance of this issue, reference can be made to the considerable number of wars these States have been involved in.[4]

The non-membership of these States and the Zionist regime in the Statute can be examined from three perspective. Firstly, in the event of armed conflict and war crimes, there is no obligation for these States to try their criminals or surrender them to the Court or opposing States. As another example of the importance of this issue, the crisis in Ukraine and Gaza can be states, where currently Russia and the Zionist regime are considered the main parties in these conflicts, and the United States is also involved in the Gaza war, fully supporting the crimes of the Zionist regime. Secondly, these States can become safe havens for war criminals who are nationals of other allied States, and when necessary, these criminals can implement these States' policies

1 . 'Joint Statement on Israeli', Retrieved from https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/09/joint-statement-on-israel/., accessed on March 5, 2024.
2 . The authors of this article do not recognize the Zionist Occupation Regime as an independent entity and state.
3 . 'States Parties to the Rome Statute', Retrieved from https://asp.icc-cpi.int/states-parties#U., accessed on March 5, 2024.
4 . To read more, see the following:
https://www.va.gov/opa/publications/factsheets/fs_americas_wars.pdf;
https://libraries.indiana.edu/political-history-americas-wars;
https://en.wikipedia.org/wiki/List_of_wars_involving_the_United_States;
https://www.zdf-studios.com/en/program-catalog/international/unscripted/history-biographies/russias-wars;
https://en.wikipedia.org/wiki/List_of_wars_involving_Russia;
https://www.britannica.com/event/Arab-Israeli-wars;
https://en.wikipedia.org/wiki/List_of_wars_involving_Israel., accessed on March 5, 2024.

in various forms such as proxy wars. Thirdly, their non-membership means not obligated to cooperate with the Court in prosecuting and punishing criminals, nor engage in political consultations with allied States to address these crimes. In other words, the membership of these States could empower the Court through international relations in various fields related to the Court's objectives.

2.4. Non-Utilization of Political Power against States that Violate International Rules in this Area

Given the devastating consequences of various war crimes, it is necessary to recruit every legal and non-legal method to minimize the occurrence of these crimes and punish their perpetrators. the members of the international community are expected to take steps and recruit their resources to stop such crimes and punish the offenders. political tools, such as economic and arms sanctions, can play a significant role in reducing the aggressiveness and power of the conflicting parties, thereby minimizing the occurrence of these crimes.

For instance, economic sanctions against hostile States, can exert substantial pressure, compelling officials and commanders responsible for these crimes to surrender. Applying economic pressures and cutting off commercial relations in the long run can disrupt the economic system of a country, leading to public dissatisfaction and increasing the likelihood of surrendering criminals to international courts. furthermore, comprehensive arms embargoes can prevent the recurrence of such crimes by the parties to an armed conflict. For instance, if there is a fear of a reduction in weapons resources in the long run for the State involved in the conflict, naturally, the use of weapons will be restricted and more controlled.

Addressing war crimes involves three distinct stages. the first stage includes applying legal methods, such as the conclusion of treaties, to prevent the commission of these crimes. Second, the control of the conflict conditions through the clear and unambiguous directives of the international community regarding the denunciation of war crimes. and finally, comprehensive international cooperation utilizing legal and political methods in the pursuit, trial and punishment of war criminals in accordance with the rules of international law. It is noteworthy to reiterate that both legal and non-legal solutions can be instrumental before, during and after conflicts and war crimes occur, making political tools such as sanctions complementary to legal methods.

The negative impact of not applying these methods and especially the provision of weapons by hostile countries, is evident in the current Gaza crisis. Several States have continued to support the Zionist regime with weapons, resulting in extensive bombings of hospitals, schools, religious and cultural centers, as well as civilian gatherings. the statements made by the President of the United States on October 10, 2023, during a press conference at the White House, further exemplify this support, where Joe Biden said in part of his speech: "We will ensure that the Zionist regime have all of what it needs to respond to this attack", and announced his intention to request a budget of 105 billion dollars from the US Congress to support their strategic partners such as the Zionist regime. Undoubtedly, if it were not for the comprehensive economic, political and military support from the United States to the Zionist regime, the number of crimes

committed by this regime would have been greatly reduced, fostering hope for justice and the trial of criminal leaders of this occupying regime.

2.5. Expediency in Drafting the Rome Statute

The Rome Statute, as the founding document of the ICC, despite its binding nature at least for its members, has not been able to fully meet the expectations of the international legal community. Although some jurists may consider the overall performance and output of the ICC relatively acceptable given its limited history of activity, this section aims to highlight certain shortcomings that may have arisen due to reasons such as appeasing the majority of member States, ensuring the ratification of its founding treaty, complacency with the formation of an international institution to act at a minimum level in order to deal with the crimes subject to the jurisdiction of the Court, lack of sufficient capacity in international law or drafters' inattentiveness at the time of the conclusion of the founding treaty.

- One of these shortcomings pertains to the jurisdiction of national and international courts during the investigation and punishment phases. According to the first paragraph of Article 17 of the Statute, if a case is being investigated or prosecuted by a country with jurisdiction, the Court will consider the case inadmissible, unless that State is unable or unwilling to carry out the investigation and prosecution. The commentary of the Statute in this regard distinguishes inaction from the unwillingness/inability of the competent government.[1] It considers unwillingness and inability when an official investigation has started, while inaction occurs when no legal action has been taken to pursue the case. The criticism of this article emanates from the fact that inaction can be seen and recognized by the Court and the beneficiaries of the case, while the unwillingness and inability to prosecute and try the accused, which occurs when the investigation has officially started, is not easily recognized, and governments are unlikely to admit to this issue. Furthermore, if a government intends to delay proceedings, it can easily do so and even prevent the proceedings of the case from being brought before the Court simply by presenting false reports.
- Another issue relates to the validity of the opinions rendered by national courts regarding the trial and punishment of their own citizens. According to the third paragraph of Article 17, if an individual has already been tried for a specific crime and a retrial is not allowed according to the third paragraph of Article 20, the Court does not consider the case admissible for the same act committed by the same individual. The third paragraph of Article 20 also states that an individual who has been tried in another court for crimes falling under Articles 6, 7 and 8 cannot be tried by the ICC unless the other court was established to protect the individual from criminal liability for crimes under the jurisdiction of the ICC, or the court was not held independently and impartially and in accordance with the norms of international law. Criticisms of these provisions arises from the fact that recognizing trials conducted by national courts can potentially ena-

1 . Klamberg Mark, Commentary on the law of the international criminal court, (Torkel Opsahl Academic E Publisher, Brussels 2017) 206-217

ble criminals, particularly high-ranking State officials and officials responsible for war crimes, to evade criminal responsibility. The possibility of extra-legal relationships of these individuals and those who hold positions and responsibilities in judicial institutions cannot be overlooked. additionally, while the Court can identify the same individual, it may prove challenging to determine whether the act in question is the same act previously prosecuted in a national court. for instance, if an individual or group is killed as a result of torture and the national court punishes the perpetrator according to the higher-level crime of murder, it remains indefinite whether the Court can subsequently deal with the crime of torture, particularly if the national court has decided to waive punishment for that specific crime or has combined it with the crime of murder based on their domestic procedures. And if this is the case, if the punishment of an individual in the national court is prolonged, halting opportunities for retrial in the ICC, and as a result, the individual goes unpunished for other crimes they have committed, can it not be claimed that justice is not attained for victims of those crimes?

Conclusion

Based on the analysis presented in this article, it is argued that the existence of specialized institutions in the international arena, which derive their legitimacy from the majority of the United Nations member States, has facilitated cooperation in the development of rules on war crimes. These rules aim to prevent such crimes in international armed conflicts and ensure the prosecution, trial and punishment of war criminals. With the exception of the Statute of the International Criminal Court (ICC), other non-treaty documents resulting from international cooperation hold significance due to their origins in UN-affiliated institutions and the involvement of representatives from various countries. Certainly, their influence in the gradual advancements in the field of International Criminal Law (ICL) should not be disregarded.

Moreover, this article observes a gradual progress in the legal literature of the international community concerning war crimes. It is as though the international institutions have been adopting a mechanism similar to the current ICC from the outset. The United Nations General Assembly's adoption of Resolution 3074 marked the initial step, establishing nine general principles for international cooperation in addressing war crimes to maintain international peace and security. Subsequently, the International Law Commission (ILC) approved a draft law on crimes against humanity in 20 articles, considering war crimes on a systematic and wide scale. This shift indicates the desire of the international legal community to move from citing generalities in this field to details and more concrete specifics. Both of these documents emphasize the need for cooperation in the prosecution, trial, and punishment of war criminals, addressing concepts like extradition and the prohibition of granting asylum to these criminals, which has facilitated the grounds for subsequent developments in this field. Ultimately, the Rome Statute, with its treaty form, broad membership, sand comprehensive definitions, stands as the most important international document in the field of crimes.

This article acknowledges the limitations inherent in treaty-making processes in the inter-

national arena, such as of the need for consensus among participating States during the initial negotiations. Additionally, when examining the international conflicts that unfolded following the Court's establishment, it becomes apparent that the current system for addressing war crimes is still flawed. The shortcomings have allowed the heads of States involved in armed conflicts to commit these crimes enjoying impunity, while the international community is manifestly unable to effectively respond to such crimes. Therefore, considering the significance of this issue and the hope for structural reforms in this area, an evaluation of international community's performance reveals the following shortcomings in the current system:

- Firstly, the absence of guarantees for appropriate and practical implementation of international documents has turned these documents into mere sources for the development of legal rules and has reduced their significance considerably. While the two initial documents lack implementation sanctions due their non-treaty nature, the drafters could have strengthened their provisions and facilitated future implementation mechanisms. Furthermore, issues such as the concern of States with lesser military power for retaliatory measures by powerful States, as well as a lack of hope for a coordinated and comprehensive response from the international system, have diminished the implementation of treaty obligations, including those outlined in the Rome Statute.
- Secondly, the prioritization of international relations over international law has overshadowed the obligations of States to international documents, placing the political considerations above international justice and the implementation of their obligations to the international community in maintaining peace and security.
- Thirdly, the non-membership of certain international major powers in the Rome Statute significantly impedes the Court's ability to fulfill its specialized functions. as long as States with substantial military power and allies remain non-members, comprehensive action against war crimes becomes practically unattainable.
- Lastly, the non-utilization of political tools by other States against offending States allows these States to continue committing crimes without facing pressure from the international community or being deprived of the facilities and privileges associated with membership in the international community.

In conclusion, the main weakness of the current system for addressing war crimes, lies not in the lack of legal documents or deficiencies in existing legal texts. Rather, it is the lack of proper and coordinated implementation, as well as the unwillingness of certain offending States to abide by the agreements which have been approved by the majority of member States of the international community and have even taken the form of treaties. The authors of this article argue that unless these issues are effectively addressed by legal professionals and policymakers worldwide, achieving practical accountability for war criminals, including the authorities of the Zionist regime, will remain elusive, despite their flagrant violations of international regulations.

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