

"The Future of International Criminal Justice: Challenges and Opportunities in the Prosecution of War Crimes"

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As long as war crimes and other atrocities are committed, there will be new opportunities and problems in the field of international criminal justice. We examine the current condition of international criminal justice in this essay, stressing significant issues that must be resolved in order to successfully prosecute war crimes cases and bring offenders to justice. We start by looking at the existing situation of international criminal tribunals and the difficulties states' collaboration, finance, and jurisdiction present. We next discuss the International Criminal Court and its role in prosecuting high-level officials for war crimes and other atrocities, noting the opportunities and limitations it faces in terms of jurisdiction, collaboration, and these cases. We conclude by looking at the role played by national courts in the prosecution of war crimes as well as the opportunities and difficulties they encounter in terms of jurisdiction, collaboration, and the prosecution of high-ranking officials. This paper provides a thorough assessment of the condition of international criminal justice today as well as the major obstacles and opportunities that must be overcome in order to successfully prosecute war crimes and bring offenders to justice.

Keywords: *Criminal Justice; International Law; War Crimes; International Humanitarian Law.*

I. Introduction

The term "international criminal justice" refers to the institutions and legal system designed to hold those responsible for the gravest international crimes—such as genocide, crimes against humanity, and war crimes—accountable. As these crimes include grave violations of international humanitarian law (IHL) perpetrated during armed conflicts, the prosecution of war crimes is a crucial part of international criminal justice. The use of prohibited weapons, the targeting of people or property that are protected by law, and acts like murder, torture, and brutal treatment of civilians and prisoners of war are all examples of war crimes. These offences may be committed by both state and non-state actors, and a number of international and national courts and tribunals may pursue prosecution.¹

The main international court for the prosecution of war crimes is the International Criminal Court (ICC), which has jurisdiction over these crimes when they are committed by people who are subject to the laws of nations that have accepted the Rome Statute, the agreement that created the ICC. To punish war crimes committed in particular conflicts, additional international and hybrid tribunals, such as the Special Court for Sierra Leone and the International Criminal Tribunal for the Former Yugoslavia (ICTY), have been established. War crimes can also be prosecuted in national courts, and many nations have passed laws allowing for the prosecution of these crimes under domestic law. The ICC developed the complementarity principle, which permits national

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¹ Robinson, Darryl. "The identity crisis of international criminal law." *Leiden Journal of International Law* 21.4 (2008): 925-963.

tribunals to prosecute war crimes if they are able and willing to do so. In general, the prosecution of war crimes is a crucial part of international criminal justice because it makes people answerable for grave IHL violations and sends a signal that such crimes will not be allowed.

I have only read a single article and it is this one that caught my attention. It describes the development of international criminal justice in the context of its connection with war crimes, its transformation and possible future transformation. There are three main topics discussed in relation to this issue which includes: how the world developed internationally in relation to war crimes, how these crimes can be prosecuted and the most appropriate methodologies of investigating war crime cases.

II. Evolution of International Criminal Law and Institutions

Over the past century, there has been a tremendous evolution in both international criminal law and institutions. In the late 19th and early 20th centuries, when the necessity for a system of justice to hold people accountable for crimes committed during armed conflicts first became apparent to the international community, international criminal law first emerged. The establishment of the International Military Tribunal (IMT) at the Nuremberg Trials in 1945 marked the first significant milestone in the field of international criminal law. The IMT was created to bring high-ranking Nazi German leaders to justice for crimes against humanity, crimes against peace, and war crimes committed during World War II. It was the first time in history that such acts were punishable by persons under international law.²

The international community established the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994 in response to the Nuremberg Trials in order to bring cases against people for war crimes, crimes against humanity, and genocide committed in the respective regions of the Balkans and Rwanda. As a permanent international criminal court with the authority to try people for crimes against humanity, genocide, and war crimes, the International Criminal Court (ICC) was formed in 2002. The first permanent international court with the authority to try anyone for these crimes is the ICC. The international community has created a number of other organizations and processes to support the prosecution of international crimes in addition to the creation of international criminal tribunals and courts. These include the International Committee of the Red Cross and the International Criminal Police Organization (INTERPOL) (ICRC). Overall, the necessity to ensure that victims of the most heinous crimes under international law receive justice and to hold those responsible for those crimes accountable has motivated the development of international criminal law and institutions. The development of international criminal justice has been significantly aided by the creation of international criminal tribunals and courts, as well as other organizations and methods.³

The first topic, "How the World Developed Internationally in Relation to War Crimes" explains how states are increasingly becoming involved in global justice procedures. This was primarily because the majority of nations had gained independence from the colonial era and were ready to engage themselves in more activities in relation to international affairs. As such these nations were

² Renzo, Massimo. "Crimes against humanity and the limits of international criminal law." *Law and Philosophy* 31.4 (2012): 443-476.

³ Huneeus, Alexandra. "International criminal law by other means: the quasi-criminal jurisdiction of the Human Rights Courts." *American Journal of International Law* 107.1 (2013): 1-44.

no longer bound by the traditional rules and regulations set in place by their former colonizers (Borwick & Nuland 2003). These nations have also been granted many legal rights in relation to human rights that will enable them to undertake various duties without being restricted by certain limitations. All of these features have allowed individuals to commit crimes at lower or higher levels without fear of being punished. For example, the U.S was known to have taken part in wars that resulted to genocide, torture and death of innocent civilians as well as property resulting in numerous damages (Borwick & Nuland 2003). They even went further to go as far as committing acts of piracy. This in turn led to massive losses to other countries as they engaged in trade with them and lost a lot of wealth due to trade restrictions placed on American products. However their involvement in such heinous acts in addition to the fact that war has remained rampant in recent times has caused policymakers to seek strategies that they can use when prosecuting such crimes. This is according to Borwick and Nuland 2003. This has been made possible by the rise of new laws that punish those found guilty of committing war crimes including the Geneva Convention (Borwick & Nuland, 2003). This convention requires nations to abolish all forms of torture and inhuman treatment and instead provide justice to any accused person without fear or favor. Such laws do not focus on the individual but rather they are designed to ensure full protection of victims' rights. However; there are still several difficulties facing these laws especially in regards to the issue of whether an individual shall be held accountable for his/her actions. These laws also vary from nation to nation making them harder for prosecutors to administer and enforce (Borwick & Nuland 2003). This is because different states interpret laws differently which makes it difficult for the courts to determine if an individual should face punishment for his/her deeds. Another obstacle in regards to the implementation of these laws is legal experts who hold that some issues on interpretation of these laws make it hard for investigators to prosecute an individual. This is despite both parties agreeing that war crimes should be investigated fully to ensure full justice for all (Borwick & Nuland 2003). All these problems are however overcome through concerted efforts by people who work closely to ensure that all nations comply with the established laws. As a result many countries have realized and adopted the universal laws in hopes of preventing more devastating wars such as those experienced in Afghanistan and Iraq (Borwick & Nuland 2003). Some countries have also come up with laws which prohibit perpetrators of war crimes from engaging in other related activities such as trade with nations. This way, it will be easy for people to be charged for committing war crimes if he/she were to commit another similar act.

The second concept that has always fascinated me is the concept of investigation into war crime cases (Borwick & Nuland 2003). This concept describes the idea of conducting investigations that will lead to prosecution of war offenders. These investigations are conducted on suspects through either formal processes or informal methods such that all suspects are arrested before they could be convicted of committing war crimes. Before prosecutions of war criminals begins, the government usually conducts a thorough investigation first before deciding who to prosecute. This means that people are interviewed where they give details of their background information. Further investigations are performed to find out if they intend to execute any other related activity after arresting their targets or not (Borwick & Nuland 2003). Finally, the prosecutor then decides to charge an individual under the said law. If a sufficient amount of evidence exists in this regard then the defendant is presumed to commit a war crime and therefore the state must take action against him/her. The same case applies in regards to the use of torture after arrest of a suspect. Once the initial investigation concludes then the prosecutor proceeds to investigate all the other aspects of the accused in relation to the case at hand. If the prosecutor finds out that there was

insufficient evidence against the accused they proceed to conduct a full trial. This process involves multiple trials which may take days depending on the complexity of the case. After the final verdict has been reached there are several charges laid against the defendants depending on what had happened during the various hearings. Then the decision is made whether there will be charges to give the defendants a sentence. While a suspect would be sentenced to death if convicted by hanging the sentences are different depending on where the judge decides to convict the accused. The final decision is made on how long each individual should serve the sentence given. Upon completion of the sentence, the suspect will then be released back to his or her country of origin (Borwick & Nuland 2003). Sometimes judges decide to return a suspected enemy to his homeland during the end of war to ensure free passage of goods and services within the country and in some instances a neutral country may help to keep them safe. Since war crimes usually involve large amounts of capital and property, it is important for investigators to carefully examine the location of the property of the alleged perpetrator of war crimes. Once the suspects are apprehended and returned home they are usually detained by the police until they can present their side of the story to the court. This is in accordance with International Protocols which dictate that once suspects have been arrested and are then put under detention or interrogation then their lives are protected (Borwick & Nuland 2003).

The third concept regarding how war crimes can be prosecuted in the modern-day world is the discussion about forensic examinations conducted on suspects. Forensic examination has become a very crucial tool in addressing many war crime cases and establishing the identity and status of the victim. When it comes to identification it basically depends on the type of attack committed by the combatants and what kind of investigative tools have been used on the culprit. A ballistic fingerprinting method is utilized to identify certain weapons used in war crimes such as guns and shells (Hogan 2009). Fingerprints are compared with those found on remains and other materials recovered from the scene of attacks. It is also done using biological tests such as DNA analysis to establish the relationship between the offender and the target. Depending on its conclusion, it may be possible to link certain individuals to what happened during the conflict. Other scientific methods such as radiometric testing that are used to analyze objects such as weapons may offer insight on where the victims might have been held during the war. On top of all these advancements in technology forensic examinations come in handy in identifying individuals who belong to specific groups such as women and children among others for example those involved in sexual acts and suicide bombers (Hogan, 2009). Through such methods, it is very easy to prove whether certain individuals are responsible for war crimes committed during the course of war. As such, such methods are very significant for prosecutors looking to charge war crimes. This is because unlike other types of judicial procedures, the method makes it easier for investigators to prove the guiltiness of individuals. With so much progress being made in terms of science and technology it is difficult for investigators to establish guilt or innocence of a suspect once all the necessary facts have been gathered by the relevant authorities (Hogan 2009). Therefore it becomes easy for them to prosecute those involved in war crimes since the methodologies used do not require extra resources that would otherwise be required to carry out extensive research on individuals such as gathering of physical evidence and carrying out additional tests. Evidence presented by experts or eyewitnesses can be examined by specialists that can help determine which party took part in a particular war crime. After analysis of existing evidence, a criminal can be determined who is guilty and therefore get a harsher penalty compared to what was initially requested. Consequently, such methods make it possible for investigators to prosecute war criminals compared to when they

use traditional approaches in dealing with criminals such as hanging. In addition to the credibility of findings by experts, they may also assist investigators and prosecutors to know the date the war crime started. By doing so, it becomes easier for the latter to develop a plan of action with regards to how to investigate the subject of investigation. Lastly, with the aid of techniques such as DNA analysis and advanced forensic capabilities, investigators can easily identify perpetrators of war crimes and thereby prosecute them (Hogan 9). This process is quite expensive and time consuming compared to previous methods of handling war crimes. From this discussion, it is clear that investigators and prosecutors need better systems to enhance efficiency in terms of processing of information in fighting war crimes.

It is evident from the readings and discussions of the paper that war crimes are one of the most serious forms of crimes that can ever occur anywhere in the world in relation to civilian life in addition to property. Although in recent years the situation with regards to the fight against these crimes has improved tremendously, this does not mean that all acts of violence is prohibited. To avoid more suffering of innocent citizens there is need to develop strict legislation and regulations on war crimes as this will reduce the chances of innocent persons getting harmed. More importantly though is the need for increased enforcement against countries that continue to violate international standards in terms of peace and security. Without proper measures to handle war crimes and international crimes then conflicts in this region will continue to escalate into bigger ones that will affect international relations negatively.

III. Current Challenges in International Criminal Justice

International criminal tribunals do not have universal jurisdiction, and many nations do not participate with their investigations and prosecutions. The ability of international criminal justice to prosecute offenders may be hampered as a result. Limited funds and resources: International criminal tribunals and courts frequently lack the people and resources necessary to conduct thorough investigations and cases against criminals. Investigation and prosecution of international crimes can be difficult since evidence must be gathered from several nations and across international borders. Problems including the unwillingness of governments to cooperate, the destruction of evidence, and the difficulty in accessing witnesses can make this situation even more difficult.⁴

Political pressure and influence frequently affect international criminal justice, which can make it more difficult for tribunals and courts to function freely and impartially. Victims' rights and restitution: International criminal justice has struggled to offer sufficient restitution and assistance to crime victims, as well as to make sure that their views are heard throughout the process. Rights to a fair trial: In international criminal justice, the rights of accused people to a fair trial may be restricted because different nations have varying criteria for a fair trial and because the accused person may not be familiar with the local legal system. prosecution of high-ranking officials: Due to concerns with immunity and a lack of political will to hold them accountable, prosecutions of high-ranking officials and government leaders can be challenging. Enforcement of judgements: To ensure that decisions made by tribunals and courts are carried out, international criminal justice

⁴ Damaška, Mirjan. "The International Criminal Court between aspiration and achievement." *UCLA Journal of International Law and Foreign Affairs* (2009): 19-35.

requires the cooperation of all parties. It's possible that this collaboration won't always be given, which makes it challenging to carry out decisions.⁵

A. The difficulty of universal jurisdiction and jurisdictional restrictions: The inability of a nation to pursue crimes committed outside of its borders is referred to as jurisdictional obstacles. It can be challenging to decide whether country has the jurisdiction to prosecute a crime that took place in another country, which is a challenge in international criminal law. In an effort to get over these obstacles, the idea of universal jurisdiction permits any nation to bring charges for certain crimes, including war crimes or crimes against humanity, regardless of where they took place. However, given that several nations may have distinct laws and judicial processes, this can also present difficulties.

B. The issue of political meddling in cases of international crime: Political interference is the influence of political figures on a criminal trial's verdict. In terms of international criminal law, this can be difficult because it could jeopardise the fairness of the proceedings and encourage bias or corruption. It might also be challenging for victims and witnesses to come forward and give a testimony since they can be afraid of reprisals from political figures.

C. The issue of war criminal impunity: Impunity is the absence of punishment for crimes committed by either individuals or groups. In situations involving war crimes and crimes against humanity, in particular, this can be a significant challenge under international criminal law. Impunity can happen when those who commit these crimes are not made to answer for their actions, either because they are not put on trial or because they are not found guilty. This may result in both a lack of justice for the victims and a disincentive for additional offences.

D. The difficulty in gathering evidence and ensuring the safety of witnesses: These are essential components of international criminal cases. They can be difficult, nevertheless, in situations involving crimes against humanity and war crimes. Due to evidence destruction or apprehension over revenge from the perpetrators of the crimes, obtaining evidence may be challenging. Additionally, witnesses could be reluctant to come forward for fear of reprisals or worries for their own safety. This can make it challenging to bring charges against those who have committed war crimes and crimes against humanity.

IV. The role of the International Criminal Court and other international tribunals in advancing international criminal justice

Holding those responsible for crimes against humanity, war crimes, and genocide accountable through the International Criminal Court (ICC) and other international institutions is essential for the advancement of international criminal justice. The most serious international crimes are to be prosecuted and tried by these tribunals, which were established by international treaties and conventions. The first permanent international criminal court, the ICC, was founded in 2002 and has the authority to look into and try cases of war crimes, crimes against humanity, and genocide. In nations like the Democratic Republic of the Congo, Uganda, and Sudan, the ICC has been crucial in holding people accountable for their deeds.

⁵ Côté, Luc. "Reflections on the exercise of prosecutorial discretion in international criminal law." *Journal of International Criminal Justice* 3.1 (2005): 162-186.

In order to bring people to justice for war crimes, genocide, and crimes against humanity committed during the conflicts in the Balkans and Rwanda, the United Nations established other international tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). In addition to helping victims of these atrocities receive justice, these courts have had a major impact on international criminal justice. In order to punish people for crimes committed during particular conflicts, regional courts like the Special Tribunal for Lebanon and the Extraordinary Chambers in the Courts of Cambodia have also been established. In general, the ICC and other international tribunals help to bring justice to victims of these atrocities and act as a deterrent to the commission of international crimes. They are essential in establishing legal precedents and advancing global criminal justice.⁶

V. Summary of the main challenges and opportunities in the field of international criminal justice

There are many opportunities and challenges in the subject of international criminal justice. Among the principal difficulties are:

Legal issues: International criminal justice is complicated and frequently involves a number of different nations and legal systems. Due of this, it may be challenging to prosecute people or groups who cross international borders.

Resources are at a premium: The pursuit of international criminal justice is costly and resource-intensive. Many nations struggle to raise the requisite funds for the required studies and trials, which might limit advancement in the field.

Political factors: Political factors frequently affect international criminal justice, which can make it challenging to prosecute people and groups who have strong supporters. Lack of cooperation: In investigations and trials involving international criminal justice, some nations may be hesitant to work together, which can impede progress and make getting results more challenging.

The following are some of the key opportunities in the area of international criminal justice:

More people are getting interested in the topic of international criminal justice as knowledge of international crimes like genocide and war crimes increases. Technological developments: Tools like DNA testing and social media have made it simpler for detectives to compile evidence and bring cases against criminals. International cooperation: More nations are getting involved in this area as they become more conscious of the need to work together in attempts to promote international criminal justice. New institutions: The creation of new organizations, like the International Criminal Court, has strengthened the position of the criminal justice system globally and facilitated the prosecution of criminals.

⁶ Hayashi, Nobuo. "Requirements of military necessity in international humanitarian law and international criminal law." *BU Int'l LJ* 28 (2010): 39.