War Crimes and the Laws of War: Analyzing the Legal Framework for Prosecuting Human Rights Violations

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ABSTRACT:

Armed conflicts continue to generate grave violations despite an extensive body of international humanitarian, criminal, and human rights law. This review examines the legal framework governing the identification, investigation, and prosecution of war crimes, with attention to the distinction between international and non-international armed conflicts, the elements of war crimes, and the relationship between humanitarian law and human rights law. It analyses the Hague and Geneva regimes, the Additional Protocols, customary international humanitarian law, and the Rome Statute of the International Criminal Court. The review also considers major categories of war crimes, modes of individual liability, command responsibility, defences, domestic jurisdiction, universal jurisdiction, complementarity, immunities, hybrid tribunals, and United Nations accountability mechanisms. Particular attention is given to investigative barriers, witness protection, digital and forensic evidence, fair-trial guarantees, and the judicial contributions of Tadić, Kunarac, Akayesu, Lubanga, Al Mahdi, and Ntaganda. The analysis finds that the principal weakness of the current system lies less in the absence of legal rules than in selective enforcement, political interference, weak state cooperation, jurisdictional gaps, and failure to execute arrest warrants. It evaluates autonomous weapons, cyber operations, and environmental harm. Stronger domestic implementation, international cooperation, evidence preservation, victim participation, reparations, and clearer regulation of emerging technologies are essential to credible and impartial accountability.

Keywords: War crimes; international humanitarian law; International Criminal Court; individual criminal responsibility; universal jurisdiction; victim justice

1. Introduction

War crimes; international humanitarian law; International Criminal Court; individual criminal responsibility; universal jurisdiction; victim justiceDespite the vast amount of international law that seeks to contain violence, violations of human dignity are still being committed in armed conflicts. Civilians, prisoners of war, wounded combatants, medical and humanitarian workers, displaced persons and other protected persons continue to be at risk of killing, torture, unlawful arrest, sexual abuse, forced displacement, starvation and property destruction. These types of activities have continued, demonstrating that relying only on the law is not enough to guarantee compliance. The capacity to investigate violations, identify those responsible, gather evidence, and provide sanctions, through fair processes, at the national and international levels is essential to effective accountability. The on-going wars have brought back the discussion about the selectivity, legitimacy and scope of international criminal justice.[C. Jacob, "A New Politics of International Criminal Justice: Accountability in Ukraine and the Israel–Gaza War" 100(6) International Affairs 2563–2581 (2024).]

International humanitarian law and the law of armed conflict govern the conduct of hostilities and protect persons not, or no longer, participating in the armed conflict. These rules limit the means and methods of warfare, clarify the difference between civilians and combatants, ban unnecessary suffering, and safeguard prisoners, wounded soldiers, medical facilities, humanitarian efforts, and civilian property. Some violations of these rules are particularly serious and are considered to be war crimes and are subject to individual criminal responsibility. Their prosecution is significant because international law recognises that political leaders, military commanders, members of armed groups, and direct perpetrators may incur individual criminal responsibility for international crimes. Not all Human Rights abuses in the context of armed conflicts are war crimes. A serious violation of IHL and a certain nexus between the war crime and an armed conflict, whether international or non-international, is necessary for a war crime to be prosecutable. Human rights law may still apply during hostilities, for example in the case of the right to life, the right to be released from detention, the right to freedom from torture, the right to freedom from involuntary disappearance and the fair-trial guarantees; the determination of whether an act constitutes a war crime will depend on the applicable humanitarian-law rule, the nature of the victim or object, the conflict nexus and the mental element required. Civil litigation and state responsibility can provide further avenues for holding individuals accountable, but are not substitutes for individual criminal prosecution.[U. Grušić, "Tort Law and State Accountability for Overseas Violations of International Human Rights Law and International Humanitarian Law: The UK Perspective" 36(2) Utrecht Journal of International and European Law 152–169 (2021).]

War-crimes accountability has developed from early codification and post-war tribunals to permanent and hybrid institutions, domestic prosecutions, universal jurisdiction, and specialised investigative mechanisms. Contemporary fact-finding increasingly involves civil-society organisations, survivor groups, digital investigators, open-source analysts, and evidence-preservation bodies.[F. D'Alessandra, "The Accountability Turn in Third Wave Human Rights Fact-Finding" 33(84) Utrecht Journal of International and European Law 59–76 (2017).] New actors and new technologies can enhance documentation and access to evidence, but raise questions about reliability, authenticity, security, bias, and admissibility.[F. D'Alessandra and K. Sutherland, "The Promise and Challenges of New Actors and New Technologies in International Justice" 19(1) Journal of International Criminal Justice 9–34 (2021).] In situations where state investigations are not forthcoming or possible, civil-society documentation can play a crucial role, but in a legal sense only the quality of the documentation and its coordination with the authorities responsible for prosecution matters.[B. McGonigle Leyh, "Changing Landscapes in Documentation Efforts: Civil Society Documentation of Serious Human Rights

Violations" 33(84) Utrecht Journal of International and European Law 44–58 (2017).] The treatment of mechanisms in relation to crimes against the Rohingya is an illustration of how civil-society involvement can aid in evidence gathering and prosecutions.[K. Stavrou, "Civil Society and the IIMM in the Investigation and Prosecution of the Crimes Committed Against the Rohingya" 36(1) Utrecht Journal of International and European Law 95–113 (2021).]

There is a huge disconnect between the scope of the legislation and the inconsistent implementation of it. Many perpetrators remain shielded from prosecution due to jurisdictions, political interference, lack of cooperation by states, unexecuting arrest warrants, domestic fragmentation of legislation, institutional constraints, and evidentiary challenges. International courts need to consider both accountability and rights to a fair trial as well as institutional legitimacy.[L.G. Minkova, "Expressing What? The Stigmatization of the Defendant and the ICC's Institutional Interests in the Ongwen Case" 34(1) Leiden Journal of International Law 223–245 (2021).] This review thus critically examines the legal framework for war crimes and serious human rights violations in Armed conflict.

Objectives

- To examine the major international legal instruments defining and prohibiting war crimes.
- To analyse the institutions and jurisdictional mechanisms used to prosecute individuals responsible for war crimes.
- To identify the legal, political, procedural, and evidentiary barriers to effective prosecution and accountability.

2. Conceptual and Historical Foundations of War Crimes

2.1 Meaning and Scope of the Laws of War

The laws of war are the rules of law governing armed conflict and aimed at restraining its humanitarian impact. The terms "laws of war," "international humanitarian law" and "law of armed conflict" are used interchangeably, but each has a slightly different historical and institutional emphasis.[Nils Melzer, International Humanitarian Law: A Comprehensive Introduction (International Committee of the Red Cross, Geneva, 2016).] A central distinction exists between jus ad bellum, which governs whether force may lawfully be used, and jus in bello, which governs how hostilities must be conducted once an armed conflict exists. The latter applies regardless of the legal or illegal use of force and regardless of who instigated the conflict.

2.2 Definition and Essential Elements of War Crimes

War crimes are serious violations of international humanitarian law that entail individual criminal responsibility. Their essential elements generally include the existence of an armed conflict, a sufficient connection between the conduct and that conflict, the protected status of the victim or object, the commission of a prohibited act or omission, and the required knowledge or intent.[Prosecutor v. Tadić, Case No. IT-64-81-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (ICTY Appeals Chamber, Oct. 2, 1995).] The armed-conflict nexus is important because acts that could be domestic offences or human rights violations don't necessarily become war crimes, unless they are closely linked to the armed conflict.

2.3 International and Non-International Armed Conflicts

International humanitarian law makes a distinction between international armed conflicts (including military occupation) and non-international armed conflicts between state forces and armed groups or between opposing armed groups.[International Committee of the Red Cross, Commentary on the Third Geneva Convention: Convention (III) Relative to the Treatment of Prisoners of War (Cambridge University Press, Cambridge, 2021).] For violence involving non-state actors to qualify as a non-international armed conflict, the hostilities must reach a sufficient level of intensity and the armed group or groups involved must possess a sufficient degree of organisation. This classification dictates the treaties, customs and

protected categories as well as the offences which will be in force in a specific situation. It also impacts on the basis on which people may be prosecuted.

2.4 War Crimes and Related International Crimes

There is also a need to differentiate war crimes from genocide, crimes against humanity, aggression, torture, terrorism and common human rights abuses. Genocide involves an "intent to destroy, in whole or in part, a national, racial, religious, or ethnic group," and crimes against humanity involve a "widespread or systematic attack against a civilian population," and may happen in war or peace.[Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-64-81-T, Judgment (ICTR Trial Chamber, Sept. 2, 1998).] By contrast, war crimes always have to do with armed conflict.

2.5 Historical Development of War-Crimes Accountability

The evolution of war-crimes accountability has been from state responsibilities to direct responsibility of individuals. The first signs of codification came with the Lieber Code, the Hague Conventions.[Convention Respecting the Laws and Customs of War on Land and Annex: Regulations Concerning the Laws and Customs of War on Land, Oct. 18, 1907.] The Nuremberg Charter then confirmed the possibility to prosecute individuals, including state officials, for international crimes.[Charter of the International Military Tribunal, Aug. 8, 1945, 82 U.N.T.S. 279.] The Geneva Conventions of 1949 further clarified the safeguards and introduced the concept of the 'grave breaches'.[International Committee of the Red Cross, The Geneva Conventions of 12 August 1949 (International Committee of the Red Cross, Geneva, 1949); International Committee of the Red Cross, Commentary on the First Geneva Convention: Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Cambridge University Press and International Committee of the Red Cross, Cambridge, 2016).] Subsequent, the ICTY and ICTR elaborated on the definitions of conflict, criminal responsibility, sexual crime and genocide; hybrid tribunals and the International Criminal Court institutionalised a permanent structure of accountability for political leaders, commanders and direct perpetrators of crime.[Tadić, supra note 9; Akayesu, supra note 11.]

3. International Legal Framework Governing War Crimes

3.1 Hague Law

The law that controlled warfare evolved through the Hague Conventions, which contained rules on means and methods of warfare, destruction and seizure of property, and military occupation. Hague law deals with the conduct of warfare, and with restricting methods, such as weapons, that are likely to cause unnecessary suffering or excessive destruction. These rules govern the obligations that the occupying powers must take and forbid actions which are not necessary for military operations. While many Hague rules have roots in treaty law, others have become customary and are binding for parties that are not parties to the original treaty.[Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules (Cambridge University Press and International Committee of the Red Cross, Cambridge, 2005).]

3.2 Geneva Conventions of 1949

The four Geneva Conventions form the basic structure to safeguard individuals involved in an armed conflict. They provide protection for wounded and sick soldiers on land, wounded, sick and shipwrecked at sea, prisoners of wars and civilians, including those in an occupied territory. The grave-breaches regime is significant in that it obligates states to look for those who are alleged to have committed the grave breach and to either prosecute or hand them over for trial. This regime turned the humanitarian responsibilities into criminal responsibilities.[International Committee of the Red Cross, The Geneva Conventions of 12 August 1949, supra note 14.]

3.3 Additional Protocols to the Geneva Conventions

Additional Protocol I enhanced protections in the context of international armed conflicts, and Additional Protocol II provided protections for

the victims of non-international armed conflicts.[Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 609.] They together help to uphold the concept of distinction, proportionality and precaution. Attacks may be directed only against military objectives; civilian objects must not be made the object of attack. Even when a military objective is targeted, an attack is prohibited if the expected incidental civilian death, injury, or damage would be excessive in relation to the concrete and direct military advantage anticipated.

3.4 Customary International Humanitarian Law

Customary international humanitarian law is based upon state practice which is sufficiently general and accepted as law.[Yudan Tan, "The Identification of Customary Rules in International Criminal Law" 34(2) Utrecht Journal of International and European Law 92–110 (2018).] It is important in the case of treaty commitments which have not been completed or where parties to treaties have not ratified relevant instruments. In both non-international and international armed conflicts, many customary restrictions are in place. In modern conflicts, their use by non-state armed groups plays a key role, a practice which has been debated and the legal significance of which is uncertain.[Tilman Rodenhäuser, "The Legal Protection of Persons Living Under the Control of Non-State Armed Groups" 102(915) International Review of the Red Cross 991–1020 (2020).] Establishing customary rules can be challenging due to lack of transparency and/or inconsistencies in state practice or political motivations.[Zhuo Liang, "The Practice of Non-State Armed Groups and the Formation of Customary International Humanitarian Law: Towards Direct Relevance?" in Panos Merkouris, Jörg Kammerhofer and Noora Arajärvi (eds.), The Theory, Practice, and Interpretation of Customary International Law 298–319 (Cambridge University Press, Cambridge, 2022).]

3.5 Rome Statute of the International Criminal Court

The Rome Statute sets out the permanent structure for the prosecution of those who commit international crimes. Article 5 lists criminal acts that fall under the jurisdiction of the Court and Article 8 lists war crimes in international armed conflicts and in non-international armed conflicts. Articles 12 and 13 deal with the jurisdictional preconditions and the exercise of jurisdiction, while Article 17 relates to complementarity and admissibility. Article 25 deals with individual criminal responsibility, Article 27 with immunity on the basis of official position and Article 28 with command responsibility. The rights of the victim are guaranteed through articles 68 and 75, which are the provisions for victim protection, participation and reparations.[Rome Statute of the International Criminal Court, arts. 5, 8, 12, 13, 17, 25, 27, 28, 68 and 75, July 17, 1998, 2187 U.N.T.S. 90.] Additionally, the ICC Elements of Crimes help to expound on the material and mental elements that prosecutors must establish.[International Criminal Court, Elements of Crimes, ICC-ASP/1/3, Part II-B, as amended.]

3.6 Relationship Between Humanitarian Law and Human Rights Law

International humanitarian law and international human rights law may apply simultaneously during armed conflict. Human rights assurances regarding life, torture, detention, disappearance and fair trial remain in force with lawful derogations and in the context of hostilities. The right to life should be read in light of the humanitarian laws of targeting and the use of force.[United Nations Human Rights Committee, General Comment No. 36: Article 6—Right to Life, U.N. Doc. CCPR/C/GC/36 (2018).] Extraterritorial application may also relate to cases where the State has effective control over the territory or people. Lex specialis can be used to overcome conflicts between different legal regimes, and does not necessarily preclude human rights law. In practice, questions of attribution and state responsibility are relevant in the case of military operations that are conducted abroad.[

Cedric Ryngaert, "Attributing Conduct in the Law of State Responsibility: Lessons from Dutch Courts Applying the Control Standard in the Context of International Military Operations" 36(2) Utrecht Journal of International and European Law 170–180 (2021).] Table 1 presents the principal international legal sources governing war crimes and summarises their contributions to humanitarian protection and criminal accountability.

Table 1. Principal Legal Sources Governing War Crimes

Legal instrument	Core area of regulation	Main contribution to war-crimes accountability
Hague Convention IV and Annexed Regulations, 1907	Means and methods of warfare, military occupation, and destruction or seizure of property	Established foundational rules governing the conduct of hostilities and prohibited methods of warfare
Geneva Conventions of 1949	Protection of wounded and sick combatants, shipwrecked persons, prisoners of war, and civilians	Established the grave-breaches regime and required states to search for and prosecute alleged offenders
Additional Protocol I, 1977	International armed conflicts	Strengthened the principles of distinction, proportionality, and precaution and expanded protection for civilians and civilian objects
Additional Protocol II, 1977	Non-international armed conflicts	Extended humanitarian protection to conflicts involving state forces and organised armed groups
Customary International Humanitarian Law	Rules derived from state practice and opinio juris	Applies important humanitarian prohibitions beyond treaty participation and across different types of armed conflict
Rome Statute of the International Criminal Court, 1998	International criminal jurisdiction and individual responsibility	Defines war crimes and regulates jurisdiction, complementarity, individual liability, and command responsibility

4. Categories of War Crimes and Individual Criminal Responsibility

4.1 War Crimes Against Persons

War crimes against persons are wilful killing, torture, inhuman treatment, mutilation, biological experiments, unlawful confinement, hostage-taking, denial of a fair trial and cruel, humiliating or degrading treatment.[Rome Statute, supra note 22, art. 8; International Criminal Court, Elements of Crimes, supra note 23.] Enforced disappearance is expressly recognised as a crime against humanity when the contextual requirements of Article 7 of the Rome Statute are satisfied. Although it is not separately enumerated as a war crime under Article 8, constituent conduct such as unlawful confinement, torture, or wilful killing may independently constitute war crimes when the relevant elements and armed-conflict nexus are established.[Rome Statute, supra note 22, arts. 7(1)(i) and 7(2)(i).]

4.2 Crimes Against Civilians and Civilian Objects

International humanitarian law bans any attack against civilians and civilian objects, and limits

attacks anticipated to inflict excessive incidental damage. Military necessity is not a justification for action that is specifically forbidden by law. Thus, the concepts of distinction, proportionality and precaution are applicable in relation to attacks on homes, schools, hospitals, religious institutions, medical units and humanitarian personnel. Recent scholarship has stressed that civilian harm cannot be treated as automatically incidental merely because an attacker identifies a military objective.[L. Daniele, "Incidentality of the Civilian Harm in International Humanitarian Law and Its Contra Legem Antonyms in Recent Discourses on the Laws of War" 29(1) Journal of Conflict and Security Law 21–54 (2024).] The distinction between indiscriminate and disproportionate attacks is legally clear and both can result in civilians being exposed to unlawful harm.[A. Sari, "Indiscriminate Attacks and the Proportionality Rule: What Is Incidental Civilian Harm?" 30(2) Journal of Conflict and Security Law 203–239 (2025).] The use of civilians as human shields also gives rise to complex issues of responsibility, while not negating the attackers ongoing responsibility for the civilian population.[C. McQuade, "The Use of Human Shields in the Jurisprudence of the International Criminal Tribunal for the Former Yugoslavia" 30(1) Journal of Conflict and Security Law 79–102 (2025).] Forced displacement, starvation and destruction of property, which is not required for military purposes, may also be considered war crimes.

4.3 Sexual and Gender-Based War Crimes

The international crimes of rape, sexual slavery, forced pregnancy, enforced sterilisation and other sexual violence are acknowledged. However, challenging prosecutions due to stigma, under-reporting, trauma, evidentiary issues, and limited understandings of gendered harm. The ICC's record shows progress in recognising sexual violence, but also continuing gaps between legal aspiration and prosecutorial outcomes.[T. Altunjan, "The International Criminal Court and Sexual Violence: Between Aspirations and Reality" 22(5) German Law Journal 878–893 (2021).] Universal-jurisdiction proceedings can widen accountability, although institutional expertise and survivor-sensitive practices remain uneven.[S. Studzinsky and A.L. Kather, "Will Universal Jurisdiction Advance Accountability for Sexualized and Gender-Based Crimes? A View from Within on Progress and Challenges in Germany" 22(5) German Law Journal 894–913 (2021).] Another example of the problems of categorising gendered crime is forced marriage, where it can be considered as sexual slavery or as another form of inhuman act.[V.M. Kerr, "Should Forced Marriages Be Categorised as 'Sexual Slavery' or 'Other Inhumane Acts' in International Criminal Law?" 35(1) Utrecht Journal of International and European Law 1–19 (2020).]

4.4 Crimes Against Children and Other Vulnerable Groups

Conscripting or enlisting children under the age of fifteen into armed forces or armed groups, or using them to participate actively in hostilities, constitutes a war crime under the Rome Statute. Active participation may include combat and other military functions that expose children to the dangers arising from hostilities.[J. Yuvaraj, "When Does a Child 'Participate Actively in Hostilities' Under the Rome Statute? Protecting Children from Use in Hostilities After Lubanga" 32(83) Utrecht Journal of International and European Law 69–93 (2016).] Their vulnerability is exacerbated by attacks against schools, by separating children from families and by violence towards displaced persons. POWs, detainees, and persons hors de combat are also entitled to a protection from violence, humiliation, coercion, and unlawful punishment.

4.5 Cultural Property, Environment, and Prohibited Means and Methods

Other acts that can be considered war crimes include the destruction of cultural heritage, pillage and looting of religious, historic and cultural sites. The Al Mahdi proceedings also affirmed that attacks against protected cultural property may be considered to be serious international crimes, and can give rise to reparative obligations.[M.M. Sadowski, "Heritage Strikes Back: The Al Mahdi Case, ICC's Policy on Cultural Heritage and the Pushing of Law's Boundaries" No. 2 Undecidabilities and Law 99–119 (2022).]

Environmental destruction, chemical and biological weapons, anti-personnel mines, cluster munitions, poisoned weapons, and unlawful siege practices raise related concerns regarding unnecessary suffering, civilian protection, and long-term harm.

4.6 Forms of Individual Criminal Responsibility

Individual liability may arise through direct commission, indirect perpetration, co-perpetration, ordering, inducing, aiding and abetting, attempt, planning, or facilitation. The Rome Statute includes provision for contribution to the commission of crimes by a group acting with a common purpose in Article 25(3)(d). Notably, such liability is different from a concept of "joint criminal enterprise" which had come to the fore in the ICTY case law. The debate over the applicability of liability for broad modes of responsibility to senior actors in relation to mass atrocities and the retention of personal responsibility continues.[L.G. Minkova, "A Battle of Ideas: Modes of Liability and Mass Atrocities" 49(1) Law & Social Inquiry 509–536 (2024).] Liability remains personal and cannot follow from rank alone.

4.7 Command and Superior Responsibility

Military commanders may incur responsibility for crimes committed by forces under their effective command and control where they knew or, owing to the circumstances, should have known that the forces were committing or about to commit such crimes and failed to take all necessary and reasonable measures to prevent or repress their commission or submit the matter for investigation and prosecution. Other superiors are subject to a distinct standard: they must have known or consciously disregarded information clearly indicating that subordinates were committing or about to commit crimes. The crimes must concern activities within their effective responsibility and control, and the superior must have failed to take the necessary and reasonable measures available.[Rome Statute, supra note 22, art. 28(a)–(b).] Judicial disagreements in the Bemba litigation demonstrate continuing uncertainty concerning effective control, causation, knowledge, and the adequacy of preventive or punitive measures.[C. O'Sullivan, "New Court, Same Division: The Bemba Case as an Illustration of the Continued Confusion Regarding the Command Responsibility Doctrine" 35(3) Leiden Journal of International Law 661–678 (2022).]

4.8 Defences and Grounds for Excluding Criminal Responsibility

International criminal law acknowledges certain circumstances under which responsibility may be limited, such as intoxicating state, mental illness, self-defence, duress, mistake of fact, mistake of law and superior orders.[Rome Statute, supra note 22, arts. 31–33.] These grounds are interpreted restrictively in view of the gravity of international crimes. Superior orders do not automatically exclude responsibility: the defence is available only where the accused was legally obliged to obey the order, did not know that it was unlawful, and the order was not manifestly unlawful. Orders to commit genocide or crimes against humanity are always manifestly unlawful.

5. Jurisdiction and Institutional Mechanisms for Prosecution

5.1 Domestic Criminal Jurisdiction

National courts continue to be the main venue for the prosecution of war crimes. Jurisdiction can be territorial, personal (nationality), protective or domestic (based on domestic legislation that incorporates international crimes). States accordingly have the primary responsibility for investigating conduct which takes place within their territory or is committed by their nationals. For effective prosecutions, there must be sufficiently drafted laws, specific investigators, independent judges, witness protection, and access to evidence.

5.2 Universal Jurisdiction

Under the concept of universal jurisdiction, national courts (under their own laws) have the right to try the perpetrators of "the most serious crimes of concern to the international community" without regard for the nationality of the accused or the victim, or the place where the crime was committed. It relies frequently on the presence of the accused, statutory requirements,

prosecutorial discretion and rules on immunity. However, as one can see from strategic litigation, despite the serious practical impediments of selectivity, political objections, evidentiary challenges and unequal capacity, there are gaps in accountability which can be bridged by the application of universal jurisdiction.[B. McGonigle Leyh, "Using Strategic Litigation and Universal Jurisdiction to Advance Accountability for Serious International Crimes" 16(3) International Journal of Transitional Justice 363–379 (2022).]

5.3 International Criminal Court Jurisdiction and Complementarity

The ICC may take jurisdiction if the territorial or nationality criteria of Article 12 are met or if a non-party state extends the Court's jurisdiction by means of an Article 12(3) declaration. A situation can be referred to the Court by a State Party, by the United Nations Security Council or by the Prosecutor on his or her own initiative under Articles 64-81.[Rome Statute, supra note 22, arts. 12–15.] It has limited jurisdiction and admissibility and gravity requirements. Non-state groups may reveal areas of vulnerability where there are no territorial or nationality connections.[C. Kenny, "Prosecuting Crimes of International Concern: Islamic State at the ICC?" 33(84) Utrecht Journal of International and European Law 120–145 (2017).] Complementarity requires the Court to intervene only in those situations where a national authority is unwilling or is genuinely unable to undertake a genuine proceeding.[Rome Statute, supra note 22, art. 17.] The cooperation between national and international institutions has become a key element in recent practice and positive complementarity aims to build up domestic capacity.[I. Anosova, K. Aksamitowska and V. Sancin, "Positive Complementarity in Action: International Criminal Justice and the Ongoing Armed Conflict in Ukraine" 24(5–6) International Criminal Law Review 657–679 (2024).] The Court also relies on the States to serve arrest warrants and apprehend the accused.

5.4 Immunities, Official Capacity, and International Crimes

The Rome Statute does not bar the ICC from exercising jurisdiction over acts committed by officials or former officials in their official capacity (Article 27), and there are still controversies surrounding immunity to ICC jurisdiction before domestic and international courts regarding personal and functional immunity. Articles 27 and 98 provide some challenging problems in relation to serving heads of state and officials of non-party states. In the Al-Bashir appeal, the ICC Appeals Chamber held that Jordan had failed to comply with its obligation to arrest and surrender Al-Bashir and reasoned that head-of-state immunity did not bar cooperation with the Court in that case.[The Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/64-81/64-81-Corr, Judgment in the Jordan Referral re Al-Bashir Appeal (ICC Appeals Chamber, May 6, 2019).] The judgment reinforced accountability before the ICC but did not abolish head-of-state immunity generally, particularly in proceedings before foreign domestic courts.[A. Epik, "No Functional Immunity for Crimes Under International Law Before Foreign Domestic Courts: An Unequivocal Message from the German Federal Court of Justice" 19(5) Journal of International Criminal Justice 1263–1281 (2021).]

5.5 Ad Hoc, Hybrid, and Special Criminal Tribunals

The Nuremberg and Tokyo Tribunals, ICTY, ICTR, Special Court for Sierra Leone, Extraordinary Chambers in the Courts of Cambodia, and other specialised institutions have contributed substantially to international criminal law.[International Committee of the Red Cross, International Criminal Justice: The Institutions, Legal Factsheet (May 21, 2021).] he ICTY and ICTR were fully international ad hoc tribunals established by the United Nations Security Council. By contrast, institutions such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia combined international and domestic legal or institutional elements. . The extensive jurisprudence of the ad hoc tribunals has been marred by criticism of their high expenses and their remoteness from the affected communities. Hybrid courts may encourage stronger domestic participation and institutional capacity, although

political interference, uncertain funding, limited accessibility, and contested legitimacy can restrict their long-term contribution.

5.6 United Nations, Civil-Society, and Supporting Mechanisms

There are mechanisms that promote accountability, including the documentation of violations by United Nations commissions of inquiry, United Nations fact-finding missions, mechanisms for preserving evidence for future proceedings, human rights bodies and civil-society organisations. The IIIM for Syria offers a blueprint for evidence collection, consolidation and analysis for criminal prosecutions.[G.A. Res. 71/248, International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes Under International Law Committed in the Syrian Arab Republic Since March 2011, U.N. Doc. A/RES/71/248 (Dec. 21, 2016).] The Ljubljana – The Hague Convention enhances mutual legal assistance and international cooperation.[Ljubljana–The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes, May 26, 2023.] Civil-society documentation and strategic litigation can support formal institutions and sanctions can have non-criminal implications. ICRC, on the other hand, cannot be viewed as a prosecuting entity; it is a humanitarian entity and one aimed at compliance with IHL. The ICC's policy on complementarity and cooperation is also a policy that highlights the need for coordinated action between domestic, international and civil-society actors.[International Criminal Court, Office of the Prosecutor, Policy on Complementarity and Cooperation (2024).]

Table 2 compares the principal domestic and international mechanisms supporting war-crimes accountability, highlighting their jurisdictional foundations, strengths, and limitations

Table 2. Comparison of War-Crimes Accountability Mechanisms

Prosecution mechanism	Jurisdictional basis	Main strength	Principal limitation
Domestic courts	Territoriality, nationality, passive personality, protective jurisdiction, or domestic legislation	Proximity to evidence, victims, witnesses, and affected communities	Weak legislation, limited capacity, lack of independence, or political interference
Universal jurisdiction	Serious international crimes prosecuted without a direct territorial or nationality connection	Addresses impunity where territorial or national authorities fail to act	Presence requirements, immunity disputes, prosecutorial discretion, and selective application
International Criminal Court	Rome Statute jurisdiction, Security Council referral, or Article 12(3) declaration	Permanent institution authorised to prosecute individuals for core international crimes	Depends heavily on state cooperation and the arrest and surrender of suspects
Ad hoc international tribunals	International mandate limited to a particular conflict, territory, or period	Develop specialised jurisprudence and focus on serious	High costs, limited jurisdiction, and distance from affected communities

		crimes committed in defined situations	
Hybrid or internationalised courts	Combination of domestic and international law, judges, prosecutors, and institutions	Connect international standards with domestic participation and capacity building	Questions of legitimacy, funding, independence, and long-term sustainability
UN investigative and evidence-preservation mechanisms	UN resolutions or mandates authorising documentation and evidentiary support	Preserve and analyse material for future domestic or international prosecutions	Generally lack independent authority to prosecute suspects or enforce arrest warrants

6. Investigation, Evidence, and Judicial Approaches

6.1 Investigation in Armed-Conflict Situations

Investigation of war crimes is complicated by the fact that crimes often take place in insecure regions where the investigators are unable to reach the crime scenes in a timely and secure manner. Evidence can be lost, altered or destroyed, and victims and witnesses can be moved beyond the country's borders. Lack of official records and forensic capacity, suspicion and threats against forensic investigators as well as political obstruction, are other factors limiting effective documentation. Digital technologies can help to partly remove barriers to access, but they do not solve issues of reliability or admissibility.[Jessica Peake, "Challenges of Using Digital Evidence for War Crimes Prosecutions: Availability, Reliability, Admissibility" 118 AJIL Unbound 57–61 (2024).]

6.2 Witness and Victim Evidence

War crimes prosecutions in the absence of documentary records will rely heavily on the testimony of victims and witnesses. Participation and recollection may be impacted by trauma, fear of retaliation, stigma, language barriers, and repeated interviewing. Investigations should thus be survivor-centred and culturally sensitive, especially with children, witnesses of sexual violence and other vulnerable witnesses. Witness-protection measures must also comply with broader human rights obligations, including protection against arbitrary detention, respect for personal security and dignity, and protection against return to a place where the witness faces a real risk of serious harm.[R. Pulvirenti, "Undesirable and Unreturnable Individuals: Rethinking the International Criminal Court's Human Rights Obligations Towards Detained Witnesses" 35(2) Leiden Journal of International Law 433–451 (2022).]

6.3 Documentary, Forensic, and Digital Evidence

Relevant material may include military orders, official records, medical reports, mass-grave findings, DNA evidence, ballistic analysis, satellite imagery, drone footage, mobile-phone recordings, and social-media content. Digital evidence can establish location, identity, command structures, and patterns of violence, but it must be authenticated and preserved through a reliable chain of custody.[L. Freeman, "Digital Evidence and War Crimes Prosecutions: The Impact of Digital Technologies on International Criminal Investigations and Trials" 41(2) Fordham International Law Journal 283–336 (2018).] Metadata, geolocation, verification of sources, and transparent investigative methods are especially important where evidence is collected remotely. The Berkeley Protocol provides guidance for the lawful and professional collection, preservation, and analysis of digital open-source information.[Office of the United Nations High Commissioner for Human Rights and Human Rights Center, University of California, Berkeley, School of Law, Berkeley Protocol on Digital Open Source

Investigations: A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law, U.N. Doc. HR/PUB/20/2, U.N. Sales No. E.20.XIV.4 (United Nations, New York and Geneva, 2022).] Deepfakes, edited recordings, and manipulated online material make verification increasingly essential.

6.4 Fair-Trial Guarantees

Accountability must remain consistent with the rights of the accused. These include the presumption of innocence, access to legal representation, disclosure of prosecution material, the right to examine witnesses, equality of arms, adjudication by an independent and impartial tribunal, a reasoned judgment, and the right of appeal.[Rome Statute, supra note 22, art. 67.] Evidentiary innovation should not reduce the burden of proof or be a substitute for due process.

6.5 Major Judicial Contributions

There has been a continuing change in International judgments that has made the substantive and procedural law of war crimes more clear. In Tadić, the ICTY clarified the definition of armed-conflict, conflict nexus, customary humanitarian law and individual responsibility.[Tadić, supra note 9.] Kunarac also identified rape, sexual violence and enslavement as international crimes and explained how they are related to armed conflict.[Prosecutor v. Kunarac, Kovač and Vuković, Case Nos. IT-64-81 & IT-64-81/1-A, Appeals Judgement (ICTY Appeals Chamber, June 12, 2002).] Akayesu established key principles on sexual violence, genocide, specific intent and civilian-authority responsibility.[Akayesu, supra note 11.]

The ICC's Lubanga judgment included a discussion of conscription, enlistment and using children younger than 15 in hostilities, and also developed co-perpetration and victim-participation principles.[Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/64-81/64-81, Judgment Pursuant to Article 74 of the Statute (ICC Trial Chamber I, Mar. 14, 2012).] Al Mahdi affirmed the criminal liability for deliberate attacks on protected religious and cultural heritage and related conviction with reparations.[Prosecutor v. Ahmad Al Faqi Al Mahdi, Case No. ICC-01/64-81/64-81, Judgment and Sentence (ICC Trial Chamber VIII, Sept. 27, 2016).] In Ntaganda, the Court addressed attacks against civilians, sexual violence, crimes against members of the same armed force, modes of liability, and reparative consequences.[Prosecutor v. Bosco Ntaganda, Case No. ICC-01/64-81/64-81, Judgment (ICC Trial Chamber VI, July 8, 2019).] These decisions, considered together, illustrate how general humanitarian restrictions have been interpreted as rules of individual criminal liability by international courts.

Table 3 summarises selected landmark decisions that have shaped the interpretation of armed-conflict classification, sexual violence, child recruitment, cultural-property destruction, and individual criminal responsibility.

Table 3. Selected International Criminal Decisions and Their Legal Contributions

Case	Court and year	Central issue	Major legal contribution
Prosecutor v. Tadić	ICTY, 1995	Armed-conflict classification and jurisdiction	Clarified the distinction between international and non-international armed conflicts, the conflict nexus, and the relevance of customary humanitarian law
Prosecutor v. Akayesu	ICTR, 1998	Genocide and sexual violence	Recognised that sexual violence may constitute genocide and clarified specific

			intent and the responsibility of civilian authorities
Prosecutor v. Kunarac, Kovač and Vuković	ICTY, 2002	Rape, enslavement, and torture	Developed legal definitions of rape and enslavement and clarified their connection with armed conflict
Prosecutor v. Thomas Lubanga Dyilo	ICC, 2012	Recruitment and use of children	Established criminal responsibility for conscripting, enlisting, and using children under fifteen in hostilities
Prosecutor v. Ahmad Al Faqi Al Mahdi	ICC, 2016	Destruction of cultural property	Confirmed that intentional attacks on protected religious and cultural sites may constitute war crimes
Prosecutor v. Bosco Ntaganda	ICC, 2019	Attacks on civilians and sexual violence	Addressed sexual crimes against members of the same armed force, modes of liability, civilian protection, and reparations

7. Critical Challenges, Victim Justice, and Reform

7.1 Political and Institutional Challenges

War-crimes accountability remains affected by selective enforcement, geopolitical influence, and unequal attention to different conflicts. A situation may reach the ICC through a State Party referral, a United Nations Security Council referral, or a Prosecutor-initiated investigation. Security Council politics are nevertheless important because a referral can extend the Court's reach to situations involving non-party states, while the veto may prevent comparable situations from being referred.[P.I. Labuda, "Beyond Rhetoric: Interrogating the Eurocentric Critique of International Criminal Law's Selectivity in the Wake of the 2022 Ukraine Invasion" 36(4) Leiden Journal of International Law 1095–1116 (2023).] Limited resources, lengthy proceedings and state non-cooperation further erode institutional credibility, while arrest warrant are not executed.

7.2 Jurisdictional and Legal Gaps

Major gaps between jurisdictions are due to the fact that some States have not joined the Rome Statute and there is inconsistent domestic incorporation of international crimes. Progress may be hindered by immunity issues, confusing definitions and lack of prosecutorial expertise. Non-state armed groups, private military companies, corporations and cross-border cyber operations continue to be a challenge in terms of accountability. Digital conduct can result in serious harm which is linked to international crimes, however, it does not always make it obvious who is subject to prosecution, or how digital conduct should be attributed to a particular entity.[S. Zarmsky, "Is International Criminal Law Ready to Accommodate Online Harm? Challenges and Opportunities" 22(1) Journal of International Criminal Justice 169–184 (2024).]

7.3 Emerging Forms of Warfare

Autonomous weapons, artificial intelligence-assisted targeting, cyber operations, drones, urban warfare, siege tactics, and dual-use infrastructure place pressure on established legal categories. The introduction of autonomous systems introduces uncertainty about the human action necessary for individual criminal responsibility and about who is responsible for commanders, programmers, operators and states.[P. Gaeta, "Who Acts When Autonomous Weapons Strike? The Act Requirement for Individual Criminal Responsibility and State Responsibility" 21(5) Journal of International Criminal Justice 1033–1055 (2023).] Cyber operations also challenge the traditional notions of attack, damage, military necessity, and loss of functionality.[G. Biggio, "Regulating Non-Kinetic Effects of Cyber

Operations: The 'Loss of Functionality' Approach and the Military Necessity–Humanity Balance Under International Humanitarian Law" 30(2) Journal of Conflict and Security Law 241–263 (2025).] The environmental destruction in war also brings up issues of proportionality, sustainability and the potential for the emergence of an international crime of ecocide.[L.G. Minkova, "Ecocide, Sustainable Development and Critical Environmental Law Insights" 22(1) Journal of International Criminal Justice 81–97 (2024).] The principles of the International Law Commission focus on the protection of the environment before, during and after armed conflict.[International Law Commission, Draft Principles on Protection of the Environment in Relation to Armed Conflicts, with Commentaries, in Report of the International Law Commission on the Work of Its Seventy-Third Session, U.N. Doc. A/77/10 (2022).]

7.4 Victim Participation and Reparations

It is important to identify victims from witness, as victims may participate, be represented and claim for reparation. Remedies are restitution, compensation, rehabilitation, satisfaction, collective measures and guarantees of non-repetition. The Rome Statute permits victims to present their views and concerns where their personal interests are affected. Following conviction, the Court may determine the scope of the harm and may order appropriate reparations, including restitution, compensation, and rehabilitation. Where appropriate, a reparations award may be implemented through the Trust Fund for Victims.[Rome Statute, supra note 22, arts. 68(3), 75 and 79; Prosecutor v. Bosco Ntaganda, ICC-01/64-81/64-81, Reparations Order (ICC Trial Chamber VI, Mar. 8, 2021).] However, there are frequently information gaps that either impede victims from understanding or from accessing universal-jurisdiction proceedings.[T. Becker, C. Ionita, W. Kornelius and R. Kuseyri, "Will Victims' Rights Be Lost in Translation? Bridging the Information Gap in Universal Jurisdiction Cases" 38(1) Utrecht Journal of International and European Law 39–61 (2023).] Reparations for non-state armed groups are even more difficult to realize as they may not have legal status, resources or stable institutional structures.[L. Moffett, "Violence and Repair: The Practice and Challenges of Non-State Armed Groups Engaging in Reparations" 102(915) International Review of the Red Cross 1057–1085 (2020).]

7.5 Criminal Justice and Transitional Justice

Criminal prosecution should operate alongside truth commissions, institutional reform, memorialisation, vetting, reconciliation, and local justice initiatives.[United Nations, Guidance Note of the Secretary-General on Transitional Justice: A Strategic Tool for People, Prevention and Peace (Oct. 2023).] These mechanisms may respond to harms that criminal trials cannot fully address. Amnesty arrangements and peace negotiations can create tension between immediate conflict settlement and long-term accountability, particularly where a proposed amnesty would prevent the investigation or prosecution of persons responsible for serious international crimes.

7.6 Recommendations for Strengthening Accountability

States should make war crimes part of their domestic laws, create dedicated investigative bodies, enhance universal jurisdiction and enhance extradition and mutual legal assistance. International institutions need to have stable funding and more efficient arrest-enforcement mechanisms. Secure evidence repositories, standardised digital procedures, witness protection, trauma-informed investigations, accessible reparations, and clearer rules on autonomous weapons, cyber operations, corporate involvement, and private military companies are equally necessary. Above all, international criminal law must be applied consistently, regardless of political power.

8. Conclusion

The legal regime for war crimes is extensive, and effective implementation thereof is essential. International humanitarian law lays down the boundaries of what may be done in armed conflict, international criminal law defines individual accountability for serious breaches of

the rules of the game and international human rights law upholds basic rights in addition to the rules of the game. These laws, when combined, offer a solid foundation for the identification of prohibited conduct, determining responsibility, and prosecution. National courts have the primary responsibility for investigating and prosecuting war crimes that occurred in their jurisdiction or by their nationals. The International Criminal Court would be a complementary forum in case of the lack of will by domestic systems and universal jurisdiction would enable national courts to punish the most heinous crimes which otherwise would go unpunished. The hybrid and internationalised tribunals offer a way of bridging international standards and local participation, but their effectiveness requires them to be both legitimate and accessible and requires local institutional support and resources. Legal rules are not enough for good accountability. The ability to prosecute meaningfully depends on reliable evidence, independent courts, witness protection, international cooperation and the execution of arrest warrants. In addition, opportunities for participation, protection, recognition and reparations for victims must be provided, and they should not be viewed simply as sources of testimony. Meanwhile, the use of autonomous weapons, cyber operations, AI-assisted targeting and other new military technologies need more legal interpretation and robuster regulatory protections. The main fault of the existing system is not that there is no law, but that there is selective and unequal enforcement. The ultimate success of the laws of war relies on the equal liability of all warmakers, whatever their military forces, political leverage, official role or nationality.

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