

## **OBLIGATIONS OF STATES ON ACCOUNTABILITY FOR WAR CRIMES UNDER INTERNATIONAL CRIMINAL LAW**

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### **Abstract**

*In view of atrocities committed by individuals and groups in armed conflict zones in the world, the question of accountability for war crimes continues to dominate discourse on International Criminal Law. Many international legal instruments prohibit war crimes and place obligations on States to ensure that perpetrators are held accountable. Consequently, some perpetrators have been identified and held accountable, while others have not been held accountable. This paper examined the obligations of States in holding perpetrators of war crimes accountable. The paper made use of the doctrinal method of research. It found that although there are adequate legal framework prohibiting war crimes which also place obligations on States to ensure enforcement by holding perpetrators accountable, some States fail, neglect or refuse to perform these obligations thereby making many perpetrators not to be held accountable. This paper recommends: increased involvement of the world community in addressing the challenges of States to enable them carry out their obligations of enforcement of relevant legal framework aimed at holding perpetrators of war crimes accountable; increased collaboration amongst States on the enforcement of relevant legal framework on war crimes; improved encouragement and support for States that perform their*

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*obligations of ensuring the enforcement of the legal framework on war crimes for accountability of perpetrators; increased intensification of international pressure through diplomacy on States that fail to perform their obligations as well as sanctioning of such States and addressing the issues of the rights and protection of victims.*

**Keywords:** Accountability of Perpetrators, International Criminal Law, Obligations of States, State Parties and War Crimes

### 1. Introduction

International Crimes have been categorized into the crime of genocide, crimes against humanity, war crimes and the crime of aggression.<sup>1</sup> War crimes is one of these international crimes, recognized all over the world and categorized as such in the Rome Statute.<sup>2</sup> Notwithstanding this categorization, specific acts of each of these crimes dovetail, one into the other. Hence, some of the acts that constitute war crimes also constitute crimes against humanity and crime of genocide.<sup>3</sup> According to Joyner, war crimes denote not only the violations of the laws and customs of war, but also crimes against the peace, crimes against humanity, and genocide as those concepts have been defined since the end of the Second World War.<sup>4</sup>

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<sup>1</sup> Rome Statute of International Criminal Court (ICC), UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, art 5 <<https://www.refworld.org/docid/3ae6b3a84.html>> accessed 9 November 2024.

<sup>2</sup> Luban, David; Allison Marston Danner; Schabas, William A; Wald, Patricia M., 'Accountability for War Crimes: What Roles for National, International, and Hybrid Tribunals?' (American Society of International Law. Proceedings of the Annual Meeting; Washington: Cambridge University Press, 2004: 181).

<sup>3</sup> Quincy Wright, 'War Criminals' (1945) 39 AM. Journal of International Law, 261.

<sup>4</sup> Christopher C. Joyner, 'Arresting Impunity: The Case for Universal Jurisdiction in Bringing War Criminals to Accountability' (1997) (59)4 Law and Contemporary Problems, 153.

However, the Rome Statute of ICC has stated what constitutes war crimes.<sup>5</sup> According to this Statute, war crimes means grave breaches of the Geneva Conventions of 12 August 1949, other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law and, in the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949. The specific acts of these breaches, which constitute war crimes, have been listed in art 8 of the Rome Statute.<sup>6</sup>

Notably, war crimes have been continually committed by parties to armed conflicts in many conflict zones such as Gaza, Ukraine and others. Within the world community, there are existing international legal instruments which accommodate and regulate conduct of armed conflicts by parties. Some of these instruments proscribe certain acts during armed conflicts and place obligations on States to ensure that violators are held accountable.<sup>7</sup> These instruments, through the use of International Criminal Court (ICC) and other ad hoc tribunals, have been used in holding violators of war crimes accountable. Consequently, some individuals in various States of the world have been identified, arrested, prosecuted and punished for war crimes.<sup>8</sup> However, others have not likewise been held accountable. Warrants of arrest issued against those placed on wanted list, have sometime remained without execution. Some State parties to relevant legal instruments on war crimes, have refused or failed to ensure that these individuals are arrested and prosecuted in accordance with their

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<sup>5</sup> Rome Statute, art 8.

<sup>6</sup> Ibid.

<sup>7</sup> See for instance, Rome Statute.

<sup>8</sup> See the cases of Ongwen, a member of the Lord's Resistance Army (IRA) of Uganda, convicted by the ICC in *The Prosecutor v Mr. Dominic Ongwen*, ICC-02/04-10/15 21; Charles Taylor of Liberia in *The Prosecutor v Charles Ghankay Taylor*, SCSL-2003-01; Dyilo convicted by ICC in the case- *The Prosecutor v Thomas Lubanga Dyilo*, ICC601/04601/06.

obligations.<sup>9</sup> And they continue to walk free without accountability. This therefore raises the concerns on the obligations of State Parties in holding perpetrators of war crimes accountable in accordance relevant legal frameworks on war crimes.

This paper is divided into four parts. Part one is the introduction, part two examines the legal frameworks on war crimes while part three concerns itself with State obligations on the enforcement of the legal frameworks on war crimes to hold perpetrators accountable while part four is the conclusion and recommendations.

## 2. Legal Frameworks on War Crimes

This consists in various laws which deal with war crimes and accountability for violations as well as protections for civilians and combatant during armed conflict. They include:

### a. Rome Statute of the International Criminal Court (Rome Statute)

This remains one of the core legal frameworks for the prosecution of perpetrators of war crimes today. It was adopted on July 17, 1998 by 120 member States and entered into force on July 1, 2002.<sup>10</sup> Today, it has 124 State Parties with Armenia joining on 14 November 2023.<sup>11</sup> However, many states including the United States of America (US), China, Russia, Israel, North Korea, Turkey and Saudi Arabia are not State Parties to this

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<sup>9</sup> AP News, Mongolia ignores an international arrest warrant for Putin's arrest, giving him a red-carpet welcome, 3 Sep.2024<<https://apnews.com/article/mongolia-rusia-putin-international-criminal-court-warrant> 4c79850ecf409287924e3d96218abc78> accessed 12 November 2024.

<sup>10</sup> UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6<<https://www.refworld.org/docid/3ae6b3a84.html>> accessed 9 November 2024.

<sup>11</sup> ICC Document. The State Parties to the Rome Statute< <https://asp.icc-cpi.int>>states-parties, accessed 20 October, 2024.

Statute.<sup>12</sup> The Statute established the International Criminal Court (ICC) which is the international judicial body with jurisdiction to prosecute perpetrators of international crimes.<sup>13</sup> According to its preamble, it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes. As such, every State has the responsibility to prosecute perpetrators of suspected crime of genocide, crimes against humanity, war crimes and the crime of aggression.<sup>14</sup> The Statute, makes the ICC, a Court to compliment national Courts of State Parties.<sup>15</sup> Thus, this Court is considered as a Court of last resort, which is expected to step in and exercise jurisdiction when a State Party is unwilling or unable to prosecute perpetrators of international crimes.<sup>16</sup> It gives the ICC the authority to exercise its functions and powers of prosecution of perpetrators of war crimes on the territory of any State Party and on the territory of non-State party, upon special agreement.<sup>17</sup> Thus, the ICC can sit in the State where the offence was committed or the State where the offender is arrested or any other State whenever it is considered desirable to do so.<sup>18</sup> A State which becomes a Party to the Rome Statute accepts the jurisdiction of the Court with respect to the prosecution of international crimes.<sup>19</sup> Thus, the Court may exercise its jurisdiction if the State where the crime was committed is a party to the Rome Statute or have accepted the jurisdiction of the Court, though such State is not a party to the Rome Statute.<sup>20</sup> In prosecuting perpetrators under the Statute, their official

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<sup>12</sup> Claire Klobuscista and Mariel Ferragamo, 'The Role of the ICC-Council on Foreign Relations' < <https://www.cfr.org>>backgrounder>accessed 8 November, 2024.

<sup>13</sup> Rome Statute, art 5.

<sup>14</sup> Leffler, Johanna M., 'U.S. War Crimes and Accountability with the International Criminal Court: A Critique' (2006) Senior Honors Projects Paper 886, 5.

<sup>15</sup> Rome Statute, art 1.

<sup>16</sup> *ibid* art 17(1)(a).

<sup>17</sup> *ibid* art 4(2).

<sup>18</sup> *ibid* arts 3(3) and 4(2).

<sup>19</sup> *ibid* art 12(1).

<sup>20</sup> *ibid* art 12(2)(a).

capacity or status are not considered and do not operate to halt prosecution or constitute a ground for reduction of sentence.<sup>21</sup> Similarly, immunities under national or international law, do not operate to bar the ICC from holding such persons accountable.<sup>22</sup> Also, war crimes are not subject to the statute of limitation and offenders can be held accountable at any time.<sup>23</sup>

b. Hague Conventions of 1899 and 1907

These Conventions consist of a series of international treaties and declarations negotiated at the two Hague International Peace Conferences in 1899 and 1907.<sup>24</sup> They provide regulations concerning prisoners of war (POW) and enshrined their legal status in international law. Accordingly, Article 4 of the Hague Convention of 1907 provides that POW must be humanely treated. Any inhumane treatment of a POW in the form of torture, denial of food, clothing, medical treatment and others, constitute war crimes. The Hague Conventions together with the Geneva Conventions, have been shown to constitute the foundation of international humanitarian law and are considered to embody the customary international law that defines the main rules of warfare and the legal status of parties.<sup>25</sup>

c. Convention on the Prevention and Punishment of the Crime of Genocide 1948 (Genocide Convention)

This Convention was adopted on December 9, 1948 in response to human rights atrocities committed during World War II and entered into force on

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<sup>21</sup> *ibid* art 27(1).

<sup>22</sup> *ibid* art 27(2).

<sup>23</sup> *ibid* art 29.

<sup>24</sup> Leffler, Johanna M (n 14) 6.

<sup>25</sup> *Ibid* 7; Baisymakova, D, 'Defining the Regulations of War in the Hague Convention of 1907 [Scholarly project]' in *The European Proceedings of Social & Behavioural Sciences* (2016)

<[https://www.europeanproceedings.com/files/data/article/38/829/article\\_38\\_829\\_pdf\\_100.pdf](https://www.europeanproceedings.com/files/data/article/38/829/article_38_829_pdf_100.pdf) > accessed 12 November 2024.

January 12, 1951.<sup>26</sup> In its Resolution 180(II) of December 2, 1947 genocide is recognized as a crime punishable under international law, when committed either in war or peace time.<sup>27</sup> The Convention has been ratified or acceded to by 153 States, including the United States.<sup>28</sup> It defines genocide,<sup>29</sup> which definition became adopted and accommodated in the Rome Statute of the ICC.<sup>30</sup> In Article 1, 3 and 4 of the Convention, State Parties have the obligation to take measures to prevent and punish the crime of genocide, including enacting relevant legislation and punishing perpetrators, whether they are constitutionally responsible rulers, public officials or private individuals. This obligation is binding on all States, whether or not they have ratified the Convention. Accordingly, any person who perpetrates the crime of genocide maybe held accountable by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.<sup>31</sup> The Convention also indulges States to grant extradition in accordance with their laws and treaties in force in that regard.<sup>32</sup>

d. Convention on Prohibition or Restriction on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effect 1980

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<sup>26</sup> *ibid* 9.

<sup>27</sup> UN General Assembly (9 December 1948) Convention on the Prevention and Punishment of the Crime of Genocide. United Nations, Treaty Series, vol. 78, no. 1021<<https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf> > accessed 10 November 2024.

<sup>28</sup> United Nation Office on Genocide Prevention and the Responsibility to Protect. Ratification of Genocide Convention < <https://www.un.org/en/genocide-prevention/1948-convention> > accessed 25 October 2024.

<sup>29</sup> Genocide Convention, art 2.

<sup>30</sup> Rome Statute, art 6.

<sup>31</sup> *ibid* art 6.

<sup>32</sup> *ibid* art 7.

This Convention was adopted on 10 October, 1980 and entered into force on 2<sup>nd</sup> December, 1983. It has been ratified or acceded to by over 125 States. The Convention aims at protecting civilians and combatants from the harmful effects of certain conventional weapons and to promote humanitarian law. Accordingly, it mainly prohibits the use of weapons that cause unnecessary suffering, restricts the use of weapons that have indiscriminate effects, and provides protection of civilians and civilian objects as well as places obligations on States to aid and cooperate in that regard.

e. The 1949 Geneva Conventions and the Additional Protocols of 1977

The Geneva Conventions are among the significant human rights Conventions on war crimes.<sup>33</sup> They are four Geneva Conventions with three additional Protocols. The Protocols expand, enhance and strengthen the protections and principles of international humanitarian law that are established by the Conventions. They aimed at reducing human suffering during armed conflict. Accordingly, there exist: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949 otherwise called Convention I; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949, otherwise called Convention II; Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949, otherwise called Convention III and; Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Convention IV). The three Additional Protocol are: Protocol relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I); Protocol relating to the Protection of Victims of Non-International Armed Conflicts,

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<sup>33</sup> Geneva Convention of 1949 and their Additional Protocols <<https://www.icrc.org/en/doc/war-and-land/treaties-customary-law/geneva-convention.htm>> accessed 27 June 2023.

of 8 June 1977(Protocol II) and; Protocol relating to the Adoption of Additional Distinctive Emblem (the Red Crystal) for use by Humanitarian Organisations of 8 June 1977(Protocol III).

Notably, these conventions and additional protocols addresses the issues covered by their names. Also, common to all four Geneva Conventions is Article 3, which extends humanitarian treatment to situations of non-international armed conflict. Also importantly, the Conventions provide for universal jurisdiction for the trial of perpetrators of war crimes and other international crimes. Accordingly, under art 49 and 50 of Geneva Conventions I and II, art 129 and 146 of Geneva Conventions III and IV, and Additional Protocol I, art 85, every State Party is obligated to enact laws, arrest, prosecute and punish perpetrators of war crimes in its territory, regardless of their nationality or that of the victim, or the place the crime was committed. Such State may also hand the suspect over to another State or an international tribunal for trial if it fails to prosecute. These instruments grant special role to the International Committee of the Red Cross to be granted access to handle the treatment of the wounded, sick, POW and other humanitarian services.

f. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.

The Convention was adopted by the General Assembly on 10 December 1984 by UN Resolution 39/46 and came into force on 26 June 1987 after ratification by 20 State Parties. By Article 2 of the Convention, State Parties have obligations to take effective measures to prevent acts of torture in any territory under its jurisdiction and forbids member states to transport people to any country to prevent being tortured. In Article 4, State Parties are required to ensure that all acts of torture are domesticated as offences under their national law while Article 5 provides a universal jurisdiction for prosecution of offenders. Notably, Article 6 of the Convention places obligations on the State Parties to arrest, detain and investigate such perpetrators of torture for prosecutions. Thus, a State Party is to establish

its jurisdiction over any persons found in its territory who are alleged to have committed torture, regardless of where the act was committed or the nationality or residence of the perpetrator. This is complimented by Article 7 which provides the obligations of State Parties to extradite or prosecute perpetrators of torture and to cooperate with other States in that regard in accordance with Article 9 of the Convention.

### **3. State Obligations on War Crimes**

The provisions of relevant legal framework on war crimes, place obligations on States to ensure, amongst others, that perpetrators of war crimes are held accountable.<sup>34</sup> One of such obligations is the obligation to enact domestic laws to enable the prosecution of perpetrators of war crimes.<sup>35</sup> This obligation, which has been accommodated in the Rome Statute, Geneva Convention and other instruments on war crimes, is aimed at ensuring that States make relevant provisions of international treaties relating to war crimes part of their national legislation by domestication.<sup>36</sup> This is more so where there are no national legislation on the subject matter addressed by such treaties. However, in spite of such domestication, some perpetrators of war crimes usually operate with the knowledge and support of national political and legal authorities of State Parties.<sup>37</sup> And where this occur, domestic law does little to hold them accountable. This is more so where their conduct is valid or mandated under national laws or policies.

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<sup>34</sup> See the Preamble to the Rome Statute.

<sup>35</sup> Roy S. Lee 'States' Responses to Issues Arising from the ICC Statute: Constitutional, Sovereignty, Judicial Cooperation and Criminal Law' (2005) xxi; Preamble of the Rome Statute; Geneva Conventions I of 1949, art 49, Geneva Conventions II of 1949, art 50.

<sup>36</sup> Joyce, Jessica 'Legal Obligations of States and Organizations Under the Rome Statute. Specifically addressing the legal obligations of States Parties, Non-States Parties, and the Security Council, and analyzing what options exist to aid the ICC in its enforcement of these obligations'(2015) 13, War Crimes Memoranda, 286.

<sup>37</sup> The Russian Constitution prohibits the extradition of nationals for prosecution in other States. On this, see Tara Law, 'The ICC Has Issued a Warrant for Warrant for Vladimir Putin. Will He Actually Be Arrested?'<Time Mag...time.com>accessed 9 November, 2024.

Thus, the prevention of such war crime and punishment of such perpetrators become legal concerns and moral obligations, not just for those governments in whose territory the crimes occurred, but for all states. According to Joyner, the effective prosecution and punishment of war criminals remain essential to the prevention of such crimes, the protection of human rights and fundamental freedoms, and the promotion of international peace and security.<sup>38</sup> This however occurs when States perform their obligations under international law which shows that there is a general international obligation and a duty upon all member States to make war crimes part of their national laws and prosecute perpetrators.<sup>39</sup> Thus in 2009, Burundi amended its Penal Code to include and punish international crimes such as war crimes; Uganda enacted the International Criminal Court Act, 2010 to give effect to the Rome Statute; and the Criminal Code of Ethiopia (2005) prohibits and punishes international crimes and outlaws immunity.<sup>40</sup> However, States that are not parties to the Rome Statute are not under such obligation, hence do not accommodate the provisions of the Rome Statute in their national law. Also, some of them, such as Russia, prohibits extradition of its own nationals for prosecution in other States in its Constitution.<sup>41</sup> All these operate to frustrate accountability for war crimes in that regard.

The prevention and prosecution of war crimes remain another obligation of State Parties to many treaties on war crimes. In 2012, the International Court of Justice in the case of *Belgium v. Senegal* established that it is the duty of States to investigate and prosecute crimes under international law.<sup>42</sup>

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<sup>38</sup> Christopher C. Joyner (n 7)153.

<sup>39</sup> Preamble and art 1 of the Rome Statute.

<sup>40</sup> Deepa Kansra, 'State Obligations under International Criminal Law: Progress, Challenges and Prospects' (2014) 1(4) *Rostrum's Law Review*, 4, <<https://journal.rostrumlegal.com/state-obligations-under-international-criminal-law-progress-challenges-and-prospects-by-deepa-kansra/>>accessed 10 November 2024.

<sup>41</sup> Tara Law (n 37).

<sup>42</sup> Deepa Kansra (n 40)4.

This is usually influenced by many factors including jurisdictions. Accordingly, where a State lacks jurisdiction, such a State is incapable of holding a person accountable for the crimes. However, for war crimes, there exist a universal jurisdiction principle that is applicable for the purpose of prosecution of perpetrators. This principle holds that some crimes are so universally abhorrent and thus condemned hence the perpetrators are considered *hostis humani generis* (enemies of all people).<sup>43</sup> This allows that jurisdiction for prosecution for war crimes may be based solely on securing custody of the perpetrator by any State. It assigns a State the authority to prosecute a criminal under its own law, instead of the law of the State where the crime was committed. Thus a government that arrests a perpetrator of war crimes may either extradite such person to the State where the offense was committed, or surrender such person to an international tribunal established to try such offenders, or retain him for trial under its own national law regardless of the nationality of the victim or the offender, or the place where the offense was committed under the universal jurisdiction principle.<sup>44</sup> This Universal jurisdiction is accommodated in relevant legal frameworks on war crimes including the Rome Statute of the ICC, Genocide Convention and Geneva Conventions.<sup>45</sup> However, the performance of this obligation by States is usually frustrated by political, economic and other considerations leading to the failure of States to hold perpetrators of war crimes accountable.<sup>46</sup> This has been witnessed in the case of Vladimir Putin whose warrant of arrest for prosecution for war crimes committed in the Russian/Ukraine war has been issued by ICC in March 2023, yet he has not been arrested, extradited or surrendered for

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<sup>43</sup> Christopher C. Joyner (n 4)165.

<sup>44</sup> Ibid 170; Other principles are the principle of territoriality, nationality, personality, passive personality and protective principle.

<sup>45</sup> Ibid; Rome Statute, art 4; Genocide Convention, art 3 and 4; Geneva Conventions III of 1949, art 129; Geneva Conventions IV of 1949, art 146.

<sup>46</sup> Joyce Jessica (n 36)286.

prosecution by other States where he has been found such as North Korea and China.<sup>47</sup>

Another obligation of State Parties is the investigation, arrest, detention and extradition of perpetrators of war crimes for prosecution. State Parties are under obligation to arrest, detain and surrender perpetrators of war crimes to the ICC or requesting states when such request is made.<sup>48</sup> A State Party is also under duty to authorize the transportation through its territory of a person being surrendered to the ICC by another State in accordance with its national law.<sup>49</sup> Such person may also be detained during the period of transit by the requested State.<sup>50</sup> It has also been shown that there is a duty to prosecute or extradite grave breaches of the 1949 Geneva Conventions, which constitute war crimes, as enshrined in articles 49, 50, 129 and 146 of the four Conventions respectively. This obligation has also been reiterated in a number of UN General Assembly resolutions.<sup>51</sup> The performance of these obligations by States has, in 2021, led to the arrest, prosecution and conviction of Dominic Ongwen of Uganda for war crimes in the case of *The Prosecutor v Mr. Dominic Ongwen*<sup>52</sup> and the arrest, extradition, surrender and trial of Charles Taylor of Liberia for war crimes in the Special Court for Sierra Leone, in *The Prosecutor v Charles Ghankay Taylor*.<sup>53</sup>

Notwithstanding this performance, some perpetrators of war crimes have not been arrested, surrendered or extradited by State Parties for prosecution

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<sup>47</sup> Aaron Fichtelberg, 'Putin may not outrun the warrant for his arrest-history shows that several leaders on the run eventually face charges in court' <<https://theconversation.com>> accessed 9 November, 2024.

<sup>48</sup> Rome Statute, art 89(1) and art 90; Genocide Convention, art 7.

<sup>49</sup> *ibid* 89(3)(a).

<sup>50</sup> *ibid* art 89(d).

<sup>51</sup> See for instance, Resolution 3074 (1973) and Resolution 41/160 (1986).

<sup>52</sup> ICC-02/04-01/1521.

<sup>53</sup> SCSL-03-1-T.

even after warrant of arrest have been issued against them.<sup>54</sup> This is because, some perpetrators of war crimes usually remain in power at the time of issuance of arrest warrants against them and are usually protected by immunity or political influence and cannot be arrested while in power since the ICC does not have its own police but relies of the State where the person is found. And because of either political, economic or other considerations, such States usually fails or refuses to arrest such persons and prosecute them or extradite them or surrender them for prosecution. This was the case with Mongolia, who failed or refused to arrest Vladimir Putin when he visited Mongolia after arrest warrant has been issued against him by the ICC even when Mongolia is a party to the Rome Statute.<sup>55</sup> Similarly, some States like Russian, in addition to being a non-State Party, prohibits the extradition of its citizens to another States for prosecution in their national law.<sup>56</sup> Thus where citizens of such countries are requested for extradition or surrender for prosecution, such request becomes dead on arrival.

Enhancement of international cooperation for the prosecution of perpetrators of war crimes constitutes yet another important obligation of State Parties under relevant legal framework on war crimes. This is provided for in many treaties on war crimes including the Rome Statute.<sup>57</sup> This cooperation could be between State Parties or between a State Party and the ICC.<sup>58</sup> Accordingly, State Parties are obliged to cooperate fully with one another and with the Court in its investigation and prosecution of war

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<sup>54</sup> Reuters, 'Which leaders are on the ICC's most wanted list?' <<https://www.reuters.co...>> accessed 12 November 2024.

<sup>55</sup> Lilith Foster-Collins, 'Putin Visits Mongolia Amid ICC Arrest Warrant Calls' <<https://www.newsweek.com/putin-mongolia-icc-arrest-warrant-1947620>> accessed 9 November 2024.

<sup>56</sup> Tara Law, (n 37).

<sup>57</sup> Rome Statute, art 86, 87 and 89; Additional Protocol 1 to the Geneva Conventions 1977, art 88.

<sup>58</sup> *ibid* art 87.

crimes. Where request for such cooperation is made, a State Party is under obligation to keep information on such request confidential and not to disclose it except the disclosure is necessary for the execution of the request.<sup>59</sup> It is to this extent that State Parties' cooperation are sought and obtained through request for extradition for prosecution by States or surrender for trial by Courts ICC.<sup>60</sup> Thus, where extradition request is made, it is the requesting state that bears the burden of undertaking the legal procedure of arrest, detention and trial in order to secure the order of extradition from the national Court.<sup>61</sup> Despite this, some States lacking in political will, usually reneged from giving their full cooperation to ensure that perpetrators of war crimes are held accountable in this regard. This is usually more of the consequence of political, economic and other considerations. Accordingly, some States only succumbed to international diplomatic pressure, by way of suspension of aids or denial of admissions to socio-economic blocs, before they undertake their obligation in this regard. This was the case in Serbia before Milosevic's arrest and trial, when the European Union (EU) made it clear that Serbia would not be admitted to EU membership unless it fully cooperated in handing over other indicted war criminals to the International Criminal Tribunal for the Former Yugoslavia (ICTY).<sup>62</sup> This was also evidenced in the arrest, extradition, surrender and trial of Charles Taylor, former President of Liberia, after intense diplomatic pressure from US on Liberia and Nigeria.<sup>63</sup>

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<sup>59</sup> *ibid* art 87(3).

<sup>60</sup> See Rome Statute, art 102(a)and(b) for distinction between, "surrender" and "extradition".

<sup>61</sup> Michael D. Hanson and Amanim Akpabio, 'Extradition and State Responsibilities on the Protection of Rights of Requested Persons' (2023)7(6), *International Journal of Research and Innovation in Social Science*, 364.

<sup>62</sup> Mark S. Ellis, 'Combating Impunity and Enforcing Accountability as a Way to Promote Peace and Stability – The Role of International War Crimes Tribunals' (2006) 2 *Journal of National Security Law & Policy*,144.

<sup>63</sup> *ibid* 148.

The protection of victims and witnesses and enforcement of sentence of ICC also constitute obligations of State Parties to relevant war crime treaties. Accountability for perpetrators of war crimes makes for attainment of justice and peace at post conflict zones. This is unachievable where convictions are not secured and sentences enforced. The guarantee that justice would be served and that perpetrators of war crimes would be held accountable, operate as deterrence and prevents feelings of frustration, bitterness and retaliation by victims.<sup>64</sup> But before this is achieved, it is the obligation of State Parties to ensure the victims and witnesses are protected throughout the course of prosecution of the perpetrators of war crimes and after sentencing. This is so because, it is the primary responsibility of States to see that those responsible for war crimes are made accountable and that victims are protected so as to be able to enjoy their right to effective remedy. It is this prosecution of war crimes and enforcement of sentence of the ICC by States that give recognition to the plights of the victims and contribute to restoration of their right to dignity of human persons violated during the war due to torture or other inhuman or degrading treatments. The obligation of States for the enforcement of the sentence of the ICC is accommodated in the Rome Statute of the ICC.<sup>65</sup> Accordingly, as the ICC does not have its own police force to execute its orders, it therefore relies on the Police of State Parties to arrest people it indicts and enforce fines and forfeiture orders against persons convicted for war crimes.<sup>66</sup> Where these Police fail to cooperate with the ICC, accountability becomes frustrated as the ICC cannot compel such State in that regard.

#### 4. Conclusion and Recommendations

War crime, which is one of the recognised international crimes have been shown to be continually committed by parties to armed conflicts in spite of existing international legal instruments which demand accountability for

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<sup>64</sup> *ibid* 156.

<sup>65</sup> Rome Statute, art 103.

<sup>66</sup> Aaron Fichtelberg (n 47); See also Rome Statute, art 103, 105 and 109.

violators. To ensure that violators are held accountable, States have been placed with obligations, such as enacting domestic laws to enable arrest, extradition and prosecution of perpetrators of war crimes and others. Some States have performed these obligations while others have failed or neglect or refused to do so, thereby frustrating accountability for war crimes amidst existing legal framework in that regard. These has been a consequent of many factors which cut across all obligations recognised by law. In view of this, the work recommends that there should be increased involvement of the world community in addressing the challenges of States to enable them carry out their obligations of enforcement of the laws to hold perpetrators of war crimes accountable. This is so because some States that fail or refuse to arrest, investigate, detain, prosecute or extradite perpetrators of war crimes, do so from the point of weakness in relation to the challenges faced by them which the person involved or the State of his nationality has been or is being or will be instrumental in addressing it. For instance, it is no news that Mongolia depends heavily on Russian Energy. Russia is a source for 95 percent of its petroleum products, which accounts for 35 percent of all imports in Mongolia.<sup>67</sup> Also Mongolia's export-led economy, which is driven by raw material sales such as coal, copper and gold, is highly reliant on Russian fuel as a means of transport to China. In March 2024, it has been shown that Russia reported a ban on fuel exports but maintained that Mongolia is exempted.<sup>68</sup> Thus even as Mongolia is a signatory to the Rome Statute and brands itself as the beacon of democracy in the heart of Asia, it was nevertheless caught in the reality of geopolitics which consequently influenced the State to disregard its obligations to arrest Putin under the Rome Statute and instead, chose maintaining its fuel supply interest from Russia that serves its national interest.<sup>69</sup> It is similar situation which made North Korea not to arrest Putin when he visited North Korea because the

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<sup>67</sup>Telmen Altanshagai, 'Why Mongolia Won't Arrest Vladimir Putin' *The Diplomat*, August 31, 2024<<https://www.thediplomat.com>> accessed 9 November, 2024.

<sup>68</sup> *ibid.*

<sup>69</sup> *ibid.*

two States have depend trade and security ties as Russia supports North Korea against the US and its allies.<sup>70</sup>

This paper also recommends increased collaboration amongst States on the enforcement of relevant legal frameworks on war crimes. Since the ICC lacks independent enforcement institutions but relies on States institutions, increased collaboration by States in that regard should be encouraged. Accordingly, all States should be made signatories to the Rome Statute of the ICC as the absent of States such as US, Russia, China, Turkey and others is frustrating cooperation of these States and other States which are their allies to hold perpetrators of war crimes accountable. This inclusion will ensure unrestricted cooperation amongst States that is necessary for holding perpetrators of war crimes accountable. Such cooperation covers the area of information and intelligent sharing, joint investigation and operations, collection of evidence for investigations, arrest, extradition and prosecutions. Where this cooperation is absent, the performance of state obligations involving arrest and extradition of perpetrators of war crimes would continue to be frustrated.

Another recommendation is the improvement of encouragement and support for States that perform their obligations. This is so because where a State partly relies on another State for economic support, be it in the area of raw material, energy or infrastructural development; or on security support, such State can jettison performing State obligations under war crime instruments where the interest of such State or its allies is involved, such as the case of Mongolia and Russia. However, against these odds, most States still perform their obligations to ensure that perpetrators of war crimes are held accountable. Where this occurs, such States should be encourage and supported by way of increased financial aids, funding to

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<sup>70</sup> Hyonhee Shin, Josh Smith and Guy Faulconbridge, 'Putin flies into North Korea with promise to back it against the US' Reuters, June, 18, 2024.><https://www.reuter...>>accessed 9 November, 2024.

strengthen national institutions, laws and procedure and strengthening of their area of weaknesses particularly in time of emergencies and disasters. This paper also recommends increased intensification of international pressure through diplomacy on States that fail to perform their obligations as well as sanctioning of such States. Just as cooperating States should be rewarded and supported in order to encourage them to do more or encourage other States to follow suit, States who fail to perform their obligations should be sanctioned to discourage them or other States from doing so too. Since the ICC depends on States institutions for the enforcement of legal instruments on war crimes, such States that fail to perform their obligations should be increasingly sanctioned, but with humanitarian exemptions. This could be by way of refusal of aids, blockade, increasing withdrawal of diplomatic relations, refusal of admissions into organisations of political, economic or social benefits to member States, trade restrictions, assets freezing, imposition of increased financial penalties imposition of travel restrictions and suspension from international cooperation. Increased intensification of diplomatic measures should be applied on such States to force them into performing their obligations under the law and deter others who would have intended to fail to perform such obligations.

Finally, this paper recommends addressing the issues of the rights and protection of victims. At the end of conflicts, the victims continue to suffer the injury and pains of the conflicts as combatants and civilians. Many of them are deprived of rights to property, in cases where their houses were targeted and destroyed, rights to freedom from torture as well as denial of justice, with its ancillary remedies of reparations and restitutions, particularly where the perpetrators are not held accountable. Amidst these concerns, many of them are expected to serve as witnesses for the prosecution during trial of perpetrators of war crimes. Some are expected to be used in information or intelligent gathering and investigation, sometimes without feasible protective mechanisms from assassinations by the suspects who are resolved to prevent or frustrate their prosecution. Yet

these victims are expected to live in peace with a belief in the State and the international community. Addressing all the concerns of victims by the States and International Community would strengthen the performance of obligations of States to achieve justice, peace and accountability for war crimes.