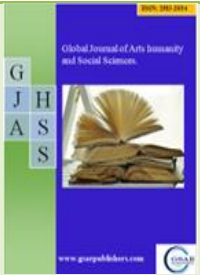
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The Role of the International Criminal Court in Protecting Human Rights Against Crimes Against Humanity

BY

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Research Paper on Crimes Against Humanity



Abstract

The International Criminal Court (ICC) serves as a court of last resort for prosecuting serious international crimes, including genocide, war crimes, and crimes against humanity. Its founding treaty, the Rome Statute, was adopted in July 1998, and the court officially began its work in 2003. Crimes against humanity fall within the jurisdiction of the ICC.

In addition to punishing perpetrators of human rights violations and preventing future crimes, the ICC establishes principles related to reparations for victims, including restitution, compensation, and rehabilitation. It also works to establish a trust fund for victims of crimes under its jurisdiction and for the families of victims.

The purpose of this paper is to clarify the role of the ICC in protecting and promoting human rights by holding perpetrators of crimes against humanity accountable and confronting human rights violations.

Keywords: International Criminal Court, Crimes Against Humanity, Human Rights

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Introduction

The establishment of the International Criminal Court is rightly considered a landmark and a turning point in the history of international humanitarian law and international criminal justice. It has helped to bridge gaps in international criminal justice.

Throughout history, humanity has experienced numerous wars and conflicts, witnessing atrocities that deeply shock the conscience. Such events undermined human civilization, violated divine laws, and resulted in devastating human rights abuses, including forms of mass killing, torture, and destruction. These serious human rights violations, which persisted into the twentieth century with repeated transgressions of international law, underscored the need for a global, collective effort to protect international society and human rights. This led to establishing principles for maintaining international peace and security and addressing severe crimes that pose a threat to global stability. The founding of the ICC was crucial for preserving international peace, security, and criminal justice.

Reasons for Choosing the Research Topic

1. To illustrate the importance of the ICC in preserving

international security and stability, deterring assaults on the dignity and life of human beings, and sending a clear, strong message to those who commit or consider committing serious violations of human rights, namely, that an effective international judiciary can hold them accountable and impose severe penalties.

2. To contribute to enhancing the role of the ICC in fulfilling its mandate to protect human rights by identifying the challenges it faces and the limitations that may prevent it from achieving its goals effectively.

Research Methodology

I relied on scientific methodologies that complement each other to enrich the study's topic:

1. **Historical Method:** To trace the historical development of ICC efforts to protect and promote human rights.
2. **Scientific Method:** To examine legal and political perspectives related to the research topic and discuss them within the framework of international law.
3. **Comparative Analytical Method:** This



complementary approach is used to analyze opinions and stances on the subject in light of international legal standards.

Research Plan

This research is divided into three main chapters:

Chapter 1: An Overview of the International Criminal Court

Chapter 2: Crimes Against Humanity

Chapter 3: Prosecution of Perpetrators of Crimes Against Humanity

Conclusion

- **First:** Findings
- **Second:** Recommendations

Chapter 1: An Overview of the International Criminal Court

Section 1: Establishment

After fifty years of concerted efforts by the international community to establish a permanent international criminal court, member states of the United Nations and various governmental and non-governmental organizations successfully laid the groundwork for a permanent international criminal court during the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held from June 15 to July 17, 1998. This conference led to the adoption of the Rome Statute, which established the ICC as a permanent judicial body responsible for prosecuting grave crimes that violate human rights, such as genocide, war crimes, and crimes against humanity.

After the adoption of the Rome Statute on July 17, 1998, the treaty officially entered into force in April 2002 following its ratification by ¹⁾ 60 countries, and the ICC formally became a legal entity on July 1, 2002. The establishment of the ICC marked a significant step in strengthening international criminal justice, setting the groundwork for the rule of law in international relations, and enforcing criminal accountability for those who violate international humanitarian law and human rights law.

The Statute of the International Criminal Court serves as a wake-up call and a warning to all who violate human rights anywhere: they will find no refuge from punishment, and there will be no haven for those who commit crimes against humanity.

The preamble of the Rome Statute expresses the reasons and justifications for establishing the Court, as well as the aspirations associated with it. It states that the States Parties to this Statute recognize the existence of common bonds that unite all peoples, and that the cultures of peoples collectively form a shared heritage. It expresses concern that this delicate fabric could be torn at any moment.

Taking into account that millions of children, women, and men have, in this century alone, fallen victim to unimaginable atrocities that have deeply shaken the conscience of humanity, it acknowledges that these serious crimes threaten peace, security, and well-being in the world. It affirms that the most serious crimes, which concern the entire international community, should not go unpunished, and that effective prosecution of their perpetrators

should be ensured through national and international measures, with an emphasis on international cooperation.

Determined to put an end to the impunity of those who commit such crimes and to contribute to preventing these crimes, the Statute resolves, for the sake of present and future generations, to establish an independent and permanent international criminal court with links to the United Nations and with jurisdiction over the most serious crimes of concern to the international community as a whole.

The Statute confirms that the ICC established by this Statute shall complement national criminal jurisdictions.

The Rome Statute of the ICC comprises a preamble and 128 articles distributed across eleven parts, constituting the charter or foundational statute of the Court.

This Statute marks the first practical step toward establishing a permanent international criminal judiciary, representing a new phase following the ad hoc tribunals (as the temporary tribunals for the former Yugoslavia and Rwanda are still operational). This represents a major development in the history of international criminal justice. As mentioned, the Statute consists of a preamble and 128 articles.

⁽¹⁾ As of now, 123 countries have ratified the Rome Statute, including 33 African countries, 19 from Asia and the Pacific, 18 from Eastern Europe, 28 from Latin America and the Caribbean, and 25 from Western Europe and other states. This marks a significant historical turning point towards global support for the International Criminal Court (ICC). It highlights the strong backing for the ICC and serves as a counter to unfounded criticisms from opponents, particularly the United States, which has claimed that the ICC lacks sufficient safeguards against politically motivated prosecutions. The fact that 123 countries have now endorsed the Statute demonstrates that these concerns are unfounded.

Article 5 ²⁾ of the Rome Statute states in its first paragraph: "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court, under this Statute, has jurisdiction in respect of the following crimes:

- The Crime of Genocide*
- Crimes Against Humanity*
- War Crimes*
- The Crime of Aggression.*"

It is noteworthy that an examination of the Rome Statute reveals that the restrictions imposed on the ICC's exercise of jurisdiction limit the scope of its authority, which may restrict the Court's effectiveness in delivering international criminal justice.

The limitation of the ICC's jurisdiction to only the most serious crimes serves **two main objectives:**

First: To prevent an overly broad expansion of the ICC's jurisdiction, aligning it with the Court's available resources, particularly since the ICC faced significant challenges when its Statute was first adopted.

Second: To ensure complementarity between the ICC's jurisdiction and national criminal courts, whereby national courts retain primary jurisdiction, and the ICC's jurisdiction is limited to cases that cannot be handled by national courts, either due to lack of jurisdiction or non-compliance with the standards and conditions established by the Rome Statute.

Section Two: Crimes Against Humanity

Introduction:

Crimes against humanity are among the most distressing topics in criminal law, as they include heinous acts such as genocide, mass murder, and torture, which humanity cannot ignore or allow to go unchallenged. Following World War II, the international community mobilized, establishing the Nuremberg and Tokyo tribunals to prosecute war criminals. Approximately fifty years later, the international community set up the tribunals for the former Yugoslavia and Rwanda to address these serious crimes. Crimes against humanity are now, for the first time, defined in an international treaty through the adoption of the Rome Statute for the International Criminal Court on July 17, 1998.

This section will examine crimes against humanity as follows:

1. Definition of Crimes Against Humanity
2. Elements of Crimes Against Humanity

First Requirement: Definition of Crimes Against Humanity

(2) See: Article 5, paragraph 2 of the Rome Statute.

Introduction and Overview: This section will provide a historical overview of the development of the concept of crimes against humanity, followed by an explanation of its meaning as defined in the Rome Statute.

I. Historical Overview of the Concept of Crimes Against Humanity:

As previously mentioned, the concept of crimes against humanity is relatively recent, first established by the Nuremberg Charter of the International Military Tribunal, which was adopted on August 8, 1945, to prosecute high-ranking war criminals from the Axis powers. Article 6(c) of the Charter held individuals accountable for crimes against peace, war crimes, and crimes against humanity. The tribunal issued rulings clarifying these crime definitions, and the United Nations General Assembly affirmed the principles set out in the Charter and recognized the tribunal's rulings as international legal standards.

Since Nuremberg, the concept of "crimes against humanity" has evolved and been the subject of extensive discussion within the United Nations International Law Commission, the International Committee of the Red Cross, and various non-governmental organizations, as well as within academic circles. Despite the growing focus on crimes against humanity, it wasn't until the 1990s that an international treaty or official document specifically addressed them with a definitive definition, aside from certain conventions covering related crimes within the scope of crimes against humanity. Examples include the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1973

Convention on the Suppression and Punishment of the Crime of Apartheid, and the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The general concept of crimes against humanity remains contentious, as these crimes often involve sensitive political or religious issues.

II. Definition of Crimes Against Humanity in the Rome Statute of the International Criminal Court (ICC)

Article (7/1) of the Rome Statute defines crimes against humanity as follows:

"For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture;

- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender grounds as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health."

(3) See: Rome Statute.

This definition in the Rome Statute expands on the concept of crimes against humanity "Compared to its concept as was prevalent in prior conventions"⁴, **this expansion is evident in two aspects:"**

1. Unlike the Nuremberg Charter, which limited the scope of crimes against humanity to acts committed during war or connected to the crime of aggression, and contrary to the approach of the Statute of the International Criminal Tribunal for the former Yugoslavia, which required that the acts constituting crimes against humanity be committed during an armed conflict, whether international or internal, the Rome Statute establishes that these crimes are independent of the crime of aggression. Thus, it does not require that the acts constituting this crime be committed in the context of an armed conflict, whether international or internal.

As previously noted, Article (c) of the Nuremberg Charter stated that crimes against humanity could be committed "before or during the war.



" From this text, it is inferred that such crimes could be committed in peacetime as well as in wartime. However, the Charter at the time limited the jurisdiction of the tribunal to cases where there was a connection with war crimes. Hence, in the context of the Nuremberg Charter, there is an inherent link between crimes against humanity and international armed conflicts.

In the Rome Conference, where the Statute of the International Criminal Court (ICC) was adopted, a minority of states held the view that crimes against humanity should be connected to armed conflicts. However, the majority rejected this view, arguing that insisting on such a connection would effectively nullify the concept of crimes against humanity, as these crimes would then be indistinguishable from war crimes. Furthermore, this approach disregards the progress made in this area. The independent nature of crimes against humanity, distinct from war crimes, has been affirmed in both the statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda.

"**Therefore**, crimes against humanity—unlike the crime of genocide—can be committed during both war and peace, equally applicable to both state officials and other individuals.

2. The Rome Statute has expanded the list of criminal acts constituting crimes against humanity in line with the developments in international humanitarian law. In addition to the traditional forms of crimes against humanity (such as willful killing, extermination, enslavement, deportation, imprisonment, torture, rape, and persecution), the statute includes specific criminal acts, such as sexual slavery, forced prostitution, forced pregnancy, forced sterilization, and other serious sexual assaults of a similar nature. This expansion aims to provide necessary protections for the most vulnerable groups in societies, particularly women and children.

Finally, it is noteworthy that the Rome Statute has significantly broadened the scope of crimes against humanity, leaving room for the inclusion of newly emerging crimes. It stipulates in Article 1(k) that 'other inhumane acts of a similar character' to those enumerated in the preceding clauses of Article 1, which intentionally cause great suffering or serious injury to the body or mental or physical health, may also be included."

Section Two

Elements of Crimes Against Humanity

Introduction:

Article (7) of the Rome Statute clarifies that crimes against humanity are based on three essential elements: first, that the criminal act is committed within the framework of a widespread or systematic attack directed against any civilian population; second, the material element, where the criminal act takes forms such as murder, extermination, enslavement, etc.; and finally, the mental element, encompassing the presence of intent necessary to establish liability for crimes against humanity.

⁽⁴⁾ The definition in Article 7 of the Rome Statute is a comprehensive, multi-faceted definition of crimes against humanity, extending further than the definitions provided by the International Criminal Tribunal

for both the former Yugoslavia and Rwanda, as well as the definitions used by the international military tribunals of Nuremberg and Tokyo."

The following outlines these three elements:

Part One: The criminal act must be committed as part of a widespread or systematic attack directed against any civilian population.

Part Two: The material element.

Part Three: The mental element.

Section One

The Criminal Act Must Be Committed as Part of a Widespread or Systematic Attack Directed Against Any Civilian Population

Paragraph ((2)(a)) of Article 7 of the Rome Statute defines this element as follows: "The term 'attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph (1) against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack."

Additionally, the introductory part of Article 7 of the Elements of Crimes for the International Criminal Court specifies that "the term 'attack directed against a civilian population' refers, in the context of this element, to a course of conduct involving the multiple commission of acts referred to in paragraph (1) of Article 7 of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack." The actions need not be part of a military operation. The concept of a "policy to commit such an attack" requires that the State or organization actively promote or encourage the attack against civilians.

The "policy" targeting civilians may be undertaken by a State or an organization. In exceptional circumstances, this policy could involve a deliberate omission, consciously intended to encourage the attack. The mere absence of government or organizational action does not suffice to establish this policy.

From the above, it is evident that Article 7 of the Rome Statute established two interrelated criteria for assaults on civilians to be classified as crimes against humanity:

Criterion One:

The internationally criminalized acts must be directed against "any civilian population," differing from the crime of genocide, which targets a specific group, as we previously discussed. According to Article (7/1) of the Rome Statute, the criminalized acts must be directed against a civilian population, meaning isolated, sporadic, or random acts that do not amount to crimes against humanity cannot be prosecuted by the Court. A few soldiers mixed among civilians does not strip the civilians of their protected status⁵⁽⁵⁾. What does the term "any civilian population" mean?

⁽⁵⁾ International Amnesty Organization, "The International Criminal Court: Prosecution of Accused for Crimes Against Humanity," Document IORUO/05/00, August 1, 2000.



This term, derived from the case law of the International Criminal Tribunal for the former Yugoslavia (ICTY), particularly in the well-known (Tadić) case, has been interpreted to include all civilians, both citizens and non-citizens. It also encompasses non-civilians among military personnel or members of armed groups who have ceased active participation in hostilities.

In reality, this criterion only raises substantial issues when connected to the second criterion.

Criterion Two: The assault must occur as part of a widespread or systematic attack:

To classify an assault on civilians as a crime against humanity in international law, the act must be part of "widespread" (Widespread) or "systematic" (Systematic) attacks. The phrase "widespread attacks" indicates that crimes against humanity are of a collective nature, targeting a large number of victims. Assaulting a single victim does not invoke international criminal liability for the perpetrator unless it is part of repeated and widespread attacks. As for the requirement that such attacks be a State or organizational policy, it implies that the acts should reflect a general policy or be consistent with an established pattern of behavior. The policy element excludes individual acts ...that are committed in an isolated manner, without coordination, and in a random fashion) 6

Consequently, such attacks may be perpetrated by agents of a state or by other individuals acting with the encouragement, approval, or consent of that state, such as execution squads. Crimes against humanity may also be carried out under policies pursued by organizations like rebel groups and terrorist organizations with no connection to governments.

It is not required that this general policy be attributed to the official authorities of the state. Nor is it necessary for this general policy to be explicitly declared; it can be implicit, as is commonly the case. The fact that these actions are carried out on a wide scale or in an organized manner serves as evidence that these actions are part of the general policy of the state or other groups involved. This view was upheld by the International Criminal Tribunal for the former Yugoslavia, which stated, "There is no need for such a policy to be official, as it can be inferred from the way acts occur" 7

Thus, the element of state action or policy is the sole criterion for international judicial jurisdiction over crimes against humanity, as it implies other meanings regarding the criminal responsibility of state agents involved in executing the plan or policy of the state. If it is proven that the state developed a policy, implemented a plan, or allowed acts that resulted in what falls within the definition of crimes against humanity, those individuals in the state who caused or participated in achieving this result are considered participants in the commission of crimes against humanity 8. Here, the responsibility of state agents exists irrespective of whether their actions are lawful under national law.

It is noteworthy that if the policy element was either developed or executed through individuals with or without authority, this

element (the policy) is a judicial jurisdiction element that classifies crimes against humanity as one of the categories of international crimes. This distinguishes it from other types of crimes, as the policy element is fundamental to giving crimes against humanity an international dimension.

- 6 *This position aligns with customary international law and the Statute of the International Criminal Tribunal for the former Yugoslavia, emphasizing that random or isolated acts are not covered.*
- 7 *See the judgment of the International Criminal Tribunal for the former Yugoslavia in the case of "Tadić," I.L.M. 908 (1997) 944.*
- 8 *An example of this is the case of Honduras, where the state was held responsible in a series of lawsuits for incidents of "forced disappearance" carried out by groups or individuals acting under authority granted by the state, or with its support or approval, as defined in the American Convention on Forced Disappearance, Article 2. These acts were also recognized as being carried out on behalf of the government or with its explicit or implicit support or approval, according to the definition in the United Nations General Assembly's Declaration on the Protection of All Persons from Enforced Disappearance.*

From the above, it can be concluded that crimes against humanity take the form of acts committed on a large scale and systematically, typically involving a significant number of victims. Therefore, isolated crimes committed by individuals on their own initiative fall outside this scope. Additionally, such acts (which constitute the large-scale and systematic attack against any group of civilians) must be carried out in line with the policy of a state or organization.

Thus, the policy of the state or organization is the core element that makes crimes against humanity international crimes, falling within the jurisdiction of the International Criminal Court. This systematic policy imbues the criminal acts committed with a high degree of severity, justifying their classification as an offense against the international community as a whole. Consequently, humanity itself is the victim of such crimes. Accordingly, if these criminal acts outlined in Article (7) of the Rome Statute were committed without a state or organization policy, they would not be considered crimes against humanity and would thus fall outside the jurisdiction of the International Criminal Court, instead falling under the jurisdiction of national criminal courts.

Section Two: The Material Element

The material element of a crime against humanity consists of a criminal act that can take one of the eleven forms specified in Article (7/1) of the Rome Statute. The Rome Statute identifies the following eleven types of acts as actions that may rise to the level of crimes against humanity:

1. Murder

Premeditated murder, which constitutes a crime against humanity, is when the accused kills 9 one or more persons as part of a widespread or systematic attack directed against a civilian population. The perpetrator must know that this conduct is part of such an attack 10 or intend for it to be part of that attack. The criminal act



may be carried out through various means of killing, whether directly or indirectly.

2. Extermination

It is a deliberate and rapid killing of individuals of certain groups. "Genocide" is the intentional imposition of living conditions, including the deprivation of food and medicine, with the sole aim of destroying part of the population¹¹.

That is, genocide, which constitutes a crime against humanity, consists of the perpetrator killing one or more persons, including forcing the victims to live in conditions that inevitably lead to the destruction of part of the population.¹² Such killing constitutes or is part of a mass killing of members of a civilian population¹³.

"Extermination" is defined as a deliberate, large-scale killing targeting individuals within certain groups, including the intentional imposition of conditions—such as deprivation of access to food and medicine—intended to destroy part of the population means that extermination, constituting a crime against humanity, involves the perpetrator killing one or more individuals, including forcing victims to live in conditions that would inevitably lead to the destruction of part of a population. Such involves a mass killing operation targeting civilians or constitutes part of such an operation

(9) "killed" is synonymous with the phrase "caused death."

(10) See: *Elements of Crimes, International Criminal Court*.

(11) Article 7(2)(b) of the Rome Statute.

(12) This imposition of conditions may include deprivation of access to shelter and medicines.

(13) See: *Elements of Crimes, International Criminal Court*. For further details, refer to:

Cherif Bassiouni, *Genocide and Racial Discrimination*, in Bassiouni and Nanda, *A Treatise on International Criminal Law*, vol. 1, Crimes and Punishment, Charles C. Thomas, USA, 1972, p. 525.

1. "Enslavement" refers to the exercise of any or all powers associated with ownership rights over a person, including the use of such powers for the purpose of trafficking individuals, especially women and children¹⁴. Enslavement, when constituting a crime against humanity, involves the perpetrator exercising one or more powers related to ownership rights over a person or persons, whether by buying, selling, lending, or bartering them, or by subjecting them to equivalent forms of deprivation of freedom¹⁵.

2. Deportation or Forcible Transfer of Population

"Deportation or forcible transfer of population" refers to the forced movement of individuals from their area of residence without lawful justification, through expulsion or other coercive acts, without justification under international law¹⁶.

The deportation or forcible transfer of civilians, as a crime against humanity, involves the perpetrator forcibly removing¹⁷ individuals to another country or place through expulsion or another act for reasons not recognized by international law. It is essential that the person or persons being moved were lawfully present in the area from which they were deported or transferred¹⁸.

3. Imprisonment or Other Severe Deprivation of Physical Liberty in Violation of Fundamental Rules of International Law

Imprisonment or other severe deprivation of physical liberty, constituting a crime against humanity, occurs when the perpetrator unjustifiably deprives one or more individuals of their physical freedom in a manner that constitutes a gross violation of the fundamental rules of international law. Naturally, this does not include lawful imprisonment or detention in accordance with laws that respect human rights, as provided by international legal frameworks.

4. Torture

"Torture" refers to the intentional infliction of severe physical or mental pain or suffering, whether bodily or psychological, on a person under the custody or control of the accused. However, torture does not include pain or suffering resulting from lawful punishments or the penalties applied in accordance with the law¹⁹.

5. Rape, Sexual Slavery, Enforced Prostitution, Forced Pregnancy, Forced Sterilization or Any Other Form of Sexual Violence of Comparable Gravity

Rape and other forms of sexual violence, including forced sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, or any other forms of sexual violence of similar severity, are considered crimes against humanity. The Rome Statute defines rape as any act of sexual penetration, whether vaginal, anal, or oral, performed against the victim's will, through force, threat, coercion, or exploitation of a person's inability to consent. This

(14) Article 7(2)(c) of the Rome Statute. For further details, refer to:

V. P. Nanda and Bassiouni, *Slavery and Slave Trade: Steps toward Eradication*, in Bassiouni and Nanda, *A Treatise on International Criminal Law*, vol. 1, Crimes and Punishment, 1973, Charles C. Thomas Publisher, USA., p. 507.

(15) It is understood that the deprivation of liberty can include, in some cases, forced labor or other forms of slavery, as provided in the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1906*. It is also understood that this element encompasses trafficking, especially of women and children.

(16) Article 7(2)(d) of the Rome Statute:

(17) The phrase "deported or forcibly transferred" is synonymous with "forcibly displaced." One of the most prominent examples of this crime is the displacement of Palestinians by Israel from their lands.

(18) The term "forcibly" does not exclusively refer to physical force; it may also include the threat of using force, coercion arising from fear of violence, duress, detention, psychological persecution, abuse of

power directed against the individual concerned or another person, or exploiting a coercive environment. See the Elements of Crimes of the International Criminal Court.

(19) 1 Article 7(2)(b) of the Rome Statute. 2 The concept of "attack" is intended to be general, applying to both men and women alike. includes any form of sexual violence resulting from fear of harm, coercion, detention, persecution, abuse of power, or exploitation of a person's incapacity to express consent.

Forced Pregnancy:

"Forced Pregnancy" means coercing a woman into pregnancy and childbirth, without lawful justification, with the intent to influence the racial composition of any group, or to commit other serious violations of international law. This definition shall not be interpreted in a way that contradicts national laws related to pregnancy)²⁰.

Sexual Slavery:

Sexual slavery occurs when the perpetrator exercises any or all powers associated with ownership over a person, including buying, selling, lending, or exchanging them, or subjecting them to similar forms of deprivation of liberty. The perpetrator may also coerce the victim or others into engaging in a sexual act or acts.

Enforced Prostitution:

Enforced prostitution occurs when the perpetrator forces one or more individuals to engage in sexual acts through the use of force, threats, or coercion, and the perpetrator obtains or expects to receive money or other benefits in exchange for such acts or for reasons connected to them.

Forced Sterilization:

As mentioned earlier in the discussion of genocide, forced sterilization means depriving one or more individuals)²¹ of their reproductive capacity without valid justification.

In all of the above crimes, the criminal conduct must be committed as part of a widespread or systematic attack against civilians, with the perpetrator knowing or intending that this conduct is part of such an attack.

Sexual Violence as a Crime Against Humanity:

Sexual violence that constitutes a crime against humanity involves the perpetrator committing a sexual act or acts against one or more individuals through the use of force, threats, or coercion. This includes acts committed under the threat of violence, detention, persecution, abuse of authority, or exploitation of the victim's vulnerability, or where the victim is incapable of expressing genuine consent.

8. Persecution:

Persecution refers to the act of systematically or intentionally depriving a specific group or groups of individuals of their fundamental rights for reasons such as political, racial, ethnic, national, cultural, religious grounds, or related to gender, as defined in paragraph (3)²² of Article (3), or for any other reasons that are universally recognized by international law as impermissible. This includes actions connected to any crime

referenced in this paragraph or any other crime falling under the jurisdiction of the Court)²³.

"Persecution" means the intentional and severe deprivation of fundamental rights of a group or members of a group in violation of international law, due to the identity of the group or its members.)²⁴ Persecution may also be based on any other ground universally recognized as impermissible under international law.

20 Article (2/7f) of the Rome Statute.

21 The term "deprivation" includes measures aimed at controlling reproduction, particularly those with permanent practical effects

22 Article 3/7 states that "For the purposes of this Statute, the term 'gender' refers to both sexes, male and female, in society, and does not refer to any other meaning than that."

23 Article 1/7H of the Rome Statute.

24 Article 2/7Z of the Rome Statute.

9. Enforced Disappearance of Persons:

"Enforced disappearance of persons" refers to the act of arresting, detaining, or abducting individuals by the state or an organized group, with the authorization or support of the state for such actions, or by the group's own initiative. The state or organization then refuses to acknowledge the deprivation of the person's liberty or provide information about their fate or whereabouts, with the intent to deny them legal protection for a prolonged period)²⁵.

Enforced disappearance of persons, which constitutes a crime against humanity, is based on the following elements)²⁶

A) The perpetrator must:

1. Arrest, detain, or abduct one or more individuals.
2. Refuse to acknowledge the arrest, detention, or abduction of the individual(s), or refuse to provide information about their fate or whereabouts.

B) This arrest, detention, or abduction is followed by a refusal to acknowledge the deprivation of liberty or to give information about their fate or whereabouts. The refusal must occur either before or simultaneously with the deprivation of liberty.

C) The perpetrator must know:

1. That the arrest, detention, or abduction of the individual(s) is accompanied by a refusal to acknowledge their deprivation of liberty or provide information about their fate or whereabouts.
2. That this refusal occurs before or simultaneously with the deprivation of liberty.

D) The arrest, detention, or abduction is carried out by a state or a secret organization, or with their authorization, support, or approval.

E) The perpetrator must know that the individual(s) are being denied protection under the law for a period of time.

F) The conduct must be part of a widespread or systematic attack against civilians, and the perpetrator must know that the conduct is part of such an attack directed against civilians.

10. The Crime of Apartheid

The term "Crime of Apartheid" refers to any inhuman acts resembling those mentioned in the first paragraph, carried out in the context of an institutionalized regime of systematic oppression and racial discrimination by one racial group against another or others, with the intent to maintain that regime²⁷.

Thus, apartheid, which constitutes a crime against humanity, is based on the following elements²⁸:

- A) The defendant must commit an inhuman act against one or more individuals.
- B) The act must be one of the acts listed in the first paragraph of Article 7 of the Rome Statute, or similar to any of those acts.
- C) The perpetrator must be aware of the factual circumstances that give rise to the inhuman nature of the act.
- D) The conduct must take place within an institutionalized regime based on oppression and systematic control by
- E) The perpetrator must know that their conduct is intended to maintain that system.
- F) The conduct must be part of a widespread or systematic attack against civilians.
- G) The perpetrator must know that the conduct is part of such an attack or must have knowledge that the conduct is part of the ongoing attack.

²⁵) Article 2/7A of the Rome Statute.

²⁶ See: *The Elements of Crimes for the International Criminal Court*.

²⁷) Article 2/7H of the Rome Statute.

²⁸ See: *The Elements of Crimes for the International Criminal Court*. one racial group against another or others.

In summary, the crime of apartheid falls under the jurisdiction of the International Criminal Court, requiring three essential elements:

1. The criminal acts are carried out in the context of an institutionalized regime based on oppression and control.
 2. The persecution and control are practiced by one racial group against another or others.
- (3) See: *The Elements of Crimes for the International Criminal Court*.
- (1) Article 2/7H of the Rome Statute.
 - (2) See: *The Elements of Crimes for the International Criminal Court*
 - (3) That the criminal acts are committed with the intention of maintaining the aforementioned racial system.

11. Other Inhuman Acts:

Acts of a similar nature that intentionally cause great suffering or inflict serious bodily or mental harm to someone. other inhuman acts that constitute a crime against humanity involve the following elements²⁹:

- A. The perpetrator causes severe suffering or significant

harm to the body, or mental or physical health by committing an inhuman act³⁰

- B. The act is of a nature similar to another act mentioned in Article 7 of the Rome Statute.
- C. The perpetrator is aware of the factual circumstances which render the act inhuman.
- D. The act is committed as part of a widespread or systematic attack against civilians.
- E. The perpetrator knows or should know that the act is part of this widespread or systematic attack against civilians.

Although determining the scope of other inhuman acts presents some challenges, it is crucial that they are addressed in the Rome Statute. The importance of specifying these acts as part of the crimes against humanity is that it enables the court to, when necessary, assert jurisdiction over such acts, especially those that might be devised by perpetrators in the future.

Summary:

The "gravity" of the act is a key factor in establishing the material element, whether the crime targets a specific person or a group. It is evident in the case of crimes like mass killings, torture, and enslavement, but it is more pronounced in cases where the criminal act affects a group based on shared beliefs or identity. For instance, the mass killings committed by the Nazis during World War II, and later genocides in Indonesia, Vietnam, Yugoslavia, and Rwanda, occurred due to conflicts over political, religious, or ideological beliefs, resulting in millions of victims.

Article 1/7K of the Rome Statute.

(29) Elements of Crimes for the International Criminal Court.

Section Three: The Mental Element

Criminal liability for committing a crime within the jurisdiction of the International Criminal Court is only established if the material elements of the crime are present, along with the requisite *mens rea* (guilty mind) and awareness crimes against humanity are intentional crimes, which require the existence of *mens rea* based on knowledge and intent³¹. The perpetrator must be aware that their act constitutes an attack on the victims or persecution of members of a particular group. Additionally, the perpetrator's intent must be directed at that result.

However, general intent alone is not sufficient for the establishment of the mental element in this context; specific intent must also be present. This refers to the perpetrator's intention to harm individuals because of their affiliation with a particular ideology. This was affirmed by the Rome Statute in Article 4, which emphasizes the necessity of the accused's knowledge at the time of committing the criminal act, ensuring that they are aware that their actions are part of a widespread or systematic attack against any civilian population.

For example, in the case of crimes such as apartheid, a form of crime against humanity, the specific intent requires that the perpetrator commits the crime "with the intention of maintaining a system of racial oppression," which is implemented by one ethnic

group through systematic persecution and discrimination against other ethnic groups. The presence of intent and knowledge can be inferred from the facts and relevant circumstances.

As for the mental elements related to the crimes that involve terms like “inhuman” or “atrocious,” it is not necessary for the perpetrator to meet a specific definition unless the act falls within the scope of these terms ³².

Chapter Three:

Penishing the Perpetrators of Crimes Against Humanity

Introduction and Division:

According to the Rome Statute, the International Criminal Court (ICC) has the authority to impose penalties for committing crimes against humanity that fall within its jurisdiction. The court may also issue rulings for compensation to victims and redress the harm caused to them. The court determines the punishment and orders according to the Rome Statute, procedural rules, rules of evidence, and the ICC's regulations, considering the seriousness of the crime and the personal circumstances of the convicted individual.

This section is divided as follows:

Section One: Penalties and Sentences Section Two: Compensation for Victims Section One: Penalties and Sentences

Article 1/3 of the Rome Statute.

30. *Preamble of the Elements of Crimes for the International Criminal Court.*

Introduction and Division:

The Rome Statute emphasizes the principle of legality in penalties, stating: "No punishment without law." Therefore, no individual can be punished by the International Criminal Court unless convicted according to the Rome Statute ³³.

According to Article 77 of the Rome Statute, the International Criminal Court may impose one of the following penalties on a person convicted of committing a crime within its jurisdiction:

- A. A fixed term of imprisonment, with a maximum of 30 years.
- B. Life imprisonment where justified by the extreme gravity of the crime and the specific circumstances of the convicted individual.
- C. In addition to imprisonment, the court may order fines based on the criteria outlined in the procedural rules and rules of evidence, or it may order the confiscation of assets or property derived from the crime.

The court determines the penalty according to the regulations and procedures and must take into account the seriousness of the crime and the individual circumstances of the convicted person.

The death penalty is not provided for as a punishment for crimes under the jurisdiction of the International Criminal Court in the Rome Statute. The Statute provides sufficient guarantees to states that the penalties prescribed therein will not affect the penalties prescribed in their domestic laws.

Therefore, states may apply their national penalties when acting within their own jurisdiction, which may or may not include the death penalty.

Section One: Penalty of Imprisonment

The Rome Statute prescribes imprisonment as a primary punishment for crimes under the jurisdiction of the International Criminal Court. This penalty can be temporary, with a maximum limit of 30 years, or it may be life imprisonment.

When the court determines the penalty of imprisonment, it must consider factors such as the seriousness of the crime and the specific circumstances of the convicted person, as outlined in the procedural rules and rules of evidence. These rules specify the criteria for determining the penalty that the court must follow, as outlined below ³⁴:

A- The court must ensure that the total sentence for imprisonment is proportional to the crime committed by the convicted person.

Article 23 of the Rome Statute.

31. *See Rule 145 of the Rules of Procedure and Evidence.*

B- It should consider all relevant factors, including the circumstances presented or mitigating circumstances, and take into account the conditions of both the convicted person and the crime.

C- In addition to the factors mentioned in the first paragraph of Article 78 of the Rome Statute, the court should consider, among other things, the extent of the harm caused, particularly the suffering of the victim and its impact, the nature of the unlawful conduct committed, the means used to commit the crime, the degree of participation by the convicted person, the intent, and the circumstances related to the manner, time, and location of the offense, as well as the convicted person's background, including education, social, and economic conditions.

In addition to the factors mentioned above, the court should also take into account, as appropriate ³⁵: A- Mitigating factors:

1. Circumstances that do not exclude criminal responsibility, such as a diminished mental capacity or coercion.
2. The behavior of the convicted person after committing the crime, including efforts made to compensate the victim or cooperation with the court.

B- Aggravating factors:

1. Any previous criminal convictions for crimes within the court's jurisdiction or similar crimes.



2. Abuse of power or authority.
3. The crime was committed with a victim who was particularly vulnerable and unable to defend themselves.
4. Committing the crime with excessive cruelty or against multiple victims.
5. Committing the crime based on discriminatory motives, as specified in Article 21(3) of the Rome Statute.
6. Any circumstances not listed but which are considered by their nature as similar to the aforementioned circumstances.

The court may impose a sentence of life imprisonment when the crime's extreme severity and the specific circumstances of the convicted person justify such a sentence. This may be determined by the presence of aggravating circumstances³⁶.

When imposing the sentence of imprisonment, the court may take into account the period – if any – the convicted person has already spent in detention under a court order. The court may also account for any additional period of detention related to the behavior underlying the crime³⁷.

When the convicted person is found guilty of more than one crime, the court shall issue a separate sentence for each offense and a joint sentence determining the total duration of imprisonment, provided that the total duration is not less than the shortest sentence and does not exceed 30 years or life imprisonment, in accordance with paragraph (b) of Article 77 of the Rome Statute³⁸.

It is clear from the above that the Rome Statute does not specify a fixed prison sentence for each crime falling under the jurisdiction of the International Criminal Court (ICC). However, its approach in this regard differs from the approach taken in the statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY). The ICTY statute granted the court the authority to impose the death penalty, with no fixed duration for the penalty for each crime, and without imposing a minimum sentence for temporary imprisonment. The length of the sentence was to be determined based on the specific crime committed and the general rules followed by the internal criminal courts of the former Yugoslavia, with consideration given to the seriousness of the crime and the severity of the offense. This was outlined in Articles 23 and 24 of the ICTY Statute.

32. Rule 2/145 of the Rules of Procedure and Evidence.

33. Rule 3/145 of the Rules of Procedure and Evidence.

34. Article 2/78 of the Rome Statute

35. Article 3/78 of the Rome Statute.

The issue of the gradation of the severity of crimes under the jurisdiction of the ICC was also raised before the ICTY, which served as a precursor to the permanent ICC. Specifically, the question was whether crimes against humanity should be considered more or less serious than war crimes. In the "Tadic" case, the Trial Chamber ruled that crimes against humanity are more severe than war crimes. However, the Appeals Chamber of the ICTY overturned this ruling. This issue was also raised before the International Criminal Tribunal for Rwanda (ICTR), which concluded that genocide is a more serious crime than crimes

against humanity, and that the latter are considered less severe than war crimes.

Section Two: The Fine

The criminal fine occupies a distinguished position among penalties, and its importance increases as it continues to be one of the most suitable penalties for many contemporary crimes, such as financial crimes, tax evasion, and other crimes where financial gain or unlawful advantage is the main motive for their commission. (2A) of Article 77 of the Rome Statute states that "In addition to imprisonment, the Court may impose a fine based on the standards set out in the Rules of Procedure and Evidence."³⁹

Rule (146) of the Rules of Procedure and Evidence sets forth the criteria for imposing a fine as an additional penalty to imprisonment, as follows:

1. When determining whether to impose a fine under Article (2A) of Article 77 of the Rome Statute, and when setting the required value of the fine, the Court will decide whether the imprisonment penalty is sufficient or not. It will duly consider the financial capacity of the convicted person, including orders for confiscation under Article (2B) of Article 77 of the Rome Statute, and orders for compensation under Article 75 of the Rome Statute, as appropriate. The Court will also consider, in addition to the factors mentioned in Rule (145) of the Rules of Procedure and Evidence, whether the motive for the crime was personal financial gain and to what extent the crime was committed as a result of this motive.
2. Determining the Appropriate Value for the Imposed Fine Under Article (2A) of Article (77) of the Rome Statute To achieve this objective, the Court gives special consideration— in addition to the factors mentioned above— to the damage and injuries resulting from the crime, including the relative gains the perpetrator obtains from committing the crime.

The total value shall never exceed 75% of the value of assets— whether liquid or convertible— owned by the convicted person, after deducting an appropriate amount to cover the financial needs of the convicted person and those they depend on.

3. **Payment Period for the Imposed Fine:** When imposing a fine, the Court grants the convicted person a reasonable period during which the fine must be paid. The Court may allow the fine to be paid in a lump sum or in installments over this period.

Daily Fine System: In cases where the fine is imposed, the Court has the option to calculate the fine under the daily fine system. In this case, the duration shall not be less than 30 days and shall not exceed 5 years. The Court will determine the total amount based on the two provisions above and decide the value of daily payments based on the convicted person's financial circumstances, including the financial needs of their dependents

(39) *Note: For further details on the penalty of fines, refer to Dr. Samir Al-Ganzouri: "Criminal Fines - A Comparative Study on the Legal Nature of Fines and Their Penal Value," unpublished, 1967, pages 11 and onwards.*

5. Non-payment of the Fine: In case of non-payment of the required fine as per the above terms, the Court may take appropriate measures according to the Rules of Procedure and Evidence, specifically Articles (217) to (222), and in accordance with Article (109) of the Rome Statute.

In cases where the non-payment persists, the Court's Presidency—based on its discretion or upon the request of the prosecutor, after being satisfied with the failure of all available enforcement measures— may extend the prison sentence for a period not exceeding one-quarter of the original sentence or five years, whichever is less.

When determining the extension period, the Presidency takes into account the value of the imposed fine and the amount paid. This extension does not apply in life sentence cases, and the total period of imprisonment cannot exceed 30 years.

6. Determining Extension: The Presidency, in order to decide whether an extension is necessary, shall hold a closed session to consult with the convicted person and the prosecutor. The convicted person has the right to request legal assistance.

7. Failure to Pay Fine: When imposing the fine, the Court warns the convicted person that failure to pay the fine according to the terms specified above may result in an extension of the prison sentence as outlined in this rule.

Third Section

The Forfeiture

In addition to the sentence of imprisonment, the court may order the forfeiture of the proceeds, property, and assets derived directly or indirectly from committing a crime within the jurisdiction of the International Criminal Court, without prejudice to the rights of third parties acting in good faith⁴⁰.

Article (147) of the Rules of Procedure and Evidence specifies the procedures to be followed for forfeiture orders as follows:

1. At a hearing held to consider the issuance of a forfeiture order, the chamber— in accordance with Articles (2) and (3) of Article (76), the first paragraph of Rule (63), and Rule (143) of the Rules of Procedure and Evidence— will hear evidence related to the nature of the proceeds, assets, or property involved in the commission of the crime.
2. If the chamber becomes aware— before or during the hearing— of the existence of a third party acting in good faith, who may have a legitimate interest in the proceeds or property, the chamber will notify this third party of the proceedings before the Court.
3. The Prosecutor, the convicted person, and any third party with a legitimate interest in the proceeds or assets concerned may present evidence relevant to the case.

4. After considering the presented evidence, the chamber may issue an order for the forfeiture of the specified proceeds, property, or assets if it is convinced that these were acquired directly or indirectly as a result of the crime.

Trust Fund

According to Article (79) of the Rome Statute, an Assembly of States Parties shall establish a trust fund for the benefit of the victims of crimes under the jurisdiction of the International Criminal Court and their families. This

See Article 2/77B of the Rome Statute. fund is managed according to criteria established by the Assembly of States Parties⁴¹. The International Criminal Court may also order the transfer of assets or property forfeited, including proceeds or assets, to the trust fund⁴².

Second section

Compensation for Victims

It is undisputed that the violation of human rights, freedoms, or collective rights through the commission of international crimes cannot be fully undone by compensation, as these violations affect the very essence of life. They are damages that cannot return the situation to what it was before, or restore the full right or object.

However, in an effort to mitigate the harmful effects of violations of others' rights, international treaties issued by the United Nations emphasize the necessity of compensating victims or their families. For instance, **Article (19) of the Declaration on the Protection of All Persons Against Enforced Disappearance (1992)** states: "Victims of enforced disappearance and their families shall be entitled to fair compensation, including rehabilitation, where possible. In cases of death resulting from enforced disappearance, the victim's dependents are entitled to compensation."⁴³

As emphasized by the Human Rights Committee in its Resolution No. 1996/35, one of the recognized principles in the field of human rights is that "victims of serious violations have the right to restitution, compensation, and rehabilitation."

Thus, the principle of the right to compensation is one of the fundamental principles that cannot be ignored in the field of international human rights law, as affirmed by international documents. The Statute⁴⁴ also emphasizes the right of victims to compensation for the harm they have suffered. Article 75 states that: "The Court shall determine principles regarding reparations for victims, including restitution, compensation, and rehabilitation. In this regard, the Court may, upon request or on its own initiative in exceptional circumstances, determine the scope and extent of the damage, loss, or injury to the victims or their families and specify the principles upon which it based its decision."

First: The meaning of "victims" according to the Rome Statute:

Rule 85 of the Rules of Procedure and Evidence defines "victims" as:

- A. Natural persons who have suffered harm due to the



commission of a crime within the jurisdiction of the International Criminal Court.

Article 3/79 of the Rome Statute.

(38) See Article 2/79 of the Rome Statute and Rule 148 of the Rules of Procedure and Evidence.

(39) See UN General Assembly Resolution No. 133/47 of 1992.

(40) Article 14 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 states:

"Each State party shall ensure in its legal system that anyone subjected to acts of torture has the right to an effective remedy, including the right to compensation and the means for rehabilitation to the fullest extent possible. In the case of the death of the victim as a result of an act of torture, the family members who were dependent on the victim shall have the right to compensation."

The right to compensation is also affirmed in Principle 35 of the Principles Relating to the Protection of All Persons Under Any Form of Detention or Imprisonment (General Assembly Resolution No. 173/43 of 1988), as well as in Principle 20 of the Principles on the Prevention and Investigation of Extrajudicial Executions, Summary Executions, and Executions Without Trial (Economic and Social Council Resolution No. 1989/65).

B. Organizations or institutions that suffer direct harm to any of their property, including those related to religion, education, culture, science, or charitable activities, as well as cultural heritage sites and other places or items of humanitarian nature.

Second: Procedures for Reparations for Victims:

Reparation procedures for victims ("victims") are initiated either upon the request of the victims or at the initiative of the Court, as follows:

1. Procedures based on victims' requests⁴⁵:

A. Victims requesting reparations under Article 75 of the Rome Statute must submit their request in writing to the Registrar. The request must include the following details:

1. The identity and address of the applicant.
2. A description of the injury, loss, or damage suffered.
3. A statement of the place and date of the incident.
4. A description of the assets, property, or other items involved, when claiming restitution.
5. Claims for compensation.
6. As much supporting documentation as possible related to the case, including the names and addresses of witnesses.

B. The Court will request the Registrar, at the start of the trial and subject to protective measures, to notify the victims or their representatives mentioned in the application, as well as any concerned parties, including states. The Court will ensure that a statement, as per Rule 3 of Article 75, is filed with the Court's registry.

To implement the above procedures, the Court's Registrar will follow a standard template for victims to submit reparations claims.

It is placed at the disposal of victims, international, governmental and non-governmental organizations that can help disseminate it on the widest scale⁴⁶.

2. Procedures based on the court's order⁴⁷:

A- In cases where the court decides to initiate its proceedings on its own initiative in accordance with paragraph 1 of Article (75), the court shall request the registrar to notify the parties or persons against whom the court is considering issuing a judgment, and to also notify – as far as possible – the victims and all interested parties or states⁴⁸.

B- As a result of notification as above: If the victims submit a claim for reparation, this claim shall be decided as if it had been submitted under Rule (94) The procedures for a claim for compensation submitted by the victims shall be followed.

If the victims request that the court not issue an order for compensation, the court will not issue any individual orders related to that victim.

3. Announcing the procedures for damage compensation⁴⁹:

(38) Rule 94 of the Rules of Procedure and Evidence.

(39) Article 1/88 of the Rules of Procedure and Evidence of the International Criminal Court

(40) Rule 95 of the Rules of Procedure and Evidence.⁽⁴⁸⁾ See Article 3/75 of the Rome Statute.

(49) Rule 96 of the Rules of Procedure and Evidence.

1. Without prejudice to the other rules regarding notification, the registrar of the court—when possible—will notify the victims or their legal representatives, or other parties concerned. The registrar will take the necessary steps to announce the compensation claim filed before the court, to notify the victims and others concerned, including their families or states.

4. Assessing damage compensation⁵⁰:

1. The court may assess the damage compensation on an individual or collective basis, or both, as appropriate, considering the scope and extent of the damage, loss, or injury.
2. To achieve this goal, the court may appoint qualified experts based on the victims or their legal representatives' request, or at the initiative of the accused, to assist in determining the scope and extent of the damage or loss sustained by the victims. The court may invite the victims or their legal representatives, or the convicted person, along with all those concerned, including states, to provide feedback on the expert reports.

5. Issuing the court's order for compensation⁵¹:

1. The court may issue a direct order against a convicted person, specifying an appropriate form of compensation for the victims, including the restoration of rights, compensation, and the restoration of dignity.



2. The court may also order that the compensation be carried out through the trust fund.
3. Additionally, the court may direct the deposit of the compensation amount into the trust fund when a direct ruling for damage compensation is impossible or difficult due to the circumstances of the case. The amount deposited into the trust fund will be allocated to the victims as soon as possible.⁽⁵²⁾

The court may issue an order for damage compensation to the convicted person from the trust fund when it is more appropriate to issue a collective judgment to compensate the victims due to the number of victims, the scope of compensation, and the nature of the damages involved⁵³.

The court may also, after consultations with the concerned states and the trust fund, order compensation from the trust fund for the damages of an international governmental or non-governmental organization approved by the trust fund. The other resources of the trust fund may be used to compensate the victims in accordance with Article 79 of the Rome Statute⁵⁴.

(49) Rule 97 of the Rules of Procedure and Evidence.

(50) See Article 2 of Article 75 of the Rome Statute. (52) (Rule 2/98 of the Rules of Procedure and Evidence. (53)) Rule 3/98 of the previous reference

(54) See paragraphs 5 and 4 of Rule 98 of the previous reference..

CONCLUSION

We have discussed the main elements of the International Criminal Court (ICC) and traced its establishment despite opposition from major states. Its establishment was driven by the need to protect human rights from the oppression of leaders and presidents. We also highlighted the court's primary functions, particularly its jurisdiction over crimes against humanity, and examined the penalties it imposes on those found guilty of committing such crimes.

First: Results

1. The importance of having an independent and effective International Criminal Court is crucial for ensuring respect for international law and the protection of human rights, as well as for compensating victims. Without a permanent and effective mechanism to address individuals who violate international law and commit heinous crimes against humanity, there would be no means of holding them accountable. The ICC plays an essential role not only as a post-crime institution (reactive) but also as a preventive and deterrent force. It can prevent dictatorships and violence. Additionally, global peace and stability are key outcomes of the ICC's presence.
2. **The definition of crimes against humanity provided in the Rome Statute is innovative and groundbreaking**, as it removes the requirement of

armed conflict as a prerequisite and allows for the commission of such crimes in both times of peace and war. The Rome Statute also explicitly defines crimes such as torture, murder, and enforced disappearance as violations of human rights, drawing a direct line between such crimes and the need for accountability for their perpetrators.

3. **Crimes against humanity are characterized by actions that are committed on a widespread and systematic basis**, with a large number of victims involved. These crimes are distinct from isolated acts of violence and must be part of a broader policy or state-sponsored attack against civilian populations.
4. **Crimes against humanity have become an integral part of international law, applicable in both times of peace and war.**
5. **The Rome Statute aligns with international law by abolishing defenses based on official status**, as many of the crimes listed in the Statute are committed by leaders. Therefore, states must either amend their constitutions or reform their legal systems to ensure that there are no immunities for perpetrators of international crimes. This provides a concrete and effective mechanism to hold individuals accountable for gross violations of human rights and is essential in safeguarding these rights.
6. **Regarding Victims of Crimes Against Humanity:** The Rome Statute introduces significant developments concerning the victims, as for the first time in the history of criminal justice, victims are allowed to participate in legal proceedings, especially through the use of legal representatives, and to claim compensation. Furthermore, the Rome Statute established a Trust Fund for Victims, which can collect funds resulting from fines and compensation orders imposed on convicted individuals.

Secondly: Recommendations

1. **Revisiting Article 16 of the Rome Statute regarding the Security Council's authority to delay proceedings before the International Criminal Court (ICC):** This is necessary to prevent its misuse by permanent members of the Security Council who may seek to impose general exceptions to the jurisdiction of the ICC. The role of the Security Council should be limited to referring cases to the ICC and not granting the authority to delay or prevent investigations and prosecutions. If it is allowed to interfere in specific cases, this could introduce political considerations that delay the effective administration of international criminal justice, weakening the effectiveness of the ICC and diminishing its credibility in safeguarding human rights. Therefore, I believe that Article 16 of the Rome Statute should be revised so that the ICC has full control over its jurisdiction, and it should have the

power to accept, delay, or reject cases based on legal grounds.

2. **Understanding the Role of the ICC in Promoting and Protecting Human Rights:** In order for the ICC to fulfill its role in promoting and protecting human rights, its role must be understood within the broader context of justice and accountability. To make progress in this area, continuous efforts must be made to expand and apply international criminal justice. Without such efforts, there is a risk of undermining the interests of millions of victims of grave crimes and harming the credibility of international criminal justice institutions.
3. **Removing Obstacles to the ICC's Role:** The ICC faces numerous obstacles in enforcing human rights that need to be overcome. These obstacles should not hinder its ability to implement its role, which is essential for global justice, particularly in responding to the challenge of establishing international criminal justice after conflicts. Delays in this process risk losing the momentum that has been gained, which could result in depriving the international community of an essential tool for defending human rights and holding those responsible for crimes against humanity accountable.

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