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RESPONSIBILITY FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND APPLICATION OF THE PRINCIPLE OF UNIVERSAL JURISDICTION

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Abstract

Violation of international humanitarian law entails international responsibility for the states and for the individuals who acted in the state's interest. In this regard, this paper is structured so that in one part it discusses the responsibility of states and the legal consequences of violations of the rules of warfare, while in another part it treats the individual criminal responsibility for war crimes, genocide, and crimes against humanity.

In the paper we will see that locating and calling responsibility in practice is a sensitive issue and a big challenge for the international community, international organizations and international courts as well. This is one of the reasons why justice is not always served, and why the practice of impunity is more prevalent than summoning responsibility. We will also see that in these circumstances, the principle of Universal Jurisdiction could be an effective mechanism that fills gaps in the rules of international criminal responsibility for war crimes, genocide, and crimes against humanity. This principle provides jurisdiction for the national courts over these crimes, even when the crimes did not take place on the territory of that state and neither the victim nor the perpetrators are its citizens. In that way, the Universal Jurisdiction allows the chain of impunity to be broken. Several cases of national courts that have applied this principle in practice are encouraging and can restore hope to justice.

Keywords: *State responsibility, individual criminal responsibility, international criminal justice, International Criminal Court, Universal Jurisdiction*

1. INTRODUCTION

International humanitarian law (IHL) is a branch of law that regulates the rules of conduct in time of war. In other words, the IHL embodies the rules of what is allowed and what is forbidden to be used as means and methods of warfare. Respecting IHL means that not only states but also the individuals who acted in the state's interest, are obliged to ensure respect of *jus in bello* (rules of war). The obligation of the states for respecting IHL is part of their general obligation to respect international law. This obligation is embedded in Article 25 of the 1929 Geneva Convention; also, in Common Article 1 of the 1949 Geneva Conventions; as well as in Article 1 of the 1977 Additional Protocol I. All mentioned articles provide that the provisions of those documents shall be respected by the High Contracting Parties in all circumstances. According to Customary law, Rule 139 provides that each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control. State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts (Rule 139, ICRC). The obligation to respect and to ensure respect for IHL is also found in numerous military manuals; it is supported by the practice of international organizations and international conferences; and there is also international case-law in support of this rule (Practice Relating to Rule 139, ICRC).

Violation of international obligations entails international responsibility also for the individuals because violations are committed by individuals, not by nations. The horrible crimes committed in the Second World War were the reason for a movement started up within the international community which clearly began to shape a deeper consciousness of the need to prosecute serious violations of the rules of war. The activities of Nuremberg and Tokyo International Military Tribunals marked the beginning of an important legal evolution, which was later more clearly defined with the setting-up of the *ad hoc* International Criminal Tribunals of Former Yugoslavia and Rwanda and, finally, with the diplomatic conference that adopted the Rome Statute of the International Criminal Court (Greppi, 1999).

Locating responsibility, however, is a very sensitive issue. There are always at least two opposing sides with their own interests and their own truth. Calling to responsibility is an even more difficult issue. In this context, very often, different geopolitical interests are intertwined. That is why, not infrequently, justice is not served, and the rules of liability are not fully applied as they are created.

In these circumstances, the principle of Universal Jurisdiction which provides for a national court's jurisdiction over war crimes, crimes against humanity and genocide, even when the crimes did not occur on that state's territory, and neither the victim nor perpetrator is a national of that state, seems to be an effective and appropriate tool for bringing to justice the most serious international crimes. Namely, the principle allows national

courts in third countries to address international crimes occurring abroad, to hold perpetrators criminally liable, and to prevent impunity. Hence, the principle of Universal Jurisdiction is a mechanism that fills gaps in the rules of international criminal responsibility for international crimes. Although not often used, some cases of its application show that impunity can be terminated.

2. STATE RESPONSIBILITY AND LEGAL CONSEQUENCES FOR VIOLATIONS OF IHL

States are obliged to ensure respect of the laws that govern the way in which warfare is conducted, irrespective of whether the cause of war is justified. Although states are less and less the sole players on the international scene, and even much less so in armed conflicts, however, they continue to play a major direct or indirect role, particularly if they are not allowed to hide behind the smokescreen labels of "globalization", "failed States" or "uncontrolled elements" (see: Sassòli, 2002, p. 433). The legal norms of state responsibility for violation of IHL were embedded in one document - UN Draft Articles on Responsibility of State for Internationally Wrongful Actions (DARS) formulated by way of codification and progressive development (<https://legal.un.org/avl/ha/rsiwa/rsiwa.html>). A State could be directly or indirectly responsible for wrongful actions and for omissions attributable to it through its organs. Direct responsibility exists when states' armed forces commit a breach of humanitarian rules or when the executive, the legislature, judiciary, as well as the central and the local authorities, commit a breach of IHL. A State could also be held responsible for the acts committed by other parties if those acts were authorized by it. This means that the responsibility of states for violations of IHL includes responsibility for violations committed by its organs or by persons or entities it empowered to exercise elements of governmental authority, as well as violations committed by persons or groups acting in fact on its directives. There are three factors employed to determine the liability of a State. Firstly, the State must be under a legal duty not to commit the act. Secondly, the State must commit the act. And finally, the act must cause injury (loss or damage) to another entity (Saxena, 2021). One of the issues which arise in this context is whether a State is responsible for all conduct of its armed forces. According to Article 3 of the Hague Convention No. IV and Article 91 of Protocol I of the Geneva Conventions, a party to the conflict "shall be responsible for all acts by persons forming part of its armed forces". This means that states are, however, responsible only for the conduct of members of their armed forces acting in that capacity. This limitation may exclude all acts committed as a private person, such as theft or sexual assaults by a soldier during leave in occupied territory (Sassòli, 2002, p. 405). Nevertheless, the committed crimes remain under individual criminal responsibility, and each person should face the consequences.

The cornerstone of the international legal order set up after World War II, as well as the central part of the UN Charter prohibits the threat or the use of force by one state against another. Hence, the use of threat or force is a core violation of a central principle of international law. According to Article 30 of abovementioned DARS, the State responsible for the internationally wrongful act is under an obligation: to cease that act, if it is continuing; and, to offer appropriate assurances and guarantees of non-repetition, if circumstances so require. The legal consequences for a State that has violated this or other IHL norms, may be political or economic, but can also entail the use of military force against the responsible state. Which measure will be applied depends on the context and circumstances of the particular case.

In any case, the decision should be made by the UN Security Council, which according to Article 39 of the UN Charter shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security (UN Charter). Article 41 contains economic and political measures which include "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations." However, first, the responsible State must cease the unlawful conduct and in this regard the Council may decide to apply any of the measures contained in Article 41. Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, then according to Article 42, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of members of the UN. Hence, even the use of military force is a legitimate and legal measure when it is used by a decision of the UN Security Council.

When the violation of IHL will be finally stopped, one way or another, the responsible state should face the consequences of those illegal actions. The State should make full reparation for the injuries of its wrongful acts. Reparation is a principle of international law, and a general conception of the law according to which the responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act (Rule 150-Reparation, ICRC). This principle is expressly laid down as long ago as 1907 in The Hague Convention (IV) respecting the Laws and Customs of War on Land and reiterated in Additional Protocol I of Geneva Conventions. Although The Hague Convention and Additional Protocol I speak only of compensation, Article 34 of DARS explains the forms of reparation such as restitution, compensation, and satisfaction. The aim of restitution is to eliminate, as far as possible, the consequences of the illegal act and to restore the situation that would have existed if the act had not been committed. The State will be obliged to materially revert the original status before the wrongful act (*Restitutio in integrum*). This approach is traditionally adopted by the peace treaties, and it is related to the obligation of one State to

make reparation to another State for violations of IHL committed by that State. However, if a return to the previous state is not possible, then the State will be obliged to make compensation in a form of monetary reparation. Both forms of compensation have the same purpose - to compensate for the damage. The payment received should cover both the losses suffered by the State and those of its nationals. This approach often includes, for individuals who have suffered losses, lump-sum payments that the recipient State is responsible for distributing (Gillard, 2003, p. 535). There appears to be a greater acceptance by states of the idea of individual victims' right to reparation. However, while some victims of violations of international humanitarian law have received compensation, the reality remains that the majority remain without redress (Gillard, E., 2003, p. 549). It is worth underlining that the abovementioned rules and practices refer only to international armed conflicts, because neither Geneva Conventions nor their Additional Protocols mention any form of reparation in situations of non-international armed conflicts, although these conflicts are fraught with widespread violations.

There is one more form of reparation - satisfaction. This form is appropriate for cases of moral damage. In this regard, satisfaction may include an official apology, acknowledgement of the wrongful character of the act, the punishment of guilty officials, denial of published alleged information, etc.

3. INDIVIDUAL CRIMINAL RESPONSIBILITY FOR VIOLATIONS OF IHL

As it was mentioned above, besides state responsibility for violations of IHL, individuals are also responsible for violations of the rules of warfare. When it comes to war crimes, it is individuals, not states that can be brought to justice. Hence, perpetrators as individuals have a criminal responsibility for violating IHL. The principle of individual criminal responsibility for these crimes is a long-standing rule of customary international law and IHL was one of the first branches of international law to contain rules of international criminal law (<https://casebook.icrc.org/glossary/individual-criminal-responsibility>; and, <https://casebook.icrc.org/law/criminal-repression>). War crimes, genocide, and crimes against humanity are grave breaches that constitute international crimes that withdraw international criminal responsibility and must be prosecuted. Although it is much easier to prove that an IHL violation which constitutes a war crime, genocide, or crime against humanity has been committed by a party to an armed conflict than to determine who the responsible individual is, still it is very important to bring that individual before a court and to prove their guilt. Criminal prosecution places responsibility and punishment at the level of the individual. Although it is probably difficult to hold high-ranking officials accountable while they are in power, however, there were examples where even those ultimately responsible were held accountable after they had lost power.

IHL obliges states to enact legislation to punish grave breaches of the rule of warfare. States have a responsibility to investigate and to search for persons who have allegedly committed such crimes, and appropriately prosecute (or extradite for prosecution) suspected persons, particularly those suspected of heinous crimes. Moreover, the International Criminal Court (ICC) has sparked debate over the need for national legislations that have not already done so to consider including the rights of victims in their criminal procedures independently, as well as, taking the necessary steps to ensure they are exercised as such, and not let the Court be the only place where victims can have their rights recognized and respected (González, 2006). However, although there has been some progress in recent decades, many war crimes have been left unpunished until today. Hence, the efforts to set up international criminal courts are understandable and expected if we have in mind that several states have not adopted the necessary national legislation, and violations of IHL sometimes remain a complete impunity. An important step in the lengthy process of developing rules on individual criminal responsibility under international law was taken with the setting-up of the two ad hoc Tribunals for the prosecution of crimes committed in the former Yugoslavia and in Rwanda (Greppi, 1999). The various forms of individual criminal responsibility enable persons who attempt, assist, incite or plan the commission of a war crime to face responsibility for their actions. For example, Article 2 of the Statute of the International Tribunal for the Former Yugoslavia gives the Tribunal the power to prosecute persons who commit or order such grave violations to be committed, while Article 5 empowers the Tribunal to prosecute persons responsible for crimes committed against civilians in armed conflict whether international or domestic. Furthermore, Article 3 widens the scope to cover violations of the laws and customs of war, while Article 4 reproduces Articles 2 and 3 of the 1948 Genocide Convention. Since the rules of armed conflict assign responsibility to military commanders who order their subordinates to violate IHL or who fail to prevent or suppress such violations, Article 7 gives broad scope to individual criminal responsibility, covering all persons who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime. This is related especially to persons with an official position such as a head of state or government, a government official, and especially to the effects of orders from superiors. It is probably difficult to hold senior officials accountable while in power, but the former Yugoslavia is one example where even those who were ultimately responsible were held accountable after they lost power.

Adopted almost at the same time and under almost the same circumstances, the Statute the Criminal Tribunal for Rwanda does not contain substantial differences in the principles and rules of international criminal responsibility with that of the Criminal Tribunal for the former Yugoslavia. It is important that all principles and rules were later codified in the Rome Statute, adopted at a UN diplomatic conference on 17 July 1998. With the

Rome Statute for the first time in history, a permanent international criminal tribunal was established.

4. THE HAGUE INTERNATIONAL CRIMINAL COURT AS PERMANENT TRIBUNAL

The establishment of the permanent International Criminal Court in 2002 with the Rome Statute signaled the commitment of many countries to fight impunity for the worst international crimes. With its establishment, the efforts to ensure individual criminal accountability culminated (Center for constitutional rights, 2015). The ICC has jurisdiction over the most serious crimes of concern to the international community, namely genocide, crimes against humanity and war crimes, when committed after 1 July 2002, as well as the crime of aggression, as of 17 July 2018, under specific conditions and procedures. The crime of aggression was introduced to the Court's authority in 2018 by amendments to the Rome Statute, primarily to Article 15. Countries that ratify the Rome Statute are simply delegating their authority to prosecute certain grave crimes committed on their territory to an international court. The Court may exercise jurisdiction over the abovementioned international crimes only if they were committed on the territory of a State Party or by one of its nationals. These conditions, however, do not apply if a situation is referred to the Prosecutor by the United Nations Security Council, whose resolutions are binding on all UN member states, or if a State makes a declaration accepting the jurisdiction of the Court. As a matter of policy, the ICC prosecutor gives priority to cases against individuals who have been determined to be most responsible for the crimes under the court's jurisdiction, regardless of their official position. The Rome Statute also incorporates international fair trial standards to preserve a defendant's due process rights, including the presumption of innocence; right to counsel; right to present evidence and to confront witnesses; right to remain silent; right to be present at trial; right to have charges proved beyond a reasonable doubt; right to an appeal; and protection against double jeopardy. However, ICC is a court of last resort because it may only exercise its jurisdiction when a country is either unwilling or genuinely unable to investigate and prosecute the grave crimes. Even after an investigation is opened, there are opportunities for states and individual defendants to challenge the lawfulness of cases before the ICC based on the existence of national proceedings (<https://www.coalitionfortheicc.org/country/united-states>).

Currently, only 123 countries are ICC members, while several of the most influential countries are not members, including USA, Russia, and China. In some sense, this is paradoxical. Particularly because there are limited situations in which the ICC has jurisdiction over the nationals of countries that have not joined the Rome Statute. When a citizen of a non-member country commits war crimes, crimes against humanity or genocide on the territory of a member country, unless the state government ratifies the treaty or accepts the jurisdiction of the Court through a declaration, then the

ICC could only obtain jurisdiction if the UN Security Council refers the situation to the Court. The Security Council, with what is called an “ICC referral” could give the Court jurisdiction stretching back to the day the Rome Statute entered into force, on July 1, 2002.

Although the establishment of the ICC is a significant step forward in achieving justice and eliminating the impunity of the perpetrators, still there is criticism for its work. The remarks are mainly related to the lack of concrete and successful actions. ICC first verdict came ten years after the Rome Statute entered into force when Thomas Lubanga, leader of a militia in Congo, was convicted because of war crimes, mainly for the use of children in his ranks. The ICC for the first time sought the arrest of a sitting head of state when it issued a warrant for the chief prosecutor against the Sudanese president Bashir who in 2008 was cited for crimes committed against humanity, war crimes, and genocide in Darfur. The Sudanese government, which was not a party to the Rome Statute, denied the charges and proclaimed Bashir’s innocence. In 2009, the ICC issued an arrest warrant for Bashir, charging him with war crimes and crimes against humanity but not with genocide. In July 2010 the ICC issued a second arrest warrant, this time charging Bashir with genocide. However, that investigation was suspended in December 2014 because of a lack of cooperation from the UN Security Council (See: Ray, M.).

Regarding the war crimes in Syria, two years after the start of the armed conflict, Ann Harrison, Amnesty’s deputy director for the Middle East and North Africa legitimately asked, “How many more civilians must die before the UN Security Council refers the situation to the prosecutor of the International Criminal Court so that there can be accountability for these horrendous crimes?” (South China Morning Post, 2013). The UN Commission of Inquiry, on many occasions, has also stressed the urgent need for international action to end serious human rights violations and to end the unsolvable cycle of impunity. As early as March 2013, the UN Commission of Inquiry undertook to submit to the UN High Commissioner for Human Rights a confidential list of individuals and entities believed to be responsible for crimes against humanity, violations of IHL and gross human rights violations (A HRC 22 59, 2013). Three former prosecutors of the International Criminal Tribunals for former Yugoslavia and Sierra Leone, examined thousands of Syrian government photographs and files recording deaths in the custody of regime security forces from March 2011 to August 2013. Nevertheless, later in 2015, the Commission stated that the international community remains a witness of all suffering, without stronger efforts to bring the parties to the peace table ready to compromise, so that the trend of destruction was expected to continue in the foreseeable future (A HRC 30 48, 2015). Unfortunately, war crimes really continued to occur in the following years. Investigators from the Commission announced that they had found evidence of war crimes in Syria committed by nearly all sides in the conflict even during the second half of 2019 and into January 2020. In this regard, the recommendations contained in the Commission's reports - to the Syrian

government, anti-government armed groups, the international community, the Human Rights Council and the Security Council - serve to emphasize the need to counter the growing culture of impunity by referring to justice nationally and internationally. The main paradox here is that Syria is not a member state of the Rome Statute. Hence, from the beginning of the civil war, it was clear that the UN Security Council must refer war crimes committed by both sides in Syria to the ICC.

The other criticism of the ICC is that it inappropriately targets African states or has preoccupied itself with Africa and failed to investigate equally severe conflicts elsewhere. Examples used mainly to support this thesis are that most of the ICC's current work comes from Africa. In its first ten years, the ICC's investigations and prosecutions have only concerned situations in Africa. The situation is almost the same nowadays because eleven out of twelve current investigations are directed at African states (<https://www.icc-cpi.int/>). However, it should be mentioned that most investigations into African situations have been opened at the request or with the support of African states.

5. THE PRINCIPLE OF UNIVERSAL JURISDICTION

In general, the States have criminal jurisdiction over acts committed on their territories or by their citizens. This is a basic universal legal principle. However, there is an exception from this principle, when a territorial or personal link with the crime, the perpetrator, or the victim, is not required. This exception is named as *Principle of Universal Jurisdiction*. The term "Universal Jurisdiction" refers to the idea that a national court may prosecute individuals for serious crimes against international law - such as crimes against humanity, war crimes, genocide, and torture - based on the principle that such crimes harm the international community or international order itself. Hence, the principle of Universal Jurisdiction allows the states to bring criminal proceedings of certain crimes, irrespective of the location of the crime and the nationality of the perpetrator or the victim. This principle allows the national authorities of any state to investigate and prosecute people for serious international crimes even if they were committed in another country. In other words, the Universal Jurisdiction allows for the trial of international crimes committed by anybody and anywhere in the world. Moreover, the principle of universal jurisdiction not only permits, but also even requires all states to prosecute war criminals, regardless of their nationality, the nationality of the victim, and where the crime was committed. Accordingly, there is no condition that the suspect or victim should be a citizen of the state exercising universal jurisdiction, or that the crime directly harmed the state's own national interests. The only condition is the nature of the crime.

The rational justification of universal jurisdiction is based on the notion that certain crimes are so harmful to international interests that states are entitled and even obliged to bring proceedings against the perpetrators. As

a derogation from the basic legal principle regards criminal jurisdiction, the Principle of Universal Jurisdiction is traditionally justified by two main ideas. First, there are crimes that are so grave that they harm the entire international community. Second, no safe havens must be available for those who committed such crimes (See: Philippe, 2006). Even though these justifications may appear unrealistic, it clearly explains why the international community, through all its components - states or international organizations - must intervene by prosecuting and punishing the perpetrators of such crimes (Philippe, 2006).

The legal ground of the states' obligation to seek out and prosecute those suspected to be responsible for grave breaches of IHL is the four Geneva Conventions of 1949. This obligation is also a key aspect of the Rome Statute of the ICC. Namely, the preamble of the Rome Statute expressly provides that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes" and emphasizes that "the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions." Nevertheless, a national or international court's authority to prosecute individuals for international crimes committed in other territories depends on both the domestic legal framework and the facts of each case. National courts can exercise universal jurisdiction when the State has adopted legislation recognizing the relevant crimes and authorizing their prosecution. A range of states' national laws provide for some form of universal jurisdiction. Such domestic legislation empowers national courts to investigate and prosecute persons suspected of crimes potentially amounting to violations of international law.

An environment supporting of the principle of universal jurisdiction was created following the establishment of the ad-hoc tribunals for the former Yugoslavia and Rwanda in 1993 and 1994, respectively, and extended to the establishment of the internationally courts such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts for Cambodia.

6. APPLICATION OF THE PRINCIPLE OF UNIVERSAL JURISDICTION IN PRACTICE

In practice, universal jurisdiction is still not always properly addressed by national legislations owing to the lack of proper enforcement provisions. Only the goodwill of states could be relied on to guarantee implementation on this principle, because political reasons have prevailed over legal reasoning in several cases. Because of this, sometimes one cannot help wondering whether discussions on the said principles are no more than an academic exercise without any tangible results (Philippe, 2006). As examples for proceedings based on universal jurisdiction, we can mention those against Chilean former dictator Augusto Pinochet and other government officials in Spain, as well as those against former Chadian dictator Hissène

Habré in Senegal, and the extradition of former Peruvian President Alberto Fujimori from Chile to Peru.

The first criminal trial over torture during the Syrian war with an application of universal jurisdiction ended with a guilty verdict and marked the first time when a high-ranking former Syrian official faced an open court in a war crimes case. The ruling came in Germany against Anwar Raslan who was accused of more than 30 counts of murder, 4,000 counts of torture and charges of sexual assault from when he oversaw a notorious prison in Damascus in 2011 and 2012. The conviction of a former Syrian intelligence officer for crimes against humanity by a German court is a ground-breaking step toward justice for serious crimes in Syria and is a meaningful moment for civilians who survived torture and sexual abuse in Syria's prisons (Human Rights Watch, Germany, 2022).

The Principle of Universal Jurisdiction is also expected to be applied in other cases regarding crimes committed during the war in Syria. For example, regarding the largest chemical weapons attacks in Syria that resulted in mass casualties, including hundreds of children, human rights organizations filed criminal complaints in Germany, France, and Sweden, on behalf of and alongside survivors of the Ghouta sarin attacks (Civil Rights Defenders, 2021). Encouraging is the fact that all three countries have opened investigations in recent months, as well as, the fact that Syrian Center for Media and Freedom of Expression, the Syrian Archive, the Open Society Justice Initiative, and Civil Rights Defenders are filing additional evidence to the investigative and prosecutorial authorities in these countries (Civil Rights Defenders, 2022).

Having in mind that nowadays, another bloody conflict is taking place, this time in Ukraine, we will see whether and how the individual allegedly war crimes cases will be prosecuted before the ICC or before other courts, or perhaps the principle of Universal Jurisdiction will be applied. Russia's military invasion on Ukraine is viewed by many governments and legal scholars as a clear violation of international law, while Russia asserts that the so-called special operation is justified due to allegedly genocide in Ukraine's Donbas region against ethnic Russians. Meanwhile, Ukraine submits a suit against Russia on February 27 at the UN's International Court of Justice, asking judges to order an immediate halt to Russian military operations, arguing that Ukraine and Russia have a dispute over the meaning of the 1948 Genocide Convention, a treaty they have both signed. From the other side, the prosecutor for the ICC announced on February 28 that his office would open an investigation into potential war crimes stemming from the conflict. Regarding these activities, some argue that we will probably see prosecutions and trials in different courts in the coming future (Stauffer, 2022), while others consider that it is difficult, but not impossible, or that it is an unlikely prospect in the short term, but in the longer term, political conditions change and individuals who seemed beyond the reach of the law suddenly could find themselves appearing in front of the courts (Dvorkin, 2022).

Anyway, law and justice are facing a new test, perhaps the most difficult in the past several decades, given that neither the Russian Federation nor Ukraine are state parties to the Rome Statute. Ukraine has twice declared that it accepts the jurisdiction of the ICC for crimes committed within its territory. The latest of the two declarations was registered with the Court in 2015 after Ukraine's Parliament adopted a resolution distinctly accepting the ICC's jurisdiction indefinitely from February 20, 2014, onward. However, exercising jurisdiction by referral of the alleged crimes to the ICC by the UN Security Council under its Chapter VII is almost certainly a dead end, as Russia (and likely China) would be inclined to use their veto powers to halt any such referral. Article 16 of the statute provides for the "Deferral of Investigation or Prosecution" by the ICC for a period of 12 months after a request by the Security Council to that effect; but such a resolution is just as unlikely due to the veto powers of the US, UK and France. In other words, from both the Russian and Western perspectives, the Security Council seems too deadlocked to play an effective role in this ICC process (Lopez, 2022).

7. CONCLUDING REMARKS

Although it is difficult to prove the state responsibility and the responsibility of individuals under international law, it does not mean that states or individuals should escape the responsibility for wrongful actions. The international efforts in locating state responsibility for violations of IHL and in proceeding the cases for individual criminal responsibility for committed war crimes, genocide, and crimes against humanity, had limited success so far. Delayed or inert reactions are probably results of an effort to make balance between the principle of non-interference in the internal affairs, and the need to take measures against states and individuals for not respecting IHL. However, although the efforts for justice and fairness sometimes may take a very long time, they still must continue because they are important ways to prevent impunity and to achieve some sort of redress for the victims and their families. The regular prosecution of IHL violations would have an important preventive effect and deterring violations. It would individualize guilt and repression, thus avoiding the vicious circle of collective responsibility and of atrocities and counter-atrocities against innocent people. When the International Criminal Court is unable to act because the alleged perpetrators are nationals of countries that have not ratified the Rome Statute, other options are still available. The Security Council may refer the case to the Court, which is however unlikely and so far has had no success in practice. It is the right of veto of the permanent members of the Security Council that causes frequent blockades of the UN reaction mechanism. Hence, more and more often, and quite legitimately, the questions arise, as to whether the international community should finally think about reforming the UN to adjust to the real relations in today's world. Until then, what can break the chain of impunity is the application of the Principle of Universal Jurisdiction which could send a strong message that impunity will not be tolerated. The

above-mentioned German verdict against a former Syrian intelligence officer for crimes against humanity is a step towards justice and sets a promising example of how states can contribute substantially to the fight against impunity for committed international crimes.

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