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DOI: <https://doi.org/10.5281/zenodo.20915202>**TORTURE IN ARMED CONFLICTS:
INCRIMINATION AND INTERNATIONAL CRIMINAL RESPONSIBILITY****Ion BADRAJAN,**

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Abstract

This study analyzes the evolution and consolidation of the international legal framework concerning the criminalization of torture in the context of armed conflicts, highlighting its status as a peremptory norm of international law (*jus cogens*) and its implications for international criminal responsibility. The research begins with the early regulations established by the Hague Conventions of 1907, which set the first legal limits on the conduct of belligerents, and continues with the significant developments introduced by the Geneva Conventions of 1949 and the Additional Protocols of 1977, which explicitly enshrined the absolute prohibition of torture and inhuman treatment.

The article systematically examines the recognition of torture as an international crime in modern legal instruments, particularly in the Rome Statute of the International Criminal Court, where it is classified both as a war crime, when committed in connection with an armed conflict, and as a crime against humanity, when it forms part of a widespread or systematic attack directed against a civilian population. In this regard, the dual legal regime of incrimination is emphasized, as well as the constitutive elements of the offense, including specific intent and the purposes pursued (such as obtaining information, punishment, intimidation, or discrimination).

Furthermore, the study pays particular attention to the mechanisms for engaging international criminal responsibility, analyzing the role of *ad hoc* international criminal tribunals (such as the International Criminal Tribunal for the former Yugoslavia and the one for Rwanda) in the development of relevant jurisprudence, as well as the contribution of the International Criminal Court to the consolidation of applicable legal standards. Fundamental principles such as individual criminal responsibility, the non-applicability of statutes of limitation to international crimes, and the inadmissibility of invoking superior orders as a justification for torture are also highlighted.

At the contemporary level, the article identifies several major challenges affecting the effective enforcement of international legal norms. These include the jurisdictional limitations of the International Criminal Court, determined by the principle of complementarity and by the refusal of certain states to ratify the Rome Statute, as well as practical difficulties in evidence collection and the execution of arrest warrants. At the same time, the study examines political pressures exerted by powerful states, which may affect the independence and functioning of international criminal justice mechanisms.

In conclusion, the study reveals a significant gap between international legal norms, which establish the absolute prohibition of torture, and the practical reality of their enforcement. Although the normative framework is well-developed and coherent, its effectiveness is limited by political, institutional, and operational fac-

tors, thereby undermining, to a certain extent, the fundamental objective of international criminal law: the prevention and punishment of the most serious violations of fundamental human rights.

Keywords: torture, war crime, armed conflict, human rights, jus cogens, International Criminal Court, international criminal responsibility.

TORTURA ÎN CONFLICTELE ARMATE: INCRIMINARE ȘI RĂSPUNDERE PENALĂ INTERNAȚIONALĂ

Abstract

Prezentul studiu analizează evoluția și consolidarea cadrului juridic internațional privind incriminarea torturii în contextul conflictelor armate, evidențiind caracterul său de normă imperativă de drept internațional (*jus cogens*) și implicațiile asupra răspunderii penale internaționale. Cercetarea pornește de la reglementările incipiente consacrate în Convențiile de la Haga din 1907, care au stabilit primele limite juridice privind conduita beligeranților, continuând cu dezvoltările semnificative aduse de Convențiile de la Geneva din 1949 și Protocoloalele adiționale din 1977, ce au consacrat în mod explicit interdicția absolută a torturii și a tratamentelor inumane.

Articolul examinează în mod sistematic consacrarea torturii ca infracțiune internațională în instrumentele juridice moderne, în special în Statutul de la Roma al Curții Penale Internaționale, unde aceasta este calificată atât ca crimă de război, atunci când este comisă în legătură cu un conflict armat, cât și ca crimă împotriva umanității, în cazul în care face parte dintr-un atac generalizat sau sistematic îndreptat împotriva populației civile. În acest sens, se subliniază dublul regim juridic al incriminării, precum și elementele constitutive ale infracțiunii, inclusiv intenția specifică și scopul urmărit (obținerea de informații, pedepsirea, intimidarea sau discriminarea).

De asemenea, studiul acordă o atenție deosebită mecanismelor de angajare a răspunderii penale internaționale, analizând rolul instanțelor penale internaționale ad-hoc (precum Tribunalul Penal Internațional pentru fosta Iugoslavie și cel pentru Rwanda) în dezvoltarea jurisprudenței relevante, precum și contribuția Curții Penale Internaționale la consolidarea standardelor juridice aplicabile. Sunt evidențiate principiile fundamentale precum responsabilitatea penală individuală, imprescriptibilitatea crimelor internaționale și inadmisibilitatea invocării ordinului superior ca justificare pentru comiterea torturii.

În plan contemporan, articolul identifică o serie de provocări majore care afectează eficiența aplicării normelor juridice internaționale. Printre acestea se numără limitele jurisdicționale ale Curții Penale Internaționale, determinate de principiul complementarității și de refuzul unor state de a ratifica Statutul de la Roma, precum și dificultățile practice în colectarea probelor și executarea mandatelor de arestare. Totodată, sunt analizate influențele politice exercitate de statele puternice, care pot afecta independența și funcționarea mecanismelor de justiție penală internațională.

În concluzie, studiul relevă existența unui decalaj semnificativ între normele juridice internaționale, care consacră interdicția absolută a torturii, și realitatea practică a aplicării acestora. Deși cadrul normativ este bine dezvoltat și coerent, eficiența sa este limitată de factori politici, instituționali și operaționali, ceea ce compromite, într-o anumită măsură, realizarea obiectivului fundamental al dreptului penal internațional: prevenirea și sancționarea celor mai grave încălcări ale drepturilor fundamentale ale omului.

Cuvinte-cheie: tortură, crimă de război, conflict armat, drepturile omului, *jus cogens*, Curtea Penală Internațională, răspundere penală internațională.

Introduction. The evolution of human civilization has been accompanied since its very origins by the element of violence [1, p.133]. Violence represents one of the most serious violations of human dignity and one of the fundamental constants of human existence, manifesting itself throughout history in varied forms and intensities.

The phenomenon of organized armed violence can be traced back to the era of pre-state formations, which possessed armed groups, continuing with the well-structured armies of great ancient empires, the military forces of feudal lords, and up to the armies of the modern era. Nevertheless, the central and immutable element of any military force, throughout history, has remained and continues to be the human person – the combatant [1, p.133].

What distinguishes human beings from other forms of life is the capacity to evolve and regulate their own behavior, including in situations of conflict. It is upon this capacity that an international legal framework has been progressively built, aimed at limiting violence in relations between states. War, as the extreme form of organized violence, has become the subject of increasingly elaborate international regulations.

International humanitarian law, crystallized through the Geneva Conventions of 1949 and their Additional Protocols, expressly prohibits any form of torture, degrading treatment, or mutilation applied to protected persons in the context of armed conflicts.

The prohibition of torture is enshrined in both universal instruments and in international humanitarian law, being qualified as a grave breach that entails the criminal responsibility of its perpetrators. Furthermore, the effectiveness of protection mechanisms is often limited by practical difficulties, such as the impossibility of collecting evidence, the destruction of judicial infrastructure, or the lack of state cooperation, which necessitates the strengthening of normative and institutional guarantees at the international level, as well as the development of effective mechanisms for holding perpetrators criminally accountable for such acts.

In the context of armed conflicts, torture falls within the category of serious violations of human rights, being prohibited by both international human rights law and international humanitarian law. It affects the essential core of rights inherent to the human being, grounded in human dignity, and frequently manifests itself within armed conflicts through acts of violence against civilians or persons outside of hostilities. Such acts fall within the sphere of the most serious crimes of concern to the international community, being susceptible to qualification as war crimes or crimes against humanity [8, pp.101-110].

As Nigel Rodley and Matt Pollard note, many aspects of the international public order in the modern world were shaped as a reaction to the events of the Second World War. The United Nations, at the center of international cooperation, proclaims in the first article of its Charter, as one of its purposes, the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion. When the United Nations came into existence and began drafting instruments intended to identify the principal norms on human rights, the experience of the atrocities of the Second World War made it inevitable to address the issue of torture. Accordingly, the Universal Declaration of Human Rights of 1948 prohibited torture, giving rise to a prohibition that has since been embedded in various international instruments on the protection of human rights [13, pp.45-46].

Aggression has always been associated with the violation of human rights. Unfortunately, social progress and the development of humanist ideas have not improved the situation with regard to human rights at the international level, and the numerous conflicts from the Second World War to the current wars in Ukraine and the Middle East have demonstrated the inability of international sanctioning mechanisms, with the law of the strongest continuing to operate and generating crimes on a horrifying scale.

This article aims to examine how the phenomenon of torture is criminalized in international criminal law, as well as the mechanisms through which criminal responsibility arises in cases where such acts are committed in armed conflicts. The paper also analyzes the main challenges facing the international criminal justice system in combating such acts, including the jurisdictional limits of the International Criminal Court. To this end, the analysis will be structured beginning with the international legal framework for the criminalization of torture, continuing with torture in armed conflicts – criminalization and international criminal responsibility – and concluding with contemporary challenges

in the application of international criminal responsibility.

Materials and methods: This study was elaborated through the use of a body of primary and secondary legal materials, selected according to their relevance to the investigated subject matter. The methodological foundation of the research consists of the dogmatic method, which ensures the systematic interpretation of applicable international legal norms. The historical method and the comparative method were also employed, each distinctly contributing to the rigorous and comprehensive analysis of the investigated phenomenon.

Discussions and results obtained. The international legal framework for the criminalization of torture in armed conflicts is a layered and coherent one, built on three pillars: international criminal law, international human rights law, and international humanitarian law. These three normative systems confer upon the prohibition of torture an absolute and universal character, the violation of which entails individual criminal responsibility.

From the long list of normative acts dedicated to the prevention and combating of torture, the most relevant ones for both combatants and civilians are cited below.

The Regulations respecting the Laws and Customs of War on Land, Annex to the Fourth Hague Convention of 1907 concerning the Laws and Customs of War on Land, provides in Article 4 that “Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them. They must be humanely treated” [2]. Article 4 of the Regulations annexed to the Fourth Hague Convention of 1907 does not contain an express prohibition of torture, but establishes an obligation of humane treatment of prisoners of war. Therefore, any form of ill-treatment, including torture, is implicitly excluded.

The Geneva Conventions of 1949 and the Additional Protocols of 1977 provide that persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria [7].

The Universal Declaration of Human Rights, adopted on 10 December 1948, provides in Article 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” [3].

The International Covenant on Civil and Political Rights, adopted on 16 December 1966 in New York, stipulates in Article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation” [4].

The European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in 1950, stipulates in Article 3: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment” [5].

The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held from 22 August to 3 September 1955 in Geneva, established a set of minimum rules for the treatment of prisoners, subsequently approved by the Economic and Social Council through Resolution No.663 C (XXIV) of 31 July 1957 and supplemented by Resolution No.207 (LXII) of 13 May 1977. Thus, “Article 31 of this document provides that corporal punishment, confinement in a dark cell, and all cruel, inhuman, or degrading punishments shall be completely prohibited as disciplinary sanctions. Article 32(1): Punishments by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain

it. Article 33: Instruments of restraint, such as handcuffs, chains, irons, and straitjackets, shall never be applied as a punishment. Chains and irons shall not be used as restraints” [6, p.11].

The UN Convention of 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in Article 1, establishes the concept of torture and defines it as a distinct and the most serious form of ill-treatment, characterized by the intensity of suffering, intent, and the involvement of a public authority agent, in relation to cruel, inhuman, or degrading treatment [9].

A landmark moment in the development of international criminal law, including in the area of torture, was constituted by the International Criminal Tribunal for the former Yugoslavia. The Trial Chamber found that the prohibition of torture had acquired the status of *jus cogens*, which may be defined as a peremptory norm in international law from which no derogation is permitted. The Tribunal further identified as elements of the offence of torture “the intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental, for the purpose of obtaining information or a confession, or of punishing, intimidating, humiliating, or coercing the victim or a third person, or for any reason based on discrimination of any kind against the victim or a third person. For such an act to constitute torture, one of the parties must be a public official or must, in any event, act in a non-private capacity, for example, as a *de facto* organ of a state or of any other entity exercising authority” [10].

The Rome Statute and the establishment of the International Criminal Court represent the apex of legal evolution in the criminalization of torture, codifying the jurisprudence of previous international tribunals, surpassing the limits of the Convention against Torture, and establishing a permanent mechanism for holding perpetrators accountable [11].

Although international law has evolved significantly in the area of the prohibition of torture – from the Hague Conventions to the Rome Statute and the establishment of the International Criminal Court – the reality is that the practice of contemporary armed conflicts demonstrates a profound gap between the written norm and the reality on the battlefield.

Reality demonstrates that both armed conflicts and “special military operations” create a permissive environment for the application of torture, premised on justifications such as defeating the adversary, national defense, ideological or religious excuses, or as a “method of interrogation”, as evidenced by the judgment of the International Criminal Tribunal for the former Yugoslavia in the *Furundžija* case, in which the Tribunal held that the prohibition of torture had acquired *jus cogens* status and that torture committed in a military context entails individual criminal responsibility.

Torture in Armed Conflicts: Criminalization and International Criminal Responsibility: According to Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, torture means “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions” [9].

The Rome Statute of 17 July 1998 of the International Criminal Court criminalizes torture both as a crime against humanity (Article 7(1)(f)) and as a war crime (Article 8(2)(a)(ii); Article 8(2)(c)(i)) [11]. The Statute does not provide a definition of torture; accordingly, in 2002 the Elements of Crimes was adopted, an auxiliary instrument that details element by element each offence provided for in the Statute.

Thus, according to the Elements of Crimes, torture as a crime against humanity is understood as “the intentional infliction of severe physical or mental pain or suffering upon one or more persons in the custody or under the control of the perpetrator, provided that such pain or suffering does not arise only from, and is not inherent in or incidental to, lawful sanctions, committed as part of a widespread or systematic attack directed against any civilian population, with the perpetrator’s knowledge of or intent that the conduct be part of such an attack” [12, p.5].

Regarding torture as a war crime, the Rome Statute of the International Criminal Court divides war crimes into those committed in international armed conflict and those committed in non-international armed conflict.

Torture as a war crime in international armed conflict is understood as “the intentional infliction of severe physical or mental pain or suffering upon one or more persons protected under one or more of the Geneva Conventions of 1949, committed for the purpose of obtaining information or a confession, as punishment, intimidation, coercion, or for any reason based on discrimination of any kind, in the context of and in association with an international armed conflict of which the perpetrator was aware, as well as the factual circumstances that established the protected status of the victim” [12, p.10].

Torture as a war crime committed in a non-international armed conflict is understood as “the intentional infliction of severe physical or mental pain or suffering upon one or more persons who were hors de combat or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, committed for the purpose of obtaining information or confessions, as punishment, coercion, intimidation, or for any reason based on discrimination of any kind, committed in the context of and in association with a non-international armed conflict of which the perpetrator was aware, as well as the factual circumstances that established the protected status of the victim” [12, p.22].

Following the analysis of the concept of torture as set out in the 1984 UN Convention and the Rome Statute of the International Criminal Court, a fundamental difference based on two key pillars is identified:

1. The 1984 UN Convention limits torture to acts committed by state representatives, whereas the Elements of Crimes of the Rome Statute has a broader scope, encompassing non-state actors as well — a reality of contemporary armed conflicts where non-state groups are active participants. An example of a non-state group involved in contemporary armed conflicts is the “Wagner Group” in Ukraine.

2. The 1984 UN Convention is an instrument of international human rights law that obliges states to prohibit torture, whereas the Elements of Crimes of the Rome Statute is an instrument of international criminal law that guides international criminal responsibility.

A reference point in refining the concept of torture as a war crime was the International Criminal Tribunal for the former Yugoslavia, the *Furundžija* case, which provided a definition of torture in international humanitarian law as “the intentional infliction, by act or omission, of severe pain or suffering, whether physical or mental, for the purpose of obtaining information or a confession, or of punishing, intimidating, humiliating, or coercing the victim or a third person, or for any reason based on discrimination of any

kind against the victim or a third person. For such an act to constitute torture, one of the parties must be a public official or, in any event, must act in a non-private capacity, for example, as a de facto organ of a state or of any other entity exercising authority". The Trial Chamber of the Tribunal further held that rape and other serious sexual assaults in situations of armed conflict may constitute torture (*the Čelebići case*). Accordingly, the Tribunal confers upon the prohibition of torture the status of a jus cogens norm [10].

In the context of armed conflicts, human rights violations acquire a systemic character, directly affecting what legal scholarship describes as the "immutable core of fundamental rights", which includes the right to life, the prohibition of torture and inhuman or degrading treatment, and the right to a fair trial. These rights are absolute in character, being inherent to human nature, inalienable and indispensable to the existence of the individual, which is why they cannot be restricted even in exceptional circumstances such as war [14].

In academic literature, Stuart Casey-Maslen emphasizes that torture committed in the context of and in direct connection with an armed conflict constitutes, unequivocally, a war crime under international law. Furthermore, the author highlights that when committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of that attack, torture falls within the category of crimes against humanity, regardless of whether it occurs within or outside an armed conflict. With regard to the relationship between torture and genocide, it is noted that torture is not autonomously qualified as an act of genocide, even when committed with the specific intent to destroy, in whole or in part, a protected group. However, in certain circumstances, torture may constitute a material element of genocidal acts, insofar as it involves causing serious bodily or mental harm to members of the targeted group [15].

Contemporary legal scholarship emphasizes that torture, while constituting in itself a serious violation of fundamental rights, acquires a higher legal gravity when committed as part of a widespread or systematic attack directed against the civilian population, thereby being qualified as a crime against humanity. In this regard, crimes against humanity represent autonomous international offences, characterized by the scale or organized nature of the acts of violence and their orientation against civilians, encompassing acts such as torture, murder, or sexual violence. An essential aspect is that these crimes may be committed both in the context of international and non-international armed conflicts, without requiring the existence of an inter-state conflict, and may be attributed to both state and non-state actors involved in hostilities. Furthermore, although international mechanisms such as the International Criminal Court provide the legal framework for sanctioning such acts, their effectiveness is often limited by deficiencies in national justice systems and by the lack of effective international cooperation in this area. In this context, the International Criminal Court plays an essential role in holding perpetrators criminally accountable, pursuant to the Rome Statute of the International Criminal Court, which confers upon it jurisdiction over the most serious offences, including genocide, crimes against humanity, and war crimes. However, the effectiveness of this mechanism is limited by the principle of complementarity and by jurisdictional constraints, particularly in situations where states are not parties to the Statute or do not cooperate with the international court, which in practice leads to difficulties in ensuring effective criminal accountability for acts of torture committed in armed conflicts [16].

The analysis of criminal responsibility for war crimes highlights the fact that International Humanitarian Law establishes a set of binding norms applicable during armed conflicts, the serious violation of which entails legal responsibility. Within this framework,

serious violations of the norms enshrined in the Geneva Conventions and the Rome Statute of the International Criminal Court may constitute war crimes, engaging both individual responsibility and, under certain conditions, state responsibility. The distinct role of command responsibility, as a particular form of individual criminal responsibility specific to international criminal law, is also noteworthy. In this context, holding perpetrators criminally accountable represents an essential mechanism for ensuring compliance with the laws of war and for preventing abuses during armed conflicts.

The evolution of individual criminal responsibility for serious violations of human rights reflects the profound transformation of international law, from a system centered exclusively on states to one that recognizes the direct responsibility of individuals for acts committed under state authority. Traditionally, state officials enjoyed broad immunity for acts performed in the exercise of their functions, and international law did not effectively regulate their conduct toward their own citizens. This paradigm was radically altered after the Second World War, when, in the wake of the atrocities committed, the principle of individual criminal responsibility in international law was established, in particular through the Nuremberg trials, which held that individuals may be held accountable for war crimes and crimes against humanity, regardless of their official position or superior orders received. This evolution formed the basis for the subsequent development of international criminal law and the consolidation of modern mechanisms for sanctioning acts such as torture, enshrining the idea that the protection of human dignity requires not only the establishment of norms but also the institution of effective mechanisms for holding perpetrators of serious violations accountable [17].

The author Rogier Bartels highlights that, within international criminal law, the legal qualification of armed conflicts constitutes a determining element for establishing the applicability of international humanitarian law norms and, implicitly, for engaging international criminal responsibility for war crimes. In this regard, the distinction between international armed conflict and non-international armed conflict, enshrined in fundamental instruments such as the Geneva Conventions of 1949 and the Additional Protocols of 1977, directly influences both the scope of application of legal norms and the legal characterization of unlawful acts. Furthermore, the jurisprudence of international criminal courts, particularly the ad hoc tribunals and the International Criminal Court, has played an essential role in clarifying these concepts, developing relevant criteria — such as the intensity of violence and the degree of organization of the parties involved — for identifying the existence of an armed conflict. At the same time, an erroneous qualification of the nature of the conflict may generate negative consequences both for the correct application of international humanitarian law and for the respect of the procedural rights of the accused, including the right to a fair trial, which underscores the need for a rigorous and coherent approach in the legal qualification of armed conflicts.

In the doctrine of international criminal law, it is emphasized that the criminalization of torture has deep historical roots, having been recognized as a serious violation of the laws and customs of war since the post-World War I period, when it was included in the list of international crimes drawn up at the Paris Peace Conference of 1919. Even in the absence of an initial conventional codification, the prohibition of torture was grounded in customary law and in the “dictates of humanity”, enshrining the idea that the infliction of suffering for punitive or coercive purposes is inadmissible. Subsequently, this prohibition was reinforced by the jurisprudence of the Nuremberg Tribunal, which held that superior orders cannot constitute a justification for acts of torture or other inhumane treatment. The subsequent normative evolution led to the express consecration of torture as an in-

ternational offence in legal instruments such as Control Council Law No. 10, which was later adopted and further developed in the statutes of the ad hoc international criminal tribunals and in the Rome Statute of the International Criminal Court. Today, torture is recognized both as a war crime and as a crime against humanity, applicable also in non-international armed conflicts and, under certain conditions, even in the absence of an armed conflict [18].

In the context of contemporary armed conflicts, legal scholarship highlights that serious violations of international humanitarian law norms are not limited to direct acts of violence but may also include indirect forms of harm to the integrity of the person, such as the refusal or obstruction of humanitarian assistance. Thus, the deliberate deprivation of essential resources such as food, water, or medical care may lead to serious suffering and may be qualified as a war crime, insofar as it affects the civilian population or persons outside of hostilities. This perspective underscores the fact that the protection afforded by International Humanitarian Law aims not only at prohibiting direct violence but also at preventing any practices that may generate suffering incompatible with human dignity. Among the most recent conflicts, mention may be made of the invasion of Ukraine in 2022, the conflict in Sudan in 2023, the Hamas invasion of Israel at the end of 2023 and the Israeli invasion of the Gaza Strip, including the broader conflict in the Middle East. All of these conflicts record massive violations of human rights. The use of various types of weapons, abuses against prisoners and civilians in occupied territories, the destruction of vital infrastructure, as well as acts of atrocity specific to warfare represent a negative dimension of armed confrontation. These criminal acts have no justification and must be sanctioned with severity. In such circumstances, two determining factors of criminal responsibility for war crimes arise: 1) prosecution, which is an extremely difficult process; and 2) adjudication. In such circumstances, prosecution is extremely difficult, the main challenge being the collection and preservation of evidence.

The analysis of the international normative framework for the criminalization of torture in armed conflicts reveals the existence of a layered and coherent legal system, progressively constructed from the Hague Conventions of 1907 to the Rome Statute of the International Criminal Court and the Elements of Crimes, which confer upon the prohibition of torture an absolute and universal character. Nevertheless, the existence of a solid and well-constructed normative framework does not in itself guarantee effectiveness. The enormous gap between the written norm and the reality of contemporary armed conflicts demonstrates that the criminalization of torture remains insufficient in the absence of effective mechanisms for enforcement and criminal accountability. It is precisely this gap that constitutes the fundamental challenge of international law, which will be examined further below.

Contemporary Challenges in the Application of International Criminal Responsibility. The founding treaty of the International Criminal Court, known as the Rome Statute with its Elements of Crimes, grants the Court jurisdiction over four main crimes: 1) genocide; 2) war crimes; 3) crimes against humanity; and 4) the crime of aggression [19]. Established for the investigation and punishment of crimes of such magnitude as to trigger concern and involvement at the international level, it is paradoxically not equipped with a police force capable of acting freely on the territory of affected states. Investigators find themselves in the position of having to cooperate with or overcome the resistance of precisely those authorities whose inaction necessitated international intervention. The challenge, particularly with regard to states that are openly or tacitly hostile to such investigations, lies in finding the right combination of legal coercion and, to the

extent possible, direct action to enable proper investigations to be conducted [20, p.363].

Ensuring the protection and prosecution of these crimes is extremely difficult, the first problem being the loss or destruction of evidence. According to testimonies from citizens of various regions who were present in areas of armed conflict, mass executions of the civilian population took place during the period of occupation, people were tortured, women were abused and raped, and many citizens disappeared. Without doubt, in such circumstances, access to justice and the benefit of a fair trial are inconceivable. The most alarming aspect is that the majority of evidence is destroyed or disappears, which significantly complicates the investigation of cases. This problem is further aggravated by the principle of complementarity, according to which the International Criminal Court intervenes only when the state concerned is unable or unwilling to investigate, thereby creating a vicious circle. It is precisely those states that allow the destruction of evidence that also obstruct national investigations [14].

Beyond the practical challenges related to the collection of evidence, the effectiveness of the International Criminal Court is also limited by the refusal of certain world powers to recognize its authority. The International Criminal Court, on the one hand, has potentially unlimited geographical jurisdiction over international crimes; at the same time, the attitude of some of the world's most influential states – the Russian Federation, the United States, China, India, and Israel – which are not members of the International Criminal Court, must not be overlooked. The absence of these states creates a serious impunity gap, as their citizens and officials cannot be prosecuted without their voluntary cooperation.

Furthermore, the United States imposed sanctions against officials of the International Criminal Court who issued an arrest warrant in the name of Israeli Prime Minister Benjamin Netanyahu [21]. Russia withdrew its signature from the Statute in 2016 following the opening of the investigation into Crimea [22]. Although the International Criminal Court issued an arrest warrant for Israeli Prime Minister Benjamin Netanyahu, he visited Hungary – a founding member state of the Court – without any consequences, and on several occasions, Hungary declared its intention to withdraw from the Court [23].

This demonstrates that political pressure can undermine the very foundations of international criminal justice. Under these conditions, victims of international crimes are often left without access to justice, and the principle of the inevitability of punishment is gravely compromised.

Conclusion. The analysis of the international normative framework for the criminalization of torture in armed conflicts reveals the existence of a layered and coherent legal system, progressively constructed from the Hague Conventions of 1907 to the Rome Statute of the International Criminal Court and the Elements of Crimes, which confer upon the prohibition of torture the character of a *jus cogens* norm, being criminalized both as a crime against humanity and as a war crime, applicable in both international and non-international armed conflicts.

Nevertheless, the existence of a normative framework does not in itself guarantee practical effectiveness. The gap between the written norm and the reality of armed conflicts constitutes the fundamental challenge of the international criminal justice system. The destruction of evidence, the obstruction of national investigations, the absence of an international police force, and the refusal of certain world powers to recognize the jurisdiction of the Court create conditions of impunity in which victims of international crimes are often left without access to justice.

Recent cases – the conflict in Ukraine, the Hamas invasion of Israel, the Israeli in-

vasion of the Gaza Strip, and the conflict in the Middle East – demonstrate that the international mechanism for holding perpetrators criminally accountable is subject to unprecedented political pressures. The sanctions imposed by the United States against officials of the International Criminal Court, Russia's withdrawal from the Rome Statute, and the visit of Israeli Prime Minister Benjamin Netanyahu to Hungary – a Member State of the Court – without any legal consequences, demonstrate that political will remains the determining factor in the effective application of international criminal law. The principle of the inevitability of punishment is gravely compromised at the international level.

International criminal justice stands at a historic crossroads: either it consolidates its authority and independence from political pressures, or it risks becoming a formal instrument devoid of real effectiveness. Overcoming these challenges requires the strengthening of international cooperation in the collection of evidence, the expansion of the universality of the Rome Statute, and the reinforcement of mechanisms for the protection of victims in conflict zones.

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