

ISIS Violations in North and East Syria: Legal Classification and Specialized Courts

(Part Two)



Al-Furat Center for Studies

Introduction:

In the post-defeat phase of ISIS’s military presence, there arises an urgent need to address its legacy in the North and East Syria region. This legacy is manifest in the form of sleeper cells, women and children in camps and shelters¹ and, particularly, former fighters held in detention centers. These individuals, estimated to number in the thousands, committed heinous crimes against the Syrian people, especially targeting ethnic, religious, and racial minorities in North and East Syria. The violations and atrocities

¹See, Al Furat Center for Studies, “Children from ISIS families in Camps and Rehabilitation Centers: Risks, Problematics, and Containment Approaches” available at the following address: <https://firatn.com/en/?p=2472>

perpetrated by this terrorist organization could be classified as crimes against humanity, war crimes, and even genocide.²

Examining possible judicial mechanisms to hold ISIS criminals accountable is of significant importance, especially as the international community, represented by the United Nations Security Council, fails to take serious and effective responsibility in preserving international peace and security by addressing or resolving ISIS's legacy. This inaction has prompted the Autonomous Administration of North and East Syria to make the decision to prosecute ISIS criminals in its own courts, under its own laws, and based on its responsibilities.

The issue of prosecuting perpetrators of war crimes, crimes against humanity, and genocide holds particular importance in preventing serious violators from evading accountability and punishment for the most egregious international crimes—an essential principle of international law.³ Moreover, it is crucial to achieve justice for victims and to dismantle a significant and dangerous part of ISIS's legacy in North and East Syria: the issue of detained members since ISIS's military defeat in March 2019. Additionally, the historical importance of such trials for major criminals lies in their potential contribution to the advancement of international criminal law.

The main question that arises is: What are the specialized courts for holding ISIS criminals detained in North and East Syria accountable? Additionally, the following sub-questions emerge:

²See: Al Furat Center for Studies, "ISIS Violations in North and East Syria: Legal Description and Specialized Courts (Part One)" available at the following address: <https://firatn.com/en/?p=2569>

³Ibrahim Draji, "International Crime," Specialized Legal Encyclopedia, <https://arab-ency.com.sy/law/details/25771/3>

- **Is it possible to prosecute ISIS criminals before the International Criminal Court (ICC)?** What are the obstacles that hinder initiating criminal liability cases against ISIS criminals in this international court?
- **Can ISIS criminals be tried before a special international court established by the UN Security Council,** similar to the tribunals for the former Yugoslavia or Rwanda?
- **Is it feasible to prosecute ISIS members before a mixed international court,** in cooperation with the Autonomous Administration of North and East Syria, as part of the international community's responsibility to support efforts in combating global terrorism and dismantling ISIS's legacy?
- **Finally, is it possible to try ISIS criminals in a local domestic court in North and East Syria under the laws of the Autonomous Administration?** What are the challenges facing the establishment of such a court?

We will attempt to answer these various questions by conducting research according to a descriptive-analytical approach, examining the main legal avenues and both international and local judicial mechanisms that can be utilized to address the crimes committed by ISIS in the North and East Syria regions and to hold its perpetrators accountable. Additionally, we will outline the obstacles that have hindered the initiation of criminal proceedings against ISIS members and delayed justice for its victims to date. This study will follow the structure below:

Chapter Two: Specialized Courts for Prosecuting ISIS Members

- **Section One:** International Courts Available for Prosecuting ISIS Members

- **Subsection One:** Possibility of Establishing a Special International Court
- **Subsection Two:** Possibility of Prosecution Before the International Criminal Court
- **Section Two:** Proposed Local Court for Prosecuting ISIS Members
 - **Subsection One:** Motivations and Justifications
 - **Subsection Two:** Challenges and Difficulties

Chapter Two:

Specialized Courts for Prosecuting ISIS Members

The severe and serious violations of international humanitarian law, international human rights law, and international criminal law committed by the terrorist organization ISIS in Syria generally, and specifically in the North and East Syria region, could amount to crimes against humanity, war crimes, and genocide. Such crimes necessitate prosecution and punishment to prevent impunity, achieve international justice, and support efforts to combat global terrorism, as they impact not only the local community but humanity as a whole.

Nevertheless, the international community has not assumed its responsibilities regarding the case of detained ISIS members in North and East Syria, despite repeated appeals from the Autonomous Administration of North and East Syria to the United Nations and the UN Security Council to transfer this case to international courts specializing in prosecuting ISIS criminals and holding them accountable for the heinous atrocities committed against religious and ethnic minorities in the region. Meanwhile, concerned states have shirked their responsibilities to repatriate their nationals among the detained ISIS members. This has led the Autonomous Administration of North and East Syria to make the decision to prosecute ISIS criminals in its own courts.

We begin by examining the possibility of prosecuting ISIS members before international courts specializing in international crimes (Section One), then we will study the local court intended to be established for

prosecuting ISIS members and holding them accountable for the crimes they committed in North and East Syria (Section Two).

Section One:

International Courts Available for Prosecuting ISIS Members

Theoretically, there are numerous legal avenues and international judicial mechanisms that can be pursued to achieve justice and accountability for the severe violations and international crimes committed by the Islamic State of Iraq and Syria (ISIS) within Syrian territory, and in the region of North and East Syria in particular.⁴ These avenues primarily include the Permanent International Criminal Court, and a special international court (purely or mixed) established specifically to address ISIS crimes and prosecute its members detained in North and East Syria.

First, we will explore the possibility of establishing a special international court by the UN Security Council to investigate the crimes of ISIS and punish those responsible (Subsection One), and then we will examine the feasibility of prosecuting ISIS criminals before the International Criminal Court (Subsection Two).

Subsection One: The Possibility of Establishing a Special International Court

Special international criminal courts are linked to the emergence of contemporary international law⁵, as they arose after World War II in

⁴Toby Kidman, Natasha Barak, "Training Manual: Accountability Mechanisms for Crimes Committed in Syria," <https://policycommons.net/artifacts/3744867/n-ljrym-lumrtkb-fy-swry-alyt-lumhsb-dlyl-ltdryb/4550795/>

⁵Special Courts, Overview, International Committee of the Red Cross, <https://www.icrc.org/ara/war-and-law/international-criminal-jurisdiction/adhoc-tribunals/overview-ad-hoc-tribunals.htm>

1945 with the "Tokyo and Nuremberg Trials"⁶ to address serious international crimes, namely genocide, war crimes, and crimes against humanity. Following these courts, special tribunals were established in the 1990s to investigate the atrocities and killings committed during the conflicts in the former Yugoslavia and Rwanda (the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda), as well as in East Timor, Sierra Leone, Cambodia and Lebanon.⁷

Special criminal courts are of a temporary nature, with their jurisdiction limited to addressing crimes committed during a specific conflict or regarding a specific crime. They are established by a resolution from the UN Security Council, such as Resolution 827 of 1993, which led to the creation of the International Criminal Tribunal for the Former Yugoslavia. This international court was tasked with investigating serious violations on the territory of the former Yugoslavia and prosecuting those responsible. Similarly, the International Criminal Tribunal for Rwanda was established under Resolution 955 of 1994, which tasked it with conducting investigations into genocide, crimes against humanity, and war crimes committed in Rwanda and prosecuting

⁶When World War II came to an end in 1945, there was a prominent trend to punish German and Japanese war criminals for the atrocities and violations they committed during the war. The Allied leaders expressed on more than one occasion their desire that the Axis powers, especially their military leaders, receive appropriate punishment for their crimes against peace and humanity. Accordingly, the International Military Tribunal was established to try war criminals from the European Axis powers under the London Agreement, known as the Nuremberg Tribunal. The International Military Tribunal to try war criminals in the Far East, known as the Tokyo Tribunal. See Ali Wahbi Deeb, "International Criminal Courts: Their Development and Role in Suppressing International Crimes," Al-Halabi Legal Publications, first edition 2015

⁷See: Ould Youssef Mouloud, "Combating Impunity in the Framework of the Third Generation of International Criminal Courts: Internationalized or Mixed Courts," Journal of Politics and Law, Issue 19, June 2018.

those responsible. Additionally, the Special Tribunal for Lebanon was established under Resolution 1644 to prosecute individuals accused of the assassination on February 14, 2005, which resulted in the deaths of 22 people, including former Lebanese Prime Minister Rafik Hariri.⁸

Therefore, since the late twentieth century, the Security Council has established purely international courts (Section One) and mixed courts through agreements between the concerned state and the United Nations (Section Two). This raises the question of the possibility of holding ISIS members, detained in North and East Syria, accountable before a specialized international court (purely or mixed).

Part One: The Possibility of Establishing a "Purely" Special International Court

The establishment of purely international courts is one of the United Nations' attempts to pursue perpetrators of international crimes. The desire for justice and punishment through international courts arises from the national courts' inability to address these serious crimes convincingly. Carla Del Ponte, a member of the United Nations Commission of Inquiry on Syria and former chief prosecutor of the International Criminal Tribunal for the former Yugoslavia, states in this regard, "By establishing a special international criminal court in the region (Iraq and Syria), the United Nations will contribute to providing the best means to prosecute and punish the many perpetrators involved in the ongoing conflict in the area."

The previous international criminal tribunals for the former Yugoslavia and Rwanda are among the most well-known purely international

⁸The Security Council has issued more than one resolution regarding the trial of war criminals, such as its Resolution No. 1593 regarding the trial of war criminals in Darfur, its Resolution No. 1315 regarding the trial of war criminals in Sierra Leone, and other resolutions.

courts.⁹ The Security Council adopted Resolution 827 during its 3217th meeting on May 25, 1993, affirming the establishment of an international criminal tribunal to prosecute individuals accused of committing serious crimes in the former Yugoslavia since 1991. This was regarded as a non-military measure,¹⁰ which could reinforce the maintenance of international peace and security and restore them to their rightful order, and the statute of the tribunal was adopted accordingly.¹¹ Additionally, in July 1994, the Security Council issued Resolution 935, which established a commission of experts to investigate serious violations of international humanitarian law in Rwanda.¹² The commission submitted its first report to the UN Secretary-General on October 4, 1994, and a final report on December 9, 1994. Based on these reports, the Security Council adopted Resolution 955, which established the International Criminal Tribunal to prosecute those responsible for committing genocide and other serious violations of international humanitarian law in Rwanda. The statute for this tribunal was also adopted at that time.¹³

Thus, drawing on the above, it is theoretically and legally possible for the Security Council to exercise its powers to maintain international peace and security¹⁴ and to adopt a resolution establishing a special criminal court to prosecute members of the Islamic State in Iraq and Syria (ISIS) and address the atrocities and serious violations committed

⁹Jelena Pejic, "Accountability for International Crimes: From Speculation to Reality," *International Review of the Red Cross*, Selections from 2002.

¹⁰In accordance with Article 41 of the United Nations Charter.

¹¹Security Council Resolution 827 adopted by the Council at its 3217th meeting, held on 25 May 1993

¹²Security Council Resolution No. (935) adopted by the Council at its 3400th session on 1 July 1994.

¹³Jelena Pejic, "Accountability for International Crimes: From Speculation to Reality," *op. cit.*

¹⁴Article 41 of the Charter of the United Nations.

by this organization, including war crimes, crimes against humanity, and genocide, particularly in North and East Syria.¹⁵

However, it is important to note some issues that have led to criticism of purely international tribunals. The most concerning issue is that the proceedings before these previously established special courts were excessively lengthy and characterized by bureaucracy, often exceeding the "acceptable" timeframe for trials required by international human rights standards and jurisprudence. Many defendants faced significant delays in reaching trial, resulting in many of them enduring unacceptable pre-trial detention periods.

Additionally, these tribunals primarily focused on holding lower- or mid-level perpetrators accountable.¹⁶ Furthermore, some decisions from the International Criminal Tribunal for the former Yugoslavia, for instance, were controversial regarding fair trial standards, as there were instances of using anonymous witnesses and not allowing witnesses to reveal their identities. This raised significant debate, especially due to the false testimony of one of the protected witnesses.¹⁷

Another criticism directed at the special international tribunals is the perceived lack of neutrality of the judges, which is essential for a fair trial. These courts were established based on political consensus among the permanent members of the Security Council, making them somewhat political in nature.¹⁸ Moreover, these special courts are temporary by nature, and from a general perspective on justice, and

¹⁵See: Al Furat Center for Studies, "ISIS Violations in North and East Syria... Legal Description and specialized Courts (Part One)," available at the following address: <https://firatn.com/?p=4045>

¹⁶See: Walihi Al-Mukhtar, "International Criminal Justice...and Serious Violations of International Humanitarian Law," Al-Halabi Legal Publications, Beirut, first edition 2020.

¹⁷Ali Wahbi Deeb, "International Criminal Courts: Their Development and Role in Suppressing International Crimes," op. cit.

¹⁸redundant.

particularly on criminal justice, it is inappropriate to establish a court to adjudicate crimes that occurred before its establishment, as it would violate a fundamental principle of criminal law, which is the principle of non-retroactivity of criminal laws.¹⁹

Based on the above, it seems that the establishment of a special international tribunal to prosecute ISIS members by a decision of the Security Council may face the same criticisms directed at the special international tribunals for the former Yugoslavia and Rwanda. This is compounded by the lack of international will regarding the necessity of holding perpetrators of crimes accountable in Syria in general, and in the North and East Syria region in particular, on one hand.

On the other hand, there must be a consensus among the permanent members of the Security Council on this matter to avoid any one of them exercising their veto power, especially by Russia and China, and thus prevent any resolution on this issue from being thwarted, as has been the case since the beginning of the Syrian conflict in 2011. The Security Council is a political body that operates based on political considerations and in the interests of its permanent members. Regarding the prosecution of ISIS criminals, it may be impossible for the permanent member states to agree on the territorial and personal jurisdiction of the special court due to the sensitivity of the situation concerning Syria.

Part Two: The Establishment of a "Mixed" International Special Court

In response to the criticisms directed at the tribunals for the former Yugoslavia and Rwanda, a different type of special international court

¹⁹Wali Al-Mukhtar, "International Criminal Justice...and Serious Violations of International Humanitarian Law," op. cit.

has emerged in the international criminal justice system, known as mixed or hybrid courts.²⁰ This type of international tribunal combines the characteristics of international criminal courts and national criminal courts, both in terms of their establishment mechanisms and composition, as well as the crimes within their jurisdiction, which include serious violations of international humanitarian law, international human rights law, or the domestic laws of these countries.²¹ This type of international court²² contributes to achieving justice and plays a crucial role in ensuring that those accused of committing international crimes are subjected to investigation, trial, and punishment. Furthermore, these courts help end the culture of impunity and contribute to the resolution of internal conflicts.²³

International hybrid courts are established either through a resolution by the United Nations Security Council or by a transitional or interim administration affiliated with the UN, which can create such courts under Chapter VII of the UN Charter. These courts are typically set up

²⁰Ould Youssef Mouloud, “Combating Impunity in the Framework of the Third Generation of International Criminal Courts: Internationalized or Hybrid Courts,” *op. cit.*.

²¹Ali Wahbi Deeb, “International Criminal Courts: Their Development and Role in Suppressing International Crimes,” *op. cit.*

²² These types of international courts also have numerous drawbacks, chief among them being the risk of internal political interference, especially in countries with weak records on judicial independence. They are also prone to confusion and inefficiency due to the blending of multiple legal systems and the involvement of personnel with diverse backgrounds in terms of training and approaches to achieving justice. The integration of international and domestic judicial aspects can lead to challenges in cooperation between national and international actors, as judges may operate with differing philosophies, and international judges might lack familiarity with the local laws of the concerned state. Additionally, there may be insufficient time for adequate preparation, training, and readiness for this type of court. Finally, the involvement of international judges and prosecutors may not necessarily ensure the court’s impartiality, particularly if their number is smaller than that of local judges within the court’s composition.

²³Ould Youssef Mouloud, “Combating Impunity in the Framework of the Third Generation of International Criminal Courts: Internationalized or Mixed Courts,” *op. cit.*

when a post-conflict state experiences a complete collapse of its governmental institutions and is either unable or unwilling to establish a court on its own. In such cases, the UN facilitates the transitional period by placing the failing state under international administration, assisting in the establishment of a special hybrid court to address violations and crimes committed during the conflict or civil war.

Thus, creating a hybrid international court requires either an agreement between the UN and the concerned state or a Security Council resolution. However, the current Syrian government would not agree to the establishment of a hybrid court operating on Syrian soil, and the Security Council would be unable to pass a resolution on the matter due to a likely veto from Russia, China, or both.²⁴

The prospect of establishing a hybrid international court to try ISIS members becomes even more complicated when it involves an agreement between the United Nations and the Autonomous Administration of North and East Syria. Although the social contract of this region lays the groundwork for a political system and civil administration, it harmonizes Syria's rich mosaic through a transition from dictatorship, civil war, and destruction towards a free and democratic society. According to the social contract, civil life and social

²⁴It should be noted here that a group of international legal experts supported the idea of establishing a hybrid court to investigate violations committed throughout Syria and by all parties to the conflict early in the Syrian conflict. In August 2013, a group of legal experts, including former chief prosecutors of international courts, drafted what they called the "Chautauqua Draft for the Establishment of a Special Tribunal for the Prosecution of Atrocities." It was intended to establish an exceptional Syrian court to try "those responsible for crimes and atrocities committed in Syria by all parties to the conflict." However, the document states that this court can only operate inside Syria when the political situation allows, following a change in government. See: Mark Lattimer, Shabnam Mojtahedi, and Liana Tucker, "A Step Toward Justice... Current Accountability Options for Crimes Committed in Syria Under International Law," Ceasefire Center for Civilian Rights, Syria Justice and Accountability Center, May 2015.

justice are upheld, fair trials are guaranteed, and the death penalty is prohibited in line with democratic norms and international human rights standards.

However, the Autonomous Administration faces numerous security challenges, particularly due to repeated Turkish attacks on its territories, which pose a significant obstacle to establishing a hybrid international court. Furthermore, it is practically impossible to reach an agreement between the United Nations and the Autonomous Administration of North and East Syria for creating a special hybrid court to prosecute ISIS members, as doing so would violate the UN Charter itself. Such an agreement would need to go through the Damascus government; otherwise, it would breach the principle of state sovereignty enshrined in the UN Charter. One of the main justifications for creating hybrid courts is to address concerns about state sovereignty and reinforce the authority and legitimacy of the local judiciary.

Furthermore, it is important to note that at the time when special courts for the former Yugoslavia and Rwanda, or hybrid international courts, were established, no dedicated criminal judiciary body existed to handle international crimes. Today, however, there is the International Criminal Court (ICC), a permanent institution based in The Hague. Thus, it would be more efficient to refer these crimes to the ICC through a UN Security Council resolution. The ICC is capable of launching investigations swiftly and at a lower cost, as it is already established and has jurisdiction to address grave violations and crimes committed by the terrorist organization ISIS.

Subsection Two: The Possibility of Prosecution Before the International Criminal Court

The International Criminal Court (ICC)²⁵ is the only body capable of exercising criminal jurisdiction over ISIS members responsible for committing international crimes in the North and East Syria region.²⁶

The ICC emerged in response to criticisms directed at international special courts,²⁷ and it was formally established after the conclusion of the diplomatic conference in Rome, where the Rome Statute, serving as the ICC's founding charter,²⁸ was adopted on July 17, 1998. This statute was approved by 120 countries, opposed by 7 (including the United States, Libya, Iraq, China, Syria, Sudan, and Israel), with 21 countries abstaining from the vote.²⁹

Unlike special international criminal courts, such as those for the former Yugoslavia and Rwanda, the ICC is a permanent institution established by its founding treaty.³⁰ It possesses international legal personality and is composed of several organizational bodies.³¹

²⁵It should be noted that the International Court of Justice is also an important judicial body for addressing human rights violations, but the International Court of Justice does not have criminal jurisdiction and cannot prosecute individuals. See Muhammad Aziz Shukri, "International Court of Justice," Specialized Legal Encyclopedia, <https://arab-ency.com.sy/law/details/26018/7>

²⁶Mohamed Ghanem Ibrahim, "The Role of International Criminal Law in Criminalizing Violations of International Humanitarian Law" An Applied Analytical Study on the Statute of the International Criminal Court(, Master's Thesis, Syrian Virtual University, 2022

²⁷Ben Bouaziz Assia, "The Role of Criminal Justice in Activating the Principle of Non-Impunity," Al-Baheth Journal for Academic Studies, Issue Zero, March 2014.

²⁸Hortensia D. T. Guterres Bossi, "The Relationship between International Humanitarian Law and International Criminal Tribunals," International Review of the Red Cross, Vol. 88, No. 861, March 2006.

²⁹See Ali Wahbi Deeb, "International Criminal Courts: Their Development and Role in Suppressing International Crimes," op. cit.

³⁰Sasha Rolf-Loder, "The Legal Character of the International Criminal Court and the Emergence of Supranational Elements in International Criminal Justice," International Review of the Red Cross, Selections from Issues 2002.

³¹Jelena Pejic, "Accountability for International Crimes: From Speculation to Reality."

The ICC's charter took effect in July 2002,³² granting the court jurisdiction over four types of crimes: genocide, crimes against humanity,³³ war crimes, and the crime of aggression.³⁴

For the court to exercise its jurisdiction, the crime must be referred by a state party to the court's Statute or through a Security Council resolution under Chapter VII of the UN Charter.³⁵ This means that the Security Council can refer a case to the ICC Prosecutor if it appears that one or more of the crimes outlined in the court's Statute have been committed.³⁶

The Rome Statute specifies that the Security Council has the authority to make such referrals, regardless of whether the state in question is a member of the court.³⁷

The Security Council has previously exercised this authority in Sudan's case after receiving a report from the investigative committee formed under Resolution 1593 (2005) to examine the situation in Darfur.³⁸

³²BBC News Network "The International Criminal Court: What is it and what are its powers?" March 19, 2023, where according to the text of the Rome Statute, the Statute enters into force on the first day of the month following the sixtieth day after the date of depositing the sixtieth instrument of ratification of the agreement with the Secretary-General of the United Nations, and the number of countries that ratified the Statute reached 60 countries on April 11, 2002. Accordingly, the court entered into force on July 1, 2002.

³³Heba Ajoub, "The Crime of Genocide and Crimes Against Humanity under the Rome Statute" A Comparative Study" Tishreen University Journal, Economic and Legal Sciences, Volume 44, Issue 1, 2022.

³⁴Article 5 of the Rome Statute, See: Bashar Rashid, "Responsibility and Punishment for War Crimes in the Rome Statute," Journal of Legal and Political Studies – Issue 5 – Volume 2 – January 2017, Ibrahim Daraji, "The Crime of Aggression", previous reference.

³⁵Ibrahim Draji, "International Criminal Court", previous reference.

³⁶Article 13 of the Rome Statute.

³⁷Bashar Rashid, "Responsibility and Punishment for War Crimes in the Rome Statute," op. cit., Fadhel Al-Gharawi, "ISIS Violations of International Humanitarian Law," Al-Rafidain Center for Dialogue, first edition, Beirut/Najaf, 2023, previous reference.

³⁸International Criminal Court, Office of the Prosecutor, "Twelfth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to Security Council

Upon receiving the committee's findings, the Council decided to refer the Darfur situation to the ICC. Similarly, in February 2011, the Security Council issued Resolution 1970, requesting the ICC Prosecutor to open a special investigation into the situation in Libya following the Arab Spring uprisings.³⁹

Regarding the crimes committed by ISIS in the region, Chief Prosecutor Fatou Bensouda of the International Criminal Court (ICC) stated on April 8, 2015,⁴⁰ that the court was not yet prepared to open an investigation into the crimes attributed to ISIS in Iraq and Syria, including genocide, due to lacking the necessary jurisdiction. This limitation arises because Syria and Iraq are not signatories to the Rome Statute, which established the ICC, thereby depriving the court of the required legal authority.⁴¹

In response, the United Nations called for ISIS crimes to be referred to the ICC.⁴² According to a report by the UN Human Rights Council, "the

Resolution 1593 (2005), <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/F66BDD95-C599-4083-B19C-272662872E11/282793/>

³⁹Resolution 1970, dated 26 February 2011.

⁴⁰ International Criminal Court: "Declaration of the Procurator of the International Penal Court, Mme Fatou Bensouda, regarding crimes that were committed by the EIIS", available on the ICC website, <https://www.icc-cpi.int/fr/news/declaration-du-procureur-de-la-cour-penale-internationale-mme-fatou-bensouda-propos-des-crimes>

⁴¹She continued: "However, it can try a number of thousands of foreign fighters in the ranks of the Islamic State who are citizens of countries that signed the Rome Statute, such as European citizens in particular." See, Al Arabiya website, "The International Criminal Court 'Not Ready' to Investigate ISIS Crimes," available at the following address, <https://www.alarabiya.net/arab-and-world/iraq/2015/04/08/>, Daniel Ciccía., "Daech: l'aveu d'impuissance de la cour pénale internationale

The CPI's policy is the most important for impeachment in the face of crimes committed by Islamic groups. Décryptage by notre contributeur", available at the following address: https://www.lexpress.fr/informations/daesh-l-aveu-d-impuissance-de-la-cpi_1669466.html. Published on 04/09/2015 at 11:15, next on 04/22/2015 at 11:54

⁴²Raed Abis, "The United Nations Methodology for Classifying and Investigating ISIS Crimes," Iraqi Center for Documenting Extremism Crimes, available at: <https://iraqicenter-fdec.org/archives/3225>

matter should be referred to the International Criminal Court for the prosecution of perpetrators.”⁴³

To outline the role and contribution of the Security Council in prosecuting and punishing ISIS members accused of committing international crimes under Article 5 of the ICC’s Rome Statute, this section will be divided into two subsections: the first part will address how the Security Council can refer ISIS crimes to the ICC, and the second will be dedicated to the obstacles to such a referral.

Part One: How the Security Council Can Refer ISIS Crimes

The ICC exercises its jurisdiction under Article 13(b) of the Rome Statute if the Security Council refers a situation to the Prosecutor in which one or more crimes within the court’s jurisdiction appear to have been committed.⁴⁴ For this referral to occur, the Security Council must act under Chapter VII of the UN Charter, which aligns with its responsibility to maintain international peace and security.⁴⁵

This means that if the Security Council observes the commission of one or more crimes within the ICC’s⁴⁶ jurisdiction that threaten international peace and security, it must fulfill its responsibilities by referring the situation to the ICC Prosecutor if it deems that such an action would help maintain or restore peace and security.⁴⁷ The Council acts under Chapter

⁴³UN, Human Rights Council: ISIS crimes against Yazidis may be considered genocide <https://hritc.co/11083>

⁴⁴Article 13 of the Statute of the International Criminal Court, which states that: “The Court may exercise its jurisdiction with respect to the crime referred to in article 5 in accordance with the provisions of this Statute in the following cases: ... b- If the Security Council, acting under Chapter VII of the Charter of the United Nations, refers a situation to the Prosecutor in which one or more of these crimes appears to have been committed.

⁴⁵In application of the text of Article 39 of the United Nations Charter.

⁴⁶Article 5 of the Rome Statute.

⁴⁷Ghassan Ali Ali, Milad Adeeb Othman, “The Development of the Theory of International Responsibility,” Tishreen University Journal, Legal and Economic Sciences, Volume 44, Issue 4, 2022.

VII of the UN Charter,⁴⁸ specifically through non-military measures, as outlined in Article 41 of the UN Charter and Article 13(b) of the ICC's Rome Statute.⁴⁹

The UN Secretary-General has repeatedly emphasized in his reports that ISIS poses a threat to international peace and security. In Resolution 2249, adopted after ISIS's terrorist attacks in France and Egypt, the Security Council recognized the group's global threat potential, noting that these terrorist acts endanger peace and security worldwide. Furthermore, in all its resolutions concerning ISIS, the Security Council condemned terrorism in general and denounced ISIS's crimes, urging all states, international organizations, and regional bodies to actively cooperate in preventing, weakening, isolating, and disrupting terrorist threats.

On the other hand, according to Security Council resolutions, the crimes committed against religious and ethnic minorities in Iraq and Syria may amount to war crimes, crimes against humanity, and genocide. The Council has consistently reiterated in all these resolutions the necessity of holding accountable those individuals who have committed violations of international humanitarian law or infringements of human rights.

When the UN Security Council affirms that ISIS crimes may constitute war crimes, crimes against humanity, and genocide, and that the group poses a threat to international peace and security, it is incumbent upon the Council to act on this responsibility by referring ISIS's crimes to the International Criminal Court (ICC), which holds jurisdiction to prosecute such offenses. The Security Council has the authority to make

⁴⁸Alaq Najima, "Hindering the Role of the International Criminal Court in Combating Impunity," *Al-Mi'yar Journal*, Volume 26, Issue 7, 2022.

⁴⁹Zarqat Omar, "The Jurisdiction of the International Criminal Court to Consider Crimes of International Terrorism," *Journal of Law and Human Sciences*, Issue 25, Volume 1.

this referral in accordance with the Rome Statute that established the ICC.⁵⁰

However, under Article 17 of the Rome Statute, any Security Council referral must adhere to the principle of “complementary jurisdiction.”⁵¹ This means that the ICC’s jurisdiction is intended to supplement, not replace, national legal systems.⁵² Article 1 of the Rome Statute emphasizes this by stating that the Court’s jurisdiction is “complementary to national criminal jurisdictions.”⁵³ In practice, this means that the ICC cannot intervene if a national court is already investigating or prosecuting the case, or if a decision has been made by the national authorities not to prosecute after a thorough investigation. Additionally, the ICC may decline to take up a case if the matter has already been adjudicated or if the case does not meet the necessary gravity threshold for the Court to pursue further action.⁵⁴

Thus, applying the principle of complementary jurisdiction, the Security Council should only initiate the necessary steps to refer a case to the ICC Prosecutor if it determines that the relevant state is either unwilling or unable to conduct its own investigations and prosecutions.⁵⁵ Otherwise,

⁵⁰Article 13, paragraph b, of the Rome Statute.

⁵¹Louay Mohammed Hussein Al-Naif, “The Complementary Relationship between the International Criminal Court and the National Judiciary,” *Damascus University Journal of Economic and Legal Sciences*, Volume 27, Issue 3, 2011.

⁵²Xavier Philippe, “Punishment for Violations of International Humanitarian Law: The Problem of the Distribution of Jurisdiction between National and International Authorities,” *International Review of the Red Cross*, Vol. 90, No. 870, June 2008.

⁵³Mukhtalat Belkacem, “The Limits of Cooperation between the International Criminal Court and National Judiciaries in Combating Impunity,” *Journal of Legal and Social Sciences*, Volume 4-Issue 4, December 2019.

⁵⁴Article 17-1 of the Rome Statute.

⁵⁵Hortensia D. T. Guterres Bossi, “The Relationship between International Humanitarian Law and International Criminal Tribunals”, previous reference.

the admissibility of the case may be challenged before the Court on grounds of national jurisdiction over the matter.⁵⁶

It is worth noting that the Security Council's authority to refer cases to the ICC extends to all states, including those not party to the Rome Statute.⁵⁷ This means that the Council's referral power is bound only by the complementary jurisdiction principle and the requirement that the case involves a "threat to international peace and security."⁵⁸ Based on this framework, the Council has the ability to refer any case to the ICC, regardless of where the crime occurred or the nationality of the perpetrator.

In theory, it would be possible to refer ISIS crimes committed in the region of North and East Syria to the International Criminal Court (ICC), even though Syria itself has not ratified the ICC's Rome Statute.⁵⁹ A prime example of this precedent is the referral of the Darfur situation to the ICC under Security Council Resolution 1593 of 2005⁶⁰ and the

⁵⁶Saeed Talal Al-Dahshan, "Legal Obstacles Hindering the Work of the International Criminal Court," *Journal of Political Science and Law*. Issue 20, Volume 04, January 2020.

⁵⁷Ali Wahbi Deeb, "International Criminal Courts: Their Development and Role in Suppressing International Crimes", previous reference.

⁵⁸Saed Al-Aqoun, "Evaluation of the Prosecution System before the International Criminal Court," *Journal of Law and Humanities*, <https://www.asjp.cerist.dz/en/article/44284>

⁵⁹Ahmed Si Ali, "The Effectiveness of the Statute of the International Criminal Court in Prosecuting Violators of International Humanitarian Law," <https://www.asjp.cerist.dz/en/article/64264>, Balwas Maryam, "The Syrian Conflict and the Jurisdiction of the International Criminal Court to Prosecute Perpetrators of War Crimes", *Academic Journal of Legal Research*, Issue 2, 2018, <https://www.asjp.cerist.dz/en/article/71037>

⁶⁰This resolution was approved by eleven members of the Security Council, while four members did not vote and remained silent, including the United States of America and China..

referral of the Libya situation under Resolution 1970 of 2011, despite both Sudan and Libya not being signatories to the Rome Statute.⁶¹

This raises an important question: given that both the UN Security Council and the UN Secretary-General have recognized ISIS as a threat to international peace and security, and given that ISIS crimes in North and East Syria fall under the jurisdiction of the ICC, why has the Security Council not yet referred ISIS's case to the ICC?⁶² In other words, what obstacles are preventing the Council from fulfilling its responsibility to maintain international peace and security by referring ISIS crimes to the ICC?

Part Two: Obstacles to Referring ISIS Crimes to the International Criminal Court

Referring a specific case to the International Criminal Court (ICC) by the UN Security Council is not straightforward; various obstacles hinder such referrals.⁶³ These obstacles include limitations related to the powers of the Security Council itself, as well as those associated with the permanent member states.⁶⁴

First - Obstacles Related to the Powers of the Security Council

⁶¹Muhannad Ali Al-Ibrahim, "Rules of Evidence before the International Criminal Court" "An Applied Study on Some Cases Considered Before the International Criminal Court", Master's Thesis, Syrian Virtual University, 2022.

⁶²See, Human Rights Watch, "Syria and the International Criminal Court: Questions and Answers," September 2013, available at:<https://www.hrw.org/ar/news/2013/09/17/251132>

⁶³Shanabi Fouad, "Obstacles and Alternatives to Establish the Effectiveness of International Criminal Justice," Journal of Political Science and Law, Issue 11, September 2018, Volume 2.

⁶⁴Daoudi Mansour, "Improvements to Criminal Responsibility in the Statute of the International Criminal Court," Journal of Law and Political Science, Volume 5, Issue 1, 2019,<https://www.asjp.cerist.dz/en/article/102000>

The Rome Statute grants certain powers to the Security Council, some of which can be considered barriers to the ICC fulfilling its mandate of prosecuting serious international crimes.⁶⁵

For one, Article 16 of the Rome Statute allows the Security Council to suspend proceedings before the ICC by issuing a "request for deferral of proceedings."⁶⁶ This authority, often regarded as "highly problematic,"⁶⁷ can halt the ICC's work, obstruct its role in investigating and prosecuting, and hinder its efforts to combat impunity for serious international crimes.⁶⁸

Article 16 of the Rome Statute stipulates that the ICC is not permitted to initiate or continue an investigation or prosecution under the Statute for a period of twelve months if the Security Council requests this from the Court, as per a decision made under Chapter VII of the UN Charter. The Council may renew this request under the same terms.⁶⁹ This article thus grants the Security Council a power that effectively suspends the activity of the ICC, allowing it to halt the initiation or continuation of investigations or prosecutions for a full year, with the possibility of indefinite extensions if international peace and security are considered at risk.

⁶⁵Ahmed Mabkhouta, "The Path to Achieving International Criminal Justice between Reality and Hope, an Analytical Study in Light of the Statute of the International Criminal Court", *Journal of Political Science and Law* - Issue 12, November 2018 - Volume 02 - Arab Democratic Center - Germany - Berlin, Shadi Jameh, "The International Criminal Court between Practical Reality and Legal Ambition", *Tishreen University Journal for Scientific Research and Studies - Frozen Economic and Legal General Series* 40, Issue 1, 2018.

⁶⁶Ahmed Hussein, Ben Salehia Saber, "Obstacles to the International Criminal Court in Achieving Justice," *Journal of Law and Humanities*, Volume 15, Issue 2, 2022.

⁶⁷Najima Alaq, "Hindering the role of the International Criminal Court in combating impunity", previous reference.

⁶⁸redundant.

⁶⁹Article 16 of the Statute of the International Criminal Court.

The danger of this authority lies in the ability of the Security Council to impose its own perspective and allow political considerations to influence judicial processes.⁷⁰ Such interference from the Security Council, which often reflects conflicting international political interests,⁷¹ has been known to hinder investigations or trials at the international level. It is no secret that political deals and compromises frequently undermine the pursuit of justice, impeding efforts to prosecute and punish perpetrators of international crimes under the ICC's jurisdiction.⁷²

Another obstacle to achieving international criminal justice lies in the Security Council's authority to refer specific cases or situations to the International Criminal Court (ICC) under Article 13(b) of its Statute, a process that requires action under Chapter VII of the UN Charter. This arrangement risks turning the ICC into a subsidiary body under the Security Council's influence. Critics argue that the Council's referral authority creates a dual system of prosecution before the Court:⁷³ one that is judicial, where cases are initiated independently by the ICC Prosecutor or at the request of a member state, and another that is political, controlled by the Security Council, the UN's most powerful political entity.

⁷⁰Ben Bouaziz Assia, "The Role of Criminal Justice in Activating the Principle of Non-Impunity," *op. cit.*

⁷¹redundant.

⁷²Ali Wahbi Deeb, "International Criminal Courts: Their Development and Role in Suppressing International Crimes", previous reference.

⁷³See: Hazem Atlam, "Prosecution Systems before the International Criminal Court," published in *The International Criminal Court – The Challenge of Immunity*, Beirut Bar Association – Human Rights Institute – Beirut 2003, p. 119.

The Rome Statute's provision granting the Security Council the right to refer cases to the ICC Prosecutor has been widely criticized,⁷⁴ as it allows a political body to direct cases that are ideally legal matters to a judicial institution. Past experiences show that the Security Council's designation of situations as threats to international peace and security often involved political considerations⁷⁵ and the interests of influential countries.⁷⁶ For instance, the Security Council, under U.S. influence, issued the highly controversial Resolutions 1422⁷⁷ and 1487⁷⁸, which effectively exempted U.S. citizens from international prosecution.⁷⁹

Second - Obstacles Related to the Powers of the Permanent Members of the Security Council

For the Security Council to refer a case to the International Criminal Court (ICC), none of the Council's five permanent members must veto

⁷⁴Najima's relationship, "Hindering the role of the International Criminal Court in combating impunity", previous reference.

⁷⁵Nourredine Moro, "The Dominance of Politicization on the Work and Effectiveness of the International Criminal Court," *Journal of Political Science and Law* - Issue 15, May 2019 - Volume 10 - Arab Democratic Center - Germany - Berlin.

⁷⁶Ali Wahbi Deeb, "International Criminal Courts: Their Development and Role in Suppressing International Crimes", previous reference.

⁷⁷Resolution No. 1422, adopted by the Security Council at its 4572nd meeting, held on 12 July 2002, which stipulated that the Statute of the International Criminal Court, issued in Rome on 17 July 1998, would enter into force on 1 July 2002, and that States not parties to the Rome Statute would continue to exercise their responsibility within their national jurisdictions with respect to international crimes.

⁷⁸Resolution No. 1487 adopted by the Security Council at its 4772nd meeting, held on 12 June 2003, Ben Bouaziz Assia, "The role of criminal justice in implementing the principle of non-impunity", *op. cit.*

⁷⁹Baria Al-Qudsi, "The International Criminal Court: Its Nature and Jurisdiction - The Position of the United States of America and Israel towards It," *Damascus University Journal of Economic and Legal Sciences* - Volume 20 - Issue 2 - 2004, Alaq Najima, "Hindering the Role of the International Criminal Court in Combating Impunity."

the decision, as outlined in Article 27 of the UN Charter.⁸⁰ This requirement naturally hinders the Security Council from exercising its referral power when it conflicts with the interests of the five permanent members or their allies.

In instances where the Security Council issues a resolution to refer a crime committed by nationals of a non-signatory state to the ICC, or when an international crime occurs within a non-member state's territory, the permanent members must refrain from using their veto. This implies that the ICC cannot prosecute crimes committed within the territories of permanent member states—such as the United States, Russia, and China—who have yet to ratify the ICC Statute, nor can it pursue crimes committed by nationals of those states or by their allies, or crimes that take place within allied territories, if any permanent member exercises its veto power.

It's worth noting that among the permanent members of the Security Council, only France and the United Kingdom have signed the ICC's Rome Statute. The United States, China, and Russia are not ICC members.⁸¹ For the Security Council to refer the crimes committed by ISIS in northeast Syria to the ICC under Chapter VII of the UN Charter—as previously discussed—all of these countries must agree, with none exercising their veto power.

But will these countries agree to refer the ISIS case in northeast Syria to the ICC?

⁸⁰Article 27, paragraph 3, of the Charter of the United Nations states that: Decisions of the Security Council on all matters other than procedural matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members, provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting..

⁸¹Official website of the International Criminal Court:<https://www.icc-cpi.int>

Firstly, it's essential to remember that France, the United States, and the United Kingdom were among the founding members of the international coalition against ISIS, formed in 2014, which includes 73 countries committed to countering ISIS on multiple fronts, dismantling its networks, and challenging its global ambitions.⁸² In 2019, the coalition, in cooperation with the Syrian Democratic Forces (SDF), declared the military defeat of ISIS in its last stronghold in Baghouz, Syria. Moreover, some ISIS members are nationals of France, the United Kingdom, and the United States.

The United States has maintained a clear stance against the International Criminal Court (ICC) since its early days in the 1990s.⁸³ As a major global power, the U.S. does not feel obligated to work with the ICC and has actively opposed it.⁸⁴ Under President George W. Bush, the "American Service-Members' Protection Act" was enacted, prohibiting cooperation with the ICC and allowing the U.S. to cut military aid to countries that ratified the Rome Statute. It even authorizes the U.S. to use necessary means to repatriate any American detainee held by the ICC.⁸⁵

⁸²Official website of the International Coalition <https://theglobalcoalition.org/ar/>

⁸³While the United States refused to join it, launched a campaign against it, and forced dozens of countries following in its footsteps to sign bilateral agreements with it, in which they pledged not to hand over any American to the court if he was on their territory, and accuse him of committing war crimes. See Fadhil Al-Azzawi, "ISIS's Violations of International Humanitarian Law."

⁸⁴The United States signed the agreement on 12/31/2000 but withdrew its signature on 5/6/2002, thereby confirming that it had no intention at all of ratifying the agreement, committing to the principles and purposes of the court, or assisting it in carrying out its tasks. Indeed, the United States' dealings with the court were characterized by hostility and lack of cooperation. See Ali Wahbi Deeb, "International Criminal Courts: Their Development and Role in the Suppression of International Crimes," *op. cit.*, and Alaq Najima, "Hindering the Role of the International Criminal Court in Combating Impunity," *op. cit.*

⁸⁵Baria Al-Qudsi, "The International Criminal Court: Its Nature and Jurisdiction - The Position of the United States of America and Israel on It", previous reference.

From this, it's evident that the U.S. presence in the region and its leading role in the international coalition against ISIS may hinder efforts to refer ISIS crimes to the ICC. However, the U.S. is not the only state potentially blocking such a referral. France, another permanent member of the Security Council and signatory of the Rome Statute, also shows reluctance to prosecute or refer its nationals who joined ISIS to the ICC. For instance, on February 25, 2019, French President Emmanuel Macron reached an agreement⁸⁶ with former Iraqi President Barham Salih to try 13 French ISIS fighters captured in Syria in Iraqi courts under Iraq's anti-terrorism laws.

Russia and China, as permanent members of the Security Council, clearly do not wish to refer any cases related to the Syrian situation to the International Criminal Court. They have used their veto power multiple times regarding the Syrian situation. For instance, on May 22, 2014, these two permanent members opposed a draft resolution presented by France to the United Nations Security Council⁸⁷ that aimed to refer the situation in Syria to the International Criminal Court.⁸⁸

In summary, the authority of the five permanent Security Council members obstructs the referral of ISIS crimes to the ICC, as such a referral requires unanimous agreement and the absence of a veto by any of the five members.

However, a decision by the Security Council is just one method for the International Criminal Court (ICC) to obtain jurisdiction. International

⁸⁶Macron to meet Iraqi president on 26th of this month, news published on the website France24 official, <https://www.france24.com/ar/>

⁸⁷Hamdi Hanan, Shamlan Abdel Aziz, "The Impact of the Veto on the Role of the Criminal Court in Reducing Impunity," *Journal of Law and Political Science*, Volume 11, Issue 1, 2024.

⁸⁸The US and Russia are similar in their stance against the ICC. These two countries have withdrawn their signatures from the ICC Statute, which could hinder the Security Council from exercising this jurisdiction if it concerns their interests or the interests of countries loyal to them.

crimes can also be referred to the ICC by any state party to the Rome Statute, or investigations can be initiated by the prosecutor acting "on their own initiative." Nonetheless, unless the Security Council makes a referral, the ICC can only exercise its jurisdiction over territories or nationals of states that have ratified the Rome Statute or have accepted the Court's jurisdiction under Article 12, paragraph 3 of the Statute. Therefore, unless Syria decides to ratify the Rome Statute, the ICC will have no jurisdiction within Syrian territory or over individuals holding Syrian nationality.

Many ISIS elements, however, are of foreign nationality or hold dual citizenship, with some being nationals of state parties to the Rome Statute, such as citizens of European countries. Thus, these individuals can be prosecuted before the ICC⁸⁹ without going through the Security Council.⁹⁰ Additionally, there are non-European states that are parties to the Rome Statute, including four Arab countries with nationals who committed crimes in northern and eastern Syria. For instance, Tunisia, which became a state party to the Rome Statute in 2011, has many nationals who fought with ISIS. Similarly, there are several ISIS fighters who are nationals of the Hashemite Kingdom of Jordan, which is also a member of the Rome Statute. In such cases, regarding the nationals of countries like Tunisia and Jordan, the ICC can exercise its jurisdiction without the need for a Security Council referral or a request from the state with jurisdiction.

⁸⁹European Centre for Counterterrorism and Intelligence Studies, "Foreign Fighters – Legal Foundations and the International Covenant on the Repatriation of European Nationals," October 2021, available at:<https://www.europarabct.com/>

⁹⁰ Conseil de l'Europe; To prevent and punish crimes against Humanity against the possible genocide committed by Daech; rapport; 25 avril 2017;<https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2017/AS-JUR-2017-07-FR.pdf>

However, the procedures of the International Criminal Court (ICC) will only have positive effects on justice, accountability, and the fight against impunity if the Court's jurisdiction encompasses all ISIS members, regardless of whether they are nationals of states that are parties to the Rome Statute.⁹¹ This will only be achieved through a decision by the United Nations Security Council or Syria's ratification of the Rome Statute. Without a Security Council resolution, the ICC risks allowing those most responsible for serious violations (such as leaders of the organization who are nationals of non-party states, including Syrians, Iraqis, nationals from Gulf countries, and other Asian states) to escape punishment and prosecution. This could lead to a lack of trust among the people in northern and eastern Syria regarding international justice, perceiving it as incomplete.

The public may believe that the ICC will only investigate and prosecute foreign nationals involved with ISIS who hold citizenship from states party to the Rome Statute. Therefore, the people in northern and eastern Syria may need to consider establishing alternative local justice mechanisms to complement the efforts of the ICC, allowing for the prosecution of ISIS members who are nationals of non-party states, such as Syrians, Iraqis, and individuals from other Asian nationalities, before a local judicial body in accordance with the laws of the Autonomous Administration of North and East Syria.

Section Two: The Local Court Proposed for the Prosecution of ISIS Members

⁹¹Mark Latimer, Shabnam Mojtahedi, and Liana Tucker, "A Step Toward Justice...Current Accountability Options for Crimes Committed in Syria under International Law," *op. cit.*

In light of the international community's inaction, and given the security risks posed by the ongoing detention of ISIS members in northern and eastern Syria without trial since the fall of the Islamic State in Iraq and Syria (ISIS) in March 2019, the Autonomous Administration of North and East Syria has decided to prosecute ISIS criminals through its own efforts and in accordance with its laws, in alignment with international human rights law and international humanitarian law.

Such a decision is certainly justifiable (Subsection One), but the local prosecution process is not without difficulties and challenges that may impede the court's operations from a practical standpoint (Subsection Two).

Subsection One: Motivations and Justifications

There appear to be numerous motivations and justifications for the Autonomous Administration of North and East Syria's decision to prosecute ISIS members, some of which are legal and human rights-based, while others are security-related.

Firstly: Justice for Victims and Stability for the Region

The prosecution of ISIS members in northern and eastern Syria seems primarily aimed at providing justice for the victims and their families, as well as for the affected community, by holding accountable those who have committed heinous crimes against the peoples of the region. An official statement from the Autonomous Administration of North and East Syria indicated that "the trials will be public, fair, and transparent, ensuring the rights of the plaintiffs who are victims and their family members."⁹² The administration clarified that "this decision was made due to the international community's failure to respond to its calls for

⁹²Diaa Awda, "ISIS Fighters' Trials in Eastern Syria...An Announcement Raise Two Questions," available on Alhurra website, <https://www.alhurra.com/syria/2023/06/13/>

countries to repatriate their citizens from the organization, in the interest of upholding rights, ensuring justice for victims, and achieving social justice."⁹³

Moreover, prosecuting ISIS members can also contribute to achieving security and political stability in the region. By conducting trials and holding accountable those responsible for committing crimes, the likelihood of the resurgence of extremism and violence can be reduced, fostering peace and stability in areas that were under ISIS control and have been the scene of the organization's crimes and atrocities.

There is genuine concern about the potential return of terrorism to the region and the revival of the caliphate. Western counter-terrorism officials, as reported by the *New York Times* in May 2020, suggest that the longer foreign fighters are held in detention, "the more radicalized they become and the greater the likelihood of a mass escape."⁹⁴

Research by Human Rights Watch in several countries has shown that the failure to hold accountable perpetrators responsible for the most heinous international crimes can exacerbate violations in the future.⁹⁵

In this context, the incident at the Ghuiran "al-Sina'a" prison in Hasakah in 2022 serves as a stark example.⁹⁶ Notably, the Syrian Democratic Forces (SDF) manage, in addition to detention centers for ISIS fighters, over ten camps that shelter tens of thousands of families displaced by

⁹³redundant.

⁹⁴Human Rights Watch, "Syria: Criminal Justice for Serious Crimes under International Law," available at: <https://www.hrw.org/ar/news/2013/12/17/252144>

⁹⁵redundant.

⁹⁶Al Arabiya website, ISIS escape from Ghweiran prison and a curfew in Hasakah, <https://www.alarabiya.net/arab-and-world/syria/2023/08/27/>

the conflict, including non-Syrian wives of ISIS fighters and their children, in the al-Hol and Roj camps in Al-Hasakah province.⁹⁷

Secondly: Preventing Impunity

Combating the culture of impunity and promoting the rule of law can help deter terrorist activities and support the efforts of the Autonomous Administration of North and East Syria in their counter-terrorism initiatives.⁹⁸

The term "impunity" refers to situations where there are no effective measures in place to punish perpetrators of serious violations and crimes.⁹⁹ In international law, the principle of impunity is closely linked to the necessity of punishment, as it aims to achieve justice by satisfying the general sense of individuals and society.¹⁰⁰ Impunity often arises from a lack of judicial mechanisms capable of adjudicating violations of international law or due to the absence of political will at the international level, or the complexities of the political landscape in specific cases,¹⁰¹ as seen in the Syrian context.

⁹⁷See Al Furat Center for Studies, "ISIS Children in Camps and Rehabilitation Centers: Risks, Problems, and Containment Means," available at: <https://firatn.com/?p=3913>

⁹⁸According to Human Rights Watch, the international community—and the Security Council in particular—has long been in need of immediate and concrete steps to combat the current climate of impunity in Syria. As a first step, the Security Council should refer the situation in Syria to the International Criminal Court. More countries should join the call and make clear to reluctant Security Council members the need to address accountability. Human Rights Watch also believes that the ICC is the forum most capable of effectively investigating those bearing the greatest responsibility for abuses in Syria, and that the court can play a central role in the absence of any prospects for effective action by the Syrian national authorities. See: Human Rights Watch, "Syria: Criminal Justice for Serious Crimes under International Law," op. cit.

⁹⁹Practical Dictionary of Humanitarian Law, "Impunity"

¹⁰⁰Ben Bouaziz Asia, "The Role of Criminal Justice in Activating the Principle of Non-Impunity."

¹⁰¹Daas Asiya, "The Principle of Non-Impunity in International Law," Al-Basaer Journal of Legal and Economic Studies, Volume 2, Issue 3, March 2021.

According to the Human Rights Committee, which is tasked with promoting and protecting human rights, impunity manifests as the inability, legally or practically, to hold violators accountable for their actions through criminal, civil, administrative, or disciplinary proceedings, often due to the absence of any investigations that would allow for charges to be brought, arrests made, or trials conducted against those accused, followed by appropriate penalties and reparation for the harm inflicted upon victims.

In international human rights law, the concept of impunity signifies the failure to bring human rights violators to justice, thereby undermining the victims' rights to justice, access to national courts, and compensation, especially in countries where governmental authorities have committed mass atrocities against civilians.¹⁰²

Given that the international community has not taken action regarding the crimes committed by ISIS members in northeastern Syria, and that the Security Council has failed to fulfill its responsibilities in maintaining international peace and security¹⁰³ by not referring these crimes to the International Criminal Court—originally established to punish those responsible for international crimes that offend the collective conscience of humanity and to prevent them from evading

¹⁰²Alaq Najima, “Hindering the Role of the International Criminal Court in Combating Impunity,” *op. cit.*

¹⁰³The international community did not move a finger and did not have clear positions regarding the establishment of special international courts to hold these dangerous criminals accountable worldwide. The “Autonomous Administration” directed invitations to foreign countries to find a solution to this issue, while foreign countries called for the necessity of withdrawing prisoners who hold their nationalities, which received individual responses, far from collective action. See previously, pages 2 and beyond of the study.

justice¹⁰⁴—it has become essential to implement local measures and resort to local judicial mechanisms to fulfill this role.

Thirdly: The Ability to Prosecute and Support Counter-Terrorism Efforts

The decision¹⁰⁵ to prosecute ISIS criminals before a local court, through self-driven efforts and in a manner that meets international justice standards, reflects, at least theoretically, the progress made in the judicial institutions of northeastern Syria and their ability to conduct fair and independent trials for highly complex and challenging criminal cases.

On the other hand, demonstrating the Autonomous administration's commitment to combating terrorism, achieving justice for victims, and holding terrorists accountable can enhance its standing and international relations. All free nations have a moral and legal obligation to combat transnational terrorism and ensure justice for victims while holding perpetrators of war crimes, crimes against humanity, and serious violations of international human rights law accountable.

Moreover, prosecuting ISIS members could provide valuable insights into the organization, its regional and global networks, future plans, and the activities of its sleeper cells in the region since its military defeat in 2019, achieved through the joint efforts of the Syrian Democratic Forces and the international coalition led by the United States. This information

¹⁰⁴The Statute of the International Criminal Court affirmed its primary objective of ending impunity in paragraphs 4 and 5 of its preamble. See: Hamdi Hanan, Shamlan Abdel Aziz, “The Impact of the Veto on the Role of the International Criminal Court in Reducing Impunity”, *Journal of Law and Political Science*, Volume 11, Issue 1, 2024, Ibrahim Al-Sayed Ahmed Ramadan, “Mechanisms to Prevent Impunity for International Crimes within the Scope of the International Criminal Court”, *Egyptian Journal of International Law*, Issue 72, 2016.

¹⁰⁵Such a move is not without risks and challenges, see later on the page:25.

can be utilized to bolster efforts against ISIS and prevent future attacks in the region or in other countries.

Fourthly: Rehabilitation and Reintegration into Society

Part of the trials could include rehabilitation programs, supported by relevant local and international organizations, for those who were not directly involved in committing crimes or who may prove their innocence.¹⁰⁶

Fifthly: Prolonged Detention Without Trial

Legal jurisprudence regarding human rights rejects indefinite detention, which can be deemed a violation of international human rights law. The prolonged detention of individuals places a significant burden on the Autonomous administration of northeastern Syria, both in terms of security and human rights. This includes ensuring access to healthcare, food, and proper living conditions, as well as maintaining communication with their families, thereby avoiding any violations of international humanitarian law and international human rights law.¹⁰⁷

In this context, Lita Tyler, a counter-terrorism expert at Human Rights Watch, has called for the international community to either provide support for the trials taking place in northeastern Syria, including resources, or to conduct the trials in the countries of the detainees or in a third country.¹⁰⁸ Tyler stated, "Anything less would not only constitute a violation of these detainees' rights to a fair trial, but it would also be a

¹⁰⁶Yasmin Souka, "Reflecting on the Past and Transitional Justice: Building Peace through Accountability," *International Review of the Red Cross*, Vol. 88-No. 862-June 2006.

¹⁰⁷See Amnesty International, "In the aftermath of ISIL's defeat: Injustice, torture and death in detention in north-east Syria", No. 24/7752/2024, 2024, available at: <https://www.amnesty.org/ar/documents/mde24/7752/2024/ar/>

¹⁰⁸Human Rights Watch, "Syria: Criminal Justice for Serious Crimes under International Law."

slap in the face to the victims of ISIS and their families who deserve to see justice served for the crimes of the organization." ¹⁰⁹

While prosecuting ISIS members in northeastern Syria through a local court and self-driven efforts can be a significant step towards achieving justice, preventing impunity, ensuring stability in the region, and rebuilding society while supporting international counter-terrorism efforts, there are still numerous difficulties and significant challenges that lie ahead in establishing this court and conducting trials for ISIS elements.

Subsection Two: Challenges and Difficulties

Although the Autonomous administration has decided to hold ISIS perpetrators accountable for the atrocities they committed against the people of northeastern Syria, the local and regional security conditions, the vast number of detained individuals, and the complexities of international criminal cases present significant challenges to conducting trials for ISIS members at this time. In other words, there are considerable challenges and numerous difficulties that may hinder the work of the local court responsible for adjudicating crimes committed by the ISIS terrorist organization.

First: Judicial Infrastructure

Serious crimes require specialized judges and terrorism experts for investigation and trial. Cases involving serious violations of international humanitarian law and international human rights law—such as war crimes and crimes against humanity committed by ISIS members in northeastern Syria—tend to be extremely complex in terms

¹⁰⁹Human Rights Watch, “Syria: Criminal Justice for Serious Crimes under International Law”, previous reference.

of investigation, evidence, defense, and sentencing. These cases often involve hundreds of pieces of evidence and witnesses. Additionally, perpetrators are often individuals who held or continue to hold high positions within the organization or are influential figures associated with it. Pursuing individuals who ordered crimes without directly participating in their commission or assuming leadership responsibility is also a challenging process. Identifying these individuals and proving the links between actions on the ground and orders issued by leadership require significant expertise in prosecution and judiciary matters.

Conversely, it is notable that the judicial infrastructure in northeastern Syria is incomplete or still in the process of development and lacks the necessary human resources, judicial expertise, and qualified lawyers specializing in complex criminal cases and the most serious international crimes, particularly the cross-border and temporal terrorism of ISIS. This shortfall may affect the ability to ensure fair trials and achieve justice.

Second: Security Challenges

The security situation in northeastern Syria is unstable, making it difficult to organize fair and secure trials. On one hand, many areas in northeastern Syria continue to face significant security threats from dormant ISIS cells. These cells can pose a considerable security risk to the courts, judges, witnesses, and lawyers, creating a major obstacle to providing a safe environment for conducting trials. The region still witnesses sporadic terrorist operations carried out by the organization's cells, and acts of retaliation and violence against judges, prosecutors,

witnesses, victims, and even their families are possible.¹¹⁰ These individuals naturally require special protection, both during the investigation phase and throughout the trials.

It is worth mentioning that the Rome Statute mandates the protection of witnesses who come forward to testify in criminal trials. However, the division of the Syrian geography among various armed groups and foreign armies complicates the protection of victims and witnesses significantly. This issue is particularly challenging for victims and witnesses who still live in areas controlled by other factions, such as the cities and regions occupied by the Turkish army and armed opposition groups supported by Turkey (Ras al-Ayn/Sere Kaniye, Tal Abyad/ Gire Spi, Jarablus, Azaz, and Afrin).

Moreover, the obligation to protect witnesses and victims of the ISIS terrorist organization extends beyond merely safeguarding them from threats or retaliation. Survivors of torture and sexual violence, in particular, who testify in criminal trials may also require additional support services, including medical and psychological assistance to address the physical and psychological trauma they suffered during ISIS's control over vast areas of North and East of Syria.¹¹¹ There may also be a need to provide protection and economic support for survivors of rape, who, after speaking out about their experiences, could face abandonment or threats from their families due to the associated stigma. In the absence of a comprehensive plan to address witness protection and provide the necessary psychological, medical, and economic

¹¹⁰Luke Wallin, "Victims and Witnesses of International Crimes: From Protection to Expression," *International Review of the Red Cross*, Selections from 2002.

¹¹¹See: Al-Furat Center for Studies, "ISIS Violations in North and East Syria... Legal Description and specialized Courts (Part One)," previous reference.

support, the judicial authorities in northeastern Syria may violate an ethical obligation if they proceed with such trials.¹¹²

Consequently, the criminal proceedings must primarily consider the issue of victims who testify and the suffering and risks that this process poses to them. Here, the importance of providing judges and lawyers with appropriate and specialized training in conducting interrogations, particularly when questioning witnesses, comes to the forefront to ensure the safety of those being interrogated. Many of them are victims of the crimes for which the defendants are on trial.¹¹³ This necessitates that the Autonomous Administration of northeastern Syria secures protection for the courts, judges, and witnesses against potential threats from ISIS and its supporters, as well as dormant cells.

On another front, the repeated Turkish assaults on northeastern Syria and its economic and security infrastructure¹¹⁴ complicate the prosecution of ISIS members. Such attacks benefit dormant ISIS cells¹¹⁵ and encourage them to free their members from detention centers or during planned trials, especially given that recent Turkish assaults have targeted facilities housing ISIS detainees.¹¹⁶

¹¹²Mark Latimer, Shabnam Mojtahedi, and Liana Tucker, “A Step Toward Justice...Current Accountability Options for Crimes Committed in Syria under International Law,” *op. cit.*

¹¹³Anne-Marie La Rosa, “Reviewing the effectiveness of sanctions as a means of achieving better respect for humanitarian law”, *International Review of the Red Cross*, Vol. 90, No. 870, June 2008.

¹¹⁴See: Human Rights Watch, “Northeast Syria: Turkish Strikes Cut Water, Electricity,” October 2023, available at: <https://www.hrw.org/ar/news/2023/10/26/northeast-syria-turkish-strikes-disrupt-water-electricity>Hiba Zayadin, Human Rights Watch, “Turkish Bombing Wreaks Havoc in Northeast Syria,” February 2024, available at: <https://www.hrw.org/ar/news/2024/02/09/turkiyes-strikes-wreak-havoc-northeast-syria>

¹¹⁵ Jean-Pierre Chevènement, “La Turquie brings a certain responsibility to the development of Daesh,” available at the following address:https://www.chevenement.fr/La-Turquie-porte-une-certaine-responsabilite-dans-le-developpement-de-Daesh_a1782.html

¹¹⁶Sky News Arabia website: “The Turkish attack in Syria; does it represent a ‘kiss of life’ for ISIS?” <https://www.skynewsarabia.com/middle-east/1574762->

Finally, both internal and external political situations may influence the trial process and heighten the challenges faced by the Autonomous Administration of northeastern Syria. Political and social tensions, particularly those occurring in Deir Ez-Zor with support and direction from other parties involved in the Syrian crisis, continue to pose a threat to security and stability in the region. Conducting fair, independent, and secure trials under such conditions may be difficult, as it is essential to ensure first and foremost that the local community accepts the trial's outcomes and to promote social unity and stability in the area.

Third: Legal and International Issues

The current legislation and legal procedures in northeastern Syria may encounter difficulties in prosecuting ISIS members as war criminals,¹¹⁷ particularly concerning investigations and cooperation with relevant international bodies in conducting trials. Foremost among these legal issues are the guarantees for a fair trial in accordance with local and international laws, as well as the principles underpinning fair trial standards, including the legality of crimes and penalties, the non-retroactivity of criminal laws, the right to appeal,¹¹⁸ and the presumption of innocence.¹¹⁹ Furthermore, it is essential to ensure procedural fairness

¹¹⁷Laour Hassan Hamza, “War Criminals under the Rules of International Humanitarian Law,” *Journal of Humanities*, Volume 32, Issue 3, December 2021.

¹¹⁸Saadoun Fatima, “The Principle of Two-Stage Litigation as a Guarantee of the Accused’s Right to a Fair Trial,” *Tabna Journal of Academic Scientific Studies*, Volume 5, Issue 2, 2022.

¹¹⁹Dahia Abdel Latif, “General Principles as Guarantees for Achieving a Fair International Trial,” *Journal of Legal Studies and Research*, Issue 10, September 2018, Wardia Tasht, Sabrina Farhati, “The Principle of Presumption of Innocence and Procedural Protection of Rights and Freedoms,” *Journal of Rights and Freedoms*, Volume 10, Issue 2, 2022.

and to provide conditions for transparent and equitable trials, alongside protecting the rights of both defendants and their victims.¹²⁰

While the Autonomous Administration is in the process of prosecuting individuals who have committed heinous terrorist crimes against the region's people, it must also ensure the right to defense and full legal representation for the accused, which may require appointing lawyers at the administration's expense if necessary.

However, conducting trials for such a large number of ISIS members, exceeding 10,000 individuals, necessitates significant funding and financial support that exceeds the capabilities of the Autonomous Administration of northeastern Syria. Consequently, courts and public prosecutors may face shortages in essential financial and human resources needed to handle the volume and complexity of cases associated with ISIS members. As a result, the administration may need financial assistance from countries interested in prosecuting ISIS elements, as well as from the United Nations itself, which holds a primary responsibility for conducting such trials, given that the atrocities and crimes of this organization have adversely impacted the global human community, not just the local population.¹²¹

Moreover, international terrorism cases inherently require international cooperation and coordination with other nations, particularly those from which ISIS members originate. Preventing anything that threatens the security and stability of human life and combating any actions that

¹²⁰Awady Farid, "The Standards of a Fair and Impartial Criminal Trial and Its Close Relationship to the Human Rights System: The Right to a Fair and Impartial Trial as a Model," *Journal of Law and Political Science*, Volume 9, Issue 2, 2022.

¹²¹See: Ould Youssef Mouloud, "The Right of the International Community to Punish International Crimes in Light of the Statute of the International Criminal Court," *Scientific Research Notebooks*, Issue 2, 2016. <https://www.asjp.cerist.dz/en/article/113035>

involve such threats necessitate mutual legal assistance within the international community. However, the absence of international recognition for the judicial authorities in northeastern Syria, or the lack of acknowledgment of northeastern Syria as a constitutional entity, undoubtedly affects the legitimacy and legality of the court that is to be established. This situation also hampers the acquisition of the necessary international support and cooperation to conduct such trials.

In other words, while prosecuting ISIS members in northeastern Syria is regarded as an international issue that contributes to the maintenance of international peace and security and supports global counter-terrorism efforts, the lack of international recognition for the Autonomous Administration's institutions and the complexities of the broader Syrian landscape may make it challenging to achieve international agreements or coordination on this matter. This difficulty is particularly evident in the exchange of information, evidence, and judicial and criminal expertise, ultimately hindering the quest for justice.

Fourth: Evidence

Gathering strong physical legal evidence and reliable testimonies to prove the involvement of all ISIS members in committing crimes can be challenging. Even when certain pieces of evidence, such as photographs, videos, and witness testimonies, are obtained, the question remains as to whether this evidence is sufficient to reach a conviction without the need for further proof. Particularly since prosecutors do not initiate trials unless there is enough evidence for a conviction.¹²² Furthermore, the court that is to be established may face difficulties in identifying the accused, especially given the large number of foreign fighters from

¹²²Mark Latimer, Shabnam Mojtahedi, and Liana Tucker, "A Step Toward Justice...Current Accountability Options for Crimes Committed in Syria Under International Law."

various European, Asian, and African countries, in addition to Syrians and Iraqis, who often lack official documents proving their identities or nationalities.

Fifth: Humanitarian Challenges

Ensuring the rights of the accused to receive fair trials in accordance with international human rights standards presents a significant challenge under the current circumstances in the region. Among the fundamental guarantees for a fair trial are the independence of the judiciary and the impartiality of the judge,¹²³ which are enshrined in various international human rights agreements and charters.¹²⁴

It is also essential to guarantee the accused, even if they are terrorists, the right to be tried in person and to defend themselves in order to achieve a fair trial. According to the International Covenant on Civil and Political Rights, "Everyone charged with a criminal offense shall be entitled to a fair trial."¹²⁵ Therefore, in the interest of justice and in line with international standards for fair trials, the right of any person, whether a suspect or accused, to defend themselves personally or through legal counsel before an independent court and an impartial judge must be ensured, free from any political or social pressure. The judiciary must be free from all influences, fulfill its mandated role, and grant every individual the right to seek redress and protect their rights or contest the

¹²³Farija Muhammad Hisham, "Guarantees of the Right to a Fair Trial in International Human Rights Covenants," Al-Fikr Magazine, Issue 10, Dr.T.

¹²⁴The independence of the judiciary has been stipulated in many international charters and treaties, including the Universal Declaration of Human Rights of 1948 in Article 10/2, Article 4 of the International Covenant on Civil and Political Rights of 1966, Article 6 of the European Convention on Human Rights, and Article 8 of the American Convention on Human Rights.

¹²⁵International Covenant on Civil and Political Rights, Article 14, paragraph (3, d).

accusations against them, safeguarding them from any form of aggression.¹²⁶

The independence of the judiciary, the impartiality of judges, and enabling the accused to exercise their right to defense are effective tools for achieving justice and protecting individuals' fundamental rights and freedoms.¹²⁷ Such matters can only be realized if the judiciary is independent from the other branches of government.

It is important to note that, under customary international law,¹²⁸ deprivation of the right to a fair trial may rise to the level of a war crime in non-international armed conflicts and a crime against humanity in both international and non-international armed conflicts.¹²⁹ Denying the right to a fair trial can constitute a crime against humanity when it is widespread, systematic, and directed against a specific group.

A crime against humanity is defined as "the persecution of a specific group for political, racial, national, ethnic, cultural, religious, gender-related reasons, or any other grounds universally acknowledged by

¹²⁶This is where international human rights law and international humanitarian law overlap. International human rights law complements international humanitarian law by providing judicial guarantees for all detainees during international and non-international armed conflicts. Article 14 of the International Covenant on Civil and Political Rights is particularly relevant in this area. Criminal detainees also have the right to a fair trial during armed conflicts. This requires that they be sentenced by an independent, impartial and regularly constituted court. They must be informed promptly of the charges against them, allowed to communicate with counsel of their own choosing, and given adequate time and equal opportunities with the opposing party to prepare their defense. Criminal detainees must be tried in their presence, without undue delay and in public proceedings. They may not be compelled or compelled to testify against themselves or to confess guilt.

¹²⁷Far Jamila, "Judicial Independence and Guaranteeing the Right to Defense to Ensure a Fair Trial," *Al-Mofaker Magazine*, Issue 15, June 2017.

¹²⁸As is the case in the Statute of the International Criminal Court.

¹²⁹The essential elements of the war crime of denial of a fair trial consist of: lack of independence as demonstrated by political influence on the judiciary and lack of impartiality of the court (for example, a biased judge or judicial system) or denial of judicial guarantees recognized as indispensable for a fair trial, including denial of the trial itself.

international law as impermissible." ¹³⁰ The definition of persecution includes "the deprivation of a fundamental right." ¹³¹ Therefore, since the right to a fair trial is a fundamental right, its systematic and widespread denial to a specific group may constitute persecution as a crime against humanity.

Finally, questions arise regarding the legitimacy of local special courts as anti-terrorism tribunals and whether they comply with the right to a fair trial. International humanitarian law remains silent on resorting to such courts, while the Human Rights Committee has affirmed that, to align with international human rights law obligations, special courts must be independent and neutral. The independence requirement, according to this committee, pertains to "the processes and qualifications for appointing judges, the conditions governing their promotion, transfer, suspension, and removal from office." This demand also includes the actual independence of the judiciary from political interference by the executive and legislative branches.

Regarding the condition of neutrality, the committee has emphasized that judges should not be influenced by personal biases or misconceptions, and courts must maintain an appearance of impartiality.¹³²

It is noteworthy that the humanitarian challenges related to the trial of ISIS elements do not stop at ensuring fair trials but may extend beyond the trials and sentencing. Defendants convicted of belonging to ISIS face difficulties in rehabilitation and reintegration into society. This requires

¹³⁰Article 7 of the Statute of the International Criminal Court.

¹³¹redundant.

¹³²United Nations, Human Rights, "Basic Principles on the Independence of the Judiciary", available at: <https://www.ohchr.org/ar/instruments-mechanisms/instruments/basic-principles-independence-judiciary>

significant efforts and substantial resources to provide employment opportunities, education, and psychological and social support for the accused. Herein lies the need for collaborative efforts from the international community, as well as local and international organizations, to ensure justice is achieved, hold those responsible for crimes accountable, and facilitate their rehabilitation and reintegration into society simultaneously.¹³³

Conclusion:

In this research, I examined the issue of ISIS detainees in North and East Syria, which represents a significant and dangerous aspect of the legacy left by the organization in the region, despite the collapse of the Islamic State in Iraq and Syria in March 2019 following the military defeat of this terrorist group through the joint efforts of the Syrian Democratic Forces (SDF) and the international coalition against ISIS led by the United States. I divided this study into two main parts. In the first part, I explored the legal characterization of ISIS violations in North and East Syria in accordance with international criminal law, particularly the Rome Statute. The second part of this study focused on investigating the most important legal avenues and judicial mechanisms for prosecuting ISIS members, relying on international criminal case law that is similar to the crimes and atrocities committed by ISIS against the peoples of the North and East Syria region. In light of this, I reached several conclusions and recommendations:

First: Findings

¹³³Zaid Hassan Ali Al-Kartani, "Policies to Promote Peaceful Coexistence and Integration in Areas Liberated from ISIS," *Transformations Magazine*, Volume 2, Issue 1, January 2019.

Firstly, from our discussion in the first part of the study regarding the legal characterization of ISIS violations committed in North and East Syria, it is evident that the armed conflict in Syria falls under the concept of non-international armed conflicts. Consequently, all parties to the conflict, including the terrorist organization ISIS, are subject to international humanitarian law and international human rights law.

Secondly, during its military control over vast areas of North and East Syria, ISIS committed heinous and atrocious crimes against religious and ethnic minorities in the region, which could amount to war crimes, genocide, and crimes against humanity, according to the provisions of Articles 6, 7, and 8 of the Rome Statute of the International Criminal Court.

Thirdly, according to Security Council resolutions and reports from international human rights organizations, ISIS constitutes a threat to international peace and security. Such a threat does not cease with the military defeat of this terrorist organization but continues as long as its legacy remains unresolved, especially regarding the issue of its detained members in North and East Syria.

Fourthly, the crimes committed by ISIS members in the region fall under the concept of international crimes, thereby falling within the substantive jurisdiction of the International Criminal Court.

Fifthly, despite this, the international community has failed to act and has shirked its responsibilities in prosecuting and holding ISIS criminals accountable for the crimes they committed, whether before the International Criminal Court or by establishing a special international court by decision of the Security Council.

Finally, in continuation of efforts to combat international terrorism and to protect the international community as a whole and the peoples of the free world, the Autonomous Administration of North and East Syria

requires international cooperation and support to assist in dismantling the legacy of ISIS in the region. This is particularly important regarding the prosecution of ISIS members before a local court and providing the necessary logistical, financial, and judicial expertise for criminal investigations and trials in accordance with international human rights standards.

Second: Recommendations

First, to achieve a fundamental and sustainable solution to the issue of ISIS members, we face two main options. The first and most appropriate option is for the concerned foreign countries to repatriate their nationals held in North and East Syria and prosecute them on their own territories, in collaboration and coordination with the Autonomous Administration's institutions regarding the provision of evidence and witnesses. The second option centers on prosecuting ISIS members before the International Criminal Court, which is the existing court with the jurisdiction to hear such international crimes. Therefore, we call on the Syrian government to ratify the Rome Statute of the International Criminal Court. If this does not occur, the Security Council must assume its responsibilities in maintaining international peace and security by referring ISIS crimes to the International Criminal Court or establishing a special international court for the prosecution of ISIS members.

Secondly, regarding ISIS members of Syrian nationality, it is possible to prosecute them before a Syrian court specifically established to address the crimes committed by the organization within Syrian territory and against the Syrian community as a whole. This requires coordination and cooperation between the Syrian government and the Autonomous Administration of North and East Syria to establish this national court to prosecute ISIS members and achieve justice for the Syrian people.

Finally, due to the current international and regional circumstances, the international coalition to combat ISIS, led by the United States, is more than ever required to support the efforts of the Autonomous Administration and its military and security forces in fighting ISIS terrorism, and to address the various risks posed by the organization's legacy in the region. This includes concerns related to the activities of its sleeper cells, the situation of its women and children in camps and shelters, and the detention of its members.

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