

EXAMINING THE DIMENSIONS OF WAR CRIMES IN THE THIRD GENERATION OF INTERNATIONAL CRIMINAL COURTS

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ABSTRACT

This article explores the scope and implications of war crimes within the context of the third generation of international criminal courts. War crimes, which include atrocities such as ethnic cleansing, prisoner executions, rape, and civilian bombings, are serious breaches of international humanitarian law. The article traces the development of the concept of war crimes from its early references in the Hague Convention of 1899 to the pivotal advancements following the Nuremberg Trials in 1945 and the establishment of the international criminal court (ICC) in 2002. The ICC's mandate to prosecute individuals for genocide, crimes against humanity, and war crimes represents a significant leap in international justice. This study delves into the challenges of prosecuting war crimes, such as jurisdictional issues, political considerations, and the difficulties of evidence collection in active conflict zones. It also discusses the principles of distinction and proportionality, which are essential to international humanitarian law, especially in the context of modern warfare involving non-state actors and advanced technologies. The article emphasizes the need for continual adaptation of legal frameworks to address new challenges and ensure accountability. The evolving interpretation and prosecution of war crimes reflect the international community's persistent efforts to maintain justice, prevent atrocities, and achieve enduring peace.

Keywords: Third Generation, War Crime, International Criminal Courts, Nuremberg Trials.

INTRODUCTION

The term "war crimes" brings to mind distressing images of concentration camps, ethnic cleansing, prisoner executions, rape, and the bombing of defenseless cities and towns. These crimes represent severe violations of human rights and international law, involving acts of violence that exceed the boundaries of lawful warfare. The concept of war crimes is relatively recent and was first loosely defined in the Hague Convention of 1899. War crimes broadly refer to breaches of international humanitarian law, involving illegal acts committed during armed conflicts. These crimes are a subset of international crimes, requiring a clear connection to the context of armed conflict.

The origins of modern war crimes can be traced to the aftermath of World War I, with the establishment of the League of Nations and initial efforts to hold individuals accountable for violations during wartime. However, it was only after World War II that the term "war crimes" became integral to international law. The Nuremberg Trials, based on the London Charter of the International Military Tribunal established on August 8, 1945, were crucial in this regard. These trials prosecuted key leaders of Nazi Germany for crimes against peace, war crimes, and crimes against humanity.¹

War crimes are considered a subset of crimes against humanity. While crimes against humanity involve offenses by governments against their own citizens, war crimes generally

occur in occupied territories. This distinction was not addressed in the Nuremberg Charter. Historically, acts such as treason have been prosecuted as war crimes among civilized nations across different eras. The Geneva Conventions of 1949 further clarified war crimes, setting legal standards for humanitarian treatment during war and protections for the wounded and sick, shipwrecked sailors, prisoners of war, and civilians.

A significant milestone in the prosecution of war crimes was the establishment of the International Criminal Court (ICC) in 2002. Created by the Rome Statute, the ICC is a permanent tribunal for prosecuting individuals for genocide, crimes against humanity, and war crimes (International Committee of the Red Cross, 2014). The court represents a critical step in the international community's effort to hold perpetrators of severe crimes accountable and provide justice for victims.²

War crimes include a wide range of offenses such as willful killing, torture, hostage-taking, intentional attacks on civilian populations, and the use of prohibited weapons. These prohibitions are rooted in the principles of distinction and proportionality, fundamental to international humanitarian law. The principle of distinction requires parties to a conflict to differentiate between combatants and non-combatants, directing military operations only at legitimate military targets (Schabas, 2012). The principle of proportionality forbids attacks causing incidental civilian loss or damage that would be excessive relative to the anticipated military advantage.³

Prosecuting war crimes faces several challenges, including issues of jurisdiction, political will, and evidence availability (Bassiouni, 1999). Many war crimes occur in ongoing conflicts, complicating the collection of reliable evidence and securing witness testimonies. Political considerations often influence the international community's response to war crimes, affecting states' willingness to cooperate with investigations and prosecutions.⁴

Recently, there has been increased recognition of the need to address the root causes of war crimes and enhance prevention mechanisms. Efforts include promoting adherence to international humanitarian law, strengthening accountability mechanisms, and supporting international and national courts' work. Education and training for military personnel on the laws of war, alongside initiatives to protect and support victims, are vital to these efforts.

The evolving nature of warfare, with the rise of non-state actors and increasing use of technology, presents new challenges for applying international humanitarian law and prosecuting war crimes. The international community must continuously adapt and strengthen legal frameworks to address these emerging issues and ensure accountability for war crimes. In summary, the concept of war crimes has significantly evolved over the past century, influenced by historical events, legal developments, and ongoing international efforts to uphold humanity and justice in war. Prosecuting war crimes is a critical part of the global effort to prevent atrocities, deliver justice for victims, and promote lasting peace and security.

DEFINITION OF WAR CRIME

The term "war crime" was first formally defined in the statutes of the Nuremberg and Tokyo International Military Tribunals as violations of the laws and customs of war. This term did not appear in the four Geneva Conventions; instead, these treaties addressed gross violations and criminalized them. The First Additional Protocol explicitly lists severe breaches of treaties and protocols as war crimes, while the Second Additional Protocol outlines criminal offenses related to armed conflicts.⁵

In customary international humanitarian law, the term "war crime" is predominantly used, although "serious violations of humanitarian law" also appears. The statute of the

International Criminal Court (ICC) mentions war crimes as one of the international crimes under its jurisdiction and provides specific examples.

War crimes occur when individuals, civilians, combatants, or other persons violate humanitarian laws during armed conflict. When these violations are severe or gross, they qualify as war crimes. These humanitarian rules include the laws and customs of war and other established norms of international law governing armed conflicts.

The practice of nations, both internationally and domestically, as well as documentation of war crimes, indicates that severe violations endanger lives or protected properties, such as causing death, serious injury, or destruction of civilian property, or violating significant human values, such as humiliating treatment of individuals. For instance, a combatant seizing a piece of bread from an occupied territory is not considered a gross violation.⁶

EXAMPLES OF WAR CRIMES

The ICC has jurisdiction over war crimes, particularly when they are part of a widespread or systematic policy. According to Article 8 of the ICC Statute, war crimes in Grave breaches of the Geneva Conventions⁷ include willful killing, torture or inhumane treatment, including biological experiments, causing great suffering or serious injury to body or health, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly, compelling a prisoner of war or other protected person to serve in the forces of a hostile power, depriving a prisoner of war or other protected person of the right to a fair trial, unlawful deportation, transfer, or confinement and taking hostages. Other serious violations of the laws and customs applicable in international armed conflict is Intentionally directing attacks against civilian populations or civilian objects, intentionally launching attacks knowing, cause to excessive incidental civilian loss, injury, or damage, attacking personnel, installations, material, units, or vehicles involved in a humanitarian or peacekeeping mission, using prohibited weapons or methods of warfare, outrages upon personal dignity, such as humiliating and degrading treatment, committing rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence, using civilians or other protected persons to shield military operations, intentionally starving civilians, conscripting or enlisting children under the age of 15 into armed forces or using them to participate actively in hostilities; And serious violations of Article 3 common to the four Geneva Conventions (non-international armed conflict) include violence to life and person, in particular, murder, mutilation, cruel treatment, and torture, committing outrages upon personal dignity, particularly humiliating and degrading treatment, taking hostages, passing sentences and carrying out executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees and other serious violations of the laws and customs applicable in non-international armed conflicts include intentionally directing attacks against civilian populations or civilian objects, attacking personnel, installations, material, units, or vehicles involved in a humanitarian or peacekeeping mission, attacking buildings dedicated to religion, education, art, science, or charitable purposes, historical monuments, hospitals, and places where the sick and wounded are collected, provided they are not military objectives, pillaging a town or place, employing prohibited weapons or methods of warfare.⁸

The intentional targeting of civilians during conflict is considered a war crime under international law. This principle is reinforced by global jurisdiction norms, which allow for the prosecution of war crimes regardless of where they were committed. Human Rights Watch, among other organizations, advocates for holding perpetrators accountable to uphold

international humanitarian standards. In conclusion, the definition and examples of war crimes as outlined by international legal instruments underscore the severe nature of these offenses and the global commitment to prosecuting them. The evolving legal frameworks reflect the international community's resolve to address the complexities of modern warfare and ensure justice for victims of war crimes.

HISTORICAL CONTEXT AND EVOLUTION OF WAR CRIMES

War crimes have a multifaceted and evolving history deeply rooted in the broader development of international humanitarian law. Understanding this historical context is essential to grasp how the modern concept of war crimes has been shaped by various legal, political, and social influences over time. The notion of war crimes can be traced back to ancient civilizations where rudimentary codes of conduct during warfare were established. However, these early efforts were inconsistent and lacked formal international recognition. Significant progress was made in the late 19th and early 20th centuries when more systematic attempts to regulate the conduct of war began.⁹

The Hague Conventions of 1899 and 1907 were among the first international treaties to establish rules of warfare. These conventions outlined the rights and duties of belligerents, the treatment of prisoners of war, and the protection of civilians and property. Despite these advancements, enforcement mechanisms were weak, and violations were widespread during World War I.

The Aftermath of World War I

World War I exposed the inadequacies of existing legal frameworks in addressing wartime atrocities. In response, the Treaty of Versailles (1919) included provisions for prosecuting war criminals, although these measures were largely symbolic and ineffective. The Leipzig War Crimes Trials (1921) were one of the first attempts to hold individuals accountable for war crimes (Best, 1997), but their limited scope and lack of enforcement reduced their impact.¹⁰

World War II and the Nuremberg Trials

The unprecedented scale of atrocities during World War II, including the Holocaust, necessitated a robust legal response. The establishment of the Nuremberg Trials marked a significant turning point in the prosecution of war crimes. The London Charter of the International Military Tribunal (1945) provided a legal basis for prosecuting major war criminals of the Axis powers (Ghaeminasab & Dafchahi, 2024a). The Nuremberg Trials were groundbreaking in several ways. They introduced the concepts of "crimes against humanity" and "crimes against peace" alongside war crimes, broadening the scope of international criminal law. The trials established that individuals, including state leaders, could be held accountable for their actions, rejecting the defense of obedience to superior orders. The principles set forth in Nuremberg were later affirmed in the Universal Declaration of Human Rights (1948) and the Geneva Conventions (1949).

The Cold War Era and Ad Hoc Tribunals

During the Cold War, the prosecution of war crimes faced significant challenges due to geopolitical tensions. However, the establishment of ad hoc tribunals in the 1990s, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International

Criminal Tribunal for Rwanda (ICTR), revitalized international efforts to address war crimes. The ICTY and ICTR were instrumental in developing international criminal jurisprudence, setting precedents for the prosecution of genocide, war crimes, and crimes against humanity. These tribunals demonstrated the international community's commitment to justice, even in complex and politically charged conflicts.

ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL COURT (ICC)

The creation of the International Criminal Court (ICC) in 2002 was a significant milestone in the fight against impunity for war crimes. Established by the Rome Statute, the ICC is a permanent tribunal with the mandate to prosecute individuals for the most serious crimes of concern to the international community, including genocide, crimes against humanity, and war crimes (Ghaeminasab, 2024). The ICC's establishment represented a commitment to a more systematic and enduring approach to international justice. Unlike ad hoc tribunals, the ICC operates with a permanent infrastructure and has the authority to initiate investigations and prosecutions. However, the ICC faces challenges, including issues of jurisdiction, state cooperation, and political interference.

The nature of warfare continues to evolve, presenting new challenges for the prosecution of war crimes. The rise of non-state actors, cyber warfare, and the use of advanced technology in conflicts complicates the application of traditional principles of international humanitarian law (IHL Databases, 1949). Ensuring accountability in these contexts requires adapting legal frameworks and enhancing international cooperation.

Efforts to strengthen the enforcement of international humanitarian law include promoting universal jurisdiction, improving support for victims, and increasing resources for international and national courts. Education and training for military personnel on the laws of war are also crucial for preventing violations and fostering a culture of accountability. Of course, there are significant cultural differences between the International Criminal Court and other international courts and the analysis of judges of the courts in the trends and emerging trends of global punishment, with a set of actors and institutions, discourses and processes, norms. And the laws that constitute the issues of crime, punishment and moral order in a global realm have been general, but access to justice that at least alleviates the pain of the victim has always been in the course of competent international courts.¹¹

EARLY CONCEPTS AND INITIAL EFFORTS

The concept of war crimes has deep historical roots, dating back to ancient civilizations that established certain codes of conduct during warfare. Ancient texts and records from cultures such as the Greeks, Romans, and Chinese show attempts to limit the brutality of war and protect non-combatants (Ghaeminasab & Dafchahi, 2024b). For instance, the ancient Greeks had a code that prohibited the killing of prisoners and non-combatants, while the Romans developed the concept of *jus in bello*, which regulated the conduct of soldiers during war. However, these early efforts were sporadic, inconsistent, and lacked the cohesive, formal international recognition that characterizes modern war crimes legislation.

It wasn't until the late 19th and early 20th centuries that more systematic and formalized efforts to regulate the conduct of war began to take shape. This period marked the beginning of the development of international humanitarian law, aimed at mitigating the horrors of war and protecting those who do not take part in the hostilities.

The Hague Conventions of 1899 and 1907 were landmark international treaties that sought to establish comprehensive rules governing the conduct of warfare. The 1899

Convention, convened at the urging of Tsar Nicholas II of Russia, was one of the first formal statements of the laws of war and war crimes in the emerging body of international law. The Convention laid down the rights and duties of neutral and belligerent states, the treatment of prisoners of war, and the protection of civilians and property during conflict. The 1907 Convention expanded on these rules, introducing more detailed regulations on the conduct of hostilities and the means and methods of warfare.¹²

The Hague Conventions marked a significant step forward in the codification of the laws of war. They represented a collective effort by the international community to agree on common standards of behavior during armed conflicts (Geneva Protocol, 1925). However, the enforcement mechanisms of these conventions were notably weak. There were no established means to ensure compliance or to prosecute violations effectively, which limited their impact in practice.¹³

The limitations of these early treaties became starkly apparent during World War I. The conflict saw widespread atrocities and violations of the Hague Conventions. The use of chemical weapons, the indiscriminate bombing of civilian areas, and the harsh treatment of prisoners of war highlighted the inadequacies of existing legal frameworks and enforcement mechanisms. The war's unprecedented scale and brutality underscored the need for more robust international laws and stronger enforcement mechanisms to hold violators accountable.

The aftermath of World War I saw renewed efforts to address these shortcomings. The Treaty of Versailles (1919), which formally ended the war, included provisions for the prosecution of individuals responsible for war crimes. Article 227 of the treaty called for the trial of the former German Emperor, Wilhelm II, for "a supreme offense against international morality and the sanctity of treaties." Although Wilhelm II was never extradited or tried, this provision marked a significant acknowledgment of the need to hold individuals accountable for violations of international law.

In addition to the Treaty of Versailles, the establishment of the League of Nations represented an attempt to create a permanent international body to prevent future conflicts and promote international cooperation. The League sought to address some of the legal and enforcement gaps exposed by World War I, although it ultimately failed to prevent the outbreak of World War II.¹⁴

The interwar period also saw the development of the Geneva Protocol of 1925, which prohibited the use of chemical and biological weapons. This protocol was a direct response to the horrors of chemical warfare witnessed during World War I. It represented a further attempt to regulate the means and methods of warfare and to mitigate the suffering of combatants and non-combatants alike.

Despite these efforts, the enforcement of international humanitarian law remained problematic. The League of Nations lacked the authority and means to enforce its decisions effectively, and there was no permanent international criminal court to prosecute individuals for war crimes. This period highlighted the need for a more robust and comprehensive international legal framework to address the conduct of war and ensure accountability for violations.¹⁵

Finally, the early concepts and initial efforts to define and regulate war crimes laid the foundation for modern international humanitarian law. The Hague Conventions of 1899 and 1907 were pioneering treaties that sought to establish rules for the conduct of warfare, although their impact was limited by weak enforcement mechanisms. The experiences of World War I and the interwar period underscored the need for stronger international laws and institutions to hold violators accountable and prevent atrocities. These early efforts set the

stage for the significant legal developments that would follow in the mid-20th century, particularly in the aftermath of World War II.

The Aftermath of World War I

World War I starkly revealed the insufficiencies of existing legal frameworks in addressing the severe atrocities committed during the conflict. The scale and nature of the war crimes exposed the urgent need for an international mechanism to prosecute and prevent such acts. In response, the Treaty of Versailles, signed in 1919, attempted to address this issue by including provisions for the prosecution of war criminals. Article 227 of the treaty called for the trial of the German Emperor, Wilhelm II, for "a supreme offense against international morality and the sanctity of treaties". However, these measures were largely symbolic and proved ineffective in practice.

The Treaty of Versailles also led to the establishment of the Leipzig War Crimes Trials in 1921. These trials were one of the first attempts to hold individuals accountable for war crimes. A special tribunal was set up in Leipzig, Germany, to try alleged German war criminals. Despite its groundbreaking nature, the Leipzig Trials faced significant limitations. Only twelve individuals were prosecuted, and the scope of the trials was extremely limited. Many of those convicted received light sentences, and some were acquitted due to insufficient evidence. The lack of enforcement and political will to fully pursue justice meant that the trials had a minimal impact on international law and justice.

The aftermath of World War I also saw the creation of the League of Nations, an international organization aimed at maintaining peace and preventing future conflicts. While the League was instrumental in promoting international cooperation, it lacked the authority and mechanisms to effectively address war crimes. The absence of a permanent international criminal court and the reliance on national jurisdictions for prosecution contributed to the ongoing impunity for war criminals.

Despite these early shortcomings, the interwar period did see some progress in the development of international humanitarian law. The Geneva Protocol of 1925, for example, prohibited the use of chemical and biological weapons in war. This protocol was a direct response to the horrors of chemical warfare experienced during World War I. However, enforcement mechanisms remained weak, and violations continued to occur. According to international law, some weapons are prohibited according to general rules. For example, in a number of international documents, it is clearly stated that the use of weapons and equipment that cause "unnecessary suffering" is prohibited. Sometimes, according to a special rule, the use of some weapons is prohibited.¹⁶

The limited success of the Leipzig Trials and the constraints of the Treaty of Versailles highlighted the need for a more robust international legal framework. The experiences of World War I and the interwar period underscored the challenges of prosecuting war crimes within the constraints of national sovereignty and political considerations. These challenges would later influence the development of more comprehensive international legal instruments and institutions.

The inadequacies of post-World War I justice efforts became even more apparent with the outbreak of World War II. The scale and systematic nature of the atrocities committed during the Second World War, particularly the Holocaust, underscored the urgent need for an effective international response. The failure of the international community to prevent and prosecute war crimes during the interwar period served as a stark lesson, leading to significant advancements in international criminal law in the aftermath of World War II.¹⁷

The Nuremberg Trials, established in 1945, represented a watershed moment in the prosecution of war crimes. Unlike the Leipzig Trials, the Nuremberg Trials had a far-reaching mandate and were backed by the Allied powers, providing the necessary authority and resources to hold major war criminals accountable (Nuremberg Trials Overview, 2019). The trials introduced the principles of crimes against humanity and crimes against peace, setting important precedents for future international criminal proceedings.¹⁸

World War II and the Nuremberg Trials

The unprecedented atrocities committed during World War II, particularly the Holocaust, demanded a comprehensive and forceful legal response. This need led to the establishment of the Nuremberg Trials, a landmark moment in the prosecution of war crimes. The London Charter of the International Military Tribunal, issued in 1945, created the legal framework for prosecuting major war criminals from the Axis powers.¹⁹

The Nuremberg Trials were revolutionary for several reasons. They introduced the concepts of "crimes against humanity" and "crimes against peace," significantly expanding the scope of international criminal law. Prior to these trials, international law primarily dealt with state conduct rather than individual accountability. The Nuremberg Trials established that individuals, including state leaders, could be held personally responsible for their actions during wartime. This was a monumental shift, rejecting the defense of following superior orders, a common justification for war crimes.²⁰

One of the most significant contributions of the Nuremberg Trials was the formal definition and prosecution of "crimes against humanity." These crimes include widespread or systematic attacks against civilians, encompassing acts such as murder, extermination, enslavement, deportation, and other inhumane acts committed against civilian populations. This category of crime acknowledged the severe impact of atrocities committed against civilian populations during conflict and peacetime. The trials also introduced the concept of "crimes against peace," which involves the planning, initiation, or waging of wars of aggression or other violations of international treaties. This was crucial in holding leaders accountable for their roles in starting wars that led to extensive destruction and loss of life.²¹ The principles established at Nuremberg were later incorporated into various international legal instruments. The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, echoed the Nuremberg principles by asserting the fundamental rights of all human beings and emphasizing the need for international standards to protect these rights. The Geneva Conventions of 1949 further codified the rules of war, setting forth comprehensive guidelines for the treatment of individuals during armed conflict, including protections for the wounded, prisoners of war, and civilians.²²

The Nuremberg Trials set a precedent for future international criminal proceedings. They demonstrated that the international community could come together to hold individuals accountable for gross violations of human rights and international law (Dafchahi & Ghaeminasab, 2024). This set the stage for later tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which built upon the legal foundations laid at Nuremberg.

The impact of the Nuremberg Trials extended beyond the courtroom. They contributed to the development of the modern human rights movement by highlighting the necessity of legal frameworks to prevent atrocities and protect human dignity. The trials underscored the importance of documenting and preserving evidence of war crimes, which has become a standard practice in contemporary conflicts.²³

Moreover, the Nuremberg Trials played a critical role in shaping public consciousness about the horrors of war and the need for justice (Scharf, 1999). The detailed documentation and public nature of the trials brought widespread attention to the atrocities committed during World War II, fostering a global commitment to preventing future occurrences of such crimes.²⁴

The legacy of the Nuremberg Trials is evident in the establishment of the International Criminal Court (ICC) in 2002. The ICC was created to provide a permanent international tribunal for prosecuting individuals for genocide, crimes against humanity, and war crimes. The Rome Statute (Akhavan, 1996), which established the ICC, drew heavily on the principles and precedents set by the Nuremberg Trials.

The Cold War Era and Ad Hoc Tribunals

During the Cold War, the pursuit of justice for war crimes encountered numerous obstacles, primarily due to the intense geopolitical tensions between the Eastern and Western blocs. The ideological conflict between the United States and the Soviet Union often overshadowed efforts to prosecute individuals responsible for atrocities, as both superpowers were more focused on their strategic interests than on upholding international law. Consequently, the enforcement of international humanitarian law during this period was sporadic and inconsistent.

However, the end of the Cold War brought significant changes to the international political landscape, creating new opportunities for addressing war crimes. In the 1990s, the international community established several ad hoc tribunals to prosecute serious violations of international humanitarian law. Among the most notable of these were the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)

The ICTY was established by the United Nations Security Council in 1993 in response to the atrocities committed during the Balkan conflicts of the early 1990s. The tribunal was tasked with prosecuting individuals responsible for genocide, war crimes, and crimes against humanity. The ICTY marked a significant step forward in international criminal jurisprudence, as it was the first tribunal of its kind since the Nuremberg and Tokyo trials. One of the ICTY's landmark cases was the trial of Slobodan Milošević, the former President of Serbia and Yugoslavia. Milošević was charged with genocide, crimes against humanity, and war crimes for his role in the conflicts in Bosnia, Croatia, and Kosovo. Although Milošević died before a verdict could be reached, the trial underscored the international community's commitment to holding high-ranking officials accountable for their actions. The ICTY also set important legal precedents regarding the prosecution of sexual violence in conflict. For example, in the case of *Prosecutor v. Furundžija*, the tribunal ruled that rape and other forms of sexual violence constitute war crimes and crimes against humanity (Wald, 2006). This decision was a significant milestone in the recognition of gender-based violence in international law.²⁵

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

In response to the 1994 genocide in Rwanda, where an estimated 800,000 Tutsis and moderate Hutus were systematically slaughtered, the United Nations Security Council

established the ICTR. The tribunal was tasked with prosecuting those responsible for the genocide and other serious violations of international humanitarian law.

The ICTR's most significant achievement was the prosecution of Jean-Paul Akayesu, the former mayor of Taba. In a landmark judgment, Akayesu was found guilty of genocide and crimes against humanity, becoming the first person to be convicted of genocide by an international court. The Akayesu case was also notable for its recognition of rape as a means of perpetrating genocide, thereby setting a crucial precedent for the prosecution of sexual violence in conflict.

Both the ICTY and ICTR played pivotal roles in the development of international criminal jurisprudence. They demonstrated that the international community could come together to address egregious violations of humanitarian law, even in the face of complex and politically charged conflicts. These tribunals also underscored the importance of individual accountability, ensuring that those responsible for war crimes, regardless of their rank or position, could be brought to justice.³⁰

LEGACY AND IMPACT OF AD HOC TRIBUNALS

The establishment of the ICTY and ICTR had a profound impact on the international legal landscape. They not only provided a mechanism for justice for the victims of the conflicts in the former Yugoslavia and Rwanda but also contributed to the development of international criminal law.²⁶ The legal principles and precedents established by these tribunals have been instrumental in the functioning of subsequent international courts, including the International Criminal Court (ICC).

The ICTY and ICTR also helped to promote the principle of universal jurisdiction, which allows states to prosecute individuals for serious international crimes regardless of where they were committed (United Nations Office on Drugs and Crime, 2019). This principle has been increasingly adopted by national courts around the world, enhancing the global framework for accountability.²⁷

Moreover, the work of the ICTY and ICTR has had a lasting impact on the societies they served. By holding perpetrators accountable and providing a forum for the voices of victims, these tribunals have contributed to the process of reconciliation and the establishment of historical records. Their proceedings have documented the atrocities committed (Human Rights Watch, 2011), ensuring that these crimes are not forgotten and providing a foundation for educational and memorial efforts.²⁸

ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL COURT (ICC)

Of course, regarding this issue, due to the existing limitations, arbitration cannot be used as one of the important elements in resolving disputes, so the International Court of Justice became the best reference for dealing with cases at that time.²⁹

The establishment of the International Criminal Court (ICC) in 2002 marked a pivotal moment in the global effort to combat impunity for war crimes. Formed under the Rome Statute, the ICC is a permanent judicial body with the authority to prosecute individuals responsible for the most serious offenses of international concern, including genocide, crimes against humanity, and war crimes (United Nations Institute for Disarmament Research, 2017). This institution represents a significant advancement in the international legal framework aimed at ensuring justice and accountability.

The creation of the ICC was driven by the need for a permanent, independent court that could address the limitations of temporary tribunals, such as the International Criminal

Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). These ad hoc tribunals, while instrumental in prosecuting war crimes in specific contexts, were limited by their temporary nature and jurisdictional constraints. The ICC, in contrast, was designed to provide a more consistent and comprehensive approach to international criminal justice. The ICC's mandate includes the investigation and prosecution of crimes committed by individuals, rather than states, reinforcing the principle that no one is above the law. This focus on individual accountability is intended to deter future atrocities by holding perpetrators personally responsible for their actions. The court's jurisdiction is complementary to national judicial systems, stepping in only when states are unwilling or unable to prosecute offenders themselves. This principle of complementarity ensures that the ICC does not undermine national sovereignty but instead acts as a safeguard against impunity.

One of the significant achievements of the ICC is its permanent infrastructure, which enables it to undertake long-term investigations and prosecutions. This permanency contrasts with the temporary mandates of previous tribunals and allows the ICC to build institutional knowledge and expertise. The court has the authority to initiate investigations either through referrals from states parties, the United Nations Security Council, or on its own motion based on information from reliable sources.

Despite these strengths, the ICC faces considerable challenges. Jurisdictional issues are among the most significant obstacles. The court can only prosecute crimes committed on the territory of a state party or by nationals of a state party, unless the UN Security Council refers a situation to the court. This limitation means that significant portions of the world's population, including those in powerful non-member states such as the United States, China, and Russia, are outside the ICC's reach. Efforts to expand the court's jurisdiction have faced political resistance, underscoring the complex interplay between international law and global politics.³⁰

State cooperation is another critical challenge for the ICC. The court relies on the cooperation of states to enforce its mandates, including the arrest and transfer of suspects, the provision of evidence, and the protection of witnesses; However, political considerations often influence states' willingness to cooperate (Human Rights Watch, 2021), and some countries have actively resisted ICC involvement. For instance, Sudan and Kenya have both experienced significant political pushback against ICC investigations and prosecutions, highlighting the difficulties the court faces in enforcing its decisions.

Political interference also poses a significant threat to the ICC's effectiveness. The court's independence is crucial to its credibility and legitimacy, yet it operates in a highly politicized environment. Accusations of bias and selective justice have been leveled against the ICC, particularly concerning its focus on African cases. Although the court has initiated investigations in other regions, such as in Georgia and Afghanistan, perceptions of bias persist. These perceptions can undermine the court's authority and hinder its ability to secure the necessary support and cooperation from the international community. The ICC has also faced challenges related to funding and resources. As an independent international organization, the ICC relies on contributions from its member states to finance its operations. However, budgetary constraints can limit the court's ability to conduct thorough investigations and prosecute complex cases. Ensuring adequate and sustainable funding is essential for the ICC to fulfill its mandate effectively.³¹

Despite these challenges, the ICC remains a crucial institution in the fight against impunity for the most serious crimes. Its establishment reflects a broader commitment to international justice and the protection of human rights. The court's work has contributed to the development of international criminal law and has provided a measure of justice for victims of atrocities. Moving forward, the ICC will need to navigate the complex landscape

of international politics, secure broader support, and enhance its operational effectiveness to continue its vital role in upholding international law and accountability.³²

MODERN CHALLENGES AND FUTURE DIRECTIONS

The dynamic nature of modern warfare poses significant challenges to the prosecution of war crimes. The increasing involvement of non-state actors, the advent of cyber warfare, and the use of advanced technologies in armed conflicts complicate the application of traditional principles of international humanitarian law. Adapting to these evolving conditions requires the development of more flexible legal frameworks and enhanced international cooperation.

The rise of non-state actors, such as terrorist groups and private military contractors, has fundamentally altered the landscape of modern conflict. Unlike state actors, these groups often do not adhere to established international norms and regulations, making it difficult to hold them accountable under existing legal structures. The decentralized nature of these actors complicates the identification and prosecution of individuals responsible for war crimes. To address these challenges, international bodies must develop new legal instruments and mechanisms specifically designed to manage the complexities introduced by non-state actors.

Ensuring accountability in the context of modern warfare necessitates the adaptation of existing legal frameworks and the enhancement of international cooperation. Efforts to strengthen the enforcement of international humanitarian law must focus on several key areas:

Promoting Universal Jurisdiction

Universal jurisdiction allows states to prosecute individuals for serious international crimes, such as war crimes, regardless of where they were committed or the nationality of the perpetrators or victims. Promoting the adoption and implementation of universal jurisdiction can help close jurisdictional gaps and ensure that perpetrators do not evade justice by crossing borders.

Improving Support for Victims

Providing adequate support for victims of war crimes is essential for ensuring justice and fostering reconciliation. This includes offering medical, psychological, and legal assistance to survivors, as well as ensuring that they have access to effective remedies and reparations. Strengthening victim support mechanisms can enhance the overall effectiveness of international humanitarian law.

Increasing Resources for International and National Courts

Adequate resourcing of both international and national courts is crucial for the effective prosecution of war crimes. This includes providing sufficient funding, technical expertise, and logistical support to ensure that these institutions can carry out their mandates effectively. Additionally, enhancing the capacity of national judicial systems to handle war crimes cases can complement international efforts and contribute to a more robust system of accountability.³³

Education and Training for Military Personnel

Educating and training military personnel on the laws of war is vital for preventing violations and fostering a culture of accountability within armed forces. This includes integrating international humanitarian law into military training programs, conducting regular refresher courses, and ensuring³⁴ that soldiers understand their obligations under the law. Promoting awareness and understanding of humanitarian principles among military personnel can help prevent war crimes and enhance compliance with international standards.

Looking forward, the international community must continue to adapt its legal frameworks and enforcement mechanisms to address the evolving nature of warfare. This includes not only responding to current challenges but also anticipating future developments. For example, the increasing role of artificial intelligence in military operations raises new ethical and legal questions that must be addressed proactively. Additionally, fostering greater international cooperation is essential for tackling the transnational nature of many modern conflicts. This includes enhancing information sharing, coordinating investigative efforts, and building stronger alliances to ensure that war crimes are effectively prosecuted, regardless of where they occur.³⁵

However, due to the importance of the issues and conflicting interests of the parties, no agreement will be reached with the complete agreement of all parties,³⁶ it seems that the best thing was to enter an international authority that was created and as after the decision of the International Court of Justice International Court of Justice 1994, the issue of the use of nuclear weapons was taken seriously and after the issuance of the advisory opinion of the International Court of Justice, a new enthusiasm has been created among the countries and the United Nations General Assembly, as soon as possible the international laws of nuclear weapons in the fields of Different should be regulated in the form of international treaties.

CONCLUSION

The challenges posed by modern warfare necessitate a comprehensive and dynamic approach to legal and institutional frameworks. As conflicts become increasingly complex and technologically sophisticated, the need for robust international cooperation and support for victims and judicial institutions becomes ever more critical. Modern warfare, characterized by the rise of non-state actors, cyber warfare, and advanced weaponry, presents unique challenges that traditional legal frameworks may struggle to address. Therefore, the international community must continually adapt its strategies and mechanisms to effectively enforce international humanitarian law and ensure accountability for war crimes.

One of the primary steps in addressing these challenges is the adaptation of legal frameworks. As warfare evolves, so too must the laws that govern it. This includes updating international treaties and conventions to reflect new realities, such as the use of drones and other advanced technologies in combat. The International Criminal Court (ICC) and other judicial bodies play a crucial role in this process, continually refining their statutes and guidelines to cover new types of war crimes and violations. For instance, the Rome Statute of the ICC has been amended to include crimes related to the use of certain modern weapons and tactics that were not foreseen when the original text was drafted.

Enhancing international cooperation is another vital component of effectively addressing war crimes in modern conflicts. This involves not only collaboration between states but also engagement with non-state actors, international organizations, and civil society. Effective cooperation can facilitate the collection of evidence, the apprehension of suspects, and the execution of international arrest warrants. It can also enhance the sharing of

intelligence and best practices among nations and institutions. For example, the ICC relies heavily on the cooperation of member states to enforce its mandates, as it does not have its own police force to carry out arrests. Support for victims of war crimes is also essential in ensuring justice and accountability. Victims must have access to legal representation, psychological support, and reparations. International and national courts need adequate resources to investigate and prosecute war crimes effectively. This support can be facilitated through funding from international donors, technical assistance from more developed legal systems, and training programs for local judicial personnel. Organizations like Human Rights Watch and Amnesty International play a significant role in advocating for victim support and documenting abuses to aid in prosecutions (Amnesty International, 2020).

The historical evolution of war crimes illustrates the international community's persistent efforts to uphold humanity during times of war. From the early Hague Conventions to the groundbreaking Nuremberg and Tokyo Trials, and the establishment of the ICC, each step represents progress in the legal fight against impunity. These milestones underscore the importance of adapting to emerging challenges and maintaining the momentum toward justice. The Geneva Conventions and their Additional Protocols have been pivotal in setting the standards for the protection of civilians and combatants in armed conflicts, reflecting a century of legal and humanitarian evolution.

Despite these advances, significant challenges remain. Modern conflicts often involve asymmetric warfare, where state actors face non-state militias and insurgent groups. These groups may not adhere to traditional laws of war, complicating efforts to enforce international humanitarian law. Additionally, geopolitical interests can hinder the prosecution of war crimes, as powerful states may obstruct investigations or provide sanctuary to perpetrators.

Furthermore, the use of advanced technologies in warfare, such as cyber-attacks and autonomous weapons systems, presents new legal and ethical dilemmas. Current international law does not fully address these technologies' implications, necessitating ongoing dialogue and revision of legal standards. The international community must work together to develop new norms and rules that govern the use of such technologies in conflict.

In conclusion, the international community's commitment to enforcing international humanitarian law and prosecuting war crimes is crucial in an increasingly complex world. By continually adapting legal frameworks, enhancing cooperation, and supporting victims and judicial institutions, the international community can better address the challenges posed by modern warfare. The progress made through various legal instruments and institutions highlights the importance of these efforts in ensuring justice for victims and upholding the principles of humanity in times of war. The ongoing evolution of war crimes law demonstrates a collective resolve to confront and overcome the atrocities that arise from armed conflict, paving the way for a more just and humane international order.

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