

## **INTERNATIONAL CRIMINAL LAW: PROSECUTION OF WAR CRIME**

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### **Introduction**

A crucial area of public international law, international criminal law (ICL) was created to combat crimes that jeopardise world peace, security, and the moral foundation of humanity. Its main goal is to bring those guilty of crimes of international concern—such as war crimes, crimes against humanity, crimes of aggression, and genocide—to justice. These atrocities frequently have terrible effects that cut beyond national boundaries and leave societies with long-lasting wounds.

War crimes, which target civilians, combatants, and protected entities during armed conflicts, stand out among them as serious transgressions of the laws and conventions of war. Sexual violence, the use of illegal weapons, and intentional attacks on civilian populations are a few examples. In addition to undermining the fundamentals of international humanitarian law, war crimes often prolong violent and unstable cycles. As a subset of these horrible deeds, war crimes are transgressions of the laws and traditions of war that target soldiers, civilians, and protected property in ways that are contrary to the regulations of armed conflict. In addition to maintaining justice, the methodical prosecution of war crimes is crucial for preventing such crimes and promoting lasting peace and reconciliation in areas of conflict.

It is more crucial than ever to prosecute war crimes in the networked world of today. In post-conflict communities, holding offenders accountable promotes rebuilding and reconciliation, gives victims justice, and sends a powerful message against impunity. Additionally, it restates the commitment of the international community to respect human dignity and the rule of law.

The prosecution of war crimes under international criminal law is examined in this article. It looks at important case studies that have influenced international jurisprudence, existing legal

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structures and procedures, and the difficulties in obtaining justice. Lastly, it talks about how to improve accountability going forward and make sure that justice wins out over impunity.

## **Historical Background of War Crimes**

The idea of war crimes has a long history and has developed in tandem with legislation intended to control combat. Initially, attempts to regulate armed combat were frequently based on moral or religious precepts, but these eventually evolved into formalised legal requirements.

### **1. Early Historical Foundations**

Ancient civilizations were the first to consider restricting behaviour during times of conflict. For example, guidelines for handling prisoners were outlined in the Code of Hammurabi, which was created in 1750 BCE. The Laws of Manu in ancient India placed a strong emphasis on treating adversaries with compassion. In a similar vein, Islamic customs and mediaeval European regulations such as the Chivalric Code promoted moral behaviour in combat, including safeguards for non-combatants.

### **2. Modern Beginnings**

Wartime regulations were codified in the 19th century, starting with the American Civil War's Lieber Code (1863). This military handbook forbade needless suffering and described how to treat prisoners humanely. These ideas were extended to the international arena by the Hague Conventions of 1899 and 1907, which covered topics like the use of weapons, the treatment of detainees, and safeguards for civilians.

### **3. Post-World War II Developments**

The way that war crimes were handled underwent a significant change as a result of the atrocities of World War II. Individual responsibility for transgressions of international law was established by the Nuremberg and Tokyo Trials, which also introduced the notions of

"crimes against humanity" and "crimes against peace" in addition to war crimes. The codification and enforcement of war crime laws were significantly impacted by these cases.

#### **4. Contemporary Evolution**

Protections for both combatants and civilians during wartime were reinforced with the 1949 adoption of the Geneva Conventions and their Additional Protocols. Later, the international community's dedication to war crime prosecution was shown by the creation of ad hoc tribunals, such as those for Rwanda (ICTR) and Yugoslavia (ICTY). In order to address these abuses, the International Criminal Court (ICC) was established in 2002. This ensured that accountability is still a fundamental component of contemporary conflict settlement.

#### **Definition and Nature of War Crimes under International Law**

Serious transgressions of international humanitarian law (IHL) that target people or property protected by the rules of war and take place during armed conflicts are known as war crimes. The 1949 Geneva Conventions, its Additional Protocols, and the Rome Statute of the International Criminal Court (ICC) are only a few of the international treaties that codify them.

#### **Definition under International Law**

The Rome Statute of the ICC, adopted in 1998, provides a comprehensive definition of war crimes. It includes:

- Grave breaches of the Geneva Conventions, such as willful killing, torture, or inhuman treatment of prisoners of war and civilians.
- Serious violations of the laws and customs applicable in armed conflict, including intentional attacks on civilian populations, destruction of cultural heritage, and the use of prohibited weapons.
- Specific acts like conscripting child soldiers, taking hostages, and committing sexual violence during war.

Both international and non-international armed confrontations can result in war crimes. They must involve acts that violate IHL regulations protecting combatants, non-combatants, or specific properties, and they must be committed intentionally.

**Illustration related to war crime :**

- **Deliberate Targeting of Civilians,**
- **Use of Prohibited Weapons,**
- **Sexual Violence and Exploitation During Armed Conflict,**
- **Destruction of Cultural Heritage**

**Types of War Crimes**

War crimes include various actions that go against the regulations of international humanitarian law (IHL). These offences can be generally classified as either grave breaches of the Geneva Conventions or other significant breaches of IHL. The severity and extent of these violations during armed conflicts are mirrored in each category.

- **Serious violations of the Geneva Conventions**

They are mainly for use in international wars and refer to actions carried out against individuals who are protected, such as civilians, prisoners of war, and the wounded. States must either prosecute or extradite individuals responsible for such breaches in accordance with the principle of universal jurisdiction.

- **Instances of serious violations of international humanitarian law.** Intentional murder of civilians or prisoners of war is known as willful killing.
  1. Cruelty or Brutality
  2. Illegal Removal or Transfer
  3. Fair Trial Denial
- **Additional grave breaches of international humanitarian law (IHL)** Aside from severe breaches, there can be other significant violations of IHL in both international and non-international armed conflicts.
  1. Instances of Grave Infractions
  2. Attacking Innocents Deliberately aiming attacks at civilian populations or infrastructure.

3. Enlistment of Child Soldiers: Recruiting or employing individuals under 15 for the purpose of participating in armed conflicts.
4. Sexual Violence: Actions such as rape, coerced prostitution, or sexual enslavement.

## **Legal Framework Governing War Crimes**

### **1. Treaty Law and Key Conventions**

1. Geneva Conventions and Additional Protocols which were established in 1949. The Geneva Conventions offer the following designated protections:
  - Initial treaty: Safeguards injured and ill troops on the ground in times of war, guaranteeing their respectful care.
  - Second Convention: Also provides similar protections for individuals on the sea, including those who have survived a shipwreck.
  - Convention three establishes the rights of war prisoners, guaranteeing them humane treatment, fair trial privileges, and suitable living conditions.
  - The Fourth Convention protects civilians in times of war by banning deportation, taking hostages, and imposing collective punishments.

2. **The Additional Protocols (I and II, 1977)** enhance safeguards in both domestic and global conflicts, and the Third Protocol (2005) introduces the "red crystal" as an additional neutral protective symbol to complement the Red Cross and Red Crescent. Statute of Rome that established the International Criminal Court in 1998. The ICC is established by the Statute and outlines war crimes, including:

- Serious violations of the Geneva Conventions.
- Assaults on non-military populations or aid operations.
- Utilisation of banned weapons such as chemical or biological substances.
- Violations committed in non-international armed conflicts, such as intentionally attacking non-combatants.
- The ICC holds individuals accountable for crimes, setting it apart from treaties that mainly hold states responsible.

**3. Conventions of The Hague in 1899 and 1907:** The Hague Conventions I & II govern tactics of war and forbid excessive harm, with a focus on behaviour of soldiers.

**4. Role of Customary International Law:** Institute the principle of proportionality in the targeting and safeguarding of cultural property. Traditional international law guarantees:

- Legal Requirement: Customs, such as the prohibition of torture, targeting civilians, and using specific weapons, also apply to states that have not ratified treaties like the Geneva Conventions.
- Customary norms fill in gaps in treaty law by addressing new types of warfare like cyber warfare, where treaties may not cover.
- Instances of traditional regulations comprise: The concept of distinction: Making a clear distinction between fighters and non-combatants, The banning of attacks or weapons that cause unnecessary harm, Ensuring that detainees are treated with humanity.

## **5. National vs. International Jurisdiction**

### **Complementarity Principle**

IHL is primarily enforced by national courts, which guarantee that war crimes be prosecuted domestically. The ICC's action is restricted under the complementarity principle of the Rome Statute to situations in which national systems malfunction because of inability or reluctance. Events That Give Rise to International Jurisdiction

- cases that the UN Security Council refers to the ICC (e.g., Darfur, Libya).
- ICC Prosecutor initiating investigations proprio motu (on their own motion) based on evidence.
- Establishment of ad hoc tribunals (e.g., ICTY for Yugoslavia and ICTR for Rwanda) to address specific conflicts.

## **6. Hybrid Tribunals**

These courts (e.g., Special Court for Sierra Leone) combine domestic and international law to address war crimes, fostering local involvement and adherence to global standards.

## **Mechanisms for the Prosecution of War Crimes**

## **1. National Jurisdictions**

- **Domestic Courts:** National courts are the primary venue for war crime prosecutions under the principle of complementarity.
  - They apply domestic and international laws to prosecute individuals.
  - Examples include trials in Germany for crimes committed in Syria.

## **2. International Tribunals**

- **Ad Hoc Tribunals:** Established for specific conflicts.
  - **ICTY (1993):** Prosecuted crimes from the Yugoslav wars, setting precedents in areas like genocide.
  - **ICTR (1994):** Addressed the Rwandan genocide, contributing to jurisprudence on sexual violence as a war crime.

## **3. Role of the International Criminal Court (ICC)**

Prosecutes war crimes, crimes against humanity, genocide, and aggression. Operates under the **Rome Statute**, limited to member states or referrals by the UN Security Council.

- **Major Cases solved by this court :**
  - **Thomas Lubanga:** Convicted for using child soldiers in the Democratic Republic of Congo.
  - **Omar al-Bashir:** Charged with genocide in Darfur.

## **4. Hybrid Courts**

Blend international and domestic legal mechanisms, operating within the affected country:

- **Special Court for Sierra Leone:** Prosecuted crimes during the Sierra Leone civil war, including Charles Taylor's trial.
- **ECCC:** Tried leaders of Cambodia's Khmer Rouge regime

## **5. Universal Jurisdiction**

Allows states to prosecute serious crimes (e.g., war crimes, genocide) regardless of where they occurred or the nationality of the perpetrators.

## **Case Studies in Prosecution of War Crimes**

### **1.Nuremberg and Tokyo Trials<sup>2</sup>**

The Nuremberg and Tokyo Tribunals, established after World War II, laid the foundation for modern international criminal law. They prosecuted high-ranking officials for war crimes, crimes against humanity, and crimes against peace, setting precedents for holding leaders accountable.

### **2.Former Yugoslavia<sup>3</sup>**

The ICTY prosecuted numerous individuals, including Slobodan Milošević, the former president of Yugoslavia. The tribunal's work highlighted the use of rape as a weapon of war and established groundbreaking jurisprudence on sexual violence in armed conflicts.

### **3.Rwanda<sup>4</sup>**

The ICTR was instrumental in prosecuting individuals responsible for the 1994 Rwandan genocide, convicting figures like Jean-Paul Akayesu, whose trial set precedents for recognizing rape as an act of genocide.

### **4.Recent ICC Cases**

1. **Thomas Lubanga Dyilo<sup>5</sup>**: Convicted for conscripting and using child soldiers in the Democratic Republic of Congo.
2. **Ahmad al-Faqi al-Mahdi<sup>6</sup>**: Prosecuted for destroying cultural heritage in Mali, marking a significant step in recognizing the protection of cultural property as part of IHL.

## **Challenges in Prosecuting War Crimes**

- Jurisdictional Issues
- State Sovereignty and Politics

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<sup>2</sup> *United States v. Göring et al.*, 6 F.R.D. 69 (Int'l Mil. Trib. 1946)

<sup>3</sup> *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54, *Prosecutor v. Duško Tadić*, Case No. IT-94-1

<sup>4</sup> *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, *Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-3

<sup>5</sup> *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06

<sup>6</sup> *Prosecutor v. Ahmad al-Faqi al-Mahdi*, Case No. ICC-01/12-01/15



- Evidentiary Difficulties
- Selective Justice
- Lack of Resources

## **Conclusion**

During armed conflicts, accountability, justice, and the preservation of human dignity depend on the prosecution of war crimes under international criminal law. The international community makes a strong statement against impunity by addressing major violations of international humanitarian law, including grave breaches of the Geneva Conventions. In order to hold offenders accountable and provide victims with justice, mechanisms such as the International Criminal Court, ad hoc tribunals, and hybrid courts are essential. Nonetheless, issues including resource scarcity, jurisdictional restrictions, and political meddling continue to exist. In the future, maintaining the rule of law and promoting peace in the wake of conflict will require fortifying legal frameworks, improving collaboration, and giving victim-centred initiatives top priority.

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