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Prosecution of War Crimes

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War crimes are meaningless unless subject to prosecution. The paper reviews historical forms of prosecution from religious authorities to the Congress of Vienna, victorious countries, Nuremberg, and international tribunals. Yet many war crimes are identified that have not been prosecuted.

Keywords: war, war crimes, international law, Geneva Conventions, prosecution, courts, criminals, violence, international relations

A long time ago, combat involved person-to-person confrontation between violent individuals. With the advent of technological developments, the possibility of destruction of nonviolent persons and objects increased exponentially. Limits on what combatants can perform in time of adversarial struggle have been recognized around the world for centuries but were not codified until the 19th and 20th centuries so that innocent persons and objects might be spared from unnecessary damage. Those who commit war crimes are viewed as outside acceptable public behavior for which there are many negative terms, most notably "barbarian". But who will prosecute them? Some scholars believe that the Nuremberg Trials of Nazis after World War II were the first war crimes trials (Meron, 2006), but in fact the history is much longer:

The Hindu classic *Mahābhārata* (400 BCE) identified such notions as proportionality, just means, and fair treatment of captives and the wounded as red lines which, when exceeded, would be war crimes. Aristotle referred to war as a measure used as a last resort for self-defense in his *Categories* (350 BCE). Greek and Roman law condemned using poisonous weapons as instruments of war (Touwaide, 2019). Presumably, Hindus, Greeks, and Romans had juridical enforcers.

What have been called "barbarian invasions" brought about the last days of the Roman Empire. A group of Mongols known as the Huns ravaged swiftly and ruthlessly throughout Europe committing "shock and awe" atrocities, killing rather than taking prisoners, to establish one of the largest empires in world history. In response, Augustine, the Bishop of Hippo, developed the notion of "just war" in his *The City of God* (c. 420 CE). For him, war is just only if waged by just authority, for a just cause, and was militarily necessary whenever nonviolent measures failed to resolve a conflict. For Augustine, the ultimate enforcer was God, though humans could confess their sins to be forgiven by Catholic priests.

Specific war crimes were identified next by clerics. In 697 CE, several Irish notables agreed that the death penalty was authorized for anyone killing a woman during war, with other penalties for slaying clerics, clerical students, and peasants on clerical land in a document known as *Cáin Adomnáin*. French bishops at the Synod of Charroux agreed in the *Pax Dei* (989 CE) that war should not involve killing of children, clergy, peasants, and women. The Council of Toulouges banned war on Sundays in *Treuga Dei* (1026 CE), a declaration later applied

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to all religious holidays, the period of Lent, and Fridays. Pope Innocent II issued *Canon 29* (1139 CE) on behalf of the Second Lateran Council, banning the crossbow as an overly cruel instrument of warfare. In all cases, the aim was to identify sins, namely, actions that would prevent their perpetrators from reaching heaven. Once again, God and priests could enforce the immoral crimes.

In *Summa Theologiae* (c. 1270 CE) Thomas Aquinas developed the theory of natural law and natural rights, which later influenced Spanish priests during the conquest of the Americas. Presumably, God would be the ultimate prosecutor, though priests could refuse to allow religious ceremonies to war criminals.

Spain's military forces began in the 1500s to indiscriminately murder Indigenous peoples and import slaves from Africa in an effort to control and derive profit from much of the Western hemisphere. In September 1510, when a group of Dominican friars, led by Pedro de Córdoba, arrived in Santo Domingo, they were appalled by the sins they saw committed by slaveowners against the Native peoples. Accordingly, they decided to deny slaveowners the right to confession. Bartolomé de Las Casas, who had earlier arrived with his father, was among those denied that right; but, as he witnessed atrocities that violated "just war" principles, he decided to lobby the Spanish government to stop the barbarities and later abolish slavery. After he became a Dominican friar and a bishop, he opposed the policy of "war by fire and blood" (Poole, 1965, p. 15) and wrote *A Short Account of the Destruction of the Indies* (1522) as well as an incendiary *The History of the Indies*, to impress the ruling monarch, though the latter volume was held up for release until 1875. He was among the first to popularize the idea that "All people of the world are humans", who have a natural right to liberty (Tierney, 1997, pp. 272-274).

Aiming to turn "just war" doctrine into secular principles of international law, Hugo Grotius wrote *Mare Liberum* (1609), urging that no combat should occur in international waters. At the time, Britain and Spain were frustrating the economic ambitions of his trading country, the Netherlands. His *De Jure Belli ad Pacis Libre Tres* (1625) was similar to Augustine's formulation, justifying war on only four bases: defense (to defend the national interest), indemnity (to recover damages caused by another state), punishment (to stop a gross injustice), and last resort (only after peaceful methods failed to resolve an interstate dispute). Once war broke out, Grotius established three limits to the conduct of war: discrimination (combat should not be directed at civilians), humanity (sick and wounded should be cared for and prisoners treated with respect), and proportionality (scope of war calibrated to only the end sought). But enforcement could only be provided by victors in a war against an aggressor.

In 1648, the Peace of Westphalia consisted of two treaties to end the Forty Years' War in which Catholic and Protestant countries fought within the framework of the Holy Roman Empire. The treaties in effect abolished that institution, providing instead that the international political regime consists of nation-states, recognizing one another diplomatically, which are to govern their interrelations by international law, namely, agreements and treaties that place limits on mutual conduct. The most important principle was that states should never interfere in the internal operations of other states (Havercroft, 2012).

War crimes, thus, had to be identified in treaties signed by countries that agreed to limits on international combat. French Emperor Napoléon Bonaparte found a pretext for war when Russia opened their seaports to all countries (Markham, 2003). Rather than employing diplomacy to resolve the dispute, in 1812 he waged war against Russia, thereby violating the *Treaties of Tilsit* (1807). In 1815, he became the first war criminal, as provided in the Final Act of the Congress of Vienna, which banned war in breach of a treaty. He surrendered to Rear Admiral Sir Frederick Lewis Maitland on HMS *Bellerophon*, was detained, and exiled on the British territory of St. Helena, though never put on trial (Dwyer, 2013, pp. 556-562).

Following the Crimean War (1853-1856), the *Declaration of Paris* of 1856 was the first multilateral treaty identifying war crimes. Three war crimes were identified therein: Banned was the use of private shipowners to harass and seize enemy ships. Blockades could only be respected if enforced. Goods carried by neutral countries should never be seized. After the Declaration was signed by seven war victors, the treaty was open for other countries to ratify; with 55 countries ratifying, the Declaration was the initial step in the global recognition of international law, but again only war victorious countries could enforce provisions against war criminals.

In 1863, President Abraham Lincoln issued the *Lieber Code*, a codification of all previous war crimes principles, as compiled by Professor Francis Lieber. Lincoln wanted officers and soldiers to abide by legal and humanitarian principles during the American Civil War. However, only one soldier was punished as a war criminal—Henry Wirz, commandant of Andersonville Prison, where nearly 13,000 Union Army prisoners of war died due to inhumane conditions (Marvel, 2006). He was tried by a military commission, found guilty, and executed in 1865.

The next major advance came with the adoption of the multilateral *Convention for the Amelioration of the Wounded in Armies in the Field* (1864), otherwise known as the Red Cross Convention or Geneva Convention, which was extended to maritime warfare in *Additional Articles Relating to the Condition of the Wounded in War* (1868). Next, Tsar Alexander II convened a conference at St. Petersburg, resulting in the *Declaration to the Effect of Prohibiting the Use of Certain Projectiles in Wartime* (1868), which banned collateral damage in war. A conference at Brussels in 1874 tried to add more to the list of war crimes but ended before any results, so Tsar Nicholas II decided to convene a conference during 1899 in The Hague, which was more productive, and followed by a second Hague conference in 1907.

Meanwhile, the rise of the Industrial Revolution during the 19th century involved employment in factories, with routine jobs held by workers who left families in agricultural areas. A romantic reaction occurred, stressing the need for individual enjoyment (Biddiss, 2012). Prussia was then seeking to united German-speaking territories into a single German country, which occurred by 1871 after considerable warfare because the glorification of the Teutonic barbarian past worked to unite soldiers to risk their lives in extraordinary ways on behalf of the common cause of nationalism (Steinberg, 2019, Chap. 2). Kaiser Wilhelm II, who offered the Huns as an example to his troops, launched World War I on a pretext that violated "just war" theory (Musolff, 2017).

When World War I ended, Article 227 of the *Versailles Treaty* indicted Kaiser Wilhelm II as a war criminal; a special tribunal was established to try him, but he fled to the Netherlands, which refused to surrender him. Article 228 required Germany to hand over those who committed war crimes for trial by military tribunals, the first specific tribunals for war crimes. Although about 1,000 persons were identified by 1920, Germany instead tried 12 persons at the high court in Leipzig and only six were found guilty (Mullins, 1921). Even though light sentences were authorized, the precedent had been established that persons accused of war crimes can be tried, convicted, and sentenced in courts. The *Treaty of Sèvres* (1920) authorized prosecutions of 200 soldiers of the Ottoman Empire, with 17 sentenced to death, though the newly formed Turkey arranged their release (Gzoyan, 2023).

A flurry of treaties to identify war crimes emerged after World War I. The most famous was the *General Treaty for the Renunciation of War* (1928), which banned war. The *Convention on Duties and Rights of States in the Event of Civil Strife* (1928) prohibited intervention in civil wars unless the rebel group achieved international recognition. None of the treaties impressed members of the German public who joined and voted for the Nazi Party, which cultivated a Social Darwinian view of the world in which Germans were the "master race",

emboldened to actions outside of international humanitarian considerations (Weikart, 2013). The result was World War II.

The major difference in the new war was bombing of cities. Aerial warfare had not been the subject of any treaty until after the war. London bore the first disaster, and Dresden was next. Then came Hiroshima and Nagasaki as technological advances continued, namely, the development of atomic bombs. Many massacres occurred during World War II on both sides, though the main ones held accountable were Germans in the Nuremberg Trials (1945-1916) and Japanese in the Tokyo Trials (1946-1948).

After World War II, the four *Geneva Conventions* (1947) were followed by Protocols and other treaties, presumed to bring limits to aerial, land, and maritime warfare (Haas, 2026b). Meanwhile, the world was divided in a Cold War between a bloc of Western countries versus a bloc containing the Soviet Union and its satellites in Eastern Europe plus China and North Korea. Many later wars became proxy wars between the two blocs. War crimes were seldom invoked, and the two hegemons took advantage of their power to violate international law.

Outside the Cold War, military conflicts have involved Israel, which was consolidated by war in 1948. Related conflicts involving Israel in 1967 and 1973 highlighted continual unrest in the region. Israel has been charged at the International Court of Justice with war crimes regarding the mistreatment of Palestinians, though no trials have been held (De Simone & Davies, 2023).

North Korea's unprovoked attack on South Korea, an obvious war crime, started the first proxy war of the Cold War—the Korean War (1950-1953). The United Nations Security Council, with the Soviet Union boycotting, recognized South Korea as a country meriting international defense, so there was no violation of the 1928 treaty regarding intervening in civil war when a coalition of countries was assembled under the UN Command banner. Forgotten is the nearly genocidal bombing of North Korea (Cumings, 1998; Holiday & Cumings, 1998, pp. 194-197), but no charges were filed and no trials were held (Wilson, 2021). As a superpower, the United States evidently considered that taking charge of world conflict was more important than compliance with the *Geneva Conventions*, which were never pursued. Nevertheless, President Harry Truman fired General Douglas MacArthur for threatening to bomb parts of China (McCullough, 2010).

In 1956, Britain, France, and Israel attacked Egypt after its President Gamal Abdul Nasser nationalized the Suez Canal. Nationalization was alleged to violate the *Convention of Constantinople* (1888) governing multilateral usage of the canal, so the war was allegedly justified (Marston, 1988). However, the United States neither was consulted beforehand nor approved afterword.

The next major proxy war was in Vietnam. Under the terms of the *Geneva Accords* (1954), there was a ceasefire along the 17th parallel, dividing the country into north and south territories, with a plebiscite scheduled for 1956 to determine whether the south would join the north, unifying the country. However, with pressure from Washington, the government in the south refused to organize a vote, whereupon a civil war began, with supplies going from north to south through a trail inside neutral Cambodia. President Lyndon Johnson secretly ordered bombing and herbicide spraying along the trail in 1964 (Olsen & Speidel, 2023) and sent combat soldiers in 1965. The United States, thus, violated the 1924 civil war treaty, though there was little publicity about war crimes. In 1969-1970, President Richard Nixon again ordered the bombing of the trail inside Cambodia and even ordered ground troops into the neutral country, an action that became a proposed article of his impeachment in 1974 (Eisenberg, 2023). Actions in Vietnam resulted in the conviction of 22 soldiers of the United States for war crimes (Solis, 1989). The most celebrated war crimes were committed by Lieutenant William Calley, Jr., and 25 other soldiers for massacring 22 civilians in My Lai Province in 1968; only Calley was convicted by a military tribunal,

originally with a life sentence that was reduced to 20 years, further limited to 10, and ultimately three years of house arrest; he was ultimately discharged from the military (Mehrota, 2025).

In 1975, a few days before the United States departed from Vietnam, the Khmer Rouge rebel force took control of Cambodia. Soon, urban centers were depopulated and about a million Cambodian died from disease, execution, overwork, and starvation (Kiernan, 2003)—humanitarian crimes. A specially designed international tribunal from 2008-2019 held surviving Khmer Rouge commanders legally accountable and arranged their permanent incarceration (Haas, 2026a, Chap. 9).

After repeated lethal attacks by the Khmer Rouge on Vietnam, Hanoi's army responded by driving the Khmer Rouge out of Cambodia from 1978-1979, an action justified as humanitarian intervention (Klintworth, 1989). The army remained as a peacekeeping force during the 1980s, but another proxy war began: While militarily supporting the remaining Khmer Rouge sheltered at the Thai border, the United States persuaded allies and the UN General Assembly to allow the Khmer Rouge to continue occupying Cambodia's seat in the United States—that is, until an international conference in 1991 designed a compromise government (Haas, 2026a, Chap. 3).

The Middle East experienced a very bloody war one year after the 1979 coup in Tehran, establishing the Islamic Republic of Iran, when Iraq attacked Iran without provocation in a war lasting a decade in which both sides committed war crimes: Iraq, the aggressor, used chemical weapons, tortured prisoners, and obliterated such civilian infrastructure as hospitals, schools, and oil facilities. Iran is notable for executing a large number of prisoners. Then in 1990, Iraq launched another unprovoked war, this time with Kuwait, committing more war crimes. Although the UN authorized action to stop the Gulf War, prosecutions of Iraqis responsible never took place in either war (Ghorishi, Niavarani, & Zamani, 2016; Keogh, 2021).

After the Cold War ended in 1991, war crimes were occurring during civil wars within Yugoslavia and Rwanda. While special war crimes tribunals for the two situations were established in 1993 and 1994, respectively, progress toward formation of the International Criminal Court (ICC) accelerated. A treaty was drawn up in 1998, and the ICC began operation in 2002. The first ICC indictments occurred in 2005, involving five Ugandans, only one of which was later detained and convicted.

Peace was disrupted on September 11, 2001 by terrorist attacks on New York and Washington. The perpetrators, Al-Qaeda, had a camp in Afghanistan. Although Washington asked Kabul to extradite the head, Osama bin Laden, the Afghan government did not comply with the request. President George W. Bush then authorized an attack on Afghanistan rather than Al-Qaeda, which escaped to Pakistan. The Afghan War began in the form of support for the rebels in the country's Northern Alliance (Hazaras, Tajiks, Uzbeks, and later Pashtuns). Military from countries of the North Atlantic Treaty Organization (NATO) joined troops of the United States, which ultimately took control of Kabul in December 2001, but the Northern Alliance was dissolved and played no role in the new government. The U.S. military then began arresting members of Al-Qaeda and other presumed terrorists, sending some to Guantánamo base in Cuba, while providing an occupation force until 2021.

In 2003, the United States made an unprovoked attack on Iraq, quickly gaining control through "shock and awe" bombardments, but not fully supported by NATO. As an occupation force, prisoners were rounded up, some sent to Guantánamo. News articles began to fill with questions about the legality of military operations, notably mistreatment of prisoners that appeared to duplicate findings from the notorious 1971 Stanford Prison Experiment (Zimbardo, 2015). Accordingly, an academic compilation of war crimes, *George W. Bush, War Criminal? The Bush Administration's Liability for 289 War Crimes* (2009), with a Foreword by Benjamin

Ferencz, a Nuremberg prosecutor. The book received enough attention that Code Pink protested at the office of the New York Times because the newspaper refused to publish a review of the book. Although some lower ranking military personnel were convicted in military courts for torture committed at Abu Ghraib, senior officers, the military, and political leadership, remain unprosecuted despite criminal complaints in France and Germany as early as 2004 on behalf of four Iraqi survivors. In 2004-2007, the European Center for Constitutional and Human Rights charged former Defense Secretary Donald Rumsfeld, Central Intelligence Agency Director George Tenet, and several high-ranking military personnel with war crimes. But court authorities in Karlsruhe and Paris, where the cases were filed, refused to initiate investigations and rejected appeals against their decisions (ECCHR, 2026b). Complaints against Bush prompted him to cancel a trip out of the United States in 2011, evidently fearing that he would be arrested (ECCHR, 2026a). Although ICC has expressed interest in investigating war crimes of the United States (Hart, 2020), Washington refuses to ratify the treaty establishing ICC, and therefore cannot be prosecuted, though other countries involved might be investigated (Robb & Patel, 2020; Chiarini, 2021). Nevertheless, polling of the American people has demonstrated overwhelmingly support for war crimes prosecution (Zvogbo & Simmons, 2025).

To follow up the book about 289 war crimes, a website (www.uswarcimes.com) continued to publish news articles and comments about war crimes, including the year 2010, when United States began to bomb terrorist sites in Syria. On at least two occasions the website was undermined clearly from a source in Washington; when restored, an essay appeared, urging the U.S. government to secure approval from the UN Security Council (UNSC) for the bombings (Haas, 2010). The result was UNSC adoption of Resolution 1963 on December 20, 2010, which provided a permanent framework for dealing with terrorism.

The next major war involved Russia's unprovoked attack on Ukraine in 2014 that escalated in 2022. In response to terrorist attacks by Hamas on Israel on October 7, 2023, Prime Minister Benjamin Netanyahu did not authorize a proportionate response; instead, he declared war on the Gaza territory. War crimes charges have been lodged against Russia's Vladimir Putin, Netanyahu, and the three Hamas perpetrators (Aljazeera, 2026), though neither Israel nor Russia are ICC members.

In June 13, 2025, Netanyahu coordinated unprovoked attacks on Iran, known as the Twelve Day War; the United States joined on June 24, 2025. Later, although diplomatic talks were ongoing, Israel and the United States launched massive strikes on Iran starting in February 28, 2026, resulting in retaliatory responses that continue to the present day. Later, Israel refocused on Iranian allies in Lebanon, establishing "kill zones" (Mroue, 2026), while the United States continued military bombardments of Iran. When Trump threatened to bomb Iran "back to the stone age", press commentary on his war crimes multiplied, and he backed down (Beaumont, 2026). Yet he continued to make similar threats, statements that themselves constitute war crimes. Trump has threatened to sanction ICC personnel for considering him as a war criminal (Pamuk, 2025).

Reviewing the continual misconduct in the world, former British Foreign Minister David Miliband (2021) once characterized the nature of the contest between autocracies and democracies as an "age of impunity", a description that might fit in the present age of multiplying war crimes. However, the nature of the warfare, with relentless bombing stealing the headlines and war criminals remaining unprosecuted, suggests a very different characterization today: Are we now living in an age of barbarism?

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