

Committee: SPECPOL 1

Topic: Ensuring Justice for War Crimes

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Summary

War crimes are defined as serious violations committed during conflicts which are in breach of international humanitarian law such as the Geneva Convention. Legally, war crimes encompass a wide range of actions so severe they violate various international treaties or customary law. Some examples include the wilful killing of protected individuals such as civilians or prisoners of war, torture, deportation of populations, taking hostages, extensive destruction beyond necessity, forcing prisoners of war to serve their opposing force, attacking civilians directly, use of prohibited weaponry, use of shield soldiers, and rape. Such crimes may be committed by the military and civilians, resulting in possible prosecution under international tribunals or national courts. Recognition of these crimes is important in protecting international humanitarian rights and law and holding individuals accountable during conflicts. While the Geneva Conventions and other international humanitarian law exist, their universality remains a challenge as shown by the ongoing violations worldwide.

Definition of Key Terms

Genocide: Acts of intentional destruction against a specific national, ethnic, racial, or religious group

Crimes Against Humanity: Systematic violence such as murder, enslavement, torture, sexual violence, and other inhumane acts specifically targeting civilians.

International Humanitarian Law: Rules implemented to restrict inhumane methods of warfare during armed conflicts.

Geneva Conventions: Four treaties and 3 protocols which are at the core of International Humanitarian Law

Rome Statute: Establishing treaty of the ICC which defines genocide, crimes against humanity, war crimes, and crimes of aggression as the four main international crimes

ICC: The International Criminal Court is an independent court that tries individuals for the abovementioned crimes.

Ad hoc Tribunals: Temporary courts created in response to specific conflicts to prosecute individuals for severe breaches of international law in particular contexts.

Background Information

Historical Context

Following World War II the Allies created the International Military Tribunal (IMT), the first international criminal tribunal, in Nuremberg to prosecute high-ranking Nazi officials. The 'Nuremberg Trials' began officially on November 20th 1945 and tried 21 Nazi leaders. The tribunal included a judge from each of the Allied powers and its constitution, function, and jurisdiction were outlined in the IMT/Nuremberg Charter. Similarly, in Tokyo, another tribunal was established to try the Japanese war criminals. Both trials addressed crimes against humanity, crimes against peace, and war crimes and were thus significant in developing international criminal law and were models for later international criminal tribunals. However, while influential, these trials also have been criticised as they represent 'victor's justice' in which the Allies' war crimes were not addressed and were thus unpunished.

Geneva Conventions

The Geneva Conventions were adopted in 1949 and are a set of four international treaties that form the basis of international humanitarian law and protect people during armed conflicts. The Geneva Conventions are universally accepted as 188 states ratified them. Key articles related to war crimes include Common Article 3 which prohibits cruel violence such as torture in non-international conflicts, and grave breaches which are acts defined in each convention as war

crimes and include wilful killing and torture, protection of civilians, protection of medical personnel, and treatment of prisoners of war. Overall, the conventions also address the balance of military necessity and humanity, establish baseline standards for the treatment of various parties, and remain adapted as they have evolved to address new challenges since 1950 (e.g. non-state actors).

International Humanitarian Law

International humanitarian law is a set of laws which aim to limit the negative effects of an armed conflict and set standards for the treatment of groups such as civilians, POWs, and wounded/sick combatants. This law is important in prosecuting perpetrators of war crimes by defining war crimes and establishing criminal responsibility for them. It further governs the legality of certain conduct during war (*jus in bello*) and in resorting to war at all (*jus ad bellum*). *Jus in bello* refers to means of warfare and is related to the grave breaches outlined in the Geneva Conventions and Additional Protocols. Meanwhile, *jus ad bellum* regulates the justification for war, such as self-defence. As they are separate bodies of law, compliance of one doesn't mean there was compliance of the other.

Challenges and Failures in Ensuring Justice

There are several challenges in ensuring justice for war crimes that have led to the failure to prosecute the responsible individuals. Firstly, in many cases, there has been a lack of accountability such as in the case of Omar al-Bashir who despite being indicted by the ICC, remains at large. This and other cases of impunity undermine confidence and power of the rule of laws such as the International Humanitarian Law and Geneva Conventions. Furthermore, various political and diplomatic obstacles exist such as powerful states undermining and opposing the ICC by not cooperating or hindering prosecution by prioritising diplomatic relations. Selective justice due to disparities in prosecution in different conflicts and regions also exists. The ICC has also struggled with perceived bias, having received arguments it targets African States. The ICC further has limited jurisdiction to the states having ratified the Rome Statute and issues of state sovereignty get in the way of prosecuting under international jurisdiction. It is also not always easy to gain resources due to funding limitations towards international courts. Lastly, gaining evidence and witnesses in conflict zones also poses a challenge. Specific case studies exhibiting these challenges include the case in Darfur where the ICC struggles with

prosecution due to a lack of cooperation by the state of Sudan while in Sri Lanka efforts by the state to investigate war crimes were deemed inadequate.

Major Countries and Organizations Involved

ICC

The ICC has jurisdiction over the following main crimes: genocide, crimes against humanity, and war crimes. The court consists of a president, judicial divisions, the office of the prosecutor, and the registry. They may only prosecute crimes committed after the implementation and effect of the Rome Statute on July 1st, 2002. The jurisdiction is further limited to crimes committed by nationals of member states, on the territory of member states, and cases referred to by the Security Council.

UN Security Council

The UNSC can make referrals to the ICC for investigation and prosecution even if it involves non-member states of the ICC. They may also establish ad hoc tribunals. They may also impose sanctions, authorise interventions, and fact-finding missions. However, due to political interests influencing decisions and veto powers (China and Russia vetoing action on the situations in Syria, Myanmar, North Korea, Ukraine, and Gaza) the effectiveness of the council is limited in prosecuting war crimes.

Rwanda

Rwanda is one country that has been affected by war crimes during the Rwandan genocide of 1994. The genocide was perpetrated by nationalists of the Hutu ethnic majority against the Tutsi minority. The genocide was extremely fast-paced and brutal. The mass killings began in the capital Kigali and then spread towards the south and centre of the country where the majority of the Tutsi population lived. The government used mass propaganda to urge the civilian population to murder Tutsi neighbours. Two million refugees were forced to flee to Zaire. There was criticism of the passive response of the international community. In 1994, the International Criminal Tribunal for Rwanda was established as an extension to that of Yugoslavia. In 1995

they began trying high-ranking officials for their role in the genocide. The trials lasted over a decade and included the 2008 trial and conviction of three high-ranking military officials for genocide. Other countries include Yugoslavia, Syria, Yemen, Iraq, Myanmar and the Central African Republic amongst others.

Amnesty International

NGOs, particularly those who advocate for human rights have a big role in this issue. They can raise public awareness and call for accountability. Such organisations include Amnesty International or Rights for Peace. Amnesty has made several international calls to action urging for more action by the ICC, the creation of ad hoc and tribunal courts, and the strengthening of international law to ensure there is justice for war crimes fully.

Timeline of Events

Date	Event and Descriptions
1945	Nuremberg Trials: Military tribunals post-World War II to prosecute prominent Nazi leaders for war crimes.
1946	Tokyo Trials: Military tribunals post-World War II to prosecute prominent Japanese military leaders for war crimes.
1948	Convention on the Prevention and Punishment of the Crime of Genocide (1948): This convention was an important international treaty that established genocide as against International Humanitarian Law and laid out the legal framework for prosecution.
1949	Geneva Convention: Series of treaties and protocols on legal standards for humanitarian treatment in armed conflict.
1977	Additional Protocols to the Geneva Convention: Additional treaties expanding on the protection of victims of internal armed conflict.
1993	International Criminal Tribunal for the former Yugoslavia (ICTY): First ad hoc temporary court for the prosecution of war crimes committed during the Yugoslav wars.
1994	International Criminal Tribunal Rwanda (ICTR): Extension of the ICTY to

prosecute those responsible for the 1994 Rwandan Genocide.

1998	Rome Statute: Treaty which established the ICC and defined the court's jurisdiction, structure, function, and role in prosecuting crimes including war crimes.
2002	Establishment of ICC: Official date court came into effect. Cases before this date are not under the jurisdiction of the ICC.
2003	Situation in Darfur: The Situation in Darfur was brought to the ICC after accusations of war crimes and genocide against the Sudanese officials.
2011	Syrian Civil War: During this conflict chemical weaponry was used, civilians were targeted, and torture was used which are war crimes.
2015	Rohingya Crisis: The Myanmar Military was internationally condemned for genocide and war crimes against the Rohingya Muslim population.

Relevant UN Treaties and Events

Geneva Conventions (1949) and Additional Protocols to the Geneva Conventions (1977)

The Geneva Conventions and the additional protocols legally defined various severe crimes which go against International Humanitarian Law. It established universal jurisdiction and encouraged states to enact the same law in their domestic legislation. Lastly, it expands protection for victims of war crimes.

Rome Statute (1998)

The Rome Statute includes the creation and function of the ICC which is an important body in prosecuting war criminals and ensuring international justice.

Convention on the Prevention and Punishment of the Crime of Genocide (1948)

This convention was adopted in December of 1948 and became effective in January 1951. It is an international treaty and crucial in establishing that genocide is a crime under international law. Article II specifically clearly defines genocide. The convention further provides a legal framework for the prosecution of individuals having had a role in the act of genocide.

Previous Attempts to Solve the Issue

Ad hoc Tribunals:

Ad hoc tribunals are temporary courts created to address specific conflicts. Only two have been created to date which are the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) which was created as an extension of the ICTY.

Hybrid Courts

Hybrid courts investigate/prosecute large-scale crimes in countries that have gone through conflict and whose own system lacks the infrastructure needed. Examples of such courts include the Special Court for Sierra Leone and Extraordinary Chambers in the Courts of Cambodia.

ICC Courts

The ICC has the responsibility to prosecute crimes which concern the international community. This includes war crimes, genocide, and crimes against humanity. However, it is not meant to be a replacement for national courts, but rather a complement to them.

Possible Solutions

In their calls to action, Amnesty International urges for the “Campaigning for the establishment and effective operation of the International Criminal Court (ICC)”, further calls upon “states to exercise universal jurisdiction over crimes under international law”, urges for “ad hoc international or hybrid courts to be established” and for the “strengthening international, regional and national laws to address crimes under international law.”

Other areas of concern which have been brought up can also be remedied as a possible solution. One such action could be giving power to the Security Council and other UN bodies in holding accountability to member states despite geopolitical interests and veto powers. The jurisdiction of the ICC could also further be addressed and expanded. Lastly, methods for collecting and securing witnesses and evidence could be improved.

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