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War Crimes: Evolution, Conceptualization, Categorization and Challenges

Savaş Suçları: Evrim, Kavramsallaştırma, Kategoriler ve Zorluklar

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Abstract

This study focuses on war crimes using a multi-disciplinary approach, which comprises history, law, and international relations. It employs case study methodology by using both primary and secondary resources. The main objective is to provide a clear, valid, and up-to-date framework to analyze war crimes and apply this framework to both historical cases and those occurring after the Cold War. To this end, having introduced the scope and importance of the subject, the study moves on to discussing theoretical and historical backgrounds. The third section analyses the narrow and broad conceptualizations of war crimes comparatively. It finds that it is necessary to adopt the narrow conceptualization to avoid ambiguity. As the categories included in the narrow conceptualization, this section also focuses on the war crimes against protected persons and objects and the war crimes related to unlawful means and methods of warfare. The following sections examine each category of war crimes in the light of historical and recent examples and find that war crimes were punished when powerful parties deemed necessary. The study concludes by emphasizing that political will is essential for punishing war crimes, and weak parties are still vulnerable to wartime violence to a large extent despite all the advances in the prosecution and punishment of war crimes in line with the premises of Realism on power and law versus those of Liberalism.

Keywords: War crimes, civilians, realism, liberalism

Öz

Çalışma; tarih, hukuk ve uluslararası ilişkileri kapsayan çok disiplinli bir yaklaşımla savaş suçlarına odaklanmaktadır. Birincil ve ikincil kaynaklara dayanan vaka çalışması yöntemi kullanılmaktadır. Çalışmanın amacı, savaş suçlarını analiz etmek için net, geçerli ve güncel bir çerçeve sağlamak ve bu çerçeveyi tarihsel ve Soğuk Savaş sonrası savaş suçları vakalarına uygulamaktır. Bu amaçla, çalışma, girişi takiben, teorik ve tarihsel arka planı incelemektedir. Sonraki bölüm, ilgili literatürü inceleyerek savaş suçlarının dar ve geniş kavramsallaştırmalarını karşılaştırmalı olarak analiz etmekte ve netlik sağlamak için dar kavramsallaştırmanın benimsenmesinin gerekli olduğu bulgusuna ulaşmaktadır. Aynı bölüm, savaş suçlarının dar kavramsallaştırmasının kapsadığı kategoriler olarak, bir yandan korunan kişilere ve nesnelere karşı işlenen savaş suçlarına, diğer yandan yasadışı savaş araçları ve yöntemleriyle ilgili savaş suçlarına da odaklanmaktadır. Takip eden bölümler, her bir savaş suçu kategorisini tarihsel ve güncel örneklerle incelemekte ve savaş suçlarının güçlü taraflar gerekli gördüğünde cezalandırıldığı bulgusuna ulaşmaktadır. Sonuç bölümü, savaş suçlarını cezalandırmak için siyasi iradenin gerekli olduğunu ve hukuk üzerine Realist varsayımlar paralelinde ve Liberal varsayımları haksız çıkaran şekilde, zayıfların hâlâ savaşlardaki şiddete karşı büyük ölçüde savunmasız olduğunu vurgulamaktadır.

Anahtar Kelimeler: Savaş suçları, siviller, realizm, liberalizm

Introduction

War crimes have been attracting significant attention recently due to the ongoing Russian-Ukrainian War and Hamas-Israeli Conflict. The issue of war crimes has risen to prominence because these wars show no sign of abating, people are frequently exposed to the severity of war in the internet age, and the International Court of Justice (ICJ) and International Criminal Court (ICC) investigated violations in these conflicts intensively. As for the war in Ukraine, the ICC has issued arrest warrants for several Russian officials, including President Putin (ICC, 2025). Regarding Gaza, the ICJ has been hearing arguments regarding accusations of genocide (Kent et al., 2024), while the ICC issued arrest warrants for Prime Minister Netanyahu and Defense Minister Gallant (ICC, 2024).

This study examines war crimes to address the pressing need for a comprehensive and multidimensional understanding by utilizing a multi-disciplinary approach. It synthesizes history, international relations, and law to analyze war crimes. This multidisciplinarity provides the study's main contribution to the literature as it enables moving beyond the limits of studies that utilize a single discipline for their analysis. While single discipline studies for law include Ambos (2014), Cryer et al. (2014), Horvitz and Catherwood (2006), Schwarz (2015), Werle and Jeßberger (2014), historical studies include Barmash (2020), Bryant (2015), Davison (2011), Hongsheng, S. (2006), Jochnick et al. (2016), Keller, (2012). There also studies which discuss the perspective of international relations on international law, such as Abbott and Snidal (2000) and (Sylvest, 2010). With its multidisciplinary approach, the study combines perspectives from history, international relations, and law to shed light on the evolution of the laws for prosecuting and punishing war crimes. While legal perspectives are utilized for categorizing war crimes and showing the codification of war crimes, history and international relations join the analysis when this categorization is applied to war crimes cases. The conclusion evaluates the applicability of international law in the light of the Realist and Liberal theories of International Relations to provide a critical assessment. In this way, the study follows a comprehensive and guiding framework to analyze the complexities of war crimes.

As another dimension of its methodology, the study employs the case study approach by using both primary and secondary resources. Primary resources include the Hague Conventions, the 1949 Geneva Conventions and their Additional Protocols, and the Rome Statute of the ICC. Secondary sources comprise articles, books, news, reports, and other relevant literature on the topic. The case study approach has two dimensions. First, the categorization of war crimes is applied to the cases of war crimes by reviewing both primary and secondary resources, and findings on the codification of war crimes are presented by reviewing international conventions of International Humanitarian Law (IHL), a type of primary resource utilized in the study. Second, the relative premises of Liberalism and Realism are applied to the study's findings to assess the performance of these theories in explaining the prosecution and punishment of war crimes.

The study aims to offer a clear, valid, and up-to-date framework to analyze war crimes and apply this framework to historical and post-Cold War cases. To this end, following the introduction, the second section explores the historical background of war crimes. The third section introduces the narrow and broad conceptualizations of war crimes by examining relevant literature and stresses the importance of adopting the narrow conceptualization to avoid ambiguity. This section also discusses the various categories of war crimes included in the narrow conceptualization of war crimes. The fourth section examines each category of war crimes in the light of historical and post-Cold War examples to contextualize analyzed cases within the broader framework of international law. The study concludes by highlighting the role of political will in punishing war crimes. The conclusion also emphasizes that despite all efforts to restrain it, societies across the world are still vulnerable to wartime violence in line with the premises of Realism and in contradiction to those of Liberalism, the two mainstream theories of International Relations (IR).

Theoretical Background: Liberalism and Realism

Liberalism and Realism are two mainstream theories in lnternational Relations (IR) that offer opposing viewpoints on the function and validity of international law. These theories have different perspectives on international law because they rely on different assumptions about human nature, the international system, and state behavior.

Liberalism regards the international system as characterized by interdependence, which fosters cooperation among states. Liberals hold that international law has a crucial role in facilitating this cooperation and promoting peace. They argue that

international institutions and laws, such as the International Criminal Court and treaties like the Hague and Geneva Conventions, help to create norms and establish frameworks for dialogue that mitigate conflicts between states (Keohane & Nye, 1977). More importantly, liberal theorists assert that compliance with international law is provided by the shared interests of states and the belief in the rule of law that it can enhance mutual benefits and stability (Abbott & Snidal, 2000). For liberal thinkers, the evolution of international law illustrates the struggle for rendering international relations fair and orderly. In this understanding, states are considered rational actors. They are capable of drawing lessons from their mistakes and cooperating to achieve common objectives (Slaughter et al., 1998).

On the contrary, Realism has a skeptical view of the effectiveness of international law and the idea of progress in human history. While it acknowledges the development of international law through history, it posits that legal norms fall short of prevailing over the power dynamics of international relations. For Realists, as states give precedence to their survival and security over legal commitment, international law cannot effectively structure state behavior (Sylvest, 2010). Moreover, this theory argues that the applicability of international law is often conditioned by the interests of dominant states rather than by universal principles of justice (Shaffer, 2015). Realism also objects to the notion of progress in Liberalism by driving attention to the recurring patterns of conflict and power struggles prevailing over peace and justice. Realists consider the selfishness inherent in human nature as a formidable obstacle to progress in international relations (Usiemure & Lawson, 2018).

Historical Background

The laws for prosecuting and punishing war crimes have evolved significantly over centuries in response to the changes in societal values, legal frameworks, and the nature of warfare. From ancient codes of conducting war to modern international tribunals, the odyssey of defining and prosecuting war crimes is evidence of humanity's ongoing struggle to limit the horrors of war. This section explores these efforts through history.

The emergence of laws of war has its roots in ancient times. The Sumerians, Hammurabi (Babylonian King), Cyrus I (Persian King), the Hittites, and the Indians developed rules or codes to regulate soldiers' behavior and protect non-combatants during the wars (Noone, 2000). In Sumerian society, specific regulations governed war. The immunity to enemy negotiators was a case in point (Greenwood, 2008). Similarly, Hammurabi's Code included laws on military service, prisoners' treatment, and soldiers' conduct, laying the groundwork for later efforts to regulate warfare (Barmash, 2020).

Another ancient civilization, the Hittites, showed respect for the citizens of a defeated enemy city. Likewise, in the 7th century B.C., Cyrus I (King of the Persians) decreed that the injured enemy soldiers be treated as his own injured warriors (Greenwood, 2008). Mahabharata, the ancient Indian text, also emphasized the necessity of civilian protection and humane treatment of prisoners (Bryant, 2015). As early as the Warring States period (475-221 BCE), guidelines prohibiting surprise attacks, severe injury, and capture of the elderly existed in ancient China (Hongsheng, 2006).

In ancient Greece, wars were governed by some rules, too. By the fifth century B.C., Euripides and Thucydides mentioned "*common customs of the Hellenes"* that governed warfare by emphasizing restraint and ethical treatment of combatants and civilians (Green, 1998, pp. 43-44).

The Roman Empire also regulated warfare to some extent. The phrase "bellum iustum" (just war) was first coined by the Roman philosopher Cicero (106–43 B.C.). His ideas about justice and war had a significant impact on the Christian just war theory, which was adopted by Thomas Aquinas and St. Augustine (Keller, 2012). Cicero contributed significantly to the theory of the just cause by including defensive war as a valid basis for a just war (Ören, 2022). Thus, Roman law focused on the regulations concerning the right to declare and wage war (jus ad bellum). However, the Empire lacked the rules to control the war conduct (jus in bello) (Jalaly, 2018).

In contrast, the Islamic law of war disapproves of the killing of women, children, the elderly, and religious officials, partly observing the principle of distinction (Öztürk, 2019; Vanhullebusch, 2015), which requires both attackers and defenders to distinguish between combatants and non-combatants (Pittman & Murnane, 2003). Saladin, the Muslim general who confronted the Crusaders in the Near East, offered treatment to both Muslim and Christian injured when he conquered

Jerusalem in 1187 (Khan, 2020). Continuing his lead, Turkish Sultan Mehmed II showed mercy for the population of Istanbul after he conquered the city (Greenwood, 2008).

Similarly, the code of chivalry in Europe introduced some moral guidelines for knights, including the humane treatment of captured enemies in the Middle Ages (Keen, 2015). Violating this code, Hagenbach (a Germanic knight of the 15th century) experienced the first and best-established instance of a multinational war crimes prosecution. He was tried by a Holy Roman Empire tribunal, found guilty, and executed for the murder, rape, arbitrary taxation, and property seizure by his forces while imposing control over Austrian territories (Gordon, 2013).

Building on these earlier codes of warfare, the publication of Grotius' "De Jure Belli ac Pacis", one of the foundational texts of international law, is also remarkable. At the beginning of the 17th century, Grotius defended the humane treatment of prisoners and the protection of civilians, inspiring subsequent developments and studies in the law of war (2007).

The Peace of Westphalia (1648), which signifies the birth of the modern state system, was another important turning point (Werle & Jessberger, 2014). While this peace ended Christian wars of religion in Europe, it also formally recognized state sovereignty by enshrining state autonomy visa via the Papacy, which had been struggling to re-establish a single Christian reign (Sheehan, 2004), and the Holy Roman Empire, which had the ambitions for a universal Habsburg Monarchy (Bull, 2012). The notions of state sovereignty and autonomy, which are now firmly established in international law, were fundamentally acknowledged by this treaty. Westphalia successfully established the foundation for contemporary international relations by reaffirming states' rights to self-govern without external intervention (Akehurst, 1982). This emphasis on state sovereignty laid the ground for the development of conventions that govern modern states' war conduct and protect non-combatants. The emergence of the modern state system resulted in a different approach to war. The modern state system guaranteed the right to wage war only to sovereign states, and wars started to take place between armies. As a result, the protection of civilians acquired a new meaning. The principles formulated during this period significantly influenced subsequent treaties, reinforcing the approach that conflicts between states could only be resolved among themselves through diplomacy rather than divine or imperial mandates (Orakhelashvili, 2008). As a result, the Peace of Westphalia not only ended the conflicts of the time but also transformed the making of international law into one that prioritizes state autonomy and the legal norms regulating war.

The regulations governing the behavior of armies during conflicts were internationally codified beginning with the late 19th century (Benvenisti & Lustig, 2020). The Lieber Code, issued in the American Civil War in 1863, included provisions for private property protection, civilians, and prisoners of war. As one of the first comprehensive frameworks to regulate the conduct of warfare, it provided guidelines for future IHL conventions. (Paust, 2001). The establishment of what was to become the International Committee of the Red Cross in 1863 and the adoption of the First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field in 1864 as a result of the efforts of this committee were other critical watersheds recorded at that period. This convention established a single symbol for medical services—a red cross on a white background—and required armies to care for injured soldiers regardless of their side. Since the First Convention, international law has progressively expanded its protection to include new groups of war victims as combat tactics have improved. Red Cross gradually came to care for the dead, sick combatants, injured soldiers, shipwrecked seamen, civilian internees, and, finally, civilians in general. The 1906, 1929, and 1949 versions of the 1864 Convention preserved it by restating its fundamentals besides continuously updating and supplementing it. The impact of the law of Geneva extended considerably beyond its immediate domain in the sense that it inspired both treaties in the law of war, such as the Hague Convention and broader human rights conventions (The First Geneva Convention, 1966). With its headquarters in Geneva, the International Committee of the Red Cross has traditionally overseen the implementation of the First Geneva Convention for the Protection of Wounded Combatants and the following conventions associated with this foundational agreement. These conventions have been based on respect for the individual and his dignity; they represent the idea of providing unconditional, nondiscriminatory aid to all people in need, whether they are injured, prisoners of war, or shipwrecked, as they are helpless and no longer considered enemies (Pictet, 1951).

As discussed above, some civilizations and societies had their own rules regulating their behavior during wartime. Since the 1860s, they have negotiated the issue at international congresses and accepted some legally binding rules (Wylie & Cameron, 2018). In this context, the Hague Conventions of 1899 and 1907 greatly influenced the current law of war by defining

fundamental principles for limiting the severity of war. Both conferences laid down rules for warfare conduct regarding the treatment of prisoners of war, civilian protection, and the prohibition of particular weaponry at the international level. The 1907 conference broadened the scope of regulations by introducing rules for war on the sea (Hayashi, 2017).

The First World War (WWI) fundamentally transformed warfare. Both sides suffered massive casualties as a result of new deadly military weaponry. As the conflict progressed and civilian casualties increased, adversaries blamed each other for committing war crimes. However, when the conflict ended, only losers were held accountable. The Versailles signatories agreed to try German emperor Wilhelm II for war crimes, and the Allies officially demanded his extradition. However, the Netherlands, where he escaped, never extradited him (Blakemore, 2023). However, the Netherlands, where he escaped, never extradited him (Blakemore, 2023). While the Versailles resulted in further trials in Leipzig before the highest German court in 1921 and 1922, the hearings touched merely a limited number of those initially accused of war crimes. Germany managed to avoid the extradition of 900 German suspects to the Allied powers, and only 12 trials were held. The lesson was clear: it was a mistake to leave the prosecution to the German authorities. Nuremberg trials would be organized in the light of this lesson (Hankel, 2016). The war also revealed the ineffectiveness of existing legal mechanisms for dealing with war. The use of new means, including aircraft, submarines, and poison gas, had intensified the human toll and devastation, but The Hague Conventions hardly addressed these (Jochnick & Normand, 2016; Noone, 2000).

Established after WWI, The League of Nations' importance for the development of the law of war first arises from the League of Nations Covenant's renunciation and prohibition of war while simultaneously establishing a system of collective security and peace enforcement (Lauterpacht, 1953). While significant limitations were placed on the right to use force by the League of Nations Covenant, none of the major governments explicitly rejected using war as a tool of national policy until the Kellogg-Briand Pact of 1928 (Greenwood, 1992). Another development in the interwar years proved to be the adoption of the 1929 Convention on the Treatment of Prisoners of War, which provided the protection of millions of prisoners between 1939 and 1945 and after (Pictet, 1951).

Civilians suffered even more in the Second World War (WWII) due to advanced technology, as illustrated by the use of atom bombs in Nagasaki and Hiroshima. As a result, the drive to hold individuals accountable for initiating and misconducting war between states gained steam at the War's end. In 1943, the Allies announced plans to sue the Nazi government when the war ended. In the subsequent Nuremberg trials, the judges charged twenty-four persons on counts of war crimes, crimes against humanity (including the Holocaust, thus genocide), waging a war of aggression, and conspiracy for committing any of these crimes (Steinacher, 2018). The Allied Powers created the International Military Tribunal for the Far East (IBTFE) in Tokyo in 1946. The tribunal was established to punish Japanese war criminals and served as Nuremberg's equivalent in the Far East. The 55 counts in the indictment consisted of crimes against peace, murder charges, war crimes, and crimes against humanity. The court convicted twelve defendants of war crimes in 1948 (Library of Congress, 1967).

The impact of these developments on the law of war is clear and direct. The Nuremberg Principles served as the foundation for the laws later implemented by courts prosecuting crimes committed in the former Yugoslavia and Rwanda, as well as the 1998 Rome Statute of the ICC (Davison, 2011). The Nuremberg trials have proved to be critical for the development of the law of war as they addressed crimes of aggression and crimes against humanity as separate categories from war crimes.

The post-WWII era witnessed the creation of various international treaties and institutions to prevent war crimes and ensure accountability. First, the 1949 Geneva Conventions replaced and enhanced the 1864 Convention discussed above (Schindler & Toman, 1988). The representatives of the 59 participating states attended the Geneva Diplomatic Conference on August 12, 1949, to review humanitarian law in light of WWII and adopted the four Geneva Conventions. These four conventions are the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea; the Geneva Convention relative to the Treatment of Prisoners of War; the Geneva Convention relative to the Protection of Civilian Persons in Time of War. These conventions developed the law of war in three ways. First, through a new treaty-the Fourth Geneva Convention—the Geneva Conventions of 1949 started to protect civilians in wartime. Second, through Article 3, which is common to all four Conventions, the 1949 Conventions started to cover the victims of non-international armed conflicts. Third, the conventions introduced a mechanism for scrutiny. While essentially neutral states are mandated to safeguard the interests of nationals of warring states who find themselves in territory controlled by the enemy, the ICRC

is also responsible for scrutiny (Bugnion, 2000). Two additional protocols were adopted in 1977 to address the deficiencies of the Geneva Conventions (Greenwood, 1999). Protocol I is particularly striking for its reference to safeguarding civilians in "armed conflicts in which people are fighting against colonial domination, alien occupation or racist regimes in the exercise of their right for self-determination" (Article 1 of the First Additional Protocol to the Geneva Conventions, 1977). Part II includes comprehensive provisions on medical transportation and expands the protection of the Conventions to civilian medical personnel, equipment, supplies, civilian units, and transports. As Part III and numerous chapters of Part IV deal with matters hitherto regulated by the Hague Conventions, their codification is essential in the sense that new states that had taken no role in the development of Hague Conventions were involved at this time (ICRC, 1977). Protocol II is notable for its focus on internal armed conflicts, a category largely excluded by previous conventions. While Part I clarifies the scope; Part II covers prohibitions against violence, torture, and degrading treatment; Part III deals with the protection and care of the wounded, sick, and shipwrecked; Part IV details comprehensive prohibitions on attacks against civilian populations and objects indispensable to their survival (ICRC, 1977).

The 1990s saw the creation of ad hoc tribunals for Rwanda and the former Yugoslavia, which are the first genuinely international criminal courts. They were created by the UN Security Council and financed by the UN general budget. In this sense, they are different from the Nuremberg and Tokyo Tribunals, founded by WWII's victorious powers (Meron, 2006). Still, peacekeeping operations of the UN became notorious for the violation of the law of war in places including Bosnia and Herzegovina, Kosovo, Cambodia, Timor Leste, and the Central African Republic (Rodriguez & Kinne, 2019).

The establishment of the ICC in 2002 further improved the international community's ability to prosecute violations of (IHL) by including war crimes, crimes of aggression, crimes against humanity, and genocide in its scope of jurisdiction (Schabas, 2011). Compared to earlier frameworks, the ICC Stature reinforced the more specific categorization of violations of IHL by focusing on genocide as a separate category.

This section has explored the evolution of the notion of war crimes and the legal frameworks addressing these crimes. The examination has shown that the regulations to control barbarity in warfare have become more focused and specific over time. This finding will guide the discussion in the next section on the narrow and broad conceptualization of war crimes.

Conceptualizing and Categorizing War Crimes

War crimes are defined as any act generally forbidden by treaty but irregularly forbidden by customary law and carried out in armed conflicts. The perpetrators must be linked to one party in the conflict and commit the crime against a victim allied with or impartial towards the opposing side (Fenrick, 2004).

But specifically, which acts are considered war crimes? Two main approaches to conceptualizing war crimes can be identified in the literature. These approaches are broad and narrow conceptualizations of war crimes (Ambos, 2014; Horvitz & Catherwood, 2006; Schwarz, 2015; Werle & Jeßberger, 2014). Wide and narrow frameworks differ in the scope of acts they consider criminal in wars. While the broad conceptualization defines war crimes as all criminal acts in armed conflicts, the narrow conceptualization limits its definition to the specific crimes codified in the Rome Statute (Ambos, 2014), as explained in more detail below.

The broad conceptualization of war crimes covers criminal acts that cannot be strictly classified as war crimes but still breach IHL, threatening both public and individual security (Dragonenko, 2022). It covers a variety of criminal conduct during armed conflicts (van der Wilt, 2012). While this unlawful conduct is also more specifically classified as crimes of aggression, crimes against humanity, and genocide, the broad conceptualization of war crimes neglects these further classifications (Werle & Jeßberger, 2014). By including the crimes of aggression in the scope of war crimes, the broad conceptualization ignores the distinction between 'ius in bello', focusing on conduct during war, and 'ius ad bellum', dealing with the justification for entering into the war (McDougall, 2023). Broad conceptualization is also problematic due to including crimes against humanity and genocide in its scope. Incorporating them in the scope of war crimes, which center on the violations of war laws and customs, may cause ambiguity since these crimes can also be experienced in peacetime (Frulli, 2001).

Moreover, the latest practices illustrate that the broad conceptualization of war crimes is not upheld. The Rome Statute lists

the crimes within its jurisdiction and deals with them separately. While Article 6 of the Statute focuses on the crime of genocide, 7 is on crimes against humanity, 8 is on war crimes, and lastly, Article 8 bis is on crime of aggression. In line with this narrow conceptualization, currently, international courts prosecute each crime separately. As a case in point, in the latest Hamas-Israeli War, South Africa sued Israel at the ICJ in December 2023, alleging that Israel has been violating the 1948 Genocide Convention in the Gaza War. The chief ICC prosecutor applied for arrest warrants for Israeli Prime Minister Netanyahu, Defense Minister Gallant, and two Hamas leaders in Gaza for war crimes and crimes against humanity (van den Berg, 2024, October 1).

In contrast to the broad conceptualization, the narrow framework focuses on specific, well-defined acts universally recognized as war crimes (Henckaerts & Doswald-Beck, 2005). It offers a precise definition of war crime as an infringement of IHL that leads to direct criminal liability in international law. This conceptualization of war crimes is built on the relationship between basic regulations on the activities forbidden by IHL and additional provisions regarding the punishment of war crimes (Schwarz, 2015).

Following the narrow approach, this study focuses on war crimes codified by Article 8 of the Rome Statute. This article deals not only with armed conflicts between states but also internal conflicts. Article 8 is limited to armed conflict crimes that fall under the 'ius in bello' category of IHL violations, differing from those based on the 'ius ad bellum': the international law governing the resort to force (Ambos, 2014).

Article 8 specifies that war crimes signify grave violations of the Geneva Conventions of 12 August 1949. These conventions are universally ratified agreements. They protect the injured and sick in land forces; injured, ill, and shipwrecked personnel of sea forces; prisoners of war; and civilians who fall under the control of a foreign state in the case of an international conflict. A common clause in the four Geneva Conventions ensures that victims of non-international conflicts receive minimum protection (ICRC, 2024).

Article 8 lists the grave breaches of the Geneva Conventions of 12 August 1949 as follows (ICC, 2024, pp. 5-6):

"(i) Willful killing;
(ii) Torture or inhuman treatment, including biological experiments;
(iii) Willfully causing great suffering or serious injury to body or health;
(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
(v) Compelling a prisoner of war or another protected person to serve in the forces of a hostile Power;
(vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
(vii) Unlawful deportation or transfer or unlawful confinement;
(vii) Taking of hostages".

The narrow conceptualization of war crimes has two merits for the aims of this study. First, it provides a more explicit framework for prosecuting war crimes. The narrow conceptualization bestows the analysis with clear guidance on what to focus on. In light of the guidance of Article 8, the study draws the analysis framework by discussing the categories of war crimes. This categorization excludes crimes of aggression, crimes against humanity, and genocide. Second, as discussed above, the legal framework for addressing war crimes evolved to adopt the narrow conceptualization, and the current legal practice holds it, too. Consequently, this study also adopts the narrow conceptualization by emphasizing the importance of a valid and up-to-date framework.

While categorizing war crimes within the narrow conceptualization, this study follows Cryer et al. (2014) with some modifications. Cryer et al. (2014) categorize war crimes as war crimes against protected persons, war crimes against protected objects, war crimes related to unlawful methods of warfare, and war crimes related to unlawful means of warfare. Recognizing that the war crimes against protected persons and war crimes against protected objects are difficult to examine independently, this study combines these categories. As the examination below illustrates, when a civilian object is attacked, civilians are generally harmed. This difficulty also applies to war crimes related to unlawful methods of warfare and war

crimes related to unlawful means of warfare; therefore, the study analyzes these crimes together, as well. Accordingly, the two following sections provide a detailed description of each combined category, along with historical and post-Cold War examples for each.

War Crimes Against Protected Persons and Objects

This category comprises war crimes committed against people who are part of a protected group or against protected objects, as described in the four Geneva Conventions. To start with the human dimension, these people aren't directly involved in fighting in most cases. These could be civilians or soldiers who can no longer fight because of illness, injury, imprisonment, or other causes. They could also be surrendered fighters (Sałkiewicz-Munnerlyn & Sayapin, 2022). If there is any question about whether or not a person is a civilian, it is necessary to regard the person in question as a civilian. Even though there may be persons in the civilian population who are not civilians, the necessity of approaching them as civilians remains valid (ICRC, 1977, Article 50).

Civilian protection rests on distinction and proportionality principles, which center on the idea that one must not hurt people who lack the means to harm. Using force under these circumstances would be unfair and disproportionate (Slim, 2016). The principle of differentiation mandates that conflicting parties differentiate between combatants and non-combatants, guaranteeing that their attacks aim exclusively at legitimate military targets (Farid, 2023). The principle of proportionality, enshrined in Article 51(5)(b) of the 1977 Additional Protocol I, accompanies the distinction principle, acknowledging that incidental injury to civilians and civilian objects is frequently inevitable in wars (ICRC, 2023). The precaution principle complements these two principles. It requires parties to implement all practicable efforts to prevent or mitigate civilian harm in wars. This entails verifying targets, adopting means and methods of combat that minimize civilian risk, and issuing appropriate warnings to civilians within the realm of possibility (ICRC, 1977, Article 57).

Distinction and proportionality principles are also valid for civilian objects. While Article 48 of the First Additional Protocol to the Geneva Conventions distinguishes between civilian and military objects, Article 52 defines civilian objects. Continuing this line of civilian protection, the ICC Statute criminalizes purposefully launching assaults against targets that are not military (Sałkiewicz-Munnerlyn & Sayapin, 2022). To qualify as a military object, first, an object must significantly advance military activity; second, its capture, destruction, or neutralization must provide a clear military benefit. If the necessary conditions are not met, the object might not be a valid target for an attack. Civilian objects can only be protected if they do not become military targets. If a hospital or a school comes to be used for stocking weapons, it is no longer considered a civilian object (Schwarz, 2015).

The table below (Table 1) outlines the acts that constitute war crimes against protected persons and objects, as the relevant IHL instruments define. The subsequent section focuses on this category's historical and post-Cold War cases, reflecting on the IHL instruments that each war crime case violates. The selection of war crimes covering attacks against protected persons and objects in this section and those associated with the unlawful means and methods of war in the next were carried out with the aim of including cases from diverse regions and time periods, thereby ensuring the validity and relevance of the study. To achieve this, the examination spans from the Balkan Wars to the present day, covering geographical areas including Africa, America, Asia and Europe. Moreover, the study tries to focus on examples of different types of war crimes. To illustrate, massacres and pillages in the Balkan Wars were discussed, as they represent a different type of war crime.

Table 1.[1]
Codification of War Crimes Against Protected Persons and Objects in IHL

Acts Considered War Crimes Against Protected Persons	Relevant IHL Instrument(s) and Article(s)
Willful killing, torture, inhuman treatment, including biological experiments	Geneva Convention IV, Art. 23, 147; Rome Statute, Art. 8(2)(a)(i)(ii).
Willfully causing great suffering or serious injury to body or health	Geneva Convention IV, Art. 147; Rome Statute, Art. 8(2)(a)(iii).
Compelling a protected person to serve in the forces of a hostile power	Hague Convention IV, Art. 6, Geneva Convention IV, Art. 147; Rome Statute, Art. 8(2)(a)(v)
Willfully depriving a protected person of the rights of fair and regular trial	Geneva Convention IV, Art. 147; Rome Statute, Art. 8(2)(a)(vi)
Unlawful deportation or transfer or unlawful confinement	Geneva Convention IV, Art. 147; Rome Statute, Art. 8(2)(a)(vii)
Taking of hostages	Geneva Convention IV, Art. 147; Rome Statute, Art. 8(2)(a)(viii)
Attacks on medical and religious personnel	Geneva Convention I, Art. 24; Geneva Convention II, Art. 36; Rome Statute, Art. 8(2)(b)(xxiv)
Conscripting or enlisting children under the age of 15	Rome Statute, Art. 8(2)(b)(xxvi)
Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence	Rome Statute, Art. 8(2)(b)(xxii)
Acts Considered War Crimes Against Protected Objects	**Relevant IHL Instrument(s) and Article(s)**
Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly	Hague Convention IV, Art., 23, 25, 46; Geneva Convention IV, Art. 147; Rome Statute, Art. 8(2)(a)(iv)
Attacks against buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not military objectives	Hague Convention IV, Art. 27; Rome Statute, Art. 8(2)(b)(ix)
Attacks against cultural property	Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, Art. 4; Rome Statute, Art. 8(2)(b)(ix)

Moving on to the historical examples of war crimes against protected persons and objects, the analysis starts with the Balkan Wars of 1912-1913. The Carnegie Endowment investigated the conduct of the war and published a report, which documented various war crimes, including those committed against civilian persons and objects. Among other cases of war crimes,

[1] This table is original to this study and prepared by reviewing ICRC (1907). Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (Hague Convention IV). https://ihl-databases.icrc.org/assets/treaties/195-IHL-19-EN.pdf; ICRC (1949a). Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field of 12 August 1949, (Geneva Convention I). https://ihl-databases.icrc.org/assets/treaties/365-GC-I-EN.pdf; ICRC (1949b). Geneva Convention for the amelioration of the condition of wounded, sick, and shipwrecked members of armed forces at sea of 12 August 1949 (Geneva Convention II). https://ihl-databases.icrc.org/assets/treaties/365-GC-I-EN.pdf; ICRC (1949c). Geneva Convention relative to the protection of civilian persons in time of war (Geneva Convention IV), August 12, 1949. https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949, ICC (2024). Rome Statute of the International Criminal Court. https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf; United Nations Educational, Scientific and Cultural Organization (1954). The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, https://www.unesco.org/en/legal-affairs/convention-protection-cultural-property-event-armed-conflict-regulations-execution-convention.

massacres, burnings, and pillaging were reported in Demir Hisar, Dedeagach, Doxato, Pravishta, and Serres (Carnegie Endowment for Peace, 1914). These crimes contravened Article 23(b), which prohibits killing or wounding *"treacherously individuals belonging to the hostile nation or army"*, Article 23(g), which outlaws *"the destruction or seizure of enemy property unless imperatively demanded by the necessities of war"*, Article 25 which forbids attacking or bombing *"towns, villages, dwellings, or buildings which are undefended"* and Art. 46, which mandates that "*Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.*" (Hague Convention IV, 1907). However, these war crimes were only reported, not punished.

Another spot is WWII. The war crimes for which the International Military Tribunal (Nuremberg) found Göring (Commander-in-Chief of the Luftwaffe and Plenipotentiary for the Four-Year Plan) guilty include crimes against protected persons and objects. Göring was convicted of using Russian prisoners of war to operate anti-aircraft batteries (International Military Tribunal, 1946). This act constitutes forcing protected persons to serve a hostile power. He was also prosecuted for diverting surplus food from Russia for German needs, which is considered destruction and appropriation of property, a war crime against protected objects (International Military Tribunal, 1946). Göring's case is pivotal as it exemplifies two categories of war crimes. His use of Russian POWs in anti-aircraft operations highlights the forced service of protected persons, violating Article 6 of the Hague Convention IV: "*The State may utilize the labor of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war.*" Similarly, diverting food from Russia demonstrates unlawful destruction and appropriation of property, violating Article 46 of the Hague Convention IV (1907): *"Private property cannot be confiscated."* Another example of war crime against protected persons is the medical experiments conducted by the Nazis during WWII on prisoners of war, concentration camp inmates, and mentally disabled individuals. The first Nuremberg trial addressed doctors charged with performing medical and racial hygiene experiments on civilians, including studies in Dachau to assess parachutists' capacity from heights of 12,000 meters and infections in Sachsenhausen, Buchenwald, and Dachau to study disease spread and recovery. As a result of this trial, 7 of the 23 accused doctors were executed, 5 received life sentences, and 4 were given prison terms of up to 20 years (Safferling, 2012). This clearly violated Article 46 of the Hague Convention IV (1907): *"Family honor and rights, the lives of persons, and private property, as well as religious convictions and practices, must be respected."* As the last example of war crimes during the WWII, it is widely assumed that Hiroshima and Nagasaki were not legitimate military targets due to a lack of substantial military establishments (Lukens, 1948). Consequently, the U.S. use of atomic bombs on these cities could also be considered a war crime, though these attacks have not been prosecuted.

The last historical example is the case of war crimes committed in the My Lai Massacre during the Vietnam War in 1968. US Army officers were involved in the killing of hundreds of unarmed Vietnamese civilians. Lieutenant Calley was convicted for his role by the Army Court of Military Review. His sentence, which included dismissal and confinement at hard labor for 20 years, was reduced by the convening authority (Smith, 2020).

Moving to post-Cold War cases of war crimes against protected persons, the first person found guilty by the ICC was Lubanga, the head of the Union of Congolese Patriots (UPC) and the Commander-in-Chief of its militia. Between 2002 and 2003, UPC took part in the fighting in Ituri. Lubanga was accused of conscripting minors younger than fifteen and forcing them to fight. Due to this crime committed against protected people, he received 14 years in prison (ICC, March 14, 2012). The Article 8(2)(b)(xxvi) of Rome Statute forbids *"conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities."*

Another notable case involved Galić, Commander of the Sarajevo Romanija Corps of the Bosnian Serb Army, was accused of organizing shelling and sniping attacks against civilians and civilian objects, including schools, markets, buses, and garbage trucks. The civilians attacked included Mrs Zametica, who had walked to the Dobrinja River to get water, and Elma and her mother, who had gone out to borrow some books from Elma's friends in the neighborhood. Among the civilian-object attacks, the Markale Market shell explosion in downtown Sarajevo caused the death of 60 people and more than 100 injuries. The Court concluded that the prosecutor presented proof for 18 of the 26 specified sniping and all five shelling occurrences. The International Criminal Tribunal for the Former Yugoslavia (ICTY) sentenced Galić to life imprisonment in 2006 (The Communications Service of the ICTY, 2009). These crimes violated Article 8(2)(b)(i), which penalizes *"intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities.";* Article 8(2)(b)(ii) which prohibits *"intentionally directing attacks against civilian objects, that is, objects which are not military*

objectives.", and Article 8(2)(b)(iv) of the Rome Statute forbids *"intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects... which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated."*

As another example, the Commander of the Patriotic Force of Resistance in Ituri, Katanga, was tried before the ICC and convicted of killing, systematic rape, sexual enslavement, destruction of property, and plundering by the militia under his command during a 2003 attack. Due to these war crimes committed by his militia during the 2003 raid on the village of Bogoro in the Democratic Republic of the Congo, Katanga was sentenced to 12 years in prison by the ICC in 2014 (ICC, March 2014). These acts violated Article 8(2)(b)(xxii) of the Rome Statute, which penalizes "committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2(f), enforced sterilization, or any other form of sexual violence." They also violated Article 8(2)(a)(iv) of the Rome Statute, which prohibits "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

Another recent spot is Afghanistan. A preliminary investigation of crimes committed in the country had been carried out since the country joined the court in 2003. This investigation included crimes committed by all parties to the conflict, including the US. Extrajudicial killings, drone strikes that killed many civilians, and torture are among the war crimes US forces had been accused of (Speri, 2021). When ICC Chief Prosecutor Bensouda requested an investigation into alleged US war crimes in Afghanistan since 2003 in 2017, the Trump administration reacted by canceling Bensouda's US visa and threatening sanctions. As a result, the ICC Pre-Trial Chamber rejected Bensouda's request, driving attention to instability and lack of cooperation (Ochs, 2020).

Colombia's 50-year civil war is the last case of recent war crimes of this section. This war involved paramilitary groups, and guerrilla organizations, particularly the Revolutionary Armed Forces of Colombia (FARC). The war has become the scene of war crimes committed against civilians, including killings, kidnappings, forced displacement, sexual violence, and the deliberate destruction of civilian infrastructure. The ICC conducted a preliminary examination of the war crimes However, in October 2021, the ICC decided to close the preliminary examination, citing that Colombia's national authorities were actively investigating and prosecuting these crimes (ICC, 2023).

War Crimes Related to Unlawful Means and Methods of Warfare

IHL forbids using means and methods that cause needless suffering or avoidable casualties. This has led to restrictions on the use of some weaponry and tactics. The principal treaties that restrict how war is waged are the Hague Convention of 1907, the Additional Protocols to the Geneva Conventions of 1977, and the Rome Statute (ICRC, 2010, October 29). Using weapons, ammunition, and materials and techniques of combat that result in needless harm or suffering is forbidden. Means and methods that may reasonably be anticipated to seriously harm the environment on a large scale over an extended period are also outlawed (Human Rights Office of the High Commissioner, 1977, art. 35). As the most recent framework, the Rome Statute prohibits using poison or poisoned weapons. Using bullets that easily expand or flatten in the human body is also considered a violation of the law. Other prohibited weaponry includes weapons that make use of microbes or other biological substances, pieces that are invisible to X-ray imaging, and laser weapons that permanently blind targets or decrease their vision (ICC, 2024). The crimes relating to unlawful methods of warfare covered by Article 8 of the ICC Statute include misusing a flag of truce, as well as the flag, military insignia, and uniform of the enemy, the UN and the neutral forces or the distinguishing emblems of the Geneva Conventions, that lead to death or serious personal injury (ICC, 2024).The starvation of civilians as a means of war by denying them vital material for survival, such as relief supplies, also falls into this scope (ICC, 2024).

To start with a historical example of unlawful means of warfare, the Japanese used brutal biological war methods in China against both Chinese soldiers and civilians during WWII. Japanese pilots spread plague-carrying fleas across urban areas, resulting in outbreaks of the bubonic plague (Barenblatt, 2004). Japanese soldiers contaminated the water resources and houses with infectious agents and even distributed contaminated chocolate to the local kids (Harris, 2002). Following their defeat, the Japanese provided data to the American and Soviet investigators. Consequently, twelve researchers from the Unit detained by Soviet forces were prosecuted for war crimes in 1949. However, in exchange for sharing knowledge, they received lenient sentences. When Japanese scientists offered their expertise on biological warfare, American inquiries into

Japanese war crimes came to an end (Harris, 2002). In 2002, the Tokyo District Court acknowledged that Japan employed unlawful means of warfare and committed one of the terrible war crimes of WWII. The Court decided that between 1940 and 1942, the imperial troops, including the notorious Unit 731, had violated the Geneva and Hague Conventions by spreading deadly germs in some Chinese towns and massacring thousands of Chinese civilians. Despite this judgment, the Court rejected compensation demands, stating that international peace accords had resolved all reparations disputes (Watts, 2002, August 28).

Moving on to another historical case of unlawful warfare methods prosecution, the trial of Commandant Weiss and his thirty-nine subordinates took place before the US Zone Military Court in Dachau, Germany, from November 15 to December 13, 1945. This trial, known as the Dachau Concentration Camp Trial, was part of the broader Dachau Trials conducted by the United States to prosecute war crimes committed in Nazi concentration camps. The US Zone Military Court tried Commandant Weiss and his thirty-nine subordinates for cruelties and abuses, including the starvation of people at the Dachau Concentration Camp. The Court convicted all the accused (Trahan & Lovall, 2014).

The post-Cold War cases of starvation prosecuted as a war crime include the case of Galić, a Bosnian Serb general, who was sentenced for his role in the siege of Sarajevo (Schaack, 2016, February 4). Among other atrocities, the blockade led to 44 months of starvation (Sarajevo Times, 2024, April 5). More recently, in 20016, the then-UN Secretary-General Ban Ki-moon stated that exposing civilians to starvation by blockading Syrian towns was also a war crime (Wyke, 2016, January 15).

Another war crime Galić was sentenced for is related to acts that constitute perfidy. In this context, during the Sarajevo Siege, Serbian forces infiltrated the UN camp by dressing in French uniforms. Through deception, the Serbs took 400 people as hostages and captured UN vehicles, including tanks (Martin, 1995, May 31).

As a more recent example, in 2007, Ali Hassan al-Majid, the former head of Iraqi Intelligence, was found guilty of crimes including using chemical weapons and was given the death penalty by the Iraqi High Tribunal. In 1987, Majid issued the first order for the deployment of chemical weapons, including mustard gas, sarin, and VX. This ended in the 1988 Iran-Iraq War strike on Halabja, close to the Iranian border. After the US invasion of Iraq, Majid was tried for charges, including war crimes. Following the rejection of his appeal, he was hanged in 2010 (Tran, 2010, January 25).

Conclusions

This timely study has addressed war crimes amid violence and destruction taking its toll on societies worldwide due to the ongoing wars. While doing this, it has carried out a historical and conceptual examination, both of which have emphasized the necessity of employing the narrow conceptualization of war crimes.

In its historical examination, the study has explored humanity's efforts to control acts of barbarity in wartime from ancient civilizations to the present day. It has detailed the gradual evolution of approaches concerning war crimes, marking the transition from broad, vague definitions to more precise conceptualizations. This finding underscores the need for specificity in legal definitions to ensure clarity and effectiveness in prosecution and punishment.

The conceptual investigation furthered the analysis in three ways. First, it has highlighted the ambiguities that employing the broad conceptualization would entail. Second, the conceptual examination has shown that current legal practice holds the narrow conceptualization instead of the broad one; therefore, it is necessary to abide by the narrow conceptualization to avoid compromising the integrity of the legal framework on war crimes. Third, it has underlined that adopting the narrow conceptualization enables a practical categorization of war crimes.

Within the framework of narrow categorization, the study has categorized war crimes into two distinct groups: the first covers war crimes committed against protected persons and protected objects, while the second pertains to crimes associated with unlawful methods and means of warfare. To further clarify the discussion on categories, the research has provided illustrative cases of war crimes that courts have prosecuted and adjudicated.

Another finding indicated that as it deals with war crimes on the basis of a specialized framework, which distinguishes

between the crime of genocide, crimes against humanity, war crimes, and the crime of aggression, the establishment of the ICC is a critical step in fighting war crimes. However, further steps to deter and punish war crimes are still necessary. At the national level, lobbying mechanisms to increase pressure on politicians to struggle to prosecute and punish war crimes in the international arena are required. Digital media might serve as a critical instrument for lobbying and creating pressure on politicians. Social media is instrumental in raising awareness of the human toll during the ongoing wars. However, it is necessary to channel this awareness into action. Posting on social media offers a sense of relief by providing a channel for criticism. Still, there is a need for effective advocacy. Public discourse on social media must be used to mobilize support to hold leaders accountable for their roles in war crimes at home and addressing war crimes in the international arena. At the international level, one step may be establishing separate courts to prosecute and punish different categories of crimes under the jurisdiction of the ICC. In this sense, further specialization and a special court focusing exclusively on war crimes may help to save time and increase effectiveness. Another step can be recruiting women staff in cases of war crimes targeting women heavily, such as rape. The prevalence of this type of war crime indicates the necessity of a gender-sensitive approach in the ICC.

The study concludes that, ultimately, political will to address these crimes is essential for punishing war crimes. War crimes are only punished when the victors of the war or powerful states take responsibility. Therefore, despite all the efforts since ancient times, humankind is still, to an important degree, vulnerable to the barbarity of wartime. This situation can be explained by referring to the Realist Theory of International Relations, which emphasizes power. As this theory argues, international law is not always observed, and while powerful actors do what they please to gain and exercise power, the weak ones have to suffer. This situation also indicates the weakness of Liberalism, as this theory attributes a vital role to international law and organizations in maintaining security in the anarchic environment of international relations. As Liberalism believes in and advocates a linear development in history, it also proves to be short of accounting for the increase in violence and destruction with technological advances in weapons.

Future studies need to provide guidelines to generate political will, improve the effectiveness of existing mechanisms, and offer new mechanisms to enforce the law of war. By doing so, academia can help humanity work toward a judicial landscape that better supports victims and holds perpetrators accountable in the current context of global conflict with severe and broad-ranging repercussions. Achieving his task will contribute to a more secure, just, humane, and civilized world.

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