



Lesson One

WAR CRIMES AND CRIMES AGAINST HUMANITY



Approximate Time

60 minutes

Materials

- *Handout 1.1* (War Crimes and International Law)

Overview

Students use excerpts from various agreements, including the Geneva conventions, the Hague conventions, United Nations conventions, and the Charter of International Military Tribunal, to understand legal definitions and responsibilities related to war crimes and crimes against humanity.

Teaching/Learning Strategies

1. Students participate in a Think/Pair/Share activity to develop answers to a set of critical questions about the rules of war.
 - Ask students to individually answer each of the following questions on a sheet of paper:
 - Are there rules for war?
 - If there are rules for war, who makes them?
 - Who ensures that the rules are followed?
 - What happens if the rules are not followed?
 - Then have each student share his or her answers with another student. When the pairs of students have decided on complete answers for the questions, have the pairs record their answers on chart paper. When completed, display their charts for use later in the lesson.
2. Students become familiar with wars around the world during the 20th century.
 - Have students make a list of wars that took place during the 20th century. They might include: Anglo Boer War, Arab Israeli conflict, Algerian Civil War, Cambodian War, Chechnya conflict, Korean War, Vietnam War, India Pakistani War, Mexican War, Middle East Wars, as well as more current armed conflicts such as the wars in the Balkans, East Timor, the Philippines, Rwanda and Burundi and Ethiopia.
 - You may want to extend the discussion by presenting articles about some of these conflicts from history textbooks, library references, the Internet, and current magazines and newspapers.

3. Students become familiar with international laws related to war crimes and crimes against humanity.
 - Provide students with copies of *Handout 1.1* (War Crimes and International Law) and invite them to compare the official rules with their answers to the questions asked in the first activity.
 - Have students revise their answers on the charts.

One of the most important steps toward justice for victims of war has been the recognition by nations around the world of war crimes and crimes against humanity. Over the past century, nations have struggled to define rules of war to ensure protection of the basic human rights of those caught in conflicts. Canada has played an important role in these developments, as a member of the international groups defining these laws, as a participant in international war crime tribunals, and as one of the nations most active in supporting United Nations' peacekeeping missions around the world.

Following are excerpts from some conventions related to war and peace. For the complete documentation of these conventions, visit the International Red Cross web site (www.icrc.org/IHL.nsf/FULL)

First International Rules of War

The first international rules of war were set down in the Geneva Conventions and the Hague Conventions. They covered the treatment of the wounded, prisoners of war, and civilians in wartime.

1864 The **Geneva Convention of 1864** established the International Red Cross and laid down the rules for treatment of the wounded in war.

1899 and 1907 The **Hague Conventions** of 1899 and 1907 established as international law many of the customary laws of war that existed before World War I.

October 18, 1907 **Hague IV (Convention Respecting the Laws and Customs of War on Land)**

Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

Article 3: A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

October 18, 1907 **Annex to Hague IV**

Article 4: Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them. They must be humanely

treated. All their personal belongings, except arms, horses, and military papers, remain their property.

Article 6. The State may utilize the labour 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.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army, or, if there are none in force, at a rate according to the work executed.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them on their release, after deducting the cost of their maintenance.

Article 21: The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention¹.

Article 23: In addition to the prohibitions provided by special Conventions, it is especially forbidden –

- (a) To employ poison or poisoned weapons;*
- (b) To kill or wound treacherously individuals belonging to the hostile nation or army;*
- (c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion;*
- (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;*
- (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;*

Article 25: The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.

Article 27: In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

¹ Red Cross Convention, August 22, 1864

Article 46: 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.

Article 47: Pillage is formally forbidden.

Refinement to the Rules of War

After World War I, international laws were further refined as they applied to civilians, prisoners of war, and wounded and sick military personnel. An important one is the Geneva Convention Relative to the Treatment of Prisoners of War, 1929. The Geneva Convention of 1929 was signed by Japan but not ratified because of Japanese military objections.

July 27, 1929

Geneva Convention Relative to the Treatment of Prisoners of War

Article 2: Prisoners of war are in the power of the hostile Government, but not of the individuals or formation which captured them. They shall at all times be humanely treated and protected, particularly against acts of violence, from insults and from public curiosity. Measures of reprisal against them are forbidden.

Article 82: The provisions of the present Convention shall be respected by the High Contracting Parties in all circumstances. In case, in time of war, one of the belligerents is not a party to the Convention, its provisions shall nevertheless remain in force as between the belligerents who are parties thereto.

The Need for Further Refinements

By the end of the Second World War, it was clear that the existing conventions had not been enough either to control the aggression of ambitious nations, or to cover the terrible consequences to civilian populations trapped by war. Two days after the bombing of Hiroshima, new rules were set in place defining wars against peace, war crimes and crimes against humanity. The new laws became the basis for prosecuting the German and Japanese governments — the main aggressors in the war — at the International Military Tribunals in Nuremberg and Tokyo.

August 8, 1945

Charter of the International Military Tribunal

(a) Crimes against peace:

(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War crimes:

Violations of the laws or customs of war include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connexion with any crime against peace or any war crime.

Formation of the United Nations

To further ensure that world peace would be preserved after World War II, the United Nations was formed. The Charter of United Nations held all member nations to a commitment not to act aggressively against another member and to settle their disagreements by peaceful means. Canada was one of the founding members of the UN.

June 26, 1945**Charter of the United Nations**

Article 2(3) All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered

Article 2(4) All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Stronger Rules Established

As the world came to terms with the terrible consequences of the Second World War, the members of the United Nations committed themselves to stronger rules that would protect the rights of civilians both in times of war and of peace. The horrors of the Holocaust led to the **Convention on the Prevention and Punishment of the Crime of Genocide**. This was followed by the **Universal Declaration of Human Rights** in 1948 and the **Geneva Convention Relative to the Protection of Civilian Persons In Time Of War**.

December 9, 1948 **Convention on the Prevention and Punishment of the Crime of Genocide**

Article 1: The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article 2: In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;*
- (b) Causing serious bodily or mental harm to members of the group;*
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) Imposing measures intended to prevent births within the group;*
- (e) Forcibly transferring children of the group to another group.*

Article 3: The following acts shall be punishable:

- (a) Genocide;*
- (b) Conspiracy to commit genocide;*
- (c) Direct and public incitement to commit genocide;*
- (d) Attempt to commit genocide;*
- (e) Complicity in genocide.*

August 12, 1949 **Geneva Convention Relative to the Protection of Civilian Persons in Time of War**

Article 27: Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Article 148: No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Principles of International Law

In 1950 the International Law Commission of the United Nations adopted the Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal. These include the recognition (Principle VI) of the definitions established by the Charter of the International Military Tribunal of crimes against peace, war crimes, and crimes against humanity.

1950

Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal

Principle II: The fact that international law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle III: The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

Principle IV: The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principle VII: Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

Non-Applicability of Statutory Limitations

The United Nations adopted the **Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity** on 26 November 1968. This convention addresses the world concern about the application of municipal law relating to the period of limitation (legal expiry date) for ordinary crime, since it prevents the prosecution and punishment of persons responsible for those crimes. This forms the legal basis for the claims of victims and survivors against the Japanese government for war crimes and crimes against humanity committed during the Asia-Pacific War. (Excerpts from the Convention are presented in *Handout 4.3: Legal Basis for Claims Against Japan*).

Enforcement of the Rules of War

In spite of efforts to regulate warfare and promote peace since the end of World War II, millions of people have lost their lives to war, and millions have become victims of crimes against humanity. To halt such atrocities and for redress in the former Yugoslavia and Rwanda, ad hoc international tribunals for the prosecution of persons responsible for genocide and violations of international humanitarian law were set up in 1993 and 1994.

On July 17, 1998, nations gathered in Rome and adopted the **Rome Statute of the International Criminal Court**. This is an attempt by nations to enforce international laws of war and peace by setting up a permanent international criminal court to bring individual perpetrators of the most serious crimes to justice. Of course, the elimination of war remains the best safeguard against human rights violations. The Preamble of the Rome Statute speaks of the hope of the world for peace and its urge to stop any acts of inhumanity. It states:

***Conscious** that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,*

***Mindful** that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,*

***Recognizing** that such grave crimes threaten the peace, security and well-being of the world,*

***Affirming** that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,*

***Determined** to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,*

***Recalling** that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,*

***Reaffirming** the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,*

***Resolved** to guarantee lasting respect for and the enforcement of international justice...*