

Shifting conflict patterns

Use of armed force

Although there have been rules governing the rights of states to make war for centuries, the modern laws prohibiting the use of armed force are inextricably linked to the development of the United Nations, and in particular, the Security Council, through chapters six and seven of the *UN Charter*. Generally, the *UN Charter* states that members of the UN must refrain from the threat or use of force against any other state. The *UN Charter* further requires Member States to settle international disputes by peaceful means. The right to make war used to be considered one of the fundamental rights of sovereign states, so the modern laws prohibiting the use of force, except in special circumstances, have been controversial.

There are two exceptions to the prohibition of the use of force in the *UN Charter*:

1. Member States may engage in military action that has been taken or authorized by the Security Council for the purposes of maintaining or restoring international peace and security. This is called the “collective security mechanism.”
2. States have the right to use armed force in self-defense. However, there are some limits to this right, and some debate as to when a state is actually acting in self-defense. Typically the right of self-defense only extends until the Security Council has addressed the situation through the collective security mechanism.

The rule against the use of force, and its exceptions, only govern whether and when a state may resort to armed force. There are different rules that apply once a state has begun using armed force against others—known as humanitarian laws or the laws of war.

Humanitarian law

Humanitarian law defines the conduct and obligations of nations engaged in warfare, both in terms of how states act toward one another, and how they act in relation to civilians, or those not involved in the fighting. It is also known as the “laws of war.” The rules and principles of humanitarian law were designed to save lives and alleviate suffering during armed conflict and are contained mainly in the *Geneva Conventions* and the *Hague Conventions*,⁶⁵ as well as in subsequent treaties, case law, and customary law.

The Geneva Conventions

The *Geneva Conventions* are a series of treaties that have been signed onto by most countries in the world.⁶⁶ The purpose of the *Geneva Conventions* is to provide protection for individuals who are *hors de combat*, meaning those who are outside the fight (civilians and wounded soldiers, for example) and to restrict the methods of warfare, such as military tactics and weaponry.⁶⁷ The first *Geneva Convention* was signed in 1864 and established rules to protect soldiers who had been wounded and could no longer participate in the fighting. Subsequent conventions have provided protections for medical personnel, hospital ships, civilians who spontaneously take up arms to repel an invasion, prisoners of war, and civilians. Rules also exist for the protection of cultural objects and places of worship and to prohibit the recruitment of child soldiers.

International War Tribunals—former Yugoslavia and Rwanda

Since World War II, the UN has established two tribunals to deal with serious breaches of humanitarian law in the former Yugoslavia and Rwanda. The International Tribunal for the Former Yugoslavia was the first war crimes tribunal established (in 1993) by the UN Security Council in response to mass atrocities taking place in Croatia and Bosnia and Herzegovina during the 1990s. There were reports of thousands of civilians being killed, wounded, and tortured in detention camps and hundreds of thousands more expelled from their homes. The tribunal charged over 160 people, including heads of state, prime ministers, and high ranking military and police leaders from various parties to the conflicts in Yugoslavia.

The UN Security Council established the International Criminal Tribunal for Rwanda in 1994 to prosecute persons responsible for genocide and other serious crimes committed in Rwanda during a conflict between the Tutsi and Hutu peoples. Similar to the Tribunal for the former Yugoslavia, the Tribunal for Rwanda brings high-ranking officials to account for the massive violations of human rights in Africa. Through its judgments and the enforcement of prison sentences, the Tribunal aims to provide an example to be followed in other parts of the world where these kinds of crimes have been committed.

Case Study: Podujevo massacre, Kosovo

Vlastimir Djordjevic was the deputy minister of the interior for Serbia and was responsible for all units of the Serbian police force. In March 1999, Djordjevic ordered a paramilitary group called the Skorpions to be incorporated into the anti-terrorist

unit of the Serbian police force and deployed into Kosovo. The Skorpions were a well-known paramilitary group that had previously participated in massacres that targeted ethnic minorities in Serbia, including the massacre of over 8,000 men and boys in Srebrenica, Bosnia.

On March 28, 1999, the new men were driven by bus to the town of Podujevo, Kosovo. Within hours of arriving, members of the Skorpions lined a group of local women and children against a wall and opened fire on them. Sixteen Kosovo Albanian civilians, all women and children, were killed. Five of the children survived the massacre but sustained multiple serious gunshot wounds.

Djordjevic was charged and tried for his responsibility for this massacre, along with a number of other actions, by the International Criminal Tribunal for the former Yugoslavia (ICTY). Two of the children who survived the massacre, a member of the Skorpions, and several senior police officials testified against him. Two leaders of the police unit testified in support of Djordjevic, stating that the Skorpion members acted without official authority and were not following orders.

Discussion questions:

- Who should be prosecuted for the massacre? Should Vlastimir Djordjevic be held responsible for these killings? Why or why not?
- Who should prosecute this crime? Should it be dealt with by the Serbian government? Or by an international tribunal like the ICTY, as part of its mandate to prosecute war crimes committed during the conflicts in the Balkans in the 1990s?
- Should the person ultimately responsible for the police force and the Skorpions be held criminally responsible for failing to properly discipline and punish the perpetrators for their actions?

Additional facts: Several weeks after the massacre, Djordjevic re-deployed 108 members of the original group of 128 men to Kosovo, where they participated in further operations in ethnic Albanian villages. All of the men who had committed the killings were redeployed, except for one. Djordjevic was charged by the ICTY with both failing to take the necessary and reasonable measures to prevent the killings in Podujevo, and failing to take the necessary and reasonable measures to *punish* the perpetrators.

- Can Djordjevic's actions in incorporating and deploying the Skorpions be seen as evidence of an intent to contribute to the ethnic cleansing of Kosovo? What evidence would you look for to argue that this was his intention?

The International Criminal Court

The International Criminal Court (ICC) is the first permanent, treaty-based international criminal court established to bring to justice the perpetrators of the most serious war crimes. The ICC is established under the *Rome Statute*, a treaty that came into force in 2002 and has been signed onto by 114 countries.⁶⁸

Unlike the Tribunals for Rwanda and the former Yugoslavia, which were established by the UN Security Council and only prosecute crimes committed during specific conflicts, the ICC is a permanent court of criminal jurisdiction that is independent from the UN. The ICC only tries cases that have not been investigated or prosecuted by a national judicial system, unless those proceedings are deemed not to be genuine (for example, a trial is held for the purpose of shielding a person from criminal responsibility) and only tries persons accused of the most serious crimes, including genocide, war crimes and crimes against humanity.