

<b>Forum:</b>	Legal Committee (GA6)
<b>Issue:</b>	Measures to ensure Fair Trials for Prisoners of War
<b>Student Officer:</b>	Lida Galati
<b>Position:</b>	Co-chair

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## PERSONAL INTRODUCTION

Dear delegates of the Legal Committee,

My name is Lida Galati, I am sixteen years old, and I attend the 11th grade of High School at Anavryta Model Lyceum. It is honestly a great honor and pleasure to serve as a Co-Chair in this year's PS MUN Conference. I have been in my school's MUN club for a year now and during that time I have been actively participating in such conferences and this will be my second time as a Student Officer. I can undoubtedly say that being an active MUN member is beneficial not only for the Student Officer, but mostly for the delegates. MUN conferences provide an excellent opportunity for all participants to become familiar with current issues that need to be tackled in the modern world, as well as encounter new people and form abiding relationships.

This year's agenda includes three very important and heated topics that the world must tackle, within the legal mandate. The topic that this study guide will be covering is "Measures to ensure Fair Trials for Prisoners of War", which is a rather salient one and affects countries' policies worldwide. My responsibility as a Student Officer is to direct your research for the topic, familiarize you with the key terms, guide you through the most important information about the topic but also propose some solutions, while also exposing you to existing previous attempts to address the topic. Having said that, I strongly encourage you to form constructive and impactful resolutions and not rely exclusively on this study guide as it is more personal and intriguing, if you get further informed about the issue when conducting your own thorough research, as you will be able to defend your country's policy more sufficiently and participate actively in the process of the debate.

To sum up, through this study guide, your rigorous research, and our guaranteed fruitful debate, I am sure that both you, and I will be able to sufficiently get informed on a topic as fascinating and important as this one. I most certainly anticipate meeting each and every one of you and be a part of the wonderful debates. Should you have any further questions, do not hesitate to contact me through my email address prior to the conference, which is [galati.lida@gmail.com](mailto:galati.lida@gmail.com), as I will be more than happy to guide you through your research.

Yours truly,  
Lida Galati

## INTRODUCTION

Since the distant past, during armed conflicts, combatants who have fallen into the hands of the belligerent opponent are taken in captivity. In international armed conflicts, such persons are designated as prisoners of war (PoWs) and are peculiarly vulnerable to abuse because of their amalgamation with the opponent and the fact that they are interned in a context of hostile war. Fortunately, the status of prisoners of war has changed considerably over time and we are far from the time when the expected outcome for captured soldiers was execution or enslavement.

The history of modern warfare reveals two evidently paradoxical trends. On the one hand, weapons have become much more sophisticated, frightening and catastrophic. On the other hand, there has been a concerted effort to make war as humanitarian as possible, for those not involved in the conflict, including members of the armed forces who are sick, wounded, captured or surrendered.

A series of “agreements”, some going back more than 100 years, had the purpose to protect prisoners of war. After the massacre of prisoners was initially forbidden, humanity explained the rights and privileges of prisoners and defined their obligations. The culmination of these developments was the Geneva Convention of 1949. On August 12, 1949, 61 nations completed the work under the auspices of the International Committee of the Red Cross (ICRC) and signed four treaties, the so-called Geneva Conventions for the Protection of War Victims.

The Conventions were drafted in the wake of the Second World War, during which time millions of prisoners of war were victims of horrifying atrocities, like being routinely beaten, starved and abused and forced to work in mines. In 1949, with these painful lessons in mind, the Third Geneva Convention revised and expanded the existing protection afforded to prisoners of war under the 1929 Convention. Today 123 nations accept the terms of the Geneva Convention. By requiring humane treatment and criminalizing abuse, the Conventions serve as a bulwark against cruelty and reaffirm the notion that, even in war, there are limits.

The current situation in Ukraine is also a painful reminder of how rapidly armed conflict can ignite and devastate. That anyone, in any part of the world, might unexpectedly be caught up in the misery of war is the ineluctable truth that has, for many years, fueled the world’s commitment to the Geneva Conventions. States, all of which have ratified the Conventions, reaffirm them on every possible occasion, demonstrating an international consensus that it would be unwise for humanity to ever let down its guard.

Keeping in mind the theme of this year's conference, "Pacifism and Injustice", it would be suffice to say that it is of vital importance that we provide fair measures and administer justice especially to those finding themselves in such a difficult situation. In times like ours, when war cannot be avoided by more peaceful means, it is salient that we make sure that justice is being served when it comes to prisoners of war and their trials.

## DEFINITION OF KEY TERMS

### Convention

"Convention is an agreement between states for regulation of matters affecting all of them"<sup>1</sup>

### International law

"International law, also called public international law or law of nations, the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors."<sup>2</sup>

### Prisoners of War

"Prisoner of war (POW), any person captured or interned by a belligerent power during war."<sup>3</sup>

### Treaty

"A treaty is a contract in writing between two or more political authorities (such as states or sovereigns) formally signed by representatives duly authorized and usually ratified by the lawmaking authority of the state."<sup>4</sup>

### Trials

"A trial that is conducted fairly, justly, and with procedural regularity by an impartial judge and in which the defendant is afforded his or her rights under the U.S. Constitution or the appropriate state constitution or other law."<sup>5</sup>

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1 "Definition of CONVENTION." [www.merriam-Webster.com](http://www.merriam-Webster.com).

2 The Editors of Encyclopedia Britannica. "Prisoner of War | International Law." Encyclopædia Britannica, 26 June 2017, [www.britannica.com/topic/prisoner-of-war](http://www.britannica.com/topic/prisoner-of-war).

3 ---. "Prisoner of War | International Law." Encyclopædia Britannica, 26 June 2017, [www.britannica.com/topic/prisoner-of-war](http://www.britannica.com/topic/prisoner-of-war).

4 "Definition of TREATY." Merriam-Webster.com, 2019, [www.merriam-webster.com/dictionary/treaty](http://www.merriam-webster.com/dictionary/treaty).

5 "Legal Definition of FAIR TRIAL." Merriam-Webster.com, [www.merriam-webster.com/legal/fair%20trial](http://www.merriam-webster.com/legal/fair%20trial).

### Tribunal

“A body or a special court put together to investigate specifically targeted problems”<sup>6</sup>

### Warfare

“The process of military struggle between two nations or groups of nations; war.”<sup>7</sup>

### Cartel system

“Official system for exchanging prisoners. The agreement established a scale of equivalents for captured officers to be exchanged for fixed numbers of enlisted men, and agents from each side were appointed to conduct the exchanges at particular locations.”<sup>8</sup>

## BACKGROUND INFORMATION

### Historical background

#### Middle ages

The history of prisoners of war dates as far back as the history of warfare. In primitive times, captured warriors were seen as personal property of the conqueror and were enslaved by force. In the Middle Ages, when the concept of ransom was firstly developed, it became advantageous for warriors to capture affluent soldiers. The imprisonment of prisoners required the expenditure of their assistance, and prisoners were therefore detained only when it was convenient for the captor, like the times where they were used as slaves. Low-ranking or wealthy soldiers were killed to reduce the number of enemies.

#### 17th-18th centuries

During the 17th and 18th centuries, a more modern view of prisoners of war began to develop, in which war was seen, strictly as a relationship between governments. Individual soldiers were enemies only as long as they were armed, and the only right to prisoners was to prevent them from returning to battle. This way of thinking has led to more humane treatment of those officially classified as prisoners of war.

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<sup>6</sup> “TRIBUNAL | Meaning in the Cambridge English Dictionary.”

*Dictionary.cambridge.org*, [dictionary.cambridge.org/dictionary/english/tribunal](https://dictionary.cambridge.org/dictionary/english/tribunal).

<sup>7</sup> “The Definition of Warfare.”, [www.dictionary.com/browse/warfare](https://www.dictionary.com/browse/warfare).

<sup>8</sup> “Dix–Hill Cartel.” *Wikipedia*, Wikimedia Foundation, [en.wikipedia.org/wiki/Dix%E2%80%93Hill\\_Cartel](https://en.wikipedia.org/wiki/Dix%E2%80%93Hill_Cartel).

As a result, the treatment of prisoners of war was increasingly regulated through interactive arrangements, in particular, in the form of the so-called cartel system, which regulated the details of prisoner exchange between warring states, like the time and place of the exchange. Another of such treaties was the Peace of Westphalia of 1648, which ended the Thirty Years' War. The treaty provided for the release of prisoners of war without ransom at the end of hostilities and their return to their homelands. In addition to that, the extensive period of conflict during the American Revolutionary War and Napoleonic Wars (1793–1815), followed by the Anglo-American War of 1812, also led to the emergence of a cartel system for the exchange of prisoners. At that time, a cartel was usually arranged by the respective armed service for the exchange of personnel. The main aim was to reduce the number of prisoners held, while alleviating shortages of skilled personnel in the home country.

### 19th century

In the 19th century, efforts to improve the treatment and care of prisoners were intensified. These new conventions have been followed by numerous international conferences, starting with the Brussels Conference of 1874, at which countries agreed on the need to avoid inhumane treatment of prisoners and the use of weapons causing unnecessary damage. Although the agreements were not immediately ratified by the participating States, work continued and led to the adoption of new internationally recognised conventions providing for humanitarian and diplomatic treatment of prisoners of war.

However, the determination of nations to enforce these laws varies greatly, and the treatment of prisoners of war has always been very different. During World War II, imperial Japan and Nazi Germany (against Soviet prisoners of war and Western Allied commandos) were notorious for their atrocities against prisoners of war. The German army used the Soviet Union's refusal to sign the Geneva Convention as a reason for failing to provide the necessities of life for Soviet prisoners of war; and the Soviets also used axle prisoners as forced labor. The Germans also regularly carried out Allied commands, which were captured behind the German lines by the Command Order.

### Latest developments

#### World War I (1914-1918)

All nations pledged to respect the Hague Rules for the fair treatment of prisoners of war and, in general, prisoners of war had a much higher survival rate than their non-captured comrades. Approximately 3.3 million men were captured. The German Reich has 2.5 million prisoners, Russia 2.9 million and Britain and France around 720,000, most of whom were captured shortly before the truce of 1918. The most dangerous moment for prisoners of war was the act of surrender, when defenseless soldiers were killed or killed accidentally. When prisoners arrive in a POW camp, conditions are

better thanks in part to the efforts of the International Red Cross and the inspections of neutral nations.



Figure 1: World War I prisoners of war in Germany<sup>9</sup>

By the end of the war, in 1918, there were about 140,000 British prisoners of war in Germany, including thousands who were imprisoned in neutral Switzerland. It was planned to send them to Dover via Dunkirk and a large reception camp with a capacity of 40,000 men was set up in Dover, which was, then, to be used for demobilization. Many were released *en masse* and sent without food or shelter across the Allied lines. This caused hardship to the host Allies and many former prisoners died of exhaustion.

#### World War II (1939-1945)

	Percentage of POWs that died <sup>10</sup>
Chinese POWs held by Japanese	Almost 100%
USSR POWs held by Germans	57.5%
German POWs held by Yugoslavs	41.2%

<sup>9</sup> Wikipedia Contributors. "World War I Prisoners of War in Germany." *Wikipedia*, Wikimedia Foundation, [en.wikipedia.org/wiki/World\\_War\\_I\\_prisoners\\_of\\_war\\_in\\_Germany](https://en.wikipedia.org/wiki/World_War_I_prisoners_of_war_in_Germany).

<sup>10</sup> "Prisoner of War." *Wikipedia*, 24 Nov. 2022, [en.wikipedia.org/wiki/Prisoner\\_of\\_war#Ancient\\_times](https://en.wikipedia.org/wiki/Prisoner_of_war#Ancient_times).

German POWs held by USSR	35.8%
American POWs held by Japanese	33.0%
German POWs held by Eastern Europeans	32.9%
British POWs held by Japanese	24.8%
German POWs held by Czechoslovaks	5.0%
British POWs held by Germans	3.5%
German POWs held by French	2.58%
American POWs held by Germans	1.19%
German POWs held by Americans	0.15%
German POWs held by British	0.03%

### International standards on trials regarding POW

The Geneva Convention regarding POWs sets out some rules on judicial proceedings. These rules are no impediment to achieving justice and also ensure that POWs will be treated with humanity, by seeking regular and fair proceedings. The ruled main goal is to prevent the existing injustice of unfair prosecutions and sentences. The knowledge that a person brought to trial is able to defend oneself fully against charges is a comfort to prisoners of war and their families, who are already facing great uncertainty.

The status of each detainee determines their rights under the Geneva Conventions. The rights of prisoners of war are very different from those of so-called illegal or underprivileged combatants. However, all prisoners can be prosecuted for war crimes, crimes against humanity and crimes not related to the armed conflict. Similarly, all detained persons, regardless of their status, must be treated humanely. An important measure to ensure humane treatment, as provided for in the Geneva Conventions, is the approval of visits by the International Committee of the Red Cross and compliance with the recommendations of the respective government.

Under the Third Geneva Convention, prisoners of war (POW) must be most of all treated humanely with respect for their persons and their honor while also being able

to inform their next of kin and the International Committee of the Red Cross of their capture. Moreover, they must be allowed to communicate regularly with their families in addition to being given adequate food, clothing, housing, and medical attention. Furthermore, Prisoners of War should get paid for work done and not be forced to do a job that is dangerous, unhealthy, or degrading. They must be released quickly after the conflicts' end and they should not be compelled to give any information except for name, age, rank, and service number at any point of time. In addition, if wounded or sick on the battlefield, the prisoner will receive help from the International Committee of the Red Cross.

When a country is responsible for breaches of prisoner of war rights, those accountable will be punished accordingly. An example of this is the Nuremberg and Tokyo Trials. German and Japanese military commanders were prosecuted for preparing and initiating a war of aggression, murder, ill treatment, and deportation of individuals, and genocide during World War II. Most were executed or sentenced to life in prison for their crimes.

#### General principles applicable to trials of POWs

Prisoners of war awaiting trial continue to be subject to the provisions of the Geneva Convention. This has several important consequences. Firstly, the obligation of humanitarian treatment laid down in Article 13 continues to apply and they must be protected by the population for the duration of their detention, even if they are subject to legal proceedings. Although this is the responsibility of the state, the media should review the way they report on trials to POWs to ensure that coverage does not expose prisoners to public observation or publicly humiliate them. No prisoner of war shall be subjected to physical or mental torture or other forms of coercion.

Judicial proceedings against prisoners of war must comply with the general principles of law, including the right of prisoners to an effective defense, and must not be forced to admit their guilt. They cannot be subject to collective sanctions (Article 87 (3))<sup>11</sup>, which is collective punishment imposed on a group for acts allegedly perpetrated by a member of that group, or just the family, friends and neighbors of the perpetrator and can be held criminally liable only for acts for which they are individually liable. They can only be tried by tribunals which offer “generally recognized basic guarantees of independence and impartiality.”<sup>12</sup> The failure to recognize the right to a fair trial for

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<sup>11</sup> “Treaties, States Parties, and Commentaries - Geneva Convention (III) on Prisoners of War, 1949 - 87 - Penalties.” *Ihl-Databases.icrc.org*, [ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/375-590106?OpenDocument](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/375-590106?OpenDocument).

<sup>12</sup> “Treaties, States Parties, and Commentaries - Geneva Convention (III) on Prisoners of War, 1949 - 84- Article 84 : Courts - Commentary of 2020.” *Ihl-Databases.icrc.org*, [ihl-](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/375-590106?OpenDocument)



prisoners of war is a serious breach of the Third Convention, which itself leads to prosecution.

The protection and treatment of captured combatants during an international armed conflict is detailed in the Third Geneva Convention relative to the Treatment of Prisoners of War, which defines prisoners of war (POWs) and enumerates the protections of POW status. Persons not entitled to POW status, including so-called "unlawful combatants," are entitled to the protections provided under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. All detainees fall somewhere within the protections of these two Conventions; according to the authoritative Commentary to the Geneva Conventions of the International Committee of the Red Cross (ICRC): "nobody in enemy hands can fall outside the law."<sup>13</sup>

### Trial stage

Article 105 of GCIII sets out the conditions that must be met in legal proceedings against prisoners of war<sup>14</sup>. This is a very detailed provision that gives a prisoner of war the right to be assisted by a fellow prisoner and defended by a qualified lawyer appointed by the prisoner himself or by the Protective Force. If neither the POW skill nor the Protection skill can provide an attorney, the Detention skill must provide an attorney. In addition, the prisoner of war must be able to call witnesses. Witnesses play a very important role in criminal cases, especially those related to POWs. They help to clarify what happened by telling the judge or jury everything they know about an event. However, there can be significant difficulty in finding witnesses when it comes to POWs trials.

Lawyers acting on behalf of a prisoner of war shall be given adequate time to mount an effective defense. This includes the possibility to speak with the POW in private and the possibility to consult witnesses. Charges against a prisoner of war shall be

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databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=4FF67677BEEA3E3CC125858500534EEA.

<sup>13</sup> International Committee of the Red Cross. "International Committee of the Red Cross." *International Committee of the Red Cross*, [www.icrc.org/en](http://www.icrc.org/en).

<sup>14</sup> "Treaties, States Parties, and Commentaries - Geneva Convention (III) on Prisoners of War, 1949 - 105 - Rights and Means of Defence." *Ihl-Databases.icrc.org*, [ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/375-590126?OpenDocument#:~:text=The%20prisoner%20of%20war%20shall](http://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/375-590126?OpenDocument#:~:text=The%20prisoner%20of%20war%20shall).

communicated to the prisoner of war and his counsel sufficiently in advance of the trial to enable them to prepare themselves.

In order to participate effectively in the proceedings, the prisoner of war must be provided with an interpreter. Finally, representatives of the Protection Force (or, if no representative has been appointed, a representative of the ICRC) should be allowed to attend the trial of the prisoner of war, unless the trial is held “in camera” for reasons of State security.<sup>15</sup>

According to Article 106, prisoners of war must have the possibility to appeal against the first instance decision or to request a pardon or a suspension of the sentence. The rights listed in Article 105 shall remain in force until the complaint or application has been completed.

Decisions and sentences shall be transmitted to the Protecting Power, the representative of the detainees and the accused prisoner of war in accordance with Article 107. If no protection authority has been designated, this should be reported to the ICRC.<sup>16</sup>

To add to that, unprivileged combatants have the right to be tried before an “ordinary non-civilian military court”, to be informed of the charges against them, to defend themselves and to call witnesses, to be assisted by a qualified lawyer of their choice, to have an interpreter and to appeal against the verdict and the verdict. In exceptional cases, court proceedings may be held in camera if the security of the State so requires.

### Humane Treatment

They must be protected from violence, intimidation, insults or public curiosity. Prisoners of war must be held under conditions as favorable as those of the armed forces of the prison force in the same area. In particular, premises intended for the

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<sup>15</sup> “GENEVA CONVENTION RELATIVE to the TREATMENT of PRISONERS of WAR of 12 AUGUST 1949.” [www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32\\_GC-III-EN.pdf](http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf).

<sup>16</sup> “GENEVA CONVENTION RELATIVE to the TREATMENT of PRISONERS of WAR of 12 AUGUST 1949.” [https://www.un.org/en/genocideprevention/Documents/Atrocity-Crimes/Doc.32\\_GC-III-EN.pdf](https://www.un.org/en/genocideprevention/Documents/Atrocity-Crimes/Doc.32_GC-III-EN.pdf), [www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32\\_GC-III-EN.pdf](http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf).

use of prisoners of war must be completely protected from dampness and adequately heated and illuminated.

Disadvantaged combatants are entitled to humane treatment. If it is possible to deny detainees certain rights which might endanger security, such restrictions must be absolutely necessary and must never amount to inhuman or degrading treatment.

#### Transfer; end of sentence

Prisoners of war may be transferred to other Parties to the Third Convention only if the host Power has demonstrated the will and ability to implement the Convention. The updated commentary does not preclude the transfer of prisoners of war to international tribunals to answer for their crimes, but notes that “the ability and readiness of the receiving International Court to guarantee standards at least as protective as those of the Convention, particularly with regard to pre-trial detention and guarantees of a fair trial are important”.<sup>17</sup>

When active hostilities come to an end, POWs have to be released without delay (Article 118). The Detaining Power may, nevertheless, continue to detain POWs undergoing judicial trials or serving sentences (Article 115). However, they may also decide to repatriate such POWs or accommodate them in a neutral country prior to the expiration of proceedings or sentences.

#### Important trials

##### The Nuremberg Trials - World War II

After the war, the allied powers – the United States, Britain, France and the Soviet Union – joined forces to form the International Military Tribunal (IMT). From 1945 to 1946, the leaders of Nazi Germany were tried for crimes against peace, war crimes, crimes against humanity and conspiracy to commit one of these crimes.

In the days leading up to Germany’s surrender on May 8, 1945, President Harry Truman appointed Robert H. Jackson, Associate Justice of the Supreme Court, as chief prosecutor to represent the United States in the trials against the European Axis powers. Jackson helped the Allies – the governments of the United States, Britain, France, and the Soviet Union – reach an agreement called the London Charter, which

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<sup>17</sup> “Treaties, States Parties, and Commentaries - Geneva Convention (III) on Prisoners of War, 1949 - 4 - Article 4 : Prisoners of War - Commentary of 2020.” *Ihl-Databases.icrc.org*, [ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=1796813618ABDA06C12585850057AB95](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=1796813618ABDA06C12585850057AB95).

set out the procedures for the Nuremberg trials. The London Agreement created the International Military Tribunal (IMT) on August 8, 1945, where each of the four Allied nations appointed a judge and a prosecution team.

On October 1, 1946, the court convicted 19 defendants and acquitted three of them. Twelve of them were sentenced to death. Three defendants were sentenced to life imprisonment and four to 10 to 20 years' imprisonment. On 16 October, the executions were carried out by hanging in the court's gymnasium. In 1947, prisoners who had been sentenced to prison terms were transferred to the Spandau penitentiary in Berlin.

There is no precedent for an international trial of war criminals, and the Nuremberg process was the first of its kind. The trials were conducted under the law of a single nation, not that of a group of four powers (France, Great Britain, the Soviet Union and the United States) with different legal traditions and practices.

With the London Charter of the International Military Tribunal (IMT) published on 8 August 1945, the Allies eventually established the laws and procedures of the Nuremberg Trials. The Charter defined, inter alia, three categories of crimes: crimes against peace (including the planning, preparation, initiation or waging of wars of aggression or wars in violation of international agreements), war crimes (including violations of the laws or customs of war, including the mistreatment of civilians and prisoners of war) and crimes against humanity (including murder, slavery or the deportation of civilians or persecution for political, religious or racial reasons). It has been established that both civilians and military personnel can be accused of war crimes.

#### Legacy of the trials

The Nuremberg trials were controversial even among those who wanted to punish serious criminals. Harlan Stone (1872-1946), Chief Justice of the United States Supreme Court at the time, called the proceedings a "hypocritical sham" and a "high-level lynching". William O. Douglas (1898-1980), then Associate Justice of the United States Supreme Court, said the Allies had "replaced authority with principle" at Nuremberg.<sup>18</sup>

However, most observers saw the trials as a step forward in the creation of international law. The Nuremberg conclusions led directly to the UN Genocide Convention (1948) and the Universal Declaration of Human Rights (1948), as well as

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<sup>18</sup> History.com Editors. "Nuremberg Trials." *History*, A&E Television Networks, [www.history.com/topics/world-war-ii/nuremberg-trials](http://www.history.com/topics/world-war-ii/nuremberg-trials).

the Geneva Convention on the Laws and Uses of War (1949). Furthermore, the International Military Tribunal provided a useful precedent for the trials of Japanese war criminals in Tokyo (1946-48), for the trial of Nazi leader Adolf Eichmann (1906-62) in 1961, and for the establishment of war crimes tribunals in the former Yugoslavia (1993) and Rwanda (1994).



Figure 2: Nuremberg trials memorial<sup>19</sup>

The strongest impact should have been on the development of international criminal law, but this was largely frozen out by the Cold War. With the re-emergence of international tribunals investigating war crimes and genocide in the former Yugoslavia and Rwanda in the 1990s, the legacy of Nuremberg proved a powerful argument for establishing the International Criminal Court in 1998.

#### Reflection upon the trial

The trials were also plagued by allegations of being little more than victor's justice. These accusations are made not only by the Germans, but also by American and British lawyers, who believe that it was a legal farce. The judges and prosecutors were not neutral, but came from the four victorious powers, resulting in such oddities as a Soviet prosecutor citing the Hitler-Stalin pact as evidence of German aggression against Poland, or a Soviet judge with extensive experience of conducting Stalin's show trials trying to convince his colleagues that the massacre of Polish officers in

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<sup>19</sup> Museen. "Memorium Nuremberg Trials." *Nuremberg Municipal Museums*, [museums.nuernberg.de/memorium-nuremberg-trials/](https://museums.nuernberg.de/memorium-nuremberg-trials/).

Katyn (who had been executed by the Soviets) should be added to the list of German war crimes.

But hypocrisy was not limited to the Soviet side: the London Charter of 8 August 1945, which established the Tribunal, explicitly limited its jurisdiction to war crimes committed by Axis forces. The Tribunal also applied the so-called *tu quoque* principle, according to which any illegal act is justified if it was also committed by the enemy.

#### Pakistan v India prisoners of war trial

The affair between Pakistan and India started after the Bangladesh Liberation War. India tried to provide diplomatic and economic support to East Pakistan, now Bangladesh, when atrocities like Operation Searchlight began. On 16 December, the Indian representative and the Pakistani representative signed the so-called surrender document, according to which the Pakistani forces in East Pakistan, together with 90,000 prisoners of war, will be handed over to the Indian forces. Most of the 400,000 Bangladeshis detained in West Pakistan were used as hostages for bargains against the Bangladeshi government. On 17 April 1973, the Bangladeshi government announced its decision to try the Pakistani Prisoners of War for crimes against humanity. On 28 August 1973, India and Pakistan signed the Delhi Accord, which followed the repatriation of Bengali and Pakistani prisoners of war. Later, the Bangladeshi government appointed key government prosecutors in war crimes courts to try Pakistani prisoners of war for genocide in Bangladesh.

#### Analysis of the trial

The issue is the repatriation of prisoners of war, 195 of the 90,000 prisoners of war accused by Bangladesh of crimes against humanity committed during the genocide of the Bangladeshi Muslims. However, all the prisoners of war, including the 195 accused of these crimes, were to be returned to Pakistan under the surrender agreement signed between India and Pakistan. Another important term for the analysis of this case is “crimes against humanity”, or in this case “war crimes”, committed in Bangladesh by the Pakistani armed forces. It is considered one of the greatest genocides of the post-war period.

It is also important to stress that the war crimes and prisoners of war case had no direct connection. Although the war that broke out between Pakistan and India in 1971 was caused by the atrocities committed in Bangladesh, the end of the war led to a completely different outcome: it led to the Shimla Accord, a peace treaty signed between India and Pakistan and has no direct link to the war crimes committed in Bangladesh. From the above conclusion, we can say that India has acted as a mediator between Pakistan and Bangladesh.

On July 2, 1972, eight months after the POW issue, the Pakistani President and the Indian Prime Minister signed the historic Simla Accord. The crucial negotiations took

place after the sudden emergence of Bangladesh in 1971, during which nearly 93,000 Pakistani soldiers and civilians were taken prisoners of war. The agreement allowed India to agree to the release of all prisoners of war. India treated the POWs under the 1925 Geneva Convention, but used it to force Pakistan to recognise Bangladesh's sovereignty after the three countries reached a compromise in 1974.

When Mujib announced that Bangladesh would indict suspected war crimes suspects, Rawalpindi's army arrested almost all officers and soldiers of the army, navy, air force, border guards, police and civilian bureaucrats who speak Bengali. The news alarmed Mujib, who immediately asked friendly countries for help in exerting diplomatic pressure on Pakistan. Both Bangladesh and India have succumbed to Pakistan's political blackmail. On 9 April 1974, the three countries signed a historic agreement.

The negotiators of the trilateral agreement did not include a guarantee clause for the military trial of the alleged war criminals. As a result, 195 people were safely returned to Pakistan without being tried in Bangladesh or charged under Pakistani military law. Fearing for the officers, the Pakistani Supreme Judge filed, on 11 May 1973, a request for a "trial against the Pakistani prisoners of war" (Pakistan v. India) and requested the intervention of the International Court of Justice (ICJ) in The Hague (Netherlands).

Pakistan's application was filed with the International Court of Justice of India, which initiated proceedings against India in a "dispute concerning allegations of genocide against 195 Pakistani nationals, prisoners of war or political prisoners held in India"<sup>20</sup> without standing. Pakistan immediately informed the Tribunal of the negotiations and, in July 1973, requested a stay of proceedings. As a result, the case was removed from the list in December 1973.

## MAJOR COUNTRIES AND ORGANIZATIONS INVOLVED

### Argentina

The Argentine Manual on the Law of War (1969) provides that protected persons detained on suspicion of committing acts harmful to the occupying power "shall not be deprived of due process of law" and that "the competent court of the occupying power shall not impose a sentence without due process of law". With regard to non-international armed conflicts, the Manual adopts the provisions of Common Article 3

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<sup>20</sup> Samad, Saleem. "Getting Away with Genocide." *The Daily Guardian*, [thedailyguardian.com/getting-away-with-genocide/](http://thedailyguardian.com/getting-away-with-genocide/).

of the 1949 Geneva Conventions. The Argentine Manual of the Law of War (1989) states that it is a serious violation of the 1949 Geneva Conventions to "deprive a protected person of the right to a fair and impartial trial".

### Belgium

The Belgian Manual on the Law of War (1983) refers to Article 3 of the 1949 Geneva Conventions and prohibits the sentencing of protected persons without a fair trial. The Handbook also states that it is a serious violation of the 1949 Geneva Conventions to deprive prisoners of war or other protected persons of the right to a fair trial. In addition to that, the Belgian Law on the Punishment of Serious Violations of the Geneva Conventions and their Additional Protocols (1993), as amended in 1999, states that "the deprivation of the right to a fair and impartial trial by a prisoner of war [or] a protected person" is a crime under international law.

### Denmark

The Danish Military Penal Code (1973), as amended in 1978, provides that: Whoever uses means or procedures of war, the application of which is contrary to an international agreement concluded by Denmark or to general rules of international law, shall be liable to the same punishment [i.e. a fine, a lesser punishment or imprisonment for a maximum of 12 years]; furthermore, the Danish Military Penal Code (2005) provides that: Any person who intentionally uses means or procedures of war, the application of which is contrary to an international agreement concluded by Denmark or customary international law, shall be liable to the same punishment [i.e. life imprisonment].

### Iraq

The Iraqi Supreme Criminal Court Law (2005) defines as a serious violation of the 1949 Geneva Conventions the "deliberate denial to a prisoner of war or other protected person of the right to a fair trial and fair hearing". The law defines it as a war crime in any armed conflict when "convictions ... are handed down without the prior decision of a duly constituted tribunal providing all recognized and necessary legal safeguards" if they are "committed against persons who are not taking an active part in hostilities, including members of the armed forces who have laid down their arms and those who have been incapacitated by sickness, injury, imprisonment or any other cause." With regard to the sentencing process, the law stipulates the following: "The Judicial Department shall ensure a fair and speedy trial, conducted in accordance with this Act and the rules of procedure and evidence annexed thereto, with full respect for the rights of the accused and with due regard for the protection of victims or their families and witnesses.



However, there is a considerable paradox in this statement, as although Iraq has plenty of laws regarding the matter while also accepting the Geneva convention, UN human rights experts expressed alarm at reports that some 50 prisoners convicted of terrorism-related crimes in Iraq face execution and urged the Government to immediately halt all mass executions saying they had serious concerns about the conduct of the trials and the extraction of confessions under torture.

### Japan

The Japanese Law on the Treatment of Prisoners of War and Other Detainees in Situations of Armed Aggression (2004) states that: in the event that any of the persons mentioned in the following paragraphs request to visit the detainees, the commander of the prisoner of war camp must allow the detainees to accept such visit. In such a case, no member of the staff of the prisoner of war camp may participate in the visit of a prisoner: an advocate in criminal cases of the prisoner.

Article 82: "The Minister of Defence may, if he considers it necessary and urgent, request the commander of the prisoner of war camp ... to limit or suspend the visits provided for in the two preceding sections. If the Minister of Defence considers that the restriction or suspension of visits under the preceding paragraph has become unnecessary, he shall immediately order the commander of the prisoner of war camp to end the restriction or suspension of visits".

### Ukraine

The Ukrainian Manual of International Humanitarian Law (2004) states that "serious violations of international humanitarian law directed against individuals include: ... denial of the right to a fair and equitable trial."

The handbook further states that in non-international armed conflicts "it is prohibited to issue sentences... without prior judgment" or to threaten to impose sentences on the following persons: Persons who do not actively participate in hostilities; Members of the armed forces who have laid down their arms; Persons incapacitated by illness, injury, imprisonment or any other cause.

The UN Human Rights Council spokeswoman Ravina Shamdasani said Russian-backed authorities in the occupied city could potentially start a trial in a few days and warned that such a trial could amount to a war crime. Shamdasani recalled that "under international law, persons with POW status enjoy immunity and cannot be prosecuted

for their participation in hostilities or for lawful warlike acts committed during an armed conflict, even if such acts would constitute a crime under national law." <sup>21</sup>

The spokesperson added that The Office of the High Commissioner for Human Rights (OHCHR) is concerned that prisoners of war are generally held without access to independent monitors, putting them at risk of torture for extracting confessions. The World Health Organization (WHO) warned that since the Russian invasion of Ukraine, which began almost six months ago, it has witnessed an "unprecedented number of attacks on health care".

"Since 23 August, the WHO has verified more than 460 attacks on health services, resulting in nearly 100 deaths and more than 100 injuries," said Dr Jarno Habicht, WHO spokesperson and head of the WHO office in the country. Habicht stressed that these attacks are not only contrary to international law, but also "are a barrier to many people in need of treatment."<sup>22</sup>

### Switzerland

The Basic Military Manual of Switzerland (1987) states, "In the context of the judicial process, persons accused of possible war crimes who no longer have the status of prisoners of war are granted certain minimum guarantees consistent with the rule of law." Furthermore, the Handbook continues, "Article 75 contains a number of provisions guaranteeing the accused a fair trial."

Also, the Handbook states that "any person found guilty of an offense committed in the context of armed conflict may be tried only on the basis of a judgment ... shall be convicted. Such sentence shall be passed by an impartial and duly constituted tribunal which shall follow generally recognized principles of due process."

Finally, according to the manual, depriving prisoners of war and civilians of the "right to trial by an impartial and duly constituted tribunal in accordance with the Conventions" is a serious violation of the 1949 Geneva Conventions. In an article titled "Judicial Guarantees," the handbook states, "Prisoners of war prosecuted for war crimes shall enjoy the rights provided for in the 1949 Geneva Convention III."

Generally, Switzerland has many laws regarding the issue and it covers the matter adequately and provides us with sufficient sentences if not followed.

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<sup>21</sup> "Ukraine Prisoner of War Trials in Mariupol Could Be a War Crime: OHCHR." *UN News*, [news.un.org/en/story/2022/08/1125222](https://news.un.org/en/story/2022/08/1125222).

<sup>22</sup> "Ukraine Prisoner of War Trials in Mariupol Could Be a War Crime: OHCHR." *UN News*, [news.un.org/en/story/2022/08/1125222](https://news.un.org/en/story/2022/08/1125222).

### International Committee of the Red Cross

Established in 1863, the ICRC operates worldwide, helping people affected by conflict and armed violence and promoting the laws that protect victims of war. The ICRC's work is based on the Geneva Conventions of 1949, their Additional Protocols, its Statutes - and those of the International Red Cross and Red Crescent Movement - and the resolutions of the International Conferences of the Red Cross and Red Crescent Movement. The ICRC is an independent and neutral organization that provides protection and humanitarian assistance to victims of armed conflict and other situations of violence. It responds to emergencies by promoting respect for international humanitarian law and its implementation in national law.

The ICRC also has a special role under international humanitarian law in re-establishing and maintaining family contacts in wartime, in particular, with regard to the right of prisoners of war and internees to send and receive letters and cards. Some key operations include 700 staff engaged in 10 locations in Ukraine<sup>23</sup> to provide assistance to displaced people, supply medicines and equipment to health facilities, restore water supplies to millions of people and carry out other life-saving activities.

The ICRC is also helping people inside Syria<sup>24</sup> who are facing extremely difficult conditions as a result of the conflict, as well as the hundreds of thousands of Syrian refugees in Jordan, Lebanon and Iraq. In cooperation with the Syrian Arab Red Crescent, we are distributing food and other essentials, restoring water supplies and supporting medical care.

### American Ex-Prisoners of War

Americans for Former Prisoners of War is a service organization that aims to help surviving American military and civilian prisoners of war (POWs), especially the elderly and those with medical problems. The American Ex-POWs, based in Arlington, Texas, was founded in 1942.

The group is open to former American POWs from all wars and their immediate families. Its service workers have helped former POWs obtain medical benefits and other rights.<sup>25</sup> Former POWs may be eligible for special veterans' benefits, including medical care at Veterans Affairs hospitals and disability benefits for injuries and illnesses caused by incarceration. These benefits are in addition to the normal benefits

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<sup>23</sup> "Ukraine." *International Committee of the Red Cross*, [www.icrc.org/en/where-we-work/europe-central-asia/ukraine](http://www.icrc.org/en/where-we-work/europe-central-asia/ukraine).

<sup>24</sup> "Syria." *International Committee of the Red Cross*, [www.icrc.org/en/where-we-work/middle-east/syria](http://www.icrc.org/en/where-we-work/middle-east/syria).

<sup>25</sup> "American Ex-Prisoners of War Organization." *Www.axpow.org*, [www.axpow.org/](http://www.axpow.org/).

and services to which veterans are entitled. Widows and minor children of former prisoners of war may be entitled to special benefits and compensation.

## TIMELINE OF EVENTS

DATE	DESCRIPTION OF EVENT
27 August 1874	The declaration of Brussels is signed.
18 October 1907	The Hague convention is signed.
13 December 1918	The Allies report that 264,000 prisoners have been repatriated by December 9.
28 June 1919	The Paris treaty is signed.
3 February 1920	The Allies present the German government with a list of persons accused of alleged war crimes.
19 June 1931	The Convention relative to the Treatment of Prisoners of War was signed.
8 August 1945	The London Agreement creates the International Military Tribunal (IMT). The Allies establish the laws and procedures of the Nuremberg Trials.
20 November 1945 – 31 August 1946	The Nuremberg trials take place.
1 October 1946	The court convicts 19 defendants and acquits three of them- The Nuremberg trials.
12 August 1949	Geneva convention is agreed upon.
21 October 1950	Geneva convention is applied.
2 July 1972	The Pakistani president and the Indian prime minister signs the Simla Accord.
17 April 1973	The Bangladeshi government announces its decision to try the Pakistani Prisoners of War.
28 August 1973	India and Pakistan sign the Delhi Accord.

## PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

### Declaration of Brussels

On 27 July 1874, at the initiative of the Russian Tsar Alexander II, representatives of 15 European states met in Brussels to discuss the draft international agreement on the laws and practices of war presented to them by the Russian government. The conference approved the draft with minor amendments, but since not all governments were willing to accept it as a binding agreement, it was not ratified. In the year of their adoption, the Institute of International Law, meeting in Geneva, set up a commission to examine the Brussels Declaration and to submit its opinion and additional proposals to the Institute. The Institute's efforts led to the publication, in 1880, of the Handbook of the Laws and Customs of War at Oxford. The Brussels Declaration and the Oxford Manual formed the basis for the two Hague Conventions on Land Warfare and their accompanying regulations, adopted in 1899 and 1907. Many provisions of the two Hague Conventions can easily be linked to the Brussels Declaration and the Oxford Manual.<sup>26</sup>

### The Hague convention IV with respect to the laws and customs of war on land

These treaties are called the "Hague Conventions" because they were adopted at the Peace Conferences in The Hague (Netherlands) of 1899 and 1907. They define the laws and customs of war in the strict sense and lay down the rules to be observed by the warring parties during hostilities. This part of international law is called the law of war, unlike the one governing the right to assistance as defined in the Geneva Conventions for the Protection of Victims of Conflicts and the Limitation of Methods of Warfare.

The Conventions and Declarations adopted at The Hague on 29 July 1899 deal with such matters as the peaceful settlement of international disputes and the laws and customs of war, reinforced by the Conventions of 1907.<sup>27</sup>

### Geneva convention III

During the Second World War, the 1929 Convention had proven effective to protect captured combatants in the hands of States that were parties to it, so in 1949, the new GC III aimed to strengthen that protection and make it universal. The Third Geneva

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<sup>26</sup> IHL, <https://ihl-databases.icrc.org/en/ihl-treaties/brussels-decl-1874?activeTab=historical>.

<sup>27</sup> IHL, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907?activeTab=default>.

Convention constituted a landmark in the history of POWs, laying out a solid legal framework for their protection.

Today, every country in the world is a party to the Third Geneva Convention, which also confers a special mandate on the ICRC, entrusting it with a central role in the protection of the dignity and well-being of POWs.

These universal prohibitions, while being essential, may conceal another central feature of the Geneva Conventions: they reach out to and protect all persons under the control of the belligerent parties, not treating them in the same way, but explicitly taking into account their different situations. In addition to simply outlawing various atrocities, international law of armed conflict – International Humanitarian Law (IHL) – offers much broader protection measures and directly addresses the different roles people could play if their lives were swallowed up by war. The attribution of each individual to one or more categories provided for in the conventions – combatants, civilians, prisoners of war, doctors, clergymen, sick, wounded, shipwrecked, women, children, mercenaries, handicapped – forms the basis of a complex legal system governing the treatment which the parties must accord by their means of communication to persons under its jurisdiction and control.<sup>28</sup>

### ICC Statute

Under Article 8, “willfully depriving a prisoner of war or other protected person of the rights of fair and regular trials” constitutes a war crime in international armed conflicts. Under Article 8, “the passing of sentences ... without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable,” constitutes a war crime in non-international armed conflicts.

Article 64 provides: “The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused.” Article 64 adds: “The Trial Chamber assigned to deal with the case shall ... confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings.” Article 64 states: “At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner.”

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<sup>28</sup> III Relative to the Treatment of Prisoners of War of 12 August 1949.  
[https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32\\_GC-III-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32_GC-III-EN.pdf).

Article 67 provides: “In the determination of any charge, the accused shall be entitled to a ... fair hearing conducted impartially”.

Article 69 states with regard to evidence: The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

This particular protocol is exceptionally important as the Rome statute has excellent relations with the UN and when it comes to such trials it also preaches international law and the Geneva conventions.<sup>29</sup>

### Additional Protocol I

Article 75(4) of the 1977 Additional Protocol I provides: “No sentence may be passed, and no penalty may be executed on a person found guilty of a penal offense related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure”.<sup>30</sup>

### IMT Charter

Article 9 of the 1946 IMT Charter (Tokyo), entitled “Fair trial for accused”, provides a list of procedures to be followed “in order to ensure fair trial for the accused”.

The definition of crimes against humanity in the Nuremberg Charter states that they include crimes committed "before or during the war", but the IMF judges decided to consider only crimes against humanity committed during the war. Although the judges acknowledged that Nazi Germany had committed horrific crimes before the war, including the persecution of Jews, they did not convict the defendants for their role in the pre-war crimes.

An important legacy of the Nuremberg Charter and the IMT is that they define crimes against humanity as crimes under international law. The IMT decision treated the evidence of war crimes and crimes against humanity together and made no distinction

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<sup>29</sup> Rome Statute International Criminal. <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

<sup>30</sup> IHL, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977>.

between the two. Therefore, the judgment does not set a precedent for distinguishing crimes against humanity from war crimes.<sup>31</sup>

## POSSIBLE SOLUTIONS

### Promote objectivity

When a trial takes place the state needs to make sure that the jury and the judges are from both sides of the conflict in order to promote impartiality. In order to provide legal guarantees to prisoners of war in armed conflicts, States should review, already in peacetime, those elements of their military system which, according to the principle of assimilation, would be applicable to prisoners of war. For instance, in countries where military personnel are tried by courts-martial, there is a need to ensure that such courts are able to guarantee an independent and fair trial of prisoners of war. They should also consider bringing civilian prisoners of war before a military tribunal, since many countries have constitutional limitations on the sentencing of civilians by military tribunals. This also makes the need of reviewing the system of existing military tribunals of vital importance.

### Separation of judiciary from the Executive

In order to guarantee the independence of the judiciary in criminal matters, the Code could separate the judiciary by requiring the presence of judges and placing them all under the supervision of the Supreme Court of each State. Because of the division, no judicial officer would have ties to a person connected to the prosecution. In criminal proceedings where the state is making a charge, it is unusually important for the executive to be clear of any doubt about the influence or control of those in power.

### Adversary System

According to this provision, any dispute concerning the criminal liability of a person must be decided by the criminal court after the person concerned has been given a reasonable and fair opportunity to be heard by the competent court. It allows an impartial and competent court to have a reasonable review of the case and is a better way to establish the truth in a fair way. In these cases, the state represents the victim and prosecutes the accused.

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<sup>31</sup> Convention on the Prevention and Punishment of the Crime of Genocide.

[https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf).



This system guarantees both parties equal rights and opportunities. Moreover, the Code requires the Criminal Court to play a more active and positive role in the struggle between the prosecutor and the accused than that of a mere arbitrator. The indictment against the accused is not made by the prosecution but by the court, after weighing the circumstances of the case, and the prosecutor cannot withdraw the indictment without the consent of the court

#### Rules on public access to proceedings

Restrictions on the public nature of the proceedings involve the exclusion of the public and the press from the hearing and are referred to as “in camera”. In proceedings for war crimes, exclusion may be justified if it is necessary for the protection of a prisoner of war or in the interests of national security. Any exclusion of the public or the media presupposes that such restriction must be necessary and proportionate. This is to be assessed on a case-by-case basis and means that restrictions, including a publication ban, may only be imposed if:

“This is necessary to prevent a serious risk to the proper administration of justice, because reasonable alternative measures will not prevent the risk of harm caused by publication of the holding of a public hearing, and when the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice”<sup>32</sup>

However, any exclusion of the press and public for reasons of national security should nevertheless be accompanied by adequate mechanisms for observation or review to guarantee the fairness of the hearing, like the supervision of the trials by ICC representatives. To add to that while freedom of expression must always be upheld, media coverage must not become inflammatory so as to negatively impact upon an accused’s presumed innocence.

#### Proceeding without undue delay in criminal and non-criminal proceedings

Judicial proceedings must be conducted in a timely manner. In case of criminal proceedings. Although this guarantee is explicitly mentioned only in connection with the determination of charges, the Commission on Human Rights has already considered that the right to be heard within a reasonable time applies to both criminal

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<sup>32</sup> COUNTER, UN. “Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process.” <https://www.ohchr.org/Sites/Default/Files/Newyork/Documents/FairTrial.pdf>, [www.ohchr.org/sites/default/files/newyork/Documents/FairTrial.pdf](http://www.ohchr.org/sites/default/files/newyork/Documents/FairTrial.pdf).

and non-criminal proceedings as an integral part of the fundamental right to a fair trial and especially when it comes to prisoners of war, as delay in the proceedings may result in a violation of the rights of the accused. Member States cannot justify delays in proceedings on the grounds of lack of resources. In practice, this means that a person must be tried without delay and that the proceedings, including possible remedies, must be brought to a speedy conclusion.

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