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LEADERS ON TRIAL

**How International Law
Is Being Undermined**

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A world without international law

‘Covenants, without the Sword, are but Words,
and of no strength to secure a man at all.’

Thomas Hobbes, *Leviathan* (1651)

Court case in Kabul: Risk in the midst of war

In 2007, I (Geert-Jan Knoops), together with, amongst others, a Dutch investigating judge and a public prosecutor, found myself in Kabul in connection with a criminal case concerning alleged war crimes. Afghanistan was in a state of instability at the time. Although the Taliban had been formally driven out in 2001, there was scarcely any real security or effective state control. The central government under President Hamid Karzai exercised only limited authority outside the heavily secured enclave in Kabul. Large parts of the country were under the influence of local warlords, militias and other insurgent groups.

The international military presence, particularly that of troops from the International Security Assistance Force (ISAF) under a NATO mandate, was substantial, but was unable to compensate for the weakness of Afghan state institutions. The police, the judiciary

and the army were fragile and fragmented, and were undermined by corruption and rival power groups. The consequences of nearly three decades of foreign intervention and war were deeply evident in the functioning of the state. At the same time, the Taliban had regrouped and, from 2005 onwards, violence escalated once more, including through suicide attacks, roadside bombs and targeted attacks, which affected daily life.

Even Kabul, which was considered relatively safe, was regularly hit by attacks on government buildings, embassies and foreign convoys, meaning that our stay in the city was inextricably linked to all manner of security risks. Travel through Kabul took place exclusively under strict security and under the escort of Australian military personnel. And because of that situation, we did not stay in a hotel, but with an Afghan host family. After all, hotels were regarded as potential targets.

The house where we found accommodation was austere and simple. But what it lacked in comfort was more than made up for in hospitality. Tea was served, meals were cooked and, above all, space was made for us. In a city where fear and violence defined the public face, a different reality turned out to exist behind the front door.

Due to the security risks, we had to stay indoors in the evenings, which left us with plenty of time once we'd gone through the files. Time that the others present were happy to spend playing games. Personally, I'm not a fan of board games. But the investigating judge with whom we were staying in Kabul turned out to be a huge fan of the game Risk. He clearly enjoyed devising strategies and the excitement the game brought. Partly thanks to his enthusiasm, we played several games in a row over a number of evenings.

Risk is a board game in which the world map is divided into territories that players can take turns conquering and defending. At the start of the game, each player is given a secret objective: sometimes to conquer specific continents, sometimes to destroy a particular opponent. Armies are tactically deployed across territories,

alliances are formed and quickly broken. Ultimately, the dice decide the outcome of the 'battles'.

Whoever is positioned on the territories most crucial to their mission at the start of the game has a better starting position on the board. Whoever operates most strategically increases their chances of fulfilling their mission. And whoever is simply the luckiest with the dice, or the cards, can conquer the most territories and thus win the game.

The game has a number of rules, but none that are fair, as I soon discovered. It lacked the terms we are familiar with from (international) law: 'proportionality', the distinction between 'legitimate' and 'illegitimate' force, and so on. Concluding treaties served little purpose. Anyone who, despite an alliance with another player, is nevertheless attacked by that same player has no one to turn to. There is no neutral third party, no judge, no 'Risk Security Council'. The only things that matter are the number of armies you have deployed and the outcome of a roll of the dice. Your 'fate' lies in the hands of power and the calculation of probability.

There was something ironic about the fact that we were playing Risk in the evenings in Kabul of all places, a city that had been the scene of real battles for territory and power for decades. During the day, we found ourselves in a reality where violence and global struggles for power had left deep scars. In the evenings, we transposed that same logic onto a cardboard world. I sometimes wondered whether that was really how things worked for those who decide on wars. In the so-called 'war rooms' we recognise from TV series and films, with large maps, red circles and military personnel reporting live from the battlefield. Are areas there also viewed as squares on a map? As positions that can be won or lost? And to what extent do the concrete consequences remain visible to the people living in those areas, to families such as the host family with whom we stayed? These are questions that have always been relevant, and unfortunately still are today.

*The Faqirzada case: why a Dutch judge
is ruling in the case of an Afghan soldier*

The case that had brought us to Afghanistan was that of Abdullah Faqirzada. In the 1980s, he held a senior position within the Afghan military intelligence service, the Military Intelligence Department (MID), in Kabul. As one of the deputies to the head of that service, he was closely involved with the unit responsible for detaining and interrogating alleged opponents of the communist regime. During the Soviet-Afghan War, that regime was closely allied with the Soviet Union.

According to the Dutch Public Prosecution Service (OM), Faqirzada was not merely a military figure on the sidelines. He was accused of being involved, between December 1985 and March 1986, in torture, cruel or inhuman treatment and other forms of serious violence against political prisoners.

Faqirzada had come to the Netherlands with his family in the 1990s. It was here that he came to the attention of the Dutch authorities, partly on the basis of information from intelligence services regarding his former role within the MID. The Public Prosecution Service believed there was sufficient evidence to warrant criminal prosecution. Faqirzada was therefore summoned to appear before a Dutch court.

At first glance, this seems strange. Why should a Dutch court rule on acts of violence that took place in Afghanistan decades earlier? The answer lies in international law and in the way in which the Netherlands has incorporated international crimes into its own criminal justice system.

Certain offences are not exclusively a domestic matter. They affect the international legal order as a whole. Therefore, in the case of such serious crimes, states not only have the right, but sometimes also the duty, to prosecute, even when the offences were committed outside their own territory. This authority may stem from

treaties, from national legislation and from the principle of universal jurisdiction: the notion that some offences are so serious that every state may, and sometimes must, take action against them.

How this principle has developed – and what political and legal upheavals were required for this – will be discussed in detail later. For now, it suffices to note that Dutch law, partly on the basis of universal jurisdiction, made it possible for a Dutch court to hear this case.

In the Faqirzada case, the Public Prosecution Service based the prosecution on the War Crimes Act, the Dutch criminal law on war crimes in force at the time (since replaced by the International Crimes Act). The doctrine of so-called ‘command responsibility’ also played an important role in this regard. This means that a superior may be criminally liable for offences committed by subordinates if he in fact had the power to intervene and nevertheless failed to do so. In this case, the specific issue was whether Faqirzada, as a superior, had ‘allowed’ subordinates to commit war crimes. The crux of the charge was that he knew, or ought to have known, that political prisoners were being tortured and that he had failed to take effective measures to prevent this.

The trial presented particular challenges. Key witnesses were unable to travel to the Netherlands and were therefore heard at the Dutch embassy in Kabul. The authorities feared that witnesses travelling to the Netherlands might apply for asylum and not return. This meant hearings under heavy security, transport in armoured vehicles and a constant security threat. The distance in terms of time and place was considerable: the evidence related to events said to have taken place years earlier in another – still unstable country.

The case ended in an acquittal. The Court of Appeal drew a clear distinction between formal authority and actual control. It found that, during the period in question, victims had been abused and tortured by officials of the Afghan military intelligence service, and

that Faqirzada had held a senior position within that service. The decisive factor, however, was whether, at the relevant time, he actually had the effective, enforceable power to intervene: the practical ability to prevent the offences.

That court found that individual criminal responsibility had not been established beyond reasonable doubt. According to the court, the case file did not sufficiently demonstrate that Faqirzada had effective control over the subordinates in question. Among other things, this was due to the fact that it was insufficiently clear what powers he actually possessed, when he carried out his deputy duties, and what he knew about the specific victims and interrogations. The interrogations in Kabul contributed to that picture: they did not provide convincing evidence that he was actually able to intervene at the decisive moment. The acquittal was upheld on cassation.

This case demonstrates that the principle of universal jurisdiction enables national courts to rule on serious international crimes, even if these were committed far beyond their territory and took place within a different political and historical context.

National prosecution of this kind also raises questions. Is it desirable for a national court to rule on a distant and complex conflict? Is there a risk of selectivity or political sensitivity? Such criticism is understandable. But the countervailing concern – that serious crimes might otherwise go unpunished – carries greater weight.

In other Afghan cases, such as those against former generals Hesamuddin H. and Habibullah J., convictions were in fact handed down for war crimes. This difference emphasises that it is not enough for someone to have formally, on paper, held a high position or exercised authority within a military or intelligence service. For criminal liability to apply, it must be established that the suspect was actually involved in the crimes or had effective control over those who committed them. In other cases, however, such

individual involvement could be established. These cases demonstrate that national prosecution of international crimes is not an automatic reckoning with former high-ranking officials, but a careful assessment of the evidence, the authority the suspect actually exercised, what he knew, and the control he had in practice.

National proceedings of this kind remain vulnerable. Not only because of practical problems with evidence, but also because old political rivalries or personal motives may influence witness statements. This calls for a particularly critical assessment of the evidence, as this is precisely where the tension lies between combating impunity and safeguarding the limits of the rule of law.

In principle, it stands to reason that states should themselves try crimes committed on their territory. National courts are generally best placed to prosecute such crimes because they are closest to the crime scene, the available evidence and the society concerned. The reality, however, is more complex. In some cases, states lack the capacity, stability or an independently functioning rule of law. In other cases, there is simply a lack of political will to proceed with prosecution. In such situations, there may be scope – and sometimes an obligation – for other states, or international tribunals, to step in and try suspects of international crimes, ensuring that no ‘safe havens’ exist for fugitives.

The Faqirzada case is just one example of a broader trend. Since the emergence of modern international criminal law, proceedings have been brought in various countries against individuals suspected of genocide, war crimes and crimes against humanity. Such cases are not confined to international tribunals; national courts, in particular, have come to play an important role in this regard.

Faqirzada stood trial before a Dutch court, under Dutch criminal law. Yet the offences in question derive their significance from international law: war crimes committed in the context of an armed conflict. It is this combination that makes the case interesting. It demonstrates how international standards can be applied

within a national legal system to violence that occurred far beyond national borders.

A fundamental shift has taken place in recent decades. Serious acts of violence are not only assessed politically but also on legal grounds. Sometimes this leads to convictions, sometimes to acquittals. In both cases, the same fundamental question arises: can this person, based on evidence and within the bounds of criminal law, be held responsible for international crimes?

The Faqirzada case demonstrates that this question should not be taken lightly. A position, title or place in a hierarchy is not enough. The court must be able to establish what someone actually did, knew or could in fact have prevented. The system is therefore not only aimed at combating impunity, but also at safeguarding the limits of the rule of law.

That system is not all-powerful. It does not prevent wars, does not prosecute every perpetrator and certainly does not always reach those who bear the greatest political responsibility. But it does make it clear that distance, the passage of time, public office or rank do not automatically offer protection against legal scrutiny. To understand how this system works, we must first explore the foundations of international law.

What is international law?

The following chapters will discuss specific conflicts, tribunals and cases. To put them into context properly, we first need to take a step back and look at the broader legal framework. This chapter begins with a few fundamental questions. What is international law? Where do its rules come from? Who applies them? And when can a violation lead to personal criminal liability?

These questions are less straightforward than they appear at first glance. International law has been shaped by treaties and case

law, but also by political practice, diplomatic relations and historic turning points: wars, genocides, mass human rights violations and international crises. The specific events discussed later are therefore not separate from the law but have helped to shape its development. This interplay between law and history also runs like a common thread through this book.

International law is the body of rules, principles and agreements that governs the behaviour of states in their relations with one another. It addresses issues that, by definition, transcend national borders, such as war and peace, diplomatic relations, international trade, migration and – increasingly – climate change. In a world where states are closely interconnected and conflicts rarely remain confined to a single country, international law provides a common framework: it facilitates cooperation and sets limits on what states – and sometimes their leaders – are permitted to do.

Anyone comparing international law with the law within a state will immediately notice a significant difference in the institutional structure. Within states, there is generally a clear hierarchy: a legislature lays down rules, the executive implements them, judges apply them, and a law enforcement apparatus can, if necessary, exercise coercion. In the Netherlands, for example, a public prosecutor may, where a person is suspected of an offence for which pre-trial detention is permitted, issue an arrest warrant even if the offence was not committed in *flagrante delicto*. In such cases, a suspicion is not limited to a legal classification on paper, but can, through national criminal procedural powers, lead to the actual deprivation of liberty by the police or investigating officers. Whether the exercise of such coercion is always regarded as legitimate or desirable in a specific case is a separate question; institutionally, that power exists within the structure of the state.

At the international level, the situation is different. A prosecutor at an international tribunal may suspect someone, conduct an investigation and, for example, request an arrest warrant, but does

not have its own police force capable of apprehending a suspect independently. At the International Criminal Court, the Pre-Trial Chamber may issue an arrest warrant at the prosecutor's request; the actual arrest then depends on the cooperation of states. Consequently, there is no central authority at the international level comparable to that of a nation state. There is no world government, no world police force and no global public prosecution service. States jointly establish the rules and remain largely responsible for ensuring compliance with them.

International law as a mosaic

An overview of international law quickly reveals that it does not constitute a strictly defined system. It resembles a mosaic: composed of various rules and sources that do not always fit together seamlessly, but which together form a whole. These rules are not everywhere laid down in clear, uniform laws, as is the case in national legal systems.

Moreover, international law often develops in response to events that put pressure on the international order. Wars, mass human rights violations and political crises regularly lead to new rules or to a reinterpretation of existing norms. As a result, the system is constantly evolving: not everything is determined in advance, and the precise scope of rules often only becomes clear in specific cases.

This pattern has been evident for centuries. In the seventeenth century, at a time of piracy and maritime rivalry, Hugo Grotius sought to formulate rules governing the conduct of states at sea and in times of war. In the nineteenth century, too, large-scale violence led to new attempts to regulate warfare, such as during the Hague Peace Conferences of 1899 and 1907, where states reached agreements on the means and methods of warfare. After the Second World War, the unprecedented devastation once again led to a wave of law-making, including the UN Charter, the Geneva Con-

ventions and the Genocide Convention. The UN Charter, adopted in 1945, forms the basis of the United Nations (UN). Its primary aim is to prevent further wars, maintain international peace and security, and promote cooperation between states.

A significant part of international law is enshrined in treaties: agreements between states that are legally binding. Some of these rules are relatively specific. Examples include the prohibition of torture, the protection of prisoners of war, and the prohibition on deliberately targeting civilians.

Other treaties, by contrast, contain more general norms, such as the prohibition of aggression. Such provisions are binding but leave more room for interpretation when applied to specific cases. This means that their precise meaning is not entirely contained within the text itself, but develops in practice, partly through the way states deal with them and through their interpretation by judges and international tribunals.

Furthermore, not all countries are parties to the same treaties. No single state is a party to every treaty, meaning the body of law remains multi-layered and sometimes incomplete, although there are treaties that have been ratified by almost all countries.

One example is the Genocide Convention, in which states have established that genocide, in times of peace as well as in times of war, is a crime under international law and must be prevented and punished. In abbreviated form, the opening of that convention reads:

'The Contracting Parties,
[...]

Recognizing that at all periods of history genocide has inflicted
great losses on humanity, and
Being convinced that, in order to liberate mankind from such an
odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article I

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.'

This is followed by further provisions on what constitutes genocide and how states are required to act. This is characteristic of international treaties: they not only formulate a standard – in this case, the prohibition of genocide – but also establish that states bear the responsibility to uphold that standard and to hold one another to account in this regard.

The practical significance of such standards then becomes apparent in their application. For example, the prohibition of torture is broadly formulated in treaties, but case law clarifies exactly what it covers. The European Court of Human Rights (ECHR), for example, has ruled that not only physical abuse but also certain forms of psychological pressure or inhumane conditions of detention may fall under this prohibition. In this way, abstract standards acquire practical substance.

In addition to treaties, there is another important source of international law: customary law. These are rules that are not set out in a single document, but which arise because states behave in a certain way in practice and because they believe they must behave in that way. In other words, it concerns what states do and their conviction that this is legally correct.

A classic example is the immunity of diplomats. States have long treated each other's diplomats as inviolable, not merely out of courtesy, but because they believe they are legally obliged to do so. This practice was later enshrined in the Vienna Convention on Diplomatic Relations, but it already existed as customary law prior to that.

Through this customary law, rules may emerge that apply to all countries, even if they have not signed a treaty. For example, the prohibition of genocide, slavery and torture is regarded as binding worldwide. Moreover, these norms are regarded as peremptory norms of international law: states may not deviate from them, regardless of their consent.

In addition, general principles of law play a role. These are fundamental ideas that recur in many national legal systems, such as personal responsibility, proportionality and the right to a fair trial. They help to fill gaps where treaties or customary law do not provide a clear answer. This is evident, for example, in international criminal cases. Whilst procedural rules do exist in such cases, they are not always fully elaborated or leave room for interpretation, for instance when assessing evidence or hearing witnesses. Judges may then rely on the right to a fair trial and on related general principles to ensure that a defendant can mount an effective defence, including by being able to cross-examine witnesses or gain access to the evidence being used against them. In this way, general principles of law ensure that proceedings, even where rules are open-ended or incomplete, meet minimum standards of justice.

When applying all these rules, judges may also refer to previous judgements and authoritative legal analyses. These can help to further interpret and develop the law, even though they are not formally an independent source of law.

One example is the way in which national judges rely on the case law of international tribunals. In the *Faqirzada* case, when interpreting concepts such as ‘command responsibility’ and ‘effective control’, the court explicitly referred to rulings of the Yugoslavia Tribunal and the Rwanda Tribunal. That case law is not binding on Dutch judges, but it was regarded as authoritative and used to give concrete substance to open-ended norms of international law.

The multi-layered structure of international law explains why it appears less clear-cut than national law. It is not a closed system,

but a whole that is constantly adapting. This is not a weakness, but rather a consequence of the world in which it must function. New developments raise new questions. For example, a key issue today is how existing rules on the use of force should be applied to cyber-attacks that, for instance, bring down electricity grids or other critical infrastructure; a problem that scarcely existed a few decades ago.

We are living in an era in which technological and geopolitical developments are rapidly reinforcing one another. Warfare involving drones, the rise of artificial intelligence (AI) and the consequences of climate change are transforming not only the nature of conflicts, but also the questions that the law must address.

Although war and peace often receive the most attention in public debate and in the media, international law extends much further. It governs not only conflicts between states, but also diplomacy, trade, human rights and numerous other cross-border issues.

We are often barely aware of this in our daily lives, even though the effects are certainly noticeable. International law is constantly at work in the background. For example, the price of fuel, the cost of transport and the availability of raw materials are partly influenced by international agreements on trade, shipping, energy and investment.

The influence of such international agreements becomes particularly apparent when they come under pressure. At the start of his second term, Donald Trump announced sweeping import tariffs against virtually all the United States' trading partners: a general basic levy on imports, supplemented by higher tariffs for specific countries. Other countries responded with countermeasures, creating uncertainty and disrupting supply chains. Businesses faced higher costs and delays, which could ultimately be passed on to consumers in the form of higher prices.

Moments such as these make it clear that international law is

not some abstract, distant system. Rules laid down by, for example, the World Trade Organisation help to determine what tariffs states may impose, how they must treat their trading partners, and how disputes over these matters are resolved.

International law also encompasses much more than trade alone. The law of the sea, for example, regulates maritime boundaries and makes it possible to prosecute piracy on the high seas, including through the United Nations Convention on the Law of the Sea. International law also applies to emergencies at sea.

When, in May 2026, Spain granted permission for the cruise ship MV Hondius – which had been struck by a hantavirus outbreak – to sail to the Canary Islands, the Spanish government invoked a ‘moral and legal obligation’ to provide assistance. This obligation should not be understood as a single, isolated rule that automatically compelled Spain to admit the ship, but rather as part of a broader legal framework. The law of the sea obliges states to organise assistance at sea and to aid persons in distress; the International Health Regulations oblige states to assess and manage health risks in ports and in international traffic. In this case, according to Spain, this was compounded by the fact that Cape Verde lacked sufficient capacity and the Canary Islands were the nearest location where medical care and safe disembarkation were possible.

International law also plays a role in less visible areas. In aviation, international rules ensure that aircraft can operate safely and in accordance with established agreements worldwide, coordinated by the International Civil Aviation Organisation. In healthcare, international agreements make it possible to monitor and combat disease outbreaks, for example through the World Health Organisation and the International Health Regulations. International law even extends into space: the Outer Space Treaty stipulates that states remain responsible for their satellites and that space cannot be claimed by any single country.

The examples above show that international law is much broader

than just war, tribunals and criminal law. It applies to trade, shipping, aviation, public health and even space travel. It thus forms a broad legal framework for all kinds of cross-border cooperation and regulation. However, this book focuses on two key areas: international humanitarian law (the law of war), which regulates the use of force during armed conflicts, and international criminal law, which focuses on the prosecution of individuals for the most serious international crimes. When this book refers to ‘international law’, it is primarily referring to these interrelated areas of law and their role in the assessment and prosecution of political and military leaders.

What is a war crime: war by the book?

Within the law of war and international criminal law, the concept of a war crime occupies a central place. Essentially, it concerns serious violations of the rules that apply during an armed conflict. International humanitarian law, for example, prohibits the deliberate targeting of civilians, the mistreatment of prisoners of war and the destruction of towns or villages without a military objective.

At first glance, this seems contradictory. After all, war is all about violence: about neutralising the opponent and destroying military capability. Yet, legally speaking, war is of a different order to ‘ordinary crime’. The use of violence in war is not prohibited by definition, but is only permitted within certain limits. The law must determine where legitimate military action ends and prohibited violence begins.

In humanitarian law, that boundary is defined primarily by the protection of persons and objects that are not, or are no longer, participating in the hostilities. Soldiers are permitted to attack enemy combatants and military targets. However, violence against

civilians, the wounded, prisoners of war, medical facilities or other protected persons and objects is prohibited, unless very specific exceptions apply. The key principles are distinction, proportionality and precaution.

Failure to comply with these rules may constitute a breach of the laws of war. An example is an attack in which a commander fails to make sufficient distinction between a military target and the civilian population or carries out an attack whilst the expected civilian casualties are clearly disproportionate to the concrete military advantage. In such cases, the question arises as to whether the limits of permissible military force have been exceeded.

Not every violation of the laws of war automatically constitutes a war crime for which a person can be prosecuted. More is required than simply establishing that a rule has been breached. Under criminal law, it must also be proven that the suspect is personally responsible and acted with the requisite intent. It is therefore not merely a question of whether the laws of war have been breached, but also whether this person deliberately committed, facilitated or permitted that breach.

The Geneva Conventions and other rules of humanitarian law do not seek to make war 'civilised'. They set a minimum standard. The rules do not eliminate the violent nature of war but stipulate that certain forms of violence are unacceptable under any circumstances. They protect civilians, the wounded and prisoners of war, and prohibit means or methods of warfare that cause unnecessary suffering.

Alongside humanitarian law, human rights law also plays a role. Both areas of law protect individuals against violence and abuse of power, but they do so from different perspectives. Humanitarian law was developed specifically for armed conflicts and 'accepts' that violence occurs to a certain extent in war. Human rights law protects individuals against the state, even outside the context of war. It grants people rights, such as the right to life, the prohibi-

tion of torture and the right to a fair trial. States have an obligation to respect and guarantee these rights for everyone within their jurisdiction.

In principle, human rights continue to apply even during war-time, but they are often applied in conjunction with humanitarian law. In the context of hostilities, humanitarian law is usually the more specific set of rules, the so-called *lex specialis*. This means, for example, that the right to life on the battlefield is assessed in accordance with the rules on distinction, proportionality and precaution. A lethal attack during war is therefore not automatically a violation of the right to life; the decisive factor is whether the attack complied with the rules of humanitarian law.

At the same time, human rights standards do not cease to apply during war. They remain particularly important in relation to detention, interrogation, access to a court and the treatment of persons outside direct combat situations. In such grey areas, human rights standards complement the law of war and offer an additional safeguard against the abuse of power.

In theory, these rules are clear. In practice, they are often difficult to apply. Military personnel must make complex judgements within a very short timeframe. Is a building a military target or a civilian object? Is someone a combatant or a civilian? Is a hospital being misused for military purposes, and if so, can it be attacked? Such questions often cannot be answered with certainty at the time.

This uncertainty is increasing in modern, often asymmetric conflicts. In such conflicts, states are pitted against armed groups that mingle with the civilian population, do not wear uniforms and operate from residential areas, schools or hospitals. When attacks are launched from such environments, a fundamental dilemma arises: the target may be of military significance, but the risk to civilians is high.

In such situations, the laws of war require that distinction, pro-

proportionality and precaution remain central. Even when the adversary violates the rules, this does not relieve a state of its own obligations. In practice, this sometimes makes the law difficult for military personnel and political leaders to accept: the reciprocity often expected in war is absent here.

These rules are not arbitrary. They are the result of historical experiences in which the absence of limits led to extreme forms of violence. The twentieth century demonstrates what can happen when war knows no bounds: massive bombings of cities, systematic executions of prisoners of war, and large-scale persecution and annihilation of population groups. Humanitarian law arose in part from the attempt to prevent such excesses.

The rules protect not only civilians, but also military personnel themselves, for example when they are wounded or taken prisoner. At the same time, they form the basis for criminal liability: anyone who deliberately crosses the boundaries can be held personally responsible.

Whether a war crime has been committed is rarely determined at the time of the military action itself. That judgement usually follows afterwards, when judges reconstruct the facts and assess what a commander knew or ought to have known, what information was available and whether realistic alternatives existed.

War crimes must therefore be assessed against two realities at once: the chaos and uncertainty of war, and the fundamental principle that limits apply even in war.

The application of international law: four interrelated questions

A legal assessment of a conflict begins with four interrelated questions. They determine not only which rules apply, but also whether political and military leaders can be held personally accountable.

The first question is whether force may be used at all. This falls

within the scope of *jus ad bellum*: the law that determines when a state may use military force against another state. The UN Charter establishes as a general rule that the use of force between states is prohibited. The exceptions are self-defence against an armed attack and action taken with the authorisation of the Security Council. For leaders, this question is crucial, as they are often the ones who decide on war, intervention or military action. When such a decision falls outside the permitted exceptions, the question may arise as to whether the crime of aggression has been committed.

If an armed conflict is taking place, a second, separate question arises: how can that force be used? This falls within the scope of *jus in bello*, also known as international humanitarian law or the law of war. This body of law does not assess whether the war itself was lawfully initiated but sets out rules governing the conduct of hostilities. This concerns the aforementioned distinction between combatants and civilians, proportionality, precaution and military necessity. These rules are important for the assessment of military operations, but also for the accountability of commanders and political leaders. After all, they may be held accountable for decisions regarding targets, strategy, the chain of command or a failure to intervene in the event of crimes committed by subordinates.

The distinction between *jus ad bellum* and *jus in bello* is important. A state may use unlawful force in contravention of the *jus ad bellum*, but that does not automatically mean that every military act during that war is also a war crime. Conversely, a state acting in self-defence may still violate the laws of war, for example by deliberately attacking civilians or using disproportionate force. Both issues must therefore be assessed separately.

The third question concerns the protection of individuals: which rights remain in force, even during conflict? This falls within the remit of human rights law, which – with limited exceptions – remains applicable and offers additional safeguards, particularly outside direct combat operations. This is relevant to the theme of this

book because leaders can be held accountable not only for what happens on the battlefield, but also for policies concerning detention, repression, torture, enforced disappearances or other forms of state violence against civilians. Such practices, when they form part of a widespread or systematic attack against a civilian population, may also reach the threshold of crimes against humanity.

Finally, there is the fourth question: who bears personal responsibility when these rules are violated? This is where international criminal law comes into play. The focus shifts from states to individuals, and from the establishment of norms to accountability and prosecution. It is this shift that makes it possible to hold to account not only 'the state' or 'the regime', but also specific individuals: presidents, ministers, generals, rebel leaders or others in power.

Together, these four questions form the legal framework within which armed conflicts are assessed. Of particular importance for this book is that they demonstrate how political choices can be translated, in legal terms, into personal responsibility. The question is then not only whether the violence was unlawful, but also who decided on it, who knew about it, who could have intervened, and who can ultimately be brought to justice.

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