

How It Could Finally be Possible to Prosecute War as a Crime

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War is a crime. The International Criminal Court has just [announced](#) that it will finally treat it as a crime, sort-of, kind-of. But how can war's status as a crime effectively deter the world's leading war-maker from threatening and launching more wars, large and small? How can laws against war actually be put to use? How can the ICC's announcement be made into something more than a pretense?

The Kellogg-Briand Pact made war a crime in 1928, and various atrocities became criminal charges at Nuremberg and Tokyo because they were constituent parts of that larger crime. The United Nations Charter maintained war as a crime, but limited it to “aggressive” war, and gave immunity to any wars launched with U.N. approval.

The International Court of Justice (ICJ) could try the United States for attacking a country if

- (1) that country brought a case, and
- (2) the United States agreed to the process, and
- (3) the United States chose not to block any judgment by using its veto power at the U.N. Security Council.

Desirable future reforms obviously include urging all U.N. members to accept the compulsory jurisdiction of the ICJ, and eliminating the veto. But what can be done now?

The International Criminal Court (ICC) can try individuals for various “war crimes,” but has thus far tried only Africans, though for some time now it has claimed to be “investigating” U.S. crimes in Afghanistan. Although the U.S. is not a member of the ICC, Afghanistan is. Desirable future reforms obviously include urging all nations, including the United States, to join the ICC. But what can be done now?

The ICC has finally [announced](#) that it will prosecute individuals (such as the U.S. president and secretary of “defense”) for the crime of “aggression,” which is to say: war. But such wars must be launched after July 17, 2018. And those who can be prosecuted for war will be only citizens of those nations that have both joined the ICC and ratified the amendment adding jurisdiction over “aggression.” Desirable future reforms obviously include urging all nations, including the United States, to ratify the amendment on “aggression.” But what can be done now?

The only way around these restrictions, is for the U.N. Security Council to refer a case to the

ICC. If that happens, then the ICC can prosecute anyone in the world for the crime of war.

This means that for the force of law to have any chance of deterring the U.S. government from threatening and launching wars, we need to persuade one or more of the [fifteen nations](#) on the U.N. Security Council to make clear that they will raise the matter for a vote. Five of those fifteen have veto power, and one of those five is the United States.

So, we also need nations of the world to proclaim that when the Security Council fails to refer the case, they will bring the matter before the U.N. General Assembly through a “[Uniting for Peace](#)” procedure in emergency session to override the veto. This is what was just done in December 2017 to overwhelmingly pass a resolution that the U.S. had vetoed, a resolution condemning the U.S. naming Jerusalem the capital of Israel.

Not only do we need to jump through each of these hoops (a commitment to a Security Council vote, and a commitment to override the veto in the General Assembly) but we need to make evident beforehand that we will be certain or likely to do so.

Therefore, World Beyond War is launching [a global petition to the national governments of the world](#) asking for their public commitment to refer any war launched by any nation to the ICC with or without the Security Council. [Click here to add your name.](#)

After all, it is not only U.S. wars that should be prosecuted as crimes, but all wars. And, in fact, it may prove necessary to prosecute junior partners of the United States in its “coalition” wars prior to prosecuting the ring leader. The problem is not one of lack of evidence, of course, but of political will. The U.K., France, Canada, Australia, or some other co-conspirator may be brought by global and internal pressure (and the ability to circumvent the U.N. Security Council) to submit to the rule of law prior to the United States doing so.

A key detail is this: how much organized murder and violent destruction constitutes a war? Is a drone strike a war? Is base expansion and a few home raids a war? How many bombs make a war? The answer should be *any* use of military force. But in the end, this question will be answered by public pressure. If we can inform people of it and persuade the nations of the world to refer it to trial, then it will be a war, and therefore a crime.

Here’s my New Year’s resolution: [I vow to support the rule of law, that might may no longer make right.](#)

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