Criminalizing War

(1) Discovering crimes in war
(2) Early attempts to regulate the use of force in war
(3) International Military Tribunal (Nuremberg trial)
(4) International Military Tribunal for the Far East (Tokyo trial)
Criminalizing War

1. U.S. Army Order No. 100 (Lieber Code), 1863
2. International Standing Committee for Aid to Wounded Soldiers (Red Cross), 1863, resulting in “Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field,” 1864
3. First Hague Peace Conference, 1899
4. Second Hague Peace Conference, 1907, resulting in Convention No. IV on “laws and customs of war”
5. Kellogg-Briand Pact, 1928
6. Geneva Convention, 1929
7. Charter of the United Nations, 1945
8. Universal Declaration of Human Rights, 1948
10. Additional Protocols, 1977
Lieber Code (1863)

Art. 56. A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

Art. 57. So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity, he is a belligerent; his killing, wounding, or other warlike acts are not individual crimes or offenses. No belligerent has a right to declare that enemies of a certain class, color, or condition, when properly organized as soldiers, will not be treated by him as public enemies.
Lieber Code (1863)

Art. 60. It is against the usage of modern war to resolve, in hatred and revenge, to give no quarter. No body of troops has the right to declare that it will not give, and therefore will not expect, quarter; but a commander is permitted to direct his troops to give no quarter, in great straits, when his own salvation makes it impossible to cumber himself with prisoners.

Art. 61. Troops that give no quarter have no right to kill enemies already disabled on the ground, or prisoners captured by other troops.
Art. 67. The law of nations allows every sovereign government to make war upon another sovereign state, and, therefore, admits of no rules or laws different from those of regular warfare, regarding the treatment of prisoners of war . . .

Art. 68. Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war, and, indeed, modern war itself, are means to obtain that object of the belligerent which lies beyond the war. Unnecessary or revengeful destruction of life is not lawful.
Lieber Code (1863)

Art. 71. Whoever intentionally inflicts additional wounds on an enemy already wholly disabled, or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the Army of the United States, or is an enemy captured after having committed his misdeed.
Criminalizing War

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8. Universal Declaration of Human Rights, 1948
10. Additional Protocols, 1977
Kellogg-Briand Pact (1928)

Article 1 The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.

Article 2 The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.
Criminalizing War

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7. Charter of the United Nations, 1945
8. Universal Declaration of Human Rights, 1948
10. Additional Protocols, 1977
Charter of the United Nations, 1945

Chapter 1: Purposes and Principles
Article 4.

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
Charter of the United Nations, 1945

Chapter 6: Pacific Settlement of Disputes
Article 33, Paragraph 1.
The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Chapter 7: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression
Article 39.
The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . .
Potsdam Conference, July 17-August 2, 1945

Winston Churchill, Harry Truman, Joseph Stalin

Clement Attlee, Harry Truman, Joseph Stalin
Nuremberg
Charter of the International Military Tribunal
Article 6

(a) CRIMES AGAINST PEACE: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
(b) **WAR CRIMES**: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
Charter of the International Military Tribunal
Article 6

(c) CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.