

11 Op. Att’y Gen. 297 (1865)

“[T]he laws of war constitute much the greater part of the law of nations. Like the other laws of nations, they exist and are of binding force upon the departments and citizens of the Government, though not defined by any law of Congress.”

Does that mean that a person can be convicted of a war crime in a U.S. court even if that crime is not specifically defined in a U.S. statute?

If it is a “grave breach” identified in the 1949 Geneva Conventions?

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“Congress can declare war. When war is declared, it must be, under the Constitution, carried on according to the known laws and usages of war amongst civilized nations. Under the power to define those laws, Congress cannot abrogate them or authorized their infraction. The Constitution does not permit this Government to prosecute a war as an uncivilized and barbarous people.”

True?

Could the U.S. Secretary of Navy have issued an order during the Vietnam War that all “fishing smacks” were subject to seizure as prizes of war?