



War Crimes: A Primer

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The Russian [invasion](#) of Ukraine and the [Israel-Hamas conflict](#) have given [rise](#) to numerous [accusations](#) of [war crimes](#). This Legal Sidebar addresses the sources and content of the law of war, also known as the law of armed conflict or international humanitarian law (IHL) as it pertains to war crimes that occur in an international armed conflict. IHL applies to the conduct of war; it does not address the [legality of a war](#).

Sources of International Humanitarian Law

IHL is a combination of international [treaties](#) and [customary international law](#). The [Hague Convention of 1907](#) generally prescribes rules of conduct for armed forces, while the [Geneva Conventions](#) and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts 1 ([Protocol 1](#)) address the rights of protected persons, such as civilians and prisoners of war, in an international armed conflict (i.e., [a war between or among states](#)). Non-international armed conflicts are governed by Article 3 Common to the Geneva Conventions ([Common Article 3](#)) and the Protocol Additional Relating to the Victims of Non-International Armed Conflicts ([Protocol 2](#)). A non-international armed conflict under Common Article 3 is an armed conflict that takes place “in the territory of one of the High Contracting Parties,” but the requirement has been [understood](#) to cover armed conflicts that take place on more than one territory but involve non-state actors—an understanding [confirmed](#) by the U.S. Supreme Court in the context of the armed conflict involving Al Qaeda and its associated forces. Because Gaza is not part of a state, it is [unclear](#) whether the Israel-Hamas conflict is an international ([potentially involving an occupied territory](#)) or non-international armed conflict. In addition, not all states are parties to these and other treaties pertaining to the law of war, but many treaty provisions are regarded as [reflecting](#) customary international law, which is [binding](#) on all states.

Principles of International Humanitarian Law

Certain [principles](#) undergird IHL and form the basis for the content of war crimes and serve to reduce unnecessary suffering during war. The most important principles are *military necessity*, *humanity*, and *honor*. The principles of *distinction* and *proportionality* flow from the first three. The Department of Defense’s [Law of War Manual](#) describes their interaction as follows:

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Military necessity justifies certain actions necessary to defeat the enemy as quickly and efficiently as possible. Conversely, *humanity* forbids actions unnecessary to achieve that object. *Proportionality* requires that even when actions may be justified by *military necessity*, such actions not be unreasonable or excessive. *Distinction* underpins the parties' responsibility to comport their behavior with *military necessity*, *humanity*, and *proportionality* by requiring parties to a conflict to apply certain legal categories, principally the *distinction* between the armed forces and the civilian population. Lastly, *honor* supports the entire system and gives parties confidence in it. (Citations omitted).

The **main purposes** of the law of armed conflict are:

- Protecting combatants, noncombatants, and civilians from unnecessary suffering;
- Providing certain fundamental protections for persons who fall into the hands of the enemy, particularly prisoners of war, military wounded and sick, and civilians;
- Facilitating the restoration of peace;
- Assisting the commander in ensuring the disciplined, ethical, and effective use of military force;
- Preserving the professionalism and humanity of combatants; and
- Preventing the degeneration of warfare into savagery or brutality.

United States Law: The War Crimes Act of 1996

The War Crimes Act (18 U.S.C. § 2441) sets forth conduct the United States punishes as war crimes. Previously, only when U.S. nationals were involved as either perpetrator or victim would the conduct potentially fall under these provisions. Congress **amended** the provision in January 2023 to provide courts' jurisdiction over foreign nationals who are found in the United States and suspected of having committed war crimes anywhere. Such a prosecution requires the Attorney General or the Deputy Attorney General to **certify** that "a prosecution by the United States is in the public interest and necessary to secure substantial justice," taking into consideration, among other things, whether it is possible to remove the offender to another jurisdiction for prosecution as well as "potential adverse consequences for nationals, servicemembers, or employees of the United States." In December 2023, the United States for the first time **indicted** several persons for violating the act and, **according to the Attorney General**, may be considering more prosecutions. For more information, see CRS Legal Sidebar LSB 11091: *The First Prosecution Under the War Crimes Act: Overview and International Legal Context*.

The act implements the United States' obligation under treaties and international law to hold perpetrators of war crimes accountable. A war crime under the act includes conduct "defined as a grave breach" in the **Geneva Conventions of 1949** or prohibited by certain provisions of the Annex to the **Hague Convention IV, Respecting the Laws and Customs of War on Land of 1907**. The act further proscribes the willful killing of or causing serious injuries to civilians contrary to the provisions of the **Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices**. It also proscribes **certain violations** defined as "a grave breach of common Article 3" of the Geneva Conventions.

The Geneva Conventions

Grave breaches as defined in the Geneva Conventions include the following acts if committed against protected persons or property (as applicable):

- **Willful killing**;
- **Torture or inhuman treatment**, including **biological experiments**;

- Willfully [causing great suffering or serious injury](#) to body or health;
- [Extensive destruction and appropriation of property](#) not justified by military necessity and carried out unlawfully and wantonly;
- [Compelling](#) a prisoner of war or other protected person to serve in the forces of a hostile power;
- Willfully depriving a prisoner of war or other protected person of the [rights of fair and regular trial](#);
- [Unlawful deportation or transfer or unlawful confinement](#); and
- Taking of [hostages](#).

The Hague Convention

Violations of the Annex to the Hague Convention punishable under the War Crimes Act include provisions forbidding combatants:

- To employ [poison or poisoned weapons](#);
- To kill or wound [treacherously](#) individuals belonging to the hostile nation or army;
- To kill or wound an enemy who, having laid down his arms or having no longer means of defense, has surrendered at discretion;
- To declare that [no quarter](#) will be given (“take no prisoners”);
- To employ arms, projectiles, or material calculated to cause [unnecessary suffering](#);
- To make improper use of a flag of truce; the enemy’s national flag, military insignia, or uniform; or the [distinctive badges of the Geneva Convention](#);
- To [destroy or seize the enemy’s property](#), unless such destruction or seizure be imperatively demanded by the necessities of war;
- To [declare abolished, suspended, or inadmissible](#) in a court of law the rights and actions of the nationals of the hostile party (a belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent’s service before the commencement of the war);
- To attack or bombard, by whatever means, towns, villages, dwellings, or buildings that are [undefended](#);
- To attack buildings dedicated to [religion, art, science, or charitable purposes; historical monuments, hospitals](#), and places where the sick and wounded are collected, provided they are not being used at the time for military purposes; and
- To [pillage](#) of a town or place, even when taken by assault.

Common Article 3

[Article 3 Common to the four Geneva Conventions of 1949](#) provides protections during armed conflicts not of an international nature and also protects persons during international armed conflicts who are not entitled to protected status under any of the four conventions. Title [18, Section 2441\(d\), of the U.S. Code](#) defines *grave breaches of Common Article 3* to include committing, or attempting or conspiring to commit:

- Torture (defined in a manner similar to that used by the federal torture statute [[18 U.S.C. §§ 2340-2340A](#)]),

- Cruel or inhuman treatment,
- The performing of biological experiments “without a legitimate medical or dental purpose ... endanger[ing] the body or health of such person or persons,”
- Murder of a person taking no active part in the hostilities,
- Mutilation or maiming persons taking no active part in the hostilities,
- Intentionally causing serious bodily injury,
- Rape,
- Sexual assault or abuse, and
- The taking of hostages.

The proscriptions against murder, mutilation or maiming, and causing bodily injury do not apply in cases of collateral damage or results incident to lawful acts of warfare.

International Law

Although the War Crimes Act sets forth conduct the United States considers serious war crimes, the United States is not party to all [treaties](#) regarding the law of armed conflict, including notably [Additional Protocol I to the Geneva Conventions](#) (regulating international armed conflicts). The [Rome Statute of the International Criminal Court](#) (ICC) probably provides the most complete compendium of serious war crimes as accepted by the international community. The United States is not party to the Rome Statute but [took part in its negotiation](#), including regarding the inclusion of the covered war crimes.

Neither Ukraine nor Russia is party to the agreement, but Ukraine has [agreed](#) to accept the jurisdiction of the ICC for activities that occur on its territory since 2014—and the ICC Prosecutor [opened an investigation](#) in February 2022 to examine the situation in Ukraine, as discussed in this [CRS Legal Sidebar](#).

Israel is not a member of the ICC, but [according to the ICC](#), the “Government of Palestine” acceded to the Rome Statute in 2015. In March 2021, the ICC Prosecutor [opened an investigation](#) into possible crimes committed within the ICC’s jurisdiction since June 13, 2014, in Gaza and the West Bank (including East Jerusalem). The investigation is ongoing and has been [extended](#) to cover the escalation of hostilities and violence since the attacks that took place on October 7, 2023.

In addition to grave breaches of the Geneva Conventions set forth above, the [Rome Statute](#) provides for punishment of:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians [not taking direct part in hostilities](#);
- (ii) Intentionally directing attacks against [civilian objects](#), that is, objects which are not military objectives;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a [humanitarian assistance or peacekeeping mission](#) in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly [excessive](#) in relation to the concrete and direct overall military advantage anticipated;

- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are [undefended](#) and which are not military objectives;
 - (vi) Killing or wounding a combatant who, having laid down his arms or having [no longer means of defence](#), has surrendered at discretion;
 - (vii) Making improper use of a [flag of truce](#), of the flag or of the [military insignia and uniform of the enemy or of the United Nations](#), as well as of the [distinctive emblems of the Geneva Conventions](#), resulting in death or serious personal injury;
 - (viii) The [transfer](#), directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or [the deportation or transfer](#) of all or parts of the population of the occupied territory within or outside this territory;
 - (ix) Intentionally [directing attacks](#) against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (x) Subjecting persons who are in the power of an adverse party to [physical mutilation](#) or to [medical or scientific experiments](#) of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xi) Killing or wounding [treacherously](#) individuals belonging to the hostile nation or army;
 - (xii) Declaring that [no quarter](#) will be given;
 - (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be [imperatively demanded](#) by the necessities of war;
 - (xiv) Declaring abolished, suspended or inadmissible in a court of law the [rights and actions](#) of the nationals of the hostile party;
 - (xv) Compelling the nationals of the hostile party to [take part in the operations of war](#) directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - (xvi) [Pillaging](#) a town or place, even when taken by assault;
 - (xvii) Employing [poison](#) or poisoned weapons;
 - (xviii) Employing [asphyxiating, poisonous or other gases](#), and all analogous liquids, materials or devices;
 - (xix) [Employing bullets which expand](#) or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition [to be set forth in an [annex](#)];
 - (xxi) Committing [outrages upon personal dignity](#), in particular humiliating and degrading treatment;
 - (xxii) Committing [rape, sexual slavery, enforced prostitution, forced pregnancy, ... enforced sterilization](#), or any other form of [sexual violence](#) also constituting a grave breach of the Geneva Conventions;
 - (xxiii) Utilizing the [presence of a civilian or other protected person](#) to render certain points, areas or military forces immune from military operations;
 - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the [distinctive emblems of the Geneva Conventions](#) in conformity with international law;
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(xxv) Intentionally using [starvation](#) of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) [Conscripting or enlisting children](#) under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

For more information about these war crimes, see the [ICC list of elements of crimes](#). For information about potential accountability for war crimes in international tribunals, see CRS Legal Sidebar LSB10704, *The Role of International Tribunals in the Response to the Invasion of Ukraine*. For more information about the situation in Ukraine, see CRS Report R47762, *War Crimes in Ukraine*.

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