

## 1. Compulsory jurisdiction over and criminalization of war crimes

## 2. War crimes in national penal law

See

- Case No. 63, Switzerland, Military Penal Code;
- Case No. 64, Germany, International Criminal Code;
- Case No. 65, Canada, Crimes Against Humanity and War Crimes Act;
- Case No. 67, Ghana, National Legislation Concerning the Emblem;
- Case No. 68, Belgium, Law on Universal Jurisdiction;
- Case No. 70, United States, War Crimes Act;
- Case No. 241, Switzerland, The Niyonteze Case

## 3. Elements of crime

See

- Case No. 23, The International Criminal Court [Part A., Art. 30]

- a. Subjective elements – *mens rea*
  - Negligence

See

- Case No. 198, Belgium, Belgian Soldiers in Somalia;
- Case No. 199, Canada, R. v. Brocklebank [Paras 18-66];
- Case No. 201, Canada, R. v. Seward

- Intent and negligence in indiscriminate attacks
- Recklessness

See

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part C.],
- Case No. 216, ICTY, The Prosecutor v. Blaskic [Part A, paras 152 and 179]

- Mistake of law in violations of IHL
- Motives

See

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part C.]

- a. Objective elements – *actus reus*
  - Causing death or serious injury as a necessary result of battlefield crimes
  - War crimes arising from failure to act

See

- Case No. 199, Canada, R. v. Brocklebank [Paras 18-66],
- Case No. 219, ICTY, The Prosecutor v. Strugar [Part B., paras 334-347]

## 4. Non-responsibility or mitigated responsibility

- a. Objective causes
  - The defence of superior orders against war crimes prosecution

See

- Case No. 23, The International Criminal Court [Part A., Art. 33];
- Document No. 96, United States Military Tribunal at Nuremberg, United States v. Wilhelm List;
- Case No. 115, Belgium, Public Prosecutor v. G.W.;
- Case No. 117, United States, United States v. William L. Calley, Jr.;
- Case No. 198, Belgium, Belgian Soldiers in Somalia;
- Case No. 199, Canada, R. v. Brocklebank;
- Case No. 243, Colombia, Constitutional Conformity of Protocol II [Paras 36-40]

- Can the defences of coercion (duress), necessity and self-defence be invoked against war crimes prosecution?

See

- Case No. 23, The International Criminal Court [Part A., Art. 31(1)(c) and (d)];
- Case No. 91, British Military Court at Hamburg, The Peleus Trial;
- Case No. 94, United States Military Tribunal at Nuremberg, United States v. Alfried Krupp et al. [Para. (4)(iii) and (vii)]

- Defence of lawful acts of hostility in wartime

## See

- Case No. 114, Malaysia, Osman v. Prosecutor;
- Case No. 126, Israel, Military Prosecutor v. Kassem and Others;
- Case No. 284, The Netherlands, Public Prosecutor v. Folkerts;
- Case No. 287, United States, United States v. Marilyn Buck

### a. Subjective causes

- The accused was a minor at the time of the crime
- Mental disorders
- Duress

## See

- Case No. 155, Canada, Ramirez v. Canada

- Prohibition of criminal liability for escapes by prisoners of war and civilian internees

## 5. Inchoate and group criminality

- Vicarious liability
- Liability for conspiracy to commit war crimes

## See

- Case No. 23, The International Criminal Court [Part A., Art. 25];
- Case No. 155, Canada, Ramirez v. Canada;
- Case No. 195, Canada, Sivakumar v. Canada;
- Case No. 199, Canada, R. v. Brocklebank;
- Case No. 200, Canada, R. v. Boland;
- Case No. 201, Canada, R. v. Seward;
- Case No. 164, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 532-562];
- Case No. 218, ICTY, The Prosecutor v. Galic [Part A., paras 168-169]

- The responsibility of commanders for war crimes committed by subordinates if they “knew or should have known”

## See

- Case No. 23, The International Criminal Court [Part A, Art. 28];
- Document No. 96, United States Military Tribunal at Nuremberg, United States v. Wilhelm List [Para.

3(x)];

- Document No. 98, The Tokyo War Crimes Trial;
- Case No. 102, United States, In re Yamashita;
- Case No. 195, Canada, Sivakumar v. Canada;
- Case No. 201, Canada, R. v. Seward;
- Case No. 241, Switzerland, The Niyonteze Case;
- Case No. 218, ICTY, The Prosecutor v. Galic [Part A., paras 561-562];
- Case No. 219, ICTY, The Prosecutor v. Strugar, [Part B., para 367 and 415-418; Part C., paras 297-308]

- Responsibility for the aid or assistance given to the main perpetrator of the violation
- Responsibility for incitement to commit a crime or ordering the commission of a crime

**See**

- Case No. 241, Switzerland, The Niyonteze Case;
- Case No. 218, ICTY, The Prosecutor v. Galic [Part A., paras 609-749];
- Case No. 219, ICTY, The Prosecutor v. Strugar, [Part B., paras 334-346]

- a. Agreement to commit a crime
- b. Common criminal purpose

**See**

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part C.],
- Case No. 164, Sudan, Report of the UN Commission of Enquiry on Darfur

## **6. Specific crimes**

**See**

- Case No. 216, ICTY, The Prosecutor v. Blaskic

- Genocide

**See**

- Case No. 164, Sudan, Report of the UN Commission of Enquiry on Darfur [paras 640-642];
- Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region [Para. 1.A.1)];
- Case No. 234, ICTR, The Prosecutor v. Jean-Paul Akayesu [Part A., paras 492-523];
- Case No. 241, Switzerland, The Niyonteze Case [Part B., III.B.]

- Crimes against humanity

## See

- Case No. 108, Hungary, War Crimes Resolution;
- Case No. 211, ICTY, The Prosecutor v. Tadic;
- Case No. 215, ICTY, The Prosecutor v. Kupreskic et al. [Paras 567-636];
- Case No. 216, ICTY, The Prosecutor v. Blaskic [Part A., paras 66-71];
- Case No. 217, ICTY, The Prosecutor v. Kunarac, Kovac and Vukovic [Paras 116-131]

- War crimes in non-international armed conflicts

## See

- Case No. 23, The International Criminal Court [Part A., Art. 8(2)(c)-(f)];
- Case No. 108, Hungary, War Crimes Resolution;
- Case No. 211, ICTY, The Prosecutor v. Tadic [Part A., paras 128-136];
- Case No. 241, Switzerland, The Niyonteze Case [Part A., and Part B., III.1.B.];
- Case No. 164, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 161-163]

- Grave breaches of IHL

## See

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part A., paras 79-84], and Case No. 216, ICTY, The Prosecutor v. Blaskic [Part A., paras 151-158]

- Other violations of IHL applicable to international armed conflicts

## See

- Case No. 216, ICTY, The Prosecutor v. Blaskic [Part A., paras 179-187],
- Case No. 241, Switzerland, The Niyonteze Case [Part B., III.1.B]

- Misuse of the red cross or red crescent emblem in peacetime

## See

- Case No. 82, United Kingdom, Labour Party Campaign – Misuse of the Emblem,
- Case No. 209, United Kingdom, Misuse of the Emblem

## 7. Multiple convictions for the same conduct

See

- Case No. 217, ICTY, The Prosecutor v. Kunarac, Kovac and Vukovic;
- Case No. 218, ICTY, The Prosecutor v. Galic [Part A., paras 158-163];
- Case No. 219, ICTY, The Prosecutor v. Strugar [Part B., paras 447-455]

## 8. Punishment

- Provisions of IHL on the treatment of detainees
- IHL limitations on the death penalty
- Escape is not an aggravating circumstance for prisoners of war and civil internees
- Certain crimes in occupied territory are punishable only by simple imprisonment or internment
- Determining the sentence

See

- Case No. 200, Canada, R. v. Boland;
- Case No. 201, Canada, R. v. Seward;
- Case No. 241, Switzerland, The Niyonteze Case [Part A. and Part B.]