

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. Alfred 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

- a. Vicarious liability
- b. 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, \[Part B., paras 334-346\]](#)

- Agreement to commit a crime
- 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 Vuković](#)
- [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 \[Part A. and Part B.\]](#)

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