1. Compulsory jurisdiction over and criminalization of war crimes

2. War crimes in national penal law

   **SEE**

   - Case No. 63, Switzerland, Military Penal Code [1];
   - Case No. 64, Germany, International Criminal Code [2];
   - Case No. 65, Canada, Crimes Against Humanity and War Crimes Act [3];
   - Case No. 67, Ghana, National Legislation Concerning the Emblem [4];
   - Case No. 68, Belgium, Law on Universal Jurisdiction [5];
   - Case No. 70, United States, War Crimes Act [6];
   - Case No. 241, Switzerland, The Niyonteze Case [7]

3. Elements of crime

   **SEE**

   - Case No. 23, The International Criminal Court [Part A., Art. 30] [8]

   **a. Subjective elements – mens rea**

   ○ Negligence
SEE

- Case No. 198, Belgium, Belgian Soldiers in Somalia [9];
- Case No. 199, Canada, R. v. Brocklebank [Paras 18-66] [10];

- Intent and negligence in indiscriminate attacks
- Recklessness

SEE

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part C.] [12],

- Mistake of law in violations of IHL
- Motives

SEE

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part C.] [12]

b. Objective elements – *actus reus*
   - Causing death or serious injury as a necessary result of battlefield crimes
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- Case No. 199, Canada, R. v. Brocklebank [Paras 18-66] [10],

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] [16];
- Document No. 96, United States Military Tribunal at Nuremberg, United States v. Wilhelm List [17];
- Case No. 115, Belgium, Public Prosecutor v. G.W [18];
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- Case No. 199, Canada, R. v. Brocklebank [20];
- Case No. 243, Colombia, Constitutional Conformity of Protocol II [Paras 36-40] [21]

- 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)] [22];
- Case No. 91, British Military Court at Hamburg, The Peleus Trial [23];
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- Case No. 114, Malaysia, Osman v. Prosecutor [26];
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   ◦ Mental disorders
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• Case No. 23, The International Criminal Court [Part A., Art. 25] [31];
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• Case No. 195, Canada, Sivakumar v. Canada [32];
• Case No. 199, Canada, R. v. Brocklebank [20];
• Case No. 200, Canada, R. v. Boland [33];
• Case No. 201, Canada, R. v. Seward [11];
• Case No. 164, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 532-562] [34];
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• Case No. 102, United States, In re Yamashita [39];
• Case No. 195, Canada, Sivakumar v. Canada [32];
• Case No. 201, Canada, R. v. Seward [11];
• Case No. 241, Switzerland, The Niyonteze Case [7];
• Case No. 218, ICTY, The Prosecutor v. Galic [Part A., paras 561-562] [40];
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• Responsibility for the aid or assistance given to the main perpetrator of the violation
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SEE

• Case No. 241, Switzerland, The Niyonteze Case [7];
• Case No. 218, ICTY, The Prosecutor v. Galic [Part A., paras 609-749] [44];
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