

AMNESTY INTERNATIONAL

International Criminal Court Fact sheet 5 Prosecuting war crimes

“Each member of the armed forces who has violated the rules of international humanitarian law must be aware of the fact that he can be prosecuted according to penal or disciplinary provisions.”

**Joint Services Regulations (Zdv) 15/2
of the German Army, August 1992**

War crimes have been punishable by national courts since the Middle Ages. The first comprehensive codification of war crimes was in the Leiber Code issued by President Lincoln in 1863 during the American Civil War. There have been numerous international humanitarian law treaties since then, including Hague Convention IV of 1907 and its Regulations, the four Geneva Conventions of 1949 and their 1977 Protocols. Article 8 of the Rome Statute of the International Criminal Court (Statute) gives the International Criminal Court (ICC) jurisdiction over a wide range of war crimes committed during *international* armed conflict which are recognized in these treaties and in international customary law. It also reaffirms recent developments in international law by giving the ICC the power to try war crimes committed in *internal* armed conflicts, such as civil wars, which are the most common conflicts today. Unlike crimes against humanity, a war crime can be a single, isolated, dispersed or random act. There is no requirement for the act to be widespread and systematic.

What war crimes during international armed conflict are included in the Statute?

These war crimes fall into two major categories. First, the ICC can try persons accused of grave breaches of the four Geneva Conventions of 1949. These include the following acts, when

committed against persons protected by the Conventions, including wounded soldiers, wounded or shipwrecked sailors, prisoners of war and civilians in occupied territories: wilful killing; torture or inhuman treatment, including biological experiments; wilfully 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 state; wilfully 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.

Second, the Court has jurisdiction over a wide range of other violations of international humanitarian law, including violations recognized in the Hague Regulations and Protocol I to the Geneva Conventions and in international customary law, including:

- Prohibited attacks on civilians, including intentional attacks against the civilian population as such, civilian objects, humanitarian assistance or peace-keeping missions, as well as attacks when it is known that it will cause incidental loss of life or injury to civilians or damage to civilian objects which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; attacks against buildings, material, medical units and transport and personnel using the Red Cross or Red Crescent emblems; and against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments and hospitals, provided they are not military objectives;

- Harm to defenceless persons, such as: killing or wounding soldiers who have surrendered; physical mutilation or medical or scientific experiments which are neither medically justified nor in the interest of the persons, and which cause death to or seriously endanger their health; outrages upon personal dignity, in particular humiliating and degrading treatment; rape and other forms of sexual violence; and use of human shields;

- Certain prohibited methods of warfare, such as misuse of a flag of truce, United Nations or enemy insignia or the emblems of the Red Cross and Red Crescent; declaring that no quarter will be given; pillaging or destroying or seizing enemy property, unless justified by military necessity; use of prohibited weapons, such as: poison or poisoned weapons; certain gases, expanding bullets and other weapons added to the Statute by amendment; intentionally using starvation of civilians as a method of warfare; and conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities; and

- Certain prohibited acts in occupied territory or against enemy nationals, including the transfer, directly or indirectly, by the occupier of parts of its own civilian population into the territory, or the deportation or transfer of all or parts of the population of the occupied territory; abolishing or suspending legal rights of enemy nationals or compelling them to take part in military operations of war against their own country.

When can the ICC try persons accused of war crimes in civil wars?

The definition of internal armed conflict in the Statute does not include situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of similar nature. The Statute makes clear that the ICC has jurisdiction over the increasing number of war crimes committed during conflicts between armed political groups, as well as between such groups and government forces. War crimes in internal armed conflict are included.

What war crimes during internal armed conflict are included in the Statute?

The Statute includes three types of war crimes in internal armed conflict:

- Violations of the common Article 3 of the Geneva Convention against civilians, wounded and detainees, including: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; committing outrages upon personal dignity, in particular humiliating and degrading treatment; taking of hostages; and the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

- Violations of humanitarian law generally recognized in Protocol II of the Geneva Conventions, including: intentional attacks against the civilian population as such, against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Red Cross and Red Crescent; against humanitarian assistance or UN peace-keeping missions; against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, provided they are not military objectives; pillaging; rape and other crimes of sexual violence; conscripting or enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities; displacement of the civilian population not justified by their security or imperative military reasons.

- Acts which traditionally been recognized as war crimes only in international armed conflict, including: Killing or wounding treacherously a combatant adversary; declaring that no quarter will be given; physical mutilation or medical or scientific experiments; destruction or seizure of the property of an adversary, unless justified by military necessity.

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