



International Atrocity Crimes and Their Domestic Counterparts

May 25, 2022

Russia's 2022 invasion of Ukraine has prompted widespread attention to the legal framework governing wartime atrocities. In a 2006 article, former U.S. Ambassador at Large for War Crimes Issues David J. Scheffer coined the term *atrocity crimes* to describe criminal conduct that is, among other elements, of a significant magnitude, prohibited under international criminal law, and led in its execution by a ruling government group or power elite in society. In 2014, the United Nations [defined](#) atrocity crimes as genocide, crimes against humanity, and war crimes. International law also criminalizes related conduct that can take place in wartime, such as torture and the crime of aggression. Some, but not all, of these offenses have counterparts in the United States' criminal code. The [Human Rights and Special Prosecution Section](#) in the Department of Justice (DOJ) is [responsible](#) for investigating and prosecuting atrocity crimes and related offenses under U.S. law, but prosecutions can be limited by the lack of [extraterritorial jurisdiction](#), [statutes of limitation](#), and other facets of the offenses. This Sidebar introduces international atrocity crimes and related offenses, examines their domestic counterparts, and discusses proposals for congressional reform.

Offenses with Domestic Counterparts

Genocide

Described as the “[crime of crimes](#),” genocide is [prohibited](#) under the 1948 [Convention](#) on the Prevention and Punishment of the Crime of Genocide. The United States ratified the convention in 1988 and passed [legislation](#) implementing the treaty into U.S. law the same year. Codified in [18 U.S.C. § 1091](#), the domestic genocide offense contains two essential elements. First, the offender must have genocidal intent—the “specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group.” Second, the offender must commit one of the following offenses: (1) killing members of the targeted group; (2) causing serious bodily injury to the group's members; (3) using drugs, torture, or similar techniques to permanently impair group members' mental faculties; (4) subjecting the group to conditions of life intended to cause the group's physical destruction; (5) imposing measures intended to prevent births within the group; or (6) transferring children out of the group by force.

Congressional Research Service

<https://crsreports.congress.gov>

LSB10747

The domestic genocide offense provides one of the broadest forms of extraterritorial jurisdiction in U.S. law. U.S. federal courts have jurisdiction if the offense was committed in whole or in part in the United States. Federal courts also have jurisdiction, regardless of where the offense was committed, if the offender is a U.S. national, a lawful permanent resident, a stateless person with a habitual residence in the United States, or present in the United States. Despite this broad extraterritorial application, the genocide statute does not provide “pure” universal jurisdiction in which U.S. courts can try any perpetrator of genocide. The statute requires at least some connection between the United States and the offender, victim, or offense. At a minimum, the offender must be “present in the United States” (i.e., located on U.S. territory) for U.S. courts to exercise jurisdiction. While the executive branch has concluded that certain events overseas constituted genocide, it has not prosecuted anyone under the genocide statute.

War Crimes

“Grave breaches” of the four Geneva Conventions of 1949 and violations of other treaties governing the conduct of armed conflicts constitute war crimes under international law. The War Crimes Act of 1986, codified as amended in 18 U.S.C. § 2441, criminalizes this offense in U.S. law. The background, scope, and definition of war crimes are discussed in detail in this CRS Legal Sidebar. The War Crimes Act provides jurisdiction for offenses “whether inside or outside the United States” if the victim or perpetrator is a U.S. national or member of the U.S. Armed Forces. The United States has not prosecuted anyone for a war crimes offense.

Torture

The United States ratified the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in 1994 and passed implementing legislation the same year. The implementing legislation (18 U.S.C. § 2340-2340B) defines torture as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.” The law only criminalizes torture committed outside the United States, and U.S. courts have jurisdiction if the offender is a U.S. national or is “present in the United States.”

In 2008, Roy Belfast Jr., also known as Charles “Chuckie” Taylor, received the only conviction to date under the torture statute. Belfast, the son of former Liberian President Charles Taylor, was convicted for his role in the torture of people in Liberia between 1999 and 2003. Belfast, who was born in the United States, was sentenced to 97 years in prison.

DOJ has brought torture charges in at least three other cases. In 2012, a grand jury indicted then-New York resident Sulejman Mujagic for alleged torture in Bosnia during the armed conflict after the breakup of the former Yugoslavia. The United States later extradited Mujagic to Bosnia so that he could be tried for a broader set of crimes than were available under U.S. law in a forum that was closer to the victim, witnesses, and location of the offenses. Two other prosecutions with torture indictments are still pending. In 2020, a grand jury indicted a Gambian national residing in Colorado for alleged torture as part of an effort to secure confessions from individuals suspected of plotting a coup to overthrow the Gambian government. A February 2022 indictment alleges that a U.S. citizen managing construction of a weapons factory in Iraq directed Kurdish soldiers to torture an individual who raised concerns about the project.

Offenses with No Domestic Counterpart

Crimes Against Humanity

U.S. law does not contain a criminal prohibition on crimes against humanity—a category of crimes that is often traced to charters of the post–World War II military tribunals at [Nuremberg](#) and [Tokyo](#). Since World War II, the offense has been included in several [international criminal tribunals](#), and it was most recently defined in the [Rome Statute](#) for the International Criminal Court (ICC). (As discussed in this [Sidebar](#), the United States is not a party to the Rome Statute.) [Article 7](#) of the Rome Statute defines crimes against humanity as certain acts—such as murder, enslavement, rape, torture, and forcible population transfers—when those acts are “part of a widespread or systematic attack directed against any civilian population” and the perpetrator has knowledge of the attack. Although it is not a defined offense in U.S. criminal law, some U.S. [laws](#) reference [crimes against humanity](#) in [other](#) contexts, and the executive branch has determined that [certain](#) overseas [atrocities](#) rise to the level of crimes against humanity.

Crimes against humanity and genocide share many common elements, but the distinguishing feature lies in the offenses’ [state-of-mind](#) requirements. For crimes against humanity, the perpetrator must, at a minimum, [know](#) that the prohibited act was part of a widespread and systematic attack on a civilian population. The genocide offense requires the *intent to destroy* a national, ethnic, racial, or religious group. The differing standards mean that many acts of genocide also qualify as crimes against humanity, but not every crime against humanity amounts to genocide.

Aggression

The crime of aggression, in its broadest sense, is the act of starting an armed conflict that is prohibited under international law. Aggression is not a defined offense in U.S. law, but it is prohibited in [some](#) foreign countries’ criminal codes, including in [Ukraine](#). The crime was defined and prosecuted in the post–World War II military tribunals, where it was referred to as “[crimes against peace](#).” The modern definition is reflected in [Article 8 bis](#) of the Rome Statute, which defines the crime as the:

planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

One component of the crime is an “[act of aggression](#),” which the Rome Statute defines as a country’s use of armed forces against the sovereignty, territorial integrity, or political independence of another country. Examples of acts of aggression include invasions, armed attacks, bombardments, blockades, and military occupations.

Immigration and Sanctions Authorities

When it is not feasible to prosecute an individual suspected of an atrocity for a more severe criminal offense, federal officials [regularly rely](#) on immigration authorities to impose adverse consequences. [Presidential Proclamation 8697](#), issued in 2011 and still [in effect](#), suspends entry into the United States of aliens who participated in certain atrocity crimes. Additionally, federal officials [often](#) use immigration laws to [remove](#) or [denaturalize](#) aliens accused of atrocity crimes by prosecuting them for making [false statements](#) or for committing fraud either during the immigration process or on [immigration forms](#). For example, the United States [prosecuted](#) Mohammed Jabbateh, also known as “Jungle Jabbah,” for fraud related to immigration documents (i.e., an asylum application and an application for lawful permanent residency) and perjury charges for failing to disclose his role in a host of violent offenses against the civilian population in Liberia during the 1990s during interviews with immigration officials. The United States may also utilize [sanction-based authorities](#), such as the [Global Magnitsky Human Rights](#)

[Accountability Act](#), to impose financial and travel restrictions (i.e., deny entry into the United States) against an individual suspected of committing an atrocity.

Considerations for Congress

Reported [evidence](#) of Russian troops' atrocity crimes in Ukraine has prompted [congressional interest](#) in avenues for accountability. Ukraine is [pursuing](#) war crimes charges in its domestic court system and has secured the [conviction](#) of one former Russian tank commander. The former commander received a [life sentence](#) for killing an unarmed civilian in violation of [Article 438](#) of Ukraine's criminal code, which criminalizes "violations of rules of the warfare." Prosecutors from Ukraine, Poland, Lithuania, and the ICC have formed a [joint investigative team](#) to examine other potential offenses, and the United States is [assisting](#) Ukraine in its work with this team. The Ukraine Invasion War Crimes Deterrence and Accountability Act ([H.R. 7276](#)), which was [passed](#) in the House on April 6, 2022, would require the executive branch to report on U.S. evidence-collection efforts. On March 15, 2022, the Senate [passed](#) a resolution ([S. Res. 546](#)) expressing support for the ICC and "any investigation" into atrocity crimes committed by Russian forces. Provisions in the [American Service Members Protection Act](#) limit federal agencies' [ability to assist](#) the ICC. There are exceptions, however, for cases [involving](#) "foreign nationals accused of genocide, war crimes or crimes against humanity," and when the President exercises [waiver authorities](#) or chooses to assist the ICC on a "[specific matter](#)."

Although the bulk of future prosecutions will likely take place outside the U.S. judicial system, some [observers](#) contend that, over time, some members of the Russian military could make their way into the United States or to a [country](#) with an extradition agreement with the United States. In those cases, criminal charges in U.S. courts may be an option, but limitations in the suite of atrocity-related federal offenses could constrain extradition and prosecution options.

For example, for U.S. courts to have jurisdiction under the War Crimes Act, the victim or perpetrator of the offense must be a U.S. national or member of the U.S. Armed Forces. By contrast, the genocide and torture statutes provide jurisdiction when the offender is "[present](#)" in the United States, regardless of nationality. The absence of "[present-in](#)" jurisdiction in the War Crimes Act has led some [commentators](#) to contend that, if a Russian national accused of committing war crimes against Ukrainian citizens were to be apprehended in the United States, U.S. courts would not have jurisdiction for war crimes charges. During the legislative debate over the War Crimes Act, the Clinton Administration [recommended](#) broader jurisdiction, but the Committee on the Judiciary concluded in a report on the War Crimes Act that it would be "[unwise](#)" to extend jurisdiction because it could "draw the United States into conflicts . . . where our national interests are slight."

The torture statute also has unique limitations. Its jurisdictional [provisions](#) are keyed to the offender's nationality or presence, but the statute does not provide jurisdiction based on the *victim's* status as a U.S. national. The absence of victim-based jurisdiction means that the torture statute would not automatically provide jurisdiction if a U.S. national were captured in Ukraine and tortured by Russian forces.

Federal prosecutors also do not have the option to bring charges for crimes against humanity or the crime of aggression. Some [observers](#) and [Members of Congress](#) view the absence of a crimes against humanity offense in U.S. law as a "[gap](#)" that Congress should fill by defining a new offense that captures the unique nature of this crime. Others [contend](#) that a crimes against humanity statute risks being [overbroad](#) and exposing U.S. military personnel to prosecution. Aggression is less frequently discussed in the context of domestic law, but it has received attention from [international](#) legal [commentators](#) because [restrictions](#) in the Rome Statute prevent the ICC from exercising jurisdiction over Russian nationals for this crime.

When prosecution is not an option under the set of federal atrocity-related crimes, DOJ can still use more common criminal charges (e.g., [murder](#) and other violent crimes) to address individual acts that formed part of a widespread atrocity campaign. Some observers have [questioned](#) whether atrocity crime reform is

necessary when the United States can leverage existing criminal and immigration laws to target offenders. Being charged with traditional criminal and immigration offenses, however, may lack the defining features and stigma of being prosecuted for atrocity crimes, and they may have shorter statutes of limitation or their own [restrictions](#) on extraterritorial reach. At the same time, it is not clear that adding new offenses or expanding jurisdiction for atrocity crimes would result in many new convictions, as the United States has only one conviction under its suite of atrocity-related crimes—the 2008 [torture conviction](#) of “Chuckie” Taylor.

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