

International Atrocity Crimes and Their Domestic Counterparts

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Russia's [war launched](#) against Ukraine on February 24, 2022, the October 7, 2023 [attacks](#) perpetrated by Hamas in Israel, and Israel's [subsequent campaign](#) in Gaza have prompted widespread attention to the legal framework that addresses atrocity crimes. The term [atrocity crimes](#) was coined by former U.S. Ambassador at Large for War Crimes Issues David J. Scheffer to describe criminal conduct that is, among other elements, "of a significant magnitude," prohibited under conventional international criminal law, and "led, in its execution, by a ruling or otherwise powerful elite in society." The United Nations has [defined](#) atrocity crimes as genocide, crimes against humanity, and war crimes. International law also criminalizes conduct related to these crimes, such as torture and the crime of aggression. Some, but not all, of these criminal offenses have counterparts in the U.S. 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. This Sidebar describes international atrocity crimes and related offenses, examines their domestic counterparts, and discusses considerations for Congress.

Atrocity Crimes and Related Offenses That Have a Domestic Counterpart

Genocide

The 1948 [Convention on the Prevention and Punishment of the Crime of Genocide](#) (Genocide Convention) recognizes genocide as a "crime under international law" and obligates state parties "to prevent and punish" it. The Genocide Convention defines the offense of genocide as the committing of certain acts "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." The acts that qualify for purposes of establishing genocide are: (1) killing members of the targeted group; (2) causing serious bodily or mental harm to the group's members; (3) subjecting the group to conditions of life intended to cause the group's physical destruction; (4) imposing measures intended to prevent births within the group; or (5) forcibly transferring children of the group. The International Court

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of Justice has [concluded](#) that the genocide prohibition is part of [customary international law](#) and thus binding on all states regardless of whether they are parties to the Genocide Convention.

The United States ratified the Genocide Convention in 1988 and passed [legislation](#) implementing the treaty into U.S. law the same year. Codified in [18 U.S.C. § 1091](#), the Genocide Convention Implementation Act contains the two essential elements to establish genocide—a specific mental state and an act—and draws on, but does not completely track, the language of the Genocide Convention. As [originally enacted](#), Section 1091 provided jurisdiction only if the offense was committed within the United States or the offender was a U.S. national. In 2007, Congress passed an amendment to Section 1091 to, as [stated](#) in the House Report, “strengthen[] the ability of the United States to prosecute perpetrators of genocide by . . . establish[ing] Federal criminal jurisdiction over the crime of genocide, wherever the crime is committed.” As a result of this amendment, Section 1091 now provides one of the broadest forms of [extraterritorial jurisdiction](#) in U.S. law. Federal courts have jurisdiction if the offense was committed in whole or in part in the United States and, 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 is present in the United States.

Despite this broad extraterritorial application, Section 1091 does not provide “[pure](#)” [universal jurisdiction](#), which would permit a U.S. court to try any perpetrator of genocide. The statute requires at least some connection between the United States and either 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 over a defendant. In some circumstances such jurisdiction could also be acquired through extradition. Several treaties prohibiting atrocity crimes—including the Genocide Convention (in [Article VII](#))—permit or require the extradition of persons who are not prosecuted by the country where they are found. (Legal considerations that might inform the federal government’s ability to extradite an offender to or from the United States are discussed in [CRS Report 98-958](#).)

While the executive branch has [concluded](#) that [certain](#) events [overseas](#) constituted genocide, to date it has not prosecuted anyone under the genocide statute. Although some private litigants have attempted to bring cases alleging claims under Section 1091, courts have rejected them, recognizing that [Section 1092](#) expressly provides that the Genocide Convention Implementation Act does not “creat[e] any substantive or procedural right enforceable by” private parties in civil actions. Courts have, however, [referenced](#) the definitions of genocide in Section 1091 as well as in the Genocide Convention in determining that plaintiffs may seek civil redress under the [Alien Tort Statute](#) (ATS) (discussed in [CRS Report R44947](#)) for alleged violations of the genocide prohibition recognized as customary international law. In November 2023, several Palestinian groups, Gaza residents, and U.S. persons filed a [suit](#), in part based on ATS jurisdiction, against the Biden Administration alleging that it violated its obligations under customary international law to prevent genocide against Palestinians in Gaza and is complicit in genocide by providing support to Israel for its military campaign. In response, DOJ has [argued](#) that the court is without jurisdiction to hear the claims on various grounds, including that there is no private right of action under international customary international law or the Genocide Convention Implementation Act and that ATS claims [may not](#) be brought against the United States.

War Crimes

“Grave breaches” of the four [Geneva Conventions of 1949](#) and violations of [other](#) treaties [governing](#) the conduct of armed conflict are among the war crimes recognized under international law. The [War Crimes Act of 1996](#), codified in [18 U.S.C. § 2441](#), criminalizes these offenses under U.S. domestic law. The background, scope, and definition of war crimes are discussed in greater detail in this [CRS Legal Sidebar](#).

[As originally enacted](#), the War Crimes Act provided jurisdiction for offenses “whether inside or outside the United States,” but only if the victim or perpetrator was a U.S. national or member of the U.S. Armed

Forces. In 2023, President Biden signed into law the [Justice for Victims of War Crimes Act](#), which amended the War Crimes Act to provide for the same more expansive jurisdictional basis conferred by the Genocide Act. Thus, the War Crimes Act’s jurisdiction now also extends to offenses committed by *anyone* found on U.S. territory—[regardless of the accused’s or the victim’s nationality](#).

In December 2023, DOJ brought an [indictment](#) against four members of the Russian armed forces or allied military units for violations of the War Crimes Act—the [first](#) in almost three decades of the Act’s existence. The indictment alleges that the four defendants perpetrated [grave breaches of the Fourth Geneva Convention](#) against a U.S. national who at the time was living in a southern Ukrainian [oblast](#) (or province). When he announced the indictment, Attorney General Merrick Garland [stated](#) that this was DOJ’s first prosecution and that more indictments may be forthcoming. He also suggested that DOJ’s work may not be limited to Ukraine, stating that “ [Hamas murdered 30 Americans and kidnapped more](#)” and that DOJ is “investigating those heinous crimes and will hold those people accountable.”

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 that made torture a criminal offense. 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.” As currently written, the law criminalizes torture only if the offender commits or attempts to commit the offense 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](#).”

To date, there have been two convictions under the torture statute. First, in 2008, Roy Belfast Jr., 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. Second, in 2023, a federal jury in Pennsylvania [convicted](#) Ross Roggio, a U.S. citizen who managed an illegal weapons factory project in the Kurdistan region of Iraq, for the torture of an Estonian citizen employed at the factory who raised concerns about the project.

DOJ has also brought torture charges in at least two 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. At least one other prosecution with torture indictments is 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.

Atrocity Crimes and Related Offenses That Do Not Have a Domestic Counterpart

Crimes Against Humanity

Crimes against humanity is 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 the jurisdictional instruments for several [international criminal tribunals](#), including in the [Rome Statute](#) for the International Criminal Court (ICC). (The United States is [not a party](#) to the Rome Statute.) Although

there is not currently a treaty dedicated to the prevention and punishment of crimes against humanity as there is for genocide and war crimes, in November 2022 the U.N. General Assembly's legal committee passed a [resolution](#) launching negotiations on [draft articles](#) of a crimes against humanity treaty. The United States was among the countries that [supported](#) the launch of the negotiations, which are currently underway and are expected to run through the end of 2024.

Unlike war crimes, crimes against humanity and genocide may be committed [during peacetime](#) as well as armed conflicts. Many of the same acts that can amount to genocide can also amount to crimes against humanity, [including](#) murder, enslavement, rape, torture, and forcible population transfers. However, the mental state required to establish crimes against humanity [differs](#) from that required to establish genocide. While the genocide offense requires the *intent* to destroy a *national, ethnic, racial, or religious group*, crimes against humanity [require knowledge](#) that the prohibited act was part of a widespread and systematic attack *on a civilian population*. These differing mental-state standards mean that many acts of genocide also qualify as crimes against humanity, but not every crime against humanity amounts to genocide.

Under certain circumstances acts amounting to crimes against humanity could be prosecuted under existing U.S. criminal statutes, including the War Crimes Act and the torture statute. U.S. criminal law does not punish crimes against humanity per se. Several U.S. laws, however, reference crimes against humanity in [other contexts](#), including [limitations](#) on foreign security assistance; support for other [countries](#)' and the [International Criminal Court's](#) efforts to investigate and prosecute crimes against humanity perpetrated by foreign nationals; and a [directive to the executive](#) to develop a "Government-wide strategy to identify, prevent, and respond to the risk of atrocities," including crimes against humanity. Additionally, over the years, the executive branch has determined that [certain](#) overseas [atrocities](#) rise to the level of crimes against humanity, including in the [context](#) of the current Russia-Ukraine conflict.

Aggression

The crime of aggression, in its broadest sense, is the act of starting an armed conflict that is prohibited under international law. The crime was defined and prosecuted in the post-World War II military tribunals, where it was referred to as "[crimes against peace](#)." The Nuremberg Military Tribunal [described](#) aggression as "the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole." 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. The ICC's jurisdiction is more limited for aggression than for the other three crimes defined in the Rome Statute—[namely](#), genocide, crimes against humanity, and war crimes. For these latter three crimes, the ICC [has jurisdiction if](#) they were committed by a national of or on the territory of a state party or a non-state party that has accepted the court's jurisdiction. In contrast, the ICC [does not have jurisdiction](#) over the crime of aggression if it was committed by a national of a state party that has opted out of such jurisdiction or by the national of or on the territory of a non-state party.

The ICC has jurisdiction to investigate crimes against humanity and war crimes by Russian nationals on Ukrainian territory because Ukraine has [accepted](#) the court's jurisdiction for that purpose. Because Russia is not a party to the Rome Statute, however, the ICC does not possess the power to investigate allegations

of aggression committed by Russian nationals, and for this reason Ukraine may not also recognize the ICC's jurisdiction to investigate the commission of the crime of aggression by Russian nationals against Ukrainians in Ukraine. Aggression is not a defined offense in U.S. law, but [some](#) foreign countries have enacted legislation criminalizing the offense, including [Ukraine](#).

Considerations for Congress

As the statutes permitting domestic enforcement of international legal prohibitions of atrocity and related crimes discussed above indicate, over time Congress has periodically shown interest in avenues for accountability. Recent conflicts throughout the world—including in [Burma](#), [Yemen](#), [Ethiopia](#), [Sudan](#), [Ukraine](#), [Israel](#), and [Gaza](#)—appear to have prompted increased congressional attention to alleged international atrocities and related crimes.

Further, as noted, DOJ has indicated that it intends to pursue additional prosecutions to hold individuals accountable for war crimes and other atrocities. The first prosecution under the War Crimes Act was brought by DOJ's [War Crimes Accountability Team](#), which Attorney General Garland established four months after Russia invaded Ukraine to “strengthen and centralize the Department’s ongoing work to hold accountable those who have committed war crimes and other atrocities in Ukraine.” Although the bulk of future prosecutions related to Ukraine and the Israeli and Hamas conflict will likely take place outside the U.S. judicial system, the recent amendment of the War Crimes Act extends criminal jurisdiction to covered offenses committed by anyone found on U.S. soil, potentially enabling U.S. authorities to more easily hold more war crimes perpetrators accountable in U.S. courts.

DOJ's ability to prosecute other atrocities and related crimes is more limited, however. Although the torture statute's jurisdictional [provisions](#) are keyed to the offender's nationality or presence, 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, for example, captured in Ukraine and tortured by Russian forces (as alleged in DOJ's first indictment under the War Crimes Act) or [held hostage](#) and tortured by Hamas militants in Gaza. In such cases, DOJ would have jurisdiction only if the offender were present in the United States (although, as discussed above, it is possible that in some cases such jurisdiction could be secured through extradition, or the United States might opt to extradite persons under its jurisdiction to another country to face criminal charges).

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 because of [obstacles to prosecution presented by immunities](#) afforded to state officials under international law, but the potential role of domestic systems in enforcing the crime has received attention from [international](#) legal [commentators](#) because of the restrictions in the Rome Statute preventing 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 common criminal charges (e.g., [murder](#) and other violent crimes) to address individual acts that formed part of a widespread atrocity campaign. Other options U.S. authorities can use are 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. 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 [restrictions](#) on extraterritorial reach. At the same time, it is not clear that adding new offenses or expanding jurisdiction for atrocity and related crimes would result in many new convictions; the United States to date has two convictions under its suite of atrocity-related criminal statutes—the 2008 and 2023 torture convictions. On the other hand, it is possible that this could change in light of developments such as Congress’s recent amendment of the War Crimes Act to expand its jurisdiction and DOJ’s recent indictment under the Act and stated commitment to further pursue accountability in Ukraine and beyond.

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