

INTERNATIONAL HUMANITARIAN LAW REQUIREMENTS FOR UNIVERSAL JURISDICTION AND UNITED STATES COMPLIANCE

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I. INTRODUCTION

This article explores international humanitarian law requirements regarding universal jurisdiction—the legal principle that allows states to prosecute people for specific serious crimes regardless of where they were committed¹—and how the United States is implementing its obligations. In 2023, the United States enacted the Justice for Victims of War Crimes Act (JWCA) to fill a jurisdictional lacuna in existing U.S. war crimes legislation, the 1996 War Crimes Act.² Due to the previous lacuna, the United States did not have domestic legislation that fulfilled certain obligations under the 1949 Geneva Conventions, to which the United States is party.³ This article explains the gap that existed in the U.S. criminal code regarding war crimes and assesses the corrective utility of the JWCA. Ultimately, this article suggests that the JWCA brings the U.S. into better compliance with the 1949 Geneva Conventions, but improvements could be made to expand the enumerated crimes and modes of liability under the War Crimes Act.

Section II of this article examines universal jurisdiction requirements under international humanitarian law including obligations regarding violations during an international armed conflict and in a non-international armed conflict. Section III provides examples from various countries of what domestic universal jurisdiction statutes may look like. Section IV addresses the history of the War Crimes Act and the Justice for Victims of War Crimes Act. Part A of section IV analyzes four areas of the U.S. legislation: personal jurisdiction, obligations for extraterritorial searches, modes of liability, and Attorney General certification requirements. Part B of section IV then discusses the only two cases brought under the JWCA and a third that has an opportunity for war crimes charges. Section V suggests two areas where the JWCA can be further improved, and Section VI concludes the article.

1. United Nations: Office of the High Commissioner, *What is Universal Jurisdiction?*, <https://perma.cc/96TC-Q573>.

2. See War Crimes Act of 1996, Pub. L. No. 104-192, 110 Stat. 2104 (codified as amended at 18 U.S.C. § 2441) [hereinafter War Crimes Act]; Justice for Victims of War Crimes Act, Pub. L. No. 117-351, 136 Stat. 6194 (codified at 18 U.S.C. § 2441) [hereinafter JWCA].

3. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3, Aug. 12, 1949, 75 U.N.T.S. 31 [hereinafter Geneva Convention I]; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members at Sea, Aug. 12, 1949, U.S.T. 3217, 75 U.N.T.S. 85 [hereinafter Geneva Convention II]; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Geneva Convention III]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Geneva Convention IV].

II. DOES INTERNATIONAL HUMANITARIAN LAW REQUIRE UNIVERSAL JURISDICTION?

International humanitarian law (IHL) is a body of international law that aims to protect people affected by armed conflict and limit the means and methods of warfare.⁴ The bedrock treaties are the four 1949 Geneva Conventions, to which all states are party, as well as the two Additional Protocols of 1977, to which many, but not all states are party.⁵ These treaties obligate states to criminally repress certain violations.⁶

Representatives of the International Committee of the Red Cross (ICRC), a neutral humanitarian organization whose main objective is to protect and assist victims of war, participated in the negotiations of the 1949 Geneva Conventions and the 1977 Additional Protocols.⁷ The ICRC has published commentaries on these treaties, and while not legally binding, they are authoritative texts that are useful for treaty interpretation.⁸ In its 2020 commentary on Geneva Convention III, the ICRC noted that criminal accountability prevents impunity and ensures respect for the law.⁹ The commentary explains that during the negotiations of the 1949 Geneva Conventions, some states noted that requiring criminal accountability would ensure that members of the armed forces would comply with the law and essentially act as a deterrent.¹⁰

Importantly, however, for examining the accountability requirements under international humanitarian law, is also understanding the types of conflict to which IHL applies. IHL addresses two kinds of armed conflict—international armed conflict and non-international armed conflict.¹¹ The distinction is important because different treaties provisions apply to each

4. International Committee of the Red Cross, *What is international humanitarian law?*, <https://perma.cc/JN23-QZS4>.

5. See Geneva Conventions I–IV, *supra* note 3; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, art. X, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I]; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II)*, 8 June 1977 at ¶ 4618, INT’L COMM. OF THE RED CROSS, <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-6/commentary/1987> [<https://perma.cc/WR5J-5U5B>]; International Humanitarian Law, *Treaties and States Parties* [<https://perma.cc/CQR6-XBAX>].

6. See Geneva Convention I, *supra* note 3, art. 49, Geneva Convention II, *supra* note 3, art. 50, Geneva Convention III, *supra* note 3, art. 129, Geneva Convention IV, *supra* note 3, art. 146.

7. *Our Mandate and Mission*, INT’L COMM. OF THE RED CROSS, <https://perma.cc/V2NP-NDTH> (last visited Jun. 8, 2026).

8. *The Geneva Conventions and their Commentaries*, INT’L COMM. OF THE RED CROSS, <https://perma.cc/HTR2-QLKD> (last visited Jun. 8, 2026).

9. *Commentary of 2020 to Geneva Convention (III) Relative to the Treatment of Prisoners of War art. 130 (Grave Breaches)*, INT’L COMM. OF THE RED CROSS, <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-130/commentary/2020> [<https://perma.cc/CJ7G-UQWQ>] (last visited June 8, 2026).

10. See *id.*

11. *How is the term “Armed Conflict” defined in international humanitarian law?*, INT’L COMM. OF THE RED CROSS, <https://perma.cc/3S9B-QBU4> (last visited June 8, 2026).

type of conflict.¹² The following subsections explain the differences in the application of the treaty law in each type of armed conflict.

A. In an International Armed Conflict

The vast majority of the 1949 Geneva Conventions apply during international armed conflict, which is when an armed conflict arises between state parties, when there is a declared war, or during an occupation, with certain other rules applying exclusively during occupation.¹³ The Geneva Conventions are not criminal law treaties; they do not provide for elements of crimes, *mens rea*, or *actus reus* requirements.¹⁴ They are a set of legally binding obligations that are supposed to protect certain people and places during armed conflict.¹⁵

The Geneva Conventions require that state parties ensure domestic frameworks that provide accountability for grave breaches of the conventions.¹⁶ Grave breaches are defined in each of the four Conventions and generally include the most egregious violations against persons and objects protected by the conventions, such as willful killing, torture, and inhuman treatment; however, many horrific acts are not included as grave breaches, such as rape and starvation.¹⁷ Additional Protocol I of 1977 (AP I) extends grave breaches to certain actions related to the conduct of hostilities.¹⁸ While states are obligated to criminalize these violations, this represents the minimum requirements, so they may also criminalize other violations of the Conventions.¹⁹

Parallel articles of the four Geneva Conventions (Articles 49, 50, 129 and 146 of Geneva Conventions I, II, III, and IV, respectively) require states to pass domestic penal legislation and search for alleged perpetrators of grave breaches of the Geneva Conventions.²⁰ States may either prosecute the individuals themselves, or with required safeguards in place, transfer them to another state for prosecution.²¹ The ICRC's commentary to Article 49 of Geneva Convention I explains that, "alongside the other bases of criminal jurisdiction, universal jurisdiction over grave breaches must be included in the implementing legislation. It is imperative that [s]tates [p]arties implement

12. *See id.*

13. *See* Geneva Convention I, *supra* note 3, art. 2 (Article 2, Application of the Convention, is common to Geneva Conventions I, II, III, and IV).

14. *See* Geneva Conventions I–IV, *supra* note 3.

15. *Id.*

16. *See* Geneva Convention I, *supra* note 3, art. 50; Geneva Convention II, *supra* note 3, art. 51; Geneva Convention III, *supra* note 3, art. 130; Geneva Convention IV, *supra* note 3, art. 147.

17. *Id.*

18. *See* Protocol I, *supra* note 5, art. 85.

19. *See* Geneva Convention I, *supra* note 3, art. 49; Geneva Convention II, *supra* note 3, art. 50; Geneva Convention III, *supra* note 3, art. 129; Geneva Convention IV, *supra* note 3, art. 146.

20. *Id.*

21. *Id.*

legislation of universal reach.”²² AP I also adds requirements on mutual assistance in criminal matters and cooperation with the United Nations in the situation of serious violations of the Conventions or the Protocol.²³

Importantly, the Geneva Conventions specifically provide that states must search for and prosecute alleged offenders “regardless of their nationality,” ensuring an expansive view of who must be brought to justice.²⁴ This ensures that not only nationals of the state must be prosecuted; but anyone who has allegedly committed a grave breach of the Geneva Conventions should be brought to justice.²⁵ Universal jurisdiction provides a mechanism for states to repress grave breaches of the Geneva Conventions no matter who the perpetrator is; it allows states to hold individuals accountable even if there is not a direct link between the perpetrator and the state.²⁶ Universal jurisdiction is typically not used for all crimes, but only for the most egregious crimes, including war crimes.²⁷

The Geneva Conventions do not provide other jurisdictional parameters, but because states must ensure that all those who have allegedly committed a violation face prosecution, states must have a system for lawful prosecutions regardless of where an offense occurred.²⁸ This could mean that states extradite individuals to another jurisdiction where they face criminal prosecution for their acts.²⁹ However, extradition may not always be possible, so states should ensure that their own domestic law allows for jurisdiction over individuals for specific crimes no matter where the crime was committed.³⁰

22. See Geneva Convention I, *supra* note 3, art. 49.

23. See Additional Protocol I, *supra* note 5, arts. 88–89.

24. See Geneva Convention I, *supra* note 3, art. 49; Geneva Convention II, *supra* note 3, art. 50; Geneva Convention III, *supra* note 3, art. 129; Geneva Convention IV, *supra* note 3, art. 146.

25. *Id.*

26. *Universal Jurisdiction over War Crimes*, INT’L COMM. OF THE RED CROSS https://www.icrc.org/sites/default/files/document/file_list/universal-jurisdiction-icrc-eng.pdf [<https://perma.cc/2DEK-8PQH>] (last visited June 8, 2026).

27. The ICRC’s 2025 Updated Commentary to Geneva Convention IV explains that “[t]he universality principle, also referred to as universal jurisdiction, has been defined as ‘criminal jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction.’” *Commentary of 2025 to Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War* art. 146 (General Observations), INT’L COMM. OF THE RED CROSS [hereinafter *2025 Commentary*] (quoting THE PRINCETON PRINCIPLES ON UNIVERSAL JURISDICTION (2001), <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-146/commentary/2025> [<https://perma.cc/FL74-UUSZ>] (last visited June 8, 2026).

28. See Geneva Convention I, *supra* note 5, art. 49; Geneva Convention II, *supra* note 3, art. 50; Geneva Convention III, *supra* note 3, art. 129; Geneva Convention IV, *supra* note 3, art. 146.

29. See *Commentary of 2016 to Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* art. 49, INT’L COMM. OF THE RED CROSS, <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-49/commentary/2016> [<https://perma.cc/59YU-YUN2>] (last visited June 8, 2026).

30. See *id.*

The Geneva Conventions do not permit amnesty for grave breaches. An amnesty is essentially when an individual is prevented from being prosecuted for a potentially wrongful act that they may have committed.³¹ The ICRC describes an amnesty as “a legislative or executive act that bars criminal investigation or prosecution of an individual or, more commonly a group, often in relation to acts committed during an armed conflict.”³² Each of the four Geneva Conventions provides that parties may not “absolve” themselves of grave breaches.³³ The ICRC’s commentary explains that states wanted to ensure that peace plans could not include amnesty provisions that would prevent accountability for the most egregious actions.³⁴ “Amnesties granted to persons who have participated in an armed conflict must not extend to those who are suspected of having committed grave breaches or other serious violations of humanitarian law” because an amnesty would violate the obligation to prosecute or extradite alleged offenders.³⁵

While the law regarding actions in an IAC has explicit requirements regarding criminalization and prosecution of grave breaches, the law in a NIAC is not nearly as robust. The following section briefly addresses the obligations regarding an NIAC.

B. In a Non-International Armed Conflict

Non-international armed conflicts make up the majority of conflict in the world.³⁶ Article 3, which is common to all four Geneva Conventions, applies to “the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties,” but the article does not provide a definition of a non-international armed conflict.³⁷ After a prominent decision from the International Criminal Tribunal for the former Yugoslavia “and subsequent jurisprudence, it is widely accepted today that two key conditions must be met for a situation of violence to be considered a NIAC and therefore subject to IHL: the non-state party/parties must be organized, and the violence between the parties must be sufficiently intense.”³⁸ So a NIAC includes situations where a state is fighting a non-state

31. ICRC Explainer: *What Does International Law Say About Pardons for War Crimes?*, INT’L COMM. OF THE RED CROSS (Dec. 6, 2019), <https://www.icrc.org/en/document/icrc-explainer-what-does-international-law-say-about-pardons-war-crimes#:~:text=IHL%20does%20not%20address%20pardons,as%20serious%20violations%20of%20IHL> [https://perma.cc/43GN-YNUW].

32. *Id.*

33. *See, e.g.*, Geneva Convention III, *supra* note 3, art. 131.

34. *Id.*; *Commentaries of 2020*, Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, <https://perma.cc/57RC-H9RU>.

35. *Commentary of 2025*, Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, <https://perma.cc/BB4T-VSBA>.

36. World Assessment and Tracking of Civilian Harm, *War Watch*, <https://perma.cc/7XLV-P3TH> (last visited June 8, 2026).

37. Geneva Conventions I–IV, *supra* note 3, art.3.

38. *See* ICRC, *supra* note 11.

armed group or when two non-state armed groups are fighting each other, and when 1) the groups are organized and 2) the intensity of hostilities is sufficient.³⁹ In Addition to common article 3, Additional Protocol II may apply to a NIAC, and many rules of customary international humanitarian law also apply.⁴⁰

Regarding accountability, the term “grave breaches” is only used in reference to certain violations during an international armed conflict.⁴¹ Neither Common Article 3 to the four Geneva Conventions nor Additional Protocol II of 1977 (AP II), make reference to the term “grave breaches.”⁴² Nevertheless, certain acts are still of course prohibited in non-international armed conflict (NIAC) and may be criminalized under domestic law.⁴³ The 1998 Rome Statute, which is the statute of the International Criminal Court, and to which the U.S. is not party, lays out a host of acts that are considered war crimes in a NIAC.⁴⁴

While states are obliged to create and implement universal jurisdiction statutes for grave breaches in an international armed conflict (IAC), there is not a similarly required action for violations in a NIAC in treaty law.⁴⁵ However, the law applicable in a NIAC does not prevent a state from doing so, and states have the right to establish universal jurisdiction of NIAC violations as well.⁴⁶ Given the prevalence of NIACs throughout the world today, states should be prosecuting violations in NIAC to tamp down on impunity and ensure accountability for violations.⁴⁷

AP II, however, includes specific mention of the possibility of amnesties.⁴⁸ The provision provides that: “At the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to

39. *Id.*

40. Additional Protocol II, *supra* note 5.

41. See Geneva Convention I, *supra* note 3, art. 49, Geneva Convention II, *supra* note 3, art. 50, Geneva Convention III, *supra* note 3, art. 129, Geneva Convention IV, *supra* note 3, art. 146.

42. See M. Gandhi, *Common Article 3 of the Geneva Conventions, 1949 in the Era of International Criminal Tribunals*, in ISIL YEAR BOOK OF INTERNATIONAL HUMANITARIAN AND REFUGEE LAW 11 (2001), <https://www.worldlii.org/int/journals/ISILYBIHRL/2001/11.html> [<https://perma.cc/GDH9-8QXA>] (hereinafter 1949 in the Era of International Criminal Tribunals); Additional Protocol II, *supra* note 5.

43. See Geneva Convention I, *supra* note 3, art. 49; Geneva Convention II, *supra* note 3, art. 50; Geneva Convention III, *supra* note 3, art. 129; Geneva Convention IV, *supra* note 3, art. 146.

44. See Rome Statute of the International Criminal Court art. 8(2)(c), July 17, 1998, 2187 U.N.T.S. 90, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> [<https://perma.cc/73KK-SMU6>] [hereinafter Rome Statute].

45. See Geneva Convention I, *supra* note 3, art. 49; Geneva Convention II, *supra* note 3, art. 50; Geneva Convention III, *supra* note 3, art. 129; Geneva Convention IV, *supra* note 3, art. 146; Additional Protocol II, *supra* note 5; 1949 in the Era of International Criminal Tribunals, *supra* note 42.

46. *Customary International Humanitarian Law: Rule 157 — Jurisdiction over War Crimes*, INT’L COMM. OF THE RED CROSS, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule157> [<https://perma.cc/P22H-UDMD>] (noting that states may vest universal jurisdiction over war crimes in their national courts) [hereinafter Rule 157].

47. See World Assessment and Tracking of Civilian Harm, *supra* note 36.

48. See Additional Protocol II, *supra* note 5, art. 6.

persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict”⁴⁹ Additionally, “[a]mnesties usually cancel any penalties that have been previously imposed.”⁵⁰ The ICRC’s 1987 Commentary on AP II notes that this amnesties provision was included to “contribute to reestablishing normal relations in the life of a nation which has been divided.”⁵¹ Amnesties, however, should not be used for grave violations of international law.⁵²

As described, the IHL obligations differ greatly regarding actions that States party must take for alleged grave breaches during an IAC from those required for serious violations of applicable IHL during a NIAC. States have chosen to implement these obligations in different ways and have provided different levels of specificity on jurisdictional issues and the substantive crimes that may be prosecuted. The following section provides example of four different universal jurisdiction statutes.

III. UNIVERSAL JURISDICTION IN PRACTICE

In practice, universal jurisdiction can have different formulations. Dozens of states currently have domestic statutes with a variation of universal jurisdiction over alleged perpetrators of war crimes.⁵³ The statutes have different types of parameters, such as requiring that the defendant be physically present in the state’s jurisdiction, known as “present in jurisdiction,” or that a special certification for prosecution be issued by the Attorney General or another high-level official.⁵⁴

A few examples from various states include:⁵⁵

Germany: The Völkerstrafgesetzbuch (VStGB), Code of Crimes Against International Law (CCAIL), 2002 (Part 1, Section 1 of VStGB) applies to “all criminal offences against international law designated [under this Act,] for offences under sections 6 to 12, it applies even when the offence was committed abroad and bears no relation to Germany,” and includes prosecution of war crimes

49. *Id.*

50. *Id.*

51. Additional Protocol II, *supra* note 5, art. 6.

52. *See, e.g.,* Massacres of El Mozote & Nearby Places v. El Salvador, Series C No. 252, Inter-Am. Comm’n H.R. Merits, Reparations, and Costs, Judgment ¶¶ 283–86 (Oct. 25, 2012) (finding that amnesty laws are incompatible with egregious international law violations).

53. The ICRC’s Customary International Humanitarian Law database includes lists of state practice, such as national legislation, which uphold and implement obligations under IHL. *See, e.g.,* Rule 157, *supra* note 46 (documenting widespread state practice supporting the exercise of jurisdiction over war crimes as a matter of customary international law).

54. *See id.*

55. These examples come from the ICRC’s Customary IHL database. *See id.*

enumerated in Chapter 2, Sections 8–12 of the Code.⁵⁶ This statute provides for broad universal jurisdiction with no territorial link or active or passive personality principle needed.⁵⁷

New Zealand: New Zealand’s International Crimes and International Criminal Court Act 2000 provides for broad jurisdiction over individuals for crimes enumerated in the Act, including war crimes.⁵⁸ The Act provides that “[e]very person commits an offence and is liable on conviction to the penalty specified in subsection (3) who, in New Zealand or elsewhere, commits a war crime.”⁵⁹ The war crimes enumerated closely mirror those included in the Rome Statute.⁶⁰ This statute allows New Zealand to exercise universal jurisdiction over these crimes.⁶¹

Malawi: Malawi’s Geneva Conventions Act (1967), which provides for the punishment of grave breaches of the 1949 Geneva Conventions by “[a]ny person, whatever his nationality,” states:

“Where an offence under this section is committed without Malawi a person may be proceeded against, tried and punished therefor in any place in Malawi as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.”⁶²

Peru: “Peru’s Military and Police Criminal Code (2010), under the heading ‘Universal Jurisdiction,’ states: ‘Regarding crimes included in the present Title [namely crimes committed in states of emergency and in violation of International Humanitarian Law],

56. VÖLKERSTRAFGESETZBUCH [VSTGB] [CODES OF CRIMES AGAINST INTERNATIONAL LAW] [CCAIL], § 1 (Brian Duffett transl.); *Germany, Practice Relating to Rule 157. Jurisdiction over War Crimes*, INT’L COMM. OF THE RED CROSS [hereinafter *Germany 157*], <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule157?country=de> [<https://perma.cc/XJ8W-9YJA>] (last visited June 8, 2026).

57. *See* VSTGB § 1; *Germany 157*, *supra* note 56.

58. *See* International Crimes and International Criminal Court Act 2000, s 11(1) (N.Z.).

59. *See id.*

60. *See New Zealand, Practice Relating to Rule 157. Jurisdiction over War Crimes*, INT’L COMM. OF THE RED CROSS, <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule157?country=nz> [<https://perma.cc/KU6V-WFA4>].

61. *See id.*

62. *Malawi, Practice Relating to Rule 157. Jurisdiction over War Crimes*, INT’L COMM. OF THE RED CROSS, <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule157?country=mw> [<https://perma.cc/5N5E-J958>].

this Code applies also if they were committed abroad and do not have any link to the national territory.’”⁶³

The U.S. universal jurisdiction statute differs from some of these examples in regard to personal jurisdiction and substantive crimes. The following section takes a closer look at the U.S. War Crimes Act and the JWWCA.

IV. UNITED STATES IMPLEMENTATION OF UNIVERSAL JURISDICTION FOR WAR CRIMES

Although the United States signed the 1949 Geneva Conventions on August 12, 1949, the first day they opened for signature, the United States did not ratify the Conventions until 1955 and did not pass its War Crimes Act until 1996.⁶⁴ The United States signed both Additional Protocols I and II to the Geneva Conventions.⁶⁵ President Reagan transmitted Additional Protocol II to the Senate for its advice and consent in 1987,⁶⁶ but the Senate has never granted its advice and consent. President Reagan stated that the United States cannot ratify Additional Protocol I.⁶⁷

When the Executive Branch sent the 1949 Geneva Conventions to the Senate for its advice and consent, the Executive Branch recognized that the Conventions did obligate the United States to prosecute offenders.⁶⁸ However, the Executive thought that this obligation was met due to ability to

63. *Peru, Practice Relating to Rule 157. Jurisdiction over War Crimes*, INT’L COMM. OF THE RED CROSS, <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule157?country=pe> [<https://perma.cc/X376-KHB7>].

64. COMM. ON FOREIGN RELATIONS, GENEVA CONVENTIONS FOR THE PROTECTION OF WAR CRIMES, S. EXEC. REP. NO. 9 (1955) <https://www.justice.gov/sites/default/files/jmd/legacy/2014/03/15/senateexecrpt-9-1955.pdf> [<https://perma.cc/QJ2U-VJL6>]; 18 U.S.C. 2441.

65. See MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING PROTOCOL II ADDITIONAL TO THE 1949 GENEVA CONVENTIONS, AND RELATING TO THE PROTECTION OF VICTIMS OF NONINTERNATIONAL ARMED CONFLICTS, S. TREATY DOC. NO. 100-2, III (1987), https://www.foreign.senate.gov/imo/media/doc/treaty_100-2.pdf [<https://perma.cc/3SRV-2XT8>]; see also Statement at the 79th General Assembly Sixth Committee Agenda Item 81: Status of the Protocols Additional to the Geneva Conventions of 1949 - United States Mission to the United Nations, <https://usun.usmission.gov/statement-at-the-79th-general-assembly-sixth-committee-agenda-item-81-status-of-the-protocols-additional-to-the-geneva-conventions-of-1949/>.

66. Under the United States Constitution, the President has the power, with the advice and consent of the Senate to make treaties on behalf of the United States. President “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur . . .” U.S. CONST. art. II, § 2, cl. 2.

67. See MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING PROTOCOL II ADDITIONAL TO THE 1949 GENEVA CONVENTIONS, AND RELATING TO THE PROTECTION OF VICTIMS OF NONINTERNATIONAL ARMED CONFLICTS, S. TREATY DOC. NO. 100-2, III (1987), https://www.foreign.senate.gov/imo/media/doc/treaty_100-2.pdf [<https://perma.cc/3SRV-2XT8>].

68. Testimony, Michael J. Matheson, Principal Deputy Legal Adviser, before the Subcommittee on Immigration and Claims, Committee on the Judiciary, House of Representatives, regarding war crimes (June 12, 1996).

prosecute under the Uniform Code of Military Justice (UCMJ), or under already existing domestic law, for crimes such as murder or rape.⁶⁹ The UCMJ is the federal criminal law applicable to the Armed Forces.⁷⁰ Members of the Armed Forces may be prosecuted under the UCMJ for offenses such as theft, rape, or murder; they may also be prosecuted for offenses specific to the military, such as desertion.⁷¹ Generally, only members of the Armed Forces are prosecuted under the UCMJ, although there may be some exceptions.⁷²

Following the horrendous crimes committed during the genocide in Rwanda and massacres in the former Yugoslavia, the United States played a leading role in helping to set up the United Nations tribunals to prosecute the perpetrators of these crimes.⁷³ In the late 1990s, states were also negotiating a landmark criminal law treaty—the Rome Statute of the International Criminal Court—which opened for signature in 1998.⁷⁴ While the United States ultimately had concerns with the Rome Statute, it was with this global backdrop towards accountability for serious violations of international law that the United States worked to pass its first War Crimes Act.⁷⁵

It also became clear that the UCMJ and other criminal statutes were not playing a sufficient role in prosecuting people for war crimes.⁷⁶ No one had been prosecuted under the UCMJ for war crimes.⁷⁷ Members of the armed forces have been prosecuted for other prohibited behavior that could amount to war crimes, and received significant punishments, but it became clear that the US was not able to prosecute non-US servicemembers for war crimes.⁷⁸ During the 1996 House of Representatives' Committee on the Judiciary's hearing about the War Crimes Act, Michael Matheson, the Principal Deputy Legal Adviser of the Department of State said that:

At the time of the submission of the 1949 Geneva Conventions to the Senate for advice and consent, the Executive Branch advised that implementing legislation was not required, since offenders could be prosecuted under federal and state penal statutes (in the case of crimes within United States jurisdiction) or the Uniform Code of Military Justice (with respect to crimes committed abroad). However, over the years, U.S. courts have handed down

69. *Id.*

70. Eugene R. Fidell, *U.S. Military Justice and Operational Mishaps: A Primer*, JUST SEC. (Apr. 24, 2017), <https://www.justsecurity.org/40208/u-s-military-justice-operational-mishaps-primer/> [https://perma.cc/UW3X-JA4B].

71. *See id.*

72. *See id.* (discussing the UCMJ and its treatment of war crimes).

73. John B. Bellinger III, *U.S. Perspectives on International Criminal Justice*, U.S. DEP'T OF STATE (Nov. 14, 2008), <https://2001-2009.state.gov/s/l/rls/111859.htm> [https://perma.cc/N95R-66NE].

74. *See* Rome Statute, *supra* note 44.

75. *See* War Crimes Act, *supra* note 2.

76. *See* Fidell, *supra* note 70.

77. *See id.*

78. *See, e.g.,* Calley v. Callaway, 382 F. Supp. 650, 653–54 (M.D. Ga. 1974).

a series of decisions which cast doubt on the constitutionality of the exercise by military tribunals of criminal jurisdiction over the acts abroad of various categories of persons who are not in active military service. It is therefore very useful, in our view, to establish clear jurisdiction in U.S. courts to try any persons for such offenses if they come within U.S. jurisdiction. Furthermore, since 1949 the United States has accepted certain specialized rules of international humanitarian law which may not have an equivalent in existing U.S. criminal statutes.⁷⁹

The House of Representatives also undertook and submitted a report to accompany the bill.⁸⁰ The report concludes that there were gaps in the implementation of the grave breaches provisions of the Geneva Conventions.⁸¹ While there were many grave breaches of the Geneva Conventions whose underlying crime would be covered by the existing federal or state law, such as terrorism, killing protected persons, and genocide,⁸² there were certain grave breaches that could not be prosecuted under existing domestic law, such as killing a prisoner of war.⁸³ The report also notes the limited scope of personal jurisdiction of courts martial and military commissions, which did not provide for comprehensive jurisdiction.⁸⁴ Generally, courts martial only have jurisdiction over “members of the United States armed forces, persons serving with or accompanying armed forces in the field, and enemy prisoners of war.”⁸⁵

The report found similar problems with the jurisdictional reach of military commissions which was before the various iterations of the Military Commissions Act, which is now being used to prosecute individuals held in Guantanamo Bay, Cuba.⁸⁶ It concluded that the “American military commissions have generally prosecuted individuals whose acts were committed in lands occupied by our military, and have always been used in instances where the United States was involved in hostilities.”⁸⁷ Under the Geneva Conventions, the United States must be able to prosecute or extradite anyone who has allegedly committed a grave breach of the Geneva Conventions, not only members of its armed forces.⁸⁸

79. See Statement of Matheson, *supra* note 68.

80. H.R. REP. NO. 104-698, at 5 (1996), <https://www.govinfo.gov/content/pkg/CRPT-104hrpt698/pdf/CRPT-104hrpt698.pdf> [<https://perma.cc/M6ZK-FY33>].

81. See *id.*

82. For a full list, see *id.* at 4–5.

83. See *id.* at 4.

84. See *id.* at 5.

85. See *id.* at 5.

86. For further discussion on the Military Commissions Act, see JENNIFER K. ELSEA, CONG. RSCH. SERV., RL33688, THE MILITARY COMMISSIONS ACT OF 2006: ANALYSIS OF PROCEDURAL RULES AND COMPARISON WITH PREVIOUS DOD RULES ON THE UNIFORM CODE OF MILITARY JUSTICE, (2007).

87. See H.R. REP. NO. 104-698, at 6 (footnote omitted).

88. See 18 U.S.C. § 2441.

Finally, with support from the Senate, the House of Representatives, and the Executive Branch, the United States War Crimes Act became law in 1996.⁸⁹ The final language of the Act, however, severely restricted the jurisdictional scope of the law.⁹⁰ Jurisdiction was limited to offenses committed within the United States, or if the offender or victim was a member of the United States Armed Forces or a national of the United States, as provided in the Immigration and Nationality Act.⁹¹ This meant that acts committed outside the United States could not be prosecuted in United States' courts unless the victim or offender was a United States national, permanent resident, or member of the United States Armed Forces.⁹²

The substantive crimes enumerated in the War Crimes Act constituted: (1) grave breaches of the 1949 Geneva Conventions; (2) certain violations of the Annex to the Hague Convention IV of 1907; (3) certain violations of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996; and (4) nine violations of Common Article 3 which are offenses committed during a non-international armed conflict.⁹³

Despite the incredible efforts to pass the United States War Crimes Act and the global signaling that the United States was taking war crimes seriously, no one was ever charged under the Act until 2023, following its amendment.⁹⁴ Russia's full-scale invasion of Ukraine in 2022, however, galvanized support for Ukraine in the United States, especially—at first—in the United States Congress.⁹⁵ One of the major drawbacks of the 1996 United States War Crimes Act was that it did not include jurisdiction over non-United States persons who were in the United States and had allegedly committed war crimes outside of the United States against non-United States persons.⁹⁶

During the discussions on the 1996 War Crimes Act, Michael Matheson, the Principal Deputy Legal Adviser of the Department of State at the time, noted that the State Department supported universal jurisdiction provisions in the War Crimes Act, which would create a more robust law.⁹⁷ However, the House of Representatives' report concludes that the Committee did not support universal jurisdiction.⁹⁸ The report argues that including universal

89. *See id.*

90. *See id.* § 2441(b).

91. *See id.*

92. *See id.*

93. *See id.* § 2441(c).

94. For a discussion of why there were no prosecutions and the faults of the United States War Crimes Act, *see generally* Beth Van Schaack, *Animating the U.S. War Crimes Act*, 97 INT'L L. STUD. 1562 (Oct. 23, 2021).

95. *See id.* at 1578.

96. *See id.* at 1553–54.

97. *See* Statement of Matheson, *supra* note 68.

98. *See* H.R. REP. NO. 104-698, at 5 (1996).

jurisdiction would “draw the United States into conflicts in which this country has no place and where our national interests are slight[,]” and that the hurdles to collect evidence and witness testimony would be nearly insurmountable.⁹⁹ While the 1996 War Crimes Act only passed through Congress with the narrow personal jurisdiction, decades later that would finally change.

A. Justice for Victims of War Crimes Act

When Russia invaded Ukraine in 2022, it became very clear that there were deficiencies in what charges the United States could bring against foreign nationals for acts committed in Ukraine.¹⁰⁰ Indeed, when the Justice for Victims of War Crimes Act (JWVCA) was introduced, most of the co-sponsoring senators specifically referenced a desire to hold Russian war criminals accountable for atrocities committed in Ukraine.¹⁰¹ The bill had significant support and momentum and was quickly signed into law.¹⁰²

The JWVCA makes a few major changes to the War Crimes Act, but did not change any of the substantive crimes that can be charged.¹⁰³ The most significant change is the personal jurisdiction.¹⁰⁴ The War Crimes Act was never truly universal because personal jurisdiction was quite limited.¹⁰⁵ The JWVCA allows the United States to prosecute anyone “found in” the United States.¹⁰⁶ Presumably, this could mean anywhere that the United States has jurisdiction, including United States military bases that may be on another state’s territory.¹⁰⁷

1. Personal Jurisdiction

The amendment makes clear that if an alleged perpetrator is found within the United States, then United States courts have jurisdiction and could prosecute the individual for war crimes.¹⁰⁸ If individuals are detained

99. *See id.* at 8.

100. *Bipartisan, Bicameral Lawmakers Introduce Bill to Broaden War Crimes Jurisdiction* (May 18 2022), CHUCK GRASSLEY, <https://www.grassley.senate.gov/news/news-releases/bipartisan-bicameral-lawmakers-introduce-bill-to-broaden-war-crimes-jurisdiction> [<https://perma.cc/SYE2-AAWE>].

101. *See id.*

102. Paras Shah, *Senate Passes Justice for Victims of War Crimes Act*, JUST SEC. (Dec. 22, 2022), <https://www.justsecurity.org/84588/senate-passes-justice-for-victims-of-war-crimes-act/> [<https://perma.cc/75QR-YRHG>].

103. *See JWVCA*, *supra* note 2.

104. *See id.*

105. *See War Crimes Act*, *supra* note 2.

106. *See JWVCA*, *supra* note 2.

107. *See id.*

108. *See id.*

overseas, they could be transferred or extradited to the territorial United States for prosecution.¹⁰⁹

The JYWCA uses the term “found in” rather than “present in,” and there may be a legal distinction between the two.¹¹⁰ “Found in” seems to require that an individual is physically present within the jurisdiction of the United States.¹¹¹ Courts can find there is sufficient personal jurisdiction over individuals, or companies, through other legal mechanisms, even if they are not physically present.¹¹² The wording of the JYWCA may preclude finding personal jurisdiction through other means, such as consent, domicile, or another long-arm statute.¹¹³

2. Searching Beyond Borders

But does the United States have to search beyond its borders to find alleged war criminals?¹¹⁴ Neither the Geneva Conventions nor the JYWCA require the United States to search beyond its jurisdiction for alleged war criminals.¹¹⁵ Doing so may violate the sovereignty of other countries, and would be logistically very difficult.¹¹⁶ In an informative case, the European Court of Human Rights, which is not binding on the United States, determined that “the 1949 Fourth Geneva Convention did not extend to an obligation on a [s]tate to search for war criminals outside its territory and to claim jurisdiction to prosecute and try them, when there are no connecting factors to that [s]tate.”¹¹⁷

The case stemmed from the death of a Spanish journalist in Iraq in 2003 who was killed by United States service members when they opened fire on his hotel.¹¹⁸ The journalist’s family filed a case in Spanish court, and there were extensive investigations.¹¹⁹ The United States, however, refused to extradite the service members to Spain, and Spain cannot prosecute individuals *in absentia*.¹²⁰ The European Court of Human Rights determined that the Spanish courts had adequately investigated and concluded that it is reasonable for states to have limits on universal jurisdiction, such as requiring

109. *See id.*

110. *See id.*

111. *See, e.g., Pennoyer v. Neff*, 95 U.S. 714 (1878).

112. *See, e.g., International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

113. *See id.*

114. *See id.*

115. *See JYWCA, supra note 2; see Geneva Convention I, supra note 3; Geneva Convention II, supra note 3; Geneva Convention III, supra note 3; Geneva Convention IV, supra note 3.*

116. *Permuy v. Spain*, App. No. 2327/20, ¶ 1 (July, 25 2024), [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-235144%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-235144%22]}) [<https://perma.cc/J3U9-4L69>].

117. *See id.*

118. *See id.*

119. *See id.*

120. *See id.* ¶ 148.

defendants to be present in the jurisdiction.¹²¹ The court did note, however, that “[s]tates are encouraged to give effect to this right by endowing their courts with jurisdiction to examine such claims for compensation”¹²² If these service members were to travel to Spain, they could be prosecuted in Spanish courts, but absent physical presence, the court determined that Spain did not have to search for them extraterritorially.¹²³ Similarly, the ICRC’s Commentary to the Fourth Geneva Convention notes that, “[a]s soon as a Contracting Party realizes that there is on its territory a person who has committed . . . a [grave] breach, its duty is to ensure that the person concerned is arrested and prosecuted with speed.”¹²⁴ There is no requirement to search beyond a state’s jurisdiction for alleged perpetrators.¹²⁵

3. *Command Responsibility vs. Conspiracy*

Under international criminal law, command responsibility provides that commanders can be held legally accountable for the actions of their subordinates.¹²⁶ The elements of the crime include: (1) a superior-subordinate relationship, (2) knowledge of the crime—or should have known about it, and (3) failure to prevent, punish, or report the offenses.¹²⁷ The United States’ UCMJ does not provide for liability through command responsibility; the United States Department of Defense Law of War Manual does discuss it, but that is not sufficient for prosecution under domestic law.¹²⁸ The Law of War Manual provides that under Command Responsibility:

Commanders have duties to take necessary and reasonable measures to ensure that their subordinates do not commit violations of the law of war. Failures by commanders of their duties to take necessary and reasonable measures to ensure that their subordinates do not commit violations of the law of war can result in criminal responsibility.¹²⁹

The Department of Defense recognizes that command responsibility exists as a mode of liability; however, because it is not available under United States law, prosecutors must charge for conspiracy.¹³⁰ As discussed below, the only two cases brought under the amended War Crimes Act both included

121. *See id.* ¶ 188.

122. *See id.* ¶ 150.

123. *See id.* ¶ 148.

124. *See 2025 Commentary, supra* note 27.

125. *See id.*

126. *See Rome Statute, supra* note 44, art. 28.

127. *Id.*

128. U.S. DEP’T OF DEF., LAW OF WAR MANUAL 1153 (2023).

129. *See id.*

130. *See id.*

charges of conspiracy to commit specific war crimes.¹³¹ Additionally, in a letter to United Nations Special Rapporteur, Ben Saul, the United States government confirmed that “[t]he United States can prosecute military commanders and other superiors for war crimes committed by their subordinates where such individuals conspire in, aid and abet, or otherwise direct the commission of war crimes over which the United States has jurisdiction under the War Crimes Act.”¹³²

4. *Certification by the Attorney General*

The JMWCA requires that the Attorney General (AG) certify that “prosecution . . . is in the public interest and [is] necessary to secure substantial justice.”¹³³ This certification is not subject to judicial review.¹³⁴ While it is not uncommon for a statute to require AG certification for prosecution, it does mean that the prosecution may become political.¹³⁵ The AG may only sign off on the charges if they are in the interest of the United States.¹³⁶

One of the United States hate crimes acts, 18 U.S.C. § 245, which prohibits violent interference with certain rights, including voting and employment activities, also requires the AG to certify charges before they are brought.¹³⁷ The statute, however, is broader than the JMWCA which includes certain people that the AG can designate to certify charges.¹³⁸ The threshold for certification is exactly the same as the JMWCA: the prosecution is “in the public interest and necessary to secure substantial justice.”¹³⁹ Sections 247 and 249 of Title 18 also have the same AG certification and threshold requirements.¹⁴⁰

Since President Biden signed the JMWCA into law, which created the amendments to the War Crimes Act, it should not be surprising that the first cases were brought under his administration.¹⁴¹ However, with the change of administration and the AG certification requirements, it is unlikely that any more war crimes cases will soon be brought.¹⁴²

131. See generally *United States v. Mkrtchyan*, No. 3:23-cr-161 (E.D. Va. 2023) (alleging conspiracy); *United States v. Hassan*, No. 1:24-cr-00533 (N.D. Ill. 2024) (same).

132. Letter to Special Rapporteur Ben Saul, Ref. No. ALUSA24/2024 (Oct. 18, 2024).

133. 18 U.S.C. § 2441(f)(2) (2023).

134. *Id.* § 2441(h).

135. See *id.*

136. See *id.* § 2441(f)(2).

137. See *id.* § 245 (a)(1).

138. See *id.*

139. See *id.*

140. See 18 U.S.C. §§ 247(e), 249 (b)(1), (b)(1)(D).

141. See *United States v. Mkrtchyan*, No. 3:23-cr-161 (E.D. Va. 2023); *United States v. Hassan*, No. 1:24-cr-00533 1, 1 (N.D. Ill. 2024).

142. See also *Mkrtchyan*, No. 3:23-cr-161; *Hassan*, No. 1:24-cr-00533 at 1 (both occurring during Biden Administration).

B. United States Cases and the Justice for Victims of War Crimes Act

The Department of Justice has brought only two cases under the amended War Crimes Act, one of which could have even been brought before the amendment.¹⁴³

1. Russia/Ukraine

Within one year of the JWWCA becoming law, the Department of Justice brought its first case against non-United States nationals for alleged war crimes committed against a civilian in Ukraine.¹⁴⁴ The indictment notes that the alleged crimes took place during an international armed conflict between Russia and Ukraine that started when Russia invaded Ukraine in February 2022.¹⁴⁵ The Department of Justice brought four criminal counts against the defendants, three counts of war crimes—unlawful confinement of a protected person, torture, and inhuman treatment—and one count of conspiracy to commit war crimes, allegedly committed against a civilian in “the so-called Donetsk People’s Republic” (DPR), which is part of eastern Ukraine.¹⁴⁶ The defendants are Russian nationals or other foreign nationals who were members of the Russian Armed Forces or DPR militia; the victim is a civilian who was not a member of the armed forces, militia, or otherwise participating in the hostilities.¹⁴⁷ The indictment alleges that the defendants abducted the victim and committed torture and other criminal acts against him.¹⁴⁸

Interestingly, as the indictment notes, the victim is a United States national.¹⁴⁹ The defendants are non-United States nationals who allegedly committed these acts outside of the United States, and the case was brought under the amended War Crimes Act.¹⁵⁰ Clearly, there was political momentum within the United States to bring a case against Russians and Russian affiliates for acts committed against civilians; but, because the victim is a United States citizen, this case could have technically been brought even before the amendment to the jurisdictional scope of the War Crimes Act.¹⁵¹ The 1996 War Crimes Act permitted cases against non-United States

143. See *Mkrtchyan*, No. 3:23-cr-161; *Hassan*, No. 1:24-cr-00533 at 1.

144. *Four Russia-Affiliated Military Personnel Charged with War Crimes in Connection with Russia’s Invasion of Ukraine*, U.S. DEP’T OF JUST. (Dec. 6, 2023), <https://www.justice.gov/archives/opa/pr/four-russia-affiliated-military-personnel-charged-war-crimes-connection-russias-invasion> [https://perma.cc/K6VT-3A6Q].

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. See 18 U.S.C. § 2441.

defendants who committed acts against United States persons.¹⁵² Additionally, at the time of the indictment, there was no indication that the defendants were in the United States, planned to travel to the United States, or had any particularly close connections to the United States.¹⁵³ Nevertheless, the political momentum to support Ukraine created space for this very first indictment under the amended War Crimes Act.¹⁵⁴

2. Syria

Almost one year after the first case was brought under the amended War Crimes Act, the Department of Justice filed its second case.¹⁵⁵ The indictment provides that since 2012, there was a non-international armed conflict in Syria consisting of a civil war between the Syrian Opposition and the Syrian Regime, led by then President Assad.¹⁵⁶ The two defendants were Syrian nationals who were members of the Syrian Air Force Intelligence, which controlled numerous detention facilities that detained, tortured, and ill-treated individuals.¹⁵⁷ Victims included United States nationals, Syrian citizens, and dual nationals.¹⁵⁸ The defendants were specifically charged with committing and conspiracy to commit violations of Common Article 3 of the 1949 Geneva Conventions during an international armed conflict under 18 U.S.C. § 2441.¹⁵⁹

Similar to *Mkrtchyan*, this case involved a United States national victim (along with other non-U.S. nationals), so the case could have been brought before the amendment to the War Crimes Act, at least in regard to the U.S. victims.¹⁶⁰ As with the first case, there was no indication that these individuals planned to travel to the United States or had any particularly close connections to the United States.¹⁶¹ But perhaps, given the political support from the first War Crimes Act, there was momentum to bring a second case.

Under United States law, defendants may not be tried *in absentia*.¹⁶² However, France has the ability to try individuals *in absentia*, with certain judicial safeguards in place.¹⁶³ Thus, France prosecuted the two Syrian defendants in the United States case, Jamil Hassan and Abdul Salam

152. *See id.*

153. *See* United States v. Mkrtchyan, No. 3:23-cr-161 (E.D. Va. 2023).

154. *See id.*

155. United States v. Hassan, No. 1:24-cr-00533 1, 1 (N.D. Ill. 2024).

156. *Id.* at 1–2.

157. *Id.* at 2–4.

158. *Id.* at 3.

159. *Id.* at 7.

160. *Id.*

161. *Id.*

162. *See* FED. R. CRIM. P. 43.

163. *See French Court Finds Three Syrian Officials Guilty of War Crimes*, RFI (May 25, 2024, 11:58 CST) [hereinafter *French Court's Finding*], <https://www.rfi.fr/en/france/20240525-french-court-finds-three-syrian-officials-guilty-of-war-crimes-crimes-against-humanity> [https://perma.cc/LYP3-KQTA].

Mahmoud, along with a third person, in May 2024.¹⁶⁴ All three were found guilty of complicity in war crimes and crimes against humanity and sentenced to life in prison.¹⁶⁵

In May 2024, when the three men were found guilty, it was presumed that they were all still in Syria.¹⁶⁶ However, in an astonishing development, Syrian opposition forces pushed President Assad out of power and out of the country in December 2024.¹⁶⁷ Assad fled to Russia, and many of his top officials fled the country as well.¹⁶⁸ As with many conflicts, the moment perpetrators start to flee, is the moment when fugitive tracking and intelligence sharing is paramount to ensure that jurisdictions, that have the ability to prosecute, can find the individuals and bring them to justice.¹⁶⁹

3. Israel/Palestine

In September 2024, after two War Crimes Act cases had been brought, the Department of Justice announced charges against senior leaders of Hamas for terrorism and related offenses committed during the horrific October 7th attacks.¹⁷⁰ On October 7, 2023, Hamas members killed over a thousand civilians in Israel, including over forty United States citizens.¹⁷¹

The charges against Hamas leaders included terrorism, murder conspiracy, and sanctions-evasion.¹⁷² There were no war crimes charges.¹⁷³ Many organizations, states, and scholars believe that Israel and Hamas have been in a NIAC for years, that Israel is occupying Gaza (and other territories); and therefore, many believe that specific IHL rules on occupation apply.¹⁷⁴

164. *See id.*

165. *See id.*

166. *See id.*

167. *See Justice Department Announces Terrorism Charges Against Senior Leaders of Hamas*, U.S. DEP'T OF JUST. (Sep. 3, 2024) [hereinafter *DOJ Terrorism Charges*], <https://www.justice.gov/archives/opa/pr/justice-department-announces-terrorism-charges-against-senior-leaders-hamas> [https://perma.cc/KSS2-MQD8].

168. *See id.*

169. *See, e.g.*, Human Rights Watch, *Recommendations on Next Steps for Comprehensive Justice for Syria*, <https://perma.cc/U6D2-NSAF> (last visited June 8, 2026).

170. *See DOJ Terrorism Charges*, *supra* note 167.

171. *See id.*

172. *See id.*

173. *See id.*

174. *See, e.g.*, *Israel & Occupied Territories: Civilian Suffering in Gaza on a Devastating Scale After Two Years of Conflict*, INT'L COMM. OF THE RED CROSS (June 10, 2025) [hereinafter *Israel & Occupied Territories*], <https://www.icrcnewsroom.org/story/en/1090/israel-occupid-territories-civilian-suffering-in-gaza-on-a-devastating-scale-after-two-years-of-conflict> [https://perma.cc/J88S-JZQF] (“Israel, as the occupying power, has an obligation to ensure their basic needs are met. Medical personnel, units and means of transport, as well as civil defense personnel must be respected and protected. The rapid and unimpeded passage of humanitarian assistance must be allowed and facilitated across the Gaza Strip.”); *see also Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion*, INT'L CT. OF JUST. (July 19, 2024) (explaining the legal consequences of Israeli occupation).

A United Nations Special Rapporteur wrote to the United States government in October 2024, encouraging cumulative charging in this case (to include terrorism and war crimes), calling it a “best practice” to ensure that terrorist violence which qualifies as international crimes is properly classified and prosecuted as such.¹⁷⁵

The Department of Justice (DOJ) may have decided not to bring war crimes charges because of the threshold requirement to show that there was an armed conflict.¹⁷⁶ Or it could have been because the National Security Division at DOJ ran the investigation.¹⁷⁷ The National Security Division leads investigations on counterterrorism issues, so war crimes may not naturally come under its purview.¹⁷⁸ It would likely have to liaise with the Office of Human Rights and Special Prosecutions, which does cover war crimes for those charges to be included.¹⁷⁹ While the JWWCA made important changes to the 1996 War Crimes Act that support accountability, there are still areas where universal jurisdiction for war crimes could be strengthened in US law.

V. FURTHER STRENGTHENING THE JUSTICE FOR VICTIMS OF WAR CRIMES ACT

While the Justice for Victims of War Crimes Act made tremendous strides in ensuring that the United States can uphold its obligations under the Geneva Conventions, investigating and prosecuting war criminals, there are still major substantive issues.

A. Substantive Crimes and Modes of Liability

One of the most significant issue is the substantive crimes that have not been changed since 1996.¹⁸⁰ Highlighting this issue, in October 2024, the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, wrote to the United States government encouraging it to use the JWWCA to charge Hamas leaders with war crimes and to strengthen the JWWCA in other

175. Letter to Special Rapporteur Ben Saul, *supra* note 132.

176. See 18 U.S.C. § 2441(b)–(c).

177. *National Security Division*, U.S. DEP’T OF JUST., <https://perma.cc/87ZZ-ZRFY> (last visited June 8, 2026).

178. See *id.*

179. *Human Rights and Special Prosecutions Section (HRSP)*, U.S. DEP’T OF JUST., <https://perma.cc/R4P7-YCQ5> (last visited June 8, 2026).

180. Compare Justice for Victims of War Crimes Act, Pub. L. No. 117-351, 136 Stat. 6194 (codified at 18 U.S.C. § 2441) (discussing substantive crimes), with 18 U.S.C. § 2441 (leaving substantive crimes unchanged).

ways.¹⁸¹ The United States government responded, providing some clarifications,¹⁸² but substantive issues still remain.

The JYWCA did not amend the substantive crimes, and the original War Crimes Act criminalizes only grave breaches of the Geneva Conventions, violations of Common Article 3—which are also called “grave breaches,” although that term does not appear in Common Article 3—violations of some weapons protocols, and some violations of the Hague Conventions.¹⁸³ This leaves many offenses that are considered war crimes under customary international law, and under the Rome Statute,¹⁸⁴ but that the United States has not criminalized.¹⁸⁵ These crimes include certain violations of Common Article 3 that would apply in NIAC, as well as other crimes such as: pillaging; launching an indiscriminate attack resulting in death or injury to civilians; launching an attack in the knowledge that it will cause excessive incidental civilian loss, injury, or damage; and using human shields.¹⁸⁶ Further, crimes of sexual violence and starvation are not included as grave breaches, and these are violations that victims frequently suffer during armed conflict.¹⁸⁷

Additionally, crimes against humanity and genocide are not included in the JYWCA.¹⁸⁸ These are crimes that may occur outside of the legal definition of armed conflict, but nevertheless, occur when there are high levels of violence.¹⁸⁹ Other states include crimes against humanity and genocide under their universal jurisdiction statutes, allowing them to prosecute alleged offenders for these other horrific international crimes.¹⁹⁰

181. 7 October: UN Experts Call for End of Violence and Accountability After Year of Human Loss and Suffering and Blatant Disregard for International Law, U.N. (Oct. 7, 2024), <https://www.ohchr.org/en/press-releases/2024/10/7-october-un-experts-call-end-violence-and-accountability-after-year-human#>.

182. U.S. Dep’t of State, Response to Amnesty Int’l USA Letter, Ref. No. ALUSA24/2024 (Jan. 6, 2025).

183. See *id.*; Geneva Convention I, *supra* note 3, art. 3.

184. While the United States is not party to the Rome Statute, it did participate actively in drafting the statute. Curtis A. Bradley, *U.S. Announces Intent Not to Ratify International Criminal Court Treaty*, 7 AM. SOC’Y OF INT’L L. INSIGHTS (May 11, 2002), <https://www.asil.org/insights/volume/7/issue/7/us-announces-intent-not-ratify-international-criminal-court-treaty> [<https://perma.cc/8ZSS-MFYH>]. The United States also signed the Rome Statute but in 2002 announced its intent not to ratify. See *id.*

185. See *id.*

186. Letter to Special Rapporteur Ben Saul, *supra* note 132.

187. For an example, see Sudan and the Democratic Republic of Congo. See “Massive Influx” of Conflict-Related Sexual Violence in Eastern Democratic Republic of the Congo, PHYSICIANS FOR HUM. RTS. (Oct. 22, 2022) [hereinafter *Massive Influx DRC*], <https://phr.org/our-work/resources/massive-influx-of-cases-sexual-violence-drc/> [<https://perma.cc/DCY2-DMPW>]; see also UN Warns of “Catastrophic” Humanitarian Crisis in Sudan’s Darfur, UN NEWS (Oct. 5, 2024), <https://news.un.org/en/story/2025/10/1166028> [<https://perma.cc/E2GJ-S6CS>].

188. 18 U.S.C. § 2441. Definitions can be found in the Rome Statute, Article 7 on crimes against humanity and Article 6 on genocide. See Rome Statute, *supra* note 44, arts. 6, 7.

189. See *Massive Influx DRC*, *supra* note 187.

190. See generally *Universal Jurisdiction*, CTR. FOR JUST. & ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/legal-strategy/universal-jurisdiction/> [<https://perma.cc/H5RM-6UGV>] (last visited June 8, 2026) (explaining that under universal jurisdiction national courts may prosecute crimes against humanity, genocide, and other serious international crimes regardless of where they were committed).

Furthermore, while the United States responded to an inquiry from the United Nations about using “command responsibility” as a mode of liability, in what seemed to be an affirmative way, in fact, the law does not currently permit pure “command responsibility,” but only through the mode of conspiracy or aiding and abetting.¹⁹¹ In its response to the United Nations, the United States government said that “[t]he United States can prosecute military commanders and other superiors for war crimes committed by their subordinates where such individuals *conspire in, aid and abet, or otherwise direct* the commission of war crimes over which the United States has jurisdiction under the War Crimes Act.”¹⁹² This response indicates that “command responsibility” as a mode of liability in itself is not available, even while the Department of Defense Law of War Manual generally recognizes it.¹⁹³ Allowing for “command responsibility” as a mode of liability under the War Crimes Act would further strengthen the Act and bring it in line with international practice.¹⁹⁴

B. Encouraging Information: War Crimes Rewards Program

While not a part of the original war crimes legislation, or the amendment, the United States has a unique program that it could be using to support its war crimes cases. In 2000, to support cases being brought against leaders in the former Yugoslavia, the Department of State initiated the War Crimes Rewards Program.¹⁹⁵ The program allows for the State Department to issue rewards for information leading to the arrest or conviction of specific individuals who have been indicted for atrocity crimes, including war crimes.¹⁹⁶ The first reward was issued for President Slobodan Milosevic after the International Criminal Tribunal for the former Yugoslavia (ICTY) indicted him for war crimes and crimes against humanity, and the State Department made it clear that rewards were available for anyone the ICTY had indicted and possibly for other critical information as well.¹⁹⁷

Since 2000, the State Department has issued awards for numerous other alleged war criminals, many of whom have been indicted by the International

191. See Letter to Special Rapporteur Ben Saul, *supra* note 132.

192. See *id.* (emphasis added).

193. See *id.*

194. See, e.g., Esti Tambay & Sarah Yager, *Finally, a Better U.S. War Crimes Bill. Now What?*, HUM. RTS. WATCH (Sep. 21, 2022), <https://www.hrw.org/news/2022/09/21/finally-better-us-war-crimes-bill-now-what> [<https://perma.cc/887R-ADFD>].

195. See *Global Criminal Justice Rewards Program — Past Reward Offers*, U.S. DEP’T OF STATE [hereinafter *Past Reward Offers*], <https://www.state.gov/global-criminal-justice-rewards-program/past-reward-offers/> [<https://perma.cc/7RJY-F76E>] (last visited June 8, 2026) (listing past reward offers for information leading to arrest or conviction of individuals charged with serious international crimes).

196. See *id.*

197. David J. Scheffer, *Ambassador-at-Large for War Crimes Issues, on-the-Record Briefing on “War Crimes Rewards Program,”* U.S. DEP’T OF STATE (Mar. 2, 2000).

Criminal Court, such as Joseph Kony.¹⁹⁸ Currently, the State Department website lists four individuals who are wanted by the Democratic Republic of Congo High Military Court for killing two United Nations experts in 2017.¹⁹⁹ To date, the reward program has paid \$8 million in rewards, and the State Department lists more than a dozen men who have been detained, prosecuted, or convicted thanks in part to information received by tips through the rewards program.²⁰⁰

The United States has not yet issued a War Crimes Reward for individuals that the Department of Justice is seeking in connection to a war crimes prosecution.²⁰¹ But, because the rewards program has been successful in the past, issuing rewards for the defendants in the Syria and the Ukraine-Russia case may solicit useful information for the United States.²⁰² Especially since the fall of President Assad, as former regime members leave Syria and seek refuge in other parts of the world, it becomes increasingly likely that the defendants may be more easily tracked or detained if they are found outside of Syria.²⁰³ Using the rewards program may result in critical evidence at a low financial cost to the United States.²⁰⁴

VI. CONCLUSION

The four Geneva Conventions of 1949 clearly provide an obligation to criminalize grave breaches of the Geneva Conventions, and then, for states to investigate and prosecute alleged perpetrators who are within the jurisdiction of the state.²⁰⁵ Before the 2023 amendment to the War Crimes Act, the United States was not necessarily in compliance with this IHL obligation.²⁰⁶ The War Crimes Act provided limited personal jurisdiction, which expanded with the amendment.²⁰⁷ While arguably the UCMJ fulfilled the Geneva Conventions obligation, it does not criminalize “grave breaches” or “war crimes” as such, and continues to provide limited personal jurisdiction.²⁰⁸

198. See *Past Reward Offers*, *supra* note 195.

199. *Global Criminal Justice Rewards Program — Current Reward Offers*, U.S. DEP’T OF STATE [hereinafter *Current Reward Offers*], <https://www.state.gov/global-criminal-justice-rewards-program/current-reward-offers/> [<https://perma.cc/4LFH-FLRV>] (last visited Feb. 8, 2026).

200. See *Past Reward Offers*, *supra* note 195.

201. See *Current Reward Offers*, *supra* note 199.

202. See *Past Reward Offers*, *supra* note 195.

203. See *French Court’s Finding*, *supra* note 163.

204. See *Past Reward Offers*, *supra* note 195.

205. See Geneva Convention I, *supra* note 3, art. 49; Geneva Convention II, *supra* note 3, art. 50; Geneva Convention III, *supra* note 3, art. 129; Geneva Convention IV, *supra* note 3, art. 146.

206. See Geoffrey S. Corn & Rachel VanLandingham, *Strengthening War Crimes Accountability*, 70 AM. UNIV. L. REV. 309, 349–50 (2020).

207. See 18 U.S.C. § 2441 of title 18, United States Code, to broaden the scope of individuals subject to prosecution for war crimes.”).

208. See *Fidell*, *supra* note 70.

Russia's 2022 invasion of Ukraine created the political will to amend the War Crimes Act, and the two cases that have followed—one against Russians and one against Syrians—are cases that generally had the political backing of the White House.²⁰⁹ With the change in administration in 2025, it is not clear how these investigations will continue and whether there will be more anymore investigations. DOJ's Human Rights and Special Prosecutions office, which has the authority to investigate war crimes and bring charges under the War Crimes Act, is still operating, but it is not clear how much political space they have to investigate war crimes.²¹⁰ The Trump Administration abolished the Office of Global Criminal Justice in the State Department, which was an office that existed for about thirty years and supports war crimes investigations globally.²¹¹ They also worked closely with the DOJ, since investigating war crimes normally requires policy positioning, diplomatic support, and sharing information between governments.²¹²

While the JWWCA made significant and important changes to the War Crimes Act, it failed to make any changes to the substantive crimes.²¹³ There are major gaps with the current list of crimes, which have been discussed well in other literature.²¹⁴ At some point, the Act should be updated to reflect more violations of international humanitarian law, especially acts committed during the conduct of hostilities.

Additionally, while the JWWCA makes tremendous and necessary changes, the United States has brought only two cases under the amended statute, both of which actually could have been brought under the War Crimes Act because the victims are United States citizens.²¹⁵ Unsurprisingly, given the United States government's immense support for Israel, despite widespread documentation of possible violations of IHL,²¹⁶ no charges have

209. See *supra* notes 94–96 (noting the Russian invasion encouraged the amending of the United States War Crimes Act).

210. See *About the Section, Combatting the Dangers of International Human Smuggling, Trafficking, and Related Immigration Crimes*, U.S. DEP'T OF JUST., <https://www.justice.gov/criminal/criminal-hrsp/about-hrsp> [<https://perma.cc/Y7L4-V5CU>] (last visited June 8, 2026).

211. See McGovern, Jacobs, Omar Ask Secretary Rubio to Preserve Global Criminal Justice Office Functions (Sept. 29, 2025), <https://mcgovern.house.gov/news/documentsingle.aspx?DocumentID=400262> [<https://perma.cc/4M7U-AK76>].

212. See *id.*

213. See 18 U.S.C. § 2441.

214. See, e.g., Van Schaack, *supra* note 94 (discussing the faults of the War Crimes Act).

215. See 18 U.S.C. § 2441.

216. See, e.g., Tom Dannenbaum, *Nuts & Bolts of Int'l Criminal Court Arrest Warrant Applications for Senior Israeli Officials and Hamas Leaders*, JUST SEC. (May 20, 2024), <https://www.justsecurity.org/95864/international-criminal-court-arrest-warrants-israel-hamas/> [<https://perma.cc/54BK-5GLN>] (discussing International Criminal Court prosecutor's warrant applications for high-ranking members); *Israel's Assault on the Foundations of International Law Must Have Consequences: UN Experts*, U.N. (Dec. 30, 2024), <https://www.ohchr.org/en/press-releases/2024/12/israels-assault-foundations-international-law-must-have-consequences-un> [<https://perma.cc/B89T-YLX3>] (suggesting consequences for Israel's campaign).

been brought against Israeli officials in the United States. Some other states have tried, and in July 2025, Belgium actually arrested a member of the IDF based primarily on evidence from his social media.²¹⁷ The United States has brought charges against members of Hamas for various crimes, but not for war crimes, and not against members of the Israel Defense Forces.²¹⁸ Trial International has documented the double standard between prosecutions for IHL violations in Gaza and Ukraine, concluding that despite well documented violations in both conflicts, states are far more likely to press charges against involving violations in Ukraine than in Gaza.²¹⁹

While the JYWCA brings the United States in line with 1949 Geneva Convention obligations regarding prosecution of grave breaches, there have been only two cases brought and no trials yet.²²⁰ It is not clear whether the DOJ will be able to continue the cases it has brought under the JYWCA and whether Attorney General will certify any new cases. Given that the Trump Administration has abolished the Office of Global Criminal Justice at the State Department, indicating a lack of interest in supporting justice for atrocity crimes committed overseas, these prosecutions will presumably not be a priority for the administration.²²¹ Nevertheless, with the amendments now law, hopefully in the future the United States can once again undertake war crimes prosecutions.

217. Mohammed Magdy, *Belgium's Arrest of IDF Soldiers Could Be a Watershed Moment*, MSN, <https://www.msn.com/en-us/news/world/belgium-s-arrest-of-idf-soldiers-could-be-a-watershed-moment/ar-AA1JSzkY> [https://perma.cc/EP6M-CCEA] (last visited June 8, 2026).

218. See *US Charges Hamas Leaders over Oct. 7 Attack on Israel*, REUTERS (last updated Sep. 3, 2024, at 21:06 CDT), <https://www.reuters.com/world/us-files-criminal-charges-against-hamas-leadership-including-sinwar-2024-09-03/> [https://perma.cc/65QK-ZTDH].

219. See generally TRIAL INT'L, UNIVERSAL JURISDICTION ANNUAL REVIEW 2025 (2025), https://trialinternational.org/wp-content/uploads/2025/04/03_TRIAL_UJAR_2025_FINAL_DIGITAL.pdf [https://perma.cc/9WH8-6FRA] (outlining cases brought under various extraterritorial jurisdiction principles).

220. See 18 U.S.C. § 2441.

221. Dani Schulkin, Tess Bridgeman & Andrew Miller, *What Just Happened: The Trump Administration's Reorganization of the State Department – And How We Got Here*, JUST SECURITY (Apr. 22, 2025), <https://www.justsecurity.org/110772/wjh-trump-reorganization-state-department/> [https://perma.cc/M9JY-4QBV].