



SCHOOL *of* LAW

**WAR CRIMES IN THE MODERN CONTEXT**

**COASTAL CAROLINA UNIVERSITY**

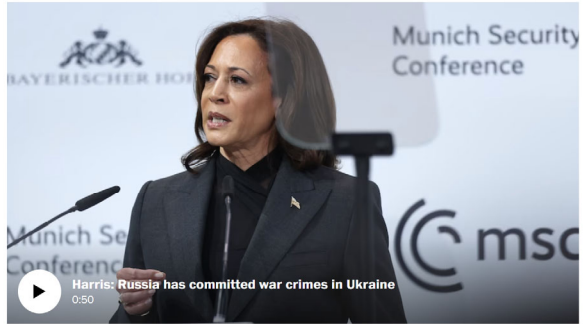
February 25, 2023

# Russia has committed 'crimes against humanity' in Ukraine, Harris declares

The vice president cited numerous occurrences since Russia's invasion began, saying that the evidence points to a finding

By [Cleve R. Wootson Jr.](#)

Updated February 18, 2023 at 4:50 p.m. EST | Published February 18, 2023 at 9:02 a.m. EST



On Feb. 18 in Munich, Vice President Harris said the U.S. strongly believes Russia has committed "crimes against humanity" in Ukraine. (Video: Reuters)

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MUNICH — Vice President Harris said Saturday that the United States believes strongly that Russia has committed crimes against humanity





DISCLAIMER



# *Contents*

1. History of War Crimes
2. Categories and Definitions
3. War Crimes in the Present Day
4. Questions

**My goal: Help you be informed consumers of news coverage and academic treatment of war crimes.**

## BOTTOM LINE UP FRONT

**There is no single definition of a war crime, and  
you should consider use of the term to the  
beginning of a conversation, not the end of it.**



HISTORY

# PRE-NUREMBERG

**Lieber Code (1863)**

**Original Geneva Conventions (1864)**

**Hague Conventions (1899 and 1907)**

**Early use of “war crime”: Unlawful participation by civilians**

# NUREMBERG AND RELATED PROCEEDINGS





# MODERN WAR CRIMES INSTITUTIONS

**International Criminal Tribunal for the Former Yugoslavia  
(1993)**

**International Criminal Tribunal for Rwanda (1994)**

**International Criminal Court / Rome Statute (1998)**

**Accountability for war crimes has been contested  
and uneven. *Ad hoc* tribunals have been the rule.**



CATEGORIES AND DEFINITIONS:  
WHAT IS A WAR CRIME?

## A “SIMPLE” DEFINITION

**“A violation of the law of war that has been criminalized”**

**“Conduct that violates international laws governing the conduct of international armed conflicts”**



Plunder of public or private property

Deportation of civilians

Ill treatment of civilians

Killing

**An *ex post* approach  
to war crimes?**

Murder of civilians

Destruction of urban centers

Slave labor of civilians

Devastation "not justified by military necessity"

# THE U.S. APPROACH TO WAR CRIMES

**Military definitions vary**

**“Every violation of the law of war is a war crime.”**

**“[S]erious violations of LOAC that are punishable by criminal sanctions.”**

**“[S]erious violations of the law of war.”**

**“Any punishment permitted by the law of war.”**

**War Crimes Act of 1996 largely refers to other definitions**

# COMPLEXITY IN DEFINING WAR CRIMES

**The problem of referential definitions**

**Overlapping sources of law**

**Domestic law**

**Treaties**

**Customary international law**

**The definition of “war crimes” is complicated by the many sources of legal rules, the moral imperative underlying many crimes, and infrequent application.**

# ELEMENTS OF A WAR CRIME

**Ongoing armed conflict**

**The act is a serious violation of the law of armed conflict**

**There is a nexus between the act and the armed conflict**

**(And the conduct must be codified as punishable)**

# THE FOB RAMROD KILL TEAM





# SSG ROBERT BALES





# DISTINGUISHING OTHER CRIMES RELATED TO WAR

**Crimes against peace / crime of aggression**

**Crimes against humanity**

**Genocide**

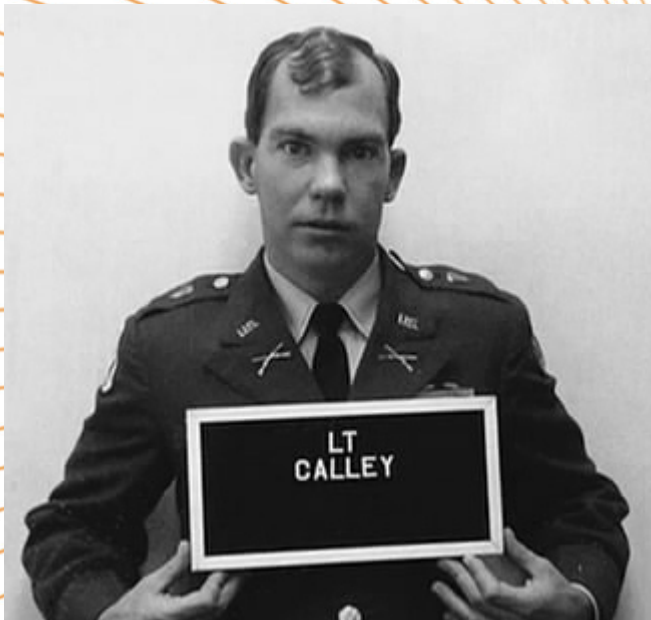
# COMMAND RESPONSIBILITY

**Commander knew or should have known**

**Failure to take necessary and reasonable steps to  
Ensure compliance with the law of armed conflict  
OR punish violators for unlawful conduct**



WAR CRIMES IN THE PRESENT  
DAY



# U.S. TWENTY-FIRST CENTURY LEGAL PRACTICE

**My Lai**

**Abu Ghraib**

**Guantanamo Bay / Military Commissions**

**SSG Robert Bales**

# INTERNATIONAL CRIMINAL COURT

**Jurisdiction includes genocide, war crimes, crimes against humanity, and aggression**

**Complementarity**

**Very limited operations to date**

# UKRAINE

**Domestic Ukrainian prosecutions**

**Potential for ICC prosecutions**

**U.S. prosecutions for war crimes in Ukraine**

**Prosecutions by other governments**

**International ad hoc tribunal for war crimes in Ukraine is unlikely**





# KEY TAKEAWAYS

## KEY TAKEAWAYS

**The definition of war crimes varies widely by source, but there is substantial overlap**

**Many war crimes are closely analogous to other types of crimes, such as crimes against humanity**

**War crimes enforcement has been erratic and is frequently overtaken by other criminal penalties**

**When people say “war crimes” they often don’t mean war crimes**



QUESTIONS



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