# What is a war crime?

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**The trial of former Bosnian Serb leader Radovan Karadzic at The Hague throws a renewed spotlight on the prosecution of war crimes.**

But what exactly are war crimes? What body of laws do they refer to and who has the right to try a suspect for such crimes?

The concept of war crimes is a recent one. Before World War II, it was generally accepted that the horrors of war were in the nature of war.

But during World War II the murder of several million people - mainly Jews - by Nazi Germany, and the mistreatment of both civilians and prisoners of war by the Japanese, prompted the Allied powers to prosecute the people they believed to be the perpetrators of these crimes.

The Nuremberg trials in 1945 and 1946 led to 12 Nazi leaders being executed.

A similar process started in Tokyo in 1948. Seven Japanese commanders were hanged, though the Allies decided not to put Emperor Hirohito in the dock.

These trials were essentially the precedents for the cases that the modern-day tribunal in The Hague hears.

In addition, individual governments, feeling that justice has not been done, have acted on their own initiative.

This happened most famously in 1960, when Adolf Eichmann, a high-profile Nazi closely involved in the organisation of the concentration camps and the policies of the Holocaust, was tracked down in Argentina by Israeli agents.

He was kidnapped and taken to Israel where he was put on trial and subsequently hanged.

A more recent example was the 1987 trial of Klaus Barbie - a leading Nazi during the German occupation of France. Barbie was sentenced to life imprisonment.

**Body of laws**

At the heart of the concept of war crimes is the idea that an individual can be held responsible for the actions of a country or that

nation's soldiers.

Genocide, crimes against humanity, mistreatment of civilians or combatants during war can all fall under the category of war crimes. Genocide is the most severe of these crimes.

The body of laws that define a war crime are the Geneva Conventions, a broader and older area of laws referred to as the Laws and Customs of War, and, in the case of the former Yugoslavia, the statutes of the International Criminal Tribunal in The Hague (ICTY).

Article 147 of the Fourth Geneva Convention defines war crimes as: "Wilful killing, torture or inhuman treatment, including... wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile power, or wilfully depriving a protected person of the rights of fair and regular trial, ...taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

This, international lawyers say, is the basic definition of war crimes. The statutes of The Hague tribunal say the court has the right to try suspects alleged to have violated the laws or customs of war in the former Yugoslavia since 1992. Examples of such violations are given in article 3:

Wanton destruction of cities, towns or villages, or devastation not justified by military necessity

Attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings

Seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science

Plunder of public or private property.

The tribunal defines crime against humanity as crimes committed in armed conflict but directed against a civilian population. Again a list of examples is given in article 5:

Murder

Extermination

Enslavement

Deportation

Imprisonment
Torture
Rape
Persecutions on political, racial and religious grounds.
Genocide is defined by the tribunal as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group".
But the law on war crimes is continually evolving.
In February 2001, the tribunal in The Hague delivered a ruling that made mass systematic rape and sexual enslavement in a time of war a crime against humanity.
Mass rape, or rape used as a tool of war, was then elevated from being a violation of the customs of war to one of the most heinous war crimes of all - second only to genocide.

**Spotting a war crime**

It is not always easy to spot a war crime.
The displacement of civilians from their homes by an enemy army is not necessarily a war crime.
It can be argued that the displacement is being carried out for the protection of the civilians.
It only becomes a war crime if the expulsions can be proven to be part of campaign of ethnic cleansing or designed as a mass punishment of civilians.
Equally, is it a war crime for the air force of one country to bomb an enemy's television station because of the propaganda in the broadcasts?
Under the Geneva Conventions, this is not a war crime. Just about all aspects of a state's infrastructure - roads, bridges, power stations, factories - become legitimate targets if they might be put to military use.
Such attacks only become war crimes if the extent of collateral damage to civilians and civilian interests resulting from the attack would be excessive compared to the military advantage gained from the attack.

**International court**

International human rights groups have long called for a uniform and global legal system for dealing with war crimes and crimes against humanity.

Apart from the International Criminal Tribunal for the Former Yugoslavia, established in May 1993, an international tribunal was established in Arusha, Tanzania, for cases resulting from the atrocities carried out in Rwanda in 1994.

Another is trying former Liberian President Charles Taylor over war crimes committed during the civil war in neighbouring Sierra Leone.

Although these represent significant further steps in bringing those accused of war crimes to justice, they are, like Nuremberg and Tokyo, committed to dealing with war crimes in specific conflicts.

In July 2008, Surinam became the 107th country to join the International Criminal Court, set up in 2002 as a permanent tribunal to prosecute individuals for crimes against humanity.

The United States has refused to sign the treaty, arguing the court could be used to pursue politically motivated prosecutions. Other major powers including Russia, China and India have also refused.

The question of whether international courts of this kind are political - as defendants like Slobodan Milosevic argued - hangs over all international legal institutions.

In a sense it is true that the tribunals are political since the international political will to establish and fund them has to exist before they can get to work.

Critics of international courts often argue that international justice can only be truly legitimate when all war crimes, committed by any county, come under the jurisdiction of a single international court.