



**THE SOLDIER'S ROLE
IN RESPONDING TO
WAR CRIMES**

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Introduction

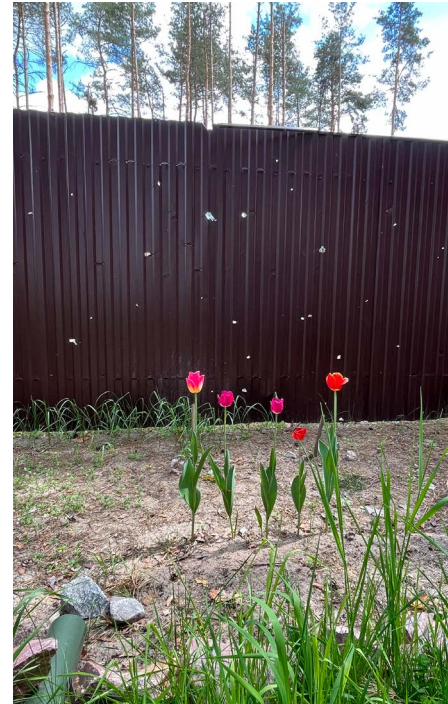


Photo: League of Officers

The identification, gathering of evidence, and reporting of war crimes are critical components in international efforts to prevent and punish atrocities committed in armed conflicts. Despite the 1949 Geneva Conventions being universally ratified and also recognized as an authoritative codification of customary international law, war crimes continue to be extensively committed. In the context of Russia's aggression against Ukraine, as of 4 June 2023, Ukrainian authorities have recorded 91,230 reports of war crimes.¹ These include, according to the Ukrainian Prosecutor General, "indiscriminate shelling of civilians, willful killing, torture, conflict-related sexual violence, looting and forced displacement on a massive scale".²

1 Office of the Prosecutor General of Ukraine, Available at: <https://www.gp.gov.ua/>

2 Amanda Macias, "Russia has committed more than 65,000 war crimes in Ukraine, prosecutor general says," *CNBC.com* (1 February 2023), Available at: <https://www.cnbc.com/2023/02/01/ukraine-russia-war-65000-war-crimes-committed-prosecutor-general-says.html>.

The sheer scale of reported violations of international humanitarian law by Russian Federation forces has led to efforts by the UN, the EU, and the International Criminal Court to begin looking into evidence collection to support any prosecutions.³ In addition, a number of non-governmental organizations are also assisting the Ukrainian authorities in collecting and compiling evidence.⁴ The bulk of the investigative work, however, is being done by the Office of the Prosecutor General, which has a War Crimes Unit and which deploys mobile war crime investigation teams across the country.⁵ These teams are spread thin and are kept very busy.⁶

Regular soldiers, as frontline witnesses to the violence and atrocities that occur, could play a critical role in identifying and documenting potential war crimes.⁷ While investigations and prosecutions are primarily the responsibility of specialized agencies and authorities, such as the Office of the Prosecutor General in Ukraine, soldiers might be called upon to provide critical support. Since soldiers lead offensive operations into occupied territories and are the first to arrive to recently liberated areas, they may be in a unique position to protect, preserve or gather evidence of war crimes. This is especially true in situations where specialized law enforcement or investigative agencies are not immediately available or where they do not have access to the conflict zone.

For example, soldiers may come across mass graves, witness the killing or torture of civilians or prisoners of war, or they may discover evidence of sexual violence or forced displacement. In these situations, soldiers have an obligation to report suspected war crimes and to take measures to protect any individuals at risk of harm. Moreover, soldiers could preserve evidence that would otherwise be lost or destroyed. They can take photographs or videos of crime scenes, collect physical evidence such as weapons or shell casings, or interview witnesses before they leave the area. Such evidence can be crucial in establishing accountability for war crimes and can help ensure that perpetrators are brought to justice.

3 Anthony Deutsch, "Ukraine prepares war crimes charges against Russian military personnel, including pilots," *Reuters* (26 April 2023), Available at: <https://www.reuters.com/world/europe/ukraine-prepares-war-crimes-charges-against-russian-military-personnel-including-2022-04-26/#:~:text=The%20prosecutor%20general%E2%80%99s%20office%20had%20in%20recent%20years.had%20been%20a%20relatively%20small%20team%20of%20prosecutors.>

4 "Evidence collection and preservation", *Ukraine Justice Alliance*, Available at: <https://ukrainejusticealliance.com/articles/evidence-collection-and-preservation> (accessed 10 March 2023).

5 Deutsch, "Ukraine prepares war crimes charges;" Yaroslava Tymoshchuk, "Ukraine: Searching for the Dead," *Institute for War & Peace Reporting* (29 November 2022), Available at: <https://iwpr.net/global-voices/ukraine-searching-dead>.

6 *Ibid.*

7 Kenneth Watkin, "The Search for Justice: Military Collection of Evidence on the Battlefield," *Global Justice Journal*, 22 July 2020, Available at: <https://globaljustice.queenslaw.ca/news/the-search-for-justice-military-collection-of-evidence-on-the-battlefield>.



Photo: Armed Forces of Ukraine

However, it is important to recognize that soldiers are not trained investigators or law enforcement officers and that their involvement in these tasks is often limited. They may not have the skills or knowledge necessary to properly identify, handle, and preserve evidence in a manner that meets legal and procedural standards. Their involvement in the collection of evidence could create challenges related to the chain of custody, admissibility, and potential bias. As a result, soldiers must be careful to avoid overstepping their role and to ensure that their actions do not compromise the integrity of investigations, or the rights of the individuals involved.⁸

To ensure that soldiers respond appropriately when they witness potential war crime scenes, it is important that national authorities develop legal and technical guidance on this matter and train and prepare soldiers to this end.⁹ That being said, the collection of war crime evidence during an ongoing conflict is relatively new and there are no international standards or internationally recognized best practices on what role soldiers should play. This policy paper will therefore serve as initial guidance to national policymakers aiming to develop policies or training curriculum for soldiers as ‘first responders’ at potential war crime scenes.

8 “Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offenses “Military Evidence Guidelines”, *UN Counter-Terrorism Committee Executive Directorate (UN CTED)* (2019), 24, 27 and 29. Available at: https://www.un.org/securitycouncil/ctc/sites/www.un.org/securitycouncil.ctc/files/battlefield_evidence_final.pdf

9 *Ibid.*, 13-14.

The present paper will address various considerations that national stakeholders should take into account. One overarching factor is the question of efficiency. Soldiers' primary responsibility is, of course, to carry out military missions assigned to them by their commanding officers. Typically these involve offensive or defensive operations against enemy forces. These tasks include: securing territory; conducting patrols; engaging in combat; and providing support to the civilian population affected by the conflict. Tasks associated with evidence preservation, collection and reporting are secondary.

For soldiers to be able to engage in tasks related to potential war crime evidence, they must be adequately trained in the correct procedures. They must also be able to devote sufficient time to these tasks rather than other ongoing military operations. Resources are always extremely scarce in armed conflict, and adequate training on proper evidence-gathering is very time consuming. It is important then to carefully consider what types of tasks can be expected of soldiers in this regard and to what extent their involvement is necessary, beneficial and effective. Thus, in most cases soldiers should be expected to conduct only the bare minimum of tasks regarding the identification of potential war crimes. Examples might include alerting the relevant authorities; preserving the scenes and evidence of war crimes; and gathering information about potential witnesses or perpetrators, which can be handed over to the relevant law enforcement personnel.

Engaging soldiers in these processes and providing them with corresponding training ideally would have a number of positive consequences. Firstly, training soldiers in tasks related to identifying potential war crimes and adequately responding thereto instils in them the value of international humanitarian law (IHL) principles. It increases the likelihood that they themselves will respect IHL in their operations. Secondly, soldiers who in general comply with IHL norms during an armed conflict might grow frustrated and disillusioned if their adversary continues to persistently violate IHL norms, while they continue to take risks associated with IHL compliance and treat their adversaries well. Engaging soldiers in processes leading to accountability for war crimes speaks to their sense of justice and lets them contribute to establishing accountability for perpetrators and justice to victims. This could positively affect morale and motivation within military units. Thirdly, the early identification and reporting of war crimes, as well as the prompt preservation of key evidence, which might otherwise be lost or destroyed, can be crucial in preventing further harm or loss of life, while also providing essential evidence in holding perpetrators accountable.

The remainder of this policy brief will examine the role and duties, as well as the challenges and limitations, associated with the role of soldiers in identifying, gathering evidence for, and reporting war crimes. It will also provide recommendations for how policymakers and military leaders can support soldiers in carrying out these tasks in a responsible and effective manner.

1. The algorithm for soldiers witnessing war crimes and war crime scenes



Photo: League of Officers

Strictly speaking, it is not the duty of regular soldiers to gather war crimes evidence.. The investigation of war crimes is a matter for professional investigators, either civilian or military. Nevertheless, soldiers can have an important role to play in identifying and reporting on possible war crimes, including the preservation of evidence. In so doing, they must always consider the risks involved and the impact that this may have on their safety and security and that of their comrades or anyone they talk to. The algorithm for dealing with war crime evidence can be usefully broken down into four steps: **SPOT-RECORD-PROTECT-REPORT**.

- ❖ **Spot:** In this first step, it is important to have the right resources to actively detect war crime scenes and related activities. This might occur incidentally in the conduct of defensive and offensive operations, or it might be done actively by utilizing satellite imagery and other technological tools.
- ❖ **Record:** In this step, it is important to make records of any possible violations. This could include taking photos or videos of the war crimes scenes, or inventories of information and items found at these scenes. It may even mean sketching the scenes on paper.
- ❖ **Protect:** In the third step, it is important to preserve the integrity of the war crime scene. It is also necessary to ensure the safety of any witnesses who are providing information so that they can do so without fear of repercussions. This could mean providing them with adequate security and protection measures.
- ❖ **Report:** In the final step, it is essential to report the evidence of war crimes to the proper authorities or through the chain of command so that the necessary actions can be taken.

The battlefield is a chaotic and changeable environment. Decisions must be made quickly in order to protect life, while accomplishing military objectives. Consequently, soldiers may have only a limited time to deal with war crime scenes or to preserve evidence. Commanders must provide clear and practical instruction to their troops as to when they are authorized to gather evidence and pause in the midst of battle to document war crimes, and the type of information or evidence they are to collect. As mentioned above, while it is not the primary responsibility of soldiers to investigate and compile evidence of war crimes committed by the enemy during wartime, they can play an important role in bringing those responsible for these crimes to justice, and for documenting the context within which specific crimes might have occurred.



Photo: Armed Forces of Ukraine

1.1 Identification or recognition of war crime scenes

The proper identification or recognition of potential war crime scenes is not a simple task. War crimes are defined by customary IHL¹⁰ and by the Rome Statute of the International Criminal Court as violations of the laws and customs of war. These include: attacks against the civilian population; rape; torture; pillage; and murder amongst others (see the statute's list of war crimes in our Annex). The evidence for these offenses might be difficult to recognize in the chaos of war. However, there are signs that a potential war crime has occurred or is underway.

For example, destructive patterns of fighting that exceed what is necessary for defeating enemy combatants, such as excessive bombing of civilian neighborhoods or targeting civilians in combat, are indicators of potential war crimes. So on the morning of 16 March 2022, a Russian air strike destroyed the Donetsk Regional Academic Drama Theatre in Mariupol, Ukraine. At the time of the attack, hundreds of civilians were in and around the theatre and many were killed. The theatre was clearly recognizable as a civilian target, perhaps more so than any other location in the city.¹¹ Additionally, patterns of oppressing certain groups, such as minority populations or political opponents, may be indicative of war crimes. In Rwanda in 1994, pro-Hutu government forces, militias and regular citizens carried out a genocide against the Tutsi social and ethnic minority. It is estimated that between 800,000 and one million Tutsi were killed, and mass sexual violence was committed against Tutsi girls and women.¹²

Other signs of potential war crimes include deliberate attacks on medical facilities, like hospitals or clinics, and the use of deadly force against protesters and other unarmed civilians. Reports of mass executions or the use of chemical or biological weapons are also pointers to potential war crimes. In order to recognize potential war crime scenes, it is important to stay aware of the behavior and tactics of all sides in a conflict. Close monitoring of the situation is necessary in order to detect violations of the laws of war. In particular, media reports and social media can be extremely useful in alerting not just the authorities but also individual soldiers to the occurrence of war crimes. As a result of investigation in Libya by the BBC, an expert uncovered evidence of the desecration of bodies of captured fighters and civilians by members of the Libyan National Army's special forces brigade. This was done through the public Facebook profiles of the perpetrators. There were also videos of summary executions on Twitter. The soldiers in question were uploading the evidence as propaganda, and using it to incite further violence among their supporters.¹³

10 ICRC, "Rule 156, Definition of war crimes," *IHL Databases*, Available at: <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule156>.

11 "Ukraine: 'Children': The attack on the Donetsk Regional Academic Drama Theatre in Mariupol, Ukraine", *Amnesty*, (30 Jun 2022), Available at: <https://www.amnesty.org/en/documents/eur50/5713/2022/en/>

12 Jeremy Maron, "What led to the genocide against the Tutsi in Rwanda? First-hand accounts from survivors" (26 Jun 2019), Available at: <https://humanrights.ca/story/what-led-genocide-against-tutsi-rwanda>

13 Manisha Ganguly, "15 Tips for Investigating War Crimes" (2 Mar 2022), *Global Investigative Journalism Network*, Available at: <https://gijn.org/2022/03/02/15-tips-for-investigating-war-crimes/>

It is essential to highlight the distinction between frontline military personnel and those working in the rear. Personnel in the rear face a different set of pressures and tasks, using specialized tools and technologies to keep track of all communications. They analyse, too, satellite images to detect unusual behaviour, intercept enemy communication and operate Unmanned Aerial Vehicles (UAVs) to gain a better insight on the field. It is vital that the RECORD activity is started as soon as possible and that the collected material is safely stored. Though their roles are distinct, both types of military personnel can play a vital part in identifying war crimes.

The early recognition of war crimes helps to ensure that those responsible for such atrocities are held accountable.

1.2 Protection of scenes of war crimes

The protection of war crime scenes is a critical factor in ensuring that justice is done. Without the proper protection of these sites, the evidence needed to prosecute those responsible can be destroyed or tampered with, thus denying victims and their families the justice they deserve. Especially amid the confusion of war, people disrupt crime scenes and inadvertently destroy evidence as they clear debris for health or safety reasons — or simply by burying the bodies of their loved ones. Victims and witnesses may flee to safety, making them hard to find during an investigation.¹⁴ This is why some minimal level of interference in such scenes is required. At the very least, the crime site should be carefully marked off and secured to ensure that it is not disturbed. Any further interference with the crime scene is not permissible unless explicitly authorized by an executive body. Even then, interference must be minimized and done in an ordered and organized way. Even these minimum tasks might, during combat, pose challenges to soldiers on the ground.

For instance, a video taken at a suspected mass grave site in Motyzhen, Ukraine, shows scores of members of the press, as well as local officials and others crowded right at the edge of the site. Some are even shown stepping into the edges of the grave.¹⁵ Non-experts, including journalists, must be aware of the serious and irreversible harm that can be inflicted upon mass gravesite investigations by interference with or unauthorized access to the site. Soldiers need to understand the importance of treating such sites as crime scenes. They should take the necessary steps to secure and protect such sites to ensure that vital evidence is not damaged or destroyed. Understandably, non-experts may be unable to recognize where a grave actually begins and ends. There may be evidence at the periphery of a site that could lead to an understanding of whether or how a crime was committed. For instance, tire tracks may provide clues as to victims' whereabouts before their deaths or as to how bodies were transported. Because of this, it is essential to not

14 Lauren Baillie, "Ukraine: Justice for War Crimes Must Begin with Evidence" (7 Apr 2022) Available at: <https://www.usip.org/publications/2022/04/ukraine-justice-war-crimes-must-begin-evidence>

15 Sarah Knuckey and Anjli Parrin, "Mass Graves in Ukraine Should Be Treated as Crime Scenes – and Urgently Secured" (6 Apr 2022), Available at: <https://www.justsecurity.org/80986/mass-graves-in-ukraine-should-be-treated-as-crime-scenes-and-urgently-secured/>

disturb the site or the area surrounding it, as this could lead to crucial evidence being spoiled.¹⁶

In the face of war crime scenes, soldiers should demonstrate restraint and adhere to their duty of minimum interference. They should primarily take an observing role. Since battlefield circumstances change rapidly, their duties to protect or preserve war crime scenes will often be minimal.

1.3 Recording and collecting physical evidence

It is important that soldiers attempt to gather evidence, not only about the event itself, but also about the possible perpetrators. In particular, they should record information such as: the military unit involved in the attack; information relating to command and control such as communications; the presence of commanders in the field; the type of weapons used; and the type of military materiel employed in the crime. Any information that is collected should be reported immediately through the chain of command so that professional investigators are alerted.

Soldiers should take photographs of any relevant evidence. For each object, ideally three photos should be taken: a longer range one that shows the overall context; a mid-range one that focusses on the object; and a close-up photo of any detail that may be of interest. Operational imperatives might make it difficult to do this in every case. Soldiers must ensure that the photographs are properly identified, including information about date and place. Attention should be paid to markings and other forms of identification that may be found on ammunition, debris, vehicles, etc. In order to optimize the recording of objects for possible war crimes investigations, a standardized length marker should be implemented for all soldiers trained in object recording. Additionally, training should emphasize the importance of noting weather conditions and other relevant field observations. With these strategies in place, soldiers ought to be able to accurately and thoroughly document as many objects as possible.

Soldiers should attempt to gather material evidence only exceptionally. They do not normally have the training to maintain chain of custody or the facilities to store evidence. Collecting physical evidence requires significant expertise that regular soldiers do not normally possess. However, depending on the situation, soldiers might encounter physical evidence for which there is a strong likelihood that it will be permanently lost unless they take steps to collect it for safekeeping.

There are some differences in what soldiers can reasonably do during offensive and defensive operations. During defensive operations, soldiers might find themselves involved in the following activities:

- ❖ recording the time, date and place of the war crime using photo and video recordings obtained, for example, on telephones or UAVs with obligatory coordinates. If coordinates are impossible – the nearest settlement should be noted down and its orientation obtained by the cardinal points (by means of a compass or telephone);

16 *Ibid.*

- ❖ seizing material evidence of crimes (fragments of missiles, shells, telephones, computers, data carriers, equipment items bearing the name of the unit or owner, personalised bank cards, instruments of torture);
- ❖ seizing documents, such as the personal documents of enemy servicemen, administrative documents and reports, workbooks, maps showing the location of the units and the targets of the enemy.
- ❖ During offensive operations, though there will likely be fewer opportunities, soldiers could be:
- ❖ recording the locations of firing (launch) sites, strongholds, and locations of enemy armed units by means of telephones or UAVs, with mandatory coordinates;
- ❖ recording places of detention, torture chambers and instruments, burial places, crematoria, etc.
- ❖ seizing documents other than those mentioned above, such as combat logs, logs of orders received and given, event logs, fire cards, ammunition receipts, etc.¹⁷

Submitting all enemy documents to the relevant authority is of the greatest importance. During offensive operations, members of the army might be tempted to take enemy documents as war trophies. This should be discouraged, as enemy documents can prove valuable evidence. The same holds true for any unit patches enemy soldiers might wear on their uniforms. It is essential to ensure that these types of evidence are preserved and handled in accordance with established collection procedures.

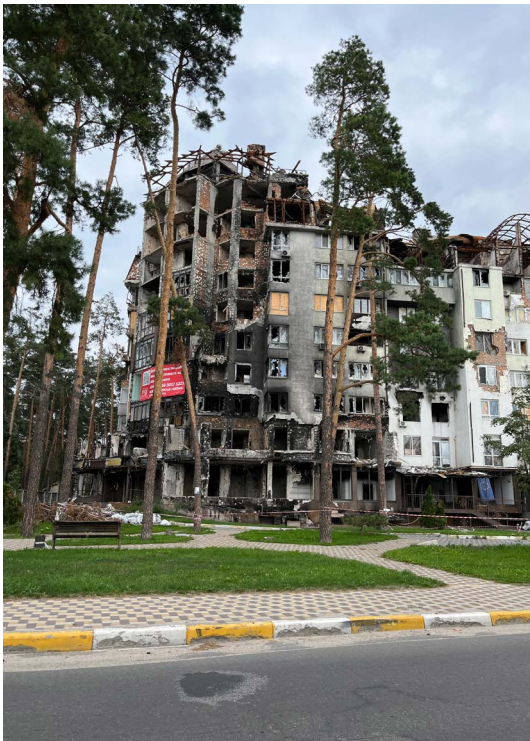


Photo: League of Officers

¹⁷ Information provided by the Ministry of Defence of Ukraine

1.4 Encountering potential witnesses, victims and perpetrators

When soldiers arrive in recently liberated areas, they may encounter potential victims and witnesses of war crimes, as well as potential perpetrators thereof. In such cases, the troops may be first responders for the civilians they encounter. Victims of war crimes and witnesses who observed these crimes present unique challenges even for highly trained forensic investigation personnel who are trained to preserve and process the evidence at crime sites.¹⁸ Any justice to victims of war crimes will require that the evidence, including witness testimonies, meets trial procedure standards and thus commanders and soldiers must exercise great caution in their encounters with such individuals.

Nevertheless, there are reasons for not dismissing the role of soldiers in such situations. The civilians they encounter may be in urgent need of medical or psychological care. Should soldiers not interact with them or hear them out then these soldiers may traumatize the victims still more. Furthermore, there is a risk that if details of the victims or potential witnesses are not recorded in a timely fashion, these people might be displaced or migrate elsewhere. As a result their testimony to support the criminal investigation against the perpetrator will be more difficult to obtain; it might be lost altogether. As a result, commanders and other military leaders present at the scene of an incident should take all feasible steps to ensure that information and evidence is secured and preserved if more appropriate authorities are not available. What is more, leaders might be required to identify possible victims and witnesses and to collect statements from them and members of their own units.¹⁹

The following list outlines considerations which soldiers should keep in mind when encountering potential victims, witnesses, or perpetrators of war crimes:

- ❖ **Context:** In cases where appropriate investigative or law enforcement authorities are available, and their arrival is imminent, soldiers should refrain from any substantial engagement with these individuals. They should restrict their conduct to ensuring that the victims receive any necessary urgent medical attention and that they do not leave the area before investigative units arrive. In instances where the relevant authorities are not available, the role of soldiers and commanders may be expanded to additional tasks which ensure that the potential testimonies used for criminal prosecution are not lost. As a rule of thumb, soldiers should, at all times, restrict themselves to the minimum conduct required to ensure investigative teams will be able to contact the potential victims and witnesses of war crimes. In so doing, they must always consider the risk involved and the impact that this might have on the safety and security of themselves, their comrades, and anyone else with whom they may talk.

18 See Global Rights Compliance, *Basic Investigative Standards*, 18, 76, 91, 93, 244. Available at: <https://globalrightscpliance.com/project/basic-investigative-standards-for-international-crimes-investigations/>

19 Noam Lubell, Jelena Pejic and Claire Simmons, *Guidelines on Investigating Violations of International Humanitarian Law: Law Policy and Good Practice* (Geneva Academy 2019), 18 Available at: https://www.geneva-academy.ch/joomlafiles/docman-files/Guidelines%20on%20Investigating%20Violations%20of%20IHL_%20FINAL.pdf

- ❖ **Medical care:** Injured victims or witnesses of war crimes may require urgent medical assistance from unit medics.²⁰ In some cases, the injuries victims have sustained will simply be beyond the capability of field medics to handle. This could particularly be the case when victims have suffered injuries because of sexual violence.²¹ One possible way that medics could help ensure that victims get the specialized help they need would be to distribute cards to the injured. These provide contact information for medical care providers, akin to the memorandum provided to Ukrainian troops who come into contact with sexual violence victims.²²

<p>MEMO</p> 	<p>IN CASE OF INTERACTION</p>
<p>On interaction with civilians affected by conflict-related sexual violence</p>	<p> Treat victims with dignity and respect</p> <p>Consider that the affected persons have a traumatic experience of interaction with military personnel and/or representatives of armed groups. Respect the choice of survivors and/or witnesses regarding their (un)willingness to communicate with and receive assistance from military personnel. For example, victims may be afraid of people in military uniforms or men, etc. Do not share personal information about the affected person.</p>
	<p> Do not traumatize the person again</p> <p>The psychological effects of the trauma may manifest themselves in different ways - tears, anger, silence. Avoid situations and attitudes that can cause reliving of traumatic events and trigger overwhelming emotions and reactions, even if the affected person acts and appears calm.</p>
<p>Sexual violence during wartime is a serious violation of international humanitarian law, international criminal law, and international human rights law. It is often a particularly brutal and public crime, not committed in isolation, but rather as a part, for example, of mass killing or looting.</p> <p>Conflict-related sexual violence is used by the aggressor as a weapon and tactic of warfare.</p>	<p> Don't be biased or negative</p> <p>Be aware and make sure that your tone, words, body language, jokes, or other actions do not accuse, embarrass, insult, judge, humiliate, ridicule, or intend to convince the affected person that nothing happened.</p>
<p>The most common acts of conflict-related sexual violence are:</p> <ul style="list-style-type: none"> rape forced prostitution sexual slavery enforced sterilization and forced abortion forced nudity genital mutilation threats and attempts to commit acts listed above compulsion to watch acts listed above 	<p> Inform survivors and/or witnesses about the possibility of contacting the relevant services</p> <p>Survivors may need various types of assistance: medical, psychological, legal, etc. However, they should seek help only based on their own free will. If the injured person turns to you, provide emergency medical aid (if necessary) and inform the contacts:</p> <p>Medical assistance: 103</p> <p>National Police: 102</p> <p>Contact center for providing free legal assistance: 0 800 213 103</p> <p>National hotline for prevention of domestic violence, human trafficking, and gender discrimination: 116 123 or 0 800 500 335</p> <p>Government hotline for combating human trafficking, preventing and combating domestic violence, gender-based violence, and violence against children: 1547</p> <p>Office of the Prosecutor General: https://warcrimes.gov.ua/</p>
<p>Any individual may be affected by conflict-related sexual violence, regardless of gender and age. However, sexual violence is most often committed against women and girls.</p> <p>While performing their duties, servicemen of the Armed Forces of Ukraine may come into contact with survivors of sexual violence.</p>	<p> Do not collect evidence</p> <p>Do not take physical objects or other potential evidence from victims or their locations, even if requested. Military personnel cannot ensure and guarantee the integrity of such evidence.</p>

20 See Department of Justice, "Crime Scene Investigation," 13.

21 Lauren Harris and Julie Freccero, "Sexual Violence: Medical and Psychosocial Support" (University of California, Human Rights Centre May 2011), Available at: https://humanrights.berkeley.edu/sites/default/files/publications/sexual-violence_-_medical-and-psychosocial-support-sv-working-paper.pdf.

22 See below, Armed Forces of Ukraine, PROTECT and Alinea, "Memo, On interaction with civilians affected by conflict-related sexual violence" (copy on file with author).

- ❖ **Psychological assistance:** Victims or witnesses of war crimes may require the assistance of psychological specialists. Such assistance would be beyond the competence of both soldiers and field medics. In those instances, it is important that soldiers take care to not retraumatize the victims by asking the wrong sorts of questions or behaving in a manner which would lead to this result.²³ Ideally, in each unit there should be at least one soldier who has had basic training in the “Dos” and (especially) the “Don’ts” of such situations. They would be able to oversee interactions with victims so that the individual in question is protected from undesirable conduct prior to the arrival of trained investigation and medical personnel.
- ❖ **Conflict-related Sexual Violence (CRSV):** Encounters with victims of sexual and gender-based violence are particularly sensitive. A survivor of this kind of violence may be traumatised if they feel that they are being treated with indifference. For detailed guidance in this area, see the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict.²⁴ In cases of CRSV, a reluctance to take testimony from victims may be interpreted as disinterest in their injuries. This can best be addressed by explaining to witnesses or victims of sexual violence that they need to be questioned by professional investigators.
- ❖ **Documenting information about potential victims, witnesses and perpetrators:** With respect to potential witnesses, survivors, or victims, after considering any safety and security issues, the identity of these persons should be recorded, along with information to assist in locating them (mobile phone number, address, etc.). In these interactions, soldiers need to carefully gather evidence not only about the event itself, but also about the possible perpetrators. Open-ended questions should be asked about what happened without any attempts to clarify or corroborate these person’s statements. That task should be left to trained investigation personnel. Soldiers should record information such as: the military unit involved in the overall attack; and any names used by perpetrators amongst themselves; information relating to command and control (communications, the presence of commanders in the field); the type of weapons used; and descriptions of the types of military materiel employed.
- ❖ **Soldiers recording their own testimonies:** When combat action has slowed, or when civilian activity has resumed in an area, soldiers should meet to fulfill reporting requirements regarding their observations of activities and any evidence they have garnered. One recommendation is to develop and utilize a short nine to ten line briefing form, similar to a casualty evacuation or fire control document, for soldiers to be able to rapidly pass information onto higher headquarters for the collection and reporting of war crimes. The brief should have: the eight or ten digit coordinates of where the war crimes evidence is located; what the nature of the crimes are (civilian deaths, perfidy, etc.); how many deaths or injuries of civilians; date discovered;

23 See “How to do no harm: Resources to help journalists avoid re-traumatizing survivors of sexual violence” *United Nations Population Fund* (20 December 2019), Available at: <https://www.unfpa.org/news/how-do-no-harm-resources-help-journalists-avoid-re-traumatizing-survivors-sexual-violence>.

24 Sara Ferro Ribeiro and Danaé van der Straten Ponthoz, *International Protocol on the Documentation and*

Investigation of Sexual Violence in Conflict (March 2017), especially the parts on interviewing (161-186) and on gathering physical evidence (193-199), Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598335/International_Protocol_2017_2nd_Edition.pdf

whether civilians are still present in the area; basic evidence identified (hasty graves, spent cartridges, civilian witnesses, etc.); assessment of whether the location remains an active combat area; whether the area is marked and by what; the unit reporting and any other short answers that could assist higher echelons and others in finding the location and assessing its value. Soldiers who actually witness potential war crimes should make a video recording: their experience; identifying themselves and their unit; the location and date of the incident; describing what they have seen; the place where the recording was made; the date of the recording; and any additional information they believe to be relevant.

- ❖ **Questioning of potential witnesses, victims and perpetrators:** Forensics teams with experts trained in witness interviewing techniques are best suited to interviewing potentially traumatized witnesses who have observed or suffered war crimes. However, if it is unfeasible to wait for this kind of expertise, tactical field questioning of witnesses should be conducted (recorded by video if possible). Soldiers should restrict themselves to seeking the tactical information which would assist them in their immediate mission. It is not their place to question witnesses deeply about atrocities. Soldiers should ask only open-ended questions, and let the persons whom they are questioning volunteer information. Questioning for the purpose of collecting war crimes evidence should ordinarily be done by experienced investigation teams working for the appropriate law enforcement agency. This is to ensure that witness reports are of a sufficient standard to be admitted into evidence at any war crimes trials.²⁵ Soldiers should obtain identity information about the witnesses including mobile telephone numbers so that professional investigators can find them and question them appropriately. If troops do need to question witnesses for tactical information, to prevent contamination they should talk to the witnesses separately.²⁶ Troops should only talk to children if their parents are there and they can consent to their children being questioned.²⁷ Troops can give witnesses cards that provide contact information for the investigation teams of the Office of the Prosecutor General. They can also usefully set out the basic information those teams would need to know from the witnesses.
- ❖ It will sometimes happen that it is absolutely necessary to immediately preserve witness testimony: and there are no regular investigation teams available. In these cases legal advisors would likely be best placed, with their background in criminal procedure, to conduct appropriate questioning of the witnesses, and then provide the testimony to investigators. For example, in Ukraine, legal advisors could preserve original signed copies of written testimony, and then upload electronic copies to the online evidence portal maintained by the Office of the Prosecutor General. Similarly, legal advisors could carry out any verbal questioning of witnesses or victims, and video record these sessions. As noted earlier, soldiers should limit themselves to recording the broad outlines of any event. They should ask open-ended questions and focus on tactical level information, including the time, date and place of the reported event. There is a danger that obtaining information improperly will taint its reliability and ultimately make prosecution more difficult or even infeasible. This is particularly true if the

25 See *Tymoshchuk*, “Searching for the Dead.”

26 “Eyewitness Evidence,” Department of Justice, 15.

27 See Global Rights Compliance, *Basic Investigative Standards*, 85.

person interviewed is a possible perpetrator, given concerns about their due process rights in any criminal proceeding. As a general rule, detailed interviews should be left to professional investigators. If a witness or victim insists upon providing an account or statement, this should be recorded. However, detailed questioning of the person should be avoided, as should any efforts in seeking to clarify or corroborate the person's statement.



Photo: Armed Forces of Ukraine

1.5 Reporting war crimes

Military manuals often provide guidance on the actions or incidents that should be reported, with some listing and defining specific examples of “reportable incidents” as a useful way of operationalising commanders’ reporting obligations.²⁸ Reporting war crimes is a morally and legally significant act. Soldiers should undertake this role as a part of their service. Soldiers’ reporting of war crimes is essential for preventing war crimes and ensuring that perpetrators are held accountable. Soldiers can report war crimes they witness or hear about to their unit commander. If a soldier is uncomfortable reporting the crime or feels that they would not be taken seriously, there are confidential reporting systems. These might include a confidential helpline, military police or an inspector general. To effectively report war crimes, it is important for a soldier to provide as much detail as possible. This includes giving as much detail as possible about the crime, including the location, date, and time; the name of any alleged perpetrator or witness; and any details about the victim.

As noted earlier, the Office of the Prosecutor General of Ukraine together with Ukrainian and international partners, has created an online resource to properly document war crimes committed by the Russian military in Ukraine. Each citizen who witnesses war crimes can report these events online (<https://warcrimes.gov.ua/en#anketa>). In addition, please see below a war crime incident report template used by the US forces. The intention here is to standardize the reporting of potential IHL violations:

28 Lubell, Pejic, Simmons, Guidelines

WAR CRIME REPORTABLE INCIDENT REPORT

REPORT NUMBER: W001

GENERAL INSTRUCTIONS: Use to convey flash traffic to the commander relating to a possible, suspected, or alleged violation of the law of war discovered within the command.

LINE 1
DATE AND TIME _____ (DTG)

LINE 2
UNIT _____ (Unit Making Report)

LINE 3
TIME OF INCIDENT _____ (Time the Incident Occurred)

LINE 4
TIME OF DISCOVERY _____ (Time the Incident Discovered)

LINE 5
LOCATION OF INCIDENT _____ (Where Incident Occurred/UTM or Six-Digit Grid Coordinates with MGRS Grid Zone Designator)

LINE 6
PERSON(S) DISCOVERING _____ (Names(s)/Unit(s) of Person(s) Discovering the Incident)

LINE 7
SUMMARY _____ (Narrative Description Including the Who, What, When, Where and How)

LINE 8
UNITS IN AREA _____ (Identity of Location and Point of Contact for All Evidence)

LINE 9
LOCATION OF EVIDENCE _____ (Identity of Location and Point of Contact for All Evidence)

LINE 10
AUTHENTICATION _____ (Report Authentication)

Source: FM 101-5-2 U.S. ARMY REPORT AND MESSAGE FORMATS

<https://www.bits.de/NRANEU/others/amd-us-archive/fm101-5-2%28uk%29.pdf>

2. Training Framework

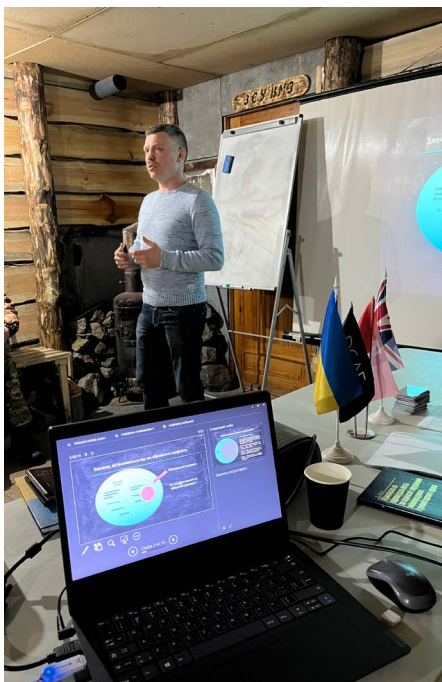


Photo: League of Officers

IHL training needs to incorporate some knowledge about how security actors identify relevant physical evidence and how they document it in a way that maintains its evidentiary value.²⁹ Internationally recognized IHL scholar Kenneth Watkin has emphasized that the collection of evidence on the battlefield by military forces needs to be further embraced. As such it should be incorporated into military practice and assessed from a broader operational perspective in terms of compliance with overarching legal requirements. In this regard, the military remains an under-utilized, but potentially effective, resource for the timely collection of evidence at the site where crimes are alleged to have taken place in combat environments.³⁰

29 G. Jasutis, and R. Mikova, Parameters of Effective Military Training in International Humanitarian Law (DCAF 2023), Available at: <https://www.dcaf.ch/parameters-effective-military-training-international-humanitarian-law>

30 Watkin, Kenneth. "The Search for Justice: Military Collection of Evidence on the Battlefield", *Global Justice Journal* (22 July 2020), Available at: <https://globaljustice.queenslaw.ca/news/the-search-for-justice-military-collection-of-evidence-on-the-battlefield>



Photo: League of Officers

Importantly, any evidence safe-guarding and collection should be done within the context of national laws related to the collection of evidence and its potential use at trial. For example, the Ukrainian Criminal Procedure Code defines evidence and the types of evidence used in Ukrainian criminal trials, the distinctions between physical and documentary evidence, and how the adequacy of evidence is assessed.³¹ The code also covers the collection of evidence and the admissibility of evidence before the court.³² Particularly relevant to the collection of evidence by soldiers is the code provision that allows for field inspections at crime sites on an exceptional basis during the pre-trial investigation. Inspections of this kind would likely provide the most probative assessment of the items of evidence and the crime site itself if the site's current condition could be accurately compared to documentary records made of the site closer in time to when the crimes were committed.³³

Thinking again of Ukraine, once the standards for the conduct of soldiers encountering potential war crime scenes are agreed upon between the Ministry of Defence and the General Staff, the Office of the Prosecutor General and any other relevant institution, it is crucial to provide appropriate training to armed forces personnel in these procedures. As this area is rather new, most IHL training frameworks do not cover this component in any kind of depth. Moreover, the demand for instruction by military commanders in the area of identification, evidence-gathering and preservation and war crimes reporting is likely to increase exponentially during armed conflict. Providing effective training is no easy matter for military educational and training systems. The demand mentioned here together with the lack of internationally recognized standard operating procedures and best practices in the context of regular soldiers safeguarding and gathering war crime evidence are all serious obstacles. The likely need for legal advisors to assist in training at the unit level could create a capability shortfall. Legal advisors would very probably be in short supply and would themselves need to undergo training to ensure that they were assisting commanders and other leaders in a uniform way.

31 Criminal Procedure Code of Ukraine (13 April 2012), No. 4651-VI (as amended), arts. 84, 85(1), 98, and 99, Available at: https://cjad.nottingham.ac.uk/documents/implementations/pdf/Ukraine-Criminal_Procedure_Code_amend_2020.pdf.

32 *Ibid.*, arts. 86(1) and 93.

33 *Ibid.*, art. 361.

Efficiency is central here. Training takes time and uses valuable resources. It is, therefore, important to consider to what extent it is desirable that personnel at different levels be trained in the identification, evidence-gathering, preservation and reporting of war crimes. The list below will address various considerations for the development of a training framework on this subject-matter:

- ❖ **Integration into the training curriculum on international humanitarian law:** In line with their obligations under IHL, national authorities already generally have in place frameworks for the training and dissemination of IHL knowledge to armed forces personnel.³⁴ It would be advisable to integrate the training on identification, evidence-gathering, preservation, and war crimes reporting into the existing IHL training curriculum. This area is closely related to topics under the law of armed conflict. While the need for training here is higher during armed conflict, it needs to remain part of standardized IHL training curriculum during peacetime as well.
- ❖ **Specific topics:** the emphasis on educating armed forces personnel about IHL should be further elaborated, particularly in relation to prohibited means and methods of warfare. On the Ukrainian battlefield, there have been allegations of war crimes, including the use of anti-personnel mines, cluster munitions, chemical weapons, cases of denying quarter to the enemy, robbery, starvation and perfidy, often involving misuse of protected international symbols. It is reasonable to expect that military personnel may come into contact with these situations. Therefore, further training is essential to ensure that soldiers understand the implications of IHL and the consequences of breaching the protocols and that they be able to act as first responders in these cases.
- ❖ **Differentiation of training curriculum according to military hierarchy:** The type and duration of instruction should vary depending on the rank and the responsibilities of military personnel. For example, the instruction given to enlisted soldiers could largely focus on: identifying possible war crimes evidence; ensuring that troops do not compromise the war crime scene by both staying away from the evidence themselves and keeping others away from the evidence; and by contacting their immediate commanders to report what they have discovered. On-scene commanders should be given specific training on what sort of action should be taken at the scene of an incident in order to secure and preserve evidence for any potential investigation.³⁵ Commanders should in all cases be instructed in how not to jeopardize a possible investigation. This should include being given basic information on how to maintain the chain of custody of evidence and how to deal with alleged victims and witnesses.³⁶ The instruction given to junior commanders and non-commissioned officers could further build on this information. They could be usefully taught how to use a basic war crime scene preservation kit in accordance with a standard operating procedure agreeable to the proper law

34 "The Obligation to Disseminate International Humanitarian Law", *ICRC* (Feb 2003). Available at: <https://www.icrc.org/en/download/file/1042/obligation-dissemination-ihl.pdf>

35 Lubell, Pejic, Simmons, *Guidelines*, 18 https://www.geneva-academy.ch/joomlatools-files/docman-files/Guidelines%20on%20Investigating%20Violations%20of%20IHL_%20FINAL.pdf.

36 *Ibid.* 18 https://www.geneva-academy.ch/joomlatools-files/docman-files/Guidelines%20on%20Investigating%20Violations%20of%20IHL_%20FINAL.pdf.

enforcement authority.³⁷ For example, a kit might include: crime scene barricade tape that could be used to mark out the war crime scene;³⁸ disposable gloves to reduce the risk of evidence contamination;³⁹ pincers to collect pieces of evidence;⁴⁰ numbered markers or cones to be placed next to evidence to identify it in reports and photographs;⁴¹ plastic or paper bags to hold items that might be degraded by weather or combat conditions;⁴² and a mobile telephone to take pictures of the war crime scene.⁴³

- ❖ **Instructors:** While the investigation teams will likely lack resources to deliver training directly to troops, they could nevertheless conduct the training of trainers. This kind of training could be usefully delivered both to the legal advisors assigned to units⁴⁴ and to commanders. Because of their education and professional role in the armed forces, legal advisors are well-suited to be instructors for military personnel in the preservation of war crime scene evidence. They would then be well prepared to provide advice on legal questions that might arise from the execution of standard operating procedures by their unit's personnel in the field.
- ❖ **Content and methodological approach:** The curriculum should be fairly simple and the tasks executable in a short amount of time. In Ukraine, for example, the development of such a curriculum could be done in cooperation with the War Crimes Unit of the Office of the Prosecutor General. Ensuring all soldiers possess a basic understanding of the truly strategic nature of war crimes, and the individual soldier's part in identifying, reporting, and at times collecting evidence around such crimes, is vitally important.

It is suggested that at the battalion level and above, an additional staff member (when there is no legal advisor) be trained to coordinate activities related to this domain. That staff member should serve as the primary point of contact between soldiers and the Prosecutor's Office. It is possible to leverage the authority of the military police — who are often attached to units in the field and seamlessly fit into the chain of command — by providing additional training to its members for this task and understanding the role and limited capabilities of regular soldiers who undertake to safeguard and collect evidence.

37 UN CTED, "Military Evidence Guidelines," 28.

38 "Crime Scene Investigation: A Guide for Law Enforcement", *U.S. Department of Justice* (January 2000), Available at: <https://www.ojp.gov/pdffiles1/nij/178280.pdf>.

39 Global Rights Compliance, *Basic Investigative Standards for International Crimes* (August 2019), 24, 50, Available at: <https://globalrightscpliance.com/wp-content/uploads/2022/03/Basic-Investigative-Standards-for-International-Crimes-Hardcopy.pdf>.

40 "Crime Scene Investigation," *U.S. Department of Justice*, 34.

41 Organization of Scientific Area Committees for Forensic Science, "Standard Guide for Crime Scene Photography" (June 2020), § 9.3, Available at: https://www.nist.gov/system/files/documents/2020/06/26/Crime%20Scene%20Photography%20Doc_OSAC%20Proposed_June2020.pdf.

42 See "Crime Scene Investigation," *U.S. Department of Justice*, 21.

43 *Ibid.*, 24.

44 Ministry of Defence of Ukraine, Order No. 164, Part 1, § 6; Part V, §§ 1.4, 1.5.

RECOMMENDATIONS



Photo: Armed Forces of Ukraine

- ❖ Soldiers should not be primarily responsible for collecting evidence of potential war crimes committed by the enemy; this is the responsibility of professional investigators and law enforcement agencies.
- ❖ However, soldiers can have an important role in reporting potential war crimes and preserving evidence. In doing so, they must be conscious of the risks they may face, such as endangering themselves, their fellow troops, and those from whom they gather information.
- ❖ When they encounter war crime scenes, soldiers should demonstrate extreme restraint. They should not interfere with the evidentiary integrity of the sites in any way. They should adopt an aware, observant stance and not tamper with, disturb, or destroy any evidence. Instead, they should seek to record it and document it as they find it. The situation in the war may be fast-moving. Therefore soldiers' ability to protect and preserve war crime scenes depends on the tempo of the conflict on a given battlefield.

- ❖ Soldiers should only attempt to gather physical evidence under exceptional circumstances, as they lack the necessary expertise and storage facilities to do so effectively. It should be a judgment call by intermediate military officers as to what extent soldiers should engage in evidence preservation and collection. If, for instance, the evidence is going to be lost in any case, then intervention becomes acceptable.
- ❖ When it comes to potential witnesses, survivors, or victims, the primary concern must be safety and security. Information should be collected that will help to locate the person (i.e. mobile phone number, address, time, date and place). But soldiers should refrain from recording detailed information about any war crime in order to protect its reliability and to ensure a successful prosecution. As a general rule, detailed interviews should be left to professional investigators. If a witness or victim insists upon providing an account or statement, this should be recorded. However, the direct questioning of the person needs to be avoided.
- ❖ Due to its sensitive nature, collecting evidence of CRSV requires an approach that is respectful to the survivor. A survivor may be further traumatized if they feel that there is indifference towards their experience.
- ❖ Soldiers should strive to collect evidence not just concerning the incident itself, but also about possible perpetrators. To accomplish this, they need to capture details like: the unit responsible for the attack; associated command and control communications; the presence of commanding officers at the scene of the event; the type of firearms employed; and the army equipment in use.
- ❖ As a part of their service in the military, soldiers have a morally and legally vital duty to report war crimes. Doing so is an effective way to prevent and address war crimes, and to make sure that those who are guilty are correctly held to account. Soldiers should feel comfortable about going to their unit commander, or to avail themselves of confidential reporting systems such as military police, a confidential helpline, or an inspector general. To ensure their report is most effective, soldiers should provide all the details they can recall. This should include the location, date and time, the names of any potential perpetrators and witnesses, and information about the victim.
- ❖ All data collected should be sent as soon as possible through the chain of command, so that the proper authorities can be contacted and an investigation launched.
- ❖ Training about evidence gathering on war crimes is important for militaries. It helps ensure that the military is following best practices for ethical behavior in conflict zones. Documenting alleged war crimes allows for evidence to be used in international criminal tribunals and domestic justice systems. Training which teaches how to properly document and collect evidence can help ensure that the evidence is accurate and reliable, allowing for the better prosecution of war criminals. Even if this information is not used directly in criminal trials, it still helps to accurately form the historical context within which specific violations occurred.

ANNEX

Rome Statute of the International Criminal Court

Article 8

War Crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, “war crimes” means: (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; (vii) Unlawful deportation or transfer or unlawful confinement; (viii) Taking of hostages. (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion; (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as



Photo: Armed Forces of Ukraine

well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury; (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; 7 Rome Statute of the International Criminal Court (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army; (xii) Declaring that no quarter will be given; (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war; (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party; (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war; (xvi) Pillaging a town or place, even when taken by assault; (xvii) Employing poison or poisoned weapons; (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions; (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123; (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions; (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations; 8 Rome Statute of the International Criminal Court (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using



Photo: League of Officers

the distinctive emblems of the Geneva Conventions in conformity with international law; (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions; (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities; (xxvii) Employing weapons, which use microbial or other biological agents, or toxins, whatever their origin or method of production. (xxviii) Employing weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays. (xxix) Employing laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices. (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause: (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (iii) Taking of hostages; (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable. (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; 9 Rome Statute of the International Criminal Court (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and



Photo: Armed Forces of Ukraine

places where the sick and wounded are collected, provided they are not military objectives; (v) Pillaging a town or place, even when taken by assault; (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions; (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities; (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand; (ix) Killing or wounding treacherously a combatant adversary; (x) Declaring that no quarter will be given; (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict; (xiii) Employing poison or poisoned weapons; (xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; (xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions; (xvi) Employing weapons, which use microbial or other biological agents, or toxins, whatever their origin or method of production. 10 Rome Statute of the International Criminal Court (xvii) Employing weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays. (xviii) Employing laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices. (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups. 3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Source: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

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