

War Crimes Act of 1996

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(a) OFFENSE – Whoever, whether inside or outside the United States, commits a grave breach of the Geneva Conventions, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(b) CIRCUMSTANCES – The circumstances referred to in subsection (a) are that the person committing such breach or the victim of such breach is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

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United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States"? See PAUST, BASSIOUNI, *ET AL.*, *supra* at 215-24; Jordan J. Paust, *After My Lai: The Case for War Crime Jurisdiction Over Civilians in Federal District Courts*, 50 TEX. L. REV. 6 (1971).

3. When Congress has exercised its power "to define and punish" under Article 1, sec. 8, cl. 10 of the Constitution, how have relevant offenses been described or categorized, as offenses "against the United States," as offenses "against the Laws of the United States," or as offenses against the law of nations or law of war? See, e.g., *United States v. Arjona*, 120 U.S. 479, 488 (1887); *Ex parte Quirin*, 317 U.S. 1, 27-30 (1942); *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 158-62 (1820); see also *United States v. Haun*, 26 F. Cas. 227 (C.C.S.D. Ala. 1860) (No. 15,329); 11 Op. Att'y Gen. 297, 299-300 (1865) [*supra*]; cf. An Act for the Punishment of Certain Crimes Against the United States, sec. 28, 1 Stat. 112, 118 (1790) (making it a crime to "assault, strike, wound, imprison, or in any manner infract the law of nations, by offering violence to the person of an ambassador or other public minister").

4. What should be included within the phrase "offenses against the laws of the United States" in 18 U.S.C. § 3231? Should the statute operate like that considered in *Ex parte Quirin* so as to incorporate offenses under international law more generally?

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18 U.S.C. § 2401. War Crimes

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(c) DEFINITIONS.---As used in this section, the term "grave breach of the Geneva Conventions" means the conduct defined as a grave breach in any of the international conventions relating to the laws of warfare signed at Geneva 12 August 1949 or any protocol to any such convention, to which the United States is a party.

Notes and Questions:

1. There are four 1949 Geneva Conventions: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 U.N.T.S.