

S. 1

To modernize the definition of a war crime to align it with modern standards of human rights and American decency.

IN THE SENATE

JANUARY 30, 2023

Mr. RICHARDS of Rhode Island introduced the following bill; which was referred to the Committee on Judiciary.

A BILL

To modernize the definition of a war crime to align it with modern standards of human rights and American decency.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Modernizing the Laws of War Act of 2023”.

SEC. 2. FINDINGS AND PURPOSE.

War crimes are an international violation of law that warrants no tolerance in society. Current law in the United States limits the bounds of war crimes to the 1949 definition outlined in the Geneva Conventions. After 74 years, the world has changed dramatically, and so has the way in which warfare is conducted. At this time, the world and our nation have significantly changed how we approach human rights issues and value human life. Actions taken during wars in the 20th century are no longer acceptable to the global community. Our nation and the world have

seen proof of this play out in the ongoing war in Ukraine. The previous Congress has even acknowledged the shortcomings of our war crimes laws and attempted to rectify the circumstances clause in the Justice for Victims of War Crimes Act.

Foreign nationals are not the only ones who need to be held accountable to internationally accepted standards of warfare. In the United States' recent history, we have been in armed conflicts in Afghanistan, Iraq, Libya, and Syria. In these conflicts alone, there have been numerous and needless violations of the American people's human rights, dignity, and values. It is only through strengthening our domestic laws on war crimes that we can finally end the questionable practices of our military and slowly rebuild respect in the international community. As a country, we need to show that we not only value the inalienable rights which all individuals possess but will uphold them even in the face of battle. This law takes a strong stance against war criminals of not only American descent but of foreign descent as well.

This bill will strike down the ban on cooperation with the International Criminal Court to fight international war criminals and show the United States' commitment to combating international war crimes. It will put in its place a provision opening dialog with the international court to help bring these criminals to justice.

SEC. 3. WAR CRIMES.

Section 2441 of Title 18, United States Code, is amended—

(1) by striking subsections (a) and (b) and inserting in their place:

“(a) OFFENSE.-Whoever, whether inside or outside the United States, commits a war crime (as described but not limited to the definition in subsection (c)), are subject to the jurisdiction of the United States (as defined in subsection (b)) and shall be imprisoned for no less than five years but not more than the penalty of death.

“**(b) JURISDICTION.**—There is jurisdiction over an offense described in subsection (a) if—

“(1) the offense occurs in whole or in part within the United States; or

“(2) regardless of where the offense occurs—

“(A) the victim or offender is—

“(i) a national of the United States (as defined in section 101 of the Immigration and Nationality Act); or

“(ii) a member of the Armed Forces of the United States, regardless of nationality; or

“(B) the offender is present in the United States, regardless of the nationality of the victim or offender.

“(3) Jurisdiction over the offense in subsection (a) shall not be limited to only the instance of an officially declared war but shall include any military conflict carried out by a state or militant group.”

(2) by adding at the end of subsection (c) the following:

“(5) which violates the values and customs of human rights applicable in armed conflict (as defined in subsection (e)).”

(3) striking subsection (d)(3) and renumbering subsection (d)(4) to (d)(3) and (d)(5) to (d)(4);

(4) by adding at the end of subsection (d) paragraph (1)(I) the following:

“(J) **EXCESSIVE DESTRUCTION OR APPROPRIATION OF PROPERTY.**—The act of a person, outside what is justifiable under military necessity, willfully orders the stealing, pillaging, or destruction of property unlawfully and wantonly.

“(K) VIOLATING THE RIGHTS OF A PRISONER OF WAR.-The act of a person who intentionally deprives a prisoner of war of their rights such as:

“(i) adequate food, water, and shelter;

“(ii) access to adequate medical care;

“(iii) access to acceptable hygiene;

“(iv) the ability to personal expression, be it religious or cultural;

“(iv) free from abuse or exploitation, either physical or psychological; and

“(v) all over provisions detailed in the third Geneva Convention signed in Geneva on 12 August 1949.

“(L) DEPORTATION.-The act of a person willfully and forcibly relocates a person or a group of people for reasons other than for the health and safety of those individuals, including prolonged confinement.”

(5) by adding after subsection (d) the following:

“(e) EGREGIOUS ACTS CONSTITUTING A WAR CRIME.-

“(1) PROHIBITED CONDUCT.- In subsection (c)(5), the term “values and customs of human rights” means any conduct which violates domestic standards, values, customs applicable to war, or international treaties to which the United States is a party. This term is to include, but is not limited to:

“(A) ATTACKING CIVILIAN POPULATIONS.-The act of directing attacks knowingly or in utter disregard against a civilian population not directly participating in hostilities.

“(B) DESTROYING CIVILIAN OBJECTS.-The act of intentionally directing attacks against civilian objects such as dwellings, establishments dedicated to

religious, education, science, or art purposes, monuments, markets, power plants, dams, water supplies, food production facilities, or other civilian infrastructure, provided that they are not being utilized for military operations.

“(C) INHIBITING HUMANITARIAN OR PEACEKEEPING OPERATIONS.-The act of intentionally carrying out attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission per the Charter of the United Nations, or other noncombatants using the distinctive emblems of the Geneva Conventions in conformity with international law.

“(D) ATTACKS RESULTING IN AN EXCESSIVE LOSS.-The act of intentionally launching an attack with the knowledge or with utter disregard to the fact that such attack will cause excessive loss of life or injury to civilians, or excessive damage to civilian objects (as defined in paragraph (1)(B)), or severe and long-term damage to the natural environment.

“(i) The term “excessive” shall be interpreted in relation to the overall damage caused compared to the overall military advantage acquired.

“(ii) The act of attacking or bombarding, by whatever means, cities, towns, villages, or other metropolitan centers which are undefended, and which are not military objectives shall always be a violation regardless of military advantage.

“(E) IMPROPER USE OF A FLAG.-The act of intentionally misappropriating a flag of truce, a State’s national flag, military insignia, or uniform of the

enemy, or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury.

“(F) INJURING SURRENDERING FORCES.-The act of willfully killing or wounding a combatant who has willingly laid down his arms or lacks the means of defense and thus has surrendered.

“(G) DENYING QUARTER.-The act of commanding, declaring, or in any other way, depriving the enemy of the opportunity, if they so wish, to surrender and henceforth for the duration of the conflict or until another agreement is reached, become a prisoner of war.

“(H) PERSECUTING NATIONALS OF A HOSTILE PARTY.-The act of abolishing, suspending, or inhibiting any of the following rights or actions of the nationals of the hostile party upon occupation:

“(i) the right to not be compelled into military service;

“(ii) the right to adequate food, water, and shelter;

“(iii) the right to adequate medical supplies;

“(iv) the right to freedom of expression;

“(v) the right to freedom of movement;

“(vi) the right to access any and all humanitarian relief supplies as provided under the Geneva Conventions or subsequent treaties the United States may be a party to;

“(vii) the right to equal treatment despite national origin, race, color, gender, or identity; and

“(viii) the right to conduct yourself without undue interference.

“(I) UTILIZING CIVILIAN CENTERS FOR MILITARY OPERATIONS.-The act of utilizing civilian centers of occupation to shield military operation from enemy attack or in an attempt to render military targets immune to counterattack under international law.”

SEC. 4. INTERNATIONAL CRIMINAL COURT.

Title 22, United States Code, is amended—

(1) by striking the entirety of Chapter 81 and inserting the following:

“CHAPTER 81—INTERNATIONAL CRIMINAL COURT

“Sec.

“7401. Mandating cooperation with the International Criminal Court.

“7402. Conditions to extradition or transfer of United States Citizens to the International Criminal Court.

“§7401. Mandating cooperation with the International Criminal Court

“(a) Cooperation

“The United States will cooperate with international investigations and turn over all information not pertinent to national security when requested by the International Criminal Court. Requests by the International Criminal Court will be reviewed by the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, who, after proper review, will delegate and coordinate with the appropriate departments to turn over the necessary information.

“(b) International Criminal Court defined

“The term “International Criminal Court” refers to the court established by the Rome Statute of the International Criminal Court adopted by the United Nations

Diplomatic Conference of Plenipotentiaries on the Establishment of an
International Criminal Court on July 17, 1998.

**“§7402 Conditions to extradition or transfer of United States citizens to the
International Criminal Court**

“(a) Conditions on extradition

“In the event that the International Criminal Court indicts or otherwise
requests the extradition or transfer of a citizen of the United States, one of the
following actions must be taken:

“(1) The United States indicts and proceeds with the prosecution of the
citizen; or

“(2) The United States successfully refutes the indictment in an
independent and nonpartial special grand jury as prescribed in chapter 216 of
title 18, United States Code.

“If the United States fails to do either of the actions as prescribed in this
subsection within 90 days of the extradition order being received by the Department
of Justice, the citizen must be turned over to the International Criminal Court
without delay.

“(b) Definition

“In this section, the term “International Criminal Court” inherits the same
meaning given in section 7401(b) of this title.”

Modernizing the Laws of War Act of 2023

The current laws in the United States surrounding war crimes are modeled after the war crimes identified in the Geneva Conventions written in 1949. In the 74 years since the signing of this document, the universally accepted standards of human rights have heightened, altering what is tolerable on the battlefield. Under our nation's current laws, military leaders can legally carry out atrocities that would otherwise affect not only international law but the ethics of the American people. This concern is not without warrant. According to Human Rights Watch, the United States has committed mass incarceration, indiscriminate killing of civilians, torture, rape, and the bombing of populated cities. It is also widely believed that the United States while fighting the war on terror in the middle east, engaged in the persecution of the local civilian population in their endeavor to eradicate al-Qaeda forces which ultimately led to a widespread uprising.

This discrepancy in how America's armed forces fight their wars and how the American people believed these wars should be fought needs to be a priority for the United States to rectify. America has self-proclaimed itself as a world leader. However, no country that violates international and domestic human rights standards can genuinely consider itself a global leader. The United States, if it wishes to repair its stature internationally, needs to step up and adhere to a higher standard of human decency. This act allows us to end the long-standing practice of hypocrisy the United States has engaged in by condemning the nations such as Russia for war crimes it too has committed at one point in time and is still legal under our laws.

This bill adopts the domestic definition of war crimes to align with internationally accepted standards defined under the International Criminal Court and the Geneva Conventions and their Additional Protocols. These changes will broaden the definition of war crimes to preserve nonmilitary targets such as dwellings and supermarkets. The application of war crimes will also be widened to account for nonstate-sponsored combatants and in situations where no formal war has been declared.

If this bill passes, all Americans can rejoice that the United States is taking steps to close the shortcomings in our laws of armed conflict and is attempting to ensure that all individuals' human rights are upheld during armed conflicts. Most of all, however, innocent civilians in the contested territories will have a better chance at survival and their livelihoods preserved during and after the conclusion of armed conflict.

However, military commanders and foot soldiers may be made afraid by these laws. The policies potentially enacted open them up to broader accountability for their actions and require military decisions to account for more than simply "winning." Similarly, Heads of State of the United States and NATO allies could be opened to inquirers by the ICC as section 4 of this Act requires the United States to cooperate with the international court. In effect, this policy at the potential to degrade our foreign relations with select allies while also helping secure the protection of human rights.

This refined definition of war crimes also stands the risk of impairing the United States' ability to emerge victorious in an armed conflict due to the primarily untested nature of this modern definition of what constitutes a war crime. Despite this concern, as we see in Ukraine, not accepting these principles will continue to be endorsed and lead to atrocities that can no longer be ignored.