

Crime against peace, war crime or crime against humanity

GUIDANCE NOTE

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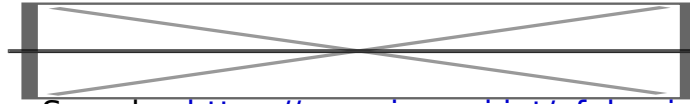
It can be noted that the ground 'crime against peace' is not found to be of particular relevance in the cases of applicants from Afghanistan.

According to COI, insurgent groups, (former) ANSF and pro-government militias, as well as civilians in Afghanistan, can be implicated in acts that would qualify as war crimes or crimes against humanity. Reported violations of international humanitarian law by all parties in the current and in past conflicts in Afghanistan could amount to war crimes. [\[7\]](#)

In terms of qualifying the relevant acts as war crimes, armed conflicts[\[8\]](#) taking place in Afghanistan can be characterised as follows:

- armed conflict between PDPA government and armed opponents from the summer of 1979 until the Soviet invasion on 24 December 1979: non-international;
- Soviet-Afghan War from December 1979 until February 1989: international;
- armed conflict between 'mujahideen' forces and the government (1989-1996): non-international;
- armed conflict between the Taliban and the United Front (1996-2001): non-international;
- armed conflict of coalition led by the USA against the Taliban regime between October 2001 and June 2002: international;
- Taliban-led insurgency against the (former) Afghan government (since 2002), as well as conflict between different AGEs (2015 - ongoing): non-international.

The amnesty envisaged under the National Stability and Reconciliation Law of Afghanistan and the amnesty provisions in the agreement with Hezb-e Islami / Gulbuddin Hekmatyar (HIG) from September 2016 would likely not prevent the exclusion of the applicant where individual responsibility for relevant excludable acts is established, as they would fail to meet the necessary requirements, i.e. being the expression of the democratic will of the citizens of Afghanistan and the individual having been held accountable in other ways.



^[7] See also <https://www.icc-cpi.int/afghanistan>.

^[8] Note that the assessment under Article 12(2)(a) QD and Article 17(1)(a) QD refers to the relevant international instruments defining the terms. Therefore, the assessment of whether or not an armed conflict takes place, as well as its nature, is based on international humanitarian law and may differ from the assessment in the context of Article 15(c) QD as defined in the *Diakité* judgment of the CJEU.