

## FACT SHEET: INTERNATIONAL CRIMES

### What are international crimes?

International criminal law (ICL) involves the most serious crimes of concern to the global community: its violations can result in imprisonment. The “core” crimes are genocide, war crimes, and crimes against humanity (these are also often referred to as “atrocities crimes”).

These crimes have been defined over time in a range of international conventions and agreements, beginning with the first Hague Conventions at the end of the 19th century, which established rules for military conduct during wartime. These agreements extended criminal responsibility not just to the direct perpetrators of a particular crime, but also to those who commanded, planned or allowed the crimes to take place.

International crimes have been prosecuted by a range of international and national courts—the International Criminal Court, established by the Rome Statute in 1998 (signed so far by 123 countries) and based in The Hague, has jurisdiction over all of them. Genocide is defined as “the intention to destroy, in whole or in part, a national, ethnical, racial or religious group” (Rome Statute, Article 6), while war crimes are “serious violations of the laws and customs applicable” in international and non-international armed conflicts (Article 8).

### What are crimes against humanity?

Article 7 of the Rome Statute, which established the International Criminal Court, defines crimes against humanity as a number of different acts committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” The Statute defines at least ten underlying acts, which include **murder, torture, and enforced disappearance**.

The Rome Statute further defines an “attack directed against any civilian population” as “a course of conduct involving the multiple commission of acts...against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.” This means that crimes against humanity can be perpetrated by government forces, as well as by organized armed groups.

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Characterizing atrocities as crimes against humanity recognizes that large-scale violence is different from ordinary domestic crime: it requires examining systems and patterns of crime in order to better understand their origins, particularly where there is evidence of state orchestration or involvement.

To this end, responsibility can be extended up the chain of command to include those who either gave the orders to commit the crimes in question, or who failed to take action to prevent or punish crimes that they knew (or should have known) were being committed. For these reasons, an international criminal law framework can capture issues of context, scale, and patterns of violence.

## Why is it important to investigate international crimes?

In cases of mass atrocities the people who carry out the crime may not have planned or instigated the violence. A killing may be carried out by soldiers, or by members of a drug gang, but ordered by a senior commander, a cartel leader or a politician. Thus charging the person or people who carried out the killings— the direct perpetrators— with “simple” crimes can miss patterns of criminality that implicate more senior perpetrators who ordered the crimes to be committed, or failed to prevent or punish their commission. Legally, this concept is known as the doctrine of *command responsibility*: a superior is responsible for crimes committed by his/her subordinates and for failing to prevent or punish those crimes.

This principle can be applied to any organized body – including both “state actors” such as the armed forces of police, and “non-state actors,” such as a rebel group, a militia or even an organized crime group.

In addition, prosecutions for crimes against humanity must prove not just that an atrocity took place, but other “contextual” elements—that it was part of a widespread and systematic pattern; that it was part of an attack on a civilian population; that it was carried out with the knowledge of the alleged perpetrator. As a result, trials for crimes against humanity possess much greater potential for exposing the root causes of atrocity crime. This can help society and the state better ascertain the truth of what happened, as well as to determine how best to address those causes.

## Is there a statute of limitations on international crimes?

There is no statute of limitations on international crimes. In 2002, for instance, Mexico ratified the “Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity,” which means that, as a matter of treaty

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law, these international crimes cannot be statutorily barred from prosecution in Mexico. International crimes can also not be subject to amnesty.

## How are investigations of international crimes different than investigating ordinary crimes?

Investigating international crimes raises a number of challenges that ordinary criminal investigations typically do not. The first is the contextual elements of international crimes: qualifying criminal acts as crimes against humanity for instance, requires demonstrating that they were widespread or systematic. Investigators therefore need to know what they are looking for and why. Investigating command responsibility or the contextual elements may also require special skills, including political, historical, anthropological, military or statistical analysis.

As noted, the fact that in many cases the intellectual authors of international crimes are different from the direct perpetrators also means that *linkage evidence* is important. Such evidence is needed to show the linkages between direct perpetrators and the suspect. Depending on the law in place, this means determining whether the suspect had effective control over his or her subordinates, gave relevant orders for the commission of crimes, or alternatively knew or should have known about their commission and failed to prevent or punish the acts. Even where a formal hierarchy was established, it remains up to the prosecutor to show that the hierarchy worked in practice.

Finally, another important aspect of international criminal investigations is *pattern evidence*. Pattern evidence can include reports from third parties (e.g., reports from domestic police agencies, public health officials, statistical data) that provide information tending to show that the crimes under investigation actually occurred. By admitting such documents, a prosecutor could support a theory of command responsibility by showing that there was a pattern of activity that may have been under the control of an accused commander.

## Can international crimes be prosecuted in domestic courts?

International crimes can and should be tried in domestic courts. The preamble to the Rome Statute states that the court will “complement the jurisdictions of national criminal courts”, and that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”. National courts have the primary responsibility for trying international crimes: the ICC only steps in when local courts cannot or will not act.

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## What are the steps leading to an ICC prosecution?

Investigations of possible crimes before the ICC are begun by the Office of the Prosecutor, under the following circumstances:

- At the request of a member state (so far, 122 countries have signed the Rome Statute to become ICC members) on whose territory crimes have taken place;
- At the behest of the UN Security Council (even if the state is not an ICC member); and
- On the initiative of the ICC prosecutor's office, in response to complaints filed by individuals.

After reviewing a complaint, the prosecutor's office may begin a preliminary investigation of the facts. This may lead to a full investigation, which may in turn lead to an arrest and charges, with the suspect being detained at The Hague to await trial. Before opening a trial, a panel of judges reviews the case, in a confirmation of charges hearing.

## CONTACT

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