



Syria and the International Criminal Court

Questions and Answers September 2013

1. Could the International Criminal Court (ICC) prosecute war crimes and crimes against humanity committed in Syria?

For now, the answer is no. Syria is not a member state of the [Rome Statute](#), the treaty that established the ICC. Unless the Syrian government ratifies the treaty or accepts the jurisdiction of the court through a declaration, the ICC could only obtain jurisdiction if the United Nations Security Council refers the situation there to the court. The Security Council, with what is called an “ICC referral,” could give the court jurisdiction stretching back to the day the Rome Statute entered into force, on July 1, 2002.

The Security Council has referred situations to the ICC only twice, for the [Darfur](#) region of Sudan in 2005 and [Libya](#) in 2011. The Security Council, however, has [failed to act](#) on other key occasions when there was strong evidence of widespread and serious international crimes and little prospect of local accountability.

2. Should the Security Council refer the situation in Syria to the ICC?

Human Rights Watch believes that the court should be given jurisdiction, considering the evidence that serious crimes have been committed in Syria, the pervasive climate of impunity there, and the grave nature of many of the abuses.

3. What impact could an ICC referral have?

A referral would give the ICC jurisdiction to investigate war crimes, genocide or crimes against humanity committed by *all* sides to this conflict, whether by government forces, opposition fighters, jihadists, or other militias. A referral would send a clear message to all parties in Syria that grave crimes will not be tolerated and carry serious consequences. It

would put those in senior positions in both the government and opposition on notice that they could be held responsible for crimes they order or commit, or for crimes they fail to prevent or punish – whatever the outcome of the Syria conflict.

4. Would pursuing justice through the ICC be an obstacle to any peace deal?

The record from other conflicts, such as those in the Balkans, confirms that criminal indictments of senior political, military, and rebel leaders can actually [strengthen peace efforts](#) by delegitimizing and marginalizing those who stand in the way of resolving the conflict. Further, the failure to hold those responsible for the most serious international crimes to account can [fuel](#) future abuses.

5. Do any Security Council members support referring the situation in Syria to the ICC?

[Yes](#). Six current UN Security Council members have publicly expressed support for an ICC referral: France, the United Kingdom, Luxembourg, [Argentina](#), Australia and South Korea. However, neither the United States nor China has expressed support for a referral. Russia has described the effort to seek an ICC referral as “ill-timed and counterproductive.” All three of these countries, as permanent Security Council members, have the power to veto resolutions.

6. Does an ICC referral feature in the current draft Security Council resolution on chemical weapons use?

Yes, a [draft of the resolution](#) prepared by France that was leaked to the media on September 13 includes an ICC referral. However, it is unclear whether this reference will survive revisions of the current draft. Remarks by the US secretary of state and the French and British foreign ministers on September 16 in Paris seemed to indicate that the next draft of the resolution would not contain a reference to the ICC.

7. How many countries have expressed support for an ICC referral?

On January 14, Switzerland presented a [letter](#) to the Security Council on behalf of 58 countries calling on the Security Council to refer the situation in Syria to the ICC. In March, 64 countries supported a cross-regional statement calling for an ICC referral during a UN Human Rights Council dialogue with the UN Commission of Inquiry on Syria.

8. Have other parts of the international community underlined the need for accountability for crimes in Syria?

Yes. The UN high commissioner for human rights has, on multiple occasions, [recommended](#) a Security Council referral of the Syria situation to the ICC. In February, UN Secretary-General Ban Ki-moon [welcomed](#) “the debate triggered by the call of some Member States for the Council to refer the situation in Syria to the International Criminal Court.”

Similarly, in conclusions adopted in December 2012, the European Union Foreign Affairs Council [called on](#) the Security Council to urgently address the situation in Syria, including the issue of an ICC referral.

9. Do any members of the League of Arab States support an ICC referral?

The League of Arab States has made strong calls for accountability in Syria, including a reference to international criminal justice in a [July 2012 resolution](#) and a recent ambiguous [call](#) for “fair international trials.” [Tunisia](#) and Libya are the only Arab states that have explicitly expressed support for an ICC referral. Four members of the League of Arab States have ratified the ICC treaty: Jordan, Tunisia, the Comoros, and Djibouti.

10. Has the Syrian National Coalition called for an ICC referral?

Yes, the Syrian National Coalition has [expressed support](#) for an ICC referral a number of times.

11. Can the ICC address the accountability vacuum that exists in Syria?

The ICC is the forum most capable of effectively investigating and prosecuting the people who bear the most responsibility for any crimes committed and of offering accountability to the Syrian people. However, the court will only be able to try a few senior people most responsible for widespread crimes. For the long-run, national trials will be necessary to achieve full accountability, and reforms will be needed to equip the Syrian judicial system to carry out credible and independent domestic proceedings.

Though the work of the ICC can be only one piece of the larger accountability effort needed in Syria, it is a crucial first step and will set a valuable reference point for other judicial

initiatives, including national trials. Other non-judicial mechanisms will also be required, including truth commissions, reparations, and institutional reform. None of this is going to happen quickly or easily in Syria, but all will be essential.

12. Could the creation of an ad-hoc international/internationalized tribunal be an effective alternative to the ICC to address crimes in Syria?

In its February report, the UN Commission of Inquiry on Syria [concluded](#) that the ICC is the most appropriate judicial mechanism to address the impunity in Syria. The commission explained why an international or internationalized ad-hoc tribunal would be inadvisable and would not adequately ensure accountability for crimes committed in Syria.

13. Can the ICC alone resolve the current crisis in Syria?

The ICC is by no means a panacea for the situation in Syria, and nobody claims that the court's involvement will stop the killing overnight. Others will have vital parallel roles in resolving the crisis there, including through diplomatic and humanitarian activities. But a Security Council decision to support a role for the ICC in Syria would signal that the body and its individual members are serious about ending the current state of impunity.

14. Can other countries prosecute international crimes committed in Syria?

Certain categories of grave crimes that violate international law, such as war crimes and torture, are subject to “universal jurisdiction,” which refers to the legal authority of the domestic judicial system of a state to investigate and prosecute certain crimes, even if they were not committed on its territory, by one of its nationals or against one of its nationals. Certain treaties, such as the 1949 Geneva Conventions and the Convention against Torture, oblige states parties to extradite or prosecute suspected offenders who are within that country's territory or otherwise under its jurisdiction.

Under customary international law, it is also generally agreed that countries are permitted to try those responsible for other crimes, such as genocide or crimes against humanity, no matter where these crimes took place. Whether cases under universal jurisdiction can actually be pursued in a particular country depends on the domestic criminal system and domestic laws, and the evidence available that is admissible in that country's courts.