

Quick sheet: Ukraine and the International Criminal Court (updated)

Introduction

The International Criminal Court (“ICC”), located in The Hague, the Netherlands, is the world’s first permanent international court established to try those accused of committing ‘core’ international crimes.¹ Although not an official state party to the ICC’s founding document – the [Rome Statute](#) – Ukraine has accepted the Court’s jurisdiction on an *ad hoc* basis twice: firstly relating to events surrounding the Euromaidan protests and secondly the conflict situations in Crimea and the Donbas region. Such declarations have created a unique relationship between the Court and Ukraine. In order to assess this relationship, Global Rights Compliance (“GRC”) produced the report “[Ukraine and the International Criminal Court](#)” in 2016, which was updated in 2021. This present “*quick sheet*” provides an accessible introduction and summary of the background and objectives of the Report and highlights several of its most relevant and essential conclusions.

Objectives and Structure of the Report (pp. 8-9)²

The Report aims to comprehensively outline Ukraine’s relationship with the ICC in order to provide relevant stakeholders – both government and non-government – the legal tools to achieve vital reform and increase accountability efforts in Ukraine. To fulfil this aim, the Report addresses popular misconceptions about Ukraine’s relationship with the ICC, highlights Ukraine’s obligations towards the Court, and illuminates the road ahead for accountability in Ukraine.

To allow for both a practical and in-depth account, the Report is divided into two chapters. The first chapter (pp. 16-95) serves as a concise and accessible guide to the key issues relating to Ukraine and the ICC. The second, more detailed, chapter (pp. 96-316) comprehensively reviews the topic – including specific theoretical and legal aspects. Both chapters’ structures are largely similar: each beginning with an account of the Ukraine-ICC relationship, continuing with a mapping of each stage of an ICC case’s life and how this is relevant for the Ukrainian context, before finishing with an appraisal of pertinent procedural issues, such as those relating to victims and witnesses. In doing so, Ukraine’s past, current, and developing relations with the ICC – and international justice in general – are examined.

Background to the Ukrainian Conflict (pp. 10-16)

Since the events surrounding the late 2013 and early 2014 “Revolution of Dignity” – where over 100 protesters and security personnel were killed – Ukraine has been affected by widespread instability. At the end of February 2014, the Crimean Peninsula was occupied by unidentified armed men ([since acknowledged](#) to have been Russian military) who gained control over the area – to widespread international condemnation. Shortly after, eastern Ukraine also began to destabilise. In the regions of Donetsk and Luhansk, conflict broke out between armed separatists and the police.

¹ Such international crimes are war crimes, crimes against humanity, genocide, and – since 2018 – the crime of aggression.

² Corresponding page numbers in the Report are indicated throughout the *quick sheet*.

Thereafter, protracted armed conflict ensued and continues to the present day along largely static frontlines. Throughout the conflict, there have been credible allegations that a number of international crimes – notably, [crimes against humanity](#) and [war crimes](#) – have been committed by several different actors.

What is the International Criminal Court? (pp. 16-24; 96-106)

The ICC's founding treaty, the [Rome Statute](#), was created in 1998 by formal agreement between states from across the world and entered into force on 1 July 2002. As the ICC is established by an international treaty, in principle, only states that have formally consented to be bound by the Rome Statute – for example, through ratification – are fully required to follow its obligations. As of September 2021, there are 123 States Parties to the Rome Statute.

The ICC's overarching aim is to end impunity for perpetrators of the most serious international crimes and contribute to deterring individuals from committing them in future. Since it began operating in 2002, there have been 30 cases brought before the Court which have led to ten convictions. As a court of 'last resort', the ICC aims to complement national courts rather than replace them. Therefore, states bear the primary responsibility to try those accused of perpetrating core international crimes within their own domestic courts and must cooperate with the ICC where required.

Ukraine and the International Criminal Court (pp. 24-32; 106-116)

Ukraine initially signed the Rome Statute in January 2000; however, in July 2001, the Constitutional Court of Ukraine ruled that it would be unconstitutional to ratify it. While subsequent domestic legislation has solved this constitutional problem, the Ukrainian Government is yet to ratify the Rome Statute. Although it is not currently a 'full' member of the ICC owing to this lack of ratification, Ukraine has twice declared acceptance of the ICC's jurisdiction on an *ad hoc* basis.³ Ukraine's [first declaration](#) concerned the events of the Euromaidan protests, with the [second declaration](#) focusing on alleged war crimes and crimes against humanity committed within the context of the armed conflict in Ukraine since 20 February 2014 (*see also* **pp. 33-44; 119-135**). Shortly after Ukraine's first declaration, the then Prosecutor of the ICC, Fatou Bensouda, [opened a preliminary examination](#) of the situation. This examination was closed in December 2020, with the Office of the Prosecutor ("OTP") concluding it likely that numerous international crimes have been committed in Ukraine.⁴

³ As foreseen in the [Rome Statute](#), Article 12(3).

⁴ Office of the Prosecutor, '[Report on Preliminary Examination Activities 2020](#)' (14 December 2020), pp. 68-72.

Selected Conclusions (throughout)

Within the Report, it is concluded that the ICC has, in theory, jurisdiction over international crimes allegedly committed in Ukraine, including in Crimea and areas of the Donbas region currently not under Ukrainian Government control (**pp. 33-44; 119-135**). Therefore, alleged perpetrators of these international crimes could, in principle, be tried at the ICC in The Hague.⁵ Furthermore, the Report concludes that as Ukraine's second declaration to the ICC was not temporally restricted, all core crimes committed from 20 February 2014 until the present day could be examined by the ICC. In this light, issues of procedure before the ICC – which are highlighted throughout the Report (*see pp. 81-95; 252-316*) – are of direct relevance to Ukraine.

In addition, while Ukraine has not ratified the Rome Statute, the Report highlights that, owing to the likelihood that the ICC has jurisdiction, Ukraine must still comply with many of the Rome Statute's provisions, namely regarding cooperation and evidence gathering. While it is stressed that it is desirable for ensuring international justice that Ukraine ratifies the Rome Statute, the Report concludes that – again owing to Ukraine's *ad hoc* declarations accepting ICC jurisdiction – Ukraine's current obligations are considerable even before taking this step (*see pp. 187-212*).

Current Developments

As indicated in the Report, the then Prosecutor of the ICC announced in December 2020 that the preliminary examination in Ukraine was complete. As of September 2021, there remains uncertainty about whether the new ICC Prosecutor, Karim Khan, will request authorisation from the Pre-Trial Chamber to open a full investigation. In the meantime, the Prosecutor General's Office of Ukraine continues to cooperate with the ICC's OTP. For instance, in August 2021 a communication was submitted to the OTP which highlighted alleged war crimes committed against [cultural property in Crimea](#).

For up-to-date information and resources about the situation in Ukraine regarding the prosecution of international crimes, see the MATRA-Ukraine Project website: www.asser.nl/MATRA-Ukraine/.

⁵ Note, this is dependent on several other important facts, such as whether Ukraine 'is unwilling or unable genuinely to carry out' investigations or prosecutions ([Rome Statute](#), Article 17). *See also pp. 72-74; 230-238* of the Report.