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International Criminal Liability and U.S. Boat Attacks in the Pacific and Caribbean



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Even after Venezuelan President Nicolás Maduro was captured, U.S. nationals may still be prosecuted under international law for the country's previous attacks against suspected drug-carrying boats in the Caribbean and Pacific, including those that happened [as recently as Dec. 31, 2025](#). Here's why: Confining these attacks to the high seas does not necessarily overrule the assertion of jurisdiction by the International Criminal Court, which explicitly recognizes that its territorial jurisdiction extends to crimes committed onboard a vessel or aircraft registered to countries that are members of the Court. Thus, war crimes or crimes against humanity, if committed on a vessel registered to Venezuela, or Ecuador, or Colombia — all countries that have joined the Court — fall within its

jurisdiction. Moreover, other countries with domestic criminal jurisdiction based on what is known as “universal jurisdiction” — crimes that offend all countries like crimes against humanity or war crimes — or “passive personality jurisdiction” — conduct that harms their own countries — could seek to prosecute U.S. nationals in their own courts.

Liability for war crimes under Article 8 of the Rome Statute — the international treaty that founded the International Criminal Court — was unlikely prior to the U.S. raid against Maduro on January 3. This was because such liability would require the International Criminal Court to accept the theory that the “drug boat” campaign was an armed conflict. But, with the January raid, there is no longer an impediment to proving the United States and Venezuela are involved in an armed conflict, broadening this international criminal exposure. Now, the Court might see these attacks, if perpetrated against Venezuelan-registered vessels, as an integral part of an armed conflict between the two countries, triggering the Court’s war crimes jurisdiction. And, regardless of the existence of an armed conflict, the Court’s jurisdiction over murder as a crime against humanity may already exist depending on the country of registration of the destroyed boats.

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The International Criminal Court and the United States

The International Criminal Court was created by [the Rome Statute of the International Criminal Court](#) in 1998 to provide a permanent international court to prosecute four crimes listed in the treaty: genocide, crimes against humanity, war crimes, and the crime of aggression. The statute entered into force on July 1, 2002. Currently, there are 125 countries that are “[state-parties](#)” who have signed and ratified the treaty, including Venezuela, Colombia, Ecuador, and many other Central and South American countries. By becoming a state-party, these countries have [consented to the Court’s jurisdiction](#) to try individuals for the listed crimes if committed within their territories or by their nationals. Although Venezuela’s National Assembly voted in Dec. 2025 [to repeal the country’s accession to the treaty](#), any withdrawal from the Rome Statute would only take effect one year after notifying the U.N. secretary-general.

While the United States was instrumental in negotiating the treaty and President Bill Clinton signed it in 2000, it was never forwarded to the Senate, the body responsible for ratifying such an agreement, due to concern that the International Criminal Court prosecutor (the lawyer responsible for investigations and prosecutions) would assert jurisdiction over non-party states such as the United States. Subsequently, in 2002, President George W. Bush [notified the U.N. secretary-general](#) that the United States did not intend to join the Rome Statute, essentially “unsigned” the treaty.

Since then, the United States has consistently objected to any assertion of International Criminal Court jurisdiction over U.S. nationals, even for alleged crimes committed within the territory of a state-party, such as in the Afghanistan war. The [administration](#) of President Donald Trump has also [imposed sanctions on International Criminal Court personnel](#), to include judges from U.S. allies.

International Criminal Court Jurisdiction

The International Criminal Court's jurisdiction is based on the non-controversial territorial and active personality principles of international law. This means the court can exercise jurisdiction over the listed international crimes when they are committed within the territory of a state-party or are perpetrated by a national of a state-party. Thus, there is no legal impediment to prosecuting U.S. nationals for crimes alleged to have been committed in the territory of a state-party (assuming, of course, the Court is able to obtain physical custody over the individual).

So, what about the attacks against boats suspected of carrying drugs in the Caribbean and Pacific? These could result in charges and prosecution under two conditions: first, if the strikes occurred within the territory of a state-party and therefore within the Court's jurisdiction; and second, if the individual allegedly committed a crime listed in the Rome Statute. Many commentators assume that because the strikes occurred on the high seas outside the territorial waters of any state, the territorial jurisdictional provisions of the Rome Statute do not apply. However, [Article 12\(2\)\(a\) of the statute](#) says otherwise. Under this article, territorial jurisdiction includes jurisdiction over crimes committed on board vessels or aircraft registered to that state. So, if any of the ships attacked were registered to Venezuela (or any other state-party), Venezuela (or any other state-party) may refer the matter to the International Criminal Court prosecutor *or* the prosecutor may independently initiate an investigation. If this jurisdictional link were established, the Court could investigate both war crimes and crimes against humanity resulting from the U.S. campaign, even for attacks in international waters.

Armed Conflict: Can War Crimes be Prosecuted?

Before the U.S. raid in Venezuela on Jan. 3, 2026, the Trump administration's assertions that it was targeting suspected drug boats as part of a [non-international armed conflict](#) with the Tren de Aragua drug cartel — [which it claimed was being sponsored and directed by the Venezuelan government](#) — had been seen with considerable skepticism by the [vast majority of international law experts](#). Further contradicting the administration's claim, the [U.S. intelligence community concluded](#) in [April 2025](#) that the Maduro regime “does not have a policy of cooperating with TDA [Tren de Aragua] and is not directing TDA movement to, and operations in the United States.” The existence of a non-international armed conflict is an objective inquiry requiring a non-state armed group to have some degree of military organization and for there to be some degree of intensity of hostilities. While the threat of importation of illegal drugs is a serious law enforcement issue, Geoffrey Corn and Ken Watkin [argued](#) in these pages that Tren de Aragua fails to meet the organizational requirements to

qualify as a non-state armed group capable of engaging in a non-international armed conflict, echoing the determination of the U.S. intelligence community. This is especially significant as it relates to an assertion of International Criminal Court jurisdiction for any alleged war crime, because nexus to an armed conflict is essential for establishing such jurisdiction. It is unlikely the Court will simply accept the U.S. assertion of armed conflict for this jurisdictional purpose absent credible objective support for that assertion — support which has been lacking since the beginning of the campaign.

The Maduro raid adds a new dimension to the jurisdictional question. The International Criminal Court could now interpret the earlier boat strikes as part of the U.S. military incursion into Venezuela, providing nexus to an international armed conflict. If so, it may view Article 8 (governing war crimes) of the Rome Statute as directly applicable. The Trump administration will likely continue characterizing the raid as a “law enforcement operation,” but that in no way controls what the International Criminal Court does. Under the four 1949 Geneva Conventions and decades of customary international law practice, an international armed conflict exists whenever: [“\[a\]ny difference arising between two States ... lead\[s\] to the intervention of armed forces ... even if one of the Parties denies the existence of a state of war.”](#) This would make it plausible for the International Criminal Court to consider the boat strikes part of a broader international armed conflict between the United States and Venezuela, thus triggering war crimes jurisdiction. Given recent reporting on alleged U.S. perfidy for using [aircraft “painted to look like a civilian plane”](#) to commit the boat attacks, war crimes liability before the International Criminal Court could include the offenses of perfidy or of deliberately targeting a civilian population.

Crimes Against Humanity

And yet, there is another wrinkle. Even if the International Criminal Court views the boat attacks as separate from the subsequent U.S. military incursion into Venezuela, it might seek to allege different charges — namely, crimes against humanity — based on evidence that some of the struck boats were registered to a Rome Statute state-party. In this regard, an important precedent is the Court’s [2019 decision](#) that “the Court may exercise jurisdiction over crimes when part of the criminal conduct takes place on the territory of a State Party.” This would include not only war crimes, but the crime of murder as a crime against humanity under Article 7 of the Rome Statute. Thus, in the case of the boat attacks, if the crime of murder — such as the killings of one or more persons — in violation of Article 7(1) of the Rome Statute occurs on a vessel or aircraft registered to a state-party, the territorial requirement of Article 12(2)(a) is met and the Court has jurisdiction to investigate and prosecute regardless of the existence of an armed conflict. It is true that we don’t yet know whether any of the over 30 boat attacks were against Venezuelan-registered vessels. But the International Criminal Court, like any court, has the authority to determine its jurisdiction, which would be established if the prosecutor provided evidence proving state-party registration of even one of the boats. Of course, the Court’s jurisdiction is conclusive if attacks occur in Venezuela’s territorial waters or on its land territory.

Crimes against humanity, under Article 7 of the Rome Statute, unlike war crimes, do not require [nexus to an armed conflict](#), so the International Criminal Court can investigate these crimes even if it determines that no armed conflict exists. Specifically listed in Article 7(1) is the crime of murder as a crime against humanity, which entails three elements: that the perpetrator killed one or more persons; that the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and that the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population. Critically, in order to constitute a crime against humanity, the crimes listed in [Article 7](#) must be “committed as (1) part of a widespread or systematic attack (2) directed against any civilian population.” [Article 7\(2\)\(a\)](#) defines “attack directed against any civilian population” as “a course of conduct involving the multiple commission of acts referred to in paragraph 1 [such as murder] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”

Thus, to meet the requirement for murder as a crime against humanity, there must be multiple acts of murder committed against a civilian population, pursuant to or in furtherance of a state or organizational policy to commit such an attack. For the same reasons that the Trump administration’s assertion of the existence of a non-international armed conflict has been nearly universally rejected, the characterization of the victims of these attacks as unlawful combatants is equally dubious. Even criminals retain their status as civilians so long as they are not direct participants in an armed conflict. As a result, it is plausible — if not likely — the International Criminal Court would consider the victims of the boat attacks civilians under the law and attacks against them as within the scope of Article 7 of the Rome Statute.

Moreover, with over [30 attacks resulting in more than 100 deaths](#), the requirement of multiple commissions of the crime of murder is undoubtedly satisfied. And, were the Court to conclude (in alignment with most legal commentary) that the U.S. campaign is in fact not an armed conflict, it would nonetheless meet the requirement for multiple attacks under Article 7(2)(a) to prove “an attack directed against any civilian population.” The requirement that the attacks be “part of a widespread or systematic attack” is also likely met. The wording of [Article 7](#) requires that the attack be part of either a widespread *or* systematic attack, not both.

Article 7(2)(a)’s requirement that the attacks be “pursuant to or in furtherance of a State or organizational policy to commit such attack” is easily demonstrated. On Dec. 2, 2025, Department of Defense spokesperson Kingsley Wilson stated in an [official press briefing](#) that, “Each ... strike conducted against these designated terrorist organizations is taken in defense of vital U.S. national interests and to protect the homeland.” Thus, the attacks are not random acts of violence but are explicitly acknowledged to be part of a formal U.S. military operational plan, dubbed “Operation Southern Spear.” Because these attacks are conducted under an official policy of the U.S. government, they are both systematic and “pursuant to or in furtherance of a State policy to commit such attacks,” and are known by their participants to be such.

Future attacks, if they occur in Venezuelan or any other state-party's waters or territory would unquestionably implicate International Criminal Court territorial jurisdiction. The United States has — and undoubtedly would in the future — object to the assertion of the Court's jurisdiction over U.S. nationals even if they are accused of committing a crime within the territory of a state-party. But the assertion of such international jurisdiction is not controversial, as it is based on the core principle of territorial sovereignty. Although ultimately a discretionary decision on the part of the International Criminal Court prosecutor, if evidence of the registration of the vessels to a state-party exists, there is likely sufficient information to initiate an investigation into the U.S. boat attacks as crimes against humanity.

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Other National Courts Jurisdiction

Finally, there is a risk of prosecution by any of the numerous countries that authorize prosecution of crimes against humanity or war crimes in their national courts as an exercise of universal jurisdiction. Even absent International Criminal Court prosecution, cases against those who plan and implement these strikes against what a prosecutor in such a country might determine is the civilian population could be pursued, even if the country has no connection to the operation or the victims. Many states also have legislation criminalizing the murder of their citizens wherever they occur under the “passive personality” principle. This means jurisdiction would be valid based on evidence that one of the victims of the strikes was a national of that country, potentially creating extensive criminal liability under the laws of the states of the victims even without the assertion of universal jurisdiction.

Conclusion

The U.S. attacks against boats in the Caribbean and Pacific alleged to be carrying drugs supposedly destined for the United States have been condemned as extra-judicial killings and violations of international law by [U.N. human rights experts](#), and labeled a crime against humanity by former [International Criminal Court Prosecutor Luis Moreno Ocampo](#). Given the [widespread](#), albeit [not unanimous, conclusion](#) that these strikes lack a legal basis under domestic and international law, it is likely that U.S. servicemembers and their leaders — including Trump and Secretary of Defense Pete Hegseth — can be held liable under international law for the deaths resulting from these strikes. [New reporting of possible perfidy](#) only adds to the available prosecutable offenses under Article 8 of the Rome Statute.

Apart from the political decision of national governments and the International Criminal Court whether to investigate or prosecute the attacks as crimes against humanity, multiple courts outside the United States likely have jurisdiction to investigate and prosecute what can be characterized as crimes against humanity or murder. Referring to a classified Office of Legal Counsel opinion justifying the attacks, a [U.S. Department of Justice spokesperson claimed](#) “the strikes were consistent with the law of armed conflict, and as such are legal orders” for which servicemembers are “not subject to prosecution.” This opinion, however, does not govern future U.S. administrations, the International Criminal Court, or other countries, all of which can pursue investigations and prosecutions for murder or crimes against humanity. Given that such crimes have no statute of limitations, many U.S. nationals will be subject to a long tail of criminal liability.

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