



The Nuremberg Academy Contextualises the ICC Office of the Prosecutor's new Investigation Concerning the Situation in Lithuania/Belarus

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1. What is the background of the ICC's investigation into the Situation in Lithuania/Belarus?

On [12 March 2026](#), the Office of the Prosecutor (the Office or OTP) of the International Criminal Court (the Court or ICC) announced the conclusion of preliminary examinations into the *Situation in the Republic of Lithuania/Republic of Belarus* (*Situation in Lithuania/Belarus*).

In April 2020, Aleksandr Lukashenko (also spelled Lukashenka), president of Belarus [since 1994](#), announced his candidacy for the 9 August 2020 presidential elections. By early May 2020, protests organised by the opposition had [grown into large-scale demonstrations](#), which were violently repressed by Belarusian security forces. In the months leading up to the elections, several presidential candidates of the opposition were arrested. Further, non-governmental organisations (NGO) and independent journalists faced severe oppression. In the election reported as fraudulent by international organisations, Lukashenko declared himself the winner [with 80%](#) of the vote, although independent sources [found](#) opposition candidate Sviatlana Tsikhanouskaya to have won instead. The Organization for Security and Co-operation in Europe [found](#) that "there is overwhelming evidence that the presidential elections of 9 August 2020 have been falsified and that massive and systematic human rights violations have been committed by the Belarusian security forces". Following the election, mass protests continued with increasing intensity. According to a [report of the UN High Commissioner for Human Rights](#), protests amounted to "the largest anti-government movement in the history of Belarus". The [United Nations](#) and the [European Parliament](#), as well as [international NGOs](#) have issued statements condemning Belarusian violence and calling for investigations into possible international crimes committed by Belarusian police forces.

As a result of the [arbitrary arrests and police brutality](#), thousands of members of the Belarusian opposition, including opposition candidate Sviatlana Tsikhanouskaya, fled Belarus into Lithuania and other neighbouring states. To date, the Lukashenko regime remains in power, with the latest presidential election of 26 January 2025 reported [equally fraudulent](#). The UN Group of Independent Experts on the Human Rights Situation in Belarus [continues to report](#) arbitrary arrests, denial of rights to a fair trial, and torture, including sexual and gender-based violence, forcing mass migration movements into neighbouring European states.

Investigation activities of the OTP related to possible international crimes committed against the Belarusian civil society were [initiated](#) through a [referral filed by the Lithuanian Minister of Justice](#) on 30 September 2024. In this referral, Lithuania alleged that “crimes against humanity - including deportation, persecution and other inhumane acts - have been carried out against the civilian population of Belarus” and argued that the Court has jurisdiction over those alleged crimes because “part of the element of these crimes was committed on the territory of Lithuania, bringing such crimes temporally, territorially, and materially (by subject-matter) within the jurisdiction of the Court.” Such allegations had also been brought to the OTP’s attention by a [submission](#) filed by international human rights organisations in May 2021.

2. What grounds has the ICC OTP relied on to open a new investigation?

Based on the allegations of criminal offences indicated above, Lithuania asked the Prosecutor of the ICC “to investigate all past, ongoing and future crimes within the Court’s jurisdiction” allegedly committed in Belarus and directed against the Belarusian civilian population since 1 May 2020. Building on this background, the OTP opened its investigation procedure. Under the procedural framework of the [Rome Statute](#) (the Statute), the treaty forming the legal basis of the ICC, the OTP first conducted a preliminary examination under Article 53(1). The purpose of this phase is to determine whether there is a reasonable basis to proceed with an investigation. The “reasonable basis” threshold has been clarified in the Court’s [jurisprudence](#) as being the “lowest evidentiary standard provided for in the Statute”. At this stage the “Prosecutor is neither expected to be ‘comprehensive’ nor ‘conclusive’, if compared to evidence gathered during the investigation”, but rather to assess whether the available information provides a sufficient basis to justify the opening of an investigation.

In its [Summary of Preliminary Examination Findings](#) (Findings) regarding the *Situation in Lithuania/Belarus* published on 12 March 2026, the OTP argued that its activity focused in particular on alleged transboundary crimes committed at least in part on Lithuanian territory from 1 May 2020 onward, thereby falling within the ICC’s territorial and temporal jurisdiction. Noting the absence of relevant domestic proceedings and the gravity of the alleged conduct, the Office further concluded that potential cases would be admissible, referring to “their large scale, nature, the manner in which the crimes were committed, including the persecutory intent of the perpetrator, and their impact”. The Office also determined that there were no substantial reasons to believe that opening an investigation would not serve the interests of justice, establishing a reasonable basis to believe that crimes within the jurisdiction of the Court have been committed and to open an investigation.

3. What are the alleged crimes in question?

The OTP’s investigation concerns alleged crimes against humanity under Article 7 of the Statute. Article 7(1) requires, for conduct to qualify as a crime against humanity, that the alleged acts be “committed as part of a widespread or systematic attack directed against any civilian population”. Article 7(2) clarifies that the acts constituting the attack must be committed “pursuant to or in furtherance of a state or organizational policy to commit such attack”. These requirements constitute the contextual elements of a crime against humanity. The OTP identified factors suggesting that the alleged crimes were committed pursuant to or in furtherance of Belarusian policy, including the “repeated attacks by Belarusian authorities against opponents, use of the legal system to suppress dissent, and the lack of accountability for alleged crimes”. According to the Office, these factors indicate that the crimes were “encouraged or approved” by the Belarusian authorities. The OTP further noted that “the large scale of the crimes, the number of victims, and the organised nature of the acts” are indicative of a widespread and systematic attack against civilians. Based on these findings, the OTP noted that potential cases arising from the investigation may be admissible under the Statute. With respect to the underlying acts, as outlined in the Findings, crimes against humanity allegedly committed by the Belarusian authorities include the crime of persecution through deportation against an identifiable group or collectivity on political grounds under Article 7(1)(h) and the crime of deportation of population under Article 7(1)(d) of the Statute.

Under the Rome Statute and the [Elements of Crimes](#), persecution entails the intentional and severe deprivation of fundamental rights against an identifiable group on discriminatory grounds. Furthermore, the persecutory conduct must have been committed in connection with at least one other crime falling within the ICC's jurisdiction. In context of the *Situation in Lithuania/Belarus*, the targeted group comprises individuals perceived as political opponents by the Belarusian authorities, and the persecution has been committed, notably, by means of and in connection with deportation.

Thus, the crime of deportation is the central element of the ICC *Situation in Lithuania/Belarus*. In the Elements of Crimes, deportation within the meaning of the Rome Statute is defined as the forcible transfer of persons that is not justified under international law. Besides use of physical force, the notion of “forcible” might also include “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power [...] or by taking advantage of a coercive environment”. Moreover, deportation is understood to be a [transboundary crime](#) by which one or more persons are forcibly displaced from one location where they were [lawfully present to another state](#). As such, the crime of deportation consists of several, consecutive aspect that actualise on separate locations: the commission of the crime is initiated in one state and completed in another. With this inherently transboundary nature, the crime of deportation has significant implications for the jurisdiction of the Court.

4. Could the ICC exercise jurisdiction over alleged crimes committed in a Non-State Party such as Belarus?

While Belarus is not a State Party to the Rome Statute, Lithuania [is a State Party](#). However, in the situation under investigation, individuals are allegedly coerced into leaving Belarus and entering Lithuania, therefore a constitutive legal element of the crime of deportation is completed on the territory of a State Party. The reasoning draws on the ICC's jurisprudence in the *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar (Bangladesh/Myanmar Situation)*.

In its [Decision on jurisdiction under Article 19\(3\)](#) (Jurisdiction Decision) in the *Bangladesh/Myanmar Situation*, Pre-Trial Chamber I (the Chamber) held that the Court may exercise jurisdiction where “at least one element of a crime [...] or part of such a crime is committed on the territory of a State Party”. On the basis that deportation is an inherently transboundary crime, the Chamber argued that a restrictive reading of Article 12(2)(a) of the Statute that would exclude jurisdiction where part of the conduct occurs on the territory of a non-State Party, would be inconsistent with the object and purpose of the Rome Statute. The Chamber instead concluded that “acts of deportation initiated in a State not Party [...] and completed in a State Party [...] fall within the parameters of Article 12(2)(a) of the Statute”, bringing the matter within the jurisdiction of the Court. This interpretation was confirmed by the [Pre-Trial Chamber III](#).

Under public international law, jurisdiction is traditionally based on the territoriality principle, which grants states authority over conduct occurring on their territory; the active personality principle, linked to the nationality of the perpetrator; and the passive personality principle, relating to the nationality of the victim. Universal jurisdiction remains exceptional and contested, permitting states to prosecute certain core international crimes regardless of where they were committed or by whom. The ICC is a treaty-based court that derives its jurisdiction from the Rome Statute, through which States Parties confer limited sovereign powers upon the Court. Accordingly, the Court may exercise jurisdiction on the basis of territoriality under Article 12(2)(a) or active personality under Article 12(2)(b), while jurisdiction over non-State Parties is only possible via a UN Security Council referral under Article 13(b) of the Statute. Notably, the passive personality principle is not provided for in the Statute. Consequently, for conduct occurring on Belarusian territory and committed by Belarusian nationals, at first glance the Court appears to be lacking jurisdiction. In the *Lithuania/Belarus Situation*, as in the *Bangladesh/Myanmar Situation*, the Court therefore relies on the observation that part of the crime of deportation had occurred within the territory of State Parties. On this basis, it established territorial jurisdiction extending also to those aspects of the conduct that were carried out within the territory of a non-State Party.

Unlike deportation, persecution under Article 7(1)(h) of the Statute does not inherently involve a cross-border element, but as indicated by the Pre-Trial Chamber I in its Jurisdiction Decision on the *Bangladesh/Myanmar Situation*, “the Court might also have jurisdiction pursuant to Article 12(2)(a) of the Statute over the crime of persecution,

considering that an element or part of this crime (i.e. the cross-border transfer) takes place on the territory of a State Party". Thus, jurisdiction over persecution may arise where the forcible cross-border transfer of persons forms part of the persecutory conduct.

5. Can the Bangladesh/Myanmar precedent with regards to the ICC's jurisdiction be extended?

The Court's reasoning regarding the extraterritorial extension of its jurisdiction has received a polarising response. The extensive interpretation of the Rome Statute has gained the acceptance of [scholars](#) and international organizations, including the [UN General Assembly](#), the [International Commission of Jurists](#), and [Members of the Canadian Partnership for International Justice](#) in the *Bangladesh/Myanmar* case, who argued that it accords with customary international law on jurisdiction, as well as with State practice and the drafting history and purpose of the Rome Statute, and facilitates redress and access to justice for all victims. Similarly, in the *Lithuania/Belarus Situation*, the OTP's activities has found the support from [several scholars](#) as well as [international](#) and [Belarusian NGOs](#). Others, however, have raised concerns, pointing out that the *Lithuania/Belarus Situation* differs from the *Bangladesh/Myanmar Situation* in some important aspects.

In Myanmar, the Rohingya minority is a distinct ethnic and religious group. Some [600,000 individuals](#) were subjected to [mass forced displacement to Bangladesh by Myanmar's armed forces](#), involving widespread violence, the destruction of villages, and systematic atrocities that have been characterised as [ethnic cleansing](#). Victims were expelled from their homes and driven across the border into Bangladesh in a large-scale, state-orchestrated displacement from the territory in which they had historically lived. In a case still pending before the International Court of Justice (ICJ), The Gambia even [alleges violations of the Genocide Convention](#). In comparison, the UN [Group of Independent Experts in the Situation of human rights in Belarus](#) reported to the UN Human Rights Council in 2025 "that up to 600,000 individuals have been forced to leave Belarus since 2020". In its Findings on the situation in Belarus, the OTP outlines that the "alleged forced deportation was caused by a coercive environment" characterised by political repression, arbitrary arrest, and violence following the disputed 2020 presidential elections, directed against [actual or perceived political opponents](#).

Especially the different levels of use or threat of force raise the question whether the approach to transboundary jurisdiction developed in the context of ethnic persecution in Bangladesh may be applied to the situation of political violence and authoritarian repression in Belarus. While the legal elements of deportation, in particular the “forcible” nature of the transfer, may be interpreted broadly to encompass coerced departures, the factual and contextual differences between the two situations suggest that the [application of the Bangladesh/Myanmar precedent to the Lithuania/Belarus context](#) is complex and merits careful analytical engagement.

The OTP’s decision to open this investigation further creates tension with the principle of [state sovereignty](#) as it relates to and limits the Court’s jurisdiction. As a treaty-based institution, the ICC’s jurisdiction is, by its very nature, dependent on the consent of states. It remains controversial whether it suffices to rely on a single transnational element that has an effect on the territory of a State Party to bring the conduct within the Court’s scope of jurisdiction. Extending the Court’s authority over conduct occurring primarily on the territory of a non-State Party, such as Belarus, that has deliberately chosen not to ratify the Rome Statute, [raises questions](#) regarding the boundaries of the legal framework it was created to uphold. Critics have argued that such an expansive reading could allow any [State Party to serve as a jurisdictional gateway for ICC oversight of events in non-States Parties](#), an outcome that [risks weakening the legitimacy](#) of the Court. In addition, concerns have been raised as to the potential practical difficulties that may arise with regard to cooperation from non-States Parties.

Finally, [scholars](#) have cautioned against the unqualified extension of the Court’s expansive interpretation of jurisdiction in the *Bangladesh/Myanmar Situation* to other situations. In particular, it has been argued that the crime against humanity of deportation must be distinguished from the forcible displacement of persons within the territory of the same state on the basis of the specific *mens rea* required for deportation, namely the [intent to transfer](#) individuals across an international border.

6. What is the significance of the OTP’s announcement?

In the phase of preliminary examination, the OTP’s competencies included only fairly limited investigative powers. With the statement made by the Office, the proceedings

in the *Lithuania/Belarus Situation* have been entered into the stage of investigation proceedings, which opens up further investigative powers of the Office. The objective of the investigative phase is to establish whether certain crimes under the Court's jurisdiction may have happened in a certain temporal, political and/or geographical context, in this case the situation in Belarus since 1 May 2020. Once the Office has identified named suspects to be charged with and held individually accountable for specific crimes, the proceedings will be entered into the next procedural state: that of a criminal case. At the same time, the institutional framework of the Court is structured around a system of judicial checks and balances intended to safeguard the legality and procedural integrity of its proceedings. Decisions and determinations adopted by the OTP are subject to review by the Court's judicial divisions, including the Pre-Trial, Trial, and Appeals Chambers, each exercising distinct supervisory and adjudicative functions. Consequently, the commencement of an investigation cannot be understood as prejudging either the admissibility of potential cases or the Court's eventual findings on matters of jurisdiction, responsibility, or liability.

At a time when the ICC is facing significant pressure, the decision to open an investigation into crimes allegedly committed in Belarus marks a significant step in its development. As Professor Christoph Safferling, Director of the Nuremberg Academy, points out, "the *Lithuania/Belarus* investigation engages with cross-border crimes that continue to challenge traditional territorial limits of the Statute. While uncertainty remains regarding Article 12(2)(a) and non-State Party jurisdiction, this proceeding may offer an opportunity to clarify the Court's competencies, strengthen legal certainty, and enhance avenues for accountability as well as redress for victims of serious international crimes." Moreover, he adds that the fact that Lithuania has turned to both the ICC and the ICJ, seeking to resolve two distinct yet related legal issues, "indicates that international law remains an essential avenue for states to settle disputes peacefully and to address complex and evolving forms of harm. That these proceedings are taking place simultaneously, reflects the broader point that international law constitutes an [interconnected framework](#) whose overall coherence must be safeguarded, particularly at a time when the foundations of the rules-based international order are facing threats." To conclude, Professor Christoph Safferling adds that "the significance of the investigation, however, should not obscure the serious legal questions it raises. The Court's willingness to extend its jurisdiction over a non-State Party based on a contested jurisdictional interpretation is a step that

demands careful scrutiny. The legitimacy of any prospective proceedings will depend not only on the gravity of the alleged crimes, but on whether the ICC can demonstrate that its jurisdictional reasoning is principled, consistent, and capable of resolving legal concerns.”