

ANATOMY OF A CRIME



Filming for human rights can be dangerous. It can put you, the people you are filming and the communities you are filming in at risk. Carefully assess the risks before you press “record.”

INTRODUCTION

If you are using video for human rights documentation, justice, and accountability, it’s good to have a basic understanding of what lawyers need to prove to hold a person, state, or institution accountable for committing human rights violations. The goal of this section is to help you understand the structure of a crime so you can make informed decisions about where to point your camera so you collect more relevant information and, in turn, enhance the usefulness and evidentiary value of your footage.



KEY DEFINITIONS

Base Crime: An act or omission that constitutes an offense and is punishable by law. Some examples would include murder, torture, rape, pillaging, slavery, denial of a fair trial, attacking protected objects, violation of fair wage laws, illegal evictions, election fraud, etc.

International Crime: For a base crime to become an international crime, lawyers also have to prove the context in which the crime was committed. There are three recognized international crimes. They are:

War Crimes: These are base crimes (e.g., murder, torture, rape, pillaging, slavery, denial of a fair trial, attacking protected objects) that are committed in wartime.

Crimes Against Humanity: These are base crimes (e.g., murder, torture, rape, pillaging, slavery, denial of a fair trial, attacking protected objects) that are widespread or systematic and committed against civilians. They can be committed in either wartime or peacetime.

Genocide: The intent to destroy all or part of a group of people based on their nationality, ethnicity, race, or religion by killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to destroy a group, prevention of births, or forcibly transferring children from the group.

CATEGORIES OF ELEMENTS OF A CRIME

When a lawyer wants to prove their case, they need to prove two parts: i) that the underlying physical act occurred; and ii) the perpetrator had the required intent to commit the crime.

The “Physical Act” is sometimes called the “Material Element” or “Actus Reus.” It means the specific action(s) a person must take towards the commission of a crime. A person’s intent or “Mental State” is referred to as the “Mental Elements” or “Mens Rea.” It is simply what the person is thinking when they were committing the crime—did they intend to commit the crime or was it an accident?

Elements of a Crime: Every crime can be broken down into specific elements (or parts) that need to be proved. To secure a conviction, a lawyer must prove each element one by one. For example, to prove a defendant is guilty of the crime of “attacking protected objects,” a lawyer has to prove:

- The defendant directed an attack.
- The target of the attack was a building(s) dedicated to religion, education, art, science, charity, or was a historic monument and/or served as a hospital.
- The target of the attack was not a military target.
- The defendant knew that such a building(s) were dedicated to religion, education, art, science, charity, or was a historical, monument and/or served as a hospital.

Mode of Liability or Form of Participation: These are legal terms for “how” someone participated in the commission of a crime—or in other words, what their role was in the commission of the crime (e.g., individual perpetration, joint perpetration, conspiracy, aiding and abetting, instigating, ordering, command responsibility, etc.).

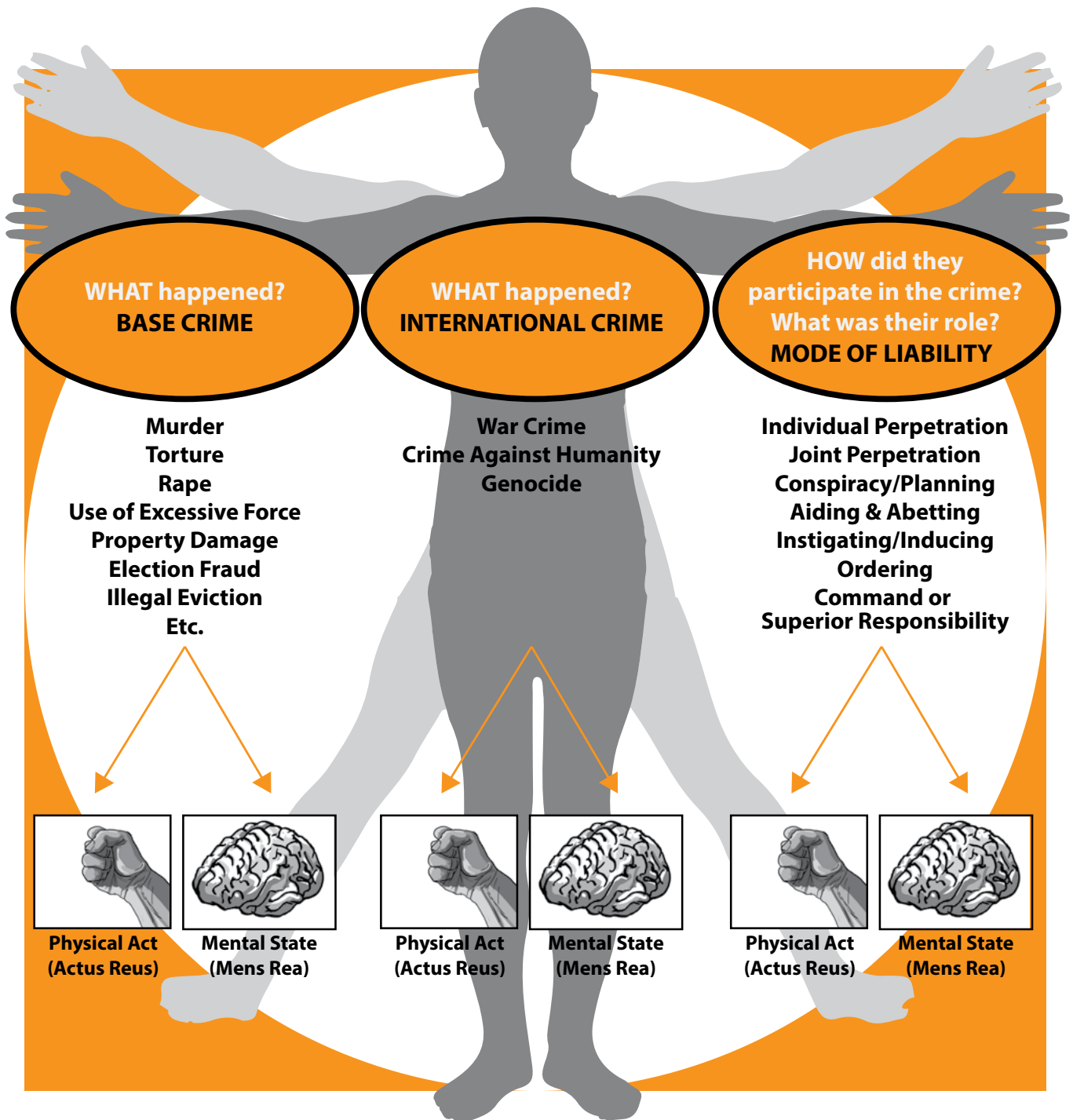
FOR MORE INFORMATION

To learn about “Modes of Liability,” see “Proving Responsibility: Filming Linkage and Notice Evidence” at vae.witness.org.

ANATOMY OF A CRIME

Who did it?

ONCE YOU HAVE A SUSPECT, THEN PROVE...



THE LAW: DISSECTING A CRIME

If you hope to use video to hold perpetrators accountable for human rights crimes or free someone who is falsely accused, it's important to understand the basic structure of a crime.

All over the world, to hold someone accountable for the commission of a crime, a lawyer must prove:

- what “crime” was committed—murder, torture, rape, property damage, hate speech, etc.;
- who did it—the identity of the perpetrator; and
- how the perpetrator participated in the commission of the crime. The legal terms for this are “mode of liability” (MOL) or “form of participation.”

In a conflict or mass-atrocity situation, a lawyer may also need to prove that the crime is not only a domestic crime but an international crime (and thus, considered even more serious) by proving the crime is:

- a war crime,
- a crime against humanity, or
- genocide.

Every crime and MOL is broken down into very specific elements that consist of “physical acts” and “mental state.”

- “Physical acts” are the specific action(s) a person must take towards the commission of a crime to be held accountable for the crime. This is also referred to as “material elements” or “Actus Reus” in some parts of the world.

Examples: The perpetrator “inflicted pain,” “killed,” “forcibly transferred,” “caused,” “deprived,” “seriously endangered,” “failed to act to protect,” etc.

- “Mental state” is the person’s state of mind when they were committing the crime. It is their intent. This is also referred to as “mental elements” or “Mens Rea”.

Examples: The perpetrator “knew,” “was aware,” “intended,” “meant to,” etc.

To secure a conviction, a lawyer must prove every element of the crime, one by one, with certainty. If there are twenty elements and the lawyer proves only nineteen, then the accused must not be found not guilty.



FOR MORE INFORMATION

To learn about “Modes of Liability” or “How” a person can participate in the commission of a crime see “Proving Responsibility: Filming Linkage and Notice Evidence” at vae.witness.org.

ELEMENTS OF A CRIME: EXAMPLE MATRIX

It's important to know that there is no reason to memorize all the elements of a crime. It's more important that you understand the principle that every base crime, international crime, and mode of liability can be broken down into elements. Each element must be proved by a prosecutor to secure a conviction.

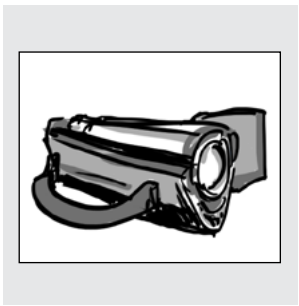
This example outlines the elements of "Torture" (base crime) as a "Crime Against Humanity" (international crime), committed by "Command Responsibility" (mode of liability). There are 18 elements that must be proved in this example.





| PHYSICAL ACTIONS also known as Material Elements of the Crime and Actus Reus | | |
|--|--|--|
| WHAT: Elements of the Base crime TORTURE | WHAT: Elements of the Int'l crime CRIMES AGAINST HUMANITY | HOW: Elements of the Mode of Liability COMMAND RESPONSIBILITY |
| <p>1. The accused inflicted severe physical or mental pain or suffering upon one or more persons.</p> <p>2. The person or persons were in the custody or under the control of the perpetrator(s).</p> <p>3. The pain and suffering did not arise from lawful sanctions.</p>  | <p>The conduct was committed as part of:</p> <p>4. an attack that was</p> <p>5. widespread or systemic and</p> <p>6. perpetrated against civilians.</p> | <p>7. The accused was a military commander or a person effectively acting as a commander of the forces that committed the crime.</p> <p>8. The forces that committed the crime were under the effective command control or effective authority of the accused.</p> <p>9. The crime was committed by such forces as a result of the failure of the accused to exercise control properly over his/her forces.</p> <p>10. The military commander or de facto authority failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.</p> |
| MENTAL STATE also known as Mental Elements of the Crime and Mens Rea | | |
| <p>The accused:</p> <p>11. Meant to inflict severe physical or mental pain or suffering.</p> <p>12. Was aware severe physical or mental pain would be caused in the ordinary course of the events.</p> <p>13. Was aware that the persons were under his/her custody or control.</p>  | <p>The accused knew that the conduct was part of or intended the conduct to be:</p> <p>14. an attack that was</p> <p>15. widespread or systemic and</p> <p>16. perpetrated against civilians.</p> | <p>17. The military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes.</p> |

WHY DOES THIS MATTER?

The reason it's important to understand the structure of a crime is simple: different images can help prove different elements. Understanding the structure will help you determine where to point your camera and ensure you don't miss the opportunity to capture a variety of footage that will provide a clearer picture of what happened.

Let's see how this works by looking at four of the elements above and considering how different video clips can help prove different elements.



| FOUR OF THE 18 ELEMENTS WE NEED TO PROVE | VIDEO CLIPS THAT COULD HELP PROVE THE ELEMENT |
|---|--|
| <p>The accused inflicted severe physical or mental pain or suffering upon one or more persons.</p>  | <p>Footage of:</p> <ul style="list-style-type: none"> • the actual commission of the torture • the instrument/s used to implement the torture • the sound (audio) of the victims' cries • medium and close-up shots of the injuries endured • medium and close-up shots of these injuries three months later, six months later • Etc. |
| <p>The conduct committed was widespread or systematic.</p>  | <p>Footage of:</p> <ul style="list-style-type: none"> • the same military unit committing torture in different locations • the same military unit committing torture on different dates • testimony of victims in different locations sharing what happened, when, where, and by whom • Etc. |
| <p>The accused was aware that such persons were under his/her custody or control.</p>  | <p>Footage of:</p> <ul style="list-style-type: none"> • a wide shot of the location • any restraints placed on the victim (handcuffs, gags, etc.) • weapons and whether they are being used to control the victim • the number of people surrounding the victim • guards placed around a perimeter • the perpetrators discussing the implementation of the torture • any identifying information that helps investigators understand who the perpetrator(s) and victim(s) are • Etc. |
| <p>The accused was a military commander or a person effectively acting as a commander of the forces that committed the crime.</p>  | <p>Footage of the accused commander:</p> <ul style="list-style-type: none"> • giving orders to his troops and the troops promptly obeying • giving commands over a satellite phone, cell phone, or radio • getting updates from the field via radio, cell phone, etc. • giving public speeches to the troops he controls • being honored by his troops at public events • Etc. |

KEY POINT

The table on the previous page illustrates the key point here, which is worth repeating:

Different images can help prove different elements of a crime.

On the frontlines, documenters tend to turn their camera toward the human rights violation as it is taking place. This footage is definitely valuable. But proving the actual violation is only part of what a lawyer needs to prove to secure a conviction. Understanding how a crime is structured will help you think about where else you should point your camera so your images can help prove different elements of the crime.

ELEMENTS OF A CRIME: ANOTHER EXAMPLE

Here's a simpler example. This chart shows the elements for the base crime of "murder" committed by "individual perpetration." This chart doesn't include a column for "international crime" because it's one person killing another outside of war or a mass atrocity situation. To prove murder when it's not a war crime, a crime against humanity, or genocide, we only need to prove four elements. Much easier.

| | WHAT: Base Crime MURDER | HOW: Mode of Liability INDIVIDUAL PERPETRATION |
|---------------------------------|---|---|
| PHYSICAL ACTION (Actus Reus) | 1. The accused killed one or more persons | 4. The accused committed the crime as an individual (as opposed to ordering the killing, providing aid, inciting the murder, etc.) |
| MENTAL STATE (Mens Rea) | 2. The accused meant to engage in the killing of one or more persons. 3. The accused meant to cause death or was aware that death was a likely consequence of his or her actions. | The accused meant to engage in the killing of one or more persons. The accused meant to cause death or was aware that death was a likely consequence of his or her actions. |

TEST YOUR SKILLS

Make a list of video clips that could help prove the four elements you need to prove to hold someone accountable for murder by individual perpetration. Consider video's strengths and limitations while making your list.

Now let's look at a story from the field to see how video can help prove an element of how a crime was committed.

FIELD NOTE

USING VIDEO TO HELP PROVE ONE ELEMENT OF “HOW”

A CRIME WAS COMMITTED

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA V. TOLIMIR

Basics

Tribunal: International Criminal Tribunal for the Former Yugoslavia (ICTY)

What Crimes: Genocide, Conspiracy to commit genocide, Extermination, Murder, Persecutions, Forcible transfer, Deportation

Who: Zdravko Tolimir, Assistant Commander for Intelligence and Security of the Bosnian Serb Army, reporting directly to General Ratko Mladić

How: Joint Criminal Enterprise. He and other Main Staff with the Army of the Republika Srpska mapped out, agreed to, and implemented a plan to forcibly remove Bosnian Muslims from areas that the UN had declared “safe areas” for civilians and to execute Muslim men and boys.

Backstory

Beginning in 1991, the six republics of Yugoslavia—Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia—began unraveling in a succession of increasingly tumultuous wars that continued until 2001. The International Criminal Tribunal for the Former Yugoslavia (ICTY) was created to prosecute perpetrators of war crimes, crimes against humanity, and genocide committed by all sides in the Yugoslav wars. One of the incidents the ICTY investigated and brought to trial was the forced evictions and massacre at Srebrenica.



In July 1995, over 8,000 men and boys were massacred and between 25,000–30,000 women, girls, and elderly were forcibly moved from their homes around the town of Srebrenica in eastern Bosnia and Herzegovina. The UN described this mass murder as the worst crime on European soil since World War II.

General Ratko Mladić and the Main Staff of the Bosnian Serb Army of Republika Srpska (VRS) stood accused of perpetrating the crimes at Srebrenica. Commander Zdravko Tolimir was part of this staff and one of Mladić’s most trusted allies.

To successfully prosecute Commander Tolimir for the massacres and evictions at Srebrenica, the prosecution had, in part, to prove that Tolimir was a member of the inner command circle that knowingly designed and assisted in carrying out a plan to eradicate the Bosnian Muslims. This element can be difficult for prosecutors to prove. As luck would have it, however, they were given help by a series of mundane video clips of speeches and meetings, one of which was filmed by a partygoer who unwittingly captured key evidence.

DEFINED

In non-legal terms, “joint criminal enterprise” refers to two or more people committing a crime by planning, organizing, or directing the perpetration of the crime, even if they do not directly participate in the crime’s execution.

At a New Year's Eve party with senior leaders of the VRS, Commander Tolimir's boss, General Mladić, gave a speech that was recorded on camera. Here are several quotes from his speech:



Ladies, dear guests, colleagues, officers and generals. General Gvero asked me to say a few words.

It was long ago, in 1992, a difficult year, when it was difficult to look at this area even on a map. Fortunately, there are witnesses. One of them is my wife, and several associates and comrades-in-arms...[B]ut I am saddened that the most important among them, General Tolimir and his wife are not with us tonight. As you know he is on assignment fighting the Serbian people in Vienna, battling the dragons of the world.

The most important decisions were made by a group of five people. This was the inner core of the Main Staff, which, in addition to myself, included General Milovanovic as my right hand man, Generals Đukic, Gvero, and General Tolimir. This was the inner core.

From Bokganica, General Tolimir and Kucic fired on Ribic....

I also want to thank the rest of my assistants and associates, General Đukic, General Gvero, General Tolimir.

Video's Role

The importance of this speech as a source of evidence should be clear. Mladić clearly listed, by name, the main decision makers and thanked them for their assistance. Tolimir was one member of his staff whom he thanked personally. This helped prove that Tolimir was member of the inner core and participated in the decision making. In finding Tolimir guilty, the three-judge panel clearly stated that they relied, in part, on this videotaped speech to conclude that Tolimir was indeed a member of the inner circle of the command, or the collegium, making “the most important decisions.”

Outcome

On December 2012, Commander Tolimir was found guilty of genocide, conspiracy to commit genocide, extermination, murder, persecutions, and forcible transfer. He was sentenced to life in prison. Tolimir died while in detention on February 8, 2016.

KEY POINT

This short clip does not show a crime in progress nor does it include any footage of the defendant, Commander Tolimir. The clip has little to no news value, whereas a clip showing Mladić and Tolimir participating in the execution of civilians would most certainly be shown on international news platforms. A video clip of a suspected war criminal giving a speech thanking his friends and colleagues isn't something that captures the world's attention.

But, when we talk about bringing high-level commanders to justice — especially those who sit many steps away from the actual commission of the crimes — lawyers must prove many different elements, both to establish that the underlying crime was committed, and that there's enough of a connection between the commander and the underlying crime that the commander should be held responsible for its occurrence. While this mundane footage seems unremarkable to most people, it can be invaluable in a courtroom. In this case, the innocuous footage of a New Year's Eve speech helped to prove that Tolimir actively participated in the military decision-making process. This, in turn, helped put Tolimir behind bars.

SHOWN IN THIS CLIP

To watch this two-minute clip, go to bit.ly/VaE_Tolimir. The clip shows General Mladić speaking into a microphone at the New Year's Eve party. He is addressing other members of the military and invited guests. The transcript of the key parts of this speech are to the left.

ADDITIONAL RESOURCES

Case Information Sheet, Zdravko Tolimir by the International Criminal Tribunal for the Former Yugoslavia.
http://www.mediafire.com/view/atyhluxar7c9g09/ICTY_Case_Info_Sheet_Tolimir.pdf.

Judgment in Prosecutor v. Tolimir by the International Criminal Tribunal for the Former Yugoslavia.
http://www.mediafire.com/view/x7xpuhqotpau3sc/2012_12_12_Trial_Court_Judgement_ICTY_Tolimir.pdf.