

4 February 1999

Original: English

**Preparatory Commission for the International
Criminal Court**

New York

16–26 February 1999

26 July–13 August 1999

29 November–17 December 1999

Proposal submitted by the United States of America**Draft elements of crimes****Addendum****Contents**

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IV. Article 7: Crimes against humanity

Article 7.1(a): Crime against humanity of murder

Elements

1. That the accused intended to kill or cause death to one or more persons.
2. That the accused killed or caused the death of one or more persons.
3. That the killing was without, and the accused knew it was without, lawful justification or excuse.
4. That the killing was part of, and the accused knew it was part of, a widespread or systematic attack directed against a civilian population.

Comments

As with all matters of fact, the accused's knowledge of a particular fact, e.g., the existence of a widespread or systematic attack, can be inferred from the circumstances and other facts presented to the Court.

Article 7.1(b): Crime against humanity of extermination

Elements

1. That the accused intended to kill or cause the death of a population, or a large portion of a population.
2. That the accused killed or caused the death of a population, or a large portion of a population.
3. That the killing was without, and the accused knew it was without, lawful justification or excuse.
4. That the killing was part of, and the accused knew it was part of, a widespread or systematic attack against a civilian population.

Comments

The lawful justification or excuse element of this offence would mean, for example, that a siege or an embargo would not result in culpability with respect to this offence.

The killing in this case need not be a direct act of violence. The actus reus can include the intentional infliction of conditions of life, inter alia, the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.

Extermination is distinguished from genocide in that it does not require the targeting of the population to be based solely on nationality, race, ethnicity or religion. It is distinguished from murder in that it involves an intent to kill, and killing of, a population, or a portion of a population, as opposed to one person.

Article 7.1(c): Crime against humanity of enslavement

Elements

1. That the accused intended to exercise powers attaching to the right of ownership over one or more persons.
2. That the accused either purchased or sold one or more persons or deprived them of their liberty and forced them to do labour without compensation.
3. That any deprivation of liberty or forced labour was without, and the accused knew it was without, lawful justification or excuse.
4. That the purchase, sale or deprivation and forced labour was part of, and the accused knew it was part of, a widespread or systematic attack against a civilian population.

Comments

The "without lawful justification or excuse" requirement would mean, for example, that forced labour, mandated as part of a lawfully imposed judicial sentence, would not result in culpability.

"Purchased or sold" need not be limited to the establishment of technical legal ownership but can include effectively equivalent transactions.

Article 7.1(d): Crime against humanity of deportation

Elements

1. That the accused intended to transfer a population from its lawful place of residence.
2. That the accused caused one or more persons in that population or group to be forcibly transferred from their lawful place of residence through expulsion or other coercive acts.
3. That the forcible transfer was part of a plan or policy designed to result in the transfer of the target population.
4. That the forcible transfer was without, and the accused knew it was without, lawful justification or excuse.
5. That the transfer was part of, and the accused knew it was part of, a widespread or systematic attack against a civilian population.

Comments

The requirement that the act be without lawful justification or excuse precludes prosecutions for justified movements such as: any movement of a population consistent with article 49 of the Fourth Geneva Convention, 1949; any movement in case of an emergency or calamity threatening the life or well-being of the population; any sentence of punishment lawfully imposed; and any movement required as a necessary adjunct of a lawful internment.

Article 7.1(e): Crime against humanity of imprisonment

Elements

1. That the accused intended to imprison one or more persons.
2. That the accused imprisoned such person or persons.
3. That the imprisonment was, and the accused knew it was, in violation of fundamental rules of international law.
4. That the imprisonment was part of, and the accused knew it was part of, a widespread or systematic attack against a civilian population.

Comments

The "in violation of fundamental rules of international law" parallels the "without lawful justification or excuse" element of other offences and in this instance it means, for example, that detention of persons for the prevention of the spreading of infectious diseases or to otherwise safeguard health and safety would not constitute an offence under this article.

As defined in section II,¹ the term "imprison" includes other severe deprivations of physical liberty.

Article 7.1(f): Crime against humanity of torture

Elements

1. That the accused intended to inflict severe physical or mental pain or suffering on one or more persons.
2. That the accused had custody of or control over such person or persons at the time of the offence.
3. That the accused committed acts resulting in the infliction of severe physical or mental pain or suffering upon such person or persons.
4. That the acts were not inherent in or incidental to lawful sanctions.
5. That the acts resulting in pain or suffering were part of, and the accused knew they were part of, a widespread or systematic attack against a civilian population.

Article 7.1(g)-1: Crime against humanity of rape

Elements

1. That the accused intended to attack one or more persons through acts of a sexual nature.
2. That the accused penetrated any part of the body of another person with the accused's sexual organ, or penetrated the anal or genital opening of another person with any object or other part of the accused's body.
3. That the penetration was committed by force.
4. That the assault was part of, and the accused knew it was part of, a widespread or systematic attack against a civilian population.

Article 7.1(g)–2: Crime against humanity of sexual slavery

Elements

1. That the accused intended to attack one or more persons by causing them to engage in acts of a sexual nature.
2. That the accused deprived one or more persons of their liberty.
3. That the accused, through force or threat, caused the person or persons to engage in acts of a sexual nature.
4. That such deprivation and acts were part of, and the accused knew they were part of, a widespread or systematic attack against a civilian population.

Comments

Besides physically detaining or confining a person to a particular place without consent, the deprivation of liberty required by this offence could also include severe deprivations of autonomy and freedom of movement, which are universally recognized as impermissible under international law.

Article 7.1(g)–3: Crime against humanity of enforced prostitution

Elements

1. That the accused intended to attack one or more persons by causing them to engage in acts of a sexual nature.
2. That the accused, in furtherance of this intent, deprived one or more persons of their liberty and forced them to engage in acts of a sexual nature with one or more other persons.
3. That the accused received some pecuniary or other material benefit in exchange for or in connection with the sex acts of the person or persons.
4. That the deprivation of liberty and forced acts were part of, and the accused knew they were part of, a widespread or systematic attack against a civilian population.

Article 7.1(g)–4: Crime against humanity of forced pregnancy

Elements

1. That the accused intended to affect the ethnic composition of a population or to carry out another grave violation of international law.
2. That, in furtherance of that intent, the accused imprisoned one or more persons within a confined area.
3. That the person imprisoned had been previously raped or otherwise forcibly impregnated, and the accused knew that such person had been previously raped or forcibly impregnated.
4. That the imprisonment was without, and the accused knew it was without, lawful justification or excuse.

5. That the imprisonment was part of, and the accused knew it was part of, a widespread or systematic attack against a civilian population.

Comments

The "without lawful justification or excuse" element in this offence would, for example, preclude prosecution for acts committed as a logical consequence of domestic laws involving pregnancy.

Article 7.1(g)–5: Crime against humanity of enforced sterilization

Elements

1. That the accused intended to terminate the natural reproductive capacity of one or more persons.
2. That the accused committed an act that resulted in the termination of the natural reproductive capacity of such person or persons.
3. That the act was committed without such person's or persons' consent.
4. That the act was without, and the accused knew it was without, lawful justification or excuse.
5. That the act was part of, and the accused knew it was part of, a widespread or systematic attack against a civilian population.

Article 7.1(g)–6: Crime against humanity of sexual violence

Elements

1. That the accused intended to attack one or more persons through acts of a sexual nature.
2. That the accused committed by force an act against one or more persons.
3. That the act was of a sexual nature or caused the person or persons to engage in activity of a sexual nature.
4. That the act involved a level of violence comparable to that of rape.
5. That the act was part of, and the accused knew it was part of, a widespread or systematic attack against a civilian population.

Article 7.1(h): Crime against humanity of persecution

Elements

1. That the accused intended to severely deprive an identifiable group of persons of life or other fundamental rights universally recognized under international law.
2. That the deprivation was motivated by:
 - (a) The target group's race or gender;

- (b) The target group's political, racial, national, ethnic, cultural or religious affiliation; or
 - (c) Other grounds universally recognized as impermissible under international law.
3. That the accused deprived one or more members of the group or life, or other fundamental rights universally recognized under international law.
 4. That the deprivation was without, and the accused knew it was without, lawful justification or excuse.
 5. That the deprivation was carried out in conjunction with another offence within the subject-matter jurisdiction of the present Statute.
 6. That the deprivation was part of, and the accused knew it was part of, a widespread or systematic attack against a civilian population.

Comments

The "without lawful justification or excuse" element of this offence precludes, for example, prosecution for legitimate enforcement of immigration and naturalization laws.

Article 7.1(i): Crime against humanity of enforced disappearance

Elements

1. That the accused intended to deny one or more persons the right to enjoy normal legal protections for a prolonged period of time.
2. That, in furtherance of this intent, the accused arrested, detained or abducted one or more persons.
3. That the arrests, detentions or abductions were accomplished with the authorization, support or acquiescence of a State or political organization.
4. That the arrests, detentions or abductions were followed by a refusal to acknowledge the arrests, detentions, or abductions by the accused and other persons with official responsibility to make such acknowledgement.
5. That the arrests, detentions or abductions resulted in the inability of the person or persons to enjoy normal legal protections for a prolonged period of time.
6. That the arrests, detentions or abductions were part of, and the accused knew they were part of, a widespread or systematic attack against a civilian population.

Article 7.1(j): Crime against humanity of apartheid

Elements

1. That the accused committed one or more of the crimes against humanity defined in article 7 of the Statute or acts of a similar character that were grossly inconsistent with the treatment expected of one human being from another under generally accepted rules of international law.
2. That there existed an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups.

3. That the crime was committed in the context of such institutionalized regime and with the intent of maintaining that regime.
4. That the accused's acts were committed with the intent of maintaining that regime.
5. That the acts were part of, and the accused knew they were part of, a widespread or systematic attack against a civilian population.

Comments

Excepting the unusual circumstance of an act rising to the level required by element 1 but not being otherwise covered in article 7, satisfying the first element of this offence necessarily mandates satisfaction of all the elements of another crime against humanity. It thus becomes an aggravated form of another crime against humanity.

Article 7.1(k): Crime against humanity of inhumane acts

Elements

1. That the accused intended to subject one or more persons to great suffering or serious injury to body or to mental or physical health.
2. That the accused committed an act or acts against such person or persons that were grossly inconsistent with universally recognized principles of humanity and generally accepted rules of international law and were of similar character to acts covered by other crimes against humanity defined in article 7 of the Statute.
3. That act or acts subjected the person or persons to great suffering or serious injury to body or to mental or physical health.
4. That the act or acts were part of, and the accused knew they were part of, a widespread or systematic attack against a civilian population.

Notes

¹ See PCNICC/1999/DP.4.