

# Terms in International Justice

# **Crimes Against Humanity**

The concept of "crimes against humanity" dates to the mid-nineteenth century, but the first list of such crimes was not integrated into an international document until the Charter of the Nuremberg Tribunal in 1945. Today, the Rome Statute of the International Criminal Court distinguishes ordinary crimes from crimes against humanity as acts, such as murder, which have been "committed as part of a widespread or systematic attack," "directed against a civilian population," and committed according to "a state or organizational policy."

The Rome Statute of the International Criminal Court defines the following 11 types of acts as being capable of amounting to crimes against humanity:

- Murder intentional killing;
- Extermination intentional killing on a large scale directed at members of groups; it includes depriving people of food or medicine, with the intention of bringing about the destruction of part of the population;
- Enslavement exercise of the power of ownership over a person; it includes trafficking in persons, in particular, women and children;
- Deportation or forcible transfer of population forcing people to leave an area in which they are lawfully present, without grounds permitted under international law; deportation involves crossing national frontiers while forcible transfers take place within national borders;
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law:
- Torture intentionally causing severe physical or mental pain or suffering to a person in custody or under the control of the accused;
- Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity – rape and other forms of sexual violence may also constitute other crimes within the ICC's jurisdiction such as torture as a crime against humanity or a war crime;
- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any crime under the Statute intentional and severe deprivation of fundamental rights contrary to international law because of the identity of the group or collectivity and linked to some other act which constitutes a crime against humanity, war crime or genocide;
- Enforced disappearances see next page.
- The crime of apartheid inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group committed with the intention of maintaining that regime; and
- Other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health inhumane acts of a similar gravity to other crimes against humanity.

#### **Enforced Disappearances**

A enforced disappearance refers to the arrest, detention or abduction of persons, by or with the

authorization, consent or acquiescence of a state or political organization, followed by either (1) a refusal to acknowledge the deprivation of freedom or (2) a refusal to give information on the fate of "disappeared" persons, with the intention of removing them from the protection of the law for a prolonged period of time. "Disappeared" people are often at risk of torture or extrajudicial execution.

# **Extrajudicial Executions**

An extrajudicial execution is an unlawful and deliberate killing carried out by order of a government or with its complicity. It can also be referred to as a political or "death squad" killing.

#### Genocide

Genocide is any one of a number of acts aimed at the destruction of all or part of certain groups of people; it is this intent that distinguishes genocide from other crimes against humanity. Article 6 of the Rome Statute gives the ICC jurisdiction over genocide as defined in Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (otherwise known as the Genocide Convention). This definition is considered part of international customary law and, therefore, binding on all states – whether they have ratified the Genocide Convention or not.

Under the Rome Statute of the ICC, the following five prohibited acts – if committed with the intention to destroy all or part of a national, ethnical, racial or religious group, as such – may constitute genocide:

- Killing members of the group;
- Causing serious bodily or mental harm to the members of a group;
- Deliberately inflicting on a group conditions of life calculated to bring about its physical destruction:
- Imposing measures intended to prevent births within a group; and
- Forcibly transferring children of a group to another group.

# **Human Rights Law**

International human rights law, including civil, cultural, economic, political and social rights, applies both in peacetime and during armed conflict and is legally binding on states, their armed forces and other agents. It establishes the right of victims of serious human rights violations to remedy, including justice, truth and reparations.

#### **Impunity**

Impunity is the exemption from punishment, penalty or harm. The word comes from the Latin *impunitas*, "the absence of punishment." Impunity is fostered by governments' refusal to investigate crimes, by granting government officials immunity from prosecution, and/or by enacting amnesty laws to shield a person or a group of people from accountability. The toll of impunity is often seen in the continued suffering of victims and the steady erosion of the rule of law.

#### **International Criminal Law**

International criminal law establishes individual criminal responsibility for certain violations and abuses of international human rights and international humanitarian law, such as war crimes, crimes against humanity and genocide, as well as torture, extrajudicial executions and enforced disappearance.

#### **International Humanitarian Law**

International humanitarian law (IHL), also known as the laws of armed conflict, includes rules protecting civilians and other individuals not participating in combat, as well as rules regulating the means and methods of warfare. It also includes rules imposing obligations on the power occupying a terri-

tory. International humanitarian law binds all parties to an armed conflict, including non–state armed groups. The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are the principal instruments of international humanitarian law.

#### **Torture**

Torture cannot be defined by a list of prohibited practices. Human rights treaties define it in a number of different ways, reflecting the different contexts in which they were drafted and the purposes of each particular treaty.

The Convention against Torture, which was adopted in 1984 by the UN General Assembly, provides not the sole, but certainly an authoritative, definition of torture in international law. Torture is defined in the Convention as the intentional infliction of severe physical or mental pain or suffering for purposes such as obtaining information or a confession, or punishing, intimidating or coercing someone. The term is applied to those forms of ill–treatment that are particularly severe and are deliberate.

The Convention prohibits torture as an independent crime, as a war crime, and as a crime against humanity, absolutely and in all circumstances.

Every act of torture is a crime under international law:

- If torture is committed in an armed conflict, it constitutes the war crime of torture;
- If torture is committed as part of a systematic or a widespread pattern of similar acts, it constitutes the crime against humanity of torture;
- The Geneva Conventions prohibit the war crime of torture in both international wars and internal
  conflicts such as civil wars or rebellions; and
- The Rome Statute of the International Criminal Court prohibits torture when it constitutes genocide, a crime against humanity or a war crime.

#### **War Crimes**

Article 8 of the Rome Statute of the International Criminal Court (ICC) gives the ICC jurisdiction over a wide range of war crimes, whether committed during *international* armed conflict or during *internal* armed conflicts, such as civil wars, which are the most common conflicts today. Unlike crimes against humanity, a war crime can be a single, isolated, dispersed or random act. There is no requirement for the act to be widespread and systematic.

Under the Rome Statute of the International Criminal Court, war crimes committed during international armed conflict fall into two major categories.

First, the ICC can try persons accused of grave breaches of the four Geneva Conventions of 1949. These include the following acts, when committed against persons protected by the Conventions, including wounded soldiers, wounded or shipwrecked sailors, prisoners of war and civilians in occupied territories: willful killing; torture or inhumane treatment, including biological experiments; willfully causing great suffering, or serious injury to body or health; extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; compelling a prisoner of war or other protected person to serve in the forces of a hostile state; willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; unlawful deportation or transfer or unlawful confinement; and taking of hostages.

Second, the Court has jurisdiction over a wide range of other violations of international humanitarian law, including violations recognized in the Hague Regulations and Protocol I to the Geneva Conventions and in international customary law, including:

- Prohibited attacks on civilians, including: intentional attacks against the civilian population as such, civilian objects, humanitarian assistance or peace–keeping missions, as well as attacks when it is known that it will cause incidental loss of life or injury to civilians or damage to civilian objects which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; attacks against buildings, material, medical units and transport and personnel using the Red Cross or Red Crescent emblems; and against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments and hospitals, provided they are not military objectives;
- Harm to defenseless persons, such as: killing or wounding soldiers who have surrendered; physical
  mutilation or medical or scientific experiments which are neither medically justified nor in the
  interest of the persons, and which cause death to or seriously endanger their health; outrages upon
  personal dignity, in particular humiliating and degrading treatment; rape and other forms of sexual
  violence; and use of human shields;
- Certain prohibited methods of warfare, such as misuse of a flag of truce, United Nations or enemy
  insignia or the emblems of the Red Cross and Red Crescent; declaring that no quarter will be
  given; pillaging or destroying or seizing enemy property, unless justified by military necessity; use
  of prohibited weapons, such as poison or poisoned weapons; certain gases, expanding bullets and
  other weapons added to the Statute by amendment; intentionally using starvation of civilians as
  a method of warfare; and conscripting or enlisting children under the age of fifteen years into the
  national armed forces or using them to participate actively in hostilities; and
- Certain prohibited acts in occupied territory or against enemy nationals, including the transfer, directly or indirectly, by the occupier of parts of its own civilian population into the territory, or the deportation or transfer of all or parts of the population of the occupied territory; and abolishing or suspending legal rights of enemy nationals or compelling them to take part in military operations of war against their own country.

The Rome Statute also includes three types of war crimes in internal armed conflict:

- Violations of the common Article 3 of the Geneva Convention against civilians, the wounded and
  detainees, including: violence to life and person, in particular murder of all kinds, mutilation,
  cruel treatment and torture; committing outrages upon personal dignity, in particular humiliating
  and degrading treatment; taking of hostages; and the passing of sentences and the carrying out of
  executions without previous judgment pronounced by a regularly constituted court, affording all
  judicial guarantees which are generally recognized as indispensable.
- Violations of humanitarian law generally recognized in Protocol II of the Geneva Conventions, including: intentional attacks against the civilian population as such, against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Red Cross and Red Crescent; against humanitarian assistance or UN peacekeeping missions; against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, provided they are not military objectives; pillaging; rape and other crimes of sexual violence; conscripting or enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities; displacement of the civilian population not justified by their security or imperative military reasons; and
- Acts which traditionally been recognized as war crimes only in international armed conflict, including: Killing or wounding treacherously a combatant adversary; declaring that no quarter will be given; physical mutilation or medical or scientific experiments; and destruction or seizure of the property of an adversary, unless justified by military necessity.