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CILRAP: Centre for International Law Research and Policy

Centre for International Law Research and Policy

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CLICC Contributors and Editor

CLICC enjoys contributions from more than 40 experts in the field, from academia as well as practitioners, and from jurisdictions around the world. The commentary is edited by Swedish international law academic Dr. Mark Klamberg, who conceived CLICC and co-ordinates the CLICC team.



CLICC Chief Editor, Dr. Mark Klamberg

CLICC Commentary on the Law of the International Criminal Court

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CILRAP: Centre for International Law Research and Policy

Commentary on the Law of the International Criminal Court



An online service in the
CMN Knowledge Hub

CLICC: An online Commentary, continuously updated, linked to legal sources

The establishment of international criminal jurisdictions such as the International Criminal Court (ICC) presents new challenges for legal practitioners as well as scholars in their legal research. High-quality legal commentaries can be of great assistance for both practitioners and scholars.

The Commentary on the Law of the International Criminal Court ('CLICC') is the only commentary in the field of international criminal law that is freely available online. Commentaries that are only available in print have some limitations: they are costly to acquire, quickly outdated by evolving case law and other legal developments, and have limited functionality.

CLICC seeks to assist users who are negatively affected by such constraints. As an online commentary, available free-of-charge for all users, it is continuously updated, and has functionality that is not possible in print. CLICC is part of the CMN Knowledge Hub of the Centre for International Law Research and Policy. CLICC is hyperlinked to the ICC Legal Tools, which provide free online access to most legal documents that may be relevant to cases involving core international crimes. CLICC will also be published as a printed book.

Basic structure

The commentary of the CLICC follows the structure of the provisions of the ICC Statute and Rules of Procedure and Evidence. Its functionality includes hyperlinks to case law and doctrine, and cross-references to related online services. In this way CLICC offers an integrated online knowledge environment for international criminal law.

How it works

There is a hyperlinked footnote after each provision and sub-provision, as applicable, of the ICC Statute. The user can access the commentary by clicking on the footnote (1). There are additional links in the commentary to case law (2), to the ICC Legal Tools (3), and to doctrine (4). The case law includes full-length documents from the ICTY, ICTR and ICC as part of the ICC Legal Tools Database.

Additionally, there are links to the Elements of Crime document, the ICC Case Matrix Elements Digest, and ICC Case Matrix Means of Proof Digest.

All hyperlinked resources are freely available online.

The diagram illustrates the CLICC structure and functionality. It shows a flow from Article 6 of the ICC Statute to a detailed commentary on Article 6(e), which then links to various legal sources including case law, ICC Legal Tools, and doctrine.

Article 6
Article 6 Genocide[33]
 For the purpose of this Statute, "genocide" means any of the following acts committed with intent[34] to destroy, in whole or in part,[36] a national, ethnical, racial or religious group,[37] as such:[38]

(a) Killing members of the group:[39]
 (b) Causing serious bodily or mental harm to members of the group:[40]
 (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part:[41]
 (d) Imposing measures intended to prevent births within the group:[42]
 (e) Forcibly transferring children of the group to another group.[43]

Article 7
 "Crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population,[44] with knowledge of the attack:[45]

(a) Murder:[46]
 (b) Extermination:[47]
 (c) Enslavement:[48]
 (d) Deportation or forcible transfer of population:[49]
 (e) Imprisonment or other severe deprivation of physical liberty in violation of international law:[50]
 (f) Torture:[51]
 (g) Rape, sexual slavery, enforced prostitution, forced marriage, enforced sterilization, or any other form of sexual violence of comparable gravity.

Article 6(e)
 [43] (e) Forcibly transferring children of the group to another group.
 The Elements of Crime specify that the act under this alternative consists in the transfer of one or more persons from a protected group to another group, when these persons belonged to the protected group and were below the age of 18 years (Elements of Crime, Article 6, elements 1, 2, 4 and 5). The potential age range of the victims is therefore more extensive than that envisaged in other international crimes (see eg Art 8(2)(b)(xxvi) ICCST and Art 8(2)(vii)).
 The transfer must have been carried out in a 'forcible' manner. In that regard, however, the ad hoc tribunals had already emphasised that it was the aim of the 'physical transfer', but also against 'acts of threats or coercion' (Prosecutor v Jean-Paul Akayesu, (Case No. ICTR 988, para 509). Today, the Elements of Crime provide that the word 'forcibly' is 'not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment.' (Elements of Crime, Art. 6, element 1, note 5).
 The perpetrator must have had intent with regard to the consequence of the crime, ie, the completed transfer from one group to another group. However, the fact that the victim of the transfer was a child, is a circumstantial element. In this regard, the Elements of Crime make clear that a standard lower than knowledge is sufficient for the subjective element: it is enough that the perpetrator 'should have known' that the victim had not yet reached the age of 18 years (Elements of Crime, Art. 6(e), 6th element) It is one of the rare cases in which the mens rea for one of the underlying acts of genocide deviates from the standard established by Article 30 of the Rome Statute.

Crossreference:
 1. Elements of Crime
 2. ICC Case Matrix Elements Digest
 3. ICC Case Matrix Means of Proof Digest

Doctrine
 1. Behrens, Paul, 'A moment of kindness? Consistency and genocidal intent', in Henham, Ralph / Behrens, Paul, The Criminal Law of Genocide (Ashgate 2007) [Behrens 2007]
 2. Behrens, Paul, 'Assessment of International Criminal Evidence: The Case of the Unpredictable Génocidaire', (2011) Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht 71: 662-89
 3. Behrens, Paul / Henham, Ralph, Elements of Genocide (Routledge 2012)
 4. Behrens, Paul, 'The mens rea of genocide', in Behrens, Paul / Henham, Ralph Elements of Genocide (2012) [Behrens 2012a]
 5. 'The mens rea of Genocide Law', in Behrens, Paul / Henham, Ralph Elements of Genocide (2012) [Behrens 2012b]

1. Hyperlinks to commentary

2. Hyperlinks to case law

3. Hyperlinks to ICC Legal Tools

4. Hyperlinks to doctrine

International Criminal Tribunal for Rwanda
 Tribunal pénal international pour le Rwanda
 CHAMBER I - CHAMBRE I
 OR : ENG
 Before:
 Judge Laitiy Kama, Presiding
 Judge Lemant Aspegren
 Judge Navanethem Pillay
 Registry:
 Mr. Agwu U. Okali
 Decision of: 2 September 1998
 THE PROSECUTOR
 VERSUS
 JEAN-PAUL AKAYESU
 Case No. ICTR-96-4-T
 JUDGEMENT
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