

The Evil Dictator's Guide to Genocide

Deliberate Infectious Disease Spread

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April 9, 2008

Rome Statute of the International Criminal Court

Article 6 Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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

See also Elements of Crimes.

I. Quick Overview

A. Benefits

- Eradicate targeted populations you don't like.
- Don't get caught. Stay in power.

B. Why Use Infectious Diseases to Commit Genocide?

- Cheaper than violent attacks
- More quiet than violence
- Faster than starvation
- Contagious infected victims as weapons against others
- Perception of infectious disease outbreaks as naturally occurring
- Requires fewer conspirators
- No explicit crime under the Rome Statute

C. Modus Operandi

- Infection from single source
 - One location (easier to control)
- Infection from multiple sources
 - Geographically targeted
 - Group-specific activity targeted (e.g., ceremonies)
 - Genetically targeted

D. Risks

- Accidentally infecting the "good" people
 - Find reason to travel abroad
 - Provide vaccines and treatments
- ICC Prosecutor
- Pesky law students

E. Possible Outcomes

- The "*perfect crime*"
- ICC unable to prosecute due to lack of jurisdiction over the crime or the person.
- Prosecuted before the ICC --> innocent
- Prosecuted before the ICC --> guilty, imprisonment

II. Four Types of Infectious Disease Spread "Crimes"*

A. First- and second-degree = Knowingly and Intentionally

You knowingly and intentionally attempt or succeed in infecting members of a protected group for the purpose of its destruction, in whole or in part. Worry about international criminal law and the crime of genocide. Continue reading this Guide.

B. Third-degree = Recklessly

You implement government policies that favor infectious disease spread and then recklessly continue to pursue these policies despite learning that your policies could cause members of a protected group to die from infectious disease.

It is legally uncertain whether you would be held criminally liable for your reckless behavior under the Rome Statute.¹ Continue reading this Guide, just in case.

C. Fourth-degree = Negligent

Mismanagement and poor decision-making may render you incompetent in the eyes of your people and other governments. While you look bad, your negligent behavior does not make you criminally liable before the ICC.

D. Nth-degree = Inability

Corruption, drought, and increased fuel and food prices cause you to be unable to respond to a sudden infectious outbreak in a targeted group. Seek international aid to treat those infected and to thwart its spread to other populations. It is the moral thing to do, and it is in your self-interest.

* Solely for illustration purposes.

¹ See O'Sullivan, Chapter 18: *Mens Rea* (discussing difference in *mens rea* standards between common law and civil law and the legal uncertainty of how the ICC will interpret and apply the language of the Rome Statute).

III. The "Big Three"

The ICC Prosecutor needs to prove three things in order to convict you of the crime of genocide:

- **Protected group** - you target a national, ethnical, racial or religious group, as such.
- **Actus Reus** - you commit one or more of the five prohibited **genocidal acts** against that protected group.
- **Mens Rea** - you had a **special intent** to destroy, in whole or in part, that protected group, as such.

IV. Targeted a Protected Group

- Let's assume that you targeted a qualifying protected group.

TIP: protected groups do not include political or economic groups.

V. The Five Prohibited Genocidal Acts - *Actus Reus*

- Commit **at least one** of the five genocidal acts under subparagraphs (a)-(e).
- For three of the five acts, the Elements of Crimes provides **non-exhaustive lists of examples**. These lists suggest that the ICC could interpret the Rome Statute broadly for these crimes to include destruction by infectious disease spread.
- Notably, the Elements of Crimes for Article 6(c) includes a prohibition against "**deliberate deprivation** of resources indispensable for survival, such as food or **medical services**."
- Interpretation may be informed by ICTY and ICTR case law, but their decisions are not legally binding on the ICC. Also, the authorizing mandates of ICTY, ICTR, and ICC vary.

A. Article 6(a): Killing Members of the Group

- Classical means of committing genocide
- Deaths as a result of unlawful and intentional killings²
- Non-accidental and non-negligent³
- Courts have not addressed whether it requires physical violence.
- Rome Statute and its Elements of Crime are silent on the methods of killing. Most cases deal only with physical violence.
- Likely will require proof that the infectious disease was the primary cause of death.

Conclusion: Infectious diseases kill. Rome Statute could be interpreted to include intentional infectious disease deaths under the crime of "killing members of the group" but likely will require the infectious disease to be the primary cause of death.

B. Article 6(b): Causing Serious Bodily or Mental Harm to Members of the Group

- Elements of Crimes provides a **non-exhaustive list**, including "torture, rape, sexual violence or inhuman or degrading treatment."⁴
- ICTR: "serious bodily harm" may include "disfigurement or serious injury to external or internal organs"⁵

Infectious diseases can cause destruction of skin and soft tissue (Buruli), major organ failure (legionellosis), permanent paralysis (polio), and deafness (Laasa fever).

² See Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶¶ 500-01 (ICTR Sept. 2, 1998), aff'd (June 21, 2001).

³ See id. (citing the International Law Commission's Draft Code of Crimes).

⁴ Elements of Crimes, at 2, n. 3 ("This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.")

⁵ Prosecutor v. Seromba, Case No. ICTR-2001-66-A, Appeals Judgment, ¶ 46 (ICTR Mar. 12, 2008).

- ICTR: does not require harm to be "permanent or irremediable."⁶

Infectious diseases can cause non-permanent injury, such as temporary neurological impairment causing physical harm and mental harm (African Trypanosomiasis).

Infectious diseases can be treated. Victims may demonstrate full or partial recovery.

- ICTR: "Physical weakening" and food deprivation considered as "serious bodily harm"⁷

Conclusion: Infectious diseases can cause serious physical injury and serious neurological impairments. Rome Statute could be interpreted to include intentional infectious disease spread as causing "serious bodily or mental harm."

C. Article 6(c): Deliberately Inflicting on the Group Conditions of Life Calculated to Bring about its Physical Destruction in Whole or in Part

- Elements of Crimes provides a **non-exhaustive list**.

"The term 'conditions of life' may include, but is not necessarily restricted to, **deliberate deprivation** of resources indispensable for survival, such as food or **medical services**, or systematic expulsion from homes."⁸

- ICTR: Confers a positive duty to provide a minimal level of "essential medical services"⁹

⁶ Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 502 (ICTR Sept. 2, 1998), *aff'd* (June 21, 2001).

⁷ Prosecutor v. Seromba, Case No. ICTR-2001-66-A, Appeals Judgment, ¶ 46 (ICTR Mar. 12, 2008) (reversing Trial Chamber's finding of "serious bodily harm" due to "physical weakening" from food deprivation because the prosecutor failed to provide supporting evidence of victims' physical condition).

⁸ Elements of Crimes, at 2, n. 4.

⁹ *Akayesu*, at ¶ 506 (conditions of life include, "inter alia, . . . the reduction of essential medical services below minimum requirement.").

- ICTR: Does not apply when you intend to kill immediately the victims, even if you deprive them food and medical services.¹⁰ Instead, you likely would be charged with the crime of genocide by killing.

Conclusion: You have a positive duty to provide a minimal level of essential medical services in response to an infectious diseases outbreak. You most likely will be charged under Article 6(c).

D. Article 6(d): Imposing Measures Intended to Prevent Births Within the Group

- Need not actually destroy – only to "intend" to prevent births.
- ICTY: examples include sterilization, separation of sexes, interruption of pregnancy, sterilization, and rape.¹¹
- In your favor is the principle of *nullum crimen sine lege* (you can't be charged for crimes not prescribed by law) under Article 22:

"The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted."

Conclusion: Because infectious diseases can interfere with pregnancy and reproductive abilities, they could constitute a measure "intended to prevent births within the group." The statutory prohibition of extension by analogy and absence of a non-exhaustive list of examples in the Elements of Crimes greatly limit the scope of Article 6(d).

¹⁰ See *Akayesu*, at ¶ 505; *Kayishema and Ruzindana*, at ¶ 548 (rejecting the prosecution's argument under Article 6(c) because the actors intended to "exterminate them within a short period of time thereafter").

¹¹ See, e.g., *Akayesu*, at ¶ 507; Prosecutor v. Krstic, Case IT-98-33A, Appeals Judgment, at ¶¶ 28-29 (ICTY Apr. 19, 2004).

E. Article 6(e): Forcibly Transferring Children of the Group to Another Group

- Elements of Crimes provides **non-exhaustive list**.¹²
- Applies to persons under the age of 18 years.

Conclusion: Rare circumstance and not likely to be relevant for infectious disease spread.

VI. The *Mens Rea* of Genocide Under the Rome Statute

Genocide imposes a heightened intent requirement, whereby the ICC Prosecutor must show that you knowingly committed the *actus reus* with the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."

Remember, the ICC Prosecutor does not necessarily need to show that you killed or intended to kill. The "intent to destroy" can be satisfied by showing you intended the protected group's gradual destruction by physical or mental harm. See Article 6(c) in this brochure.

A. Actual Proof of Knowledge and Intent

Actual proof of your knowledge and genocidal intent would be your downfall.

TIP: Be careful what you say, to whom you say it, and the means of communication.

B. Proof of Intent as Inferred from Circumstances

Proof of your genocidal intent can be inferred from the circumstances. The ICC Prosecutor will attempt to prove your intent based on:

1. Proving intent based on your deliberate actions.
2. Proving intent based on your failure to act to prevent or respond to an infectious outbreak, i.e. the acts of omission.
3. Proving intent based on a combination of deliberate actions and deliberate omissions.

¹² See Elements of Crimes, at 4, n. 5 ("The term '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.").

C. Deliberate Actions to Cause Intentional Disease Spread

Your deliberate actions may reveal clues into your knowledge and intent. The following examples of deliberate acts can give you an idea:

- Deliberately infecting the sole water well used by a protected group, such as pushing a decaying sick cow into it.
- Providing effective medical treatments to your friends and others in society but intentionally giving ineffective placebos to members of protected group.
- Engineering an infectious disease specific to a genetic vulnerability of members of a protected group and deliberately infecting members of that group.
- Providing vaccinations for a specific disease, knowing that members of a protected group will refuse to get vaccines, and later deliberately releasing that disease in the food, water, or air supply of the protected group.

D. Acts of Omission and Infectious Disease Spread

Good news for you. Proving acts of omission is very difficult. There always is a chance of politically motivated judges applying the broadest interpretation against you, but the judges then would feel the wrath of international criminal lawyers and academics.

The following examples of deliberate inaction can give you an idea:

- Deliberately failing to respond to an outbreak in an area with qualifying protected groups.
- Deliberately orchestrating vaccine and pharmaceutical supplies to be unavailable during an outbreak within a protected group. When the outbreak occurs, you are unable to act.

TIP: Similar fact patterns can be found for deliberate starvation where leaders failing to take action. With Darfur, the ICC Prosecutor chose not to bring charges, based largely on the difficulty in providing intent.

E. Intervening Causations (i.e. Disguising Your True Genocidal Intent)

The sliding scale from easiest to hardest to prove:

- Genocidal intent to destroy group, "as such," is easiest to prove where there is a confession.
- It becomes increasingly difficult to prove as your actions move away from clearly deliberate acts to mixed actions.
- Genocidal intent based on acts of omission is nearly impossible to prove.

Intervening causations increase the difficulty of you being convicted for the crime of genocide. Possible answers to give to disguise your true genocidal intent:

- Accidental infectious disease spread, not intentionally targeted at that group.
- Limited economic resources to purchase pharmaceuticals, provide health services, and provide treatments.
- Poor decision-making. In hindsight, should have reacted sooner.

F. Challenge the Underlying Assumptions

Why criminalize deliberate infectious disease spread? Doesn't this create disincentives for governments to take action during an outbreak for fear that the ICC Prosecutor will use that to infer the requisite "intent." It is safer to do nothing. Thus, criminal charges before the ICC may create disincentives for leaders to respond to future outbreaks and thus increases the risks to global health security.

If deliberate infectious disease spread is that evil, why not amend the Rome Statute to make it explicitly clear?

**In memory of
those known and unknown who died
– April 9 –**

On this day in 1994, Jean Kambanda became Prime Minister of Rwanda.

During the 100-day campaign, he incited genocide on the radio by asserting that "genocide is justified in the fight against the enemy."

He became the first head of state to plead guilty to genocide and was sentenced to life imprisonment. His sentence was upheld on appeal.

Prosecutor v. Kambanda, ICTR-97-23-A, Oct. 19, 2000.

Circulation to evil dictators not permissible by law.

**Produced as Class Handout for:
International Criminal Law Seminar Spring 2008**
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