

The Development of the Concept of “Intent” in International Criminal Law

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OBJECTIVE: To discuss the “blameworthy mental element” concept in International Criminal Law, specifically “intent”, its varieties and evolution.

I. American Law “Mens Rea” (Model Penal Code (American Law) –blameworthy mental state – 4 main ones)

Mens rea	Definition	Relation to consequences
Purpose	It is the actor's conscious object to bring about the result.	"I want this to happen." A shoots B because he wants B to die.
Knowledge	The actor is aware the result is practically certain to occur.	"I know this will happen." A blows up an airplane to collect insurance, knowing the passengers will certainly die.
Recklessness	The actor consciously disregards a substantial and unjustifiable risk.	"It may happen, but I'll do it anyway." A fires repeatedly into a crowded room, recognizing the substantial risk of killing someone but proceeding anyway.
Negligence	The actor should be aware of a substantial and unjustifiable risk but fails to perceive it.	A leaves a loaded firearm where a child can easily access it, failing to recognize an obvious risk.

- “Purpose” and “Knowledge” are explicitly mentioned in the Rome Statue of the International Criminal Court. “Recklessness” and “Negligence” are not.

II. International Criminal Law (Rome Statute, specifically)

International Criminal Law (ICL) has evolved (see reverse side for timeline). The Rome Statute (1998) does not mention “Mens Rea” - rather it uses the term “Mental Element” which includes “intent” and “knowledge”

Article 30: Mental element (ICC’s *mens rea* rule)

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with **intent** and **knowledge**.
2. For the purposes of this article, a person has **intent** where:
 - (a) In relation to conduct, that person means to engage in the conduct;
 - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, "**knowledge**" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "**Know**" and "**knowingly**" shall be construed accordingly

III. Proving the intent element

1. For which crime? (Genocide? Crimes Against Humanity? War Crimes (of which there are many types – e.g., conscripting and enlisting children under the age of 15))
2. Law recognizes different forms of intent (*dolus directus* vs. *dolus specialis*, perhaps *dolus eventualis*, it depends on the tribunal). Its complicated.
3. Genocide requires *dolus specialis*, whereas other atrocity crimes require a different kind of intent (*dolus directus*). There's a continuum.
4. What counts as proving *dolus specialis*?

Article 6 : Genocide (From the Rome Statue [International Criminal Court])

"...committed **with intent to destroy**, in whole or in part, a national, ethnical, racial or religious group, as such...

IV. International Criminal Law and (An evolution since Nuremberg)

Year	Tribunal/Event	Significance
1945	International Military Tribunal (IMT)	Established by the London Charter; prosecuted major Nazi leaders.
1946-1949	Subsequent Nuremberg Trials conducted by the U.S.	After the first International Military Tribunal (1945–46), the United States conducted twelve Subsequent Nuremberg Trials (1946–1949) before U.S. military tribunals
1946	International Military Tribunal for the Far East (IMTFE/Tokyo Tribunal)	Prosecuted Japanese leaders after World War II.
1948	Convention on the Prevention and Punishment of the Crime of Genocide	Not ratified by the U.S. until 1988. Lists a number of different “genocide crimes” Genocide; Conspiracy to Commit Genocide; Direct and Public Incitement to Commit genocide; Complicity in genocide
1993	International Criminal Tribunal for the former Yugoslavia (ICTR)	Created by the UN Security Council (Resolution 827).
1994	International Criminal Tribunal for Rwanda (ICTR)	Created by the UN Security Council (Resolution 955).
1998	Rome Statute establishing the International Criminal Court (ICC) is adopted	Established the legal framework for the ICC. “Intent and Knowledge” requirement.
1998	<i>Prosecutor vs. Akayesu</i> (ICTR)	First prosecution and conviction of genocide (ICTR) - first authoritative interpretation of the Genocide Convention and the requirement of <i>dolus specialis</i>
2002	Rome Statute enters into force	Permanent ICC begins operation.
2002	Special Court for Sierra Leone (SCSL)	Established by agreement between the United Nations and Sierra Leone to prosecute those bearing the greatest responsibility for crimes committed during the Sierra Leone Civil War.
2007	<i>Nahimana et al.</i> (Media case) (ICTR)	Genocidal intent inferred from circumstantial evidence showing that radio/newspapers were tools to promote destruction of Tutsi group.
2012	First ICC Conviction (<i>Prosecutor v. Thomas Lubanga Dyilo</i>)	Prosecuted for war crime of conscripting and enlisting children under the age of 15, and using them to participate in hostilities. “Intent” and “Knowledge” proven. Knowledge is defined as: "The perpetrator knew or should have known that such person or persons were under the age of 15 years" (Elements of Crimes/Negligence standard)