

CRIMES AGAINST HUMANITY UNDER THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT: LEGAL IMPLICATIONS.

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Abstract

Crimes against humanity represent one of the gravest categories of international crimes. Despite their codification in customary international law and treaty frameworks, including the several legal challenges persist regarding their prosecution and enforcement. This Research Work critically explores the definition, jurisdictional basis, elements, and legal consequences of crimes against humanity within the ICC framework. It also analyzes the complementarity regime, procedural innovations, and ongoing debates surrounding the interpretation of Crimes against Humanity, with emphasis on the ICC's evolving jurisprudence and its broader implications for international justice. Furthermore, using a doctrinal research approach, this Research work explores the historical evolution, definition, and key elements of these crimes as outlined in the Rome Statute. Through this comprehensive analysis, the study aims to contribute to a deeper understanding of the ICC's mandate in the fight against impunity and its broader role in enforcing international justice. It ultimately underscores the significance of a robust international legal framework in ensuring accountability for crimes that shock the conscience of humanity.

Keywords: Crimes, Humanity, ICC, Justice, Violation

1. Introduction

The advent of the International Criminal Court (ICC) in 2002 marked a watershed in international criminal law by establishing a permanent tribunal tasked with prosecuting individuals for the most serious crimes of concern to the international community. Among the core crimes under its jurisdiction—genocide, war crimes, and crimes against humanity—the latter is arguably the most expansive and flexible in scope, encompassing a wide array of inhumane acts committed as part of a widespread or systematic attack against any civilian population.

However, the ICC's exercise of jurisdiction over crimes against humanity has been both legally significant and contentious, raising questions about legal definitions, thresholds of applicability, political interference, and interaction with domestic jurisdictions. This article examines the ICC's jurisdiction over crimes against humanity and the attendant legal implications from both substantive and procedural perspectives.

Conceptually, a crime is a socially harmful act or omission that breaches the values protected by a state. It is an event prohibited by Law, one which can be followed by prosecution on conviction. The state criminalizes certain conduct due to burgeoning public pressure to proscribe certain immoral harms. However, criminality shall not be confused with immorality, they are related but not synonymous terms.

2. Historical Evolution of Crimes Against Humanity

Crimes against humanity emerged during the post-World War II Nuremberg Trials, where the Allied powers prosecuted Nazi officials for atrocities not confined to the traditional notion of war crimes.² The Nuremberg Charter defined these crimes as inhumane acts committed against civilians, including murder, enslavement, and persecution.³

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²Charter of the International Military Tribunal, annexed to the London Agreement of 8 August 1945, 82 UNTS 279, Article 6(c).

³*Ibid.*

Subsequent developments in international law, notably the statutes of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), reaffirmed the status of Crimes against Humanity as customary international law.⁴ These tribunals broadened the legal understanding of Crimes against Humanity culminating in the codification under Article 7 of the Rome Statute. Unlike war crimes, Crimes against Humanity do not require a nexus to armed conflict, thereby allowing for broader prosecutorial reach.⁵

3. Definition and Elements under the Rome Statute

The Black's Law Dictionary defines Crimes against Humanity as:

Any of various inhumane acts committed as part of a widespread or systematic attack against a civilian population, regardless of whether the acts violate the law of the country where they are perpetrated. These crimes include murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts of a similar character."⁶

Crimes against humanity refer to specific crimes committed in the context of a large scale attack targeting civilians, regardless of their nationality. These crimes include murder, torture, sexual violence, enslavement, persecution, enforced disappearance, etc.⁷ Crimes against Humanity are also certain acts such as murder, extermination, enslavement, deportation, imprisonment, torture, rape, and other inhumane acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.⁸ For example, The United Nations Commission reported in March 2025 that Russia's systematic use of enforced disappearances and torture of Ukrainians during its invasion constituted crimes against humanity.⁹

According to Egon Schwelb,¹⁰ the two meanings of the term "humanity" in crimes against humanity are (i) the human race or mankind as a whole and (ii) humanness that is a certain quality of behavior; it is the latter, which is applicable.

To the then Secretary General of the United Nations, Crimes against humanity refer to inhumane acts of a very serious nature, such as willful killing, torture or rape committed as part of a widespread or systematic attack against any civilian population on national, political, ethical, racial or religious grounds.¹¹

It is respectfully submitted that crimes against humanity as part of the jurisdictions of the International Criminal Court are those acts against human beings, which derogate from humanity in the victim. The concept of crimes against humanity seems to have its antiquity in customary international law. The crime was, however, a raging controversy as to whether it was a legislative act creating a new offence or simply a reaffirmation of an existing crime under customary international law among scholars.¹² It is respectfully submitted that it was merely a reaffirmation of an existing crime under customary international law.

⁴See Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), UN Doc S/RES/827 (1993), Article 5; Statute of the International Criminal Tribunal for Rwanda (ICTR), UN Doc S/RES/955 (1994), Article 3⁵ Rome Statute of the International Criminal Court, adopted 17 July 1998, entered into force 1 July 2002, 2187 UNTS 90 [Rome Statute], Article 7.

⁶Black's Law Dictionary (11th ed. 2019), Crimes against Humanity.

⁷TRIAL International <<https://trialinternational.org/topics-post/crimes-against-humanity>> accessed 15 May 2025

⁸European Center for Constitutional and Human Rights <<https://www.ecchr.eu/en/glossary/universal-jurisdiction>> accessed 15 May 2025

⁹Reuters <<https://www.reuters.com/world/un-commission>> accessed 15 May 2025

¹⁰Schwelb, "Crimes against Humanity": 23 BUYIL 178 (1946) P. 195.

¹¹Report of the Secretary General pursuant to paragraph 2 of the Security Council Resolution 808 (1993), UN Doc. S/25704; separate opinion of Judge Robinson in Prosecutor v Dusko Tadic.

¹²See J Rikhof, "Crimes against Humanity, Customary International Law and the International tribunals for Bosnia and Rwanda," 6 Nat' L. J. CONST. L.

Article 7 of the Rome Statute defines Crimes against humanity for the purposes of the Statute as “Any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”¹³ From the foregoing, it is evident that crimes against humanity under the ICC Statute are not restricted to the existence of internal wars. They can be committed in both international and internal conflict and in peacetime situations.

Three central elements emerge from this definition:

1. The attack must be widespread or systematic.
The terms are disjunctive; “widespread” refers to the large-scale nature or number of victims, whereas “systematic” implies a pattern or policy.¹⁴
2. Directed against a civilian population.
Victims must be civilians or persons taking no active part in hostilities.¹⁵
3. With knowledge of the attack.
The perpetrator must be aware that their conduct is part of the broader context.¹⁶
The inclusion of a “policy element” in Article 7(2) (a) has been subject to debate, especially given that it potentially limits liability to conduct endorsed by a State or organizational apparatus.¹⁷ This policy requirement is not present in the ICTY’s Statute, indicating a divergence in standards.¹⁸

4. Jurisdictional Reach of the ICC over Crimes Against Humanity

The ICC exercises jurisdiction over crimes against humanity under specific conditions:

4.1 Territorial and Personal Jurisdiction

The ICC may exercise jurisdiction if the crime occurred on the territory of a State Party or was committed by a national of such a State.¹⁹ Alternatively, jurisdiction may be triggered by a referral from the UN Security Council under Chapter VII of the UN Charter, as seen in the situations of Darfur (Sudan) and Libya.²⁰

4.2 Temporal Jurisdiction

The Court has jurisdiction only over crimes committed after the entry into force of the Rome Statute on 1 July 2002.²¹

4.3 Complimentarity Principle

The ICC operates on a complementary basis to national criminal jurisdictions.²² It may only proceed if a State is “unwilling or unable genuinely to carry out the investigation or prosecution.”²³ This principle respects State sovereignty but has also led to tension between national and international prosecutorial authorities, particularly in Africa.²⁴

¹³ Rome Statute of International Criminal Court, July 17, 1998, UN Doc. A/CONF. 183/9 (hereinafter referred to as “the ICC Statute”).

¹⁴ *Prosecutor v Kunarac et al.* (IT-96-23), Trial Chamber Judgment, 22 February 2001, para 429.

¹⁵ *Ibid.*, para 425

¹⁶ *Rome Statute, Article 7(1)*.

¹⁷ *Ibid.*, Article 7(2)(a); see also M. Bassiouni, *Crimes Against Humanity in International Criminal Law* (3rd edn, CUP 2011), 246–248.

¹⁸ *ICTY Statute, Article 5*.

¹⁹ *Rome Statute, Article 12(2) (a)-(b)*.

²⁰ UNSC Res 1593 (2005) for Darfur; UNSC Res 1970 (2011) for Libya.

²¹ *Rome Statute, Article 11(1)*.

²² *Rome Statute, Preamble and Article 1*.

²³ *Rome Statute, Article 17(1) (a)-(b)*.

²⁴ Plessis du M., ‘The International Criminal Court that Africa Wants’ (ISS Paper 225, 2010) 8–12.

The ICC complements national jurisdictions but can step in when states are unwilling or unable to prosecute. The court has tried figures such as Thomas Lubanga and Jean-Pierre Bemba from the Democratic Republic of Congo. However, critics argue that the ICC disproportionately targets African leaders while being unable to prosecute officials from major global powers.²⁵

Some of the notable cases handled by the ICC include:

Thomas Lubanga (Democratic Republic of the Congo) – Convicted in 2012 for recruiting child soldiers during the DRC's civil war.²⁶

Jean-Pierre Bemba (Central African Republic) – Convicted in 2016 for war crimes committed by his militia, though later acquitted.²⁷

Omar al-Bashir (Sudan) – The ICC issued an arrest warrant against the former Sudanese president in 2009 for genocide and crimes against humanity in Darfur.²⁸ However, due to political and diplomatic challenges, he has not been extradited.

Al Hassan Ag Abdoul Aziz (Mali) – A Malian jihadist currently on trial for war crimes, including sexual slavery and attacks on cultural heritage.²⁹

5. Legal and Procedural Implications

5.1 Individual Criminal Responsibility

One of the key innovations of the Rome Statute is the principle of individual criminal responsibility.³⁰ Heads of State, military leaders, and civilian officials can be prosecuted irrespective of their official capacity.³¹ This departs from the traditional doctrine of sovereign immunity, signaling a shift towards accountability over impunity.

5.2 Modes of Liability

The Rome Statute provides various modes of liability including direct perpetration, co-perpetration, ordering, aiding and abetting, and command responsibility.³² The Bemba judgment significantly clarified the contours of command responsibility under Article 28, although it was controversially overturned on appeal.³³

5.3 Victim Participation and Reparations

The ICC allows for extensive victim participation, a unique procedural innovation. Victims can present views and concerns and may also receive reparations, including restitution, compensation, and rehabilitation.³⁴ This victim-centered approach aligns with restorative justice principles, albeit with practical and funding challenges.

6. Limitations, Challenges and Criticisms

The enabling statute of the ICC (the 1998 Rome Statute) is only binding on state parties and applies only to crimes committed after 2002 on state party territories or by state party nationals. Moreover, the jurisdiction of the ICC has limitations, since it is only activated if a state party is genuinely unable

²⁵ D Bosco, *Rough Justice: The International Criminal Court in a World of Power Politics*. Oxford University Press. (2014)

²⁶ *International Criminal Court, The Prosecutor v Thomas Lubanga Dyilo, ICC-01/04-01/06, Judgment, 2012.*

²⁷ *International Criminal Court, The Prosecutor v Jean-Pierre Bemba Gombo, ICC-01/05-01/08, Judgment, 2016.*

²⁸ *International Criminal Court, The Prosecutor v Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09, Arrest Warrant (2009)*

²⁹ *International Criminal Court, The Prosecutor v Al Hassan Ag Abdoul Aziz, ICC-01/12-01/18, Ongoing Trial.*

³⁰ *Rome Statute, Article 25.*

³¹ *Rome Statute, Article 27*

³² *Rome Statute, Articles 25 and 28*

³³ *Prosecutor v Jean-Pierre Bemba Gombo (ICC-01/05-01/08), Appeals Chamber Judgment, 8 June 2018.*

³⁴ *Rome Statute, Article 68(3).*

or unwilling to pursue justice. Negotiating parties limited the personal jurisdiction of the ICC to natural persons and excluded corporate accountability.

While the limitations of the ICC's jurisdiction is addressed to some extent by Section 13(b) of the Rome Statute, which allows the UN Security Council to refer a situation to the ICC even if the state in question has not ratified the Rome Statute, it poses a number of challenges in reality. The referral of a situation by the UN Security Council to the ICC requires the unanimous support of the permanent five members, which is difficult to secure considering the divergent political interests of those members. An example is the UN Security Council's inability to refer the cases of Syria, Myanmar, and Iraq to the ICC.

6.1 Political Interference and Selectivity

Critics argue that the ICC disproportionately targets African leaders while ignoring similar crimes elsewhere, such as in Syria or Myanmar³⁵. This perception has led to threats of mass withdrawal from the Rome Statute by African Union (AU) members, despite the AU's role in referring some cases.³⁶ While some cases were referred by African States themselves, the African Union has accused the Court of being politicized and Eurocentric.

6.2 Evidentiary Challenges

Prosecuting crimes against humanity demands extensive evidence of contextual elements, patterns, and policy links. The lack of cooperation by States, witness intimidation, and the destruction of evidence often impede successful prosecutions³⁷. Securing reliable evidence for crimes against humanity is arduous. The contextual nature of Crimes against Humanity means that prosecutors constantly must demonstrate not only the commission of acts but also their connection to a broader 'attack'.

6.3 Ambiguity in Interpretation

The Court's jurisprudence continues to grapple with interpretative ambiguities, such as the scope of "organization" in Article 7 and the definition of persecution in non-discriminatory contexts.³⁸ These ambiguities require consistent judicial clarification to ensure coherence and predictability.

7. Conclusion and Recommendations

Crimes against humanity remain a cornerstone of the ICC's mandate. The Court's efforts to prosecute these crimes have advanced the global fight against impunity and reinforced international legal norms. However, ongoing legal, procedural, and political challenges threaten to undermine its legitimacy and effectiveness.

To enhance its role, the ICC must:

Continue clarifying legal standards through coherent jurisprudence.

Strengthen partnerships with national jurisdictions under the complementarity principle.

Improve witness protection, evidence gathering, and victim support mechanisms. Engage in strategic outreach to counter perceptions of bias and increase global support for universal ratification.

³⁵ A. Jalloh, 'Regionalizing International Criminal Justice?' (2010) 9 Wash U Global Stud L Rev 1.

³⁶ African Union, 'Decisions and Declarations', Assembly/AU/Dec. 270(XIV), Addis Ababa, 31 January 2010.

³⁷ C. Hall, 'Challenges to Prosecuting Crimes Against Humanity at the ICC' (2009) 5 Journal of International Criminal Justice 791.

³⁸ K. Ambos, *Treatise on International Criminal Law*, Vol. II: The Crimes and Sentencing (OUP 2021), 39–41.

In implementing some of these recommendations, the International Criminal Court will strengthen its legitimacy and fulfill its mandate of ending impunity for the perpetrators of the gravest international crimes.

In summary, while the ICC has made commendable strides, a more robust, politically insulated, and universally supported institution is essential for the long-term efficacy of prosecuting crimes against humanity.