



Crimes against humanity

- **The Phenomenon of Crimes against Humanity**

Crimes against humanity are mass crimes committed **against the fundamental human rights** of a civilian population. They can be distinguished from genocide in that they need not target a specific group, but a civilian population in general. Thus, they include crimes against political and or other groups. In contrast to genocide, it is also not necessary for the perpetrator to intend to destroy a group as such, in whole or in part. Crimes against humanity are different from war crimes insofar as the criminal conduct may be directed not only towards the enemy's but also against the perpetrator's own population.

- **History of the Crime**

Crimes against humanity were first explicitly formulated as a category of crimes in Article 6 (c) of the **Nuremberg Charter**. The offense was also included in Article 5 (c) of the Tokyo Charter and Article II (1) of Control Council Law No. 10. While the Nuremberg and Tokyo Charters required that crimes against humanity evidence a connection to aggressive war or war crimes, this supplementary requirement was left out of Control Council Law No. 10. The Statutes of the Yugoslavia and Rwanda Tribunals and the International Criminal Court have reaffirmed the **customary law** character of crimes against humanity. Additionally, the prohibition of crimes against humanity has the status of *jus cogens* and operates *erga omnes*.

- **Structure of the Crime**

The material element of crimes against humanity requires the commission of a **specific individual act in the course of a widespread or systematic attack** on a civilian population (see Article 7 of the ICC Statute). The attack on the civilian population represents the contextual element of the crime. The mental element requires intent and knowledge regarding the material elements of the crime, including the contextual element.

- **Protected Rights**

The crime affects not only the individual victim, but – because of the systematic or widespread attack on the fundamental human rights of a civilian population – also **the international community** as a whole. This context of organized violence calls into question humanity as such. In addition, the norm protects **individual rights**, that is, the individual victim's life, health, freedom and dignity.

- **Contextual element: Attack on a Civilian Population**

According to the definition in Article 7 (2) (a) of the ICC Statute, an "attack on a civilian population" means "a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack."



➤ **The civilian population as the object of the crime**

Crimes against humanity are directed **against a civilian population as such**, not merely at an individual. A “civilian population” comprises every plurality of persons that are connected with each other by common characteristics, which make them the target of an attack. Neither the victim’s nor the perpetrator’s nationality plays any role. Also, the presence of a limited number of combatants among an attacked civilian population does not negate its civilian character. It is not necessary that the entire population of a State or territory be affected by the attack.

The “civilian” character of the attacked population and persons applies both in war and in peacetime. Therefore, the distinction between civilians and “non-civilians” cannot be made solely by applying the terms of international humanitarian law. In the context of crimes against humanity, the notion of “civilian population” aims to protect the fundamental rights of every human being against any form of systematic violation. Thus, the essential factor is the **victims’ need for protection**, which follows from their defenselessness vis-à-vis state, military or other organized force. Therefore, anyone who is not part of the organized power using force should be considered a civilian. What is crucial is not the formal status, such as membership in the military forces, but a person's actual role at the time of commission of the crimes. This includes members of military forces or other armed groups who have laid down their arms or have otherwise been rendered *hors de combat*.

➤ **Widespread or Systematic Attack**

- Attack

The "attack" element describes a course of conduct involving the commission of acts of violence. Such a course of conduct must include the "**multiple commission**" of acts listed in Article 7 (1) of the ICC Statute. The perpetrator does not need act repeatedly by him- or herself.

- Widespread or Systematic Character

The criterion of "widespread" describes a **quantitative** element. The widespread nature of the attack can arise from the number of victims or its extension over a broad geographic area. The criterion of a "systematic" attack is **qualitative** in nature. It refers to the organized nature of the committed acts of violence and thus serves to exclude isolated acts from the notion of crimes against humanity. Earlier case law of the *ad hoc* Tribunals required that the individual act follow a predetermined plan or policy. The Appeals Chamber of the Yugoslavia Tribunal has now distanced itself from such a requirement. Although attacks on a civilian population will typically follow some form of predetermined plan, this does not make the existence of a plan or policy an element of the crime. Under customary international law, crimes against humanity do not call for a "**policy element**". However, Article 7 (2) (a) of the ICC Statute requires that the attack on a civilian population be carried out "pursuant to or in furtherance of a State or organizational policy to commit such attack."

- Perpetrators

Perpetrators need not be members of the State or organization involved in the crime, but can include **all persons** who act to implement or support the policy of the State or the organization.



- **Individual acts**

- killing (Art. 7 [1] [a] of the ICC Statute)
- extermination (Art. 7 [1] [b] of the ICC Statute)
- enslavement (Art. 7 [1] [c] of the ICC Statute)
- deportation or forcible transfer of population (Art. 7 [1] [d] of the ICC Statute)
- imprisonment (Art. 7 [1] [e] of the ICC Statute)
- torture (Art. 7 [1] [f] of the ICC Statute)
- sexual violence (Art. 7 [1] [g] of the ICC Statute)
- persecution (Art. 7 [1] [h] of the ICC Statute)
- enforced disappearance (Art. 7 [1] [i] of the ICC Statute)
- apartheid (Art. 7 [1] [j] of the ICC Statute)
- other inhumane acts (Art. 7 [1] [k] of the ICC Statute)

- **Mental Element**

The perpetrator must act with intent. He must act with knowledge of the attack on the civilian population and that his action is part of this attack. Discriminatory intent is required only for the act of persecution.

Recommended reading: Gerhard Werle, *Principles of International Criminal Law*, Part Four, 2005; Guénaél Mettraux, *International Crimes and the ad hoc Tribunals* (2005), Chapter 11.