

## **Chapter 16. Genocide, crimes against humanity and war crimes**

### **Section 101. Genocide**

Any person is liable to punishment for genocide who with intent to destroy, in whole or in part, a national, ethnical, racial or religious group

- (a) kills one or more members of the group,
- (b) causes serious injury to body or to mental or physical health to one or more members of the group,
- (c) deliberately inflicts on one or more members of the group conditions of life calculated to bring about the physical destruction of the group, in whole or in part,
- (d) imposes measures on one or more members of the group intended to prevent births within the group, or
- (e) forcibly transfers one or more children from the group to another group.

To render a person liable to punishment for aiding and abetting, it suffices that he intends to share the principal's genocidal intent.

The penalty for genocide is imprisonment for a term not exceeding 30 years.

### **Section 102. Crimes against humanity**

Any person is liable to punishment for a crime against humanity who, as part of a widespread or systematic attack directed against any civilian population,

- (a) kills a person,
- (b) exterminates a population in whole or in part, including by inflicting on it or parts of it conditions of life calculated to bring about the destruction of the population in whole or in part,
- (c) enslaves a person,
- (d) deports or forcibly transfers a population in violation of international law/*without grounds permitted under international law*,
- (e) imprisons or otherwise severely deprives a person of physical liberty in violation of fundamental rules of international law,
- (f) tortures a person in his custody or under his control by inflicting on the person severe mental or physical pain *or suffering*,
- (g) subjects a person to rape, sexual slavery or enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity,
- (h) subjects an identifiable group to persecution by depriving one or more members of the group of fundamental human rights on political, racial, national, ethnic, cultural, religious, gender-related or other grounds contrary to international law,
- (i) on behalf of, or with the consent, support or authorisation/*authorisation, support or acquiescence\** of a State or a political organisation contributes to the enforced disappearance of a person, with the intention of removing that person from the protection of the law for a prolonged period of time,
- (j) in the context of an institutionalised regime of systematic oppression and domination by one racial group over one or more other racial groups/*any other racial group or groups\** commits a crime of apartheid by carrying out inhumane acts of a character like or similar to that of acts falling within the scope of this section with the intention of maintaining that regime, or
- (k) commits another inhumane act of a similar character that causes great suffering or severe injury to body or health.

The penalty for a crime against humanity is imprisonment for a term not exceeding 30 years.

### **Section 103. War crimes against persons**

Any person is liable to punishment for a war crime who in connection with an armed conflict

- (a) kills a protected person,
- (b) inflicts on a protected person great suffering or serious injury to body or health, particularly by torture or other cruel or inhuman treatment,
- (c) enslaves a protected person,
- (d) subjects a protected person to rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity,
- (e) takes a protected person hostage,

- (f) conscripts or enlists children under 18 years of age into armed forces or uses them to participate actively in hostilities,
- (g) subjects a protected person to a medical or scientific experiment that is not carried out in the interest of the person concerned and that seriously endangers the life or health of such person,
- (h) in violation of international law deports or forcibly transfers a protected person from an area in which the person is lawfully present or unlawfully confines a protected person,
- (i) imposes or implements a penalty in respect of a protected person without that person first being given a fair trial in accordance with international law,
- (j) grossly violates the dignity of a protected person by subjecting that person to humiliating or degrading treatment/*commits outrages upon the dignity of a protected person, in particular humiliating or degrading treatment*, or
- (k) wounds a combatant who has surrendered or has been placed hors de combat,

In the case of an international armed conflict, any person is also liable to punishment who

- (a) transfers part of its own civilian population into an occupied territory,
- (b) compels a national of the hostile party to take part in the operations of war directed against his own country, or
- (c) compels a protected person to serve in the armed forces of a hostile power.

A protected person is a person who does not take, or who no longer takes, active part in hostilities, or who is otherwise protected under international law.

The penalty for a war crime against a person is imprisonment for a term not exceeding 15 years, but for a term not exceeding 30 years in such cases as are mentioned in the first paragraph (a) to (e) or otherwise if the crime is serious. In deciding whether the crime is serious, importance shall be attached to its potential for causing harm and its harmful effects, and to whether it was committed as part of a plan or policy for or as part of a large-scale commission of such crimes.

#### **Section 104. War crimes against property and civil rights**

Any person is liable to punishment for a war crime who in connection with an armed conflict

- (a) pillages,
- (b) destroys, seizes or confiscates property on a large scale, unless this is strictly necessary for the purpose of waging war/*imperatively demanded by the necessities of war\**, or
- (c) declares abolished, suspended or inadmissible in a court of law the civil rights of the nationals of the hostile party,

A war crime against property or civil rights is punishable by imprisonment for a term not exceeding 10 years, but for a term not exceeding 30 years when the offence is serious, cf. [section 103](#), fourth paragraph, second sentence.

#### **Section 105. War crimes against humanitarian missions or distinctive emblems**

Any person is liable to punishment for a war crime who in connection with an armed conflict

- a) directs an attack against personnel, installations, material, medical units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or property/*civilian objects\** under international law,
- (b) directs an attack against personnel, buildings, material, medical units or transport which are entitled under international law to use one of the specially protected distinctive emblems of the Geneva Conventions and Additional Protocols or any other means of identification indicating that they are protected under the Geneva Conventions, or
- c) makes improper use of a flag of truce, the flag of the enemy or of the United Nations, military insignia or uniforms or makes improper use of the specially protected distinctive emblems mentioned in (b), resulting in death or serious personal injury.

is liable to punishment for a war crime.

The penalty for a war crime against humanitarian missions or distinctive emblems is imprisonment for a term not exceeding 10 years, but for a term not exceeding 30 years in the cases mentioned in (c) and otherwise when the crime is serious, cf. [section 103](#), fourth paragraph, second sentence.

#### **Section 106. War crimes consisting in the use of prohibited methods of warfare**

Any person is liable to punishment for a war crime who in connection with an armed conflict

- (a) directs an attack against the civilian population as such or against individual civilians not taking direct part in hostilities,
- (b) uses starvation of civilians as a method of warfare by depriving them of, withholding from them or denying them access to food or objects indispensable to their survival, or impeding relief supplies in violation of international law,
- (c) launches an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or damage to the natural environment which would be excessive in relation to the concrete and direct overall military advantage anticipated,
- (d) utilises the presence of a protected person to render certain points, areas or military forces immune from military operations,
- (e) directs an attack against towns, villages, dwellings or buildings which are undefended and which are not military objectives, or against demilitarised zones,
- (f) directs an attack against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, cultural monuments, hospitals and places where the sick and wounded are collected, or against any other civil object, provided they are not military objectives,
- (g) leading any person to believe that he is entitled to protection or is obliged to provide protection in accordance with international law and with the intention of betraying this trust, kills or wounds any person belonging to the nationals or armed forces of the hostile party, or
- (h) declares or threatens that no quarter will be given.

The penalty for a war crime consisting in the use of prohibited methods of warfare is imprisonment for a term not exceeding 15 years, but for a term not exceeding 30 years when the crime includes the wilful murder of a civilian and any other protected person or otherwise if the crime is serious, cf. [section 103](#), fourth paragraph, second sentence.

**Section 107. War crimes consisting in the use of prohibited means of warfare**

Any person is liable to punishment for a war crime who in connection with an armed conflict

- (a) employs poison or poisoned weapons,
- (b) employs biological or chemical weapons,
- (c) employs bullets which expand or flatten easily in the human body, or
- (d) employs another means of warfare that is in violation of international law

The penalty for a war crime consisting in the use of prohibited means of warfare is imprisonment for a term not exceeding 15 years, but for a term not exceeding 30 years when the crime includes the wilful murder of a civilian or any other protected person or otherwise if the crime is serious, cf. [section 103](#), fourth paragraph, second sentence.

**Section 108. Conspiracy and incitement to commit genocide, crimes against humanity and war crimes**

Any person who conspires with another person to commit a criminal offence mentioned in [sections 101 to 107](#) is liable to imprisonment for a term not exceeding 10 years. The same applies to any person who directly and publicly incites another person to commit such an offence.

**Section 109. Responsibility of superiors**

A military or civilian commander or person effectively acting as such is liable to punishment for breach of superior responsibility if persons under his authority and control commit a crime mentioned in [sections 101 to 107](#), when the crime is a result of the commander or person's failure to exercise control properly over them, and the commander or person

- a) knew or should have known that the subordinates were committing or were about to commit such a crime, and
- b) failed to take necessary and reasonable measures within his power to prevent or stop the crime, or to report the matter to a competent authority for prosecution,

The penalty is imprisonment for a term not exceeding 10 years, but not exceeding 30 years if the crime is serious. When assessing whether the crime is serious, importance shall be attached to the degree of seriousness and scope of the crimes the subordinates have committed and the degree to which the superior is to be blamed.

**Section 110. Minimum penalty**

No penalty imposed under the provisions of this chapter may be below the minimum penalty prescribed in the penal provision which, in the absence of Chapter 16, would have applied to the act of which the perpetrator is convicted.