MENS REA IN INTERNATIONAL LAW: NUREMBERG TO THE INTERNATIONAL CRIMINAL COURT

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ABSTRACT

Mens Rea is a foundational concept, intrinsic to the dynamic field of international criminal law which is yet to consolidate its theoretical contours. Criminal responsibility and personal guilt are central to all criminal law and date far back. International law is inherently political and is a fertile ground for political struggles. When comparing Crimes against Humanity to the crime of crimes, Genocide, the ideological differences are exceedingly clear especially in terms of criminal intent. Criminal intent or Mens Rea takes inspiration from the laws and jurisprudence of common and continental law jurisdictions. The complexity of core international crimes imposes an obligation to carefully consider how various *mens rea* standards are applied and construed in the international law making it harder to prove. The absence of *mens rea* on the part of a perpetrator while committing a crime precludes the attribution of criminal responsibility. This paper attempts to trace the evolution of the concept of mens rea from Nuremberg trials through various tribunals to the International Criminal Court. It tries to understand how degrees of intent varied through different courts and tribunals including the Nuremberg trials, the International Military Tribunal, International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, and the International Criminal Court while studying their charters. This paper uses a document-based research method to study presently available material on Mens Rea.

INTRODUCTION

Mens Rea is a foundational concept, intrinsic to the dynamic field of international criminal law which is yet to consolidate its theoretical contours. Criminal responsibility and personal guilt are central to all criminal law and date far back. The culpable mental state that applies to each aspect of the conduct, consequences, and circumstances constituting the crime makes a defendant guilty or not. The mens rea doctrine takes into account full criminal intent as opposed to negligence and recklessness in committing a crime. Even in domestic courts, criminal intent is extremely important to prove, sometimes making the difference between the guilty and the innocent. Mens Rea is extremely essential to prosecute core international crimes such as genocide, war crimes, crimes of aggression and crimes against humanity.

International law is inherently political and is a fertile ground for political struggles. When comparing Crimes against Humanity to the crime of crimes, Genocide, the ideological differences are exceedingly clear especially in terms of criminal intent. Criminal intent or Mens Rea takes inspiration from the laws and jurisprudence of common and continental law jurisdictions. The complexity of core international crimes imposes an obligation to carefully consider how various *mens rea* standards are applied and construed in the international law making it harder to prove. Intent in the case of Article 30 in the ICC statute, signifies that the person means to engage in the conduct and means to cause, or is aware, of a certain consequence that follows in the ordinary course of events. It states that a person can only be criminally responsible where the material elements are committed with intent and knowledge.[i]

Conceptually, the framework of intent is split into levels of culpability with dolus directus or direct intent being the highest, which means that the perpetrator desires or foresees the illegality and/or harmful consequence of his or her act or omission. Dolus indirectus or indirect intent which follows this states that certain secondary harmful consequences were foreseen by the perpetrator as a certainty and even if these were not desired by the perpetrator, he or she still committed the act. If the perpetrator foresees other consequences than those desired as a possibility and still follows through with an act by reconciling her/himself with it, dolus eventualis is committed. Dolus eventualis is distinguished from dolus indirectus since in the former the consequences were seen as a mere possibility, not a certainty as is the case in the latter.[ii] In the lower thresholds of mens rea the line is often blurred between dolus eventualis and recklessness. They are treated as very near concepts but differentiated by stating that a

volitional element of acceptance or reconciliation is necessary in dolus eventualis whereas in recklessness mere knowledge of an unjustifiably high risk suffices. Negligence can sometimes form a basis for criminal liability but is not strictly a form of mens rea because it refers to an objective standard rather than a state of mind. Recklessness could be treated as the lowest form of mens rea. Furthermore, negligence can only form the basis for international criminal liability in exceptional cases.[iii]

Philosophically, *mens rea* is a state of guilty mind that a person entertains while committing a crime. The absence of *mens rea* on the part of a perpetrator while committing a crime precludes the attribution of criminal responsibility. The term intention has been defined by the Special Rapporteur of the International law commission as 'a conscious will to commit an act, desiring and seeking a consequence'. The crime of crimes 'genocide' is a direct intent crime and nothing less than the dolus directus of the first degree along with dolus specialis of genocide would be sufficient to trigger would be sufficient to trigger criminal responsibility for a crime so heinous.[iv] The people involved in international law come from different countries with different legal systems, causing problems. The different levels of ''intent'' vary from one system to another, creating conflict when determining what degree of intent is required for different international crimes, and whether a perpetrator is guilty or not. International criminal law is filled with sprawling case laws with contours which makes establishing anything firmly difficult. This paper attempts to trace the evolution of the concept of mens rea from Nuremberg trials through various tribunals to the International Criminal Court.

NUREMBERG CHARTER AND INTERNATIONAL MILITARY TRIBUNAL

When World War II ended, Raphael Lemkin returned to Europe and served as an advisor to Justice Robert H. Jackson, the lead prosecutor at the Nuremberg trials. The Nuremberg trials according to Lemkin were only partially successful, for while they convicted and punished some of those guilty of genocide, most nazi leaders got away on broader charges of crimes against humanity, and in which case the Jewish identities of these victims were not recognised or pressed upon. Genocide by then had still not been recognized in law as a crime.[v] The Genocide Convention of 1948 states, ''genocide means any of the following acts committed with intent to destroy, in whole or in part, a group, as such.'' The type of intent needed to

convict criminals, including dolus specialis, dolus eventualis, general, or knowledge-based is not stated. This absence of a clear definition has resulted in much debate and arguably hindered the effectiveness of the Convention. The question surrounding the meaning of 'intent' comes up often, and if this barrier was removed, it would be one less obstacle preventing action, and one less excuse for states to use.[vi] Nuremberg was significant with respect to mens rea but was counterintuitive perhaps since the charter did not include a general provision on the mental element. Legal developments had to happen on a case-by-case basis which hindered the coherent use of mens rea. The resulting jurisprudence is vague and incoherent, and can be traced as judges employing both common law and continental law terms.[vii] The most important legal instruments of the Nuremberg and Tokyo Tribunals did not elaborate on the mens rea attribute within their jurisdiction. The Allied powers who emerged victorious appointed justices, were entrusted with broad judicial discretionary powers, to settle the nature of mens rea in relation to the crimes charged. A number of problems emerged on the interpretation of the mens rea concept during trial proceedings at Nuremberg, including the interpretation of prior knowledge of the consequences of crimes as to the lawfulness or unlawfulness of conduct, the inference of intent, the interrelation between mens rea and defences, etc.[viii] At the International Military tribunal, the judges indicted 24 defendants, who were charged with crimes against peace for planning, preparation, initiation and waging wars of aggression, war crimes and crimes against humanity. They were also charged with participation in the formulation and execution of a common plan and conspiracy to commit the foregoing plan. Six defendants were sentenced to death by execution for having prior knowledge of ongoing crimes during World War II. Shigenori Togo and Mamoru Shigemitsu were proven to have been opposed to the war and even though Togo signed the declaration of war they were both sentenced to imprisonment as criminal intent could not be established. In Nuremberg, the mens rea attribute was discussed in relation to conspiracy.[ix] Defendants at Nuremberg carefully denied having prior knowledge of the widespread scale of crimes, and invoking defences of superior orders and duress. The court ruled that even if they were given orders, they chose to actively engage with their assigned tasks by superiors not absolving them from criminal responsibility. By cooperating with Hitler, with knowledge of his criminal aims, they made themselves parties to the plan that he had initiated.[x] Art. 6(a) of the Nuremberg charter, explicitly criminalises 'conspiracy' in case of crimes against peace but not for war crimes and crimes against humanity. From judgements it is also not clear what degree of mens rea was

considered for criminal responsibility. During the trials, art. 6 was applied by analogy or by general principles of criminal law regarding complicity. In case, the defendant lacked knowledge to prove his criminal intent, they were acquitted. For example, in the case of Wilhelm Frick, the court said that he knew fully well that people were being systematically put to death but did nothing to stop it. The English originated doctrine of 'wilful blindness' or 'turning blind eyes to the obvious fact' was employed to indict Walter Funk. The US Military Tribunal at Nuremberg considered the subjective element of individual criminal responsibility relying on 'knowledge'. The tribunal considered the person inciting murder as equally responsible to the person committing murder. Judge H. C. Anderson, devoted special attention to how guilty knowledge was inferred either by direct or circumstantial evidence with knowledge of the facts. In the case of Bruno Tesch who supplied S.S. Karl Weinbacher with poison gas for killing 'vermin', the court indicted them both for having actual and constructive knowledge sufficient to incur criminal liability for complicity in war crimes and criminal liability for supplying lawful material knowing its unlawful use. In case of military commanders, the mens rea ranges from wilful intent and knowledge to negligence on their part. The tribunal also invoked the concept of 'wilful blindness' or 'wilfully shutting one's eyes". A field commander could also incur criminal responsibility for a 'manifestly unlawful order'. Similarly, during the Tokyo trials, judgements showcase that knowledge was relevant to the standard of responsibility. Shortly post-Nuremberg, the International law commission was established in 1947. They went on to write the 1991 and 1996 Draft code of crimes against the peace and security of mankind during the formation of which mens rea was widely debated.[xi] The UN International Law Commission (ILC), in the Draft Code of Crimes against the Peace and Security of Mankind commentaries (1996), states that a general intent would not be sufficient and that genocide ''requires a particular state of mind or a specific intent with respect to the overall consequence of the prohibited act.'' Guenael Mettraux continued this argument by stating that ''genocide was adopted to sanction a very specific sort of criminal action." He also stated that it would be reprehensible to alter genocide for the sake of encompassing as many categories and degrees of criminal involvement as possible within its said terms.[xii]

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY) AND INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

Even though more than two decades have passed since the creation of the International Criminal Tribunal for the Former Yugoslavia and Rwanda the most fundamental concept in all of law, mens rea remains unsettled. Both criminal tribunals lack a general provision on the mental element. In such cases and the absence of such provisions, the issue is left to the sitting judges of these tribunals to ascertain the requisite mens rea for each crime within the subject matter jurisdiction of the Tribunal. Some judges have viewed criminal intent as encompassing a cognitive element of knowledge and a volitional element of acceptance, whereas others are of the opinion that simply foreseeability of harm is sufficient to trigger the criminal responsibility of individuals for serious violations of international humanitarian law. Some judges have employed common law terms such as 'direct intent', 'indirect intent', 'oblique intent' and 'recklessness', whereas others have adhered to continental law terms such as '*dolus coloratus*', '*dolus directus*' and '*dolus eventualis*', regardless of the vast diversity between these terms.[xiii]

The two ad hoc tribunals have consistently referenced national approaches to a variety of legal issues to support their findings on issues of both substantive and procedural international criminal law.[xiv] Among these issues is the identification of the mens rea required for triggering the criminal responsibility for serious violations of international humanitarian law. It is a general principle of law that the establishment of criminal culpability requires an analysis of both actus reus, the material element of a crime, and mens rea, the mental element of a crime.[xv] The jurisprudence of the Tribunals reflects the difficulty of identifying the various forms and shades of mens rea in international criminal law. One reason for this is the lack of a general definition of the issue in either the Nuremberg and Tokyo Charters, or the Statutes of the two ad hoc Tribunals. Both the Yugoslav and Rwanda Tribunals in determining the requisite mens rea of international crimes, saw judges, prosecutors, and defence lawyers of the two ad hoc Tribunals often basing their arguments on a comparison of the world's major criminal law systems and on a systematic analysis of the existing case law.[xvi] Of course that means that different legal systems require different standards of mens rea. Accordingly, what occured is a breakdown in communication between different modes of legal analysis. French criminal

system, for example, distinguishes two components of mens rea, "la conscience" and "la volonté", both of which are said to be required for both "general intent" and "special intent".[xvii] Similarly, German, Austrian and Swiss law also require two components for mens rea "wissen" and "wollen". These two components form at least three different kinds of mens rea, in descending order of seriousness, absicht (intention in the strict sense), dolus indirectus (indirect intent) and bedingter vorsatz (dolus eventualis) (conditional intent). The jurisprudence of both Tribunals evidence the inconsistency regarding the requisite mens rea standards for serious violations of international humanitarian law.[xviii] In Cˇelebic´i, the Prosecution's position was that the mens rea element of "wilful killing" and "murder" as provided for in article 2(a) of the ICTY Statute is established where the accused possessed: (a) the intent to kill, or (b) inflict grievous bodily harm on the victim. The Prosecution argues that the word "wilful" must be interpreted to incorporate reckless acts as well as a specific desire to kill, whilst excluding mere negligence.[xix] Prosecution contended that, while the accused's acts must be "intentional", the concept of intention can assume different forms, including both "direct" and "indirect intention" to commit the unlawful act. This indirect intention refers to situations where the accused commits acts and is reckless to their consequences and where death is foreseeable.[xx] Adopting a narrower definition of intent, the Defence argues that the mens rea element of the offence of "wilful killing" requires a showing by the Prosecution that the accused had the "specific intent" to cause death by his actions. The Defence submits that the words "reckless" and "intent" are mutually exclusive.[xxi] International rules may require a special intent (dolus specialis, dol aggravé) for particular classes of crimes related to the degree or intensity of the requisite mens rea. In the Akayesu (ICTR) Trial Judgment: "Specific intention, required as a constructive element of a crime, demands that the perpetrator clearly seeks to produce the act charged." The Akayesu Trial Chamber evidently assigned a higher degree of mens rea to the term rather than mere knowledge. In the Jelisic Appeal (ICTY), the Prosecution argued that the concept of dolus specialis, a civil law term used to describe mens rea of a crime, set too high a standard, and could not be equated with the common law concepts of "specific intent" or "special intent".[xxii] It seems from the case law that the ICTR has been inclined to favour an intensity-related thrust for 'dolus specialis'. The jurisprudence of the ICTY is less clear. In Jelesic´, the Appeals Chamber seems to have adopted the view that the term (specific intent) or 'dolus specialis' does not imply any higher degree of the requisite intent as such. It asserts that it only used the term to refer to "genocidal intent" and did not attribute to it as requiring

that the perpetrator seeks to achieve the destruction. The Jelesic ´Appeals Chamber applied the definition adopted in Akayesu and on the face of it equalled "specific intent" with purpose. Thus, it is submitted that, for the sake of consistency, the term "specific intent" should be used as signifying "purpose". The common law concept "specific intent" should be referred to as "ulterior intent" or "surplus intent".[xxiii] As far as recklessness is concerned, the Appeals Chamber of the ICTY in Blaskic, submitted that the Trial Chamber in defining the mens rea standard required to convict for planning, instigating, and ordering, erroneously adopted an "indirect intent" standard.[xxiv] "Indirect intent" for the ICTY Trial Chamber, appeared to be synonymous with the common law concept of recklessness and/or the civil law concept of dolus eventualis and deemed it useful to consider the approaches of national jurisdictions in order to adopt the requisite mens rea for 'ordering' as provided for in article 7(1) of the ICTY Statute.[xxv] The dolus specialis requirement has arguably allowed many who have committed genocide to escape conviction for that crime. This is evident in what can be seen as an overall failure of the International Tribunal for the former Yugoslavia (ICTY) regarding prosecutions of genocide. During the Kristic Trial Chamber, the chamber concluded that the campaign to kill all military aged men was conducted to guarantee that the Bosnian Muslim Population would be permanently eradicated from Srebrenica and therefore constituting genocide.[xxvi] However, Professor Schabas has criticised this conviction stating a lack of genocidal intent and that Srebrenica is an ethnic cleansing which could be the warning sign of genocide.[xxvii] The Akayesu (trial chamber) September 1998, para 560 says that the crime of inciting genocide the intent to directly prompt or provoke another to commit genocide and that this implies on part of the perpetrator a desire to create by his actions a particular state of mind necessary to commit such a crime in the minds of the person(s) he is so engaging. The trial chambers for ICTR called upon and punished RTLM radio station for inciting violence and telling listeners to exterminate the Tutsis. An inconsistency shadows the jurisprudence of both ad hoc Tribunals with regard to the mens rea required for triggering the criminal responsibility of serious violations of international humanitarian law. Evidently, judges, prosecutors, and defence lawyers coming from different schools of law and joining the ICTY and ICTR have made numerous efforts in order to reach a definitive concept for mens rea in international criminal law, however, more frequently, a breakdown in communication occurs between different legal cultures. Moreover, the case law of the Yugoslav and Rwandan Tribunals lacks the consistency in establishing the constituent mens rea required for different modes of participation in a criminal offence.

INTERNATIONAL CRIMINAL COURT AND ROME STATUTE

As a result of the general uncertainty regarding the definition of various categories of mens rea and the absence of a customary rule regarding these issues, the drafters of the Rome Statute decided to include a special provision on the subject. However, it is doubtful if that adequately covers all the significant variations of subjective elements of international crimes.[xxviii] Professor Schabas noted that "article 30 of the Rome Statute is not only confusing and ambiguous, it is also superfluous, and that judges of the International Criminal Court, like their colleagues at the ICTY, would easily have understood the mental element of crimes without them having to be told."[xxix] The first paragraph of Article 30 stresses that unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the ratione materiae of the International Criminal Court only if the material elements are committed with intent and knowledge. The second paragraph identifies the exact meaning of intent, whereas the third paragraph defines the meaning of knowledge. Pursuant to Article 30(2)(b) of the ICC Statute, a person has intent in relation to consequence if he means to cause that consequence or is aware that it will occur in the ordinary course of events assigning two different degrees of intent in relation to the consequence element, namely direct intent of the first & second degree. At first sight, it appears that the explicit words of Article 30 are sufficient to put an end to a long-lasting debate regarding the mens rea enigma which has confronted the jurisprudence of the two ad hoc Tribunals for the last decade, but this is not true. Scholars disagree regarding the exact meaning of intent under Article 30. Some view Article 30 as encompassing the three categories of dolus, namely, dolus directus of the first and second degree and dolus eventualis. Others believe that the plain meaning of Article 30 is confined to dolus directus of the first degree (intenti stricto sensu) and dolus directus of the second degree (indirect or oblique intent).[xxx] In the case of Thomas Lubanga in 2007, Pre-Trial Chamber I (PTC) of the ICC asserted that the cumulative reference to 'intent' and 'knowledge' as provided for in Article 30 requires the existence of a volitional element on the part of the accused, and that volitional element encompasses three degrees of dolus, namely, dolus directus of the first and second degrees and dolus eventualis. Aware that the jurisprudence of the two ad hoc Tribunals has recognised other degrees of culpable mental states than that of direct and indirect intent,[xxxi] the PTC went further, assuring that the volitional element also encompasses dolus eventualis. According to them dolus eventualis applies in situations in which the suspect is "aware of the risk that the objective elements of the crime may result from his or her actions or omissions,

and accepts such an outcome by reconciling him/herself with it or consenting to it". The PTC found it necessary to distinguish between these regarding the degree of probability of the occurrence of the consequence from which intent can be inferred.[xxxii] It is clear that the ICC Statute lacks a general provision regarding the definition of the actus reus or material elements of the crime as it appears in Article 30(1). This is remedied by paragraphs (2) & (3) which set out the relationship between the mental elements and the material elements of an offence expressly referred to as conduct, consequence and circumstance.[xxxiii] In more recent times, while strongly condemning the atrocities in Darfur, in his book *War Crimes and Human Rights*, Professor Schabas says that they should not be labelled genocide because "the summary execution" of non-Arabs in Darfur "does not establish genocidal intent." [xxxiv] Under the ICC Statute, 'element analysis or the rule of mens rea coverage', has to be applied cautiously since culpability terms[xxxv]; are stated in the definition of particular crimes (genocide 'with intent to', war crimes of 'wilful killing') or are stated in the Elements of Crimes. Mens rea under article 30 of the ICC has more legal personality and character and is far more defined than other tribunals, courts and charters. As in the case of Lubanga, even recklessness with relation to mens rea was taken into account which Professor Cassese once feared would be excluded and generate impunity.[xxxvi]

CONCLUSION

In his December 2019 defense of Myanmar at the International Court of Justice, Professor Schabas took a conservative stance of what constitutes genocide. He claimed that the atrocities in Myanmar could be convicted as crimes against humanity and not genocide due to a lack of genocidal intent. In conclusion, mens rea is a very important concept to convict criminals and hold those accountable for crimes. It also hinders those who may not directly commit crimes but are accessories to crimes by holding them for intentionally aiding the criminal knowing their unlawful motives. With no general definition of *mens rea* in either the Charter of the International Military Tribunal (Nuremberg Charter), the Statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY), or the International Criminal Tribunal for Rwanda (ICTR), only the Rome Statute of the International Criminal Court (ICC) has a comprehensive legal provision on the mental element of a crime. However, as observed, from Nuremberg to the ICC, criminal intent has been carefully considered and has been instrumental to convicting

those responsible for the most heinous crimes. This has also established through the explored meanings of the terms "deliberately", "intention", "intent", "intentionally", "wilful or wilfully", "knowledge", and "wanton" as provided for in statutes and judgments that accessories to crimes, giving out ‘manifestly unlawful orders’ or through command responsibility that those responsible for inciting crimes are equally (if not more) guilty and punishable as those who commit the crimes themselves. Courts and tribunals have also observed the use of "specific intent", "special intent", "dolus specialis", or "surplus intent". A revolutionary step towards giving ‘mens rea’ a more universally unified definition would be taking a survey of the attitude taken towards the definition of the major facets of mens rea by the world major legal systems.[xxxvii] Recently, scholars have argued that dolus specialis is too strict and that a knowledge-based approach should be adopted, which is more closely related to the intent required in a common-law legal system.[xxxviii] For the sake of international criminal justice, a tendency towards a better understanding of the mens rea concept in different legal systems is a must with an in-depth and systematic study of mens rea standards in comparative law. International criminal law even today is filled with sprawling case laws with contours that haven’t been consolidated, which means that establishing anything firmly is difficult. There is a need for a more concrete, unambiguous and practical definition of mens rea, one that is not mutative or transforming according to the situation. The culpable state of mind of a guilty party can prove beyond reasonable doubt that the defendant committed the offense. The criminal justice system can now differentiate between someone who did not mean to commit a crime and someone who intentionally set out to commit a crime using *Mens Rea*. A crime committed purposefully would carry a more severe punishment than if the offender acted knowingly, recklessly, or negligently and could make the difference between those actually responsible and those influenced mindlessly. If the accused admits to having a motive consistent with the elements of foresight and desire, this will add to the level of probability that the actual outcome was intended making it credible. But if there is clear evidence that the accused had a different motive, this may decrease the probability that he or she desired the actual outcome. In such a situation, the motive may become subjective evidence that the accused did not intend, but was reckless or wilfully blind making a difference in sentencing.

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ENDNOTES

[i] (Finnin, 2012).

[ii] (Van der Vyver, 2004) p. 63-64.

[iii] (Cassese, 2009) p. 57, 302.

[iv] 1948 Genocide Convention.

[v] (Lemkin, 2013)

[vi] 1948 Genocide Convention.

[vii] (Cassese, 2009) p. 57.

[viii] (Marchuk, 2014).

[ix] (Badar, 2013)

[x] (Marchuk, 2014)

[xi] (Badar, 2013)

[xii] (Goldsmith, 2010) p. 241.

[xiii] (Badar, 2013)

[xiv] Prosecutor v. Tihomir Blasˇkic ´ (Case No. IT-95-14-A), Judgment, 29 July 2004, paras. 34–42; Decision on Rule 98 bis Motion for Judgment of Acquittal, 31 October 2002, paras. 54–59; Prosecutor v. Erdemovic ´, (Case No. IT-96-22-A), Judgment, 7 October 1997, paras. 40–61.

[xv] Prosecutor v. Delalic´ et al., (Case No. IT-9621-T), Judgment, 16 November 1998, para. 424

[xvi] (Cassese, 2003)

[xvii] (Elliott, 2000) p. 35-38

[xviii] (Badar, 2005)

[xix] Prosecutor v. Delalic´ et al. (Case No. IT-96-21-T)

[xx] Ibid

[xxi] Ibid, supra note 2, para 427.

[xxii] Prosecutor v. Jelisic ´, (Case No. IT-95-10-A), para. 4.22

[xxiii] (Badar, 2005)

[xxiv] Prosecutor v. Tihomir Blasˇkic ´, (Case No. IT-95-14-A), Appellant's Brief on Appeal, 14 January 2002, p.130, para. 278.

[xxv] (Badar, 2005)

[xxvi] (Goldsmith, 2010) p. 244.

[xxvii] (Schabas, 2008)

[xxviii] (Cassese, 2003) p. 159–60

[xxix] (Schabas, 2002) p. 1024.

[xxx] (Badar, 2008) p. 1.

[xxxi] (Badar, 2006)

[xxxii] Lubanga Decision, supra note 1, para 352.

[xxxiii] Cassese, The Statute of the International Criminal Court, supra note 63, p. 153-154.

[xxxiv] (Schabas, 2008)

[xxxv] (Defined in Article 30).

[xxxvi] Cassese, The Statute of the International Criminal Court, supra note 63, p. 153-154.

[xxxvii] (Badar, 2005).

[xxxviii] (Goldsmith, 2010) p 241.