



The Role of the Mental Element in the Statute of the International Criminal Court: Intent, Consent, and Knowledge

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Abstract

The International Criminal Court (ICC) Statute represents a landmark in international criminal law by articulating the mental element (*mens rea*) for intentional crimes in Article 30, establishing it as a general rule applicable to all crimes within the Court's jurisdiction unless otherwise provided. This article addresses the core research problem: despite Article 30's ambition to define intent and knowledge comprehensively in relation to material elements (conduct, circumstances, and results), the provision contains ambiguities regarding the precise components of *mens rea* such as the interplay of will, desire, awareness, and consent which have generated interpretive challenges in judicial practice and scholarly analysis. The primary objective is to identify, define, and analytically examine the key components of the mental element as outlined in Article 30 and the Elements of Crimes document, elucidating their role in establishing criminal responsibility for genocide, crimes against humanity, war crimes, and aggression. The central research question is: What are the precise components of the mental element (will, awareness, desire, and consent) in ICC crimes, how do they relate to the material elements of conduct, circumstances, and results, and what exceptions or interpretive nuances arise in the Statute and jurisprudence? Employing a doctrinal and jurisprudential analysis of the Rome Statute, Elements of Crimes, and ICC case law, the findings reveal that Article 30's "intent" encompasses three interrelated components will (volition in conduct), awareness (knowledge of circumstances and results), and desire (wish for results), with consent treated as a ground for exemption rather than *mens rea*. Awareness of foreseeable results via ordinary events suffices even without direct desire, while motivation is irrelevant except in specific-intent crimes like genocide. These clarifications resolve ambiguities, enhancing foreseeability and judicial consistency in international criminal law.

Keywords: *Crime; Mental Element; Intent; Knowledge; Consent; International Criminal Court*

Introduction

Article 1 of the Rome Statute grants the ICC jurisdiction over the most serious crimes of concern to the international community as a whole, namely genocide, crimes against humanity, war crimes, and the

crime of aggression (Article 5). Article 30 elaborates the mental element for these intentional crimes, serving as a general rule unless otherwise provided, and defines "intent" and "knowledge" in relation to each material element (conduct, circumstances, and results). While groundbreaking as the first treaty to directly address mens rea in international criminal law, Article 30 fails to provide fully clear and precise definitions of material and mental components, leading to ambiguities that complicate interpretation and application. These gaps have engendered significant challenges in ICC jurisprudence and scholarly discourse, particularly regarding the roles of will, desire, awareness, consent, and motivation.

The mental element is indispensable to distinguishing culpable conduct from morally neutral or excusable acts, ensuring that criminal responsibility aligns with fault and moral blameworthiness. In international criminal law, where crimes often involve complex chains of causation and collective perpetration, precise delineation of mens rea is crucial for upholding fairness, foreseeability, and the prohibition of strict liability. The necessity of this study arises from Article 30's pivotal role in all ICC prosecutions: resolving its ambiguities is essential for consistent judicial application, preventing arbitrary convictions, and advancing doctrinal clarity in a field reliant on customary norms and evolving jurisprudence.

Scholarship on ICC mens rea has proliferated since the Rome Conference, with analyses of Article 30 drawing on domestic analogies (e.g., direct/indirect intent in civil law systems) and prior tribunals like Nuremberg and the ICTY/ICTR. Key works examine intent's volitional and cognitive dimensions, the Elements of Crimes' interpretive role, and exceptions like command responsibility under Article 28 (negligence-based). Debates persist on whether "knowledge" requires *dolus eventualis* (acceptance of risk) or mere foreseeability, and on motivation's irrelevance except in specific-intent crimes (e.g., genocide). ICC Pre-Trial and Trial Chamber decisions, such as Lubanga and Bemba, have begun clarifying these issues, but gaps remain in relating mens rea to material elements.

To identify and define the primary components of the mental element (intent, knowledge, will, awareness, desire, consent) under Article 30 and the Elements of Crimes. To analyze the mental element's application to material components (conduct, circumstances, results) in ICC crimes. To examine exceptions, interpretive nuances, and the role of motivation in specific crimes. To assess the implications of these components for judicial practice and international criminal responsibility.

Central Research Question: What constitutes the mental element in ICC crimes under Article 30, how does it interrelate with material elements, and what interpretive challenges does it pose? How does "intent" encompass will, desire, and awareness across conduct, circumstances, and results? Is consent part of mens rea or a basis for exemption? What role does motivation play, and when is foreseeability via "ordinary events" sufficient? Hypothesis: Article 30's "intent" comprises three components—will (for conduct), awareness (for circumstances/results), and desire (for results)—with consent as an exemption ground; this tripartite structure resolves ambiguities when informed by Elements of Crimes and jurisprudence, promoting consistency without importing domestic doctrines.

Doctrinal analysis reveals that mens rea under Article 30 presumes intent unless non-intentionality is specified (e.g., negligence in Article 28). Will is required for conduct; awareness suffices for circumstances (with evaluative exceptions); and for results, either desire or awareness of ordinary-course occurrence is adequate. Motivation is generally irrelevant, except as specific intent (e.g., genocidal destruction). These findings mitigate ambiguities, affirm Article 30's cognitive-volitional balance, and underscore its innovation in codifying mens rea for international crimes.

1. Crime

The term "crime" is an Arabic word, meaning sin, mistake, acquisition, and the commission of a reprehensible and undesirable act. In general, crime is defined as sin, error, rebellion, wrongdoing, and disobedience (Mo'in, 1384: 28). The word "crime" is a noun, and its plural is "crimes." In Persian, crime means sin and wrongdoing (Amid, 1379: 46). However, in the Dehkhoda Dictionary, "crime" is defined

as sin, error, wrongdoing, transgression, rebellion, and similar terms (Dehkhoda, 1372: under the word "crime"). The original meaning of "crime" refers to separating fruit from a tree, and this term has been metaphorically applied to the acquisition of any undesirable act. In the *Qamus al-Quran*, the term "crime" is defined as cutting (Raghib Isfahani, n.d.: 89). Another synonymous term with "crime" is "ithm," and another synonymous word is "error," which in its definition is said to mean deviating from the straight path (Qureshi, 1412: 28). In the terminology of criminal law, a crime is a behavior that is contrary to social order and exposes its perpetrator to punishment or preventive measures, or a crime, in its general sense, is a criminal act that makes the person liable to punishment according to the law or a specific provision. From this perspective, the term "crime" broadly refers to any behavior contrary to an individual's actions that disturb social order.

According to some legal scholars, a crime is an act or omission that, externally, damages public order, peace, and tranquility. Alternatively, it is an act or omission that is foreseen by law, is punishable, and can be attributed to its perpetrator. A crime is an act or omission considered a violation under the law, with specified elements and prescribed punishments or preventive measures (Afghan Penal Code, 1396: Article 27).

According to the definition in the Penal Code, no person can be punished for committing an act unless that act was previously criminalized in the law, its elements are defined, and a punishment has been established for its commission. In other words, the terms "crime" and "punishment" are derived from the word "jarma" (with a fatah and a sukoon on the "ra"), meaning to acquire or cut. According to Raghib Isfahani, the original meaning of "crime" refers to cutting or picking fruit from a tree. Among the Arabs, it has been metaphorically associated with committing an evil act contrary to justice, right, and integrity. The words "crime," "criminal," and "criminalize" mean sin and transgression or refer to the person who has committed a crime (Yasin, 1383: 7).

Another word synonymous with "crime" is "dhamb," which is defined as the tail of an animal or, metaphorically, anything inferior. When it is said, "the lowly people of a tribe," it refers to the inferior members of the community (Raghib Isfahani, n.d.: 184). Some others define crime as any act or omission that disrupts public order, peace, and social tranquility and for which the law has prescribed punishment (Danesh, 1374: 44). It appears that the complex nature of crime has left many criminologists unable to define it comprehensively. As a result, many criminology textbooks dedicate only a few lines to this subject, and when engaging with societies and legal and social schools of thought, each has defined crime in a unique way. The frequent and consistent use of the word "crime" may give the impression that the term is entirely clear and self-evident, while in reality, its definition remains challenging (Hashemi, 1401: 17).

1-1: The Levels and Degrees of the Mental Element in Crime

The psychological and ethical element plays a significant role in the foundational structure of any criminal act, such that in the relationship between the criminal act and its punishment, the intent and will of the perpetrator and its degrees play a prominent role and affect the entire criminal mechanism. Therefore, understanding and recognizing the qualitative aspects of the mental element of a crime is essential for a judge, as without it, justice cannot be properly served. Since most international law sources derive from custom and international treaties, the degrees and levels of the mental element of crimes, including complicity in a crime, resemble customary law more than treaty law. In this regard, three types of intent can be identified: direct intent, indirect intent, and the commission of a crime resulting from negligence and carelessness. In the case of direct intent, the perpetrator is fully aware of the criminal consequences of their act, and their primary goal is to achieve those undesirable results. On the other hand, in the case of indirect intent, the perpetrator, although aware of the consequences of their act, does not aim to achieve all of those consequences and may not have committed the crime if they had known about the final results. In the third case, the individual is aware of the possible consequences of their negligence or may be unaware, and the occurrence of the crime is merely a result of their ignorance and carelessness, something the judge must consider when administering justice.

Albin Asser, by dividing the mental element of a crime into two components, will and awareness, identifies four levels of this element. First, direct intent, which is the strongest form of the psychological element, meaning that the perpetrator is fully aware of all the material elements of the crime and has a deliberate will to achieve criminal results, such as someone planning to kill an ethnic group for genocidal purposes. Second, recklessness, which is weaker than direct intent, such as in war crimes where the perpetrator intends to destroy a building for military purposes, but despite their reluctance, they are aware of the potential for civilian casualties and accept it. In this case, the volitional element is weaker, but the awareness element is more prominent. Third, a middle ground between recklessness and conscious negligence, where the perpetrator is aware of the consequences of the crime but the volitional element is impaired, such as in an attack where it is believed that no civilians are present. In this situation, there is awareness but no intention to target civilians. Fourth, unconscious negligence, where the awareness element is effectively absent, but the individual should have or could have realized from the circumstances that their actions would result in a crime. Therefore, when ranking the mental element of a crime, gross negligence and carelessness must be considered, especially in international crimes, where accused individuals may use this to evade punishment.

Unlike national law, in international criminal law, the distinction between direct intent, indirect intent, and negligence is not feasible and may even have a negative impact on establishing international justice. Therefore, modern international law emphasizes the principle that to protect global interests, any action that violates legal rules threatening these interests must be criminalized and punished, regardless of the intent and motivation of the perpetrator. Otherwise, the international community will be plagued by insecurity and perpetual tension. Since international law is mostly customary, and even its treaty-based sources are nothing more than the codification of these customs, enforcing violations of these rules will be difficult. In contrast, in national criminal law, the legislator determines the punishment for crimes by considering various possibilities.

1-2: The Mental Element of International Crimes

At the national level, in addition to the legal and material elements, the existence of the mental element of a crime is also necessary. The mental element of a crime refers to the involvement of a person's will in the criminal act, meaning that if a person's will is involved in a criminal act, they are responsible for their crime and can be punished. However, if the person's will is not involved in the criminal act, they do not bear moral fault and, consequently, have no criminal responsibility. Therefore, they are not punishable and are considered an irresponsible person. In fact, three categories of individuals lack free will in committing a crime: children, mentally insane individuals, and those who act under coercion (Nadai, 1402: 170-171).

From the perspective of the mental element of national crimes, they are divided into two categories: intentional crimes, where a person's will is involved in the form of intent, and unintentional crimes, where the will is present in the form of error.

In international crimes, there are two theories regarding the necessity of the mental element in a crime:

First theory: According to this theory, the existence of the mental element is not necessary in international crimes. Rather, the mere existence of a causal relationship suffices. That is, when there is a direct link between a person's criminal act and the resulting crime, the responsibility for the act falls on the perpetrator, regardless of whether their will was involved.

Second theory: According to this theory, similar to national crimes, the existence of the mental element is considered necessary in international crimes. In this view, there must be either intent or error in the mental state of the individual committing the crime. Proponents of this theory refer to the decisions of the Nuremberg International Criminal Court, where the existence of the mental element was taken into account during the trial of defendants (Danesh, 1391: 12).

Article 30 of the Rome Statute of the International Criminal Court states: *"No one shall be criminally responsible for committing any of the crimes within the jurisdiction of the Court, unless the material*

element is accompanied by intent and knowledge." (Rome Statute of the International Criminal Court, Article 30).

According to this article, intent is presumed when a person:

- Intends to commit the act itself;
- Intends to cause the result of the act, or is aware that this result will naturally occur as a consequence of their actions;
- In accordance with this article, knowledge is presumed when a person is aware that the conditions for committing the crime exist or that the result will occur as a natural consequence of the events (Nadai, 1402: 171-172).

1-3: The Role of Motivation in the Rome Statute

Motivation, or "dasee," refers to the ultimate goal pursued by the perpetrator of a crime and essentially represents the benefit or desire that drives the offender to commit the crime (Ali-Abadi, 1385: 60). In criminal law, motivation plays an important role in various aspects, such as determining the punishment and applying reductions or enhancements to penalties. However, motivation is generally not considered part of the mental element of a crime. This principle has also been upheld in international criminal courts and legal frameworks. For example, in the process of adopting the 1948 Genocide Convention, the view that motivation should not be part of the mental element of crimes listed in that convention was explicitly agreed upon by its members. In the jurisprudence of international courts, the International Criminal Tribunal for Rwanda, in the case of one defendant named Ragiou, did not consider motivation as relevant to the crime. Although it was established that the defendant intended to destroy an ethnic group, the political and idealistic motivations did not prevent his conviction (Keryang Sak, 1387: 22-53). This principle is applied under Article 30 of the Rome Statute concerning crimes under the jurisdiction of the International Criminal Court (ICC). According to this article, if a person's actions align with the material and mental elements of the crimes outlined in the statute, the defendant's motivations or reasons for committing the crime do not affect its occurrence. However, some legal scholars argue that motivation may influence the commission of certain crimes under the jurisdiction of the ICC. For example, they suggest that if the perpetrator of an act of aggression has humanitarian motives, the crime may not be deemed to have occurred. Therefore, if a country attacks another with the aim of preventing severe human rights violations, they argue that the necessary mental element for the crime would be absent.

This view seems incorrect from two perspectives. First, motivation is not part of the elements of the mental element of crimes under the jurisdiction of the ICC, and the Rome Statute does not mention it. Second, the United Nations Charter provides mechanisms to address a country that commits severe human rights violations against its own citizens. If an attack on another country is conducted within the framework of this Charter and does not aim to violate territorial integrity or destroy the political independence of the attacked country, it will not constitute the crime of aggression. Therefore, a country's humanitarian motives for engaging in an act of aggression do not remove the criminal nature of the act.

Another important point is that the Rome Statute contains several provisions where the perpetrator's desire for a specific result is considered part of the mental element, but the actual occurrence of that result is not a condition for the crime to be considered completed. These include the intention to destroy all or part of a national, ethnical, racial, or religious group in the crime of genocide (Article 6(3)), the intention to maintain an oppressive regime and racial domination in the crime of apartheid (Article 7(1)(h)), the intention to discriminate in the crime of persecution (Article 7(1)(h)(3)), and the intention to deprive property owners of their property for personal use in the crime of pillage (Article 8(6)(b) and Article 8(5)(h)(2)(3)).

It could be argued that these are not considered specific intent or result-oriented crimes, but rather motivations, and therefore could be seen as exceptions to the general rule that motivation does not

influence the commission of a crime. However, since specific intent does not necessarily mean the result has to materialize in the material element, it can be concluded that these are part of the mental element of the crime and are not merely motivations.

1-4: The Mental Element Components Related to Conduct, Circumstances, and Result in Crimes Under the Jurisdiction of the Court

This paper analyzes the position of the mental element of a crime in international law and distinguishes the components of both the material and mental elements of a crime. In this regard, the material elements include conduct, circumstances, and the result, while the mental element, which the Rome Statute defines as comprising intent and awareness, is examined. The relationship and compatibility between these two elements are then analyzed. As previously discussed, the Rome Statute uses the term "intent" in different meanings, and since this component of the mental element consists of will, awareness, and desire—or even one of these elements—an analysis of the material components will also be carried out in comparison with these three elements.

2. Components of the Mental Element Related to Conduct

Criminal conduct consists of a prohibited act or omission that is defined as a crime and for which punishment is specified. Determining which acts or omissions constitute criminal conduct for crimes under the jurisdiction of the Court is not always easy, as the definitions in the Statute are usually general and broad, encompassing a wide range of behaviors. One proposed criterion for distinguishing the element of conduct from other elements of a crime is to define conduct as the mere physical movement of the perpetrator. However, this view raises questions, such as whether actions or omissions by the perpetrator that cause other movements, resulting in an outcome, should also be considered criminal conduct, and whether knowledge of these movements is necessary. In most cases, the Statute criminalizes any act or omission that leads to a specific result, and in such cases, criminal conduct is recognized through its result. In these types of crimes, the process of reviewing the crime is conducted in reverse; the result is examined first, and then the act or omission that caused this result is identified. In committed crimes, causality or causation is examined to identify the conduct that caused the result. After determining that, the question arises whether this conduct was accompanied by the necessary mental element for the crime to be realized. Some instances of genocide crimes, such as murder, infliction of serious bodily and psychological harm, and forced transfer of children, are examples of such crimes.

2-1: Will in the Commission of Conduct

Part (a) of Article 30(2) of the Statute uses the terms intent and "want," stating: "A person has intent regarding conduct if they wish to perform that conduct." There is no doubt that the necessity of will in committing the conduct, in addition to being inferred from general criminal law principles, is also reflected in the phrase "wish to perform that conduct," which at least suggests the presence of will in performing the conduct. Moreover, the presence of will in conduct creates a causal relationship between the perpetrator and their behavior, and behavior performed without will cannot be attributed to the person. (Mirsaidi, 1390: 153-154)

2-2: Wanting to Perform Conduct (Consent Regarding the Conduct)

Criminal law sources usually do not consider wanting, desire, or voluntary consent as part of the mental element, and instead, they examine non-consent within concepts such as coercion, considering it under specific conditions as a defense that can exempt the perpetrator from criminal liability. In some cases, without directly referring to criminal liability, non-consent is regarded as a defense that, if proven, can exempt the perpetrator from punishment. Similarly, the Rome Statute of the International Criminal Court does not consider consent as part of the mental element of crimes. Article 31(d) of the Statute

explicitly states that if the perpetrator's conduct is, firstly, performed under duress from an imminent threat of death or serious injury to themselves or another person; secondly, conducted reasonably and necessarily to avoid the threat; and thirdly, does not cause harm exceeding that necessary to avert the threat, the perpetrator will be exempt from criminal responsibility. This approach indicates that consent is not a component of the mental element, but rather, under specific conditions, it may lead to an exemption from punishment. The reason for this is that in cases of duress, the perpetrator's rationality, perception, and will are not eliminated; rather, their voluntary consent to perform the act is affected. If consent were part of the mental element, its absence would solely lead to the non-existence of the mental element and, consequently, the non-occurrence of the crime. However, the Rome Statute shows that the crime still occurs without consent, but if the conditions specified in Article 31 are met, the individual will be exempt from criminal responsibility. Therefore, consent or voluntary desire regarding the conduct is not part of the mental element of criminal conduct. (See: Safai and Rahimi, 1395: 194; Mirsaidi, 1390: 62 and 68)

2-3: Awareness Regarding the Conduct

In the modern era, the necessity of the perpetrator's awareness that their actions will result in the elements of the material component, particularly conduct, has gained more importance and complexity due to technological advancements, which have created a gap between different components of conduct as part of the material element. For example, in actions such as launching missiles or bombing, the process of firing, from the moment the physical act is performed by the perpetrator to the realization of the result, takes so long that it seems to be independent of the initial physical conduct. Since this process neither falls under the result element nor is considered as a condition, but rather is part of the conduct element, the question arises whether the perpetrator's awareness of this process is necessary, which is one of the important and challenging issues in analyzing the mental element of crimes.

Regarding crimes under the jurisdiction of the Court, the question that arises is whether mere will in performing the conduct is sufficient for the commission of these crimes, or whether awareness of the nature and subject of the conduct is also necessary. In this regard, Part (a) of Article 30(2) of the Statute states: "A person has intent regarding conduct if they wish to perform that conduct." The question arises as to what this phrase means. Does it mean that the person only has to willfully perform their physical movements, without needing to know the nature of the conduct and its subject? Or does "that conduct" refer to the criminal behavior with its specific nature, characteristics, and attributes? It seems that the phrase "that conduct" in this provision refers to conduct that has been criminalized with all its aspects. In other words, the phrase "that conduct" in the text of Article 30 is a definite noun and points to the fact that the perpetrator's will to perform conduct must be accompanied by an awareness of the subject and nature of the criminal conduct specified in the Statute. Therefore, in this provision, the term "intent" regarding conduct consists of a combination of will along with awareness of the conduct.

Thus, in response to the question of whether mere will to perform an act leading to the result desired by the law is sufficient, it must be said that will alone is not enough. The perpetrator must, at the time of committing the act, be aware of the subject and know the nature and features of their behavior. This interpretation of the phrase "wish to perform that conduct" has also been confirmed in the case law of the Pre-Trial Chambers of the International Criminal Court. These chambers have emphasized the necessity of general intent, conscious desire, or expressed intent at the time of committing the material elements of the crime, showing that mere conduct is not sufficient, and the perpetrator must also be aware of it. The use of such expressions in case law indicates that awareness of conduct is an essential component in the analysis of criminal responsibility. (See: Aqa'i-Nia and Zahrawi, 1388: 9-10)

In this regard, the First Pre-Trial Chamber of the Court, in the Lubanga case, determined that the suspect has intent with respect to conduct if: (1) they know that their actions or omissions create the elements of the material component of the crime; and (2) they perform these actions or omissions with the definite intention to create the elements of the material component of the crime. The phrase "elements of the material component" in Part 1 includes conduct, circumstances, and result. Therefore, in this case, the

emphasis was also placed on the necessity of the perpetrator's awareness of the conduct they committed. With all these considerations and reasons, as some scholars have implicitly pointed out, the lack of explicit mention in the Statute of awareness regarding conduct could lead to significant issues in reviewing crimes and determining the guilt of suspects. (438:2008 Badar)

3. The Spiritual Element Related to Conditions

The conditions for committing a crime refer to the features of objects, people, time, place, and other situations that are explicitly stated in law as necessary for the commission of the crime. These conditions may be presented in an affirmative manner, such as the requirement that the victim belongs to a specific group in the case of genocide, or in a negative manner, such as the condition that the population attacked in crimes against humanity must be non-combatants. In other words, these conditions are elements that are beyond the control of the perpetrator, but their presence or absence is essential for the crime to occur. Therefore, these conditions, as part of the material element of the crime, play a determining role in identifying whether or not a criminal act has occurred. (Refer to: Mir Mohammad Sadeghi, 2007: 52). It has been argued that conditions are merely descriptive of the elements of behavior and results, and do not have an independent nature from these two components of the material element. However, the flaw in this view is that sometimes the conditions stated in law are not descriptive of either the behavior or the result and possess an independent existence from both. For example, the non-combatant status of the victim in genocide is not related to the perpetrator's behavior or the resulting outcome. Hence, as some legal scholars have stated, it can be argued that conditions are actually additional statuses (whether factual or legal) that, alongside behavior and result, are essential for the crime to be realized.

This part of the material element has an independent existence from the will and intention of the perpetrator, meaning that the perpetrator's intention does not influence the formation of the necessary conditions for the commission of the crime, nor does their intent relate to creating these conditions. Therefore, among the elements of the spiritual element, only awareness is necessary concerning the conditions for the crime's commission. Whether awareness of certain conditions is required depends on the definition of the crime and the obligations set out in the statute. In addressing crimes within the jurisdiction of the Court, the review of conditions as part of the material element requires three stages: first, it must be determined which conditions, according to the articles of the statute and the elements of the crimes document, are necessary for the crime to occur; second, it must be determined whether these conditions existed at the time the crime was committed; and third, if these conditions were realized in reality, it must be proven that the perpetrator was aware of them. In addition to paragraph one of Article 30 of the Rome Statute, which generally refers to the necessity of awareness regarding the conditions, paragraph 3 of Article 30 specifically confirms this. It begins by stating: "Awareness means being informed about the existence of conditions...". This part of the spiritual element is only realized if the perpetrator had complete knowledge and awareness of the conditions, and situations where the perpetrator had doubts or uncertainties about the existence of the conditions are not included. This principle has also been upheld in several international criminal tribunals. For example, the Nuremberg International Criminal Tribunal acquitted the accused in the cases of Schacht and Krupp because they were unaware of Hitler's aggressive plans (Kasai, 2008: 202).

However, there are some exceptions regarding the necessity of full awareness of conditions. For example, paragraph 4 of the General Introduction to the Document on the Elements of Crimes, concerning the alignment of the spiritual element with some material conditions that have evaluative meanings, allows for exceptions. According to this paragraph, for conditions like "inhuman" or "severe" actions, which carry evaluative meaning and are essential elements of some crimes within the jurisdiction of the Court, "there is no need for the perpetrator to personally form a correct and complete judgment about these concepts, unless otherwise stated". This rule is also applied in cases where the result involves significant harm, and it suffices to prove that the perpetrator was aware of the harm, without the need to

demonstrate that the perpetrator knew the harm would be severe (Dehimi, 2005: 71). Another exception regarding knowledge and awareness of conditions is found in the context of crimes against humanity. According to Article 7 of the Rome Statute, the existence of a widespread or systematic attack is a necessary condition for the crime of crimes against humanity to occur. However, according to paragraph 2 of the General Introduction to the crime of crimes against humanity in the Elements of Crimes document, it is not required for the prosecution to prove that the perpetrator had full knowledge of all the specific features and details of the attack. It is sufficient that the perpetrator was aware that the attack was part of a widespread or systematic plan. In this context, the International Criminal Tribunal for the former Yugoslavia, in the cases of Tadic (paragraph 248) and Blaskic (paragraphs 247 and 251), did not require full knowledge of the details of the attack for the crime to be committed (Kasai, 2008: 98-99). Furthermore, legal doctrine treats situations where the accused recognizes that there is a high probability that the conditions exist but consciously refrains from obtaining a final conclusion about them due to a desire to deny awareness, as tantamount to full awareness of the result.

4. Components of the Spiritual Element Related to the Result

The result element refers to the conditions that the criminal's behavior must alter or create to fulfill the crime. The result is the specific legal effect that must arise from the criminal's behavior. In the crimes specified in the Rome Statute, results are divided into two categories: in some cases, the occurrence of a complete result, such as causing death, is essential, while in other cases, creating a specific state of harm or danger, such as endangering health or security, is sufficient for the crime to be realized. Since the internal will of the perpetrator has no direct relation to the result, and the two are connected only through the behavior, the will concerning the result does not inherently have a subject matter. Rather, the intent regarding the result refers to the mental actions through which the perpetrator desires to bring about a specific result. However, in some countries, the standard of foreseeability or awareness of the result is sometimes considered equivalent to desiring the result. This standard is met when the person does not directly intend the result but is aware that their behavior will lead to it. In this regard, concepts such as "direct intention of the second degree" in German law, "indirect intent" in English law, and the establishment of "knowledge of the intrinsically lethal nature of the act" in Islamic jurisprudence and the Penal Code can be referred to. According to parts (a and b of paragraph 2, Article 30 of the Rome Statute), the components of the spiritual element related to the result are the desire for the result and awareness that the result will occur in the course of ordinary events. Therefore, the presence of either of these two mental states—the desire for the result or awareness that it will result from the ordinary course of events—is sufficient for the realization of this part of the spiritual element, and there is no need for the perpetrator to both desire the result and be aware of it.

4-1: Desire for the Result

According to the beginning of section (b, paragraph 2) of Article 30 of the Rome Statute, a person has intent regarding the result when they "wish to bring about that result." This means that the person desires to create the result through their behavior. Here, wanting to create the result does not refer to the will to achieve the result, but rather to the inner wish or consent of the perpetrator to see the result occur as a consequence of their actions. Therefore, intent in this part of Article 30 of the Rome Statute lacks the elements of will and awareness and simply refers to desiring the result. One important point about desiring the result is that in certain crimes, the intent to achieve the result is a necessary element for committing the crime, but its actual occurrence in the real world does not affect the crime's realization, and these two do not necessarily correlate. Thus, the existence of this component of the mental element should not be interpreted as meaning that the result must occur in the outside world. In other words, the Rome Statute of the International Criminal Court requires the perpetrator to desire a specific result in certain crimes but does not make the actual occurrence of that result in the real world a condition for the crime's commission. For example, according to Article 6 of the Rome Statute, in the crime of genocide,

the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group is considered part of the mental element, while the actual destruction of that group in the real world is not a condition for the crime. Furthermore, the mere death of many members of a specific group does not automatically prove the perpetrator's intent to destroy the entire or part of that group. This approach was also taken by the International Criminal Tribunal for the former Yugoslavia. For instance, in the case of Goran Jelisić, although the defendant killed or tortured many Muslims and even referred to himself as "Hitler," the court did not convict him of genocide because it did not find the specific intent to destroy part or all of the Muslims and concluded that his actions were not aimed at ethnic cleansing (refer to: Diehim, 2005: 135).

However, in the case of murder, which is one of the manifestations of the crime of genocide, it could be argued that given the requirement to kill at least one person in this case, the actual destruction of part of the group, in addition to desiring it, is a condition for the crime's realization. However, it should be noted that the requirement to kill at least one member of the described group does not relate to desiring the destruction of all or part of the group, but rather to the act of murder itself as referred to in section (a) of the mentioned article. Additionally, even in the case of murder, one could argue that killing a single person does not necessarily equate to the destruction of part of a group. Moreover, regarding other manifestations of the described crime, such as causing severe physical or mental harm, forced displacement of children, and so on, the destruction of all or part of the group in the real world is not a condition for the crime's realization; hence, in this crime, the result of the destruction of all or part of a defined group is not part of the required material element, whereas desiring this result as part of the mental element is a condition for the crime's realization. In this regard, the Trial Chamber of the International Criminal Court for Rwanda in the Akayesu case (paragraph 521 of the judgment) expressed the view that genocide could be committed even with the commission of one prohibited act and against one member of a population (Kassesse, 2008: 154).

4-2: Awareness of Result Occurrence Following Ordinary Events

The end of paragraph (b), section (2) of the hypothetical statute stipulates that if a person does not desire a specific result but is aware of its likelihood following ordinary events, it is considered equivalent to desiring that result. This element of the mental element is almost identical to the concept of *indirect intention* or *oblique intent* in common law systems. The awareness standard in this section is personal. Awareness of the result is only achieved if the perpetrator has complete knowledge of its occurrence. Therefore, if the perpetrator does not want the result to occur and believes that the likelihood of the result happening due to ordinary events is low, this element of the mental element is not met. Accordingly, in the preliminary chamber of the Bemba case, it was stipulated that the defendant must be aware that the material elements are almost certainly going to occur due to the usual course of events as a result of his actions or omissions. The International Criminal Tribunal for Rwanda also deemed awareness of the result, together with an omission, sufficient for the commission of a crime in the *Kambanda* case. In this case, the accused, as the Prime Minister of Rwanda, despite being aware of the genocide, did not take steps to stop it, and thus, he was convicted of committing genocide. (Kriyang Sakh, 2008: 88). The phrase "result occurs following natural (ordinary) events" comes with several ambiguities. For instance, an individual may claim that they did not intend for the result to occur and were not aware of it, because they expected an intermediary event—one that is considered unusual in common practice but deemed plausible by them—would occur and prevent the result. In such cases, the perpetrator hoped for an event that would prevent the result from happening, but this event, from an objective perspective, is unlikely and unusual. For example, imagine a person detains civilians in an abandoned area without resources, but hopes that military forces loyal to them will accidentally find and rescue the detainees. In this scenario, determining whether the perpetrator was aware of the result's occurrence or not would be challenging. Another example could be firing a missile at a civilian area where the perpetrator knows all the individuals there will be killed but simultaneously hopes that some kind of divine inspiration or sign will cause them to leave the area before the explosion. In such cases, considering that the expected events the perpetrator relies on are clearly improbable and unusual, and based on the criterion of "result following the usual

course of events," the perpetrator would have been aware that, unless these extraordinary events occurred, the result would follow. Thus, it can be said that the necessary mental element for the commission of the crime exists. Therefore, if a defendant relies on expectations that are extremely improbable and unusual to exonerate themselves, such a defense will not be acceptable. In this regard, this criterion differs from the criterion of "certainty regarding the result's occurrence," because in the latter case, if it is proven that the perpetrator, even assuming the intervention of unusual factors, did not consider the result to be certain, they could be acquitted. However, under the criterion mentioned in Article 30, uncertainty about the result's occurrence, based on unlikely events, cannot alone lead to the defendant's acquittal. (See: Dehim, 1999: 97-98)

Conclusion

Despite the differing viewpoints of the drafters of the Statute, which mainly stem from the differences in the legal systems of their respective countries, and the numerous gaps and shortcomings in the regulations related to the mental element of crimes outlined in the Statute, the adoption of such provisions, regardless of the fact that they were groundbreaking in international legal documents, has opened new horizons in the field of international criminal law. The differentiation of the material and mental elements, clarification of their concepts, and examination of their interrelationship are among the innovations that can bring about significant and beneficial changes in both domestic and international criminal law literature. In most studies related to the mental element in the Rome Statute, following the apparent meaning of Article 30, this element is considered to consist of two components: intent and awareness, or two aspects of volition and consciousness. However, the provisions of the Statute and the Elements of Crimes document show that the term "intent" in these documents has multiple meanings and includes a combination of three elements: desire, will, and awareness, or even just one of them. Therefore, it can be said that the mental element of crimes under the jurisdiction of the Court consists of three components: will, awareness, and desire, each of which has its own concept and manifestations. According to the Rome Statute, will is a mental state by which an individual moves their body parts or refrains from performing an act; desire refers to the internal wish or consent to commit an act, omission, or achieve a result; and awareness is the personal knowledge gained directly through one's senses. For a more precise analysis of the mental element of intentional crimes, these components should be separated and their relationship with the material elements should be examined. Therefore, in regard to each of the material elements, the following conclusions can be made: First, according to general criminal law principles and paragraph (2) of Article 30 of the Statute, the presence of will in committing an act is necessary, but desire or consent regarding the act, according to paragraph (1) of Article 30, is not considered part of the mental element of intentional crimes. Also, awareness regarding the subject and nature of the act, according to Article 30 and the International Criminal Court's jurisprudence, is necessary for the commission of a crime, particularly when the criminal process, in terms of time and space, deviates from the initial physical act and results in an outcome. Second, conditions, as part of the material element, have an independent nature from the act and result, and are not related to the will and desire of the perpetrator. Rather, mere awareness of the perpetrator regarding the existence of those conditions is sufficient for the crime to be completed, although in some cases, full awareness of the conditions is not required, such as when the conditions are of a value-based nature and complete knowledge of them by the perpetrator is not necessary. Third, since the result is detached from the criminal act through a causal relationship, the presence of will in this section of the material element is also not relevant. According to Article 30, the perpetrator will have the mental element concerning the result if they either desired the result or were aware that the result would occur following ordinary events. The criterion of "result occurring due to ordinary events" differs from the criterion of "necessity of certainty regarding the occurrence of the result," because in the latter case, if the perpetrator is unaware of the result for any reason, this component of the mental element is not met. However, under the criterion

mentioned in the Statute, if the perpetrator's doubt is caused by unusual events, the mental element of awareness regarding the result will still exist.

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