

MEMORANDUM

TO: Deputy Prosecutor of the International Criminal Tribunal for Rwanda

FROM: Lorin Einhorn

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RE: International War Crimes Prosecution Project; 2 credits

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Topic #27:

MENS REA REQUIRED FOR GENOCIDE  
Vs.  
MENS REA REQUIRED FOR CONSPIRACY TO COMMIT GENOCIDE

This memorandum presents a comparative study of the approach in the common law jurisdictions of the United States of America, Canada, and Britain in determining the required mens rea for conspiracy to commit genocide versus the required mens rea to commit genocide alone. In addition, this memorandum also analyzes current ICTR and ICTY cases addressing the issue of mens rea.

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### CASES

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*Prosecutor v. Akayesu*, Trial Chamber, 497 (1998).

*Prosecutor v. Musema*, Trial Chamber, 184-198 (2000).

*Beanal v. Freeport-McMoran, Inc.*, 969 F.Supp.362 (1997).

*People v. Carter*, 415 Mich. 558 (1982).

*People v. Swain*, 12 Cal. 593 (1996).

*People v. Lauria*, 251 Cal. App.2d 471(1967).

*Pinkerton v. United States*, 328 U.S. 640 (1946).

*State of Minnesota v. Christopher*, 305 Minn. 226, 231 (1975).

*Presbyterian Church of Sudan v. Talisman Energy Inc.*, 244 F.Supp.2d 289, 319(2003).

*Regina v. O'Brien*, 11 W.W.R. 657 (1954).

*R. v. Ross*, 164 Nfld. 214 (1998).

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*R. v. Thomson*, 1966 WL 23278.

*R. v. Collins*, 1983 WL 217041.

*R. v. Brown*, 2001 WL 825762.

*R. v. Anderson*, 1985 WL 311028.

*Prosecutor v. Goran Jelusic*, Trial Chamber I (1999).

*Prosecutor v. Stakic*, Trial Chamber II (1992).

## STATUTES

Statute of the International Tribunal for Rwanda, pt. 2, Article 2.

Canada Criminal Code, R.S.C. 1985, C-46, section 318.

Crimes Against Humanity and War Crimes Act, S.C. 2000, C-24, section 6.

Criminal Law Act 1977, C.45, Pt. 1, section 1.

## OTHER SOURCES

*International Humanitarian Law: Catching the Accomplices*, 83 Int'l Rev. Red Cross 439, 442 (2001).

## I. INTRODUCTION

This memorandum addresses the issues surrounding the requisite mens rea to be convicted of genocide or conspiracy to commit genocide. The memorandum presents a comparative study of the approaches in the common law jurisdictions of the United States of America, Canada, and Great Britain in determining the required mens rea for conspiracy to commit genocide versus the required mens rea to commit genocide in itself.

There are many difficulties in demonstrating intent. In most circumstances, however, intent can be inferred from the relevant facts and the context of the alleged culpable acts. The difficulty in determining a standard of how to apply the intent requisite is much greater. Some of the issues that arise include: Whether genocide or conspiracy to commit genocide is a specific or general intent crime? Whether an individual must possess a purpose or whether the mere knowledge that the consequences will follow is enough to satisfy the requisite mens rea? What is the difference between intent to promote hate that is protected under freedom of speech and intent to promote hate that amounts to conspiracy to commit genocide?

The crime identified as genocide includes acts committed as part of a widespread or systematic attack against any civilian population with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. *Statute of the International Tribunal for Rwanda* pt. 2, Article 2. Demonstrating the requisite intent is of paramount importance to convict an individual, or group of individuals, of genocide.

International law has also created criminal liability not only for principals who committed acts of genocide or war crimes but also for those who were connected with any plans or enterprises involving the commission of such crimes. *Enforcing*

*International Humanitarian Law: Catching the Accomplices*, 83 Int'l Rev. Red Cross 439, 442 (2001).

This planning for genocide may constitute the separate crime of conspiracy. The intent for conspiracy to commit genocide is distinct from the crime of genocide. Common law systems tend to view “entente” or conspiracy as a specific form of criminal participation, punishable in itself.

## II. FACTUAL BACKGROUND

The distinction between the crimes of genocide and conspiracy to commit genocide is, at times, difficult to discern. Many issues arise in an attempt to convict an individual of the two offenses. One such issue is whether an accused may be convicted of both genocide and conspiracy to commit genocide on the basis of the same acts. May a “dual mens rea” be found in such circumstances sufficient for a conviction of both offences? Under common law, an accused can be convicted of both conspiracy and a substantive offence where the objective of the conspiracy extends beyond the offences actually committed. The converse implication of this in international law is that no purpose would be served in convicting an accused, who has already been found guilty of genocide, for conspiracy to commit genocide, on the basis of the same acts.

An issue that arises in common law and international law currently is whether it is possible to define a universal standard of intent that will be the basis for a conviction of genocide, or conspiracy to commit genocide, or will the mental element be determined on a case-by-case basis? Both international and common law have attempted to define a requisite standard of intent.

### III. LEGAL DISCUSSION

#### A. INTERNATIONAL LAW

##### 1. Genocide.

Genocide is distinct from other crimes because it requires *dolus specialis*, a special intent. Special intent of a crime is the specific intention which, as an element of the crime, requires that the perpetrator clearly intended the result charged. The *dolus specialis* of the crime of genocide lies in the “intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such.” Prosecutor v. Rutaganda, Trial Chamber, 59-60 (1999). A person may be convicted of genocide only where it is established that he committed one of the acts referred to in the Rome Statute of the International Criminal Court with the specific intent to destroy, in whole or in part, a particular group.

The intent of the crime of genocide has three fundamental components: intention to destroy a group, the intention to destroy a group in whole or in part, and the intention to destroy a group that is identifiable by; nationality, race, ethnicity, or religion. The defining feature of genocide is that it must be proven that the alleged offender possessed the “specific intent” or *dolus specialis* to destroy the group in whole or in part. Where this intent is not established, the act remains punishable, but not as genocide. A “specific” intent offence requires performance of the actus reus but in association with an intent or purpose that goes beyond the mere performance of the act. Prosecutor v. Akayesu, Trial Chamber, 497 (1998).

“While the principal offender must possess the specific intent of genocide, this is not necessary in the case of accomplices. The accomplice must act knowing that the principal offender is committing genocide.” See Akayesu at 539. If an accused knowingly aided and abetted another in the commission of genocide while being unaware that the principal offender had the special genocidal intent, the accused could be prosecuted for complicity in murder but not for complicity in genocide. On the other hand, if the accused “knew or had reason to know” that the principal offender was acting with genocidal intent, the accused would be an accomplice to genocide even though he did not share the murder’s intent to destroy the group. Id at 451.

## 2. Conspiracy to Commit Genocide.

Conspiracy to commit genocide only requires proof of an actual or implied agreement to commit genocide. The existence of a plan or policy is not a legal ingredient of a crime, but may facilitate the proof of the requisite specific intent. For example, if the accused accompanied or preceded the act with some form of genocidal declaration or speech, its content may assist in establishing the special intent. “The Chamber holds that conspiracy to commit genocide is to be defined as an agreement between two or more persons to commit the crime of genocide. With respect to the mens rea of the crime of conspiracy to commit genocide, the Chamber notes that it rests on the concerted intent to commit genocide, that it is to destroy, in whole or in part, a national, ethnic, racial or religious group, as such. Thus, it is the view of the Chamber that the requisite intent for the crime of conspiracy to commit genocide is, *ipso facto*, the intent required for the crime of genocide, that is the *dolus specialis* of genocide.” Prosecutor v. Musema, Trial



Chamber 184-198 (2000). Therefore, the intent of conspiracy to commit genocide is by the very nature of the situation the specific intent to commit genocide.

## **B. COMMON LAW**

### **1. UNITED STATES OF AMERICA**

The common law has long looked towards the criminal's state of mind to determine the essential prerequisite to criminal fault. The term, "mens rea," meaning "a guilty mind; a guilty or wrongful purpose; a criminal intent," has both a broad and a narrow meaning in criminal law. The broad meaning, which is analogous to general intent, is defined as intent to do any socially undesirable conduct. The narrow meaning, which is analogous to specific intent, is defined as intent to do or achieve a specific wrong now or in the future. Both specific and general intent crimes are recognized by common law, however the modern trend in the U.S. is towards the narrow meaning. The Model Penal Code versions which have been adopted by the majority of jurisdictions in America, establishes a formula to measure the degrees of culpability of the offender's mental state. The MPC distinguishes the terms "purposely" (the actor's conscious purpose/objective), "knowingly" (conduct or result highly probable to occur), "recklessly" (conscious disregard of risk), and "negligently" (lack of awareness). Each of these terms may satisfy the requisite intent for a number of substantive crimes, however, they are distinguished by their levels of criminal responsibility and are punished accordingly.

Genocide is an intentional tort. The crime of genocide was clearly recognized in the aftermath of the Second World War by the United Nations, international conventions, United States law and case law. “Genocide is a specific intent offense. To prove genocide, the plaintiff must demonstrate that certain acts were committed with the intent to destroy, in whole or in part, an ethnic group.” Beanal v. Freeport-McMoran, Inc., 969 F.Supp.362 (1997).

Criminal conspiracy is proscribed by statute and case law in the United States. The offense has its origins in the common law and is identified as a specific intent crime under this law. However, a twofold specific intent is required for conviction: intent to combine with others, and intent to accomplish the offense which is the object of the conspiracy. People v. Carter, 415 Mich. 558 (1982). The crime is complete upon formation of the agreement; it is not necessary to establish any overt act in furtherance of the conspiracy as a component of the crime. The guilt or innocence of a conspirator does not depend upon the accomplishment of the goals of the conspiracy. Thus, a defendant may be convicted and punished for both the conspiracy and the substantive crime. See Carter. Therefore, under the common law, conspiracy does not merge with a conviction of the completed object offense. Conspiracy is complete upon agreement and no overt act in furtherance is needed.

The Model Penal Code, unlike the common law, does require an overt act and merges with the object offense. “To sustain a conviction for conspiracy to commit a particular offense, the prosecution must show not only that the conspirators intended to agree but also that they intended to commit the elements of that offense.” People v. Swain, 12 Cal. 4<sup>th</sup> 593 (1996). The MPC, which has been adopted by a majority of states

within the US, does not require a “corrupt motive” to satisfy the requisite intent of conspiracy. In some instances, knowledge of another’s criminal activity is equated with conspiracy to further such criminal activity. People v. Lauria, 251 Cal.App.2d 471 (1967).

The Supreme Court of the United States established the “Pinkerton Rule” where each co-conspirator is responsible for any reasonably foreseeable crime committed in furtherance of the conspiracy, whether or not that overt act was the intent of the co-conspirator. Pinkerton v. United States, 328 U.S. 640 (1946). This federal rule has been rejected by the MPC and has received widespread criticism. The Pinkerton rule potentially makes relatively minor parties in a large conspiracy criminally responsible for many completed offenses over which they had little or no control and no intention to accomplish. One case which sharply contradicts this rule is State of Minnesota v. Christopher, “If a conspiracy is arbitrarily defined as an agreement of intentions, a meeting of the minds, and not merely of language, that where there is no such agreement of intentions then there is no conspiracy.” 305 Minn. 226, 231 (1975).

Other situations arise in which the intent required for the conspiracy offense is difficult to prove. A U.S. district court was faced with the issue whether a corporation could possess the specific intent required for conspiracy to commit genocide or the specific intent required for genocide alone. The action arose out of the alleged activities of Talisman, a large energy company, which plaintiffs claim collaborated with Sudan in “ethnically cleansing” civilian populations surrounding oil concessions located in southern Sudan in order to facilitate oil exploration and extraction activities. The court held that a considerable body of United States and international precedent indicates that

corporations may be liable for violations of international law, particularly when their actions constitute jus cogens violations. The court cited the Second Circuit, Ninth Circuit, Fifth Circuit, numerous district courts, and international precedent to uphold its decision. “A private corporation is a juridical person and has no per se immunity under U.S. domestic or international law. Therefore, a corporation may be imputed with having the requisite specific intent to commit a criminal action.” Presbyterian Church of Sudan v. Talisman Energy, Inc., 244 F. Supp.2d 289,319 (2003).

In conclusion, in order to be convicted of conspiracy to commit genocide within the United States, the requisite specific intent must be proved. While it is difficult in some cases to prove such intent, two elements must be met. First, the conspirator must have possessed the intent to combine with others. Second, the conspirator must have possessed the intent to accomplish one of the substantive crimes such as murder, torture, or rape in furthering the crime of genocide. Whether or not one of these overt acts must be completed for a conviction of conspiracy depends on whether the Model Penal Code or common law principles are applied. According to the MPC, one crime (such as murder for example) must be committed to reach the final illegal objective of genocide. However, under the common law, conspiracy does not require accomplishment of the conspiracy and the crime of genocide is complete upon the agreement entered by the conspirators. Despite these differences, the requisite specific intent is the same for both the MPC and common law, whereas, both elements must be met.

## 2. CANADA

Under Canadian federal law, genocide is defined as, “any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely, (a) killing members of the group; or (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction. R.S.C. 1985, c. C-46, s. 318. This federal statute also contains a provision which addresses advocating genocide and states, “Every one who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.” *Id.*

A recent federal statute, the “Crimes Against Humanity and War Crimes Act” now incorporates conspiracy as an offense. It states, “Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) is guilty of an indictable offence.” S.C. 2000, c. 24, s. 6. Such a provision exists by federal Canadian law for offences within and outside of Canada.

As in the USA, both statutory and case law exist in Canada to define the mens rea required for conspiracy to commit genocide. “Since conspiracy is a crime at common law, it follows that mens rea must be an essential element in it.” 1954 CarswellBC 33.

Canadian law currently defines conspiracy in the following terms:

A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it (the design) into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for the use of criminal means.” *Mulcahy v. Reg.*, (1868) LR 3 HL 306, at 317.

This definition of conspiracy is consistent with the Model Penal Code adopted by the majority of jurisdictions throughout the US. Here, the overt act is required and the conspiracy offense merges with the object offense.

Canadian law incorporates the possibility of satisfying intent or purpose with willful blindness as sufficient mens rea for conspiracy. In the context of conspiracy to commit genocide, knowledge of the general scheme of genocide along with willful blindness of the pertinent details or facts is sufficient to prove the requisite mens rea for the criminal offense. In addition, any overt act must be accomplished in furtherance of the object offense to prove the conspirator's intent to conspire with others.

In the case Regina v. O'Brien, the court had to consider whether one of two alleged conspirators who feigns assent in the unlawful design and at no time intends to assist in the unlawful enterprise, can be guilty of conspiracy. The court held that there is no conspiracy because there is no concurrence of purpose, intention, or determination as the law contemplates in defining conspiracy. "A direction to the jury which appears equivalent to saying that there can be a conspiracy though there be no concurrence of mind in respect to the criminal design and though one of the alleged conspirators had no criminal intent is a misdirection." 1954 CarswellBC 33. The opinion in this case is similar to the American case mentioned above; State of Minnesota v. Christopher, where it was decided that there must be a meeting of the minds and not merely language, to reflect a true agreement of intentions, otherwise there can be no conspiracy. However, a dissenting opinion by Kerwin, J. in Regina v. O'Brien seems to more accurately define the common law requirements (as set forth in the USA) for mens rea elements of conspiracy. The dissent states, "Mens rea was proved by the mere entering into the

agreement. If one person does the act of agreeing with another person to commit an indictable offence, intending to do that act his mind is *rea* whether he intends to commit that indictable offence or not. *Mens rea* is in such a case merely a condition of mind which is evidenced by the act of agreeing itself. The guilty intent which is important is the intent to enter the agreement.” 1954 CarswellBC 33.

A subsequent case upheld the *O’Brien* decision in setting out the necessary elements of conspiracy. *R. v. Ross*, a Newfoundland Supreme Court case, supported the “mutuality of object” approach to the definition of criminal conspiracy. Overt acts in pursuance of the alleged conspiracy are admissible to prove the agreement. Therefore evidence establishing commission of the predicate offence is admissible as proof of the agreement. 1998 CarswellNfld 122. The decision also gave an analysis of the degrees of culpability based on intent and stated, “Mere knowledge of another’s criminal object does not make one a conspirator. It is not necessary to show that each conspirator was aware of all the details of the common scheme, but it must be shown that each of the conspirators were aware of the general nature of the common design and intended to adhere to it.” Knowledge of the common scheme which constitutes the object of the agreement is required but “willful blindness to the existence of pertinent facts will suffice to support a conviction for conspiracy and may be imputed with the knowledge component of the necessary *mens rea*.” *See Id.* Willful blindness is equated with deliberately choosing not to know something when given reason to believe further inquiry is necessary and can satisfy the mental element of the offense.

Finally, a case decided in Canada held; similar to the holding in the US case *Presbyterian Church*, that a corporation can entertain the essential mens rea element to be convicted of criminal conspiracy. R. v. Fane Robinson Ltd., 1941 CarswellAlta 33.

In sum, case law has established in Canada that specific intent is a requirement to be convicted of conspiracy. Canada also incorporates the possibility of satisfying intent or purpose with willful blindness as sufficient mens rea for conspiracy. For a conviction of conspiracy to commit genocide, knowledge of the general scheme of genocide along with willful blindness of the pertinent details or facts is sufficient to prove the requisite mens rea for the criminal offense. In addition, any overt act must be accomplished in furtherance of the object offense to prove the conspirator's intent to conspire with others. This approach is similar to that adopted by the Model Penal Code in the United States.

### 3. GREAT BRITAIN

Another common law jurisdiction is the United Kingdom which also relies on statute and case law in defining criminal offenses. One such statute, the Criminal Law Act 1977, Chapter 45 defines conspiracy:

If a person agrees with any other person or persons that a course conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either-(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or  
(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible, he is guilty of conspiracy to commit the offence or offences in question. Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence by virtue of subsection 1 above unless he and at least one other party to the agreement intend or know that the fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.” UK ST 1977 c45 Pt I.



British common law has established that conspiracy involves an element of mens rea. The prosecution must prove not only an agreement between the alleged conspirators to carry out an unlawful purpose, as signified by words or other communications between them, but also that they had the intention to carry out the unlawful purpose. “The fact that a person has agreed to the unlawful purpose is evidence that he intended to carry it out, but is rebuttable. In a conspiracy case where the jury might, on the evidence, have inferred that the accused manifested his consent to a criminal enterprise, but his mind did not go with his assent, Lawton, J. directed the jury that if that were so, the necessary mental element was missing and they should acquit.” R. v. Thomson, 1966 WL 23278.

Similar to the law proscribed in the United States, Britain has also adopted a dual intent requirement as defined in the case above. For example, another UK case reaffirmed that for a conspiracy conviction, there had to be a “true agreement”, and “actual agreement”, and acquiescence was not enough. In addition, there had to be an intention to carry out the object offense. R. v. Collins, 1983 WL 217041.

A British case established the same culpability of knowledge to prove intent as mentioned previously in the Canada *Ross* case. In the case R. v. Brown, defendants appealed against their convictions for conspiring to defraud and contended that each of them had to have knowledge of every aspect of the conspiracy to satisfy the elements of mens rea. The court dismissed their appeal and held that the Crown was not required to prove that the appellants had knowledge of every aspect of the process involved in the conspiracy, it merely had to be demonstrated that they had known of and had agreed to the fraud. 2001 WL 825762. Here, again, is an example of how knowledge of the

general scheme of the conspiracy is sufficient to meet the mens rea required for criminal conspiracy in the common law.

As in the other common law jurisdictions, Britain was also faced with the issue whether an overt act was needed to prove the intent to conspire. The case R. v. Anderson held in summary, “The Criminal Law Act did not require an intention on the part of each conspirator that the offence should in fact be committed. While the mens rea had to be such as to recognize the innocence of those who agreed to a course of conduct to expose and frustrate the criminal purpose of the other parties, it was sufficient to establish the guilt of the accused to show that he had known that the course of conduct to be pursued would amount to or involve the commission of an offence and that he had intended to play some part in the agreed course of conduct in furtherance of the criminal purpose that it had been intended to achieve.” 1985 WL 311028. Therefore, a specific overt act is not required and a criminal purpose alone may be sufficient intent to prove conspiracy.

## **C. ASSESSMENT OF ICTR AND ICTY CASES**

### **1. ICTY**

The International Criminal Tribunal for Yugoslavia has also defined the elements of mens rea required for a conviction of genocide and ways of seeking proof of such intent. A recent case characterized genocide by two legal elements; the material element of the offence and the mens rea of the offence, consisting of the special intent to destroy,

in whole or in part, a national, ethnical, racial, or religious group. The Prosecutor v.

Goran Jelisic, Trial Chamber I (1999). The judgement also states:

It is in fact the mens rea which gives genocide its speciality and distinguishes it from an ordinary crime and other crimes against international humanitarian law. The special intent which characterizes genocide supposes that the alleged perpetrator of the crime selects his victims because they are part of a group which he is seeking to destroy. In seeking proof of discriminatory intent, the Trial Chamber takes account of not only the general context in which the acts of the accused fit but also his statements and deeds. The Trial Chamber deems, moreover, that an individual knowingly acting against the backdrop of the widespread and systematic violence being committed against only one specific group could not reasonably deny that he chose his victims discriminatorily. See Id.

The International Criminal Tribunal for Yugoslavia was faced with a more complexing issue in the case, Prosecutor v. Dr. Milomir Stakic, where Dr. Stakic faced charges of genocide, complicity in genocide, and conspiracy to commit genocide. Here, the court had to decide whether the requisite mens rea of an individual in a position of power was enough for a conviction even where no material element of the offence had been committed. The court held:

In relation to all offences, the Trial Chamber is convinced Dr. Stakic and his co-perpetrators acted in the awareness that the crimes would occur as a direct consequence of their pursuit of the common goal. The Trial Chamber is convinced that Dr. Stakic knew that his role and authority as the leading politician in Prijedor was essential for the accomplishment of the common goal. Prosecutor v. Dr. Milomir Stakic, Trial Chamber II (1992).

An individual in a position of power or authority is held responsible for the crimes committed by his co-perpetrators or co-conspirators where there is the existence of an agreement to reach a common goal by coordinated cooperation with joint control over the criminal conduct. The co-perpetrator may be convicted of genocide or conspiracy to commit genocide where he acted in the awareness of the substantial likelihood that

crimes would occur and must have been aware that his role was essential for the achievement of the common goal.

## 2. ICTR

The International Criminal Tribunal for Rwanda has also faced several issues in determining the requisite mens rea for genocide or conspiracy to commit genocide. One major issue is whether the freedom of expression is protected when it promotes ethnic hatred and instigates acts of genocide. A recent case involved the conviction of three men in the radio television business of genocide, incitement to genocide, conspiracy, and crimes against humanity. The Court affirmed, “The power of the media to create and destroy fundamental human values comes with great responsibility. Those who control such media are accountable for its consequences.” Here, again, individuals in positions of power may be found as possessing the requisite intent for genocide and conspiracy to commit genocide where they controlled and coordinated their efforts towards the common goal, the destruction of a specific population.

#### IV. SUMMARY OF CONCLUSIONS

In conclusion, the three common law jurisdictions share many of the same principles of criminal law in defining the requisite elements of mens rea to prove criminal conspiracy. While case law may differ in these jurisdictions defining the burden on the prosecution to prove the necessary intent, the majority of decisions tend to support any overt act in furtherance of the object offense of the conspiracy as sufficient proof. All the common law jurisdictions discussed, define conspiracy as a specific intent crime.

Conspiracy is a stand alone crime separate from that of genocide. For there to be a conviction of conspiracy to commit genocide; first the conspirators must have the intent to combine together and agree and second, they must intend to accomplish the genocide through any of the criminal offenses distinguished by statute. Both elements of intent must be met to prove conspiracy to commit genocide under the USA, Canada, and Britain.