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**Topic:** ICC Statute Article 8(2)(b)(xiii)

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Now I will say some words about article 8, paragraph 2 (b) (xiii), which penalizes destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war.

The crimes under article 8, paragraph 2 (b) are serious violations of the laws and customs applicable in international armed conflict", which means that they may be derived from customary law applicable in such conflict.

The chapeau moreover adds "within the established framework of international law", which serves to underline that the offences must be interpreted in line with established law, possibly to exclude an all too progressive interpretation of certain offences. This understanding is in line with the provision in article 22, paragraph 2 of the Statute, which says:

The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted, or convicted.

The wording of this offence is derived from article 23 (g) of the 1907 Hague Regulations.

It is closely related to article 8, paragraph 2 (a) (iv), which penalizes causing extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. It is not, however, necessary that the destruction be "extensive" to be covered by the crime presently discussed.

There are some other differences. One is that article 8, paragraph 2 (a) (iv) penalizes 'appropriation' of property, while the present crime penalizes 'seizure'. The exact meaning of the two phrases and their differences has a complicated explanation and history that we cannot account for here.

Another difference is that article 8, paragraph 2 (a) (iv) speaks of acts not justified by military necessity, while the present crime speaks of destruction or seizure not imperatively demanded by the necessities of war. It seems to be agreed that the two phrases cover the same thing.

Both crimes must, however, be understood in light of rules in the Law of Armed Conflict that permit certain appropriation or seizure of property. According to article 53 of The Hague Regulations, an army of occupation may take possession of cash, funds, and realizable

securities, which are strictly the property of the State; depots of arms, means of transport, stores and supplies; and, generally, all movable property belonging to the State which may be used for military operations. The right to appropriate private property is, however, strictly limited.

In naval warfare, both private and public property at sea can be seized under prize law. This is typically merchant vessels and cargo having enemy character.

Destruction of property on the other side of the front line, in the conduct of hostilities such as air raids over enemy territory, is not covered by the present crime, but is covered by the unlawful attack charges under article 8, paragraph 2 (b), such as sub-paragraph (ii), which deals with intentionally directing attacks against civilian objects.

Thank you.