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Topic: ICC Statute Article 30(3)

Level: Introductory

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Pursuant to article 30, paragraph (3) of the Rome Statute, a person is deemed to have acted with intent in relation to attendant circumstances in cases of awareness that the circumstances exist. The literal interpretation of this wording seems to limit the notion of intent in relation to attendant circumstances to cases where the individual was actually aware of the surrounding factor. In contrast, the narrow interpretation excludes from the notion of intent, in relation to the attendant circumstances, cases of constructive knowledge, that is, where a reasonable person would have been aware of the relevant fact. Furthermore, intent in relation to attendant circumstances will not include either cases of wilful blindness, that is, where the person was aware that the surrounding fact was likely to exist, but decided to refrain from acquiring the final confirmation.

A last crucial question raised by article 30 of the Rome statute is the meaning of the opening clause “Unless otherwise provided” in the first paragraph of this provision. It has already been mentioned that the meaning of the opening clause is that intent is the standard *mens rea* required for criminality before the International Criminal Court, but derogations from the normal requirement of intent can be allowed if so provided.

Hence, the question arises of what sources can provide for exception to the normal requirement of intent within the meaning of the opening clause. At least three answers to this question are possible, depending on how the relationship between article 30 and article 21 of the applicable law is understood. Without going into much detail, I will just say that some voices have claimed that derogation from the normal requirement of intent can derive only from the Statute itself, while others have opined that both the Statute and the Elements of Crime can provide otherwise in the sense of the opening clause. Furthermore, according to a third opinion, exception to the normal requirement of intent could derive not only from the Statute and the Elements of Crimes, but also from customary international law.

The early practice of the International Criminal Court has maintained the view that both the Rome Statute itself and the Elements of Crimes can provide otherwise” in the sense of the first paragraph of article 30 of the Rome statute. This conclusion finds an underpinning in paragraph (2) of the General Introduction to the Elements of Crimes. In fact, according to this latter provision - I quote from it - “Where no reference is made in the Elements of Crimes to a mental element for any particular conduct, consequence or circumstance listed, it is understood that the relevant mental element, i.e., intent, knowledge or both, set out in article 30

applies” [end of the citation]. I have finished for today. Thank you very much for your attention.