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Topic: ICC Statute Article 8(2)(b)(xii)

Level: Introductory

Date of recording: 30 May 2017

Place of recording: Norway

Duration of recording: 02:44

PURL of film: www.cilrap.org/cilrap-film/8-2-b-xii-dahl/

PURL of English transcript: www.legal-tools.org/doc/5589cb/

Now I will say some words about article 8, paragraph 2(b)[xii], which penalizes declaring that no quarter will be given.

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

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 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.

‘No quarter’ means that no surrender will be accepted. There shall be no survivors. The crime is based on article 23 (d) of the 1907 Hague Regulations and article 40 of the 1977 Additional Protocol I to the 1949 Geneva Conventions. Article 40 says that it is prohibited to order that there shall be no survivors, to threaten an adversary therewith, or to conduct hostilities on this basis.

According to the Elements of Crimes, the crime includes to issue a declaration threatening the adversary or an order directed at own troops that there shall be no survivors. The actual implementation of such declaration or order would generally be covered by the war crime of wilful killing in article 8, paragraph 2 (a) (i) or the war crime of killing or wounding a person hors de combat in article 8, paragraph 2 (b) (vi).

Thank you.