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Now I shall say some words about article 8, paragraph 2, sub-paragraph (b) (ii), which penalizes intentionally directing attacks against civilian objects.

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

It is a requirement that the attack took place in the *context of* and was *associated with* an international armed conflict. Vandalism or terrorism in peacetime do not constitute war crimes.

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.

This war crime is based on article 52 of the 1977 Additional Protocol I to the 1949 Geneva Conventions. The provision reflects customary international law.

The term ‘attack’ is defined for Law of Armed Conflict purposes as acts of violence against the adversary, whether in offence or in defence. It makes no difference whether you are fighting an offensive or defensive war under *jus ad bellum*, or whether your unit for the moment is on the offensive or is fighting a defensive rear guard action.

‘Acts of violence’ normally means use of physical force, including blast and fire. Cyber operations can be attacks if they result in consequences in the physical world that are comparable to results of using ordinary weapons. This could, for example, be when the floodgates of a dam are opened by hacking the control system producing an inundation comparable to as if the dam had been breached by bombing. What defines an ‘attack’ is not the violence of the means, but the violence of the results.

‘Civilian objects’ are those which are not military objectives. In so far as objectives are concerned, military objectives are those objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage. The language is taken from article 52, paragraph 2 of the Additional Protocol I.

The attack must be made in order to gain a *military* advantage, not a political one. Attacks for the purpose of affecting civilian morale are not permitted. It is, however, not prohibited to choose targets that are visible to many civilians, thereby affecting civilian morale, when the targets are military objectives in their own right.

The military advantage must be concrete and direct, not hypothetical or speculative. Many States gave, however, declarations on ratification of Additional Protocol I to the effect that the advantage anticipated could be from the *attack as a whole* and not only from isolated or particular parts of the attack. This is particularly relevant with respect to weighing civilian losses against military advantage (also known as the “proportionality principle”), which is covered in article 8, paragraph 2, sub-paragraph (b)(iv).

It is worth noting that a military objective - in other words, a lawful target - need not be owned by the military or be of a particularly military nature like a warship or a field gun. Civilian facilities for production of items that are of military importance are also military objectives. A well-known example is the electrolytic factory at Vemork in Telemark, Norway, which was producing hydrogen for the purpose of making artificial manure but had deuterium oxide as a bi-product. The deuterium oxide (also known as heavy water) was seen as vital for a German program for developing nuclear weapons. The factory was attacked repeatedly during the Second World War and was without doubt a military objective despite its civilian ownership and predominantly civilian production.

More or less any building, vehicle, or other object can become a military objective by use. A school building becomes a military objective if an army brigade establishes its headquarters there. A cruise ship or passenger aircraft becomes a military objective if it is used for transporting troops. Intended future use for such purposes will render the object a military objective by purpose. There must, however, be concrete indications of future military use - mere suspicion is not enough.

Some items, such as battle tanks and fighter aircraft, are military objectives by nature, which means that they are assumed to make an effective contribution to military action in all circumstances - if not today, then tomorrow. It can also be argued that some objects that are made for civilian use have an inherent potential for military use, which is so important that they are also considered military objectives by nature or at least presumed to be so. A prominent example will be main axis of communication, which in most situations will be of vital importance either to use or to deny the enemy the use of.

The penalized act is “intentionally directing attacks” against civilian objects. It is no requirement that any civilian objects are damaged or destroyed. The attack may fail due to malfunction of weapons or poor aiming. On the other hand, civilian objects can lawfully be damaged or destroyed as an incidental result of an attack that was aimed at something else. This is what is called ‘collateral damage’ by the military. This situation is covered in article 8, paragraph 2, sub-paragraph (b)(iv), which makes it punishable to launch attacks that are known to cause collateral damage that is clearly excessive in relation to the concrete and direct military advantage anticipated.

An attack can be indiscriminate in the sense that the attacker does not know whether this attack will hit civilian objects or not. Area bombardment or ‘carpet bombing’ may serve as an example if a military objective located in a residential area is attacked by weapons that are not sufficiently precise to hit the military objective, but the attacker resorts to dispatching large numbers of shells or bombs in the direction of the military objective, hoping that some will hit. Indiscriminate attacks count as direct attacks against civilian objects. Depending on the circumstances, this mode of the crime may overlap with the crime of causing excessive collateral damage, and it can be disputed how the line exactly should be drawn.

It may also be that the attacker launches an attack against something that he or she assumes to be a lawful target, such as a building used for military purposes, but does not care whether the target is actually a military objective or not. Such recklessness - *dolus eventualis* - is, according to the ICTY in the *Galic* case, sufficient to constitute the crime.

Another situation is when the attacker believes that the object to be attacked is a lawful target, but has not taken the necessary precautions by doing everything feasible to verify that the object of attack actually is a military objective. This is not necessarily a war crime, but lack of precautions can be an indication of recklessness. In any case, one must assess which information was available or could reasonably be available to the accused at the moment of attack. The assessment cannot be made with hindsight.

The 1977 Additional Protocol I prohibits attacks on civilian objects by way of reprisals. The United Kingdom has entered a reservation to the corresponding rule with regard to civilian persons, but not with regard to the present rule.

The prohibition is not included in the ICRC 2005 Customary Law Study as having customary law status with regard to civilian objects in general. As not being part of customary law it is not binding on non-parties to Protocol 1. Thus, this crime is “within the established framework of international law” in relation only to those States that have accepted the treaty prohibition.

Thank you.