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

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Now I shall say some words about article 8, paragraph 2 (b) (xxiv), which penalizes intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law.

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 or treaty law derived from customary or treaty 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.

In the first paragraph of the Elements of Crimes, the following definition is given:

The perpetrator attacked one or more persons, buildings, medical units or transports or other objects using, in conformity with international law, a distinctive emblem or other method of identification indicating protection under the Geneva Conventions.

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 rearguard action.

The distinctive emblems of the Geneva Conventions are the red cross, the red crescent, and the red crystal. The red lion and sun is also recognized, but is not used. A special case is Israel that took a reservation on ratification of the 1949 Geneva Convention to the effect that they can lawfully use the *David Magen Adom* (the “Red Star of David”) as a protective emblem.

The buildings will typically be hospitals of the military medical service, or civilian hospitals if authorized by the State. Medical transports or other objects could be ambulances, medical

aircraft, or hospital ships. These could, in addition to the visual emblem, employ blue flashing lights, as indicated in an annex to the 1977 Additional Protocol I, or radar transponders with certain codes by agreement between the Parties to the conflict.

It should be noted that misuse of the distinctive emblems of the Geneva Conventions and other protective emblems is prohibited. A medical facility may be attacked if it is used to commit, outside its humanitarian function, acts harmful to the enemy. Protection may, however, cease only after a warning has been given, setting, whenever appropriate, a reasonable time limit and after such warning has remained unheeded.

The penalized act is “intentionally directing attacks” against certain buildings. It is no requirement that any such buildings are damaged or destroyed. The attack may fail due to malfunction of weapons or poor aiming but will still be a war crime.

Thank you.