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

Level: Introductory

Date of recording: 30 May 2017

Place of recording: Norway

Duration of recording: 06:10

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

PURL of English transcript: www.legal-tools.org/doc/c28f8d/

Now I shall say some words about article 8, paragraph (2)(b)(ix), which penalizes intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.

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 applicable in international armed conflict.

It’s a requirement that the attack took place in the context of and was associated with an international armed conflict. Mere vandalism unrelated to an ongoing armed conflict is not a war crime.

The chapeau moreover adds “within the established framework of international law”, which serves to underline that the offenses must be interpreted in line with established law, possibly to exclude an all too progressive interpretation of certain offenses. 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 crime is largely derived from article 27 and article 56 of the 1907 Hague regulations; numerous provisions in the 1949 Geneva Conventions on the protection of hospitals; the 1954 Hague Convention for the Protection of Cultural property Hague Convention for the Protection of Cultural Property during Armed conflict; and some complementary provisions in the 1977 Additional Protocols to the Geneva Conventions from 1949. Mention should also be made of the 1999 Additional Protocol to the 1954 Hague Convention.

The various objects have different degrees of protection, ranging from the general protection of civilian objects that are not used for military purposes, such as the village parish house, to a near immunity which applies to cultural property under “enhanced protection” regime, established by the 1999 Protocol to the 1954 Hague Convention.

For objects in the middle ground, a general requirement is that they may only be attacked in certain situations and after a warning has been given. For instance, the Fourth Geneva Convention lays down in article 19 that civilian hospitals must not be attacked unless

they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded.

The objects may be attacked if they are military objectives. These 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. If, for example, the military takes over a school building. If, for example, the military takes over a school building and uses it as a headquarters or an ammunition depot, it becomes a military objective by use and has lost its protection, presumably until the original function has been restored.

If you have been in Athens, you may have seen the Acropolis, the old temple on the hill in the middle of the city which was serving as a Pagan temple, a Christian church, a mosque, during different times, but the destruction came about when it was a gunpowder store, and was therefore a military objective by the besieging army from Venezia. That gives a very practical and visible example of the results of making a cultural object into a military objective by use. This happened more than two hundred years ago, so these rules about giving a warning, etc., they were not applicable then.

Well, the penalized act is intentionally directing attacks on the protected buildings. It is no requirement that any persons or objects are hurt, killed, damaged or destroyed. The attack may fail due to malfunction of weapons or poor aiming, but will still be a war crime.

Thank you.