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Now I shall say some words about article 8, paragraph 2 (b) (xxv), which penalizes intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions.

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 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.

The text is largely derived from article 54 of the 1977 Additional Protocol I to the 1949 Geneva Conventions.

The term ‘starvation’ is usually understood to mean killing people by denying them food. In the present crime, it is used in a somewhat wider sense, including also deprivation of objects indispensable to survival in general - objects that might, for instance, be blankets in order not to freeze in cold weather.

This is made clear by the Elements of Crimes, which reads in the first two paragraphs:

1. The perpetrator deprived civilians of objects indispensable to their survival.
2. The perpetrator intended to starve civilians as a method of warfare.

Starvation is a recognized method of warfare when directed against combatants. When a fortress is laid under siege, the purpose will typically be to starve the defenders to submission.

In modern warfare, large cities may be besieged. In St. Petersburg, formerly Leningrad, the *Piskarevskoye* cemetery is a communal grave for 450,000 human beings who starved to death during the 900-day siege of Leningrad from 8 September 1941 until 18 January 1944. These were mainly civilians.

The siege of Leningrad was not a theme at Nuremberg, and the starvation of the inhabitants was not considered a war crime. On the contrary, an American Military Tribunal found in the High Command Case that an order issued by Field Marshal von Leeb to German artillery to fire on Russian civilians attempting to flee through the German lines during this siege, was not unlawful.

In the 1949 Geneva Conventions rules were laid down for relief consignments aimed at the civilian population. These rules were developed in the 1977 Additional Protocol I.

The supply of relief consignments to a besieged town or area is problematic since the local authorities most likely will give priority to feeding the soldiers. The ability to defend the place will be increased and the sufferings of the civilians will continue. If the besieging power is to be expected to permit such consignments, there has to be some way of ensuring that the foodstuffs will go to the civilians, not to the combatants.

For these reasons, the Party which allows the passage of relief consignments shall have the right to prescribe the technical arrangements, including search, under which such passage is permitted. It may also make such permission conditional on the distribution of this assistance being made under the local supervision of a Protecting Power, a role which could be taken by the International Committee of the Red Cross.

A naval blockade could have similar effects to a siege. In the 1994 San Remo Manual on International Law Applicable Armed Conflict at Sea, it is stipulated that the declaration or establishment of a blockade is prohibited if:

- (a) It has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or
- (b) Damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade.

The first alternative would clearly fall under the crime of starvation. The second alternative is more doubtful in this respect.

The San Remo Manual aims at restating existing customary law, but it is not in itself binding.

The 1977 Additional Protocol I has in article 54, paragraph 5 a provision which permits the employment of 'scorched earth policy' on its national territory as a measure against invasion, even if it results in depriving the civilian population of objects indispensable to its survival. The intention will not be starvation of the civilians, and would therefore not be covered by this war crime.

Thank you.