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

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Now I will say some words about article 8, paragraph 2 (b) (viii), which penalizes the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.

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

This crime is based on article 49, paragraph 6 of the Fourth Geneva Convention of 1949 and article 85, paragraph 4 (a) of the 1977 Additional Protocol I to the Geneva conventions, which defines wilful transfer or deportation in violation of article 49 of the Fourth Convention as a grave breach.

Deportations and transfers of population have taken place since Biblical times. In particular, the deportation of Jews to Babylonia and the transfer by the Assyrians of alien people into Samaria is well known.

Experience from the Second World War shows that an Occupying Power can have more than a temporary interest based on military reasons for taking control over enemy territory. reasons for taking control over enemy territory. The aim can be annexation, and the transfer of its own nationals into the occupied territory and deportation of the original inhabitants as preparation for or following such annexation. For example, the western parts of Poland were annexed to Germany and populated with Germans that had been evacuated from Baltic States as part of an arrangement

with the Soviet Union, which occupied Estonia, Latvia, and Lithuania and transferred some of its own population into those countries, incorporating them into the Soviet Union.

The original inhabitants of the annexed Polish territories were deported eastwards to the so-called 'General Government', an occupied but not annexed part of Poland.

These are only a few examples of large-scale deportations or transfers of people in wartime. In any event, large-scale transfers of population are likely to create problems for those transferred, for the original population in the receiving area, and make a peaceful reconciliation of the conflict more difficult.

The crime can be divided into two sub-crimes.

The first is transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies.

The word 'transfer' indicates a physical displacement of a certain duration. Temporary evacuation of people from a drought-stricken area into occupied territory does not count. The persons transferred must be *civilians*. An occupying army can consist of hundreds of thousands of soldiers; its only if they start to settle down permanently with their families that we can talk of unlawful transfer of population. Since the aim of the provision is to protect the population of the occupied territory, it is irrelevant whether the transfer is *voluntary* or not.

It's not clear which degree of involvement on the part of the Occupying Power that is required to constitute the crime. Isolated individuals buying property or moving into houses in occupied area in accordance with the law of the occupied territory is not transfer by the occupying power. Some form of involvement of the State is required, by planning, financing, or other inducements.

A topical issue that has to be given some attention is the Israeli settlements on the West Bank of the river Jordan. This territory was conquered from Jordan in the Six-Day War in June 1967. The United Nations has in several resolutions upheld the view that Israel's construction of settlements constitutes a violation of the Fourth Geneva Convention of 1949.

Some settlements in this area are from the British mandate period, this predating the establishment of the State of Israel. From 1948 to 1967 the West Bank was under Jordanian administration after the British mandate period, which followed the breakdown of the Ottoman Empire in 1918. The West Bank was formally annexed by Jordan on 24 April 1950. The annexation was initially claimed to be illegal by the Arab League who a month later declared that they viewed the area "annexed who a month later declared that they viewed the area "annexed by Jordan as a trust in its hands until the Palestine case is fully solved in the interests of its inhabitants". The Jordanian administration has thus often been referred The Jordanian administration has thus often been referred to as the Jordanian occupation.

The Israeli position appears to be that this land was not under the legitimate sovereignty of any state when Israel took control in 1967. The Geneva Conventions do not prohibit settlements in such territory. Be that as it may, the settlements are evidently a difficult point, which has to be resolved in any peace agreement concerning the West Bank.

The second sub-crime is the deportation or transfer of all or parts of the population of the occupied territory or parts of the population of the occupied territory within or outside of this territory. This crime overlaps with article 8, paragraph 2, (a) (vii), which penalizes unlawful deportation, transfer, or confinement of protected persons. The difference is that the present crime

is not limited to deportation, etc. of those who are defined as ‘protected persons’ in the sense of the Geneva Conventions.

In general, the civilian population in an occupied territory will qualify as ‘protected persons’, but one might imagine a situation where a segment of the population has citizenship of a third State that has normal diplomatic representation in the State in whose hands they are. This segment of the population will not be ‘protected persons’ in the sense of the Geneva Conventions and deportation of these will not be covered by the crime in article 8, paragraph 2 (a) (vii), but covered by the crime presently discussed.

Apart from this, the crimes are basically similar. I shall not repeat the lecture on article 8, paragraph 2 (a) (vii) here, but I advise you to look it up yourselves.

Thank you.