

« *Lawyers for Lawyers* »

CRIS 2008 165-110 EuropeAid/126412/C/ACT/Multi

TRAINING MANUAL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 15: THE WAR CRIME

➤ ***Applicable law***

The 4 Geneva Conventions of 1949 (which constitute common law in the Law of Armed Conflict), and the 1st Additional Protocol of 1977 + Statutes of the ICTY, ICTR, and the ICC.

➤ ***Constituent elements:***

Context : act committed in a context of international armed conflict.

Nature of the act : serious act, as defined in texts.

Article 8.a) of the Statute of the ICC defines the most serious acts targeted on persons and property protected by the Geneva Conventions. These relate to:

- Intentional homicide ;
- Torture and inhuman treatment, including biological experiments ;
- The act of intentionally causing great suffering or causing serious harm to physical integrity or to health ;
- The destruction or appropriation of property, not justified by these military necessities and carried out on a large scale, in an illegal and arbitrary manner (Conventions I and II) ;
- forcing a prisoner of war or other protected person to serve in the armed forces of the enemy Power (Conventions III and IV) ;
- Depriving a person of the right to be judged lawfully and impartially (Conventions III and IV).
- The illegal deportation or transfer, illegal detention and taking of hostages (Convention IV).

Article 8.b) sets out an extensive list of violations of the law applicable to armed conflict and which constitute a war crime.

Articles 11 and 85 of Additional Protocol I to the Geneva Conventions also contain a list of serious offences of the law applicable to armed conflict.



Lawyers for Lawyers

Certain countries have decided to extend the scope of application for the punishment of war crimes to non-international armed conflict (defined in Additional Protocol II to the Geneva Conventions).

The Statute of the ICC moreover incriminates war crimes committed within the scope of non-international armed conflict.

With regard to the perpetrator of the crime, this may relate to both civilians and combatants. Victims may be civilians or combatants (especially persons who are out of the fighting).

➤ ***Regime***

The Convention on the non-applicability of Statutory Limitation to Crimes against Humanity and War Crimes and the Statute of the ICC provides for the non-applicability of statutory limitation to war crimes, irrespective of the date of their commission (applicable to States which have ratified these texts).

Sources :

-Henri D. BOSLY, Damien VANDERMEERSCH, *Génocide, crimes contre l'humanité et crimes de guerre face à la justice : les juridictions internationales et les tribunaux nationaux*, Bruylant, 2010.

-Web site of Trial Watch : <http://www.trial-ch.org/index.php?id=800&L=5>

Last updated : 1st October 2010