



ICRC



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INTERNATIONAL CRIMINAL COURT

Prosecutor v. Z. Karmonic

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Facts of the Case

Country Sohulwa is a democratic country and it is situated at the eastern coast of continent Z. This eastern portion of continent Z comprises of four countries. Sohulwa is one among them. The other three countries of the region are Sambhota, Zumanja and Rokumba. This portion of continent Z is also known as Sarozula subcontinent. Mountain Sarozas separates this subcontinent from the rest of the Z continent. Sarozula subcontinent is surrounded by mountain ranges of Sarozas from all directions except the east. Ocean X makes its boundary in the east.

Sarozas starts from the southern border of Rokumba adjoining the sea and traverses in a semi-circle to touch the sea again at the northern border of Zumanja. Starting from Rokumba, the Sarozas ranges touch Sambhota and Zumanja respectively and make a natural and political boundary for these countries that separate them from rest of continent Z. Sohulwa's borders do not touch Sarozas ranges. Sambhota is a landlocked country. The borders of Sohulwa and Sambhota touch all the countries of the subcontinent. Sohulwa is the biggest country of the region in respect of area and population. Sohulwa is surrounded by Zumanja in the North, Sambhota in the West and Rokumba in the South. Ocean X makes the eastern boundary for Sohulwa as well as for Rokumba and Zumanja. . As per the census conducted by all the four countries of the subcontinent in 1990AD, Sohulwa makes up almost seventy percentage (70%) of the total population of the Sarozula subcontinent with almost fifty percentage (50%) of the total geographical area of this subcontinent.

The Sarozas have three important passes through which many immigrants tribes used to come in this subcontinent. . This subcontinent had witnessed many wars, aggressions, conflicts and assimilations through different ages of its history. Each coming population infused new philosophical and cultural insights into this subcontinent and the region welcomed each new idea. This is the main reason for the ultimate diversity of the Sarozula subcontinent. These passes of Sarozas are now situated one each in Rokumba, Sambhota and Zumanja. These

passes are still serving as important land connection for Sarozula subcontinent to the rest of continent Z.

The Sarozas are also the source of two prominent rivers of this subcontinent. These rivers are R1 and R2. R1 emerges in Sambhota and then enters into Sohulwa and runs almost parallel (though inside Sohulwa) to the border between Sohulwa and Zumanja and finally merges into ocean X. Many small rivers emerging from Zumanja merges in R1 inside Sohulwa. R2 also emerges in Sambhota though south to R1, enters into Sohulwa and merges into ocean X near the border of Rokumba. It also runs almost parallel, though inside Sohulwa, to the border between Rokumba and Sohulwa. Many small rivers emerging from Rokumba merges in R2 inside Sohulwa. Seventypercent (70%) of the total area of Sohulwa is lying between these two rivers. As per the 1990 census, this area is densely inhabited by almost ninety percent (90%) of the population of Sohulwa. Sohulwa has a developed system of canals between these two rivers for irrigation. This area is the most fertile area of the Sarozula subcontinent.

Historically Sarozula had never been a single political entity. Different kingdoms in different parts of it were built and destroyed by successive rulers. From 1715AD onwards, the businessmen from many nationalities started to come to this subcontinent using sea route. At this time, thesubcontinent was ruled by four prominent kingdoms, each ruled from the modern day capitals of the four countries of the sub region. From 1715AD onwards, traders,of many nationalities, arrived from the eastern coast and spread their dominance gradually across the sub region. Sarozula witnessed many colonial wars for control over the natural and other resources of the region from 1820 to 1905.

During this period, Sarozula became the most contestedpoint among the four colonial powers active in the subcontinent. However, these conflicts wererefinally settled in 1905 by the Treaty of Sarozula, which wasentered into by thethen active colonial powersin the subcontinent. The names of all four countries were settled in their current form by this treaty. Each colonial power got one area each for its administration.

Since this treaty was entered into bythe colonial powers of Sarozula to end their intermittent wars for control over resources, this treaty adopted many innovative approaches to ensure maximum interdependence and cooperation between the nations. The following were some of the important contributions made by this treaty:

1. Each party agreed to demarcate its area of control and also to respect the areas controlled by the others;
2. Rivers R1 and R2 were declared as rivers of Sarozula but provisions were made for freedom of navigation for the purpose of business and trade over these rivers;
3. Guarantees for the freedom of movement of civilians from one part of the sub region to another, purely for civilian purposes and subject to common regulation;
4. The protection of the religious minorities in each area controlled by different colonial powers;
5. Areas of Sohulwa lying between rivers R1 and R2 would be developed as agricultural land by all the contracting parties of the Treaty of Sarozula to fulfil the food requirements of whole Sarozula subcontinent. Contracting parties were further required to negotiate bilateral and multilateral deals containing details that would accomplish this task. To this end a multilateral deal was entered into in 1907 (MT 1907) among all the four colonial administrators of Sarozula.

With the financial and technical support of all four colonial administering powers of Sarozula, the extensive network of canals was built in this area utilising the water of River R1 and R2. Persons belonging to all parts of Sarozula were involved in providing labour for this work.

As per the 1907 deal, some pockets of Sohulwa's land between rivers R1 and R2 were demarcated as 'Lands for Sarozula' (popularly known as LfS). These LfS were situated in different parts of Sohulwa between rivers R1 and R2 and were administered by the committee constituted by all the four administrative powers of the subcontinent. This joint administration over LfS was only for agricultural purposes and maintenance of law and order and security over LfS was remained with Sohulwa's administration. Workers from all parts of Sarozula were eligible to work in LfS.

Many other agreements were entered to facilitate the movement of labourers to work in LfS. The colonial administrators of Rokumba, Sambhota and Zumanja also agreed to make payments at regular intervals to Sohulwa, in lieu of its LfS. Sohulwa also got the right to use any of the Sarozas passes, for the purpose of transporting civilians and goods into the rest of continent Z. Similar kinds of arrangements, though on a smaller scale, were also made in the other three regions of the subcontinent with respect to sharing mines and minerals.

The present political boundaries of this subcontinent are also the result of the Treaty of Sarozula. The dominance of different religious groups in different areas of this subcontinent was the basis for drawing the formal line of control in 1905 AD, which was subsequently adopted as the formal borders for these countries.

As per the census conducted jointly by the colonial offices throughout the whole of Sarozula during 1904 and 1905, the region was primarily occupied by four different religious groups. The names of these groups were Sohu, Sambho, Zuma and Rokum. As per the division plan, all the contiguous geographical areas where the followers of Sohu religion were more than seventy percent (70%) became part of Sohuwa. Similarly, where the people of Sambho, Zuma and Rokum religions were more than seventy percent (70%) in contiguous geographical areas became part of Sambhota, Zumanja and Rokumba respectively.

As per historical records, Sohu is the most ancient religion of Sarozula. The emergence of Sambho and Zuma religions in Sarozula are merely the result of reformative movements against the orthodoxy of the Sohu religion. However, the Rokum religion is the most recent religion to emerge in Sarozula, and has no connection to the Sohu religion. Followers of the Rokum religion first came to Sarozula from the southern part of continent Z around 1400 AD.

Although the 1905 formal division of the subcontinent was based on religious makeup within a specific geographical area, there were significant numbers of religious minorities in each territory. All the countries of Sarozula achieved independence together in 1955. At the time of their independence, all four countries declared their intention to follow the 1905 Treaty of Sarozula, and all other related deals and arrangements, with respect to Sarozula. All four countries, as per their constitution adopted at the time of their independence, are secular democracies.

All four countries also agreed in 1957 to cooperatively use rivers R1 and R2 for hydroelectric purposes. Accordingly, two dams, one each on rivers R1 and R2 were built in Sohuwa with the collective financial and technical help of all four countries. These dams were successful in substantially fulfilling the electricity needs of the Sarozula subcontinent. These dams have also been utilised as important sources of potable water for the adjoining areas of Sohuwa, by the Sohuwan authorities. It was also decided in 1959 to jointly establish four universities under the banner name of the University of Sarozula, one each in the capital of each country of the subcontinent. The objective of these institutions was to promote the study of mutual

coexistence and interdependence and to prepare the leaders of the future for an era of cooperation.

However, when successive governments failed to deliver on socio-economic fronts, a political ideology of aggressive nationalism based on the notion of cultural and religious superiority started to emerge slowly in Sohulwa. A seemingly non-political religious outfit named Sarozula of Sohus (popularly known as SoS) was established in 1999 on the banks of river R2. It advocated for the adoption of the Religion of the Whole Earth (i.e. Sohu) by the religious minorities living in Sarozula. SoS drew on the history of the Sohu religion in the region, and appealed to all the persons of the other three religions to come back to the Sohu religion. SoS also promised to reform some practices of the Sohu religion to accommodate new entrants.

From the date of its establishment, all the leaders of SoS have been followers of Sohu religion. SoS was receiving specific patronage from the Sohu Voice Party (popularly known as SVP) – a political party of Sohulwa established in 1970 but remained on political margins and first time won the general elections of Sohulwa only in 2013 to form the government. The next general election in Sohulwa took place in December 2018. .

From 1999 onwards, SoS started to open branches for religious preaching throughout the whole subcontinent. In all contexts, except Rokumba, its ideas were slowly gaining acceptance. In 2007, Rokumba ordered a ban of the SoS movement on the grounds of law and order and internal security. Rokumba, though the smallest country of the region, aggressively adopted the path of science and technology for its development. It has the least fertile land, but has an abundance of mineral resources. Rokumba, with the help of foreign support, became a global hub of electronic and telecommunications equipment within 40 years of its independence. Many industries were established from 1980 onwards inside Rokumba, along the banks of the small rivers that ultimately joined R2. Industrial effluents from these industries used to cause intermittent environmental disputes between Sohulwa and Rokumba.

As per the media reports published in January 2015 and not denied by Rokumba's authorities, Rokumba clandestinely allowed foreign powers to make use of its lands and waters for a series of nuclear tests, during December 2014. Just one week after publication of these media reports, Rokumba itself conducted a nuclear test, and claimed that it will use its nuclear technology for

peaceful purposes. Subsequently, Rokumbawas also successful in establishing its two nuclear thermal power plants by January 2018.

Since 2016, Rokumba also started diverting the water of many small rivers, for its own domestic industrial use; and made a plan to join these rivers through manmade artificial routes. It offered some compensation to Sohulwa and the other affected countries of the region for this work.

These plans were aggressively objectedby other countries of the sub region. From April 2017 onwards, the pollution levels in river R2 rose exponentially, resulting in acute shortages of potable water in the adjoining areas of Sohulwa. Five hundred deaths of children are reported from May2017 to August 2017 in the areas adjoining R2 in Sohulwa.All of these deaths are attributed to the water pollution. Many rounds of negotiation and conciliation ensued,but to no avail.

On 11 March 2018, Sohulwa immediately stopped all supplies from LfS to Rokumba and ordered all citizens of Rokumba to leave Sohulwa within 48 hours. Sohulwa also blocked Rokumba's share of electricity generated from the dam on R2. In response, Rokumba declared its unilateral withdrawal from the Treaty of Sarozula and called back its officials and workers fromSohulwa. On 13 March 2018 , it was reported by Sohulwa's officials that there was no trace of five hundred Rokumba nationals who had been working in Sohulwa on LFS areas. There were conflicting media reports about their whereabouts,but it was confirmed that they did not return to Rokumba.The next day, Rokumbain authorities took two hundred Sohulwan students and faculty members of the University of Sarozula, situated in the capital city of Rokumba, into custody on the charges of sedition and conspiracy. All detained Sohulwan nationals were of the Sohu faith.

On 18 March 2018, media houses inSohulwa published the photographs of some of the missing Rokumba nationals, with a story that they had adopted the Sohu religion under the spiritual influence of SoS. These media reports madeallegations oftorture carried out on the captured students and faculty members of the University of Sarozula. Suddenly, on 20 March 2018, a message with photographs of the captured students and faculty members appeared on Facebook depicting inhuman treatment being met against them. This message with photographs was widely shared and circulated.

Subsequently, a Facebook account under the name “Help Sarozula” was created on 30 March 2018 by Mr. Z. Karmonic. Mr. Z. Karmonic was an ardent follower of SoS and at that time was the head of its cyber wing. He held a degree in computer engineering from the world’s most reputed institution. With each passing day, the popularity of Help Sarozula spread. Posts on the page spurted venom against Rokumba. An invitation to march towards the borders of Rokumba and to congregate along the border on 15 April 2018 was issued on this page. After that, this Facebook account became defunct, but this message was shared, copied and pasted thousand times on different Facebook accounts.

Many people started to march towards the Rokumba border with sticks and machetes in hand. The Sohulwa government arrested Mr. Z. Karmonic, on the grounds of inciting public disobedience, and appealed to the public not to follow the Help Sarozula’s call to march. Despite these efforts, almost twenty five thousand people assembled at the border between Sohulwa and Rokumba on 15 April 2018. Some followers of SoS, from Sambhota and Zumanja, also participated in the march. The number of marchers swelled with each passing day, the Sohulwa government completely failed to control the situation.

On 17 April 2018, through a Press Statement, a group of the marchers declared the formation of the group, Help Sarozula and announced the leader as Mr. Z Karmonic. The organisational structure of this group was also shared with media. During this Press Conference, Help Sarozula made three demands:

1. the immediate release of the captured students and faculty members;
2. the immediate release of Mr. Z Karmonic from Sohulwa prison; and
3. a statement from Rokumba, indicating its intention to return towards the path of mutual coexistence and interdependence.

The group gave two days to both the governments to act on their demands. They also appealed to all the people of the subcontinent to extend their support to Help Sarozula at this crucial time.

On the same day, the Government of Sohulwa issued orders to its armed forces to ensure the safety and security of the marchers assembled at its borders, against any hostile act from Rokumba. On 20 April 2018, there were a series of bomb blasts on Rokum religious sites inside the capital of Rokumba. Around 100 people were killed, and 200 were injured in

these bomb blast. Although no organisation took responsibility for these blasts, the Rokumba government accused the members of the banned SoS group.

On the next day, there was a sudden uprising against the government and many government buildings were put on fire in the capital of Sohulwa. Almost one hundred police personnel and three hundred citizens died during the operations to control the situation. Mr. Z Karmonic was reported missing from custody, along with many other inmates, as jail breaks were reported from all three custodial facilities situated in the capital of Sohulwa. The government of Sohulwa declared a national emergency and suspended some of the basic rights of its citizens.

On 22 April 2018, Rokumba launched missile attacks on five SoS offices situated in Sohulwa. Rokumba also issued a warning to Help Sarozula protestors to immediately disperse, as it would not be responsible for any occurring injury. Rokumba demanded that the government of Sohulwa and other countries of the region ensure the withdrawal of marchers from the border areas with immediate effect.

The Facebook page Help Sarozula became active once again on 24 April 2018. The account immediately started commenting disparagingly on Rokumba and the Rokum religion. Mr. Z. Karmonic issued a call for bravery and said that marchers should act like fighters to help Sarozula ensure a victory for justice.

On 25 April 2018, a group of Help Sarozula protestors wearing similar clothing, with the inscription 'HS Fighters' and carrying arms, attempted to cross the border. This elicited retaliatory firing and mortar attacks from the Rokumba's armed forces. This resulted in further retaliation by the Help Sarozula protestors and the armed forces of Sohulwa, tasked with protecting the marchers. There were scenes of complete chaos at the border. The protestors and members of the armed forces of Sohulwa were successful in crossing the border of Rokumba, in some pocket areas.

Almost five hundred people from both sides were killed in these hostilities. One hundred protestors and twenty five soldiers of Sohulwa were captured by Rokumba's armed forces. Fifteen members of the Rokumba's armed forces were also captured by Sohulwa's armed forces.

With the help of the International Committee of the Red Cross (popularly known as the ICRC), negotiations between the parties to the conflict started to ensure safety and security of captives of all sides. While on the battle front, the Rokumba's armed forces were slowly but surely regaining control of their territory; and were on the verge of gaining territory across the Sohulwa border. However, there were still some Help Sarozula marchers camping near that border.

On 25 May 2018, while negotiations were ongoing, a Facebook post carrying ICRC insignia claimed that negotiations between the two countries had failed and the ICRC deplored the brutal killings of all the captives at the hands of the Rokumbangovernment. This post was first shared on Facebook by Mr. Z. Karmonic, with the caption "***Should Fokums be taught in their own ways all over Sarozula immediately!***". This post with Mr. Z. Karmonic's caption spread like wildfire on social media. At the same time, the official ICRC website was hacked and pictures of some dead bodies in bad shape, appeared with the caption 'Sorry to Humanity' on its website.

By the evening of 25 May 2018, large scale riots spread across Sohulwa and the Rokum minorities found themselves targeted by mobs. Almost six hundred Rokum minorities, of Sohulwa nationality, were killed in one night. Through a press statement, published on 26 May 2018, in all prominent newspapers of the Sarozula subcontinent, the ICRC categorically denied issuing the Facebook post that had been attributed to them, claiming that the post was fake. The ICRC also confirmed that its website had been hacked.

Rokumba began using environmental modification techniques to create heavy artificial rainfall near the border areas, with the intention of dispersing the remaining marchers. The sudden heavy rainfall resulted in flooding and landslides in the adjoining areas. On 30 May 2018, armed forces of Rokumba entered Sohulwan territory and started to march towards the capital city. Cyber experts of the Rokumban armed forces hacked the website of the Sohulwan armed forces, completely disrupting e-mail communication. These cyber-attacks significantly disrupted the military capabilities of the Sohulwan army.

On 5 June 2018, the government of Sohulwa granted a pardon to Mr. Z. Karmonic for his past activities and made him the head of the cyber cell of the Sohulwa's armed forces. He was tasked to properly answer the cyber actions of Rokumba.

On 15 July 2018, when armed forces of Rokumba crossed R2, there were sudden blasts in both nuclear energy plants of Rokumba. These blasts resulted in radioactive leaks and caused great sufferings. Electricity supplies to hospitals and other essential services were also completely disrupted. Almost five hundred patients admitted in ICU, died due to the unavailability of electricity in different hospitals in Rokumba. One thousand employees working in these nuclear units and other surrounding industries died on the spot due to the radioactive leakage from the blast. These blasts also caused severe damage to the natural environment that were patently look hard to be compensated in a decade or so. These blasts also caused leakage of many chemicals from surrounding industries. Many small rivers of Rokunga got extremely polluted and full with the dead bodies of many aquatic creatures.

In response the UN Security Council passed resolution 2553, under chapter VII of the UN Charter, during an emergency meeting held on 16 July 2018. The Security Council urged all parties to the conflict to immediately cease all hostilities on humanitarian grounds. It also urged the Rokumban government to call back her armed forces from inside Sohulwan territory. The Security Council further urged the Government of Sohulwa to ensure the protection of Rokum minorities on its territory.

The resolution also constituted four committees:

1. a technical committee of experts to investigate the cause of the blasts;
2. a technical committee of experts to recommend steps to ameliorate the effects of the blast and to take all feasible steps to minimise the effects of the radioactive leak;
3. a committee to monitor conditions of detention for persons detained in relation to hostilities and to seek information on the whereabouts of people reported missing; and
4. a committee to investigate whether any international crime have been committed during the conflict.

All States were called on to cooperate with these committees.

Accordingly, the parties to the conflict declared the end of hostilities. The first technical committee of experts found that the blasts were the result of a cyber manipulation, in the nuclear plants' software, that originated from Sohulwa's territory.

Sohulwa withdrew its state of emergency on 30 July 2018. Elections were held in December 2018 and the then existing government faced marginal defeat and the new government was formed in Sohulwa in January 2019.

On 5 April 2019, cyber experts from the first committee, with the help of Sohulwan security forces found a set of ten super computers, which were connected with each other, in an underground room in a village near Sohulwa's capital. The Committee alleged that these were the computers through which software programmes aimed to target the nuclear power plants of Rokumba were developed.

On 8 April 2019, the second committee issued its first report wherein it found that the chemicals leaked by the blast have caused serious existential threat in the surrounding areas and primarily responsible for death of aquatic creatures. It stated that probably it would not be possible to restore the affected environment back to its pristine glory in next two decades.

On 10 April 2019, the fourth committee highlighted three incidences that it recommended merited further investigation. The Security Council requested the Prosecutor of the International Criminal Court to consider the findings made in the report of the fourth committee. After complying with all formalities the ICC issued arrest warrants against five persons including Mr. Z. Karmonic, on 15 June 2019.

The captured students and faculty members, along with the captured members of the Sohulwan armed forces and the members of HS Fighters were returned to Sohulwa under UN supervision. However, the persons reported missing inside Sohulwan territory could not be traced.

Mr. Z. Karmonic was arrested on 10 June 2019, from a village in Sohulwa. Subsequently he was handed over to the ICC. After complying with all formalities the Trial Chamber of the ICC will now commence with a trial based on following charges:

The Charges:

1. Mr. Z. Karmonic is charged with the Crime of Genocide under article 6 (a) of the ICC Statute for allegedly causing the killing of followers of Rokum religion on night of 25 May 2018.

2. Mr. Z Karmonic is charged with committing War Crime under article 8 (2)(b)(ii) for intentionally directing attack against nuclear energy plants of Rokumba.

3. Mr. Z. Karmonic is charged with committing War Crimes under article 8(2)(b)(iv) for intentionally launching an attack against the nuclear energy plants of Rokumba, with the knowledge and intention of causing incidental loss of life and injury to civilians and widespread, long-term and severe damage to the natural environment that is excessive to the concrete and direct military advantage anticipated.

All the countries of Sarozula subcontinent are parties to the Four Geneva Conventions of 1949 and two Protocols Additional to the Geneva Conventions of 1977. All these countries have also ratified the Statute of the International Criminal Court in 2006. All these countries are also parties to all important conventions of International Humanitarian Law, Human Rights Law and Public International Law.

Written and oral arguments on behalf of the Prosecution and Defence are to be confined to these two charges. Counsel for both sides are to make arguments with respect to the applicability of the charges and whether the “Elements of Crimes” (United Nations Doc. PCNICC/2000/1/Add.2 (2000), with relevant parts reproduced below) have been met for each of the two charges. Counsels are expected to bring to the Court’s attention relevant jurisprudence of the international and national courts and tribunals and other documentation. Questions relating to jurisdiction and admissibility may not be raised unless they are substantially linked to the merits of the case.

Elements of the Crimes

Article 6: Genocide

For the purpose of this Statute, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious groups, as such:

(a) Killing members of the group.....

Introduction:

With respect to the last element listed for each crime:

- The term “in the context of” would include the initial acts in an emerging pattern;
- The term “manifest” is an objective qualification;
- Notwithstanding the normal requirement for a mental element provided for in article 30, and recognizing that knowledge of the circumstances will usually be addressed in proving genocidal intent, the appropriate requirement, if any, for a mental element regarding this circumstance will need to be decided by the Court on a case-by-case basis.

Article 6 (a): Genocide by Killing

Elements

1. The perpetrator killed¹ one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 8 (2) (b) (ii)

War Crime of Attacking Civilian Objects

Intentionally directing attacks against civilian objects, that is, objects which are not military objectives

Elements

1. The perpetrator directed an attack.
2. The object of the attack was civilian objects, that is, objects which are not military objectives.
3. The perpetrator intended such civilian objects to be the object of the attack.

¹The term ‘killed’ is interchangeable with the term ‘caused death’.

4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (iv)

War Crime of Excessive Incidental Death, Injury, or Damage

Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.

Elements

1. The perpetrator launched an attack.
2. The attack was such that it would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.²
3. The perpetrator knew that the attack would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.³
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

² The expression “concrete and direct overall military advantage” refers to a military advantage that is foreseeable by the perpetrator at the relevant time. Such advantage may or may not be temporally or geographically related to the object of the attack. The fact that this crime admits the possibility of lawful incidental injury and collateral damage does not in any way justify any violation of the law applicable in armed conflict. It does not address justifications for war or other rules related to *jus ad bellum*. It reflects the proportionality requirement inherent in determining the legality of any military activity undertaken in the context of an armed conflict

³As opposed to the general rule set forth in paragraph 4 of the General Introduction, this knowledge element requires that the perpetrator make the value judgement as described therein. An evaluation of that value judgement must be based on the requisite information available to the perpetrator at the time.