"For private or personal use" : the meaning of the special intent requirement in the war of pillage under the Rome Statute of the International Criminal Court / Yulia Nuzban

Abstract: Legislating for international courts and tribunals is a delicate and complex process, which sometimes results in unintended consequences. Arguably, the inclusion of a special intent requirement, also known as dolus specialis, concerning "private or personal use" in the definition of pillage under the Rome Statute of the International Criminal Court is one such consequence. But this is not the only reason why the war crime of pillage deserves special attention. On closer examination, other questions arise concerning its interpretation and application. What is the meaning of "military necessity" and "necessity" in relation to pillage, and how do they correlate with the special intent requirement? To answer these questions, the article examines the drafting history, law and current practice relating to the crime's ambiguous new element. It then proposes several avenues to address the recurring uncertainty regarding its meaning: conservative, radical and pragmatic.

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