

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No. ICC-01/04-02/06 A2

Date: 14 August 2020

THE APPEALS CHAMBER

Before:

**Judge Howard Morrison, Presiding
Judge Chile Eboe-Osuji
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF PROSECUTOR V. BOSCO NTAGANDA

Public

**Request of Peta-Louise Bagott for leave to file observations, pursuant to the
'Order inviting expressions of interest as *amici curiae* in judicial proceedings' of
24 July 2020**

**Document to be notified in accordance with regulation 31 of the Regulations of
the Court to:**

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr James Stewart, Deputy Prosecutor

Counsel for the Defence

Mr Stéphane Bourgon
Ms Kate Gibson

Legal Representatives of the Victims

Ms Sarah Pellet
Mr Dmytro Suprun

Registrar

Mr Peter Lewis

I. Overview

1. I request leave to submit *amicus curiae* observations on the definition of ‘attack’ in article 8(2)(e)(iv) of the Statute, in accordance with Rule 103 (1) and pursuant to the Appeals Chamber’s Order of 24 July 2020.¹

II. Qualifications and interest

2. I am a barrister at Doughty Street Chambers (London, United Kingdom). I have significant experience in international criminal law, including working on cases before the International Criminal Court, International Residual Mechanism for Criminal Tribunals, and the International Criminal Tribunal for the former Yugoslavia. My Chambers profile can be assessed [here](#).
3. Specifically, in relation to the main questions posed by the Appeals Chamber, I have recently published a chapter in *Intersections of Law and Culture at the International Criminal Court* (edited by Julie Fraser and Brianne McGonigle Leyh, published by Edward Elgar Publishers)² considering the judgment in *Prosecutor v Ahmad Al Faqi Al Mahdi*³. The chapter includes an analysis of the definition of ‘attack’ in article 8(2)(e)(iv), whether or not it applies after the object has fallen into the hands of the adversary, and if such objects are afforded any kind of ‘special protection’.

¹ ‘Order inviting expressions of interest as *amici curiae* in judicial proceedings (pursuant to rule 103 of the Rules and Procedure and Evidence)’, ICC-01/04-02/06-2554, 24 July 2020.

² Publication date October 2020; see [Edward Elgar Publishers](#).

³ *Prosecutor v Ahmad Al Faqi Al Mahdi*, ‘Judgment and Sentence’, ICC-01/12-01/15, 27 September 2016.

III. The subject of this application

4. I wish to participate as *amicus curiae* in this matter on the question of what the term 'attack' means in article 8(2)(e)(iv) of the Statute. The Prosecutor argues that it has a 'special meaning', such that it applies outside the conduct of hostilities and covers movable objects from within protected buildings.⁴

5. I will make the following observations:
 - (a) the definition of 'attack' in article 49(1) of Additional Protocol I requires 'acts of violence against an adversary' carried out as part of a military operation;
 - (b) the drafting history of the Rome Statute supports that article 8(2)(e)(iv) is rooted in article 27 of the 1907 Hague Convention;
 - (c) the 'attack' must be a method of warfare, thereby creating a sufficiently close link between the crimes and the conduct of hostilities, as confirmed by the relevant jurisprudence;
 - (d) the provision does not apply outside the conduct of hostilities for the aforementioned reasons;
 - (e) article 8(2)(e)(iv) does not cover acts such as the pillaging of items within protected buildings or damage to items contained therein;
 - (f) it does not cover acts committed in the course of a *ratissage* operation, conducted shortly after the takeover of a town, as they would not constitute a 'military attack' or 'combat action' against an adversary within the meaning of article 49(1);
 - (g) the interpretation the Prosecutor invites the Appeals Chamber to adopt would broaden the definition of article 8(2)(e)(iv) and contravene article 22(2).

⁴ Prosecution Appeal Brief, ICC-01/04-02/06-2434, 7 October 2019, paras.9-11.

6. For these reasons, I will conclude that the term 'attack' is limited to military attacks committed during the conduct of hostilities; and article 8(2)(e)(iv) does not cover acts such as pillaging and destruction, or those committed in the course of a *ratissage* operation.

Respectfully submitted,

A handwritten signature in black ink on a light-colored background. The signature reads "Peta-Louise Bayatt" in a cursive, flowing script. The first name "Peta" is written in a larger, more prominent hand, followed by "Louise" and "Bayatt" in a similar but slightly smaller hand. The signature is written on a rectangular piece of paper that is slightly offset to the left.

Dated this 14th day of August 2020

At London, United Kingdom