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**Preparatory Commission for the
International Criminal Court**

Working Group on Elements of Crimes

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Proposal submitted by Costa Rica, Hungary and Switzerland on certain provisions of Article 8 para. 2 (b) of the Rome Statute of the International Criminal Court: (viii), (x), (xiii), (xiv), (xv), (xvi), (xxi), (xxii), (xxvi)***Article 8 (2)(b)(viii): 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**

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator
 - (a) Transferred, directly or indirectly, parts of its own population into the territory it occupies; or
 - (b) Deported or transferred all or parts of the population of the occupied territory within or outside this territory.

* In view of the discussions at the first session of the Preparatory Commission, and the draft general paragraph to be included as an introduction to Article 8, the element of 'unlawfulness' has not been repeated. Likewise, the general intent has not been repeated as it is implied. In view of the discussions at the first session of the Preparatory Commission, 'act or omission' has been replaced by 'conduct'.



Article 8 (2)(b)(x): Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons

Elements of Physical mutilation

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator physically mutilated a person.
3. The person was in the power of an adverse Party (Party other than the one on which he depends) at the time the crime was committed.
4. The conduct caused death or seriously endangered the physical or mental health.
5. The conduct is unlawful, even with the consent of the victim, if it is not justified by the medical, dental or hospital treatment of the person concerned and not carried out in his or her interest, i.e., any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty.

Elements of medical or scientific experiments

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator carried out a medical or scientific experiment on a person.
3. The person was in the power of an adverse Party (Party other than the one on which he depends) at the time the crime was committed.
4. The experiment caused death or seriously endangered the physical or mental health or integrity of a person.
5. Medical or scientific experiments are unlawful, even with the consent of the victim, if they are not justified by the medical, dental or hospital treatment of the protected person concerned and not carried out in his interest, i.e. any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty.

Article 8 (2)(b)(xiii): Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator destroyed or seized property of the adverse Party.
3. The destruction or seizure was not imperatively demanded by military necessity.

Article 8 (2)(b)(xiv): Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator declared abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the adverse party.

Article 8 (2)(b)(xv): Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator compelled by pressure or coercion a national of an adverse party to take part in the operations of war directed against his or her own country.
3. The compelled acts were not permissible as prisoner of war or civilian labour, as defined under international humanitarian law.

Article 8 (2)(b)(xvi): Pillaging a town or place, even when taken by assault

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator appropriated or obtained against the owner's will [by force] [either through taking advantage of the circumstances of armed conflict or through abuse of military strength] private or public property in a town or a place.
3. The conduct was not permissible as a lawful act of, in particular, seizure, levying contributions, requisition or taking war booty.
4. The perpetrator appropriated or obtained the property with the specific intention [of unjustified gain] [to deprive the owner or any other person of the use or benefit of the property, or to appropriate the property for the use of any person other than the owner].

Article 8 (2)(b)(xxi): Committing outrages upon personal dignity, in particular humiliating and degrading treatment

Elements of humiliating and degrading treatment

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The conduct of the perpetrator constituted an attack on human dignity and caused – either in the eyes of others or in the eyes of the victim – humiliation or debasement attaining a minimum level of severity.

Article 8 (2)(b)(xxii): Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions

Rape

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator committed an act of sexual penetration, however slight:
 - a. of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or
 - b. of the mouth of the victim by the penis of the perpetrator;
1. The perpetrator committed this act by coercion or force or threat of force against the victim or a third person.

Sexual slavery

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator treated a person as chattel by exercising any or all of the powers attaching to the right of ownership, including sexual access through rape or other forms of sexual violence.

Enforced prostitution

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator imposed conditions of control over a person and coerced that person to engage in sexual activity.

Forced pregnancy, as defined in article 7, paragraph 2 (f)¹

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator confined a woman forcibly made pregnant.
3. The perpetrator intended:
 - a. to affect the ethnic composition of any population; or
 - b. to carry out other grave violations of international law.

Enforced sterilization

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator coerced a person to be sterilized.

¹ These elements are based on article 7(2)(f) of the Rome Statute.

Any other form of sexual violence also constituting a grave breach of the Geneva Conventions

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator committed a physical or psychological act of a sexual nature upon a person under circumstances that are coercive.

Article 8 (2)(b)(xxvi): Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities

1. The conduct took place in the context of and was associated with an international armed conflict.
 2. The perpetrator caused
 - a. the conscription or enlistment of a child into the national armed forces; or
 - b. used a child to participate actively in hostilities.
 1. The child was under the age of fifteen years.
 2. The perpetrator
 - a. knew or was aware that the child was under the age of fifteen years; or
 - b. was wilfully blind to the fact that the child was under the age of fifteen years.
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