



22 July 1999

Original: English

Preparatory Commission for the International Criminal Court

Working Group on Elements of Crimes

New York

16–26 February 1999

26 July–13 August 1999

29 November–17 December 1999

Proposal submitted by Japan

Elements of crimes: article 8, paragraph 2 (b) (i) to (xvi)

Terminology for war crimes

1. “A civilian” is any person who is not a member of the armed forces of a party to a conflict.
2. “The civilian population” comprises all persons who are civilians.
3. “Attacks” means acts of violence against the adversary, whether in offence or in defence.
4. “Civilian objects” are all objects which are not military objectives. Without prejudice to the rules of international law applicable in armed conflict at sea or in the air, “military objectives” are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.
5. “Incidental damage” means additional damage that was not intended, but collaterally caused with an attack against military objectives.
6. “Undefended towns” means towns that are open for immediate and unresisted occupation.
7. “Perfidy” means, without prejudice to the rules of international law applicable in armed conflict at sea or in the air, any acts of inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence.

8. “Transfer of persons” means unlawful displacement of persons, without consent, by expulsion or other coercive acts, from an area in which the transferee is lawfully present, to another area.

9. “Enemy’s property” means any property which belongs to the Government or the nationals of hostile party, and which is not a military objective.

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities

1. The act took place in the context of an international armed conflict.
2. The accused directed attacks against:
 - (a) Civilian population, as defined in paragraph 2 of the Terminology; or
 - (b) Individual civilians, as defined in paragraph 1 of the Terminology.
3. In the case of subparagraph (b) of element 2, such individual civilians were not taking direct part in hostilities.
4. The attack resulted in death or serious injury to body or health of civilians.

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

1. The act took place in the context of an international armed conflict.
2. The accused intentionally directed attacks against civilian objects, which are defined in paragraph 4 of the Terminology.
3. The civilian objects were actually damaged by the attack.

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict

1. The act took place in the context of an international armed conflict.
2. The accused directed attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.
3. Such personnel, installations, material, units or vehicles were entitled to the protection given to civilians or civilian objects, which are defined in paragraphs 1 and 4 respectively of the Terminology.
4. The attack resulted in death or serious injury to body or health of such personnel, or actually damaged such installations, material, units or vehicles.

(iv) 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

1. The act took place in the context of an international armed conflict.

2. The accused launched an attack against military objectives.
 3. The attack resulted in the following incidental damage:
 - (a) Loss of life or injury to civilians;
 - (b) Damage to civilian objects; or
 - (c) Widespread, long-term and severe damage to the natural environment.
 4. The attack resulted in death or serious injury to body or health of civilians.
 5. The collateral damage was clearly excessive in relation to the concrete and direct overall military advantage anticipated.
 6. When launching the attack, the accused knew that the attack would cause the incidental damage, and that the incidental damage would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.
- (v) **Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives**
1. The act took place in the context of an international armed conflict.
 2. The accused attacked or bombarded towns, villages, dwellings or buildings.
 3. The towns, villages, dwellings or buildings that the accused attacked were undefended, and were not military objectives.
 4. The accused knew that the towns, villages, dwellings or buildings were undefended.
- (vi) **Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion**
1. The act took place in the context of an international armed conflict.
 2. The accused killed or wounded a person who had been a combatant.
 3. At the time of being killed or wounded, the person had surrendered at discretion by laying down his arms or not having any means of defence.
 4. The accused knew that the victim had surrendered at discretion.
- (vii) **Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury**
1. The act took place in the context of an international armed conflict.
 2. The accused used a flag of truce, the flag or the military insignia and uniform of the enemy or of the United Nations, as well as the distinctive emblems of the Geneva Conventions.
 3. The manner in which the accused used such flags or emblems was prohibited under the international law of armed conflict, including the international law of armed conflict applicable in armed conflict at sea or in the air.
 4. The accused was aware of the factual circumstances that indicated that the manner in which the accused used such flags or emblems was prohibited under the international law of armed conflict.
 5. Making use of such flags and emblems resulted in death or personal injury.

- (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 act took place in the context of military occupation with respect to territory where authority of a hostile army was established and exercised.
 2. The Occupying Power caused the transfer, directly or indirectly, 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.
 3. The accused was responsible for such transfer or deportation.
 4. Such transfer or deportation was conducted in violation of article 49 of the Fourth Geneva Convention.
- (ix) **Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives**
1. The act took place in the context of an international armed conflict.
 2. The accused directed attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected.
 3. The targets of the attack were extensively destroyed.
 4. The targets of the attack were not military objectives.
- (x) **Subjecting persons who are in the power of an adverse party to physical mutilation or 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**
1. The act took place in the context of an international armed conflict.
 2. The accused subjected persons who were in the power of an adverse party to physical mutilation or medical or scientific experiments of any kind.
 3. Such conduct was neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest.
 4. Such conduct caused death to or seriously endangered the physical or mental health of the person or persons.
- (xi) **Killing or wounding treacherously individuals belonging to the hostile nation or army**
1. The act took place in the context of an international armed conflict.
 2. The accused killed or wounded individuals belonging to the hostile nation or army by resort to perfidy, as defined in paragraph 7 of the Terminology.
- (xii) **Declaring that no quarter will be given**
1. The act took place in the context of an international armed conflict.

2. The accused was in a position to command or control his subordinate forces effectively in the circumstances ruling at the time.
3. The accused made a declaration or gave an order to those subordinate forces that bona fide surrender by the enemy be refused, even if it would be reasonable to accept, and that all enemy persons proffering surrender be killed.
4. Such a declaration or order was given in order to threaten an adversary therewith or to conduct hostilities on this basis.

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

1. The act took place in the context of an international armed conflict.
2. The accused destroyed or seized the enemy's property, as defined in paragraph 9 of the Terminology.
3. Such destruction or seizure was not permitted under the rules of international law applicable in armed conflict at sea or in the air.
4. Such destruction or seizure was not imperatively demanded by the necessities of war.
5. The accused knew that such destruction or seizure was not imperatively demanded by the necessities of war.

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

1. The act took place in the context of an international armed conflict.
2. The accused was in a position to command or control his subordinate forces effectively in the circumstances ruling at the time.
3. The accused declared that the rights and actions of the nationals of the hostile party be abolished, suspended or inadmissible in a court of law.
4. The rights and actions of the nationals of the hostile party were abolished, suspended or inadmissible in a court of law, in accordance with the declaration made by the accused.

(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 services before the commencement of the war

1. The act took place in the context of an international armed conflict.
2. The accused compelled the nationals of the hostile party to serve in its armed or auxiliary forces or to undertake any work which involved them in the obligation of taking part in military occupation.

(xvi) Pillaging a town or place, even when taken by assault

1. The act took place in the context of an international armed conflict.
2. The accused pillaged a town or place.