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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
Article 8 para. 2 (b) (xvii), (xviii), (xix), (xx), (xxiii), (xxiv), and (xxv)
of the Rome Statute of the International Criminal Court¹**

Article 8 (2) (b) (xvii): War crime of Employing Poison or Poisoned Weapons

1. The conduct took place in the context of and was associated with an international armed conflict.²
2. The perpetrator employed poison or a poisoned weapon.
- [3. The perpetrator was aware that the substance or means of warfare he or she was employing was poison or a poisoned weapon.]

**Article 8 (2) (b) (xviii): War crime of Employing Prohibited Gases, Liquids,
Materials or Devices**

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator employed an asphyxiating, poisonous or other gas, or an analogous liquid, material or device.
- [3. The perpetrator was aware that the means of warfare he or she was employing was an asphyxiating, poisonous or other gas, or an analogous liquid, material or device.]

¹ 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 In view of the discussions at the first session of the Preparatory Commission, 'act or omission' has been replaced by 'conduct'.

² This element would not be necessary if it were included in a general paragraph or in general elements to article 8 (2) (c).



Article 8 (2) (b) (xix): War crime of Employing Prohibited Bullets

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator employed bullets which expand or flatten easily in the human body.
3. The perpetrator knew either:
 - a) That the use [employment] was in violation of the laws and customs applicable in international armed conflict;
 - b) Or that the bullets expanded or flattened easily in the human body;
 - c) Or that the bullets were not in conformity with those issued on a standard basis within the armed forces to which the accused belonged.

Article 8 (2) (b) (xx): War crime of Employing Weapons, Projectiles or Material or Methods of Warfare listed in the Annex to the Statute

[Elements will have to be drafted once weapons, projectiles or material or methods of warfare have been included in an annex to the Statute.]

Article 8 (2) (b) (xxiii): War crime of Utilizing Protected Persons to Immunize Objects or Forces

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator used the presence of a civilian or other protected person to render a certain point, area or military force immune from military operations.
3. The perpetrator was aware of the factual circumstances that established the civilian or otherwise protected status of the person whose presence was used.

Article 8 (2) (b) (xxiv): War crime of Attacking Objects and Personnel Using the Distinctive Emblems of the Geneva Conventions

1. The conduct took place in the context of and was associated with an international armed conflict.
2. The perpetrator directed an attack against a building, material, medical unit or transport, or personnel using, in conformity with international law, a distinctive emblem or other method of identification indicating protection under the Geneva Conventions to the building, material, medical unit or transport, or personnel.
3. The perpetrator was aware of the factual circumstances that established the special status of the building, material, medical unit or transport, or personnel.

Article 8 (2) (b) (xxv): War crime of Starvation of Civilians as a Method of Warfare

1. The conduct took place in the context of and was associated with an international armed conflict.
 2. The perpetrator starved civilians as a method of warfare by depriving them of objects indispensable to their survival, including impeding relief supplies as provided for under the Geneva Conventions.
 3. The perpetrator was aware of the factual circumstances that established the civilian status of the persons deprived of objects indispensable to their survival.
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