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**Preparatory Commission for the International  
Criminal Court**

**Working Group on Elements of Crimes**

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**Proposal submitted by China and the Russian Federation on the  
elements of article 8 (2) (c) (I) in the discussion paper proposed by  
the Coordinator (PCNICC/1999/WGEC/RT.5/Rev.1)**

Add the following as element 5 to article 8 (2) (c) (I)-4: War crime of torture:

“5. The conduct was instigated or committed with the consent or acquiescence of a public official or other person acting in an official capacity, including persons who have been provided with similar powers or capacity by an adverse party, irrespective of whether the party was recognized as a State.”