

10 August 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

**Discussion paper proposed by the Coordinator**

**Article 8(2)(c)<sup>1</sup>**

**Article 8 (2) (c) (i) - 1: War crime of murder**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.<sup>2</sup>
2. The accused killed one or more persons.<sup>3</sup>
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel<sup>4</sup> taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.<sup>5</sup>

---

\* Reissued for technical reasons.

<sup>1</sup> It is understood that any modifications to the draft elements for Article 8 (2) (a), may require re-examination of the elements of article 8(2)(c).

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

<sup>3</sup> The term “killed” is interchangeable with the term “caused death”.

<sup>4</sup> The term “religious personnel” includes those non-confessional non-combatant military personnel carrying out a similar function.

<sup>5</sup> 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) (c) (i) - 2: War crime of mutilation**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused mutilated one or more persons, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.
3. The conduct caused death or seriously endangered the physical or mental health of such person or persons.
4. The conduct was not justified by the medical, dental or hospital treatment of the person or persons concerned and not carried out in such person's or persons' interests.
5. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.

**Article 8 (2) (c) (i) - 3: War crime of cruel treatment**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused inflicted severe physical or mental pain or suffering upon one or more persons.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.

**Article 8 (2) (c) (i) - 4: War crime of torture**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused inflicted severe physical or mental pain or suffering upon one or more persons.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.
4. The accused inflicted the pain or suffering for the purpose of obtaining information or a confession, punishment, intimidation or coercion, or obtaining any other similar purpose.

**Article 8(2) (c) (ii): War crime of outrages upon personal dignity**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused humiliated, degraded or otherwise violated the dignity of one or more persons.<sup>6</sup>

---

<sup>6</sup> For this crime, "persons" can include dead persons.  
It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation.

This element takes into account cultural background of the victim.

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.
4. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.

**Article 8(2)(c)(iii): War crime of taking hostages**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused seized, detained or otherwise held hostage one or more persons.
3. The accused threatened to kill, injure or continue to detain such person or persons.
4. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.
5. The accused intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.

**Article 8(2)(c)(iv): War crime of sentencing or execution without due process**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused passed sentence or executed one or more persons.<sup>7</sup>
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities, and the accused was aware of the factual circumstances that established this status.
4. There was no previous judgment pronounced by a court, or the court that rendered judgment was not "regularly constituted", that is it did not afford the essential guarantees of independence and impartiality, or the court that rendered judgment did not afford all other judicial guarantees generally recognized as indispensable under international law.<sup>8</sup>
5. The accused was aware of the absence of a previous judgement or of the denial of relevant guarantees and the fact that they are essential or indispensable to a fair trial.<sup>9</sup>

---

<sup>7</sup> The elements laid down in these documents do not address the different forms of individual criminal responsibility, as enunciated in articles 25 and 28 of the Statute.

<sup>8</sup> With respect to elements 4 and 5, the Court should consider whether, in the light of all relevant circumstances, the cumulative effect of factors with respect to guarantees deprived the person or persons of a fair trial.

<sup>9</sup> Ibid.