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**Working Group on Elements of Crimes**

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**Discussion paper proposed by the Coordinator**

**Article 8, paragraph 2 (e)**

**Article 8 (2) (e) (i): War crime of attacking civilians**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused attacked a civilian population as such or individual civilians not taking direct part in hostilities.
3. The accused intended the object of the attack to be the civilian population as such or individual civilians not taking direct part in hostilities.

**Article 8 (2) (e) (ii): War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused attacked one or more persons, buildings, medical units or transports, or other objects using, in conformity with international law, a distinctive emblem or other method of identification indicating protection under the Geneva Conventions.
3. The accused intended the object of the attack to be such persons, buildings, units or transports or other objects so using such identification.

**Article 8 (2) (e) (iii): War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

2. The accused attacked 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 that protection given to civilians or civilian objects under the international law of armed conflict and the accused was aware of the factual circumstances that established that protection.
4. The accused intended the object of the attack to be such personnel, installations, material, units or vehicles.

**Article 8 (2) (e) (iv): War crime of attacking protected objects**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused attacked one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The accused intended the object of the attack to be one or more buildings, monuments, hospitals or places of such nature.

**Article 8 (2) (e) (v): War crime of pillaging**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused appropriated or seized certain property.
3. The appropriation or seizure was not justified by military necessity and was committed with intent to deprive the owner thereof.

**Article 8 (2) (e) (vi)-1: War crime of rape**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused invaded<sup>1</sup> the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
3. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.<sup>2</sup>

**Article 8 (2) (e) (vi)-2: War crime of sexual slavery**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.

<sup>1</sup> The concept of "invasion" is intended to be broad enough to be gender-neutral.

<sup>2</sup> It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

2. The accused exercised a power attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.
3. The accused caused such person or persons to engage in one or more acts of a sexual nature.

**Article 8 (2) (e) (vi)-3: War crime of enforced prostitution**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.<sup>3</sup>
3. The accused or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

**Article 8 (2) (e) (vi)-4: War crime of forced pregnancy**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused confined one or more women.
3. Such woman or women had been forcibly made pregnant.
4. The accused intended to keep the woman or women pregnant in order to affect the ethnic composition of a population or to carry out another grave violation of international law.

**Article 8 (2) (e) (vi)-5: War crime of enforced sterilization**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused deprived one or more persons of biological reproductive capacity.<sup>4</sup>
3. The conduct neither was justified by the medical or hospital treatment of the person or persons concerned nor was carried out with their genuine consent.<sup>5</sup>

**Article 8 (2) (e) (vi)-6: War crime of sexual violence**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or

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<sup>3</sup> Ibid.

<sup>4</sup> The deprivation is not intended to include birth-control measures.

<sup>5</sup> It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.<sup>6</sup>

3. The conduct was of a gravity comparable to that of a serious violation of article 3 common to the four Geneva Conventions.

**Article 8 (2) (e) (vii): War crime of using, conscripting and enlisting children**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities.
3. Such person or persons were under the age of 15 years.
4. The accused knew or should have known that such person or persons were under the age of 15 years.

**Article 8 (2) (e) (viii): War crime of displacing civilians**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused ordered a displacement of a civilian population.
3. The accused was in a position to effect such displacement by giving such order.
4. Such order was not justified by the security of the civilians involved or by military necessity.

**Article 8 (2) (e) (ix): War crime of treacherously killing or wounding**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused invited the confidence of one or more combatant adversaries to believe that he or she was entitled to or is obliged to accord protection under rules of international law applicable in armed conflict with intent to betray that confidence.
3. The accused killed or injured that person or persons.<sup>7</sup>
4. In killing or injuring, the accused made use of the confidence invited by him or her.

**Article 8 (2) (e) (x): War crime of denying quarter**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused declared or ordered that there shall be no survivors.
3. The accused was in a position of effective command or control over the subordinate forces to which the declaration or order was directed.
4. Such declaration or order was given in order to threaten an adversary or to conduct hostilities on the basis that there shall be no survivors.

**Article 8 (2) (e) (xi)-1: War crime of mutilation**

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<sup>6</sup> Ibid.

<sup>7</sup> The term "killed" is interchangeable with the term "caused death".

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. Such person or persons were in the power of another party to the conflict.
4. The conduct caused death or seriously endangered the physical or mental health of such person or persons.
5. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interest.<sup>8</sup>

**Article 8 (2) (e) (xi)-2: War crime of medical or scientific experiments**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused subjected one or more persons to a medical or scientific experiment.
3. Such person or persons were in the power of another party to the conflict.
4. The experiment caused death or seriously endangered the physical or mental health or integrity of such person or persons.
5. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.<sup>9</sup>

**Article 8 (2) (e) (xii): War crime of destroying or seizing the enemy's property**

1. The conduct took place in the context of and was associated with an armed conflict not of an international character.
2. The accused destroyed or seized certain property.
3. Such property was private or public property of the adversary and the accused was aware of the status of the property.
4. The destruction or seizure was not required by military necessity.<sup>10</sup>

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<sup>8</sup> Consent is not a defence to this crime. The crime prohibits 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.

<sup>9</sup> Ibid.

<sup>10</sup> It is understood that the *chapeau* may have to be adapted to address the applicability of this crime in naval warfare. It was understood that the Working Group will return to this crime to consider both its scope and its content.