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PREPARATORY COMMITTEE ON THE
ESTABLISHMENT OF AN INTERNATIONAL
CRIMINAL COURT
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Working Group on definition of crimes

DRAFT CONSOLIDATED TEXT¹

War crimes

[For the purpose of the present Statute, "war crimes" means:]

[For the purpose of the present Statute, any of the following war crimes constitutes a crime within the jurisdiction of the court when committed as part of a systematic plan or policy or as part of a large-scale commission of such crimes:]

A. grave breaches of the Geneva Conventions of 12 August 1949, namely, the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(a) wilful killing;

(b) torture or inhuman treatment, including biological experiments;

(c) [wilfully causing great suffering, or serious injury to body or health] [wilfully causing great suffering, serious injury to body or health, including rape, enforced prostitution and other sexual violence of comparable gravity];

(d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

¹ This text is based on a written proposal submitted by the United States (A/AC.249/1997/WG.1/DP.1) and a written proposal submitted by New Zealand and Switzerland (A/AC.249/1997/WG.1/DP.2) as well as on discussions in the working group and informal consultations.



(e) compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(f) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(g) unlawful deportation or transfer or unlawful confinement;

(h) taking of hostages.

B. [Other war crimes in violation of laws and customs applicable in international armed conflict within the established framework of international law, namely:]

[Other war crimes in international armed conflict]²

[other grave breaches]

[³ 1. [Any of the following acts, when committed wilfully, in violation of international humanitarian law, and causing death or serious injury to body or health:⁴]

[Grave breaches of article 85(3) of Protocol I of 10 June 1977 Additional to the Geneva Conventions of 12 August 1949, namely the following acts, when committed wilfully, in violation of the relevant provisions of the Protocol and causing death or serious injury to body or health];

(a) making the civilian population or individual civilians the object of attack;

(b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects[;⁵] [, which is

² Other delegations feel that grave breaches of Protocol Additional I to the 1949 Geneva Conventions should be reflected in the Statute under the heading of grave breaches which would reflect more appropriately the status of those crimes in international humanitarian law.

³ This square bracket closes after paragraph 3 (c).

⁴ The provisions of paragraph 1 are drawn from article 85(3) of Protocol Additional I to the 1949 Geneva Conventions.

It was suggested that crimes listed under section B (1)-(3) could be covered as treaty crimes.

⁵ This provision should be read together with article 57(2)(a)(iii) of Protocol Additional I to the 1949 Geneva Conventions. This footnote is an alternative to the words in square brackets following it.

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excessive in relation to the concrete and direct military advantage anticipated;]

(c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects[;⁶] [, which is excessive in relation to the concrete and direct military advantage anticipated]

(d) [making non-defended localities and demilitarized zones the object of attack;]

[attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended⁷;]

(e) [making a person the object of attack in the knowledge that he is *hors de combat*;]

[killing or wounding an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion⁸;]

(f) the perfidious use of the distinctive emblem of the red cross or red crescent or of other protective signs and signals recognized by international humanitarian law⁹.

2. [Any of the following acts, when committed wilfully and in violation of international humanitarian law:¹⁰

[Grave breaches of article 85(4) of Protocol I of 10 June 1977 Additional to the Geneva Conventions of 12 August 1949, namely the following acts when committed wilfully, in violation of the relevant provisions of the Protocol and causing death or serious injury to body or health];

(a) the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all

⁶ This provision should be read together with article 57(2)(a)(iii) of Protocol Additional I to the 1949 Geneva Conventions. This footnote is an alternative to the words in square brackets following it.

⁷ This alternative is drawn from article 25 of the Annex to the IV Hague Convention respecting the laws and customs of war on land.

⁸ This alternative is drawn from article 23.1(c) of the Annex to the IV Hague Convention respecting the laws and customs of war on land and would

⁹ This provision should be read together with article 37 of Protocol Additional I to the 1949 Geneva Conventions. It is partly overlapping with a proposal in 4(d) below.

¹⁰ The provisions of paragraph 2 are drawn from article 85(4) of Protocol Additional I to the 1949 Geneva Conventions.

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or parts of the population of the occupied territory within or outside this territory;¹¹

(b) unjustifiable delay in the repatriation of prisoners of war or civilians;

(c) practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

(d) [making the clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result, extensive destruction thereof, where there is no evidence of the use by adverse party of such objects in support of a military effort, and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives]

[intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, unless such property is used in support of the military effort¹²];

3. [Wilful acts or omissions, in violation of international humanitarian law, which seriously endangers the physical or mental health or integrity;¹³]

[Grave breaches of article 11 of Protocol I of 10 June 1977 Additional to the Geneva Conventions of 12 August 1949, namely the following acts, when committed wilfully, in violation of the relevant provisions of the Protocol and causing death or serious injury to body or health];

subjecting persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty, to 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 which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty, in particular to carry out on such persons, even with their consent:

¹¹ This provision should be read together with article 49 of the Fourth Geneva Convention.

¹² This alternative is based on article 27 of the Annex to the IV Hague Convention respecting the laws and customs of war on land.

¹³ The provisions of paragraph 3 are based on article 11 of Protocol Additional I to the 1949 Geneva Conventions.

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- (a) physical mutilations;
- (b) medical or scientific experiments;
- (c) removal of tissue or organs for transplantation.]

4.¹⁴ [Other serious violations of international humanitarian law.]

(a) killing or wounding treacherously individuals belonging to the hostile nation or army] [perfidy¹⁵];

(b) killing or wounding an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion;¹⁶

(c) [declaring that no quarter will be given [thereby inflicting death or serious personal injury upon the enemy]]

[to declare that there shall be no survivors];

(d) [making improper use of flag of truce of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive emblems of the Geneva Conventions, [thereby inflicting death or serious personal injury upon the enemy]]

[perfidy];

(e) [destroying or seizing the enemy's property [, within one's custody or control,] unless such destruction or seizure be imperatively demanded by the necessities of war;¹⁷

(f) [declaring] abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(g) 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 service before the commencement of the war;

¹⁴ The numbering of this paragraph depends on the inclusion of paragraphs 1-3 above.

¹⁵ This alternative provision should be read together with article 37 of Protocol Additional I to the 1949 Geneva Conventions.

¹⁶ This has also been covered in paragraph B.1(e).

¹⁷ This subparagraph is drawn from article 23.1(g) of the Annex to the IV Hague Convention respecting the laws and customs of war on land.

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(h) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended;¹⁸

(i) [pillaging a town or place, even when taken by assault]

[pillage]

[plunder];

(j) employing poison or poisoned weapons;^{18 bis}

[(k) [employing weapons, projectiles and material and methods of warfare of such a nature as to cause superfluous injury or unnecessary suffering [or inherently indiscriminate] [:][including:]]

[employing arms, projectiles, or material calculated to cause unnecessary suffering [:][including:]]

(i) using asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(ii) using bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(iii) using bacteriological (biological) agents or toxins for hostile purposes or in armed conflict;

(iv) using chemical weapons [as defined in and prohibited by the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and On Their Destruction;] in violation of international law;¹⁹^{19 bis}

(l) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, unless such property is used in support of the military effort;²⁰

¹⁸ This has also been covered in paragraph B.1(d).

^{18 bis} It was suggested that this subparagraph could be moved to subparagraph (k).

¹⁹ This provision should be read together with the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and On Their Destruction.

^{19 bis} It was suggested to include a reference to nuclear weapons.

²⁰ This has also been covered in paragraph B.2(d).

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(m) intentionally directing attacks against the civilian population as such, as well as individual civilians;

(n) outrages upon personal dignity, in particular rape, enforced prostitution and other sexual violence of comparable gravity;

(o) utilizing the presence of a civilian or other protected person to render certain points, areas, or military forces, which otherwise would be legitimate military objectives, immune from military operations;

((p) to cause wilfully, widespread, long-term and severe damage to the natural environment;

(q) attacks against buildings, material medical units and transport and personnel entitled to use in conformity with international humanitarian law, the distinctive emblem of the red cross or the red crescent;

(r) starvation of civilians;

(s) to recruit children under the age of fifteen years in the armed forces, or to allow them to take part in hostilities;

(t) violation of armistice, suspensions of fire or local arrangements concluded for the removal, exchange and transport of the wounded and the dead left on the battlefield.]

C.

Serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949 in the case of an armed conflict not of an international character namely the following acts against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(a) [violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment, such as torture, mutilation or any form of corporal punishment]

[violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture];

(b) taking of hostages;

(c) [outrages upon personal dignity, in particular humiliating and degrading treatment (rape and enforced prostitution)];

[outrages upon personal dignity, in particular rape, enforced prostitution and other sexual violence of comparable gravity];

[wilfully causing great suffering, serious injury to body or health, including rape, enforced prostitution and other sexual violence of comparable gravity];

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(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by regularly constituted court affording all judicial guarantees which are generally recognized as indispensable;

²¹[Other war crimes in non-international armed conflicts

(e) collective punishments;

(f) acts of terrorism;

(g) slavery and the slave trade in all their forms;

(h) [pillaging a town or place, even when taken by assault;]

[pillage;]

[plunder;]

(i) attacks directed against the civilian population as such, or individual civilians;

(j) employing poison or poisoned weapons;

[(k) [employing weapons, projectiles and material and methods of warfare of such a nature as to cause superfluous injury or unnecessary suffering [:] [including:]]

[employing arms, projectiles, or material calculated to cause unnecessary suffering [or inherently indiscriminate] [:] [including:]]

[(i) using asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(ii) using bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(iii) using bacteriological (biological) agents or toxins for hostile purposes or in armed conflict;

(iv) using chemical weapons [as defined in and prohibited by the 1993 Convention on the Prohibition of the Development, Production, Stockpiling

²¹ This square bracket will end after the last paragraph of the section.

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and Use of Chemical Weapons and On Their Destruction;] [in violation of international law;²²]^{22 bis}]

(l) to cause wilfully widespread, long-term and severe damage to the natural environment;

(m) attacks against buildings, material, medical units and transports, and personnel entitled to use in conformity with international humanitarian law, the distinctive emblem of the red cross or red crescent;

(n) attacks directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort;

(o) starvation of civilians;

(p) to recruit children under the age of fifteen years in the armed forces, or to allow them to take part in hostilities;

(q) ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or military reasons so demand;

(r) perfidy;

(s) [declaring that no quarter will be given [thereby inflicting death or serious personal injury upon the enemy]]

[declaring that there shall be no survivors];

(t) violation of armistice, suspensions of fire or local arrangements concluded for the removal, exchange and transport of the wounded and the dead left on the battlefield.]

²² This provision should be read together with the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and On Their Destruction.

^{22 bis} It was suggested to include a reference to nuclear weapons.