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**Topic:** ICC Statute Article 8(2)(b)(xx)

**Level:** Introductory

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**PURL of film:** [www.cilrap.org/cilrap-film/8-2-b-xx-dahl/](http://www.cilrap.org/cilrap-film/8-2-b-xx-dahl/)

**PURL of English transcript:** [www.legal-tools.org/doc/7fa979/](http://www.legal-tools.org/doc/7fa979/)

Now I shall say some words about article 8, paragraph 2(b)(xx), which penalizes employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international Law of Armed Conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123.

The crimes under article 8, paragraph 2 (b) are “serious violations of the laws and customs applicable in international armed conflict,” which means that they may be derived from customary or treaty law applicable in such conflict.

This crime is based on article 23 (e) of the 1907 Hague Regulations and article 35, paragraph 2 of the 1977 Additional Protocol I to the 1949 Geneva Conventions. The first is about causing superfluous injury and the second is about indiscriminate weapons. A number of specific prohibitions are based on these principles. Some of them are explicitly included in the ICC Statute, such as the war crime of employing asphyxiating, poisonous, or other gases.

So far, the ICC Statute has not been amended to include any list of additional weapons. Thus, the use of several weapons that are subject to a more or less comprehensive ban, such as blinding laser weapons, do not fall under the jurisdiction of the ICC. Nor is there any case law from the ICTY or the ICTR on whether a specific means of warfare is of a nature to cause superfluous injury or unnecessary suffering or is inherently indiscriminate.

Thank you.