

**Fourteenth session**

The Hague, 18-26 November 2015

**Report of the Working Group on Amendments****I. Introduction**

1. The present report is submitted pursuant to the mandate given by the Assembly of State Parties (“the Assembly”) to the Working Group on Amendments (“the Working Group”). The Working Group was established by the Assembly pursuant to resolution ICC-ASP/8/Res.6 for the purpose of considering amendments to the Rome Statute proposed in accordance with article 121(1) and to the Rules of Procedure and Evidence (“the Rules”), with a view to identifying amendments to be adopted in accordance with the Rome Statute and the Rules of Procedure of the Assembly of States Parties.

2. The work of the Working Group concerning the consideration of amendment proposals to the Rome Statute and to the Rules of Procedure and Evidence is governed by the Terms of Reference adopted by the Assembly at its eleventh session pursuant to resolution ICC-ASP/11/Res.8. The amendment procedure for the Rules of Procedure and Evidence is also governed by the “Roadmap on reviewing the criminal procedures of the International Criminal Court”, the main purpose of which is to facilitate a structured dialogue between key stakeholders on proposed amendments to the Rules of Procedure and Evidence.<sup>1</sup> With the Roadmap, which was endorsed by the Assembly in resolution ICC-ASP/11/Res.8, and in resolution ICC-ASP/12/Res.8, the Assembly reaffirms the role of the Working Group in receiving and considering recommendations to the Assembly on proposals of amendments to the Rules.

3. At its thirteenth session the Assembly “*invite[d]* the Working Group to continue its consideration of all amendment proposals in accordance with the Terms of Reference of the Working Group, and requested the Bureau to submit a report for the consideration of the Assembly at its fourteenth session.”<sup>2</sup>

4. At the Review Conference of the Rome Statute in 2010 it was decided to retain article 124 and further review its provisions during the fourteenth session of the Assembly. At its thirteenth session, the Assembly “*decide[d]* to review the provisions of article 124 of the Rome Statute in the context of the Working Group on Amendments during the fourteenth session of the Assembly.”<sup>3</sup>

5. At the first plenary meeting of the thirteenth session, the Assembly appointed Amb. May-Elin Stener (Norway) as Chairperson of the Working Group for 2015.<sup>4</sup>

<sup>1</sup> The Roadmap is contained in the Report of the Bureau on the Study Group on Governance, (ICC/ASP/11/31). The revised version is contained in the reports of the Study Group on Governance to the twelfth session of the Assembly (ICC-ASP/12/37).

<sup>2</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Thirteenth session, New York, 8 - 17 December 2014* (ICC-ASP/13/20), vol. I, part III, ICC-ASP/13/Res.5, annex I, para 15(a).

<sup>3</sup> *Ibid.*, para. 15 (b).

<sup>4</sup> *Official Records ... Thirteenth session... 2014* (ICC-ASP/13/20), vol. I, part I, vol. I para. 19.

6. In accordance with the recommendations made to the thirteenth session,<sup>5</sup> the Working Group met at its earliest convenience, on 5 February 2015, to commence its work. Cognizant of the importance of holding regular meetings the Working Group, at its first meeting, agreed on implementing a regular schedule of meetings (approximately every six-weeks), and to conduct meetings on various issues, as well as focused meetings on specific subjects that could benefit from close communication via video-link with colleagues in the Hague or from the presence of experts. Thus, the Working Group met inter-sessionally throughout 2015, holding 7 informal consultations: 5 February, 16 March (expert level), 29 April, 18 June, 14 July, 16 September, and 8 October.

## II. Consideration of proposals to amend the Rome Statute

7. The Working Group continued to have before it those amendment proposals previously referred to it by the Assembly at its eighth session, as well as those transmitted by the Depositary of the Rome Statute on 14 March 2014.<sup>6</sup>

8. As in the past, proponents were given the opportunity, at each meeting of the Working Group, to provide updates on their proposals. All delegations were invited to comment on the different proposals before the Working Group. Throughout the inter-sessional period the Chair also invited amendment proponents to the Rome Statute to use the Working Group meetings to organize expert sessions to enlighten the Working Group about their respective proposals and to spur debate and catalyse engagement. One expert meeting was held on 16 March 2015 on the Belgian proposal concerning additions to article 8, paragraphs 2(b) and 2(e) related to the use of certain weapons as war crimes.

### A. Belgium

9. At its second meeting, the Working Group heard an expert presentation by Prof. Roger Clark, Professor of Law at Rutgers University, organized by the delegation of Belgium, regarding its proposal to amend article 8 of the Rome Statute. The presentation delved into the nature of the negotiations at the Rome Conference concerning article 8 and on the development of criminalizing the use of certain weapons during armed conflict.

10. At the third meeting, the delegation of Belgium informed the Working Group of its intention to reformulate the terms of its proposed amendment 2 so as to favor instead the suppression of certain portions of article 8(2)(b)(xx) in order to eliminate the dependency of the criminalization of the use of certain weapons on a comprehensive prohibition to be included in the Statute. At the fifth meeting, the Belgian delegation elaborated on this change to its proposal. At the sixth meeting, the delegation of Belgium reiterated its position and announced that the concrete proposal would be presented during the fourteenth session of the Assembly.

11. At the third meeting, Belgium circulated a non-paper, dated 29 April 2015, identifying provisions of the Rome Statute that criminalize acts as war crimes only in the context of international armed conflicts (article 8(2)(b)), and not in conflicts not of an international character (article 8(2)(e)).<sup>7</sup> That delegation hoped that the non-paper would facilitate the preparation of proposals that would harmonize the Rome Statute.

12. Several delegations, many of which had co-sponsored the Belgian proposal, reiterated their support and welcomed continued discussion of it.

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<sup>5</sup> ICC-ASP/13/31, para. 30.

<sup>6</sup> These amendment proposals are contained in the report of the Working Group on Amendments to the thirteenth session of the Assembly ICC-ASP/13/31. They are available on website of the Secretariat [https://www.icc-cpi.int/en\\_menus/asp/WGA/Pages/default.aspx](https://www.icc-cpi.int/en_menus/asp/WGA/Pages/default.aspx) and having been notified to the Depositary, are also available at the United Nations Treaty Collection, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en).

<sup>7</sup> The non-paper by Belgium is included in Annex IV of the present report.

**B. Mexico**

13. At the third meeting, the delegation of Mexico expressed its appreciation for the standing invitation from the Working Group to elaborate on its proposal and to provide expert presentations. The Mexican delegation indicated that it would be in a position to update the Working Group on its proposal in the near future.

14. No further updates were provided by Mexico concerning its proposal during the inter-sessional period.

**C. Trinidad and Tobago**

15. At the third meeting, the delegation of Trinidad and Tobago presented the rationale behind its proposal and in this regard referred to the transnational character of drug trafficking, which often leaves perpetrators of such crimes outside the reach of national jurisdictions and thus difficult to prosecute. The delegation indicated that in the near future, it would make use of an expert presentation to further ascertain its proposal.

16. No further updates were provided by Trinidad and Tobago concerning its proposal during the inter-sessional period.

**D. South Africa**

17. No further updates were provided by South Africa concerning its proposal during the inter-sessional period.

**E. Kenya**

18. At the third meeting, the delegation of Kenya wished to initiate consultations regarding its proposed amendment 5, which seeks to amend the preamble of the Rome Statute in order to ensure that the principle of complementarity sufficiently recognizes regional criminal judicial mechanisms. The delegation of Kenya highlighted that the proposal would guarantee that the Court remained a court of last resort and allowed judicial proceedings to take place closer to the location where the alleged crimes had been committed. The Kenyan delegation indicated it would provide further information to the Working Group at a future meeting.

19. No further updates were provided by Kenya concerning its proposal during the inter-sessional period.

**III. Consideration of proposals to amend the Rules of Procedure and Evidence**

20. During the period of October to early December 2014 the Working Group considered a set of proposals of amendments to the Rules of Procedure and Evidence transmitted to it by the Study Group on Governance (SGG) and the Court. The so-called “language cluster” contained proposed amendments to rule 76(3), rule 101(3) and rule 144(2)(b) to allow for partial translations of prosecution witnesses statements and court decisions. Another proposal concerned rule 140bis and sought to allow for the temporary absence of a judge from trial. As part of its efforts to further elucidate the proposed amendments the Working Group heard a briefing, via video link, on 29 October by the then Chair of the Study Group on Governance (SGG), Ambassador Emsgård (Sweden), and the Principal Legal Adviser to the Presidency of the Court, Mr Hiram Abtahi.

21. In its report to the thirteenth session, the Working Group “*invite[d]* the Court to bring to its attention any information regarding the temporary absence of a judge (and the proposed rule 140bis) that could further inform the discussion of the Working Group on this issue in the future, as it deem[ed] appropriate.”<sup>8</sup>

<sup>8</sup> ICC-ASP/13/31, para. 29.

22. Concerning the language cluster, while there was strong support in favor of recommending that the Assembly adopted this set of amendments, some reservations still existed. Hence the consultations were not concluded before the end of the session. Thus, the Working Group agreed to reconvene during the thirteenth session of the Assembly to continue and potentially conclude the discussion on the proposals to amend rules 76, 101 and 144 of the Rules of Procedure and Evidence.<sup>9</sup> The Working Group could not, however, agree to submit a proposal to the Assembly to adopt the language cluster.

23. At its first meeting in 2015, the Working Group agreed to continue its work on the Rules of Procedure and Evidence transmitted to the Working Group. The Working Group first noted that enhancing the efficiency and effectiveness of the Court is of common interest both to the Assembly and the Court and in that regard expressed its appreciation to the Court for its amendment proposals to the Rules of Procedure and Evidence and recalled that proposals that seek to improve the effective and efficient functioning of the Court will be given priority.

24. Several delegations indicated that the Working Group should concentrate its efforts on the language cluster as there was less divergence concerning these proposals, compared to the proposal on the temporary absence of a judge.

25. At its third meeting, the Chair invited Mr. Hiram Abtahi to provide via video-link, a presentation on behalf of the Court on the language cluster. The presentation was based on information previously provided by the Court,<sup>10</sup> and also addressed specific questions from delegations regarding the practical application of the proposed rules.

26. The Chair held informal consultations with interested delegations and reported, at the fourth meeting of the Working Group that there was still very strong support in favor of the language cluster amendments to rule 76(3), rule 101(3) and rule 144(2)(b). However, she also indicated that a few delegations had asked for additional time to consider the proposals.

27. At this meeting, the Chair invited delegations to present their substantive views on the language proposals. Several delegates emphasized that the proposals would facilitate fair and expeditious trials while cutting translations costs. Delegations also referred to the protection of the rights of the accused embedded in the proposals, and the appropriateness of supporting proposals prepared by the Court and produced after a long period of consultations with concerned actors.

28. Other delegations, however, warned that the perceived and actual impact of the proposals on fundamental fair trial standards needed to be borne in mind, and that the actual efficiency to be brought about by these amendments had not been clearly established. They therefore favored further deliberations to ascertain the full impact of the proposals.

29. The Chair undertook to pursue additional consultations with concerned delegations in order to try to find agreement on the matter.

30. At its sixth meeting, the chair informed that there was still strong support in favor of recommending the Assembly to adopt the language cluster amendments. However, a few delegations still voiced concerns and said that they were not comfortable in recommending to the Assembly that the proposals be adopted. The Working Group agreed to refrain from making such a recommendation to the forthcoming session of the Assembly, but agreed that the matter remained a priority on the agenda of the Working Group-and that the Working Group would continue to deliberate the issue with a view to responding to the questions raised by those delegations with outstanding concerns, including by seeking further advice from the Court if necessary.

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<sup>9</sup> *Ibid.*, para. 28.

<sup>10</sup> Inter alia, Report of the Bureau on Study Group on Governance ((ICC-ASP/13/28) Annex 1 titled "Report of the Study Group on Governance Cluster I in relation to amendment proposals to the Rules of Procedure and Evidence put forward by the Court", and the "Paper from the Chair of the Study Group on Governance - Amendments to rule 76(3), rule 101(3) and rule 144(2)(b) - Relevant International Legal Standards" (Appendix I of the same document (pages 16-17)).

## IV. Review of Rome Statute article 124

31. At its first meeting, the Working Group recalled its mandate to review the provisions of article 124. It was agreed that the mandate should be implemented throughout the inter-sessional period.

32. At the second meeting, the Working Group had before it a Chair's Background Note of 5 March 2015 synthesizing earlier discussions on article 124, both at the 1998 Rome Conference and the 2010 Review Conference. The Chair had also invited Dr. David Donat Cattin, Secretary-General of Parliamentarians for Global Action and Adjunct Assistant Professor of International Law at New York University (NYU), to give an expert presentation on article 124.

33. At the third meeting, the Working Group examined five options for how to proceed with 124. It could recommend (i) deletion, (ii) retention, (iii) revision, (iv) introduction of a "sunset" clause after which the provision would automatically expire, and (v) consideration at a later date by the Assembly.

34. A large majority of delegations indicated their strong preference for deleting article 124. However, some delegations inquired whether retaining the provision could attract additional ratifications and contribute to the universality of the Rome Statute.

35. At the fourth meeting, the Chair circulated a discussion-paper dated 8 June 2015 exploring the process of amending article 124 should the Working Group decide to recommend that the Assembly modify or delete the provision. The discussion paper presented two potential avenues for amending article 124. The first track was the regular amendment procedure outlined in article 121 (4) of the Rome Statute. The second track would consider article 121 inapplicable due to the special transitional nature of article 124 and would require only the *adoption* of a provision, rather than an amendment (the so-called *lex specialis* approach). The Working Group noted that under article 121 (4) ratification by seven-eighths of the States Parties would be required for the amendment to enter into force.

36. During this meeting, the Working Group also benefited from an expert presentation by Mr Santiago Villalpando, Head of the Treaty Section of the United Nations Office of Legal Affairs. Mr. Villalpando presented to the Working Group the applicable requirements under article 121 (4) for the circulation of the proposal, their adoption, entry into force, and the calculation of the seven-eighths of the required ratifications.

37. Some delegations indicated their support for the *lex specialis* approach while others indicated their willingness to study this option further. Most delegations, however, were of the view that, although cumbersome, article 121 (4) provided the only appropriate amendment procedure.

38. The Working Group also considered the impact of article 124 on promoting universality of the Statute. In this regard, some delegations were of the view that article 124 could be instrumental in encouraging states to ratify or accede to the Rome Statute. Along these lines, a view was expressed that article 124 did not have any concrete negative effects and that deletion was not necessary. Most delegations, however, highlighted that no further declarations under article 124 had been made since 2002, and that there was no concrete evidence suggesting that article 124 had contributed or would contribute to future ratifications of the Statute.

39. On 6 July 2015, the Chair circulated a draft proposal to delete article 124, which was considered by the Working Group at its fifth meeting. The proposal recognized that the Working Group had not yet concluded its discussions on article 124, but considering that article 121 establishes that the Assembly requires a notification of at least three months to decide whether to take up a proposal, the proposal was presented to enable the Assembly to consider an eventual recommendation of the Working Group.

40. After receiving some comments from delegations, the Chair disseminated the proposal on 15 July subject to a silence procedure until 20 July, which was not broken. With the agreement of the Working Group, Norway submitted the proposal to the United

Nations Secretary-General on 24 July 2015. The proposal was circulated by the UN Secretary-General to all State Parties on 30 July 2015.<sup>11</sup>

41. As announced at the fifth meeting, the Chair engaged in consultations with delegations that had not yet expressed full support for the recommendation of deleting the provision.

42. At its sixth meeting, the Working Group once again considered the option of recommending to the Assembly the deletion of article 124. Those few delegations that had expressed concerns about deletion of article 124 indicated that they were cognizant of the support for deletion, and while they continued to believe that article 124 could be a decisive tool for promoting universality of the Rome Statute, particularly among countries faced with armed conflicts, they did not intend to block consensus. Consequently, they signalled their readiness to join consensus within the Working Group. Thus, it was agreed that the Working Group would recommend to the Assembly to delete article 124. This agreement was made notwithstanding the Working Group's ongoing consideration of what constituted the appropriate amendment procedure.

43. At its seventh meeting, the Working Group considered the draft resolution through which the Assembly would adopt the amendment to article 124, and agreed that such amendment would be based on article 121 (4) of the Rome Statute.

## V. Exchange of information on the status of ratification of the Kampala amendments to the Rome Statute

44. The Secretariat of the Assembly kept the Working Group continuously informed of the deposit of the instruments of ratification of the amendments to the Rome Statute adopted at the 2010 Review Conference and of the corresponding actions by the President of the Assembly in this regard. At the 4 February 2015 meeting, the Secretariat informed of the deposit by Malta on 30 January 2015, and of the scheduled deposit on 5 February 2015 by Costa Rica.<sup>12</sup> On 5 February, the Secretariat informed of the deposit by the Czech Republic on 12 March 2015<sup>13</sup> and on 16 September, of the deposit by Switzerland on 10 September 2015.<sup>14</sup>

45. As of 12 November 2015, the Kampala Amendments to article 8 have been ratified by 26 States Parties,<sup>15</sup> and the amendments on the Crime of Aggression have been ratified by 24 States Parties.

## VI. Decisions and Recommendations

46. The Working Group recommends to the Assembly the adoption of the amendment to delete article 124 of the Rome Statute as contained in the annex of the draft resolution (annex I),

47. The Working Group reiterates its invitation to the Court to bring to its attention, as it deems appropriate, any information that could further inform the discussion of the Working Group on the proposed amendments to rule 76(3), rule 101(3) and rule 144(2)(b) regarding partial translations, and on the proposed rule 140bis regarding the temporary absence of a judge.

48. The Working Group recommends that the expert meetings format be continued and that regular meetings be held throughout 2016.

49. The Working Group concludes its inter-sessional work by recommending to the Assembly the inclusion in the omnibus resolution of four paragraphs (annex II).

<sup>11</sup> C.N.439.2015.TREATIES-XVIII.10 (Depositary Notification), <https://treaties.un.org/doc/Publication/CN/2015/CN.439.2015-Eng.pdf>.

<sup>12</sup> [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/pr1098.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1098.aspx).

<sup>13</sup> [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/PR1087.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/PR1087.aspx).

<sup>14</sup> [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/PR1150.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/PR1150.aspx).

<sup>15</sup> Ratification by Georgia, deposited on 3 November 2015. See, [https://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/PR1167-ASP.aspx](https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/PR1167-ASP.aspx)

## Annex I

### [Draft] Resolution on article 124

*The Assembly of States Parties to the Rome Statute,*

*Recalling* that pursuant to the Rome Statute, article 124 shall be reviewed at the Review Conference convened in accordance with article 123, paragraph 1, and *recalling* the decision of the 2010 Review Conference of the Rome Statute, held in Kampala, Uganda, to retain article 124 and to further review its provisions during the fourteenth session of the Assembly,<sup>1</sup>

*Noting* that at its thirteenth session the Assembly decided to review the provisions of article 124 of the Rome Statute in the context of its Working Group on Amendments of the Assembly of States Parties,<sup>2</sup>

*Further noting* the recommendation of the Working Group on Amendments to delete article 124,<sup>3</sup>

*Having reviewed* the provisions of article 124 in accordance with the Rome Statute and *acting* pursuant to article 121 of the Rome Statute,

1. *Adopts* the Amendment to article 124 of the Rome Statute contained in the annex to the present resolution;
2. *Recalls* that the Amendment shall be subject to ratification or acceptance and shall enter into force in accordance with article 121 (4), of the Rome Statute;
3. *Calls upon* all States Parties to ratify or accept the Amendment to article 124;
4. *Urges* all States that have not done so to ratify or accede to the Rome Statute, and in doing so to also ratify or accept the Amendment to article 124.

## Appendix

### Amendment to article 124 of the Rome Statute

Article 124 of the Rome Statute is deleted.

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<sup>1</sup> *Official Records ... Review Conference ... 2010 (RC/11)*, part II, RC/Res.4.

<sup>2</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Thirteenth session, New York, 8 - 17 December 2014 (ICC-ASP/13/20)*, vol. I, part III, ICC-ASP/13/Res.5, annex I, para 15(b).

<sup>3</sup> As contained in its report to the fourteenth session of the Assembly ICC-ASP/14/15.

## Annex II

### **Draft text for the omnibus resolution**

**A. Paragraph 92 of the 2014 omnibus resolution (ICC-ASP/13/Res.5) is maintained**

*“Welcomes the report of the Bureau on the Working Group on Amendments.”*

**B. In line with op 3 and 4 of draft resolution contained in annex I of the present report, insert two new paragraphs to the 2015 omnibus resolution**

*“Recalls its decision to adopt the amendment to article 124 pursuant to resolution ICC-ASP/14/[....] and notes that this amendment is subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 4, of the Rome Statute.”*

*“Calls upon all States Parties to ratify or accept the amendment to article 124, and urges all States that have not done so to ratify or accede to the Rome Statute, and in doing so to also ratify or accept the amendment to article 124.”*

**C. Paragraph 15 of annex I (mandates) of the 2014 omnibus resolution (ICC-ASP/13/Res.5) is replaced by the following**

- (a) *Invites the Working Group to continue its consideration of all amendment proposals, in accordance with the Terms of Reference of the Working Group, and requests the Bureau to submit a report for the consideration of the Assembly at its fifteenth session;”*



## Annex III

### **Belgian non-paper: Harmonization of the competences of the ICC relating to war crimes in case of international armed conflict and armed conflict not of an international character.**

#### **A. Comparison between articles 8, §2, b), et 8, §2, e), of the Rome Statute**

1. In conformity to the Statement (see below), made by Belgium at the occasion of the adoption of the first amendment to the Rome Statute, during the Review Conference of Kampala, on 10 June 2010, please find hereunder a comparative table of articles 8, §2, b) et 8, §2, e) of the Rome Statute. This document aims at highlighting the disparities between these two articles and at fostering a reflection for further harmonization, a process initiated with the amendment nr. 1 adopted in Kampala.

#### **B. Belgian Statement at the adoption of the First Amendment to the Rome Statute :<sup>1</sup>**

2. The Review Conference has just witnessed a historic moment: the adoption of the first amendment to the Rome Statute. The negotiations on this amendment could not have been brought to such a successful conclusion without the support of a large number of delegations and the willingness of everyone to achieve results.

3. Ever since this proposal was first launched, Belgium has emphasized that it could not envision the adoption of such amendment other than by consensus, which is what we have.

4. We would like to thank in particular the other 18 States Parties, from every region of the world, which agreed to co-sponsor this proposal. Our thanks go once again, therefore, to Argentina, Austria, Bolivia, Bulgaria, Burundi, Cambodia, Cyprus, Germany, Ireland, Latvia, Lithuania, Luxembourg, Mauritius, Mexico, Romania, Samoa, Slovenia and Switzerland for their unfailing support. We would also like to thank all those others who subsequently gave their strong support to our proposal.

5. By adding, with this first amendment, three war crimes to the list of war crimes that fall within the jurisdiction of the International Criminal Court in circumstances of armed conflict not of an international character and by choosing, to that end, three war crimes which already fall within the jurisdiction of the International Criminal Court in circumstances of international armed conflict, the States Parties are embarking on a process which aims, in line with modern international humanitarian law, to ensure that war crimes are prosecuted and the victims protected regardless of the armed conflict in which the crimes have been perpetrated. In this respect too, the process initiated by the adoption of this first amendment is vital.

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<sup>1</sup> Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May - 11 June, Official Documents (RC/11), annex VI, p. 124. See on line : [http://www.icc-cpi.int/iccdocs/asp\\_docs/ASP9/OR/R C-11-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/ASP9/OR/R C-11-ENG.pdf).

### C. Comparative analysis of articles 8, §2, b), et 8, §2, e) of the Rome Statute:

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#### *Rome Statute – Article 8, §2, b)<sup>2</sup>*

*Article 8, §2, b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:*

8, §2, b), i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

8, §2, b), ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

8, §2, b), iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

8, §2, b), iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

8, §2, b), v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

8, §2, b), vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

8, §2, b), vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

8, §2, b), viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

8, §2, b), ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

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#### *Rome Statute – Article 8, §2, e)<sup>3</sup>*

*Article 8, §2, e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:*

8, §2, e), i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

8, §2, e), iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

8, §2, e), viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

8, §2, e), iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

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<sup>2</sup> Article 8, §2, b), xx), is not included in the present list, as it is not a crime on which the International Criminal Court is competent.

« 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; »

<sup>3</sup> Rome Statute as amended by resolution RC/Res.5 of 10 June 2010, adopted during the Review Conference of the Rome Statute at Kampala. Paragraphs 2, e), xiii), à 2, e), xiv), have hence been added to this list.

8, §2, b), x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;	8, §2, e) xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
8, §2, b), xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;	8, §2, e), ix) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
8, §2, b), xii) Declaring that no quarter will be given;	8, §2, e), x) Declaring that no quarter will be given;
8, §2, b), xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;	8, §2, e), xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
8, §2, b), xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;	
8, §2, b), xv) 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;	
8, §2, b), xvi) Pillaging a town or place, even when taken by assault;	8, §2, e), v) Pillaging a town or place, even when taken by assault;
8, §2, b), xvii) Employing poison or poisoned weapons;	8, §2, e), xiii) Employing poison or poisoned weapons;
8, §2, b), xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;	8, §2, e), xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
8, §2, b), xix) Employing 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;	8, §2, e), xv) Employing 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;
8, §2, b), xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;	8, 2, c, ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
8, §2, b), xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;	8, §2, e), vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
8, §2, b), xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;	
8, §2, b), xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;	8, §2, e, ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
8, §2, b), xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;	
8, §2, b), xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.	8, §2, e), vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;