

## Annex VIII

### Elements of crimes corresponding to the proposed amendment contained in annex III to resolution ICC-ASP/8/Res.6

Belgium proposes, in order to enhance the degree of precision afforded to the definitions of crimes, to forward to the Review Conference for adoption the elements of crimes which correspond to the draft amendments of the war crimes that the Assembly already forwarded to the Conference at its eighth session, in November 2009 (Resolution ICC-ASP/8/Res.6 adopted on 26 November 2009, Annex III).

These elements are exactly the same elements of crimes as those approved for the corresponding war crimes in the context of an international armed conflict, i.e. the elements of crimes set out in article 8, paragraph 2 (b) (xvii), (xviii) and (xix). However, one amendment has been made to these elements, in a logical fashion, to reflect that the crime is committed in the context of an armed conflict not of an international character. Thus, under the third element of the first two war crimes proposed, and the fourth element of the third war crime proposed, the terms “international armed conflict” contained in the corresponding elements of crimes in the context of an international armed conflict are replaced by the terms “armed conflict not of an international character”.

As a reminder – proposal of amendment forwarded to the Review Conference for adoption:

*Add the following to article 8, paragraph 2 (e):*

“xiii) Employing poison or poisoned weapons;

xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

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.”

### Proposal

#### Elements of Crimes

*Add the following elements to the Elements of Crimes:*

#### Article 8, paragraph 2 (e) (xiii)

#### **War crime of employing poison or poisoned weapons**

#### Elements

1. The perpetrator employed a substance or a weapon that releases a substance as a result of its employment.
2. The substance was such that it causes death or serious damage to health in the ordinary course of events, through its toxic properties.

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

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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

**War crime of employing prohibited gases, liquids, materials or devices**

**Elements**

1. The perpetrator employed a gas or other analogous substance or device.

2. The gas, substance or device was such that it causes death or serious damage to health in the ordinary course of events, through its asphyxiating or toxic properties.<sup>12</sup>

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

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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

**War crime of employing prohibited bullets**

**Elements**

1. The perpetrator employed certain bullets.

2. The bullets were such that their use violates the international law of armed conflict because they expand or flatten easily in the human body.

3. The perpetrator was aware that the nature of the bullets was such that their employment would uselessly aggravate suffering or the wounding effect.

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

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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<sup>1</sup> Nothing in this element shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to the development, production, stockpiling and use of chemical weapons.