



Sixteenth session

New York, 4 – 14 December 2017

Report of the Working Group on Amendments

Addendum

II. Consideration of proposals to amend the Rome Statute

A. Belgium

[...]

22bis. During the Assembly, the Working Group held three meetings, on 8, 11 and 13 December 2017, to continue the discussion on amending article 8 of the Statute.

22ter. The Working Group reached agreement on a recommendation concerning the proposed amendments to article 8 regarding the inclusion of three war crimes involving the use, respectively, of biological and toxin weapons, of weapons causing injuries by fragments which in the human body escape detection by X-rays and of laser weapons causing permanent blindness. Some delegations still raised concerns regarding the necessity of adding the use of new weapons to the list of acts that may amount to war crimes, but decided not to oppose consensus. One delegation, while not blocking consensus, disassociated itself from the adoption of the amendments. The Working Group further agreed that the proposed amendment regarding the inclusion of a war crime involving the use of anti-personnel mines would remain on its agenda.

V. Decisions and recommendations

[...]

37. The Working Group recommends to the Assembly the adoption of a draft resolution on amendments to article 8 of the Rome Statute (annex VI).

Annex I

Draft text for the omnibus resolution

[...]

3. Add a new paragraph in section V entitled “Consideration of amendments” reading:
 “*Calls upon* all States Parties to ratify or accept the amendments to article 8 adopted at the sixteenth session of the Assembly;¹”

¹ ICC-ASP/16/Res....

Annex VI

Draft resolution on amendments to article 8 of the Rome Statute of the International Criminal Court

The Assembly of the States Parties

Noting article 121, paragraphs 1 and 2, of the Rome Statute of the International Criminal Court which permits the Assembly of States Parties to adopt any proposed amendment to the Rome Statute after the expiry of seven years from the entry into force of the Statute,

Noting article 121, paragraph 5, of the Statute which states that any amendment to articles 5, 6, 7 and 8 of the Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance and that in respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding the crime covered by the amendment when committed by that State Party's nationals or on its territory, and *confirming* its understanding that in respect to this amendment the same principle that applies in respect of a State Party which has not accepted this amendment applies also in respect of States that are not parties to the Statute,

Confirming that, in light of the provision of article 40, paragraph 5, of the Vienna Convention on the Law of Treaties, States that subsequently become States Parties to the Statute will be allowed to decide whether to accept the amendments contained in this resolution at the time of ratification, acceptance or approval of, or accession to the Statute,

Confirming that States Parties to the Statute and States that subsequently become States Parties to the Statute will be allowed to ratify or accept all or some of the three amendments contained in Annex I to III of this resolution,

Noting article 9 of the Statute on the Elements of Crimes which states that such Elements shall assist the Court in the interpretation and application of the provisions of the crimes within its jurisdiction,

Considering that where the elements of the crimes specify that the conduct took place in the context of and was associated with an armed conflict, they consequently confirm the exclusion from the Court's jurisdiction of law enforcement situations,

Considering that the crimes referred to in article 8, paragraph 2 (b) (xxvii) and article 8, paragraph 2 (e) (xvi) (employing microbial, biological or toxins weapons); in article 8, paragraph 2 (b) (xxviii) and article 8, paragraph 2 (e) (xvii) (employing weapons that injure by fragments undetectable by X-rays) and in article 8, paragraph 2 (b) (xxix) and article 8, paragraph 2 (e) (xviii) (employing laser blinding weapons) are serious violations of the laws applicable in international armed conflict and in armed conflict not of an international character,

1. *Decides* to adopt the three amendments to article 8, paragraph 2 (b) and to article 8, paragraph 2 (e), of the Rome Statute of the International Criminal Court contained in annex I to III to the present resolution, which are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5, of the Statute;
2. *Decides* to adopt the relevant elements to be added to the Elements of Crimes, as contained in annex IV to VI to the present resolution.

Annex I

Amendment to be inserted as article 8-2-b)xxvii) and article 8-2-e)xvi) of the Rome Statute

Employing weapons, which use microbial or other biological agents, or toxins, whatever their origin or method of production;

Annex II

Amendment to be inserted as article 8-2-b)xxviii) and article 8-2-e)xvii)

Employing weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays;

Annex III

Amendment to be inserted as article 8-2-b)xxix) and article 8-2-e)xviii)

Employing laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices;

Annex IV

Elements of crime of new article 8-2-b)xxvii)

1. The perpetrator employed-weapons which use microbial or other biological agents, or toxins, whatever their origin or method of production.
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

Elements of crime of new article 8-2-e)xvi)

1. The perpetrator employed weapons which use microbial or other biological agents, or toxins, whatever their origin or method of production.
2. The conduct took place in the context of and was associated with an armed conflict not of an international character.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

Annex V

Elements of crime of new article 8-2-b)xxviii)

1. The perpetrator employed weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays.
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

Elements of crime of new article 8-2-e)xvii)

1. The perpetrator employed weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays.
2. The conduct took place in the context of and was associated with an armed conflict not of an international character.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

Annex VI

Elements of crime of new article 8-2-b)xxix)

1. The perpetrator employed laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness¹ to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices.
2. The blinding was not an incidental or collateral effect of the legitimate military employment of laser systems, including laser systems used against optical equipment.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

Elements of crime of new article 8-2-e)xviii)

1. The perpetrator employed laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness² to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices.
2. The blinding was not an incidental or collateral effect of the legitimate military employment of laser systems, including laser systems used against optical equipment.
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 the factual circumstances that established the existence of an armed conflict.

¹The terms “permanent blindness” mean “irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery”.

²The terms “permanent blindness” mean “irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery”.