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PREPARATORY COMMITTEE ON THE  
ESTABLISHMENT OF AN INTERNATIONAL  
CRIMINAL COURT  
11-21 February 1997  
Working Group on definition of crimes

Proposal submitted by the United States

WAR CRIMES

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 offences:

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

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(B) other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law, namely:

(i) killing or wounding treacherously individuals belonging to the hostile nation or army;

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

(iii) declaring that no quarter will be given;

(iv) making improper use of a 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];

(v) 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;

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

(vii) 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;

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

(ix) pillaging a town or place, even when taken by assault;

[(x) employing poison or poisoned weapons;]

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

[(xii) 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;]

[(xiii) using bacteriological (biological) agents or toxins for hostile purposes or in armed conflict;]

[(xiv) 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;]

(xv) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments,

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hospitals and places where the sick and wounded are collected, unless such property is used in support of the military effort;

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

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

[(xviii) 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]

(C) serious breaches 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 occurring on the territory of one of the States Parties, 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 . . . by sickness, wounds, detention or any other cause:

(i) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) taking of hostages;

(iii) outrages upon personal dignity, in particular humiliating and degrading treatment;

(iv) the passing of sentences and the carrying out of executions without previous judgement pronounced by regularly constituted court affording all judicial guarantees which are recognized as indispensable by civilized peoples.

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