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## V. Article 8: War crimes

### Article 8.2 (a) (i): War crime of murder

(See also art. 8.2 (b) (vi), art. 8.2 (c) (i))

#### Elements

1. That the act took place in the course of international armed conflict.
2. That the accused intended to kill or cause death to one or more civilians taking no active part in hostilities or one or more combatants placed *hors de combat*.
3. That the accused killed or caused death to one or more civilians taking no active part in hostilities or one or more combatants placed *hors de combat*.
4. That the acts were committed without, and the accused knew they were committed without, lawful justification or excuse.

#### Comments

*The actus reus for this offence can include failures to fulfil a duty. If death is the foreseeable consequence of such failure, intent can be inferred. Examples include withholding food rations to prisoners of war or medical care to wounded enemy combatants with the intent of causing death.*

*The "without lawful justification or excuse" element of this offence would mean, for example, that the killing of an escaping prisoner of war would not result in culpability for this offence.*

### Article 8.2 (a) (ii)-1: War crime of torture

(See also art. 8.2 (a) (iii), art. 8.2 (c) (i))

#### Elements

1. That the act took place in the course of international armed conflict.
2. That the accused intended to inflict severe physical or mental pain or suffering upon one or more persons.
3. That the accused had custody of or control over such person or persons at the time of the offence.
4. That the accused committed acts resulting in the infliction of severe physical or mental pain or suffering upon such person or persons.
5. That the acts were not inherent in or incidental to lawful sanctions.

#### Comments

*The effects of weapons, the use of which is not prohibited by the Statute, do not constitute "severe physical or mental pain or suffering".*

**Article 8.2 (a) (ii)–2: War crime of inhuman treatment**

(See also art. 8.2 (b) (x), art. 8.2 (c) (i), art. 8.2 (e) (xi))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused committed an act against one or more persons that forcibly subjected the person or persons to extreme physical or mental pain or suffering grossly inconsistent with universally recognized principles of humanity and generally accepted rules of international law.
3. That the act was committed without, and the accused knew it was committed without, lawful justification or excuse.
4. That the act caused death or serious bodily or mental harm to the person or persons.

**Article 8.2 (a) (ii)–3: War crime of biological experimentation**

(See also art. 8.2 (b) (x), art. 8.2 (c) (i), art. 8.2 (e) (xi))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused subjected one or more persons to a particular medical or biological procedure or treatment.
3. That the intent of the procedure or treatment was non-therapeutic and was neither justified by medical reasons nor carried out in the person's or persons' best interests.
4. That the procedure or treatment was not freely consented to by the person or persons.
5. That the act was committed without, and the accused knew it was committed without, lawful justification or excuse.
6. That the act caused death or serious bodily or mental harm to the person or persons.

**Article 8.2 (a) (iii): War crime of torture**

(See also art. 8.2 (a) (ii), art. 8.2 (c) (i))

**Elements/Comments**

*Use elements for article 8.2 (a) (ii)–1.*

**Article 8.2 (a) (iv): War crime of destruction or appropriation of property**

(See also art. 8.2 (b) (xiii), art. 8.2 (b) (xvi), art. 8.2 (e) (v), art. 8.2 (e) (xii))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intended to destroy or appropriate certain property that did not constitute a military objective and whose destruction or appropriation would not serve a military purpose.
3. That the accused destroyed or appropriated that property.
4. That the destruction or appropriation was without, and the accused knew it was without, lawful justification or excuse.
5. That the amount of destruction or appropriation was extensive.

**Comments**

*Destruction or appropriation justified by military necessity would not result in culpability for this offence since neither the "without lawful justification or excuse" element nor the military purpose element would be satisfied.*

**Article 8.2 (a) (v): War crime of compelling hostile acts**

(See also art. 8.2 (b) (xv))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused coerced a certain person, by act or threat, to take part in military operations against that person's own country or forces.
3. That the person coerced was a prisoner of war or a civilian national of the hostile Power.
4. That the accused knew of the nationality or prisoner-of-war status of the coerced person at the time of coercion.
5. That the coercion was without, and the accused knew it was without, lawful justification or excuse.

**Comments**

*Implicit in element 5 is the fact that the acts compelled do not include those acts defined by articles 49 to 57 of Geneva Convention III Relative to the Treatment of Prisoners of War of 1949 and articles 51 and 52 of Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War of 1949.*

**Article 8.2 (a) (vi): War crime of denying judicial guarantees**

(See also art. 8.2 (b) (xiv), art. 8.2 (c) (iv))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused caused a punishment to be imposed on a prisoner of war or civilian.

3. That the accused intended to deprive the person of a fair and regular trial.
4. That such act was performed without according the person a fair and regular trial as prescribed by the Third and Fourth Geneva Conventions of 1949.

#### **Comments**

*For international armed conflicts, the substance of this offence is the violation of one or more of the penal provisions of articles 82 to 88 and 99 to 108 of Geneva Convention III Relative to the Treatment of Prisoners of War of 1949 and articles 64 to 78 of Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War of 1949.*

#### **Article 8.2 (a) (vii)–1: War crime of deportation**

(See also art. 8.2 (b) (viii), art. 8.2 (e) (viii))

#### **Elements**

1. That the act took place in the course of an international armed conflict.
2. That the accused intended to transfer one or more persons from their lawful place of residence.
3. That the accused caused one or more persons to be forcibly transferred from their lawful place of residence through expulsion or other coercive acts.
4. That the forcible transfer was without, and the accused knew it was without, lawful justification or excuse.
5. That the person or persons transferred were persons protected by Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War of 1949.

#### **Comments**

*States are authorized, for reasons of security and military necessity, to intern civilians in some situations in accordance with articles 41 to 43, 68 and 79 to 104 of Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War of 1949. It is the Prosecutor's burden to prove that internment of civilians was not undertaken for security or other lawful purposes once a prima facie case is made for that defence.*

#### **Article 8.2 (a) (vii)–2: War crime of unlawful confinement**

#### **Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intended to imprison one or more persons.
3. That the accused imprisoned such person or persons within a confined area.
4. That the imprisonment was, and the accused knew at the time the imprisonment was, without lawful justification or excuse.

**Comments**

*The "without lawful justification or excuse" requirement means, for example, that detention of persons for the prevention of the spreading of infectious diseases or to otherwise safeguard health and safety would not constitute an offence.*

*Unlike the crime against humanity of imprisonment, element 2 for this offence requires imprisonment to a confined area. The elements are not satisfied by mere deprivation of liberty.*

**Article 8.2 (a) (viii): War crime of taking hostages**

(See also art. 8.2 (c) (iii))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused seized, detained or otherwise held hostage one or more persons.
3. That the seizure, detention or holding was without, and the accused knew it was without, lawful justification or excuse.
4. That the accused threatened to injure, kill, continue to detain such person or otherwise harm such person's or persons' interests.
5. That the threat was made with the intent to compel a State, an international intergovernmental organization, a natural or juridical person, or a group of persons to do or refrain from doing any act as an explicit or implicit condition for the safe release of the person.

**Article 8.2 (b) (i): War crime of attacking civilians**

(See also art. 8.2 (b) (iii), art. 8.2 (e) (i), art. 8.2 (e) (iii))

**Elements**



**Article 8.2 (b) (ii): War crime of attacking protected objects**

(See also art. 8.2 (b) (iii), art. 8.2 (b) (ix), art. 8.2 (e) (ii), art. 8.2 (e) (iii), art. 8.2 (e) (iv))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intended to attack one or more of the following objects: a building dedicated to religion, art, science or charitable purposes, an historic monument, a hospital or place where the sick and wounded are collected, installations, material or vehicles involved in a humanitarian assistance or peacekeeping mission, or any other civilian object.
3. That the accused directed an attack against one or more of such objects.
4. That the target of the attack was not, and the accused knew it was not, a military objective at the time of the attack.
5. That the attack was without, and the accused knew it was without, lawful justification or excuse.

**Comments**

*Causing collateral damage does not constitute attacking protected objects, as the intent and knowledge requirements would not be satisfied. Thus, protected objects located in proximity to or within a lawful military objective at the time of the attack may be destroyed without giving rise to culpability under this offence. Likewise, protected objects that make an effective contribution to military action can be the direct object of attack because they will have become military objectives.*

**Article 8.2 (b) (iii)–1: War crime of attacking civilians (peacekeepers)**

(See also art. 8.2 (b) (i), art. 8.2 (e) (i), art. 8.2 (e) (iii))

**Elements/Comments**

*Use elements for article 8.2 (b) (i), replacing the term “civilian(s)” throughout with “person(s) engaged in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations”.*

**Article 8.2 (b) (iii)–2: War crime of attacking protected objects (peacekeepers)**

(See also art. 8.2 (b) (ii), art. 8.2 (b) (ix), art. 8.2 (e) (ii), art. 8.2 (e) (iii), art. 8.2 (e) (iv))

**Elements/Comments**

*Use elements for article 8.2 (b) (ii), replacing element 2 with the following:*

2. That the accused intended to attack an installation, vehicle or other object involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.

### **Article 8.2 (b) (iv): War crime of causing disproportionate damage**

#### **Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused launched an attack resulting in:
  - (a) Incidental injury to civilians;
  - (b) Collateral damage to civilian objects; or
  - (c) Widespread, long-term and severe damage to the natural environment.
3. That the incidental injury, collateral damage or severe environmental damage was clearly excessive in relation to the concrete and direct overall military advantage anticipated.
4. That, when launching the attack, the accused knew that such incidental injury, collateral damage or environmental damage would be disproportionate to the concrete and direct overall military advantage gained.

#### **Comments**

*The knowledge element is key to the "excessive damage" or "proportionality" analysis for this offence. Since the evaluation is necessarily subjective, the proportionality knowledge threshold must be high and analysis must be based on the perspective of the accused in planning and conducting the attack, based on what was known at the time of the attack, and with appropriate consideration of the exigent circumstances. The requirement that the military advantage be "concrete and direct" necessitates that it not be a fanciful or vague claim to future benefit. However, the focus on "overall" military advantage admits of legitimate military benefits that may or may not be temporally or geographically associated with the specific attack in question or its object.*

### **Article 8.2 (b) (v): War crime of attacking an undefended town**

#### **Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused directed an attack against a certain town, village, dwelling or building.
3. That the object of the attack was open for immediate, unresisted occupation.
4. That the accused knew that the object of the attack was open for immediate, unresisted occupation.
5. That the object of the attack was not a legitimate military objective.

### **Article 8.2 (b) (vi): War crime of murder**

(See also art. 8.2 (a) (i), art. 8.2 (c) (i))

#### **Elements/Comments**

*Use elements for article 8.2 (a) (i), deleting the words "one or more civilians taking no active part in hostilities or" in elements 2 and 3.*

## Article 8.2 (b) (vii): War crime of perfidy

(See also art. 8.2 (b) (xi), art. 8.2 (e) (ix))

### Elements

1. That the act took place in the course of armed conflict.
2. That the accused intended to kill or cause serious injury to an adversary.
3. That the accused committed an act resulting in the death or serious injury of an adversary.
4. That the accused intended the death or injury to be accomplished by inviting the confidence of an adversary to believe himself or herself to be entitled to, or obliged to accord, protection under the international law of armed conflict, with intent to betray that confidence.
5. That the death or injury occurred as a result of such misrepresentations.

### Comments

*The perfidious activity described in element 4 could include improper use of a flag of truce, uniform of the enemy or the United Nations or distinctive emblems of the Geneva Convention. However, such uses would not result in culpability if not perfidious as defined by the elements (e.g., if the use of an enemy uniform does not cause detrimental belief in an obligation or protection arising under the law of armed conflict, it is not perfidious). Ruses of war are legitimate so long as they do not involve perfidy.*

## Article 8.2 (b) (viii)–1: War crime of transferring Occupying Power citizens

### Elements

1. That the act took place in the course of a military occupation with respect to territory where authority of a hostile army was actually established and exercised.
2. That the accused intended to effect the compulsory transfer, on a large scale, of parts of the population of the Occupying Power into such occupied territory.
3. That the accused effected such transfer of nationals of the Occupying Power into such occupied territory.
4. That the accused intended that such transfer would endanger the separate identity of the local population in such occupied territory.
5. That the transfer worsened the economic situation of the local population and endangered their separate identity.
6. That the transfer was without, and the accused knew it was without, lawful justification or excuse.

### Comments

*The "without lawful justification or excuse" element of this offence would mean, for example, that the compulsory movement of civilians for the purpose of the fulfilment of the obligations of the Occupying Power under international law with respect to territory it*

*occupies (e.g., article 43 of the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land) would not result in culpability with respect to this offence.*

**Article 8.2 (b) (viii)–2: War crime of deportation**

(See also art. 8.2 (a) (vii), art. 8.2 (e) (viii))

**Elements/Comments**

*Use elements for article 8.2 (a) (vii)–1, but delete element 5 regarding the protected status of the transferees.*

**Article 8.2 (b) (ix): War crime of attacking protected objects**

(See also art. 8.2 (b) (ii), art. 8.2 (b) (iii), art. 8.2 (e) (ii), art. 8.2 (e) (iii), art. 8.2 (e) (iv))

**Elements/Comments**

*Use the elements for article 8.2 (b) (ii), deleting the words “or any other civilian object” in element 2.*

**Article 8.2 (b) (x)–1: War crime of inhuman treatment**

(See also art. 8.2 (a) (ii), art. 8.2 (c) (i), art. 8.2 (e) (xi))

**Elements/Comments**

*Use elements for article 8.2 (a) (ii)–2.*

**Article 8.2 (b) (x)–2: War crime of scientific experiments**

(See also art. 8.2 (a) (ii), art. 8.2 (c) (i), art. 8.2 (e) (xi))

**Elements/Comments**

*Use elements for article 8.2 (a) (ii)–3.*

**Article 8.2 (b) (xi): War crime of perfidy**

(See also art. 8.2 (b) (vii), art. 8.2 (e) (ix))

**Elements/Comments**

*Use elements for article 8.2 (b) (vii).*

**Article 8.2 (b) (xii): War crime of denying quarter**

(See also art. 8.2 (e) (x))

**Elements**

1. That the act took place in the course of armed conflict.
2. That the accused was a person in command who had forces under the accused's effective command and control or authority and control.
3. That the accused made a declaration or gave an order to those subordinate forces that any bona fide surrender by the enemy be refused, even if it would be reasonable to accept, and that all enemy persons proffering surrender be killed.
4. That in so declaring or ordering, the accused intended that his or her stated intent be executed.
5. That one or more persons were killed by forces acting in furtherance of the declaration of the accused.

**Comments**

*Bringing a preponderance of force to bear against enemy military objectives or enemy personnel does not constitute denial of quarter. Neither is a commander obligated to offer an opportunity to surrender before carrying out an attack, since surprise or speed may be critical to the success of the attack.*

**Article 8.2 (b) (xiii): War crime of destruction or appropriation of property**

(See also art. 8.2 (a) (iv), art. 8.2 (b) (xvi), art. 8.2 (e) (v), art. 8.2 (e) (xii))

**Elements/Comments**

*Use elements for article 8.2 (a) (iv) but delete element 5 requiring "extensive" characterization. Note that the threshold for war crimes, however, should preclude prosecution for any destruction or appropriation that is not extensive.*

**Article 8.2 (b) (xiv): War crime of denying judicial guarantees**

(See also art. 8.2 (a) (vi), art. 8.2 (c) (iv))

**Elements/Comments**

*Use elements for article 8.2 (a) (vi).*

**Article 8.2 (b) (xv): War crime of compelling hostile acts**

(See also art. 8.2 (a) (v))

**Elements/Comments**

*Use elements for article 8.2 (a) (v).*

**Article 8.2 (b) (xvi): War crime of pillaging**

(See also art. 8.2 (a) (iv), art. 8.2 (b) (xiii), art. 8.2 (e) (v), art. 8.2 (e) (xii))

**Elements/Comments**

*Use elements for article 8.2 (a) (iv). Add the following element:*

6. That the destruction or appropriation was carried out in an arbitrary manner, devoid of concern for the consequences.

**Article 8.2 (b) (xvii): War crime of employing poison**

(See also art. 8.2 (b) (xviii))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intentionally attacked an adversary in that armed conflict with poison.
3. That, at the time of the attack, the accused was aware of the nature of the weapon he was using and its prohibited status under the circumstances.

**Article 8.2 (b) (xviii): War crime of employing poison**

(See also art. 8.2 (b) (xvii))

**Elements/Comments**

*Use elements for article 8.2 (b) (xvii).*

**Article 8.2 (b) (xix): War crime of employing expanding bullets**

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intentionally attacked an adversary in that armed conflict with bullets designed to expand or flatten easily in the human body.
3. That, at the time of the attack, the accused was aware of the nature of the weapon he was using and its prohibited status under the circumstances.

**Article 8.2 (b) (xx): War crime of employing other prohibited weapons****Elements/Comments**

*To be completed if and when included in an annex to the Statute.*

**Article 8.2 (b) (xxi): War crime of degrading treatment**

(See also art. 8.2 (c) (ii))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intended to humiliate and degrade one or more persons and thereby inflict severe mental pain or suffering upon them.
3. That the accused committed an act or acts that resulted in the degradation and humiliation of such person or persons and the infliction of severe mental pain or suffering upon such person or persons.
4. That the accused had custody of or control over such person or persons at the time of the offence.
5. That the act or acts were not inherent in, or incidental to, lawful sanctions.
6. That the act or acts were without, and the accused knew they were without, lawful justification or excuse.

**Article 8.2 (b) (xxii)-1: War crime of rape**

(See also art. 8.2 (e) (vi))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intended to attack one or more persons through acts of a sexual nature.
3. That the accused penetrated any part of the body of another persons with the accused's sexual organ, or penetrated the anal or genital opening of another person with any object or other part of the accused's body.
4. That the penetration was committed by force.

**Comments**

*It should be noted that the existence of specific crimes of sexual violence in articles 8.2 (b) (xxii) and 8.2 (e) (vi) does not undermine the fact that those same acts might constitute the essential element of some other offence under the Statute.*

**Article 8.2 (b) (xxii)-2: War crime of sexual slavery**

(See also art. 8.2 (e) (vi))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intended to attack one or more persons by causing them to engage in acts of a sexual nature.
3. That the accused deprived one or more persons of their liberty.
4. That the accused, through force or threat, caused the person or persons to engage in acts of a sexual nature.

**Comments**

*Besides physically detaining or confining a person to a particular place without consent, the deprivation of liberty required by this offence could also include severe deprivations of autonomy and freedom of movement that are universally recognized as impermissible under international law.*

**Article 8.2 (b) (xxii)–3: War crime of enforced prostitution**

(See also art. 8.2 (e) (vi))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intended to attack one or more persons by causing them to engage in acts of a sexual nature.
3. That the accused, in furtherance of this intent, deprived one or more persons of their liberty and forced them to engage in acts of a sexual nature with one or more other persons.
4. That the accused received some pecuniary or other material benefit in exchange for or in connection with the sex acts of the person or persons.

**Article 8.2 (b) (xxii)–4: War crime of forced pregnancy**

(See also art. 8.2 (e) (vi))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intended to affect the ethnic composition of a population or to carry out another grave violation of international law.
3. That, in the furtherance of that intent, the accused imprisoned one or more persons within a confined area.
4. That the person imprisoned had been previously raped or otherwise forcibly impregnated, and the accused knew that such person had been previously raped or forcibly impregnated.
5. That the imprisonment was without, and the accused knew it was without, lawful justification or excuse.



**Comments**

*The "without lawful justification or excuse" element in this offence would, for example, preclude prosecution for acts committed as a logical consequence of domestic laws involving pregnancy.*

**Article 8.2 (b) (xxii)–5: War crime of enforced sterilization**

(See also art. 8.2 (e) (vi))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intended to terminate the natural reproductive capacity of one or more persons.
3. That the accused committed an act that resulted in the termination of the natural reproductive capacity of such person or persons.
4. That the act was committed without such person's or persons' consent.
5. That the act was without, and the accused knew it was without, lawful justification or excuse.

**Article 8.2 (b) (xxii)–6: War crime of sexual violence**

(See also art. 8.2 (e) (vi))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intended to attack one or more persons through acts of a sexual nature.
3. That the accused committed, by force, an act against one or more persons.
4. That the act was of a sexual nature or caused the person or persons to engage in activity of a sexual nature.
5. That the act involved a level of violence comparable to that of rape.

**Article 8.2 (b) (xxiii): War crime of immunizing an area with protected persons****Elements**

1. That the act took place in the course of international armed conflict.
2. That, at the time of the offence, the accused was defending a military objective from possible attack.
3. That the accused caused the military objective, one or more civilian persons, one or more persons protected under one of the Geneva Conventions of 1949 or objects connected with such persons to be moved so that the military objective and the civilian personnel or

protected persons would be either located together or otherwise positioned so that an attack against the military objective would seriously endanger the civilian personnel or protected persons.

4. That the accused's actions were intended to shield the military objective from attack, to shield, favour or impede military operations or to otherwise undermine the adversary's will to attack or continue an attack.

#### **Comments**

*Intent to shield from attack, or to shield, favour or impede military operations can be inferred from the circumstances.*

### **Article 8.2 (b) (xxiv): War crime of attacking a protected emblem**

(See also art. 8.2 (e) (ii))

#### **Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intentionally attacked a building, an object, a medical unit or transport, or person that was properly displaying a distinctive protective emblem of the Geneva Conventions.
3. That the accused intended the object of the attack to be the person or object attacked and knew the object of attack was properly displaying a distinctive protective emblem of the Geneva Conventions.
4. That the object of attack was not, and the accused knew it was not, being used for a military purpose at the time of the attack.

### **Article 8.2 (b) (xxv): War crime of starvation**

#### **Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused engaged in an act, as a method of warfare, to attack, destroy, remove or render useless objects indispensable to the survival of a civilian population.
3. That the accused's act was intended as a method of warfare with the specific purpose of denying such objects to the targeted civilian population.
4. That, as a result of the accused's acts, one or more persons died from starvation.

#### **Comments**

*As with murder, the actus reus for this offence could be the failure to fulfil a lawful duty: for example, feeding prisoners under the accused's care. This offence does not impose or imply a duty of care that does not otherwise exist in international law (e.g., to provide food for a civilian population).*

**Article 8.2 (b) (xxvi): War crime of conscripting children**

(See also art. 8.2 (e) (vii))

**Elements**

1. That the act took place in the course of international armed conflict.
2. That the accused intended to conscript or enlist certain persons into the national armed forces or to otherwise use them for active participation in hostilities.
3. That the accused committed an act that caused the conscription or enlistment into the national armed forces, or otherwise caused the active participation in hostilities, of one or more persons under fifteen years of age.
4. That, at the time of the act, the accused knew that the person or persons enlisted, conscripted or used had not yet attained fifteen years of age.

**Comments**

*This offence does not require an element of force; any act yielding causation is sufficient, including merely authorizing an enlistment or conscription. Therefore, consent on the part of the under-age person is not a defence to enlistment or conscription. However, since no mere acquiescence would "cause" an under-age person to be used for active participation in hostilities, some positive act is required if the under-age person is neither conscripted nor enlisted. In this regard, a scenario in which a person who had not yet attained fifteen years of age, who chose of this or her own volition to participate in a levée en masse, would not result in culpability.*

**Article 8.2 (c) (i)-1: War crime of murder**

(See also art. 8.2 (a) (i), art. 8.2 (b) (vi))

**Elements/Comments**

*Use elements for article 8.2 (a) (i), deleting the word "international" in element 1 and deleting the words "one or more civilians taking no active part in hostilities or" in elements 2 and 3.*

**Article 8.2 (c) (i)-2: War crime of torture**

(See also art. 8.2 (a) (ii), art. 8.2 (a) (iii))

**Elements/Comments**

*Use elements for article 8.2 (a) (ii)-1, deleting the word "international" in element 1.*

**Article 8.2 (c) (i): War crime of inhuman treatment**

(See also art. 8.2 (a) (ii), art. 8.2 (b) (x), art. 8.2 (b) (xxi), art. 8.2 (c) (ii), art. 8.2 (e) (xi))

**Elements/Comments**

*Use elements for article 8.2 (a) (ii)–2, deleting the word “international” in element 1.*

**Article 8.2 (c) (ii): War crime of degrading treatment**

(See also art. 8.2 (b) (xxi))

**Elements/Comments**

*Use elements for article 8.2 (b) (xxi), deleting the word “international” in element 1.*

**Article 8.2 (c) (iii): War crime of taking hostages**

(See also art. 8.2 (a) (viii))

**Elements/Comments**

*Use elements for article 8.2 (a) (viii), deleting the word “international” in element 1.*

**Article 8.2 (c) (iv): War crime of denying judicial guarantees**

(See also art. 8.2 (a) (vi), art. 8.2 (b) (xiv))

**Elements/Comments**

*Use elements for article 8.2 (a) (vi), deleting the word “international” in element 1 and replacing element 4 with the following:*

4. That such act was performed without judgement by a regularly constituted court and without according judicial guarantees recognized as indispensable by all civilized peoples.

**Article 8.2 (e) (i): War crime of attacking civilians**

(See also art. 8.2 (b) (i), art. 8.2 (b) (iii), art. 8.2 (e) (iii))

**Elements/Comments**

*Use elements for article 8.2 (b) (i), deleting the word “international” in element 1.*

**Article 8.2 (e) (ii): War crime of attacking a protected emblem**

(See also art. 8.2 (b) (xxiv))

**Elements/Comments**

*Use elements for article 8.2 (b) (xxiv), deleting the word “international” in element 1.*

**Article 8.2 (e) (iii)–1: War crime of attacking civilians**

(See also art. 8.2 (b) (i), art. 8.2 (b) (iii), art. 8.2 (e) (i))

**Elements/Comments**

*Use elements for article 8.2 (b) (i), deleting the word “international” in element 1 and replacing the term “civilian(s)” throughout with “person(s) engaged in humanitarian assistance or peacekeeping missions in accordance with the Charter of the United Nations”.*

**Article 8.2 (e) (iii)–2: War crime of attacking protected objects (peacekeepers)**

(See also art. 8.2 (b) (ii), art. 8.2 (b) (iii), art. 8.2 (b) (iv), art. 8.2 (b) (ix), art. 8.2 (e) (ii), art. 8.2 (e) (iii), art. 8.2 (e) (iv))

**Elements/Comments**

*Use the elements for article 8.2 (b) (ii), deleting the word “international” in element 1 and replacing element 2 with the following:*

2. That the accused intended to attack an installation, vehicle or other object involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.

**Article 8.2 (e) (iv): War crime of attacking protected objects**

(See also art. 8.2 (b) (ii), art. 8.2 (b) (iii), art. 8.2 (b) (ix), art. 8.2 (e) (ii), art. 8.2 (e) (iii))

**Elements/Comments**

*Use the elements for article 8.2 (b) (ii), deleting the word “international” in element 1 and deleting the words “or any other civilian object” in element 2.*

**Article 8.2 (e) (v): War crime of pillaging**

(See also art. 8.2 (a) (iv), art. 8.2 (b) (xiii), art. 8.2 (b) (xvi), art. 8.2 (e) (xii))

**Elements/Comments**

*Use elements for article 8.2 (a) (iv), deleting the word “international” in element 1 and adding the following element:*

6. That the destruction or appropriation was carried out in an arbitrary manner, devoid of concern for the consequences.

**Article 8.2 (e) (vi)–1: War crime of rape**

(See also art. 8.2 (b) (xxii))

**Elements/Comments**

*Use elements for article 8.2 (b) (xxii)–1, deleting the word “international” in element 1.*

**Article 8.2 (e) (vi)–2: War crime of sexual slavery**

(See also art. 8.2 (b) (xxii))

**Elements/Comments**

*Use elements for article 8.2 (b) (xxii)–2, deleting the word “international” in element 1.*

**Article 8.2 (e) (vi)–3: War crime of enforced prostitution**

(See also art. 8.2 (b) (xxii))

**Elements/Comments**

*Use elements for article 8.2 (b) (xxii)–3, deleting the word “international” in element 1.*

**Article 8.2 (e) (vi)–4: War crime of forced pregnancy**

(See also art. 8.2 (b) (xxii))

**Elements/Comments**

*Use elements for article 8.2 (b) (xxii)–4, deleting the word “international” in element 1.*

**Article 8.2 (e) (vi)–5: War crime of enforced sterilization**

(See also art. 8.2 (b) (xxii))

**Elements/Comments**

*Use elements for article 8.2 (b) (xxii)–5, deleting the word “international” in element 1.*

**Article 8.2 (e) (vi)–6: War crime of sexual violence**

(See also art. 8.2 (b) (xxii))

**Elements/Comments**

*Use elements for article 8.2 (b) (xxii)–6, deleting the word “international” in element 1.*

**Article 8.2 (e) (vii): War crime of conscripting children**

(See also art. 8.2 (b) (xxvi))

**Elements/Comments**

*Use elements for article 8.2 (b) (xxvi), deleting the word "international" in element 1 and the word "national" in elements 2 and 3.*

**Article 8.2 (e) (viii): War crime of displacing civilians**

(See also art. 8.2 (b) (viii))

**Elements**

1. That the act took place in the course of armed conflict.
2. That the accused intended to transfer a civilian population from its lawful place of residence.
3. That the accused caused a civilian population to be forcibly transferred from its lawful place of residence through expulsion or other coercive acts.
4. That the forcible transfer was without, and the accused knew it was without, lawful justification or excuse.
5. That the forcible transfer was not for the security of the civilians involved or imperative military reasons.

**Article 8.2 (e) (ix): War crime of perfidy**

(See also art. 8.2 (b) (vii), art. 8.2 (b) (xi))

**Elements/Comments**

*Use elements for article 8.2 (b) (vii), deleting the word "international" in element 1.*

**Article 8.2 (e) (x): War crime of denying quarter**

(See also art. 8.2 (b) (xii))

**Elements/Comments**

*Use elements for article 8.2 (b) (xii), deleting the word "international" in element 1.*

**Article 8.2 (e) (xi)–1: War crime of inhuman treatment**

(See also art. 8.2 (a) (ii), art. 8.2 (b) (x), art. 8.2 (c) (i))

**Elements/Comments**

*Use elements for article 8.2 (a) (ii)–2, deleting the word "international" in element 1.*

**Article 8.2 (e) (xi)–2: War crime of scientific experiments**

(See also art. 8.2 (a) (ii), art. 8.2 (b) (x), art. 8.2 (c) (i))

**Elements/Comments**

*Use elements for article 8.2 (a) (ii)–3, deleting the word “international” in element 1.*

**Article 8.2 (e) (xii): War crime of destruction or appropriation of property**

(See also art. 8.2 (a) (iv), art. 8.2 (b) (xiii), art. 8.2 (b) (xvi), art. 8.2 (e) (v))

**Elements/Comments**

*Use elements for article 8.2 (a) (iv), deleting the word “international” in element 1 and deleting element 5 requiring “extensive” characterization. Note that the threshold for war crimes should preclude prosecution for any destruction or appropriation that is not extensive.*