

Contents

<i>Foreword by Dr Jakob Kellenberger, President of the International Committee of the Red Cross</i>	ix
<i>Foreword by Ambassador Philippe Kirsch, QC</i>	xiii
<i>Table of cases by alphabetical order</i>	xv
<i>Table of cases by jurisdiction</i>	xxiii
<i>Table of treaties and other international instruments</i>	xlii
<i>List of abbreviations</i>	lix
1. Introduction	1
2. Legal value of the elements of crimes	8
3. General Introduction adopted by the PrepCom	9
4. Introduction to elements of war crimes listed in Article 8 of the Rome Statute	15
5. Article 8(2)(a) ICC Statute – Grave breaches of the 1949 Geneva Conventions	17
5.1. Elements common to all crimes under Article 8(2)(a) ICC Statute	17
5.2. Elements of specific crimes under Art. 8(2)(a) ICC Statute	38
Art. 8(2)(a)(i) – Wilful killing	38
Art. 8(2)(a)(ii) – Torture or inhuman treatment, including biological experiments	44
Art. 8(2)(a)(iii) – Wilfully causing great suffering, or serious injury to body or health	76
Art. 8(2)(a)(iv) – Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly	81
Art. 8(2)(a)(v) – Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power	97
Art. 8(2)(a)(vi) – Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial	100
Art. 8(2)(a)(vii) – Unlawful deportation or transfer or unlawful confinement	106
Art. 8(2)(a)(viii) – Taking of hostages	124
6. Article 8(2)(b) ICC Statute – Other serious violations of the laws and customs applicable in international armed conflict	128
6.1. Elements common to all crimes under Article 8(2)(b) ICC Statute	128
6.2. Elements of specific crimes under Art. 8(2)(b) ICC Statute	130
Art. 8(2)(b)(i) – Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities	130

vi *Contents*

Art. 8(2)(b)(ii) – Intentionally directing attacks against civilian objects, that is, objects which are not military objectives	148
Art. 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	153
Art. 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	161
Art. 8(2)(b)(v) – Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives	177
Art. 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	185
Art. 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	193
Art. 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	208
Art. 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	215
Art. 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	229
Art. 8(2)(b)(xi) – Killing or wounding treacherously individuals belonging to the hostile nation or army	240
Art. 8(2)(b)(xii) – Declaring that no quarter will be given	246
Art. 8(2)(b)(xiii) – Destroying or seizing the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war	249
Art. 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	263
Art. 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	269
Art. 8(2)(b)(xvi) – Pillaging a town or place, even when taken by assault	272
Art. 8(2)(b)(xvii) – Employing poison or poisoned weapons	281
Art. 8(2)(b)(xviii) – Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices	285

	<i>Contents</i>	vii
Art. 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	292	
Art. 8(2)(b)(xx) – 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	297	
Art. 8(2)(b)(xxi) – Committing outrages upon personal dignity, in particular humiliating and degrading treatment	314	
Art. 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	325	
Art. 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	344	
Art. 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	349	
Art. 8(2)(b)(xxv) – Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions	363	
Art. 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	375	
7. Article 8(2)(c) ICC Statute – Violations of common Article 3 of the 1949 Geneva Conventions	382	
7.1. Paragraph 1 of the introduction to the war crimes section	382	
7.2. Elements common to all crimes under Article 8(2)(c) ICC Statute	383	
7.3. Elements of specific crimes under Art. 8(2)(c) ICC Statute	394	
Art. 8(2)(c)(i) – Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture	394	
Art. 8(2)(c)(ii) – Committing outrages upon personal dignity, in particular humiliating and degrading treatment	404	
Art. 8(2)(c)(iii) – Taking of hostages	406	
Art. 8(2)(c)(iv) – The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable	408	
8. Article 8(2)(e) ICC Statute – Other serious violations of the laws and customs applicable in armed conflicts not of an international character	439	
8.1. Paragraph 1 of the introduction to the war crimes section	440	
8.2. Elements common to all crimes under Article 8(2)(e) ICC Statute	441	
8.3. Elements of specific crimes under Art. 8(2)(e) ICC Statute	443	
Art. 8(2)(e)(i) – Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities	443	

Art. 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	447
Art. 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	452
Art. 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	458
Art. 8(2)(e)(v) – Pillaging a town or place, even when taken by assault	464
Art. 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	466
Art. 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	470
Art. 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	472
Art. 8(2)(e)(ix) – Killing or wounding treacherously a combatant adversary	476
Art. 8(2)(e)(x) – Declaring that no quarter will be given	480
Art. 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	482
Art. 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	485
Appendix: Request from the Governments of Belgium, Finland, Hungary, Mexico, the Republic of Korea and South Africa and the Permanent Observer Mission of Switzerland to the United Nations regarding the text prepared by the International Committee of the Red Cross on the mental element in the common law and civil law systems and on the concepts of mistake of fact and mistake of law in national and international law	487
<i>Bibliography</i>	499
<i>Index</i>	504