

Annex A

ANNEX A

EXTRACTS FROM *TRAVAUX PRÉPARATOIRES*Section A

DOCUMENT	EXTRACT
<p>Egypt, Draft: Optional Approaches to the Definition of War Crimes, 29 March 1996</p>	<p><u>Violations of the laws or customs of war</u></p> <p>The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:</p> <p>[...]</p> <p>(d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;</p> <p><u>Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II</u></p> <p>The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:</p> <p>[...]</p> <p>(t) making clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to</p>

	<p>which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result, intensive destruction thereof, where there is no evidence of the violation by the adverse party of using such objects in support of a military effort, and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;</p>
<p>Serious violations of the laws and customs and applicable in armed conflicts, 2 April 1996</p>	<p>Violations of the laws or customs of war, which include, but are not limited to:</p> <p>[...]</p> <p>e. Seizure of, destruction of or willful <i>[sic]</i> damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;</p>
<p>Chairman's Informal Text No. 4, Article 20 ter, War Crimes, 4 April 1996</p>	<p>[War crimes] means:</p> <p>[...]</p> <p>2. Other serious violations of the laws and customs [of war] [applicable in armed conflict], [whether of an international or of a non-international character] which include, but are not limited to the violations referred to in the 1907 Hague Convention No. IV, [and the serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 and of Additional Protocol II <i>[sic]</i> thereto of 8 June 1977.] These violations include but are not limited to:</p> <p>[...]</p> <p>(e) Seizure of, destruction of or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;</p> <p>[...]</p> <p>(aa) making clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a</p>

	<p>competent international organization, the object of attack, causing as a result, intensive destruction thereof, where there is no evidence of the violation by the adverse party of using such objects in support of a military effort, and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;</p>
<p>Preparatory Committee, Proceedings of the Preparatory Committee during the period 25 March–12 April 1996, 9 April 1996, A/AC.249/CRP.2/Add.2/Rev.1</p>	<p>8. Several delegations expressed the view that the list of offences should include sufficiently serious violations of the Hague law, with references being made to the 1907 Hague Convention IV respecting the Laws and Customs of War on Land and its annexed regulations and the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict; grave breaches of the Geneva Conventions, with references also being made to common article 3 thereof and grave breaches of Additional Protocol I; and comparably serious violations of other relevant conventions that had attained the status of customary law.</p>
<p>Preparatory Committee, Proceedings on the Preparatory Committee during the period 25 March–12 April 1996, 11 April 1996, A/AC.249/CRP/9/Add.4</p>	<p><u>Chairman’s revised informal text on war crimes</u></p> <p>[War crimes] means:</p> <p>1. Grave breaches referred to in the Geneva Conventions of 12 August 1949 [and of Additional Protocol I thereto of 8 June 1977] [such as] [namely]:</p> <p>[...]</p> <p>(m) making clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing, as a result, intensive destruction thereof, where there is no evidence of the violation by the adverse party of using such objects in support of a military effort, and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;</p>

	<p>2. Other serious violations of the laws and customs [of war] [applicable in armed conflict], [whether of an international or of a non-international character] [which include, but are not limited to,] [namely] the violations referred to in the 1907 Hague Convention No. IV, [and the serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 and of Additional Protocol II <i>[sic]</i> thereto of 8 June 1977] [include but are not limited to] [are]:</p> <p>[...]</p> <p>(d) seizure of, destruction of or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;</p> <p><u>Compilation of proposals and suggestions with regard to the definition of war crimes</u></p> <p>2. [The following] [Other serious] Violations of the laws [applicable in armed conflicts] or [[and] customs of war, [whether international or internal in character,] which include, but are not limited to: [, including serious violations of article 3 common to the Geneva Conventions of 12 August 1949, and of Additional Protocol I thereto of 8 June 1977. These violations shall include, but shall not <i>[sic]</i> limited to:]</p> <p>[...]</p> <p>(d) seizure of, destruction of or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;</p>
<p>Preparatory Committee, Summary of the Proceedings of the Preparatory Committee during the period 25 March–12 April 1996, 7 May 1996, A/AC.249/1</p>	<p>(b) Definition of crimes</p> <p>13. There was general agreement that the crimes within the jurisdiction of the court should be defined with the clarity, precision and specificity required for criminal law in accordance with the principle of legality (<i>nullum crimen sine lege</i>). A number of</p>

	<p>delegations expressed the view that the crimes should be clearly defined in the statute. However, some delegations envisaged the statute as a procedural instrument and expressed concern about possible duplication of or interference with the work of the International Law Commission on the Draft Code of Crimes against the Peace and Security of Mankind.</p> <p>41. Several delegations expressed the view that the list of offences should include sufficiently serious violations of the Hague law, with references being made to the 1907 Hague Convention IV respecting the Laws and Customs of War on Land and its annexed regulations and the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict; grave breaches of the Geneva Conventions, with references also being made to common article 3 thereof and grave breaches of Additional Protocol I; and comparably serious violations of other relevant conventions that had attained the status of customary law. Different views were expressed concerning the customary law status of Additional Protocols I and II. There were proposals to incorporate provisions of the protocols without referring thereto and to add Additional Protocol II under article 20, subparagraph (e). The view was also expressed that Additional Protocol I had not so far secured the most widespread acceptance by the international community, which would be essential for the Protocol to qualify for inclusion in the statute.</p>
<p>Preparatory Committee, Proposal submitted by Japan on the definition of war crimes, 27 August 1996, A/AC.249/WP.48</p>	<p>2. The term "war crimes" means any of the following acts by members of the armed forces of a party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces, when committed in the case of armed conflict of an international character:</p> <p>[...]</p>

	<p>(7) Seizure or destruction of or wilful damage to institutions dedicated to religion, charity and education or the arts and sciences, historic monuments and works of art and science;</p>
<p>Preparatory Committee, Working paper submitted by the delegations of New Zealand and Switzerland, 14 February 1997, A/AC.249/1997/WG.1/DP.2</p>	<p>1. Grave breaches of international humanitarian law applicable in international armed conflicts: [...] (c) One of the following acts, when committed wilfully and in violation of international humanitarian law: [...] (iv) Making the clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the use by the adverse Party of such objects in support of the military effort, and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives; [...]</p> <p>3. Serious violations of international humanitarian law applicable in non- international armed conflicts: [...] (x) Attacks directed against historic monuments, works of art or places of worship, which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort;</p>

Section B

<p>Preparatory Committee, Proposal submitted by the United States, War Crimes, 14 February 1997, A/AC.249/1997/WG.1/DP.1</p>	<p>(B) other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law, namely:</p> <p>[...]</p> <p>(xv) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, unless such property is used in support of the military effort;</p>
<p>Preparatory Committee, Draft Consolidated Text, War crimes, 20 February 1997, A/AC.249/1997/WG.1/CRP.2</p>	<p>B. [Other war crimes in violation of laws and customs applicable in international armed conflict within the established framework of international law, namely:]</p> <p>[Other war crimes in international armed conflict]</p> <p>[Other grave breaches]</p> <p>1. [...]</p> <p>2. [Any of the following acts, when committed wilfully and in violation of international humanitarian law:</p> <p>[...]</p> <p>(d) [making the clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result, extensive destruction thereof, where there is no evidence of the use by adverse party of such objects in support of a military effort, and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives]</p> <p>[intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, unless such property is used in support of the military effort¹²];</p>

	<p>[footnote 12: This alternative is based on article 27 of the Annex to the IV Hague Convention respecting the laws and customs of war on land.]</p> <p>[...]</p> <p>4. [Other serious violations of international humanitarian law.]</p> <p>[...]</p> <p>(l) intentionally directing attack against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, unless such property is used in support of the military effort;</p> <p>Serious violations 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 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 hors de combat by sickness, wounds, detention or any other cause:</p> <p>[...]</p> <p>(n) attacks directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort;</p>
<p>Preliminary text, War crimes, 20 February 1997, UD/A/AC-249/1997/WG-1/IP/REV-1</p>	<p>2. Any of the following acts, when committed wilfully and in violation of international humanitarian law:</p> <p>[...]</p> <p>(d) [making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization,</p>

	<p>the object of attack, causing as a result, extensive destruction thereof, where there is no evidence of the use by adverse party of such objects in support of a military effort, and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives]</p> <p>[intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, unless such property is used in support of the military effort¹²];</p> <p>[Footnote 12: This alternative is based on article 27 of the Annex to the IV Hague Convention respecting the laws and customs of war on land.]</p> <p>4.</p> <p>[...]</p> <p>(l) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, unless such property is used in support of the military effort;²⁰</p> <p>[Footnote 20: This has also been covered in paragraph B.2(d)]</p> <p>C. [War crimes in non-international armed conflicts]</p> <p>[...]</p> <p>(n) attacks directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort;</p>
Preparatory Committee, Decisions taken by the Preparatory Committee at	B. [Other war crimes in violation of the laws and customs applicable in international armed conflict within the established framework of international law,

<p>its session held from 11 to 21 February 1997, 12 March 1997, A/AC.249/1997/L.5</p>	<p>namely:]</p> <p>[Other war crimes in international armed conflict]/</p> <p>[other grave breaches]</p> <p>[...]</p> <p>2. [Any of the following acts, when committed wilfully and in violation of international humanitarian law:^{18]}</p> <p>[Footnote 18: The provisions of paragraph 2 are drawn from article 85(4) of Protocol Additional I to the 1949 Geneva Conventions.]</p> <p>[...]</p> <p>(d) [making the clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result, extensive destruction thereof, where there is no evidence of the use by adverse party of such objects in support of a military effort, and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives]</p> <p>[intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, unless such property is used in support of the military effort^{20]};</p> <p>[Footnote 20: This alternative is based on article 27 of the Annex to the IV Hague Convention respecting the laws and customs of war on land.]</p> <p>[...]</p> <p>4. [Other serious violations of international humanitarian law.]</p> <p>[...]</p> <p>(l) intentionally directing attacks against buildings</p>
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	<p>dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, unless such property is used in support of the military effort;²⁹</p> <p>[Footnote 29: This has also been covered in paragraph B.2(d)]</p> <p>2. [Other war crimes in non-international armed conflicts</p> <p>[...]</p> <p>(n) attacks directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort;</p>
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Section C

<p>Informal working paper on war crimes, 14 July 1997, UD/A/AC-249/1997/WG-1/IP/REV-1</p>	<p>[B. Other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law, namely:]</p> <p>[...]</p> <p>[(22) (g) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, [unless such property is used in support of the military effort] [provided they are not being used at the time for military purposes];</p> <p>[...]</p> <p>[D. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely:]</p> <p>[...]</p> <p>(60) (d) intentionally directing attacks against buildings dedicated to religion, art, science or</p>
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	<p>charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected. unless such property is used in support of the military effort:</p> <p><u>Annex to the “Informal working paper on war crimes” (Rev. 1) Comments submitted by Partners</u></p> <p>No. 22 US: "The recommended change conforms the text to article 27 of 1907 Hague IV. Also, it clarifies the point that property normally protected from intentional attack is at risk only at the time it is being misused. Thus, the fact that, for example, a hospital or church was used as a military bivouac one night would not justify its attack two months after enemy troops had abandoned it, and it had reverted to its normal use."</p> <p>[...]</p> <p>No. 53-67 UK : "... we are not yet convinced that this section in principle is reflective of customary international law. This section, therefore, should also remain in square brackets in its entirety....The footnote, which was for internal use only will... need to be removed.</p>
<p>Informal working paper on war crimes, 31 October 1997, UD/A/AC-249/1997/WG-1/IP</p>	<p>B. Other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law, namely any of the following acts:</p> <p>[...]</p> <p>(g)</p> <p>Option I</p> <p>(g) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not being used at the time for military</p>

	<p>purposes;</p> <p>Option II</p> <p>(g) 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 being used at the time for military purposes;</p> <p>[D. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely any of the following acts:</p> <p>[...]</p> <p>Option I</p> <p>(c) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not being used at the time for military purposes;</p> <p>Option II</p> <p>(c) 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 being used at the time for military purposes;</p>
<p>Synopsis on War Crimes relating to the Informal working paper on war crimes (A/AC.249/1997/WG.1/CRP.7) dated 3 December 1997, UD/A/AC-249/1997/WG-1/IP</p>	<p>B. Other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law, namely any of the following acts:</p> <p>[...]</p> <p>(g) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not being used at the time for military</p>

	<p>purposes; [Sources:] cf. Art. 27 Hague IV</p> <p>D. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely any of the following acts: [...]</p> <p>(c) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not being used at the time for military purposes; [Sources:] cf. Art. 27 Hague IV</p>
<p>Preparatory Committee, Informal Working Paper on War Crimes, 3 December 1997, A/AC.249/1997/WG.1/CRP.7</p>	<p>B. Other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law, namely any of the following acts: [...]</p> <p>(g) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not being used at the time for military purposes;</p> <p>D. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely any of the following acts: [...]</p> <p>(c) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided</p>

	<p>they are not being used at the time for military purposes;</p>
<p>Preparatory Committee, War Crimes, 12 December 1997, A/AC.249/1997/WG.1/CRP.9</p>	<p>B. Other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law, namely, any of the following acts:</p> <p>[...]</p> <p>(g)</p> <p>Option I</p> <p>(g) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not being used at the time for military purposes;</p> <p>Option II</p> <p>(g) 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 being used at the time for military purposes;</p> <p>D. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:</p> <p>[...]</p> <p>(c)</p> <p>Option I</p> <p>(c) intentionally directing attacks against buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not being used at the time for military purposes;</p>

	<p>Option II</p> <p>(c) 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 being used at the time for military purposes;</p>
<p>United Nations Diplomatic Conference of Plenipotentiaries, Summary Record of the 4th Meeting, 17th June 1998, A/CONF.183.C.1/SR.4</p>	<p>64. Ms. WONG (New Zealand) said that, under section B, subparagraph (g) concerning attacks against buildings was of particular concern to her delegation, which had been responsible for the addition of the word “education” in option 2. [...]</p>