

THE RELATIVE GRAVITY OF CULTURAL HERITAGE DESTRUCTION AS A WAR CRIME

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Summary: The law governing the protection of cultural heritage during armed conflict can be broadly divided into legal rules that are proactive and those that are reactive. The law of armed conflict (or international humanitarian law) contains several rules in the former category that aim to prohibit and prevent destruction and misappropriation before it occurs. International law in the latter category aims to redress or punish losses after they have occurred and includes rules that require restoration, repair, or restitution, as well as international criminal law that prosecutes and punishes high-level perpetrators. Improving the legal regime governing cultural heritage protection must focus not only on strengthening rules that facilitate preservation in the first instance, but also on strengthening and enforcing those rules that might serve as effective deterrents in future conflicts. This paper focuses specifically on international criminal law and argues that the deterrent effect of prosecuting cultural heritage-related crimes depends partly on the relative gravity that is assigned to cultural heritage destruction by prosecutors and adjudicators in international criminal tribunals. By their nature, international criminal tribunals can prosecute only a limited number of high-level offenders responsible for atrocities and other serious violations, and prosecutorial decisions to prosecute cultural heritage-related offenses and judicial determinations to impose hefty sentences both can have a deterrent effect.

This paper begins its general inquiry into the relative gravity of cultural heritage-related offenses by exploring the general debate over whether a hierarchy exists among the international criminal offenses contained in modern international criminal codes. The category of prosecutable ‘war crimes’ includes the deliberate and unjustified destruction of religious, artistic, and cultural institutions and of historic monuments. In addition to war crimes, international criminal law also typically encompasses separate categories for the crime of genocide and crimes against humanity. Relying on the jurisprudence developed by the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Court (ICC), in particular, the paper then considers two questions regarding the stature of cultural heritage destruction in international criminal law: first, whether the means exist for determining the relative gravity of cultural heritage destruction as a war crime, compared to other offenses (especially crimes against humanity); and second, even if the relative gravity cannot be established conclusively, how international tribunals might better establish that they deem cultural heritage destruction sufficiently grave to advance the fundamental goal of deterrence.

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Introduction

Contemporary international criminal law establishes that the intentional and unnecessary destruction of institutions or buildings dedicated to religion, education, art, science or charitable purposes, as well as of historic monuments, can constitute a 'war crime' when committed during an armed conflict. The Statute of the International Criminal Tribunal for the former Yugoslavia (or ICTY Statute, adopted by the United Nations Security Council in 1993) and the later Rome Statute of the International Criminal Court (or Rome Statute of the ICC, adopted by a multigovernmental conference in 1998 and entered into force in 2003) each expressly include this offense in a list of prosecutable war crimes.¹ So, too, do the instruments governing other *ad hoc* or hybrid international tribunals established to prosecute atrocities and violations committed during specific armed conflicts.²

The general category of *war crimes* in international criminal law covers a range of violations of the laws and customs of war, and the enumerated offenses can vary according to the applicable instrument. The ICTY Statute, for example, includes a short illustrative list of war crimes under the heading of 'Violations of the laws or customs of

¹ Rome Statute of the International Criminal Court (1998) UN Doc A/CONF.183/9 (17 July 1998) art 8(b)(ix); Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, in 'Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)' (3 May 1993) UN Doc S/25704 (1993) 9, adopted by UNSC Res 827 (25 May 1993) UN Doc S/RES/827 (1993) art 3(d). The ICTY Statute also expressly covers attacks on 'works of art and science,' though both codes also include general provisions on plunder, pillage and other destruction of property that would cover both immovable and movable property. **Excerpts of both the ICTY Statute and the Rome Statute of the ICC are presented in the Annex.**

² The statute governing the hybrid international tribunal for Cambodia, which prosecutes international offenses committed during the reign of the Khmer Rouge in the late 1970s, for example, includes express provision for cultural heritage crimes, as do the regulations governing the hybrid tribunal for East Timor. Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea (2001), as amended by NS/RKM/1004/006 (27 October 2004) art 7; United Nations Transitional Administration for East Timor, Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction Over Serious Criminal Offences, UN Doc UNTAET/REG/2000/15 (6 June 2000) art 6(b)(ix). *See also* Caroline Ehlert, *Prosecuting the Destruction of Cultural Property in International Criminal Law: With a Case Study on the Khmer Rouge's Destruction of Cambodia's Heritage* (Nijhoff 2014).

Yet not all international criminal codes expressly include cultural heritage destruction because the statutes governing *ad hoc* tribunals or hybrid bodies were written to address the most egregious atrocities and violations from the conflicts for which each was established. The statutes for Rwanda and Sierra Leone, for example, do not expressly mention cultural heritage.

war.’ The Rome Statute of the ICC, on the other hand, includes a much longer laundry list of 50 different offenses that constitute ‘war crimes.’³

The ICTY Statute, the Rome Statute of the ICC, and other international criminal codes also include other categories of prosecutable international offenses, other than war crimes. The ICTY Statute includes *genocide*, *grave breaches of the 1949 Geneva Conventions*, and *crimes against humanity*, while the Rome Statute of the ICC includes *genocide*, *crimes against humanity*, and the *crime of aggression* (and instead collapses grave breaches of the 1949 Geneva Conventions under the heading and definition of ‘war crimes’). The categories of genocide, crimes against humanity, and war crimes form the three common categories of crimes also provided for other *ad hoc* or hybrid tribunals.

Though cultural heritage destruction expressly and unequivocally can qualify as a war crime today – which was not the case for much of the development of international criminal law during the 20th century – questions nonetheless continue to lurk regarding the relative gravity of the offense of cultural heritage destruction vis-à-vis other enumerated war crimes and also vis-à-vis other categories of international criminal offenses, particularly crimes against humanity. In practice, determinations as to the relative gravity of cultural heritage destruction can substantially influence decisions whether to commence international criminal prosecutions for cultural heritage destruction (particularly for destruction that is not directly married to other offenses) and also can have an obvious impact on the sentences handed down by tribunals. Prosecuting cultural heritage-related offenses and handing down heavy sentences, in turn, can help deter future attacks on cultural heritage in times of conflict.

Contours of the general debate

At the dawn of the new millennium, the ICTY Appeals Chamber, in its much-cited *Tadić* case, ruled that ‘there is in law no distinction between the seriousness of a crime against humanity and that of a war crime.’⁴ The tribunal made this ruling in the context of competing views of the question taken by the Trial Chamber below, focusing specifically on the question of relative gravity as between categories of offenses and not within them.

The Appeals Chamber itself did not elaborate at length, though two of its judges submitted separate opinions to address ‘the question whether crimes against humanity

³ ICTY Statute, art 3; Rome Statute of the ICC, art 8.

⁴ *Prosecutor v. Tadić*, Appeals Judgement, ICTY-94-1-A and IT-94-1-Abis (26 Jan 2000) para 69.

are more serious than war crimes, “all things being equal”.⁵ Judge Shahabuddeen supported the conclusion of the Appeals Chamber and observed, at the outset, that the Nuremberg Tribunals established after the Second World War ‘did not treat crimes against humanity as being graver offences than war crimes.’ He continued that ‘juridical seriousness’ was determined as a function of available sentences, and so long as the available sentences for a crime were coterminous, no distinction in seriousness could be made between them. He also maintained that the creation of ‘crimes against humanity’ and ‘genocide’ as new categories to supplement ‘war crimes’ was not intended to establish or suggest heavier gravity, but simply to criminalize atrocities that did not previously always qualify as ‘war crimes’ because they did not necessarily run afoul of the *customary* laws and customs of war. ‘Crimes against humanity,’ for example, required conduct in pursuance of organized policy or as part of a widespread, systematic practice, or injury to a class of victims, rather than individuals. But muddying the waters, Judge Shahabuddeen also distinguished ‘juridical seriousness’ from ‘material seriousness,’ where ‘looking at the character of the acts proscribed by a crime, it is generally possible to say that one crime is more serious than another.’⁶

In his separate opinion espousing an opposite view, Judge Cassese began by stating that ‘all international crimes are serious offences and no hierarchy of gravity may *a priori* be established between them.’ Nonetheless, he argued that international criminal law ‘being still at a rudimentary stage of development’ did not consist of detailed crimes, but rather of ‘a cluster of prohibited offences that are diverse both in nature and in gravity.’ From here, Judge Cassese continued to the question of relative gravity *within* the category of war crimes, stating that the list of war crimes contained in the ICTY Statute covered such diverse conduct as the employment of poisonous weapons, wanton and unjustified destruction of cities, and plunder of public and private property, which ‘are not only *objectively different* from one another, but also *differ in gravity*.’ He rejected reliance on the prescribed available penalties as a tool for measuring gravity, arguing that international criminal law – unlike most domestic criminal systems – has long left the determination of penalties to the courts.⁷

⁵ Separate Opinion of Judge Shahabuddeen, *Prosecutor v. Tadić*, ICTY-94-1-A and IT-94-1-Abis (26 Jan 2000) 35.

⁶ *ibid* 35-39.

⁷ Separate Opinion of Judge Cassese, *Prosecutor v. Tadić*, ICTY-94-1-A and IT-94-1-Abis (26 Jan 2000) paras 3-10 (emphasis in original). Here and elsewhere, Judge Cassese also made clear that he believed firmly in a hierarchy between those international crimes that warranted prosecution before an international tribunal and those ‘lesser international crimes’ that could be relegated to and prosecuted by national

Returning to the specific question of the relative gravity of crimes against humanity vis-à-vis war crimes, Judge Cassese maintained that murder charged as a crime against humanity rather than as a war crime must necessarily mean that the perpetrator not only intended death, but did so aware that the conduct was a common practice. Such conduct 'may imperil fundamental values of the international community to a greater extent than in the case where that offence should instead be labelled as a war crime' and thus 'must be regarded as inherently of greater gravity, *all else being equal*.' Likewise, murder of a group of persons, if classified as genocide, 'clearly is more serious than if defined as a war crime or as a grave breach of the 1949 Geneva Conventions.'⁸

As one commentator has noted, determination of relative gravity 'has extremely concrete implications' in the near-term context of an international criminal prosecution because 'it is crucial for the application of penalties.'⁹ If one accepts the Appeals Chamber's position, then, the same criminal conduct would result in the same penalty regardless of whether characterized as a crime against humanity or a war crime. On the other hand, it should entail a heavier penalty if characterized as a crime against humanity than if characterized as a war crime, according to the latter view. As Judge Cassese observed, the sentence, in turn, has an impact on deterrence because a heavier penalty should deter similar crimes.¹⁰

Much of the public debate and jurisprudence discussing the relative gravity of different categories of offenses and within categories of offenses indeed has focused on the impact on sentencing and on sentencing issues. The myopic focus on sentencing reflects institutional realities because sentencing determinations form the immediate context in which international jurists confront and decide questions of gravity.

Yet, as the appellant in *Tadić* argued in challenging his sentence, multiple legal commentators contend that 'the most potent deterrent against violations of international humanitarian law is not the length of the prison sentence itself, but the

tribunals. *ibid* para 13; Antonio Cassese, 'The Statute of the International Criminal Court: Some Preliminary Reflections,' 10 EJIL 144, 158 (1999).

⁸ Separate Opinion of Judge Cassese, *Prosecutor v. Tadić*, ICTY-94-1-A and IT-94-1-Abis (26 Jan 2000) paras 11-17 (emphasis in original).

⁹ Micaela Frulli, 'Are Crimes against Humanity More Serious Than War Crimes?' 12 EJIL 329, 330 (2001).

¹⁰ Separate Opinion of Judge Cassese, *Prosecutor v. Tadić*, ICTY-94-1-A and IT-94-1-Abis (26 Jan 2000) para 15.

subjective assessment of the offender as to the likelihood of his being indicted, arrested, tried and convicted.’¹¹ For intentional cultural heritage destruction, these latter combined factors – likelihood of indictment, arrest, trial, and conviction – likely do pose a greater deterrent effect than sentences alone.

During this workshop, participants can discuss whether they agree as to whether and why this might be so. But if true, the sometimes-behind-the-scenes determinations of gravity made on the prosecutorial side *in deciding whether to bring a prosecution before an international tribunal* might prove as (or more) critical than determinations made by judges in the often-much-later sentencing phase.

Application of the debate to determining the relative gravity of cultural heritage destruction

The express inclusion of cultural heritage destruction within the category of war crimes itself says something about the gravity of cultural heritage destruction relative to other international criminal offenses. Our modern international criminal codes were shaped by protracted debates over the relative gravity of criminal offenses – namely the identification and segregation of international offenses that were deemed sufficiently serious to include in an international criminal code, and thus to prosecute before international criminal tribunals, from those lesser international offenses that could be relegated or entrusted to national courts. The late-arriving decision to include cultural heritage destruction as a war crime in the statutes of international criminal tribunals ultimately has cemented its status as a serious international criminal offense.¹²

From this premise, the paper will proceed to consider whether either (a) the existence of a hierarchy of international crimes or (b) the relative gravity of cultural heritage destruction can be established. Put another way, can one conclusively measure or determine the relative gravity of cultural heritage destruction vis-à-vis other war crimes or vis-à-vis crimes against humanity or genocide based on such factors as:

- Placement of cultural heritage destruction within the international criminal code

¹¹ *Prosecutor v. Tadić*, Appeals Judgement, ICTY-94-1-A and IT-94-1-Abis (26 Jan 2000) para 41

¹² See Anne-Marie Carstens, *Safeguarding Cultural Property During Armed Conflict* (forthcoming OUP 2017) Chs 3, 5 (discussing development of international criminal law during the 20th century, including the post-First World War draft code developed by the Commission of Inquiry into Responsibility of the Authors of the War and Means of Punishment, the post-Second World War Nuremberg Tribunal, and the UN International Law Commission’s numerous drafts of a Draft Code of Crimes Against the Peace and Security of Mankind, which ultimately formed the blueprint for the ICTY Statute and the Rome Statute of the ICC).

- Placement of cultural heritage destruction within the prosecuting documents
- Prosecutorial decisions regarding which crimes to charge
- Frequency with which cultural heritage-related crimes are alleged simultaneous with other offenses
- Statements by drafters, prosecutors, or tribunal adjudicators
- Sentences assigned for cultural heritage destruction as a war crime compared to other offenses
- Other factors

A preliminary assessment suggests that some of these factors yield clues in certain circumstances as to the *existence* of a hierarchy. The longer version of this paper will identify the indications that seemingly support Judge Cassese’s position that a hierarchy of international crimes does exist, both between categories of offenses and within the offenses that fall under the umbrella of ‘war crimes.’ For a variety of reasons, though, these factors likely are insufficient to definitively establish the relative gravity of cultural heritage destruction vis-à-vis the other enumerated war crimes or crimes against humanity.

The inability to determine precisely the placement of cultural heritage crimes within this hierarchy nonetheless does not defeat the overall analysis. The factors *are* sufficient to establish the broad outlines of a hierarchy. For starters, the evidence suggests a traditional reluctance to prosecute and sentence offenders for cultural heritage destruction unless the offense was joined with other atrocities that typically received higher billing – suggesting that prosecutors and tribunal judges considered cultural heritage destruction less grave than other offenses. (In fairness, it also reflects the less-cynical view and the reality that cultural heritage destruction often occurred as just one facet of large-scale, orchestrated patterns of atrocities and violations.)

Since the first international criminal code was drafted a century ago following the First World War, the reluctance to prosecute cultural heritage destruction as the primary or sole offense – and the corresponding implications as to determinations of the relative gravity of cultural heritage destruction – has withered away significantly. The strongest evidence that contemporary prosecutors and judges view cultural heritage destruction more seriously comes from the recent prosecution and conviction of Ahmad al-Faqi al-Mahdi for the sole offense of intentionally directing attacks against protected objects in Timbuktu, Mali, specifically mausoleums and mosques, most of which were protected UNESCO World Heritage sites.¹³

¹³ *Prosecutor v. Al Faqi Al Mahdi*, Trial Chamber Judgment, Case No ICC-01/12-01/15 (27 September 2016). Al-Mahdi pleaded guilty and was sentenced by the ICC to nine years in prison. As evidence of the

At the same time, another development in international criminal law likely has operated against deterring future cultural heritage destruction, even though the development has been welcome and advantageous in several other respects. In particular, ICTY prosecutors increasingly cited examples of cultural heritage destruction – not to establish a war crime, as they did in the *Dubrovnik* cases against commanders held responsible for the 1991 shelling of the UNESCO World Heritage site of the Old City of Dubrovnik, but to establish both the *actus reus* and the *mens rea* for the offence of persecution as a crime against humanity and even as evidence of intent to commit genocide.¹⁴ This development is welcome and advantageous in that it helps erode the often-false exercise of segregating crimes against property from crimes against people when committed in the context of war. Put another way, in the words of UNESCO Director-General Irina Bokova, it reflects that attacks on cultural heritage often occur ‘as part and parcel of the same global strategy of persecution and destruction, which seeks to tear at the fabric of society, to deny human rights and to quash the rule of law.’¹⁵ Equating cultural heritage destruction with other conduct that evidences crimes against humanity or genocide might also serve as additional evidence that prosecutors and judges have ratcheted up their assessments of the seriousness of cultural heritage destruction.

From a deterrence perspective, though, a decision to *not* prosecute cultural heritage destruction as a separate offense but instead to rely on it as evidence to support

continuing debate, though, several international organizations protested the prosecution of al-Mahdi on the single charge and argued for the additional inclusion of other war crimes and crimes against humanity. See, e.g., Worldwide Movement for Human Rights, ‘Press Release: Mali: The hearing of Al Mahdi before the ICC is a victory, but charges must be expanded’ (30 September 2015) (stating that the represented organizations regretted that charges against al-Mahdi did not also include other war crimes and crimes against humanity, including torture, arbitrary detentions, rape, forced marriage, sexual slavery and other sexual violence)

¹⁴ See, e.g., *Prosecutor v Strugar* (Trial Judgment) ICTY-01-42-T (31 Jan 2005) (shelling of Dubrovnik as war crime); *Prosecutor v Jokić* (Sentencing Judgment) ICTY-01-42/1-S (18 Mar 2004) (shelling of Dubrovnik as war crime); *Prosecutor v Kordić and Čerkez* (Appeals Judgment) ICTY-95-14/2-A (17 Dec 2004) (persecution on political, racial and religious grounds as a crime against humanity); *Prosecutor v Krstić* (Appeals Judgment) ICTY Case No. IT-98-33-A (19 April 2004) (genocide). Because the judges are constrained to examining the offenses that have been charged by the prosecutors, they must sentence cultural heritage destruction on this same basis and not as a separate offense.

¹⁵ Irina Bokova, ‘Ending Impunity for War Crimes on Cultural Heritage: The Mali Case’ (22 June 2016), http://www.unesco.org/new/en/unesco/about-us/who-we-are/director-general/singleview-dg/news/ending_impunity_for_war_crimes_on_cultural_heritage_the_mali/.

prosecution of a crime against humanity or genocide likely diminishes its deterrence potential. The interests of deterrence likely are better served if cultural heritage destruction forms the core of the offense charged and if the sentence imposed for the destruction is both heavy and directly linked to cultural heritage destruction. The consequences of cultural heritage destruction are more likely to reach headlines and to reach future perpetrators in these circumstances than if the destruction is considered evidence of persecution or genocide in judgments typically numbering hundreds of pages long, though genocide convictions themselves usually receive significant public attention.

Unfortunately for prosecutors in international tribunals, they often must choose between these two approaches – to prosecute cultural heritage destruction as its own offense or, instead, to cite it as evidence to support a charge of persecution or genocide – to avoid the risk that the same conduct will be used for conviction on two different counts. The challenge therefore remains how to prosecute and sentence cultural heritage destruction in a way that reflects the relative gravity of cultural heritage destruction and serves the interests of deterrence.

STATUTE OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991 (ICTY STATUTE)

Article 1 Competence of the International Tribunal

The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

Article 2 Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed 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 a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.

Article 3 Violations of the laws or customs of war

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:

- (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- (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;**
- (e) plunder of public or private property.

Article 4 Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;

- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

Article 5
Crimes against humanity

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

Article 1
The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute....

Article 5
Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
 - (b) Crimes against humanity;
 - (c) War crimes;
 - (d) The crime of aggression.
- ...

Article 6
Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 7
Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture;
 - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - (i) Enforced disappearance of persons;
 - (j) The crime of apartheid;
 - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
2. For the purpose of paragraph 1:
 - (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
 - (b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
 - (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
 - (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
 - (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time....

Article 8
War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, "war crimes" means:
 - (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Wilful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;

- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.

(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:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- (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;
- (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;
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (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;
- (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;
- (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;**
- (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;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (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;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (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;
- (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;
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (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;

- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (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;
- (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed 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:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (iii) Taking of hostages;
- (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or acts of a similar nature.

(e) 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:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (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;
- (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;
- (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;
- (v) Pillaging a town or place, even when taken by assault;
- (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;
- (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- (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;
- (ix) Killing or wounding treacherously a combatant adversary;
- (x) Declaring that no quarter will be given;
- (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;
- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups....