

cannot be attributed to it and this is confirmed in Article 11 of the Draft Articles. However, responsibility may still arise if it is shown that there existed a duty to exercise due diligence and that diligence was not exercised. It was seen in Chapter 7 that states are under a duty to protect the premises of diplomatic missions within their territory. Therefore a failure to provide adequate protection will give rise to responsibility should a diplomatic mission be attacked by a group of private individuals. It was for this reason that the Irish government admitted responsibility for the sacking by private individuals of the British Embassy in Dublin in 1972.

### 10.4.3 Ultra Vires acts

The mere fact that a state organ or official acts outside municipal law or express authority does not automatically mean that a state will not be responsible for their actions. Article 10 of Part I of the Draft Articles provides that:

The conduct of an organ of a state, of a territorial government entity empowered to exercise elements of the governmental authority, such organ having acted in that capacity, shall be considered as an act of the state under international law even if, in the particular case, the organ exceeded its competence according to international law or contravened instructions concerning its activity.

An act may be attributed to a state even where it is beyond the legal capacity of the official involved, providing, as Verzijl noted in the *Caire Claim*,<sup>27</sup> that the officials 'have acted at least to all appearances as competent officials or organs or ... have used powers or methods appropriate to their official capacity'. In the words of the Commentary to the ILC Draft Articles, 'the state cannot take refuge behind the notion that, according to the provisions of its legal system, those actions or omissions ought not to have occurred or ought to have taken a different form'.

In the *Union Bridge Company Claim* (1924)<sup>28</sup> a British government official wrongly appropriated neutral property during the Boer War. The arbitration tribunal held Britain liable and commented:

That liability is not affected either by the fact that [the official appropriated the property] under a mistake as to the character and ownership of the material or that it was a time of pressure and confusion caused by war, or by the fact, which, on the evidence, must be admitted, that there was no intention on the part of the British authorities to appropriate the material in question.

The *Youman's Claim* (1926)<sup>29</sup> arose from a situation in which Mexican troops, who were sent to protect US nationals besieged by rioters, joined in the attack in which the US nationals were killed. The Mexican authorities argued that since the soldiers had acted in complete disregard of their instructions Mexico could not be responsible for the deaths. The tribunal recognised that a state might not be responsible for the malicious acts of officials acting in a personal capacity but held that a state would almost invariably be responsible for wrongful acts committed by soldiers under the command of an officer. The soldiers in this

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27 (1929) RIAA 575.

28 (1924) RIAA 138.

29 (1926) RIAA 110.

case had been under the immediate supervision and in the presence of their commanding officer.

The ILC recognised that there was a distinction between action by officials in a private capacity and those done in an official capacity, but provided little assistance on how the distinction was to be made. It will therefore depend on the facts of the particular event. It would appear that in the case of high level officials there is a greater presumption that their acts are within the scope of their authority and Brownlie suggests that in the case of military leaders and cabinet ministers it is inappropriate to use the dichotomy of official and personal acts. An analogy may be drawn with the rules relating to diplomatic immunity: diplomatic agents enjoy the highest level of immunity from jurisdiction whereas lower level diplomatic staff will only attract immunities in respect of activities carried out in the exercise of their official functions. An example of the distinction is seen in the *Mallen Claim* (1927).<sup>30</sup> Mallen, the Mexican consul in Texas was twice assaulted by the Deputy Constable of Texas. On the first occasion the constable had met Mallen in the street, had threatened to kill him and had slapped his face. On the second occasion, the constable had boarded a train on which Mallen was travelling, attacked him and then demanded the train stop so that he could take Mallen to jail. The tribunal found that the first assault had been a private act and no responsibility on the part of the US could arise. However on the second occasion it was clear that the constable had taken advantage of his official position. It was established that the constable had shown his official badge to assert his authority and the tribunal pointed out that a private individual would not have been able to take Mallen to jail. It therefore held the US responsible for the second assault since the constable had been acting with apparent authority even though his behaviour was wholly unreasonable and had been motivated by a private vendetta.

#### 10.4.4 *Insurrectionaries*

Article 11 of the Draft Articles makes it clear that the conduct of a person or persons not acting on behalf of the state will not be considered as an act of the state under international law. It therefore follows that the actions of rebels and insurrectionaries will not normally be considered as acts of the state and this is provided for in Article 14. However, the state is required to show due diligence, and may be liable if it has provided insufficient protection for aliens (the special protections for diplomatic and consular staff should be noted in this context).

Where an insurrectionary movement is successful and the revolutionaries take over the government, the new government will be liable for the actions of the insurrectionaries before they took power. In the *Bolivar Railway Company Claim* (1903) the tribunal held Venezuela liable for the acts of successful revolutionaries committed before they had taken power. The conclusion was justified on the grounds that:

Nations do not die when there is a change of their rulers or in their forms of government ... The nation is responsible for the obligations of a successful revolution from its beginning, because in theory, it represented *ab initio* a

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30 (1927) RIAA 173.

changing national will, crystallising in the finally successful result ... success demonstrates that from the beginning it was registering the national will.<sup>31</sup>

In *Short v Iran* (1987) the Iran-US Claims Tribunal considered the claim of an American national who had been evacuated from Iran three days before the Islamic revolutionary government took office. He was evacuated on the orders of his American employers because of the worsening situation in Iran at the time and he sought compensation from the new government of Iran for loss of salary arising out of what he alleged to be his expulsion from Iran. The tribunal stated:

Where a revolution leads to the establishment of a new government the state is held responsible for the acts of the overthrown government insofar as the latter maintained control of the situation. The successor government is also held responsible for the acts imputable to the revolutionary movement which established it, even if those acts occurred prior to its establishment, as a consequence of the continuity existing between the new organisation of the state and the organisation of the revolutionary movement.<sup>32</sup>

The tribunal, however, went on to point out that the same rules of attributability apply to revolutionary movements as apply to states. In other words, it must be established that the acts complained of are the acts of agents of the revolutionaries and not the acts of mere supporters.

## 10.5 International crimes

A distinction is sometimes drawn between international crimes and international delicts. Article 19 of Part I of the ILC Draft Articles provides that all breaches of international obligations are internationally wrongful acts. But an internationally wrongful act which results from the breach by a state of 'an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognised as a crime by that community as a whole' constitutes an international crime. All other wrongful acts are international delicts. Article 19(3) lists some examples of specific international crimes:

- serious breaches of the law on peace and security;
- serious breaches of the right to self-determination;
- serious breaches of international duties on safeguarding the human being (eg slavery, genocide, apartheid);
- serious breaches of obligations to protect the environment.

The Commentary to the Draft Articles makes clear that an international crime is not the same as a crime at international law. It is states who are responsible for international crimes, whilst individuals bear responsibility for crimes at international law.

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31 (1903) RIAA 445.

32 (1988) *AJIL* 140.

### 10.5.1 *The International Law Commission and the Draft Code of Crimes against the Peace and Security of Mankind*

It was recognised by the Nuremberg War Crimes Tribunal that ‘international law imposes duties and liabilities upon individuals as well as upon states’. The International Law Commission has now produced a set of Draft Articles dealing with the international criminal responsibility of individuals.

#### *A Introduction*

30 The General Assembly, in Resolution 177 (II) of 21 November 1947, requested the Commission to: (a) formulate the principles of international law recognised in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal; and (b) prepare a Draft Code of Offences against the Peace and Security of Mankind, indicating clearly the place to be accorded to the principles mentioned in (a) above. The Commission, at its first session in 1949, appointed Mr Jean Spiropoulos Special *Rapporteur*.

31 On the basis of the reports of the Special *Rapporteur*, the Commission: (a) at its second session, in 1950, adopted a formulation of the principles of international law recognised in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal and submitted these principles, with commentaries, to the General Assembly; and (b) at its sixth session, in 1954, submitted a Draft Code of Offences against the Peace and Security of Mankind, with commentaries, to the General Assembly.

32 The General Assembly, in Resolution 897 (IX) of 4 December 1954, considering that the Draft Code of Offences against the Peace and Security of Mankind as formulated by the Commission raised problems closely related to those of the definition of aggression, and that the General Assembly had entrusted a Special Committee with the task of preparing a report on a draft definition of aggression, decided to postpone consideration of the Draft Code until the Special Committee has submitted its report.

33 On the basis of the recommendations of the Special Committee, the General Assembly, in Resolution 3314 (XXIX) of 14 December 1974, adopted the definition of aggression by consensus.

34 The General Assembly, however, did not take action on the Draft Code, until on 10 December 1981 it invited, in Resolution 36/106, the Commission to resume its work with a view to elaborating the Draft Code and to examine it with the required priority in order to review it, taking duly into account the results achieved by the process of the progressive development of international law.<sup>33</sup>

35 The Commission, at its thirty-fourth session, in 1982, appointed Mr Doudou Thiam Special *Rapporteur* for the topic. The Commission, from its thirty-fifth session, in 1983, to its forty-third session, in 1991, received nine reports from the Special *Rapporteur*.<sup>34</sup>

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33 *Yearbook ... 1983*, Vol II (Part One), p 137, doc A/CN4/364; *Yearbook ... 1984*, Vol II (Part One), p 89, doc A/CN4/377; *Yearbook ... 1985*, Vol II (Part One), doc A/CN4/387; *Yearbook ... 1986*, Vol II, doc A/CN4/398; *Yearbook ... 1987*, Vol II (Part One); doc A/CN4/404; *Yearbook ... 1988*, Vol II (Part One), doc A/CN4/411; *Yearbook ... 1989*, Vol II (Part One), doc A/CN4/419 and Add 1 and Corr 1 and 2 (Spanish only); *Yearbook ... 1990*, Vol II (Part One), doc A/CN4/430 and Add 1; *Yearbook ... 1991*, Vol II (Part One), doc A/CN4/435 and Add 1 and Corr 1.

34 See *Yearbook ... 1991*, Vol II (Part Two), para 173.

36 At its forty-third session, in 1991, the Commission, provisionally adopted on first reading the draft articles of the Draft Code of Crimes against the Peace and Security of Mankind.<sup>35</sup> At the same session, the Commission decided, in accordance with Articles 16 and 21 of its Statute, to transmit the draft articles, through the Secretary General, to Governments for their comments and observations, with a request that such comments and observations be submitted to the Secretary General by 1 January 1993.<sup>36</sup> The Commission noted that the draft it had completed on first reading constituted the first part of the Commission's work on the topic of the Draft Code; and that the Commission would continue at forthcoming sessions to fulfil the mandate the General Assembly had assigned to it in para 3 of Resolution 45/41, of 28 November 1990, which invited the Commission, in its work on the Draft Code, to consider further and analyse the issues raised in its report concerning the question of an international criminal jurisdiction, including the possibility of establishing an international criminal court or other international criminal trial mechanism.<sup>37</sup>

37 At its forty-sixth session, the General Assembly in its Resolution 46/54 of 9 December 1991 invited the Commission, within the framework of the Draft Code to consider further and analyse the issues raised in the Commission's report on the work of its forty-third session (1991)<sup>38</sup> concerning the question of an international criminal jurisdiction, including proposals for the establishment of an international criminal court or other international criminal trial mechanism, in order to enable the General Assembly to provide guidance on the matter.

38 At its forty-fourth and forty-fifth sessions, in 1992 and 1993, the Commission had before it the Special *Rapporteur's* tenth and eleventh reports on the topic,<sup>39</sup> which were entirely devoted to the question of the possible establishment of an international criminal jurisdiction. The work carried out by the Commission at its forty-fourth (1992), forty-fifth (1993) and forty-sixth sessions on that question culminated in the adoption, at the forty-sixth session in 1994, of a draft statute of an international criminal court which the Commission submitted to the General Assembly with the recommendation that it convene an international conference of plenipotentiaries to study the draft statute and to conclude a convention on the establishment of an international criminal court.<sup>40</sup>

39 At its forty-sixth session in 1994, the Commission had before it the Special *Rapporteur's* twelfth report on the topic,<sup>41</sup> which was intended for the second reading of the Draft Code and focused on the general part of the draft dealing with the definition of crimes against the peace and security of mankind, characterisation and general principles. It also had before it the comments and observations of governments<sup>42</sup> on the Draft Code adopted on first reading at that session.<sup>43</sup> After considering the twelfth report, the Commission decided at

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35 *Ibid*, para 175. The Commission noted that it had already started to discharge this mandate and its work on this aspect of the topic was reflected in paras 106 to 165 of its report (*ibid*).

36 *Yearbook ... 1990*, Vol II (Part Two) (A/45/10), Chap II, sect C.

37 A/CN.4/442 and A/CN.4/449 and Corr 1 (English only).

38 See *Official Records of the General Assembly, Forty-ninth Session, Supplement No 10* (A/49/10), Chap II A.

39 A/CN.4/460 and Corr 1.

40 In document A/CN.4/448 and Add 1

41 *Yearbook ... 1991*, Vol II (Part Two), Chap IV.

42 A/CN.4/404 and Corr 1 (English and Russian only).

43 A/CN.4/L.522 and Corr 1 (English only), 2 (French only) and 3 (Spanish only).

its 2350th meeting to refer draft Articles 1 to 15, as dealt with in that report, to the Drafting Committee.

40 At its forty-seventh session, the Commission had before it the thirteenth report of the Special *Rapporteur*.<sup>44</sup> This report was prepared for the second reading of the Draft Code and focused on the crimes against the peace and security of mankind set out in Part II. After consideration of the thirteenth report, the Commission decided at its 2387th meeting to refer to the Drafting Committee Articles 15 (Aggression), 19 (Genocide), 21 (Systematic or mass violations of human rights) and 22 (Exceptionally serious war crimes) for consideration as a matter of priority on second reading, in the light of the proposals contained in the Special *Rapporteur's* thirteenth report and of the comments and proposals made in the course of the debate in plenary. This was done on the understanding that, in formulating those articles, the Drafting Committee would bear in mind and at its discretion deal with all or part of the elements of the following draft articles as adopted on first reading: 17 (Intervention), 18 (Colonial domination and other forms of alien domination), 20 (Apartheid), 23 (Recruitment, use, financing and training of mercenaries) and 24 (International terrorism). The Commission further decided that consultations would continue as regards Articles 25 (Illicit traffic in narcotic drugs) and 26 (Wilful and severe damage to the environment).

41 As regards Article 26 concerning wilful and severe damage to the environment, the Commission decided at its 2404th meeting to establish a working group that would meet at the beginning of the forty-eighth session to examine the possibility of covering in the draft Code the issue of wilful and severe damage to the environment, while reaffirming the Commission's intention to complete the second reading of the draft Code at that session in any event.

42 The Drafting Committee began its work on the second reading of the draft articles at the forty-seventh session of the Commission and completed its work at the present forty-eighth session.

43 At the forty-eighth session, the working group examining the issue of wilful and severe damage to the environment met and proposed to the Commission that the issue of wilful and severe damage to the environment be considered either as (i) a war crime, or (ii) a crime against humanity, or a separate crime against the peace and security of mankind.

44 The Commission at its 2431st meeting decided by a vote to refer to the Drafting Committee only the text prepared by the Working Group for inclusion of wilful and severe damage to the environment as a war crime.

45 The Commission considered the report of the Drafting Committee<sup>45</sup> at its 2437th to 2454th meetings from 6 June to 5 July 1996 and adopted the final text of a set of 20 draft articles constituting the Code of Crimes against the Peace and Security of Mankind.

46 The Draft Code was adopted with the following understanding: 'with a view to reaching consensus, the Commission has considerably reduced the scope of the Code. On first reading in 1991, the Draft Code comprised a list of 12 categories of crimes. Some members have expressed their regrets at the reduced

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44 The General Assembly unanimously affirmed the principles of international law recognised by the Charter of the Nürnberg Tribunal and the Judgment of the Tribunal in Resolution 95 (I) of 11 December 1946.

45 Agreement for the prosecution and punishment of the major war criminals of the European Axis (hereinafter Nürnberg Charter), 82 UNTS 279.

scope of coverage of the Code. The Commission acted in response to the interest of adoption of the Code and of obtaining support by governments. It is understood that the inclusion of certain crimes in the Code does not affect the status of other crimes under international law, and that the adoption of the Code does not in any way preclude the further development of this important area of law.'

*B Recommendation of the Commission*

47 The Commission considered various forms which the Draft Code of Crimes against the Peace and Security of Mankind could take; these include an international convention, whether adopted by a plenipotentiary conference or by the General Assembly; incorporation of the Code in the statute of an international criminal court; or adoption of the Code as a declaration by the General Assembly.

48 The Commission recommends that the General Assembly select the most appropriate form which would ensure the widest possible acceptance of the Draft Code.

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*D Articles on the Draft Code of Crimes against the Peace and Security of Mankind*

**Article 1 Scope and application of the present Code**

- 1 The present Code applies to the crimes against the peace and security of mankind set out in Part II.
- 2 Crimes against the peace and security of mankind are crimes under international law and punishable as such, whether or not they are punishable under national law.

**Article 2 Individual responsibility**

- 1 A crime against the peace and security of mankind entails individual responsibility.
- 2 An individual shall be responsible for the crime of aggression in accordance with Article 16.
- 3 An individual shall be responsible for a crime set out in Articles 17, 18, 19 or 20 if that individual:
  - (a) intentionally commits such a crime;
  - (b) orders the commission of such a crime which in fact occurs or is attempted;
  - (c) fails to prevent or repress the commission of such a crime in the circumstances set out in Article 6;
  - (d) knowingly aids, abets or otherwise assists, directly and substantially, in the commission of such a crime, including providing the means for its commission;
  - (e) directly participates in planning or conspiring to commit such a crime which in fact occurs;
  - (f) directly and publicly incites another individual to commit such a crime which in fact occurs;
  - (g) attempts to commit such a crime by taking action commencing the execution of a crime which does not in fact occur because of circumstances independent of his intentions.

**Article 3 Punishment**

An individual who is responsible for a crime against the peace and security of mankind shall be liable to punishment. The punishment shall be commensurate with the character and gravity of the crime.

**Article 4 Responsibility of states**

The fact that the present Code provides for the responsibility of individuals for crimes against the peace and security of mankind is without prejudice to any question of the responsibility of states under international law.

**Article 5 Order of a government or a superior**

The fact that an individual charged with a crime against the peace and security of mankind acted pursuant to an order of a government or a superior does not relieve him of criminal responsibility, but may be considered in mitigation of punishment if justice so requires.

**Article 6 Responsibility of the superior**

The fact that a crime against the peace and security of mankind was committed by a subordinate does not relieve his superiors of criminal responsibility, if they knew or had reason to know, in the circumstances at the time, that the subordinate was committing or was going to commit such a crime and if they did not take all necessary measures within their power to prevent or repress the crime.

**Article 7 Official position and responsibility**

The official position of an individual who commits a crime against the peace and security of mankind, even if he acted as head of state or government, does not relieve him of criminal responsibility or mitigate punishment.

**Article 8 Establishment of jurisdiction**

Without prejudice to the jurisdiction of an international criminal court, each state party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in Articles 17, 18, 19 and 20, irrespective of where or by whom those crimes were committed. Jurisdiction over the crime set out in Article 16 shall rest with an international criminal court. However, a state referred to in Article 16 is not precluded from trying its nationals for the crime set out in that Article.

**Article 9 Obligation to extradite or prosecute**

Without prejudice to the jurisdiction of an international criminal court, the state party in the territory of which an individual alleged to have committed a crime set out in Articles 17, 18, 19 or 20 is found shall extradite or prosecute that individual.

**Article 10 Extradition of alleged offenders**

- 1 To the extent that the crimes set out in Articles 17, 18, 19 and 20 are not extraditable offences in any extradition treaty existing between states parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.
- 2 If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider the present Code as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested state.



- 3 State Parties which do not make extradition conditional on the existence of a treaty shall recognise those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested state.
- 4 Each of those crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territory of any other state party.

**Article 11 Judicial guarantees**

- 1 An individual charged with a crime against the peace and security of mankind shall be presumed innocent until proved guilty and shall be entitled without discrimination to the minimum guarantees due to all human beings with regard to the law and the facts and shall have the rights:
  - (a) in the determination of any charge against him, to have a fair and public hearing by a competent, independent and impartial tribunal duly established by law;
  - (b) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - (c) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
  - (d) to be tried without undue delay;
  - (e) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him and without payment by him if he does not have sufficient means to pay for it;
  - (f) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (g) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
  - (h) not to be compelled to testify against himself or to confess guilt.
- 2 An individual convicted of a crime shall have the right to his conviction and sentence being reviewed according to law.

**Article 12 *Non bis in idem***

- 1 No one shall be tried for a crime against the peace and security of mankind of which he has already been finally convicted or acquitted by an international criminal court.
- 2 An individual may not be tried again for a crime of which he has been finally convicted or acquitted by a national court except in the following cases:
  - (a) by an international criminal court, if:
    - (i) the act which was the subject of the judgment in the national court was characterised by that court as an ordinary crime and not as a crime against the peace and security of mankind; or
    - (ii) the national court proceedings were not impartial or independent or were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted;
  - (b) by a national court of another state, if:

- (i) the act which was the subject of the previous judgment took place in the territory of that state; or
  - (ii) that state was the main victim of the crime.
- 3 In the case of a subsequent conviction under the present Code, the court, in passing sentence, shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

**Article 13 Non-retroactivity**

- 1 No one shall be convicted under the present Code for acts committed before its entry into force.
- 2 Nothing in this article precludes the trial of anyone for any act which, at the time when it was committed, was criminal in accordance with international law or national law.

**Article 14 Defences**

The competent court shall determine the admissibility of defences in accordance with the general principles of law, in the light of the character of each crime.

**Article 15 Extenuating circumstances**

In passing sentence, the court shall, where appropriate, take into account extenuating circumstances in accordance with the general principles of law.

PART II CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

**Article 16 Crime of aggression**

An individual who, as leader or organiser, actively participates in or orders the planning, preparation, initiation or waging of aggression committed by a state shall be responsible for a crime of aggression.

**Article 17 Crime of genocide**

A crime of genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, such as:

- (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 18 Crimes against humanity**

A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a government or by any organisation or group:

- (a) murder;
- (b) extermination;
- (c) torture;
- (d) enslavement;
- (e) persecution on political, racial, religious or ethnic grounds;
- (f) institutionalised discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population;

- (g) arbitrary deportation or forcible transfer of population;
- (h) arbitrary imprisonment; forced disappearance of persons;
- (i) rape, enforced prostitution and other forms of sexual abuse;
- (j) other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm.

**Article 19 Crimes against United Nations and associated personnel**

- 1 The following crimes constitute crimes against the peace and security of mankind when committed intentionally and in a systematic manner or on a large scale against United Nations and associated personnel involved in a United Nations operation with a view to preventing or impeding that operation from fulfilling its mandate:
  - (a) murder, kidnapping or other attack upon the person or liberty of any such personnel;
  - (b) violent attack upon the official premises, the private accommodation or the means of transportation of any such personnel likely to endanger his or her person or liberty.
- 2 This article shall not apply to a United Nations operation authorised by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organised armed forces and to which the law of international armed conflict applies.

**Article 20 War crimes**

Any of the following war crimes constitutes a crime against the peace and security of mankind when committed in a systematic manner or on a large scale:

- (a) any of the following acts committed in violation of international humanitarian law:
  - (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 of protected persons;
  - (viii) taking of hostages;
- (b) any of the following acts committed wilfully in violation of international humanitarian law and causing death or serious injury to body or health:
  - (i) making the civilian population or individual civilians the object of attack;
  - (ii) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;