

# War crimes

Prof. Dr. G.A.M. Strijards

Prof. Dr. Gerard Strijards  
Holding the Chair of  
International Criminal Law  
by special appointment at Groningen University  
Senior Legal advisor in international matters  
With the Higher Prosecutorial Office  
of the Netherlands

- Article 8 ICCS offers an Universal Recodification of the crime called “WAR CRIME”
- Two prerequisites:
  - the conduct must constitute a violation of International Humanitarian Law (IHL)
  - and must have been recognised under treaty or customary international law.

- **Not all violations of IHL amount to “war crimes”.**
- **The violation must be specifically criminalised** prompting individual
- responsibility according to treaty or customary law.
- Necessary elements:
  - existence of an armed conflict
  - nexus of the alleged conduct to that conflict
  - violation of a specific rule of IHL
  - the violation is criminalised under international law
  - the violation answers to alle requisite material and mental elements as defined in the criminalisation.

# Scope of IHL

- IHL= the law of armed conflict or ius in bello
- IHL sets rules on any situation of armed conflict
- irrelevant as to whether the conflict is international or internal
- some acts are prohibited in international conflicts alone
- some are in internal conflicts alone
- some in all conflicts

- **Purpose of IHL:**
  - To moderate negative effects of armed conflict in favour of
    - “protected persons” designated by IHL and
    - “protected objects” also designated by IHL
- **Basic assumption:**
  - “military necessity”  
cannot justify violations of IHL  
unless a rule provides so specifically
- **Targetted groups of protected persons:**
  - person not participating in the hostilities (mainly: civilians)
  - persons not longer participating in the hostilities (mainly: POWs)
  - Those protective rules are known as the “Geneva Laws”

- **Applicable to**
  - **wounded**
  - **sick**
  - **shipwrecked**
  - **prisoners of war**
  - **other persons detained, interned or otherwise deprived of liberty as a result of hostilities**
- **civilians,**  
particularly the population in an occupied territory,  
being in the hands of an adversary
  - **they are entitled to**
    - **humane treatment**
    - **a judicial examination of their legal status**
    - **in case of prosecution: fair trial guarantees**

- Four Conventions(1949)
  - and two additional Protocols (1977)
  - and customary international law (especially with a view to internal armed conflicts)
- Geneva law also protects:
  - property in the hands of an adversary
  - population, property and pre-existing order of an occupied territory
- The The Hague law
  - sets limits on how armed warfare and military operations may be conducted in armed conflict
- The The Hague IHL
  - prohibits to target any non-combatant with armed force or any object that does not qualify as a military objective.

# Military ???

- **Question:  
what is a “military objective”?**
- **Three IHL-principles:**
  - **distinction principle between legitimate and prohibited targets and persons**
  - **principle of proportionality**
  - **prohibition to employ**
    - **means or methods of warfare of a nature to cause**
      - **superfluous injury or**
      - **unnecessary suffering**



# The Hague

- Hague law sources:
  - 1907 Hague Regulations on the Warfare on land
  - 1977 first Additional Protocol to the Geneva Rules
  - 1899 and 1907 Hague Conventions
  - 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict
  - 1980 Classical Weapons Convention and its Protocols
  - Customary international law

- Overarching problem:  
asserting the existence of an armed conflict
- Completely irrelevant:  
how do the participating parties qualify the situation
- And:  
what reasons are invoked by states or parties to legitimate their use of force
- A non-international armed conflict is at stake
  - if there are armed confrontations within the boundaries of one single state involving armed confrontations not only of a sporadic nature between the authorities of that state and dissident armed forces or non-governmental organised armed groups or among such armed groups.

- The adversary group do need some organisation to make IHL applicable
- Nexus requirement:
  - There must be a genuine link to the armed conflict: Prosecutor versus Blaskic Case No. IT-95-14-T Judgment Trial Chamber 3 March 200 para. 69.
- Important:
  - a single and isolated act can be qualified as a war crime. No need for planning and large scale commission.

- Grave breaches of the Geneva law are particularly serious violations of that law
  - the conduct took place in the context of and was associated with an international armed conflict
  - the perpetrator was aware of the factual circumstances that established the existence of an armed conflict
  - targeted persons and objects were protected under Geneva law
  - the perpetrator was aware of the factual circumstances that established that protected status