

# War crimes

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- Is it possible to surrender a Dutch national to Bosnia based on a referral request by the ICTY?
- Must a Dutch Court abide by a referral request issued by the ICTY?
- Can the Dutch authorities refuse?

Central Balkan Region



- 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 all requisite material and mental elements as defined in the criminalisation.

On the run



# 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

