INTERNATIONAL CRIMINAL LAW

ICL

3 pages (max 6 pg) text on **a suspected / ongoing / decided ICL case** (e.g from www.icc-cpi.int/cases, www.icty.org/en/cases), to be discussed in class. Seminars start **TLL 29 Sept**, **HKI 3 Oct** (text may be submitted later). Please **register your topic** at tanelkalmet@gmail.com. **Registered topics are enlisted below.**

Open questions, open materials

Exam 50%

Essay 50%

Evaluation

Literature and sources

The course

ALTERNATIVES
- Cryer, Friman, Robinson, Wilmshurst: An Introduction to International Criminal Law and Procedure. Cambridge UP. www.nuhanovicfoundation.org/user/file/2010,_an_introduction_to_international_criminal_law_and_procedure,_r._cryer,_h._friman,_d._robinson,_e._wilmshurst.pdf
- Stahn: A Critical Introduction to International Criminal Law. Cambridge UP. www.cambridge.org/core/services/aop-cambridge-core/content/view/EFEDBED0B84359DFA281A9079047846F/9781108423205AR.pdf/A_Critical_Introduction_to_International_Criminal_Law.pdf?event-type=FTLA
- Cassese, Gaeta: Cassese's International Criminal Law. Oxford UP. global.oup.com/academic/product/casseses-international-criminal-law-9780199694921?cc=ee&lang=en&

(Corso modelo sobre DIP. www.icc-cpi.int/get-involved/Pages/derecho-internacional-penal.aspx)

- ICC. www.icc-cpi.int/
- Rome Statute. www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf
- Elements Of Crimes. www.icc-cpi.int/resource-library/Documents/ElementsOfCrimesEng.pdf
- Rules of Procedure and Evidence. www.icc-cpi.int/resource-library/Documents/RulesProcedureEvidenceEng.pdf
- etc www.icc-cpi.int/resource-library#legal-texts

- ICTY. www.icty.org/
- ICTR. unictr.irmct.org/
- Nuremberg Charter: www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf
- Humanitarian Law. www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions; ihl-databases.icrc.org/applic/ihl/ihl.nsf/
- en.wikipedia.org/wiki/Hague_Conventions_of_1899_and_1907
- en.wikipedia.org/wiki/Geneva_Conventions
- Coalition for the ICC. www.coalitionfortheicc.org/

- Nurenberg trials and other predecessors: Ferencz: International Criminal Courts: The Legacy of Nuremberg. core.ac.uk/download/pdf/46711856.pdf
- History of ICL: Slye, van Schaack: A Concise History of International Criminal Law. digitalcommons.law.scu.edu/facpubs/626/

Registered topics TLL:
Ahmad Al Faqi Al Mahdi; Ratko Mladic; Omar H. A. Al Bashir; Gotovina et al.; Thomas Lubanga Dyilo; Martic; Plavsic; Al-Hassan; Deronjic; Abdallah B. A. Nourain; Dominic Ongwen; Joseph Kony et al; Pinochet;

Registered topics HKI:
Germain Katanga; Mathieu Ngudjolo Chui; Ivan (John) Demjanjuk; Bosco Ntaganda; Jean-Pierre Bemba; Saddam Hussein; M. M. Busyf Al-Werfalli; Uhuru Kenyatta; Thomas Lubanga Dyilo; Omar H. A. Al Bashir; Abu Garda; Callixte Mbarushimana; Joseph Kony et al; Goran Jelisic; Yezidi genocide; Pinochet; Simone Gbagbo; Crimes in Bolivia; Rohingya genocide; Republic of Philippines

Meaning

Jurisdiction of municipal criminal law
- Territorial
- Personal
- Protection
- Universal
- Cooperation
- Procedure

International Law
- Criminal
- Literal

Kress: International Criminal Law. MPI. www.legal-tools.org/doc/de7638/pdf/

Broader meaning
- Piracy
- Slave trade
- Other (?): apartheid, torture, terrorism

Transnational crime
- Substance and procedure

Supranational (jus cogens, erga omnes)

stricto sensu: ICC
- Genocide
- War crimes
- Crimes against humanity
- Crime of agression

Genocide convention www.un.org/en/genocideprevention/genocide-convention.shtml; en.wikipedia.org/wiki/Genocide_Convention

Humanitarian Law / Jus in bello en.wikipedia.org/wiki/International_humanitarian_law
- cf Human Rights Law
- Codified
  - The Hague 1899, 1907
  - Geneva 1949, 1977 etc
- ICRC 1863 (Henri Dunant 1828–1910)
- Lieber Code 1863 (Franz Lieber 1798–1872) avalon.law.yale.edu/19th_century/lieber.asp
- Versailles Peace Treaty 1919 Art 227 etc, Sevres PT 1920 Art 230
- Nurenberg & Tokyo Trials, customary en.wikipedia.org/wiki/Crimes_against_humanity

Martens clause (Friedrich Fromhold v. Martens 1845–1909): *Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.*

Jus ad bellum
- Kellogg-Briand Pact 1928 en.wikipedia.org/wiki/Kellogg-Briand_Pact
- Crime against peace

Kampala 2010 asp.icc-cpi.int/en_menus/asp/crime%20of%20aggression/Pages/default.aspx

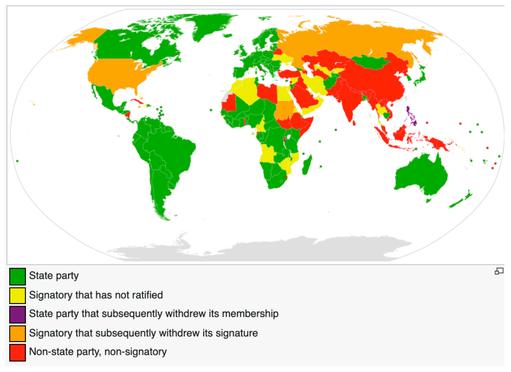
Legitimation
- Protection of peace, security, well-being of the world
  - Contextuality – use of force (usually by state)
- Avoiding impunity
  - Prevention, deterrence
  - Retribution
  - Rehabilitation
  - Individual accountability
  - Truth-finding

ICRC. https://www.icrc.org/en/download/file/1070/general-principles-of-criminal-law-icrc-eng.pdf

Principles
- Legality
  - Non-retroactivity Art 11; 24 RS
  - No analogy
  - Statutory limitation, amnesty and other obstacles to prosecution
  - Nullum crimen sine lege Art 22–23 RS
- Ne bis in idem
  - Art 20 RS
  - Complementarity
    Carter: The Principle of Complementarity and the International Criminal Court: The Role of Ne Bis in Idem. scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1182&context=facultyarticles#:~:text=Complementarity%20is%20a%20principle%20which,but%20not%20supersede%2C%20national%20jurisdiction.
- Individual responsibility
  - cf State Responsibility
  - Immunities
  - Command responsibility www.icrc.org/en/download/file/1087/command-responsibility-icrc-eng.pdf; www.legal-tools.org/doc/7441a2/pdf/

Sources
- Art 21 RS
  - National laws
  - Case law
  - Interpretation
  - Human rights, non-discrimination Art 21(3) RS
- Rome statute
- Sources of international law: primary and subsidiary

Ratification status en.wikipedia.org/wiki/States_parties_to_the_Rome_Statute_of_the_International_Criminal_Court



Jurisdiction
- Jurisdiction issues
  - Incorporation of international crimes into domestic law
  - Universal jurisdiction
    - Duty to prosecute
- Crime of aggression (Art 15bis, 15ter RS)
- Ratione materiae Art 5 RS
- Ratione temporis Art 11 RS
- Referral by a state (Art 13(a); 14 RS)
  - If committed in a territory of a MS or by a national of a MS (Art 12(2) RS)
- Referral by UN Security Council (Art 13(b) RS)
- Prosecutor proprio motu (Art 13(c); 15 RS)
  - If committed in a territory, or by a national of a non-MS accepting the jurisdiction of ICC (Art 12(3) RS)
- Deferral of proceedings by UN Security Council for 12 months (Art 16 RS)
- Authorisation by Pre-Trial Chamber
  - Admissibility (Art 17–19 RS)
  - Interests of justice
  - Initiation of an investigation (Art 53 RS)
    - Reconsideration request by PTC proprio motu or if applied by the State
    - Interests of victims
    - Gravity
    - Facts
    - Investigation
      - Surrender to the court (Art 60-61 RS)
      - Arrest warrant
    - Powers and tools (Art 54, 56-59 RS)
    - Reconsiderable prosecutorial discretion

Structure of crime
- Material element
  - Conduct
    - Act
    - Omission
  - Consequence and causation
    - Harm
    - Danger
  - Circumstances: contextual element etc
- Mental element
  - Intent and knowledge standard (Art 30 RS)
    - Will to cause a consequence or awareness that it will occur (dolus directus)
    - Intent for conduct and consequences
      - 'Specific intent' to destroy the group (genocide)
    - Knowledge for circumstances and consequences
      - Knowledge of factual circumstances, legal perfection not relevant
  - Unless otherwise provided
    - (Wording issues: will / intent, with awareness …)
    - Negligence e.g. Art 28 RS (Command Resp.) 'should have known'
    - Dolus eventualis, recklessness and negligence ('wantonly', 'wilfulness' infer recklessness)
      - Dolus eventualis: knowledge that specific result 'may happen' and 'makes peace' with the fact
      - RS does not define, ICTY and ICTR have accepted in their cases
    - Recklessness: conscious disregard of a risk that specific result will occur as a result of a conduct
- Exclusion of responsibility
  - Military necessity, reprisals against unlawful attack – probably
  - Self-defense against imminent and unlawful use of force (incl threats) against protected interests
    - Life, bodily integrity, freedom of movement of any person (plus essential property for some war crimes)
    - Immediately impending, or already begun and ongoing
    - Proportionate measures; intent to defend the interest
    - Distinct from state's right to self-defense
  - Duress and necessity if threats to life and limb of a person, by objective circumstances / other person
    - Specific threat out of the person's control
    - Necessary and reasonable measures; intent to avert the threat; choice of lesser evil
  - Mistake (Art 32 RS)
    - Fact
    - Law
    - Depends whether a defense; ignorance of law does not excuse in general
  - Superior order
    - Respondeat superior, absolute liability, or manifest illegality principle?
    - Art 33 RS
  - Other
  - Mental disease or defect
    - Consent of victim is no defense
    - No measures foreseen to replace punishment
  - Intoxication, except voluntary or reckless self-intoxication
    - At the time the act committed there was no capacity to understand its illegality, or to control his conduct

Exceptional defense for war crimes if legal duty to obey, did not know the order was illegal, and the illegality was not manifest

Order to commit genocide or crime agains humanity is manifestly illegal

Obstacles to prosecution
- External to the structure of crime
  - Deferral by UN SC (Art 16 RS)
  - Threshold for war crimes – large-scale plan or policy Art 8(1) RS
  - Other
    - Manifest pattern for genocide
    - Crime of aggression (Art 15bis, 15ter RS)
- Subject less than 18 years of age at the time of commission Art 26 RS
- Ne bis in idem, incl acquittal or conviction by a national court Art 20(3) RS
- Statute of limitation and immunity are no obstacles for the ICC (Art 27(2); 29 RS)

Subject
- Art 25(3) RS
  - Special subjects for crime of agression
  - Command/superior responsibility
    - = command responsibility but includes also civil superiors, also beyond public sphere; Art 28 RS
    - Subordination de jure or de facto: "ability to prevent and punish … the offences" (ICTY)
    - Failure to take necessary and reasonable preventive or repressive measures
    - Knew or should have known about the crime
    - Crime committed by the subordinate was a result of the failure to control by the superior
    - Relevant if the crime to be committed is not reported – then may be asked if there was a duty to establish a reporting mechanism
    - If one member commits sth in excess, all members may be responsible for that if it was a natural, forseeable consequence of the common conduct
  - Conspiracy in customary law
  - Individual or joint commission, or commission-by-means
    - Joint commission – common plan, design or purpose – may be deduced from the cooperation
    - Commission-by-means – not relevant if the immediate actor is responsible or not
    - Alternatives – common purpose is not necessary if common design present; also systemic commission (e.g. in a concentration camp) – all individuals are responsible for the acts of the group
  - Participation by ordering, inducing or abetting
    - Public incitement to genocide is a crime itself (Art 25(3)(e) RS)
    - Aiding, abetting or otherwise assisting
      - An individual
        - Incl. providing means, encouraging (even being present) – no causal link to the crime required
      - A group of at least 3 persons acting with a common purpose
        - Facilitating the crime, being aware of supporting the commission thereof and knowing the actor's intent
      - Not present in customary law

Stages of crime
- Conspiracy – agreement to commit a crime
  - Nuremberg: conspiracy to commit a crime of aggression is a crime
- Planning – design if the commission of a crime
  - Aiding a group Art 25(3)(d) RS
  - Gen. Conv: Conspiracy to commit genocide is a crime
- Attempt – substantial step taken toward carrying out the crime
- Preparation – any dangerous conduct intended to further a planned crime
  - Customary law: crime of agression; ICTY – also for other crimes
  - RS does not criminalise
- Art 25(3)(f)
  - If the crime is not carried out due to circumstances independent of the person's intentions, it is an attempt
    - No punishment
  - If the crime is not carried out because the person abandons the effort of commission, or prevents the completion, it is abandonment (voluntary loss of criminal purpose)
  - Participation in an attempt?

Omission
- Customary law – violation of a duty to act
- No provision in RS
- Substantial law – a crime defined as an omission (e.g. starvation)

Organisation
- Legal personality (Art 4 RS)
- Establishment and seat (Art 3 RS)
- Composition and administration (Art 34-52 RS)

Immunity
- General international law: principle of sovereignty
  - State acts (ratione materiae)
    - ICL: ratione materiae immunity does not affect responsibility for international crimes (even an aggravating circumstance) Art 27(1) RS
  - Ratione personae (heads of state and government, diplomats, foreign ministers)
    - Ratione personae immunity is just an obstacle for prosecution during tenure of office
    - ICL: an obstacle for prosecution in national courts but not in the ICC (Art 27(2) RS)
- Extends to national courts (cf Pinochet case in UK,1998)

Multiple crimes
- Same or separate acts?
  - Separate acts are prosecuted separately
  - Art 78(3) RS: joint sentence, minimum of highest sanction
- ICTY Mucić: If same conduct but several provisions, multiple convictions are possible if there are distinct elements not covered by other provisions. As a principle, more specific provision should be preferred if all provisions have not been proven to be breached.
  - Individual acts – specificity analysed
  - ICTY, ICTR: genocide not lex specialis vis-à-vis crimes against humanity
- Gravity of crime and individual circumstances of the person to be taken into account
- Art 78 RS

Penalty
- Art 77 RS
  - Imprisonment of up to 30 years or life imprisonment if justified
  - Fine as additional penalty
  - Forfeiture of proceeds of crime
  - Trust fund for the benefit of victims (Art 79 RS)
- Enforcement by states under supervision of ICC Art 103–109 RS
  - No right to review by state Art 105 RS
  - Subsequent prosecutions by the execution state if approved by ICC Art 108 RS

Appeal
- Grounds
  - Error
    - Procedure
    - Fact or law
  - Fairness of procedure
  - Disproportionality of penalty
- Right to reverse or amend a decision, or to order a new trial (Art 83(2) RS)
- Revision (Art 84 RS) if miscarriage of justice

Trial
- Rights of the accused (Art 67 RS)
  - Witness protection (Art 68 RS)
  - Evidence (Art 69 RS)
  - Fine
  - Misconduct in court (Art 71 RS)
  - Rules of Procedure and Evidence
  - Admission of guilt (Art 65 RS)
  - Jurisdiction over the offences against the administration of justice (Art 70 RS)
  - Imprisonment up to 5 y and/or fine
  - Presumption of innocence (Art 66 RS)
  - Convincing the Trial Chamber beyond reasonable doubt
    - Decision (Art 74 RS)
      - Preferably unanimous, otherwise majority
      - Sentencing (Art 76 RS)
- Prosecutor (Art 81(1)(a), (b), (2)(a) RS)
  - Convicted person (Art 81(1)(b), (2)(a) RS)
  - Conviction, acquittal and sentencing
  - Other decisions (Art 82 RS)
  - No suspensive effect (Art 82(3) RS)

CRIMES AGAINST HUMANITY
- Acts
  - Killing
    - RS: includes intentional infliction of conditions of life, i.a. deprivation of access to food and medicine, calculated to bring about the destruction of part of a population
    - Even by reckless disregard for human life
    - Causing death of another
  - Extermination
    - cf genocide; no group defined
    - direct or indirect causing of death
      - Murder on a massive scale
    - ICTR, ICTY: death of a large number of people
    - *calculated* does not mean a purpose to destroy a group
    - EOC: causing at least one death
  - Enslavement
    - *deportation* if border is crossed
    - RS: the exercise of any or all of the powers attaching to the right of ownership over a person, includes the exercise of such power in the course of trafficking in persons
    - Slavery Convention 1926
    - Nurenberg: forced labour
    - EOC: purchasing, selling, lending or bartering; similar deprivation of liberty
    - often: gain
    - UN CATOC protocol 2000 on trafficking
    - Customary law: intrastate forcible transfer is an inhumane act
  - Torture
    - Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity
      - e.g stripping
      - Rape as gender-neutral invasion
        - violence or threat to use violence
        - presumed in armed conflict and captivity
      - Forced pregnancy - genetic purpose
      - Prostitution - financial / other advantages to be received
      - Re Kunarac: new standard of involuntariness
    - Crime of Appartheid
      - UN Convention 1973
      - RS: 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
      - purpose required
    - Enforced disappearence
    - Persecution against any identifiable group / collectivity on political, racial, national, ethnic, cultural, religious, gender, 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
      - link to other acts – not required in customary law
    - Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health
      - e.g. bodily injury, human experiments
      - comparable in nature and severity
      - *intention* does not mean purpose
  - Imprisonment / other severe deprivation of physical liberty in violation of fundamental rules of international law
    - Deportation / forcible transfer of population
      - at least one victim
      - Duration affects severity
      - E.g. camp, ghetto, house arrest
      - Arbitrary vs with lawful ground and procedure
      - RS: forced displacement of the persons by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law
        - evacuation during hostilities not illegal
        - *lawful* under international standard
        - no permanent damage to health needed
      - acquisition for compensation, lack of opposition, and duration are not decisive
      - threat, force or other coercion
        - acts
        - deception, abuse of power, vulnerability, detention etc
      - Re Kunarac 2001 ICTY
        - forms: sex, exploitation etc
        - loss of free will
        - control / ownership of autonomy, freedom of choice or movement
      - catalogue of acts: Re Kvočka 2001 ICTY
      - RS intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity
        - group defined by the perpetrator
        - EOC: at least one victim
        - fundamental rights: UN Bill of Rights
        - e.g. hate speech (Re Nahimana ICTR)
        - *intention* does not mean purpose
        - Mens rea
          - attack on property rights destroying economic livelihood; single hate crime against property excluded
          - Discriminatory motive against the group required
          - customary law included political, racial and religious grounds only
          - sexual orientation, economic and social grounds not *impermissible under international law*
    - e.g. anti-Jewish laws
      - cf Re Tadić ICTY
        - word used since Nuremberg, without definition
        - cf refugee law: no analogy
  - Widespread or systematic attack (mass crimes)
    - Policy element: state or organisation (Art 7(2)(a) RS)
    - *Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.*
    - Against civilian population
      - No 'special group'; political and social groups may be victims
        - Not necessarily the whole population
        - Incl own nationals
      - Holders of state or other organised power used against civilians excluded
      - Subject - may be every person
      - Military people may be among victims
        - members of organised power using force not covered
      - protected status (IHL) irrelevant
      - Knowledge that attack is taking place and the act is part of it
      - No 'specific intent'
        - Discriminatory motive not needed, cf ICTR
        - Customary: if an act of killing, torture, etc is discriminatory, it is *persecution* as lex specialis
      - Customary law: an inhumane act
      - cf Art 3 ICTR: 'national, political, ethnic, racial, or religious grounds'
      - Multiple acts in total; any mistreatment will do (not necessarily use of force)
      - Rights of the accused (Art 67 RS)
      - Presumption of innocence (Art 66 RS)
    - Armed conflict irrelevant (Art 3 ICTR)
      - Art 6(c) Nurenberg Charter
      - Customary law; Re Eichmann 1968, Barbie 1985, etc
      - cf international or internal armed conflict (Art 5 ICTY)
      - Massacres of Armenians referred to as 'crimes against humanity' in 1915
      - Martens clause: 'laws of humanity'
      - Concept
        - Phenomenon

CRIME OF AGGRESSION
- Nuremberg: crime against peace – planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing
  - Kampala 2010
  - RS: planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the UN.
- Act of Aggression Art 39 UNC explained in UNGA Res 3314 1974
  - The use of armed force by a state against the sovereignty, territorial integrity or political independence of another state
  - exceptions: self-defense, collective security
  - incl acts of lesser intensity than war
  - UN Charter: ban on the use of force against the territorial integrity or political independence of any state
  - Prevention and prohibition of war: League of Nations, Geneva Protocol 1924, Kellogg-Briand Pact 1928
  - Hague Convention for the Pacific Settlement of International Disputes 1899/1907: mediation to be used if circumstances permitted
  - *jus ad bellum*
  - War as legitimate political tool to pursuit the interests of a sovereign state
  - UN COT 1984 but without purpose element and special subjects
  - no purpose needed cf. ICTY, ICTR
- UNGA Res 95 1946: customary law crime
  - purpose not required
  - Leadership
  - intensity and degree, not all aggresive acts criminal
  - aggressive aim

GENOCIDE
- Protected groups
  - National
  - Ethnic
    - e.g national minorities
    - cultural tradition, common history
    - physical traits; incl tribal groups
  - Racial
    - sects included, atheists not (cf political group)
  - Religious
  - Social and political groups not included in the Convention and in RS – not all 'stable groups'
  - Membership
    - Subjective approach
      - Perception by others
    - Objective approach
      - Self-perception, identity
    - 'Cultural genocide'
- Acts
  - Killing
    - one victim suffices
    - actual, not putative member of the group; otherwise attempt
  - Serious bodily or mental harm
    - incl sexual violence
    - not necessarily permanent
  - Destructive conditions of life
    - e.g enslavement, starvation; not deportation as such
  - Measures to prevent births
  - Forcibly transferring children
  - all with the purpose of destoying the group physically or socially
    - cf 'ethnic cleansing' with an aim of expulsion
- Systematic? (cf EOC)
  - Specific genocidal intent to destroy a group (not individual), in whole or in part
- Convention 1948
  - Concept 1943
    - Raphael Lemkin 1900–1959
    - Phenomenon
    - Nurenberg: no mention; 'extermination' instead
    - excl provocative language
  - Conspiracy
  - Direct and public incitement (cf Art 25(3)(e) RS)
    - incl by euphemisms

WAR CRIMES
- Acts
  - against humanitarian operations
  - against property and other rights
    - *Declaring abolished, suspended or inadmissible in a court the rights and actions of the hostile party*
    - Destruction in occupied territory
      - mere damage not covered
      - recklessness
      - protected property only, extensively
    - Expropriation
      - Pillaging of a place
      - Confiscation of enemy property
      - to own use by force
      - wantonly
      - military necessity exception
      - against the will, period and motive irrelevant
  - against protected person
    - Killing
      - Killing and wounding of persons not involved in combat
      - formerly attack on dignity
      - Rape and other sexual violence
      - Humiliating and degrading treatment
        - possible by omission
        - dead persons also protected
        - must be an outrage; acts that undermine self-respect
      - Torture
        - specific purpose required
        - Mutilation
          - permanent harm
        - mistreatment
          - Biological, medical, scientific experiments
          - EOC: serious danger to physical or mental health
          - Causing suffering / injury to health
            - no purpose
      - Hostage-taking
      - affecting liberty
        - Slavery
        - Forced labour
        - Delay in repatriation
        - Compelled service in military forces / operations of war against own country
        - Unlawful confinement
      - Punishment without regular trial
      - Inhuman or cruel treatment
      - other serious injuries, physical or mental
      - Deportation / forcible transfer
      - Transfer of own civilian population to occupied territory
      - Use of child soldiers
      - incl indirectly, motive not relevant
      - Not in RS
      - Nuclear, chemical, biological, some conventional weapons
      - Causing unnecessary suffering
      - Prohibited ammunition
      - not in RS; as act against dignity etc.
      - volunteering not illegal
      - Poison
        - Poison gas and similar substances
        - unde-fended places
        - terror against civilians
          - not in RS; Re Galić
        - Attack on non-military targets
          - attack on civilians
          - civilian objects
            - disproportionate incidental damage
            - specially protected objects (religion, education, hospitals etc)
            - persons / objects using protected emblems
            - purpose required
          - serious consequences
          - Starvation of civilians
          - Improper use of insignia
          - Use of human shields
          - Perfidious killing or wounding
          - Giving no quarter
          - prohibited means
          - prohibited methods
  - Nexus
    - wilful – incl recklessness
    - Personal reasons of the act do not exclude war crime
    - The conduct must be committed because and with awareness of the conflict
    - Indicated by the position of the subject in the party, or by the act committed by a civilian being ordered or tolerated by the party
  - Time and place
    - Since the initiation until peace; on territories of states concerned, or territory under the control of a non-state party, disregarding the site of actual combat
  - Armed conflict
    - Occupation of territory without armed resistance
    - Also if war declared but force not used
    - other international conflicts where a party is de facto an organ of another state
    - Inter-state: by a state against a territory of another state (incl 'first shot') [¶]
    - Intra-state: state vs organised armed group / between such groups
    - international: wars of national liberation (people against colonial domination / alien occupation / against racist regimes in the exercise of their right of self-determination)
    - mere threats excl
    - not relevant if 'war' or 'police action'
    - Re Tadić: serious violation – rule of IHL protecting important values, grave consequences for the victim
    - ICTR Statute 1994; Re Tadić ICTY 1995: also internal armed conflict having certain intensity and duration (difference in scope may result from IHL rules)
    - excl internal disturbances, riots, isolated acts of violence Art 8(2)(d,f) RS
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        - Phenomenon and concept
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        - G 1949: grave breaches under universal jurisdiction
        - ¶ in international conflicts: GI-III - sick/wounded, shipwrecked, POW members of armed forces and similar; GIV - persons in the enemy's hands ot covered by GI-III
        - in non-international conflicts Art 3(1) GI-IV
        - soldiers may kill enemy soldiers but not men
        - Not in RS
        - Nuclear, chemical, biological, some conventional weapons
        - Causing unnecessary suffering
        - Prohibited ammunition
        - not in RS; as act against dignity etc.
        - volunteering not illegal
        - Poison
        - Poison gas and similar substances
        - unde-fended places
        - terror against civilians
        - Attack on non-military targets
        - specially protected objects (religion, education, hospitals etc)
        - persons / objects using protected emblems
        - purpose required
        - Perfidious killing or wounding
        - Starvation of civilians
        - Improper use of insignia
        - Use of human shields
        - Giving no quarter
        - prohibited methods
        - prohibited means
        - serious consequences
        - Delay in repatriation
        - Forced labour
        - Slavery
        - Hostage-taking
        - affecting liberty
        - Compelled service in military forces / operations of war against own country
        - Unlawful confinement
        - Punishment without regular trial
        - Inhuman or cruel treatment
        - Causing suffering / injury to health
        - Biological, medical, scientific experiments
        - EOC: serious danger to physical or mental health
        - Deportation / forcible transfer
        - Transfer of own civilian population to occupied territory
        - Use of child soldiers
        - incl indirectly, motive not relevant
        - Killing and wounding of persons not involved in combat
        - Killing
        - Rape and other sexual violence
        - Humiliating and degrading treatment
        - Torture
        - Mutilation
        - Biological, medical, scientific experiments
        - Causing suffering / injury to health
        - Destruction in occupied territory
        - Expropriation
        - Pillaging of a place
        - Confiscation of enemy property
        - to own use by force
        - wantonly
        - military necessity exception
        - against the will, period and motive irrelevant
        - Giving no quarter
        - Use of human shields
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  - Nexus
    - wilful – incl recklessness
    - Personal reasons of the act do not exclude war crime
    - The conduct must be committed because and with awareness of the conflict
    - Indicated by the position of the subject in the party, or by the act committed by a civilian being ordered or tolerated by the party
  - Time and place
    - Since the initiation until peace; on territories of states concerned, or territory under the control of a non-state party, disregarding the site of actual combat
  - Armed conflict
    - Occupation of territory without armed resistance
    - Also if war declared but force not used
    - other international conflicts where a party is de facto an organ of another state
    - Inter-state: by a state against a territory of another state (incl 'first shot') [¶]
    - Intra-state: state vs organised armed group / between such groups
    - international: wars of national liberation (people against colonial domination / alien occupation / against racist regimes in the exercise of their right of self-determination)
    - mere threats excl
    - not relevant if 'war' or 'police action'
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