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 21 Sept**, **HKI 25 Sept** (text may be submitted later). Please **register your topic** at tanel.kalmet@tlu.ee. **Registered topics are enlisted below.**

INTERNATIONAL CRIMINAL LAW

The course
Evaluation
Exam 50%
Open questions, open materials
Essay 50%
Literature and sources

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/
- Nurenberg 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:
Ruto and Sang;
Lubanga;
Ahmad Al Faqi Al Mahdi;
Gicheru;
Ali Abd Al Rahman;
Al Bashir;
Srebrenica;
Palestine;
Abu Garda;
Gbagbo & Blé;
Taylor;
Tolimir;
Bemba;
Harun;
Stakic;
D. Milosevic;
Katanga

Registered topics HKI:
Kambanda;
Aleksovski;
Lubanga;
Al-Hassan;
Delic;
Gbagbo and blé Goudé;
Babić;
Dominic Ongwen;
Ghaddafi;
Banović;
Milan Martic;
Al Bashir;
Lukić;
Yegatom and Ngaïssona;
Armenia;
Al Faqi Al Mahdi;
Taylor;
Galic;
Ntaganda

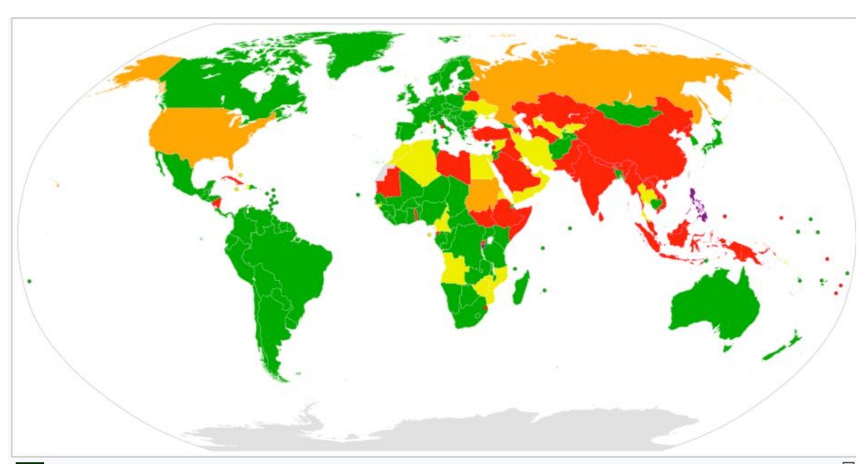
Meaning
Literal – Criminal – Law – International
Jurisdiction of municipal criminal law – Personal, Territorial, Protection, Universal
Cooperation – Procedure
Transnational crime – Substance and procedure
Kress: International Criminal Law. MPI. www.legal-tools.org/doc/de7638/pdf/
Supranational (jus cogens, erga omnes)
Broader meaning – Piracy; Slave trade; Other (?): apartheid, torture, terrorism
stricto sensu: ICC
Genocide – Genocide convention www.un.org/en/genocideprevention/genocide-convention.shtml; en.wikipedia.org/wiki/Genocide_Convention
War crimes – Humanitarian Law / Jus in bello en.wikipedia.org/wiki/International_humanitarian_law
Codified – The Hague 1899, 1907; Geneva 1949, 1977 etc
cf Human Rights Law
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
Crimes against humanity – Nurenberg & Tokyo Trials, customary en.wikipedia.org/wiki/Crimes_against_humanity
Crime of agression – 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

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.*

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

Principles
ICRC. https://www.icrc.org/en/download/file/1070/general-principles-of-criminal-law-icrc-eng.pdf
Legality – Nullum crimen sine lege Art 22–23 RS – Non-retroactivity Art 11; 24 RS; No analogy
Jurisdiction issues – Statutory limitation, amnesty and other obstacles to prosecution; Universal jurisdiction – Duty to prosecute – Incorporation of international crimes into domestic law
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; Human rights, non-discrimination Art 21(3) RS; Interpretation; Sources of international law: primary and subsidiary
Rome statute
Ratification status en.wikipedia.org/wiki/States_parties_to_the_Rome_Statute_of_the_International_Criminal_Court



Structure of crime

Material element
Act; Omission; Harm; Danger
Conduct
Consequence and causation
Circumstances: contextual element etc

Mental element
Unless otherwise provided
Intent and knowledge standard (Art 30 RS)
(Wording issues: will / intent, with awareness …)
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
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
Recklessness: conscious disregard of a risk that specific result will occur as a result of a conduct
RS does not define, ICTY and ICTR have accepted in their cases

Exclusion of responsibility
Art 31 RS
Mental disease or defect
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
No measures foreseen to replace punishment
Consent of victim is no defense
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
Other – Mistake (Art 32 RS) – Law; Fact
Depends whether a defense; ignorance of law does not excuse in general
Superior order – Art 33 RS
Respondeat superior, absolute liability, or manifest illegality principle?
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
Military necessity, reprisals against unlawful attack – probably
External to the structure of crime

Obstacles to prosecution
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)
Other – Deferral by UN SC (Art 16 RS); Threshold for war crimes – large-scale plan or policy Art 8(1) RS; Manifest pattern for genocide; Crime of aggression (Art 15bis, 15ter RS)

Subject
Special subjects for crime of agression
Art 25(3) RS
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)
Knew or should have known about the crime
Failure to take necessary and reasonable preventive or repressive measures
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
Individual or joint commission, or commission-by-means
Conspiracy in customary law
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
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
Particiation by ordering, inducing or abetting
Ordering in a hierarchical structure; inducing may be psychical or physical, mediate or immediate (incl. encouraging a crime already being committed)
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
Not present in customary law – 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

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

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

Penalty
Gravity of crime and individual circumstances of the person to be taken into account
Art 78 RS
Review by ICC; reduction if 2/3 served (25 years of life imprisonment) (Art 110 RS)
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

Trial
Witness protection (Art 68 RS)
Evidence (Art 69 RS)
Rights of the accused (Art 67 RS)
Admission of guilt (Art 65 RS)
Fine
Misconduct in court (Art 71 RS)
Rules of Procedure and Evidence
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)
Preferrably unanimous, otherwise majoritary
Sentencing (Art 76 RS)

Appeal
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)
Grounds – Procedure; Fact or law; Error; 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

Jurisdiction
Ratione materiae Art 5 RS
Ratione temporis Art 11 RS
Crime of aggression (Art 15bis, 15ter RS)
Deferral of proceedings by UN Security Council for 12 months (Art 16 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)
Authorisation by Pre-Trial Chamber
Admissibility (Art 17–19 RS)
Interests of justice

Initiation of an investigation (Art 53 RS)
Age and health of the subject
Interests of victims
Gravity
Facts
Reconsideration request by PTC proprio motu or if applied by the State
Reconsiderable prosecutorial discretion
Investigation – Rights of the subject (Art 55 RS) – Non-self-incrimination; Freedom from coercion; Habeas corpus; Right to a counsel; Right to translation
Surrender to the court (Art 60-61 RS)
Powers and tools (Art 54, 56-59 RS) – Arrest warrant

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
Extends to national courts (cf Pinochet case in UK,1998)
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)

GENOCIDE
Conspiracy
Direct and public incitement (cf Art 25(3)(e) RS) – incl by euphemisms; excl provocative language
Convention 1948
Systematic? (cf EOC)
Specific genocidal intent to destroy a group (not individual), in whole or in part
Nurenberg: no mention; 'extermination" instead
Concept 1943
Phenomenon
Raphael Lemkin 1900–1959

Protected groups
National – e.g national minorities
Ethnic – cultural tradition, common history
Racial – physical traits; incl tribal groups
Religious – sects included, atheists not (cf political group)
Social and political groups not included in the Convention and in RS – not all 'stable groups'
Membership – Subjective approach – Perception by others; Self-perception, identity; Objective approach
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
'Cultural genocide'
all with the purpose of destoying the group physically or socially
cf 'ethnic cleansing' with an aim of expulsion

CRIMES AGAINST HUMANITY
Concept
Massacres of Armenians referred to as 'crimes against humanity' in 1915
Martens clause: 'laws of humanity'
Phenomenon
Art 6(c) Nurenberg Charter
Customary law; Re Eichmann 1968, Barbie 1985, etc
cf international or internal armed conflict (Art 5 ICTY)
Armed conflict irrelevant (Art 3 ICTR)
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.
Policy element: state or organisation (Art 7(2)(a) RS)
Widespread or systematic attack (mass crimes)
Multiple acts in total; any mistreatment will do (not necessarily use of force)
cf Art 3 ICTR: 'national, political, ethnic, racial, or religious grounds'
Against civilian population
No 'special group'; political and social groups may be victims
Not necessarily the whole population
Incl own nationals
Military people may be among victims – members of organised power using force not covered
protected status (IHL) irrelevant
Holders of state or other organised power used against civilians excluded
Subject - may be every person
Knowledge that attack is taking place and the act is part of it
No 'specific intent'
Discriminatory motive not needed, cf ICTR
Nurenberg: discrimatory motive needed for *persecution type* acts, not for *murder type* acts
Customary: if an act of killing, torture, etc is discriminatory, it is *persecution* as lex specialis

Acts
Killing – 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
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
calculated does not mean a purpose to destroy a group
EOC: causing at least one death
Enslavement
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
UN CATOC protocol 2000 on trafficking
Re Kunarac 2001 ICTY – often: gain; control / ownership; of autonomy, freedom of choice or movement; loss of free will
forms: sex, exploitation etc
acts – threat, force or other coercion; deception, abuse of power, vulnerability, detention etc
acquisition for compensation, lack of opposition, and duration are not decisive
Deportation / forcible transfer of population
deportation if border is crossed
Customary law: intrastate forcible transfer is an inhumane act
at least one victim
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
if place of reception proper and possible to return after hostilities
involuntariness
opt-out or flight out of fear are not involuntary
individual expulsion of an alien may be legal
collective expulsion of aliens illegal (Art 4 Prot 4 ECHR)
lawful under international standard
Imprisonment / other severe deprivation of physical liberty in violation of fundamental rules of international law
Duration affects severity
E.g. camp, ghetto, house arrest
Arbitrary vs with lawful ground and procedure
Torture
RS: intentional infliction of severe pain or suffering, 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
no permanent damage to health needed
catalogue of acts: Re Kvoćka 2001 ICTY
UN COT 1984 but without purpose element and special subject
no purpose needed cf. ICTY, ICTR
Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity
e.g stripping
Forced pregnancy - genetic purpose
Rape as gender-neutral invasion – violence or threat to use violence
Re Kunarac: new standard of involuntariness – presumed in armed conflict and captivity
Prostitution - financial / other advantages to be received
purpose required
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
Enforced disappearence
purpose required
RS: 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
Customary law: inhuman act; UN Convention 2006
alternative acts: deprivation of liberty and withholding info – inquiry to get info required
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
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
e.g. anti-Jewish laws
word used since Nurenberg, without definition
cf Re Tadić ICTY
cf refugee law: no analogy
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
Discriminatory motive against the group required
attack on property rights destroying economic livelihood; single hate crime against property excluded
customary law included political, racial and religious grounds only
sexual orientation, economic and social grounds not *impermissible under international law*

CRIME OF AGGRESSION
jus ad bellum
War as legitimate political tool to pursuit the interests of a sovereign state
Hague Convention for the Pacific Settlement of International Disputes 1899/1907: mediation to be used if circumstances permitted
Prevention and prohibition of war: League of Nations, Geneva Protocol 1924, Kellogg-Briand Pact 1928
UN Charter: ban on the use of force against the territorial integrity or political independence of any state
exceptions: self-defense, collective security
Act of Aggression Art 39 UNC explained in UNGA Res 3314 1974
incl acts of lesser intensity than war
The use of armed force by a state against the sovereignty, territorial integrity or political independence of another state
Nurenberg: 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
UNGA Res 95 1946: customary law crime
purpose not required
Leadership
intensity and degree, not all aggresive acts criminal
aggressive aim
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.

WAR CRIMES
- only combatants may undertake belligerent activity;
- if they follow IHL they are not responsible for participating in the conflict;
- only combatants may be targeted, as a rule;
- non-combatants must be protected;
- incidental consequences for protected persons must be limited;
- attack is not allowed if causing disproportionally incidental consequences ;
- means and methods causing unnecessary suffering must be avoided also in lawful attack.

precedents from the Antiquity and Middle Ages
Modernity – war between states
jus in bello
soldiers may kill enemy soldiers but not men
separate from legality of war, *jus ad bellum*
war – normal rules suspended but not a legal vacuum
Protection of non-combatants (Geneva law)
Methods of warfare (the Hague law)
also customary law, common principles
states' duty to ensure that persons under their control adhere to IHL; in some cases criminalisation
G 1949: grave breaches under universal jurisdiction
Phenomenon and concept
Versaille PT; Nuremberg, ICTY etc – customary
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)
if directly criminal under ICL
violation of a rule of humanitarian law
ICC - only Art 8(2) RS
excl internal disturbances, riots, isolated acts of violence Art 8(2)(d,f) RS
Armed conflict
mere threats excl
not relevant if 'war' or 'police action'
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)
Also if war declared but force not used
Occupation of territory without armed resistance
other international conflicts where a party is de facto an organ of another state
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
Nexus
The conduct must be committed because and with awareness of the conflict
wilful – incl recklessness
Personal reasons of the act do not exclude war crime
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

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
mere damage not covered
recklessness
¶Destruction in occuped territory
protected property only, extensively
Expropriation
Pillaging of a place
Confiscation of enemy property
to own use by force
wantonly
against the will, period and motive irrelevant
military necessity exception
Not in RS
¶Nuclear, chemical, biological, some conventional weapons
¶Causing unnecessary suffering
¶Prohibited ammunition
prohibited means
¶Poison
¶Poison gas and similar substances
prohibited methods
Perfidious killing or wounding
Giving no quarter
Use of human shields
Starvation of civilians
Improper use of insignia
serious consequences
undefended places
not in RS; Re Galić
terror against civilians
Attack on non-military targets
attack on civilians
civilian objects
disproportionate incidental damage
specially protected objects (religion, education, hospitals etc)
purpose required
persons / objects using protected emblems
against protected person
¶ 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
incl indirectly, motive not relevant
Deportation / forcible transfer
¶Transfer of own civilian population to occupied territory
Use of child soldiers
Killing and wounding of persons not involved in combat
Killing
not in RS; as act against dignity etc.
¶Delay in repatriation
¶Forced labour
Slavery
volunteering not illegal
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
other serious injuries, physical or mental
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
mistreatment
¶Causing suffering / injury to health
no purpose
Mutilation
permanent harm
Biological, medical, scientific experiments
EOC: serious danger to physical or mental health

Ali Abd Al Rahman