

# INTERNATIONAL LAW OVERVIEW

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# International Law

- International law, except that which is strictly treaty based such as the trade regimes which are enforced by the WTO, is often subject to political will to be interpreted and enforced.

# Types of International Law

- Customary International Law: That law which has become so universally accepted that compliance is a matter of legal not moral duty; but which can be changed by an affirmative executive act; may be in treaties or not.
- Jus Cogens Norms: Those norms which are so entrenched in the law that no nation can pass a law to legitimize it: e.g. slavery; torture; genocide; wars of aggression.

# What is Customary International Law Based On ?

- International Law can be based on:
  - Treaties
  - State Practice
  - Work of Scholars
  - Decisions of the International Court of Justice
  - Some combination of the above

# TOPICS FOR DISCUSSION

- Legality of War: UN Charter; Nuremberg Principles; self defense
  
- International Humanitarian Law: Hague Conventions 1899, 1907, Geneva Conventions of 1925 and 1949; other treaties to ban specific weapons; optional protocol to Geneva Conventions; Nuremberg Principles

# International Human Rights Law

- Universal Declaration of Human Rights;  
International Covenant on Civil and Political Rights; International Covenant on Economic Social and Cultural Rights;  
Convention on the Elimination of all forms of Racial Discrimination (CERD);  
Convention on the Elimination of Discrimination against Women (CEDAW);

# International Human Rights Law

- Convention on the Rights of the Child; Convention on the Rights of Disabled People; Convention on the Rights of Migrant Workers.

# Duty to promote disarmament

- UN Charter Article 26, 47
- Section VI of the Nuclear Non Proliferation Treaty

# Other Conventions

- The Convention Against Torture and the Genocide Convention are critical conventions in International law.

# Contrast to WTO

- Unlike law relating to war, war crimes, accountability for war crimes, and the like, the trade regimes are enforced through WTO which is a body with power to issue binding decisions. Decisions are generally followed.

# Remedies

- International Court of Justice
- Human Rights Council, other UN bodies
- High Contracting parties to the Geneva Conventions
- Universal Jurisdiction
- War crimes statutes
- Statutes prohibiting torture
- International Criminal Court

# UN CHARTER

- The UN Charter was signed on June 26, 1945.
- It was ratified by the United States and is a ratified treaty
- Ratified treaties pursuant to Article VI Section 2 of the US Constitution are binding domestic law

# UN CHARTER

- Article 2 subsections 3 and 4
- All members shall settle their disputes by peaceful means in such a manner that international peace and security and justice are not endangered
- All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state..

# UN CHARTER

- All member states of the UN agreed to outlaw recourse to war as a means of resolving international disputes

# UN Charter

- Articles 33 to 38 set forth mechanisms for settlements of disputes  
negotiation; enquiry; mediation;  
conciliation; arbitration; judicial settlement;  
resort to regional agencies; or other  
peaceful means

# UN Charter

- Article 51 recognizes the inherent right to self defense but it is a narrow exception. It is limited to use of force to repel an ongoing armed attack on the territorial integrity of the state until the security council can act to restore international peace and security; response must be proportionate to the attack.

# Self defense

- Self defense justifies an attack only when the necessity of that self defense is instant overwhelming and leaving no choice of means or moment for deliberation.
  - Caroline Case (1837)

# Wars of Aggression

- If a war is not in self defense, it is by definition a war of aggression and illegal.
- Only the UN Security Council may authorize military force to restore international peace and security. UN may not authorize a war of aggression.
- Definition of Aggression is in UN Resolution 3314 of 1974

# Background to Nuremberg Principles

- The War Crimes Trials of Nazi leaders and abettors after World War II were based on the Nuremberg Charter. The UN later directed the International Law Commission to formulate principles of international law based on the charter. The principles apply to all persons. They define war crimes and crimes against humanity.

# Background to Nuremberg Principles

- By defining those actions prohibited in war they fall into category of international humanitarian law, but the crimes against peace make them part of the law proscribing wars of aggression.

# NUREMBERG PRINCIPLES

- *Principle I*
- Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.
- *Principle II*
- The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

# NUREMBERG PRINCIPLES

*Principle III:* The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

*Principle IV:* The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

# NUREMBERG PRINCIPLES

## *Principle V*

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

## *Principle VI*

The crimes hereinafter set out are punishable as crimes under international law:

# NUREMBERG PRINCIPLES

- (a) Crimes against peace: (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
- (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

# NUREMBERG PRINCIPLES

- *(b) War crimes:*

Violations of the laws or customs of war which include, but are not limited to, murder, ill treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity

# NUREMBERG PRINCIPLES

(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

# NUREMBERG PRINCIPLES

*Principle VII* Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

# International Human Rights Law

- 1948 The UN adopts the Universal Declaration of Human Rights.
- The Rights include all the basic civil liberties but also the right to an adequate standard of living, such as food, shelter, medical care, social security, living wage jobs etc.

# International Humanitarian Law

- Whether a war is legal or illegal, all parties to war are bound by principles of international humanitarian law, IHL.
- The purpose of IHL is to lessen the impact of war on both combatants and non-combatants, but especially on non-combatants (civilians)

# International Humanitarian Law

- Treaties which outlaw specific weapons such as poisoned gases etc are designed to protect both combatants and non combatants.
- Law specifically prohibits attacks on Civilians and civilian objects

# International Humanitarian Law

- Proportionality relates only to whether civilian injuries or deaths are excessive in relation to the military advantage of the attack.
- It is a principle of distinction between civilian and military targets and the amount of firepower used in the attack.

# Human Rights Law

- Human Rights Law is independent from International Humanitarian Law.
- Countries at war are not exempt from their duties under human rights instruments

# Human Rights Instruments

- The treaties to implement the UDHR were written by the UN. US demanded separate treaties for Civil and Political Rights and Economic Social and Cultural Rights.
  - Two Covenants issued in 1966
  - ICCPR, ICESCR
- US has not ratified ICESCR

# Human Rights Instruments

- Various conventions come out of UN through process of negotiation/conferences etc.
- Each treaty has a committee to which the countries which ratify the treaty must report.

# Duty to Promote Disarmament

- Article 26 of the UN Charter provides that In order to promote the establishment of peace and security with the least diversion for armaments of the world's economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff committee for the establishment of a system of regulations of Armaments.

# Duty to Promote Disarmament

- Article 47 (1) of the UN Charter gives the Military staff committee the duty to regulate armaments and possible disarmament.
- Section VI of the Nuclear Non Proliferation Agreement refers directly to disarmament.

# Convention Against Torture

While Torture is prohibited in many human rights documents and Geneva Conventions, the UN issued a separate Convention Against Torture in 1984. It is called: **The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment .**

# CAT

- Torture is defined as any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed,

# CAT

- or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

# CAT

- The Convention Against Torture is enforced through the Committee against Torture and commits parties to taking effective measures to prevent any act of torture in any territory under their jurisdiction. These include ensuring that torture is a criminal offence.

# Accountability for Torture

- War Crimes Act
- Statute against Torture

# Convention Against Genocide

- Article 2 of this convention defines genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group;

# Convention Against Genocide

- deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; [and] forcibly transferring children of the group to another group.

# Genocide Prohibitions

- There have been problems with the enforcement of this provision based on Article 2(7) of the Charter which states prevents the UN from intervening in matters which are essentially domestic.

# Remedies

- The Right to a Remedy is firmly entrenched in International Law
- UDHR Article 8; Article 2(3) of ICCPR; Article 6 of the CERD; Article 14 of CAT;
- Article 39 of the CRC; Article 3 of the 1907 Hague Conventions; Article 91 of the Additional Protocol of the Geneva Conventions; Article 75 of the Rome Statute of the ICC

# Remedies

- The International Court of Justice acts as a world court. It decides, in accordance with international law, disputes of a legal nature that are submitted to it by States and it gives advisory opinions on legal questions at the request of the organs of the United Nations or specialized agencies authorized to make such a request (advisory jurisdiction).

# Remedies

- The US has interpreted the language of Article 94 of the Charter that “each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party to mean that it is not bound by decisions of the ICJ.
- The US pulled out of the Court after the decision brought by Nicaragua.

# ICJ

There is recourse to the Security Council if a party does not agree, but the Security Council is subject to the veto of the permanent members.

# Human Rights Council and other UN Bodies

- The UN Human Rights Council has established a program of Universal Periodic Review of States' compliance with Human Rights Treaties.
- US is coming up on November 5
- All the other treaty bodies which administer the HR conventions take and investigate complaints. Power is limited to Shaming.

# High Contracting Parties to the Geneva Conventions

- The parties to the convention have the power to convene for the purpose of enforcing the conventions.
- This has not happened

# Universal Jurisdiction

- There are some crimes which are so heinous, such as torture, promoting wars of aggression, that theoretically all jurisdictions should have an interest in suppressing them.
- Universal Jurisdiction Statutes have been passed in several countries to proscribe procedures for these cases.

# War Crimes Statutes

- The US has a War Crimes Statute as well as a statute which outlaws torture. These have not been used to prosecute anyone who is responsible for implementing the policies of torture.
- Several persons are being investigated for actions going beyond what the “torture memos” written by John Yoo et al proscribed.

# International Criminal Court

- This is often referred to as the Rome Statute. It outlaws many of the actions which would violate provisions of the Geneva Conventions, the CAT and Genocide Conventions.
- The US helped write the statute, and Bill Clinton signed it. The US under Bush withdrew its signature.