

Lesson Four: Access to Justice and Fair Trial

Lesson Four: Lesson Plan

LEARNING OBJECTIVES:

- Understand what accessing justice means and that fair trial is an important component of access to justice
- Be able to relate accessing justice to the concepts of equality and fairness

(Extension exercise: Understand the challenges that individuals may face in accessing justice under international human rights law and humanitarian law)

LEARNING OUTCOMES:

- Be able to explain what elements need to be present for justice to be accessible, institutionally, legally and in a practical sense
- Be able to apply the elements necessary for access to justice to assess different scenarios

(Extension exercise: Be able to explain and evaluate international human rights and/or humanitarian law systems for accessibility and effectiveness)

SKILLS:

- Applying the law to different scenarios, drawing conclusions from application of the law to facts, assimilating and using new concepts, evaluating a set of circumstances using known principles, drawing reasoned conclusions

4.1 Introduction



4.1.1 INTRODUCTION - Access to Justice and Fair Trial - Teacher-led Introduction

In this lesson, we will examine concepts relating to access to international justice and fair trials, exploring what is necessary to achieve justice in an international context.

On a national level, ie within a country, having access to justice and achieving justice means being able to get a fair and just resolution to a dispute (in civil cases) or a fair and just outcome where someone has been accused of a crime.

On an international level, having access to justice and achieving justice means being able to get a fair and just resolution to a dispute between an individual or organisation and a state, or between two or more states. For instance, states might go to court to resolve a dispute about where a territorial boundary lies, or where more than one state claims the right to a particular stretch of the sea. Students may have heard of the International Court of Justice which deals with general international law disputes, but there are also specialist international courts and tribunals dealing with specific areas of international law or dealing with regional law. For example the European Court of Justice deals with EU law disputes.

Just as criminal activity is prosecuted in courts on a national level, there are international courts to prosecute individuals for international crimes. International crimes are of the most extreme nature and seriousness. We will examine the International Criminal Court in this lesson and how effectively it dispenses justice.



4.2.1 STARTER ACTIVITY

- Justice and the International Criminal Court
- Printouts for students

In 2016 the Chilcot Report was published and was widely reported in the UK and international news. The report was commissioned to investigate the failings and mistakes of the British government surrounding the Iraq War and occupation. Some sources estimate there were up to a quarter of a million deaths, including both civilians and combatants, from the time the war began in 2003 through the post-war



occupation, and since the occupation officially ended in 2011.¹ Some critics have commented that the war led to increased sectarian violence in the country and that the rise of the terrorist organisation “Islamic State” in the country is linked to the war.²

A number of commentators have called for the prosecution of British government ministers in the International Criminal Court (ICC), for their role in the war. The process leading to cases being heard in the ICC is a long one. First, the law and facts must be considered to decide whether there could be legal grounds to prosecute. This is called the pre-investigatory stage. If there could be sufficient grounds for a case, the ICC then opens an investigation to gather evidence on the allegations. This is called the investigatory stage. All allegations must be backed up by evidence at the ICC’s investigatory stage, and it is only where there is sufficient evidence that there can be a possibility of prosecution. Allegations that are not supported by evidence will not succeed at the investigatory stage. Securing a prosecution at the ICC is therefore a long and difficult process. Many cases do not end up being heard by the court either because there are no legal grounds for prosecution, or because there is insufficient evidence.

In this exercise, you are at the pre-investigatory stage, and have been asked to consider whether there are any legal grounds on which the ICC may decide to gather more evidence. The **Prosecutor of the ICC** has called on you, as one of the ICC’s legal advisers, to examine the law on the crimes that the ICC can prosecute. You have been asked to consider what the relevant issues are in deciding whether there is scope to open an investigation and to gather evidence.

Below you are given information on what the law is and what the situation was, as well as information on the allegations made by the Chilcot Report and complaints received by the ICC.

Your task: Carefully read the law and the allegations that have been made. Compare the allegations with the law and jot down the elements of the law that you think may be relevant to the allegations. Discuss as a class whether you think there might be legal grounds for potential prosecution, which the ICC may wish to gather more evidence on.

Remember that in this exercise, your task is to examine legal issues that are relevant to potential prosecutions in the ICC. Your observations must be based strictly on the law rather than your own personal feelings about whether someone in a particular position should be prosecuted

What the law says:

Under the constitutional document of the International Criminal Court (ICC) called the ICC Statute or the Rome Statute, the ICC has the authority to try individuals for the following crimes:

- 1) (a) **The crime of genocide**, which means killing or causing serious harm to a national, ethnical, racial or religious group with the intent to destroy that group or part of that group;
- (b) **Crimes against humanity**, which means murder, enslavement, torture, rape, deportation, illegal imprisonment, or any other inhumane act when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack;
- (c) **War crimes**, which means in an armed conflict situation attacking, torturing, killing or harming civilians, aid or health workers, the sick and wounded, or prisoners of war.
- (d) **The crime of aggression**, which means the planning, preparation, initiation or execution by a person in a leadership position of the use of armed force by one State against another State without the justification of self-defence or authorization by the Security Council. This includes armed invasion, bombardment and blockade. The Court may not prosecute individuals for this crime until states decide whether to give the Court the power to do so, and they may only decide whether to do this after 1 January 2017.

2) A military commander or superior may be held responsible for crimes committed by troops under his/her effective command, authority or control, where he/she knew or should have known that the crimes were being committed and failed to prevent or stop the crimes from being committed.

The Chilcot Inquiry³ seems to indicate that:

- The British government exaggerated the certainty of the intelligence findings on the existence of weapons of mass destruction and the severity of the threat posed by Saddam Hussein.
- There was no imminent threat at the time that Britain participated in the military action.
- The decision to go to war was made without first exhausting all the peaceful options that were available.

The Office of the ICC Prosecutor has received well over a thousand complaints of killing, torture and other forms of ill-treatment by UK troops. The allegations being investigated by the ICC include:

- Unlawful killings of civilians, including allegations that Iraqi persons died in UK custody and that others were killed by UK Services personnel in situations outside of custody.
- Systematic abuse of hundreds of Iraqi detainees by UK troops in UK-controlled facilities across Iraq over the whole period of their deployment from 2003 through 2008.
- Rape of Iraqi individuals in detention and other forms of sexual violence.

Note: A number of allegations relating to unlawful killings have since been shown to have no factual basis and have been withdrawn.



4.2.2 STARTER ACTIVITY

- Justice and the International Criminal Court
- Instructions for teachers

Students will examine the law surrounding the crimes of **genocide, crimes against humanity, war crimes** or the **crime of aggression**. They should determine the elements of the crimes and compare the allegations against the elements, discussing whether there might be any grounds for prosecution. Ultimately, evidence would have to be found to support these claims, in order for there to be a case to hear in court. The exercise should develop the abilities of students to examine facts against legal standards and to draw a conclusion.

Note that the language and content of the applicable law given to students in their printouts have been simplified for classroom use.



4.2.3 STARTER ACTIVITY

- Justice and the International Criminal Court
- Background for teachers

International criminal justice is a complex and rapidly developing topic. Although we are looking at only a small part of that law here, the exercise aims to highlight for students some of the difficulties in achieving justice in an international court for both sides to a dispute, or in criminal cases, for both victims and the accused. It is important to note that although we are examining the International Criminal Court as an example, there are many other international courts and tribunals⁴ that may not share the same challenges. The ICC highlights just some of the fair trial and access to justice challenges that exist in the realm of international justice.

The subject of this activity has been poorly reported in the media, with some confusion between the different crimes that the ICC covers. This book does not express a view on the legality of the conduct of British troops. The point of the exercise is simply to explore elements of the law in this area. The short answer is that, of the crimes above, it is unlikely that either British government ministers or UK troops could be prosecuted for genocide, crimes against humanity, or the crime of **aggression**. If sufficient evidence were to be found, on the face of the applicable law, there is the possibility that the elements necessary for a **war crimes** prosecution could be made out (and at the time of writing the ICC is investigating this).⁵ The following section explores these crimes in more detail.

Genocide

The crime of genocide requires the elimination of, or causing serious harm, to a particular national, ethnical, racial or religious group and the intention to eliminate that group or part of that group. The UK administration did not set out to eliminate a particular group in Iraq, nor did they eliminate or cause serious harm to any particular group. Therefore the elements of this crime are not fulfilled.

An example where genocide did occur was in Rwanda in 1994 where the Hutu government slaughtered up to an estimated 800,000 Tutsis on the basis of their ethnicity.

Crimes against humanity

Students may at first glance match some of the elements of crimes against humanity with some of the allegations against UK troops, for example, unlawful killing, torture, and rape. However, they should go on to see that to fulfil the full definition of the crime, the actions have to be committed as 'part of a widespread or systematic attack directed against any civilian population'. This would not be fulfilled because in Iraq there was no widespread or systematic attack specifically directed against civilians.

An example where there were widespread instances of crimes against humanity was discovered by the UN Commission of Inquiry on Human Rights in Eritrea. Its 2016 report documented thousands of instances of enslavement, imprisonment, enforced disappearances, torture, persecution, rape, murder and other inhumane acts.

War crimes

Subject to the existence of sufficient evidence, the allegations made may fulfil the elements for a war crimes case. Those detained by UK troops were prisoners of war, a group given certain protections under international humanitarian law. Allegations have been made to the ICC that some of those people were victims of crimes committed by UK troops, such as wilful killing and ill-treatment including torture and rape. A large number of reports of abuse of Iraqi detainees by UK personnel during the Iraq War and occupation reported to the ICC are under preliminary examination by the Office of the Prosecutor of the ICC to decide whether there are grounds to open an investigation where evidence would be gathered.

The ICC's mandate also gives it the authority to prosecute those who had military or superior command or control over the troops. To fulfil the criteria the commander or superior needs to either have known that the crimes were being committed or should have known that crimes were being committed. Whether anyone had the requisite control over troops and knowledge of their actions would be a question to be examined by the ICC based on evidence available.

The example of Jean-Pierre Bemba could help in explaining this to students. Bemba was the President and Commander-in-Chief of the 'Mouvement de Libération du Congo', a group that took part in an armed conflict in the Central African Republic from 2002 to 2003. In 2016, the ICC found him guilty of both crimes against humanity and war crimes on the basis that Mr Bemba was a person effectively acting as a military commander with effective authority and control over the forces that committed the crimes.⁶

Crime of aggression

It would seem, on the face of the situation, that planning and initiating the use of armed force against Iraq could constitute the crime of aggression because it was done without the justification of self-defence or authorization by the Security Council. However, even if the acts fulfil the definition of the crime of aggression, the International Criminal Court does not yet have the authority to prosecute the crime of aggression. It is only after January 2017 that states party to the ICC Statute (that is, states that have accepted the authority of the ICC) may decide whether to give the ICC this authority.

Even if states did decide to give this authority to the court after January 2017, a general rule of law principle is that crimes cannot be prosecuted retrospectively. This means that those who carried out actions which were not prosecutable crimes at the time they were done cannot later be prosecuted for those past actions.

On one hand, some may feel that it is unsatisfactory for victims that the individual who committed this grievous action will not be brought to justice in court. On the other hand, it would be unfair for individuals if they could be held criminally responsible for an action that was not a crime at the time of commission; if that happened then there would never be any certainty over what you could or could not do with confidence that it was legal and without fear of future prosecution.



4.2.4 OPTIONAL EXTENSION ACTIVITY

- Justice and the International Criminal Court
- Teacher-led Discussion

You may wish to explain to students that the activity they have just worked through has highlighted that it is not always easy to fit crimes into the definitions within the Statute. The ICC was set up to prosecute the most serious of crimes and this means that definitions of crimes are limited to the very worst acts.

Examples of this can be seen in the requirements for a crime against humanity – it must incorporate an attack that is a) widespread or systematic and b) specifically directed against civilians. This is a very high threshold and so many acts that may be very serious and deplorable cannot be prosecuted as international crimes because they do not fulfil both criteria in the definition. Where states are unwilling or unable to prosecute on a national level, this means that individuals may escape justice. For example, a head of government who is still in power and who has committed atrocities in his or her own country is very unlikely to be prosecuted in the courts of that country. If the situation were successfully referred to the ICC, that head of government may not be brought to justice if, for example, the attacks against civilians were not clearly widespread or systematic.

The definition of genocide has been criticised for its limitation to the destruction of 'a national, ethnical, racial or religious group'. Critics have argued that destruction of groups on other bases should also be included under the definition. They argue that destruction of other categories of groups, for example, political groups, should also be classified and prosecutable as genocide.

Many people have felt that it was unsatisfactory that illegal uses of force (for example illegal invasions, as many consider Iraq to be) were not originally prosecutable in the ICC. Following lengthy negotiations and discussions, states agreed on a definition for the new crime of aggression to cover these sorts of circumstances. Should states decide in 2017 to give the ICC the authority to prosecute the crime of aggression, this will go some way towards closing the gap in the scope of crimes that the Court can prosecute.



4.3.1 ACTIVITY I - International Human Rights and Access to Justice - Printouts for students

Maria is a young woman in Kirzia, an imaginary country that has experienced nearly 20 years of conflict between government and anti-government forces. Before the conflict started, Kirzia's public institutions were improving. Unfortunately, since the conflict started, the government's resources and efforts have been diverted towards the conflict and without central administration, public services are not functioning.

Most young adults have not received education as most schools closed down when the conflict began, and it is in any case too dangerous to make the journey to school. There are many people who cannot read or write.



Kirzia has a court system to deal with civil disputes and to hear criminal cases. However, after decades of conflict, there are few lawyers and judges with the expertise to administer the law and they are based mainly in Kirzia's capital city. The lawyers who are still in practice charge high fees for their services. Those who can afford it sometimes give court staff money to schedule cases for prompt hearing and give judges money to help them win their case. As a result, poorer people feel that a number of barriers prevent them from accessing the justice system, and their prospects of winning their case are low.

Maria lives in a rural area far away from the capital. Her family are not aligned to either side of the conflict but her parents have friends who are politically opposed to the government. One day, she hears a knock on the door and when she opens it, armed men enter and take her father forcefully into a car. He is taken to a prison where he has now been detained for weeks. Maria has no idea why this has happened. The only thing she knows is that the men who took her father away were probably government forces.



Kirzia has agreed to (ratified) the International Covenant on Civil and Political Rights and therefore the government not only has to respect the rights guaranteed in the Covenant, to make sure that everyone in the country respects those rights, but must also take action where those rights have not been respected.

Both the ICCPR and Kirzia's national law say that:

1. No one shall be subjected to arbitrary arrest or detention.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge and shall be entitled to trial within a reasonable time or to release.
4. Anyone who is deprived of his liberty shall be entitled to take proceedings before a court, so that the court may decide whether his detention is legal and order his release if it is not.
5. Anyone who has been the victim of unlawful arrest or detention shall have a right to compensation.

Maria is desperate to get her father released and to seek justice for him. What can Maria do and what difficulties does she face?



4.3.2 ACTIVITY I - International Human Rights and Access to Justice - Instructions for teachers

Allow students to read through this activity and then ask if there is anything that is unclear. Students should use the information that they have been given to think through the problem for themselves before you lead a class debrief.



4.3.3 ACTIVITY I - International Human Rights and Access to Justice - Background for teachers

In an ideal justice system, Maria and her family would be able to take her father's case of arbitrary arrest and detention to court. As guaranteed by the ICCPR and Kirzian national law, Maria's father cannot be arrested and detained without being told what he is accused of and without the chance for him to challenge the legality of his arrest and detention before a judge. If a judge found that Maria's father had been detained illegally by the government (or anyone else), the judge could order her father's release as well as order that he be paid compensation.

However, there are some challenges preventing Maria's family from seeking justice in court, and the point of the exercise is to demonstrate to students that having access to justice is not just about having a court system and laws in place. While these formal institutions are vital for accessing justice, other elements are necessary too, most of which are absent in Maria's situation.

Literacy and education

The conflict has gone on for nearly 20 years in Kirzia, leading to a generation of people who have not had access to education. This is likely to have an impact on people knowing what the law is and what their rights are. Lack of education also makes it less likely that people will know where to get help if their rights are violated and lack of public resources means that there are few places where people can obtain independent advice about the law and their rights. As a result of poor literacy, it is less likely that Kirzians will be able to advocate for themselves in the absence of legal representation.

Justice system resourcing and infrastructure

The fact that resources have been diverted away from public services means that the justice system is probably not adequately funded, with judges and lawyers not being adequately trained for their jobs in administering justice.

Lack of funding may also mean that the justice system is not being adequately staffed on any level. For example, there may not be a system where cases are registered and where people are helped through the procedure of bringing a case before court. Where the administration of justice is underfunded, this can lead to a significant backlog of unresolved cases, so any case Maria lodges is likely to be severely delayed.

There may not be well maintained court rooms, computers, or filing systems that adequately enable scheduling or record keeping. Courts and court administration as well as access to legal advice and representation may not be geographically well spread, and so families such as Maria's in rural areas may not have good access to these facilities.

Legal assistance and representation

We are told that legal representation exists for those who can afford to pay. It is unfair that families such as Maria's who do not have the resources to pay high lawyers' fees will therefore not be represented and have access to the justice system. This means that people with money are more likely to win cases in court, which goes against the principle of equality before the law.

Corruption

We are told that court staff in Kirzia sometimes accept money to schedule a case for hearing in court and that judges sometimes accept money to rule a certain way. This completely undermines the rule of law and justice as it means that access to a court is not the result of fair and equal process and the outcome of a case is not the result of establishing facts and what the law is. There is no equality before the law, because those unable to pay the bribe are unlikely to succeed in a case even if they were in the right under the law.

Distrust of justice systems

The elements above mean that people in the position of Maria's family are not likely to trust that they will get a just result even if they get to court. Those in their position might feel that justice is only for the rich, and even if they could access legal representation, there would be little point if a corrupt process meant that the result would not be one of justice anyway.

Conclusion

The point that students should take away from this is that laws and infrastructure may exist to protect individuals but these alone are insufficient to guarantee their fair trial rights and access to justice. Where the level of literacy and education, economic circumstances, or geographical accessibility stops people from accessing the justice system and where the unfairness of the process stops people from securing a just outcome, there is not true access to justice despite the existence of laws and courts. A final point to ask students to consider is that even in the very unlikely situation that Maria's family get to court and win their case, and the judge rules that Maria's father must be released and that he should be compensated, the government may not necessarily do so. Not all justice systems enforce judgements, particularly if infrastructure and resources are lacking. Without the reliability of having judgments enforced, the right of Maria's family to justice would only be theoretical.



4.4.1 OPTIONAL EXTENSION ACTIVITY

- Civilian Deaths Caused by Military Action
- Printouts for students

Printout for both groups - background notes

Read the background information and report from the Guardian newspaper on the US airstrike that struck a hospital in Afghanistan in 2015, killing dozens of people.

Once you have got to grips with the facts, in your groups, consider the law that regulates this area. Looking at the information that you have been given on your printouts, think about the extent to which victims of an attack such as this are able to gain a legal remedy (for example compensation) and to see justice being done through courts and their attackers standing trial.

There is a lot of information to take in, and you may wish to decide in your groups how best to present the information once you have digested it all. The aim of the activity is to evaluate the question of how fair and just the existing system is for dealing with these sorts of cases. On each piece of information given to you about legal remedies, you have been given prompt questions on the impact for justice. Ensure that you speak to your teacher if you feel uncomfortable at any point.

Background information

In October 2001, the US launched an armed conflict in Afghanistan, targeting the Taliban government who it accused of providing a safe haven for Al Qaeda in that country who had claimed responsibility for the terrorist attacks carried out on 11 September 2001 in New York.

On 3 October 2015, a US aircraft attacked a Médecins Sans Frontières (also known as MSF or, in English, 'Doctors without Borders') hospital in Kunduz, a city in northern Afghanistan, which resulted in 42 civilian deaths. MSF insisted that an independent investigation should be carried out to examine whether the attack amounted to a war crime and therefore a violation of international humanitarian law. The Obama administration never responded to the request. Instead, a US internal military inquiry was carried out and it found that the attack was not a war crime.

**Inside the Kunduz hospital attack: ‘It was a scene of nightmarish horror’
– Extract from an article in the Guardian, 10 April 2016⁷**

After the Taliban swept through the north Afghan city of Kunduz last autumn, and the government launched a bloody offensive to retake it, only one hospital offered real hope of survival to those caught by bullets, rockets or grenades.



So in the early hours of 3 October, the wards of the Médecins Sans Frontières trauma centre were full, and its exhausted surgeons were working late into the night to tackle a backlog of major surgeries. They were tired but not overly frightened. The raging battles of the last week seemed to have calmed slightly and, while war is always unpredictable, the doctors inside the walled compound had considered themselves as safe as anyone can be near heavy fighting.

As the attack planes returned again and again, and the hospital collapsed and burned, MSF staff inside the hospital, in Kabul and in the United States put in frantic calls to contacts in the US military from Afghanistan to Washington DC. They appeared to have no effect. As the attack wound down, a representative of NATO’s Resolute Support mission in the Afghan capital sent a text to the charity saying: “I’ll do my best, praying for you all.”

By then at least 30 people were dead or dying, some burned beyond recognition; others were killed on the operating table. Dozens more were horribly injured.

The top US general in Afghanistan described the attack as a “tragic mistake” and said the gunship’s targeting systems failed. MSF called for an independent investigation into the airstrikes, pointing to a string of discrepancies between the official US military account and witness reports of how the horror unfolded.

Dr Kathleen Thomas is an intensive care doctor from Australia, and was on her first trip with MSF at the time of the attack. Here, she offers an eyewitness account of the bombing

“ When the US military’s aircraft attacked our hospital, its first strike was on the ICU [Intensive Care Unit]. With the exception of one three-year-old, all the patients in the unit died. The caretakers with the patients died. Dr Osmani died. The ICU nurses Zia and Strongman Naseer died. The ICU cleaner Nasir died. I hope with all my heart that the three sedated patients in ICU, including our ER nurse Lal Mohammad, were deep enough to be unaware of their deaths – but this is unlikely. They were trapped in their beds, engulfed in flames.

The plane hit with alarming precision. Our ER nurse Mohibulla died. Our ER cleaner Najibulla died. Dr Amin suffered major injuries but managed to escape the main building, only to then die an hour later in the arms of his colleagues as we desperately tried to save his life in the makeshift operating theatre set up in the kitchen. The OT nurse Abdul Salam died. The strikes tore through the outpatients department, which had become a sleeping area for staff. Dr Satar died. The medical records officer Abdul Maqsood died. Our pharmacist Tahseel was lethally injured. He also made it to safety in the morning meeting room, only to die soon after. He bled to death. Two of the watchmen, Zabib and Shafiq, also died.

Group A printout

– International humanitarian law presentation notes

What are the facts?

Though the facts are still contested, the US has made a number of claims about how the hospital came to be attacked. Common to each claim is that the bombing of the hospital was not intentional. One of the claims made was that it was targeting Taliban fighters and the hospital nearby was accidentally struck. Another was that Afghan government forces were being fired on by Taliban fighters and asked the US for help. Following this, the US used an airstrike to target the Taliban fighters and accidentally struck civilians in the hospital.

MSF staff claim that the hospital was targeted directly and that it was no accident as it was hit again and again, even when staff made several calls to the US military to alert them to the situation in the hospital.

What does the law say?

There are two possible areas of law that seek to protect the rights of the airstrike victims: international humanitarian law and international human rights law. **Your group will be presenting on international humanitarian law.** Group B will be presenting on international human rights law.

International humanitarian law

- International humanitarian law is sometimes called the law of war and regulates the conduct of *hostilities*. It does not prohibit *warfare*. It recognises the reality that warfare occurs, and sets out what combatants (those participating in hostilities) may or may not do in the conflict.
- The main elements of international humanitarian law are found in the *1949 Geneva Conventions and their Additional Protocols*. Some of the principles have been reproduced in other treaties and pieces of law including, for example, the *Statute of the International Criminal Court (ICC)*.
- International humanitarian law is only applicable in armed conflict situations. For your presentation, you may assume that this is an armed conflict situation between the United States and the Taliban in Afghanistan.
- Two very fundamental general principles of international humanitarian law are '*distinction*' and '*proportionality*'. These principles are the basis for the extracts from the Geneva Conventions and the ICC Statute that you will examine below.

- The principle of **distinction** requires that those participating in a conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.
- The principle of **proportionality** prohibits any attack which is expected to cause disproportionate loss of life, injury, or damage to civilian objects relative to the military aim sought.
- Serious **breaches** of international humanitarian law constitute war crimes under the ICC Statute and can be **prosecuted** in the ICC.

Geneva Conventions Additional Protocol I

Two clauses of the Additional Protocol are relevant:

- It is prohibited to launch an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.⁸
- Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, is a grave breach.⁹



ICC Statute

War crimes include:

- Intentionally launching an attack in the knowledge that such attack will cause **incidental** loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.¹⁰

How can war crimes be dealt with?

The International Criminal Court deals with war crimes on an international level. It **prosecutes** perpetrators of war crimes and has a process through which victims can ask for **reparations**. The Court is governed by its founding document, the **ICC Statute** (also called the Rome Statute), which sets out the circumstances in which the Court may prosecute, and which crimes the Court may prosecute.



What are the challenges?

The functioning of the Court faces a number of legal challenges in the scope of how it prosecutes crimes, as well as a number of practical challenges.

Legal challenges:

- a) Nationality - There are limitations to which nationalities the ICC can prosecute.¹¹ In general, the potential crime(s) must be committed by the nationals (citizens) of a Party State (a state that has accepted the authority of the ICC), or the crime(s) must have been committed in the territory of a State Party. In this scenario Afghanistan could refer the case to the ICC on either basis because Afghanistan was where the acts took place and Afghanistan is a Party State to the ICC. However, the US has been very vocal about its disagreement with its nationals being potentially subject to the ICC's scrutiny without the US accepting the authority of the ICC. The US has made agreements with many other states (who are Party States) which guarantee that those states will not refer US nationals to the ICC.

The only other legal way that the US nationals could be subject to ICC scrutiny would be if the Security Council referred the situation to the ICC.¹² The fact that the US is a permanent member of the Security Council

and may veto such a referral means that in reality, this is not a possible route for the ICC to gain authority over the US troops responsible.

Prompt question: What is the impact on law and justice if countries can opt out of their nationals standing trial? You may wish to consider issues of fairness and equality before the law.

b) Gravity (or seriousness) threshold¹³

–The ICC Statute gives the **Prosecutor of the ICC** the **discretion** to decide which cases should be investigated and heard by the Court, with only the most serious allegations going forward. The practical reason for allowing this discretion is that the ICC would not be able to hear every case that was referred to it due to limited financial and human resources. However, the fact that the Prosecutor's office may act as a 'gatekeeper' has led to criticism that there may be instances where cases are sufficiently serious to warrant investigation and hearing by



the Court, but have nevertheless been rejected, and questions have been asked about whether there has been political motivation in the selection of cases. For example, the ICC has come under criticism for the fact that all the cases that have reached the trial stage have been African cases. (However, at the time of writing there is an indication that this may be changing as the Prosecutor's office is investigating whether there is a case to be heard on crimes against humanity and war crimes committed on both sides of the international armed conflict between Georgia and South Ossetia (a separatist region in Georgia) in 2008. The Prosecutor's office is also in the early stages of examining several other matters where allegations do not relate to Africa.)

Prompt question: What is the impact on international justice if some wrongdoers are targeted for punishment while others are not? You may wish to consider issues of fairness and equality before the law. What impact does this have on the ICC's reputation as a forum for justice?

Practical challenges:

a) Lack of powers of arrest – when an individual is charged with a crime, the court may issue an **arrest warrant** which allows the police to arrest that individual so that he or she is physically present to face charges in court. The difficulty of the ICC is that there is no international police force to arrest individuals and so the ICC must rely on the state in which the individual is physically present to give that individual up to the Court. If states do not do this, there is very little the Court can do to procure the

individual's presence. For example, the ICC issued an arrest warrant for Omar Al Bashir, the President of Sudan, in 2009, and another in 2010. He has been charged with genocide, crimes against humanity and war crimes. To date, despite the fact that he has travelled through Sudan and several other countries, he is still at large because no state has arrested him and given him up to the ICC. Until this happens, he will not stand trial. This is a considerable hindrance to the effectiveness of the Court as it relies on the cooperation of states in order to start the process of achieving justice.

Prompt question: What is the impact on justice if law and justice machinery exist but practicalities mean that they cannot be put into effect? Is this true justice?

b) Lack of financial resources – the ICC relies on contributions of member states to fund its activities. The yearly budget is agreed by member states. Critics point out that the financial and human resources allocated to ICC investigations are much smaller than those allocated by countries to their own national criminal investigations and argue that many of the ICC's operational constraints and delays are partly due to lack of funding.¹⁴

For example, difficulties in collecting evidence are said to be made worse by the lack of funding. The collection of evidence is often an expensive, complex and difficult task. It is often done in circumstances involving conflict or post-conflict situations where infrastructure in a country is weak, and large numbers of people may need to be interviewed, perhaps in remote locations. Victims can often be reluctant to give evidence and to testify due to fear of repercussions. Investigators may need substantial time and resources to work effectively in such circumstances. If there is insufficient evidence collected then the Prosecutor of the Court cannot open a case, which may mean that in some cases perpetrators are not brought to justice.

Prompt question: What is the impact on international justice if legal rules and institutions exist but they are not well resourced enough to function effectively? Is this true justice?

c) Delays in ICC proceedings – The ICC took 10 years to deliver its first verdict and often has a long pre-trial phase at the evidence gathering stage.

Prompt question: What is the impact on justice if it is not delivered in a timely manner? What impact do you think this has for both the accused and the victims?

Given the difficulties, how can else can perpetrators be brought to justice?

National Law - UK Law

To prosecute international crimes, states will legislate to make these crimes punishable under their national laws, which means that wrongdoers do not need to be pursued by the ICC but can instead be prosecuted in **domestic** courts. Generally, states prosecute war crimes committed by or against their nationals, or war crimes committed on their territories in national courts.



In this case, either the US or Afghanistan could (in theory) proceed under their own laws to prosecute the perpetrators for war crimes. However this is not particularly likely. The US prefers that its nationals are not subjected to international prosecution – for example, it is not a party to the ICC and has agreements with countries not to refer its nationals to the ICC – and so it would seem that a very high threshold would need to be met before it would pursue a war crimes prosecution against its nationals in its own national courts.¹⁵ One of the reasons that some states prefer that their nationals not be subject to prosecution abroad is that they may not receive the same standards of protection or may not receive a fair trial in other countries.

Afghanistan is unlikely to seek to prosecute US nationals. It is politically and economically dependent on the US after the armed conflict, and in order to prosecute, the individuals responsible would have to be extradited from the US, and that is something the US has previously shown a reluctance to do.

Group A printout

– International humanitarian law glossary

1949 Geneva Conventions and Additional Protocols: These are the main sources of international humanitarian law. These legal instruments determine how parties to an armed conflict may or may not behave. While accepting that conflict is a reality, the aim of the conventions is to minimise suffering in warfare and to protect those who are not directly involved in the hostilities.

Arrest warrant: an authorisation issued usually by a judge or a magistrate that gives law enforcement agents the power to arrest a specific individual

Breach a law: to break a law

Discretion: the power to make decisions, usually within particular legal limits

Domestic court: national court

Hostilities: acts of fighting in a conflict situation

Incidental: a secondary, unintended result of an action

Indiscriminate: done without careful selection or judgement

Prosecute: to carry out legal proceedings against someone in court

Prosecutor of the ICC: the person whose office is responsible for investigating and bringing criminal proceedings against individuals at the ICC

Reparations: compensation (usually ordered by a court) for the victim of harm or injury

Statute of the International Criminal Court: the treaty that established the International Criminal Court and that sets out what powers the Court has. It is sometimes also referred to as the ICC Statute or the Rome Statute.

Taliban: a political and religious movement that emerged in the early 1990s in Afghanistan and Pakistan. Taliban leaders formed the effective government in much of Afghanistan before the 11 September 2001 attacks on the World Trade Center and the Pentagon. The Taliban government was overthrown by the US and other Western forces at the end of 2001.

Treaty: an agreement between two or more states that sets out their respective responsibilities and obligations.

Warfare: military conflict between states or armed groups

Group B printout – International human rights law presentation notes

What are the facts?

Though the facts are still contested, the US has made a number of claims about how the hospital came to be attacked. Common to each claim is that the bombing of the hospital was not intentional. One of the claims made was that it was targeting Taliban fighters and the hospital nearby was accidentally struck. Another was that Afghan government forces were being fired on by Taliban fighters and asked the US for help. Following this, the US used an airstrike to target the Taliban fighters and accidentally struck civilians in the hospital.

MSF staff claim that the hospital was targeted directly and that it was no accident as it was hit again and again, even when staff made several calls to the US military to alert them to the situation in the hospital.



What does the law say?

There are two possible areas of law that seek to protect the rights of the airstrike victims: international humanitarian law and international human rights law.

Your group will be presenting on international human rights law and how violations of international human rights law are dealt with at an international level. Group A will be presenting on international humanitarian law.

International human rights law

- International human rights law protects the human rights that each individual possesses by virtue of being human. Its content is based on upholding human dignity and providing all people with the protections they need to live decent lives.
- The main elements of international human rights law are found in the nine core human rights treaties. Some of these are reproduced at regional level (for example in the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights). For the purposes of this activity, you will be considering only the applicable international human rights **treaty**, the International Covenant on Civil and Political Rights, which is explained below.
- The right to life is a fundamental right in international human rights law and is protected at international level by the International Covenant on Civil and Political Rights, a treaty that most (but not all) states in the world have agreed to.
- The general rule is that the human rights contained in a particular treaty are applicable in states that have ratified (agreed to the terms of) the treaties.
- For your presentation, you may assume that this is an armed conflict situation between the United States and the Taliban in Afghanistan.
- International human rights law is applicable in all situations including armed conflict situations. In armed conflict situations, international humanitarian law also applies to work alongside human rights law. You will explore their interaction below but your group's focus will be on international human rights law.
- **Breaches** of international human rights law can be brought to the attention of UN human rights committees and the UN Human Rights Council, and in some circumstances individuals may make individual complaints about **violations** of rights that they have suffered.

Article 6(1) of the International Covenant on Civil and Political Rights:

'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'

'In an armed conflict situation, what amounts to an **arbitrary** deprivation of life is determined by international humanitarian law.'¹⁶

What the law is saying is that in an armed conflict situation, if someone is killed contrary to humanitarian law, then human rights law will also have been violated. Group A students will be doing their presentation on the application of humanitarian law to this situation and you do not need to repeat this in your presentation. All you need to bear in mind is that for the purposes of this exercise is that you can assume that this is an armed conflict situation between the United States and the Taliban in Afghanistan, and that international humanitarian law has

been violated. The law you have been given above says that where international humanitarian law has been violated in an armed conflict situation, international human rights law will also have been *breached*.

How can violations of international human rights law be dealt with at an international level?

Recourse and Remedies

In the international legal system, there are two main ways in which victims of violations of rights contained in the International Covenant on Civil and Political Rights (ICCPR) can make complaints and seek remedies:

- Through the United Nations Human Rights Committee
- Through the United Nations Human Rights Council



Human Rights Committee

The United Nations has nine core human rights treaties.¹⁷ Each has a committee of experts to monitor *implementation* of the treaty provisions by the states that are party to it. The committee that monitors the ICCPR is called the Human Rights Committee (not to be confused with the Human Rights Council, a separate body that you will read about below.) The Human Rights Committee (and other committees generally) face a number of challenges:

- a) The Human Rights Committee is only able to hear and decide on complaints from individuals where the state that person is complaining about is a State Party to the relevant treaty (the ICCPR), and where that state has agreed that the Committee can receive and consider complaints from individuals.

Prompt question: What is the impact on justice for individuals if countries can opt out of having their actions and undertakings to implement human rights scrutinised? Is there a point in individuals having rights if states can opt out of having their violations scrutinised?

- b) The path to bringing a complaint to a Committee is not easy. The Human Rights Committee (and other UNHR committees) are only able to hear and decide on complaints from individuals where the individual has already tried and failed to get a remedy through national courts. In some countries, the justice system may not be well-developed, or functioning well,

and an individual may find it very difficult and time-consuming to bring a human rights case before a national court.

In many countries, people simply do not know that these systems exist or how to use them. Governments do not always publicise the availability of complaints procedures. In countries where there is not widespread access to the internet, it may be difficult to gain information on how to make complaints and seek redress. The complex criteria that must be fulfilled before a complaint can be considered by international bodies may be off-putting. If the country concerned does not support individual human rights, there may not be many activist lawyers or non-governmental organizations that can help people to bring cases before courts.

Prompt question: What is the impact on justice if law and justice machinery exist but they are so difficult to access that they are not widely used?

c) Even where a case gets to the stage of being heard by the Committee, it often takes a long time before the Committee reaches a decision.

Prompt question: What is the impact on justice if it is not delivered in a timely manner? What impact do you think this has for victims?

d) The Committee has no power to force a state to comply with its findings or to take any action. Unlike the decisions of national courts, the decisions of the Committee do not impose legal obligations or duties. Instead, the Committee tries to maintain a dialogue with the state and the case remains open until satisfactory measures are taken.

Prompt question: If states cannot be forced to comply with the human rights standards that they are obligated to uphold, what impact does this have for the rights system and for individuals?

The Human Rights Council (HRC)

The HRC is an organ of the *United Nations General Assembly*, which is one of the six principal bodies of the United Nations. It is an inter-governmental organization, made up of 47 countries, and is responsible for the promotion and protection of human rights worldwide. The members are elected for 3 year terms by the UN General Assembly. One of the HRC's tasks is to operate the complaints procedure, which examines gross and systematic violations of human rights. These are violations that are very serious, committed against significant numbers of people, and are ongoing. Past



situations considered by the HRC include the persecution of religious minorities in Iraq and widespread violations of right in Eritrea, including through torture, summary executions and arbitrary detentions.

In order for a complaint to be considered by the HRC, a number of criteria must be fulfilled. It must be in writing, not be politically motivated, adequately describe the alleged violations and be submitted by the victim or a person or group with direct and reliable information. As with the UNHR committees previously discussed, the individual must first have sought a remedy within the national legal system, and it must have been appealed to the highest possible level. The complaint must not have been submitted to another UN human rights body.

The HRC aims to work with countries to bring an end to abusive practices. However, it has no power to impose penalties or punishments for violations, other than to resort to bringing public attention to the human rights situation in a particular country. It cannot order any form of compensation for those whose rights have been violated.

You will have noted that the Human Rights Council suffers from some of the same challenges as the Human Rights Committee you have just looked at.

Prompt question: What potential problems can you foresee regarding the fairness of decisions made by the HRC, where the members are made up of representatives of only some of the countries in the world?

Special Procedures of the Human Rights Council (HRC)

Another way individuals can raise complaints about violations of their rights is through the HRC's Special Procedures. This is where independent human rights experts with mandates investigate human rights violations alleged to have taken place in specific countries (country specific mandates) or to examine trends and developments in relation to specific rights, for example freedom of expression, the right to education or the rights of migrants (thematic mandates). Special Procedures are not designed to consider individual complaints in the same way as the HRC. However, they often receive information on specific violations, perhaps because there is no requirement to exhaust *domestic remedies* before contacting them. They can intervene with the state concerned to request that the state takes action. However, they have no authority under international law to require states to undertake any particular action and states are often reluctant to cooperate with them.

Prompt question: What is the likely consequence of a widespread perception that the UN international human rights system cannot actually enforce individual rights and force states to stop or remedy violations?

Group B printout – International human rights law glossary

Arbitrary: not objectively justified

Breach a law: to break a law

Domestic remedies: remedies in national courts

Implementation of the law: putting the law into practice

Taliban: a political and religious movement that emerged in the early 1990s in Afghanistan and Pakistan. Taliban leaders formed the effective government in much of Afghanistan before the 11 September 2001 attacks on the World Trade Center and the Pentagon. The Taliban government was overthrown by the US and other Western forces at the end of 2001.

Treaty: An agreement between two or more states that sets out their respective responsibilities and obligations

United Nations General Assembly: an organ of the United Nations made up of representatives of all UN member states

Violations of human rights: infringements of human rights



4.4.2 OPTIONAL EXTENSION ACTIVITY - - Civilian Deaths Caused by Military Action – Instructions for teachers

This activity is an alternative option to the activities earlier in the lesson, **Justice and the International Criminal Court** and **International human rights and access to justice**. Both lesson options cover similar ground but **Civilian deaths caused by military action, access to justice and fair trial** requires a higher level of independent thought and analysis and should be used as a challenging alternative for more capable students. It is estimated to take up a whole lesson as well as student preparation time before the lesson.

This activity gives students the opportunity to process legal principles and concepts independently and to analyse the information given using rule of law principles that they have looked at in the international context. Note that the language and content of the applicable law given to students in their printouts have been simplified for classroom use.

Divide the class into two groups. Each group will tackle an area of law relating to targeted killing, either international humanitarian law or international human rights law, with the aim of giving a presentation on the fair trial and access to justice issues involved in that area of law. The overall question they are considering could be summarised as 'To what extent do the victims of airstrikes such as those in the Kunduz hospital have legal pathways through which they can seek justice for the wrongs done to them, and what impact does this have on the rule of law?'

Note: The extract from the newspaper article on US airstrikes on a hospital provided in the student printout contains an eye-witness testimony with graphic descriptions of the strikes that may not be appropriate for some students. Teachers should read the material and decide whether to include the eye-witness testimony which is set out on a separate page so that teachers can choose not to reproduce it if inappropriate for a particular class.

Each group should be given the presentation notes on the relevant printout, and should be given time to prepare their presentations before class. You may wish to brief a less able class on some of the more challenging aspects of their printouts before they take them away to prepare the presentation independently of you (in their groups). Students have prompt questions on their printouts which can form the basic structure of the main part of their presentations once they have briefly gone through the facts and the law.

After the presentations have been given, ask students to explore the challenges common to accessing justice in both areas of law. This will give students an opportunity to put ideas together and to draw conclusions as a group.



4.4.3 OPTIONAL EXTENSION ACTIVITY - - Civilian Deaths Caused by Military Action – Background for teachers

Answers to student prompt questions that should be addressed in presentations:

International humanitarian law

Prompt question:What is the impact on international justice if countries can opt out of their nationals standing trial? You may wish to consider issues of fairness and equality before the law.

This potentially undermines justice as the nationals of some countries can avoid prosecution for wrongdoing while others face the consequences. Justice systems are most fair and effective when all are equal before the law, meaning that all wrongdoers must face the consequences of their wrongdoing.

Prompt question:What is the impact on international justice if some wrongdoers are targeted for punishment while others are not? You may wish to consider issues of fairness and equality before the law. What impact does this have on the ICC's reputation as a forum for justice?

Similar points may be made to the question above on the fact that if not everyone is equal before the law, it is unfair both for wrongdoers and for victims. A perception of politically motivated prosecutions creates a feeling that the system has a set of rules that apply only to some and not others. This undermines the credibility of the system, as a justice system that targets or serves only some in the community is not a fair or just one.

Prompt question:What is the impact on justice if law and justice machinery exist but practicalities mean that they cannot be put into effect? Is this true justice?

Some feel that this means that the system is rather toothless because people's rights are only theoretical if little can be done to bring violators of rights to justice. For victims, it is unsatisfactory that they must depend on the goodwill of states for justice.

Prompt question:What is the impact on justice if law and justice machinery exist but they are not well resourced enough to function effectively?

Similar points may be made to the answer above. If laws and the justice system have been established, that is a good start, but they do not offer full protection to people unless they have the resources to function.

Prompt question: What is the impact on justice if it is not delivered in a timely manner? What impact do you think this has for both the accused and the victims?

One of the key aspects of the right to a fair trial is the principle that justice should be dispensed quickly. Lengthy delay in cases, especially in criminal proceedings, is unfair for both the accused and for victims.

There should be a verdict within a reasonable timeframe so that an accused person who is guilty faces the consequences of their acts as soon as possible, and so that accused person who is not guilty can continue with a normal life without the threat or fear of imprisonment hanging over them.

A timely verdict is also important for victims. Victims should be able to see those who have abused their rights brought to justice as soon as possible in order to ensure that the cause of their suffering is recognised and so that they can move on with their lives.

International human rights law

Prompt question: What is the impact on international justice for individuals if countries can opt out of having their actions scrutinised? Is there a point of individuals having rights if states can opt out of having violations scrutinised?

Traditionally, states have resisted interference by international bodies in what they consider their internal affairs. Refusing to *ratify* optional protocols or make declarations recognizing the ability of the Committees to receive complaints about them is one way of avoiding international scrutiny of their human rights records. This also explains why human rights bodies have little power to enforce compliance with human rights standards, as it is states that decide at the outset how these bodies should operate and the powers they should have.

Critics argue that if states can choose whether to have their behaviour subject to scrutiny, then not all states are equal before the law.

Prompt question: What is the impact on justice if law and justice machinery exist but they are so difficult to access that they are not widely used?

If the machinery of the legal system that is supposed to protect rights is not easily used, and people are not given the help that is needed in order to access the system and use it effectively, then the usefulness of having such a system in the first place is limited. The justice such a system delivers will be incomplete, inadequate and not available equally to all.

Prompt question: What is the impact on justice if it is not delivered in a timely manner? What impact do you think this has for victims?

One of the principles of fair trial is that justice should be dispensed quickly. Victims should be able to see those who have abused their rights brought to justice

as soon as possible in order to that the cause of their suffering is recognised and so that they can move on with their lives.

Prompt question: If states cannot be forced to comply with the human rights standards that they are obligated to uphold, what impact does this have for the rights system and for individuals?

Critics argue that if violations cannot be scrutinised and states cannot be made to change their ways and to provide compensation, then individual rights are merely theoretical.

Prompt question: What potential problems can you foresee regarding the fairness of decisions made by the HRC, where the members are made up of representatives of only some of the countries in the world?

A problem inherent to decisions made by bodies that do not represent all of the countries in the world is that they may not always be impartial. Country representatives tend to support the interests of their own country and those of their allies. A criticism that has been made of the HRC (and of many other organisations) is that decisions are sometimes influenced by political considerations, and that representatives have at times defended human rights abuses perpetrated by a particular government that their own country has links with. Furthermore, it has been pointed out that a country representative is unlikely to condemn a particular human rights abuse being perpetrated by a country being scrutinised if his or her own country carries out that same practice.

Prompt question: What is the likely consequence of a widespread perception that the UN international human rights system cannot actually enforce individual rights and force states to stop or remedy violations?

A perception that the system is ineffective makes people less likely to try and use it. If a justice system exists but is not used, once again, the rights it is supposed to protect may exist in theory but may not exist in practice. This gives the justice system little credibility.



4.5.1 PLENARY - Access to Justice in International Law - Teacher-led Discussion

Conclusion: Difficulties common to how international humanitarian law and international human rights law are dealt with in international courts and institutions

Difficulties common to both include the fact that at an international level, justice forums often rely on states to shoulder the main responsibility of dispensing justice. The ICC only prosecutes a small number of the most serious cases, relying on states to deal with the rest, while the international human rights committees require cases to have been brought to national courts first.

You can explain to students that on a national level, in countries where judiciaries are not independent of governments, courts are often unwilling to scrutinise government actions and where prosecuting authorities are not independent of government, a criminal prosecution may be very unlikely. Even in countries such as the UK where courts exist independently of governments, courts can often be reluctant to scrutinise government decisions and actions in the realm of national security and foreign policy on the basis that these are political decisions over which government should have wide control and discretion.

However, the picture is not bleak. In some regions of the world, particularly in Europe, there is a well-developed system for human rights redress under relevant human rights treaties. There may therefore be a preference by individuals to pursue actions under these systems with a belief that they are more effective.

Lesson Four: Glossary

Allegation: an assertion that has not been proved

Arbitrary: not objectively justified

Blockade: the isolation of a particular area in order to cut off supplies, communications or weapons

Enforcement: to compel compliance with the law or a decision made by a court

Hutus and Tutsis: ethnic populations inhabiting the Great African Lakes, residing principally in Rwanda and Burundi

International Court of Justice: the main judicial organ of the UN, considering questions on international law. It rules on disputes between states and provides advice on legal questions raised by UN organs and agencies

International Criminal Court (ICC): A court set up to prosecute the most serious international crimes, namely, genocide, war crimes, crimes against humanity and in the future, possibly the crime of aggression. These crimes all constitute serious breaches of international humanitarian law

Ratify: the official approval or consent given by a state to a treaty

Redress: legal means to solve an injustice

Sectarian violence: violence occurring between different groups within a country often with different ideologies, religions or political aims

Tribunal: a court-like body with judicial powers i.e. authorised to settle a dispute between parties

Footnotes:

¹ The Iraq Body Count has estimated that, at the time of writing, there have been 163,031 - 182,198 reported civilian deaths linked to the invasion of Iraq. Link can be found at: <https://www.iraqbodycount.org/>

² President Obama is one of the critics who have expressed the view that one of the unintended consequences of the Iraq war has been the growth of ISIS. <http://www.independent.co.uk/news/world/middle-east/president-obama-claims-rise-of-isis-is-unintended-consequence-of-george-w-bush-s-invasion-in-iraq-10115243.html>

³ For a summary of the key findings of the Chilcot Report see: <https://www.theguardian.com/uk-news/2016/jul/06/iraq-inquiry-key-points-from-the-chilcot-report>

⁴ These courts and tribunals include the International Court of Justice (ICJ), the International Criminal Tribunal for the former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR).

⁵ The Prosecutor made a statement correcting assertions contained in an article published by the Telegraph. The statement can be found at: <https://www.icc-cpi.int/Pages/item.aspx?name=160704-otp-stat>

⁶ A summary of the Bemba judgment can be found at: <https://www.icc-cpi.int/Pages/item.aspx?name=pr1200>

⁷ The original article in the Guardian can be found here: <https://www.theguardian.com/world/2016/apr/10/kunduz-afghanistan-attack-medecins-sans-frontieres>

⁸ Article 51(5)(b) of the 1977 Additional Protocol I

⁹ Article 85(3)(b) of the 1977 Additional Protocol I

¹⁰ Article 8(2)(b)(iv) of the Rome Statute of the ICC 1998

¹¹ Article 12 of the Rome Statute of the ICC 1998

¹² Article 13(b) of Rome Statute of the ICC 1998

¹³ For a more detailed explanation of the gravity threshold see: <http://www.internationalcrimesdatabase.org/upload/documents/20160111IT115040-Ochi%20ICD%20Format.pdf>

¹⁴ For further information on ICC resourcing, see Ford, Stuart. "Us and Them: The Unequal Allocation of Resources in Domestic and International Criminal Investigations." http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2733700

¹⁵ There have been prosecutions of members of US armed forces in US courts-martial (military courts that try military personnel for violations of the US military's criminal code.)

¹⁶ Nuclear Weapons Advisory Opinion of the ICJ, para 25

¹⁷ International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on the Rights of the Child; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; International Convention for the Protection of All Persons from Enforced Disappearance; Convention on the Rights of Persons with Disabilities.