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CENTRE FOR
**THE
RULE
OF
LAW**

The Rule of Law for Citizenship Education: International Law & Human Rights

RESOURCE PACK
First edition



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These resources are part of a series for rule of law teaching for secondary school students:

- The Rule of Law for Citizenship Education: Understanding Justice
- The Rule of Law for Citizenship Education: International Law and Human Rights

Contact the Bingham Centre's schools team for more information:
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The Bingham Centre for the Rule of Law is dedicated to the study, promotion and enhancement of the rule of law worldwide. It does this by defining the rule of law as a universal and practical concept, highlighting threats to the rule of law, conducting high quality research and training, and providing rule of law capacity-building to enhance economic development, political stability and human dignity. The Bingham Centre was launched in 2010. It is a constituent part of the British Institute of International and Comparative Law (BIICL), a registered charity and leading independent research organisation founded over 50 years ago.

Note: The flags on the front cover have been modified from an image of world flags. None of them now represent the flag of any particular country.

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The Rule of Law for Citizenship Education: International Law and Human Rights – Resource Pack

I. Foreword

I.1 About the book and active Citizenship

This book introduces 'the rule of law' within the context of the Citizenship curriculum. The rule of law can be viewed as a framework of principles that should be reflected in every good justice system. Although every country has different laws and different ways of administering those laws, common to all effective systems are the principles that laws and legal institutions should be fair, they should serve all equally, and they should not infringe individual liberties more than is necessary. The rule of law is a standard against which these features of legal systems should be assessed.

Many teachers have told us that they look for relevant and at times controversial issues to engage students with in their learning. In the pursuit of good Citizenship, students want to challenge and to be challenged. They want to express opinions, question the status quo and think critically. Learning about law and justice through a rule of law lens does this. Students are not simply told what the law is. Effective Citizenship learning requires students to think beyond questions of what the law is to ask what the law should be.

The Key Stage 4 (KS4) Citizenship curriculum introduces the exciting and rather demanding subjects of international law and human rights. This book addresses these topics head-on, examining and evaluating international organisations, international criminal law, human rights law and humanitarian law, among other topics. These fast-developing areas of law provide ample opportunity for rule of law exploration through classroom activities, topical case studies, and expert video material.

Though this book has been produced with a KS4 Citizenship audience in mind, it has broader applicability to other contexts where law and justice issues are of relevance. The book, for example, could be used in areas with clear legal emphasis, such as Law, or subjects such as Geography where international institutions form part of the examinable subject matter.

This resource book is part of a wider rule of law project that aims to give secondary school students a structured way to think about law and justice as independent learners and to develop key skills of evaluation and analysis. Beyond addressing the curriculum, the project also aims to add constructively to SMSC teaching requirements, and aspires to instil important values of fairness, equality and justice that bridge social and cultural backgrounds.

For more information, please contact the project team at: schools@binghamcentre.biicl.org.

I.2 Opportunities for Citizenship action

The book provides a starting point for students to articulate their own views on international law and justice. Students are exposed to a range of viewpoints and are given the skills to evaluate the justice system for themselves. The natural next step is to provide students with opportunities for citizenship action.

Campaign organisations across the world work in the areas of international law and justice touched upon by this book. Engagement with these organisations will allow students to pursue causes that they

care about, and they should be encouraged to do so throughout this course. The internet is a useful place to find out more about getting involved in campaigns.

In guiding students to begin this journey into active citizenship, you may wish to explain that individual campaign groups take different perspectives on world issues, and often address slightly different points in campaigns relating to similar policy areas. It is valuable for students to be able to consider a wide variety of viewpoints to make their own minds up on causes that they wish to pursue.

A number of suggestions for citizenship action are detailed below, but these serve as a mere snapshot of the thousands of campaign groups that touch upon the themes of this book. Bearing in mind that there are many organisations working within each campaign area students might be interested in the following organisations, but should not confine their research to those mentioned.

- Lobbying to change the behaviour of governments and companies. For example Amnesty International is a well-known group that campaigns worldwide on a range of human rights violations, often focusing on the suffering of individuals.
- Campaigning to educate others around particular issues, especially with a view to changing public behaviour and opinions. For example Greenpeace and the World Wide Fund for Nature (WWF) are perhaps the best known environmental campaign groups.
- Providing direct support to groups facing particular challenges. For example the International Rescue Committee provide humanitarian assistance to refugees and asylum seekers across the world.

2. Finding your way around the book

The book contains four lessons on the rule of law from an international law and human rights perspective, as well as an overall plenary session. These are detailed in the Lesson Map.

2.1 Contents:

The book contains four lessons on the rule of law from an international law and human rights perspective, as well as an overall plenary session. These are detailed in the Lesson Map. Inside you will find teachers' materials containing information on how to teach each of the main components:

- Guidance on learning objectives, learning outcomes and key skills.
- Student printouts and activities with marked optional worksheets.
- Background information on each teaching point, topic and activity.
- Glossaries containing definitions of key legal terms and concepts.
- Footnotes providing links to legal sources, citations and further information.
- Links to expert interviews examining issues in international law and human rights.
- Questions and answers to lead plenary discussions.

3. Using the book

3.1 Skills development and adaptation for different classes

These materials have been developed with participatory and student-centred learning approaches in mind in order to develop independent learning and thinking skills. The book is designed to allow freedom for debate and articulation of opinions. While concepts and teaching points are still very much teacher-led, activities require students to read and absorb information more independently than at

earlier learning stages. However, each class will require a different level of supervision and guidance and it is up to the teacher to respond and deliver lessons appropriately for each class.

3.2 Identifying different components in the materials

For ease of identification, each component of the materials has been marked with a different identifying icon as in the key below:



Student materials



Teachers' instructions



Teachers' background



Teacher-led introduction/
discussion



Multimedia activity

3.3 Optional activities

Optional activities are labelled as such in the teachers' materials. They are included to meet the ability levels and interests of different classes. The optional worksheets cover similar concepts to activities elsewhere in the book. Several activities are more advanced, and are thus appropriate for challenging students of a higher ability level.

3.4 Instructions for teachers

In the teachers' materials, after each of the key teaching points and after the student activities, there are sections labelled 'Instructions for Teachers'. These sections contain suggestions on how to organise activities for students.

3.5 Background for teachers

Information on key concepts is placed after each of the key teaching points and student activities sections. This provides context to teachers without a legal background, ensuring they feel comfortable in presenting the student materials and answering student questions. These sections enhance teachers' understanding of the key concepts and it is recommended that they are read before planning the lessons, but reading all parts is not necessary.

The footnotes contain references to legal sources, materials and further information. They are included for the teacher's reference and for completeness but it is not necessary to read all the footnotes in order to understand the principles.

3.6 Teacher-led introductions to topics

A script has been provided for teachers to use in presenting key concepts and principles contained in the lessons. The script can either be read, paraphrased or adapted depending on the chosen teaching style and background knowledge of the teachers.

3.7 Student activities

Student activities and printouts are included within the book and can be photocopied as necessary for students to write on. Teachers can also adapt these for alternative presentation formats such as PowerPoints if desired.

3.8 Plenary and evaluation

Each lesson has a plenary activity at the end. The activities are intended to allow the teacher to assess if the students have grasped the key concepts and how much they have learnt in each lesson.

Make sure that you subscribe to the quarterly Bingham Centre Schools Newsletter for all the latest news about the project, as well as contextual updates on rule of law issues, our Bingham Briefings!

Lesson name	Lesson outline	Type of activity	Learning Objectives	Learning Outcomes	Key Skills
I. Concepts and Principles of International Law and Human Rights	<p>I.1.1 INTRODUCTION - Video introducing the international law and human rights framework</p> <p>I.2.1 ACTIVITY 1 - The Many Faces of International Law</p> <p>I.3.1 ACTIVITY 2 - Case Study on Children's Rights and Child Labour</p> <p>I.4.1 PLENARY - Bringing Human Rights Violators to Justice - Video Case Study on Child Soldiers</p>	<p>Audio-visual</p> <p>Comprehension exercise</p> <p>Writing exercise</p> <p>Audio-visual and group discussion</p>	<p>Understand the function of international law and that international human rights law is one of the many fields within international law</p> <p>Have a general understanding of some of the subject matters and situations that international law deals with</p> <p>Have a general understanding of the role of international courts in resolving international law disputes</p>	<p>Be able to explain what international law is and how it is formed</p> <p>Be able to give examples of situations regulated by international law</p> <p>Be able to explain generally how international law is enforced and some of the challenges in enforcement</p>	<p>Assimilating and articulating new concepts, expressing points of view, debating conflicting points of view, forming reasoned conclusions</p>
2. Certainty and Clarity of the Law	<p>2.1.1 INTRODUCTION - Certainty and Clarity of International Law - Teacher-led Introduction</p> <p>2.2.1 STARTER ACTIVITY - Uncertainty and the Law on the Use of Force - Teacher-led Discussion</p> <p>2.3.1 ACTIVITY 1 - The Law on Armed Force and Self-Defence</p> <p>2.4.1 ACTIVITY 2 - The Legality of Using Force - Country Examples</p> <p>2.5.1 PLENARY - Legal Certainty - Teacher-led Discussion</p>	<p>Group work and presentation</p> <p>Group role play and team work, class discussion</p> <p>Class discussion</p>	<p>Understand the difference between law that is clear and certain and law that is unclear and uncertain</p> <p>Understand why some areas of international law are unclear and uncertain</p> <p>Understand the importance of clarity and certainty of the law</p>	<p>Be able to give examples of law that is unclear and uncertain within the law of armed force</p> <p>Be able to explain what the consequence of lack of clarity and certainty is for those being governed by the law</p>	<p>Literacy, applying legal principles to different scenarios, analysing legal frameworks, constructing arguments, weighing up and evaluating evidence, challenging different ideas, expressing reasoned opinions</p>

Lesson name	Lesson outline	Type of activity	Learning Objectives	Learning Outcomes	Key Skills
3. Equality Before the Law and the Abuse of power	3.1.1 INTRODUCTION - Equality before the Law 3.2.1 STARTER ACTIVITY - The Security Council 3.3.1 ACTIVITY 1 - Reforming the Security Council 3.4.1 PLENARY - Abuse of Power - Teacher-led Introduction 3.5.1 ACTIVITY 2 - The Exercise of Power 3.6.1 ACTIVITY 3 - Abuse of Power - Teacher-led Case Study 3.7.1 PLENARY - Correct Use of Power - Teacher-led Discussion	Comprehension exercise Writing and class discussion Group work and presentation Class discussion	Understand the general concept of equality before the law Understand the implications of having the opportunity to participate in law-making and being treated equally under the law Understand what power is and the difference between legitimate and illegitimate abuses of power	Be able to explain the link between structural inequality in institutions and inequality of law and policy made by those institutions Be able to give examples of abuses of power Be able to explain the hallmarks of a legitimate use of power and be able to use these principles to evaluate power in different scenarios	Applying a set of principles to evaluate different situations, constructing arguments, weighing up and evaluating evidence, challenging different ideas, expressing reasoned opinions

Lesson name	Lesson outline	Type of activity	Learning Objectives	Learning Outcomes	Key Skills
4. Access to Justice and Fair Trial	<p>4.1.1 INTRODUCTION - Access to Justice and Fair Trial</p> <p>4.2.1 STARTER ACTIVITY - Justice and the International Criminal Court</p> <p>4.2.4 OPTIONAL EXTENSION ACTIVITY - Justice and the International Criminal Court - Teacher-led Discussion</p> <p>4.3.1 ACTIVITY I - International Human Rights and Access to Justice</p> <p>4.4.1 OPTIONAL EXTENSION ACTIVITY - Civilian Deaths Caused by Military Action</p> <p>4.5.1 PLENARY - Legal Certainty in International Law - Teacher-led Discussion</p>	<p>Writing and class discussion</p> <p>Teacher-led plenary</p> <p>Group work and presentation</p> <p>Group work and presentation</p> <p>Teacher-led plenary</p>	<p>Understand what accessing justice means and that fair trial is an important component of access to justice</p> <p>Be able to relate assessing justice to the concepts of equality and fairness</p> <p>(Extension exercise- Understand the challenges that individuals may face in accessing justice under international human rights law and humanitarian law)</p>	<p>Be able to explain what elements need to be present for justice to be accessible, institutionally, legally and in a practical sense</p> <p>Be able to apply the elements necessary for access to justice to assess different scenarios</p> <p>(Extension exercise- Be able to explain and evaluate international human rights and/or humanitarian law systems for accessibility and effectiveness)</p>	<p>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</p>

Lesson name	Lesson outline	Type of activity	Learning Objectives	Learning Outcomes	Key Skills
5. Course Plenary	5.1 PLENARY- Terrorism and Human Rights - Video Interview with David Anderson QC, The Independent Reviewer of Terrorism Legislation	Audio-visual Class discussion	<p>Understand that all people have human rights</p> <p>Understand broadly the potential conflict between measures designed to protect the public and individual human rights</p> <p>Understand why it is important to respect the rights of suspected criminals including suspected terrorists</p>	<p>Be able to give examples of different scenarios where there is a potential conflict between measures to protect the public and individual rights, and be able to explain which rights are at risk of being infringed</p> <p>Be able to articulate arguments for and against particular public safety measures being used in different circumstances and be able to draw a reasoned conclusion on where the balance between implementing security measures and respecting personal liberties should lie</p> <p>Be able to explain the potential consequences of not respecting the rights of suspected criminals including suspected terrorists</p>	<p>Understanding unfamiliar points of view, debating conflicting points of view, constructing arguments, forming reasoned conclusions</p>

Lesson One: Concepts and Principles

Lesson One: Lesson Plan

LEARNING OBJECTIVES:

- Understand the function of international law and that international human rights law is one of the many fields within international law
- Have a broad understanding of some of the subject matters and situations that international law deals with
- Have a general understanding of the role of international courts in resolving international law disputes

LEARNING OUTCOMES:

- Be able to explain what international law is and how it is formed
- Be able to give examples of situations regulated by international law
- Be able to explain generally how international law is enforced and some of the challenges in enforcement

SKILLS:

- Assimilating and articulating new concepts, expressing points of view, debating conflicting points of view, forming reasoned conclusions

I.1 Introduction



I.1.1 STARTER ACTIVITY - Video introducing the international law and human rights framework

The video addresses the following questions.

- What is international law? What's the point of it?*
- How is international law made and where can you find what it says?*
- What are human rights?*
- Does everyone have the same rights?*
- What can people do if their rights have been violated?*



I.1.2 STARTER ACTIVITY - Video introducing the international law and human rights framework - Instructions for teachers

Play the video on international law and human rights and ask students to consider all or a selection of the following questions to make sure that students have understood the video. Students may request that you replay the video or certain sections of it.

bit.ly/humanrightsintro

1. *What is the purpose of international law?*
2. *Give examples of some of the areas that are covered by international law.*
3. *Explain what treaties are and what customary law is.*
4. *Explain international law is enforced.*
5. *Name the four categories of human rights mentioned in the video.*
6. *Why does Professor McCorquodale say that there is no hierarchy of rights?*
7. *Outline some of the examples that Professor McCorquodale gives of cultural relativism.*
8. *Under international human rights law, what sorts of legal resolution can people get when their rights have been violated?*



I.1.3 STARTER ACTIVITY - Video introducing the international law and human rights framework - Background for teachers

The answers to the questions have been taken from the video and supplemented with further information to give teachers a full background.

1. What is the purpose of international law?

- International law forms a set of rules that states and other actors have to adhere to. It tells them what conduct is lawful and what is not.
- The primary purpose is to govern and regulate the relationships between states, but also other international bodies such as international organisations, armed groups and corporations. It sets out the obligations and the entitlements of states and other organisations.
- In the same way that national law seeks to regulate the conduct and relationships of its citizens, international law aims to regulate the conduct and relationships of states.
- International human rights law is a branch of international law concerned with people and their rights. It gives individuals and groups of individuals rights against states, making it unique within international law.

2. Give examples of some of the areas that international law covers.

- Armed conflict, environmental law, human rights, investment and trade law, *intellectual property* (trademarks and copyrights), commercial law.
- Other examples not in the video: International crime, migration, *sustainable development*, finance, labour, seas and oceans, and maritime boundaries, cultural heritage and refugees and displaced people.

3. Explain what treaties are and what customary international law is.¹

- Treaties are agreements between states setting out what they can or cannot do in a particular situation. Treaties can be bilateral or multilateral. Bilateral treaties are agreements between two states. Multilateral treaties are agreements between several states. Professor McCorquodale compares treaties with contracts which are *binding* agreements between two parties such as individuals (for example if you hire a painter) or between other entities such as companies (for example when one company buys out another). Treaties are similar to contracts but are usually much

more complex.

- Customary international law is the law that develops from states carrying out a particular practice over and over again with the sense that they are obliged to do this because this is the law. The more it is repeated, the more it becomes entrenched as international law.
- An example of customary international law is the principle that a visiting Head of State is immune from being prosecuted in the country that he or she is visiting, regardless of what he or she may be accused of or may have done.

4. Explain how international law is enforced.

- Enforcement is the process of making sure that states comply with their obligations under international law – that they do what they are supposed to do.
- Where there is a dispute or where a state has been accused of wrongdoing under international law, international courts and **tribunals** such as the International Court of Justice (ICJ), and **tribunals** on trade and investment, hand down judgments that states are required to comply with.
- One difficulty is that a state has to agree that it will accept the rulings of a particular court, otherwise it cannot be forced to appear before this court.
- Even where a state appears before a court and the court delivers a ruling, enforcement of international law is problematic, as the judicial and penal systems in place don't have a robust system of forcing states to comply with rulings.
- For example, international human rights committees (an example of an international body with a court-like function) may deliver a judgment saying that a state must stop violating a particular human right or that it must change its laws to comply with international human rights standards. However it is difficult to force states to comply with the ruling as there is not much that can be done if the state continues to violate the right and does not change its laws.

5. Name the four categories of human rights mentioned in the video.

- Civil and political rights² – examples include the right to life,³ right to freedom of expression,⁴ right to freedom from slavery,⁵ right to freedom of assembly.⁶
- Economic, social and cultural rights⁷ – examples include the right to access to healthcare,⁸ right to education,⁹ right to safe conditions of work,¹⁰ right to cultural life.¹¹
- Collective rights - examples include the right to self-determination¹² (right of people to decide on matters of their own political future) and right to freedom from **genocide**.¹³

- Cross-cutting rights – these are rights which apply to the enjoyment of all other rights, such as the right to equality and freedom from discrimination.¹⁴ This means that all people should enjoy all human rights equally and without discrimination.

6. What does Professor McCorquodale mean when he says that there is no hierarchy of rights?

- Professor McCorquodale says that there is no hierarchy of rights, because each individual has a different background in terms of culture, ethnicity, religion and a different set of beliefs and value systems at each stage of their lives. As a result, every human may have a different prioritization of rights and there is no generally applicable hierarchy. Furthermore, many rights are linked and the enjoyment of one right might depend on being able to exercise another right.
- For example the right to freedom of speech¹⁵ is directly linked to the right to freedom of assembly.¹⁶ The right to take part in political activities¹⁷ is often linked with the right to education,¹⁸ as education may improve the ability of individuals to participate in political activities. The right to work¹⁹ is often linked with the right to education as education enhances work opportunities.

7. What is cultural relativism? Outline some of the examples that Professor McCorquodale gives of cultural relativism.

- Cultural relativism is closely connected to the discussion in the previous question. Different historical, cultural, religious, ethnic and developmental backgrounds mean that the governments of different countries may not only prioritise different rights, but may regard human rights in different ways. Even though there is a set of rights that all states are supposed to adhere to, there are variations in the ways these rights are interpreted and understood.
- Some would go as far as to say that cultural relativism means that there is no objective standard of rights to which all countries must adhere, and that the individual circumstances of the state in question should determine how it protects the rights of its citizens.
- Professor McCorquodale gives various examples of how cultural relativism can result in different interpretations and enjoyment of rights. He explains that in some countries, laws that require certain sectors of the population to act and dress in a particular way can be seen as protective rather than a discrimination issue. In other words, by imposing a restrictive requirement on some people in a country (but not on all people), the government may argue that it is not discriminating against those people but that it is instead acting to protect that sector of the population. Another example might be a government agreeing with rights advocates that all people should have access to healthcare, but then making the decision that some people may not have access to a medical centre near to them (for example, for religious reasons). Lastly, there might, for example, be general agreement by a government

that people should have freedom of expression, but that government may try to restrict this freedom in particular situations by, for example, limiting the rights of the media to publish criticism of the government; sometimes a government may say that restrictions are required for security and stability needs particular to that country.

- There are some rights that must be protected absolutely whatever the cultural, historical, or political situation of a country. For example there are absolute prohibitions on torture and slavery. These rights are so fundamental that there is no room for interpretation on their absolute prohibition and it is illegal for anyone to be tortured or enslaved at any time under any circumstances. Unfortunately this does not prevent violations of these rights; torture and slavery still happen.

8. Under international human rights law, what sorts of remedies can people get when their rights have been violated?

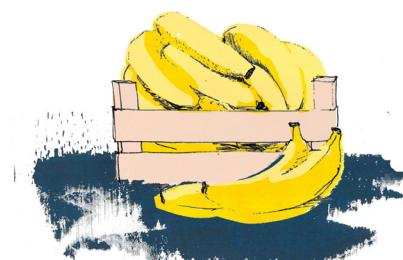
- Gaining a remedy in this context means gaining redress or relief from a violation of your rights. There are different remedies available. Victims of human rights violations may go to courts to seek compensation, to have the violation stopped or to somehow change the position they are in.
- There are remedies available in national, regional and international courts.
- In this country, there are national laws that protect human rights. The main piece of national law governing human rights in this country is the Human Rights Act 1998 (although at the time of writing, there is ongoing discussion on whether to repeal this Act and instead to have a British Bill of Rights).
- If individuals are unable to obtain remedies in national courts, they may seek to bring their claims to regional or international bodies (provided their country has accepted the authority of that regional or international body).
- Regional bodies where individuals may seek relief include the African Court on Human and Peoples' Rights and the European Court of Human Rights.²⁰
- International bodies that hear individual complaints include the United Nations Committees that monitor state implementation of the treaties – (such as the Committee against Torture and the Committee on the Rights of the Child).²¹
- It can be difficult to take a case to regional or international bodies. For example, a UN Committee will only hear a complaint by an individual, if, the state being complained about is a party to the relevant human rights treaty and the state must have agreed to allow the Committee monitoring the relevant treaty to receive and consider complaints from individuals.
- Another difficulty with accessing regional and international human rights bodies is that they require the individual to first try to get a remedy through national courts. However, where the national justice system is not functioning well then that may be difficult of even impossible.



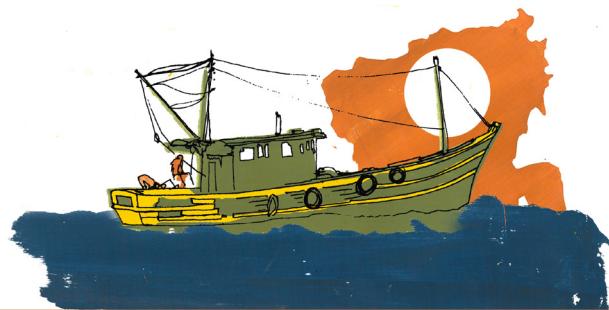
1.2.1 ACTIVITY 1 - The Many Faces of International Law - Printouts for students

Match the areas of activity and situations in the boxes on the left-hand side with the areas of law that you think might be involved in regulating those activities. There may be more than one area of law that is relevant, and in each case, explain at which point in the process or activity the area of law might be relevant, and how you think that area of law is relevant.

A banana is sold in your local corner shop.



The government of an imaginary country, Olympus, claims that fishermen from a neighbouring country, Atlantis, have strayed into Olympus' waters. Government forces from Olympus abduct the fishermen and keep them in prison without food or water. The government of Atlantis sends troops to rescue its fishermen.



War breaks out between two imaginary countries (Atlantis and Olympus) and both governments are attacking civilians in the enemy country. Many people from both Atlantis and Olympus flee to other countries in the surrounding region hoping that they will receive protection.



Humanitarian law

Trade Law

Refugee Law

The Law on the use of force

Environmental Law

The law of the sea

International human rights law

Labour law



1.2.2 ACTIVITY I - The Many Faces of International Law - Instructions for teachers

Divide the class into 3 groups, giving them each a situation to consider. Ask each group to present its answer to the class, being careful to explain at which point in the situation each area of law engages. The point of the exercise is to give students an idea of the wide issues covered by international law and the fact that international law may touch their daily lives for example through the simple act of buying foreign goods in a UK shop.



1.2.3 ACTIVITY I - The Many Faces of International Law - Background for teachers

A banana is sold in your corner shop.

The growing of the bananas would have been regulated by international environmental law which governs for example issues such as the release of chemicals from industrial processes into water systems. Working conditions in growing the bananas may also be regulated by international labour law, for example through Conventions set by the International Labour Organisation, once ratified by a country. As bananas do not grow in the UK, the importing of the bananas into the UK would have been regulated by international trade law. For example it would probably have been subject to a tax imposed on imported goods based on trade agreements between the country of origin and the country of destination.

The government of a country claims that fishermen from a neighbouring country have strayed into their waters. They abduct them and keep them in prison without food or water. The government of the fishermen's country sends troops to rescue the fishermen.

Whether the fishermen did stray into the waters of another country requires consideration of maritime boundaries. The law of the sea governs maritime boundaries, the main piece of law being the UN Convention on the Law of the Sea. The ill-treatment of the fishermen by the government engages international human rights law. This could include treaty law, (including the Convention Against Torture

and the International Covenant on Civil and Political Rights), and customary law (that applies to all states) on the prohibition of torture and inhuman and degrading treatment. The rescuing of the fishermen by troops will engage the law on the use of force, where sending troops into another state's territory without permission is prohibited except as an act of **self-defence** or with UN authorisation. (Some argue that there is another limited exception for the rescue of one's nationals in another state, but this is controversial.)

War breaks out between two countries and both governments are attacking civilians in the enemy country. Many people flee to countries in the surrounding region hoping that they will receive protection.

The targeting of civilians is illegal under international humanitarian law, which protects those who are not actively involved in hostilities through the 1949 Geneva Conventions and the 1977 Additional Protocols. The protection that those fleeing from their country for personal security reasons may have in other countries is governed by international refugee law. This includes the 1951 Convention Relating to the Status of Refugees and/or the 1967 Protocol as well as a number of regional treaties.



1.3.1 ACTIVITY 2 - Case Study on Children's Rights and Child Labour - Printouts for students

What is child labour?

Not all work done by children is considered child labour. Work that does not affect children's health and development or interfere with their schooling is generally regarded as positive, giving children new skills and building experience. The International Labour Organisation (ILO), which is a specialized agency of the United Nations, defines child labour as "work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development".



What does the law say?

Under international law, child labour is defined by reference to two key treaties:

- ILO Convention No. 138 Concerning Minimum Age for Admission to Employment (1973) (ILO C.138)
- ILO Convention No. 182 on the Worst Forms of Child Labour (1999) (ILO C.182)

ILO C. 138 sets the ages at which children can legally be employed, which is an important way of making sure that children do not begin work at too young an age. It sets different standards for developed and developing countries. The Convention states that:

- Work likely to threaten children's physical, mental or moral health should not be carried out by anyone under the age of 18. There is an exception for developing countries, where the age limit is 16, as long as there are safeguards in place.
- The minimum age for work should not be below the age for finishing compulsory schooling, and it should not be less than the age of 15. In developing countries, children should not work below the age of 14.

- ‘Light work’ may be done by children between the ages of 13 and 15 as long as it does not threaten their health and safety, or hinder their education or vocational training. For developing countries, the age is slightly lower at 12 to 14.

What do states have to do to protect children?

ILO C.182 places a duty on states to take immediate and effective measures to prohibit and eliminate the worst forms of child labour. It lists the worst forms of child labour as:

- Slavery or similar practices, such as the sale and trafficking of children, **debt bondage**, and forced or compulsory labour, including the forced recruitment of children for use in armed conflict;
- Child prostitution or pornography;
- Illicit activities, such as the production and trafficking of drugs;
- Hazardous work, including night work/long hours of work; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment and tools, or which involves handling or transport of heavy loads; and work in an unhealthy environment involving hazardous substances, or exposure to temperatures, noise levels, or vibrations damaging their health.



All countries that are members of the ILO are required to respect and work towards the standards within these treaties. However, although a majority of countries have passed laws to prohibit or regulate the work and employment of children, child labour remains a serious global problem. It is estimated that approximately 168 million children worldwide are in child labour. 85 million of those are in hazardous work. Of those involved in child labour, 58.6% are involved in agriculture, 25.4% in services, such as restaurants and hotels, 7.2% in industry, such as mining and construction and 6.9% in domestic work.

Consider the questions below:

Do you think it is wrong for children to work for a living in all cases?

What do you think children involved in illegal child labour can do about their situation?



1.3.2 ACTIVITY 2 - Case Study on Children's Rights and Child Labour - Instructions for teachers

Give students time to read their printouts on child labour and ask them to consider the questions at the end of the printout. You may wish to prompt students to think about situations where it may be acceptable for children to work for a living. In considering what children can do to gain a remedy, you may wish to refer students to what they have heard and discussed in the Starter Activity video.



1.3.3 ACTIVITY 2 - Case Study on Children's Rights and Child Labour - Background for teachers

Case study on child labour

Do you think there are circumstances where it is acceptable for children to work for a living?

Almost all countries agree that the worst forms of child labour should be abolished under ILO Convention No. 182 on the Worst Forms of Child Labour. International attention is concentrated on the creation of laws and programmes that aim to bring these to an end.

As to less damaging forms of child labour, there are difficult moral questions around whether preventing children from working is simply a Western ambition. In some countries, the difficulty with a Western insistence on prohibiting child labour is that many families depend on some or all of their children working in order to survive. Without this income, some families simply would not manage to get by. Education may be costly and poor families cannot afford it. To help the family, children therefore work rather than attend school.

Where a country's government is unlikely to intervene to provide the family with social support as an alternative to children working, or to use law and policy to increase adult wages so that children do not have to contribute to the family income, stopping children from working could mean that some families do not manage

to get by. Therefore, there is an argument that prohibiting child labour in those circumstances is worse than allowing limited child labour (presuming that the worst forms of child labour are avoided). United Nations Children's Fund (UNICEF) and the International Programme on the Elimination of Child Labour (IPEC) have drawn attention to the need to ensure that children do not end up worse off as a result of campaigns to end child labour. This has sometimes been the case where children are simply dismissed to avoid legal proceedings or negative publicity. In recent years, some countries, particularly in Latin America, seem to be moving away from abolition towards regulation and the empowerment of child workers.

This means that in a small number of situations, child labour is legalised, but governments implement rules determining when it may take place and create structures controlling how it may take place to protect children undertaking such work.

What do you think children involved in illegal child labour can do about their situation?

Although a majority of countries have now enacted laws that regulate and/or prohibit child labour, there is rarely an opportunity to enforce this through the courts. In many parts of the world, where legal systems are underdeveloped and underfunded, pursuing those who use child labour is simply not a priority.

There are technical difficulties with bringing cases concerning child labour. For example, there is not always a system of birth registration and so even when cases are taken to court it can be extremely difficult to prove the child's age and thus difficult to prove that they fall outside the legal parameters.

In addition, among non-governmental organisations (NGOs) there seems to be a consensus that legal frameworks cannot be the sole solution to child labour as children and families are worse off if they are simply sacked to avoid negative publicity. Thus, the provision of alternatives, particularly educational initiatives, has become a focus among the national and international NGOs that do most of the work on this issue.



1.4.1 PLENARY - Bringing Human Rights Violators to Justice - Video Case Study on Child Soldiers

Play the video which discusses the trial of Thomas Lubanga Dyilo, warlord from the Democratic Republic of Congo in the International Criminal Court in 2012: https://www.youtube.com/watch?v=Zsy_2rH2TY0

The previous case study highlighted the difficulty in gaining a remedy through courts for certain human rights abuses. The present case study is an example of extreme human rights abuses being successfully addressed through international courts where there has been little success on a national level.



1.4.2 PLENARY - Bringing Human Rights Violators to Justice - Video Case Study on Child Soldiers - Instructions for teachers

Play the video on the use of child soldiers. Introduce the video by explaining to students that:

Between 1994 and 2003 a war was fought in the Democratic Republic of Congo (DRC) between its government and various armed rebel groups. More than 5.4 million people died as a result of the fighting. Of these, 2.7 million were children. One of the notable features of the DRC conflict was the use of children as soldiers. In 2006, the International Criminal Court (ICC) issued a warrant of arrest for the leader of one rebel group, Thomas Lubanga Dyilo. He was charged with *enlisting* and *conscripting* children under the age of fifteen years into the Union des Patriotes Congolais [*Union of Congolese Patriots*] (UPC), and using them to participate actively in hostilities. The enlistment and conscription of children under fifteen into armed forces or groups or the use of them to participate actively in hostilities is a war crime under Article 8 of the ICC Statute. The DRC authorities surrendered Lubanga to the ICC in The Hague.

At Lubanga's trial, the ICC heard evidence that boys and girls under the age of fifteen were recruited into the UPC between 2002 and 2003. Some were abducted and forced into the rebel group, while others were encouraged or coerced into joining. They were sent to military training camps where they underwent harsh

training regimes and punishments. Children were used to fight in battles and as bodyguards for senior members of the UPC. Girls were used to carry out domestic work and many were raped and suffered sexual violence.

Ask students to take notes during the video and be prepared to discuss the questions below:

1. *What was the outcome of the trial in the International Criminal Court?*
2. *Why are prosecutions of crimes related to the use of child soldiers difficult to carry out in national courts?*

If there is time, you may wish to ask students to do research on what is being done to rehabilitate former child soldiers.



1.4.3 PLENARY - Bringing Human Rights Violators to Justice - Video Case Study on Child Soldiers - Background for teachers

Judgment in the case of Prosecutor v. Thomas Lubanga Dyilo in the International Criminal Court, 14 March 2012

What was the outcome of the trial?

On 14 March 2012, Lubanga was found guilty. The ICC decided that the UPC's recruitment of children and the use of children in military activities was part of a coordinated plan. As leader of the group, Lubanga played a crucial role in making decisions on recruitment policies and the planning of military operations. He also made speeches to local people in which he encouraged children to join the UPC and he used under fifteen amongst his bodyguards. The ICC therefore found that Lubanga bore ultimate responsibility for the UPC's conscription and enlistment of children and their use in hostilities. He was sentenced to 14 years' imprisonment. The ICC's decision and sentence were upheld on appeal on 1 December 2014. Lubanga is currently serving his sentence in a prison in the Democratic Republic of Congo.

A number of former child soldiers have applied to the ICC for compensation, known as reparations, for the harm they suffered as a result of Lubanga's actions. The form that this should take, who should receive it and whether it should be paid solely by Lubanga or also from the **ICC Trust Fund for Victims** (TFV) is still to be decided. This

is the first case in which the ICC has had to make decisions on reparations and the delay has caused a lot of frustration. The TFV has delivered a plan for symbolic reparations that was approved by the International Criminal Court on 21st October 2016. This takes into account the amount to be paid by Lubanga, the amount to be paid by TFV, a list of potential victims and an assessment of the harm they have suffered.

Why are prosecutions of crimes related to the use of child soldiers difficult to carry out in national courts?

The ICC spent considerable energy on crimes related to child soldiers during its early years, listing them in seven of the first twelve *indictments*. However, at the national level less has been achieved, with very few successful prosecutions. Post-conflict states seldom have the infrastructure to carry out the necessary investigations and prosecutions and political will is often lacking as very often all sides, including the current government, will have used children as soldiers. Thus, if not pursued by international courts there is little chance of redress at the national level.

If there is time, you may wish to ask students to conduct research on rehabilitation of former child soldiers.

Students should understand that although prosecution of human rights abusers and getting legal remedies in court may not be easy for the reasons above, some former child soldiers are helped by various organisations to try to lead a normal life again. Within the UN system, UNICEF (The United Nations Children's Fund) has opened rehabilitation centres for child soldiers, and NGOs such as War Child work to reintegrate former child soldiers into society and into education.

Lesson One: Glossary

Binding: if an agreement or a piece of law is binding on a party, it has legal effect on that party, meaning that that party must adhere to its terms

Congscripting: forcible recruitment

Debt bondage: the labour of a person for the purposes of repayment of a debt

Enlisting: voluntary recruitment, even though it might not be truly voluntary given the situations under which children of young age are living

Environmental Law: the branch of law concerned with the protection and use of the natural environment

Genocide: the intentional destruction of a national, ethnical, racial or religious group of people.

Humanitarian Law: the branch of law regulating conduct in armed conflict. It seeks to limit the effects of the conflict by offering protection to those taking part in hostilities, to those no longer taking part in hostilities and to civilians.

Indictment: a formal accusation or criminal charge

Intellectual property: creative property belonging to an individual or organisation including for example, artistic work, ideas, designs and symbols

ICC Trust Fund for Victims: established under Article 79 of the Rome Statute. The purpose of the TFV is twofold: (i) to implement reparation orders by the International Criminal Court and (ii) to provide physical, psychological, and material support to victims and their families

International Court of Justice: the main judicial organ (court) of the UN considering questions on international law which rules on disputes between states and provides advice on legal questions raised by UN organs and agencies

International human rights Law: the branch of international law concerned with the protection of individual and collective rights and freedoms

Labour Law: the branch of law concerned with the rights of workers in their employment

The Law on the use of Force: the branch of law setting out the conditions under which countries may use force against one another

The Law of the Sea: the branch of international law that deals with issues relating to the use of seas and oceans such as the setting of territorial boundaries, the protection of the marine environment and biodiversity, and piracy.

Refugee Law: the branch of law dealing with the rights and protections of refugees

Self-defence: refers in this context to military actions taken by states in response to an armed attack, or threat of armed attack

Sustainable development: economic and human development that does not use up resources in an unsustainable way, compromising the ability of future generations to meet their own needs

Trade Law: the branch of law regulating the trade relationships between states

Tribunal: a body with judicial powers (a court-like function), authorised to settle a dispute between parties

Union of Congolese Patriots: a political and military group founded by Thomas Lubanga in Ituri, in the Democratic Republic of Congo

Footnotes:

¹These are the two most important sources of international law. Other sources of international law include: a) general principles of law common to many countries b) judicial decisions including the decisions of national courts and the ICJ c) legal scholarship.

²Civil and political rights are protected by the International Covenant on Civil and Political Rights (ICCPR). Some of these rights are also covered in other international treaties and in national law, but we refer here mainly to the ICCPR for consistency.

³ Article 6 of the ICCPR

⁴Article 19(2) of the ICCPR

⁵Article 8 of the ICCPR

⁶Article 21 of the ICCPR

⁷Socio-economic rights are protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR). Some of these rights are also covered in other international treaties and in national law, but we refer here mainly to the ICESCR for consistency.

⁸Article 12 of ICESCR

⁹Article 13 of ICESCR

¹⁰Article 7(b) of ICESCR

¹¹Article 15(a) of ICESCR

¹²Article 1(1) of ICCPR, and Article 1(1) of ICESCR

¹³The Convention on the Prevention and Punishment of the Crime of Genocide 1948; Article 6 of the Rome Statute of the International Criminal Court 1998

¹⁴Article 2(1) and Article 26 of the ICCPR and Article 2(2) of ICESCR

¹⁵Article 19(2) of ICCPR

¹⁶Article 21 of the ICCPR

¹⁷Article 25 of the ICCPR and Article 8 of ICESCR

¹⁸Article 13 of ICESCR

¹⁹Article 6 of ICESCR

²⁰American human rights cases are heard by the Inter-American Court and Commission of Human Rights

²¹Other committees (known as UN Treaty Bodies) include: the Human Rights Committee, the Committee on Migrant Workers, the Committee on the Rights of Persons with Disabilities, the Committee on Enforced Disappearances, the Committee on Economic Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women and the Committee against Torture

Lesson One: Concepts and Principles

Lesson Two:

Equality Before the Law and the Abuse of Power

Lesson Two: Lesson Plan

LEARNING OBJECTIVES:

- Understand the general concept of equality before the law
- Understand the implications of having the opportunity to participate in law-making and being treated equally under the law
- Understand what power is and the difference between legitimate and illegitimate abuses of power

LEARNING OUTCOMES:

- Be able to explain the link between structural inequality in institutions and inequality of law and policy made by those institutions
- Be able to give examples of abuses of power
- Be able to explain the hallmarks of a legitimate use of power and be able to use these principles to evaluate power in different scenarios

SKILLS:

- Applying a set of principles to evaluate different situations, constructing arguments, weighing up and evaluating evidence, challenging different ideas, expressing reasoned opinions

2.1 Introduction



2.1.1 INTRODUCTION - Equality Before the Law - Teacher-led Introduction

Read this out to students or paraphrase:

Just as we expect individuals like you or me to be equally subject to national law, we equally expect countries to be subject to international law. In the same way that we would not expect certain wealthy or powerful individuals to get away with breaking the law, while the rest of us had to face the consequences of breaking the law, we would not expect some countries to be able to violate international law without facing any consequences. While such a notion of equality before the law is ideal, international law has sometimes been criticised for inequality both in terms of what it says and how it is applied.

There are many reasons for this inequality. In Activity 1, we will explore one of the potential reasons by examining the structure of one of the decision-making bodies of the UN, the Security Council.

Note that the Security Council is only one of several organs in the UN. Other important decision-making bodies include the UN General Assembly (which is the main policy-making body of the UN). The issues that we are going to explore in Activity 1 on the Security Council are not necessarily applicable to the other UN organs which have different structures.



2.2.1 STARTER ACTIVITY - The Security Council

- Printouts for students

What is the UN?

The United Nations (UN) is an international organisation founded in 1945 in the aftermath of World War II that has the main aim of promoting peace, security and development in the world. The UN is made up of several organs. Its main decision-making bodies are the UN General Assembly and the Security Council. The UN General Assembly currently has 193 members, representing all of the countries in the world. (It does not include certain regions/administrations that consider themselves to be countries but are not recognised as countries by the rest of the international community.)

Beyond the bodies making up the UN itself, there is a large number of UN-linked organisations, funds and agencies across the world that make up the UN system. Each of these is an international organisation in its own right and each focuses on a specific area of international concern. You may have heard of some of these organisations, for example, UNICEF (the UN Children's Fund) which works to protect children's rights, or UNHCR (the UN High Commissioner for Refugees), which works to protect the rights of refugees. Over the years, the organisations in the UN system have carried out important work in a vast number of areas including responding to humanitarian crises, giving assistance to those caught up in conflict, protection of the environment, improving health and sanitation, improving literacy and education, and helping to resolve disputes on international law, to name but a few.

However, all organisations, particularly large ones, face challenges and criticisms in the way they carry out their work. In this activity we look at the Security Council, one of the organs of the UN, to examine the issue of fairness in decision-making.

What is the Security Council?

The Security Council is one of the organs of the **United Nations** which was set up in the aftermath of World War II to try to prevent the horrors seen in the world wars from ever happening again. The Security Council is responsible for dealing with and making decisions about international peace and security issues in the world.

The Security Council has the power to make decisions that member states are required to implement. The work of the Security Council is complex and delicate. It includes for example:

- Deciding on how to deal with governments or other armed groups that are breaching international peace and security by using force against their opponents and civilians.¹
- Deciding how to deal with humanitarian crises resulting from conflicts.²



Measures that the Security Council may authorise to deal with the above include:

- Condemning any illegal actions
- Sending independent mediators to defuse a situation
- Imposing sanctions on a government (that is, the restriction of trade and possibly the **freezing of assets**)
- As a last resort, authorising armed force against the government or forces causing the breach of international peace and security
- Allowing aid and medical supplies to be brought into a country to protect a suffering civilian population

The aim that the Security Council tries to achieve is necessary in a world where countries have competing interests and where disputes arise, but some have questioned the fairness of its decisions. Others have linked this point about fairness to the structure of the Security Council, that is, how it is made up and how it makes decisions.

Which countries are in the Security Council?

The permanent members are China, France, Russia, UK, and USA. The non-permanent members are elected from all the other remaining countries of the UN. They are non-permanent members for two years. To date nearly 70 countries of the General Assembly have never been elected to the Security Council.³



Your task:

Read the statements below and decide whether any aspect suggests unfairness in the way decisions are made, or that a decision is unfair.

a) The Security Council has 5 permanent members and 10 non-permanent members. For important decisions to be made, 9 out of 15 Council members have to vote in favour; including all 5 of the Permanent Members.

b) The permanent members of the Security Council have been on the Council since it was set up in 1945. The non-permanent members are elected for 2-year terms.

c) Any of the five permanent members of the Security Council can prevent a resolution from being passed. This is commonly referred to as exercising a veto.

d) From 2011 - 2014, during a period of grave humanitarian crisis, draft Security Council resolutions condemning the actions and abuses of the Syrian government were vetoed by China and Russia and were therefore not passed.

e) From the 1970s up until the present, the US has vetoed most of the resolutions critical of Israel's military and settlement activities in the Palestinian territories. The ***International Court of Justice*** has said that the settlements are illegal.



2.2.2 STARTER ACTIVITY - The Security Council - Instructions for teachers

If time permits, you may wish to ask students to do some research on the aims and functions of the UN Security Council before coming to the lesson. See at:
<http://www.un.org/en/sc/about/>

The student printout gives a brief overview of the Security Council and will prepare students for the activity, but more capable students may wish to do more in depth research before coming to the lesson.

Ask students to consider the implications of each statement with regard to equality for countries before you lead a class debrief on it. Students may work individually or in groups.



2.2.3 STARTER ACTIVITY - The Security Council - Background for teachers

The point of this activity is to encourage students to consider potential unfairness and inequality at the heart of an organ of the UN that has huge power in making some of the most important global decisions that affect the lives of countless people. It is easy to take at face value the decisions of these important bodies that we hear about in the news, without questioning or analysing them. As with all the activities, the point is not to persuade students one way or another, but to encourage them to examine the evidence for themselves.

- a) Many students may spot the point that it seems unfair that only five countries should permanently have decision-making power on some of the most important decisions in the world with some of the most serious consequences. While other countries are elected on a fixed-term basis so that different countries get their turn on the Council, the permanent members can count on always being there.

Critics of the post-war set-up point out that the permanent members of the Security Council represent the winners of the Second World War and some of the most powerful economies at the time. This balance of power may have been understandable in that period, considering that

the winners of the war regarded themselves as guardians of peace and security. However many believe that the world order at the time the UN was set up has less relevance now. Critics believe that the consequences of this are that important decisions made by the Council are often made in a way that suits the interests of the permanent members.

From a rule of law point of view, this clearly suggests that the balance of power lies with a few countries in this body, meaning a lack of equality which has consequences for the fairness of decisions made. You might wish to make the analogy that if it were the same student allowed to be school councillor every year throughout school without election, this would mean a lack of equality among students, and would mean that that student had an unfair and privileged position of power over other students.

b) A majority of 9 out of 15 Council members being needed to pass a vote is relatively uncontroversial. What is controversial is that all five of the permanent members have to agree. This means that if any one of the permanent members decides to disagree with the motion, it will not be passed. This is unfair because it means that a particular decision could reflect overwhelmingly the opinion of the international community and yet still not be passed because of a single disagreement by one country out of the five.

c) The veto of the five permanent members of the Security Council means that important decisions can be blocked by one (or more) of those five countries even if everyone else on the Council has voted in favour. This means that the set-up is undemocratic in that the majority view may not always be carried. The fact is that countries have many considerations in voting for or against a resolution and their own self-interest is undeniably a consideration. There are many examples where the majority of the Security Council have voted for a certain measure that also overwhelmingly represents the view of the international community and yet the resolution has not been passed because of one (or more than one) veto from a permanent member.

d) This is an example where the use of the veto has been criticised for being political with grave consequences. Between 2011 and 2014, during the Syrian conflict that continues today, the Syrian government had used serious force against rebel forces and against civilians. Several resolutions were put before the Security Council, variously seeking to condemn the government for its human rights abuses and violations of international humanitarian law, to consider sanctions against the government, and to refer the situation to the International Criminal Court. The resolutions were vetoed by Russia and China, with both countries giving reasons that it was not constructive to put pressure on the Syrian government. Critics of the countries' actions have suggested that it is their economic and trade links to the Syrian government that prompted their vetoes, and that their individual interests therefore overrode the best interests of the Syrian

people.

e) The US has also been criticised for using its veto for political purposes. Since the 1970s, the US has vetoed most of the resolutions put before the Security Council that have been critical of Israel, even in cases where as above, the majority of national governments supported the resolution in question. Resolutions put before the Security Council included condemnations of Israel for violating previous resolutions of the Security Council, for violating international humanitarian law and condemnations of Israel's many military activities in Palestinian territories. In 2011, the Obama administration was severely criticised by the international community for its decision to veto a resolution unanimously supported by the rest of the Security Council members, regarding the condemnation of Israeli settlements in the occupied Palestinian territories.⁴ The *International Court of Justice* had ruled that Israeli actions were illegal and that international law did not allow the threat or use of force and the acquisition of territory in this way, and that it contravened principles supporting the right to self-determination (the right of people to decide on their own governance and future).⁵ It seems to undermine the rule of law where a resolution condemning actions that had been ruled to be illegal by the *International Court of Justice* could be undermined by just one country as it shows an unwillingness to accept the ruling of the court. This undermines court judgments and reduces the value of the law.

Conclusion: The point that students should take away from this activity is that the structural inequality of an important decision-making body can make the substance of its decisions unequal. It is almost unavoidable that countries act in their self-interest in interpreting international law, and so where some countries are given more power in a decision-making structure, it is likely that those decisions will favour the interests of those with more power.



2.3.1 ACTIVITY 1 - Reforming the Security Council

- Printouts for students

Having thought about the structural weaknesses of the Security Council in the previous activity, you have now been asked by the UN Secretary-General to put forward suggestions on how the Security Council could be reformed to make the structure more equal and fair, with a view to making its decisions more equal and fair.

Write down a couple of your ideas for reform in the box below and explain what you think the strengths and weaknesses of each suggestion are:

Reform Idea One:

Strengths:

Weaknesses:

Reform Idea Two:

Strengths:

Weaknesses:



2.3.2 ACTIVITY I - Reforming the Security Council - Instructions for teachers

Allow students to think through possibilities for reforming the structure and process of the Security Council before discussing as a class.



2.3.3 ACTIVITY I - Reforming the Security Council - Background for teachers

Various suggestions have been made for the reform of Security Council structure and decision-making process, such as the veto not being available to permanent members in the most serious situations such as where mass atrocities or genocide are in question. The problem with this proposition is that it would be difficult to agree on where this threshold had been reached, and since the restriction of its use applies only to the most extreme circumstances, most decisions would still be subject to the veto.

Another much-discussed suggestion is to expand the number of permanent members in the Security Council, so that it achieves better geographical representation and more realistically reflects the balance of power in the world. The advantage of this is that a wider representation of world powers on the Council would help to balance out the interests of individual countries and better keep them in check. However, this reform would still not achieve democratic decision-making. There would still be two "classes" of states; the only difference would be that the group of permanent members with veto powers would be larger than it currently is.

The most radical approach, suggesting the removal of the right of veto altogether, could potentially improve the inclusion and representation of all member states. Voting by simple majority means that in theory at least, all members are equal in voting status and have the equal right to represent the interests and positions of their own countries. Therefore, where a vote was carried, the motion could be said to formally represent the interests of the majority of the Security Council and probably the international community. However, in reality, even this reform is unlikely to achieve equality and a truly democratic voting system because powerful states are likely to exert their influence on less powerful states that may have economic, political or security reasons for supporting more powerful states in the position they take.

2.4 Introduction



2.4.1 INTRODUCTION - Abuse of Power - Teacher-led Introduction

Read this out to students or paraphrase:

There is nothing wrong with power in itself, and it is necessary that some people have the power to make policies that run society effectively. It is equally necessary that people are given the power to implement those policies. For example, in a school, it is necessary that management have the power to implement education policies that the government has set out, and that teachers have the power to carry out these policies. Otherwise, the school would not function.

However, power should not be abused. This means that power should only be exercised for the purpose for which it was granted, and in a reasonable way which includes making fair decisions using the correct procedure. For example, teachers have the authority to discipline students to keep order in the classroom and making sure that lessons run efficiently, but it would not be a fair and correct exercise of that power if a teacher disciplined only one student all the time, and where he or she had done nothing wrong. This would be unfair firstly because the teacher would not be applying the disciplinary policy to everyone equally and also because the teacher would not be disciplining the student for legitimate reasons.



2.5.1 ACTIVITY 2 - The Exercise of Power – Printout for students

Thinking about the exercise of power in an international context, consider in each fictional scenario whether power has been used correctly.

Remember that for power to be used correctly you should take into consideration whether it was:

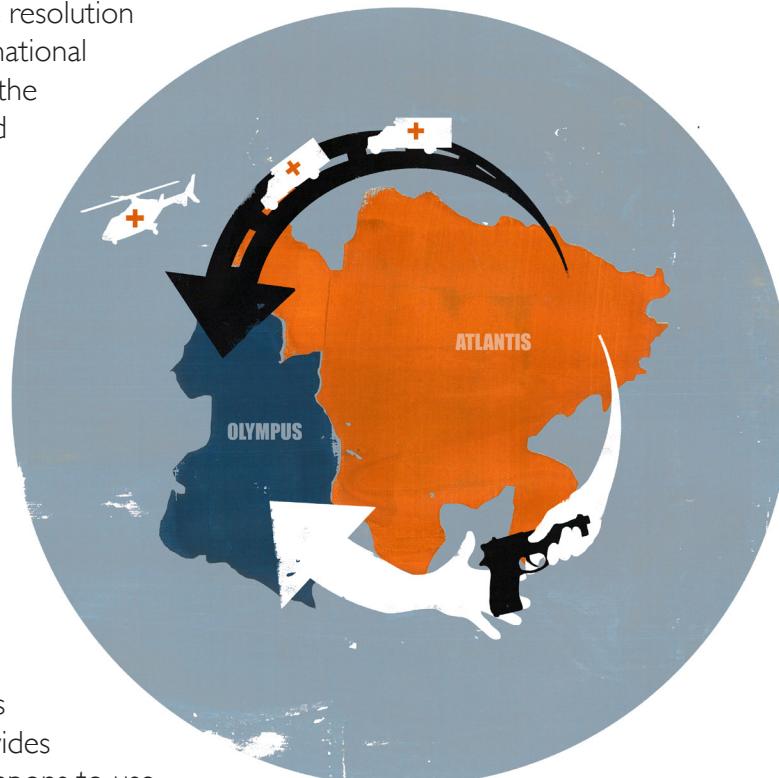
- a) A fair and reasonable decision, within the limits of the power given
- b) A decision being made for the right purpose
- c) The correct procedure being used to come to a decision

Example 1

An imaginary country, Olympus, is in the middle of a civil war between the government and rebel groups. There have been heavy casualties and there is evidence that the government is using military force against civilians. The government refuses to let doctors and emergency supplies into the country.

The Security Council of the United Nations has passed a resolution authorising the international community to enter the country to deliver aid to civilians and to protect civilians.

Atlantis, a country that shares a border with Olympus, responds to the Security Council resolution by sending aid convoys into Olympus, delivering supplies to civilians. It also stations troops in Olympus and provides rebel forces with weapons to use against government forces.



Example 2

The Charter of an international organisation, Health United, says that:

"Health United may make a decision that all countries in the world have to follow in areas relating to public health in the public interest. In a non-emergency situation, Health United must consult the international community before making a decision in order to give countries a chance to express their view on what impact the decision would have for them. The consultation must be issued to countries in written form at least a year before the decision is made."

A major cholera epidemic breaks out in Europe and Health United makes an immediate decision that all countries outside Europe must impose a travel ban to Europe unless the journey is absolutely necessary.

Conscious that whooping cough and tuberculosis are on the rise, Health United makes another immediate decision that all countries must vaccinate children under 12 against these diseases immediately, funded by each country's health budget. Poorer countries say that they cannot afford these vaccinations immediately. Health United says that it will provide subsidies (financial help) for poorer countries as long as they buy the vaccines from Pharma Co, a drug company that is partly owned by some of Health United's top officials.





2.5.2 ACTIVITY 2 - The Exercise of Power

- Instructions for teachers

Ask students to discuss the two situations in groups before sharing ideas as a class. Some or all of the questions below can be asked to draw out answers:

- a) Who has been given power to make a decision in each situation?
- b) What has the power been given for and what is the extent of that power?
- c) Has the authority in possession of that power respected the limits imposed upon it?
- d) Did the authority exercise the power fairly and reasonably?
- e) Was that power used for the right purpose?
- f) Were the correct procedures followed when exercising that power?
- g) Who is affected by the exercise of power and what are the consequences of an abuse of power in that situation?

If time is short, half the class could consider Example 1 and half could consider Example 2.



2.5.3 ACTIVITY 2 - The Exercise of Power - Background for teachers

Example 1

The details given in this example suggest that Atlantis has exceeded the power given by the Security Council to enter into Olympus. The resolution says that countries are authorised to enter Olympus to deliver aid and to protect civilians. By stationing troops in Olympus and providing rebels with weapons, Atlantis has gone beyond the power it was given, and is probably exercising it for an illegitimate purpose, that is, overthrowing the present Olympian government.

Example 2

The Charter of Health United leaves open the possibility for the organisation to make decisions that must be followed immediately when there is an emergency situation, which a large scale cholera outbreak might fall into. The organisation has probably exercised its power within appropriate limits on the information we have been given.

However, in a non-emergency situation the Charter specifies the procedure that must be followed for the organisation's power to be exercised correctly. While there are certain diseases on the rise, we are not told that there is anything immediately urgent about the situation. Health United exceeds its power by making a decision without holding a year-long consultation as required by its Charter. The decision that it makes cannot be said to be fair or reasonable because poorer countries are unable to meet the requirements. The solution that Health United proposes suggests an abuse of power as it is using its authority to benefit a company that its top officials have an interest in.



2.6.1 ACTIVITY 3 - Abuse of Power - Teacher-Led Case Study

If there is time you may wish to take students through this well known example of the abuse of power:

After Saddam Hussein (the Iraqi President at the time) invaded Kuwait in 1990, a series of sanctions were imposed on Iraq, which had a serious impact on its economy and its civilian population. The Oil-for-Food programme was a \$60bn (£32bn) scheme that aimed to allow Iraq to sell some of its oil under a UN-regulated scheme so that it could buy food, medicine and other humanitarian supplies with the money gained, without breaking the sanctions imposed on it.⁶

What was the power given to UN officials?

UN officials were responsible for administering this programme and for approving sale contracts.

What was the aim of the power?

The point of the power to approve sale contracts was to make sure that all sales were legitimate and that the proceeds were for the benefit of the Iraqi people.

How was the power abused?

UN officials (as well as some foreign politicians and various companies) were accused of being complicit in the widespread corruption and abuse of the programme. Saddam Hussein was allowed to divert profits unlawfully from the programme to fund his regime, which is believed to have made billions of dollars through illegal sales to neighbouring countries and through bribing foreign officials. UN officials were responsible for making sure that correct procedures were followed for sales. They did not do so and further, are said to have used their power to allocate sales to certain companies in exchange for money.⁷ Officials therefore used their power to benefit themselves rather than the Iraqi people, which was what the power was granted for.



2.7.1 PLENARY - Why is it Important to Exercise Power Correctly? - Teacher-led Discussion

Ask students to consider this question based on what they have learned in the lesson. More advanced students could be asked to think about the question independently and to jot ideas down. Other students may need prompting by being asked what they think might happen if those with power were allowed to exercise it in any way they wished.

Prompts might be framed as below:

Why are certain people or authorities given power?

Can you make a checklist of questions authorities using a power should ask themselves? For example, 'Is the decision being made fairly?', 'Has the correct procedure been followed?'



2.7.2 PLENARY - Why is it Important to Exercise Power Correctly? - Background for teachers

If power is not exercised correctly, it is open to abuse. Those with power have been entrusted with it to make decisions and to carry out actions so that they can fulfil a specific purpose in the public interest. Those decisions and actions can have important and far-reaching consequences on the lives of those affected and so it is vital that the decisions are made fairly and within the limits of rules set. Decisions and actions carried out can benefit some people (for example the public being protected from disease through certain measures), can put a burden on others, (for example countries being required to implement measures to protect public health), or even impose a penalty (for example a decision to impose financial sanctions on countries that have broken the law).

Those who are entitled to benefit from decisions expect authorities' decisions to be made for the right reasons, expect their best interests to be protected and expect that all those who are entitled to benefit will be treated equally. Those who gain a burden as a result of those decisions rely on those decisions to be made according to rules and within certain limits and not at the whim of decision-makers. Those who receive a penalty through decisions made expect the decision to have been made fairly and according to objective rules, so that penalties are not being imposed for

the wrong reasons and only on some wrongdoers and not others.

There are many relevant observations students may make, but examples of student answers may include:

- The abuse of power means that some may be unfairly targeted. Some people/parties may consistently receive benefits from decisions while others are punished according to the decision-maker's whim or private interests.
- The abuse of power means that power is being exercised for the wrong reasons and is therefore not being used in the public interest but is instead used for the gain of a few in power. For example, if authorities had the power to use funds in the public interest and instead benefited themselves with the funds, this would be an obvious example where power had not been used correctly with the consequence that the public would be deprived of the benefit they were entitled to.
- If power is exercised arbitrarily people cannot predict decisions or know with any certainty what will be decided. The same set of circumstances may lead to different outcomes. This is unfair as it means that people in similar situations might be treated differently, with no good reason for any different treatment.

Lesson Two: Glossary

Arbitrary: based on a capricious or random decision without justification or reason

Freezing of Assets: the prevention of an individual, an organisation, or a government from accessing or disposing of money or property that they are holding

Independent mediators: an independent professional responsible for encouraging and helping parties at conflict to reach an agreement

International Court of Justice: the main judicial organ (court) of the UN considering questions on international law which rules on disputes between states and provides advice on legal questions raised by UN organs and agencies

International law: the law that regulates the behaviour and relations of states as well as other international actors

Sanctions: a penalty imposed, in this context, on states when they fail to comply with their obligations under international law

Self-determination: the right of people to decide on their own governance and future

United Nations: an international organisation with 193 member states, established in 1945 after the end of WWII to maintain international peace and security, to promote cooperation between states on global issues, to promote human rights and to aid in the process of decolonisation

UN Secretary-General: the head of the executive body of the UN, the Secretariat

United Nations Security Council: the UN body responsible for maintaining peace and security in the world

Veto: the right to object to or reject a proposal or a decision by a law or rule-making body

Footnotes:

¹ Under Article 41 of the UN Charter, the Security Council may authorise non-forceful measures to respond to a threat to international peace and security. Measures may include economic sanctions, interruption of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Under Art. 42 of the UN Charter the Security Council is able to authorise the use of military force in order to restore and maintain international peace and security. For example the Security Council has on occasions: a) authorised the use of military force to respond to an illegal use of force by one state against another (for example Iraq's invasion of Kuwait in 1990) or by a government against its own civilians (for example in Libya in 2011) b) authorised UN Peacekeeping operations to use limited force on various occasions for self-defence or to keep the peace, for example in the former Yugoslavia in 1999, in Somalia 1993 and the Democratic Republic of Congo in 2010 c) authorised the use of all necessary means or measures to maintain or restore international peace and security by multinational forces in various conflict regions, including Bosnia and Herzegovina, Liberia, Iraq and Haiti.

² For example the Security Council authorised United Nations humanitarian agencies and their implementing partners to use various routes across conflict lines and certain border crossings in Syria, in order to provide humanitarian aid and relief.

³ See link for list of countries never elected to the Security Council: <http://www.un.org/en/sc/members/notelected.asp>

⁴ Examples of vetoed resolutions include: Resolution 24 (2011), Resolution 878 (2006), Resolution 783 (2004), and Resolution 240 (2004)

Examples of resolutions that were passed include: Resolution 672 (1990), Resolution 726 (1992)

⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004.* <http://www.icj-cij.org/docket/files/131/1671.pdf>

⁶ More information can be found at: http://news.bbc.co.uk/1/hi/world/middle_east/4445609.stm

⁷ Summary of Volcker Committee Report on the Oil-for-Food Programme:
http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/27_10_05_summary.pdf
Links to the full report can be found here:
<http://news.bbc.co.uk/1/hi/world/americas/4550859.stm>

Lesson Three: Certainty and Clarity of the Law

Lesson Two: Lesson Plan

LEARNING OBJECTIVES:

- Understand the difference between law that is clear and certain and law that is unclear and uncertain
- Understand why some areas of international law are unclear and uncertain
- Understand the importance of clarity and certainty of the law

LEARNING OUTCOMES:

- Be able to give examples of law that is unclear and uncertain within the law of armed force
- Be able to explain what the consequence of lack of clarity and certainty is for those being governed by the law

SKILLS:

- Literacy, applying legal principles to different scenarios, analysing legal frameworks, constructing arguments, weighing up and evaluating evidence, challenging different ideas, expressing reasoned opinions

3.1 Introduction



3.1.1 INTRODUCTION - Certainty and Clarity of International Law - Teacher-led Introduction

Read this out to students or paraphrase:

*In order for the law to be fair, it needs to be clear and certain. Just as individuals need to know what they can and cannot do under the law, countries must also know what they are permitted to do and what they should avoid to comply with **international law**.*

*Some areas of **international law** are particularly uncertain. One of the reasons is that these areas of international law are in a state of constant development to take account of new situations. Generally speaking, international law can be more prone to uncertainty than national law, because one of the ways that international law is formed is through custom. Law-making through custom means that if countries act in a certain way, in the belief that they should act in that way as it reflects the law, then that customary practice is likely to become the law at some point. In other words, if something is done for long enough in the belief that it should be done that way, it becomes the law. While it is completely necessary that the law should change to reflect the changing needs of the **international community**, individuals and countries may sometimes find it is difficult to know exactly what the law permits and what it forbids. Some areas of international law have been criticised for uncertainty allowing some countries to act in a way that other countries would deem illegal.*

In this lesson, we will explore through activities some examples of recent events that show how uncertain the law is, with different countries giving different opinions of what the law is.

3.2 Uncertainty and the Law on the Use of Force



3.2.1 STARTER ACTIVITY

- Uncertainty and the Law on the Use of Force
- Teacher-led Introduction

In this teacher-led starter activity students are introduced to the concept of the sovereign state and the branch of *international law* that governs relations between countries when tensions become extreme and they use military force against each other. The discussion serves as a backdrop to the Activities 1 and 2 which take a closer look at the specifics of the law and some of the uncertainties in the area.

Lead this discussion by writing the following questions on the board and asking students to discuss:

1. What does **sovereignty** mean?
2. Why is the use of force against other countries prohibited?
3. Do you think there should be any exceptions to the prohibition?



3.2.2 STARTER ACTIVITY

- Uncertainty and the Law on the Use of Force - Background for teachers

1. What does **sovereignty** mean?

All countries agree that it is an established rule of *international law* that each country in the world is sovereign and this includes both territorial and political **sovereignty**. This means that its borders cannot be violated by another country, and that it has the right to make policies to govern its own people as it chooses.

2. Why is the use of force against other countries prohibited?

The use of military force against a country is the ultimate violation of its **sovereignty**.

and following the Second World War and the creation of the **United Nations**, the general position in **international law** is that the use of force against other countries is prohibited. You may wish to write the following parts of the **UN Charter** (that governs all country members of the UN) on the board.

- Article 2(1) of the **UN Charter** refers to the 'principle of the sovereign equality of all its Members.'
- Article 2(4) of the **UN Charter** states that '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, or in any other manner inconsistent with the Purposes of the **United Nations**'.¹

If the use of force were not prohibited, we would perhaps see military conflict even more frequently than we do now, with countries resorting to force much more readily to get what they want. You may wish to ask students to consider the parallel if violence between individuals were not prohibited, for example if assault and murder were not illegal. The prohibition on the use of force aims to protect weaker countries from being bullied by more powerful countries, just as the law on **offences against the person** in national law aims to protect weaker individuals from being physically violated by stronger individuals.

3. Do you think there should be any exceptions to the prohibition?

International law specifically allows two exceptions to the prohibition on the use of force against other countries. One exception is specific authorisation from the UN Security Council² which is the UN body made up of permanent and non-permanent member states in charge of trying to ensure international peace and security in the world. It is generally uncontroversial that where the Security Council has authorised it, the use of force is permitted. The other exception is the use of force in **self-defence**³ but there is uncertainty on when this can be claimed. (Students will explore this uncertainty in Activity 1.)

However, some people argue that the meaning of territorial **sovereignty** and exceptions to territorial **sovereignty** have changed since the **UN Charter** was drawn up 50 years ago. One controversial concept that has developed as a basis for intervention is that of 'humanitarian intervention.' Some argue that in countries where there is terrible humanitarian suffering, (such as civilians being oppressed by a government), the law now needs to allow the **international community** to enter into that country and intervene, using force as a last resort, in order to alleviate the suffering. This is so even in cases where the government of that country denies permission to enter or to intervene. Some argue that there is even a duty to do intervene. (Students will explore this further in Activity 2.)



3.3.1 ACTIVITY 1 - The Law on Armed Force and Self-Defence - Printouts for students

There are two sources for the law on **self-defence**. There is little uncertainty about the right to **self-defence** where an attack is ongoing. However, the law is less certain where an attack has already finished or where an attack is threatened in the future.

What does the law say?

The traditional legal test for **self-defence** comes from an old 1837 case called The Caroline Case, where a group of Canadians were rebelling against the British colonial government. Their cause was being supported by some Americans who sent men and supplies in a steamboat called the Caroline to help the Canadian rebels. In response, a British force entered US territory and destroyed the Caroline. This case established the legal principle that in order for **self-defence** to be legal, it must be necessary because the threat is imminent. Further, the measures taken must be proportionate to the threat, in other words only what is necessary to stop the attack.

The later reference in law to '**self-defence**' is Article 51 of the **UN Charter** which refers to 'an inherent right of individual or **collective self-defence** if an armed attack occurs.'

A literal reading of Article 51 requires two elements for **self-defence**: a) an armed attack b) that must already have occurred or still be occurring. The Caroline case on the other hand appears to leave open the possibility that **self-defence** could be used to prevent an attack that has not yet happened but is imminent.

Imagine that you are a legal advisor to the government of an imaginary country called Olympus that is facing legal uncertainty about how to act in the scenarios below. The UN Security Council has not given authorisation for you to use force, so in each case, advise the government whether using force would be legal giving your reasoning based on the law of **self-defence**.



I. The government of Olympus has a long-running dispute with a neighbouring country. Tension has been building for a long time and eventually the neighbouring country, Atlantis, sends troops across the border, including stationing soldiers and tanks in some of the towns and villages in your country, along the border. There are reports that some villagers have been injured and killed trying to defend their homes.

- (a) You send troops to protect the villagers and to drive the Atlantis soldiers out of Olympus.
- (b) You send a widespread bombing campaign over the whole of Atlantis to put pressure on their government to call off their troops from your territory.

2. (a) The government of Olympus has received information that Atlantis is enriching uranium to create nuclear weapons which it intends to use against Olympus at some point in the future. You bomb Atlantis to destroy the warehouses where your intelligence has told you the weapons are housed.
 - (b) The government of Olympus is aware that Atlantis' government is starting to manufacture uranium (a metallic element) which it says is for producing energy. You strongly suspect that the Atlantis is actually going to use the uranium to create nuclear weapons. You bomb Atlantis to destroy the warehouses where according to your intelligence the uranium is being manufactured to avoid the danger of nuclear weapons being created and used against Olympus.
3. You have been attacked by Atlantis. The attack is over, but there is strong evidence that they will attack you again. You send troops to Atlantis to attack their military and destroy their weapons in order to stop the potential further attack on Olympus.



3.3.2 The Law on Armed Force and Self-Defence - Instructions for teachers

Split the class into small discussion groups, and ask them to consider the different scenarios. Representatives from each group should be prepared to present their answers to the class, explaining the reasoning for their conclusions in different scenarios. Flip charts could be used to present ideas if there is time.



3.3.3 The Law on Armed Force and Self-Defence - Background for teachers

Most countries consider that Article 51 and the law from the Caroline case co-exist so that where an armed attack has happened and is ongoing, Article 51 provides the right to self-defence, but even where an attack has not occurred but is about to occur; the Caroline formulation⁴ provides a basis for **self-defence**. The first point to highlight is the uncertainty with regard to what sort of scenario triggers a right of **self-defence**. Weapons capabilities and methods of armed attack and warfare have moved on since the Caroline case and since Article 51 of the **UN Charter** was drafted. Warfare these days is not confined to combat on the ground. Therefore, there have been arguments that the definition of what is imminent must be adapted to take this into account. For example, someone may be sitting in a control room about to detonate a bomb hundreds of miles away. This surely would meet the definition of imminence required to trigger a right of **self-defence**.

Many countries believe that Article 51 co-exists with the Caroline formulation of legal **self-defence** which allows for situations where attacks are about to occur.

The second point to highlight is that, even where one has successfully established what the law is, there may be great difficulty in establishing evidence. Even if we had established that it was permissible to use force in **self-defence** where an attack was about to occur; it is not always easy to prove that an attack is about to occur. For example, if a country intended to use nuclear weapons against you imminently, how can we prove that intention?

- I(a) On the facts given, it is probably quite uncontroversial to use force in this case as there is an armed attack ongoing. It falls squarely under the wording of Article 51 of the **UN Charter**.

1(b) The Caroline case established that, to be legal, force used in **self-defence** must be only what is necessary to stop the attack. It said that in **self-defence**, there must be "nothing unreasonable or excessive, since the act, justified by the necessity of **self-defence**, must be limited by that necessity, and kept clearly within it."⁵ It might be that a widespread bombing campaign is excessive and going beyond what is necessary to remove the neighbouring country's troops. However this will depend on the detailed circumstances which we have not been given, for example, whether less drastic measures have already been tried with no success.

2(a) The uncertainty here as to whether there is a right to self-defence lies in the fact that an armed attack has not happened. Many countries have pointed out that logically, by the time a modern attack using remote methods has taken place, it is too late to act in self-defence. Most countries agree that even where an attack has not yet happened, states have an inherent right to **self-defence** where the threat of an attack meets the required degree of imminence under the Caroline formula. Most countries would consider that if an attack were about to happen imminently, as under the Caroline formula, that force could be used in order to prevent such an attack. This is often called anticipatory **self-defence**. Some countries that do not accept the right to anticipatory **self-defence** are still able to justify **self-defence** before an actual attack by explaining that where another country is already in the advanced stages of preparing for an armed attack, and there is an intention and capability to attack, then the attack has already started.

Whether the situation in this example meets the necessary threshold of imminence to trigger a right to **self-defence** is debatable. Factors that need to be considered include the accuracy of the intelligence, whether the state is in an advanced enough stage in its manufacturing process for an attack to actually be possible, and how soon an attack is planned.

2(b) The wording of this scenario suggests that the necessary degree of imminence for **self-defence** is unlikely to have been reached. The country has only just started manufacturing uranium and is unlikely to be at a point yet where it has the capacity to manufacture nuclear weapons. Nor is it clear that the manufacturing of uranium is not for peaceful purposes.

3 As explained in the previous examples, many countries would regard it as legal to use force in **self-defence** before an attack has happened if it were about to happen imminently. In this scenario, as long as there is clear evidence that a further attack is likely to happen, **self-defence** may be regarded as legal. However, it can be difficult to ascertain that an attack is about to happen, and a criticism that has been made of the law of **self-defence** being applied to this type of scenario is that states could use pre-emptive **self-defence** as a basis for attacking another country for other reasons.

Further, those who don't accept the right of anticipatory **self-defence** may accept that one attack having happened is sufficient to trigger a right to respond in anticipation of another attack or series of attacks.⁶

3.4 The Legality of Using Force



3.4.1 ACTIVITY 2 - Country example 1 - Kosovo - Printouts for students

Timeline:

- 1989 - Slobodan Milošević becomes President of Serbia
He brings Kosovo under Serbian rule, removing its autonomy. Tensions between ethnic Albanians and Serbs increase
- 1997 - Slobodan Milošević becomes the President of the Federal Republic of Yugoslavia
- 1998 - Conflict between Serbs and ethnic Albanians breaks out
- March 1998 - UNSC condemns actions on both sides of the conflict and imposes a trade embargo on Yugoslavia
- May 1998 - Operation Horseshoe initiated
- Sept 1998 - UNSC calls for ceasefire
- Jan 1999 - Racak massacre
- March 1999 - NATO begins airstrikes against Serbian military forces
- June 1999 – Yugoslav government withdraws troops from Kosovo

The conflict involves:

Government: Serbian government and military forces, Yugoslav government and military forces

Protesters against the government:

Ethnic Albanians in Kosovo

External actors: NATO

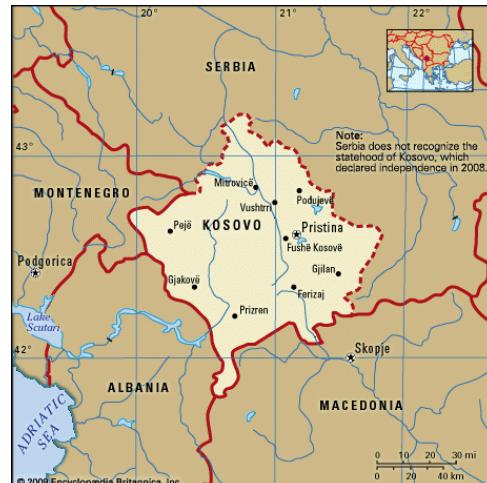


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What does the law say on using force against another country?

- Generally prohibited
- Exception permitted in self-defence
- Exception permitted if authorised by the Security Council
- Some countries argue that an exception is also permitted for humanitarian reasons to relieve suffering, but not all countries accept this.

The situation

Kosovo is a region that lay in Southern Serbia. Serbia was itself a **republic** in the former Yugoslavia which was made up of six republics (Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro and Macedonia). Until 1989, Kosovo, enjoyed a high degree of **autonomy** and had a mixed population of which the majority were ethnic Albanians. In 1989, Slobodan Milošević became President of Serbia and altered the status of Kosovo, removing its autonomy and bringing it under the direct control of Belgrade, the Serbian capital. The ethnic Albanians in Kosovo initiated a policy of non-violent protest against the abolition of the province's autonomy. Over the coming years, tensions increased between the ethnic Albanians and the Serbs. In 1997, Slobodan Milošević became the President of the Federal Republic of Yugoslavia which by this time only included the republics of Serbia and Montenegro, as the other former Yugoslavian republics had become independent.

In 1998, conflict broke out between the Serbian military and police forces and the Kosovo Liberation Army, an ethnic Albanian **paramilitary group** supporting the independence of Kosovo from Serbia. There was growing concern among the **international community** about the escalating conflict, its humanitarian consequences and the risk of it spreading to other countries. In March 1998, the UN Security Council passed a resolution condemning actions on both sides of the conflict, and imposing an **arms embargo** across Yugoslavia.

In May 1998, a major military operation, Operation Horseshoe, was carried out by Serbian and Yugoslav forces in Kosovo, with the intention of driving the Albanian civilian population out of Kosovo. In September 1998, the UN Security Council approved a **resolution** calling for a **ceasefire** in Kosovo, calling on the Federal Republic of Yugoslavia not to carry out any repressive actions against the peaceful population and to pursue a political solution to the conflict, and calling for unlimited access for international monitors and humanitarian organisations. Milošević agreed to meet most of the terms but failed to implement them. The Kosovo Liberation Army renewed its attacks and the Yugoslav and Serbian forces responded with a counter-offensive.

In January 1999 the massacre of Kosovo Albanians in Racak spurred action from the **international community**. The **North Atlantic Treaty Organisation (NATO)** called for autonomy for Kosovo, the development of democratic institutions, and the presence of NATO forces to oversee the process. It was rejected by the Serbian authorities as they could not accept the presence of a NATO force to guarantee Kosovar autonomy.

NATO began air strikes without UN authorisation against Serbian military targets in March 1999 justifying its actions as necessary to avoid further humanitarian crisis. The number of deaths and displaced persons caused by the conflict is disputed and sources vary so widely that it is difficult to give a meaningful estimate of figures. The operation continued for 11 weeks until the Yugoslav government agreed to withdraw its troops from Kosovo.

Glossary:

Arms embargo – ban on trade in weapons with a particular country

Autonomy – independence

Ceasefire – a suspension of fighting on both sides

NATO – a military alliance of countries from North America and Europe

Paramilitary group – an organised armed group that is not part of the national military

Republic – a sovereign country with a government that represents the citizens in decision-making

Resolution – a formal decision or recommendation made by a UN organ

Your tasks are to answer the following questions:

- Should NATO have intervened using force?
- What arguments could you put forward for the air campaign being seen as legal?
- If you don't think the air campaign was legal, do you think it was nevertheless justified? If so, explain why.
- Comparing your country example with those of other class groups, do any of the other country situations share any of the features that you decided were important as an argument for the use of force being legal?
- Did other groups also identify these features as being an argument for the use of force being legal in this situation?



3.4.2 ACTIVITY 2 - Country example 2 - Afghanistan - Printouts for students

Timeline:

- 11 September 2001** - Al-Qaeda attacks the World Trade Centre and Pentagon
- 14 September 2001** - The Authorisation for Use of Military Force Against Terrorists (AUMF) passed
- October 2001** – Operation Enduring Freedom begins
- December 2001** - Taliban removed from government in Afghanistan. Interim Government formed
- July 2002** - Afghan Transitional Authority instated
- October 2004** - Official Presidential elections held in Afghanistan

The conflict involves:

- Government:** Taliban
Protesters against the government: Al-Qaeda
External actors: US and other countries



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What does the law say on using force against another country?

- Generally prohibited
- Exception permitted in self-defence
- Exception permitted if authorised by the Security Council
- Some countries argue that an exception is also permitted for humanitarian reasons to relieve suffering, but not all countries accept this.

The situation

The United States military campaign in Afghanistan occurred after the September 11 attacks in 2001, where four commercial airliners were hijacked by men from the terrorist group Al-Qaeda, and intentionally crashed into the **World Trade Center** and **the Pentagon**. Close to three thousand people died in the 9/11 attacks, though the death and injury toll continues to rise as thousands were exposed to dangerous toxins as a result of the attack. Prior to 9/11, the US had already been the target of various armed attacks, organised and carried out by Al-Qaeda, including attacks against US naval vessel U.S.S. Cole, U.S. embassies in Kenya and Tanzania, and other U.S. military and other targets abroad.

Three days after the attacks, **US Congress** passed a **resolution**, The Authorisation for Use of Military Force Against Terrorists (AUMF), authorising the US government to use force against those responsible for attacking the United States on 9/11. The Taliban, an Islamic fundamentalist group, held power and was the effective government in much of Afghanistan at the time. It was thought that they were **harbouring** Al-Qaeda members and in particular Osama bin Laden, the founder of Al-Qaeda. The President of the United States at the time, George W Bush, demanded that the Taliban hand over Osama bin Laden and expel al-Qaeda from Afghanistan. The Taliban declined to hand over Bin Laden and ignored demands to shut down terrorist bases and hand over other terrorist suspects. In October 2001, the US military, with British support, began a bombing campaign against Taliban forces. Called 'Operation Enduring Freedom', and aiming to combat the perceived future threat to the US, it was intended to disrupt the use of Afghanistan as a terrorist base of operations, to capture Osama bin Laden and to find members of Al-Qaeda.

Operation Enduring Freedom was successful in removing the Taliban government from power in Afghanistan in December 2001. The Bonn Conference, sponsored by the UN, was held in Germany with Afghan anti-Taliban leaders who then formed a temporary administration called the Interim Authority. The Interim Authority was replaced by the Afghan Transitional Authority in July 2002, where a new Head of State, Hamid Karzai, was elected. He was elected as President in Afghanistan's official presidential elections in 2004.

Glossary:

Harbouring - giving protection to or allowing to reside in one's country

Resolution – a law or legal measure

The Pentagon – the headquarters of the US Department of Defence

US Congress – the branch of the US government that makes laws

World Trade Center – a financial centre in New York, notable for its two 110-storey buildings

Your tasks are to answer the following questions:

- Should the US, UK and other countries have intervened in Afghanistan using force?
- What arguments could you put forward for the military campaign in Afghanistan being seen as legal?
- Comparing your country example with those of other class groups, do any of the other country situations share any of the features that you decided were important as an argument for the use of force being legal?
- Did other groups also identify these features as being an argument for the use of force being legal in this situation?



3.4.3 ACTIVITY 2 - Country example 3 - Iraq - Printouts for students

Timeline:

- 18 March 2003 - US launches military attack against Iraq
- April 2003 - Saddam government overthrown
- June 2004 - Iraq Interim Governing Council formed
- 2010 - Troops withdraw and the occupation ends
- June 2009 - Chilcot Inquiry into Iraq war announced
- 6 July 2016 - Release of Chilcot Inquiry results

The conflict involves:

Government: Saddam Hussein's government

External actors: US, UK and around 37 other allied countries



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What does the law say on using force against another country?

- Generally prohibited
- Exception permitted in self-defence
- Exception permitted if authorised by the Security Council
- Some countries argue that an exception is also permitted for humanitarian reasons to relieve suffering, but not all countries accept this.

The situation

Saddam Hussein had been in power for more than two decades. His regime had carried out serious human rights violations, including restrictions on political participation and religious freedom as well as oppressive government policies which led to the *internal displacement* of hundreds of thousands of Iraqis, primarily Kurds. There have also been documented chemical attacks by the regime and the use of *arbitrary* executions and rape as a political tool.

On 18 March 2003, the United States led a military attack (involving the UK and 30 other countries) against Iraq, which resulted in the overthrow of the Baathist party and the removal of Iraqi president Saddam Hussein. The US and the UK put forward several justifications to the *international community* for the military action.

- a. The US and UK alleged that the use of force against Iraq was necessary to prevent the Iraqi government developing and using weapons of mass destruction (WMDs) including biological weapons, chemical weapons and long-range missiles, which posed a threat to international peace and security.
- b. They declared that Iraq violated *disarmament* obligations under Security Council Resolution 1441 (the legal decision made by the UN body in charge of peace and security) and presented evidence to the Council, notably in a meeting on 5 February 2003, where US **Secretary of State** Colin Powell told the Security Council, "What we're giving you are facts and conclusions based on solid intelligence." The Council, however, did not authorise military action.
- c. The US claimed that Saddam Hussein was giving support to Al-Qaeda and promoting international terrorism that threatened the United States.
- d. Both countries cited the need to liberate the Iraqi people from Saddam Hussein's repressive dictatorship and bring freedom and democracy to Iraq.

Following the invasion, a military occupation was established and run by the Coalition Provisional Authority (CPA), administered by the US and UK. The CPA exercised powers of government on a temporary basis and later granted limited powers to the Iraqi Interim Governing Council in June 2004. Security Council Resolution 1483 set out the responsibilities of the *occupying powers* and aimed to provide for the security and administration of Iraq, rebuild the military, security, economic and governmental institutions and facilitate efforts of the Iraqi people to create a representative government. The Coalition, however, faced increasing opposition from the Iraqi people; and clashes between anti-occupation resistance and the Coalition forces continued throughout the years of the occupation, which ended in 2010.

Glossary:

Arbitrary – not objectively justified

Disarmament – reducing or abolishing of weapons

Internal displacement – where someone has been forced to flee his or her home but remains within the same country

Occupying powers – countries with a physical presence in another country's territory, usually holding some sort of control over that territory. In this case it refers to the US and other coalition forces in Iraq.

Secretary of State – The chief foreign affairs advisor to the President of the United States.

Your tasks are to answer the following questions:

- Should the US and UK have intervened in Iraq using force?
- What arguments could you put forward for the military campaign in Iraq? Which of the arguments put forward by the US and UK do you agree with?
- Comparing your country example with those of other class groups, do any of the other country situations share any of the features that you decided were important as an argument for the use of force being legal?
- Did other groups also identify these features as being an argument for the use of force being legal in this situation?



3.4.4 ACTIVITY 2 - Country example 4 - Libya - Printouts for students

Timeline:

- February 2011 - Demonstrations against Gaddafi regime. "Day of Rage" protests across Libya
- March 2011 - UNSC issues no-fly zone over Libya Multi-state coalition begins air-based military intervention
- July 2011 - International recognition of the National Transitional Council (NTC)
- October 2011 - Gaddafi killed by rebel forces
- November 2011 - Interim government formed
- July 2012 - Parliamentary elections held

The conflict involves:

- Government:** Gaddafi government
Protesters against the government: Various rebel forces
External actors: US, UK, France, NATO



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What does the law say on using force against another country?

- Generally prohibited
- Exception permitted in self-defence
- Exception permitted if authorised by the Security Council
- Some countries argue that an exception is also permitted for humanitarian reasons to relieve suffering, but not all countries accept this.

The situation

Inspired by revolts in neighbouring Arab countries, a popular uprising took place in Libya. In February 2011, demonstrations took place in Benghazi demanding an end to Muammar al-Gaddafi's oppressive 40-year regime, which was characterized by censorship, banning of other political parties and imprisonment of **dissenters**. The demonstrations led to clashes between security forces and anti-Gaddafi rebels. On 17 February, protesters defied a security crackdown and took to the streets in four cities for a "Day of Rage".

The government responded to the protests with severity. The International Federation for Human Rights (IFHR) stated that Gaddafi was eliminating Libyan citizens who stood up against his regime and repressing civilians. The International Criminal Court estimated that 500-700 people were killed by security forces in February 2011 and the IFHR reported a case where 130 soldiers who refused to fire on protesters were executed. Human rights groups documented severe violations of human rights and evidence of war crimes including torture, **summary execution**, rape as a weapon of war, **forced disappearances**, using civilians as human shields and indiscriminate attacks on civilians.

The civil war led to a dire humanitarian situation in Libya. By the end of February 2011, supplies of medicine, fuel and food were very low in urban areas. Attacks on civilian and medical facilities prevented staff from working. The UN expressed concern over the outbreak of water-borne diseases. The conflict triggered a massive outflow of people to neighbouring countries, especially Tunisia to the west and Egypt to the east.

In March 2011, the UN Security Council authorized the protection of civilians by all necessary means (which included the use of force). A **multi-state coalition**, largely led by the UK, US and France, began an air-based military intervention in Libya to disable the Gaddafi government's military capabilities. The **North Atlantic Treaty Organisation (NATO)** quickly took over the military operation. In July 2011, the International Contact Group on Libya, which includes 21 countries including the UK and the US as well as **inter-governmental organisations**, formally recognised the main **opposition group**, the National Transitional Council (NTC), as the legitimate government of Libya. Gaddafi went into hiding in August and was captured and killed in late October by rebel forces. Three days after his death, the NTC declared Libya to be officially liberated. An **interim government** was formed in November and the first parliamentary elections were held in mid-2012. The political situation has been unstable since then and a series of successive governments have not been able to command widespread support or to overcome the conflict between the many different factions operating in the country.

Glossary:

Dissenters – political opponents and people disagreeing with the government's policies

Factions – groups with different allegiances and political interests

Forced disappearances – detention by the state without information about the purpose or timeframe for which the detainee is being held

Intergovernmental organisations – organisations made up of several different countries, for example, the United Nations and the European Union

Interim government – A temporary government to bridge a gap until a permanent government is put in place

Multi-state coalition – an alliance or group of countries sharing an aim

NATO – a military alliance of countries from North America and Europe

Opposition group – the political party opposing the party in power

Summary execution – execution without trial or without genuine trial

Your tasks are to answer the following questions:

- Should the international community have intervened in Libya using force?
- What arguments could you put forward for the air strikes in Libya being seen as legal?
- Comparing your country example with those of other class groups, do any of the other country situations share any of the features that you decided were important as an argument for the use of force being legal?
- Did other groups also identify these features as being an argument for the use of force being legal in this situation?



3.4.6 ACTIVITY 2 - Country example 5 - Ukraine - Printouts for students

Timeline:



- November 2013** - President Yanukovych refuses to sign EU agreement
Mass protests take place
- February 2014** - President Yanukovych is ousted
- Late February, early March 2014** - Pro-Russian troops seize Crimea
- 11 March** - **Supreme Council of Crimea** declares Crimea to be an independent republic
- 16 March** - Crimeans vote in **referendum** to separate from Ukraine and to join the Russian Federation
- 18 March** - Russian President signs into law the absorption of Crimea into the Russian Federation

The conflict involves:

Government: Russian government
Ukrainian government
Supreme Council of Crimea



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What does the law say on using force against another country?

- Generally prohibited
- Exception permitted in self-defence
- Exception permitted if authorised by the Security Council
- Some countries argue that an exception is also permitted for humanitarian reasons to relieve suffering, but not all countries accept this.

The situation

2014 Ukrainian revolution

In 2010, Viktor Yanukovych became the President of Ukraine. In November 2013, mass popular protests took place after his refusal to sign an EU agreement on **free trade**, instead choosing to align Ukraine more closely with Russia. Yanukovych tried to quash the protests and assert control, leading to violent clashes. On 22 February 2014, the President was **ousted** and protesters took control of the government and the city. Yanukovych eventually fled Kiev due to security concerns and a **coalition government** formed from the opposition.

Unrest in Southern and Eastern Ukraine

Crimea is a **peninsula** to the south of the Ukrainian mainland that was part of Southern Ukraine. Although Crimea was part of Ukraine before 2014, most of those living there are Russian-speaking and identify themselves as ethnic Russians, (although there was a significant minority who were Tartars) as before 1954, Crimea was part of Soviet Russia.

After the revolution and the ousting of Yanukovych, protests by pro-Russian activists began in Crimea and were followed by demonstrations in cities across eastern and southern Ukraine. Pro-Russian activists gradually began to take over the peninsula, seizing airports and government buildings.

Crimean independence and joining Russia

Russia supported pro-Russian activists, with the Russian President Vladimir Putin declaring that he would provide assistance to respect the wishes of the Crimean people which was to join the **Russian Federation**. In late February and early March 2014, pro-Russian troops seized control of Crimea with minimal bloodshed. On 11 March the **Supreme Council of Crimea** declared Crimea to be an independent republic. On 16 March, a **referendum** was held in which Crimeans voted to **secede** from Ukraine and to become part of the Russian Federation. The Russian government then declared Crimea as part of the Russian Federation. Most of the **international community**, and Western countries in particular regarded the **referendum** as illegal and invalid, and view the joining of Crimea to Russia as **annexation** by Russia.

Members of the **international community** expressed concerns over the Russian intervention in Ukraine and criticized Russia for its actions, including the United States and the UK. The EU condemned Russia, accusing it of breaking international law and violating Ukrainian **sovereignty**. Many of these countries implemented economic sanctions against Russia, Russian individuals and companies.

Glossary:

Annexation – to claim control over a piece of land

Coalition government – a government made up of two or more parties sharing power

Free trade agreement – an agreement between two or more countries to allow trade without tariffs (taxes), making trade easier

Ousted – overthrown

Peninsula – a piece of land that is joined to the mainland on one side and has water on three sides

Referendum – a vote by a population on a single issue

Russian Federation – the legal and official name for Russia

Secede – to separate from a country to become a new independent country

Supreme Council of Crimea – the Parliament of Crimea at the time

Your tasks are to answer the following questions:

- Should Russia have used military force in this situation?
- Do you think the military action taken in Crimea was legal?
- Comparing your country example with those of other class groups, do any of the other country situations share any of the features that you decided were important as an argument for the use of force being legal?
- Did other groups also identify these features as being an argument for the use of force being legal in this situation?



3.4.7 ACTIVITY 2 - The Legality of Using Force - Instructions for teachers

Split the class into groups of around 4 or 5 students, giving them each one country situation to consider. Each group should receive a country printout and discuss among themselves what they think the relevant features of each situation are in deciding whether military force should have been used to intervene in the countries in question.

It may be helpful to prompt students to consider the consequences of intervening and not intervening. **Self-defence** has already been discussed in Activity 1 in this lesson, but other relevant points to consider include humanitarian intervention and the right to independence. Explain to the students that all of these areas of law are in constant development and that there is not always consensus on what the law is. In general, law develops to serve the needs of society, but where there are conflicting needs and interests, it is not always clear what the law should be.

If time is short, you may find it helpful to give students their country information sheets in advance of the lesson so that they come prepared to discuss.



3.4.8 ACTIVITY 2 - The Legality of Using Force - Background for teachers

The point of the activity is to give an example of an area of **international law** that has many grey areas. It explores competing needs and interests in real-life situations to gain an understanding of the uncertainties of the law, how this impacts the rule of law and what the consequences of this uncertainty can be.

It shows students that while there are certain rules that countries can agree on and apply in the law surrounding the use of force, there are some elements that are disputed and make the law uncertain. Countries that use force or support the use of force in a certain situation seek to justify it with legal arguments, while those that do not support the use of force in that situation claim that it is illegal, putting forward competing arguments and interpretations.

A point to note about all of the examples in this activity is that they have been simplified to suit the level of study and in order to be run in a timeframe that is realistic for classrooms. The legal analysis to illustrate the point in this lesson about uncertainty of the law refers only to one area of law applicable in these cases, namely, the law on the use of force. There are other areas of law that are relevant to these situations that are not discussed.

A second point to note is that only a small number of examples of conflict have been chosen to illustrate the application of the law in a range of circumstances. It has not been possible to include all major conflicts for the purposes of this activity. For example, the conflict in Syria has not been included as it is ongoing at the time of writing and it is unclear what the outcome will be.

The conclusion that students should take away is the extent of uncertainty with regard to this area of law and the importance of certainty for the rule of law. It often appears that states seem to decide on a course of action and then try to find a legal justification for it and, as the case studies indicate, the lack of consistency in how the Security Council and the international community act shows that the law is not only uncertain, but that countries may have a slightly different interpretation or at least public statement of what the law is in order to suit their own interests. This area of law has profound consequences for those involved, potentially including rights violations, displacement and loss of life. Students should be able to see that such uncertainty in the law, which could open up opportunities for abuse, is unsatisfactory. This uncertainty is something that the rule of law tries to avoid.

Below are suggested answers for each of the scenarios relating to the five countries in the printouts for students.

Kosovo

There are two issues to consider here: firstly, whether the intervention of NATO was legal, and secondly whether it was justified even if not legal.

Illegal?

NATO bombed Serbia (part of the Federal Republic of Yugoslavia) in 1999 without UN Security Council authorisation and it was not an act of **self-defence**. Therefore, many critics of the intervention describe it as an illegal use of force contrary to Article 2(4) of the **UN Charter** which prohibits “threat or use of force against the **territorial integrity** or **political independence** of any state.”

Legal?

Supporters of the intervention claim that the Security Council gave retrospective authority for the intervention by establishing in a resolution the UN Interim Administration Mission in Kosovo.⁷ That is, even if not legal

at the time, this subsequently made it legal. This idea of retrospective authorisation was not accepted by all countries internationally or by all organisations working in the region.

Illegal but justified?

NATO countries claim that even if the intervention was not legal at the time, it was justified because of the humanitarian disaster happening in Kosovo. NATO regards its intervention as a success because Serbian troops withdrew from Kosovo and NATO troops put an end to the ethnic cleansing of the ethnic Albanian population. They argue that had they not bombed Serbia, the regime of ethnic cleansing of ethnic Albanians would have deteriorated. Supporters of the doctrine of humanitarian intervention argue that it is wrong for the international community to do nothing when there is a humanitarian disaster happening.

Where an intervention is successful, it may be easy to justify in retrospect. The difficulty with this sort of argument is that it is often hard to say before an intervention takes place whether it is going to work or; after the intervention, whether the situation would have been better had there been no intervention at all. There are many other situations where critics argue that the situation has been made worse by intervention. A frequently cited example of this is the Western invasion of Iraq.

Some supporters of the doctrine of humanitarian intervention claim that by consensus of the international community, the law is moving towards a duty to intervene in humanitarian crises.

Illegal and unjustifiable?

Critics of humanitarian intervention argue that there is no right in *international law* to intervene without Security Council authorisation, and that if there is no legal right to intervene, then intervention is unjustifiable. They argue that a 'humanitarian intervention' justification for using force against countries is a slippery slope, because countries could start to use it as a pretext for using force for other reasons such as political or resource gain. Furthermore, the uncertainty of the threshold of suffering that needs to exist before an intervention is justifiable means that it is not clear when it would apply. The uncertainty of the law means that there is potential for abuse, where countries may try to justify entering and using force against another country for illegitimate purposes such as political or economic gain.

There is no clear-cut answer on whether humanitarian intervention is legal and/or justifiable. For the law to be clear and certain countries should know whether an action is legal or illegal without having to carry out the action. This is crucial to the rule of law.

Afghanistan

As previously discussed, the only established legal exceptions to the prohibition on the use of force are **self-defence** and authorisation by the Security Council to use force. The US justified its military action as **self-defence** and this was generally accepted by the international community. Students may point out the US law that was passed authorising military force against the perpetrators of the attacks, but it is important to note that this only makes the use of force legal on a national level within the US. The fact that a national law authorises the use of force does not make it legal in *international law*.

The fact that the international community accepted **self-defence** as the basis for military action makes it relatively uncontroversial. However there are several issues here relating to **self-defence** that might have been controversial and are unresolved as the international community did not necessarily analyse the law and determine the grounds on which **self-defence** was legal in this case.

- a. The US used force against the Taliban government allegedly in **self-defence**. However, it was not the Taliban government that had attacked the US. The role of the Taliban was that of harbouring Al-Qaeda members, non-state actors, who had attacked the US. The acceptance of **self-defence** as a justification for military action suggests that harbouring perpetrators of an attack is sufficient to trigger a right of **self-defence** against those harbouring those responsible for the original attack.
- b. By the time the US acted in **self-defence** the attack against the US was over. The military action in **self-defence** must logically have been to defend the country against a future attack. As discussed in the previous activity, many states agree that under the Caroline formulation, there is a right to **self-defence** to avoid a future attack where there is clear evidence that an attack is imminent, and this requires the attacking country to have both the intention and the capability to attack. Considering the fact that the 9/11 attack was the last in a long line of attacks, it was arguable that another attack was imminent.
- c. Critics of the US and UK military operation in Afghanistan point out that one of the aims and in fact the outcome of the operation was regime change in Afghanistan. The Taliban government was overthrown and a new government was set up, led by Hamid Karzai who was backed by the US. Regime change is not a legal basis for the use of force against another country and is an infringement of a country's **sovereignty**. Article 2(4) of the **UN Charter** specifically prohibits 'the threat or use of force against the **territorial integrity** or **political independence** of any state.' Some argue that changing the government of a country goes beyond what is 'necessary and proportionate' to defend against a future attack.

Iraq

The 2003 Iraq invasion and occupation afterwards has now become an infamous example of an illegal use of force. Even in the lead up to the invasion, strong objections were raised by key US allies and major global powers, including France, Russia, China and Germany, who were members of the Security Council at the time military operations began. These countries maintained their positions throughout and after the invasion.

Anti-war groups across the world organised public protests and prominent figures such as former US President Bill Clinton and Nelson Mandela publicly voiced their opposition.

Taking each of the justifications given in turn:

a. The US and the UK claimed that Iraq was developing and planning to use weapons of mass destruction and that this would be a threat to international peace and security. While this may have been so, it is up to the Security Council to determine that there is a threat to international peace and security and authorise action against the offending country. As previously discussed it is only with Security Council authorisation (or in **self-defence**) that force may legally be used against a country. We now know that there were no weapons of mass destruction in Iraq, making that argument even less valid.

Had Iraq been manufacturing weapons of mass destruction, the US might have been able to claim a right to **self-defence**, but as discussed in previous examples, it would still have had to show that Iraq intended to use the weapons imminently.

b. There was no current Security Council authorisation for the use of force in Iraq, but in the 1990s SC Resolutions were passed allowing the use of force against Iraq in the context of the Iraq-Kuwait war.⁸ The US and the UK sought to revive these in 2003, claiming that 10 years on, they still provided the authorisation to invade Iraq.

c. The US claimed there was a link between Saddam Hussein's regime and Al-Qaeda and other terrorist organisations. After the September 11 attacks in the US, the President of the United States, George W Bush, declared a 'global war on terror'. The term has no specific meaning from a legal point of view, and certainly does not give the legal right to use force against any country suspected of harbouring terrorists or supporting terrorists. Critics have commented that the term has come to symbolise a more aggressive foreign policy towards certain countries, without necessarily having a legal basis for it.

d. As discussed above, regime change is not legal as a reason for the use of force, even if it is claimed that the government is not free and democratic. It is undeniable that the regime under Saddam Hussein was

brutal and that there were grave human rights abuses committed under his command. However, military intervention to overthrow a regime does not fall into one of the two legal exceptions to the prohibition on the use of force (**self-defence** and Security Council authorisation). In extreme circumstances, some might argue that there is a case for humanitarian intervention as a third basis for the use of force – but as discussed in previous examples, this is still a controversial doctrine. There would not be much peace in the world if countries were entitled to invade any country where they did not support the regime.

There have been widespread criticisms about the invasion of Iraq, perhaps more than any other military intervention in recent times. Critics argue that the intervention was carried out for illegitimate reasons and that Western countries had their own agenda in carrying out the operation in Iraq. For example, some have commented on the profits made by UK and US companies involved with reconstruction in Iraq following the war.⁹ If we examine this from a rule of law perspective we can see that it is because the law is uncertain that countries are able to take actions that much of the international community views as illegal. This undermines the very point of having laws that are intended to be a standard that all countries abide by. If some countries are able to get away with behaving differently, some argue that this leads to disorder and potential bullying of weaker countries by more powerful countries.

Libya

The use of force against the Libyan regime was uncontroversial in this case as it was authorised by the Security Council. The Security Council passed a resolution calling on the Libyan government to immediately and completely cease violence against civilians.¹⁰ It authorised Member States to take all necessary measures (therefore including the use of force) to protect Libyan civilians, but specifically excluded any form of occupation of Libyan territory. It strengthened an existing arms embargo, banning flights of Libyan airlines to protect civilians from attacks by government forces and freezing Libyan financial assets as already defined a previous resolution.¹¹

What was controversial was the aid given by Western countries to rebel forces to procure regime change. The Security Council resolutions authorising force were centred on what was necessary for civilian protection. The fact that the Gaddafi regime was subsequently toppled with Western backing has fuelled criticism that the action taken went beyond merely civilian protection and therefore what was legally authorised.

Ukraine

Most countries, and in particular, Western countries have declared Russian deployment of military forces in Crimea to be illegal (along with the subsequent Crimean **referendum** and joining of Crimea to the Russian Federation).

Legality of Russian deployment of forces in Crimea

First, there is the issue of whether this was a 'use of force'. Russia asserts that its troops were present simply to make sure that the **referendum** went ahead without violence, and that with no blood shed, there was no 'use of force'. Ukraine and Western countries argue that the presence of Russian troops was a violation of Ukraine's territorial **sovereignty** and thus, with military forces deployed, constituted a use of force.

Secondly, if it was a use of force, was it legal? The deployment of Russian troops in Crimea before and during the **referendum** did not have the authorisation of the Security Council so there was no legality on that basis. Russia, however, has suggested that it was acting in **self-defence**, arguing it was protecting Russian citizens in Crimea, which, in theory, can provide a basis for a **self-defence** use of force (though we will not discuss that aspect of the law here). However, this has not been accepted by the international community as a legitimate exercise of **self-defence** because it was not accepted that Russian nationals were under threat by Ukrainian authorities.

A further argument that Russia has made is that the deployment of troops was legal because they were in Ukraine at the invitation of the Ukrainian authorities; that is, the ousted pro-Russia, President Yanukovych. Russia considered Yanukovych still to be the Ukrainian President as it considered his ouster to be illegal. The argument that force was legal on these grounds is not generally accepted by the international community, which did not consider Yanukovych to represent the Ukrainian government at that point.

Legality of declaration of independence

Most countries, and particularly Western countries did not recognise Crimea's declaration of independence from Ukraine. Russia argues that the declaration of independence was legal, relying on the decision of the **International Court of Justice** which had found Kosovo's second declaration of independence in 2008 not to be illegal.¹² The declaration was also recognised by the US and many Western countries. Russia argues that the circumstances of the Crimean **referendum** are similar and accuses the West of hypocrisy and double standards in recognising the independence one country but not of another.

Legality of referendum

Russia argues that the **referendum** shows the overwhelming will of the people. The West regard the **referendum** on secession from Ukraine to be illegal, for reasons including that it was held at very short notice and that although the results appear to show that Crimeans voted overwhelmingly to join Russia, the turnout was not as high as the Crimean and Russian authorities claim.



3.5.1 PLENARY - Legal Certainty - Teacher-led Discussion

Ask students to consider the following questions:

- a) *What are the potential consequences of the law being uncertain? For example, does the law being applied differently in similar scenarios mean that it is difficult to know how the law applies in future situations?*
- b) *Who is most likely to suffer those consequences of the law being uncertain?*

Lesson Three: Glossary

Collective self-defence: the right of states to defend another state against an attack, by using military force

International community: the collective governments (and sometimes people) of the world

International Court of Justice: the main judicial organ (court) of the UN considering questions on international law which rules on disputes between states and provides advice on legal questions raised by UN organs and agencies

Offence against the person: a crime caused by one person using force against another

Political independence: the right of states to complete control over their own domestic and foreign affairs and to make laws and exercise authority over its own people

Referendum: a vote by an electorate on a particular issue

Self-defence: refers in this context to military actions taken by states in response to an armed attack, or threat of armed attack

Sovereignty: in this context, the right of a government to exercise control and authority within its territory without interference and not to have its borders violated by other states

Supreme Council of Crimea: the Parliament of Crimea before Russia's military intervention

Territorial integrity/sovereignty: the right of a state to the security of its borders and not to have its territory violated by other states or any other non-state actor

UN Charter: the document that sets out the purposes, rules and principles of the United Nations, signed on the 26th of June 1945

United Nations: an international organisation with 193 member states, established in 1945 after the end of WWII to maintain international peace and security, to promote cooperation between states on global issues, to promote human rights and to aid in the process of decolonisation

United Nations Security Council: the UN body responsible for maintaining peace and security in the world

Footnotes:

¹This has also become a principle of customary international law, meaning that most or all countries agree that this is what the law is, and that all countries are obliged to follow the law.

²Under Chapter VII of the UN Charter.

³The exception is found under Article 51 of the UN Charter and under the definition given in a case called the Caroline case in customary international law.

⁴The case said that the necessity of self-defence had to be 'instant, overwhelming, leaving no choice of means, and no moment of deliberation.'

⁵The principle that use of force in self-defence must be proportionate to the armed attack and necessary to respond to it has been confirmed several times by the International Court of Justice. (Nicaragua case, para.176; see also, para.41 of the Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons.)

⁶As in the Caroline incident, and in the case of the intervention in Afghanistan in 2001, which was categorised by the US and the UK as the exercise of the right of anticipatory self-defence (see UN Doc. S/2001/946 and UN Doc. S/2001/947).

⁷Resolution 1244 (1999).

⁸Resolution 678 (1990), Resolution 1441 (2002).

⁹https://web.archive.org/web/20080708222309/http://news.independent.co.uk/world/middle_east/article350959.ece

¹⁰Resolution 1973 (2011)

¹¹Resolution 1970 of 26 February 2011

¹²Advisory Opinion on the Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, I.C.J. Reports 2010, p.43.

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:

- I) (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 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 UNHRC 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/20160111T115040-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.

Course Plenary

Course Plenary: Lesson Plan

LEARNING OBJECTIVES:

- Understand that all people have human rights
- Understand broadly the potential conflict between measures designed to protect the public and individual human rights
- Understand why it is important to respect the rights of suspected criminals including suspected terrorists

LEARNING OUTCOMES:

- Be able to give examples of different scenarios where there is a potential conflict between measures to protect the public and individual rights, and be able to explain which rights are at risk of being infringed
- Be able to articulate arguments for and against particular public safety measures being used in different circumstances and be able to draw a reasoned conclusion on where the balance between implementing security measures and respecting personal liberties should lie
- Be able to explain the potential consequences of not respecting the rights of suspected criminals including suspected terrorists

SKILLS:

- Understanding unfamiliar points of view, debating conflicting points of view, constructing arguments, forming reasoned conclusions



5.1.1 Course Plenary - Instructions for teachers

bit.ly/evidenceandrights

Play the video on terrorism and human rights and ask students to take notes. After the video, lead a discussion on the themes explored in the interview. You may wish to give students the questions to think about while the video is playing, and you may need to play the video more than once depending on how advanced the class is. Questions are not simply factual and require students to form their own opinions and to be able to back these up with reasoning. Note that the background provided below, in answer to the questions, uses material from the video but also gives teachers wider background information around the subject so that discussion can be expanded beyond the video if appropriate to the class.



5.1.2 Course Plenary - Background for teachers

Using counter-terrorism measures in recent years as a backdrop, this activity deals with the potential conflict between government measures in trying to ensure public safety and preserving individual liberties to the greatest extent possible.

The government has a duty to ensure the security of its citizens, which includes taking measures that it considers necessary to protect the public from the threat of terrorism. In doing so, it may take measures that interfere with the rights of suspected or convicted terrorists.

Examples addressed in this activity include situations where aspects of fair trial rights, the right to privacy, and the right to physical liberty, among other rights, are at risk of being unduly compromised.

Questions and answers

In what circumstances might evidence be used against an individual in court that is not revealed to that individual? Which right is at risk of being infringed where an individual does not know the evidence that is being used against him/her?

In some particularly sensitive cases where a suspected terrorist is on trial in a civil case, the government has used evidence in the trial that the suspect is not made aware of, as to do so might mean revealing government secrets. This is called a Closed Material Procedure (CMP). The withheld information might include details of how the state has been observing a suspect, including what kinds of devices or surveillance agents they have been using. By failing to make evidence against an individual known to him or her, the right to a fair trial is at risk of being undermined.

This situation might not meet the requirements of an important fair trial principle, that of 'equality of arms'. This means that both parties to the proceedings enjoy an equal right to present their case. They should each know what case the other side is putting forward and what evidence is being used, in order that each side knows the nature of the case it will need to respond to. If the prosecution can make full use of certain evidence that the defence doesn't know about and therefore cannot prepare for, the circumstances of each side will not be equal.

It should be noted that the use of these CMPs is confined almost exclusively to civil cases, as it is recognised that in criminal trials, where ultimately the individual could be sentenced to jail, the protection of an individual's fair trial rights must be more robust.¹ However, this is not to say that consequences may not be serious in civil trials where the government may seek to deport the suspected terrorist or impose certain constraints on their movements.

In the video, David Anderson QC explains some of the mitigating measures that must be taken in situations where undisclosed evidence can be used against a suspected terrorist. Do you think these mitigating measures are sufficient to protect individual rights? What are the reasons for your answer?

The Justice and Security Act 2013 has extended the use of CMPs from the immigration and employment tribunals to civil cases on terrorism matters. CMPs are procedures where certain pieces of evidence being used against an individual are withheld from him or her.

Where CMPs are used, undisclosed evidence is presented to a security-cleared lawyer called a Special Advocate who represents the suspect and defends his or her interests. Critics question whether Special Advocates are able to defend the suspected terrorist's rights sufficiently, as they are not allowed to discuss the undisclosed evidence with the suspect, as a lawyer normally would. This means that the Special Advocate cannot ask the suspect questions that might yield information important to defending the case.

Parliament's Joint Committee on Human Rights has raised concern over the use of CMPs, arguing that such practice raises serious questions about the 'equality of arms' between the state and the individual accused. The Joint Committee has also highlighted the fact that there are often delays in disclosing the evidence to the Special Advocate, thus limiting the amount of time that the advocate can consider it. Where a defendant does not have adequate means to present his or her side of the case, not only do fair trial rights risk being breached, there is also the risk of serious errors taking place in court, leading to miscarriages of justice. These factors are unlikely to fulfil the procedural fairness demanded by Article 6 of the European Convention on Human Rights.

Do you think it is justifiable that individuals may be held without charge for a longer period where terrorism is suspected?

An individual suspected of a crime may be held in custody for up to 24 hours without being charged. When an individual is suspected of a serious crime, such as murder, the police may seek judicial approval to detain the individual for up to 36 or 96 hours. However, when an individual is suspected of terrorism, she/he can be held in detention for up to 14 days without being charged. Some consider that the justification behind detaining suspected terrorists for longer is that terrorism is a crime unlike any other and that the horror that terrorism evokes in a population is of a different order and magnitude to other violent crime. Others do not consider it to be unlike any other murder or violent crime where there is a different motive.

Those who feel that being held without charge for long periods is unjustifiable highlight the fact that most of the people detained are never charged. This means that a high proportion of individuals detained have been deprived of their physical liberty without having done anything wrong. The question is whether detaining these individuals is justifiable to find the few who may have committed a crime.

Which factors do you think police may and may not take into account when carrying out ordinary 'stop and search' operations on the street?

Under the current law, when exercising their powers of stop and search, the police must have good reasons for doing so. They must have reasonable grounds of suspicion that the person is in possession of prohibited objects or substances, such as guns or drugs. The suspicion has to be reasonable meaning that it usually has to be based on accurate and current information or intelligence. Such information or intelligence could be, for example, a phone call made to the police by someone reporting that an individual in a certain area is in possession of a gun.

Factors such as heritage, race or appearance cannot be taken into account in a decision whether to stop and search someone on the street. The law was recently changed to try to make sure that irrelevant factors do not play a part in a decision to stop and search, as statistics showed that ethnic minorities were being disproportionately targeted by the police.

When is surveillance used and what sorts of measures might be taken in carrying out surveillance? In what circumstances do you think the use of surveillance is acceptable and when is it not acceptable?

The police and intelligence agencies use surveillance to detect and prevent crime. It is principally used in very serious crimes such as terrorism, child sexual exploitation and kidnapping. Examples of surveillance could include attaching a recording device on the walls of houses, or placing wiretaps on telephones to monitor conversations. The Investigatory Powers Act 2016² allows the police and intelligence services to gather and share private data in bulk in certain circumstances, including, for example, communications data collected by telecommunication companies.

The stated aim behind these powers of bulk data collection is for the authorities to be able to keep up to date with the latest security threats posed by known individuals and so that new threats can be identified. Policy-makers behind the new legislation seek to reassure the public that the police and intelligence services are not given free rein by the Act and that data collection requires authorisation by the Judicial Commissioner.

Critics are concerned that a very large number of individuals could be targeted under the Act, of which only a very small number will turn out to be threats of the sort that these far-reaching powers were given to identify. If this is the case, bulk collection of data could seem disproportionate as a measure to respond to serious crime.

Why do you think it is important that the rule of law and human rights should be protected in dealing with issues of terrorism and security?

All people have human rights because they are human beings and should have those rights protected, including suspected and convicted terrorists.

The seriousness of the harm done in terrorism cases often shocks the public and it is easy to forget that suspected terrorists are still entitled to their human rights and that it is the responsibility of state actors such as the police and intelligence services to observe this in the part they play in the administration of justice.

The fact that suspected terrorists may not turn out to be the perpetrators of a terrorist act is all the more reason that they must have a fair trial. An unfair trial may ultimately lead to the wrong outcome. Miscarriages of justice can be very detrimental to the confidence that the public have in law enforcement agencies and the criminal justice system more generally. If an individual has been found guilty of a crime then this should have been after a trial where the correct procedures were followed and the rights of the defendant were respected. Only in this way can a fair and just result be ensured.

David Anderson QC says that it is important for the state to uphold its moral high ground. If the state violates individual rights for example by torturing suspects

or depriving them of a fair procedure in trial, then it undermines the principles of fairness and justice that the state should stand for. It would seem to undermine the state's credibility if in purporting to bring human rights abusers to justice it did not respect the rights of suspects.

The state risks alienating the public, or particular groups, if it targets individuals illegitimately and thus abuses its power. For example, if certain minorities are systematically targeted or perceived to be targeted by the police this may put the public or particular groups within it out of sympathy with the aims of the police. This reduces their credibility which can in turn have an impact on their efficiency as enforcers of the law.

The more far-reaching the powers given to authorities, the stronger the safeguards needed in order to ensure that an appropriate balance is reached between the interests of security and safety on the one hand, and individual rights on the other.

Footnotes:

¹ However, where the public interest to withhold prosecution evidence overcomes the interests of justice to disclose it, information relied on by the prosecution can be kept secret from a defendant in very rare circumstances in criminal cases.

² <http://www.legislation.gov.uk/ukpga/2016/25/part/1/crossheading/overview-and-general-privacy-duties/enacted>

Course Plenary: Glossary

Article 6 of the European Convention on Human Rights: the article in the main European human rights treaty concerned with fair trial rights

Civil case: in civil cases an individual or organisation (the claimant) takes legal action against (sues) another individual or organisation (the defendant) for causing harm or breaching a duty towards the claimant. The court may order the defendant to compensate the claimant or to put right what the defendant has done wrong, but cannot order a custodial sentence (imprisonment).

Counter-terrorism measures: legal and administrative steps pursued by governments to prevent terrorism and to deal with suspected and convicted terrorists

Criminal case: in criminal cases individuals are being accused of a crime. The state prosecutes the accused individual(s) (the defendant(s)) in court. The court may order a range of measures including imprisonment (in the most serious cases) if the defendant is found guilty.

Equality of arms: an element of the right to fair trial that requires both the prosecution and defence in a criminal case (or claimant and defendant in a civil case) to have equal opportunities to present their cases

Green Paper: a document outlining the government's proposals on a specific matter; often to launch a consultation on the issue. This may eventually result in law being passed by Parliament on the issue.

Human rights: rights possessed by each person by virtue of being human. To protect these rights, governments have both negative obligations (that is, not doing certain things that unduly restrict liberties) and positive obligations (that is, taking positive measures to ensure that individual liberties are being respected by others). The entitlement to enjoy some of these rights and the scope of the obligations on governments to protect these rights in different situations are disputed by some countries.

Individual liberties: the freedoms that individuals enjoy

Miscarriages of justice: situations where the justice system does not reach the correct conclusion, for example where an innocent defendant is convicted

Parliament's Joint Committee on Human Rights: a parliamentary committee that scrutinises legislation for compliance with human rights standards, ensures that the government responds to human rights-related court judgments, and conducts its own inquiries into the observance of human rights in the UK. The committee comprises members of both the House of Commons and the House of Lords.

Perpetrator of an offence: someone who has committed an offence

Settlement: a situation where the defendant agrees to compensate the claimant in a civil case resulting in the case being resolved without going through full trial procedure.

Stop and search powers: powers given to the police to stop individuals and search them where they have reasonable grounds of suspicion that the individual is carrying prohibited items such as illegal drugs, weapons, stolen property or something which could be used to commit a crime (for example a crowbar). In limited circumstances, higher ranking police officers may stop

and search individuals in a particular area, even if they do not have a reasonable suspicion that the individual is carrying a prohibited item, if for example they suspect that serious violence is about to occur (or if it has already occurred) in that particular area.

Terrorism: the use (or threat of the use) of violence, particularly against civilians, and usually in pursuit of a political, social or religious objective.

The right to fair trial: the right to procedural fairness (and fairness in the content of the law) in a trial process in order to achieve a just outcome. Examples include the right to know what one is being accused of, the right to adequate legal representation and having the opportunity to present one's case. (Although there is often a focus on procedural fairness, logically, the content of the law being considered in a case must also be fair to reach a just outcome.)

The right to physical liberty: the right of individuals not to be physically restrained or confined without a legitimate reason. (A legitimate reason would include being imprisoned having been found guilty of a crime.) Detention or restrictions upon freedom of movement without charge risk violating the right to physical liberty if the measures go beyond what is necessary to protect the public.



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