

As mentioned in Chapter 1, Remarks on teaching International Humanitarian Law, nearly every aspect of international law can be explained, discussed and understood using examples taken from IHL. Furthermore, many cases and documents contained in this book discuss or exemplify issues pertaining to branches of international law other than IHL. To facilitate the use of this book for these purposes, including by international law specialists not particularly interested in IHL, each heading below is followed by references to the pertinent passages of Parts I and II.

I. The nature of international law

A. The science of international law

1. A normative science

- a. Difference between *sollen* and *sein*
- b. Purport and advantages of the general and the abstract rule
- c. Conduct, discourse and hypocrisy

See

- Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Part A. and B.]

2. Realism and idealism

See

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part A., para. 58]
- Case No. 215, ICTY, The Prosecutor v. Kupreskic et al. [Paras 517-534]

3. Diversity of cultures and values

See

- Case No. 251, Afghanistan, Separate Hospital Treatment for Men and Women [Part A.]

4. Dogmatic or practical approach

5. Anglo-Saxon and Romano-Germanic approach

6. Lawyer's roles

- a. Normative
- b. Practitioner
- c. Legal science specialist

B. Reality and specific character of international law

1. Existence

See

- Chapter 2. I, IHL: at the vanishing point of international law, **Introductory text**,
- Chapter 2. I. 1, Is international law law? **Quotations**;
- Case No. 95, United States Military Tribunal at Nuremberg, The Ministries Case;
- Case No. 171, Iran/Iraq, UN Security Council Assessing Violations of International Humanitarian Law [Part C. and D.];
- Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Part B.]

- IHL, the crucial test of international law

See

- Chapter 1. II, The possibility of legal regulation of warfare, **Introductory text**,
- Chapter 2. II. Fundamental distinction between *jus ad bellum* (legality of the use of force) and *jus in bello* (humanitarian rules to be respected in warfare), **Introductory text**

2. Respect

See

- Chapter 13. XII, Factors contributing to violations of IHL, **Introductory text**,
- Chapter 13. XIII, Non-legal factors contributing to respect for IHL

3. Decentralization and relativism: comparison between the implementation of international law and that of municipal law

- a. Creation: absence of a distinct, permanent or centralized legislator
- b. Application: absence of an ordinary tribunal that can be unilaterally seized
- c. Execution: no central executive power

4. Self-application and its consequences

- a. Difficulty to establish violations
- b. Need for clear rules

5. Adaptation and stability

See

- Case No. 261, Status and Treatment of Detainees Held in Guantanamo Naval Base [Part A. and B.]

6. Expansion

- a. Horizontal
- b. Vertical

7. *Lex lata* and *lex ferenda*

C. The two layers of contemporary international law

1. The law of the society of States

- a. Contents:
 - i. The law necessary for the co-existence of States
 - ii. The growing field of the law of cooperation between States
- b. Characteristics:
 - i. Relativism
 - ii. Dominant role of consent
 - iii. Decentralized reaction to violations

See

- Case No. 215, ICTY, *The Prosecutor v. Kupreskic et al.* [Para. 530]

2. The law of the international community composed of six billion human beings

- a. International organization and international organizations
- b. Piercing the corporative veil of the State
 - i. The individual protected by international law (even from his own State)

See

- Chapter 2. III. 5, The types of relations governed by IHL

- ii. The individual as the addressee of international criminal law

See

- Chapter 13. X, Violations by individuals,
- Case No. 211, ICTY, *The Prosecutor v. Tadic* [Part A., paras 58 and 128-136]

- c. A hierarchy of rules

See

- Case No. 215, ICTY, *The Prosecutor v. Kupreskic et al.* [Paras 519 and 520]

- i. *Jus cogens*
 - ii. *Erga omnes* obligations
- d. The international community
 - i. Concept
 - ii. Use of the notion
 - iii. As a subject of international law?

D. The main characteristics of international law

1. The Westphalian system, its universalization and its obsolescence
2. The central role of the State – human finality

- **Application of IHL by and in failed States**

See

- Case No. 45, ICRC, Disintegration of State structures [II.2],
- Document No. 52, First Periodical Meeting, Chairman's Report [II.2]

3. Decentralized system – a tendency towards institutionalization

II. Sources of international law

- Codification and development of IHL in multilateral treaties

See

- Chapter 4. I, Treaties

- The process that resulted in the 1977 Protocols
- The struggle to ban the use of anti-personnel landmines

1. Customary international law

- Difficulties to assess practice and *opinio juris* in IHL

See

- Chapter 4. II, Customary law, **Introductory text** and **Quotations**;
- Case No. 168, South Africa, S. v. Petane;
- Case No. 132, Israel, Cases Concerning Deportation Orders [4-7];
- Case No. 43, ICRC, Customary International Humanitarian Law;
- Case No. 276, Sierra Leone, Special Court Ruling on the Recruitment of Children

a. The two classical elements

See

- Case No. 215, ICTY, The Prosecutor v. Kupreskic et al.

i. The material element: practice

- Conduct that constitutes practice
- The practice of belligerents

See

- Case No. 153, ICJ, Nicaragua v. United States [Para. 186],
- Case No. 211, ICTY, The Prosecutor v. Tadic [Part A., para. 99]

- The practice of non-belligerents
- Relevance of ICRC practice

See

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part A., paras 99 and 109]

- How many States?
- For how long?
- States specifically concerned
- ii. The psychological element: *opinio juris*
 - Nature: opinion or commitment
 - Possible manifestations

See

- Case No. 215, ICTY, The Prosecutor v. Kupreskic et al. [Paras 527-534 and 540]

- iii. The two elements are inseparable
- b. The persistent objector
- c. The codification of international law

See

- Chapter 3, Historical development of IHL,
- Chapter 4. I, Treaties

- d. The influence of treaties on customary law

See

- Chapter 4. II. 2, IHL treaties and customary IHL, **Quotation**;
- Case No. 153, ICJ, Nicaragua v. United States [Paras 174-178, 181, 185 and 218];
- Case No. 168, South Africa, S. v. Petane;
- Case No. 132, Israel, Cases Concerning Deportation Orders [4-7];
- Case No. 76, Sweden, Report of the Swedish International Humanitarian Law Committee [3.2.2]

2. General principles of law

See

- Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part B., paras 36-85]

3. General principles of international law

See

- Chapter 4. III, Fundamental principles of IHL, **Introductory text**,
- Case No. 153, ICJ, Nicaragua v. United States [Paras 215 and 218]

- Elementary considerations of humanity
- The Martens clause

See

- Case No. 153, ICJ, Nicaragua v. United States [Para. 218];
- Case No. 243, Colombia, Constitutional Conformity of Protocol II [Para. 22];
- Document No. 55, Minimum Humanitarian Standards [Part B., paras 84 and 85]

4. The tendency towards “general international law”

5. Equity

6. Unilateral acts

- Establishment of a non-defended locality

7. Subsidiary sources

a. Jurisprudence

See

- Case No. 215, ICTY, The Prosecutor v. Kupreskic et al. [Paras 537-541]

b. Writings of publicists

8. “Soft law”

a. Resolutions adopted by international organizations

See

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part A., paras 110-112]

- Resolutions of the International Conference of the Red Cross and Red Crescent

b. Non-binding agreements

9. Hierarchy of norms: *jus cogens*

See

- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 40];
- Case No. 62, ICJ, Nuclear Weapons Advisory Opinion [Para. 79];
- Case No. 215, ICTY, The Prosecutor v. Kupreskic et al. [Para. 520]

III. The subjects of international law

A. States

1. Definition

- a. Components
 - i. Population
 - ii. Territory
 - iii. Government

b. State sovereignty

c. Recognition

2. State jurisdiction

- a. Territorial jurisdiction
 - i. The exclusions that result from territorial jurisdiction

- ii. Obligations that are derived from territorial jurisdiction
- iii. Defining and delimitating State territory
- b. Personal jurisdiction
 - i. Nationality of individuals
 - ii. Nationality of corporations
 - iii. The nationality of certain properties
- c. State continuity
 - i. Change of government

See

- Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Part C.]

- ii. Recognition of governments
- iii. Insurrectional movements
- d. State succession

B. International organizations

1. **Contractual conception and institutional conception**
2. **Creation**
3. **Structure**
4. **Legal status**
5. **Powers**

C. Other subjects of international law

1. Individuals

- Rights and obligations of individuals according to IHL

See

- Chapter 2. III. 5. c), Individual-individual,
- Chapter 13. X, Violations by individuals

2. Companies

3. Insurgents

- Functional legal personality of parties to non-international armed conflicts

See

- Chapter 12. VIII, Who is bound by the law of non-international armed conflicts? **Introductory text**,
- Chapter 12. IX, Consequences of the existence of a non-international armed conflict for the legal status of the parties, **Introductory text**;
- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 10];
- Case No. 243, Colombia, Constitutional Conformity of Protocol II [Para. 8];

- Case No. 164, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., para. 174]

4. The Holy See

5. The International Committee of the Red Cross

- Legal status of the International Red Cross and Red Crescent Movement
- Legal status of the ICRC

See

- Chapter 15. II. 1. f), The relevance of ICRC practice for the development of customary international law, **Quotation**;
- Case No. 54, UN, ICRC Granted Observer Status;
- Case No. 214, ICTY/ICC, Confidentiality and Testimony of ICRC Personnel;
- Document No. 27, Agreement between the ICRC and Switzerland

IV. The United Nations

1. Objectives and principles

2. Legal nature

3. Members

4. The main organs, their system and their jurisdiction

- a. General Assembly
- b. Security Council
- c. Economic and Social Council
- d. Trusteeship Council
- e. International Court of Justice

5. Settlement of disputes

6. Collective security and peacekeeping

- a. Security Council enforcement measures
 - Applicability of IHL

See

- Case No. 57, UN, Guidelines for UN Forces;
- Case No. 198, Belgium, Belgian Soldiers in Somalia;
- Case No. 22, Convention on the Safety of UN Personnel

- Means of implementing IHL

See

- Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region [Part 3.D.],
- Case No. 205, Bosnia and Herzegovina, Constitution of the Safe Areas in 1992-1993

i. The prosecution of war crimes as peace enforcement

See

- Case No. 190, Iraq, The End of Occupation;
- Case No. 230, UN, Statute of the ICTR;
- Case No. 211, ICTY, The Prosecutor v. Tadic [Part A., paras 28-39]

ii. Peacekeeping and peace-enforcement operations

See

- Case No. 57, UN, Guidelines for UN Forces;
- Case No. 198, Belgium, Belgian Soldiers in Somalia;
- Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region;
- Case No. 274, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea

iii. Applicability of IHL

b. Economic sanctions and IHL

See

- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 50, para. 7]

7. Specialized agencies

v. **Fundamental rights and obligations of States**

o The principle of non-intervention

See

- Case No. 153, ICJ, Nicaragua v. United States [Paras 207, 219 and 254]

o IHL applicable to foreign intervention in non-international armed conflicts

o International cooperation in cases of serious violations of IHL

See

- Case No. 139, UN, Resolutions and Conference on Respect for the Fourth Convention;
- Document No. 39, ICRC, Protection of War Victims [3.1.3];
- Document No. 52, First Periodical Meeting, Chairman's Report

o The right to self-determination

See

- Case No. 74, United Kingdom and Australia, Applicability of Protocol I [Parts A. and B.];
- Case No. 77, United States, President Rejects Protocol I;
- Case No. 167, South Africa, Sagarius and Others;

- Case No. 168, South Africa, S. v. Petane;
- Case No. 284, The Netherlands, Public Prosecutor v. Folkerts;
- Case No. 287, United States, United States v. Marilyn Buck;
- Case No. 286, The Conflict in Western Sahara

- The IHL applicable to wars of national liberation

VI. International law and municipal law

See

- Chapter 2. III. 5. b), State-State, IHL in the law of treaties, Introductory text

1. Role of municipal law in respect of international law

2. Position of international law in municipal law

- a. Monism and dualism
- b. Direct application or necessity to transform
 - Transformation or direct application of IHL treaties

See

- Case No. 132, Israel, Cases Concerning Deportation Orders [4 and 5]

- c. Self-executing rules and rules that need legislation for application

See

- Chapter 13. II, Measures to be taken in peacetime, **Introductory text**,
- Chapter 13. II. 4, Legislation for application, **Introductory text**

3. The dualist system (Canada, United Kingdom)

- a. Treaties are not directly applicable
 - i. They become domestic law through transformation

See

- Case No. 65, Canada, Crimes Against Humanity and War Crimes Act;
- Case No. 81, United Kingdom, Interpreting the Act of Implementation;
- Case No. 110, India, Rev. Mons. Monteiro v. State of Goa

- ii. They help construe domestic law

- b. Customary law is part of municipal law

4. The monist system (United States, France, Switzerland)

- a. Self-executing treaties and customary law are part of municipal law
 - Self-executing and non-self-executing norms of IHL treaties

See

- Case No. 158, United States, United States v. Noriega [Part B.II.C];
- Case No. 152, Chile, Prosecution of Osvaldo Romo Mena;

- Case No. 241, Switzerland, The Niyonteze Case [Part A., consid. 9a)]

b. Other treaty-based rules need implementing legislation

- Need for national legislation on war crimes

See

- Case No. 63, Switzerland, Military Penal Code;
- Case No. 64, Germany, International Criminal Code;
- Case No. 66, Cameroon, Law on the Protection of the Emblem and the Name “Red Cross”;
- Case No. 67, Ghana, National Legislation Concerning the Emblem;
- Case No. 68, Belgium, Law on Universal Jurisdiction;
- Case No. 70, United States, War Crimes Act;
- Case No. 241, Switzerland, The Niyonteze Case [Part A.]

c. The hierarchy of international law in municipal law

5. International law in a federal State

- Federal States as subjects of international law?
- Right of federal authorities to conclude treaties on matters falling under the domestic jurisdiction of the federated States?
- Right to adopt legislation of transformation or implementation?
- Responsibility of the federal State for the federated States?

VII. The law of treaties

1. Conclusion

- International jurisdiction and internal jurisdiction
- Procedure of conclusion
 - Simplified form and formal form
 - Initialling – authentication – signature – ratification – accession
 - Entry into force
- Invalid consent
- Reservations
- Role of the depositary
- Registration and publication

2. Interpretation of treaties

See

- Case No. 132, Israel, Cases Concerning Deportation Orders,
- Case No. 211, ICTY, The Prosecutor v. Tadic [Part A., paras 71-93, and C.]

- The text as starting point
- Interpretation in context and in the light of the text’s object and purpose
- Subsequent practice and the remainder of international law

d. Supplementary recourse to preparatory work

3. Termination and suspension

a. By consent of the parties

b. Non-execution

- No termination or suspension of the applicability of an IHL treaty as a consequence of its breach

See

- Chapter 13. IX. 2. c) dd), Applicability of the general rules on State responsibility – but no reciprocity

c. Fundamental change of circumstances

d. *Jus cogens*

4. Treaties between States and international organizations

- Status agreements concluded by the ICRC

See

- Document No. 27, Agreement between the ICRC and Switzerland

VIII. The law of diplomatic relations

o The Protecting Powers

See

- Chapter 13. IV. 1, The Protecting Power, **Introductory text**

o The legal status of ICRC delegations and of ICRC delegates

See

- Case No. 214, ICTY/ICC, Confidentiality and Testimony of ICRC Personnel

o Diplomatic immunity and prosecution of war crimes

See

- Case No. 23, The International Criminal Court [Arts 27 and 98];
- Case No. 242, ICJ, Democratic Republic of the Congo v. Belgium;
- Case No. 275, Sierra Leone, Special Court Ruling on Immunity for Taylor

IX. State jurisdiction and its delimitation

1. Jurisdiction

a. Territorial jurisdiction

b. Jurisdiction of the flag

c. Active personal jurisdiction

d. Passive personal jurisdiction?

e. Jurisdiction of the public authorities

- f. Jurisdiction of protection
- g. Universal jurisdiction
 - The universal obligation to repress grave breaches

See

- Chapter 13. X. 2, Violations by individuals, **Introductory text**;
- Case No. 223, Switzerland, Military Tribunal of Division 1, Acquittal of G.;
- Case No. 241, Switzerland, The Niyonteze Case [Part B.III.1.c)];
- Case No. 242, ICJ, Democratic Republic of the Congo v. Belgium [Paras 15 and 45; separate opinion Judge Bula-Bula and dissenting opinion Judge van den Wyngaert, paras 54 and 59]

- h. Delegated jurisdiction

2. Fields of application of municipal law

3. Jurisdiction for implementation

4. Immunities

- a. Of the State
- b. Of State organs
 - Immunities under international law and prosecution for war crimes

See

- Case No. 242, ICJ, Democratic Republic of the Congo v. Belgium,
- Case No. 275, Sierra Leone, Special Court Ruling on Immunity for Taylor

X. The law of the sea

See

- Chapter 10, The law of naval warfare
- Applicability of the United Nations Convention on the Law of the Sea in times of armed conflict
- Hostilities in different maritime zones
- Innocent and transit passage through neutral waters

XI. The international protection of the individual

- The historical development of IHL

See

- Chapter 3, Historical development of IHL

- Protected person status in IHL

See

- Chapter 2. III. 2, Personal scope of application, **Introductory text**,
- Chapter 14. I. 2, Protected persons;

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part A., para. 81; Part B., paras 580-608, and Part C., paras 163-169],
- Case No. 216, ICTY, The Prosecutor v. Blaskic [Part A., para. 127]

- Comparison of the status of war victims under IHL and International Human Rights Law

See

- Chapter 14, IHL and International Human Rights Law, **Introductory text**;
- Chapter 14. I. 1, Material fields of application: complementarity, **Introductory text**;
- Chapter 14. I. 3, Relations affected, **Introductory text**;
- Chapter 14. II, Protected rights, **Introductory text**, p. 346;
- Chapter 14. III, Implementation, **Introductory text**, p. 348;
- Case No. 227, ECHR, Bankovic and Others v. Belgium and 16 other States;
- Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 101-134];
- Case No. 164, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 149-153 and 403-413]

- The role of human rights bodies in the implementation of IHL

See

- Chapter 14. III, Implementation, **Introductory text**;
- Case No. 20, The Issue of Mercenaries [Parts C. and D.];
- Case No. 151, ECHR, Cyprus v. Turkey;
- Case No. 157, Inter-American Commission on Human Rights, Coard v. United States;
- Case No. 192, Inter-American Commission on Human Rights, Tablada [Paras 157-170];
- Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region [3.A.2) and 3.B.1)];
- Case No. 261, United States, Status and Treatment of Detainees Held in Guantanamo Naval Base [Parts C. and D.];
- Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A.]

XII. **State responsibility**

See

- Chapter 13. X, Violations by individuals, **Introductory text**;
- Case No. 53, International Law Commission, Articles on State Responsibility,
- Case No. 192, Inter-American Commission on Human Rights, Tablada

1. **Primary and secondary rules**

2. **Attribution of an unlawful act to a State**

- a. Responsibility of a State for “its” acts – how may a State act?
- b. Responsibility of a State for its organs

- i. Members of armed forces as State organs
- ii. Strict responsibility for violations of the laws of war by members of the armed forces?

See

- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 7, and Part B., para. 26]

- c. Responsibility for *de facto* organs

See

- Case No. 53, International Law Commission Articles on State Responsibility [Part A., Art. 8];
- Case No. 153, ICJ, Nicaragua v. United States [Para. 115];
- Case No. 211, ICTY, The Prosecutor v. Tadic [Part C., paras 98-145];
- Case No. 164, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 123-125]

- d. Responsibility for individuals acting in the absence of official authorities

See

- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 9]

- e. Responsibility for acts by insurgents

See

- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 10]

- i. Responsibility for violations of IHL by parties to a non-international armed conflict

- f. Responsibility for acts acknowledged and adopted by the State

- g. Responsibility for a lack of due diligence with respect to private actors

3. Responsibility for private damages: specific conditions of diplomatic protection

4. Evaluation of the wrongfulness of the act and nature of the violated obligation

5. Degrees of responsibility: the concept of State crime

See

- Case No. 53, International Law Commission, Draft Articles on State Responsibility [Part A., Chapter III and Arts 40 and 41]

6. Circumstances precluding wrongfulness

- a. Consent
- b. Self-defence

See

- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 21],
- Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 138-139]

c. Conduct rendered necessary by a peremptory norm

See

- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 26]

d. Measures to counter a wrongful act

See

- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Arts 49 and 50];
- Case No. 74, United Kingdom and Australia, Applicability of Protocol I;
- Case No. 215, ICTY, The Prosecutor v. Kupreskic et al. [Paras 527-536]

e. *Force majeure*

f. Distress

g. Necessity

See

- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 25];
- Case No. 94, United States Military Tribunal at Nuremberg, United States v. Alfred Krupp et al. [Sect. 4(iii)];
- Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., para. 140]

7. Consequences of responsibility for the State concerned

a. Reparations for violations of *jus ad bellum* and *jus in bello*

See

- Document No. 39, ICRC, Protection of War Victims;
- Case No. 180, UN Compensation Commission, Recommendations;
- Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., paras 147-153]

8. Implementation of responsibility

See

- Chapter 13. V, The obligation to ensure respect (common Article 1), **Introductory text**;

- Chapter 13. X, Violations by individuals, **Introductory text**;
- Case No. 164, Sudan, Report of the UN Commission of Enquiry on Darfur [Part A., paras 593-600]

- a. How to invoke international responsibility?
- b. The notion of injured State
- c. Loss of the right to invoke international responsibility
- d. Plurality of injured States
- e. Victim States other than the injured State
 - i. The concept of injured State in cases of violations of IHL

See

- Chapter 13. V, The obligation to ensure respect (common Article 1), **Introductory text**

- f. Counter-measures
 - i. The prohibition of reprisals in IHL

See

- Document No. 73, France, Accession to Protocol I [Part B.];
- Case No. 74, United Kingdom and Australia, Applicability of Protocol I [Part C.];
- Case No. 215, ICTY, The Prosecutor v. Kupreskic et al. [Paras 527-536]

- ii. Economic sanctions and IHL

See

- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 50, para. 7]

XIII. **International economic law**

- Economic sanctions and IHL

See

- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 50, para. 7],
- Case No. 174, UN Security Council, Sanctions Imposed upon Iraq

XIV. **Protection of the environment**

See

- Case No. 38, The Environment and International Humanitarian Law,
- Case No. 62, ICJ, Nuclear Weapons Advisory Opinion [Paras 27-33]

- Protection of the environment in times of armed conflict

- Continued validity of environmental protection treaties even in armed conflicts

XV. **The peaceful settlement of disputes**

See

- Chapter 13. I, General problems of the implementation of international law and specific problems for IHL, **Introductory text**,
- Chapter 13. IX, The international responsibility of the State for violations, **Introductory text**

- 1. General obligation to settle disputes peacefully**
- 2. Tensions with the tendency for the State to take the law into its own hands**
- 3. Liberty of choice as to the method of settlement**
- 4. Role of the UN organs**
- 5. Framework**
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 - Consultations
 - Good offices
 - The role of the Protecting Power

See

- Chapter 13. IV. 1, The Protecting Power, Introductory text;
- Case No. 95, United States Military Tribunal at Nuremberg, The Ministries Case,
- Document No. 86, Switzerland Acting as Protecting Power in World War II

- The role of the ICRC and its right of initiative
- Enquiry
 - Enquiry procedures provided for by IHL
 - The International Fact-Finding Commission
 - Mediation
 - Conciliation
 - Conciliation procedures and the role of the Protecting Power
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 - Arbitration
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- 6. The International Court of Justice**
 - Structure
 - Practical importance
 - Only States have the capacity to act in justice
 - Bases of jurisdiction
 - Special agreement
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 - Declaration accepting mandatory jurisdiction (the optional clause on mandatory jurisdiction)
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- i. Legal disputes
- ii. Interested third States
- iii. Parallel procedures before the Security Council
- f. Advisory opinions
- g. Procedure

XVI. The use of force

1. Historical development
2. State perspective: the ban on the use of force and its exceptions

- a. Self-defence

See

- Case No. 62, ICJ, Nuclear Weapons Advisory Opinion [Paras 94-97],
- Document No. 73, France, Accession to Protocol I [Part A.]

- i. As a reaction to armed aggression
- ii. Subsidiary to collective security measures
- iii. Preventive self-defence?
- iv. Self-defence against non-State actors?

See

- Case No. 288, United States, The September 11, 2001 Attacks,
- Case No. 123, ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A., para. 139]

- v. Collective self-defence
- b. Use of force decided or authorized by the Security Council

See

- Case No. 205, Bosnia and Herzegovina, Constitution of the Safe Areas in 1992-1993,
- Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region [Part 1.B. and C.]

- c. Wars of national liberation
- d. Armed intervention with the State's consent

See

- Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region [Part 3.A.],
- Case No. 274, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 1.B.4)]

- e. Armed humanitarian intervention?

See

- Case No. 177, UN, Security Council Resolution 688 on Northern Iraq;
- Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region [Part 1.C. and 3.D.];
- Case No. 274, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 1.B.4)]

f. Armed reprisals?

3. *Jus ad bellum* and *jus in bello*

See

- Chapter 2. II, Fundamental distinction between *jus ad bellum* (legality of the use of force) and *jus in bello* (humanitarian rules to be respected in warfare), **Introductory text**;
- Document No. 96, United States Military Tribunal at Nuremberg, United States v. Wilhelm List;
- Case No. 93, United States Military Tribunal at Nuremberg, The Justice Trial;
- Case No. 74, United Kingdom and Australia, Applicability of Protocol I [Parts A. and B.];
- Case No. 158, United States, United States v. Noriega [Part B.II.A];
- Case No. 125, Israel, Applicability of the Convention to Occupied Territories

4. The perspective of the United Nations Charter

a. Maintenance of peace and international security by the Security Council

i. The concept of a threat to peace and international security

See

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part A, para. 30]

ii. Possible Security Council enforcement measures

- Non-military sanctions
- Creation of a criminal tribunal

See

- Case No. 211, ICTY, The Prosecutor v. Tadic [Part A., paras 35-39]

- Economic sanctions

See

- Case No. 53, International Law Commission, Articles on State Responsibility [Part A., Art. 50, para. 7]

- Military sanctions

See

- Case No. 164, Sudan, Report of the UN Commission of Enquiry on Darfur

b. Subsidiary role of the General Assembly

See

- Case No. 139, UN, Resolutions and Conference on Respect for the Fourth Convention [Part B.]

c. Peacekeeping operations

See

- Document No. 59, UN, Review of Peace Operations

i. Applicability of IHL

See

- Case No. 22, Convention on the Safety of UN Personnel;
- Document No. 57, UN, Guidelines for UN Forces;
- Document No. 59, UN, Review of Peace Operations [Para. 41];
- Case No. 198, Belgium, Belgian Soldiers in Somalia;
- Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region [Part 1.C.2)];
- Case No. 274, Case Study, Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 1.B.2), 1.B.3) and 2.B]

ii. A means of implementing IHL?

See

- Case No. 205, Bosnia and Herzegovina, Constitution of the Safe Areas in 1992-1993,
- Case No. 228, Case Study, Armed Conflicts in the Great Lakes Region [Part 1.B, 1.C.1) and 3.D.]

5. Principles applicable to the legal use of force

- a. Proportionality
- b. Necessity
- c. Respect for IHL

See

- Chapter 2. II, Fundamental distinction between *jus ad bellum* (legality of the use of force) and *jus in bello* (humanitarian rules to be respected in warfare)

6. Absence of a ban on non-international armed conflicts

XVII. The law of disarmament

See

- Document No. 17, Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction;
- Document No. 21, Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction;
- Document No. 48, ICRC, Biotechnology, Weapons and Humanity

XVIII. **The law of neutrality**

- The development of the concept of neutrality from the 1949 Geneva Conventions to the 1977 Additional Protocols
- Humanitarian assistance by neutral States
 - Providing relief
 - Transit
 - Internment of prisoners of war in neutral countries

See

- Case No. 250, Afghanistan, Soviet Prisoners Transferred to Switzerland

- Naval warfare
 - Innocent and transit passage through neutral waters
- Neutral shipping in sea warfare