**ARMED ATTACK**

**Is this an armed attack?**

* **No, just a violation of non-intervention:**
  + Use of coercion to influence choices of poli/econ/soc/cultural systems (*Nicaragua*)
  + Funding to *contras* (*Nicaragua*)
  + Consent for troops withdrawn (*DRC/Uganda*)
* **No, just a threat or use of force:**
  + Mining harbors, attacking installations (*Nicaragua*)
  + Arming and training *contras*, logistical or other support to *contras* (*Nicaragua*)
  + Providing training and military support to rebel forces (*DRC/Uganda*)
  + Geographically limited clashes between patrols on remote/unmarked/disputed border (Eritrea Ethiopia Claims Commission 2005)
* **Yes, an armed attack:**
  + Action by regular armed forces across an intl border (*Nicaragua*)
  + The sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which arry out acts of armed force against another state of such gravity as to amount to (*inter alia*) an actual armed attack conducted by regular forces, or its substantial involvement therein (UNGA Res. 3341, taken as CIL in *Nicaragua*)
  + **Attributability**:
    - *Nicaragua*: effective control (reinforced by ICJ Bosnia genocide case) (none found in *DRC/Uganda*)
    - *Tadic*: overall control (less stringent)
    - “Harboring” (presumed interconnectedness and support, in Afghanistan) = emerging CIL
    - “Unable/unwilling” (US/UK expansion of “harboring”) = not widely accepted

**If this is an armed attack:**

**Art. 51 self-defense:**

* **Individual**: state must claim that it suffered an armed attack (*Nicaragua, DRC/Uganda*)
* **Collective**: at the request of a state that suffered an armed attack (*Nicaragua*, but see NATO bombing in Kosovo)
* **Reporting requirement**: a state acting under Art. 51 must report self-defense to UNSC
* **UNSC involvement**: “until the UNSC has taken measures necessary to maintain intl peace and security”

**CIL self-defense:** (must be necessary and proportionate)

* **Anticipatory**: instant, overwhelming, and leaving no choice of means and no moment for deliberation (*Caroline* criteria)
  + Generally precludes a state from using force beyond that necessary to repel an attack or restore the status quo ante
* **Preemptive (Israel, US)**: precautionary, striking first in order to prevent future attacks, last window of opportunity

**TREATIES PROCESSES**

* Definition of treaty (VCLT Art. 2)
* Negotiation/drafting (not addressed in VCLT: diverse processes)
* Adoption/conclusion (VCLT Art. 9)
* Signing by states (VCLT Art. 12)
* Ratification (VCLT Art. 14)
* Entry into force (VCLT Art. 24 – also: Art. 18: obligation to refrain from acts that would defeat object/purpose prior to entry into force)
* **Reservations (see separate document)**
* *Pacta sunt servanda* (VCLT Art. 26: overarching principle of good faith)
* Potential problems
  + Capacity (VCLT Art. 6-8)
  + Consent (VCLT Art. 11-15)
  + Coercion (VCLT Art. 51-52)
  + Interpretation (VCLT Art. 31-32)
  + Conflicting national law (VCLT Art. 27)
  + Non-retroactivity (VCLT Art. 28)
  + *Jus cogens* (VCLT Art. 53, 64, 71)
  + Invalidation (VCLT Art. 42, 46-50, 69)
  + Separability of treaty provisions (VCLT Art. 44)
  + Loss of right to invoke a ground for invalidation / termination / withdrawal /suspension (VCLT Art. 45)
  + Breach (VCLT Art. 60)
  + Termination / withdrawal (VCLT Art. 54, 56, 59, 60, 70)
  + Suspension (VCLT Art. 57-58, 59, 72)
  + Impossibility (VCLT Art. 61)
  + Change of circumstances (VCLT Art. 62)
  + Amendment (VCLT Art. 39-41)
  + Disputes (VCLT Art. 65-67)

**RESERVATIONS TO TREATIES: DIFFERENT APPROACHES**

* + **ICJ advisory opinion on genocide convention (1951)**
    - Tension: depth of obligation vs. breadth of membership (and participation is esp. important for genocide conv.)
    - States can make reservations even if not all other states accept them
    - States that don’t accept reservations must explicitly object to them (otherwise: assumed to accept)
    - States can individually appraise whether another state’s reservation is compatible with object/purpose
      * Each objecting state will individually decide whether to still consider reserving state to be party to treaty
  + **VCLT (Art. 19-21)**
    - Art. 19 allows reservations unless:
      * Treaty prohibits reservations
      * Treaty provides only for specific reservations and no others
      * Reservation is incompatible with object/purpose of treaty
    - If a state does not object: treaty enters into force between reserving state and accepting state w/ reservation
    - If objecting state does not oppose entry into force: treaty is in force but provision w/ reservation falls out
    - If objecting state “definitely expresses” its intent not to be bound: treaty does not enter into force between the objecting state and reserving state (🡪 piecemeal set of obligations)
  + **UNHRC**
    - General comment on reservations (1995):
      * Reservations that offend *jus cogens* are not compatible with treaty’s object/purpose
      * Reservations to provisions that represent CIL (esp. *jus cogens*) are not allowed
      * If reservations effectively mean that the reserving state does not have to make any change in national law to ensure treaty compliance, that is of particular concern (bc it means no real intl rights or obligations were accepted)
      * Absence of protest by other states does not imply that a reservation is or isn’t compatible with object/purpose
      * Unacceptable reservations can be severed, and reserving state would still be bound to treaty (w/o reservation)
    - *Kennedy v. Trinidad & Tobago* (1999): if reservation is against object/purpose, it is invalid and severable
  + **US**
    - Response to UNHRC General Comment:
      * Disagrees with how UNHRC has positioned itself as determining any conflicts with object/purpose
      * States should determine meaning of treaty and their obligations, not UNHRC (primacy of state consent)
      * If reservation is widely considered to conflict with treaty’s object/purpose:
        + Reserving state should not be bound without the benefit of the invalid reservation
        + Objecting states should individually get to decide whether they want the reserving state to still be party
        + Reserving state whose reservation is deemed invalid should be able to cease to be a party
      * A state can reserve to a *jus cogens* norm, because a treaty is only one source of legal obligation (one means of enforcement of a particular norm) and reservation does not vitiate CIL obligation relating to the *jus cogens* norm
        + UNHRC’s proposition that any reservation contravening a CIL norm is *per se* incompatible with object/purpose of treaty is too broad and contrary to CIL
    - *Domingues*: not necessarily a correlation between non-derogability and importance of provision to treaty
      * So US reservation to ICCPR article regarding execution of juveniles is not prohibited
  + **ILC draft articles on reservations**
    - 3.1.8. – the fact that a treaty provision reflects a customary norm is a pertinent factor in assessing the validity of a reservation although it alone does not pose an obstacle to the formulation of a reservation to that provision; and a reservation on a treaty provision reflecting CIL does not affect the binding nature of the customary norm (between the reserving state and other states which are bound)
    - 3.1.9. – reservation cannot exclude or modify the legal effect of a treaty in a manner contrary to a preemptory norm of general IL (*jus cogens*)
    - 3.1.10 – reservation relating to non-derogable rights may not be formulated unless in a way that is compatible with treaty’s essential rights and obligations
    - 3.2.1. – treaty monitoring body may interpret validity of reservations, with the same legal effect as that deriving from the performance of its monitoring role
      * Therefore (implicitly) UN HRC does not have binding authority as sole judge of what is contrary to object/purpose of treaty – we still have piecemeal system as per VCLT
    - Open question for ILC: effects of an invalid reservation
  + **ECHR**
    - *Belilos v. Switzerland*: reservation is contrary to object/purpose, so state remains party but loses reservation
  + **ICJ DRC/Rwanda (2006)**
    - Holding: Rwanda’s reservation to provision of Genocide Convention referring disputes to ICJ was not incompatible with the treaty’s object/purpose (because it does not affect substantive obligations)
    - **Concurrence (Higgins)**: such a reservation could be incompatible with object/purpose
      * Must look at the particular treaty and the particular reservation
      * A reservation to a ‘procedural’ provision could be contrary to the treaty’s object/purpose if the treaty body (or tribunal) is central to the whole efficacy of the treaty
        + ICJ plays an important role under Genocide Convention
        + States monitor each other’s compliance w/ genocide prohibition
        + But ICJ provision lets states bring suspected violator to court
      * A state should not be able to shield itself from intl judicial scrutiny regarding any claim that might be made against it concerning genocide

**IMPORTANT TREATIES**

|  |  |  |
| --- | --- | --- |
| **Treaty name** | **Has US signed it?** | **Dispute resolution?** |
| VCLT (on treaties) | No, but treats it as CIL | No |
| Vienna Convention on Consular Relations (VCCR) | Yes | US had signed Optional Protocol for ICJ jx, but withdrew in 2005 (after *Avena*) |
| ICCPR (treaty body: HRC) | Yes | US has not signed Optional Protocol which would allow individual complaints to HRC |
| ICESCR | Signed by Carter, not ratified |  |
| CEDAW | Signed but not ratified |  |
| UNCAT | Yes (core provisions are CIL) | State obligation to criminalize and prosecute or extradite – US has not signed Optional Protocol (about establishing a system of inspections of places of detention) |
| Geneva Conventions | Yes (core provisions are CIL) | “grave breaches” can be prosecuted (domestically and in intl tribunals, and national tribunals under universal jx?) |
| Geneva Additional Protocols | No (but US acknowledges core provisions of both AP 1 and AP 2 as CIL, including minimal protections to non-POW detainees) |  |
| Genocide Convention | Yes | State obligation to criminalize (Art. 5) but prosecution (Art 6) and extradition (Art 7) are a little vague  Art 9: disputes go to ICJ – US reservation: dispute cannot be submitted to the ICJ without US consent for that case |
| ICC Rome Statute | Signed but refuses to ratify |  |
| ICJ Statute | US withdrew compulsory jx under Art 36(2) after *Nicaragua*  Art. 36(1): US can still accept jx on a case-by-case basis, and may allow cases on matters specifically provided for in treaties to which US is a party |  |
| UN Charter | Yes | UNSC Ch. VI and VII, ICJ |

**STATE FORMATION, STATE RECOGNITION, GOVERNMENT RECOGNITION**

**How states can form:**

* **Decolonization** (*uti possidetis*)
* **Secession** (Aland Islanders, Quebec, Kosovo) – internal vs. external self-determination
* **Dissolution** (Yugoslavia)
* **Merger**
* **Peace treaties**

**Recognition of states:**

* **Declaratory view: Montevideo Convention** criteria (CIL)
  + Permanent population
  + Defined territory
  + Government (effective?)
  + Capacity to enter into relations with other states
* **Constitutive view:** all about recognition by other states (and recognition = a political choice)

**Recognition of governments**

* Cases: Cambodia (Khmer Rouge), Haiti, Palestinian legal status, Greece/Macedonia, Sudan, Libya, Syria
* **Tobar Doctrine** (normative; democratic req) vs. **Estrada Doctrine** (should not interfere w/ internal power struggles)
* Test for new government: **effective control**
* External actors can: approve new government, disapprove, or transact without new stance (like US State Dept)
* IL: change in government does not affect a state’s international obligations

**JURISDICTION IN IL**

**Jx to prescribe** (legislative jx: scope of state authority to promulgate law)

* **Territorial principle**: jx within state’s territory (*Lotus*) – also: “effects” doctrine (Sherman Act line, *Re Wood Pulp Cartel*)
  + Extraterritorial jx (= all others listed below): more controversial
* **Nationality principle**: states have jx over their nationals abroad; corporation has nationality of state of incorporation
* **Protective principle**: states have jx over foreigners, outside territory, who act against state security or important interests)
  + *Pizzarusso* (2d Cir): applies to making false statements in visa application since this is an affront to US sovereignty
  + *Romero-Galue* (11th Cir): applies to prosecution of foreign nationals on foreign ships on high seas for drug possession
* **Passive personality principle**: state has jx over an act committed outside territory by non-national where national is victim
  + Hijacking, terrorism
* **Universal jx**: any state may exercise jx over individual who commits certain heinous and widely condemned offenses
  + Piracy, war crimes, genocide, slave trade – usually for criminal liability so ATS is unusual (torts)
  + Intl principles of comity and reasonableness: determines which state is in the best position to actually exercise this jx
  + *Eichmann, Yousuf*

**Jx to adjudicate** (state authority to subject persons/things to judicial processes)

* Capturing criminals abroad: *Dokmanovic, Eichmann, Alvarez-Machain, Nikolic* 
  + But see:US extraordinary renditions (*non-refoulement*)
* State practice is split on whether to uphold jx despite irregularities: 3 possible approaches:
  + 1) no impact on jx: *Ocalan v. Turkey* (ECHR)
  + 2) discretion (UK, Australia, New Zealand)
  + 3) destroys jx (South Africa, Zimbabwe)
* Reasonableness requirement: state should only exercise jx to adjudicate where reasonable (pjx: link between state and D)

**Jx to enforce** (state authority to induce/compel compliance with its law through courts, exec, admin, or police action)

* Must first have jx to prescribe
* Must be reasonable in proportion to violation
* Must be done through courts that have jx to adjudicate
* Extraterritorially only if notice and opportunity to be heard

**UNSC REFORMS - BRAINSTORM**

Rawls “veil of ignorance”: if you don’t know what kind of state you are, what’s optimal?

Factors

* # of members (should be an odd number)
* Veto power or not (for voting)
  + 1 veto vote per region of the world? Using the econ regional bloc boundaries like ASEAN, ECOWAS, etc?
    - “the sun shall not set on” the P5 (analogous: British empire)
  + Different procedures: unanimity of diversity bloc could count as veto?
* Permanent seats vs. rotating seats
  + P5 based on diversity of political / economic systems (socialism, capitalism, etc)
  + Build in review of P5 periodically (to change membership) – but: how to constrain ultimate authority? (keep P5 from overriding?)
  + If no permanent seats: stagger the rotating seats’ turnover
* Diversity: geographic, economic, specially affected groups, size of population
  + Or: level of contribution to IL (like India always gives peacekeeping troops)
  + Or: military might (standing army, nuclear weapons, etc.)

Other considerations:

* Themes: representativity, transparency, accountability
* Procedural reforms: Judicial review? Ombudsman?
* How to get around the issue of vote-trading or coercion (votes being bought or forced)?
* Weigh the incentives that get created by how each factor is structured
* Realpolitik of the transition: that’s the hardest part
* Could not really change anything but just update the P5 to reflect current powerful states
  + Would that be good enough for the foreseeable future?
* How UNSC membership could affect other UN organs like UNGA or ICJ (because powerful states would want an unreviewable UNSC)

Actual positions of various blocs regarding UNSC reforms:

* Indonesia
  + Developing countries should no longer be disenfranchised; membership of UNSC is unrepresentative of states and intl interests
  + Even though UN has gained a tremendous amount of new members, there has not been corresponding increase in UNSC members
  + UNSC is seen as an institution for the imposition of the will of the strong (small group of powerful nations) over the weak
* Japan and Germany: Feel that their UN contributions and geopolitical clout entitle them to UNSC permanent membership
* UN Sec-Gen high-level panel on threats, challenges and change: report
  + Critiques: UNSC has not always been equitable in its actions, or acted consistently or effectively in the face of atrocities; UNSC credibility has been damaged; Even outside the use of the formal veto, the ability of P5 to keep critical peace/security issues off the agenda has undermined confidence; Fin/mil contributions to UN of some of P5 are modest compared to their special status
  + Goal: increase effectiveness and credibility of UNSC, and enhance its capacity and willingness to act in the face of threats
  + Recommendations: increase involvement in decision-making of those who contribute most to UN financially, militarily and diplomatically; among developed countries, at least substantial progress toward internationally agreed level of 0.7% of GDP for ODA should be an important criterion of contribution; bring in states more representative of broader membership, especially the developing world; avoid impairing the effectiveness of UNSC; increase the democratic and accountable nature of UNSC
* 2005 rival proposals:
  + 27 states led by G4 (Brazil, Germany, India, Japan): add 10 states (6 permanent but without veto power, 4 non-permanent)
  + African Union: 11 new members (and new permanent members would have veto power): Asia and Africa get 2 perm and 2 non-perm; Latin America and Caribbean get 1 perm and 1 non-perm; 1 perm for Western Europe; 1 non-perm for Eastern Europe
  + Uniting for Consensus (UfC) group (of middle-sized states) led in part by Italy and Pakistan: no new permanent seats (due to fear that such permanent seats would reduce their chances to obtain a non-permanent seat on a rotating basis); 10 new non-permanent seats (with particular regard for contributions to UN for peace/security, and equitable geographical distribution)
* Pakistani ambassador (critiquing G4 proposal)
  + Sovereign equality of states; ratio of permanent to non-permanent members would be high and therefore reduce democracy and accountability; would enlarge “club of the privileged” who have a vested interest in addressing most issues in UNSC, further draining oxygen out of the UNGA and enhancing the domination of UNSC; adding too many permanent members would reduce effectiveness and efficiency of UNSC because it would require constant reconciliation of interests of too many states (gridlock)
* Canadian ambassador (supporting UfC proposal)
  + Would add seats permanently allocated to regions, whose members decide who is best suited to serve and for how long; flexible; democratic and accountable (periodic elections at intervals that regions would determine); adjusts to changing circumstances
* United States
  + UNSC enlargement should look at criteria for which states are now eligible, and which states are supremely well-qualified to become members of UNSC – shouldn’t just be a debate about how geographic regions should be represented
    - Factors could be: size of economy, population, military capacity, potential to contribute militarily to UN peacekeeping missions, contributions to peacekeeping, commitment to democracy and HR, financial contributions to UN, record and commitment on counterterrorism, record and commitment on nonproliferation, geographic balance
  + Would support adding 2 or so permanent members – and longstanding support for Japan
  + Also would support 2 or 3 additional non-permanent seats (so UNSC would go from 15 current members to 19 or 20)
  + As a custodian of UNSC, and P5 member: If UNSC added 9 or 10 states, it would not be possible to assure UNSC’s effectiveness
* UNGA president named 5 facilitators to consult with member states: report in 2007
  + On: membership, veto power, regional representation, size of an enlarged UNSC, working methods, relationship to UNGA
  + Noted the different positions of various states; suggested interim arrangements 🡪 UNGA interstate negotiations ongoing
* David Malone: Every state looks to its own advantage when considering UNSC reform; all want to be on UNSC as often as possible

**Academic positions (frameworks)**

* AIDS: (in)equality and (in)justice
  + Kingsbury: sovereign equality seems to at least notionally counter the vast inequalities of legal system, but also excludes other forms of inequality from real consideration – not clear if globalization aggravates or mitigates inequalities (among states)
  + Wright: economic rights should be linked to imbalanced gender division of labor
  + Nagel: justice can only be achieved with sovereign force (for compliance of citizens)
  + Hurrell: IOs move states toward shared understanding of “social good,” so shared understanding of what constitutes justice is no longer just national – but IOs are not neutral arenas; they are sites of power/dominance, so global moral community is fragile
  + Held: cosmopolitanism: moral duty/equality of individuals (not based on citizenship)
  + Pogge: IOs shape global inequalities of wealth (and poverty) – developed states and citizens who benefit from IOs have a duty to help those who are harmed
  + Mutua: IL’s colonist legacy continues to define the field; WTO = Western hegemony; Third World is recipient of IL rule-making (not participants)
  + Abi-Saab: scope and direction of change in IL is historically contingent – development cooperation in later part of 20th century, now given way to triumphant neo-liberalism
  + Kennedy: IL is a disciplinary consciousness or vocabulary that intl lawyers share, and use to evaluate doctrinal and institutional arguments from a systemic perspective, rather than by how they impact particular states or groups
* Post-9/11 challenges: legitimacy and authority of IL
  + Krauthammer: IL has no enforcement mechanism, so states are free to ignore it (power)
  + Hart: States comply with IL for a variety of reasons, not just coercion
  + Boutros-Ghali: even those who don’t respect IL adopt its language and terms of reference
  + Henkin: violations get attention but states follow IL regularly to maintain order
  + Reisman: politics, power and law are inextricably linked
  + Koskenniemi: law must balance communal life with individual autonomy
  + Realist perspective: IL may exist, but only state interests influence state behavior
  + Institutionalist perspective: states can create institutions that make rules that then affect states’ behavior, by creating convergent expectations and incentives for compliance
  + Constructivist perspective: legal rules help define identity, interests, and structure of the intl system, e.g. human rights activism has shaped the intl discourse
  + Keck and Sikkink: boomerang pattern; transnational justice network enables individuals to go outside their state (where access to justice is blocked) and seek justice abroad
  + Lutz and Sikkink: HR practices have become constitutive of the identity of democratic states – this ideational perspective assumes that the institutionalization of HR norms influences state actors to comply with them (pressures 🡪 socialization and emulation)

**Lists of examples**

|  |  |
| --- | --- |
| **Treaties (excluding major treaties)** | * Libya/France 1955 treaty in Chad/Libya dispute * Cyprus: 3 treaties in 1960 * Ozone regime (treaties/soft law) * Climate regime (treaties/soft law) * TRIPs and modifications regarding affordable medicines * Nuclear weapons regime |
| **CIL** | * Hull doctrine (on compensation for expropriation) * Montevideo Convention * Tobar Doctrine vs. Estrada Doctrine * ILC draft articles on state responsibility for internationally wrongful acts |
| **Soft Law** | * UNGA resolutions on compensation for expropriation * World Bank guidelines on compensation for expropriation * UNGA Declaration on Friendly Relations * OAS and UNGA condemnation of Haiti military coup * UNGA resolutions condemning apartheid * Cairo Population Conference * IO efforts to draft guidelines and codes of conduct for MNCs re apparel factors * Ruggie principles (framework for corporate responsibility) * UNSC discussion and resolution on AIDS pandemic * UNGA Declaration of Commitment on AIDS pandemic * UNHRC General Comment on extraterritoriality of ICCPR * UNHRC General Comment on reservations to treaties * ILC draft articles on treaty reservations * CESR general comment on the right to food * UNHRC resolution on the right to food * R2P principles endorsed by UN Sec Gen * UNSC anti-terrorism sanctions list? * UNGA resolution after 9/11 * ICRC study on citizens’ direct participation in hostilities * UN Special Rapporteur (Philip Alston) report on targeted killings |
| **ICJ decisions** | Contentious cases:   * Chad/Libya * DRC/Rwanda * Colombia/Nicaragua * *Angel Breard* (Paraguay/US) * *LeGrand* (Germany/US) * *Avena* (Mexico/US) * *Lotus* (France/Turkey) (\*PCIJ) * Nicaragua/US * DRC/Uganda * Yugoslavia/Belgium (and other NATO members) * Libya/US and UK * Bosnia genocide case (Bosnia/Serbia)   Advisory opinions:   * Kosovo Declaration of Independence * UN reparations for mediator bombing * SA/Namibia * Genocide Convention * Legality of threat or use of nuclear weapons * Wall (Israel-Palestine) |
| **Intl ad hoc tribunals** | Nuremburg:   * *Eichmann* * *US v. Joseph Alstoetter et al*   ICTY:   * *Dokmanovic* (on abductions/luring and jx) * *Nikolic* (on abductions/luring and jx) * Report on NATO bombing of Kosovo * *Tadic* |
| **Regional human rights tribunals** | ECHR:   * *Ocalan v. Turkey* (on jx regarding arrest/abduction for purpose of trial) * *Republic of Ireland v. UK* (on torture and CIDT) * *Belilos v. Switzerland* (on reservations contrary to object/purpose) * *Leyla Sahin v. Turkey* (on headscarves) * *Lautsi v. Italy* (on crucifix in public school) * *Eweida v. UK* (on wearing a cross at work) * *Behrami* (on attributability to UNSC of actions by EU states in Kosovo) * *Al Jedda v. UK* (on effective control by UK soldiers in Iraq under UNSC) * *Incal v. Turkey* (on prohibition of military officers on special national security courts)   IACHR:   * *Domingues* (on US reservation to ICCPR re juvenile execution) * Inuit petition linking climate change and HR (rejected) * *Medellin* * Precautionary measures to US on Guantanamo status determinations |
| **Other forums for dispute resolution** | * *Rainbow Warrior*: UN Sec Gen * Cyprus: UNSC * Iran FDI/expropriations: special arbitral tribunal * Libya FDI/expropriations: sole arbitrator (appointed by ICJ president) * Aland Islanders: LoN commission * Yugoslavia dissolving: Badinter Commission * Quebec secession: Canada Supreme Court * *Re Wood Pulp Cartel* (extraterritoriality of EC competition law): Euro Ct of Justice * *Trail Smelter* (US v. Canada): arbitration tribunal * GATT panels: *Bananas I, II, II* / *Tuna-Dolphin* / *Shrimp-Turtle* * *Public Committee against Torture in Israel v. State of Israel*: Israeli Supreme Court * *Al Skeini* (on jx regarding “effective control of persons”): UK court * *Kennedy v. Trinidad & Tobago*: UNHRC * *Begum v*. *Denbigh* (girl wearing jilbab in school): UK court * Qana incident (Israel/Hezbollah): UN report * War in Gaza 2008-2009: UNHRC fact-finding mission, Goldstone report * Gaza flotilla: UN investigation (and separate investigations by Turkey and Israel) * Khmer Rouge atrocities: Cambodia tribunal (Ds charged w/ genocide in 2009) * *Kadi*: Euro Ct of First Instance; Euro Ct of Justice |
| **US domestic judicial decisions** | SCOTUS   * On treaties and US law: * *Missouri v. Holland* * *Reid v. Covert* * *Made in the USA Foundation v. US* * *Dames & Moore v. Regan* * *Youngstown Sheet* * On conflicts between IL and domestic obligations: * *Marbury v. Madison* * *Angel Breard* * *LeGrand* * *Sanchez-Llamas* * *Medellin* * On relationship between CIL and domestic law * *Paquet Havana* * *Lawrence v. Texas* * *Roper v. Simmons* * *Sosa* * *Sabbatino* * *Kirkpatrick* * *Mohamed* * *Kiobel* * On extraterritorial application of domestic law and other jx to prescribe * *American Banana v. United Fruit* * *Hartford Fire Insurance* * *Morrison v. National Australia Bank* * On jx to adjudicate/enforce * *Alvarez-Machain* * On climate change * *MA v. EPA* * On US procedures for detaining and prosecuting suspected terrorists * *Rasul v. Bush* * *Hamdi v. Rumsfeld* * *Hamdan v. Rumsfeld* * *Boumedienne v. Bush*   Lower courts   * On relationship between CIL and domestic law * *Filartiga* * *In Re South African Apartheid Litigation* * *Khulumani* * On extraterritorial application of domestic law and other jx to prescribe * *US v. ALCOA* * *Timberlane Lumber* * *US v. Yousef* * *Minn-Chem v. Agrium* * *Pizzarusso* * *Romero-Galue* * On US procedures for detaining and prosecuting suspected terrorists * *Al-Bihani v. Obama* |
| **US Unilateralism** | * *Missouri v. Holland* vs. *Reid v. Covert* (cuts both ways – unsettled) * “later in time” rule (between statutes and treaties) * Bricker Amendment * *Medellin* line of cases (but arguably influenced by IL) * US states’ anti-Sharia laws * US extraterritoriality of Sherman Act line of cases? * *Alvarez-Machain* (abduction; not expressly prohibited by US-Mexico treaty) * US practice of extraordinary rendition (violating *non-refoulement*) * US use of state secrets privilege to block lawsuits on extraordinary rendition * Resistance to climate regime (but could be seen as some IL influence) * *Banana* wars: judging EC noncompliance unilaterally and trying to retaliate * US practice of “enhanced interrogation techniques” (torture) * RUDs to ICCPR (seen as conflicting with object/purpose, and *Domingues* lawsuit) * US response to UNHRC General Comment about treaty reservations? * Resistance to ICESCR rights (like right to food) * Resistance to ICJ (limiting jx after *Nicaragua*) and ICC (refusing to ratify) * Limited prosecutions (not high-level officials) regarding abuses at Abu Ghraib * 2003 Gulf War (without UNSC authorization) * NATO Kosovo bombing under humanitarian rationale (without UNSC authorization) * Trying to change CIL on use of force in self-defense (“preemptive”) * Trying to change CIL on attributability (harboring / unable and unwilling) * Trying to assert GWOT and then a global non-intl armed conflict against al Qaeda * Persisting with military commissions even though they aren’t in line with IL * Keeping Guantanamo open in a way that effectively constitutes indefinite detention * Targeted killings, especially away from internationally-recognized theaters of conflict * Bin Laden targeted killing (probably without Pakistani consent) * Al-Awlaki targeted killing (US citizen) |
| **US Influenced by IL** | * *Paquet Havana* * *Charming Betsy* principle * US Constitution Supremacy Clause (treaties are the supreme law of the land) * *Medellin* line of cases (but arguably unilateralism) * *Lawrence v. Texas* (SCOTUS relied on ECHR decision on homosexuality law) * *Roper v. Simmons* (SCOTUS relied on UN Convention on Rights of the Child) * *Filartiga / Sosa* and ATS line generally (US courts use treaties to identify what CIL is) * TVPA (cause of action for official acts of torture committed by individuals abroad) * Participation in and compliance with ozone regime? * Resistance to climate regime? (but pretty much unilateralism) * *Hamdan* (US courts use IL as a source of interpretation) * Disputes with SA and Brazil re TRIPs? * US legal justification for “enhanced interrogation techniques” (torture) * 1991 Gulf War (pushing until US got UNSC authorization) * Trying to change CIL on use of force in self-defense (“preemptive”) * Trying to change CIL on attributability (harboring / unable and unwilling) * Trying to assert GWOT and then a global non-intl armed conflict against al Qaeda * Modifying military commissions in response to SCOTUS cases derived from IL in part * US legal justifications for targeted killings (don’t want to be seen as an outlaw) |