# Vorlesung 1: Crash Course:

## Guiding Questions

1. **What are the main legal features (Eigenschaften) of the international community? What are the main differences between public international law and domestic law?**

* 1. Horizontal structure and not vertical   
  2. Agreed-upon and not imposed   
  3. Decentralized and not centralized   
  4. Rare and unsystematic sanctions vs sanctions as usual tool

5. Close links with international politics vs national politics

6. Multiplication of stakeholders (Interessenvertreter)

7. Complex Systems vs easier ones.

1. **What are the fundamental principles governing international relations?**

General legal base for principles GA Resolution 2625

* 1. Prohibition of the use of force (UNO Charta 2 IV)

2. Pacific settlement of disputes (UNO Charta 2 III)  
3. Non-interference in domestic affairs (UNO Charta 2 VII)  
4. Int. Cooperation (UNO Charta 1 III)  
5. Principle of equal rights and self-determination of people (UNO Charta 1 II)  
6. Sovereign equality of States (UNO Charta 2 I)  
7. Good Faith (UNO Charta 2 II)

1. **What are the sources of public international law?**

* *ICJ Statute 38 Number 1*

Lit. a) int. conventions: Bsp. Human rights law, Int. humanitarian law, law of the sea, refugee law etc.

Lit. b) Customary law

Lit. c) General principles of Law

Lit. d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as *subsidiary means* for the determination of rules of law

* A-C exist at the same time none supervenes the other (ICJ; Nicaragua Case §177)
  1. **What are the main rules of treaty interpretation?**

**🡪** Vienna Convention on the law of treaties: Art. 31 – 33

Main Rule Art. 31 I: Good faith, Ordinary Meaning (31 I and IV), Context (31 I and II and III) in light of its object and purpose (31 I) (Ziel und Zweck)

Supplementary means are preparatory works and circumstances of the conclusion of the treaty (Art. 32) (They can be used as guidelines) (Historische Auslegung und Materialien)

* 1. **How are customary rules created?** (ICJ North Sea continental Shelf Case 1969)) (Case of Germany against Netherlands and Denmark, the latter wanted to have customary law out of a treaty, that was not ratified by Germany and a division of the sea by the Equidistance principle, at the end no division by that principle and Germany got a much bigger piece of the sea) (🡪 1. Settled practice and 2. Opinio iuris (States concerned must believe that they are conforming a legal obligation)

1. **Who are the subjects of public international law?**

* 1. States, 2. Int. Organizations (EU/UN) 3. Individuals (Rights through human rights law and duties through int. criminal law and the right to bring int. claims), 4. Sui Generis Subjects (eigener Art, example Vatikan, red cross)
  1. **What are the constitutive/distinctive elements of Statehood?**
* Montevideo Convention on the Rights and Duties of States 1933: Art. 1: 1. A permanent population 2. A defined Territory 3. Government 4. Capacity to enter into relations with the other states

Art. 3: The political existence of the state is *independent* of the recognition by the other states

* 1. **What are the main organs of the United Nations and what is their roles?**
* 1. General Assembly: Operates like a global town hall, Members can bring ideas forward to all for open discussion, 191 members with each one vote, approves Budget, establishes agencies and programs, elects members to serve on agencies and coordinates programs through various committees.
* 2. Security Council: Most powerful body, responsible for maintaining int. peace, 15 members 5 permanent, responsible for maintaining int. peace and security, enforces rules through resolutions, 9 votes required and no vetos.
* 3. ICJ: The World Court, Judicial aim of the UN, cases of nations against each other in territorial disputes, human rights violations, trade disagreements, 15 judges elected by Security C and General A, Countries are not required to participate
* 4. Trusteeship Council: Established to oversee transition of colonies to independence, last colony was Palau Islands in 1994 making the council obsolete
* 5. Economic and Social Council: 54 Members elected by GA for 3 Years, Committee System that conducts programs in medicine education and social needs, coordinates various agencies to promote higher living standards full employment, respect for human rights
* 6. Secretariat: The Executive Branch of the UN which oversees programs and policies and carries out day to day operations, Secretary General is the chief executive who’s nominated by the SC and chosen by the GA, Secretary General sets UN Agenda brings matters to the SC and serves as neutral mediator to international conflicts,

1. **When and how is the responsibility of States entailed?**

* 4 Steps: ILC Articles on Responsibility of States for Internationally Wrongful Acts.

1. Attribution of conduct to a state (Chapter II ILC Articles)

* + State organs (de jure (according to law) and de facto (not official but according to facts)
  + Private actors in exceptional cases if (ICJ Nicaragua): total dependence, effective control, ex post acknowledgement)

2. Breach of an international obligation (Existence of a breach, Norm which was breached in force?) (Chapter III ILC Articles)  
3. Circumstances precluding (ausschliessen) wrongfulness? (Chapter V ILC Articles)  
Consent, Self Defense, Countermeasures, Force Majeure, Distress (Notlage), Exception of the preclusions: Peremptory norms (zwingende Normen)  
4. Legal consequences: (Part 2 ILC Articles) Continued duty of performance (anhaltende Leistungspflicht), Cessation (Einstellung) and non – repetition, reparation (restitution, compensation, satisfaction)

* 1. **What is the difference between State responsibility and individual criminal responsibility?**
* *State R*: Sanctions because of a general a breach of international law, compensation of the victim important, ICJ

*Individual R:* Sanctions because of breaches against int. criminal law, punishment of the individual important, ICC

Bsp. Armed conflict where a state breaches humanitarian law. A military commander from state A launches strike on unprotected civilians of state B. State is brought in front of the ICJ and the military commander in front of the ICC for war crimes.

1. **How is public international law integrated into domestic law?**

* Monistic System: Int. law is automatically also domestic law (Switzerland) (Art. 5 federal constitution)

Dualist System: Int. law is not automatically domestic law but needs a law to integrate it in the domestic system. (UK)

1. Self-Executing (Applied directly by courts and state organs) (1. Sufficiently determined and clear in content to provide in each individual case the basis of a decision to make 2. the rights and duties of the individual as content, 3. the addressee of the norm must be the law-enforcing authorities"

2. non-self-executing (not applied directly by courts and state but by the legislator)

Primacy of int. law in case of conflict with domestic law: Art. 26 VCTL (Pacta sunt servanda) and Art. 27 VCTL: a state can’t use provisions of internal law as justification for failure to perform a treaty.

## Questions on Piece of News?

An: Initiative for autodetermination launched by the SVP in 2018. No 66.3 %  
Objective that the Constitution takes precedence over int. law with exception of jus cogens. Other countries like Germany where the constitution prevails over int. law exist. But the German System is much more closed as they don’t have initiatives and there are experts to ensure that German law is in accordance with int. law.

**Are some treaties more important/binding than others from an international law perspective?**All treaties are binding. VCLT 26 (Vienna convention 26) no Pacta sunt servanda, no hierarchy between sources or treaties but between norms there is a hierarchy:  
VCLT 53 64 ius cogens before, UNC 103: Norms of the UN Charta are before others, ICJ Barcelona Traction case: Erga omnes obligations are before others.   
Then tools in case of conflicts: lex specialis and lex posterior VCLT 30.

**How does Switzerland implement international law?** Right now, int. law takes precedence over swiss law. Monist system in Switzerland, if there is conflict int. law takes precedence in general but BV 190, federal laws are on same stage. Court must find a way through interpretation. Exception Schubert case: Law that was implemented after the int. law in knowledge to breach int. law.

**What would have been the potential legal consequences at the international level had the initiative been accepted?**

Art. 26 f. VCLT would still count. (Same Articles on State responsibility 32) Switzerland would have to find a way to implement int. Law. If they can’t do that   
🡪 Renegotiation / denunciation of a range of int. Treaties.  
🡪 No domestic remedies for potential int. Human rights violations followed by condemnation by the European court of human rights because of a lack of remedy  
🡪 Lack of legal security/certainty with a range of consequences.   
🡪 violations of int. law could lead to retaliation by other states and UN sanctions.

# Vorlesung 2: Self – determination

## Guiding Questions:

* **What is the origin of the principle of self-determination?**
* 17th and 18th century:Grotius Pufendorf and Kant, they said that transfer of territory needs the consent of both parties for legitimacy. American and French Revolution (relied on peoples sovereignty) right to resist against a ruler.
* 19th century, SD from a revolutionary concept of the left to a political principle operated by international diplomacy: Cases: Independence of Spanish colonies in Latin America, fourteen points of President Wilson (notion of SD appeared), League of Nation system of Mandates (But no specific reference to SD), Start but no principle…
* SD in the UN Charta (1II) as a *political purpose* and *fundamental principle* in int. law. (but still *not an enforceable right*) 🡪 Programmatic Character.
* **What was provided under the UN Charter in 1945 in relation to non-self-governing territories? What was the international trusteeship system?**
* UN Charta 73: Sacred trust to promote the well-being of the inhabitants and

Uno Charta 73 b: to develop a self-governing government

Uno Charta 73 e: to inform the SC regularly about the situation in the colony.

* Int. Trusteeship System in Uno Charta Chapter 12:

Objective was a progressive development towards self – government or independence: There are no countries today under this system.

* **What are the legal sources of the self-determination principle?**
* *Un Charta 1 II and Art 55*: (promote SD in light of economic and social well-being)
* GA Resolution 1514, Declaration of the Granting of Independence *to colonies and peoples* 1960: §2 All peoples have the right to SD, §5 Immediate steps shall be taken in Trust and Non-Self-Governing Territories to transfer all powers to the people of those territories, without any conditions or reservations.
* ICCPR Art. 1-3 alles Gesetz.
* GA Resolution 2625 1970: All peoples = right to freely determine, without external interference, their political status and to pursue their economic, social and cultural development, obligation to bring a speedy end to colonialism, modes of implementing the right, use of force issues (became customary law or even jus cogens)
* ICJ East Timor Case (Portugal v. Australia) 1995 🡪 Erga omnes character of the right to SD. (Case about the border in the sea between AU and Portugal east Timor (because of Oil and Gas resources in the sea) Was settled in 2018)
* Customary law, but the contents are very unclear
* **Who are the right holders of the right to self-determination?**
  + **What does the notion of “peoples” mean under international law?**
* No Int. definition of peoples, but for sure people equals not minorities.
* Controversies: Is it just for decolonization, Alien occupation, and racist regimes or even more? (CAR People)
* Could be also: subjective element, such as a common belief by members of the group that they share the same characteristics and beliefs and thus form a common unit, as well as an objective element, such as common racial background, culture, ethnicity, religion, language, and history.
  + **Who may determine what a “people” is?**
* UNGA and regional organizations by recognition, but is only a help to recognize, is not constitutive.
  + **How would you define the notions of colonialism, alien occupation and racist regime?**
* ICRC Commentary to Art. 1IV of the additional Protocol I to the four Geneva Conventions §112.
* **C:** the most frequently occurring case in recent years, where a people has had to take up arms to free itself from the domination of another people; it is not necessary to explain this in greater detail here.
* **AO:** as distinct from belligerent occupation in the traditional sense of all or part of the territory of one State being occupied by another State (86) -- covers cases of partial or total occupation of a territory which has not yet been fully formed as a State (87)
* **RR:** Cases of regimes founded on a racist criterion.
* **What does the principle of self-determination entail?**
* GA Resolution 1514, 1960 §2:

“All peoples have the right to SD; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

See also Art. 1 ICCPR Ziff. 1 und 2

* + **What is the difference between internal and external self-determination?**
* Doctrine makes that distinguishment**:**
* Internal SD: Internal right of a given people to determine freely its internal political order, Political participation, Limited self-government, autonomy.
* External SD: Historically reserved for cases of decolonization, and “CAR” cases.
  + **What is the principle of permanent sovereignty over natural resources?**
* GA resolution 1803 (XVII) of 1962, §1: “The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned”.
  + **What are the modalities of external self-determination?**
* GA Resolution 2625, 1970: “The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people”.
  + **May a national liberation movement use force in order to become independent?**
* Starting point, NO: UN Charter, 1945: Art. 2§4: prohibition of the use of force: Majority view says peoples have right to SD, but they need to respect the UN Charta and can’t use force 🡪 Need for the authorization of the SC.
* Minority View: Third exception to the prohibition of the use of force OR Self – Defense argument, that they are under permanent attack of the main state as an oppressor.
* Resolution 1514 (XV), 1960:

§4: “All armed action or repressive measures of all kinds directed against *dependent peoples* shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.”(Means that colonial powers can’t use force to suppress independence movements)

* UNGA, Resolution 2625, 1970:

§5: States must refrain from any forcible action which deprives peoples of their right to SD. National liberation movement may seek and receive support in accordance with the purposes and principles of the Charter.

§7: “Nothing in the foregoing paragraphs shall be construed as *authorizing* or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color."

* **What does the notion of *uti possidetis iuris (wer besitzt)* mean? And what is the principle of stability of boundaries?**
* Higgins: “Uti possidetis is the principle whereby states become independent within their colonial boundaries”. Notion has crystallized in relation to declarations of independence on Latin America, Solution to endless conflicts in Africa over boundaries.
* Stability and intangibility of boundaries is broader.
* Both arguments against SD and they prevail (durchsetzen) over the concept of SD.
* **Does the principle of territorial integrity (Charta 2IV) limit the independence of a people?**

🡪 For “people” with a right to external self-determination, the answer is no.

ICJ, Kosovo Advisory Opinion, 2010:

Unilateral declaration of independence is not prohibited by general international law

§80: “The scope of the principle of territorial integrity is confined to the sphere of relations *between* States.” (So i.c. we have a dispute in domestic law so we have no limitation by that principle)

Unclear whether the principle would be violated in case the minority would use force unlawfully…

* **What is a minority?**
* No internationally agreed upon definition but for example: Simma Commentary to the UN Charter: “The term “minorities” covers all groups linked together by commonalities like language, culture, religion, race – as long as these groups do not form the majority in a given State. Some of these minorities might have a clear territorial basis, a historical settlement area where they used to live together in high concentration”.

**What are the rights of minorities?**

* HR: for example, ICCPR 27: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

Or also UN OHCHR Minority rights, International Standards and Guidance for Implementation 2010.

**May a minority be granted independence if it was subjected to serious violations of human rights/humanitarian law? Discuss the notion of “remedial secession”. (sanfte Abspaltung)**

* Arguments pro and contra: Was avoided by the ICJ as question, RS comes into play if the group was over a longer period in a grave way obstructed of using it’s right to SD. Normally in cases of grave discrimination and other human right breaches.
* Pro: jus cogens nature of the prohibition of genocide, secession as a last resort, right to resistance.

## Piece of News:

AN:   
Catalonia is a semi-autonomous region, in October 2017 they tried to secede from Spain, which failed. Spain declared the referendum illegal and dismissed the entire government. New regional election in December which elected pro separatist parties. Currently trial against the seperatist leaders for subversion and rupture of the constitutional order.   
Puigdemont is the former leader, lives in Brussels. Rajoy was the prime minister at that time. Same thing Kurds in 2017 independence of Iraq.

**1. Do Catalans have a right to self-determination? If yes, to what extent?**

Divided into Internal SD and External SD

External SD: *“peoples”* as right holders, which are generally identified by the UN GA. Typical situations Colonialism, Alien Occupation, Racist Regime.   
Internal SD: Certain Minorities as right-holders and SD as a human right.

**2. Which rights may Catalans claim from an international legal perspective?**

🡪 Only internal SD. So not succession from the mother state but free association and autonomy. There is no right to secession in int. law. (And we do not have a case of colonialism, Alien Occupation or Racist Regime) There is the case of Kosovo where the right to SD was accepted because of Genocide, which sets a dangerous precedent. It implies that there must be genocide that States permit a right to SD.  
🡪 Various human rights: Survival, nondiscrimination, political participation, cultural rights, economic rights etc.   
**3. Does international law command a referendum when political communities claim independence ?**

In relation to peoples? Referendum is considered as an appropriate solution, but int. law doesn’t command it.   
In relation to minorities? No int. right to a referendum. Internal legal and political process.

**4. May Spain invoke the principle of territorial integrity in order to counter claims for independence? What about the stability of boundaries?**

Yes, they may invoke the argument of territorial integrity: (Uno Charta 2 IV) then the argument of stability of boundaries, sovereignty, international community as a club, risk of Implosion, “proliferation” (Ausbreitung) proliferation of states.

**5. May Catalans be allowed to resort to force to obtain independence from an international law perspective? Why or why not?**

No by any means is force forbidden (UNO Charta 2 IV) (*Majority view*) without a SC authorization. Problem that UNO Charta 2 IV only applies to international conflicts and here we would have a national conflict, so we can’t apply that article. Still the use of force in int. law is forbidden.  
*Minority view*: There is a third hidden exception to the use of force in int. relations.   
Colonialism, alien occupation and racist regimes are a continuous armed attack, AND the suppression of SD as well is a continuous armed attack. That’s why the use of force is legal as derived from Self-D. It’s kind of an expansion of the right to SD.   
Or right to remedial secession (sanfte Abspaltung), but even then, not necessarily a right to use force.

# Part 3: Self – Defense

## Guiding Questions:

**AN:** Syrian government leader *Bashar al Assad*: supported by *Russia and Iran*, Russia: Acts on behalf of Syrian Government.   
Rebels (Free Syrian Army (FSA)) (different (1000) groups of fighters): *USA, Turkey, Saudi Arabia* support them and the Moderate rebels (which are also supported by UK, (France Started intervention in sept. 2015 because of individual (terror attacks in Paris) and collective SD.)) France also asked for assistance which Germany and UK followed.   
UK, France and US fired against chemical weapons factories in Syria.  
IS: 2014 emerged against Al-Assad and the FSA. Large parts of Iraq conquered. All other parties fighted against IS in Iraq.

**1. What is the origin of the “inherent right” of self-defence?  
🡪** Prohibition of the use of force: Before the 1. World war right to fight /war, no need for SD justification, only a political concept, however a legal concept to justify measures short of war e.g. Caroline 1837.   
After 1. World war partial war ban: Briand-Kellogg pact in 1928, which implemented that war is not a tool to enforce the own interests and solve int. disputes  
UNC in 1945: Famous Art. 2IV. Exception Chapter VII as collective security trough SC, SD 51.

**2. What are the legal sources of the “inherent right” of self-defence?**

🡪 UNC 2IV, 51  
Customary int. law (Military and paramilitary activities in and against Nicaragua ICJ 1986)

**3. What is the nature of self-defence?**🡪 Is self-defence a right in the limits of UNC 51? Danger that we could go beyond a restrictive interpretation🡪 An exception to the prohibition on the use of force? UNC 51. ICJ sees it as an exception, which requires a restrictive interpretation. 🡪 A circumstance precluding wrongfulness? (Ein Umstand, der Unrechtmäßigkeit ausschließt?) in the UNC SD is a primary norm. However, in the ILC of the articles on state responsibility 21 these are secondary norms, which must be applied to implement the laws. Nuclear Weapons AO: would states violate international environmental law if they used chemical weapons in an armed attack? We could use Article 21 to show SD in relation to violations unrelated to Article 2.4 of UN Charter, when it doesn’t relate to using force. 🡪Expands the definition of SD beyond the use of force.

**4. What are the material and procedural conditions for States to lawfully use force in self-defence?**🡪 VSS:  
1. Armed *immediate* attack against a state.   
2. Necessity of the military defense instrument  
3. Proportionality of the use of force in self – defence  
4. Only until the security council starts to act.  
5. + in case of collective self-defense: request of the attacked state.   
6. + Procedural obligation to inform the Security C.

**5. What is an armed attack?  
🡪** No definition in the UNC.  **5 a) Where to find a definition of the notion of “aggression”?**   
🡪 Resolution 3314 of 1974 of the UN General Assembly Art. 1: “Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.”  
Art. 2: There must be a sufficient gravity of the attack.  
Art. 3 are examples, it’s not an exhaustive list. Today ex. also cyber attacks could fall under the term “aggression”.   
🡪 It is non-binding, but the ICJ noted in Nicaragua that a number of the articles are customary law, because of it’s authentic interpretation. But the SC is still not bound by this definition of aggression.   
**5 b) Is an “armed attack” the same as an “aggression”?**   
🡪 GG says yes. Other scholars say Aggression is only the most serious form of the use of force as per Art. 2IV. (in UNC 51 they use the term armed attack!)  
🡪 Aggression is defined in ICC Statute 8bis. (provides definition of a crime of aggression, however this only applies to heads of the state, individuals) (criminal liability)  
🡪 But ICJ said in Nicaragua case, that there was no armed attack, but still a violation of UNC 2IV, but see Art. 3g resolution 3314 we have an aggression. y

**6. How to assess the necessity (Notwendigkeit) and proportionality of the use of force in self-defence?  
🡪** Randelshofer/Nolte, in commentary to the UNC, p. 1425:   
Lawful SD is restricted to what is *necessary* for the *repelling* of an armed attack and must not acquire a retaliatory, deterrent, or punitive character. The means and the extent of the defence must not be *disproportionate* to the *gravity of the attack.*  
🡪 Lack of conceptualization (Begriffsbildung). Difficulties in distinguishing between necessity and proportionality.  
🡪 Proportionality: How far can the response go in order to achieve such a purpose. Proportionality in relation to the objective, or also in the means used?  
🡪 Very difficult to apply in practice. Bsp. Nuclear weapons.

**7. Is it possible to use force in collective self-defence? Even if the victim did not ask for support?**

**🡪** starting point text of UNC 51:  
VSS: The aggressed state needs to *determine* if an aggression occurred and *consents* to the intervention of a third state for collective SD.   
ICJ Nicaragua: *§195*: It’s not another state who can declare that an attack has occurred and then intervene.   
No consent = breach of UNC 2VII. intervention in domestic matters. And breach of the principle of territoriality. Bsp. Nicaragua. US who intervened on the side of the contras.

**8. Does a State need to wait until an armed attack has occurred before resorting to self-defence? Discuss the notions of preventive, pre-emptive, anticipatory and interceptive self-defence.**

**🡪** After UNC 51: Text: Only of attack *occurs.* **🡪** Case law? ICJ Nicaragua §194 ICJ avoids the question…🡪 Caroline 1837. Justification for strike of Bush W. against Iraq because of (NO) weapons of mass destruction. Very controversial rule. Caroline is problematic as it is not a state who was directing the ship.  
(VSS: - the necessity for [self-defense] must be "instant, overwhelming, and leaving no choice of means, and no moment for deliberation", as formulated by Daniel Webster (secretary of State US).Background: Ship on which Canadian separatists wanted to fight against the British. The brits attacked the ship in the US preventively and destroyed it.  
ILC (international law commission) said that Caroline was not on SD, but on necessity and that imminence is a feature of necessity.   
🡪 State practice? SC resolution 487 Condemning Israeli preventive strike against Iraqi nuclear reactor.  
See above Bush administration to justify attack against Iraq. (controversial)  
Recent argument in Syria against chemical weapons (controversial)  
1. Preventive? To prevent future attacks who are not imminent but inevitable (William Haynes) – very dangerous as it could kill the notion of the prohibition of force.   
2. Preemptive? Imminent on the verge of occurring: Bsp. Neighbour state is gathering missiles and pointing it to your country. But problem is the definition of imminence.   
3. Interceptive: Attack has been launched but there is no effect. Bsp. Pearl harbour attack: Japanese Airplanes taking off but have not attacked yet.  
**9. Does a State forfeit its right to use force in self-defence if it does not inform the Security Council as requested by Article 51 of the UN Charter?  
🡪** No: Violation of the Charta, but you do not loose your right, because customary right goes beyond Art. 51 UNC and does not include the procedural requirement. Absence of notification is possible evidence that force was not used in SD, ICJ Nicaragua §200  
**10. When does the right to use force in self-defence cease to exist?  
🡪** When the attacker has been repelled, but different to say when: only when it’s back in his territory? But then it could conduct another attack. Peace treaty? Would be too formalistic OR  
🡪 When the measures taken by the Security Council can be deemed “necessary to maintain international peace and security”. (there has to be an action by the SC under UNC 41 / 42) but even then it is debatable if there the action by the SC is necessary.   
Piece of News

**1. Which States invoked self-defence (collective and/or individual) to justify their military interventions in Syria?   
🡪** *Iraq* against IS (individual self - defense)  
🡪 *US* collective self-defense because of the request of Iraq. (US not a victim in any way (secretary Tillerson (Exxon Mobile) argued otherwise, chemical weapons could fall in the hands of ISIS and then they could attack the US which is super unlikely: anticipatory SD?)  
🡪 France individual (terror attacks in Paris) and collective SD on behalf of Iraq. (France also asked for assistance which Germany and UK followed)  
🡪 UK also individual SD, (drone strikes in Syria because individuals were planning and directing imminent armed attacks against the UK. 7 terrorist attacks were planned against the UK)  
🡪 Russia (“Best excuse”) Consent of the Syrian Government to fight against “terrorist” groups.   
🡪 Turkey: SD against Kurdish armed groups in Syria.

**2. May States use force in self-defence against a non-State actor such as the Islamic State? Under which conditions? Explain the “unwilling or unable” doctrine.**AN:Unwilling unable is a test in international criminal law for deterrence but using deterrence in SD is very problematic. The idea in int. criminal law is to avoid impunity (Straflosigkeit) and to determine the jurisdiction of the ICC.  **🡪** *Pros* (for intervening against a non-state actor)  
1. Art. 51 is just saying armed attack! Nothing about a state that attacks.  
2. Precedents: Caroline Case: Not a government but armed separatists, SC and US action against Al Qaeda in response to 9/11 (controversial)  
3. Unfair results if Syria is unwilling or unable to prevent threat posed by IS. (Corfou Channel Case 1949 ICJ*: Obligation to ensure that the territory is not used in detriment (Beeinträchtigung) to other states*: (Case UK vs Albania: about the water channel between the Island of Corfu and Albania: UK said international waterway, Albania said no it’s our territorial water. To prevent that customary law is created, UK sends ships through, which drown due to water mines. Albania said we didn’t know that there were mines but see obligation above. Further: UK breached int. law due to clearance of the mines which was a military intervention which was not allowed in int. waterway (intervention in domestic matters (UN Charta 2VII))  
*Unwilling?* No Assad wants to cooperate to fight against IS. But US and western countries don’t want to cooperate with Assad. However, on the other hand, only a few states have contested that criterion of the unwilling and unable doctrine. The current silence of a vast majority of states towards the ‘unwilling or unable’ test might indicate an implicit a*cquiescence* (Preah vihear temple case) towards a right to self-defense against a non-state actor when the host state does not want or cannot prevent the actor’s armed attack. A new interpretation of a norm becomes customary and thus legal, only if it is observed during a certain period of time on several occasions by states and if states believe that the interpretation is legal (North Sea Continental Shelf Cases, ICJ Rep 1969 para 74). Thus, it is too early to assert that a state is allowed to use force against a non-state actor perpetrating an armed attack against it or one of its allies if the host state is ‘unwilling or unable’ to prevent such attack.  
🡪 Contra: Historical Interpretation of Art. 51 says only against states. (ICJ Palestinian Wall case)  
🡪 ICJ always refused SD right against non-state actor without the consent of a state. (Bsp. Nicaragua §195, ICJ Wall advisory opinion, 2004 §139)  
🡪 Unwilling and unable doctrine is not based on a law (see above)  
🡪 Violation of the principle of territorial integrity, problem that Syria might be allowed to respond in SD, or even worse in collective SD with Russia.   
🡪 Pandoras Box for situations in the future.

**3. May States use force in defence of the Syrian civilian population against chemical attacks by the Syrian government?**

🡪 chemical weapons convention which Syria joined in 2013 (also customary law). 2014 also with support of Russia the destroyed all chemical weapons. BUT since the 40 attacks with chemical weapons (sarin Gas).  
🡪 The use of Chemical weapons is a threat to peace and security (UNC 39), but Veto Russia.  
🡪 Collective SD? Needs explicit request by the state (Syria) not i.c.   
🡪 Other justification? *R2P:* Humanitarian intervention. Ok if security council approves it in measures of chapter 7 of UNC. What if Veto in security council? Bsp. In case of Kosovo - intervention of the NATO in 1999. (China and Russia support the sovereignty) Kofi Annan said intervention is legitimate but not legal.   
The use of force to enforce int. law as retaliation = Vergeltung or Reprisals = repressalie (Definition: Reprisals are acts that are in principle unlawful, but they can be excused because they aim to force a state back into compliance with its international obligations.) is forbidden in int. law except the security council gives a mandate to do so. (UNC 2IV)

**4. May States use force in anticipatory self-defence against potential attacks of their population?**

**🡪** Pro: Caroline Case  
Unjust to wait until the armed attack has occurred or is imminent. It is absurd to wait (practical argument)  
i.c. risks of chemical attacks by Syria or terrorist groups  
Imminent attack must be understood in the modern day capabilities, technological innovations of terrorist organizations  
🡪 Contra: UNC 51: armed attack *occurs…*   
Pandoras Box, we don’t know how far the idea of anticipatory goes if we allow it.  
(If we start to enforce int. law with force we are going back to the time before 1945.)  
SC council condemned the use of anticipatory SD in the past: Res. 487 Osirak (nuclear reactors in Iraq which were attacked in an anticipatory way, because believe they would build atomic bombs which wasn’t the case)  
Even if anticipatory SD were accepted – we have *no imminence*  
Syria controls it’s arsenal and no signs that it wants to use it against the west  
Chemical weapons are not in the hands of terrorists

# Part 4: SC

## Guiding questions

# **AN**: Permanent members, US, UK France, China, Russia, non-permanent 15 members for one year. G4 Germany, India, Brasil and Japan, no immediate re-election of the non-permanent members. (UNC 23) Regional organisations (NATO, AU, Arab League) cannot authorise the use of force, but there might be a collaboration.

**What is at the origin of the creation of the UN Security Council?**  
🡪 Veto System to protect the interests of the winning Nations of WWII. Also, a burden in promoting global security. But the composition doesn’t reflect today’s world order, that’s why G4 want a permanent seat.

**To what extent was the creation of the UN Security Council a novelty in 1945?**

It had a precursor the council of the league of nations, but the novelty was the far-reaching power of taking decisions for everyone.

**What does the UN Charter tell us about the UN Security Council? Art. 23 ff.**Composition UNC 23  
Functions (keeping int. peace) UNC 24 – 26  
Voting UNC 27 (27 III veto power) (empty chair doesn’t mean veto Bsp. Russia in case when north Korea attacked the south 1950.)

**How was the UN Security Council supposed to maintain peace and security?**

It has a primary responsibility to be concerned with int. peace and security (but not an exclusive one)   
Army of the SC which was never created….

**Are the powers of the Security Council akin to Executive, Legislative or Judiciary powers?** Executive originally, but it has intervened in any branch. Ex. Demanding states to criminalize terrorism, (SC resolution 2178), creation of tribunals (ICTY, ICTR)

**What are the differences between the powers of the UN Security Council and of the UN General Assembly?  
🡪** GA: UNC 10: May discuss any question within scope of the charta, only soft powers: recommendations, can also be concerned with the maintenance of peace and security. For example, concerning the budget it has authority UNC 17 (can relate to maintaining peace and security)  
🡪 SC: more narrow scope: maintaining of international peace and security: UNC 24 I. But strong powers: Decisions (UNC 25)  
But if the UNSC is blocked the GA may *recommend* the use of force to impose peace. (Resolution 377 UNGA). (Context was the crisis in Korea 1950 when the SC was blocked)

**Are the powers of the UN Security Council the same or different under Chapter VI and VII of the UN Charter?  
🡪** Chapter VI:Call upon states, investigate or recommend. (soft) (was used as legal basis for peacekeeping after Viv)  
🡪Chapter VII: UNC 39: Can determine if there is a threat or breach of the peace or an aggression, It can take action as recommendation or decide (but in order to do that we need a breach of the peace, aggression etc)  
UNC 40 provisional (vorläufige) measures or decisions in UNC 41, 42.  
🡪 UNC 40: E.g. ceasefire, troops withdrawal, unclear interplay with Art. 39 UNC, Determination of a situation under UNC 39 is not necessarily needed. The measures must be *temporary)*  
🡪 UNC 41: *Binding measures*, *Not involving the use of armed force* (peaceful), non-exhaustive list, E.g. interruption of economic or other relations.   
Creation of the ICTY, and ICTR (Ruanda)  
🡪 UNC 42: *Use of force*, determination (Festlegung) of a situation under UNC 39 explicit or implicit, Discretionary power (Ermessensspielraum) to take measures under 41 first or go directly to 42. Implementation by the SC itself (UNC 43) which was intended to create an UN army, which never happened. So UNC 43 – 48 have fallen into disuse as customary law has destroyed it.   
Solution: Authorisation to States to send their own troops,

**How would you define a “threat to the peace”, “breach of the peace” or an “act of aggression”?**

**🡪** There is no definition for the 3 which is binding for the SC. So the the UNSC can decide pretty much itself. **🡪** Threat to the peace: Difference between threat to the peace (UNC 39) and threat to use force in UNC 2 IV (threat to use force is much more narrow, it’s a threat to attack), large and unclear concept. It’s an empty shell and the SC can put anything in it: Bsp. Serious violations and HRL and IHL (Kosovo), international terrorism, piracy, Ebola, climate change? It is the most used one by the SC.  
🡪Breach of the peace: Needs an international armed conflict, Bsp. Attack of North against South Korea, Invasion of Kuwait by Iraq, *no need to identify the aggressor*.  
🡪Aggression: Aggressor needs to be identified. GA resolution 3314 defines aggression in Art. 1. But it also says that the SC is not constrained by the definition (Art. 4)  
Very rarely used as it is politically sensitive and it is difficult to identify the aggressor, it has legal repercussions (Rückwirkungen) as SD and individual criminal responsibility.   
Bsp. South Africa vs Angola, Israel vs Tunisia 1985, South Rhodesia vs Mozambique.

**May the UN Security Council adopt decisions outside Chapter VII?   
🡪** ICJ Namibia advisory opinion: 1971 §113: Stated that UNC 25 is not limited to enforcement measures adopted under Chapter VII (also because 25 is not in Chapter VII so it indicates that the SC might make decisions outside Chapter VII)   
But measures under 25 cannot involve the use of force.

**What types of measures has the Security Council taken under Chapter VI? And under Chapter VII?**🡪 UNC 41: Creation of the ICTY and the ICTR.  **🡪** UNC 42: Implementation of use of force:   
1. Ex ante (im Voraus) authorization: E.g. Iraq / Kuwait (Saddam Hussein invaded, Bush build a strong coalition against Iraq and crushed Iraq, but Saddam remained in power until second invasion) or Libya (2011)  
2. Legitimization without authorization: Ex ante: Afghanistan/Al Qaeda 2001, arguably Iraq 2003  
Ex Post: Kosovo 1999 (sending of troops in the aftermath to stabilize the situation  
Syria/IS 2014 (Resolution UNSC 2249)  
**What are the options if the veto exercised by one of its permanent members prevents the UN Security Council from fulfilling its function to maintain international peace and security?**

Resolution uniting for peace. (context Crisis in Korea 1950) Res. 377 of the UNGA: If the UNSC is blocked the GA may recommend the use of force to impose peace.

**Explain the origin, objectives and functioning of the United Nations General Assembly (UNGA) resolution 377 A, the "Uniting for Peace" resolution, also known as the “Acheson Plan”.**Resolution, that the UNGA can consider the matter immediately and may issue recommendations it deems necessary to restore int. peace and security. But merely recommendations, not binding decisions. Context Korea crisis where first the USSR had an empty seat policy, but then returned and kept blocking everything. (If states then want to intervene there is sort of a authorisation of the UNGA)

**What is the legal source of the binding nature of UN Security Council decisions?**   
Art. 25 UNC

**Are UN Security Council decisions binding upon non-UN-member States?**

**Are States obliged to implement UN Security Council decisions if they violate other international law obligations?**

🡪 UNSC 103 allows the SC to adopt measures which go against “agreements”.

**Are there any limits to the powers of the UN Security Council?  
🡪** very unclear, what the SC can do and what it can’t do.   
🡪 Respect for IHL and HR should be a limit as they are part of the SC mandate and they can’t go against their mandate.

**Is customary law a limit to the powers of the UN Security Council?  
🡪** No it isn’t, Art. 103 interpretation. Agreements stand also for customary law.

**Is jus cogens a limit to the powers of the UN Security Council?**

Some scholars say that the prohibition of the Use of Force isn’t really use of force just “aggression”, so technically when the UNSC authorises use of force, they are not authorising aggression… Therefore, this might mean that the UNSC cannot contravene jus cogens.  
Very controversial. Depends on the situation. She makes the example with Genocide, that the SC can’t order Genocide.

**May the International Court of Justice (or other international courts or tribunals) review the legality of UN Security Council decisions?  
🡪** ICJ Lockerbie case 1992 § 39 – 45. Libyan request was admissible despite the decision of the SC. No hierarchy between the ICJ and the SC, prima facie obligation to respect the decisions of the SC, which prevail over any other int. agreement. (UNC 25 and 103). *No decision* on the legal effects of the SC decision, refusal by the ICJ to order provisional (vorläufige) measures. Later ICJ will deem itself competent, but no decision on substance.

## Piece of news

**What are the UN Security Council failures/challenges that lead the international community to discuss potential reforms?   
🡪** Problems are more the lack of action, than the SC acting ultra vires.  **🡪** SC reactions to the crisis in relation to *Kosovo* (1999) (UCK (Albanian paramilitary organisation which fighted for the independence against Serbs. NATO helped the UCK and intervened on humanitarian grounds 1999) (Kosovo was controlled by Serbia historically but is ethnically mostly Albanian, was partly independent until 1989 when leader Milosevic changed it to total control, 1998 Kosovo liberation army formed and started a guerrilla war against Serbian military, treatment of Albanians in Kosovo brutal by Serbian forces. Serbian leadership was accused of ethnic cleansing.) The SC was blocked but there was an ex post legitimization by the SC with resolution 1244 (1999) After Serbia withdrew, Kosovo was led by UN Interim Administration until 2008 when they declared independence. (wasn’t accepted by Serbia)  
🡪 *Afghanistan* (2001) (No authorization by the UNSC to interfere in Afghanistan even though the attack on the twin towers was called a threat to world peace and security (Bush against Taliban and Bin Laden, Taliban don’t want to give Bin Laden to the US.) In fact the SC wanted to authorize actions but the US vetoed as acting in SD gave them more freedom. Implicitly this means that use of force against NSA ist allowed.   
Ex ante legitimization by the SC,  
Was before a communist country supported by Russia. US trained resistance the Muhajideen which ended in withdrawal of Soviets in 1989, followed by internal wars in 1996 the Taliban gained power and ruled the country with brutal force until 9/11 and Bush invaded.  
🡪 *Iraq* (2002-2003) US (with help of the UK) because of the connection of Iraq with Al Qaida (Bin Laden) and the weapons of mass destruction on grounds of preventive SD. Saddam Hussein ruled as brutal dictator the country. (He was part of the Sunni minority who supressed the Shia Majority. US gave power to Shia who supressed the others. Generally: Shia is fuelled by Iran and Sunnis is fuelled by Saudi Arabia. I.c. US argued that the authorisation obtained in the 1990s was still valid, the resolution did not die. And one condition of the resolution was, that Saddam Hussein would not develop weapons of mass destruction, which he broke.   
seemingly ex ante legitimization  
🡪 Libya (2011) begin protests against regime (Qadhafi) who responded with violence, rebels start fighting back. International community started to act.  
Authorization to use “all necessary means, but no troops on the ground” (R2P), NATO intervention, government change + failure to protect civilians. (no troops to avoid accusation that states want to occupy and go after the oil.   
🡪 Syria (2015) (was blocked by Russias Veto) and therefore no SC authorization, but ex post legitimisation of military action against IS and Al Qaeda, SC blocked in relation to chemical attacks.) But we also have resolution 2249: SC did not decide, that states can intervene military. It’s an ex poste legitimisation of the actions of States, which only allows them to act in accordance with the UN Charter. This made all States happy – Russia is acting in relation to consent, and USA, UK etc. are supposedly using ‘self-defence’. Therefore, the resolution essentially means nothing. It seems to legitimise everything.   
  
**Did the UN Security Council overstep its powers in some cases? Is it necessary to limit its powers?**🡪 Examples which could be overstepping:   
🡪 Creating peacekeeping operations, (was not considered by the UNC)  
🡪 Regime changes (Libya)  
🡪Ad hoc tribunals (international criminal tribunal for the former Yugoslavia, (ICTY) SC resolution 827, played the role of a legislator than the one as a “world-police”  
🡪Demarcating boundaries (resolution 687 urged Iraq and Kuwait to respect the boundary between the two countries (and determined it))  
🡪 Requiring criminalization of terrorism SC resolution 1373 and 2178 (die ist in den Unterlagen)

**What are the legal and political challenges related to the reform of the UN Security Council?   
🡪***Legal:*India, Japan, Brazil Germany push for a reform. Problem, reform needs to be approved by the five permanent members as well as 2/3 of UN-members. (UNC 108-109)  
🡪 *Political:* Who shall become permanent member? Removal of the veto? Structure of the UNSC? Size of the SC? Representation for each region?  
AN: No African country no Latin American country and no Caribbean country.  
🡪Most countries agree that a reform is needed as an obsolete (überholt) SC affects its legitimacy/credibility and effectiveness.   
🡪 Concrete proposals by the “high-level Panel on threats, Challenges and Change” lead by former UN Secretary General Kofi Annan, Recent discussion by the UNGA in 2018. (wanted expansion and rotating composition)  
🡪 Recommendations in a nutshell: Increase involvement in decision making of those who contribute the most to the UN? (financially, military and diplomatically), more representation of the developing world, not impair the effectiveness of the SC, Enlargement of the SC, regular adaptation of the composition, no modification of the powers of the SC, *no expansion and modification of the veto*, aim is to increase the democratic nature of the body, transparency and accountability.

# Part 5: Peace Forces (PF)

***AN:*** Main Problems.  
1. Several allegations of *sexual abuse* against PF, especially in Central African Republic. (Total 340 allegations since 2010 for PF) 181 against Civilian Staff (CS). Problems not only in Central African Republic but also in Haiti, South Sudan, Congo.   
🡪 Cover-up and lack of accountability  
2. *Failure to protect civilian population.*  
Problems in South Sudan, Central African Republic, Congo; even if UNSC mandate includes to use “all necessary means” to protect civilians under threat of physical violence. (Resolution adopted under Chapter VII) e.g. UNSC Resolution 2155 §4ai (in Unterlagen)/ 2149 §30ai  
🡪 What Solutions have been proposed?  
🡪“Zero tolerance policy” of sexual abuses by the UN: It has a change of culture and structural reforms, effective investigations by the UN, TCCs (Troop contributing countries) and Host State, naming and shaming of the TCC who do not prosecute, possibility for waiving immunity and consider prosecution by the host state, repatriation (Zurückschaffung) and dismissal of the PK.   
🡪”Code Blue Campaign” advocate for an independent special courts mechanism to deal with sexual violence by UN peacekeepers.  
🡪 Regarding protection of civilians mandates: Clarification of the mandate, adequate staffing and resources etc, collaboration with regional organizations.

## **Guiding questions**

**Was the existence of UN Peace Forces anticipated when the UN Charter was drafted? What brought about the creation of UN Peace Forces?  
🡪** Was not anticipated! It was an invention of Dag Hammarskjöld (Un Secretary General), Creation then by the UN General Assembly on the basis of the resolution uniting for peace.  
Was the response of the Suez crisis 1956 (Conflict of Egypt against Israel UK and France, after Egypt wanted to nationalize the Suezchannel which was in control of a UK/France company, US and Russia worked together to prevent a war against Egypt and the UN deployed peacetroops to the Israeli / Egypt border)

**What is/are the legal basis of UN Peace Forces?  
🡪** not anticipated by the UNC, it is based on subsequent (nachfolgende) practice and created through resolution by the SC or the GA.   
🡪The legal basis is controversial: Some say it is based on chapter VI, some on VII Art. 40 as a provisional measure, some say there is sort of a chapter VI and a half and some say it is because of implied powers of the UN for the realization of it’s basic purpose, the maintenance of peace and security.

**Within the UN, which organ can create UN Peace Forces?**

Viv: the UNSC or the UNGA

**What types of activities are performed by UN Peace Forces?**🡪1. Traditional peacekeeping: essentially military, observation, monitoring and reporting, supervision of ceasefire, Interposition as a buffer and confidence-building measure. Eg. Forces in Cyprus  
🡪2. “Multidimensional” peacekeeping: Mix of military, police and civilian capabilities to support the implementation of a comprehensive peace agreement, create a safe environment (e.g. help maintain law and order, secure peace process etc.) Protect civilians under imminent threat of physical violence, direct role in political efforts to solve the conflict, peacebuilding activities: (Disarmament, mine-action, protection and promotion of human rights, electoral assistance, support for the restoration and extension of state authority, promotion of social and economic recovery and development) Administration of territories – lead states through a transition to stable government (e.g. Kosovo, East Timor)  
 **Try to devise a typology of those activities.** (Folie 14 After class)

* Conflict prevention
* Peacemaking
* Peace enforcement: (based on UNC 42) Does not require the consent of the main parties and may involve the use of force at the strategic or international level, which is normally prohibited for member states under Art. 2 IV, unless authorized by the SC. *Is targeted at one party*
* (robust) Peacekeeping: involves the use of force at a tactical level with authorization of the SC and consent of the main parties. Use of force is *not* targeted at one party.
* Post conflict peacebuilding and preventing relapse to conflict (e.g. Disarment, demobilization, mine cation, electoral assistance, support for restoration and extension of State authority)

**What are the principles devised by the UN and governing UN peacekeeping operations?**

* 1. Consent of the host country and different parties. (for peace keeping)   
  2. Impartiality: Uphold peace regardless of the source of the threat.   
  3. Self Defense (primary bases for the use of force) and defence of the mandate. (not because of UNC 51, but SD as a military concept: the legal basis is debated.

**What does protection of civilians mean in the context of UN Peace operations?**🡪 Origin: Was only born after the failed UN Mandates in Srebrenica and Rwanda:  
1st PoC Mandate was the UN Assistance mission in Sierra Leone 1999 -2005. Today the majority if UN PK Missions have a PoC mandate.   
🡪 Legal basis: HRL (Right to life ICCPR 6) and intern. humanitarian law, SC mandate to protect civilians who are under imminent threat of attack as an additional legal basis – GG yes. (the mandate is to protect the security of the population through use of force, but alspo ensuring the respect of IHL / HRL.   
🡪 Activities: Improve security of the population, ensure respect for HRL and IHL, E.g. advocacy, strengthening the rule of law, political involvement, use of deadly force as last resort.  
🡪 Whose responsibility? Host state = primary responsibility, peace operations, when the host state is unable or unwilling, Link with R2P?   
Viv: R2P is for war crimes and crimes against humanity, PoC is for protecting human rights.   
Aus von meinen Notizen von vor Vorlesung: R2P is limited to genocide, war crimes, ethnic cleansing, and crimes against humanity, the POC mandate covers any and all forms of physical violence.

**Are UN Peace Forces bound by international humanitarian law? Why or why not?**   
🡪 Not bound by IHL treaties because only states can be part of the treaties, not the UN, but they are bound by customary IHL irrespective (rücksichtslos) of the UNSC mandate (Chapter VI or VII),   
🡪Peacekeepers are civilians and protected from attacks *unless they directly participate in hostilities or the peace forces become a belligerent party to the conflict*. (UN uses force systematically against one party) ICC Rome Statute 8IIb iii and 8IIe iii.  
🡪IHL applicability depends on the facts on the ground.   
Viv: The PK must be considered as belligerents (usually they are considered as civilians), there must be an armed conflict, and the act-in question must have a substantial nexus (verbindung) with the armed conflict. (There is a nexus in the context of UNPK as they are there because of the armed conflict and would not be there otherwise.   
🡪 In practice, reluctance of the UN/States to accept, that PF have become a party to the conflict, because there would be a conflict with the principle of impartiality + PF become a legitimate target as there is a principle of equality of belligerents (Kriegsführende Parteien)  
🡪 To become a party a certain intensity of violence is required.  
Further the Geneva Conventions don’t mention sexual violence, but that’s written in 1949 and we can link rape to the prohibition against torture, inhuman or degrading treatment.

**Are UN Peace Forces bound by international human rights law? Why or why not?**   
🡪HRL is applicable at all times, peace or armed conflict, but the UN is not party to HR treaties, but the UN has *obligations through customary law* and could be implicitly derived from the object and purposes of the UN which include promotion of the HRL. (UNC 1III)  
🡪UN does not contest the application of human rights.  
🡪 but issue of extraterritorial application of HRL. It is usually considered that a jurisdictional link must be established. (vgl. ICCPR 2I)  
🡪HR obligations can also be derived from HR obligations on troop contributing countries and Host state.  
🡪 UN policies as well: Human Rights Due Diligence Policy on UN Support to non-UN Security Forces, United Nations Policy, Human Rights Screening of UN Personnel.

**Are there accountability mechanisms in place when peacekeepers or other members of UN Peace forces commit crimes (e.g. sexual violence) or fail to protect civilians (e.g. Srebrenica)?**   
🡪 City in Bosnia which capitulated against the Bosnien Serbs in1995. But the UN Forces (mostly Netherlands) Were not able to protect the civilians of the massakers.   
See piece of news for more.

**What are the main successes and challenges pertaining to UN Peace Forces?**

* Successes: Nobel peace price in 1988, Key tool in maintaining peace and security, mere presence of UN PF may ease tensions, continuous improvements and professionalization.
* Challenges: Accountability, appropriate mandate, funding, weapons, training, Blurring the line between military interventions and humanitarian/development activities.

## **Piece of news**

**Are UN Peace Forces bound by the prohibition of rape and other forms of sexual violence? Under which legal framework(s)?**

* Remain under the legal jurisdiction of their home country. So the home country must determine if rape is punishable or not.
* Int. humanitarian law: applies only to behaviour during and in connection with an armed conflict.

Prohibition of sexual violence under many different forms: e.g. Common art. 3 to the four Geneva Conventions prohibiting torture, cruel and degrading treatment and belonging to customary law. Or ICC statute Art. 8 IIa ii, 8 IIb xxii (second one is explicitly against sexual crimes)

Questions (on slides) Are PF a party to the armed conflict? If yes, which additional obligations are binding on them?

Is sexual violence prohibited in armed conflicts even if UN peacekeepers are merely civilians? Yes it is prohibited, but we can’t rely on the Geneva conventions as the UN is not a party, but customary laws apply and prohibition of rape is customary law, which binds the peacekeepers.

* IHL: Issue of extraterritorial application, that some countries don’t recognize (e.g. USA), Prohibition of sexual violence under many different forms, ICCPR 7 (Uno Pakt II)  
  Questions: (on slides): Are UN Peace forces bound by HRL? If yes, which obligations are binding upon them?  
  Viv: The UN is not bound by the ICCPR. But, there is also domestic law. The host state and troupe contributing countries. But there arises an issue of extra-territorial application of human rights law – ICJ has said that you can apply human rights treaties extra-territorially, but States like the US and Israel continue to violate this, but UNC 1 lists its principles and purposes and one of them is HRL, so how can we say, that the UN is not bound by HRL?
* Nowadays, the UN does not deny that its peace forces are bound by HR law. (HR law applies whether or not they are belligerent parties.)
* However, for International Humanitarian Law, it is difficult, because the UN does not want its peacekeepers to be considered belligerent parties into an armed conflict on the ground.

**Are UN Peace Forces bound to protect civilians? Under which legal framework(s)?**

Each UNPForce mandate states that the PF must protect civilians. A failure to do so is a failure to carry out the resolution.   
Under the right ot life (ICCPR 6) there is a duty to protect civilians against the threat of murder.

**May the UN/States criminally prosecute peacekeepers who have perpetrated crimes?**

* *UN*: They can be investigated and there is an internal investigation to determine the credibility of the allegation. Problem is the independence of those investigation and there is no court to prosecute them.
* *States*: They have an agreement with UN, that they have to prosecute and also agreement, that host state will not prosecute. Obligation to prosecute their troops having committed crimes under int. or domestic law, Problem is the inherent difficulty to conduct proper investigation and gather evidence in different country.
* Civilians abroad? Unclear jurisdiction. Some states have legislation to prosecute but some may have not. Problem, that states can very difficultly investigate on a different state.
* Host state? Soldiers can’t be prosecuted as stated in agreement with UN, Civilian staff? It is possible to prosecute them but problem of functional Immunity, can’t be prosecuted for things they did during function, and problem, that UN is very broadly interpreting this. Problem also that the host state is not able and not willing to prosecute. Often nearly failed states.  
  UN may decide to waive the immunity, but it has never done so.
* Other states? Could prosecute grave breaches on universal jurisdiction, bsp. Torture - But states rarely do it.

**May the UN/Troop contributing countries be held accountable for failures of UN Peace Forces?  
🡪** Is the UN a subject of int. law? Yes, the ICJ advisory opinion regarding reparations, says, that the UN is a subject, because UN could ask for reparations, when one of it’s workers got killed in the Palestinian conflict. It shows, that it has rights and responsibilities and can be held to account.   
Art. 7 of the ILC Draft Articles on the responsibility of Int. Organizations:   
There needs to be *effective control* over the organ, which she seems to say is there i.c. of the UN Troops.   
So the UN is responsible (ILC Draft Articles 29 – 31): This has the following consequences: Continued duty of performance, Cessation and non-repetition, reparation.🡪 Countries? No majority view is that UN has the main responsibility because the UN has command and control over the forces.Viv: Article 6 on the ILC Article on state responsibility states that if there are forces given to State A by State B, and the forces are under control by State A, then State A should be responsible.  
If we apply this to this case, then by analogy, the UN should be responsible?

**Why do you think UN Peace Forces fail to effectively protect civilians?**

* Unclear mandate
* Then often the troops are understaffed and the attackers are much more numerous.
* Lack of training and discipline
* Lack of incentives in taking more risk
* Lack of trust among the population (link with lack of accountability)
* Lack of impartiality (Unparteilichkeit)
* Problem if state actors commit crimes and the PF react, then state may be unhappy and withdraw the consent*.*
* Fear that the the UN become a belligerent party (link, that the UN wants to stay impartial)

# V6: Int. armed conflicts – occupation (Israel – Palestine)

AN: *Hamas holding Gaza starting from 2006*, unity government with *Fatah in 2014*, Israel withdrew troops after 2005, Netanyahu doesn’t want to go to war, Gaza Protests, used live ammunition against civilians in *2018*, US opened the embassy in Jerusalem 🡪 followed by bloody protests.  
Illegal settlement in Palestinian territory by Israel, violation of Self-Determination.  
🡪 History: Egypt controlled Gaza after creation of Israel in 1948, Next war *1967 Israel occupied Gaza and Westbank* 🡪 Israeli settlers moved in until *2005, when Israel decided to leave Gaza with soldiers*, Hamas has been in charge - fighting with more moderate Fatah, Hamas in control, Population 1.8 mio people, decendents of people who fled Israel, *Israel Land air and sea blockade since 2007*, Egypt strictly controls border, Threat of violence will not excuse lethal force,   
🡪 History super old: 70n Chr. Chirsten zerstörten Tempel in Jerusalem und vertrieben Juden in alle möglichen Ländern. Im alten Land (Palästina) lebten v.a. Araber (Palästinenser). Nach 1. Weltkrieg gewährte UK, welches Palästina verwaltete die Einwanderung der Juden, 100'000de Juden nach 2. Weltkrieg immigrierten nach Palästina. UNO entschied Zweiteilung des Landes in Teile für Juden und Araber, Araber empfanden das als ungerecht, 1948 endete Besetzung UK und Israel Staat entstand. Aber dann griffen Araber an aus anderen Ländern, Israel hatte aber bessere Waffen und mehr Motivation. Palästinenser flüchteten.   
1967 6 Tagekrieg Besetzung Israels Westjordanland und Gazastreifen. Siedler fingen an Land zu besetzen. Immer mehr Terroranschläge von Hamas, 2003 Bau Mauer nicht jedoch auf grüner Linie sondern mehr im Landesinnern von Arabern.

## Guiding questions

**What are the origins of the “laws of war”?   
🡪** precursors of modern IHL: Grotius with de jure belli ac pacis (1625), The law of the nations de Vattel (1858), Rousseau, Le contrat social, 1762)   
🡪Role of Henry Dunant? After Battle of Solferino (1859) pushed for the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (1864) and the creation of the ICRC.

**Is there any difference between the following terms: “laws of war”, “law of armed conflicts and “international humanitarian law”(IHL)?   
🡪** If we follow the definition of the ICRC website it is all the same.  
🡪 IHL: is a set of rules, which seek for humanitarian reasons to limit the effects of armed conflicts. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. IHL is also known as the law of war or the law of armed conflict. IHL applies to armed conflicts. It does not regulate whether a State may actually use force; this is governed by an important, but distinct, part of international law set out in the United Nations Charter. (jus ad bellum v. jus in bello)

**What is the difference between “jus ad bellum” and “jus in bello” and why shouldn’t they be conflated?**🡪Jus ad bellum is the right to war (legality of war) Art. 2 4 uno charta, is not permitted anymore   
🡪 ius in bello is the law which applies in case of war. (mainly IHL)

**What are the sources of IHL?**

🡪 Haguer convention 1907 (Not ratified by Israel and ratified by Palastina but became customary law)  
🡪 4 Geneva convention and the 3 additional protocols. (Deals with IAC’s, only common Art. 3 is for NIACS)  
🡪 I.c. is Convention N. 4 important as it has a whole section on occupation. (Section III Art. 47 ff.)

**Which treaties apply to international armed conflicts?  
🡪** Hague Law (Body of rules in relation to the conduct of hostilities/means and methods of warfare)  
🡪Geneva Law (Body of rules which protect persons in the power of the enemy (often qualified as “victims of war”)  
🡪 ICJ opinion: Legality of the Threat or Use of Nuclear Weapons, 1996 §75: The two branches are very closely related and form the IHL.

**How does IHL define an international armed conflict?  
🡪** Common Art. 2 of the four Geneva Conventions and Additional Protocol I Art. 1 IV.  
1. Armed conflict between two or more States/Int. Organizations. (Common Art. 2)  
2. Occupation without resistance (Common Art. 2) (Gaza and West Bank is occupation but there is resistance) (ICJ wall advisory opinion: Art. 2 I implicitly covers occupation with resistance and therefore it covers the Westbank and Gaza)  
3. Wars of national liberation (Additional Protocol)  
Fight for CAR people = int. armed conflict because these groups have a right to SD.

**What is the difference between an international and a non-international armed conflict?  
🡪** International – see above  
🡪 non – international: Between armed groups and state(s)

**What is the threshold of violence required for an international armed conflict to begin?**

**When does an international armed conflict cease (Ende) to exist?**

**How does IHL define occupation? When does an occupation start? And when does it end?**

🡪Occupation needs effective control – for definition of effective control see Art. 42 Hague regulation (GG: administering territory is not a requirement of effective control, it’s more the legal consequence of it)  
🡪 End of Occupation? Geneva Convention IV: 6 III (Generally after 1 year after the close of military operations but: As long as the power exercised is the function of a government it is still valid for certain provisions) and API I 3b (Says nothing about the definition only what happens if occupation ends, no idea why she cites this article)  
ICRC says: an occupation ceases when it ceases, even if hostilities have ceased, but there are still troops on the ground, it is still occupied so IHL still applies. Art. 6 III has fallen into disuse.

**What are the main IHL rules applicable in international armed conflicts?**🡪3 main rules for the conduct of hostilities:  
1. Distinction between civilians and combatants. Only the latter can be attacked. API 48 (however, when civilians take up arms, they can be targeted)  
2. Proportionality: An attack which may expect collateral damage (civilians) needs to be not excessive in relation to the concrete and direct military advantage anticipated. API 51 Vb.  
3. Precautions: constant care in attacks, that the civilians are spared. API 57. No precautions in relation to legitimate targets, so you can also kill an enemy soldier, when he’s showering even when right then, he’s not taking part in hostilities. (don’t have to look at the activities)   
An: Further she states chemical, biological weapons are prohibited. (Ottawa Conventions) Reason is that that you can’t control the effects of the latter, landmines can’t distinguish between a soldier and a civilian.   
🡪 Main IHL rules for protection of victims of armed conflicts?  
Geneva Conventions 1 – 4.

**What is the difference between the Hague Law (on means and methods of warfare/conduct of hostilities) and Geneva Law (on the protection of victims of armed conflicts)?**

**What are the main IHL rules applicable in an occupied territory?   
🡪** 1. No transfer of sovereignity  
2. No duty of allegiance with the occupying power  
3. Obligations to ensure a normal life to the civilian population (Hospitals, schools, courts etc.)  
4. Legal effects cease at the end of the occupation.

**What are the implementation mechanisms (Umsetzungsmechanismus) available under IHL?   
🡪** *State obligations: (well in force)*1. Respect and ensure respect (Common Art. 1 Geneva C.) and API 1I.   
2. Dissemination (Verbreitung) of IHL: Art. 47/48/127 GC 1.  
3. Prosecution of war crimes + suppression of other violations (Art. 129 GC1 gibts nicht)  
4. Cooperations to stop serious IHL violations API 89  
🡪 *IHL Implementation* foreseen in IHL treaties: (problematic in reality)  
1. Appointment of protecting powers (API 5) or GC1 Art. 8. (was never done by the states)  
2. Enquiry procedure GCI 52. (if violation of the convention) (needs consent of the belligerent parties and has never been done)  
3. Int. humanitarian fact finding commission: API 90. (has been very insufficient and has nearly never been called to help only in the Ukraine)  
4. ICRC: GCIII: 126, right to initiative GC1 9. (pretty much the only functioning body. It can always visit without asking, but play a humanitarian role only. Not there to name and shame.  
*🡪 Other actors dealing with IHL matters:* (intervene mostly afterwards)  
ICTY (tribunal Yugoslavia), ICC, UN, NGOs etc.

**What is the International Humanitarian Fact-Finding Commission?  
🡪** investigate in armed conflict situations, problem. States nearly never asked the commission to play a role, has not been called upon to act, “the sleeping beauty” API 90

**Are serious violations of international humanitarian law criminalized**?

**Does international human rights law apply in armed conflicts?  
🡪** Yes applies at all times, but lex specialis (Nuclear weapons ICJ advisory opinion §25)

**What is the interplay between international humanitarian law and human rights law?   
🡪** ICJ Nuclear weapons opinion: §25: int. human rights always apply. In time of armed conflict if IHL applies as well, then it counts as lex specialis if they are contrary.

## Piece of news

**Is Gaza an occupied territory?**

**🡪** Starting point *effective control* Hague regulations 42:  
🡪contra occupied (Israeli official view): *No troops on the ground*, no effective control, Israel is not administering the Tt, Gaza is merely under siege + blockade.   
🡪 Pro occupied (majority view) Majority view in the international community (Palestine, ICRC, UN, EU, most States, HR organizations such as Human Rights Watch)  
Arguments: Because Israel controls Gaza’s air and maritime space and six of Gaza’s seven land crossing + border.  
Israel’s military reserves the right to enter Gaza at will. *Potential* to exercise effective control, See ICTY, Naletilic: (keine zusätzlichen Referenzen in Folien) an occupation exists so long as the occupying army has the “*capacity* to send troops within reasonable time to make the authority of the occupying power felt”.   
Gaza depends on Israel for water, electricity, telecommunications and other utilities.   
West Bank and Gaza constitute a single territory and Israel has an obligation for Westbank.  
ICRC considers that this is a sui generis (eigener Art) situation and says it’s still occupied.

**What are Israel’s international law obligations in relation to Gaza?   
🡪** Under IHL (if Gaza is considered as occupied):  
1. Ensure public order and safety (Hague regulation 43)  
2. Maintain the status quo: e.g. prohibition of transfers of population GCIV 49 VI, prohibition to modify criminal laws GCIV 64:  
3. Ensure the wellbeing of the population: e.g. ensure the education of children GCIV 24, ensure population is adequately supplied GCIV 53.   
🡪 Under HRL: (Assuming no occupying power)  
Issues of application in AC + extraterritorial application  
economic, social and cultural rights, e.g. right to health, education etc.  
Civil and political rights: E.g. right to life

**Did Israel use excessive force against protesters? Why or why not**?

🡪 AN: 6000 People injured and 183 killed, Used live ammunition, (great march of return was the protest named)   
🡪 If IHL applies: (Gaza is still occupied or new armed conflict): Directing attacks against combatants/fighters or civilians directly participating in hostilities (DPH) is allowed. API 48, 51 III. (DPH is very difficult to define, e.g. damaging the fence – is it enough?)   
Civilian unrest has to be dealt with under law enforcement (Hague regulation 43)   
Viv: Israel negates the existence of Palestine as a State, so they think it’s a non-IAC against Hamas, which is a militant group. Therefore, if they qualify this as a NIAC, they can have snipers and people, because they can target people who are civilians taking part in hostilities, military, and collateral damages are allowed, given that it is not excessive.  
🡪 If IHL does not apply: Use of force must be the last resort including the use of force in personal SD against imminent threats.   
i.c. doesn’t matter what applies: as snipers shot directly on marked civilians as journalists.   
🡪 If Israel is an occupying power, an occupying power must maintain law and order.   
GG: law enforcement is also relevant in occupation and NIACs. In times of civilian unrest, that is not armed conflict, it is the maintenance of peace and security, like in peace time. Under law enforcement, use of force is last resort. Objective is to capture individuals, not to kill them. Should use other measures e.g. rubber bullets before killing.  
🡪Israel states that if they’re dealing with NIAC, they can kill civilians. They also claim that in an NIAC, there are different rules in relation to civilian unrest – law enforcement under armed conflict permits more than in peace time. (GG says this view is as a precedent very dangerous)

**What did the international community do in order to “respect and ensure respect” for IHL?**

**🡪** Basis is the obligation to respect and ensure respect for IHL: Art. 1 common Art. GC, API 1I  
🡪 UN independent commission of Inquiry: Created by the HR council in May 2018, qualified the situation as civilian unrest not CoH , Finding violations of IHL and HRL by Israel, even potential war crimes and crimes against humanity, blaming Hamas as well for failure to prevent the use of incendiary kites and balloons  
🡪 Condemnations of the part of NGO’s   
🡪Egyptian and UN Mediators

**Which type of monitoring was in place?**

🡪From the UN commission and from independent human rights groups (Vor Vorlesung)

# **V7: NIACS - Mexiko Drug War**

**AN:** the State is responsible for torture and many disappereances (forced),   
Second Article: Many deaths due to gang violence, even in ambulances of the red cross and in restaurants.   
Pick and choose? Mexiko is simply killing and doing things that are only allowed under IHL, but not under HRL. But they say no we don’t have an armed conflict.   
Risk of perversion? That other states could do the same and use military means to fight “crime”.   
Cons against non-international armed conflicts.   
Violence increase by targeting killings or security detentions  
She is a positivist lawyer and wants to apply IHL. But for a humanitarian stand.   
Extremely high rates of drug-related homicides. E.g. 2018: 28’000 homicides, Regular armed clashes between Gov. and cartels, US support to Mexico to fight “drug war” (financial, training, equipment, reforms).

## Guiding questions

**What are the sources of IHL applicable to non-international armed conflicts?  
🡪** Treaty law:   
Common Article 3, Additional Protocol II (Art. 1 II excludes all internal disturbances, tensions riots, sporadic acts of violence! Only armed conflicts)  
THUS: Few rules. Difficulties in adopting treaty rules for NIACs)  
See Drafting history.  
🡪 Customary law:   
Progressive recognition of the customary nature of many IHL rules for both IAC and NIAC.   
Theoretical challenges  
Should the practice of organized armed groups be taken into account? (not the case right now)  
Does the law of NIAC become unrealistic?  
Is it still relevant today to maintain the difference between IAC and NIACs?  
🡪 IHL rules for NIACs are binding upon both States and organized armed groups (OAG).   
Various theories to explain why IHL rules are binding upon OAG.   
This does not change the legal status of OAG. See last sentence of CA3 (6.26) and art. 4 API.   
🡪 How to improve respect by OAG?   
See work of Geneva Call. (tried to negotiate with organized armed groups)   
Increase reward? (that the fighter respects IHL, as right now even If he respects everything then at the end of the conflict he can still be prosecuted by the state for ex. Murder)?

**Why is IHL for non-international armed conflicts less developed than IHL for international armed conflicts?**

Part of the concept of sovereignity. State has the obligation to ensure security on it’s soil.

**How does IHL define a non-international armed conflict?**

🡪Definition of common Art. 3. (Organization and Intensity of Violence) see Document Rulac  
🡪 Art. 1 of AP II: It’s not meant to be to replace Common Art. 3, just restrict it. In addition to everything of Common Art. 3 we need to prove that they have some *territorial control*. APII will not cover extraterritorial NIACs. Ex. US vs IS is not in the US so not application. (Majority view) And APII does not cover fights between non-state armed groups. We need one side the government who ratified the AP II and one side armed group.  
Achtung CA 3 sagt auch auf dem Territorium vom Staat, aber nach ICRC has fallen into disuse.

**When does a non-international armed conflict cease to exist?**

**What are the main IHL rules applicable to non-international armed conflicts?**

🡪 Common A3: (6.26)  
1. Protection of persons taking no active part in the hostilities (protects also individuals from the own party. Ex child soldiers who get raped by olders? Historically IHL was meant to protect the enemy and not the own forces. It is considered that no distinction is to be made. What matters is if the behavior is part of the hostilities.   
2. Humane Treatment (CA3 I a – c)  
3. Prohibition of adverse distinction (Verbot der nachteiligen Unterscheidung)  
4. Judicial guarantees (CA3 I d)  
5. Obligation to collect and care for the wounded and sick (CA3 II)

🡪 AP II:  
*More precise rules as C3 in:*   
Fundamental guarantees of humane treatment  
Arts 4 and 5 APII  
Judicial guarantees  
Art. 6 APII  
Amnesties! (6 V) (Incentive to follow IHL during conflict for fighters. Important scope of AP II.)  
Wounded, sick and shipwrecked  
Art. 7-8 APII  
Use of the emblem  
Art. 12 APII  
*🡪 Specific rules in AP II:*   
Protection of children  
Art. 4 (3) APII  
Protection of medical personnel and units, duties of medical personnel  
Arts 9-12 APII  
Conduct of hostilities  
Art. 13 APII (civ pop) (civilian population)  
Art. 14 APII (objects indispensable for the survival of the civ pop)  
Art. 15 APII (works and installations containing dangerous forces)   
Art. 16 APII (cultural objects)  
Art. 17 APII Prohibition of forced movements of civilians  
Art. 18 APII Relief operations

**What are the key legal and practical differences between the law applicable to international versus non-international armed conflicts**?

1. No combatant/POW (prisoner of war) status:   
🡪 Targeting of fighters: same or different from targeting of regular combatants? Majority view: Members of organized armed groups can always be targeted. ICRC says in an NIAC the law doesn’t protect people on their status but based on their activities. So we can only target those taking active part in hostilities. (Different view but actually in the document)  
🡪 Grounds for detention of fighters: same or different from detention of POWs?  
You can detain until the fight ends? Problem it is very hard to say when the fight ends.  
2. No “occupation”  
3. No grave breaches and in the past no war crimes. (First war crime Tadic case: War crimes can be committed by anyone, even a simple civilian. We just need a link to the hostilities and some serious violation of IHL.)  
4. Lack of implementation mechanisms.

**Should the law be strengthened in relation to non-international armed conflicts?**

Yes, more implementation mechanisms and more specific rules but problem that it must be accepted by armed groups. 🡪 Amnesty AP II 6 V.

**What is the interplay between HRL and IHL in non-international armed conflicts?**

IHL the lex specialis also in NIACs? GG yes?  
What if IHL is silent on an issue? Ex. Detention. Does HRL fill the gaps or shall we draw analogies from IHL for IACs?

## **Piece of news**

**Does the situation of violence in Mexico amount to a non-international armed conflict? Why or why not?**

**🡪** Doc RULAC! Pro (CA 3 and AP II 1 (not ratified by Mexico)  
Against: (Ihre Folie 1:1) E.g. Mexico

E.g. Some international lawyers such as Noam Lubell or Yves Sandoz.  
Not OAG, but criminals.  
Purely economic motivation.  
Cartels are not organized as OAG.  
Intensity of violence is doubtful/fragmented despite high murder rates.

**Who would be the parties to the armed conflict?**

Mexiko and Cartel de Jalisco Nueva Generacion.

**Is the intensity of violence sufficient?**

**OS:** The level of armed violence must reach a certain degree of intensity that goes beyond internal disturbances and tensions.  
Factors that are used to assess whether a given situation has met the required intensity threshold:  
Number, duration and intensity of individual confrontations; the types of weapons and military equipment used; the number of persons and types of forces participating in the fighting; the number of casualties; the extent of material destruction; the number of civilians fleeing; and the involvement of the United Nations Security Council.  
**US: siehe RULAC Doc: http://www.rulac.org/browse/conflicts/non-international-armed-conflict-in-mexico#**

**Are the cartels sufficiently organized**?

A series of indicative factors are used to assess whether armed groups exhibit the required degree of organization, such as the existence of a command structure and disciplinary rules and mechanisms; the ability to procure, transport and distribute arms; the ability to plan, coordinate and carry out military operations; the ability to negotiate and conclude agreements, e.g. ceasefire or peace agreements. If the minimum criterion for organization of the armed groups is not fulfilled, there is no armed conflict.

**Should we take into account the motivations of cartels?**

Motivation is irrelevant + is not an objective criterion. See e.g. ICTY, Limaj, 2005, §170 (gedruckt)

**What are the legal consequences if the situation does amount to a non-international armed conflict?   
🡪** If NIAC, main applicable international legal framework is IHL (CA3 + customary IHL; not APII because not ratified by Mexico):   
IHL is lex specialis for HRL  
Direct attacks of cartel’s members is not prohibited. (IHL distinction)  
Collateral damages are prohibited only insofar as they are excessive in relation to the direct and concrete military advantage anticipated from an attack. (IHL proportionality)  
Administrative detention for security reasons is not prohibited by IHL.   
ICRC has a right of initiative (but consent needed to intervene and for instance to visit detainees).

🡪 If it is an internal strife/disturbances, only HRL applies:  
HRL is more protective than IHL regarding the use of force and procedural/Judicial guarantees for detainees.   
Re: Use of force: Law enforcement only. No targeted killing. Objective = arrest. Use of force as a last resort. No “collateral damages”.  
Habeas corpus. No administrative detention for security reasons (unless exceptional situation) and right to a fair trial.

**Does the Government of Mexico recognize the existence of an armed conflict on its soil?**

AN: Mexico never accepted that there is a military conflict on its soil. They say it’s mainly law enforcement. War is only rethorical. They don’t want to recognize an NIAC on their soil, as it gives legitimacy to the armed groups. (not international armed groups is the minority view)

**From a policy perspective, what are the pros and cons of IHL applicability in a situation like Mexico?  
🡪 Pros:** Positivist approach. Apply the law as it stands. Avoids “pick and choose” approach by States like Mexico. IHL is more realistic. E.g. allows administrative detention. Perversion of law enforcement. Gives international rights/obligations to OAG.  
**🡪 Cons**: IHL was not made for this type of violence.   
Vicious circle: violence-increase.   
Targeting of poor and teenage criminals.   
Motivations is an important factor throughout IHL even if not depicted as such as a criterion for IHL applicability.   
E.g. no incentive for cartels to respect IHL as they have no political agenda.   
E.g. impossible to engage in a peace process with drug gangs.   
IHRL and domestic criminal law is a more appropriate framework.

# V8 and 9: Counter Terrorism:

***Guiding questions***

AN: Problem fighters returning after the IS didn’t work out. US Says the best is to let them come home and prosecute them there, rather then let them go free on the world stage.   
UK says no we don’t want them as they are a threat to security.   
Under US law, citizens can loose their citizenship if they fight for an-other country or force. FR and Russia take some of their citizens back to face charges back home, UK strips citizen of their citizenship if they have or are eligible of citizenship of another country + targeting killing of former nationals.   
2 SC resolutions that require every country to take measures to try and stop their citizens from becoming foreign terrorists.   
There is no wave of terrorism by returnees. Only 0.002 percent of returnees (she says there is no clear data on the risk). Defense secretary UK says we need to hunt down the jihadists and kill them, (Gavin Wiliamsons) they are a threat when they come home.   
Phenomenon of people going to other countries to fight (2018 5000 – 6000 people from Europe) described by the UNSC: See UNSC Resolution 2178 (2014): (4.13) “Foreign terrorist fighters” are “individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict”.

**How have terrorist acts been defined in international treaties?**

🡪 From the 1960 onwards there have been sectoral counter terrorism conventions. Sectoral as the definition focuses on certain methods ex. Hijacking, hostage taking, terrorist financing, terrorist bombin, nuclear terrorism etc.   
Ex. Terrorist bombing convention Art. 2. Any person …  
🡪 There have been tries at the UN level but never succeeded.   
🡪 Some regional organisations like the League of Arab states, African Union EU generically define terrorism.

**Why is there no internationally agreed-upon generic definition of terrorism?**

🡪 It is super hard for states to agree on one definition as it encounters many difficulties. Ex. See Art. 2 of the UN draft comprehensive Convention:   
🡪 Ex. Question for difficulties:   
Should the Convention exclude activities of State military forces? Only when consonant with IHL or in any case?   
Should the Convention exclude activities by armed groups? Only freedom fighters?   
Should there be an exception for just causes (e.g. tyrannical regimes)  
Should there be a democratic protest exception?  
Should a political, religious or ideological purpose be additionally mentioned?   
Which damages should be included? Only physical damages?

**How can this lack of definition impact human rights law?**

🡪 Principle of *legality* and *non-retroactivity* (Nicht Rückwirkung):  
“No one shall be held guilty of any criminal offence on account of any act or omission which *did not constitute a criminal offence*, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.” See Art. 15§1 ICCPR.   
🡪 Prescribed by law: Precise (elements of the crime; definition of “terrorist acts”)  
🡪 Non-discrimination (See e.g. Art. 26 ICCPR)  
🡪 UN sanctions regime based on abusive domestic definitions: “unintentional international legitimization of conduct undertaken by oppressive regimes”.

**Which measures/sanctions have been taken by the United Nations Security Council since 2001?**

**🡪** Resolution 1373 (2001) Criminalization of international terrorism (Adopted under Chapter VII (thus (demnach Art. 25 + 103 UNC)   
Criminalization of financing, planning, preparation or perpetration of terrorist acts or supporting terrorist acts, Deny access to or use of their territories by persons involved in terrorist actions, Freezing of the financial assets and economic resources of such persons, Creation of Counter-Terrorism Committee to monitor the implementation of the resolution.  
🡪 Res. 1390 (2002) – Sanctions at specific individuals belonging to Taliban, AQ, and associated forces:   
Adopted under Chapter VII  
Precursor: Res 1267 (1999) - SC Committee concerning sanctions a/ Taliban + Usama Ben Laden. (Al Qaida was not known back then)   
Further expansion. See e.g. Res 2253 (2015)  
Sanctions: 1*) Indefinite freezing of assets:* 2) *Travel bans*; 3) *Arms embargoes*  
List of sanctioned individuals/entities. (pretty impossible to get off the list, as national courts need to oblige to SC resolutions)  
🡪 Resolution 2170 and Resolution 2178 and Resolution 2396 “Foreign terrorist fighters”  
Adopted under Chapter VII  
2170: States are required to take national measures to suppress the flow of ‘foreign terrorist fighters’ to Islamic State, al-Nusra, and others associated with al-Qaeda and to bring them to justice.  
2178: States required to adopt legislation to prosecute FtF (Foreign terrorist fighters) + persons funding/recruiting of FtF.   
2396: To address threat posed by returnees, States are required to collect biometric data of alleged terrorists and develop global watch lists of known or suspected terrorists; Share info globally; Develop investigative and prosecutorial strategies to bring to justice anyone “suspected” of participating or supporting terrorists.

**Are these measures consonant with UN Security Council traditional role? Or are they ultra vires?**

🡪 Measures are: General, permanent obligations, no end in time or geography, de facto legislative measure on criminalization, (UNSC 1373 and 2178), quasi-judicial character (1390 on targeted sanctions)   
Ultra vires? UNSC was not give a legislative or judiciary power, SC is not supposed to deal with progressive development or codification of the law. (for sure controversial)

**Do State obligations stemming from UN Security Council decisions to fight terror prevail over human rights obligations?**

**🡪** UNC SC decisions, Art. 25 UNC (Agree to carry out decisions by the UNC) and 103 UNC (prevail over other obligations of int. law)  
🡪 For the human rights she says, that they are mostly limitable or derogable human rights.

**What are the human rights challenges that have been raised by this sanctions regime and the criminalization of terrorism / foreign terrorist fighters?**

🡪 Sanctions, listing: No effective remedy (Abhilfe, Gegenmittel) at the domestic or international level. No independent judicial review.   
Equivalent to a criminal sanction without the right to a fair trial (e.g. presumption of innocence)   
Concerned are: Right to property, freedom of movement, private and family life, non-refoulement etc.   
🡪 Criminalization of terrorism and foreign terrorist fighters: No definition of terrorism. Principle of legality. Risk of overbroad criminalization at the domestic level.

**How did human rights courts and other tribunals address conflicts between UN Security Council decisions in relation to counter-terrorism and States’ human rights obligations?**

🡪 Ex. HRC Sayadi and Vinck v. Belgium 2008: Complainants are officials of an Islamic charitable foundation allegedly linked with an association on the terrorist list.   
Sanction regime: travel restrictions. Listing. Violation of freedom of movement + right to privacy. (Decided to put in place the sanction regime demanded by the SC)  
Despite State request to de-list the complainants after that Belgium did an investigation and said no terrorist funding.   
Family filed complaint in front of the *human rights council*. They did not decide to argue between interplay of ICCPR and UNC. But decided that they cannot review the SC decisions BUT the obligations of Belgium under ICCPR. Said that Belgium violated the ICCPR as it was too fast of a listing with not enough evidence.  
Result 2009 the names were delisted.   
🡪 Facts: CAT, Agiza v. Sweden (siehe Unterlagen Humanrights)  
Complainant found guilty in Egypt in abstentia for belonging to a terrorist group.   
Sweden refuses to accept him as a refuge because of UNSC Resolution 1373  
Sent back and tortured in Egypt despite diplomatic assurances.   
Legal conclusion:   
*Violation* of prohibition of non-refoulement + right to an effective remedy, *Despite State duty not to grant safe havens to terrorist. See: Res 1373.*  
Because SC Res requires respect of HRL.  
🡪 Kadi Case before the EU court of Justice:   
Kadi was accused of terrorism, and the EU applied sanctions against the individual.   
1. The EU court of Justice First instance, 2005:   
SC decisions prevail (unless jus cogens)  
2. European Court of Justice: Grand Chamber 2008  
Overturns the decision  
Community acts must respect HRL  
Violation of the right to property + effective remedy (was offered no explanation why put on sanctions list, so not enough info to fight against that listing) (Dieser Cadi Case 1 ist in den Unterlagen NZZ)  
Required the EU to adopt new regulations.   
3) November 2008: Commission adopted a new regulation (was provided that info was given to persons under sanctions)  
Maintains freezing of Kadi’s funds.  
4) Filed new complaint, against the new regulation. General Court of the EU, 2010 (previously known as the court of first instance) (Kadi 2)   
Ruling on new regulation: Re-examination procedure by the Sanctions Committee fails to offer guarantees of effective judicial protection, unsufficient procedure before the Commission.   
Violation of the right to an effective remedy, right to property.   
Court annulled the Commission’s regulation and said that as long as there is no effective remedy on UN level this void must be filled on the EU level.   
10 years after the listing he was delisted. She said there wasn’t much evidence in the first place.  
🡪 Nada vs Switzerland 2012: (in Unterlagen Tages Anzeiger)  
Nada was in an Enclave, Campione d’Italia, was accused of terrorism and listed by the US.   
Facts: Interference with the right to private and family life following SC sanction regime in the context of the fight a/ terrorism. Problem he was old and sick and could not access hospitals and couldn’t visit his family in Italy.  
Issue: Does SC sanction regime prevail over the right to private and family life of the applicant?   
Court does not directly answer this question. Harmonization theory. HR must be interpreted in harmonization of the SC decisions.   
HR can be restricted: VSS  
1. Legal basis for limitation: The SC resolution  
2. Legitimate aim: Counterterrorism  
3. Principles of necessity and proportionality. Court said, that CH has some latitude in applying the SC resolution. Problem here was that CH did not communicate their findings of their investigation to the sanctions committee and that’s why the proportionality was not fulfilled and we have HR violation. Switzerland did not ask the delisting.   
Conclusion: Interference was not « necessary in a democratic society ». Violation of the right to private and family life and right to have an effective remedy. 🡪 UNC 103 is very nice, but not the end of the story.

**To what extent may UN Security Council counter-terrorism measures (especially regarding the financing of terrorism) negatively impact humanitarian action?**

**🡪** If OAG are labelled as terrorists we have a listing and wide prohibition of “material support” etc. Even bringing food to war zones, where there could be terrorists.  
🡪Risks thereof:   
1. Criminalization of activities of humanitarian organizations  
E.g. visit + material assistance to detainees. Ex. ICRC discusses with all belligerent parties, even Al Qaida. (But ICRC is not the problem here as they have a mandate) She said it’s the job of NGO’s to talk with all belligerent parties.   
2. Obstacles to the funding of humanitarian activities.  
3. Non-acceptance of the notion of neutral, independent and impartial humanitarian action.  
🡪 ICRC Recommendation (ICRC Challenge Report 2011 and 2015)  
1. Measures aiming at criminally repressing acts of terrorism should be crafted so as to not impede humanitarian action.  
2. Recognition that engagement of OAG is expected from the ICRC

**Which measures have been taken by the UN/States to prevent terrorism and counter violent extremism?**🡪1. SC Resolution 2178: States shall not only focus on military solutions on terrorism, but also on the reasons why people go to those groups and so they shall focus on preventing. Recommendation: Member States should develop national and regional Plans of Action in that respect.  
🡪 2.Human Rights Council Resolution, Human rights and preventing and countering violent extremism, 2 Oct. 2015. UN Doc, A/HRC/RES/30/15   
Here violent extremism is defined very broadly. Doesn’t even require actual violence. Risk of discrimination (and abuse) by states of small groups.

**To what extent may the new “preventing violent extremism” agenda positively/negatively impact human rights? Consider for instance the impact on the freedom of opinion and expression of certain preventive measures (e.g. closing of extremist mosques, websites, mass surveillance on the web etc.).   
🡪** Pros:   
Puts HRL at the center, including economic, social and cultural rights.   
Focus on the root-causes of terrorism, factors in the radicalization process.   
Move away from purely security approaches to terrorism. Softer approach. Non-coercive, preventative measures in managing the risk from violent extremism.  
🡪 Cons:  
“Violent extremism” = undefined concept. Risk of abuses. Principle of legality.   
Criminalization of “glorification of terrorism” or “holding of extremist views”. Stigmatization of certain communities particularly “at risk”. Non-discrimination. Potentially invasive approaches. (e.g. closing of extremist mosques, websites, mass surveillances on the web): freedom of expression, associaty, privacy etc.   
E.g. UK Prevent programme.

## **Piece of news**

**Do States have an obligation to let “foreign fighters” return?**

Int. law: ICCPR 12: Freedom of movement IV: There is a right to return. But the problem is arbitrary, the right is therefore not absolut. We can limit the entry as long it’s not arbitrary.  
1. Legal basis  
2. Legitimate aim: that’s mostly given as terrorist returnees carry risks, protection of the country.   
3. Proportionality and siehe oben: Difficult, we need to look at every person in particular. Ex. Was it a fighter, was it the wife of the fighter or even the child, is the fighter disappointed by the IS. Shall all be taken into account.   
And OWN country is much broader than only the citizenship. Is maybe also the state of residence.

**In other words, do “foreign fighters” who have the nationality of a European country, for instance, have a “right to return” home under international law? Is this right absolute?**

**Does international law prohibit the stripping of citizenship?**

🡪 Art. 15 of the Universal Declaration of Human Rights:   
(1) Everyone has the right to a nationality.  
(2) No one shall be *arbitrarily* deprived of his nationality nor denied the right to change his nationality.  
🡪 Art. 4 of the European Convention on Nationality, ratified by 20 states of the Council of Europe.   
a) everyone has the right to a nationality;   
b) statelessness *shall be avoided*; (See also art. 7§3)  
c) no one shall be *arbitrarily* deprived of his or her nationality (…)  
🡪 Art. 8 of the Convention on the Reduction of Statelessness (not CH)  
Prohibition from depriving an individual of citizenship if doing so would render him or her stateless   
Exception: it may be legitimate where conduct is ‘seriously prejudicial to the vital interests of the State’.  
🡪 Other relevant human rights: prohibition of non-refoulement; right to private and family life.  
Also, here we have the key word arbitrary. We have to look again, at all the reasons above.   
1 – 3. For sure is there needs to be more than just the travel to a country.   
Statelessnes? Problematic, in fact there is a right to nationality. Here the bench to strip someone is much higher than decline someone the right to return.

**On which basis may States prosecute/detain “foreign fighters”?**

**Do States have an obligation to criminalize the travel (or attempt thereof) of so-called “foreign terrorist fighters”? What are the potential legal issues with such a criminalization?**

🡪 See UN Security Council Resolution 2178 (2014), §6:   
decides that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense: (4.132)

(a) their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to ravel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;

(b) the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and,

(c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;

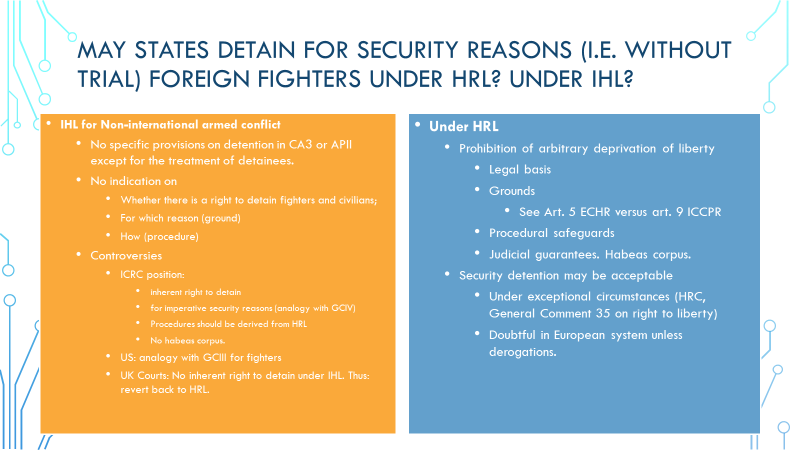
🡪 Potential legal issues with criminalization?  
Principle of legality. (no def. of Terrorism)  
Abuses by States in relation to political opponents.   
Discrimination.  
Exceptional law becomes ordinary law.   
Decorative international law invocation without concrete enforcement  
No data to quantify the threat of FtF + singular approaches to all returnees

**Do States have an obligation to prosecute “foreign fighters” who have allegedly perpetrated international crimes (e.g. war crimes)?**

* Ist vor allem ein customary law.   
  **See e.g. art. 49 GCI (6.28). (See also 50 GCII; 129 GCIII; 146 GCIV; 85 API).** 
  + “Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such **grave breaches**, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.” Aut dedere aut judicare.
* **Rule 158 of the ICRC *Customary* IHL Study**
  + “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.”
* **Preamble of the ICC Statute:** 
  + recalls “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”
* *See also:* Genocide Convention, Article VI; Convention against Torture, Article 7.

**May States detain for security reasons (i.e. without trial) foreign fighters under human rights? under international humanitarian law?**

For NIACS as the fight against IS we have no specific measures for that.   
Under HRL. We have this prohibition, so we have to have all the points under that fulfilled, legal grounds etc. Judicial guarantee: Habeas corpus, that you have to right to challenge the detention in front of a court.

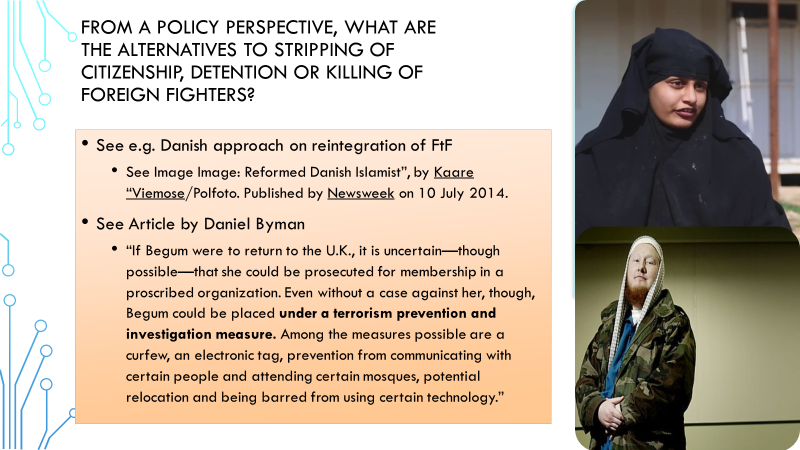


**May States target and kill alleged “foreign fighters” whenever and wherever they are located under human rights law? under inte rnational humanitarian law?**

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Assumption NIAC between UK and IS. So not prohibited is the killing of fighters. Problem if fighters cross borders and are suddenly in Switzerland. That’s a very broad understanding of a geographical of the application of IHL.

**From a policy perspective, what are the alternatives to stripping of citizenship, detention, or killing of foreign fighters?**

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# V10: Migrations:

AN: 2011: uprising and armed conflict (end of Qhadafi’s 40-year rule in Libya), 2014 NIAC siehe RULAC

**What is a migrant?**

🡪No agreed legal definition of the term « migrant   
1. someone who changes his or her country of residence?  
2. someone who is outside a State of which he or she is a citizen or national?  
🡪 Legal categorizations in some treaties:  
Migrant worker : Art. 2 I «refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national » (Convention on the Rights of All Migrant Workers CMW)

**Think of five good reasons for a person to leave her or his country. Do you consider that all/some of them could lead to the refugee status? Are all migrants refugees?**

No often no fear of being persecuted (just VSS )

**What is a stateless and an internally displaced person?**

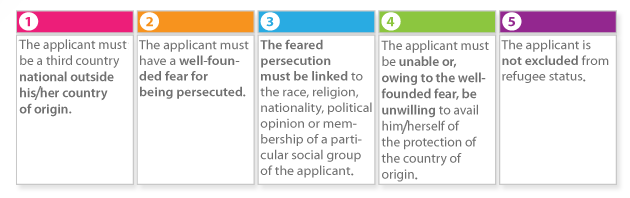
🡪 A stateless person ”means a person who is not considered as a national by any State under the operation of its law” (Art. 1 1954 Convention on Statelessness**)  
🡪** Internally displaced persons are persons “who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border” (1998 Guiding Principles on Internal Displacement)

**What are the conditions under the 1954 Statelessness Convention that a person has to fulfil in order to be qualified as stateless?**

See art. 1

**What is a refugee?**

🡪 1951 Refugee Convention: Art. 1 (A) II.

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The list is exhaustive  
Declaratory effect of refugee status recognition  
Refugee and asylum-seeker are protected by refugee law (principle of non-refoulement under the 1951 Convention Art. 33)  
 **Can a person be in danger in her of his country of origin without being granted the refugee status?**

**What is the principle of non-refoulement?**Applies only to refugees and asylum seekers.   
🡪 For refugee law Art. 33 I 1951 Geneva Convention

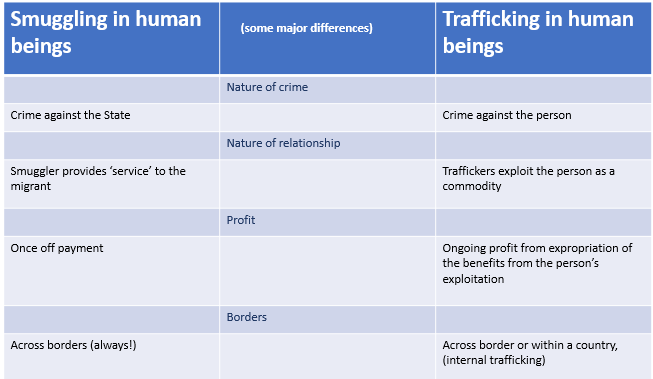
🡪For HRL: CAT**:** Art. 3 I.

Absolute protection. Safety net for everyone. So if someone doesn’t fulfil the 5 conditions above he still goes into the “safety net”  
 **What does the principle of non-refoulement imply in terms of States’ obligations? Can for example a border guard “push back” a migrant trying to enter illegally the country?**

🡪 Applies wherever a State exercises jurisdiction, including at the frontier, on the high seas or on the territory of another State (criterion: effective control)  
🡪 Principle of non-refoulement implies access to asylum procedure, right to stay on the territory during the procedure and a careful examination of all the circumstances of the case (ECtHR, M.S.S. versus Belgium and Greece, 2011)  
🡪 Principle of non-refoulement prohibits « push-back » by border guards and collective expulsion (ECtHr, Hirsi Jamaa and others versus Italy, 2012)  
🡪 controversial is if Pull back is admittet.

**What is migrant smuggling/human trafficking?**

🡪 Art. 3 (a) 2000 Protocol Against Smuggling” : Smuggling is the illegal movement of people across borders in exchange for payment but with no exploitative end purpose (although the smuggled person may still end up being exploited in reality).  
🡪 Art. 3 (A) 2000 Palermo Protocol on Human Trafficking: Trafficking in human beings has as its main objective the exploitation of an individual for profit (often using coercion and control). Trafficking does not need to have a transnational element in order to be trafficking in human beings.

**What are the differences between migrant smuggling and human trafficking?**

**Can human trafficking lead to refugee status?**

Can but not all, we need to see if the requirements of refugee status are met.

**Can human smuggling lead to refugee status?**

Ich glaube wie oben.

**What are the human rights that refugees, migrants and stateless persons are entitled to?**

🡪 All human rights  
« The Global Compact is based on international human rights law and upholds the principles of non-regression and non-discrimination. By implementing the Global Compact, we ensure effective respect, protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle ». (Irgend so eine Association)

**Can human rights (examples: right to life, right to private life, right to work, etc.) be applied differently on the ground of migration status or nationality?**

**What are the rights attached to the refugee status according to the 1951 Refugee Convention (same question as regards stateless persons according to the 1954 Convention)?**

🡪 Refugee law  
Access to courts, right of association, employment, housing, education, freedom of movement etc.  
Ex: right to engage in wage-earning employment (meaning : refugee must be afforded the « most favourable treatment accorded to nationals of a foreign country », restrictive measures – under conditions - are possible)  
🡪 Human rights law  
Right to work (art. 6 ICCPR) –> goes beyond, no discrimination in access to labour market.

**When human rights law offers a better protection, does it prevail over the 1951 or 1954 Convention?**

**What are the links between refugee/stateless persons and IHL?**

Art. 44 / 70 § 2 GCIV. (6.17,6.20)  
🡪 Broader definition of refugee than the 1951 Convention (but nationality criterion)  
🡪 Art. 73 API. (6.23.2)« Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction » -> protected person status irrespective of their nationality

## Piece of news

**What are the dangers faced by the migrants and refugees in Libya or trying to leave Libya?**Doc RULAC!  
Libya: destination and transit country for persons fleeing persecution, armed conflicts, human rights violations or poverty.  
700’000 - 1 million migrants in Libya (source: IOM)  
53’285 refugees and asylum seekers in Libya as of 30 September 2018 (source: UNHCR)  
Libya is a very important transit point to Europe: in 2017, 119’400 migrants and refugees reached Italy from Libya by sea ; in 2018, 23’400 (Decrease by 80%) 1314 deaths on the sea route, (increasing – getting more dangerous)  
Violations of human rights in the detention centres or outside the centres (abuses by human smugglers and traffickers, armed groups, etc.):  
1. Arbitrary detention (indefinite detention, denial contact with outside world)  
2. Torture, ill-treatment  
3. Return to their country of origin without any examination of the personal circumstances of the case  
4. Starvation, malnutrition and disease (lack of food and water)  
5. Bombing (detention centres close to fighting)  
6. Forced labour  
7. Unlawful killings, forced disappearance  
8. Sexual and gender-based violence, rape  
9. Drowning (Mediterranean sea crossings) -> intercepted and transferred back to Libya by Libyan coast guards (pull back)

**What are the obligations of Libya in relation to migrants and refugees?**

Respect, protect and fulfill the human rights of migrants and refugees (right to liberty, prohibition of torture and ill-treatment, of slavery, right to food, etc.) -> human rights provide protection to all, regardless of migratory status  
Rescue people at sea  
Fight against human trafficking and human smuggling  
CESCR 2: Prohibition of discrimination. (auch ICCPR?)  
prohibition of arbitrary detention, ICCPR 9. Detention solely on the migration status can amount to torture!  
ICCPR 12 II: Liberty of leaving the country

**What are the obligations of the EU Member States in relation to migrants and refugees trying to leave Libya/reaching their shores?**Prohibition of any assistance, participation, encouragement to pull back. See Doc (A/HRC/37/50)

**anning the veil**

Loads of reasons why women wear it. Usually very religious beliefs to wear the Niqab. Usually their decision and even against the opposition of their families. Critical component to who they are. It is about denying their dignity to prohibit it. Just that it makes uncomfortable is not a valid reason. It is fear of the unknown.   
Could it be a interruption of the look. She can see us, but not us. A lot politicians try to ban it. Sarkozy: Burka is not welcome in France.   
Someone else: It is against women and against our beliefs and traditions.   
There have been legislative bans around the world. Luxembourg, Belgium, Sri Lanka, Switzerland in some Cantons, France and many more.   
Also, many countries wearing it in public service functions. Regional bans also in Italy and Canada and more.   
Also, a desire to modernize and to distance themselves from those 3rd world countries. Also associating with terrorism and terror. Affront to national values. Women say it is part of my clothes and I will not take off my clothes. Impact that they get excluded from public service.   
Integration of the women in society is harder. But no one has ever had a discussion with one of the women so it’s all prejudices.  
Int. law provisions: Art. 2, 18, 27 ICCPR. Art. 14, 8, 9, 10, 11 ECHR.   
She talks a lot about the Quebec laws and the Canadian law. Quebec banned public servants from wearing religious symbols. Applies only for 5 years.  
Impact on minorities: If you really want to wear your religious symbol then you can’t work in public service. So, it makes, that these women won’t even try in those sectors.   
Mountain police in Canada actually changed their minds for a sikh and allowed it and changed their strict clothing rules. (Sikh had a head and a beard, which was not allowed)  
Destroying peoples dreams to work in certain areas, as ex. Police or Teaching. Contradictory if you say it is promoting women rights, as it is banning people from society, and excluding them and not exactly including them. It just makes, that we don’t see those people anymore.   
Impowering people that they harass those people, go to women and rip of their Niqab and tell them to go back to their countries.   
She had probably a selection bias, as those people who wanted to speak with her a possibly very well educated and furthermore they are especially women that are suffering as they are the one’s wearing those religious symbols and beards are usually not forbidden.   
France banned the covering the face in public spaces.