CURRENT PROBLEMS IN INTERNATIONAL LAW

National University of Singapore

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EXPLANATORY MEMO

Introduction

This memo is to provide some background to the course outline I have attached for my course, `Current Problems in International Law'.

As the title of this course suggests, my hope is that the class will engage with compelling current issues in international law-human rights issues, the use of force etc. It is directed at students who already have some background in international law. As a result, I do not go over some of the classic areas of international law in an explicit way, but I try to provide some sort of an introduction to areas such as sources for those who have not done international law before.

Textbook and Materials

The Textbook I use for this course is a US textbook, Dunoff, Ratner & Wippmann, (3rd edition) (which I prefer to the 4th edition) which I used for my last few years of teaching at the University of Utah. Having tried the treatise approach many years ago (the classic US text, Henkin, which is now Damrosch and Murphy) I find that students are more responsive to the "case" or "problem" oriented approach found in Dunoff et. al. The difficulty in using this approach is that it is important to know the text very well to decide on which themes need to be emphasized, and what doctrines might need to be explained by way of "background" to any problem. The advantage of the treatise approach is that it is much easier to be systematic in covering one topic and proceeding sequentially to the next. The problem with a "case study" approach is that the case might involve many different doctrinal areas that need to be understood if the problem is studied in depth. In my own preparations for class, I find Damrosch and Murphy, Harris and Brownlie/Crawford to be very useful.

In addition to informing students of what materials (pages) they must read for each class, I provide a "rough guide" to the relevant readings (the "Course Guide", below) – and this is what is posted here. The Dunoff text is quite dense, and can be confusing because the case/problem involves many issues, but with the rough guide I hope to give students the sense of what is important when they read, and what issues they should be thinking about. *(The Guide provided here is a combination of my standard "rough guide" together with Asian materials that have been helpfully inserted by Marcus Teo as a way of suggesting how a classic international law course may be taught using Asian materials. This is simply a beginning, and my thanks to Marcus for compiling materials I can use in my future classes).*

I divide the materials I use roughly into 3 categories: (1) Textbook and Course Guide; (2) Supplementary materials-i.e. treaties, articles, readings generally; and (3) Current affairs stories, from the local media, the Economist, international law blogs covering a particular case/incident etc.

The Supplementary materials are used to "customize" the course to the particular location in which I am teaching and also the "current events" taking place. Given that I am teaching now in Singapore, I have tried to use more Asian materials to make the course more pointedly relevant. In every location I teach, I try to find a treaty or case – and there is almost always a treaty or case – that gives an account of how that particular place acquired a particular status or personality in the international legal system. In Singapore, I distribute the different treaties, of 1819 and 1824 between the East India Company and the Sultan of Johore; in the US, Johnson v. McIntosh is a famous case that is rarely taught in international law classes, but which is fundamental as it traces US sovereignty to the conquest of Columbus. Sri Lanka has the Kandyan Convention of 1815, Thailand the Bowring Treaty of 1855 etc. These documents are a useful way to give students a sense of the Law of Treaties as well as doctrines of title – conquest, cession etc etc. The larger point made through this exercise is that international law is the very foundation of the existence of the state, even if few appreciate this.

Teaching and Assessment

I use a combination of "Socratic method" and lecturing.

Students are required to complete three different exercises in this class:

1. Preparing an argument for a short Jessup-type problem (the problem and relevant memo are attached); this is to give students the opportunity to learn and apply the relevant doctrines and also learn how they might be used for formulate arguments; and to develop their oral presentation/argument skills. I also want them to experience a different method of learning-students are far more focused when they have to make an oral presentation before the whole class. (I had a small enough class to make this exercise feasible – in bigger classes I conduct a class discussion and call on students).

2. Writing a 2000 word essay about some current debate about international law or its doctrines. I want students to feel they can participate in the debates taking place on blogs etc about particular issues. Here the purpose of the assessment is to encourage students to develop their writing skills and also to read scholarly literature on a topic and connect that literature to a purely doctrinal approach. This part also usually requires students to engage with the `history and theory' aspect of the course. (I attach the exercise-the content will vary depending on the current issues we have studied. In this instance, we had spent some time on Spain and Catalonia).

3. A final exam: this takes the form of a fact problem-in effect a Jessup type international case. I sometimes include an essay question something like "`International law is worse than useless, it is positively dangerous'. Discuss making reference to materials we have covered'.

By way of general observation, I have found that over the years, I spend more time teaching less. In the earlier part of my career I was determined to cover ALL the materials, no matter how superficially. Now I try to ensure that my students understand the basic techniques of international law – this in the hope they can use those techniques to deal with whatever new material they encounter, even if it is in a field of international law we have never covered.

Tony Anghie

COURSE GUIDE

Introduction

This course provides students with an overview of current problems in Public International Law. Starting from the history thereof, this course will build on discussions of its fundamental theories, sources of law and the actors in the international legal order, before covering contemporary issues involving issues such as Human Rights, International Criminal and Humanitarian Law, and the Use of Force. While studying classical doctrines of international law, the course will also emphasize Asian materials and history, this in an effort to understand the relationship between international law and Asia.

Class 1: the History of Role International Law

History

Peter Malanczuk, *Akehurst's International Law* 7th Ed (Routledge, 1997), at 1-7 and 15-18

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010) at 4-11

Antony Anghie, `The evolution of international law: Colonial and post-colonial realities', *Third World Quarterly*, vol. 27. (2006) pp. 739-753

Study the chapter on the history of international law in *Akehurst*: Who are the major actors in international law that you can identify in this history? Is the history of international law about people? About countries/states? About particular doctrines? About famous scholars and their ideas? History is also about events. What events are central and defining in this history? Where do these defining event take place? How do these events generate problems that are perceived in legal terms? In what ways does our understanding of history shape our approach to international law? Our understanding of doctrine? Is international law `Eurocentric'? Does it matter? Many Asian countries have experienced some form of imperialism. What does this history suggest about the relationship between interntional law and imperialism?

Role

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010) at 12-33

Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia / Malaysia), Judgment (2002) *ICJ Reports* 625, at [34]-[43] & [49]-[52] – *cf Dissenting Opinion of Judge ad hoc Thomas Franck* at [38]-[47].

Beckman et. al., *Promoting Compliance: the Role of Dispute Settlement Mechanisms in ASEAN Instruments* (CUP, 2016) at 12-36 (skim)

Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order of 8 October 2003 (2003) *ITLOS Reports* 10 at [22]-[24] and [106].

Consider the *ratio* of *Libya/Chad* (in Dunoff et. al.), the values it prioritises and how it relates to the positivist notion that States are bound only by their consent. Now consider the *Ligitan & Sipadan* case. How does this latter case construct the notion of consent? Do these cases contradict each other?

What is the realist/institutionalism/constructivist debate? Skim the Beckman et. al. reading. How would you characterise the role of ASEAN's internal norms in international law?

What does the *Rainbow Warrior* affair tell us about the role of institutions and the UN in international law? Now read the *Land Reclamation* case – how does ITLOS' role differ, and what are the ends you feel the tribunal attempted to achieve?

Class 2: The United Nations Charter

Charter of the United Nations

Study the Charter, the closest instrument we have of a `World Constitution' to get a sense of the basic concerns and principles of international law and institutional structures. Focus on key themes: the fundamental principles of the Charter, and particularly important provisions, the different organs of the UN and their functions (the General Assembly, Security Council, ICJ etc).

Consider the following – how is the Charter expected to work to resolve international disputes? How can we see the Charter as reflecting the history of international law that we studied in the previous class? What new concerns are raised in the Charter? Is the Charter adequate for the challenges of today or do we need a revision of the Charter?

Class 3: Sources of Law Part I – Treaties

The Purpose of Treaties in International Law and Relations

Statute of the International Court of Justice, Article 38

Vienna Convention on the Law of Treaties Articles 2, 3, 6, 7, 8.

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010) at 37-47

What is a treaty – a contract, a statute, a constitution, or something else? Do different treaties perform different roles? Why are treaties useful to its States Parties?

The Validity of Treaties

Vienna Convention on the Law of Treaties Articles 42, 45, 51, 52, 53 & 64.

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 48-52 & 58-60.

Treaty of Nanjing 1842 (Skim)

Katherine A Greenberg, "Hong Kong's Future: Can the People's Republic of China Invalidate the Treaty of Nanking as an Unequal Treaty" (1983) 7 *Fordham International Law Journal* 534

What does "coercion" mean in the context of the *VCLT*, and what is its role in relation to the existence and enforceability of treaties? Consider the *Treaty of Nanjing*, entered into between Britain and the People's Republic of China at the end of the opium war – is there an argument to be made for its invalidity on grounds of coercion?

What is a *jus cogens* norm, and what is its effect on treaties?

Interpretation

Vienna Convention on the Law of Treaties Articles 31 & 32.

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 52-63.

Case concerning the Temple of Preah Vihear (Cambodia v Thailand), Merits, Judgment of 15 June 1962, (1962) *ICJ Reports* 6, at 14-18, 20-24, 26-29 & 32-35 (skim) – *cf Dissenting Opinion by Judge Moreno Quintana*, at 70-71.

Joint Declaration of the United Kingdom and the People's Republic of China on the Question of Hong Kong 1984 (skim)

Lim Chin Leng, "Britain's "Treaty Rights" in Hong Kong" (2015) 131(Jul) *Law Quarterly Review* 348-354

What are the rules of treaty interpretation under the VCLT?

What evidence is necessary for a finding that parties have made "subsequent agreements" as to the interpretation of treaties? Compare the approaches of the majority in *Preah Vihear* to the dissent of Judge Quintana; what were the considerations at play here?

How does one determine the "relevant rules of international law applicable in the relations between the parties"? What was the contention in the Cyprus case (in Dunoff et. al.) regarding the effects of the norm of state sovereignty on the interpretation of the 1960 accords? Now, skim the text of the *Sino–British Joint Declaration* and Lim's article; is there an argument to be made that the HKSAR Basic Law is relevant to the interpretation of the *Joint Declaration*?

Suspension of Treaty Obligations

Vienna Convention on the Law of Treaties Articles 56 & 60.

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010) at 63-68.

Consider the ICJ's contention in the *Gabcikovo-Nagymaros Dam Project* case, referred to in Dunoff et. al., that the parties therefore had a duty to negotiate in good faith arising from the

provisions of treaties. Consider whether, and if so how, this duty may arise in the context of the *Treaty of Nanjing* or the *Sino-British Joint Declaration*.

Class 4: Sources of Law Part II – Custom, Soft Law and Others Approaches

Customary International Law

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 73-92.

Kingdom of Lesotho v Swissbourgh Diamond Mines (Pty) Ltd [2017] SGHC 195 (Singapore High Court) at [292]-[298] – *cf Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 (Singapore Court of Appeal) at [1], [6(b)], and [93]-[99]

What is customary international law? Why is custom legitimate to bind sovereign States? Is the separation of the elements of State practice and *opinio juris* defensible? Read the *Paquete Habana*, *SEDCO* and *Texaco* (Dunoff et. al.) – how were these questions approached in these cases?

Consider the debate over the Permanent Sovereignty of Natural Resources, mentioned in Dunoff et. al. What is the main difference between the position of Secretary Hull and the Mexican Foreign Minister? What are the similarities and differences among UN General Assembly Resolutions 1803, 3171 and 3281? What are the objections developing countries had to assertions of customary international law? How can customary international law be changed once made?

Compare the cases of *Lesotho* and *Yong Vui Kong* from the Singapore courts. What do they tell us about the role of institutions in the development of custom? What might this entail for a specific custom, based on your justification above for why custom is legitimate to bind States?

Soft Law and Other Approaches

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 93-97.

Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance" (2000) 54:3 *International Organization* 421, at 421-423.

Articles on Responsibility of States for Internationally Wrongful Acts, International Law Commission, 2001 (skim)

Amitav Acharya, "Culture, security, multilateralism: The 'ASEAN way' and regional order", (1998) 19:1 *Contemporary Security Policy* 55, at 55-69.

What is soft law? Is it "law"? Why do States, or other international actors, resort to soft law? Skim the ILC's *Articles on State Responsibility*. Is it a treaty, does it create legally-binding custom, or does it do neither of those? If not, what is its purpose?

What is the "ASEAN Way", and what is its role (if any) in the international legal order? What are consequences of its existence for the development of treaty obligations, customary international law and soft law in Asia and ASEAN?

Class 5: International Actors Part I – States

Montevideo Convention Article 1 & 3.

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 111-159.

Christine Chinkin, "The East Timor Case (Portugal v Australia)" (Casenote), (1996) 45 *International and Comparative Law Quarterly* 712, at 713-714 & 723-724.

What is an international legal personality? What are the consequences thereof?

What are the criteria for Statehood in international law? How is adherence to said criteria to be assessed?

What is *uit posseditis*, and how does it relate to a State's claim over territory?

What are the declaratory and constitutive theories of recognition? What are the implications of an adherence to one over the other? Which is more consonant with the norms of an international *legal* order? If States are not obliged to extent recognition, are States also entitled to accord recognition in *any* circumstances – and if the answer is no, what does this mean for the legal criteria of Statehood?

What is the difference between the recognition of a regime *vs* the recognition of a State?

How should we differentiate between secession and other (legal) means of dividing up the territory of a predecessor State?

What is the right of self-determination, what is its weight in the international legal order, and what are the consequences of invoking it? Consider the right's development though the *Aaland Islands* Case, UNGA Resolutions 1514 (1960) and 2625 (1970), the Opinions of the European Communites' Badinter Commission (1991-1992), and the Quebecoi claim to a right to self-determination? What is the difference between internal and external self-determination?

What is the relevance of "oppression"? How can "oppression" be shown? What does the international community's stance on Timor Leste's right to self-determination from 1975-1989 (as described in the Chirkin reading) tell us about this?

Class 6: International Actors Part II – International Organisations, NGOs, and Others

International Organisations

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 159-187.

Antony Anghie, "Time Present and Time Past: Globalization, International Financial Institutions, and the Third World" (2000) 32 *New York University Journal of International Law and Politics* 243, at 243-275.

Pak Chi Young, *Korea and the United Nations* (Martinus Nijhoff, 2000), at 108-114.

William Stueck, "The United Nations, the Security Council, and the Korean War", chapter 11 in Vaughn Lowe et al eds., *The United Nations Security Council and War* (2010) – read only the section titled "Non-permanent Members and the General Assembly"

What is an "international organisation", and what, according to Jacobson (as mentioned in Dunoff et. al.), is their role in the international legal order?

Read the General Assembly Resolutions and Security Council Resolutions concerning the apartheid in South Africa (in Dunoff et. al.), and identify what each requests/demands and how they change in that respect over the years. Consider the different positions adopted by the Assembly and Council. What is the legal basis for the Assembly and Council engaging with these issues? What can we say about the "politics" of each of these institutions?

Consider the *Reparations* case (mentioned in Dunoff et. al.). Do IOs have international legal personality? To what extent can IOs participate in international or domestic legal processes – *de jure* and/or *de facto*? What are the consequences of such participation? What are the principles that should determine whether, and to what extent, a particular IO should be entitled to such participation?

What was the purpose of the "Uniting for Peace" Resolution, which the UN General Assembly passed during the Korean War? Was it an illegal circumvention of the Security Council's decision-making rules, or a legal exercise of the Assembly's powers? If the purpose of the former decision-making rules is to limit the powers of the "Big 5" (in this case, the US), did the General Assembly nevertheless achieve that? What does this tell us about how IOs may operate in practice?

NGOs and Companies

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 189-214.

United States – Import Prohibition of Certain Shrimp and Shrimp Products ("*US Shrimp*") Report of the WTO Appellate Body, WT/DS58/AB/R, 12 October 1998, at [1]-[8] (skim), [9], [29]-[33] & [99-110].

What is a non-governmental organisation ("NGO"), and how does its claim to have a right to participate in the international legal process? Does this claim differ from that of a State or an international organisation? Why is there a concern for the accountability of NGOs – what is meant by "accountability", and to whom should NGOs be accountable?

In *US-Shrimp*, the WTO Appellate Body ("AB") considered whether the US' import ban against shrimp products from (*inter alia*) India, Pakistan and Thailand could be justified as measures "relating to the conservation of exhaustible natural resources". A preliminary issue was whether unsolicited information provided by NGOs should be admissible before the

WTO Panel. What were the arguments of India, Pakistan and Thailand against such admissibility? What was the solution of the Panel (at first instance) and the Appellate Body (on appeal), and on what principles did the Panel and AB ground their conclusions? What do those principles tell us about the right of NGOs to participate in international law?

Revisit the *Texaco* case that we covered in Class 3: Sources of Law Part II. What role have corporations played in the system and functioning of international law?

Consider the Ruggie Report and the prior attempts by international organisations to regulate corporations (Dunoff et. al.). What are the particular problems that corporations create for international law, and how might they be effectively regulated?

Class 7: Human Rights

The Basis and Content of Human Rights

Universal Declaration of Human Rights (skim)

International Covenant on Civil and Political Rights (skim)

International Covenant on Economic, Social and Cultural Rights (skim)

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 403-406, 409-417, 450-463, & 478-487.

Wong Kan Seng, "The Real World of Human Rights"; (1993) *Singapore Journal of Legal Studies* 605

Thio Li-ann, "Implementing Human Rights in ASEAN Countries: Promises to Keep and Miles to Go before I Sleep" (1999) 2 *Yale Human Rights & Development Law Journal* 1, at 12-25.

What was the status of the individual in international law prior to the emergence of human rights law? What contribution was made by the League of Nations to the development of human rights? What were the historical and political factors that led to the emphasis on human rights at the time of the UN?

What are civil & political rights, and what are socio-economic & cultural rights? How do they differ from each other? Do they have different conceptual bases?

What is cultural relativism, and how does that square with the notion of human rights? Do either the universalists or contextualists over-state their case? Consider the argument put forth by Wong – does he deny the existence of human rights, or the concept of dignity? Now consider Thio's overview and critique of the "Asian Values" debate; how defensible is the notion of human rights in Asia?

Fostering Compliance

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 417-423 & 463-478.

Thio Li-ann, "Implementing Human Rights in ASEAN Countries: Promises to Keep and Miles to Go before I Sleep" (1999) 2 *Yale Human Rights & Development Law Journal* 1, at 60-79.

South Korea, *Act on the Performance of Duties by Police Officers* (Act No 14839, 26 July 2017) Article 1(2)

Compare the approaches of the English and Israeli courts in *Republic of Ireland v United Kingdom* and *Public Committee Against Torture in Israel v State of Israel* respectively. (Dunoff et. al.). How did both of them deal with the notion of "necessity"? Which court applied a higher standard of rights-scrutiny? What was the justification given for the differing standards?

South Korea's *Police Duties Act* Art 1(2) states that "the authority of police officers under this Act shall be exercised to the minimum extent necessary for performing their duties and shall not be abused". Does this compare to the English or Israeli approach mentioned above, or does it seem to be something else?

Consider the provisions in the *ICCPR* and *ICESCR* related to the enforcement of human rights (if any). Given your answer above on the differences (or lack thereof) between civil & political rights and socio-economic & cultural rights, should the enforcement of both vary?

Consider the approach taken by the European Court of Human Rights in "l'affaire du foulard" (in Dunoff et. al.), and contrast it with the approach suggested and investigated by Thio. Is legal enforceability the only – or the most effective way – to secure compliance with human rights? What other methods are possible, and what are the advantages and disadvatages thereof?

Class 8: *Jus in Bello*

International Humanitarian Law

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 489-513.

Ramesh Thakur, "Global norms and international humanitarian law: An Asian perspective" (2001) 83:841 *International Review of the Red Cross* 19, at 19-33.

What is the difference between the "law in war" and the "law of war"? Consider the evolution of this body of law, and the notion of war – how do we explain the existence of any law at all in the midst of war?

How do we characterise a dispute as one covered by the *jus ad bellum*, or the *jus in bello*, or both? What are (or what should be) the implications of such a characterisation? Compare the majority's approach in the *Nuclear Weapons* case against the approaches in the dissents of Judges Weeramantry and Higgins – does this shed light on the issue?

Read carefully the Lieber Code of the United States (in Dunoff et. al.); what are the main principles structuring the conduct of war? Is there any constraint on "military necessity"? How does the Code suggest differences between civilized and uncivilized people? What are the tensions evident in the principles and how are they resolved?

On what grounds did the majority in the *Nuclear Weapons* case determine that the use of nuclear weapons was not unlawful? Consider: (i) How did they rule on the question of the existence of customary international law on the issue, and what does this tell us about the interaction between treaties, custom and soft law? (ii) Did the court make reference to the notion of "necessity" when considering the use of nuclear weapons alongside the principles of international humanitarian law, and if so did it differ from how the concept of "necessity" is treated in human rights? How did the dissents of Judges Schwebel and Weeramantry deal with the issue?

Consider Thakur's argument on the importance of norm-development for the purposes of international humanitarian law. Why does he bring in such issues? How does he relate the notion of humanitarian law to human rights? What are the challenges that may arise in the development and enforcement of such norms in Asia?

International Criminal Law

Convention on the Prevention and Punishment of the Crime of Genocide

Statute of the International Criminal Court Articles 1-3

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 565-582

Antony Anghie & B S Chimni, "Third World Approaches to International Law and Individual Repsonsibility in Internal Conflicts" (2003) 2 *Chinese Journal of International Law* 77, at 88-96

Robert Petit & Anees Ahmed, "A Review of the Jurisprudence of the Khmer Rouge Tribunal" (2009) 8 *Northwestern University Journal of International Human Rights* 165, at 166-174

What is the purpose of an international criminal law? What are the primary challenges that arise in the determination and enforcement of international criminal liability? Considering the Anghie & Chimni/Petit & Ahmed readings, how should international criminal law develop?

What does *nullum crimen sine lege, nulla poena sine lege* mean? Why is it a "natural principle of justice"? Consider *US v Alstoetter* (in Dunoff et. al.); what are the different considerations that one need consider when applying the rule in international law? Is it broader or narrower than the rule as applied in domestic law? Is this difference justified given the justification for the rule's existence?

Consider the facts of the Khmer Rouge's atrocities in Cambodia (in Dunoff et. al.) – do they amount to genocide under the *Genocide Convention*? Which argument for or against that conclusion is the most persuasive? Should the interpretation of the *Genocide Convention*

similarly affect the interpretation of the *Nuremberg Charter* and the *Statute of the International Criminal Court*?

Class 9: Use of Force Part I

UN Charter Articles 1, 2, 24, 25, 33, 39. 40, 41, 42, 43, 51 & 53.

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 825-865.

When is it legal to go to war? Does the *UN Charter* determine this question? Insofar as it does, to whom does the *Charter* vest the authority to determine that question?

Consider the events leading to Iraq's invasion of Kuwait. Could Iraq have justified their actions as self-defence? Read UNSC Resolutions 678, 686, 687 and 1441; what does each seek to do, and how does each characterize the use of force?

What limits are there to the use of force in self-defence? Given your answer to whether and how the *UN Charter* determines the question, what elements need to be satisfied such that the use of force in self-defence is legal? What is anticipatory self-defence, and pre-emptive self-defence? Is there a difference?

Revisit the readings on the Korean War in Class 5: International Actors Part II. Consider the argument to the effect that when the UNSC is gridlocked and ineffective, it is legitimate for other UN organs or even UN Members to act out of necessity. Is this argument persuasive?

Class 10: Use of Force Part II

Intervention

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 866-906.

Ramesh Thakur, "Global norms and international humanitarian law: An Asian perspective" (2001) 83:841 *International Review of the Red Cross* 19, at 34-41.

Nicholas J Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (OUP, 2002) Chapters 2 & 3 (Skim)

Jürgen Haacke, "Myanmar, the Responsibility to Protect, and the Need for Practical Assistance" (2009) 1 Global Responsibility to Protect 156, at 156-176.

Is intervention permitted under international law? Is this an issue to be determined by the *jus ad bellum* or the *jus in bello*, or both? Consider *Congo v Uganda* and the *Nicaragua* case (Dunoff et. al.); is there a difference between intervention by consent or otherwise? When is consent given for intervention – how easy is it for such consent to be implied?

Is humanitarian intervention permitted under international law? Consider the *Kosovo* conflict, and the background thereto (Dunoff et. al.), in particular the involvement of the US, NATO and the UN, and the arguments put forward by all sides in *Legality fo the Use of Force*

(*Yugoslavia v Belgium)* and the commentary that followed thereafter. Is Kosovo precedent for a right of humanitarian intervention? What support, if any, does India's intervention in East Pakistan and Vietnam's intervention in Cambodia (in Wheeler), provide for the proposition that such a right has developed – given the facts surrounding those interventions, the claims of India and Vietnam, and the responses of the international community?

What is the "responsibility to protect"? On what grounds is such a responsibility claimed? Is this responsibility consistent with the principle of State sovereignty, and if so how? Consider how the R2P principle was invoked in the wake of Cyclone Nargis in Myanmar (described in Haacke); was the principle invoked here the same as that in Kosovo, or was this approach fundamentally different? In particular, was ASEAN's involvement a relevant difference?

Use of Force & Self-Defence in a New Age

Jeffrey L Dunoff, Steven R Ratner & David Wippman, *International Law Norms, Actors, Process: A Problem-Oriented Approach* 3rd Ed (Aspen, 2010), at 932-946.

Examine the international community's responses to the 9/11 attacks in UNSC Resolution 1368, 1373, GA Res. 56/1 and the Statement of the North Atlantic Council (Dunoff et. al.). What do these responses suggest about the powers of the entity involved, how each characterized the attacks, and what actions the international community took following 9/11?

Study the Letter of 7 October 2001 sent by the US to the UN (Dunoff et. al.). What is the idea of self-defence implicit in this letter? How does it compare with concept of self-defence that we have studied so far? What relationship does this letter establish between US action and the Security Council? What are the different ways in which we could characterize the 9/11 attacks? What are the consequences that follow?

Was Afghanistan responsible for the 9/11 attacks? Examine the *Articles on State Responsibility* (only the excerpts in Dunoff et. al.) and consider whether Afghanistan met the standards outlined there regarding state responsibility. Are those articles adequate or unsatisfactory?

How does the "war on terror" fit into traditional categories of "war" and "armed conflict"? Is this a new form of war? What rules should apply, if any?