

- **International law and human rights**
  - The Geneva Convention: goals, objectives, legal obligations, limitations (international vs. non-international conflict - common article 3)
  - War crimes
  - Crimes against humanity
  - International humanitarian law vs. international human rights law: goals, objectives, limitations, what are the differences
  
- Human rights are rights **inherent to all human beings**. We are all equally **entitled to our human rights without discrimination**. Certain things that **ought never to be done to people** and certain **other things that should be done or given to people**. States assume obligations and duties under international law to respect, protect, and fulfill human rights (understand human rights as **legal rights**)

#### Human Rights (1945-1949)

- Establishment of UN and its Charter (1945)
- Universal Declaration of Human Rights (UDHR) (1948)
  - **Civil and political rights** were to provide protection against abuse by the state
  - **Economic, social, and cultural rights** were to guarantee individual access to essential goods and services
  - Article 3, 7, 13, and 18
  - It represents the universal recognition that basic rights and fundamental freedoms are inherent to all human beings
  - not legally binding, the foundation of international human rights law
- Genocide Convention (1948) - First international treaty specifically focused on human rights
- The Geneva Conventions (1949) - International Humanitarian Law (IHL)

#### International Law and Human Rights

- **Moral duties**: UDHR - Not legally-binding internationally, no state obligations
- **Legal duties (Treaties and Conventions)**: State obligations
  - Positive obligations (right to) - State's **obligation to engage** in an activity to secure the effective enjoyment of a fundamental **right**
  - Negative obligations (freedom from) - Civil and political rights, The state must abstain or refrain from **human rights** violations, Protect the individual against the abuses of the State
- International Humanitarian Law
  - **Geneva Conventions and additional protocols**

- The Hague Convention (1907)
- International conventions regulating the use of or prohibiting certain weapons
- Laws and customs of war
- International Human Rights Law
  - **Convention on the Prevention and Punishment of the Crime of Genocide**
- Customary law
  - ***Jus cogens*** (compelling law) - *International obligations arising from established state practice, as opposed to obligations arising from formal written international treaties*

### The Laws of War

- Jus ad bellum (Right to go war)
  - The legitimate reasons a state may engage in war
  - UN Charter - Article 2, Chapter 7 - Article 51 (self-defense) and Article 42 (Peace enforcement action)
- Jus in bello (*right conduct in war*)
  - can be defined as the branch of international humanitarian law **limiting the use of violence in armed conflicts**
- Main objectives behind IHL
  - Protect those who are not fighting; those unable to fight; Prohibit targeting civilians; Mandate that the sick and wounded have a right to be cared for; Specify that medical workers, vehicles and hospitals can not be attacked; Prohibit torture and degrading treatment of prisoners; Limit the weapons and tactics that can be used in war
- Main principles behind the IHL
  - Principle of distinction - all involved in the armed conflict must distinguish between the persons thus defined (the combatants) and civilians
  - Principle of necessity - In an armed conflict the only acceptable action is to weaken the military potential of the enemy
  - Principle of proportionality - attacks on military objects must not cause loss of civilian life considered excessive in relation to the direct military advantage anticipated
  - Principle of non-discrimination - All protected persons shall be treated with the same consideration by parties to the conflict

### Geneva Conventions

- The **First Geneva Convention**, treatment of sick and wounded in the armed forces

- The **Second Geneva Convention** treatment of sick and wounded at sea
- The **Third Geneva Convention** relative to the Treatment of Prisoners of War
- The **Fourth Geneva Convention** relative to the Protection of Civilian Persons in Time of War

#### Common Article 3

- **Article 3, common to the four Geneva Conventions** covers situations of non-international armed conflicts
- **It is like a mini-Convention within the Convention** as it contains the essential rules of the Geneva Convention in a condensed format and makes them **applicable to conflicts not of an international character**
- Limitations for NIAC - violations of the **Common article 3 were not criminalized until the Statute of Rome (ICC)**

#### Goals of the Geneva Conventions

- They protect people who do not take part in the fighting and those who can no longer fight
- **Identifies specific obligations whose breach may constitute war crimes**

#### International vs. Non-international Conflicts: The Limitations of the Geneva Conventions

- Two types of conflict: International armed conflicts (IAC) and Non-international armed conflicts (NIAC)
- Definition of a conflict in the Geneva Conventions
  1. International armed conflicts exist whenever there is resort to armed force between two or more States.
  2. Non-international armed conflicts are protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State

#### War Crimes

- Nuremberg International Military trial (1940s) - Based on laws and customs of war; war crimes: violations of the laws or customs of war
- The Geneva Conventions (1949) - The commissions of a range of acts, defined as **“grave breaches” in the Geneva Conventions, that are considered violations of the laws and the customs of war** (only in International armed conflicts), Violation of some provisions of the convention may constitute **war crimes. Not all violations are war crimes. War crimes are not a concept in the Geneva convention.**
- International Criminal Court (ICC) - The Statute of the ICC defines war crimes as, *inter alia*, **“serious violations of the laws and customs applicable in international armed**

**conflict” and “serious violations of the laws and customs applicable in an armed conflict not of an international character”**

Crimes Against Humanity

- **Established when traditional understanding of war crimes gave no provision for crimes committed by a power on its own citizen**
- Build on Customary Law, no conventions on crime against humanity
- Different from IHL: Presence of armed conflict is not necessary, emerge through customs (jus cogens obligations)
- Definition: particularly odious offences in that they constitute a serious attack on human dignity or grave humiliation or a degradation of human beings; widespread or systematic attack against the civilian population
- ICTY Article 5 and ICC Article 7

Genocide Convention

- In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group
- Defines and prohibits genocide, and obligate states to prevent and punish genocide
  - More universal obligations (universal jurisdiction)
  - Two broad components
    - The intent to destroy a particular groups
    - The Commission of specific acts in support of the intent

- **Humanitarian intervention and the responsibility to protect**
  - What is it? History, context, and the development of an international norm
  - Legal sources for intervention
  - Norms vs. convention
  - Sovereignty
  - Limitations

#### Intervention within States

- When the UN was founded, state sovereignty was regarded as a central system trait
- This made more difficult the notion of intervention *within* states
- In many ways, this was an historic aberration, given that great powers had often considered such intervention to be righteous
- The notion of unconditional state sovereignty has relatively recently been somewhat relaxed

#### Humanitarian Intervention

- Coercive actions by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death among its inhabitants
- Sovereignty and order vs. Enforcement of human rights

#### The 1990s: a gold era of humanitarian activism?

- The 1990s saw a dramatic increase in the number of humanitarian interventions
- Humanitarian sentiments were **not** decisive drivers of these interventions
  - Most interventions were prompted by mixed motives
- Interventions were more successful in stopping immediate killing; less successful in building long-term peace
- The UNSC has gradually expanded its list of what counts as a threat to the peace:
  - Human suffering, the overthrow of democratic government, state failure, refugee movements, ethnic cleansing

#### Legal Sources for humanitarian intervention

1. UN Charter
  - a. The human rights provisions
  - b. Chapter VII of the UN Charter**
2. The UDHR
3. Genocide Convention
4. The Geneva Conventions and the Additional Protocols

## 5. The statute of the ICC

### The Responsibility to Protect (R2P)

- In 1999, NATO decided to intervene militarily during the Kosovo crisis to stop violence against civilians - despite not having a UNSC mandate to do so
- An international commission found NATO's activities to be 'illegal but legitimate'

### Human rights and humanitarian intervention

- **Chapter VII of the UN Charter:** sets out the UNSC's powers to maintain peace (Preventing Crime Against Peace); authorize intervention
- Article 39: the SC shall determine the existence of any threat to the peace, breach of the peace, or act of aggression
- Article 51: provides for the right of countries to engage in self-defence, including collective self-defense, against an armed attack
- The main problems with Chapter VII:
  - Clear about war of aggression, not so clear about mass murders and crimes against humanity

### International Commission on Intervention and State Sovereignty (2001)

- Avoid future situations like the Kosovo Crisis
    - Where the SC is blocked
  - Avoid situations like Rwanda and Srebrenica
    - Where the world stood aside as a genocide unfolded
  - Establishment of a threshold and criteria for humanitarian interventions
  - Moving the debate from human rights vs. sovereignty to how to better protect endangered people
1. Just cause - is the threat a "serious and irreparable harm occurring to human beings"?
    - a. Large scale loss of life
    - b. Large scale 'ethnic cleansing'
  2. Right intention - is the main intention of the military action to prevent human suffering or are there other motives?
  3. Final resort - has every other measure besides military intervention been taken into account? (this does not mean that every measurement has to be applied and failed, but that there are reasonable grounds to believe that only military action would work in that situation)
  4. Legitimate authority
  5. Proportional means - are the minimum necessary military means applied to secure human protection?

6. Reasonable prospect - is it likely that military action will protect human life, and are the consequences of this action sure not to be worse than no action at all?

#### Responsibility to Protect - R2P

- R2P is a norm and not a law
  - **Sovereignty as responsibility**
- Is an emerging norm that sovereignty is not a rights, the State needs to protect its own population
  - Sovereignty not only entailed rights, **but also responsibilities**
- Commission of specific crimes not the nature of the political regime
  - Responsibility to protect or to prevent?

#### 2005 UN World Summit - R2P Three Pillars

1. A state has a responsibility to protect its population from genocide, war crimes, crimes against humanity, and ethnic cleansing.
2. The international community has a responsibility to assist the state to fulfill its primary responsibility.
3. If the state manifestly fails to protect its citizens from the four above mass atrocities and peaceful measures have failed, the international community has the responsibility to intervene through coercive measures such as economic sanctions. Military intervention is considered the last resort.

#### Main Problems with R2P

- Imperialist Interventionism
  - Impose your own definition of humanitarian intervention
    - National interests, hegemonic culture, potential abuses for political reasons, selective bias
- Moral hazard
  - Those seeking secession manipulate external intervention to advance their political purposes
  - Staging the conditions for mass murder

#### Timeline

- 1990-1995: Failure to intervene on time in Rwanda and BiH (Srebrenica)
- 1999: NATO's intervention in RFY - Against the SC's decisions (Russia vetoed)
- 2003: Coalition intervened in Iraq (USA) - Threat to use the veto against the American resolution
- 2003-2004: No intervention in Darfur (Sudan) - Potential genocide
- 2011: UNSC authorized an intervention against a sovereign state (Libya)