

International Humanitarian Law: Syllabus Supplements

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Editor's Note: This international humanitarian law (IHL) syllabus supplement offers curated articles from Just Security's archives. This resource is intended to be combined with traditional coursecasebooks and other materials in a law school or other higher education classroom setting where these topics are relevant. The selections have been curated to reflect recent, compelling illustrations of core IHL topics that are likely to lead to rich classroom discussion (last updated December 2025; additional relevant analysis may also have been published since then, available on Just Security's [website](#)). As with all articles on Just Security, the articles represent the views of the individual authors.

Proposed discussion prompts are offered for each article.

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A. History, Sources, and Principles of IHL

1. Ryan Goodman, Michael W. Meier and Tess Bridgeman, [Expert Guidance: Law of Armed Conflict in the Israel-Hamas War](#) (October 2023)

Discussion prompts:

- i. Can you identify the primary sources of IHL and the core set of rules that apply to both international and non-international armed conflicts?
- ii. The article highlights several pathways that could cause the Israel-Hamas war to be classified as an international armed conflict. What effect would that have on classification in practice (e.g., the full war-crimes list under the Rome Statute, grave breaches, prisoner of war protections, others)? Which of the pathways raised in the article is the most legally persuasive, in your view? Does it make a difference to your position whether you are providing legal advice to a State government, a human rights advocacy organization, or an international court? How should investigators, journalists, and courts frame their discussion of violations when the classification question isn't fully resolved?
- iii. In dense urban warfare against an organized armed group embedded in civilian areas, does the mainstream IHL approach highlighted in the article give attackers realistic operational space, or is that precisely the restraint IHL is supposed to impose? How should fact-finders separate (a) defenders' unlawful use of human shields from (b) attackers' own proportionality and feasible-precautions obligations, especially when both of these kinds of conduct can harm civilians?

2. Just Security, [Human Rights, Deprivation of Life and National Security: Q&A with Christof Heyns and Yuval Shany on General Comment 36](#) (February 2019)

Discussion prompts:

- i. General Comment 36 extends the ICCPR's protection of the right to life to State conduct with a direct and reasonably foreseeable impact outside a State's borders. Does this broadened standard close accountability gaps — such as those raised by drone strikes, cross-border cyber operations, or transnational surveillance — or does it risk overextending human-rights jurisdiction? What criteria should determine when an effect is “reasonably foreseeable,” and who should decide? How should courts and policymakers draw the line between global human rights obligations and national security imperatives?



- ii. The General Comment provides that lethal force consistent with IHL is “in general” not arbitrary under article 6, but leaves room for exceptions. When should article 6 impose stricter limits – for example, requiring capture when feasible, mandating independent investigations, or treating aggression itself as an arbitrary deprivation of life? How should courts reconcile overlapping obligations under IHL, *jus ad bellum*, and human rights law when those frameworks point in different directions?

3. Sarah Cleveland, [The United States and the Torture Convention, Part II: Armed Conflict](#) (November 2014)

Discussion prompts:

- i. How should we define “conflict” between CAT and IHL? Does the Obama administration’s “conflict preemption” approach preserve meaningful protections against torture while respecting IHL, or does it risk leaving the CAT’s added safeguards toothless in wartime? What are the best arguments for interpreting IHL versus CAT obligations as controlling, and how would each position shape U.S. and other States’ accountability in practice?
- ii. Article 14 of the CAT requires an enforceable right to compensation for torture victims, but the United States argues such remedies are anomalous in armed conflict where IHL envisions State-to-State reparations. Should individual claims for torture be judicially enforceable in wartime, or should remedies remain interstate? What are the legal, institutional, and moral stakes of each approach, and how do evolving practices in European and Inter-American human rights systems challenge the U.S. position? Does it matter if the armed conflict is an internal civil war, a so-called transnational non-international armed conflict, or an international armed conflict?

4. Beth Van Schaack, [United States Report to the UN Human Rights Committee: Lex Specialis and Extraterritoriality](#) (October 2013)

Discussion prompts:

- i. What might explain the United States’s shift in perspective on the relationship between international human rights law and international humanitarian law between the Bush and Obama years? What role might the U.N. Human Rights Committee and the United States’ reporting obligations under the ICCPR have played in this shift, if any? Can you think of any other reasons for this change in legal interpretation?
- ii. What, if anything, does the U.S. position’s shift from outright separation of humanitarian law and human rights law toward a language of “complementarity”



suggest about how States manage legal ambiguity when their practices are under international scrutiny?

B. Triggering the Application of IHL

1. Ryan Goodman, [*Flip Flops?: The Conflict with Al Qaeda Is \(Not\) a War*](#) (September 2013)

Discussion prompts:

- i. What, if anything, does it say about the rules-based international order that legal arguments can and have swung so widely, depending on the policy imperative at stake? What, if anything, does this tell you about international law (positively or negatively), and about the responsibilities of various actors making legal interpretations, particularly (though not only) lawyers of State governments whose interpretations can potentially inform *opinio juris* and customary law over time? What about civil society?
- ii. Taking all of the various “turns” of interpretation together, what is your opinion? As a matter of law, has the United States been engaged in an armed conflict with Al Qaeda? Why or why not? What are the likely positive and negative ramifications of your position?

Note: You may also be interested in Kevin Jon Heller, [*A Reply to Goodman Re: War/Not War with Al-Qaeda*](#) (September 2013)

C. Classification and Status of Persons

1. Jenny Maddocks, [*Membership in a Non-State Armed Group in the DoD Law of War Manual*](#) (February 2024)

Discussion prompts:

- i. How should “membership” in an organized armed group be defined in IHL? Is a factors-based approach appropriate? If so, are the factors listed in the DoD Law of War Manual the right ones, or are they too closely tied to the particular circumstances of the conflicts in which the United States was engaged when those factors were developed? Does a factors-based approach risk including individuals who are only loosely associated with a non-state armed group, or play no role in its military operations? Is the ICRC’s approach more or less viable as a legal matter? As an operational matter?



2. Ryan Goodman, [Al-Qaeda, the Law on Associated Forces and “Belonging to” a Party \(did the new UN drones reports get it right?\)](#) (October 2013)

Discussion prompts:

- i. How do you evaluate “belonging to” as a basis for targeting? In your view, what are the most compelling benefits, and most concerning potential risks, of this approach? More generally, how should international law balance the need for operational clarity with safeguards against perpetual, borderless conflict?
- ii. Should legal categories developed for resistance movements in international armed conflict (e.g., the French Resistance) govern twenty-first-century counterterrorism? Why or why not? Are there alternative frameworks that could preserve humanitarian protections without legitimizing indefinite war, in your opinion?

3. Kevin Jon Heller, [The Problematic “Belonging To” Analogy: A Response to Goodman](#) (October 2013)

Discussion prompts:

- i. Should legal gaps under the law governing non-international armed conflicts, including as it pertains to transnational armed groups, be filled by analogy, or does that raise any particular risks, in your view? Do you have any concerns about the effect on the distinction between IHL and human rights law?
- ii. In asymmetric conflicts involving non-state actors, do you think that analogies between international armed conflicts and non-international armed conflicts must remain symmetrical — or can the realities of terrorism and irregular warfare justify selective extension? What criteria would make such extensions legitimate, in your view? What are the benefits and downsides to such an extension?

D. Conflict Classification

1. Yahli Shereshevsky, [Armed Conflict Classification in the ICC Prosecutor’s Request for Arrest Warrants - Between International Humanitarian Law and International Criminal Law](#) (June 2024)

Discussion prompts:

- i. Taking together all of the factors raised by the author, are you in favor of adopting a mixed conflict approach, or against? Why? Whichever your view, can you formulate



a counterargument supporting the opposite position? If you were advocating to the Prosecutor of the ICC to take a particular approach, what reasoning would you raise, and why?

ii. How would you try to manage the tension that the author raises regarding the differentiation in criminalization under the Rome Statute, between an international armed conflict (IAC) and a non-international armed conflict (NIAC)? For instance, would this inform your approach to classification in certain fora (in which fora and in what ways?), would you advocate for amendments to the Rome Statute, or something else entirely?

E. Civilian Protection Law

1. Michael Schmitt and Marko Milanovic, [*The International Law Obligation to Investigate the Boat Strikes*](#) (December 2025)

Discussion prompts:

i. Assume the role of a prosecutor in a hypothetical court with jurisdiction over the United States' strikes against boats allegedly trafficking drugs from Venezuela. How would you make the case that the United States is under an obligation under international law to conduct an investigation into the strikes? What do you think the strongest and weakest elements of your argument are, and why? What potential consequences would you argue are at stake for the United States? For individual commanders and other officials? For individual armed forces personnel operating under those commanders?

2. Larry Lewis, [*Israeli Civilian Harm Mitigation in Gaza: Gold Standard or Fool's Gold?*](#) (March 2024)

Discussion prompts:

i. What is your assessment of IDF measures to mitigate civilian harm, such as notifications to civilians and "roof knocking"? Are they effective and sufficient, in your view? Why or why not? How do assess the relationship between these measures and the requirements under international humanitarian law regarding protections for civilians?



3. Eliav Lieblich, [On Civilians' Return to North Gaza: What International Humanitarian Law Requires](#) (February 2024)

Discussion prompts:

- i. When large-scale civilian evacuations occur in protracted urban conflicts, in your view, does international humanitarian law meaningfully constrain how long displacement can last, or do shifting operational justifications allow states to stretch “temporary” measures far beyond what the law envisioned?
- ii. If the October evacuation was framed as a precautionary warning — which civilians were free to heed or ignore — what, if anything, is the legal source for *later* refusing reentry once large-scale bombardment ends? Does the shift from active hostilities to asserted “operational control” automatically pull the situation into occupation law, with its duty to permit return, or can Israel continue to rely on the original danger assessment months later?

4. Fionnuala Ní Aoláin, [A Zone of Silence: Obstetric Violence in Gaza and Beyond](#) (February 2024)

Discussion prompts:

- i. How would you articulate the specific protections that States are legally obligated under international humanitarian law to ensure for pregnant women, women giving birth, mothers with young children, and post-partum women and infants? What are their particular vulnerabilities, and how does the law attempt to protect for them? Are there areas where, in your view, the current legal framework itself falls short (as opposed to poor implementation or enforcement of the current requirements)? What, if anything, would you recommend to more effectively protect this population?

5. Yousuf Syed Khan, [The Directive to Evacuate Northern Gaza: Advance Warning or Forced Displacement?](#) (October 2023)

Discussion prompts:

- i. Taking all of the criteria set forth in the article together, how do you evaluate whether the IDF has committed forced displacement? What about persecution? Which factors do you find most compelling in your assessment? If you were arguing the case before a tribunal (whether for the prosecution or the defense), how would you craft your argument to make it the most persuasive it can be, and why?



F. Proportionality, Distinction, and other Core IHL Rules

1. Michael Schmitt, Tess Bridgeman and Ryan Goodman, [Operation Southern Spear: Why the Crews, Drugs, and Boats are Not Targetable](#) (December 2025)

Discussion prompts:

- i. Assuming *arguendo* that the United States has entered into an armed conflict in the context of the strikes on suspected drug boats as it claims, what are the primary reasons that the individuals aboard the boats that were targeted by U.S. strikes were not, in fact, targetable under international law? What about the boats themselves? What about the drugs allegedly onboard the boats? Which of these reasons do you find to be the clearest or most compelling, again assuming IHL applied?
- ii. What is your view on whether war-sustaining objects are or ought to be considered targetable under IHL? Why? Pause and consider - is your argument grounded in law, in policy, or both?

2. Alon Sapir, ["Lies, Damned Lies, and Statistics": The Legality of Statistical Proportionality](#) (July 2025)

Discussion prompts:

- i. How does this article inform your understanding of proportionality under IHL, particularly with consideration for how this requirement is implemented in practice? Does it raise any concerns for you that go beyond the specific example center to the article regarding the IDF's approach to assessing civilian harm? With the article's analysis in mind, how well do you think the proportionality requirement achieves its purpose(s)? Are there any flaws inherent to the law, in your view, or are proportionality problems primarily those of implementation and/or enforcement?

3. Richard Horowitz, [Israel's Pager Operation: Not an Indiscriminate Attack But a Strategic Success](#) (March 2025)

Discussion prompts:

- i. With the article's analysis in mind, make your own assessment of the lawfulness of the Israeli pager operation. Was the operation indiscriminate in your view? Why or why not? Similarly, how do you assess its proportionality? In your opinion, was the incidental loss of civilian life excessive to the concrete and direct military advantage



anticipated? What is the best evidence to support your position, and what are potential counterarguments?

4. Nicholas Rostow, [Revisiting International Law in the Gaza Context](#) (January 2024)

Discussion prompts:

i. With particular consideration for the requirements of both of distinction and proportionality under international law, what is your view on whether the targeting of Hamas tunnels is lawful? What is the best evidence to support your position? Now, make the strongest counterarguments you can against your position. How would you answer those counterarguments? Now conduct the same exercise for hospitals, schools, or places of worship. What would need to be true for such civilian objects to become targetable? What kind of evidence would a decision-maker need to have, in your view, before considering such objects repurposed for military use?

5. Eliav Liebllich, [Protected Persons and the 'Geographic Nexus' Requirement in the DoD Law of War Manual](#) (February 2024)

Discussion prompts:

i. What are the implications of attaching a geographic nexus requirement that requires an individual to be either in occupied territory or in the home territory of a party to the conflict to benefit from “protected person” status in the Geneva Conventions? How does this limit important protections under international law, and how does it affect the prospect of criminal accountability? Is it consistent with the structure of the Geneva Conventions? With their object and purpose? What recommendations would you offer to mitigate the potential harms of a geographic nexus requirement if it were to become accepted?

6. Michael W. Meier, [The Principles of Proportionality in the DoD Law of War Manual](#) (January 2024)

Discussion prompts:

i. With consideration for the views of both the U.S. Department of Defense and the ICRC, which do you think is the better read of the law – that IHL does, or does not, require that military sick and wounded, military medical personnel and facilities, and religious personnel and facilities be incorporated into proportionality analyses? How does the Department of Defense Law of War Manual’s approach to feasible precautions pertaining to these entities inform your view? What risks are raised by blurring the line between proportionality and feasible precautions?



7. Leonard Rubenstein, [Israel's Rewriting of the Law of War](#) (December 2023)

Discussion Prompts

- i. Can you articulate the Israeli legal position regarding proportionality, and what is your view on whether it conflates *jus in bello* standards with those of *jus ad bellum*? What do you make of this position normatively? If the international community more broadly were to adopt the described Israeli position, what implications would this have for IHL's ability to achieve its primary purposes?
- ii. What do you make of the author's analysis regarding Israel's obligations to hospitals under the duty to minimize harm under Additional Protocol I, including that Israel had an obligation to take feasible steps to "ameliorate the severe health crisis within the hospitals in the lead-up to or execution of the assault"? In your view, does or should the duty to minimize harm include a requirement to address catastrophic hospital conditions caused by raids on hospitals?

8. Amichai Cohen and Yuval Shany, [Unpacking Key Assumptions Underlying Legal Analyses of the 2023 Hamas-Israel War](#) (October 2023)

Discussion prompts:

- i. What is your assessment as to how the scope and nature of the war aims undertaken by a belligerent should or should not affect legal analyses relating to the means and methods of warfare, distinction, and/or proportionality? In your view, does a more ambitious military campaign necessarily shift proportionality calculations, including because it may expand the scope of what offers a concrete military advantage? Why or why not? What are the relative benefits and costs of this interpretation?

9. Brian Finucane, [The Prohibition on Indiscriminate Attacks: The US Position vs. the DoD Law of War Manual](#) (May 2022)

Discussion prompts:

- i. What are the various ways in which an attack can be indiscriminate in a manner that is prohibited by law? What are the primary legal bases for the prohibition of indiscriminate attacks, including "those which are not directed at a specific military objective," and to whom are these prohibitions applicable? What risks are raised by the apparent schism in the U.S. Department of Defense's position on the prohibition of attacks not directed at a specific military objective?



10. Eliav Liebllich, [Dispatch from Israel on Human Shields: What I Should've Said to a Dad on the Playground](#) (May 2021)

Discussion prompts:

- i. How, in your view, should decision-makers approach situations where one party to an armed conflict intentionally puts civilians in harm's way? What legal and moral imperatives are implicated in this scenario? What responsibilities does the other (responding) party to the conflict have regarding those civilians? What are the costs, legally and morally, of absolving that party from responsibility for their actions vis-à-vis those civilians?

11. Lt. Col. John Cherry, Sqn. Ldr. Kieran Tinkler and Michael Schmitt, [Avoiding Collateral Damage on the Battlefield](#) (February 2021)

Discussion prompts:

- i. What do you make of the fact that proportionality determinations are made *ex ante*, as opposed to *post factum*, and that an assessment of compliance with proportionality generally hews not to the actual collateral damage that took place, but what was *expected*? Does this inform your view on the effectiveness of IHL? How does the requirement regarding precautions in attack inform your thinking? Evaluate these questions first from the perspective of a legal advisor to a military commanding officer, and then from the perspective of a legal advisor to a civil society humanitarian organization. Does your vantage point change your view of the law?

12. Geoffrey S. Corn, [Precautions to Minimize Civilian Harm are a Fundamental Principle of the Law of War](#) (July 2015)

Discussion prompts:

- i. When should military decision-makers incorporate consideration for feasible precautions into their decision-making process, and why? What effect does incorporating this consideration at differing junctures in decision-making have on civilian risk mitigation? Do you think that the U.S. approach to precautionary measures adequately enshrines IHL's fundamental purpose to serve as "effective and rational balance between the need to employ deadly combat power and the obligation to mitigate the risk to civilians produced by that employment"? Why or why not?



G. Cyber Operations

1. Michael Schmitt, [*The State of Humanitarian Law in Cyber Conflict*](#) (January 2015)

Discussion prompts:

- i. Should the law evolve so that serious cyber operations (e.g., large-scale disruption of critical infrastructure) by themselves can reach the threshold of an international or non-international armed conflict, or is it better to keep that threshold high to avoid “militarizing” cyberspace? How would or wouldn’t lowering the threshold change the legal status and targetability of State hackers, contractors, and members of organized armed groups who work primarily behind keyboards?
- ii. The Tallinn Manual experts treat cyber operations that cause physical damage or loss of functionality as “attacks,” but generally exclude operations that merely alter or destroy civilian data, and proportionality/precautions rules track that boundary. In a world where data loss can cripple hospitals, financial systems, or elections without breaking a single server, should IHL’s concept of “attack” be broadened to cover severe data-only harms, and if so on what criteria (scale, type of data, foreseeability of downstream effects)? If the law does *not* evolve in that direction, are there other legal regimes (human rights law, domestic criminal law, new treaties) that should fill the protection gap for civilians affected by major but non-physical cyber operations?

H. Humanitarian Assistance

1. Tom Dannenbaum and Alex de Waal, [*Time Has Run Out: Mass Starvation in Gaza and the Global Imperative*](#) (July 2025)

Discussion prompts:

- i. What are the primary legal obligations that are implicated in a State’s decision to restrict essential necessities to a civilian population? Are those obligations sufficient, in your view? If not, how would you seek to change the legal obligations pertaining to this issue? Because starvation causes long-term and irreversible harm, what does it mean in practice for States to “do everything reasonably in their power” to stop it? Beyond opening aid routes, what kinds of sustained actions should States view as legally required to protect civilians over time?
- ii. The authors posit that “leaders ought not require legal advice to see the obvious need to act . . . [t]he moral imperative could hardly be clearer.” What do you make of the nexus between law and morality that is raised by starvation and/or famine? Does



the law as it is currently conceived of provide an adequate framework to address this issue? Why or why not?

2. Bailey Ulbricht and Allen Weiner, [Humanitarian Notification in Gaza is Broken: How to Document and Respond When Things Go Wrong](#) (July 2024)

Discussion prompts:

- i. In your opinion, is the humanitarian notification system an effective tool for upholding certain elements of IHL (such as the protections for humanitarians), or has its implementation in conflicts like Gaza undermined the protections it was designed to ensure?
- ii. What do you make of the authors' recommendations for addressing the gaps in the current humanitarian notification framework? What, if anything, would you include in your own recommendations if you were in a position to redesign the notification framework?

3. Rosa-Lena Lauterbach, [The Law of Relief Action – Is Israel Required to Allow Fuel into Gaza?](#) (January 2024)

Discussion prompts:

- i. What resources do you think qualify as “a *necessary* item in terms of relief action for the sustenance or survival of the civilian population,” and why? Food and medicine are generally more clearly established under sources such as Additional Protocol II to the Geneva Conventions, but what about resources such as electricity, cars, shoes, soap, and phones? With consideration for the author's analysis regarding fuel, what kind of “case-by-case” factors would indicate that these or other related items constitute a necessary or essential element of humanitarian assistance under international law?
- ii. With the article's analysis regarding the parameters for humanitarian assistance in mind, what do you make of international humanitarian law's balance between humanity and military necessity? Does the law strike the right balance? Why or why not? If you were negotiating to amend either the Geneva Conventions or the Additional Protocols (or perhaps negotiating a new, superseding treaty), what changes would you make to the current framework, and why?



4. Caroline D. Krass, [Department of Defense Issues Update to DoD Law of War Manual on the Presumption of Civilian Status and Feasible Precautions to Verify Military Objectives](#) (July 2023)

Discussion prompts:

- i. The updated Department of Defense Law of War Manual added a new section regarding the obligation to take feasible precautions, while affirming that “the law of war does not prevent commanders and other personnel from making timely decisions and acting at the speed of relevance, including in high-intensity conflicts, based on their good faith assessments of the information available at the time.” How do you evaluate the relationship between the obligation to take feasible precautions, on the one hand, and the need for timely decision-making by commanders and other personnel, on the other? How well do you think IHL has struck the balance between humanity and military necessity in this context?

5. Rebecca Barber, [The UN Has Options Beyond the Security Council for Cross-Border Aid to Syria](#) (June 2021)

Discussion prompts:

- i. What are the primary parameters for providing humanitarian assistance without host State consent? How do (or should) those parameters apply in the context of Syria at the time that the article was written, particularly in light of diversified territorial control? What do you make of the United Nations Office of the Legal Affairs opinion finding that the United Nations could not legally provide assistance in opposition-held areas without Syrian government consent? If you were to take a counterposition to that opinion, what would the best arguments be, and why?

I. Compliance

1. Tal Gross and LCDR Christopher Hart, [From Ukraine to Gaza: IHL Compliance as a Tool for Preventing Moral Injury](#) (August, 2025)

Discussion prompts:

- i. Does the article’s analysis regarding moral injury and its intersection with IHL compliance inform or change how you conceive of IHL as a body of law? Why or why not? Does the consideration of moral injury, including as a form of force protection, have anything to say about the balance between humanity and military necessity under international humanitarian law?



2. Cordula Droege, [War and What We Make of the Law](#) (July 2024)

Discussion prompts:

- i. Taking all of the article's analysis together, do you think that IHL rules are themselves inadequate, or are core failures tied to problematic interpretations of law or insufficient enforcement? The article asserts that "there is a difference between the law *assuming* a degree of violence and the law *enabling* it." How do you assess IHL in that balance?
- ii. The author distinguishes between outright non-compliance with IHL and interpretations that skirt the law's limits. Do you think interpretations that push the envelope, tilting the balance towards military necessity and away from humanity, are undermining the core protective purpose of IHL? Are such interpretations eroding the law, or making it more likely that States still seek to abide by it by making compliance easier? What would it mean for IHL as a body of law if States are abiding by a watered down set of rules that risks further weakening over time?

Note: You may also wish to listen to the author's podcast elaborating on these issues, available [here](#).

3. Janina Dill, [Law and Survival in Israel and Palestine](#) (October 2023)

Discussion prompts:

- i. What does the author's data regarding public support for compliance with international law regarding the treatment of civilians reveal about the international rules based order, in your view? With this information in mind, make an argument for the value and relevance of international law. Now, make the opposite argument. What, if anything, does this tell you about how lawyers should approach giving legal advice regarding international humanitarian law?
- ii. How do you respond to the Alexander Hamilton quote that "when the life of a nation is threatened 'no constitutional shackles can wisely be imposed on the power to which the care of it is committed'"? Do you agree or disagree? Why? Do you think international law can ever "fall short"? In what ways? What do you make of the author's argument that international law is more likely to be effective in reducing moral wrongdoing than moral arguments themselves?

4. Jelena Pejic, [Expert Q&A on IHL Compliance in Russia's War in Ukraine](#) (April 2023)

Discussion prompts:

- i. The author raises a fundamental question: "[W]hy compliance with IHL by all States and other actors is not better on the ground and how to improve it," *during* an



armed conflict (rather than following one, in a courtroom). What is your answer to that question? What are the primary causal factors leading to incomplete compliance with IHL, in your view, and what would need to be done to improve compliance? Are there changes to be made to the law itself, structural reform of certain institutions, or something else? Is this an issue that *can* be overcome, in your opinion?

J. War Crimes

1. Nema Milaninia, [Time to Revisit the ICC's Position on Head-of-State Immunity?](#) (March 2025); and Todd Buchwald and Charlie Trumbull, [Does the Int'l Criminal Court Impose Too Low a Standard of Proof to Arrest a Head of State?](#) (December 2024)

Discussion prompts:

- i. What do you make of the gap between claimed authority and enforceability of the ICC in the context of head of State immunity? Is it possible to recalibrate the ICC in a manner that addresses this gap effectively? Why or why not? What reforms would you recommend, and why? What are the limitations your recommendations might face, and how might you overcome them?
- ii. With the authors' analysis in mind, what is your opinion on whether the Court should reverse the *Bashir* precedent? Why? Make the argument in favor of reversal. Now, make the counterargument in support of maintaining the *Bashir* decision.

2. Dan Plesch and Steve Kostas, [The Lost Archive: France's Highest Court Should Follow WWII-Era Rejection of Head of State Immunity](#) (July 2025)

Discussion prompts:

- i. What do you make of the United Nations War Crimes Commission and its approach to head of State immunity? Do you agree with the Commission's assessment that the imperative of accountability for certain international crimes overrides traditional immunity frameworks? Does it matter to your view which international crimes are at play – for instance, should only the most serious crimes overcome head of State immunity? How do you think domestic courts like the Cour de Cassation in France should take into account the “extensive, coordinated state practice during the formative period of international law explicitly rejecting head of state immunity for international crimes”?



3. Rebecca Ingber, [Mapping State Reactions to the ICC Arrest Warrants for Netanyahu and Gallant](#) (March 2025)

Discussion prompts:

- i. What do you make of the various State reactions to the ICC's decision to issue arrest warrants for Netanyahu and Gallant? As applicable to their circumstances, how do States seem to have attempted to handle the tension between support for customary international law that *does* enshrine head of State immunity in international tribunals, and treaty obligations under the Rome Statute to comply with ICC warrants? What makes it difficult to infer a position on these issues from the various statements made (or not made) by States, in your view?
- ii. What are some of your most significant takeaways from the mapping exercise regarding State reactions, and what import it may have for both customary international law and the ICC?

4. Tom Dannenbaum, [Nuts & Bolts of the International Criminal Court Arrest Warrants in the 'Situation in Palestine'](#) (November 2024)

Discussion prompts:

- i. The warrants against Netanyahu and Gallant emphasize starvation, murder, and persecution but (for now) omit extermination and notes that additional crimes may be charged as evidence develops. How should the Prosecutor and the Pre-Trial Chamber of the ICC decide when the evidentiary record is strong enough to include the gravest charges, especially for ongoing deprivation-based crimes? Should international criminal law prioritize early, maximal signaling about the nature of the criminal project, or a narrower, more cautiously framed charge sheet that can be safely sustained at confirmation and trial? For whichever position you take, articulate the basis of your view, and the potential downsides of that position.
- ii. States Parties now have clear duties to arrest and surrender Netanyahu and Gallant and to cooperate with ICC investigations, while non-parties like the United States still face "ensure respect" obligations under IHL and the Genocide Convention. When these legal duties collide with strategic alliances, domestic politics, and fears of reciprocity, how should we assess the legitimacy of States' decisions to comply or not comply? What mechanisms — domestic courts, opposition litigation, export controls, or diplomatic efforts — are most likely to shape how governments actually respond to these warrants, in your view?



5. Yusef Al Tamimi, [Dutch Appeals Court, Finding Clear Risk of IHL Violations, Orders Government to Halt Military Deliveries to Israel](#) (February 2024)

Discussion prompts:

- i. The Dutch appeals court treats “clear risk” of grave IHL violations as not requiring prior judicial confirmation and relies heavily on NGO and U.N. reporting to conclude that standard is met. How demanding should the “clear risk” threshold be in export-control cases, and whose fact-finding (government, courts, U.N. actors, NGOs) should carry the most weight? Should national courts be willing to second-guess executive claims that the evidence is uncertain or incomplete, or should they defer more when the assessment involves complex battlefield judgment? Why?
- ii. The court holds that once a clear risk of grave IHL violations exists, mandatory export-control norms and the Common Article 1 “ensure respect” duty must trump foreign-policy concerns, including alliance management with the U.S. and Israel and concerns about factory closure or futility if the United States can still supply parts. Is this a desirable model for how courts should police the boundary between hard legal obligations and diplomatic/strategic considerations? Why or why not? How should other F-35 partner States think about their own obligations when their exports are only one link in a broader supply chain, and when cutting off transfers might reduce their political “influence” over how force is used?

