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School of Law Library
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Telephone (505) 277-0939
FAX (505) 277-0068

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International Law, Spring 2011

Professor Moore

Final Exam (2.5 HRS, CLOSED BOOK)

Short Answer Questions (one hour, 20 questions, 50 points in all)

(these questions should be answered in pen on the lines provided)

1. What is the so-called “Montevideo” definition of statehood? Recall that although the 1933 Montevideo Convention was only opened for signature, signed and ratified by 16 states in the Western Hemisphere, its four-part definition is regarded to have attained the status of customary law. What are these four elements? (4 points)

2. Contrast the Montevideo definition with a more modern conception of statehood. Please identify at least two additional elements now required for the recognition of newly independent states, at least in the context of Europe and Asia. (2 points)

3. **EXTRA CREDIT:** In what instrument, or in what historical and geographic context, were additional requisites of statehood articulated? (2 points)

4. Name four other subjects of international law besides, the state, and define each very briefly. (4 points)

5. “Instruments” are written documents signed by states (through their representatives) that comprise both treaties and resolutions. Contrast these two types of instruments. What makes a treaty different than most resolutions, particularly those adopted by the General Assembly? (2 points)

6. There is one organ of the United Nations whose resolutions may have the force of law. What organ is this, and under what circumstances do its resolutions create binding obligations? (2 points)

7. Give one example of a General Assembly resolution that has come to be obligatory in character. Give one explanation for how this transformation from non-binding resolution to source of legal obligation occurred. (2 points)

8. Define *jus cogens* and provide one example of a *jus cogens* norm. (2 points)

9. Define *opinio juris* and explain the context in which evidence of *opinio juris* is relevant to the determination of the existence of a primary source of law. (2 points)

10. Treaties adopted by the European Union (EU) are automatically incorporated into the domestic law of the member states. How do we characterize such a system? (1 point)

11. Contrast the attitude of European Union member states toward EU law with the perspective of states that require legislative action to implement treaties within their domestic systems. How do we typically refer to such states? (1 point)

12. Give one example of a state, which normally requires formal implementation of treaties by the legislature or parliament, but under rare circumstances dispenses with the requirement of legislative enactment. Under what circumstances is legislative action *not* required in such state systems? (2 points)

13. Identify the two classic principles of jurisdiction. Give an example of a “modern” (post-1945) principle of jurisdiction that a state may use to criminalize the conduct of a non-national, which allegedly occurred outside the physical territory of the state. What kinds of international crimes provide the basis for this modern principle of jurisdiction? (6 points)

14. Define a crime against humanity. (2 points)

15. Contrast the term genocide with other crimes against humanity. What additional requirements are needed to meet the definition of genocide? (2 points)

16. What is the object and purpose of international humanitarian law (IHL)? What are the four customary norms underlying IHL? (5 points)

17. What are the four most widely ratified international humanitarian law treaties? What population does each treaty focus upon? (4 points)

18. What treaty or treaty provision specifically focuses upon non-international armed conflict? Give one example of the sort of war, which might be deemed non-international. (2 points)

19. For war detainees deemed *not* to enjoy the status of prisoners of war, what treaty provisions govern their treatment in detention and at trial? (You do not need to cite treaty provisions by number or paragraph. It is sufficient to provide the name of the treaty and the specific legal protections that it provides.) (1 point)

20. Article 2(4) of the United Nations sets forth the so-called “general prohibition against the use of force.” Please articulate four exceptions to the general prohibition, and give a legal source for each exception. You may include subsidiary sources of law where relevant. (4 points)

Essay Questions (one hour, 2 essays, 30 minutes and 25 points per essay)

- A. In the current conflict occurring in Libya, government forces have been accused of deploying cluster bombs against rebel forces. According to *The New York Times*, “[C]luster munitions are typically anti-personnel weapons that eject dozens of explosive bomblets when detonated. Whether dropped from aircraft or fired from artillery, cluster bombs can scatter dozens or even hundreds of smaller explosives across an area the size of a football field.”¹

The First Additional Protocol to the 1949 Geneva Conventions (Protocol I was adopted in 1977) provides in Article 51:

Art 51. - Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

- (a) those which are not directed at a specific military objective;**
- (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or**
- (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;**

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered as indiscriminate:

- (a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects;**

and

- (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.**

6. Attacks against the civilian population or civilians by way of reprisals are prohibited.

¹ See “Cluster Munitions,” Times Topics, available at topics.nytimes.com/top/reference/timestopics/subjects/c/cluster_munitions/index.html?inlines=nyt-classifier (last accessed April 28, 2011).

7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

8. Any violation of these prohibitions shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians, including the obligation to take the precautionary measures provided for in Article 57.

1. Please make an argument under Article 51 for the lawfulness of the use of cluster bombs by the Government of Libyan (GOL). Assume throughout Question A that Protocol I binds the GOL. (5 points)
2. Please make an argument under Article 51 for the impermissibility of the use of cluster bombs by the GOL. (5 points)
3. Please make arguments for and against the use of cluster bombs under customary international humanitarian law. (5 points)
4. Please assume that the rebel forces have deployed cluster bombs against Libyan armed forces. (This is a hypothetical situation.) What is the relevance of rebel use of cluster bombs to your analysis of the legality of the use of cluster bombs by the GOL under customary or treaty-based international humanitarian law? (10 points)

- B. Eight individuals have been convicted of war crimes and crimes against humanity by the Special Court for Sierra Leone in the aftermath of the civil war that ended in 2002. In addition to criminal prosecutions, victims of civil war atrocities, including war amputees, have demanded reparations. Assume that 10,000 Sierra Leoneans suffered the loss of a limb, ear or nose through intentional mutilation by rebel or government militia forces.

Sierra Leone's gross domestic product (GDP) per capita was \$900 in 2010.² (You may think of GDP per capita as the average share of the nation's wealth allotted to each individual Sierra Leonean.) GDP per capita for the United States in 2010 was 47,400.³

Resolution 60/147, "the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, was adopted by the General Assembly on 6 December 2005. Section VII, paragraph 11, on "Victims' right to remedies" provides:

Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

- (a) Equal and effective access to justice;**
- (b) Adequate, effective and prompt reparation for harm suffered;**
- (c) Access to relevant information concerning violations and reparation mechanisms.**

1. Assume that a majority of the General Assembly, including Sierra Leone, voted for Resolution 60/147. Please make an argument that the Government of Sierra Leone (GOSL) is required to make reparations to all civil war amputees. Include an analysis as to the force of Res. 60/147 as a source of international law. Also suggest a means of determining the appropriate form or amount of reparations. Be creative. (10 points)
2. Please make an argument that the GOSL is *not* required to make reparations. In the alternative, make an argument in favor of limiting the form or amount of such reparations in a specific manner. Again, part of your answer should include an analysis of Res. 60/147 as a source of international law. (10 points)
3. Assuming the GOSL refuses to make adequate reparations to civil war victims, please suggest one mechanism by which amputation survivors might seek a remedy under international *or* national law. Feel free to consider informal mechanisms. (5 points)
4. **EXTRA CREDIT:** Please specifically address the practical reality of Sierra Leone's limited economic resources as a factor in determining whether and to what extent there is an obligation to make monetary payments or other forms of reparation to civil war

² See 2010 CIA Factbook entree for Sierra Leone (available at <https://www.cia.gov/library/publications/the-world-factbook/geos/sl.html>).

³ See 2010 CIA Factbook entrée for the United States (available at <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html>).

victims. Are state responsibilities in the domain of social and economic human rights weaker than in the domain of civil and political rights? (10 points)

NOTE: You have an extra 30 minutes to review your answers. Wishing you a good summer!