



LEGAL STUDY GUIDE

Agenda Item 1

**Crimes Without Borders: The question of international
jurisdiction**

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1 | Welcome Letter

Dear delegates;

My name is Esma Reyyan GÜNLER and recently I study at Kadıköy Ahmet Sani Sani Gezici Ladies' Religious High School. I'm a junior and I will be chairing this committee. This Conference will be my 20th experience.

In this Committee we will discuss two different topics and we expect you to write two different resolution papers. Apart from the debates we will also have fun sessions. We will read anonymous comments that you will write in committee. In addition to this we will play some MUN games. However we should be aware of the fact that we all will be there for the formal sessions. We expect you to join all of the debates that we are going to manage during the formal sessions. Hope to see you at the conference!

2 | Introduction

2.1 | Introduction to the Committee

The UN is composed of 6 primary organs, the General Assembly (also known as the UNGA or GA). It is a forum comprising all 193 UN members. The GA is unlike any other UN organ as it ensures equal power and representation of each member state. The first GA session was held on the 10th of January 1946. The resolutions which the GA adopts are non-binding and serve as recommendations rather than commands. Chapter IV of the UN Charter sets out the composition, functions, powers, voting, and procedure of the General Assembly.

The General Assembly is composed of 5 categories. One of these categories are the committees, of which there are 30. The six main committees are numbered from 1 to 6. The Sixth Committee, or the Legal Committee, deals with legal matters. The Legal Committee is a key actor in the negotiations and the adoption of new international treaties. The Legal Committee assists the GA in "encouraging the progressive development of international law and its codification;" (Article 13(1)(a) of the UN Charter), which is part of an article relating to one of the functions and powers of the GA.

The Legal Committee is the primary forum for any legal questions, mainly concerning public international law. This committee generally discusses common topics regarding:

- The promotion of justice and international law
- Organizational, administrative and other matters
- Drug control
- Crime prevention
- Combating international terrorism,

2.2 | Introduction to the topic

The First issue that will be dealt with in this committee is that of the Question of Universal Jurisdiction. The issue here is to make sure all criminal offences are being prosecuted, no matter where the individual is located, while still respecting state sovereignty.

Before analyzing what the core topic is about, it is crucial to mention the importance of justice in the global community. Justice, in the form of law, is a critical aspect of society. It can ensure public safety and prosecute and rehabilitate individuals who have already committed law violations. By having a stable and impartial justice system, a nation can flourish without meeting any heavy obstacles and avoid impunity, meaning the usually unjustified freedom from prosecution and punishment.

After the atrocities that occurred during World War II, the international community realized the fact that there should be punishment on a global level towards people who commit such crimes. Therefore, the International Criminal Court was created in order to punish the so-called enemies of humanity and one way to prosecute them could be through a principle called Universal Jurisdiction.

If we were to imagine the aforementioned idea, the base would be a term called *Hostis humani generis* or “enemy of mankind”. It is the legal term mainly used to describe a person whose actions go against the international law regardless of their nationality, race, and cultural background. In essence, the enemy of mankind is what universal jurisdiction aims to prosecute and rehabilitate.

It is now clear that International Criminal Law violations can be characterized as critical criminal attacks against the global community. The perpetrators of such actions should be punished through universal jurisdiction mainly in order to combat impunity. Ergo, the principle of the Universal Jurisdiction, having already been adopted by some countries, provides a way to ensure international safety and just trials against enemies of humanity.

Last but not least, some countries on an international level have applied the principle of universal jurisdiction to their national courts. These countries have changed their national legislation in accordance with the universal jurisdiction standards and practice law outside their own territory. Currently, lots of other countries could still apply it or further enhance their existing legislation. On the contrary, a noticeable obstacle is the fact that there are countries which are reluctant to the idea and do not wish to adopt the principle. This major problem prohibits the international community from combating impunity for serious violations of international law.

We must discuss the scope and applicability of this principle. With this issue, so many new questions arise. *To what extent is this principle applicable? Is there absolutely no requirement for a territorial link? To what crimes should it apply? When should it apply? Is the principle in accordance with state sovereignty?* These are all questions that lead to controversial answers, and will be the questions the debate in this committee revolves around.

3. | Key Terms

Crimes Against Humanity (CAH)

Acts committed as part of a widespread or systematic attack directed against any civilian population.

Criminal Justice System

The system in a contextual society by which people who are accused of crimes are judged in court.

Extradition

The formal process of one state surrendering an individual to another state for

prosecution or punishment for crimes committed in the requesting country's jurisdiction.

Extraterritorial Jurisdiction

Extraterritorial jurisdiction is the situation when a state extends its legal power beyond its territorial boundaries.

International Law

A set of laws that all member states agree upon, establishing guidelines to ensure diplomacy and strong international relations.

Sovereignty

The power and ability of a country to control its own government and systems, including the Criminal Justice System.

Tribunal

A special court or group of people who are officially chosen, especially by the government, to examine legal problems of a particular type.

Universal Jurisdiction (U.J.)

Criminal jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction and may be exercised by a competent and ordinary judicial body of any state in order to try a person duly accused of committing serious crimes under international law such as; (1) piracy (2) slavery (3) war crimes (4) crimes against peace (5) crimes against humanity (6) genocide and (7) torture.

4. | Problem Specification

Ensuring the prosecution or punishment of violators of international crimes has its intricacies. However, the main caveat is, and has always been, the principle of universal jurisdiction. Put simply, it is the only principle under international law which requires no jurisdictional nexus between the State invoking jurisdiction and the affected State. Instead, its basis has roots in the very nature of the prosecuted crime. In other words, the gravity of the offence in question is so abhorrent that virtually every State has a legitimate interest in repressing it.

However, in applying the principle of universal jurisdiction, other concepts inevitably seem to create conflict. Can this principle be utilized in such a way as to circumvent immunity, for instance? As a symbol of State sovereignty, immunity is a complex concept in itself, which has not been set aside legally very often. Case law depicts that there are only a handful of prominent cases where immunity could not be invoked, as will be discussed further. The cases of Pinochet and Eichmann, in particular, put into perspective the extent to which universal jurisdiction may be utilized when no obstacles exist in its application. However, with other cases, such

as the Arrest Warrant, this has not always been successful.

Moreover, to what extent is this principle effective in prosecuting perpetrators of crimes and ensuring there is no impunity? Perhaps there are other more effective means to ensure that the perpetrators do not go unpunished, such as the Universal Periodic Review (UPR) and the Responsibility to Protect (R2P) Doctrine? Both mechanisms have been largely contested by the international community, and it is no surprise that both have also received a substantial amount of criticism as well.

Thus, it remains inevitable to ponder over how can the international community ensure that the violators of such heinous offences do not remain unpunished.

These are the questions which your Resolution should focus on. By defining the principle of universal jurisdiction, as well as its scope and implementation in practice, this Background Paper will aim to provide an overall insight into the topic. It is advisable that you, as Delegates, go beyond the scope of this paper to research the topic and particularly the implementation of universal jurisdiction nationally.

5. | Universal Jurisdiction in Theory

5.1. What is Universal Jurisdiction?

Universal jurisdiction is a principle of extraterritorial criminal jurisdiction that is based on the idea that some crimes are so abhorrent that they engender jurisdiction for any state regardless of a territorial or national link to the crime. This principle is justified by the idea that there should be no safe haven for those who commit the most violent crimes. This base for jurisdiction is generally only invoked when no other bases for criminal jurisdiction are available, that is the case when the accused is not a national of the State and when the crime was not committed on the state's territory or against its nationals.

This principle was originally used for piracy crimes. Since pirates operated on the high seas, outside of State territories and were often composed of nationalities from many states, it was very easy for them to escape jurisdiction of any state and thus jurisdiction by all states was necessary. Now, the principle applies to a wide variety of crimes and can be found in both international agreements such as notably the Geneva Conventions and is a well-established principle in customary international

5.2 | When do Problems Start Arising?

Scope

While States recognize the principle of Universal Jurisdiction, it is a difficult principle to implement as it is not only an international law issue but also a national law one. States are entitled to grant their own courts universal jurisdiction over certain crimes on the basis of a national decision. Since national decisions differ from state to state, the principle is not uniformly applied, and its scope is vague.

For instance national law differs regarding whether the principle could be exercised in absentia of the accused. This would mean that the accused does not need to be on the state's territory in order to be prosecuted. National law rules on this differ and many do not say anything about this issue. In addition, one can only speculate the extent of recognition of universal jurisdiction in

absentia under international law as the International Court of Justice has, in many cases, chosen to avoid the question of its presence. This was the case in the Arrest Warrant case, the issue was discussed in the Separate Opinions of the judges. The opinions of Judge Guillame and the joint opinions of Judges Higgins, Kooijmans & Buergenthal are good reference points for this issue.

Immunities

Furthermore the issue clashes with immunities under international law. While immunities are of integral importance for state relations, if the whole point of universal jurisdiction is to ensure that no one gets away with such heinous crimes then does it not clash to say that higher officials are able to get away with them? In that sense, this is an immunities vs human rights dilemma. The answer to this dilemma is not uniform as will be illustrated.

A classic example of this can be found in the Pinochet case. The case concerned General Augustus Pinochet who was accused of human rights abuses committed against Spanish citizens in Chile during the military regime as well as the murder, torture, taking of hostages and genocide of Chileans.

The British courts chose to prosecute Pinochet under the principle of universal jurisdiction. In the rulings, they distinguished between state immunities and personal immunity of Heads of States and stated that state immunities do not apply to Heads of States in the context of criminal proceedings. Personal immunities from criminal proceedings could only be invoked for acts done in official capacity and since such heinous crimes could not be done as official acts, Pinochet could not benefit from immunity.

Another case is the Arrest Warrant case before the International Court of Justice. The case concerned an international arrest warrant issued on the basis of universal jurisdiction by a Belgian Magistrate against the former Foreign Minister of the Congo. The warrant alleged that the minister had committed grave breaches of the Geneva Convention of 1949 and its Additional Protocols as well as crimes against humanity and asked States to arrest, detain and extradite Yerodia to Belgium. The question in this was whether Belgium acted contrary to the principles of customary international law concerning the absolute inviolability and immunity from criminal proceedings. The Court held that it is an established principle of international law that Heads of States and Governments as well as Foreign ministers and Diplomatic and Consular (i.e. ‘the Big 3’) agents enjoy immunity from civil and criminal jurisdictions of other States.

6. | What Does Universal Jurisdiction Look Like in Practice?

The Lotus case underlines the necessity of consent from the territorial state to another state when it wants to “exercise its power in any form in the territory”. Suppose there is a specific legal justification in place. In that case, this allows the state to disregard the necessity of consent of the other state. Whereas there is no consent and no rationale for an exercise of power in another state, this is a breach of sovereignty.

6.1 | Extradition

Extradition is the most used method to solve cases in which two countries deal with jurisdiction enforcement. For instance, when an individual is located in a state (the extraditing state) but is wanted for criminal prosecution in another state (the receiving state), the extraditing state hands over the individual to the receiving state. Then again, many states are reluctant to extradite their citizens. Variety principles and obligations govern extraditions. The most important ones are the principles of double criminality and double jeopardy; and the obligations that bind extraditing states by Human Rights Conventions. The Model of extradition, by the UNGA in 1990, established the SOFA. SOFA allows states to consent to other state's enforcing their jurisdiction in their territory. For instance, a host state consenting to the presence of foreign troops on its territory.

6.2. | Nuremberg Trials

The Nuremberg Trials were a set of trials which occurred in Nurnberg, Germany after the end of the World War II, between 1945 and 1949, and were supervised by an American chief prosecutor. One of the main outcomes of the trials was the declaration of the Nazi Party as a criminal organization and its leaders being prosecuted, which signalized the complete end of the third Reich. This part of history is a milestone towards the recognition of crimes against humanity and war crimes and the formation of universal standards in regard to criminal law. The Nuremberg trials set the basis for the application of the principle of universal jurisdiction for severe violations of international law, as the prosecutors and the judges did not come from Germany, but from other countries such as the USA, France, the UK and Russia. They were one of the first trials which made clear that, for severe violations of international law, individuals should be tried despite the place where the crime was committed or the nationality of the accused. Thus, it is heavily important to mention and interpret them as a significant step before the introduction of the scope and application of universal jurisdiction.

6.3. | Rome Statute of the International Criminal Court

Historically speaking, the Rome Statute was a treaty initially drafted in 1998 and put into action on 1st July 2002. The United Nations General Assembly adopted the treaty after a diplomatic conference in Rome, Italy and its primary purpose was the creation of an International Tribunal, namely the International Criminal Court (ICC), and the recognition of the core crimes the court would have jurisdiction over. It was also the ultimate result of a myriad of attempts since the Nuremberg Trials to create and put into action an International Tribunal which prosecuted criminals regardless of their country of origin and where the crime was committed. Currently, over 60 member states have ratified the aforementioned treaty and almost 140 have signed it.

6.4. | International Criminal Court

The International Criminal Court is by definition an international tribunal, headquartered in The Hague, Netherlands and began to function on 1st July 2002, after the ratification of the Rome Statute of the International Criminal Court.

This tribunal, as an international court, practices jurisdiction with the primary purpose of prosecuting criminals who committed crimes that fall under the four core crimes the court has jurisdiction over, which are the crime of genocide, crimes against humanity, war crimes and crimes of aggression. Although it is characterized as “international”, the ICC can neither investigate or prosecute accused individuals who come from countries that have not signed or have withdrawn their signatures from the Rome Statute. Therefore, the absolute boundaries the ICC faces are the borders of countries that are not willing to sign the treaty.

The Court’s jurisdiction is based on the principle of universal jurisdiction and as a result it is a very important aspect of the topic. The formation of the ICC and the application of the principle of universal jurisdiction by it paved the way for the end of impunity for severe violations of international criminal law and showed to the global community the benefits of universal jurisdiction.

6.4.1.| Difference between the ICJ and ICC

The International Criminal Court and the International Court of Justice (ICJ) are two of the most important international tribunals. Nevertheless, the two tribunals have many differences. The ICJ’s purpose is to settle conflicts between countries arising from the interpretation of international law and give advice to states and UN organs on legal questions. Nevertheless, the ICJ has no jurisdiction over trying individuals and thus it does not exercise universal jurisdiction. However, the rulings of the International Court of Justice have an impact on the way that the principle of universal jurisdiction is applied. For example, a ruling of the ICJ in the so-called ‘Arrest Warrant Case’ showed that the principle of universal jurisdiction cannot violate diplomatic immunities.

On the contrary, the ICC’s purpose is to prosecute individuals in accordance with the Rome Statute international criminal law, regardless of their origin and the place where the crime was committed. As mentioned before, the ICC prosecutes and punishes individuals only for crimes against humanity, war crimes, genocide and crimes of aggression and it does not solve disputes between countries.

6.5. | Abuse of the principle

Although the principle of universal jurisdiction is a way to seek justice against enemies of the human race, it can potentially be abused. Some of the main concerns regarding its violation are either being charged for the same crime twice or ignoring and violating the immunity of the government and generally national officials.

First and foremost, with the application of the principle, individuals could potentially get charged for the same crime more than once. More specifically, the problem lies in the fact that different countries which have adopted universal jurisdiction might prosecute and try someone for the same crime. For this exact reason, International Law has created a legal doctrine, called “Non bis in idem” which translates to “not twice against the same thing”. The abuse of the principle occurs mainly because international law does not provide a clear definition as to who is going to prosecute and judge the perpetrators. Therefore, interpretations could conflict with each other leading to the arrest and prosecution of a person twice for the same offense by different authorities.

Second of all, another potential abuse of the principle of U.J. is the violations of immunities of official persons from the contextual country. A characteristic example of this

abuse is the case: “Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)”. In essence, Belgium accused the Democratic Republic of the Congo and the perpetrator, a government official (minister of foreign affairs Mr. Abdoulaye Yerodia Ndombasi) and the case was brought before the International Court of Justice. Mr. Yerodia’s diplomatic immunity was abused and he was prosecuted and removed from his governmental position through the adoption of universal jurisdiction.

6.6 | Cases Concerning Universal Jurisdiction

Ever since World War II, the principle of universal jurisdiction has developed and been codified. Following the Nuremberg trials, the question of accountability was enshrined in the idea of universal jurisdiction. As such, the Geneva Convention of 1949 further defines this principle.²⁷ The following cases are meant to further help you understand how universal jurisdiction works in practice.

6.6.1 | Eichmann Case

In 1962 when the Adolf Eichmann, a former German Nazi who had implemented the extermination of Jews (titled the “Final Solution” by Nazipropaganda), was convicted and executed on the grounds of war crimes, crimes against humanity and the genocide of Jewish people. After escaping and evading criminal prosecution for more than a decade, he was found, captured and smuggled out of Argentina by the Israeli secret service in 1961. Argentina argued that a treaty had been agreed on. Still, there had been no ratification of it and, as such, was not in force at the time of Eichmann’s abduction. Argentina claimed this was a breach of international law. At the UNSC, Argentina raised this concern. It declared the abduction had been a violation of their sovereignty, demanding Eichmann to be returned. The UNSC had ruled the case as Israel breaching international law, being a case of enforcement jurisdiction. The two countries settled the issue, and Eichmann was tried before a District Court in Jerusalem. This judgment was, and continues to be a very controversial case.

6.6.2 | Rohingya Genocide

The case of the Rohingya genocide deals with the alleged crimes of genocide and crimes against humanity against the Rohingya people, an ethnic Muslim minority, in Myanmar. These people are stateless and have been discriminated against, abused and persecuted in Myanmar for many years. The UN declared the necessity of the generals and head of the country’s army to be held accountable. In November 2019, the Burmese Rohingya Organization UK (BROUK) filed a lawsuit before the Argentinian Judiciary. It requested this case be opened under universal jurisdiction. The ICC followed suit and started investigating crimes against humanity against the Rohingya. State Counselor Aung San Suu Kyi, among other military and civilian leaders, is now a suspect in crimes against humanity and possible genocide. This ongoing case has gathered a lot of attention and continues to collect evidence

and open investigations.

6.6.3 | Syria Crimes Against Humanity

The Syrian civil war began in 2011. Allegedly the Syrian intelligence services had been arresting, sexually assaulting, torturing and killing those who had opposed the regime and continued to do so. Syrian nationals, former and present Syrian intelligence services, are facing charges of crimes against humanity. Despite this occurring in Syria, the principle of universal jurisdiction allows for any state to prosecute crimes, even if they are not being committed in their territory. In September of 2011, an investigation opened into war crimes and crimes against humanity committed by the Syrian regime. The currently ongoing case has managed to arrest many suspects and convict them. As the civil war continues, there is still hope that many war criminals will be held accountable for their actions.

6.7. | International Status

The principle of universal jurisdiction is a current and global matter and can be characterized as a pressing legal topic. The main points raised mainly pertain to the extent of the scope, the potential to be abused and whether or not it could possibly harm a nation's sovereignty, since being able to try your individuals and try criminals at the place where they committed the crime is considered a part of a state's sovereignty. Furthermore, there are two sides of the debate. The one side supports the concept, wants to invest in it and make changes to the domestic legislation to match with the standards required. The other side disagrees by supporting the fact that the principle can be abused by violating officials' immunities if deemed necessary by other member states. The unsupportive side additionally defends the fact that national courts practicing universal jurisdiction can be biased and thus not prosecute criminals accordingly.

6.8. | Major Countries And Organizations Involved

6.8.1 | International Criminal Tribunal of Rwanda

The International Criminal Tribunal of Rwanda was established in 1994, after the events of the Rwandan genocide occurred. Its fundamental purpose was to prosecute people responsible for the aforementioned genocide and generally to prosecute people responsible for the Rwandan genocide, which constitutes a severe violation of international criminal law. Its role was firmly based upon universal jurisdiction for the following reasons: Initially, its creation was due to the authorization of UNSC Resolution 955 making it an international attempt to combat the situation in Rwanda. Moreover, it was located outside of Rwanda and particularly in Arusha, Tanzania and lastly, its judges were foreigners practicing jurisdiction outside their country's borders. Eventually, it was dissolved in 2015 after all trials against the perpetrators concluded.

6.8.2. | International Criminal Tribunal of Former Yugoslavia

The International Criminal Tribunal of Former Yugoslavia was established in 1993 during the Yugoslav wars. The Court's main purpose was to prosecute criminals who harmed the Yugoslavian community, violated serious criminal laws and committed crimes against humanity. We can also see the fact that the members of the Court came from different countries and thus practiced universal jurisdiction. The Court was eventually dissolved in 2017 after all the trials concluded.

6.8.3. | European Union

The European Union and its members play a significant role in this topic. More specifically, after the workshop regarding Universal Jurisdiction took place in cooperation with the European Parliament Subcommittee on Human Rights (DROI), the Committee on Legal Affairs (JURI) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE), the EU recommended investment into investigations, prosecutions and judgment and suggested a treaty on legal borderless assistance and extradition among the member states, which is in essence what universal jurisdiction is all about.

6.8.4. | Belgium

As a country with a passed legislation in regard to universal jurisdiction in 1993, Belgium took on the case of the Rwandan Genocide (1994) and successfully conducted a trial in cooperation with the International Criminal Tribunal of Rwanda and prosecuted the alleged “enemies of the human race”. After the law was repealed in 2003, there was a new published legislation similar to the first but more restrictive regarding the legal boundaries of decisions, meaning the extraterritorial jurisdiction.

6.8.5. | United States of America

The US withdrew its signature from the Rome Statute and is not willing to change its legislation regarding universal jurisdiction. The country also seems uncertain based solely on the fact that this principle can be abused. Also, the USA raised concerns as to the potential violation of diplomatic immunity and the potential violation of the state sovereignty, if it becomes a member of the ICC.

6.8.6. | China

The People's Republic of China's (PRC) domestic legislation explicitly states on Article 9 of Criminal Law of the PRC: “This Law shall be applicable to crimes which are stipulated in international treaties concluded or acceded to by the People's Republic of China and over which the People's Republic of China exercises criminal jurisdiction within the scope of obligations, prescribed in these treaties, it agrees to perform”⁷. Essentially, China can exercise its jurisdiction when it comes to the violation of International Treaties ratified by the country.

7. | Previous Attempts, Possible Solutions and Alternatives

7.1. | Previous Attempts To Solve The Issue

Inter-American Convention to prevent and punish torture The “Inter-American Convention to prevent and punish torture” is essentially a convention among nations in the Americas (excluding the United States and Canada). It was entered into force in 1987 and it ultimately supported Human Rights in the American territories. More specifically, Article 14 of the Convention describes the fact that when a state requests the extradition of a case, then the state, in whose jurisdiction the crime was committed, should submit the case to its authorities and after proper investigation, the authorities must inform the requesting state.

7.2 | Possible Solutions

If we take all of the above into consideration, we can acknowledge that the main problem in our case is the abuse of the principle of the U.J. by either double conviction on the same crime or violation of an official's immunity. This exact problem lies in the unwillingness of several countries to adopt the principle of universal jurisdiction due to that

fact that it might be abused. Thus, the international community must take measures to ensure that there is no abuse of the principle and that more countries adopt the principle.

With that being mentioned, if there is better cooperation and communication among the states that have U.J. related legislations, double conviction for the same offense by different authorities could potentially be avoided and thus have only one prosecution for the violations committed.

One additional solution to the aforementioned problem could be the reconsideration and discussion among member states in regard to governmental immunities. There should be negotiations so as to firstly declare which crimes need prosecution regardless of status so as to avoid international danger and secondly declare which violations of criminal law could the immunity fall under so as to ensure national stability.

In order to prevent the abuse of the principle, countries which have already applied universal jurisdiction should meet their obligations. More specifically, after applying the U.J. to their domestic courts, their judges and prosecutors have to be in accordance with international law and firmly unbiased. Moreover, countries have to be alert in order to take on extradition cases or domestic cases and also advocate in any prosecution or investigation taking place either in the country's territory or abroad. Lastly, those countries are obliged to keep governmental disputes and legal conflicts aside in order to avoid unfair decisions and judgments.

Furthermore, another aspect of the topic is the participation of countries in international tribunals. On that note, they should be encouraged to sign treaties and statutes such as the Rome Statute, so that even more members join Courts and organs which practice universal jurisdiction.

Last but not least, it is a fact that problems might arise with the collection of evidence from different countries. For instance, a question that may be raised is: How will the contextual country's authorities collect sufficient evidence to try a person accordingly? Therefore, there should be worldwide cooperation among member states for trustworthy investigation in the country where the crime was committed. If this could be achieved, then the reliability of a contextual country's court could be ensured and thus a fair trial would be conducted.

7.2. | Alternatives to Universal Jurisdiction

7.2.1. | What Options Exist Besides Universal Jurisdiction?

Apart from the principle of universal jurisdiction, other mechanisms, including the Human Rights Council's system of UPR and the R2P doctrine have proven to be particularly useful in holding the violators accountable.

The UPR procedure has been renowned for catching the most heinous violators, and is a mechanism which consists of three main steps. Firstly, the UN Member States offers an assessment of its human rights record to the UPR Working Group.

Secondly, the other UN Member States engage in a collective dialogue and offer suggestions on improvement. The UPR Working Group then submits an "Outcome Report" to the Human Rights Council for a formal decision. This procedure takes place on a four year basis and is seen as a cooperative opportunity by States, which ensures full involvement of the State in question. While it provides for a high degree of State control, it simultaneously creates less room for the independent human rights experts and non-governmental organizations (NGOs): it is in fact a requirement that during the interactive dialogue with the State under review, neither

one may participate. Nonetheless, it is an opportunity to address the situation of human rights in all 192 UN Member States.

The UPR mechanism could be said to fall under a broader category of measures implemented on an international level, namely that of “naming and shaming”. For international bodies with monitoring competences but practically no enforcement powers, this tool provides a source of strength by publicizing the violating country’s actions (i.e. “shaming”). Other confrontational mechanisms include retortion, countermeasures and sanctions. In particular, another alternative option for universal jurisdiction is the so-called R2P Doctrine.

The R2P Doctrine is an obligation on behalf of the UN Member States to intervene in another State in order to put an end to one of the four international crimes: genocide, war crimes, ethnic cleansing and crimes against humanity, when the latter grossly fails to do so itself. In contrast to humanitarian intervention, which has been perceived as somewhat controversial, the R2P mechanism functions primarily through the UN Security Council. The first step of the R2P is to resort to diplomatic and peaceful means under Chapter VII of the UN Charter.⁴⁷ However, in a situation where this fails, the UN Member States have a responsibility to take collective action through the Security Council. What is important to note is that this concept resorts to the use of armed force as a last resort measure. Yet, the R2P has also been a

Nonetheless, it cannot go without saying that the use of the R2P Doctrine may inevitably give a wrong message to the State being intervened, causing an insurgency or escalating a conflict. One prominent example of this is the current conflict in Syria: would the insurrection have occurred, had there been no intervention in Libya in the Arab Spring of 2011?

Another point of contention concerning the R2P Doctrine is its ethical aspect: can armed intervention be justified morally? Would it not be better or sufficient to resort to solve the conflict through more diplomatic means?

Overall, the alternatives to the principle of universal jurisdiction seem to be located on two polar opposites: while the UPR mechanism may appear less effective, the R2P Doctrine is, on the contrary, interventionist and aggressive. One may even argue that all of these mechanisms come at a different stage of violations: while the UPR mechanism could be used to detect the beginning phases of human rights violations, the R2P Doctrine is used when the problem is conspicuous, while the principle of universal jurisdiction is enforced to punish the perpetrators of crimes when the crime has already occurred. Inevitably, one may wonder: are these mechanisms even connected? Throughout the Conference, it will be up to you, the Delegates, to discuss the extent of effectiveness of universal jurisdiction, and the options currently available under international law to target the perpetrators of such mass atrocities and avoid impunity altogether.

8. Questions To Be Answered

- * *To what extent is this principle applicable?*
- * *Is there absolutely no requirement for a territorial link?*
- * *To what crimes should it apply?*
- * *When should it apply?*
- * *Is the principle in accordance with state sovereignty?*
- * *Are there any possible alternatives to Universal Jurisdiction?*
- * *How To Prevent Abuse of the principle?*

* How to provide better cooperation and communication among the states that have U.J. related legislation?

* How will the contextual country's authorities collect sufficient evidence to try a person accordingly?

8 | Sources for Further Research

1. *Impact of Covid on Universal Jurisdiction:*

https://reliefweb.int/sites/reliefweb.int/files/resources/Trial%20International_UJAR_DIGITAL.pdf

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LEGAL STUDY GUIDE

Agenda Item 2

Criminal Accountability of United Nations Officials

haydarpagum

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Agenda Item II: Criminal Accountability of United Nations Officials

A. Introduction to the Committee Director

Most esteemed delegates,

I am Zeynep Birce KAL. I will be serving as Chair of UNGA sixth committee LEGAL. Currently I am studying at Kadıköy Ahmet Sani Gezici Imam Hatip High School for Girls as a junior. I hope best for the Haydarpaşa Model United Nations Conference. I aim to help every single one of you as far as I can and give you the best MUN experience possible.

In this Model United Nations conference our agenda items are dealing with the accountability of the UN and questioning of international jurisdiction. We are also waiting for you to write position papers and send them to one of us via email until 9th June. We will be considering your position papers while choosing awards. Furthermore I have some advice for resolution papers as well. You will be answering the questions that I gave in the “Questions Should be Answered” part. Also you should read the “Possible Solutions” part. Hope it will be a great experience for you.

If you have any questions please do not hesitate to contact me.

My email; bircekal@gmail.com

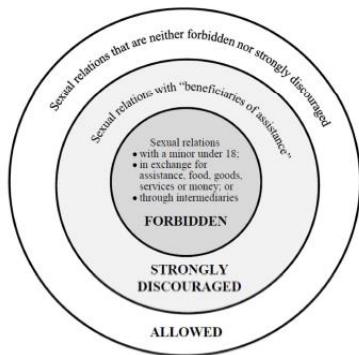
Hope to see you at conference

Yours sincerely,

Zeynep Birce KAL

B. Introduction to the Agenda Item

The reason why this subject is a problem nowadays is because of widespread cases of criminal actions carried out by UN officials and experts on mission, particularly in countries where poverty is rampant or there's an armed conflict ongoing. It's not clear what number of cases have occurred since the creation of the international organization in 1945, because of underreporting, but it is clear that this issue has been happening for a protracted time. In keeping with certain sources , there are reports of



such crimes since the 1990s in UN missions to Mozambique, Bosnia, Guinea, Liberia and Republic of Sierra Leone, which involve cases of prostitution and sex trafficking. In 2003 the difficulty reached the UN General Assembly, which condemned all crimes and established a “zero tolerance” policy. It also drew clear lines regarding sexual relations between UN officials and civilians.

Today there's stronger surveillance of what UN officials and experts do when on mission, and every UN body does some style of training among their personnel to stop molestation. But much work is yet to be done. Consistent with a report the following missions of the UN have the

foremost allegations of crime: the world organization Stabilization Mission in Haiti (MINUSTAH), World Organization Stabilization Mission in Republic of Congo (MONUSCO), International Organization Mission in Liberia (UNMIL) and United Nations Missions in Sudan and South Sudan (UNMIS and UNMISS), and therefore the problem is way beyond being solved.

Country	Number of substantiated allegations*	Country	Number of substantiated allegations*
Algeria	1	Mali	1
Bangladesh	2	Mauritania	1
Benin	2	Morocco	2
Cameroon	1	Nepal	1
Canada	2	Niger	1
Chad	2	Nigeria	7
Chile	1	Pakistan	4
Djibouti	1	Samoa	1
Egypt	1	Senegal	1
Gambia	1	South Africa	9
Ghana	2	Togo	2
Guatemala	1	Tunisia	1
Guinea Bissau	1	Turkey	1
Guinea	1	United Kingdom	1
India	3	Uruguay	8
Jordan	1		

The chart of of allegations against uniformed personnel by Member State between 2010 and 2013

Most allegations involved personnel, civilians and police. It's considered within these organizations that a legal process towards its workers has huge delays (16 months on average), as the responsibility in each part of the method is deferred and every one bodies blames one another. This severely undermines enforcement. Furthermore, when a sanction is put into place, it always involves dismissal and repatriation for civilians, while only military forces are sentenced to prison. See the chart below for the amount of cases in keeping with the sort of disciplinary sanction against civilian personnel in peacekeeping operations between 2008 and 2013:

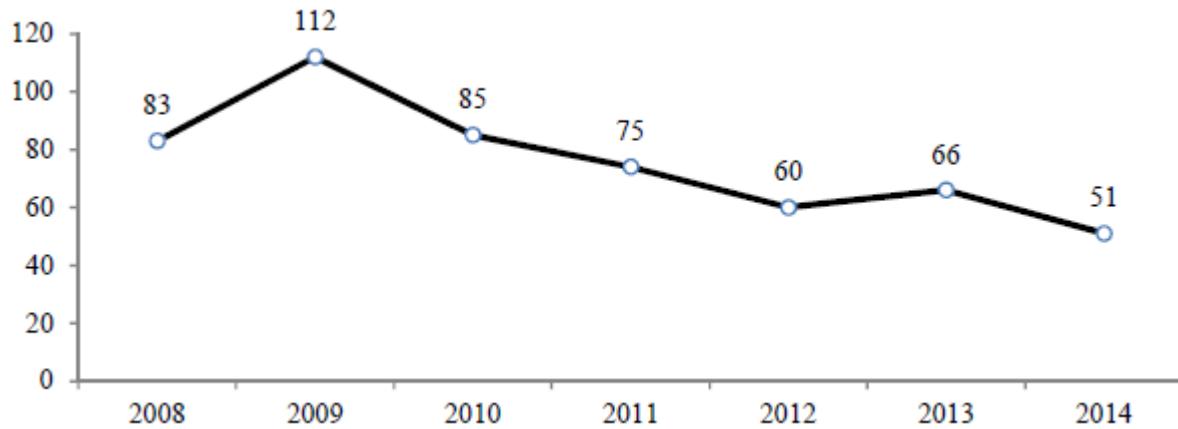
Type of disciplinary sanction	Number of cases
Dismissal	19
Separation from service	3
Lesser disciplinary sanction and administrative action	3
Closed as SEA could not be established at the requisite standard	5
Closed with note to official status file of staff member upon separation	3
Not pursued due to procedural issues or insufficient evidence of the requisite standard	7
Case still under review	2
TOTAL	42

The chart of the amount of cases in keeping with the sort of disciplinary sanction against civilian personnel in peacekeeping operations between 2008 and 2013

See within the following chart the share of allegations and also the share of peacekeeping personnel in crime allegations:

Personnel type	Share of peacekeeping personnel (per cent)	Share of SEA allegations (per cent)*
Military	71	50
Civilian	17	33
Police	11	12

Apparently, transactional sex is one among the foremost common actions, although it's barely reported. Another pending issue that ought to be remedied by this committee, is assistance to victims. Due to the lack of funding and therefore the slow enforcement process, few victims are assisted. The reason for the matter at hand seems to be the ability differential between impoverished civilians and UN peacekeepers: while rich countries provide funds, poor countries provide troops, over and over without the required training. The United Nations Department of Peacekeeping Operations (UNDPKO) is consistently struggling for funds and personnel, with over 100,000 deployed troops (from 34,000 within the year 2000) and 19,000 civilian staff. With such spread missions, accountability and transparency are hard to return by. Additionally, investigating criminal cases is solely a voluntary action that the contributing rich country can do, because of the immunity of UN officials and experts, which should first be waived (see next point (b) for further information on the issue of immunity). Between 2008 and 2013 alone there have been nearly 500 cases of abuse, but it is obvious that several more have occurred but haven't been reported. you'll 20 see within the image21 the evolution of allegations for field missions by year:



No single UN body has been missed from this catastrophe. Anyhow, there seems to be a correlation between funds from rich countries being directed to poor countries and a hike within the cases of abuse. We can find some clear examples in the Central African Republic in 2022 and French troops in Africa in 2023. In 2006 the international organization General Assembly decided to review the question of peacekeeping and all told its aspects. It requested the Sixth Committee (Legal), additionally as SPECPOL (4th Committee) to review this issue, each under their competences. This can be in pursuance of compromises made by the A/RES/59/300 and 60/263; and decision 61/503A. The Sixth Committee has established a special circumstantial committee to analyze this issue, which had meetings within the years 2007 and 2008. It involved nations that contributed to the UN's missions with personnel.

C. General Overview

The problem we've at hand with UN officials is the existence of the Convention on the Privileges and Immunities of the global organization. This can be essential for the UN to hold out its mission in multiple aspects, which range from meeting Heads of State, participating during a conference on climate change or concluding peacekeeping operations. In step with the Convention, it's the task of the Secretary-General to submit the categories of officials who shall have immunities under the Convention (Article V, Section 17). From this we will understand that a UN official is someone who holds a mandate or function within the world organization. Therefore, this definition ranges from peacekeepers working under the mandate of the UN, to the very Secretary-General. The Convention includes during this definition the "representatives", who "shall be deemed to incorporate all delegates, deputy delegates, advisers, technical experts and secretaries of delegations" (Article IV, Section 16); and therefore the experts, "other than official coming within the scope of Article V" (Article VI, Section 22). This can be an awfully broad inclusion, which suggests that anybody working with the international organization is stricken by the Convention. Now that we all know who is under the scope of the Convention, we must concentrate after they are to be laid low with it. Let's have a glance at Article V, Section:

SECTION 18. Officials of the United Nations shall:

- (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
- (c) Be immune from national service obligations;
- (d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (e) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (f) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

We can see in point (a), that whatever action that may involve a legal process is immune, but only regarding acts carried out by the UN official while at work. This means that, for instance, if the official commits a crime after his working hours, outside UN premises and not being identified as a UN official, he will not be under the scope of the Convention and will not enjoy immunities, but be prosecuted according to the laws of the country, without any major impediment. A very similar situation applies to representatives of the members, as seen in Section 11:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(a) Inviolability for all papers and documents;

Ç. History of the Topic

The Sixth Committee has already dealt with this issue in past meetings, although the level of success in implementing the measures proposed, and the extent to which such measures have been effective, is yet to be seen. The measures which have already been decided upon are to:

- Prosecute criminals and not leave crimes unpunished;
- Encourage states to share information with the United Nations. The Secretary-General can request from states where the suspect of having committed crimes comes from, that they submit a report on the progress done with the investigation;
- Encourage states to afford each other extraditions which focus on serious crimes;
- Request the Secretary-General to ensure training in the United Nations' standards and induction before deployment;
- Take measures to restore credibility of the accused if allegations are unfounded;
- Not retaliate against whistleblowers;
- Ensure that the countries of which the victims are nationals protect them;
- Eliminate gaps in legislation and promote international cooperation;
- Ensure that criminals are accountable;

- Urge states to implement measures when their nationals were suspects.
 - Allow countries that supply personnel to investigate cases of misconduct by their nationals.
- In November 2014, the Sixth Committee received a request to report from the Secretary-General which highlighted the responsibility of the United Nations and of States to ensure compliance with Laws. All States agreed on zero tolerance towards cases of crimes committed by UN officials in mission. However, few responses were submitted by member States, thus not reflecting the true nature of the problem. Some delegations underlined the need to promote cooperation in criminal investigations, and exchange information and collection of evidence. Other delegations stressed the need to take care of victims. Some argue against, as they do not see it necessary to have such bureaucracy put into place, given that national rules are sufficient to ensure an adequate trial. In another order of things, the UN Secretary-General proposed to all member states who have ground operations to adhere to a Voluntary Compact, which has the purpose of proving to the world that UN peacekeeping forces are committed to end sexual exploitation and abuse

In previous meetings of the Sixth Committee, various delegations have raised the following proposals:

- To include in the reports submitted by Member States all steps taken during investigations;
- To assess the national legislations in order to find gaps that would allow for impunity;
- To have an updated file where all convicted criminals would be registered, including the nature of the crime and the process of investigation;
- To veto UN officials who have committed a crime to further serve in the UN;
- To fund a Comprehensive Strategy on Assistance and Support to Victims;
- To strengthen the follow up protocols when a crime has been committed;
- To report on whether commanders have carried out their duty of preventing a crime from occurring within his/her troops;
- To set a target time to solve allegations of abuse;
- To include an appropriate role for the host country in investigations;
- To define a single body that would carry out investigations of abuse allegations

D. Guiding Questions

- Should this Sixth Committee establish ad hoc criminal courts, that would also carry out the summary investigations? Should the mandate of these investigations instead belong to the International Criminal Court?
- Some States have proposed that there would be an updated file with all cases of crimes committed by UN officials, including the nature of the crime and the process of investigation.
- Would your State accept such a mandate?
- What barriers are there now that impede international cooperation in this matter?
 - Should UN officials be vetted from serving if they have committed a crime? Or under which circumstances?
 - What preventive measures could be implemented if there is suspicion of a crime having taken place?
- What measures can be taken to protect victims, witnesses and whistleblowers?
- Is there legislation in countries individually regarding nationals acting under UN jurisdiction (e.g. the principle of Universal Jurisdiction)? If so, can this be extended to other member

States? Or could there be jurisdiction of one state over their nationals when they act within the scope of the UN?

- Can you propose concrete measures to ensure accountability?
- How could waiving immunity from UN officials work?
- Could privacy of allegations be respected?

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A handwritten signature in cursive script, likely belonging to Haydar Pasaoglu, is positioned at the bottom of the page. The signature is written in black ink on a white background.