

# **MUNQS**MUN '14

9-11 October 2014



United Nations Security Council  
Background Guide

# **Letter from the Executive Board**

Greetings Delegates,

Welcome to the Security Council at MUNQSMUN 2014, firstly, congratulations on being a part of one of the most competitive committees the circuit has ever seen. Secondly, this committee in its dynamics is substantially different from other councils due to it being a double delegation, and we acknowledge this fact.

Coordination, comprehension and distribution of work become imperative in such a format. We will not be judging a delegation on individual roles the delegates play in committee, but, as a collective entity. This implies that our judgment criteria will view a delegation as two people forming one entity and how well in their collective capacity have they been able to push for their nation's interests while keeping in mind their obligations to the UN.

Key features in this committee include but are not limited to - in detailed analysis, contextual application of content, in depth research and impeccable coordination. Owing to the relatively small size of the committee, it is important to make every contribution count, while maintain consistency in participation in both – debate and lobbying.

On an ending note, we wish that this turns out to be a wonderful learning experience for everyone involved and will strive to make this council as enriching as possible.

All the best!

Regards,

**Executive Board**

**United Nations Security Council, MUNQSMUN 2014**

**Note:** Nothing contained in this background guide can be used as substantial proof/evidence in committee; this document is solely for research purposes.

# **Committee Description**

## **Background**

The Security Council has primary responsibility, under the Charter, for the maintenance of international peace and security. It is so organized as to be able to function continuously and a representative of each of its members must be present at all times at United Nations Headquarters.

When a complaint concerning a threat to peace is brought before it, the Council's first action is usually to recommend to the parties to try to reach to agreement by peaceful means. In some cases, the council itself undertakes investigation and mediation. It may appoint special representatives or request the Secretary General to do so or to use his good offices. It may set forth principles for a peaceful settlement. When a dispute leads to fighting, the Council's first concern is to bring it to an end as soon as possible. On many occasions, the Council has issued cease-fire directives, which have been instrumental in preventing wider hostilities. It also sends United Nations peace-keeping forces to help reduce tensions in troubled areas keep opposing forces apart and create conditions of calm in which peaceful settlements may be sought. The council may decide on enforcement measures, economic sanctions (such as trade or embargoes) or collective military actions (with reference to Chapter VII of the UN Charter)

The Presidency of the Council rotates monthly according to English alphabetical listing of its Member states.

## **Functions and Powers**

Under the charter the functions and powers of the Security Council are:

- To maintain international peace and security in accordance with the principles and purposes of the United Nations;
- To investigate any dispute or situation which might lead to international friction;
- To recommend methods of adjusting such disputes or the terms of settlement;
- To formulate plans for the establishment of a system to regulate armaments;
- To determine the existence of a threat to the peace or act of aggression and to recommend what action should be taken

- To call on members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;
- To take military action against an aggressor;
- To recommend the admission of new members;
- To recommend the General Assembly the appointment of the Secretary-General and, together with the Assembly, to elect the Judges of the International court of Justice

## **Voting Procedure**

### **Article 27**

1. Each member of the Security Council shall have one vote
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under the paragraph 3 of Article 52, a party to dispute shall abstain from voting

## **Veto Power**

A negative vote or veto, by a permanent member prevents adoption of a proposal, even if it has received the required number of affirmative votes (9).

Abstention is not regarded as a veto

Procedural matters are not subjected to a veto, so the veto cannot be used to avoid discussion of an issue.

## **Acceptable Sources of Information**

The following sources will be referred to as credible in the council.

→ News Sources:

REUTERS – Any Reuters article which clearly makes mention of the fact or is in contradiction of the fact being stated by a delegate in council. <http://www.reuters.com/>

State operated News Agencies – These reports can be used in the support of or against the State that owns the News Agency. These reports, if credible or substantial enough, can be used in support of or against any Country as such but in that situation any other country in the council can deny them. Some examples are – RIA Novosti (Russia) <http://en.rian.ru/> , IRNA (Iran) <http://www.irna.ir/ENIndex.htm> , BBC (United Kingdom) <http://www.bbc.co.uk/> , Xinhua News Agency and CCTV (P.R. of China) <http://cctvnews.cntv.cn/>.

→ Government Reports:

These reports can be used in a similar way as the State Operated News Agencies reports and can, in all circumstances, be denied by another country. However, a report that is being denied by a certain country can still be accepted by the Executive Board as credible information.

Examples are Government Websites like:

State Department of the United States of America:

<http://www.state.gov/index.htm> ,

Ministry of Defense of the Russian Federation

<http://www.eng.mil.ru/en/index.htm> ,

Ministry of Foreign Affairs of various nations like India

(<http://www.mea.gov.in/>)

France (<http://www.diplomatie.gouv.fr/en/>),

Russian Federation ([http://www.mid.ru/brp\\_4.nsf/main\\_eng](http://www.mid.ru/brp_4.nsf/main_eng)),  
etc.

Permanent Representatives to the United Nations Reports

<http://www.un.org/en/members/>

(Click on any country to get the website of the Office of its Permanent Representative).

3. Multilateral Organizations like the

NATO (<http://www.nato.int/cps/en/natolive/index.htm> ),

ASEAN (<http://www.aseansec.org/> ),

OPEC ([http://www.opec.org/opec\\_web/en/](http://www.opec.org/opec_web/en/) ),

→ UN Reports:

All UN Reports are considered as credible information or evidence for the Executive Board of the Security Council.

UN Bodies: Like the

SC (<http://www.un.org/Docs/sc/>),

HRC

(<http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>)

UN Affiliated bodies like the International Atomic Energy Agency (<http://www.iaea.org/>)

World Bank (<http://www.worldbank.org/>)

Under no circumstances will sources like Wikipedia

(<http://www.wikipedia.org/>), Amnesty

International(<http://www.amnesty.org/>), Times of

India(<http://timesofindia.indiatimes.com/>) be accepted in the Council.

## *Agenda: Collective intentions and individual criminal responsibility for internationally wrongful acts with regards to prosecution.*

### **Introduction and Analysis**

The question which the Security Council wishes to discuss in the upcoming session, is whether member states should be accountable for internationally wrongful acts, to name a few, genocide, ethnic cleansing, war crimes conducted by collective organizations or individuals for different motives.

These motives might include measures to establish political hegemony by certain individuals or entities, **or organizations, which are politically affiliated to countries, yet do conduct atrocities, which do require international attention and prosecution measures.**

What we as the Security Council look to discuss is whether there should be any responsibility of states to deal with these atrocities and how should the prosecution procedure be carried out via international tribunals or domestic jurisdiction, considering different aspects of jurisdiction as well, including **principles of jurisdiction.**

### **Collective Intentions And Individual Criminal Responsibility**

The treatment of collective intentions in individual criminal responsibility for crimes against humanity and war crimes, at the example of the emerging International Criminal Court's (ICC) jurisprudence. It is argued that collective ('joint' and 'indirect') perpetration accounts of ICC ought to provide first of all a coherent conception of collective intentions and actions to identify individuals involved in cooperative harm doing, to attribute harm to causally responsible individuals, and to provide grounds for formulating a 'decision method' necessary for distributiveness of moral blame. Secondly causal responsibility test for harm brought about in accordance with such intentions should

- (a) Rely on strong sufficiency rather than normative attribution standard (real rather than hypothetical attribution);
- (b) Specify that irreducible collective intention is a 'NESS' condition for attributing harm to liable individuals;



(c) Distinguish principals by formulating a stronger collective intention threshold that requires 'meshing' of individual participatory intentions.

Finally allocation of moral blame for harm brought about collectively should

(a) Explain how moral blame is distributive among participants of collective actions, in order to avoid its blending into metaphysical shame or 'guilt by association';

(b) Rely on collective intentions as a 'decision method' of harm-doing that distributes moral blame;

(c) Consider that 'strong' formulations of such 'decision method' blame superiors, and vice versa a weak 'decision method' would increase morally responsibility of final perpetrators.

Whereas it has been argued in the literature that criminal prosecutions for human rights atrocities are at odds with liberal premises of human rights law including individual culpability, it is the purpose of this work to argue for such grounds and that ICC can address collective complicities based on respect for individual autonomy and without degenerating into collective guilt theories that disregard free will and moral responsibility.

### **Further Reading:**

- Entrenching Impunity Government Responsibility for International Crimes in Darfur
- Culpability of Individuals under International Law

### **Internationally Wrongful Acts**

**Earlier drafts** of the Articles on State Responsibility contained Article 19, which provided for "state crimes". Article 19 included the following provisions:

*2. An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole constitutes an international crime.*

*3. Subject to Paragraph 2, and on the basis of the rules of international law in force, an international crime may result, inter alia, from:*



- (a) a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression;*
- (b) a serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;*
- (c) a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid;*
- (d) a serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas.*

*4. Any internationally wrongful act which is not an international crime in accordance with paragraph 2 constitutes an international delict.*

**\*\*\*Article 19 was deleted from the final Draft Articles\*\*\***

However, this article provides the crux and essence of internationally wrongful acts, including acts like genocide, war crimes, ethnic cleansing etc.

# **International Instruments for State Responsibility**

## **ILC Draft Code of Crimes against the Peace and Security of Mankind (1991)**

**Provides: “Prosecution of an individual for a crime against the peace and security of mankind does not relieve a State of any responsibility under international law for an act or omission attributable to it.”**

## **ILC Draft Code of Crimes against the Peace and Security of Mankind (1996)**

**Provides: “The fact that the present Code provides for the responsibility of individuals for crimes against the peace and security of mankind is without prejudice to any question of the responsibility of States under international law.”**

## **ILC Draft Articles on State Responsibility (2001)**

**“Every internationally wrongful act of a State entails the international responsibility of that State.”**

There is an internationally wrongful act of a State when conduct consisting of an act or omission:

- a) Is attributable to the State under international law; and
  - b) Constitutes a breach of an international obligation of the State.
- This “wrongful act of a State” can be the consequence of the conduct of any State organ.

### **Note:**

The relationship between state responsibility and individual criminal liability for acts or omissions that constitute at the same time internationally wrongful acts as well as crimes under international criminal law forms one of the most fascinating, yet underdeveloped, branches of international law. While both state responsibility and individual criminal liability have generated considerable debate in literature, the scope and nature of their interplay has been but insufficiently addressed. The articulation of state and individual responsibility in the realm of international crimes remains for the most part unclear; **this is due to a misconception with regard to the nature of state responsibility for such crimes as well as the tendency,**

**encouraged by far-reaching human rights considerations, of addressing different facets of state responsibility (for perpetration, failure to prevent and/or punish, or lack of due diligence) under a generalized “umbrella” concept of state responsibility.**

The relevance of the relationship between the two forms of responsibility is not only doctrinal, but also practical. While closely connected to the nature of international crimes and the role of international criminal justice, the question has serious implications *in lite*, affecting the establishment of one or the other form of responsibility. The *Genocide* case is a prime example of the consequences of such implications, with regard to the burden of proof, the use of criminal law notions in the application of the law of state responsibility, and judicial law-making, to name but a few. This relationship ranges from complete independence to partial or total dependence, or even full coincidence. Furthermore, there are numerous aspects in this interplay, which takes place at different levels.

## **State Responsibility under General International Law**

The responsibility of states under general international law is regulated in the ILC Articles, and consists in an act or omission attributable to the state and violating an international obligation in force for that state. There are thus two steps to the establishment of (*prima facie*) state responsibility, namely the violation of a primary

### **State Responsibility for International Crimes**

There is no doubt that state responsibility for international crimes are, like state responsibility for any internationally wrongful act, neither civil nor criminal, but as correctly has been stated by the ICJ, *sui generis*. As such, and in principle, it obeys to the same rules that govern state responsibility under general international law, as stipulated in the ILC Articles.

However, it is generally accepted that state responsibility for international crimes must be distinguished from state

## **State responsibility of Palestine as a “state”**

The recent conflict in the Gaza Strip has once again brought to the fore debates on the Israel-Palestine conflict and the International Criminal Court (ICC), which have been simmering away ever since the Palestinian Authority (PA) lodged an ad-hoc declaration with the ICC five years ago in an attempt to give the court jurisdiction in the Gaza Strip following Israel's “Operation Cast Lead” without also becoming a party to the Rome Statute. During that conflict, the United Nations established a Fact-Finding Mission chaired by Justice Richard Goldstone. On a visit to Gaza, the mission found evidence of egregious violations of international human rights and humanitarian law, including war crimes and possible crimes against humanity committed by Israel and Hamas, although nothing came of the report after it was buried by Palestinian President Mahmoud Abbas in the United Nations Human Rights Council on account of pressure from Israel, the United States, and its European allies.

Mr. Luis Moreno-Ocampo, the ICC's prosecutor, invited individual submissions from the PA, distinguished jurists, and civil society organisations to explain whether they believed the ad-hoc declaration lodged by the PA met statutory requirements, as only states can lodge ad-hoc declarations with the court. In the end, the arguments all came down to the same issue: is Palestine a state?

In April 2012, he decided that his office was not the appropriate body to determine whether Palestine was a state capable of lodging a declaration with the court. Being a “state” is a precondition to the exercise of jurisdiction by the ICC.

In his April 2012 decision, Mr. Ocampo did not appear to take into account Palestine's acceptance as a full member in the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in October 2011, a move that was significant because only states can become members of the UN Specialised Agencies. Support for the Palestinian cause in the UNGA and in the political bodies of the UN where the US and its allies do not have veto powers have always been strong. President Abbas was confident, therefore, that the UNGA would accord Palestine observer state status in the United Nations. It did so on 29 November 2012.

Since then, President Abbas has continued, albeit cautiously, to take steps that only states can make. After the latest round of peace

talks between Israel and the Palestine Liberation Organization (PLO) collapsed in April 2014, Palestine acceded to over a dozen treaties on human rights and humanitarian law, further buttressing Palestine's claim that it is a state, as only states can sign, ratify, and accede to treaties. While these treaties have all been accepted by their depositaries, Canada, Israel, and the US have protested to the depositaries that Palestine is not qualified to accede to these treaties because in their view it is not a state.

### **State Cooperation with International Criminal Tribunals for the former Yugoslavia and for Rwanda**

When establishing the International Criminal Tribunals for the Former Yugoslavia and for Rwanda in 1993 and 1994, the UNSC was aware of the fact that the success of the Tribunals would depend primarily on the cooperation of national states with these tribunals.

The contributions of states to the Tribunals' investigations and national assistance to international court proceedings were considered and later proved to be the key factor in fulfilling the Tribunals' mandate- the prosecution of violations of IHL committed during the conflicts in FRY and Rwanda in the 1990s.

### **Various Responsibilities of State Cooperation**

- a) State cooperation is required for the Prosecutor's pre-trial investigations, including production of evidence, conducting of on-site investigations, service of documents, questioning of victims and witnesses, and the identification and location of persons.
- b) State cooperation is further required when it comes to the execution of the Tribunals' arrest warrants and transfer orders.
- c) For the deferral of national court proceedings
- d) Finally, state cooperation is needed in enforcing the final sentences pronounced by tribunals.

# **Government Responsibility for International Crimes in Darfur**

## **Culpability of Individuals under International Law**

International crimes committed in Sudan include war crimes and crimes against humanity. Since July 2003, Sudanese government forces and government-backed Janjaweed militias have committed numerous war crimes and crimes against humanity against civilians, civilian property, and civilian populations of the same ethnicity as rebel forces. Rebel forces may also be responsible for war crimes.

International humanitarian law (the laws of war) imposes upon states and armed groups, legal obligations during armed conflicts to reduce unnecessary suffering and to protect civilians and other non-combatants. The conflict in Darfur is considered under international humanitarian law to be a non-international (or internal) armed conflict. Although Sudan has not ratified the Protocol Additional to the Geneva Conventions, most of its provisions, including those concerned with protecting the civilian population, are considered reflective of customary international law. Violations of the laws of war for which there is individual criminal liability are considered war crimes.

Crimes against humanity are unlawful acts committed as part of a widespread or systematic attack against a civilian population. The acts that constitute crimes against humanity include murder, extermination, enslavement, deportation, arbitrary detention, torture, rape, persecution on political, racial and religious grounds, and other inhumane acts.

The widespread and systematic reported abuses by government and Janjaweed forces against ethnic groups believed to be linked to the rebels' amount to an attack on a civil population within the definition of crimes against humanity. The pattern of similar crimes against civilian populations in different areas of Darfur, as well as documentary and eyewitness evidence linking senior government officials with abusive military operations, point to a policy at the highest levels of the Sudanese government. Whether that policy amounted to genocide remains unclear. The

International Commission of Inquiry into the crimes in Darfur concluded that there was no government policy of genocide, but that individuals with genocidal intent may have committed crimes and that this question should be resolved in a court of law.

Many Sudanese government officials, military commanders and militia leaders were in positions of authority over the soldiers and militia members who committed the atrocities. Some issued orders to attack civilians, destroy villages, and loot civilian property for which they are liable as a matter of individual criminal responsibility. Others may be found responsible under the doctrine of command responsibility: Military or civilian leaders are liable for serious abuses committed by persons under their command or authority if they knew or should have known of the abuses, and did not take measures to prevent them or punish the perpetrators. Attacks on civilian populations were organized at high levels of government, were continued for more than two years with the full knowledge that the targets were civilians, and resulted in no serious steps to punish those responsible for the crimes committed.

Presenting allegations of international crimes is only a first step; extensive criminal investigations are required. But gathering evidence for prosecutions of international crimes is extremely difficult in the current climate in Sudan. Witnesses must be able to come forward without fear of retribution, crime scenes must remain untampered with, and forensic and documentary evidence must be shown to be genuine. Given the absence of its own serious investigations, the Sudanese government must allow and ensure the safety of international investigators, prevent threats and violence against witnesses, and open up its governmental records for outside scrutiny.

## **Violations of International Humanitarian Law**

The principle of distinction between civilians and combatants is recognized as a fundamental principle of international humanitarian law in all armed conflicts. This principle provides that parties to a conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants and other military objectives, and not against civilians or civilian objects. In case of doubt whether a person is a civilian, that person is considered a civilian.

A legitimate military objective is an object or a target, selected by its nature, location, purpose, or use, that contributes effectively to



the enemy's military capability, and whose destruction or neutralization offers a definite military advantage in the circumstances. Legitimate military objectives include the enemy's forces, weapons, convoys, installations, and supplies. In addition, objects generally used for civilian purposes, such as houses, commercial buildings, or a civilian airfield, can become military objectives if their location or use meets the criteria for a military objective.

Common article 3 expressly binds "each Party to the conflict," that is, government forces and non-state armed groups, even though the latter do not have the legal capacity to sign the Geneva Conventions.

With regard to civilians and captured combatants, both government and rebel forces are prohibited from using violence to life and person, in particular murder, mutilation, cruel treatment, and torture. The taking of hostages is forbidden, as is humiliating and degrading treatment. No party to the conflict may pass sentences or carry out executions without previous judgment by a regularly constituted court that has afforded the defendant all judicial guarantees.

## **Crimes against Humanity**

Crimes against humanity were first codified in the charter of the Nuremberg Tribunal of 1945. The purpose was to prohibit crimes "which either by their magnitude and savagery or by their large number or by the fact that a similar pattern was applied ... endangered the international community or shocked the conscience of mankind." Since then, the concept has been incorporated into a number of international treaties and the statutes of international criminal tribunals, including the Rome Statute of the ICC.

<http://www.hrw.org/sites/default/files/features/darfur/fiveyearson/report9.html> - \_ftn219

The ICC Statute defines crimes against humanity as unlawful acts "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Murder, extermination, enslavement, deportation, arbitrary detention, torture, rape, persecution on political, racial and religious grounds, and other inhumane acts all fall within the range of acts that can qualify as crimes against humanity. Unlike war crimes, crimes against humanity may be committed in times of

peace or in periods of unrest that do not rise to the level of an armed conflict. Because crimes against humanity are considered crimes of universal jurisdiction, all states are responsible for bringing to justice those who commit crimes against humanity. Crimes against humanity include those abuses that take place as part of an attack against a civilian population. So long as the targeted population is of a predominantly civilian nature, the presence of some combatants does not alter its classification as a “civilian population” as a matter of law. Rather, it is necessary only that the civilian population be the primary object of the attack.

<http://www.hrw.org/sites/default/files/features/darfur/fiveyearsreport9.html> - [ftn223](#)

The attack against a civilian population underlying the commission of crimes against humanity must be widespread or systematic. It need not be both.

<http://www.hrw.org/sites/default/files/features/darfur/fiveyearsreport9.html> - [ftn224](#)

“Widespread” refers to the scale of the acts or number of victims. A “systematic” attack indicates “a pattern or methodical plan.” International courts have considered to what extent a systemic attack requires a policy or plan, but such policy or plan need not be adopted formally as a policy of the state.

Culpability for crimes against humanity requires that the perpetrator have the relevant knowledge of the underlying attack. That is, perpetrators must be aware that their actions formed part of the widespread or systematic attack against the civilian population. While perpetrators need not be identified with a policy or plan underlying crimes against humanity, they must at least have knowingly taken the risk of participating in the policy or plan.

## **Individual Criminal Responsibility**

All individuals, including government officials, military commanders, soldiers, militia members, and civilians, are subject to prosecution for war crimes, crimes against humanity, and applicable domestic crimes under international law.

Individual criminal responsibility for war crimes committed during internal armed conflicts has been explicitly provided in a number of international treaties since the early 1990s. These include the statutes for the international criminal tribunals for the former Yugoslavia and Rwanda, as well as the Rome Statute of the ICC.

Individuals who commit war crimes may be held criminally liable. They may also be held criminally responsible for assisting in, facilitating, aiding, or abetting the commission of a war crime. They can also be prosecuted for planning or instigating the commission of a war crime. In addition, civilian officials, military commanders, and soldiers who order or commit crimes against humanity can be held individually liable.

<http://www.hrw.org/sites/default/files/features/darfur/fiveyearson/report9.html> - [\\_ftn232](#)

In Darfur, individuals such as militia leaders, soldiers, and pilots involved in bombing campaigns, military commanders, and government officials who directly participated in, planned, ordered, or were otherwise complicit in the commission of war crimes and crimes against humanity can be found criminally liable for these activities in international courts, regardless of the presence of Sudanese amnesty or immunity laws. Some of these individuals including those named in this report—both civilian and military—may also be liable for war crimes or crimes against humanity under the theory of command responsibility.

## **Command Responsibility**

Under the doctrine of command responsibility, commanders, or other superiors may be culpable for failing to prevent or punish crimes committed by their subordinates. In Darfur, individual commanders and civilian officials could be liable for failing to take any action to end abuses by their troops or staff. Command responsibility is an established principle of customary international law,

<http://www.hrw.org/sites/default/files/features/darfur/fiveyearson/report9.html> - [\\_ftn233](#) and has been incorporated into the statutes of international criminal courts, including the Rome Statute of the ICC. Although the concept originated in military law, it now also embraces the responsibility of civilian authorities for the abuses committed by persons under their effective authority. The principle of command responsibility is applicable in internal armed conflicts as well as international armed conflicts.

<http://www.hrw.org/sites/default/files/features/darfur/fiveyearson/report9.html> - [\\_ftn235](#)

## **State Responsibility for Crimes Committed by Militia Members**

Under international law, a government is responsible for international crimes committed by militia groups if it can be shown that the state retained “overall control” over the militias. This standard applies regardless of whether militia members are incorporated in or formally linked to the Popular Defense Forces, Border Intelligence Guards or other “official” paramilitary forces, or whether they remain more loosely linked tribal militias armed and coordinated by the government but operating under the direct authority of tribal *agids* (war leaders).

***Further Reading:*** The Tadic Decision of ICTY

## **The Genocide Convention in International Law**

### **Background**

In 1948, the United Nations General Assembly voted unanimously to create the UN Convention on the Prevention and Punishment of the Crime of Genocide ([external link](#)). Recognizing that “at all periods of history genocide has inflicted great losses on humanity” and that international cooperation was needed “to liberate mankind from this odious scourge,” the Convention criminalized certain acts committed with the intent to destroy ethnic, national, racial, or religious groups.

But how has the definition of genocide—crafted through diplomatic negotiation—become meaningful against real threats to civilian groups?

Only a handful of individuals were held accountable for genocide in the decades following 1951, when the Convention came into effect. Few and far between, these trials were held by national courts, which often used national adaptations of the international law of genocide. For example, Adolf Eichmann was prosecuted under an Israeli law very similar to “genocide,” but covering crimes against the Jewish people.

## International Courts

In 1993, in response to massive atrocities in Croatia and Bosnia-Herzegovina, the United Nations Security Council created the International Criminal Tribunal for the Former Yugoslavia (ICTY). It was the first international criminal tribunal since Nuremberg and the first ever mandated to prosecute the crime of genocide. A year later, in response to [devastating violence in Rwanda](#), the Security Council established the International Criminal Tribunal for Rwanda (ICTR). Nearing the completion of their mandates, both of tribunals have contributed detail, nuance, and precedent to the application of the law of genocide.

In 1998, the [Rome Statue of the International Criminal Court \(ICC\)](#) established the first permanent international criminal court. The Rome Statute's drafting process and the ICC's ongoing case against the president of Sudan have added further clarifications to the international law of genocide. In 2007, the International Court of Justice (ICJ), which hears cases between states, issued a landmark decision addressing state responsibility to prevent and punish genocide in the case of *Bosnia and Herzegovina v. Serbia and Montenegro*.

### **\*\*Evolution Of The Law**

Law grows through the setting of precedents. Understanding the intricacies of the definition of genocide is just the first step to understanding the law, which evolves through legal judgments in cases before the tribunals and courts.

A signature to the Convention confers upon the state certain duties: to enact national legislation that punishes genocide committed in its territory and that does not allow for the legal defense of acting in an official capacity; to take measures to reasonably ascertain the location of an accused individual within the state's own borders and arrest him; to cooperate with extradition requests; and to send disputes between nations to the ICJ, individual criminal cases to a national or international tribunal, or to refer a case to the "competent organs of the United Nations."

## **The Case of Private Military Contractors**

Private Military Companies are one of the newest non-state actors in the international scene operating around the globe in different situations as private entities carrying out public works. But their role and responsibility is unknown in international law. To hold them accountable for any violation of legal rules during armed conflicts it is essential to determine their legal status under international law. In the absence of their recognition as a distinctive category of persons under international humanitarian law, inferences could be drawn by reference to other defined categories of persons, namely, combatants, mercenaries and civilians. Based on such inferences the present article examines accountability related issues for any contravention, by civilian-contractors, during armed conflicts.

PMCs are those entities that provide armed security services as private business activity for profit. They are one of the newest armed non-state parties operating in unstable states and conflict situations coming from an unusual source of private sectors as opposed to traditional source of military personnel from public sectors.

This new species of actors and their activities are neither uniform nor regulated directly by the existing rules of international law. They engage in all kinds of activities starting from combating to guarding and protection, detention and interrogation, technical and intelligence assistance, and so on ensuring their presence in pre, during and post conflict situations. Their involvement is perceived both in armed as well as non-armed conflicts and their usage becomes unavoidable in times of war as well as peace in the contemporary international scenario.

PMCs, being a relatively new concept give rise to many issues. So they are in a way in the scope of our debate. Please consider the following questions in the process of your research, but remember, in no way are we asking to limit yourself to them.

The list is as follows: -

- (i) Is there any remedy for victims of PMC activities under humanitarian law?;
- (ii) Against whom such remedies may lie—either against PMC or against its personnel or against the hiring state or against the home state of the PMC and its personnel?;
- (iii) Will the remedy be civil, criminal or both?;
- (iv) Which forum will have jurisdiction over such issues—either the state where the conflict occurs or the hiring state or the home state of the PMC or its personnel?; and
- (v) Whether PMCs are subjects of international law to sue or be sued directly before domestic or international courts and tribunals?

And finally, the role of the committee is to connect all issues like these, to find answers to these problems and while joining the dots, answer the ultimate question about Individual Criminal Responsibility with regards to Private Military contractors.

## **Immunities of State Officials,** **International Crimes, and Foreign** **Domestic Courts**

International law confers on *certain* state officials immunities that attach to the office or status of the official. These immunities, which are conferred only as long as the official remains in office, are usually described as ‘personal immunity’ or ‘immunity *ratione personae*’. It has long been clear that under customary international law the Head of State and diplomats accredited to a foreign state possess such immunities from the jurisdiction of foreign states. In addition, treaties confer similar immunities on diplomats, representatives of states to international organizations, and other officials on special mission in foreign states. The predominant justification for such immunities is that they ensure the smooth conduct of international relations and, as such, they are accorded to those state officials who represent the state at the international level. International relations and international cooperation between states require an effective



process of communication between states. It is important that states are able to negotiate with each other freely and that those state agents charged with the conduct of such activities should be able to perform their functions without harassment by other states. As the International Court of Justice (ICJ) has pointed out, there is 'no more fundamental prerequisite for the conduct of relations between States than the inviolability of diplomatic envoys and embassies'. In short, these immunities are necessary for the maintenance of a system of peaceful cooperation and co-existence among states. Increased global cooperation means that this immunity is especially important.

### **Questions to consider while discussing the issue of Immunities:**

1. The impact of Immunities of the domestic judicial system and the entire prosecution process.
2. The issues of accordance of immunities to the officials of Non-self-governing/unrecognized states
3. How the issue of diplomatic immunity is connected to Individual Criminal Responsibility

### **Further Reading:**

- *The Arrest Warrant Case of the ICJ*
- *United States v. Noriega case*

## Afterword

*This committee as you know is a double delegation. There is a special procedure for backroom negotiations for your benefit. Please find the same in the Annexure.*

*Your Executive Board, like any other will only be responsible for facilitating the procedure of the committee. Please make sure that, every fact you raise in the committee has some substantial backing; the Executive Board will not be passing any value judgments.*

*Also, we attempted to make this background guide as direct as possible. Any opinions about any country that are present in the guide are for the proper understanding of the agenda. In no way are these opinions reflecting the views of the Executive Board.*

*This agenda is very complex and requires a good amount of understanding of basic international law. We do not ask you to read entire commentaries of law theorists; but we do expect a base level of knowledge about the principles, which are directly related to this agenda.*

*The guide has been made keeping in mind the competitive nature of this committee and therefore, a bare minimum level of information has been provided only for a small fragment of a wide range of issues related to the agenda. Proper research followed by brainstorming is the key to a good understanding of the agenda.*

*In a nutshell, you may consider the following questions/issues while brainstorming about this agenda-*

- The definition of 'State Crimes' and the scope of any existing definitions.
- Whether member states should be accountable for internationally wrongful acts conducted by collective organizations or individuals for different motives.
- *The effectiveness of existing legal frameworks*

- The relationship between state responsibility and individual criminal liability for acts or omissions that constitute at the same time internationally wrongful acts as well as crimes under international criminal law
- The cooperation of states with International tribunals.
- The case of Palestine and Sudan
- State Responsibility for Crimes Committed by Militia Members
- *The case of Private Military Contractors/Companies (Special Emphasis on their Accountability)*
- *The issue of Diplomatic Immunity while prosecuting individuals for International Crimes.*
- *The case of Non – Self-governing territories.*

*For any further queries, feel free to contact your executive board via email or Facebook.*

*Regards,  
Executive Board,  
United Nations Security Council – MUNQSMUN 2104*

*President – Abhishek Arora (abhishek.arora1996@gmail.com)  
Vice President – Arjun Singh Rana (arjunsrana243@gmail.com)  
Lobby Director – Abeer Arora (abeera863@gmail.com)*

# ANNEXURE

## THE PROCEDURE FOR BACKROOM NEGOTIATIONS AND FUNCTIONING OF DOUBLE DELEGATIONS

- 1) The delegation **need not** have a designated Speaker and Lobbyist.
- 2) Any of the two members of the delegation may speak when recognized, without a time frame in which the roles have to be switched.
- 3) The Lobby Director will be present during every backroom negotiation. A secret record will be kept of these negotiations.
- 4) Procedure of initiation:
  - a) A delegation wishing to initiate such a negotiation will write a chit addressed to the Executive Board through the Lobby Director in the following format:

To: Executive Board via Lobby Director  
For: Backroom Negotiation Initiator: Country A  
With: Country B, Country C and Country D  
Theme of negotiation: \_\_\_\_\_

- b) This chit will then be passed to Country B, Country C and Country D for consent. To agree to a negotiation request, as in to give consent, that particular delegation will write the name of their country with a "Yes" written against it.  
Illustration:

To: Executive Board via Lobby Director  
For: Backroom Negotiation Initiator: Country A  
With: Country B, Country C and Country D  
Theme of negotiation: \_\_\_\_\_

Country B: Yes  
Country C: Yes  
Country D: No

After consent has been recorded on the chit, it will reach the Executive Board for its consent.

**c)** Even if one country agrees to participate in the negotiation except the initiator, the request will be valid. However, if all countries disagree except the initiator, the request will be invalid. The Executive Board will keep a record of all requests.

**d)** If a delegation 'X' wishes to participate in an ongoing negotiation of which X is not a part of, then that delegation must send a chit addressed to the Lobby Director regarding the same. If all the participants of that ongoing backroom negotiation agree only then can X participate.