The Southern Regional Model United Nations—SRMUN XVII

Dear Delegates,

Greetings and welcome to Southern Regional Model United Nations (SRMUN) XVII and the International Law Commission (ILC)! My name is Kate Moore and I am very excited to be serving as your Director. Both I and Gilbert Abraham, your Assistant Director, hope to make the ILC a great committee in November. This is my sixth year attending SRMUN, and my second on staff. Last year I was Assistant Director to the International Atomic Energy Agency (IAEA) Board of Governors. I graduated in December of 2004 from Clemson University, and this fall I am entering my first year of law school at George Washington University in Washington, D.C. I have a strong interest in international affairs which I partly attribute to my years with SRMUN, and I am always thrilled to return every year to share my passion for world affairs with other students.

The International Law Commission was founded by the General Assembly and comes under the direct supervision of the General Assembly 6th Committee. As the committee background will explain, the ILC is not a typical SRMUN committee, and therefore will be run slightly different from other committees. Most noticeably, though we will recognize you by your country name, you will not be representing the views of your country. **Delegates to the ILC will be acting as individual legal theorists and will work together in committee to draft conventions on each topic**. This will be a part of your challenge at SRMUN, but trust that Gilbert, your Assistant Director, and I will be right there with you to answer your questions and help you figure out what to do and how to do it.

The topics for the International Law Commission are:

I. Universal Jurisdiction;
II. Odious Debt;
III. Status, Privileges and Immunities of International Organizations.

Though the background guides are available to give you a basic understanding of each of the topics, it is your duty to conduct further research to help prepare you to resolve the legal issues at hand. Once again, we encourage you to contact either of us for help in understanding the topics and preparing for the conference.

Each delegation is required to submit a position paper covering each of the three topics, the whole of which is to be no longer than 2 pages. Please see the SRMUN webpage for other format specifications. **Position papers must be turned in to the Director-General, Laura Merrell, by Midnight, EST, October 30th, 2006 (dg@srmun.org).** Please recall that you should not write your position papers from the perspective of your respective country, but from your own professional opinion. However, we do ask that you examine and write on your country's history with each topic as this will provide a diverse knowledge in committee and enable us to better form draft conventions.

Once again, we are excited to be directing the International Law Commission and we are happy to answer any questions you may have. Good luck, and see you in November!

Kate Moore	Gilbert Abraham	Laura Merrell
ilc@srmun.org	ilc@srmun.org	dg@srmun.org
Director	Assistant Director	Director-General

History of the International Law Commission

"Through law, the attempt is made to regulate behavior in order to ensure harmony and maintain a society's values and institutions." [1] *- Christopher C. Joyner*

The International Law Commission (ILC) was formed by the United Nations General Assembly in 1947 in the spirit of the newly written UN Charter which called for the "progressive development of international law and its codification."[2] The International Law Commission works towards this goal by seeking to formally document existing international laws and to create and expand new and undeveloped laws.[3]

Origins of Modern International Law and the ILC

To understand the work of the ILC, it is necessary to understand first the general concept of international law. International law is best understood as the concept that nation-states are as equally subject to the rule of law as are their citizens.[4] This idea was first espoused by the philosopher Hugo Grotius in the early 17th Century.[5] Grotius is often considered to be the father of international law and continued to write several treatises on the behavior of states in peace and war, as well as the governance of maritime transportation throughout his life.[6]

Grotius' theories were realized through the Treaty of Westphalia in 1648, which saw both the emergence of nation-states as sovereign entities and the beginning of modern international relations.[7] Though philosophers have argued that international law derives from higher principles of morality or ethics, the Treaty of Westphalia demonstrates that international law is above all a necessary instrument of inter-state relations; nation-states would have to initiate and follow some type of order if they were to survive. This same reasoning prevails today as the world becomes more global and power is more equally distributed between nations.

Both the distinguishing factor and the dilemma of international law is the absence of the authoritative body that governs in other types of legal systems.[8] Between nation-states there is no legislative body to pass undisputed laws as there is within individual states, such as the United States Congress. Nor does any authority exist to enforce adherence as does most state systems such as militaries and police forces. Therefore, international law must be developed and regulated by the states themselves, each of which have its own self interests to protect. In the past this has often been through war, but as international relations have grown, so too have other means of enforcement such as diplomacy, economic incentives and sanctions.[9]

The foundation of the International Law Commission began with the formation of the League of Nations following World War I.[10] Member states, especially those recovering from the utter devastation wreaked by modern warfare, were eager to create a means by which international issues of contention could be peacefully resolved—essentially a system of widely accepted rules for state interaction. On September 22, 1924, the Assembly of the League of

---

[1] Christopher C. Joyner. "The Reality and Relevance of International Law in the Twenty-First Century." *The Global Agenda: Issues and Perspectives.* 6tgh Edition. Ed. Charles W. Kegley, Jr. and Eugene R. Wittkopf. Boston: *McGraw Hill.* 2001, p. 241.
[2] *Charter of the United Nations*. The United Nations. June 26, 1945.
[3] "Introduction." The International Law Commission. http://www.un.org/law/ilc/index.htm
[4] Anthony Kenny, Ed. *The Oxford History of Western Philosophy.* New York, Oxford University Press. 1994, p. 313-314.
[5] Ibid.
[6] "Hugo Grotius." Oregon State University. http://oregonstate.edu/instruct/phl302/philosphers/grotius.html
[7] Christopher C. Joyner. "The Reality and Relevance of International Law in the Twenty-First Century." *The Global Agenda: Issues and Perspectives.* 6tgh Edition. Ed. Charles W. Kegley, Jr. and Eugene R. Wittkopf. Boston: *McGraw Hill.* 2001, p. 241.
[8] Ibid.
[9] Ibid.
[10] "Introduction." The International Law Commission. http://www.un.org/law/ilc/index.htm

Nations established the 'Committee of Experts for the Progressive Codification of International Law' to examine which international legal issues were most in need of clarity and recognition.[11] In 1947, the newly created United Nations General Assembly adopted this same concept and chartered in its second session of the International Law Commission.[12] Because of the wariness of member states to establish an authoritative body, the ILC was charged solely with the "study and recommendation" of international law.[13]

Sources of Law for the ILC

As defined in The Hague Peace Conferences of 1899 and 1907, international laws can be placed in three different categories.[14] First are the laws of peace, which largely involve the duties and rights of states at peace with one another.[15] This includes the recognition of nation-states and their governments by other nation states, and the observance of territorial lines and diplomatic representatives. The second category comprises the laws of war, which dictate the conduct of nation-states, or "belligerents," in warfare.[16] The Geneva Convention of 1864 is the most famous example of this category, as it first recognized the need for humane treatment of civilians and of war prisoners. Last are the laws of neutrality, which correlate to the recognition of neutral territories and the duty of nation-states, especially belligerents, to observe their neutrality.[17]

International Law derives from several sources. First and foremost are previously established treaties and conventions.[18] If accepted by enough parties, conventions may develop their own legal status and thus become known as "lawmaking treaties." These are an essential part of international law because they often create the "organizational machinery" through which law can be further expanded.[19] A prime example of this is the Nuclear Non-Proliferation Treaty, which has paved the way for numerous other treaties and conventions on the use of weapons of mass destruction.

Customs and local laws play a secondary role in international law, though their influence has lessened as the global community has encompassed more cultures.[20] Also known as "laws by use," local customs and traditions have become so familiar that they have become binding to the states which practice them. For example, most of the rules found in the U.N. Convention on the Law of the Sea were adopted from longstanding customary practices.[21] Custom is broader than just political texts, and can include philosophical and religious tenets that when first founded were adopted by ruling societies and have become adopted over time into legal practice. An example is the Biblical Ten Commandments which, though originally Judaic and Christian religious beliefs, were adopted into early law practices and are still reflected in many western legal systems.

Structure of the ILC

The International Law Commission serves a distinct purpose in the international legal field. Rather than seeking to resolve specific disputes brought before it, the ILC works to establish rules of conduct for states to abide by when working with each other.[22] Sometimes the laws are already in existence, such as the widely accepted Geneva Convention, and sometimes the laws are geared towards new situations for which there exists no code of conduct. Nor does the ILC itself issue a ruling, but rather refers its draft conventions to the General Assembly (GA) which then determines the next course of action.[23]

---

[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Robert J. Pronger. "International Law." *World Book Encyclopedia.* 6th Edition. Chicago: World Book, Inc. 2006, p. 340-342.
[15] Ibid.
[16] Ibid.
[17] Ibid.
[18] Christopher C. Joyner. "The Reality and Relevance of International Law in the Twenty-First Century." *The Global Agenda: Issues and Perspectives.* 6tgh Edition. Ed. Charles W. Kegley, Jr. and Eugene R. Wittkopf. Boston: *McGraw Hill.* 2001, p. 241.
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] "Introduction." The International Law Commission. http://www.un.org/law/ilc/index.htm
[23] Ibid.

The International Law Commission reports to the GA; particularly to the GA 6th Committee which oversees legal issues.[24] In following the mandate of the UN Charter, the ILC works to promote the development and codification of international law. The ILC is comprised of thirty-four members who are elected by the GA to five-year terms.[25] These members do not act as members of their respective nations but rather as unbiased legal theorists.[26] The ILC meets annually and subsequently submits an annual report of their progress to the GA.

In session, the ILC works to prepare draft conventions on various topics in the international legal realm. Sometimes these topics are chosen by the ILC, and sometimes they are assigned to the ILC by the GA or the Economic and Social Council (ECOSOC).[27] Once a topic has been selected, the ILC then requests information and commentary from member states to the UN on that particular topic.[28] A draft convention is written and submitted to the General Assembly, which will then debate the draft convention and seek further commentary from the Member States.[29] Depending on the outcome of the debate and Member State reactions, the draft convention may be sent back to the ILC for further drafting or it may be formed into a formal diplomatic conference, and eventually a final convention that will be open to member states for signing.[30] At this point, the convention becomes a legal document that will be recognized by all signed parties and will be used in later draft conventions of a similar nature.

The current members of the International Law Commission include:

ARGENTINA, BAHRAIN, BRAZIL, CAMEROON, CHINA, COLOMBIA, COSTA RICA, FINLAND, FRANCE, GABON, GHANA, GREECE, INDIA, IRAN (ISLAMIC REPUBLIC OF), ITALY, JAPAN, KOREA (REPUBLIC OF), MALI, MOZAMBIQUE, NEW ZEALAND, POLAND, PORTUGAL, QATAR, ROMANIA, RUSSIAN FEDERATION, SOUTH AFRICA, SYRIAN ARAB REPUBLIC, TANZANIA (UNITED REPUBLIC OF), TUNISIA, UGANDA, UNITED KINGDOM, UNITED STATES OF AMERICA, URUGUAY, VENEZUELA.

I. Universal Jurisdiction

"Any man's death diminishes me, because I am involved in mankind."- John Donne[31]

"Where law exists a court will rise. Thus, the court of humanity, if it may be so termed, will never adjourn."- Michael A. Musmann[32]

Introduction

Since the beginning of civilization, codes of behavior and action have often promoted social cohesion and conflict resolution through laws. These laws are deemed so important to achieve these aims that they are often found across a wide variety of locations, cultures and religions. The Code of Hammurabi (one of the earliest sets of laws) is often cited as the first example that some laws are so basic that they cannot be changed, even by a king.[33]

Of the rules of law, there are some offenses that have achieved universal condemnation—murder, rape, torture, enslavement—these offenses and others are collectively called crimes against humanity. Crimes against humanity are broadly defined as acts so grave, on a scale so large, that their very execution diminishes the human race as a whole. Crimes again humanity were first recognized and defined during the Nuremburg Trials following World

[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Ibid.
[30] Ibid.
[31] John Donne. *Meditation XVII.* The Literature Network. www.online-literature.com/donne/409
[32] Michael A.Musmanno. *U.S.N.R, Military Tribunal II, Case 9: Opinion and Judgment of the Tribunal. Nuremberg: Palace of Justice.* 8 April 1948. pp. 112–116. http://www.einsatzgruppenarchives.com/trials/crimesagainst.html
[33] "Hammurabi's Code of Laws." Translated by L.W. King. http://eawc.evansville.edu/anthology/hammurabi.htm

War II.[34] Most recently, the definition was expanded with the creation of the International Criminal Court through the Rome Statute.[35] Though the United Nations has made remarkable improvements regarding human rights around the world, the global community is constantly beset by horrific accounts of these crimes—often occurring through internal civil conflict. Yet despite their brutality, these crimes seem to go unpunished. While the world community has never hesitated to condemn these crimes, it has often been paralyzed to act. Many argue that this failure to act, whether out of respect for national sovereignty, political agendas or fear of reciprocity, is as inexcusable as the crimes themselves. These theorists argue that "Terrorism and human rights violations are…the concern of the world's legal system rather than the sole province of individual states."[36]

Universal Jurisdiction is a controversial principle in international law based solely on the nature of the crime, without regard over persons whose alleged crimes were committed outside of the boundaries of the prosecuting state, regardless of nationality of either the perpetrator or the victim, or any other connection to the state exercising such jurisdiction.[37] This principle received a great amount of prominence when in 1993, the Kingdom of Belgium instituted a controversial law that gave its judges universal jurisdiction to prosecute "war crimes, crimes against humanity and crimes of genocide, independently from the place where the crime was committed, the nationality of the victim and the location of the presumed perpetrator."[38] Though the law was later modified, it raised the question of whether these acts that are universally condemned, or "universal crimes," exist and whether the world community has the obligation through some form or another to ensure that the perpetrators are brought to justice.

Essential terms

In any legal situation, the right of ***jurisdiction***, or the right of an authority to judge a case, must be established before a trial may begin. Traditionally in international law, jurisdiction falls within national boundaries, with each state exerting jurisdiction over crimes perpetrated within its borders and against its populace.[39] As the world has become more connected, jurisdiction has also become more complicated—crimes no longer occur with the criminal, the victim and the location all being of the same country. Thus it has become customary for states to make claims of jurisdiction in legal matters not necessarily within their borders. The terrorist bombing of PanAm flight 103 over Lockerbie, Scotland demonstrates this issue when two Libyan nationals were accused of a terrorist bombing an American flight in the United Kingdom. As a result, the United States, The United Kingdom and Libya all asserted jurisdiction over the case.[40]

Extradition is the legal process in which one state's authority returns an individual within its borders to another state which requests that individual on the grounds that they violated the requesting state's laws.[41] Rooted in international law, extradition evolves from the principles of state sovereignty and universal crime by creating a venue for nation-states to work together to apprehend suspected criminals without compromising any state's sovereign rights or another state's right to justice. There are, however, limitations to extradition. Many countries do not desire to extradite their own nationals and several have disparaging laws on the nature of the crime and the severity of the punishment.[42] The principle of *Aut Dedere Aut Judicare* ("extradite or judge") arises from this quandary and offers the legal remedy of giving a state a choice in the face of a requested extradition; either the state

---

[34] "Nuremburg Trial Proceedings Vol. 1, Charter of the International Military Tribunal." The Avalon Project at Yale Law School. http://www.yale.edu/lawweb/avalon/imt/proc/imtconst.htm

[35] "Article 7 of the Rome Statute." International Criminal Court. http://www.un.org/law/icc/statute/99_corr/2.htm

[36] K.C. Randall. "Universal Jurisdiction Under International Law." *Texas Law Review.* Volume 66, Issue 4. 1987-1988

[37] "The Princeton Principles on Universal Jurisdiction." The University of Minnesota Human Rights Library. http://www1.umn.edu/humanrts/instree/princeton.html

[38] "The Law on Universal Jurisdiction reviewed." The Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation of Belgium. http://www.diplomatie.be/en/press/homedetails.asp?TEXTID=5943

39 Colleen Enache-Brown and Ari Fried. "Universal Crime and Duty: The Obligation of Aut Dedere Aut Judicare in International Law." *McGill Law Journal*. 1998, Vol. 43. pp.613.

[40] Michael Plachta. "The Lockerbie Case: The Role of the Security Council in Enforcing the Principle *Aut Dedere Aut Judicare*." *European Journal of International Law.* Volume 1, 2001. pp. 125-140.

[41] "Extradition—some benchmarks." Interpol. March 18, 2003. http://www.interpol.int/public/ICPO/LegalMaterials/FactSheets/FS11.asp

[42] Ibid.

may extradite the suspect or it may submit the suspect to domestic legal authorities for investigation of the alleged crime.[43]

The principle of universal jurisdiction is founded on several political and ethical beliefs. Foremost, it is argued that it is necessary for the good of the world community.[44] Many legal theorists believe that even states that dismiss their moral obligation will often need to act for practical reasons of social and economic interests—whether to show their political strength to their citizens and neighbors, or to protect a valuable physical or monetary asset.[45] Ideally, however, because human rights are an internationally shared value, theorists argue that states should act out of a belief in protecting that shared value.[46]

Legal History

Up until the mid-20th century, most of the violence against civilians occurred during warfare between two countries, or international warfare.[47] By the time the United Nations and other international organizations came into force to curb such conflicts, warfare was already becoming an increasingly internal affair. Much of this conflict resulted from the hasty division and reformation of new countries following the two World Wars that threw different cultural and ethnic groups under the same nationality. Other internal conflicts, such as the genocide in Rwanda, have other, deep-rooted sources such as Western Imperialism.[48] Whatever the cause, internal conflicts quickly became as important as international wars in the struggle to protect against human suffering.

In order to determine whether there exists a legal basis for universal jurisdiction, it is necessary to examine the developments made in international law with respect to human rights. International law draws from many sources of precedent including international treaties, conventions, international court rulings and customary norms. The 1945 UN Charter began by stating its goal to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small," and declared one of its fundamental purposes to be to "uphold the promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."[49]

Immediately following the creation of the United Nations, two conventions formed the foundation of humanitarian law. The first, *The Universal Declaration of Human Rights*, was adopted by the UN General Assembly in 1948 and declared that:

> "Everyone has the right to life, liberty and security of person. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Everyone has the right to recognition everywhere as a person before the law. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."[50]

In 1949, four Geneva Conventions were adopted by the world community to prohibit harm to civilians during conflict.[51] Specifically, the Geneva Conventions forbid murder, mutilation, torture, "cruel treatment," hostage taking, and degradation.[52] The Conventions distinctively applied these prohibitions to "armed conflict not of an

---

[43] Ibid.
[44] Colleen Enache-Brown and Ari Fried. "Universal Crime and Duty: The Obligation of *Aut Dedere Aut Judicare* in International Law." *McGill Law Journal*. 1998, Vol. 43. pp.613.
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Philip Gourevitch. *We wish to inform you that tomorrow we will be killed with our families: Stories from Rwanda*. New York: Farrar, straus and Giroux. 1998, pp. 50-62.
[49] *Charter of the United Nations*. The United Nations. June 26, 1945.
[50] *Universal Declaration of Human Rights*. United Nations General Assembly. December 10, 1948.
[51] *Geneva Conventions*. August 12, 1949.
[52] Ibid.

international character occurring in the territory of one of the High Contracting Parties."[53] They also established the groundwork for the eventual concept of universal jurisdiction by declaring that "Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts."[54] As some legal theorists have noted, the vague working of this clause implicates the responsibility of all governments to prosecute perpetrators of the aforementioned crimes.[55] The same clause also establishes the legal concept of *Aut Dedere Aut Judicare*: "It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case."[56]

In 1968 the United Nations General Assembly adopted Resolution 2444, *Respect for Human Rights in Armed Conflicts*, which states that internal conflicts were as subject to legal restraints as international ones.[57] The resolution goes on to call for the protection of civilians and non-combatants during internal conflicts.[58] Another important legal step was taken in the direction of universal jurisdiction when *Protocol Additional to Geneva Conventions* (commonly known as *Protocol II*) was signed into force in 1978. Perhaps the most important part of the *Protocol II* was the 'Martens' clause' in the Preamble, named for a Russian delegate to the Hague Convention of 1899.[59] It states that "in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience."[60] Many legal theorists have argued that this important phrase, simply by being within the text of a strongly recognized treaty, serves as a legal 'catch-all' for circumstances that have yet been addressed formally in law.[61]

In 1986, the International Court of Justice ruled that "elementary considerations of humanity" could apply in internal conflicts as well as international ones.[62] The justices argued that though international conventions, such as the Geneva ones, may not have directly applied to internal conflicts, but at the least they were expressions of "fundamental general principles of humanitarian law."[63]

The UN General Assembly took a drastic step towards universal jurisdiction by passing the 1987 *Convention Against Torture*, which calls for active enforcement of humanitarian laws that ban torture.[64] Specifically, the document declares that "each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."[65] However, the uniquely strong language of this convention has caused many states to hold reservations against the convention and at least forty recognized nations have not signed to it. [66] Lack of near universal participation thus weakens the legal standing of the Resolution.

The 1996 *Draft Code of Crimes Against Peace and Security of Mankind*, which reiterates those crimes that are considered to be universal, also lists what are considered to be commonly held war crimes, and states that "any of

---

[53] Ibid.
[54] *Geneva Conventions*. August 12, 1949.
[55] Colleen Enache-Brown and Ari Fried. "Universal Crime and Duty: The Obligation of *Aut Dedere Aut Judicare* in International Law." *McGill Law Journal*. 1998, Vol. 43. pp.613.
[56] Ibid.
[57] UNGA R. 2444. *Respect for Human Rights in Armed Conflict*. United Nations General Assembly. December 19, 1968.
[58] Ibid.
[59] Rupert Ticehurst. "The Martens Clause and the Laws of Armed Conflict." *International Review of the Red Cross*. April 30, 1997. pp. 125-134.
[60] *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*. Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts. December 7, 1978.
[61] Colleen Enache-Brown and Ari Fried. *Universal Crime, Jurisdiction and Duty:The Obligation of* Aut Dedere Aut Judicare *in International Law. McGill Law Journal.* Volume 43, 1998. pp. 613-633.
[62] Ibid.
[63] Ibid.
[64] A/RES/39/46. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. United Nations General Assembly. December 10, 1984.
[65] Ibid.
[66] John Dugard. "Bridging the Gap Between Human Rights and Humanitarian Law: The Punishment of Offenders." *International Review of the Red Cross.* September 30, 1998. pp.445-453.

the following acts committed in violation of international humanitarian law [are] applicable in armed conflict not of an international character…"[67] Other important legal precedents include the International Military Tribunals at Nuremburg, the International Criminal Tribunal for Rwanda, the International Military Tribunal for the former Yugoslavia, and the international legal prosecution of the bombers of PanAm Flight 103 over Lockerbie, Scotland. As criminal proceedings, these tribunals all helped to set the international standard for universal crime by allowing for the world to hold violators of human rights and international law responsible.[68] Essentially, in declaring these acts and their perpetrators as criminal on a multilateral level, these tribunals open the door for all nation-states to act on their expressed condemnation of crimes against humanity.

Delegates may also want to note several other important legal and international documents: Notably, the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* which declared officially that genocide was a crime against humanity;[69] and the 1993 *World Conference on Human Rights*, which calls for "perpetrators of such [violations of human rights] be punished and such practices immediately stopped."[70] There are several more conventions currently in progress, including proposed treaties concerning weapons of mass destruction.[71]

Current Situation

Universal crime and jurisdiction became a highly controversial issue when, in 1993, the Kingdom of Belgium passed a "war crimes law" that gave the Belgian courts universal jurisdiction to prosecute crimes "irrespective of whether Belgium has a traditional nexus with that crime, the criminal or the victim."[72] The law was based largely on the precept of the International Military Tribunals at Nuremburg, and on the proceeding law passed by the newly formed state of Israel that allowed Israeli courts to hear additional cases against alleged perpetrators of war crimes.[73] The original law also withheld any type of immunity from country officials and diplomats.[74]

The immunity clause was later struck down by the International Court of Justice, which wrote that Belgium had surpassed any established legal precedent, and that, while in office, "Heads of State, Heads of Government and of Ministers of Foreign Affairs" were immune from prosecution in international law.[75] Furthermore, after meeting with intense international criticism, the law was amended in 2003 so that charges not involving a Belgian could only be brought by the Belgian Federal Prosecutor. The new law specifically stated that the Federal Prosecutor still retained such a right to bring charges, with four specific exceptions: when the claim would be clearly without merit, when the facts of the case could not be interpreted to show a breach of international law, when the claim could not lead into an admissible investigation, and when Belgium had the obligation to yield the charge to another court with more jurisdiction, such as the International Court of Justice or an international tribunal regarding the case.[76] To further encourage international participation, the amended law required the Belgian Minister of Justice to inform the ICJ of intent to file a claim, and allowed such claim to be brought only after the ICJ clearly showed no intention of acting itself on the claim.[77]

Even after amendments in 2003 were made to reflect the ruling of the ICJ, the Belgian law still met with a large amount of criticism from other nation states, and was further amended to allow only claims which directly involved

---

[67] *Draft Codes of Crimes Against the Peace and Security of Mankind*. International Law Commission. 1996.
[68] Colleen Enache-Brown and Ari Fried. "Universal Crime and Duty: The Obligation of *Aut Dedere Aut Judicare* in International Law." *McGill Law Journal*. 1998, Vol. 43. pp.613.
[69] UNGA R. 260. *Convention on Prevention and Punishment of Crimes of Genocide.* United Nations General Assembly. December 9, 1948.
[70] A/CONF.157/24. *Vienna Decalration and Programme of Action.* United Nations General Assembly. July, 12, 1993.
[71] John Dugard. "Bridging the Gap Between Human Rights and Humanitarian Law: The Punishment of Offenders." *International Review of the Red Cross.* September 30, 1998. pp.445-453.
[72] Colleen Enache-Brown and Ari Fried. *Universal Crime, Jurisdiction and Duty:The Obligation of* Aut Dedere Aut Judicare *in International Law. McGill Law Journal.* Volume 43, 1998. pp. 613-633.
[73] Stefaan Smis and Kim Van der Borght**. "**ASIL Insights: Belgian Law concerning The Punishment of Grave Breaches of International Humanitarian Law: A Contested Law with Uncontested Objectives." The American Society of International Law. July 2003. http://www.asil.org/insights/insigh112.htm
[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Ibid.

a Belgian national.[78] Many international human rights organizations and legal advocates were disappointed by the newly, watered-down version of a law that had originally been a large step towards prosecuting offenders across borders. Amnesty International particularly argued against the changes, pointing out that "It could be argued that the ICJ implicitly accepted that Belgium did have jurisdiction to issue warrant arrests in such circumstances…" and "the ICJ judgment has no relevance to the issues" presented by critics of the law regarding whether Belgium did indeed have jurisdiction to bring international claims. [79]

Presently, there is still very little precedence to truly keep any nation state from invoking universal jurisdiction. Two of the largest problems stem from tradition within the two areas of law that govern such crimes: human rights law and humanitarian law. Human rights law is traditionally the law of states with regard to their own populaces, and human rights treaties are traditionally non-coercive (with the *Convention Against Torture* as an important exception).[80] Ironically, the related branch of humanitarian law is often powerless in internal situations: though the *Geneva Conventions* and *Protocol II* forbid the crimes against humanity mentioned earlier, the vague wording of the section regarding enforcement is argued by some theorists to only apply in international situations, not internal ones.[81] Supporters of international jurisdiction further point out that the progress of the law is incredibly slow: for example, the officials at the Nuremburg Trials chose to only prosecute crimes that occurred during open international warfare, thus making the struggle to address internal crimes in times of international peace more difficult to prosecute.[82]

Another large problem is the relative newness of an international stage on which to pursue offenders: the International Court of Justice only came into being in 1996, and with the exception of individual tribunals, there was no other global venue. [83] Conversely, as the retraction of the original Belgian war crimes law shows, individual states do not retain such power over each other, and very few states have passed legislation even remotely similar to Belgium's, as the existence of such laws could interfere with state sovereignty and create international strife.[84] As many theorists are quick to note, states do not prosecute many of these crimes within their own borders, largely because the government itself is a party to the crime, unwilling to punish members of its own military, or quick to overlook past crimes for political reasons.[85] A common scenario is that in which a new government formed after massive internal upheaval will offer amnesty to past leaders in an attempt to quickly establish stability. Though the crimes are acknowledged, national security often takes more precedence.

Conclusion

There are many ways to address the issue of universal jurisdiction. Some theorists have proposed creating a hierarchy of jurisdiction by which future criminal acts can be addressed.[86] For example, such a convention might dictate in the pretext of a crime with multiple jurisdictions, which nation is given priority to prosecute. Such a convention would require a careful balance of elasticity: should a convention become too rigid, then it would not be applicable to every situation, but if too flexible, then it would be abused.

Other potential solutions include strengthening international bodies to deal with enforcement: the International Court of Justice or even the UN Security Council, which has in the past invoked sanctions as a means of forcing Member States to adhere to their obligations to enforcement.[87] A 'third party' system could be established, in which a neutral state is chosen to hold hearings against offenders of universal crimes. This plan succeeded in the PanAm 103 case,

---

[78] Ibid.
[79] "Universal Jurisdiction: Belgian Prosecutors can Investigate Crimes under International Law Committed Abroad." Amnesty International. February 1, 2003. http://web.amnesty.org/library/Index/ENGIOR530012003?open&of=ENG-BEL
[80] John Dugard. "Bridging the Gap Between Human Rights and Humanitarian Law: The Punishment of Offenders." *International Review of the Red Cross.* September 30, 1998. pp.445-453.
[81] Ibid.
[82] Ibid.
[83] Ibid.
[84] Ibid.
[85] Ibid.
[86] Michael Plachta. "The Lockerbie Case: The Role of the Security Council in Enforcing the Principle *Aut Dedere Aut Judicare*." *European Journal of International Law.* Volume 1, 2001. pp. 125-140.
[87] Ibid.

when the Netherlands offered to host the trial, thus preventing international conflict.[88] The solution may also be as simple as drafting a new convention for international jurisdiction, with stronger wording, but such a convention may not be strongly supported by the international community.

It is however, necessary for the world community to reach some sort of solution, lest states resort to illegal venues for prosecuting offenders (illegal seizure, assassination, invasion and international war) that could lead to worse conflict and political strife.

Committee Directive

Delegates must first determine individually whether international jurisdiction is a justified and viable legal issue for the International Law Commission to address. Though not representing the official opinions of their respective countries, delegates might want to briefly consider this issue from the standpoint of their own nation conflicted with an example of a universal crime. How has your country dealt with an instance of a crime or crimes against humanity, whether internal or external? Which treaties does your state belong to and to which treaties or conventions does your state have reservations against? Delegates should then consider what methods would best legally strengthen the world's ability to respond to universal crime and should prepare to work on those methods in committee.

A draft convention can be a newly written document or an extension or a re-write of an existing convention, but it should be written with the intention of becoming an actual convention open for nation states to sign on to. Possible avenues for committee work could include writing a draft convention based on one of the aforementioned proposed solutions, however delegates are not limited to these suggestions. Delegates may also want to further examine the original law passed by the Kingdom of Belgium and consider creating a draft convention based on the tenets of this legal document.

Ultimately, the delegates to the International Law Commission will be working as a group of legal theorists to produce a draft convention to be submitted to the General Assembly. Group consensus on the viability of a draft convention will be necessary for a draft convention to be considered admissible to the GA—therefore delegates will work as a unified group to achieve this goal. Delegates should bear in mind that the ILC works to codify (or review) existing law, or create new law based firmly on preceding documents. Therefore creativity is applauded, but must be balanced with practicality.

II. Odious Debt

"If a despotic power incurs a debt not for the needs or in the interest of the State, but to strengthen its despotic regime, to repress the population that fights against it, etc., this debt is odious for the population of all the State."[89]
-Alexander Nahum Sack

Introduction

Settling the quandary over odious debt has matriculated into a heated debate in the international community. The conflict pits bankers and bureaucrats in support of accountability and debt repayment against empathizers of indebted countries and non-governmental organizations (NGOs) who support full and complete debt forgiveness. Odious debt is a very broad subject open to interpretation, however for these reasons it makes the topic increasingly intriguing. Current ideology asserts that odious debt occurs when a tyrannical power acquires a debt not for or in the interest of the State.[90] However, the primary purpose the power has acquired it is to strengthen its own tyrannical regime.[91] At this juncture the debt is then considered to be objectionable for the population of the state, and the new

[88] Ibid.
[89] Patricia Adams. "The Doctrine of Odious Debts." From *Odious Debts: Loose Lending, Corruption, and the Third World's Environmental Legacy.* Odious Debts. http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=subcontent&AreaID=3
[90] Ibid.
[91] Ibid.

government is therefore not obligated to repay the debt.[92] The debt is by default considered the personal debt of the power that has incurred it.[93] While one side argues for repayment and accountability, the opposition is for total debt forgiveness. This raises ethical questions as to whether or not debt that is considered odious should be forgiven or if various groups or persons should be held accountable. While for many this is an ethical issue, ILC delegates should keep in mind that their job will be not to determine the ethically correct course of action, but the legally accurate course—especially in the event that the two are different.

An example of a debt that would be considered *odious* is a scenario in any prospective developing country in which there is a regime that borrows money from a prospective international lender such as the International Monetary Fund (IMF) or World Bank. What follows is that this regime would then use the funds that they garner to enlarge personal accounts and promulgate their personal endeavors. As a result of spending the funds that they acquire on personal objectives the state is left with the bill that was not created by the state and citizens. After the original regime is no longer in power the state and its citizens are left with the debt. This debt under the current ideology would be considered odious. In analyzing this complex and multifaceted topic keep in mind that as a member of the ILC, you are an unbiased legal theorist.

Definition

It is essential to be aware that the theory asserts that these debts by virtue of their name are loathsome or menacing debts incurred by a regime, that are bequeathed upon the subsequent government and population of the state indiscriminately.[94]

Odious debt as interpreted by the International Law Commission is an expansive subject that embodies at least two sub-topics, which are "war debts" and "subjugation debts."[95] Therefore, for a State to repudiate a debt under the odious debt doctrine, three conditions must be present before a state can repudiate a debt: the debt must have been incurred without the consent of the people of the state; the debt can not have benefited the public in that state; and the lender must have been aware of these two conditions.[96]

According to the *Ninth report on succession of States in respect of matters other than treaties* an extract from the Yearbook of the International Law Commission of 1977:

> "Two important points may be singled out to clarify the definition of the term "odious debt:"
>
> *(a)* From the standpoint of the successor State, an odious debt could be taken to mean a State debt contracted by the predecessor State to serve purposes contrary to the major interests of either the successor State or the territory that has been transferred to it;
>
> *(b)* From the standpoint of the international community, an odious debt could be taken to mean any debt contracted for purposes that are not in conformity with contemporary international law and, in particular, the principles of international law embodied in the Charter of the United Nations."[97]

[92] Ibid.
[93] Ibid.
[94] Ibid.
[95] Ibid.
[96] Patricia Adams. "Debt Forgiveness" Odious Debts. http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=7759
[97] A/CN.4/301 and Add.1 *Ninth report on succession of States in respect of matters other than treaties*. Extract from the Yearbook of the International Law Commission. 1977

After in depth analysis, according to the extract from the yearbook of the ILC, one may assert that virtually all political, economic, and social action by a state is harmful for another state.[98] Therefore, debt is not considered odious unless it is used to injure a State.[99]

History

Several regimes across history have borrowed funds from abroad, expropriated them for personal use and then left the debt to the population that was ruled.[100] Examples of this are Mobutu Sese Seko of Zaire (now the Democratic Republic of Congo), who accumulated over $12 billion in sovereign debt, diverted the public funds to his personal accounts and during the mid-1980s his personal assets reached $4 billion.[101] Akin to Mobutu, is Ferdinand Marcos of the Philippines, whose regime owed $28 billion to foreign creditors, while his personal wealth was estimated at $10 billion.[102] Another example is that of Anastasio Somoza who was reported to have looted $100 million to $500 million from Nicaragua in the 1970s.[103] Although there are several examples of odious debt, conversely the first documented case involves the settlement of the Spanish-American War.

The settlement of the Spanish-American War of 1898 is the origin of the issue that is presently known as odious debt.[104] The situation begins with the Cubans, whom at that time were colonized by the Spanish and were in pursuit of self-governance.[105] The Cuban economy was primarily based in the agricultural market. One of the major forms of agriculture at that time was sugar cane and the state created profit from its exportation. During this time Cuba was experiencing a major decline in prices, devastating the market.[106] Subsequently, civil unrest grew as a result of the market crash, resulting in armed aggression against the Spanish loyalists.[107] The United States government entered the fray by arming Cuban guerrillas, which promulgated the U.S. to intervene. A war with Spain followed soon thereafter.[108] Subsequently, the Spanish were defeated and ousted from Cuba. The U.S. acquired ownership of Cuba and peace negotiations with the Spanish in Paris soon followed.[109] Over the course of what became known as the Paris Peace Treaty, the Spanish argued that the U.S. be responsible for Cuba's debts.[110] The debt created by Spanish rule were affirmed by the U.S. to be "debts created by the Government of Spain, for its own purposes and through its own agents… much of the borrowing was designed to crush attempts by the Cuban population to revolt against Spanish domination."[111] However, The Spanish affirmed that state obligations belong to a land and its people, not to a regime[112]:

> It would be contrary to the most elementary notions of justice and inconsistent with the dictates of the universal conscience of mankind for a sovereign to lose all his rights over a territory and the inhabitants thereof, and despite this to continue bound by the obligations he had contracted exclusively for their regime and government.[113]

---

[98] Ibid.
[99] Ibid.
[100] Michael Kremer and Seema Jayachandran. "The Brookings Institution" Spring 2003. http://www.brookings.edu/press/review/spring2003/kremer.htm
[101] Ibid.
[102] Ibid.
[103] Ibid.
[104] J. Russell Major. *Civilization in the Western World: 1815 to the Present.* J.P. Lippincott Company, Philadelphia and New York, 1966.
[105] Ibid.
[106] Patricia Adams. "Debt Forgiveness" Odious Debts. http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=7759
[107] Ibid.
[108] Ibid.
[109] Ibid.
[110] Ibid.
[111] Ibid.
[112] Ernst H. Feilchenfeld. *Public Debts and State Succession.* The Macmillan Company. New York, 1931.
[113] James L. Foorman and Michael E. Jehle. "Effects of State and Government Succession on Commercial Bank Loans to Foreign Sovereign Borrowers." *University of Illinois Law Review.* vol. 1982, no. 1

Spain did not accept the validity of the U.S. argument. However the U.S. won the issue and Spain took responsibility for the debt under the Paris Peace Treaty.[114]

Another note worthy occurrence involving the concept of odious debt occurred between the governments of Costa Rica and Great Britain in the early 1920s,[115] and is often considered the best known case absolving states of responsibility for debts.[116] The situation began with Alfredo Gonzalez being ousted from his role as President of Costa Rica by Frederico Tinoco in June of 1917.[117] Tinoco assumed power and quickly established a new constitution as a dictator of Costa Rica.[118] Tinoco's ruled lasted until August of 1919.[119] During his rule, Tinoco entered into an agreement with a British oil company, which awarded an allowance through a contract approved by Tinoco, and one house of the Costa Rican congress.[120] However, according to the Costa Rican constitution, a contract involving a tax provision, (as this scenario did) required the approval of both Houses of Congress.[121] After the Tinoco government fell, the new government repudiated the contract on the grounds that those who had entered into it acted *ultra vires*—referring to contracts made by someone without proper authority with foreigners. [122]

The Costa Rican government that followed disputed odious debts entered into between the Tinoco government and the British company.[123] Costa Rica passed a law to renounce both of the dealings by the Tinoco dictatorship, in which became known as the Costa Rican Law of Nullities.[124] The Costa Rican law was challenged in the case, *Great Britain vs. Costa Rica*, and heard before Chief Justice Taft of the U.S. Supreme Court, who sat as an arbitrator.[125] However the challenge failed, and the law was upheld in Justice Taft's 1923 ruling that determined:

> *The transactions in question, which in themselves did not constitute transactions of an ordinary nature and which were "full of irregularities," were made at a time when the popularity of the Tinoco Government had disappeared, and when the political and military movement aiming at the overthrow of that Government was gaining strength. The payments made by the bank were either in favor of Frederico Tinoco himself "for expenses of representation of the Chief of the State in his approaching trip abroad," or to his brother as salary and expenses in respect of a diplomatic post to which the latter was appointed by Tinoco." The case of the Royal Bank depends not on the mere form of the transaction but upon the good faith of the bank in the payment of money for the real use of the Costa Rican Government under the Tinoco régime. It must make out its case of actual furnishing of money to the government for its legitimate use. It has not done so. The bank knew that this money was to be used by the retiring president, F. Tinoco, for his personal support after he had taken refuge in a foreign country. It could not hold his own government for the money paid to him for this purpose." The position was essentially the same in respect to the payments made*

---

[114] Michael Kremer and Seema Jayachandran. "The Brookings Institution" Spring 2003. http://www.brookings.edu/press/review/spring2003/kremer.htm

[115] Patricia Adams. "Debt Forgiveness" Odious Debts. http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=7759

[116] Ibid.

[117] "The Tinoco Arbitration." George Washington University. http://64.233.161.104/search?q=cache:QT8ycWSojsAJ:www.gwu.edu/~jaysmith/Tinoco.html+Tinoco+costa+rica&hl=en&gl=us&ct=clnk&cd=4

[118] Ibid.

[119] Ibid.

[120] Patricia Adams. "Debt Forgiveness" Odious Debts. http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=7759

[121] Ibid.

[122] Ibid.

[123] "The Tinoco Arbitration." George Washington University. http://64.233.161.104/search?q=cache:QT8ycWSojsAJ:www.gwu.edu/~jaysmith/Tinoco.html+Tinoco+costa+rica&hl=en&gl=us&ct=clnk&cd=4

[124] Patricia Adams. "Debt Forgiveness" Odious Debts. http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=7759

[125] Ibid.

to Tinoco's brother. The Royal Bank of Canada cannot be deemed to have proved that the payments were made for legitimate governmental use. Its claim must fail.[126]

Current Situation

At the present the 60 poorest countries have paid in both principal and interest over the last three decades $550 billion, for $540 billion in loans; they have a $523 billion dollar debt burden yet left to pay.[127] In the developed world $13 is spent on debt repayment for every $1 received in grants.[128] There are currently several situations that further illustrate the many facets regarding odious debt and debt forgiveness.

In the 1980s the apartheid regime of South Africa borrowed funds from several private banks and used the moneys to finance the military and police in executing the regime's opponents.[129] The post-apartheid regime sought debt forgiveness, but changed their policy due to the fear that foreign investors would be repelled if the debt repudiation were sought.[130] The issue that faced South Africa is one that many States share: many of the companies identified for debt repudiation or forgiveness in lawsuits are also highly sought after for investment. In other words, the same lender that the state owes funds to from a former regime is presently being sought after to lend funds to the state and invest. Can investors be expected or forced to forgive debts and then turn around and lend moneys back to the same regimes?

At an international level, the UN has made efforts to aid with the arrears that have been accumulated by states that have suffered from great amounts of debt. In 1996 the HIPC initiative was introduced by the World Bank and the IMF as the first comprehensive approach to reduce the external debt of the world's poorest and most heavily indebted countries.[131] Additional international aids to quell the world debt condition as it pertains to Odious Debt have come from NGOs and think tanks such as the World Watch Institute, Transparency International, the Jubilee Foundation, Probe International, Drop the Debt and AFRODAD.

In a more recent national level, individual nations have also worked in reducing debt of other nations. Presently in Iraq, the post-Saddam Hussein regime owes $130 billion in foreign debt.[132] The United States with the support of Britain invaded Iraq on March 20, 2003 to remove the regime of Saddam Hussein. The Bush Administration then appointed James Baker as the specialist in "the restructuring and reduction" of debt.[133] Baker is the former treasury secretary under President Ronald Reagan and the noteworthy creator of the Baker Plan— which facilitated indebted states with loans to service old loans.[134] The Baker Plan required that the countries adhered to damaging economic policies prescribed by the International Monetary Fund.[135] Baker's ultimate initiative is to reduce the Iraqi debt.

Conclusion

In summation, it is imperative to keep in mind the nature of this committee. Firstly, although you are a delegate and representative of your state in the context of the conference as a whole, as a member of the ILC you are an unbiased legal theorist—meaning that you represent no state, and your role is to contribute ideological and theoretical vantage points for the purpose of proposing codifications of legal concepts and amendments, and/or updating treaties and conventions that already exist. Delegates have a plethora of options, which include creating a draft convention on

---

[126] "The Tinoco Arbitration." George Washington University. http://64.233.161.104/search?q=cache:QT8ycWSojsAJ:www.gwu.edu/~jaysmith/Tinoco.html+Tinoco+costa+rica&hl=en&gl=us&ct=clnk&cd=4

[127] "Third World Debt Undermines Development." Global Issues That Affect Everyone. http://www.globalissues.org/TradeRelated/Debt.asp

[128] Ibid.

[129] Michael Kremer and Seema Jayachandran. "The Brookings Institution" Spring 2003. http://www.brookings.edu/press/review/spring2003/kremer.htm

[130] Ibid.

[131] "Debt Relief for Sustainable Development." The World Bank Group. http://www.worldbank.org/hipc/about/hipcbr/hipcbr.htm

[132] Justin Alexander. "Downsizing Saddam's Odious Debt" Global Policy Forum. March 2, 2004. http://www.globalpolicy.org/security/issues/iraq/contract/2004/0302odiousdebt.htm

[133] Ibid.

[134] Ibid.

[135] Ibid.

odious debt, defining it further and proposing what should or should not be done with such incurred debts. Ultimately, odious debt is a vague subject, use the topic guide and additional resources to gain a grasp on the legal doctrine and the social doctrine as they are two different ideologies.

Committee Directive

The present issue as it stands, inquires as to what to do about odious debts? Questions to consider include: who, if anyone is responsible for repayment? Has Odious Debt been adequately defined? Is this something that could be litigated?

For example, if an unnamed dictator ran up a large debt to a retail company in the U.S. and the new government was deemed not to be responsible for the debt, could the company sue that dictator and liquidate his assets for repayment? Or should the loan just be absorbed by the company?

A noteworthy reason for the world's averse nature as it pertains to the doctrine of odious debt is the fear that debt may be claimed odious after a loan is made, therefore making it impossible for a debt to be repaid. Also, what institution should be responsible for assessing the legitimacy of debt? Can an institution be expected to make impartial rulings on cases involving exponential amounts of funds and will the world's donors honor their edicts?

III. Status, Privileges, and Immunities of International Organizations

"If the UN's global agenda is to be properly addressed, a partnership with civil society at large is not an option, it is a necessity."[136]

Introduction

Without doubt, international organizations are the backbone of global peace and cooperation. In particular, the thousands of non-governmental and inter-governmental movements that highlight and address important issues and seek to elevate societies and broaden state relations constantly prove to be "the clearest manifestation of what is referred to as 'civil society.'"[137] A concept founded only in the 20th century, international organizations have grown exponentially and have more ability to bring about global change than ever before.

In 1998, the Secretary General released a report concerning the actions of international organizations in which he noted the "universal movement towards greater citizen action."[138] He demonstrated this point in noting that forty-one non-governmental organizations (NGOs) were granted consultative status by the Economic and Social Council (ECOSOC) in 1948, but the number has expanded today to over 1,350.[139] This number does not include the many more thousands of NGOs not formally recognized by the Council.

With the worldwide commitment to the Millennium Development Goals (MDGs), the opportunity for international organizations to influence the world's work in eradicating poverty grows stronger than ever. In preparation for the Millennium+5 conference in 2005 to discuss the progress made thus far in realizing the MDGs, the Conference on Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO) worked to provide a cumulative report for the conference on the work of NGOs towards the MDGs.[140] In this project and in many more, the aid of international organizations can not be ignored.

---

[136] Secretary General Kofi Annan. "NGOs and the United Nations Department of Public Information: Some Questions and Answers." UN Department of Public Information for Non-Governmental Organizations. http://www.un.org/dpi/ngosection/brochure.htm

[137] A/53/170. *Arrangements and practices for the interaction of non-governmental organizations in all activities of the United Nations system.* United Nations General Assembly. July 10, 1998. p. 2

[138] Ibid.

[139] Ibid.

[140] *"We Will Spare No Effort": A Civil Society Call to Action for the Five Year Review of the UN Millennium Summit and the Millennium Development Goals.* Millennium+5 Network. June 2005. http://www.ngocongo.org/files/m+5reportfull.pdf

Whether in conjunction with the MDGs or through other projects, all international organizations are working to improve world conditions. Because of this goal and their not-for-profit nature, international organizations are a strong form of social movement. International organizations have many advantages and disadvantages. They can provide local accountability, expertise and advise in, for example, region-specific issues.[141] They can also provide an independent assessment of the problems at hand, and are often more capable of collecting and disseminating information.[142] However, international organizations tend to be biased towards their individual agendas and are not as strong in organization or physical resources as an international governmental organization (IGO) such as the UN.[143]

"It should also be noted that, throughout the years, and despite their numbers, very few incidents of a disruptive nature involving NGOs have occurred."[144] There are however, many legal questions that arise concerning international organizations: what are their rights under international law, and what are their obligations? And how may the world address the rarer, unpleasant issue of corruption within these groups and breaches by them of international law?

Types and the Status of International Organizations

Within the broad category of international organizations (IOs), there are two distinct groups. First, there are international governmental organizations (IGOs), of which the UN is the largest, which often work to align governments around similar interests and goals, ranging from economics, military protection, or human rights. Second, there are non-governmental organizations (NGOs), which are generally considered to be any non-profit group independent from any government.[145] The United Nations Department of Public Information defines NGOs more specifically as, "not-for–profit, voluntary citizens' groups…organized on a local, national, or international level to address issues in support of the public good."[146] For funding purposes, the UN World Bank defines NGOs as "private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development."[147]

NGOs can be further categorized into operational NGOs, "whose primary purpose is design, implementation of development-related projects," and advocacy NGOs, which seek to defend and promote a particular cause.[148] NGOs can be community-based, national or even international in their membership.[149]

Depending on what type of organization it is, International Organizations have differing levels of recognition. The IOs with the strongest status will be IGOs, which are founded on charters and retain recognition and authority from the states that form them. The United Nations, for example, is strong enough and has the recognized authority to raise peacekeeping forces to deploy to violent regions. NGOs are not nearly as strong and only gain status as their size and record grow to prove their value. Within the UN system, this is shown through the level of status awarded to NGOs by the ECOSOC. General consultative status is given to those organizations that share the same broad goals as the United Nations and have the strength and ability to aid the UN in achieving those goals.[150] Special consultative status is reserved for those organizations dedicated to a few specialized goals that are also shared by the UN, and roster status is given to the majority of organizations in order to improve relations and give those organizations the opportunity to gain information and name status in committee.[151]

---

[141] A/53/170. *Arrangements and practices for the interaction of non-governmental organizations in all activities of the United Nations system.* United Nations General Assembly. July 10, 1998. p3

[142] Ibid.

[143] Ibid.

[144] Ibid.

[145] "Categorizing NGOs." Duke University Libraries. http://docs.lib.duke.edu/igo/guides/ngo/define.htm

[146] "NGOs and the United Nations Department of Public Information: Some Questions and Answers." UN Department of Public Information for Non-Governmental Organizations. http://www.un.org/dpi/ngosection/brochure.htm

[147] "Non-governmental Organizations and Civil Society Overview." World Bank. http://wbln0018.worldbank.org/essd/essd.nsf/NGOs/home

[148] "Categorizing NGOs." Duke University Libraries. http://docs.lib.duke.edu/igo/guides/ngo/define.htm

[149] Ibid.

[150] Ibid.

[151] A/53/170. *Arrangements and practices for the interaction of non-governmental organizations in all activities of the United Nations system.* United Nations General Assembly. July 10, 1998.

Organizations so affiliated with the ECOSOC are given rights within the Council: organizations with general consultative status are able to receive the Council's agenda and may place items on it and may also give presentations in committee and write briefs on select topics that can be published and distributed as official UN documents.[152] With the rights given to these international organizations also, they are also given obligations back to the United Nations.[153] For example, organizations with general consultative status must make a report of their duties to the Economic and Social Council at least every four years.[154]

History

In 1957, the International Law Commission adopted a draft resolution dealing with the status of permanent diplomatic missions between states, a situation considered similar to the recognition of international organizations.[155] In the draft resolution, entitled *Draft Articles on Diplomatic Intercourse and Immunities with commentaries*, the ILC notated specifically that "there are also relations between states and international organizations. There is likewise the question of the privileges and immunities of the organizations themselves. However, these matters are, as regards most of the organizations, governed by special conventions."[156] At the committee debates for these articles, many delegates to the commission questioned the validity of attempting to codify the "rules regarding diplomatic privileges and immunities."[157]

In 1961, the United Nations Conference on Diplomatic Intercourse and Immunities adopted the *Vienna Convention on Diplomatic Relations*, another document detailing the rules on diplomatic mission between states. [158] As in the previous *Draft Articles*, the Convention remarked only that the rights and immunities of any type of special mission (including those conducted by NGOs) would have to be re-examined by the International Law Commission in a future report.[159]

The *Vienna Convention on Law of Treaties* entered in to force in March of 1969 and defines a treaty as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."[160] In 1986, the UN went further to make treaties applicable to international organizations by ratifying the *Vienna Convention on Law of Treaties between States and International Organizations of between International Organizations*.[161] The treaty stipulates that an international organization is specifically an intergovernmental organization. The 1986 Vienna Convention also outlines who within an international organization is in the position to legally authorize the signing of a treaty: in the case that no one is clearly given that authority by the IO's charter or rules, then a representative who appears from circumstances and by interpreting the rules of the organization, to have authority.[162]

Questions Regarding the Status of NGOs

One particular question facing international organizations (as well as other state actors) is the right to intervene in intrastate affairs when the state government is not capable of doing so itself.[163] When a state government is unable

---

[152] Ibid.
[153] Ibid.
[154] Ibid.
[155] "Diplomatic Intercourse and Immunities." International Law Commission. June 30, 2005. http://untreaty.un.org/ilc/summaries/9_1.htm
[156] *Draft Articles on Diplomatic Intercourse and Immunities with commentaries.* International Law Commission. 1958.
[157] "Diplomatic Intercourse and Immunities." International Law Commission. June 30, 2005. http://untreaty.un.org/ilc/summaries/9_1.htm
[158] Ibid.
[159] Ibid.
[160] *Vienna Convention on the Law of Treaties.* International Law Commission. May 23, 1969.
[161] *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.* International Law Commission. March, 21, 1986.
[162] Ibid.
[163] Chiara Giorgetti. "Fulfilling International Obligations by International Organizations in the Absence of State Control." European Society of International Law. www.esil-sedi.org/english/pdf/giorgetti.pdf

to provide for its citizens, or moreover, when a state government's inability to act can affect global peace and security, there rises an arguable need for third parties, namely international organizations to step in.[164] As Article 3 of the *Draft Declaration on Rights and Duties of States* reiterates, "every state has the duty to refrain from intervention in the internal or external affairs of any other state."[165] But, some argue that the term 'intervention' "in international law…has a stricter meaning, according to which [it] is forcible or dictatorial interference…calculated to impose certain conduct or consequences on that other state."[166]

Furthermore, the International Court of Justice has found that "the notion and the prohibition of intervention cannot accurately extend to the collective action undertaken in the general interest of states or for the collective enforcement of international law."[167] The UN, and various other international organizations have stepped in such scenarios, an example being the UN-backed proxy government in Somalia, but besides the ILC ruling, there is very little other authority for these actions.[168] The issue then becomes simply a contention between the duty of international organizations to act and their duty of non-interference. As some have pointed out, this problem needs to be further discussed and qualified: human rights, for example, have become a common justification for interfering in state's affairs, but there is not authority or legal precedent for international organizations to step in.[169]

Another unexamined area of international organizations in international law is the responsibility of these organizations and their members in matters of liability. In 1995, the Institute of International Law put forth a resolution declaring that an international organization is liable for its obligations to third parties, whether under the law of a particular state, or under international law.[170] The organization further states that the liability of Member States to international organizations is dependent on the rules of the charter of that organization and the degree of participation of the Member State in the specific act.[171] Most importantly, the Institute of International Law remarks that there is no codification to this extent, nor does the statement within a number of international organizations' charters signify the presence of an implied law.[172] Though not a universally acceptable source of international law, this organization's steps to raise the question of this matter brings to light the potential problem of attempting to sue or criminally prosecute an international organization of wrong doing—who would be held responsible?

Because they often seek to elevate the poorest and most unstable regions of the world, international organizations are certainly prone to danger. Despite their declaration of neutrality, and good intentions, international workers have become victims too: the 2004 kidnapping and killing of a highly recognized official for the organization CARE International served as a shocking reminder of this fact.[173] The Geneva Conventions were the first of many international treaties condemning the harming of all civilian workers in any area of conflict or war.[174] Furthermore, it is a commonly accepted international legal tradition that relief workers should not be harmed. However, should there be more specific legal language protecting these individuals and the organizations they represent?

Conclusion

In approaching this topic, delegates should first consider how much codification is necessary in the area of international organizations. As noted earlier, the ILC has previously shed away from adopting laws that limit the broad reach and work of these organizations. However, it is realistic to assume that in the growing world of civil movements, conflicts will occur for which the current state of international law is unprepared. With an estimated

---

[164] Ibid.
[165] *Draft Declaration on Rights and Duties of States.* International Law Commission. 1949.
[166] Chiara Giorgetti. "Fulfilling International Obligations by International Organizations in the Absence of State Control." European Society of International Law. www.esil-sedi.org/english/pdf/giorgetti.pdf
[167] Ibid.
[168] Ibid.
[169] Ibid.
[170] "The Legal Consequences for Member States of the Non-fulfillment by International Organizations of their Obligations towards Third Parties." Institute of International Law. September 1, 1995. http://www.idi-iil.org/idiE/resolutionsE/1995_lis_02_en.pdf
[171] Ibid.
[172] Ibid.
[173] Karl Vick. "Head of CARE in Iraq Abducted." *The Washington Post.* October 20, 2004. p. A01.
[174] *Geneva Conventions.* August 12, 1949.

number of 6,000 to 30,000 distinct NGOs working in third world countries, the possibility of incident is likely.[175] Additionally, much of the codified law regarding international organizations speaks only to intergovernmental organizations: there is very little information regarding other types of organizations, especially NGOs.

Committee Directive

There are several routes that you may take in addressing this question. Delegates are particularly encouraged to review the past treaties regarding international organizations and consider how these treaties might be extended to address NGOs as well. An excellent treaty to examine in this regard is the *Vienna Convention on Law of Treaties between States and International Organizations of between International Organizations,* but delegates are certainly not limited to this treaty.

Delegates are reminded to focus on working together to achieve a plausible draft convention on the topic that may either be based on past legal documents or be an entirely new document (that is based on past precedence). Delegates should focus their efforts on the main issues raised in the background guide. Being familiar with any situations that may have risen from gaps in international law should be reviewed. Further, it is important to ask yourself, "what if"? Analyze how different factors might affect NGOs and international peace and security in any of the situations posed above.

[175] "Categorizing NGOs." Duke University Libraries. http://docs.lib.duke.edu/igo/guides/ngo/define.htm