Southern Regional Model United Nations XXI
The Global Paradigm: Enhancing Peace through Security Initiatives
November 18-20, 2010
Atlanta, GA
Email: ilc@srmun.org

Dear Delegates,

Welcome to the 21st annual Southern Region Model United Nations Conference (SRMUN XXI)! As your director for the International Law Commission (ILC), I am excited to meet each of you and share in this rewarding educational experience. This will be my third year on staff at SRMUN and as always I am sure it will be better than the last!

I am honored to share the ILC dais this year with Christine Simpson. This is Christine's second year on SRMUN staff, and we are both eager to see the amazing debate that will undoubtedly take place in the International Law Commission this year!

The ILC is an integral part of codifying international law that helps to regulate the actions of States and individuals across the globe to achieve a more peaceful world. They work diligently within their mandate to address a variety of topics that aim to enhance a global understanding and acceptance of international law. "The Global Paradigm: Enhancing Peace through Security Initiatives," is the theme for SRMUN XXI and was carefully considered during topic selection. My hope is that by discussing the following topics, delegates will gain an understanding of the uniqueness of the ILC and its quintessential role within international organizations such as the United Nations.

I. Immunity from Prosecution for Heads of State and State Officials
II. Addressing Rights to Shared Natural Resources
III. Evaluating the Treatment and Protections of Prisoners of War and Unlawful Combatants

As ILC delegates, you are required to submit a position paper that discusses each of these topics in a manner that is designed to persuade your fellow committee members on the best way to address each of these issues. It is imperative that you remember that as a delegate to the ILC, you are functioning as a legal expert from your state, but not a direct representative of your state's government. You will be voicing your educated opinion as a legal theorist from your respective Member State throughout your background guide rather than presenting your government's position. This is a difficult adjustment for many delegates, so please contact us if you have any questions about this!

Your position paper should be no longer than two pages single spaced, and is crucial for providing insight to your fellow delegates on your position for each topic. A significant amount of research will be required to achieve a position paper that outlines not only your stance on the topic, but your course of action for a solution. Delegates are encouraged to clearly and concisely address the pros and cons of their positions and solutions. A well developed position paper is a key component in conference preparation and will greatly enhance your understanding of the committee and topics. There is additional information regarding the specific formatting of position papers at www.srmun.org. **Position papers must be submitted no later than 11:59PM EST by Friday, October 22nd, 2010.**

I am confident that participating in SRMUN XXI as members of the ILC will be both rewarding and challenging for each of you. I look forward to working with you and am available if you have any questions or concerns.

Sincerely,

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History of the International Law Commission

The International Law Commission (ILC) is a body of the United Nations (UN), working on the codification of international law. Codification of international law has a long historical timeline that continues to be a work in progress. The earliest evidence of international law is believed to have begun after the Napoleonic Wars, with the Congress of Vienna in 1814 drafting international law provisions relating to international rivers and the slave trade.[1] Over the course of the next century, additional international protocols were created, and international conflict pushed the necessity to create more legal standards and practices to better define legal conduct during war. At the end of World War I, the League of Nations saw it fit to create a Codification Conference in 1924, which was considered the first worldwide attempt to codify international law. Albeit, the League of Nations did not agree on any conventions, agreements were made concerning the influence of Governments during international law codification. Additionally, the League of Nations attempted to create an international criminal court, but due to the events of World War II, their attempts were stopped short of any further development. The concern for state sovereignty was continuously deliberated during international law debates, and later transposed into the UN and the International Law Commission.[2] In later years, the Prisoners of War Convention and the Geneva Convention of 1929 were enacted to protect soldiers and prisoners of war.

After WWII, the first four Geneva Conventions in 1949 reconstituted preceding conventions and sought to provide better protections for the wounded, prisoners of war, and civilians. These principles still remain and formulated the core of what is now known as international humanitarian law.[3] Additionally, the atrocities that arose from WWII led the international community to look more deeply into the principles that should govern international criminal law and thus adopted the "Nürnberg Principles" which essentially held individuals responsible and liable for punishment for any acts that were deemed a crime under international law.[4] The Nurnberg Principles correlated with the time period of the Nürnberg Tribunal, and the International Law Commission was created about a year later when the International Military Tribunal announced its judgment for the Trial. [5] The first session of the General Assembly, resolution 94(I) created the preceding Committee on the Progressive Development of International Law and its Codification that formulated the initial framework for the ILC. During the second session of the General Assembly, the International Law Commission and its Statute were enacted through Resolution 174(II) on November 21, 1947.[6] During the first session of the ILC, the Commission was utilized to draft a report for the principles and international crimes derived from the judgment and the Charter of the Nürnberg Tribunal.[7] Later in 1954, the International Law Commission began the "draft Code of Crimes against the Peace and Security of Mankind" building upon those principles.[8]

Much of the codification provided in these previously mentioned works were set in motion through the General Assembly. Both, the codification of "The Crimes against the Peace and Security of Mankind" and the Commission's reported aftermath of the Nürnberg Tribunal, were initiated through General Assembly Resolution 177(II). During the procedure of new topics of discussion for the ILC, the General Assembly may ask the Commission to work on certain topics and provide approved draft articles and reports back to the General Assembly for resolution voting. Furthermore, the Commission will confer with many bodies of the United Nations and agencies official and unofficial to receive information and recommendations to consider proposals for development of international law. The ILC mission originated from Article 13(1) of the United Nations Charter, which is "to promote the progressive development of international law and its codification."[9] The Statute allows the International Law Commission to assist with the creation of new international law provisions and to assist with recommendations and revisions to

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[1] "International Law Commission: 1. Historical antecedents" Codification Division, Office of Legal Affairs. 1998-2010. 23, February 2010. http://www.un.org/law/ilc/

[2] Ibid

[3] "The Geneva Conventions of 1949" International Committee of the Red Cross, 2010. 25, Februaray 2010. http://www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions

[4] Werle, Gerhard "Principles of International Criminal Law" (The Hague, The Netherlands: Asser Press, 2005), 3-9.

[5] Ibid.

[6] "International Law Commission: 3. Drafting and implementation of Article 13, paragraph 1, of the Charter of the United Nations" Codification Division, Office of Legal Affiars, 1998-2010, February 23, 2010 http://www.un.org/law/ilc

[7] Werle, Gerhard "Principles of International Criminal Law" (The Hague, The Netherlands: Asser Press, 2005), 13-14.

[8] http://untreaty.un.org/ilc/summaries/7_3.htm

[9] Wood, Sir Michael "Audiovisual Library of International Law: Statute of the International Law Commission" Prepared by the Codification Division, Office of Legal Affairs, 2008. 25, February 2010. http://untreaty.un.org/cod/avl/ha/silc/silc.html

existing protocols and regulations.[10] Documents drafted by the Commission are not typically resolutions. Instead, they are draft articles for purposes of report and recommendations. Thus, the draft articles may be submitted to the General Assembly for further review. The Commission's work may be seen as recognizing certain customary international law, or to examine further certain points of interest in customary international law.[11] Although the ILC's mission to promote and assist with the codification of international law is a progressive development, the UN Charter protects state sovereignty and thus all work provided by the Commission is not binding.

Prior to the Commission finalizing draft articles, subgroups within the Commission work together to provide information, proposals, and specialized research before entering plenary. Plenary is conducted for debate and to review the reports provided by the three working groups of the ILC which are, the Drafting Committee, the Planning Group, and the Special Rapporteurs. To further explain the specialized roles under the Commission, the working groups function as ad hoc committees, investigating the special topics through research and proposals. The Drafting committee assists by "drafting points [especially pertaining] of substance which the full Commission has been unable to resolve or which seem likely to give rise to unduly protracted discussion." [12] Special Rapporteurs are individuals who have the responsibility of creating reports for topics, assisting during topic consideration in plenary and detailing commentaries to draft articles.[13] The ILC holds plenary sessions to decide which topics to further develop, and after voting, the Commission as a whole will produce an annual session report.

The Membership of the ILC differs extensively from that of other committees within the United Nations Body. Rather than members representing various States, Article 2 paragraph 1 of the ILC statue states that members "shall be persons of recognized competence in international law"[14] There are a total of 34 members with a wide range of international law expertise currently serving on the ILC and no 2 members may be nationals of the same country. Additionally, as members of the ILC, individuals do not represent the views of their government but rather their own ideas. While in years past, there was discussion that concerned electing members to the ILC, the General Assembly ruled that candidates should be nominated by the governments of stated that are UN members, and that only the General Assembly should be charged with electing the members of the ILC from that group of candidates.

The work of the International Law Commission has been very significant since its first session in 1949 has dealt with the scope of international public law including the regime of territorial waters, rights of asylum, laws of treaties, regimes of the high seas, and recognition of states and governments. In conjunction with the General Assembly Sixth Committee (Legal), and United Nations Commission on International Trade Law (UNCITRAL), the International Law Commission exists as a UN body furthering the development and codification of international law.

I. Immunity from Prosecution for State Officials and Heads of State

"Impunity cannot be tolerated, and will not be. In an interdependent world, the rule of law must prevail"[15]
Former UN Secretary-General Kofi Annan

Introduction

The concept of immunity for heads of state, diplomats, and other state officials dates as far back as the ancient governments of the Greek and Roman Empires when messengers and envoys were given a special status ensuring they would not be harmed while carrying out their duties.[16] Today, several international courts, committees, and

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[10] "International Law Commission Statute: Article 15" 21 November 1947. http://untreaty.un.org/ilc/texts/instruments/english/statute/statute_e.pdf
[11] Werle, Gerhard "Principles of International Criminal Law" (The Hague, The Netherlands: Asser Press, 2005), 14.
[12] "International Law Commission: Drafting Committee" www.un.org/law/ilc
[13] Ibid. Special Rapporteurs
[14] "International Law Commission. Membership." http://www.un.org/law/ilc/
[15] "International and Internationalized Criminal Tribunals." Amnesty International. http://www.amnestyusa.org/international_justice/pdf/InternationalTribunalsfactsheet.pdf.
[16] Clay Hays. "What is Diplomatic Immunity?" Calea Online. March 2000. http://www.calea.org/online/newsletter/No73/what_is_diplomatic_immunity.htm

tribunals, such as the International Court of Justice (ICJ) and the International Criminal Tribunal for Rwanda, have been created to successfully resolve a variety of legal issues and determine legal precedent for future proceedings. The mandate of these bodies of international law has directed them to explore the various aspects of immunity for heads of state when these individuals are believed to be responsible for certain international crimes. The International Law Commission (ILC) is also one of those organizations, and the ILC began discussing the topic of immunity in 2007 with its decision to include the topic in its program of work. General Assembly (GA) resolution 62/66 of 6 December, 2007 solidified the decision of the ILC by authorizing the ILC to discuss this issue and conduct further research on the matter.[17] The ILC has been charged with the task of reaching a reasonable solution which allows state officials to effectively carry out their mandates in foreign countries while also being held responsible for any reckless or criminal actions they may have been involved in during their time abroad. The ILC can make strides in the codification of international law with regards to immunity for heads of state and state officials by looking at the history of diplomatic immunity, differences in the jurisdictions in international courts, case studies including that of Charles Taylor in Sierra Leone, and other related sub topics.

History

Diplomatic Immunity is a concept that can be traced back to the ancient civilizations of China, India, Greece and Egypt. These civilizations understood that in order to preserve the channels of communication between various governments, certain officials were exempt from local laws, practices, prosecution and jurisdiction. These officials, who came to be known as diplomats or ambassadors, could not be punished for their crimes. They could only be declared "persona non grata" and asked to leave the country where they were being hosted.[18] Diplomatic relations among states throughout the world continued to evolve through the use of diplomats and ambassadors and by the end middle ages, the concept of diplomacy was taking on a much more modern day approach. It was not until 1815 and the Congress of Vienna that any international effort was made to codify diplomatic law. The Congress of Vienna simplified the rules by distinguishing heads of diplomatic missions which had caused several disputes in the prior centuries and was certainly a step in the right direction for codification of diplomatic immunity. However, it was not until 1957 when the ILC, in conjunction with the UN framework, began the comprehensive codification of diplomatic immunity that has since become a universally respected rule of international law.[19] The work of the ILC led to the Vienna Convention on Diplomatic Relations in April 1961, which became the first international legal authority that defined the various aspects of diplomatic immunity.

Because of the work and cooperation among Member States during the preparation of this document, the Vienna Convention has been considered one of the most successful documents for the development and codification of international law.[20] The ILC was largely responsible for this achievement because of its extensive involvement in the codification process. The Vienna Convention of 1961 covered issues ranging from the use of telecommunication devices to the items that diplomats were allowed to carry with them which was covered in Article 27.[21] With regards to diplomatic immunity, Article 29 declared that diplomatic agents were inviolable and could not be arrested or detained for any reason. One major area of contention among the Members of the ILC during the conference was the level of immunity that would be granted to the administrative and technical staffs of diplomats. Prior to the Convention, states handled this issue individually, and it often led to strife between the involved states. The ILC proposed that full diplomatic immunity be given to this type of personnel, but it was the compromise suggested by the United Kingdom that was ultimately adopted by the Convention in Article 37. Under Article 37, members of the administrative and technical staff, including their families, were granted immunity from criminal proceedings, but not from civil proceedings if such acts were performed outside the course of their duties.[22] The success of the

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[17] "Immunity of State Officials from Foreign Criminal Jurisdictiton." International Law Commission. http://untreaty.un.org/ilc/guide/4_2.htm

[18] Micheal Garcia. "Diplomatic Immunity: History and Overview." November 19, 2003. American Law Division. http://web.mit.edu/annakot/MacData/afs/sipb/contrib/wikileaks-crs/wikileaks-crs-reports/RS21672.pdf

[19] Eileen Denza. "Vienna Convention on Diplomatic Relations." Audio Visual Library of International Law. April 18, 1961. http://untreaty.un.org/cod/avl/ha/vcdr/vcdr.html

[20] Eileen Denza. "Vienna Convention on Diplomatic Relations." Audio Visual Library of International Law. April 18, 1961. http://untreaty.un.org/cod/avl/ha/vcdr/vcdr.html

[21] *Vienna Convention on Diplomatic Relations*. UN Treaty Series. April 18, 1961. http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

[22] *Vienna Convention on Diplomatic Relations*. UN Treaty Series. April 18, 1961. http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

Vienna Convention is truly unique, in that almost all states in the world are now parties and there appears to be little controversy over any of its major principles. One of the few oppositions that the Convention has encountered in its nearly 50 years of existence came during the 1980's when some scholars became concerned with the potential for abuse of immunity privileges. However, the rules of immunity set forth in the Convention remain widely accepted throughout the world as necessary for diplomacy.[23]

The 1961 Vienna Convention on Diplomatic Relations was also responsible for later treaties, such as the 1963 Vienna Convention on Consular Relations, which was drafted based on the provisions of the 1961 Convention.[24] In 1958, after reviewing the topic of consular intercourse and immunities, the ILC formally started discussion on a draft set of rules and provisions that ultimately became 71 articles long and was submitted to the General Assembly for review in 1960. Member states of the General Assembly thought these articles should form the basis for a Convention and thus the Vienna Convention on Consular Relations was held from 4 March to 22 April 1963 and was signed into force in 1967.[25] With regards to immunity, Article 43 of the Convention granted Consular officers and employee's immunity from jurisdiction for acts performed while carrying out consular functions.[26]

Another significant document that followed the 1961Vienna Convention was the 2004 UN Convention on Jurisdictional Immunities of States and their Properties, which applied to the immunity of a state and its property from the jurisdiction of another state's courts.[27] In 1977, under resolution 32/151, the General Assembly requested that the ILC include the topic of jurisdictional immunities in its Agenda. For several years following the initial GA request, the ILC gathered information, drafted articles, compiled reports, and established an ad hoc committee relating to the topic.[28] It was not until 2004 that the convention was adopted and primarily focused on exactly which properties of a state could be used in criminal proceedings, but it also reiterated the importance of immunity from prosecution for heads of state under Article 3.[29] While the work of this convention was significant, it has still not received the acceptance of enough member states to be signed into force.

The work of the ILC in codifying international law through these conventions has been crucial to the further development of legal institutions such as the International Criminal Court (ICC), International Court of Justice (ICJ), Criminal Tribunals, and Special Courts. However, it is the jurisdiction and mandates of these very institutions that begin to challenge the concept of immunity for heads of state and state officials.

Jurisdiction: International Criminal Tribunals, Special Courts, and the ICC

Until the 20th century, the concept that certain government officials should be exempt from the jurisdiction of local courts and authorities was based only on customary law and international practice rather than mandated international law. The first attempt to create an arena for prosecution of heads of state came at the end of World War I under article 227 of the 1919 Treaty of Versailles, which indicted William II for prosecution before a special tribunal.[30] William II was the Commander in Chief of the German Army during WWI although the military in reality operated independently. According to the treaty, the former German Emperor was to be brought before a special tribunal that was charged with trying William II of Hohenzollern for his "supreme offense against international morality and

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[23] Eileen Denza. "Vienna Convention on Diplomatic Relations." Audio Visual Library of International Law. April 18, 1961. http://untreaty.un.org/cod/avl/ha/vcdr/vcdr.html

[24] Eileen Denza. "Vienna Convention on Diplomatic Relations." Audio Visual Library of International Law. April 18, 1961. http://untreaty.un.org/cod/avl/ha/vcdr/vcdr.html

[25] Juan Manuel Gomez Robledo. "Vienna Convention on Consular Relations." April 24, 1963. Audio Visual Library of International Law. http://untreaty.un.org/cod/avl/ha/vccr/vccr.html

[26] *Vienna Convention on Consular Relations.* UN Treaty Series. April 24, 1963. http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

[27] *United Nations Convention on Jurisdictional Immunities of States and their Properties.* General Assembly. December 2, 2004. http://untreaty.un.org/English/Notpubl/English_3_13.Pdf

[28] *Jurisdictional Imunities of States and Their Properties.* June 30, 2005. International Law Commission. http://untreaty.un.org/ilc/summaries/4_1.htm

[29] *United Nations Convention on Jurisdictional Immunities of States and their Properties.* General Assembly. December 2, 2004. http://untreaty.un.org/English/Notpubl/English_3_13.Pdf

[30] Gabriel Sawma. "The Immunity of Heads of State Under International Law." May 25, 2006. http://searchwarp.com/swa65501.htm

the sanctity of treaties".[31] This special tribunal was unprecedented because it mandated William II's extradition from the Netherlands so that he could be put on trial, and it was also responsible for setting a punishment for his crimes pending a verdict of guilty. William II was granted the opportunity to present a defense according to the treaty.[32] However, the Netherlands refused to release William II therefore, Article 227 was never enforced.[33] It is unclear why the allies chose not to cooperate with the treaty, but the Treaty of Versailles was successful in clarifying the need for international law that allows for the prosecution of heads of state.[34]

After the Treaty of Versailles set the precedent for establishing special tribunals to prosecute heads of state, 2 major International Military Tribunals followed with the conclusion of WWII.[35] The first was the Nuremburg Tribunal, which sought to bring 22 members of the German military and government to justice for their crimes against humanity during the war. General Assembly Resolution 177 charged the ILC with formulating the principles of international law that would be used in the Charter and judgment of the Nuremburg Tribunal. During its second session in 1950, the ILC adopted seven firm principles that laid the foundation for trying war criminals regardless of their status as "head of state." Principle I declares that "any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment."[36] It is Principle III that specifically refers to heads of state and government officials by affirming "The fact that a person who committed an act which constitutes a crime under international law acted as a Head of State or responsible Government official does not relieve him from responsibility under international law."[37] The remaining principles identified the types of crimes that were covered under this doctrine in addition to establishing that any person charged with a crime has the right to a fair trial.[38]

The second major International Military Tribunal to follow the Treaty of Versailles was the International Military Tribunal for the Far East (IMTFE), also known as the "Tokyo Tribunal". Much like the Nuremburg Tribunal, the IMTFE sought to prosecute members of the Japanese Government for their crimes against peace, conventional war crimes, and crimes against humanity.[39] While both tribunals were enacted to achieve the same goal of prosecuting war criminals, they were a few differences between them. Because hostilities in the Far East continued for several years without an actual declaration of war, the IMTFE charter included the planning, preparing, and initiation of wars of aggression as criminal acts and therefore punishable.[40] Additionally, article six of the IMTFE Charter further extended the idea of punishing any person that has committed a crime under international law by stating "Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged."[41]

By declaring that any person convicted of committing a crime under international law should be held accountable for their actions, these tribunals set a precedent that would continue to develop and change the course of international law over the next 60 years. The trials held at Nuremburg and Tokyo further led to the development of the concept known as "Universal Jurisdiction," which declares that every state has an interest in holding those who have committed crimes under international law accountable regardless of where the crime was committed or the

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[31] *Peace Treaty of Versailles*. Article 227-230. Penalties. http://net.lib.byu.edu/~rdh7/wwi/versa/versa6.html
[32] *Peace Treaty of Versailles*. Article 227-230. Penalties. http://net.lib.byu.edu/~rdh7/wwi/versa/versa6.html
[33] Christiane Phillipp. "The International Crminial Court – A Brief Introduction." 2003. http://www.mpil.de/shared/data/pdf/pdfmpunyb/philipp_7.pdf
[34] Christiane Phillipp. "The International Crminial Court – A Brief Introduction." 2003. http://www.mpil.de/shared/data/pdf/pdfmpunyb/philipp_7.pdf
[35] Gabriel Sawma. "The Immunity of Heads of State Under International Law." May 25, 2006. http://searchwarp.com/swa65501.htm
[36] "Principles of the Nuremburg Tribunal." 1950. The Commission of inquiry for the International War Crimes Tribunal. http://deoxy.org/wc/wc-nurem.htm
[37] "Principles of the Nuremburg Tribunal." 1950. The Commission of inquiry for the International War Crimes Tribunal. http://deoxy.org/wc/wc-nurem.htm
[38] "Principles of the Nuremburg Tribunal." 1950. The Commission of inquiry for the International War Crimes Tribunal. http://deoxy.org/wc/wc-nurem.htm
[39] "International Military Tribunal for the Far East Charter." http://www.icwc.de/fileadmin/media/IMTFEC.pdf
[40] "The Charter and Judgment of the Nürnberg Tribunal – History and Analysis." International Law Commission. http://www.un.org/law/ilc/index.htm
[41] "International Military Tribunal for the Far East Charter." http://www.icwc.de/fileadmin/media/IMTFEC.pdf

nationality of the accused and their victims.[42] Universal Jurisdiction covers crimes such as genocide, torture, apartheid, crimes against humanity, and others that are laid out in doctrines such as the UN Convention on Torture and the Geneva Convention on War Crimes.[43] These conventions, along with the international law of Universal Jurisdiction, help to ensure that those guilty of committing crimes under international law cannot hide from their punishment among other states. Although universal jurisdiction seeks justice for the most heinous crimes, it is still subject to the laws of individual sovereign states, often making it difficult for criminals to be prosecuted.[44] It is this very flaw in the system that created a necessity for an international court system with established laws that were recognized and implemented internationally.

Chapter seven, article 58 of the UN Charter grants the Security Council the ability to have their decisions carried out through other UN and international agencies, which would include such ad hoc criminal tribunals.[45] Following the initial Nuremburg and Tokyo tribunals, the Security Council under Chapter 5 Article 29 of the United Nations Charter, established several other International Criminal Tribunals including those for Yugoslavia (ICTY) and Rwanda (ICTR).[46] The UN also worked jointly with sovereign states such as Sierra Leone, East Timor, and Cambodia to create Special Courts under the home government within the country that would prosecute criminals. The ICTY, ICTR, and other Military Tribunals and Special Courts work especially well in the prosecution of individuals for international criminal law, however their jurisdiction is both limited and tedious. Both Tribunals only allow jurisdiction over cases in their respective territories during the time frames established within their individual mandates. Additionally, they each have a separate detailed set of rules of procedure that are used to guide their respective court proceedings, protect the accused, and apply the concepts of popular common and civil law systems found throughout the world.[47]

Aside from creating a forum where international war criminals could be held accountable for their actions, these international criminal tribunals and Special Courts were the cornerstones for the creation of the International Criminal Court (ICC), which was established in July of 2002.[48] One of the main purposes for the creation of the ICC was to create an institution that would allow those accused of committing crimes against international law to be prosecuted in a court that was both internationally recognized and viable. The UN General Assembly initially asked the ILC to research the possibility of an international Criminal Court in 1950. Although the ILC reported that it was a viable option at the time, the Cold War stifled the project until 1994, when the ILC presented their final draft statute for the ICC to the General Assembly.[49] By 1995, a preparatory committee established by General Assembly Resolution 50/46 was given the task of drafting a governing statute that would define the structure, jurisdiction, and organization of the ICC.[50]
In 1998, the draft statute was presented at the Rome Conference and ultimately adopted. What is now known as the Rome Statute, established the jurisdiction, organization, operating rules, and applicable law of the ICC.[51] The preamble clearly states its purpose as:

> *"Determined to put an end to impunity to the perpetrators of these crimes [the most serious crimes under international law] and thus to contribute to the preventions of such crimes"*[52]

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[42] Reed Brody. "Universal Jurisdiction." PBS. http://www.pbs.org/wnet/justice/world_issues_uni.html
[43] Reed Brody. "Universal Jurisdiction." PBS. http://www.pbs.org/wnet/justice/world_issues_uni.html
[44] Reed Brody. "Universal Jurisdiction." PBS. http://www.pbs.org/wnet/justice/world_issues_uni.html
[45] *Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.* United Nations Charter, Chapter 7: http://www.un-documents.net/ch-07.htm
[46] Gabriel Sawma. "The Immunity of Heads of State Under International Law." May 25, 2006. http://searchwarp.com/swa65501.htm
[47] Anne Mahle. "The Ad Hoc Criminal Tribunals for the Former Yugoslavia and Rwanda." PBS http://www.pbs.org/wnet/justice/world_issues_hag.html
[48] Global Policy Forum. "The International Criminal Court" http://www.globalpolicy.org/international-justice/the-international-criminal-court.html
[49] "History of the ICC." Coalition for the International Criminal Court. http://www.iccnow.org/?mod=icchistory
[50] "General Assembly Resolutions." Rome Statute of the International Criminal Court. http://untreaty.un.org/cod/icc/gares/garesfra.htm
[51] Anne Mahle. "The Ad Hoc Criminal Tribunals for the Former Yugoslavia and Rwanda." PBS http://www.pbs.org/wnet/justice/world_issues_hag.html
[52] "Preamble." Rome Statute of the International Criminal Court. http://untreaty.un.org/cod/icc/STATUTE/99_corr/preamble.htm

According to the Rome Statute the ICC has jurisdiction over individuals accused of genocide, crimes against humanity, and war crimes in addition to those persons who may be liable because of their assistance in committing such crimes.[53] Articles 27 and 28 clearly define the inability of a head of state or member of the military to be considered immune from prosecution simply because of their status.[54] The position of the ICC is to bring all individuals guilty of crimes under international law to justice regardless of their Stately status. This position drastically differs from that of the traditional and customary international law which grants heads of state and state officials diplomatic immunity because it is deemed necessary to carry out diplomacy. [55] These varying viewpoints have created inconsistencies in the way in which international law is codified with regards to diplomatic immunity. The ILC is currently charged with the task of clarifying the use of Diplomatic Immunity as it applies to the ICC and other international institutions seeking justice for crimes.

In addition to its' position and jurisdiction regarding diplomatic immunity, the ICC has limited jurisdiction in other areas as well and is particularly susceptible to the resistance of Member States. Since the court was established in 2002 it does not have the jurisdiction to prosecute criminals for any crimes committed prior to 1 July, 2002.[56] More importantly, the ICC does not have Universal Jurisdiction and therefore may only preside in cases involving nationals or territories of States that accept the jurisdiction and principles of the ICC.[57] As of March 24, 2010, 111 countries have ratified and become State Parties to the Rome Statute of the International Criminal Court.[58] While there appears to be an abundance of International cooperation and acceptance of the ICC, many of the world's largest Nations including China, the Russian Federation, and the United States of America have still not ratified the Rome Statute.[59] Since its establishment, the ICC has come up against serious criticism because of its goal to bring to trial those responsible for large scale political crimes, including heads of state and state officials.[60]

Types of Immunity: Functional, Personal, Sovereign and Foreign Criminal Jurisdiction

It is the will of the ICC and other international justice systems to eliminate the use of immunity as a defense for committing heinous crimes against international law. The concept of immunity has been loosely defined by organizations such as the ILC through various conventions like the Vienna Convention on Diplomatic Relations, however there are several types of immunity that the ILC must look at codifying into international law. Functional, personal, and sovereign immunity are three types that are commonly accepted as customary throughout the world. In 2008 the ILC discussed the topic of Immunity for heads of state at its sixtieth session and the preliminary report used during this meeting addressed the various types of immunity.[61]

According to the preliminary report which was prepared by the Special Rapporteur, Roman Anatolevich Kolodkin, "State officials enjoy immunity *ratione materiae* (functional immunity) regardless of their post by virtue of the fact that they are performing official state functions."[62] Functional Immunity is designed to protect presidents, prime ministers, foreign ministers and other levels of government officials from prosecution in another country only when they are working within their official duties.[63] This type of immunity is permanent and places an importance on the

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[53] "Jurisdiction and Admisibility." International Criminal Court. . http://www.icc-cpi.int/Menus/ICC/About+the+Court/ICC+at+a+glance/Jurisdiction+and+Admissibility.htm

[54] *Rome Statue of the International Criminal Court*. Prevent Genocide International http://www.preventgenocide.org/law/icc/statute/part-a.htm

[55] "Jurisdiction and Admisibility." International Criminal Court. . http://www.icc-cpi.int/Menus/ICC/About+the+Court/ICC+at+a+glance/Jurisdiction+and+Admissibility.htm

[56] "Jurisdiction and Admisibility." International Criminal Court. . http://www.icc-cpi.int/Menus/ICC/About+the+Court/ICC+at+a+glance/Jurisdiction+and+Admissibility.htm

[57] "Jurisdiction and Admisibility." International Criminal Court. . http://www.icc-cpi.int/Menus/ICC/About+the+Court/ICC+at+a+glance/Jurisdiction+and+Admissibility.htm

[58] "The State Parties to the Rome Statute." International Criminal Court. http://www.icc-cpi.int/Menus/ASP/states+parties/

[59] "The State Parties to the Rome Statute." International Criminal Court. http://www.icc-cpi.int/Menus/ASP/states+parties/

[60] Global Policy Forum. International Criminal Court. http://www.globalpolicy.org/international-justice/the-international-criminal-court.html

[61] "Immunity of State Officials from Foreign Criminal Jurisdictiton." International Law Commission. http://untreaty.un.org/ilc/guide/4_2.htm

[62] Roman Anatolevich Kolodkin. *Preliminary Report on Immunity of State Officials from Foreign Criminal Jurisdiction*. International Law Commission. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/357/15/PDF/N0835715.pdf?OpenElement

[63] "Amnesty and Immunity." Trial. http://www.trial-ch.org/en/intl-law/amnesty-and-immunity.html

position itself and not a specific person. An individual who holds a specific state official position is still considered to have functional immunity even after they have left their post.[64] Functional Immunity is also sometimes referred to as substantive immunity because it relates to a substantive law and can be used as a substantive defense.[65] In contrast to *ratione materiae, ratione personae* (Personal Immunity) applies only to senior and high level government positions, however it is temporary and does protect them in a personal capacity as well as the capacity of their official position. [66] This is considered the oldest type of immunity and protects the State official prior to and during their tenure as an acting senior official, however this immunity ceases once they leave their post.[67] Personal immunity is also known as procedural immunity in that it relates to procedural law. It is considered a procedural defense that State officials be immune from civil or criminal jurisdiction.[68] Because of the structure and customary nature of these two types of immunity, certain state officials enjoy both functional and personal immunity.[69] The work of the ILC is needed to clarify which posts should receive which immunities and which acts constitute a personal capacity.

Another important type of immunity to mention is sovereign immunity, which refers to the immunity of a State in foreign Courts.[70] The concept of sovereign immunity provides that a foreign state is immune from the jurisdiction of another sovereign states' courts and was developed based on customary international law.[71] This practice remained virtually unquestioned until the mid-twentieth century when private enterprise and governments began collaborating extensively for commercial purposes.[72] Private parties began to feel that sovereign immunity was inherently flawed and thus States such as the United States and some Western European Nations adopted a "restrictive theory" approach to the concept of sovereign immunity.[73] These parties argued that under the "restrictive theory" of sovereign immunity foreign states were immune from jurisdiction for public acts but not for private acts which included most commercial activities.[74] Some aspects of sovereign immunity were codified by the ILC and adopted under the UN Convention on Jurisdictional Immunities of States and There Properties.[75] While sovereign immunity more directly relates to a State, it can be argued that State officials belong to the State and thus are immune from foreign jurisdiction.

While functional, personal, and sovereign immunity are specific types of immunity designed to protect state officials, the concept of immunity from foreign criminal jurisdiction is slightly different. At its 60th session in 2008 the ILC specifically addressed the immunity of state officials from foreign criminal jurisdiction.[76] According to the report generated at the ILC's 60th session, immunities from foreign criminal jurisdiction only apply to State officials with regards to the authorities of a foreign state, not the immunities granted by their own states or international

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[64] "Amnesty and Immunity." Trial. http://www.trial-ch.org/en/intl-law/amnesty-and-immunity.html
[65] Roman Anatolevich Kolodkin. *Preliminary Report on Immunity of State Officials from Foreign Criminal Jurisdiction*. International Law Commission. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/357/15/PDF/N0835715.pdf?OpenElement
[66] Trial. *Amnesty and Immunity.* http://www.trial-ch.org/en/intl-law/amnesty-and-immunity.html
[67] Roman Anatolevich Kolodkin. *Preliminary Report on Immunity of State Officials from Foreign Criminal Jurisdiction*. International Law Commission. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/357/15/PDF/N0835715.pdf?OpenElement
[68] Roman Anatolevich Kolodkin. *Preliminary Report on Immunity of State Officials from Foreign Criminal Jurisdiction*. International Law Commission. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/357/15/PDF/N0835715.pdf?OpenElement
[69] Roman Anatolevich Kolodkin. *Preliminary Report on Immunity of State Officials from Foreign Criminal Jurisdiction.* International Law Commission. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/357/15/PDF/N0835715.pdf?OpenElement
[70] David Stewart. "Small Group: Foreign Sovereign Immunity." International Law and Litigation for US Judges. http://www.fjc.gov/public/pdf.nsf/lookup/Intl0646.pdf/$file/Intl0646.pdf
[71] David Grahm. "A Primer on Foreign Sovereign immunity." HG.org. http://www.hg.org/articles/article_1223.html
[72] David Grahm. "A Primer on Foreign Sovereign immunity." HG.org. http://www.hg.org/articles/article_1223.html
[73] David Grahm. "A Primer on Foreign Sovereign immunity." HG.org. http://www.hg.org/articles/article_1223.html
[74] David Grahm. "A Primer on Foreign Sovereign immunity." HG.org. http://www.hg.org/articles/article_1223.html
[75] *United Nations Convention on Jurisdictional Immunities of States and their Properties.* General Assembly. December 2, 2004. http://untreaty.un.org/English/Notpubl/English_3_13.Pdf
[76] "Immunity of State Officials from Foreign Criminal Jurisdictiton." International Law Commission. http://untreaty.un.org/ilc/guide/4_2.htm

courts and tribunals.[77] Understanding when to apply immunity from foreign criminal jurisdiction versus functional, personal, or sovereign immunity continues to be a struggle for codification amongst members of the ILC. The report of the 60th session attempts to address questions such as when these immunities can be applied and when they are considered inadmissible as a defense, however more work needs to be done to achieve these answers.[78] It is important to note that these different forms of immunity can be extremely difficult to handle in one document. Delegates may wish to consider focusing on one or two areas rather than addressing all aspects of sovereign immunity.

Case Study: Charles Taylor and Sierra Leone

The case brought against Charles Taylor, former President of Liberia presents a unique look at the practical application of the immunities afforded to heads of state and how immunity cannot always be used as a defense in special international courts. As president of Liberia between 1997 and 2003, Taylor's term in office was plagued with regional conflict. An alleged alliance between Taylor and Foday Sankoh, leader of the Revolutionary United Front (RUF) was the main motivation for Taylor's indictment issued by the Special Court for Sierra Leone (SCSL) on 7 March, 2003.[79] During his presidency, armed conflict existed in Sierra Leone that was brought on by the RUF, which the SCSL maintained was financed and supported by Charles Taylor who aimed to destabilize the country so as to gain access to the natural resources of Sierra Leone.[80] Charles Taylor was indicted on 17 counts and a warrant was issued for his arrest.[81] These included unlawful killings, sexual and physical violence, use of child soldiers, forced labor and other war crimes that were serious violations of international humanitarian law.[82] In July of 2003 President Taylor filed a motion to nullify his indictment and arrest warrant on the grounds that was a Head of State and enjoyed absolute immunity from Criminal Proceedings under customary international law.[83] With International pressure mounding and court proceedings pending, Charles Taylor resigned from his official position as President of Liberia in August of 2003 under the stipulation that he would receive sanctuary from arrest in Nigeria.[84] After being sent to an appeals chamber of the SCSL Taylor argued that the court violated rules of international law governing jurisdiction, immunity, and sovereign equality. The defense claimed that Mr. Taylor was the Head of State of Liberia and thus shielded from prosecution based on the personal immunity granted to him through his position. The Defense further argued that immunity cannot be nullified by exceptions from other international laws and that the SCSL did not have jurisdiction since it was not enacted by the Security Council under Article 7 (as was the ICTY and ICTR). According to the defense, the SCSL had the same force as that of a national court and thus was unable to prosecute Charles Taylor. The court however maintained its jurisdiction based on the national law of Sierra Leone and the legality of the actions taken by the court by reaffirming that Taylor was being prosecuted for crimes committed in Sierra Leone.[85] The Appeals Chamber ultimately held that the SCSL does constitute an international criminal tribunal and its mandate may exercise jurisdiction over international crimes including those Charles Taylor was accused of.[86]

It was not until 29 March, 2006 that Charles Taylor was arrested and sent to the SCSL. Taylor plead not guilty to all charges.[87] Although the case was ultimately sent before the ICC under Security Council resolution 1688, it reflects

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[77] *Immunity of State Officials from Foreign Criminal Jurisdiction.* United Nations General Assembly. A/CN.4/596. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/290/75/PDF/N0829075.pdf?OpenElement

[78] *Immunity of State Officials from Foreign Criminal Jurisdiction.* United Nations General Assembly. A/CN.4/596. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/290/75/PDF/N0829075.pdf?OpenElement

[79] "Charles Taylor." Trial. http://www.trial-ch.org/en/trial-watch/profile/db/facts/charles_taylor_98.html

[80] "Charles Taylor." Trial. http://www.trial-ch.org/en/trial-watch/profile/db/facts/charles_taylor_98.html

[81] "Charles Taylor." Trial. http://www.trial-ch.org/en/trial-watch/profile/db/facts/charles_taylor_98.html

[82] C. Jalloh. "Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone." http://www.asil.org/insigh145.cfm

[83] C. Jalloh. "Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone." http://www.asil.org/insigh145.cfm

[84] C. Jalloh. "Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone." http://www.asil.org/insigh145.cfm

[85] C. Jalloh. "Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone." http://www.asil.org/insigh145.cfm

[86] C. Jalloh. "Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone." http://www.asil.org/insigh145.cfm

[87] Charles Taylor." Trial. http://www.trial-ch.org/en/trial-watch/profile/db/facts/charles_taylor_98.html

the importance of international tribunals and their role in bringing all persons guilty of crimes against international law to justice regardless of their position or status. Taylor's ICC trial began on 7 January, 2008 and the proceedings are ongoing.

Immunity versus Impunity

International law regarding an individual's accountability for their actions is continuously trying to evolve in a world where States are committed and governed by customary and legally binding concepts of national sovereignty. It has traditionally been the responsibility of the state to prosecute wrongdoings but it is the recent precedents that have been set by institutions such as the ICC that question these issues of sovereignty, immunity, and impunity.[88] With regards to heads of State and international law, impunity refers to the idea that an individual is free from punishment or discipline, whereas immunity offers exemption and freedom from liability.[89] While these concepts extensively overlap, there is still the school of thought that immunity does not equal impunity. However the legal framework in which immunity for heads of state and state officials is situated does allow for impunity although that may not be the intention.[90] The conundrum of immunity versus impunity calls in to question the moral argument of diplomacy versus international human rights. Respecting the rights of the individual while subsequently holding them responsible for their actions regardless of their status is at the core of this debate.[91] The ILC must work with the international community to further define and codify the laws of immunity in several areas so as to widen the scope between immunity and impunity.

Conclusion

The work of the ILC and the international community to date has created a forum in which a head of state or state official can no longer easily dodge responsibility for their actions based strictly on the immunity that their title grants them. However, the ILC must continue to push for legislation that clarifies specifically, who, what, where, and when the laws of immunity apply. Continued development of international tribunals, special courts, and the ICC are fundamental in setting a precedence that will define the future of immunity for heads of state and state officials. Application of the various types of immunity including functional, personal, and sovereign, must be considered to ensure their proper use. More importantly the ILC must continue to work with States to reach unity on the concept of universal jurisdiction and how it is to be applied with respect to diplomatic immunity.

Committee Directive

The scope of topic of immunity for heads of state and state officials has several intricacies that delegates should be well prepared for. It is extremely important to research the work of the ILC and understand how it differs from other internationally recognized legal institutions in reference to diplomatic immunity. Delegates should be prepared to tackle the difficult questions that arise with discussions of sovereignty and diplomatic immunity. What are the consequences that could be associated with removing immunities granted to heads of state? Does the need for justice potentially impede the peace process and if so, which takes priority? Should there be legislation requiring a statute of limitations on heads of state being brought to trial? How should the international community handle former heads of state? Additionally, delegates should be knowledgeable of former cases such as the Pinochet Case and the Democratic Republic of Congo V. Belgium, both of which sought to set precedence for some of these concepts.

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[88] Heidi Altmon. "The Future of Head of State Immunity: The Case Against Ariel Sharon." April, 2002 http://www.indictsharon.net/heidialtman-apr02.pdf

[89] "Diplomatic Immunity." Encyclopedia Britannica Online. http://www.britannica.com/EBchecked/topic/931495/diplomatic-immunity

[90] Lorna McGregor. "Torture and State Immunity: Deflecting Impunity,Distorting Sovereignty." The European Journal of International Law. Vol 18. No 5. http://www.ejil.org/pdfs/18/5/244.pdf

[91] Heidi Altmon. "The Future of Head of State Immunity: The Case Against Ariel Sharon." April, 2002 http://www.indictsharon.net/heidialtman-apr02.pdf

Topic II: Shared Natural Resources

Introduction

As more states make more extensive use of fossil fuels and other types of energy, the rights to manipulate resources that may cross borders, such as underground oil reserves, will become important to the global population. Additionally, greater industrialization and general population growth puts a strain on water supplies and other life-sustaining resources. A state that lives at the source of a river that flows through other Member States could damage quality of life for those downstream if the state chooses to construct a dam to regulate water flow and take advantage of hydroelectric energy. The question of whether or not that state has the right to restrict water to other Member States is one that has still not been adequately addressed by international law.

The phenomenon of shared natural resources has been a significant topic of discussion as the depletion rate of natural resources continues to increase over time. Records show that people have more extensively changed the ecosystems in the past fifty years than in any historical time period in human history.[92] The stress of depleting resources increases conflicts and it strains international relations. The means of conflict prevention and conflict management due to shared natural resources can be guided through legal provisions.

The fourth Global Environment Outlook (GEO-4) in 1997 further confirmed to the United Nations that the unsustainable trend will leave 1.8 billion people in countries and regions with absolute water scarcity in 2025.[93] The Earth's water resources consist mostly of seawater, with only 2.15 per cent of the Earth's water being usable freshwater.[94] Freshwater resources are precious to many states struggling to provide the growing population access to potable or usable water.

Vital natural resources such as water and the energy resource - oil, are some of the most important resources being shared. The boundaries of territorial distinction, utilization of resources, and the effects of the unsustainable trends are many of the questions put forth before this committee.

In 2003, law provisions such as the *Charter of Economic Rights and Duties of States* (A/Res/29/3281) provided legalities on managing shared natural resources. Article 3 states "In the exploitation of natural resources shared by two or more countries, each State must co-operate on the basis of a system of information and prior consultations in order to achieve optimum use of such resources without causing damage to the legitimate interest of others."[95]

Following the same year of the *Charter of Economic Rights and Duties of States* (A/Res/29/3281), the fifty-fourth session of the International Law Commission (ILC) decided to include the topic of "Shared natural resources" in its program of work.[96] Chusei Yamada, the Special Rapporteur, brought it to the attention of the Commission to focus on trans-boundary ground waters, followed by oil and natural gas.[97]

Shared Waters: Transboundary Aquifers

Transboundary aquifers, also known as groundwater, is a new topic in international law, but the history of shared waters and the pertaining international regulations date back to the 1800s. International law on shared waters has been said to have initially occurred during the aftermath of the Napoleonic Wars when The Congress of Vienna decreed the freedom of commercial use and navigation on shared rivers in Western Europe, such as the Rhine River.

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[92] *Overview of the Millennium Ecosystem Assessment*, 2005. http://www.millenniumassessment.org/en/About.aspx

[93] *Global Environment Outlook (Geo-4: environment for development): Summary for Decision Makers* United National Environment Programme http://69.90.183.227/doc/meetings/tk/emccilc-01/other/emccilc-01-geo4-en.pdf

[94] *United Nations Evnironment Programme –Division of Technology, Industry and Economics: Freshwater Issues* Information derived from GEO Report of 1997 http://www.unep.or.jp/ietc/issues/freshwater.asp

[95] *Charter of Economic Rights and Duties of States* http://www.un-documents.net/a29r3281.htm

[96] *International Law Commission – Summaries: Law of the Sea: Shared natural resources (Law of Transboundary Aquifers)* http://untreaty.un.org/ilc/summaries/8_5.htm

[97] Ibid

This was the first international legal action to pioneer laws on shared waters.[98] Following the Crimean War, *the Treaty of Paris of 1856* allowed free access to the Danube River. The importance of these treaties signified the beginnings of international regulations and discussions of shared waters. The treaties relating to the Danube River and Rhine River only regarded the navigational uses of shared waters, but the discourse of non-navigational use becomes more relevant in the 1900s.
After World War I, the initial discussions towards *non-navigational* use began in the *1919 Treaty of Versailles*.[99] Although the *Treaty of Versailles* did not fully focus on non-navigational use, it embarked the first steps for new legal terms concerning other water uses, such as irrigation, fishing and water supply.[100] The significance of non-navigational is the precedence it created prior to discussions of transboundary rivers and transboundary aquifers. Thus, as time progressed, the milestone Helsinki Rules in 1966 created the international framework for shared rivers and drainage basins to be utilized equally.[101] Despite the lack of formal agency and inability to utilize these rules under the United Nations, the Helsinki Rules provided the foundation to the 1997 *Convention on the Law of Non-Navigational Uses of International Watercourses*. This convention conceived legal terms of "equitable and reasonable utilization" and "the obligation not to cause significant harm."[102] Therefore, these terms under the *Convention on the Law of Non-Navigational Uses of International Watercourses* provided means to better accountability.[103] Transboundary river basins became more thoroughly discussed after these frameworks were established.

Since 1997, most work has related to surface waters and international watercourses, detailing the importance of navigational and non-navigational purposes. However, the most significant issue concerning shared waters is the three per cent of the Earth's usable freshwater. Considerable portions, more specifically ninety-seven per cent, of the freshwater resources are in aquifers (groundwater).[104] Transboundary aquifers have only been a topic of discussion in international law for a little over a decade, yet relate to a large portion of usable water.

The same terms of "equitable and reasonable utilization" and "the obligation not to cause significant harm" from the *Convention on the Law of Non-Navigational Uses of International Watercourses* in 1997 were used again to apply to transboundary aquifers.[105] During the 60th session of the International Law Commission, it developed the draft articles for the Law of Transboundary Aquifers. [106] In addition to terms concerning utilization and significant harm, the other drafts regard the collection of data and information; measures to protect and preserve ecosystems; and prevention, reduction, and control of pollution.[107]

Despite the thorough work completed on shared international waters, the issues of refinement and clarification have been mentioned amongst the Commission with regards to the newly sanctioned *Law of Transboundary Aquifers*. There have been recent requests for reexamination on the scope of "significant harm" to the shared aquifer and Aquifer States. Particularly if instances of "normal utilization" are significantly harming, the aquifer and other Aquifer States have little to work with for precedent cases of "significant harm." Some representatives of Member States found that the provisions under the *Law of Transboundary Aquifers* lack a necessary prioritization to Aquifer

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[98] Muhammad, Mizanur Rahaman *Principles of international water law: creating effective transboundary water resources management* Int. J. Sustainable Society, Vol. 1, No. 3, 2009, Helsinki University of Technology http://www.internationalwaterlaw.org/bibliography/articles/general/Rahaman-2009_IWL.pdf

[99] Dinar, Ariel, S. Dinar, S. McCaffrey, D. McKinney *Bridges Over Water: understanding transboundary water conflict, negotiation and cooperation* World Scientific Series on Energy and Resource Economics, Singapore: World Series 2007 Vol. 3. p 62.

[100] Ibid.

[101] Muhammad, Mizanur Rahaman *Principles of international water law: creating effective transboundary water resources management* Int. J. Sustainable Society, Vol. 1, No. 3, 2009, Helsinki University of Technology

[102] Ibid

[103] Ibid

[104] Kerstin Mechlem, *International Law Commission Adopts Draft Articles of a Transboundary Aquifers Convention*, American 12(18) The American Society of International Law http://www.asil.org/insights080827.cfm August 27, 2008.

[105] *International Law Commission – Summaries: Law of the Sea: Shared natural resources (Law of Transboundary Aquifers)* http://untreaty.un.org/ilc/summaries/8_5.htm

[106] Ibid

[107] Ibid

States which use groundwater mostly for drinking water.[108] The Commission may find it meaningful to add more terms about significant harm and resource utilization for arid regions that rely more heavily on aquifers for drinking water. Furthermore, the Commission has yet to establish the means and measures of dispute settlements amongst Aquifer States. While there are very few disputes concerning shared aquifers, it is the responsibility of the Commission to create legalities of dispute settlement for this shared resource.

Case Study

The Middle East and Northern Africa have a history of water conflicts since the arid states have difficulty finding water resources. The Jordan River has a long history in conflict. However, the well known Arab-Israeli War of 1948 is the consequential event that impelled many other water conflicts in this region. Armed conflict abruptly happened again in 1964 when Syria attempted to avert the water flow of the Jordan River so the downstream of the river would be lessened in Israel.[109] The constant struggle for territory in that region has been related to water resources causing conflicts and wars.

Agreements between Israel, Jordan, Syria and Palestine did not occur until the 1990s. The Peace Treaty between Israel and Jordan consisted of territory boundaries, water related agreements of the Jordan River, and environmental issues.[110] Due to the arid lands in the region, the heavy reliance on the Jordan River is proving to be unsustainable and the effects are polluted waters and diminishing resources as climate change and water use for economic growth continue to affect it.

Similar issues of the Jordan River concern another transboundary river, the Tigres-Euphrates. The Tigres-Euphrates water system has seen similar affects of conflict and unsustainable utilization. With the transboundary rivers slowly diminishing and the water quality becoming worse, most countries are divulging in the aquifer resources.
The Nubian Sandstone Aquifer is the largest fossil water aquifer system.[111] The water resources from the aquifer are shared amongst Egypt, Chad, Libyan Arab Jamahiriya (Libya), and Sudan. The state, Libya has already created the "Great Man-Made River Project" that plans to pump water from the sandstone aquifer at a rate of 5.7 million m^3 per day.[112] Due to the new resource development, it is difficult to find out the affects of this utilization and the affects of the other sharing states to follow suit. It is up to the sharing states to provide cooperation in equal utilization and to mitigate any potential harm to the water resources. Nevertheless, the body of the International Law Commission has the duty to set these protocols and prevent any potential problems and unclear terms concerning the *Law of Transboundary Aquifers*.

Transboundary Oil & Gas

Petroleum products, such as oil and gas, are the most valuable commodities traded on the world market.[113] This non-renewable, natural resource is widely used as a vital energy source, thus, requiring more complicated resource management and conflict prevention as time progresses. Most of the issues of shared resources of oil and gas have been largely mitigated through bilateral agreements. A good example of the most recent bilateral agreement is the negotiations on maritime boundaries between Norway and the Russian Federation. These two states were able to agree to mostly equal parts of the Barents Sea and part of the Artic Ocean.[114] Generally, disagreements and issues, like this 40-year-old dispute between Russia and Norway relate to offshore oil drilling in territorial waters and the various sea zones shared by neighboring states.

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[108] *International Law Commission "Broadening Horizons" of Cooperation with other Legal Bodies, Chairman Tells Sixth Committee* http://www.un.org/News/Press/docs/2008/gal3351.doc.htm

[109]

[110] *Main Points of Israel-Jordan Peace Treaty* Israel Ministry of Foreign Affiars 26 October 1994. http://www.mfa.gov.il/MFA/Peace%20Process/Guide%20to%20the%20Peace%20Process/Main%20Points%20of%20Israel-Jordan%20Peace%20Treaty

[111] *The Nubian Aquifer Project: A Joint Initiative of the IAEA* http://www-naweb.iaea.org/napc/ih/IHS_projects_nubian.html

[112] Masahiro, Murakami *Managing Water for Peace in the Middle East: Alternative Strategies* United nations University Press, 1995

[113] *Petroleum Online: Module Refining and Product Specifications* International Human Resources Development Corporation http://www.petroleumonline.com/content/overview.asp?mod=8

[114] http://www.norway.org/News_and_events/top-stories/Agreement-on-bilateral-maritime-delimitation/

Furthermore, since disagreements concerning this topic relate to offshore drilling, it is necessary to examine the maritime boundaries and other definitions related to the *Law of the Sea*. Prior to the 1940s, maritime boundaries were defined as the old "canon shot rule" which encompassed three nautical miles from the shore.[115] However, the 1940s were bringing new technologies, new explorations for resources, and states' interests in more fishery resources and offshore oil and gas. Thus, there became a need for territorial expansion.

During 1945, the United States was the first to bring up the possibilities of expanding the limited three nautical mile standard. President Truman of the United States proclaimed a jurisdiction to the wide continental shelf off the US shores. The international community accepted the US Truman Proclamation and many countries such as Mexico, Argentina, Chile, Costa Rica, and Saudi Arabia followed behind in a similar proclamation.[116]

Prior to 1958, states had declared three to twelve nautical miles as territorial waters, while others were treating the continental shelf as their national jurisdiction. These proclamations of territorial waters created confusion on the definition of national jurisdiction which determined state control and enforcement, (e.g. custom tariffs, national marine life protection) and economic rights to resources in sea zones. Thus, the ILC decided to develop the concept and further define the term "continental shelf," along with other terms such as the Exclusive Economic Zone. In 1958, the United Nations approved the definition of the continental shelf created by the Commission. [117] In the *Convention on the Continental Shelf*, the term is defined as, "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 [nautical miles], or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas."[118] This definition coincided with the Exclusive Economic Zones (EEZ). These sea zones allowed each state to rightfully utilize marine resources or any resources in this 200 nautical mile zone.[119] The exception to this rule is when a state's EEZ overlaps with another neighboring state's EEZ. The three nautical mile territorial water standard was moved up to twelve nautical miles. All of these zone and territorial standards became binding in the United Nations Convention on the Law of the Sea (UNCLOS) in 1982.[120]

While the Commission has thoroughly worked on maritime boundaries, these delimitations are still repeatedly questioned amongst neighboring oceanic states. In addition to the disagreements, some states are not signatories to UNCLOS, making it difficult for the terms to be binding. The issues of oil and gas are still not resolved and certain maritime boundaries are not particularly clear.

The most recent oil and gas conflicts have been between countries such as Greece-Turkey and the Aegan Sea, China-Japan and the East China Sea, and the United States and Canada and the Beaufort Sea. All of these examples relate to the delimitation boundaries of the shared seas. While these disputes relating to territorial waters can be resolved through bilateral agreements and negotiations, there is a large potential for more disagreements to arise as oil explorations continue and the energy resource diminishes.

Overview of Current Legal Disputes Related to the UNCLOS

The Aegean Sea dispute between Greece and Turkey has affected the relations between the neighboring countries for almost half a century. The two states have been disputing over the Aegan Sea since before the 1970s.[121] Each state is concerned with the others' advantage over territorial waters. Greece wishes to expand the current six mile

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[115] *The United Nations Convention on the Law of the Sea: A historical perspective* Oceans and Law of the Sea: Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations. 1998. http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm

[116] Ibid

[117] *The United Nations Convention on the Law of the Sea: A historical perspective* Oceans and Law of the Sea: Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations. 1998. http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm

[118] Ibid

[119] Ibid

[120] Ibid

[121] Daly, John C. K. *Greece andTurkey Spar over Offshore Oil Exploration* Eurasia Daily Monitor Volume: 5 Issuee 222 http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=34146

territory to the international standard twelve mile territorial waters. However, Turkey finds this claim from Greece to be a move towards conflict and cause of war.[122]

Turkey has not ratified the United Nations Convention on the Law of the Sea, yet Greece actualized ratification in 1995. International customary law allows Greece to draw an EEZ and the twelve mile territorial zone. Greece has very little domestic reserves of oil and gas and relies on imports.[123] Thus, the debate continues in how to resolve issues between signatories and non-signatories to the UNCLOS.

Additionally, a similar issue pertaining to international law and delimitation sea lines, the Beaufort Sea dispute between the United States and Canada presents an unsettled definition of EEZ lines. Canada argues that the EEZ line runs along the 141 meridian west line following the Alaska-Yukon land border. However, the United States counter argues that the perpendicular line to the coast is the border to the EEZ. Since both states have interests related to oil reserves in this area, the Beaufort Sea dispute will continue until further actions are taken to resolve the issue.

As oil and gas resources continue to deplete, the issues of maritime boundaries between Greece and Turkey and the United States and Canada may continue be questioned and pursued. Furthermore, it is evident that despite the creation of international law, the provisions of the *Law of the Sea* allows for some states to hold non-signatory status and remove themselves from the legal ramifications. Therefore, the lack of binding terms on non-signatories creates a questionable debate of which provisions under UNCLOS are customary law. The issue of concern is how customary international law would be upheld in the International Court of Justice and if new legal provisions could resolve these dilemmas.

Conclusion

It is necessary to establish methods to settle any future disputes. Both subtopics of shared natural resources, transboundary aquifers and oil and gas, need discussion and work due to the unsustainable trends of resources and the potential for future conflicts. For transboundary aquifers, the definition of "significant harm" and "equitable and reasonable utilization" of aquifers has yet to be fully defined. There have been multiple questions needing clarification with regards to implementation. Additionally, the Commission has to yet to complete the details of dispute settlements and the mechanisms that should be used to resolve transboundary aquifer disputes.

As offshore drilling for oil and gas exploration continues to be further developed, neighboring states will continue to dispute any agreements not further clarified. The issues of clarification lie in the definition of the term "island" and where the delimitation lines are being drawn. Due to circumstances of oil and gas being a non-renewable resource, and the continued race to discover more of it, it would be quite impossible to determine a definition of "equitable and reasonable utilization." Nevertheless, oil and gas being a new topic to the ILC, it is necessary to make laws that touch base on ecosystems and environmental damages due to negligence or improper management of oil and gas. Shared natural resources has been discussed in much detail and with the role of the Commission, many international law provisions have been created. However, the need for clarification on many questionable boundaries, terms and conditions, definitions, certain circumstantial priorities, and detailed dispute settlement mechanisms makes this topic very necessary to discuss within the Commission.

Committee Directive

The Law of Transboundary Aquifers is new to international law, and it is important to consider how the international community is affected by this new law. Evaluate the Law of the Sea and the many pertinent international laws and conventions. Specifically, the ILC is encouraged to identify potential areas where natural resources are in contention across state boundaries, and to determine a legal way to address current and future conflicts to avoid conflict escalation in the future.

Delegates should work carefully to ensure that they complete their work without regard to their own state's policies or views, and instead from their own perspective as legal theorists. While delegates will not spend time on this topic

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[122] Ibid.

[123] *Greece Energy Date, Statistics and Analysis – Oil, Gas, Electricity, Coal* EIA of Greece. http://www.eia.doe.gov/cabs/Greece/Full.html

focusing on the water policies and specifics of their own states of origin, it is critical that you instead broadly understand the legal protections and restrictions on the use or control of natural resources. You should additionally have a working background knowledge of specific regions or natural resources that are either currently disputed or have the potential to soon be disputed.

Topic III: Evaluating the Treatment and Protections of Prisoners of War and Unlawful Combatants

Introduction

On 6 March, 1944, second Lieutenant Herbert Markle of the United States Air Force was shot down by a German fighter plane. After surviving the crash landing he was immediately captured and taken to jail. Markle spent the next 14 months of his life as a World War II prisoner of war (POW) in various prison camps throughout Germany.[124] While being transported from the jail to the prison camp, Markle was put into an overcrowded box car with several other POWs that were forced to stand for the duration of the multi-day journey. They were given no food or jackets to protect them from the freezing conditions and had to go to the bathroom in their clothes. Markle's POW experience was filled with limited food rations, torturous interrogations, disgusting living conditions and one skillfully crafted escape plan that ultimately saved his life.[125] The story of Herbert Markle is only one of the thousands of POWs that were captured during WWII. While Markle's tale ended triumphantly with his liberation in 1946, a series of orders issued by Adolf Hitler led to the massacres of allied troops during the course of the war.[126] Although Germany was party to the third Geneva Convention in 1929, which outlined the specific treatment of POWs, the Nazi ideology that emphasized racial purity superseded the principles of the convention and led to the death of millions of POW's.[127]

So long as wars continues to plague the planet, the International Law Commission (ILC) will be charged with the task of continuously developing and codifying international law with respect to POW's and unlawful combatants. Applying the fundamentals of International Humanitarian Law (IHL) and adhering to the principles laid out in the Geneva Convention will allow the ILC to properly evaluate the practical use of these documents with regards to POWs and unlawful combatants. Advancements in warfare have made it necessary to evaluate the treatment and protection of POWs and unlawful combatants as they apply to the modern technologies and techniques that are being used during war. By taking a look at the history of the ILC's work regarding the treatment of prisoners, the intricacies of the third Geneva Convention, and current situations including Guantanamo Bay, the ILC can begin to codify new law that aims to protect those involved in armed conflict.

History

The ILC has not previously discussed the protection of prisoners of war in its program of work, however with the development of modern warfare and the introduction of the term "unlawful combatant," it has become necessary that they work to codify law that would address these issues. The topic is within full purview of the Commission and should be introduced to the General Assembly for discussion on the issues that this paper addresses.

The basic principles of International Humanitarian Law (IHL) set forth the rules and customs that govern armed conflict between nations and have two branches that cover its principles.[128] "Hague Law" regulates the use of weaponry and military targets, while "Geneva Law" regulates the treatment of POW's, detainees, civilians, and humanitarian aid workers that are involved in the atrocities of war.[129] There are currently four Geneva Conventions and two additional protocols that serve as the core principles of Geneva Law and they have been ratified by almost

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[124] "Escape from Staglag Luft I." World War II – Prisoners of War – Staglag Luft I. http://www.merkki.com/marklebert.htm
[125] "Escape from Staglag Luft I." World War II – Prisoners of War – Staglag Luft I. http://www.merkki.com/marklebert.htm
[126] "Allied Powers in German Camps." World War II Multimedia Database. http://worldwar2database.com/html/alliedpoweto.htm
[127] "Allied Powers in German Camps." World War II Multimedia Database. http://worldwar2database.com/html/alliedpoweto.htm
[128] "International humanitarian Law." American Society of International Law. http://www.asil.org/ihl1.cfm
[129] "International humanitarian Law." American Society of International Law. http://www.asil.org/ihl1.cfm

every State in the world.[130] These conventions intend to protect vulnerable and defenseless individuals during armed conflict while also offering protection to certain combatants involved in the conflict.[131]

The 1929 third Geneva Convention upheld the importance of International Humanitarian Law by creating principles that specifically protected POW's. The 143 article convention detailed that POW's could include members of the armed forces, volunteer militia, and civilians accompanying the armed forces.[132] These groups of people were to be treated humanely and provided with adequate food, shelter, clothing and medical care.[133] The fourth Geneva Convention relates to the treatment of Civilians during wartime and maintains that civilians should be permitted to lead normal lives and that their safety, honor, family rights and religious practices are to be respected.[134] The International Committee of the Red Cross (ICRC) is often seen as the guardian of international humanitarian law, and they were largely responsible for the development of the 1949 Geneva Convention.[135] After the adoption of this milestone document, the ICRC continued to hold meetings and conferences with legal experts so that in spite of modern technology and warfare practices the Geneva Convention would not lose its significance.[136] In 1965 the ICRC began research on what needed to be added to the Geneva Convention to protect victims of modern military conflicts and in 1977, two additional protocols were adopted as a supplement to the 1949 Geneva Convention.[137] Examining the application of these additional protocols as it applies to persons involved in conflict is where the ILC can concentrate its work.

Prisoners of War v. Unlawful Combatants

One of the goals of the Additional Protocol was to further clarify the protection for civilians and combatants during times of war. Article four of the third Geneva Convention specifically identifies which types of persons involved in conflict, if detained, can be considered combatants and be protected as a prisoner of war.[138] Any persons not included in Article four are considered civilians and thus entitled to general protection from the dangers associated with military operations.[139] However as the modes of warfare changed, so too did the persons that were involved. One of the main goals of Additional Protocol I was to further define which persons were able to declare POW status. Article 43 of Additional Protocol I to the Geneva Convention defines the term combatant as members of organized armed forces and members of groups which are under the command of those armed forces. It further declares that such combatants have the right to participate in hostilities and article 44 grants them prisoner of war status should they fall into enemy custody.[140] These "lawful combatants" as they are referred to customarily, cannot be prosecuted for their acts of war. However, they are not protected from prosecution for committing crimes against international law including genocide and crimes against humanity.[141] Their status as a lawful combatant entitles them to the POW status and thus they are protected by the third Geneva Convention.[142]

A new concept that was introduced by Additional Protocol I in Article 47 was that of mercenaries. Mercenaries are defined as any person who was specially recruited to take part in armed conflict but is not a member of the armed

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[130] "Geneva Convention Introduction." Peace Pledge Union Project. http://www.ppu.org.uk/learn/texts/doc_geneva_con.html
[131] "Geneva Convention Introduction." Peace Pledge Union Project. http://www.ppu.org.uk/learn/texts/doc_geneva_con.html
[132] "Fact Sheet. Summary of the 1949 Geneva Conventions and Their Additional Protocols." American Red Cross International Services. http://www.redcross.org/www-files/Documents/International%20Services/file_cont5230_lang0_1902.pdf
[133] "Fact Sheet. Summary of the 1949 Geneva Conventions and Their Additional Protocols." American Red Cross International Services. http://www.redcross.org/www-files/Documents/International%20Services/file_cont5230_lang0_1902.pdf
[134] "Fact Sheet. Summary of the 1949 Geneva Conventions and Their Additional Protocols." American Red Cross International Services. http://www.redcross.org/www-files/Documents/International%20Services/file_cont5230_lang0_1902.pdf
[135] "History of International Humanitarian Law." International Red Cross. http://www.redcross.lv/en/conventions.htm
[136] "History of International Humanitarian Law." International Red Cross. http://www.redcross.lv/en/conventions.htm
[137] "History of International Humanitarian Law." International Red Cross. http://www.redcross.lv/en/conventions.htm
[138] "Article 4 of the Third Geneva Convention." World Press. http://www.worldpress.org/specials/justice/Article_4.htm
[139] Knut Dormann. "The Legal Situation of Unlawful/Unpriveledged Combatants." International Committee of the Red Cross. http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/5lphbv/$file/irrc_849_dorman.pdf
[140] "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)." 8 June, 1977. International Committee of the Red Cross. http://www.icrc.org/ihl.nsf/full/470?opendocument
[141] Knut Dormann. "The Legal Situation of Unlawful/Unpriveledged Combatants." International Committee of the Red Cross. http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/5lphbv/$file/irrc_849_dorman.pdf
[142] Knut Dormann. "The Legal Situation of Unlawful/Unpriveledged Combatants." International Committee of the Red Cross. http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/5lphbv/$file/irrc_849_dorman.pdf

forces or a national of the party in conflict.[143] More importantly a mercenary does not have the right to be a combatant or a prisoner of war.[144] Article 48 maintains the protection of civilians by declaring they cannot be made the object of an attack and that they do not have the right to participate directly in hostilities. However there is a stipulation declaring that if a civilian takes direct part in hostilities, they become lawful targets and can be held captive by the enemy.[145] This is an important principle that the ILC must look at when determining how to codify the law with regards to people not covered under Article 4 of the third Geneva Convention.

Recently the term "unlawful combatant" has been used among international law scholars to define persons that engage in armed conflict without adhering to the acceptable rules of war, and therefore they do not qualify for the protections granted to lawful combatants under the third Geneva Convention.[146] Although it has been frequently used within the last decade, the term "unlawful combatant" is not used or defined within the Geneva Convention or other international law treaties.[147] The terms "unlawful combatant," "enemy combatant," and "unlawful belligerent" are somewhat synonymous among legal scholars and various documents have been produced that attempt to define these terms with relation to international law.

One of the earliest of these documents is the 1907 Hague Convention Regulations which were an annex to the Convention Respecting the Laws and Customs of War on Land.[148] These regulations attempted to draw a distinction between "lawful belligerency" and "unlawful belligerency" by adopting a set of four criteria that would be used to determine if a person was acting as a lawful belligerent.[149] According to Article one, the laws of war applied not only to armies but militia and volunteer corps that met the following conditions:

1. *To be commanded by a person responsible for his subordinates;*
2. *To have a fixed distinctive emblem recognizable at a distance;*
3. *To carry arms openly; and*
4. *To conduct their operations in accordance with the laws and customs of war.*
   In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."[150]

The Regulations of the Hague Convention clearly indicated that anyone who joined an armed force by taking up arms and did not meet these criteria were considered unlawful belligerents and thus not protected under international law.[151] Unlawful belligerents such as spies and saboteurs threatened the safety and security of civilized states and individuals and could be severely punished.[152]

In addition to the Regulations of the Hague Convention, the International Laws of Armed Conflict (LOAC) helps distinguish between lawful and unlawful combatants and acts of lawful belligerency. LOAC is recognized among

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[143] "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)." 8 June, 1977. International Committee of the Red Cross.

[144] "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)." 8 June, 1977. International Committee of the Red Cross.

[145] Knut Dormann. "The Legal Situation of Unlawful/Unpriveledged Combatants." International Committee of the Red Cross. http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/5lphbv/$file/irrc_849_dorman.pdf

[146] Michael Dorf. "What is an 'Unlawful Combatant' and Why it Matters: The Status Of Detained Al Qaeda And Taliban Fighters." 23 Jan, 2002. Findlaw. http://writ.news.findlaw.com/dorf/20020123.html

[147] Knut Dormann. "The Legal Situation of Unlawful/Unpriveledged Combatants." International Committee of the Red Cross. http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/5lphbv/$file/irrc_849_dorman.pdf

[148] "Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land." 18 October, 1907. The International Committee of the Red Cross. http://www.icrc.org/ihl.nsf/FULL/195

[149] Lee Casey, David Rivkin, and Darin Bartram. "Unlawful Belligerancy and its implications Under International Law." http://www.pegc.us/archive/Unitary%20Executive/Rivkin-Casey_unlawful_belligerency.pdf

[150] "Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land." 18 October, 1907. The International Committee of the Red Cross. http://www.icrc.org/ihl.nsf/FULL/195

[151] Lee Casey, David Rivkin, and Darin Bartram. "Unlawful Belligerancy and its implications Under International Law." http://www.pegc.us/archive/Unitary%20Executive/Rivkin-Casey_unlawful_belligerency.pdf

[152] Lee Casey, David Rivkin, and Darin Bartram. "Unlawful Belligerancy and its implications Under International Law." http://www.pegc.us/archive/Unitary%20Executive/Rivkin-Casey_unlawful_belligerency.pdf

nations as an instrument for protecting civilians, POWs, and other individuals involved in international armed conflict.[153] According to LOAC a lawful combatant is granted Geneva Convention POW status and is immune from prosecution for lawful combat activities such as assault, murder, kidnapping, and trespassing.[154] When a combatant engages in unlawful belligerence by not following the acceptable LOAC rules of warfare the individual may be deemed an unlawful combatant or unlawful belligerent. Upon capture and at the discretion of the capturing party, they may not be granted Geneva Convention protection and can be tried by a military tribunal that would assign appropriate punishment if found guilty.[155]

Case Study: Guantanamo Bay

On September 11, 2001 the United States of America (USA) sustained a terrorist attack that took the lives of over 2,700 people.[156] Since then the USA has been engaged in an international anti-terrorism campaign that has lead to armed conflict in both Iraq and Afghanistan. Currently, the USA is detaining several hundred unlawful combatants from more than 40 countries at the maximum-security detention facility on the U.S. naval base in Guantanamo Bay, Cuba.[157] The controversy surrounding the treatment and status of these detainees has escalated to an international level and is a catalyst for the work of the ILC on this topic.

Several questions are left unanswered regarding the status of these detainees in that the Geneva Convention does not grant prisoner of war status to unlawful combatants. However, the fact that there are no international law treaties or conventions that mention the term "unlawful combatant" there is contention regarding why the USA will not grant these detainees POW status. Although some scholars argue that this term has been generated arbitrarily by the USA to warrant the harsh treatment of prisoners at Guantanamo Bay, it has actually been used for decades among US courts.

In 1942 following the declaration of war between the US and Germany, eight Nazi agents attempted to sabotage various US targets but were captured in the process.[158] Following their capture in the US, President Franklin Roosevelt ordered that they be tried by a military tribunal and prosecuted accordingly. All eight men were found guilty and sentenced to death.[159] The Nazi agent defendants argued that the President had exceeded his powers by issuing a military tribunal rather than granting them due process under the fifth and sixth amendment of the US Constitution. Their case was appealed to the US Supreme Court and on 31 July 1942, the court concluded that the agents violated the laws of war as spies without uniforms and thus were to be considered "unlawful enemy combatants".[160] Since the US Congress had previously authorized military tribunals for unlawful enemy combatants under the "Articles of War," the court concluded that the president had not exceeded his power and the original ruling was carried out.[161] The precedence set in this landmark case not only addresses the term "unlawful combatant" and negates its use specifically to target members of Al Qaeda, but it also addresses whether the USA has the authority to hold military tribunals for detainees to determine their guilt or innocence. According to the ruling in the Ex Parte Quirin case, unlawful combatants found guilty under US military tribunals will be punished accordingly for the crimes they have committed.[162] Opponents to the US's policy have declared that documents such as the Third Geneva Convention and International Covenant on Civil and Political Rights (ICCPR) negate the claim by the USA that individuals such as Osama Bin Laden, and Taliban members are indeed unlawful

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[153] Rod Powers. "Law of Armed Conflict. The Rules of War" http://usmilitary.about.com/cs/wars/a/loac.htm
[154] Lee Casey, David Rivkin, and Darin Bartram. "Unlawful Belligerancy and its implications Under International Law." http://www.pegc.us/archive/Unitary%20Executive/Rivkin-Casey_unlawful_belligerency.pdf
[155] Lee Casey, David Rivkin, and Darin Bartram. "Unlawful Belligerancy and its implications Under International Law." http://www.pegc.us/archive/Unitary%20Executive/Rivkin-Casey_unlawful_belligerency.pdf
[156] Phil Hirschkorn. "New York reduces 9/11 death toll by 40." CNN.com. 29 October 2003. http://www.cnn.com/2003/US/Northeast/10/29/wtc.deaths/
[157] Joseph Bialke. "Al-Qaeda & Taliban Unlawful Combatant Detainees, Unlawful Belligerency, and the International Laws of Armed Conflict." 2004. B Net. http://findarticles.com/p/articles/mi_m6007/is_55/ai_n8585592/
[158] "Ex Parte Quirin." Oyez. http://www.oyez.org/cases/1940-1949/1941/1941_1_ORIG
[159] "Ex Parte Quirin." Oyez. http://www.oyez.org/cases/1940-1949/1941/1941_1_ORIG
[160] "Ex Parte Quirin." Oyez. http://www.oyez.org/cases/1940-1949/1941/1941_1_ORIG
[161] "Ex Parte Quirin." Oyez. http://www.oyez.org/cases/1940-1949/1941/1941_1_ORIG
[162] "Ex Parte Quirin." Oyez. http://www.oyez.org/cases/1940-1949/1941/1941_1_ORIG

combatants.[163] However neither of these international documents requires the favorable treatment of unlawful combatants and the overall application of international law in this area remains largely unchanged.[164]

Both domestic and international human rights organizations maintain that pursuant to LOAC, any combatant captured during armed conflict should be granted POW status.[165] Like the Geneva Conventions the LOAC regulates the conduct of armed hostilities and includes provisions for determining the status of a detainee.[166] LOAC follows the Geneva Conventions definitions of the various types of people that can be involved in armed conflict and allows that any one deemed an unlawful combatant is not granted POW status.[167] When the status of a detainee is undetermined, the capturing party must hold a competent tribunal to determine the status of the detainee, and must extend POW protections to that person until their status is determined by the trial.[168] In the case of the detainees at Guantanamo Bay there is controversy over their status and thus their treatment. The USA maintains that the detainees at Guantanamo Bay willfully violated the laws of war and therefore should be considered unlawful enemy combatants with no POW protections.[169] The majority of the detainees were fighting for the Taliban or Al-Qaeda. They did not wear uniforms, refused to carry their arms openly and represented no government or military hierarchy.[170] According to the laws set forth in the Geneva Conventions, these detainees did not follow the laws of war and therefore the US does not see it fit to offer up the privileged POW status.[171] The US further justifies the detention of these persons under Article 118 of the third Geneva Convention which states that combatants must be released "after the cessation of active hostilities."[172] An important thing the ILC must consider when codifying international law with regards to a detainees status as an unlawful combatant is that POW status is only relevant during international armed conflict. As defined by the LOAC international armed conflict occurs when the "armed forces of one party are engaged in hostilities of a reasonably sustained nature against another party."[173] There need not be a formal declaration of war between two States however in the case of the US with the "War on Terror," simply using the term "war" does not make it an internationally accepted armed conflict and thus the principles of the Geneva Convention would not apply.[174] LOAC becomes applicable when a States military is "engaged in protracted hostilities with a foreign adversary."[175] Considering the massive US military operations that are being conducted against the Taliban and Al-Qaeda in Iraq and Afghanistan the US "war on terrorism" would apply as an international armed conflict and thus subject to the rules of international humanitarian law.[176] As armed conflict

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[163] Lee Casey, David Rivkin, and Darin Bartram. "Unlawful Belligerancy and its implications Under International Law." http://www.pegc.us/archive/Unitary%20Executive/Rivkin-Casey_unlawful_belligerency.pdf

[164] Lee Casey, David Rivkin, and Darin Bartram. "Unlawful Belligerancy and its implications Under International Law." http://www.pegc.us/archive/Unitary%20Executive/Rivkin-Casey_unlawful_belligerency.pdf

[165] Joseph Bialke. "Al-Qaeda & Taliban Unlawful Combatant Detainees, Unlawful Belligerency, and the International Laws of Armed Conflict." 2004. B Net. http://findarticles.com/p/articles/mi_m6007/is_55/ai_n8585592/

[166] Rod Powers. "Law of Armed Conflict. The Rules of War" http://usmilitary.about.com/cs/wars/a/loac.htm

[167] Rod Powers. "Law of Armed Conflict. The Rules of War" http://usmilitary.about.com/cs/wars/a/loac.htm

[168] Rod Powers. "Law of Armed Conflict. The Rules of War" http://usmilitary.about.com/cs/wars/a/loac.htm

[169] James Carafano, Ph.D. , Steven Groves *and* Janice Smith. "Treatment of Detainees and Unlawful Combatants: Selected Writings on Guantanamo Bay" 24 September, 2007. The Heritage Foundation. http://www.heritage.org/Research/Reports/2007/09/Treatment-of-Detainees-and-Unlawful-Combatants-Selected-Writings-on-Guantanamo-Bay

[170] James Carafano, Ph.D. , Steven Groves *and* Janice Smith. "Treatment of Detainees and Unlawful Combatants: Selected Writings on Guantanamo Bay" 24 September, 2007. The Heritage Foundation. http://www.heritage.org/Research/Reports/2007/09/Treatment-of-Detainees-and-Unlawful-Combatants-Selected-Writings-on-Guantanamo-Bay

[171] James Carafano, Ph.D. , Steven Groves *and* Janice Smith. "Treatment of Detainees and Unlawful Combatants: Selected Writings on Guantanamo Bay" 24 September, 2007. The Heritage Foundation. http://www.heritage.org/Research/Reports/2007/09/Treatment-of-Detainees-and-Unlawful-Combatants-Selected-Writings-on-Guantanamo-Bay

[172] "Geneva Convention Relative to the Treatment of Prisoner of War." 21 October, 1950. Article 118. http://www1.umn.edu/humanrts/instree/y3gctpw.htm

[173] Terri Gill and Elies Von Sliedgregt. "Guantanamo Bay: A Reflection on the Legal Status and Rights of unlawful Enemy Combatants." Utrecht Law Review. http://www.utrechtlawreview.org/publish/articles/000003/article.pdf

[174] Terri Gill and Elies Von Sliedgregt. "Guantanamo Bay: A Reflection on the Legal Status and Rights of unlawful Enemy Combatants." Utrecht Law Review. http://www.utrechtlawreview.org/publish/articles/000003/article.pdf

[175] Terri Gill and Elies Von Sliedgregt. "Guantanamo Bay: A Reflection on the Legal Status and Rights of unlawful Enemy Combatants." Utrecht Law Review. http://www.utrechtlawreview.org/publish/articles/000003/article.pdf

[176] Terri Gill and Elies Von Sliedgregt. "Guantanamo Bay: A Reflection on the Legal Status and Rights of unlawful Enemy Combatants." Utrecht Law Review. http://www.utrechtlawreview.org/publish/articles/000003/article.pdf

between the US and terrorist organizations in the Middle East continues, so too will the imprisonment of Taliban and Al-Qaeda members at Guantanamo Bay.[177]

Conclusion

The work of the ILC with respect to POWs and unlawful combatants is rooted in the need to codify international law that allows for the protection of international doctrines such as The Geneva Convention, The Hague Regulations and LOAC. The integrity of these documents is crucial in codifying law that relates specifically to individuals that are captured during armed conflict. There must be an understanding that not all combatants in armed conflict are equal and thus do not require the same treatment.[178] Granting unlawful combatants the privileges afforded by these documents diminishes their effect on the rules of warfare. The ILC must work diligently to introduce a practical and humane way of addressing the issue of unlawful combatants. Careful consideration must be given to international precedent as the ILC seeks to define the term "unlawful combatant." The situation at Guantanamo Bay can be used to scrutinize the effectiveness of practices used when detaining unlawful combatants. It is apparent that the world faces a new type of warfare which includes combatants that do not wear uniforms, carry their arms openly, or have any regard for the acceptable rules of warfare. These combatants pose a severe threat to the safety of civilians and the ILC must diligently prepare research that the General Assembly can use to regulate these individuals.

Committee Directive

As an ILC delegate you must carefully consider existing international precedent when defining the various terms that refer to unlawful combatants. It is imperative that you understand how these terms are currently being applied in international law and what the ILC must do to further codify them. Is it necessary that an entirely new document be created or would an additional Protocol to the Geneva Convention suffice for defining these terms? As members of the Commission you should address whether or not unlawful combatants should be granted POW status. What are the consequences of granting POW status to unlawful combatants and could it lead to rouge warfare? How would the international community deal with issues such as repatriation of unlawful combatants? To what extent should a State be able to try unlawful combatants in military tribunals as opposed to civil courts? Full consideration of these questions will ensure that the International Law Commission makes a commendable impact on the issue of Prisoners of War and unlawful combatants.

Technical Appendix Guide

Topic I. Immunity from Prosecution for Heads of State and State Officials

"*Preliminary report on immunity of State officials from foreign criminal jurisdiction*." United Nations. International Law Commision. A/CN.4/601 29 may 2008.
http://untreaty.un.org/ilc/documentation/english/a_cn4_601.pdf

A preliminary report was written up from the 60th session of the international law of commission to briefly describe the history of international law in the discussion of immunity of state officials. It also gives an outline of questions the commission should answer to during the work on this topic. This history will provide guidance to the delegates by illustrating how this topic has been brought to the table. In addition the questions will provide some insight when they are foming their position allowing them to prepare in advance for some of these questions that will need to be answered in order to formulate a solution.

Flower, Kevin, and Jonathan Wald. "Israel condemns 'absurd' UK arrest warrant for Livni." *CNN* 15 Dec 2009
http://www.cnn.com/2009/WORLD/meast/12/15/uk.israel.livni/index.html?iref=allsearch

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[177] James Carafano, Ph.D. , Steven Groves *and* Janice Smith. "Treatment of Detainees and Unlawful Combatants: Selected Writings on Guantanamo Bay" 24 September, 2007. The Heritage Foundation. http://www.heritage.org/Research/Reports/2007/09/Treatment-of-Detainees-and-Unlawful-Combatants-Selected-Writings-on-Guantanamo-Bay

[178] Joseph Bialke. "Al-Qaeda & Taliban Unlawful Combatant Detainees, Unlawful Belligerency, and the International Laws of Armed Conflict." 2004. B Net. http://findarticles.com/p/articles/mi_m6007/is_55/ai_n8585592/

This article exemplifies a rather current situation in which British courts have issued a warrant for the arrest of several Israel officials and heads of state who took part in the Gaza strip crisis. In Israeli's defense they feel they did what was necessary to fight terrorism, but in accordance to international law from the British Courts point of view they violated several human rights laws. The main reason why this article will be effective in the research is because it will be these situations that arise in whish international law will need to mandate what will and will not fall under the protection of immunity.

"Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal 1950." *UN Treaty*. United Nations, 2005. Web. 16 Apr 2010. http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/7_1_1950.pdf

This charter which was originally established at the International Law Commissions second session consist of seven principles. These principles are meant for any person who breaks international law. It specifically states that immunity is not given for heads of state or government officials. This will provide some beneficial background knowledge.

Adujie, P.I. (2004). "Immunity From Prosecution: Arguing both sides." http://www.kwenu.com/publications/adujie/immunity_prosecution.htm

This article specifically focuses on the state of Nigeria and demonstrates both sides of the argument on the topic of Immunity from Prosecution for State Officials and Heads of Government. On one hand the article points out that this idea is in fact very beneficial and allows the heads of government freedom to do whatever is necessary if the power is used for the good of the state. This in return outlines the other argument where if states allow such a law to pass then the people are not protected from corrupt government. The article argues for a balancing act which brings a good question to the table. How can we give the heads of states and government officials enough freedom to protect the people without putting some people in danger at the same time too?

Dodds, Paisley. "The Raw Story: Pope's immunity to prosecution may be challenged in Britain." April 2010. http://rawstory.com/rs/2010/0404/popes-immunity-prosecution-challenged-britain/

This controversial topic opens more doors than one might think. This article covers the latest story on the discussion of whether or not the Pope should have immunity from persecution as well. While it is easy to say no the Pope is not a state official the article gives reason to support that he could be considered. The first reason being that the Vatican has relations with 170 countries and secondly because it has a permanent seat as an observer at the UN. This article is pointing out a very big question because if we were to pass a law giving immunity to state officials who counts and who does not? After reading this, one might consider in their ideas what circumstances an official might require in order to fall under this law.

Extension Of List Of Crimes No Longer Qualifying For Immunity Is Urged In Legal Committee Discussion Of Acts Of Foreign Officials. General Assembly. 3 November 2008. http://www.un.org/News/Press/docs/2008/gal3356.doc.htm

This review of the Sixty-third General Assembly, Sixth Committee, is an important document that debates what should and should not be under immunity. In the text it states where many of the countries stand on the issue and how they feel the committee should handle this topic. The focus of the debate was over whether or not "no immunity" should be extended to other crimes. As of now officials have not been considered for immunity for genocide, war crimes, crimes against humanity, and crimes of aggression.

Topic II. Shared Natural Resources

Boisson de Chazournes, Laurence "Freshwater and International Law: The Interplay between Universal, Regional and Basin Perspectives" The United Nations World Water Assessment Programme: Insights 2009 http://unesdoc.unesco.org/images/0018/001850/185080e.pdf

This side series publication was created as an insight into the roles of the different universal and regional instruments of international law. This insightful document provides a more thorough portrayal of the inner workings of the international laws and the transformations of different rules and laws surrounding water over the years. It would be a great resource and research building block to read this publication on freshwater and international law.

UN Atlas of the Oceans – Issues: Climate Change Draft articles on the Law of Transboundary Aquifers. International Law Commission. Sixtieth Session. 5 August 2008. http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/8_5_2008.pdf

This document gives perambulatory clauses mentioning passed events and treaties pertaining to the topic of natural resources. Within the document itself, it shares a detailed outline of what the ILC has recently drawn together with their stride in shared natural resources. This will allow the students to understand how the commission is taking a stand on the issue of shared natural resources and what they can expect to create. It also will educate them on the current progress that has been taken.

Environmental Law Guidelines And Principles On Shared Natural Resources United Nations Environment Program. http://www.unep.org/Law/PDF/UNEPEnvironmental-Law-Guidelines-and-Principles.pdf

This document is a guide for principles that the United Nations Environment Program has already created. It focuses on the importance of peace and cooperation between two states in addition to preventing degradation to the environment. It recommends that bilateral and multilateral agreements should be made by states to ensure proper conduct. It also highly suggests that states take the initiative to recognizes the utilization of resources and the harm it may be causing on the environment and other states.

Foster, John. "Afghanistan and the new great game" *The Toronto Star*. Global Forum Policy. 12 August 2009. http://www.globalpolicy.org/security-council/dark-side-of-natural-resources/oil-and-natural-gas-in-conflict/48020.html

This article is a great example of one of the most commercially valuable natural resources currently on the planet. It focuses on the current situation in the Middle East and Turkmenistan that has a large reserve of oil. As of now the Russia Federation, the United States and the Republic of China have been discussing oil pipelines. It further explains that each state has its own separate plan to achieve the upper hand in the oil supply. According to the article, whichever state takes the upper hand could serve as the dominating power in the region. In addition, this article discusses other pipelines that are being built and presents questions for the oil debate.

Gleick, Peter *Water Conflict Chronology* Pacific Institute for Studies in Development, Environment, and Security 07 September 2000. http://www.worldwater.org/conflictchronologychart.PDF

This document provides a summarized timeline of the many water disputes and conflicts over the centuries. It focuses on the conflicts of the 1900s, and provides a synopsis of each conflict in an accessible chart. This resource provides basic information over the history of water conflicts. Thus, it would be a great reference into the historical context of current water disputes.

Salman, M. A. Salman *The Helsinki Rules, the UN Watercourses Convention and the Berlin Rules: Perspectives on International Water Law* Water Resources Development, Vol. 23, No. 4, 625-640, December 2007 http://www.internationalwaterlaw.org/bibliography/articles/general/Salman-BerlinRules.pdf

This article provides a great analysis into the questions regarding the Helsinki Rules and the following Conventions that shaped the international laws of watercourses. The article is a detailed document describing the differences of law between non-navigational use and navigational uses of watercourses. Additionally, it conveys the importance of the Helsinki Rules but additionally providing the criticisms that are still applied to current international law concerning watercourses. It will be a great resource to use for purposes of questions, criticisms, and discussion on the current topic of shared natural resources.

Topic III. Evaluating the Protection and Treatment of Prisoners of War and Unlawful Combatants

"In Depth Iraq: The Geneva Conventions." CBC News online. 13 May 2004.
http://www.cbc.ca/news/background/iraq/genevaconventions.html

This article addresses the progression of the Geneva Conventions as they apply to prisoners of war by detailing the gaps in protections afforded to POWs. A brief synopsis of each of the Geneva Conventions is outlined in an effort to draw a link between the status of POWs and unlawful combatants. The article discusses the situation of the United Sates and the prisoner scandal at the Abu Graib prison in Iraq by offering the various viewpoints on the issue. Most importantly, issues such as "occupied territories" and "violations of prohibitions" are discussed at length, providing viewpoints to this topic that havee not yet been addressed.

"Enemy Combatant" Sourcewatch. http://www.sourcewatch.org/index.php?title=Enemy_combatant

The evolution of the term "enemy combatant" is discussed from the view of the Ex Parte Quirin Case in this article. This is crucial to research on this topic, because of the implications it holds for scholars that believe the term was only made up for use with Guantanamo Bay detainees. The article provides the details of a 1942 court case that initiated the use of the term "enemy combatant" and how the United States President and Congress are authorized to use the term. Additionally, this article addresses the use of the term "enemy combatants" for terrorists and introduces a variety of examples where these concepts were applied.

Terry Frieden. "U.S Reverses Policy, Drops 'Enemy Combatant' Term" 13 March, 2009. CNN.
http://www.cnn.com/2009/POLITICS/03/13/enemy.combatant/index.html#cnnSTCText

In a dramatic policy shift, this article details the United States new policy on the use of the term "enemy combatant" under the Obama administration. According to the CNN author, Obama's administration has reversed the use of the actual term, however many of the policies that allow members of the Taliban and Al Qaeda to be detained remain intact. Wording within the new policy remains vague, however the article does an excellent job of introducing potential solutions that could be used by delegates when addressing this topic.

Derek Jinks. "The Declining Significance of POW Status". Harvard International Law Journal.
http://www.harvardilj.org/print/50

This article presents a unique look at the status afforded to POWs and makes the argument that it is not as prestigious as it once was. The author claims that the gap between the rights given to POWs and those afforded to unlawful combatants is not as great as many scholars believe it to be. By outlining and detailing the variances that do exist, the author is able to make a case that POW status carries few protective consequences. This viewpoint could be used by delegates that wish to refrain from granting POW status to unlawful combatants, yet still grant them their inalienable human rights.

Ronald D Rotunda. "No POWs. Unlawful Combatants, American Law, and the Geneva Conventions." 29 January, 2002. http://old.nationalreview.com/comment/comment-rotunda012902.shtml

As a professor at the University of Illinois College of Law, Mr. Rotunda poses some very intriguing questions regarding the status of detainees at Guantanamo Bay. He carefully weighs the various international law instruments that govern POW status and outlines the consequences of granting such status to unlawful combatants. Additionally, his article discusses a portion of the Geneva Protocol that allows non state belligerents to secure protected treatment by filing a declaration with the Swiss government. He further claims that since members of terrorist organizations have failed to do this, they should not be granted POW status. This particular piece of evidence could be used by delegates to show the unwillingness of terrorists to comply with established international law, and thus reason for them to not be protected under the Geneva Convention.

George P. Fletcher. "War and the Constitution: Bush's Military Tribunals Haven't Got a Legal Leg to Stand on." American Prospect Magazine. January 2002. http://www.thirdworldtraveler.com/Democracy_America/War_Constitution.html

In an attempt to create a case against the use of military tribunals for terrorist detainees, Mr. Fletcher discusses precedent set forth not only by the US Supreme Court, but also by established international law doctrines such as the Geneva Conventions. Although the author tends to be quite bias and belligerent about some facts, he is able to draw conclusions that are crucial to research on this topic. By approaching terms and phrases with a literal, rather than subjective eye, he craftily introduces arguments that delegates may find helpful in arguing that unlawful combatants should be tried in civil courts rather than military tribunals. This is an aspect of the topic that is crucial when determining any potential solution to the treatment and protection of unlawful combatants.

John Perazzo. "Why Civilian Trials for Terrorists are a Bad Idea." 6 February, 2007. Front Page Magazine. http://97.74.65.51/readArticle.aspx?ARTID=336

This article is extremely relevant to the topic in that it discusses whether or not terrorist acts can be constituted as acts of war. The pertinence in this issue of the topic lies in the fact that the Geneva Convention protections only apply during times of war and international armed conflict. The Convention specifically outlines what constitutes these terms, however there is a vast amount of vagueness as it refers to acts of terrorism. The author attempts to draw the conclusion that terrorist acts do fall under the "acts of war" category and thus the international law regarding lawful combatants and their protections are applicable. Delegates must carefully consider this angle as it is the basis for much of the law that exists regarding the treatment of POWs and unlawful combatants.