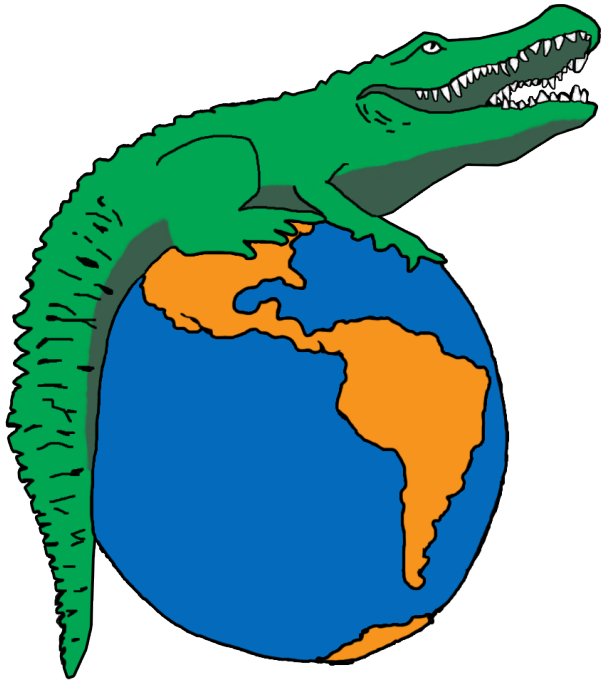
GatorMUN XVI

Background Guide



Sixth General Assembly
Committee: Legal

Esteemed Delegates,

Hello, and welcome to GatorMUN's General Assembly 6th Committee (Legal). My name is Marco Guzman, and I am a third-year student at the University of Florida pursuing a degree in International Studies focused in Latin America and the Caribbean as well as a second degree in Russian Language and Culture. Although this is my first time directing my own committee, I have seven years of Model United Nations experience and look forward to getting to spectate our committee from my side of the dais. I have carefully selected our topics to provide minimal overlap while allowing a wide berth in the directions delegates can pursue within them. If anyone has any questions about the topics, expectations, the committee, or college life in general, I strongly encourage them to reach out via our email.

As delegates of the 6th Committee, you will be working to discuss two legal issues facing the international community, identify shortcomings and oversights in existing legal regimes or policies (or any lack thereof), and collaborate to offer resolutions which address all or some of these concerns. In order to achieve these goals, delegates are expected to research both the topics and national policies before committee and conduct themselves professionally during the course of our meetings.

Within our topics, delegates will get to balance national sovereignty against the necessities of individuals and the obligations of states pursuant to relevant international treaties. Whether discussing the possible recourses for losses of citizenship and the prerequisite circumstances for the surrender of citizenship, or the legal admissibility of unmanned or autonomous weapons systems in armed conflict and the legality of unilateral extraplanetary security measures, delegates will work to create and/or codify enduring legal principles which serve to facilitate ongoing international cooperation by ensuring human rights are respected in peace and war.

Position papers will be required for this committee. If you have any questions about this or any of the committee's topics, please do not hesitate to contact me at gatormun@gmail.com. Until then, I look forward to seeing you.

Sincerely,

Marco Guzman
Director, Legal Committee

Rules of Procedure

Quorum
A majority of voting members answering to the roll at each session shall constitute a quorum for that session. This means that half plus one of all voting members are present. Quorum will be assumed consistent unless questioned through a Point of Order. Delegates may request to be noted as "Present" or "Present and Voting."

Motion to Open Debate
This opens the floor for debate, allowing other points or motions.

Motion to Set the Agenda
This motion determines the order in which the topics of a committee will be debated. Permission to speak will be accorded to one speaker for and one speaker against, and a two-thirds majority is required for the motion to pass.

Motion to Open the Speaker's List
Opening the Speaker's List requires a simple majority to pass. A delegate may only be present on the Speaker's List once, but may re-enter after he/she has spoken. If the Speaker's List expires, debate then closes.

Motion to Set Speaking Time
Speaking Time must be indicated by this motion from the floor before any members of the body may speak on the Speaker's List. This motion must also accompany any motion for a Moderated Caucus. In a Motion to Set Speaking Time for the formal Speaker's List, a delegate may also specify a number of questions or comments to automatically affix to the Speaking Time. These designated questions or comments may also have Speaking Time or Response Time (in the case of a question) limits, but these are not required. The Director may rule any Motion to Set Speaking Time dilatory. This motion requires a simple majority. Any delegate may make this motion between formal speakers in an effort to change the Speaking Time.

Motion to Close the Speaker's List
The Speaker's List may be closed upon a motion from the floor. Permission to speak will be accorded to one speaker for and one speaker against, and a two-thirds majority is required for the motion to pass.

Motion to Suspend the Rules for the Purpose of a Moderated Caucus
This motion must include three specifications:

a. Length of the Caucus
b. Speaking time, and
c. Reason for the Caucus.

During a moderated caucus, delegates will be called on to speak by the Committee Director. Delegates will raise their placards to be recognized. Delegates must maintain the same degree of decorum throughout a Moderated Caucus as in formal debate. This motion requires a simple majority to pass.

Motion to Suspend the Rules for the Purpose of an Unmoderated Caucus

This motion must include the length of the Caucus. During an unmoderated caucus, delegates may get up from their seats and talk amongst themselves. This motion requires a simple majority to pass. The length of an unmoderated caucus should never exceed twenty minutes.

Motion to Suspend the Meeting

This motion is in order if there is a scheduled break in debate to be observed. (ie. Lunch!) This motion requires a simple majority vote. The Committee Director may refuse to entertain this motion at their discretion.

Motion to Adjourn the Meeting

This motion is in order at the end of the last committee session. It signifies the closing of the committee until next year's conference.

Motion to Table the Topic

If a delegate believes that the flow of debate has become stagnant, he/she may make this motion. To Table the Topic is to halt debate on the present Topic, save the speakers' list and all draft resolutions, and move on to the next Topic on the Agenda. The delegate making this motion may also choose to specify a previously tabled Topic. This motion requires a two-thirds vote to pass. The Topic may be returned to at any time by tabling the present Topic and adding the phrase "for the purpose of returning to Tabled Topic ____," to this motion. If no Topics have been previously tabled, debate must follow the established Agenda. This motion is to be used sparingly.

Points of Order

Points of Order will only be recognized for the following items:

a) To recognize errors in voting, tabulation, or procedure,
b) To question relevance of debate to the current Topic or
c) To question a quorum.

A Point of Order may interrupt a speaker if necessary and it is to be used sparingly.

Points of Inquiry

When there is no discussion on the floor, a delegate may direct a question to the Committee Director. Any question directed to another delegate may only be asked immediately after the delegate has finished speaking on a substantive matter. A delegate that declines to respond to a question after a formal speech forfeits any further questioning time. The question must conform to the following format:

Delegate from Country A raises placard to be recognized by the Committee Director.
Committee Director: "To what point do you rise?"
Country A: "Point of Inquiry."
Committee Director: "State your Point."
Country A: "Will the delegate from Country B (who must have just concluded a substantive speech) yield to a question?"
Committee Director: "Will the Delegate Yield?"
Country B: "I will" or "I will not" (if not, return to the next business item)
Country A asks their question (it must not be a rhetorical question.)
Country B may choose to respond or to decline.

If the Delegate from Country B does not yield to or chooses not to answer a question from Country A, then he/she yields all remaining questioning time to the Committee Director.

Points of Personal Privilege

Points of personal privilege are used to request information or clarification and conduct all other business of the body except Motions or Points specifically mentioned in the Rules of Procedure.

Please note: The Director may refuse to recognize Points of Order, Points of Inquiry or Points of Personal Privilege if the Committee Director believes the decorum and restraint inherent in the exercise has been violated, or if the point is deemed dilatory in nature.

Rights of Reply

At the Committee Director's discretion, any member nation or observer may be granted a Right of Reply to answer serious insults directed at the dignity of the delegate present. The Director has the ABSOLUTE AUTHORITY to accept or reject Rights of Reply, and the decision IS NOT SUBJECT TO APPEAL. Delegates who feel they are being treated unfairly may take their complaint to any member of the Secretariat.

Working Papers and Draft Resolutions

Once a Working Paper has been submitted, approved, distributed, and formally introduced to the body, it can and will be referred to as a "Draft Resolution." In order for a Working Paper to be submitted to the Committee Director, it must be in correct format and bear the names of a combination of a number of Sponsors and Signatories necessary to introduce, as determined by the Committee Director.

Sponsors are the writers of the Working Paper, and agree with it in its entirety. They should be able to vote 'yes' for the paper during voting procedure. Signatories are those delegates interested in bringing the Working Paper to the floor for debate, but do not necessarily agree with its contents.

A delegate can motion to discuss the working paper during a moderated caucus or unmoderated caucus. A delegate can also motion for an author's panel, which is essentially a moderated caucus moderated by the authors. It is the chair's discretion on the maximum amount of authors allowed on the author's panel.

Friendly Amendments

Friendly Amendments are any changes to a formally introduced Directive that *all* Sponsors agree to in writing. The Committee Director must approve the Friendly Amendment and confirm each Sponsor's agreement both verbally and in writing.

Unfriendly Amendments

Unfriendly Amendments are any substantive changes to a formally introduced Directive that are not agreed to by all of the Sponsors of the Directive. In order to introduce an Unfriendly Amendment, the Unfriendly Amendment must the number equivalent to 1/3 of Quorum confirmed signatories. The Committee Director has the authority to discern between substantive and nonsubstantive Unfriendly amendment proposals.

Plagiarism

GatorMUN maintains a zero-tolerance policy in regards to plagiarism. Delegates found to have used the ideas of others without properly citing those individuals, organizations, or documents will have their credentials revoked for the duration of the GatorMUN conference. This is a very serious offense.

Motion to Close Debate and Voting Procedures

A motion to close debate may only pass with a two-thirds majority. Once this motion passes, and the committee enters Voting Procedure, no occupants of the committee room may exit the Committee Room, and no individual may enter the Committee Room from the outside. A member of the Dias will secure all doors. No talking, passing notes, or communicating of any kind will be tolerated during voting procedures.

Once moving into voting procedures chair can only accept these motions:

- A point of order to correct an error in procedure
- An appeal of the decision of the chair
- A motion for division
- A motion for roll call vote
- A motion for adoption by acclamation

Each Draft Resolution will be read to the body and voted upon in the order which they were introduced. Any Proposed Unfriendly Amendments to each Draft Resolution will be read to the body and voted upon before the main body of the Draft Resolution as a whole is put to a vote. The Committee will adopt Directives and Unfriendly Amendments to Directives if these documents pass with a simple majority. Specialized committees should refer to their background guides or Committee Directors for information concerning specific voting procedures. Unless otherwise specified by the Secretariat, each Committee may pass as many resolutions as it agrees are necessary to efficiently address the Topic

Delegates who requested to be noted as "Present and Voting" are unable to abstain during voting procedure. Abstentions will not be counted in the tallying of a majority. For example, 5 yes votes, 4 no votes, and 7 abstentions means that the Directive passes.

Roll Call Voting

A counted placard vote will be considered sufficient unless any delegate to the committee motions for a Roll Call Vote. If a Roll Call Vote is requested, the committee must comply. All delegates must vote: "For," "Against," "Abstain," or "Pass."

During a Roll Call vote, any delegate who answers, "Pass," reserves his/her vote until the Committee Director has exhausted the Roll. However, once the Committee Director returns to "Passing" Delegates, they must vote: "For" or "Against."

Voting with Rights

During a Roll Call vote delegates may vote "For with Rights" or "Against with Rights." Delegates will be granted 30 seconds to explain their reasons for voting for or against a draft resolution. This time will come after the tabulation of votes.

Delegates should use this option sparingly. It is meant for delegates who feel that their vote may seem off policy, despite it being correct. The acceptance of rights is up to the director's discretion. If a speaker goes off topic during their allotted time the director will rule their speech dilatory and move to the next in order.

Accepting by Acclamation

This motion may be stated when the Committee Director asks for points or motions. If a Roll Call Vote is requested, the motion to Accept by Acclamation is voided. If a delegate believes a Directive will pass without opposition, he or she may move to accept the Directive by acclamation. The motion passes unless a single delegate shows opposition. An abstention is not considered opposition. Should the motion fail, the committee will move directly into a Roll Call Vote.

Committee History

The Sixth General Assembly Committee of the United Nations was established by the United Nations Charter in order to "initiate studies and make recommendations for the purpose of promoting international cooperation in the political field and encouraging the progressive development of international law and its codification […] and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."[1] The two key areas of international law which will be particularly important for the purposes of the proceedings of the Legal Committee will be International Human Rights Law and International Humanitarian Law.

International Human Rights Law regards the rights of individuals and the obligations of states for the maintenance of these rights. Some of the foundational documents for this section of International Law include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Social and Economic Rights, the Convention on the Rights of the Child, and other international treaties. The General Assembly, through its mandate, also has the liberty to recognize and recommend existing trends in state practice for codification as customary international human rights law. These protections, however, generally rely on the relationship between an individual and their host country or country of nationality. This relationship creates the opportunities for an individual to use legal avenues to rectify human rights shortcomings or abuses.

International Humanitarian Law (IHL) governs the legality of acts committed within armed conflict. Its primary defining treaties include the Geneva Conventions (I – IV) as well as newer treaties such as the Comprehensive Nuclear Test Ban Treaty and the Convention on Certain Conventional Weapons. Together these instruments make up varying degrees of codified IHL, to which states are only bound through formal ratification or accession. By contrast, customary international humanitarian law enshrines the lowest common denominator to which all states have agreed through formal ratification or through continued application of the rule (a peremptory norm of international law or *jus cogens*). Generally, there is a two-stage definition for an element of customary international law: states regularly and freely adhere to the principle and states do so from the belief that it is already a responsibility.

During committee, delegates will be expected to offer possible legal regimes through which the international community can better address the agenda topics; they are also highly encouraged to be aware of existing regimes, their flaws and shortcomings, and possible rectifications the body could recommend in order to maximize efficiency and minimize waste. The body may, through resolution, recommend specific trends in international relations from which they believe a general norm or principle has arisen. In the United Nations, such a recommendation would go to either the International Law Commission, which would then investigate and publish a decision on the existence of such principle as well as offer a relevant draft treaty, protocol, or amendment which would better codify the norm, or to the International Court of Justice, which would then issue a ruling for an Advisory Judgement regarding the existence of such a norm. For the purposes of committee, the passage of a resolution by supermajority will recognize such a norm as it is written in the clause.

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1 [1]United Nations, *Charter of the United Nations,* 24 October 1945, 1 UNTS XVI

Topic I: The Role of Non-Traditional Elements in Armed Conflict

Introduction

International Humanitarian Law seeks to divide possibilities in armed conflict between those permitted and those proscribed. Among the most basic of these distinctions is between combatant and non-combatant, each of which receive different protections or rights, including the legitimacy of targeting individuals and locations for military purposes. Even in this mostly simplistic framework, however, IHL allows for adaptations to different situations. For example, an individual who is a member of the armed forces of a party to a conflict is *almost always* a legitimate target for military actions, unless they are *hors de combat* (incapacitated or gravely injured), at which time they are protected from attack. Similarly, an individual who is not a member of the armed forces or militias affiliated to a party of a conflict is *almost never* a legitimate target, unless they are actively and meaningfully taking a role in combat, at which time they surrender their protection for the time they are actively and meaningfully engaged in such activity.

Further blurring these delineations are *jus cogen* norms of international law - principles of international law which are regarded as customary and therefore binding to all states - such as the principle of proportionality, which states that an attacking force may target protected structures or locations if, and only if, the potential for civilian casualties outweighs the resulting military advantage. These grey areas have been discussed by the General Assembly and international community previously, resulting in initiatives such as the Convention on Certain Conventional Weapons and the Convention on Cluster Munitions. While some of these instruments have proven continually useful, others present opportunities for improvement and many are not already regarded as applicable to states beyond those who have chosen to bind themselves to these rules. For the purposes of the proceedings of the General Assembly, "Non-Traditional Elements" will mean any technology or entity which is not immediately covered by International Humanitarian Law, codified or customary.

History

Following the destruction of the First and Second World Wars, the international community outlawed engaging in armed conflict except where it was sanctioned through the United Nations Security Council or as a result of self-defense against another state's aggression. It also, through the adoption and revision of the Four Geneva Conventions, sought to limit the effects of armed conflict through limiting the types of weapons permissible, standardizing the expected procedures for identifying legitimate targets and objectives, and identifying what entities and/or individuals would be accountable for any derogations from these rules.

Several of the foundational documents of International Humanitarian Law were first negotiated in the beginning of the 20th century and, for this reason, lack insight into modern military technologies or organization. The first and most drastic example of such a lag between international law and military technology was the development of atomic weapons during the 1940s and following decades. The original weapons used in Hiroshima and Nagasaki certainly violated international humanitarian norms, such as the aforementioned principle of proportionality. Furthermore, the development of delivery systems for nuclear warheads during the Cold War vastly outpaced the international community's ability to effectively negotiate international treaties regarding these developments. Overall, these rapid developments and rigid response structures complicated the efforts of the international community to ensure global security through the rule of law.

The same lag has continued as the international community and individual states attempt to prevent the proliferation of state and non-state actors which attempt to use cyberwarfare to attack military and civilian targets and undermine the infrastructure and sovereignty of states. Although political organizations, academia, and the general public have continued to highlight the threat posed by such actors and their questionably legal activities following United States elections since 2016, the international community has failed to cooperate to establish legal instruments to govern state activities or through which to hold states responsible for the actions of their nationals. Other actions, including the involvement of computer-based espionage to directly achieve concrete goals outside of data collection, have also prompted concerns about the ability of these changes to affect balances of power between states.

The international community has undertaken measures to attempt to overcome some of these lacking areas in international treaty law, such as the Convention on Certain Conventional Weapons. The Convention consists of its main text and five protocols, which each delineate rules and regulations regarding different classifications of weapons. Through this methodology, members of the international community can choose the guidelines to which they must adhere, ranging from prohibitions on non-detectable fragments to regulations on the explosive remnants of war. Unfortunately, however, the Convention on Certain Conventional Weapons lacks any enforcement mechanism or a system of oversight to ensure compliance, weakening its ability to serve as a meaningful lasting instrument of International Humanitarian Law.

Key Issues

Lethal Autonomous Weapons Systems

One of such elements in the grey area of International Humanitarian Law, for which the Convention on Certain Conventional Weapons has made attempts to codify standards, is Lethal Autonomous Weapons Systems (LAWS). LAWS present a significant hurdle due to the perceived incongruity between the processes of a machine and a human. For example, as previously discussed, International Humanitarian Law poses a complex, situation-dependent identification of legitimate and illegitimate targets during the course of armed conflict. Many in academia and politics doubt the ability of computer coding to be able to make the same differentiation during combat that is expected of a human combatant. In addition, whereas International Humanitarian Law recognizes the responsibility of an individual or a state in the commission of a violation, the international community has not identified who would be the responsible party in the event a LAWS were to violate International Humanitarian Law. For these reasons, some have proposed a total ban on LAWS. Others contend that specific limitations would make treaty negotiation and enforcement more viable. Others still maintain that LAWS could operate as would any other combatant and, therefore, require no further examination by the General Assembly. These discrepancies mean that, barring the emergence of an international norm, the international community will be less safe, rather than more. Moreover, barring international consensus, no such laws would be applicable in the context of Non-International Armed Conflict to govern these technologies, potentially allowing impunity for any abuses committed by them.

Private Military and Security Contractors

Private military and security contractors (PMSC) muddy the existing definitions of International Humanitarian Law. They take part in hostilities and often unofficially represent states' interests in a conflict; however, they are deliberately removed from traditional chains of command (a defining characteristic of militias in according to International Humanitarian Law). Article 43(2) of the 1st Protocol to the 1949 Geneva Convention states that "[combatants] have the right to participate directly in hostilities." Later, Article 47(1) of the same Protocol states that "a mercenary shall not have the right to be a combatant or a prisoner of war." Therefore, mercenaries, who do not fall under the definition of combatant according to International Humanitarian Law, also lack the legal right to engage in hostilities. To do so despite this prohibition would be a contravention of International Humanitarian Law. Nevertheless, private military and

security contractors continue to be contracted by states, and even the United Nations in some instances, which suggests that states regard these forces as something more than just soldiers for hire. Indeed, following the 2004 release of evidence of torture at Abu Ghraib, a PMSC-controlled prison in Iraq, some 11 low-level individuals met charges of dereliction of duty and maltreatment of prisoners; however, the contracting company which oversaw the facility originally claimed that they had no records of who worked at the facility, including having no record of the individuals allegedly involved, at the time and continued to receive contracts from the United States military. More than a decade later, former detainees continue to try to obtain justice. In the interim, the company which was paid for its work at the Abu Ghraib detention facility has continue to receive contracts. PMSC involvement in armed conflict necessitates that the international community take steps towards defining and regulating these groups, either through partnership with the industry or through the implementation of new legal frameworks by states. The General Assembly should consider the potential for working groups to address the aforementioned issues. It may also wish to consider measures to improve regulation of PMSCs.

The International Criminal Court

Throughout the 1990s, the United Nations General Assembly and the International Law Commission worked to develop the Rome Statute, which designed a new international legal mechanism through which to prosecute "the gravest crimes of concern to the international community": genocide, war crimes, crimes against humanity, and the crime of aggression. The enshrined organ, the International Criminal Court (ICC), serves as a permanent tribunal to prosecute those who are recommended for prosecution by member states, the United Nations Security Council, or who are otherwise are identified by the Prosecutor's Office of the ICC. The ICC, however, due to its limited reach has been unable to move forward with its definition and procedures for prosecuting individuals for the crime of aggression which could prove a serious deterrent to future international acts of aggression. Additionally, several countries are either in the process, or expected to begin the process, of leaving the ICC due to perceptions of bias in the crimes and criminals it targets. For example, of the current 10 ongoing investigations the ICC is conducting, 9 are focused on African countries. Even expanding considerations into the ICC's 10 preliminary investigations as well, only one country is identified which is neither post-colonial nor post-soviet. Such concerns prompted the remark of Burundi's presidential spokesperson that "The ICC has shown itself to be a political instrument and weapon used by the west to enslave." The Committee may decide to discuss in conjunction with topics the viability of the expansion of the ICC.

Cyberwarfare

Article 51 of the United Nations Charter declares an "inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." Through this statement, the Charter codified the only legal way to enter into international armed conflict since the proscription of war following the First World War: in self- or collective defense. Yet again, however, new technologies pose new threats to the existing legal paradigm. The emergence for the possibility of hybrid war – the concurrent use of traditional military capabilities in conjunction with technological assets – has forced a reconsideration of state sovereignty and foreign influence within the international community. For example, the United States has employed or considered the application of computer programs to undermine civilian and military technological assets in both Iran and Libya. In the first case, its Stuxnet program aimed not only to steal information about the construction and format of an Iranian nuclear facility, but also allowed for sophisticated misinformation campaigns about centrifuges therein. It even allowed the United States to unilaterally cause physical damage by changing settings of centrifuges. In the second case, the United States considered using similar tactics to remotely control or render inoperable Libyan air defense systems during 2011 NATO-led air attacks. Similarly, Ukraine suffered power outages for 225,000 citizens in December of 2016 after a new program, dubbed CrashOverride, infected power grid infrastructures. As these programs

become more sophisticated and receive more state attention, the international community is concerned for the possible application of such technologies in hybrid warfare and the negative effects this could have on global security. Therefore, the committee may choose to reconsider the implications of technological advancements which have permitted states and non-state actors to engage in inter-state acts, whether these activities constitute illegal intervention by foreign governments on the sovereignty of the receiving state (or if such actions are illegal at all under International Law), and if such a violation could trigger self-defense or collective defense pursuant to Article 51.

Regional Context

Americas
Regarding the connections between international law and international peace and security, American nations generally express a desire for the maintenance of the international status quo. Generally, the bloc has called for actions which would limit the ability of emerging technologies to encourage conflict. PMSCs, by contrast, have a high rate of use in much of Central and South America domestically. Coupled with a lack of transparency in security apparatuses already in the region, this has created a situation where not only do private contractors outnumber police, but also can be more susceptible to corruption. Currently the ICC has no ongoing investigations and only one preliminary investigation in the region.

Europe
European nations generally discuss topics of shifting security technologies from a position of inevitability. For this reason, the bloc generally focuses on measures which can best regulate emerging technologies or practices. This practice is evidenced not only in the discussion regarding LAWSs and cyberwarfare, but also in the creation of the Montreux Document, a non-binding document which enumerates states' responsibilities and suggests best practices for states' interactions with PMSCs.

Asia
Asia lacks a strong consensus on actions to be taken regarding new developments for armed conflict; however, states in the region generally agree that ongoing developments would best be met by international coalitions consisting of a cross section of society. While some countries continue to argue that permanent initiatives relating to ongoing developments would not best address these issues, others contend that any concerns about the ability for new developments to adhere to International Humanitarian Law and be accountable for any derogations should be proscribed from use in armed conflict. States have also highlighted the importance of targeted understandings of automated technologies to ensure that any regulation would not needlessly hinder the pursuit of similar civilian technologies.

Africa
Regarding developments in the methods of armed conflict, Africa is similarly divided. Although states generally agree in regards to developing technologies that short term solutions should involve moratoria on the development or deployment of such technologies, countries disagree on the efforts the international community should make to develop international law for such emerging technologies. In regards to elements such as PMSCs, some nations have chosen to regulate domestically and ban the use of any foreign companies, allowing for greater regulation of the market but making the available resources inefficient and prone to corruption. As previously mentioned, several African countries have decried a western bias in the International Criminal Court which makes it a tool against their interests. It would be difficult for these states to support recommendations for other problems which rely on the ICC for oversight without significant analysis of this relationship.

The Middle East

The Middle East continues to be a site of tension and conflict. Naturally, technologies which could lower the human costs of conflict could make fighting insurgencies such as ISIS less costly; however, the danger of such technologies falling into the hands of any number of terror organizations makes them both an asset and liability. In the realm of PMSCs, some countries in the region continue to utilize such contractors, such as Russian contractors which operate on Syrian territory to aid the embattled government against rebel forces or terrorist organizations. Countries not directly involved in conflict, however, continue to argue that the involvement of these non-traditional elements raise the chances for greater danger, greater conflict, and greater damage. Here, also, some nations have attempted to better regulate PMSCs through a partial or total ban.

Questions to Consider

What is your country's policy regarding these new developments in the International Humanitarian Law?

To what existing legal regimes is your state a party? How, if at all, could these systems be improved to better execute their mandates?

Are current mechanisms adequate for the continued development of International Humanitarian Law or could they be supplemented by new frameworks?

Topic II: Laws and Regimes to Overcome Statelessness

Introduction

International Human Rights Law governs the inherent rights and protections of individuals, which the Universal Declaration of Human Rights recognizes "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." It therefore governs the relationship between individuals and nation states in order to ensure the legal equality of all people. In some instances, such as is the case with European Court of Human Rights, individual EU citizens have the legal right to bring a case against a country in order to ensure the protections of these rights. In other cases, individuals or groups of those affected garner international recognition in order to pressure their national governments into changing policies which do not respect human rights. Unfortunately, even this means of recourse is made ever more difficult in the case of stateless persons.

A stateless person is an individual without a nationality. Legally, this means no state is technically responsible for their protection and these individuals have limited avenues of recourse for human rights abuses. In the earlier example of the European Court of Human Rights, only a citizen of the EU can bring a case to the Court, and EU citizenship is determined through citizenship of an EU member state. Therefore, if an individual lacked citizenship of any country, they could not have EU citizenship and could not seek recourse for Human Rights abuses. The denial of citizenship based on religious, ethnic, or racial grounds is not uncommon in some countries potentially making statelessness not only an unfortunate outcome of history or conflict, but also of political considerations.

History

The concept of citizenship dates back to Enlightenment thinking and can most easily be traced through the expansion of Napoleonic France. This era also created the concept of nationalities as group identities (allowing colonial empires to separate territorial holdings from the actual essence of the homeland and justifying the subjugation and exploitation of indigenous communities). These concepts continued to grow and develop throughout the following two centuries, during which time it not only united otherwise fractured politics, but also made possible some of the worst actions of mankind's history. Generally, the international community points to the example of World War II and Nazi Germany's policies against Jews, homosexuals, disabled individuals and others as the possible worst-case scenario of what countries can do when a people are completely disenfranchised and ignored by the international community.

The international community has attempted to take several measures in order to prevent such situations from recurring, most notably through the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, which have been ratified by 6 and 58 states, respectively. Today, the United Nations High Commissioner for Refugees estimates that there are 10 million stateless persons globally, although it acknowledges that exactly calculating this number is difficult for a number of reasons. Moreover, there is not one single global cause for statelessness which the committee will have to tackle. Instead, modern statelessness has arisen not only from political processes such as state succession and political disenfranchisement, but also from the spread of people by conflict or through a lack or resources in remote areas. In each of these cases the opportunity arises for the phenomenon of statelessness to pass from one generation to the next without meaningful action by local, national, and international actors. The committee cannot hope to truly realize the goal of eradicating statelessness without

addressing all of the circumstances from which it can arise, including any other state-specific considerations that may be of concern to particular state policies.

Key Issues

This background guide will identify 4 issues which create opportunities for new cases of stateless individuals, as well as circumstances that otherwise prevent the eradication of statelessness worldwide. However, delegates are encouraged to find cases specific to national or regional contexts as well.

Discriminatory Citizenship Policies

Stemming from states' right to sovereignty, every country has the right to set their own national legislation without interference from foreign governments. This means that, barring a principle of customary international law or a state's choice to ratify an international treaty, independent states can create citizenship apparatuses which do not conform to the ideals enshrined in the (non-binding) Universal Declaration of Human Rights or other international declarations. Generally, citizenship law relies on at least one of two methods for establishing nationality: *jus solis* and *jus sanguinis*. *Jus solis* refers to a geographical definition of nationality. According to *jus solis* systems, anyone who was born on the territory of a country is a national of that country. Some *jus solis* systems also clarify that the parents must be in the country legally in order for the child to be considered a national. According to *jus sanguinis* systems, by contrast, the place of birth does not matter. Instead, nationality is transmitted by the parents. *Jus sanguinis* systems may also have other limitations. For example, in 27 countries, nationality can only be transferred by the father. In others, only certain ethnic groups are allowed to transfer nationality through birth.

State Succession

State succession is another catalyst for statelessness. State succession occurs when one sovereign state is either replaced by a new sovereign state entirely, or when a state separates into smaller sovereign states. This can happen with or without conflict. An example of each case can be found at the end of the twentieth century when looking at the dissolutions of the Union of Soviet Socialist Republics and Yugoslavia. For example, the dissolution of the USSR in 1991 and subsequent creation of independent successor states through Eastern Europe created hundreds of thousands of stateless people. More than a quarter of a century later, these successor states still represent almost 500,000 stateless people in Europe (not including those in successor states in Central Asia).

Geography

Part of having citizenship is also proving to have it. For this reason, many communities which are geographically removed from capitals or otherwise difficult to reach have many stateless people for a combination of reasons. For example, birth certificates, which often identify the place of birth, require these communities to have reliable communication and coordination with local and national governments in order to obtain such official documents. Lacking a birth certificate, the child will likely be unable to claim citizenship in either a *jus solis* or *jus sanguinis* apparatus due to a lack of documentation. Birth is also not the only stage of life when documentation could be important. For example, in some systems of *jus sanguinis* citizenship a child must also be born in wedlock, meaning a marriage certificate is equally as important in order to establish the nationality of a child.

Conflict

Conflict creates many problems which can exacerbate statelessness, prevent its eradication, and proliferate new cases. Many of these issues stem from forced migration related to conflict. For example, although an individual may actually have citizenship, the destruction of war and the demanding nature of evacuation mean that documents such as birth certificates or marriage licenses can be lost, stolen, or destroyed. If these displaced persons become refugees, the loss of these documents can be detrimental for their ability to find

asylum abroad. Children born in refugee camps are particularly susceptible as well when their parents' nationality cannot be transferred through the mother, since families can be separated by any number of events.

Regional Context

Sub-Saharan Africa

Of the 27 countries in the world whose citizenship policies contain racial, religious or ethnic discrimination, 9 are in Sub-Saharan Africa. The top two countries in the region have an estimated one million stateless persons, according to the UN High Commissioner on Refugees, and eight countries in Sub-Saharan Africa are believed to have more than 10,000 stateless people each. These high numbers are affected by most, if not all, of the factors above, including the geopolitical legacy of arbitrarily drawn colonial borders which were later established as formal international borders, the difficulty experienced by governments (and often a lack of resources) to reach distant communities, and the effects of conflict. Despite this legacy, the African Union has worked over the last two decades to build a meaningful legal apparatus to help resolve the issue. In 1999 the African Charter on the Rights and Welfare of the Child went into force, and 41 of the 54 members of the African Union have signed and ratified the document, in which article 6(3) states that "every child has the right to acquire a nationality," and article 6(4) requires states to provide *jus solis* citizenship to any child who lacks citizenship provided by any other state.

Americas

In his former role as the United Nations High Commissioner on Refugees, now Secretary General Antonio Gutierrez remarked that the Americas promised to lead the way in the eradication of statelessness. Among the reasons for this optimism are the region's frameworks which blend *jus solis* and *jus sanguinis* guidelines for nationality as well as regional legal safeguards and emerging good practices. In the Americas, only one country has more than 10,000 stateless persons, and the region as a whole is estimated to have about 137,000 stateless persons – the least of any region. Over the last four years, it is estimated that some 80,000 former stateless persons have acquired a nationality as a result of national policies. The Americas also have a developed regional Human Rights system which incorporates the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights under the auspices of the Organization of American States (OAS). The region has also codified the right to a nationality in Article 20 of the American Convention on Human Rights, which has been ratified by 23 of the 33 members of the OAS. The Brazil Plan of Action of 2014 represents the most recent action taken regionally regarding statelessness, in which states pledge to end statelessness in the region by 2024. The most salient obstacles presented to American countries regarding statelessness involve difficulties in reaching remote areas and providing documentation within the region.

Asia and the Pacific

Asia is home to about 40% of the identified stateless people in the world. This is a result of different situations which involve histories of conflict and nationality laws which discriminate against ethnic groups, genders, or both. Three of the 27 states which do not allow for women to transmit nationality to their children are in Asia. Lingering effects of conflict in the region in the late twentieth century have caused difficulties in ensuring nationality for those displaced. Asia and the Pacific also lack a regional Human Rights framework, although the Association of Southeast Asian Nations' Human Rights Declaration declares that "every person has the right to a nationality…" Asia also has difficulties regarding obtaining birth and marriage certificates, exemplified by the estimated 135 million children under age 5 without birth certificates.

Europe

The two largest factors contributing to Europe's stateless population are the dissolution of the USSR and Yugoslavia, as well as migration. Of the almost 592,151 estimated stateless persons in Europe, almost 500,000 are in former-soviet states and another 10,000 are split among the successor states of Yugoslavia. Statelessness also arises among migrants who lose the nationality of their origin state without gaining the nationality of their host state. Migrants fleeing conflict, such as refugees from the Middle East and North Africa, are also at particular risk for statelessness either immediately or in the subsequent generations. Europe has a robust regional Human Rights apparatus consisting of the European Convention on Human Rights, which enshrines the human rights of everyone in Europe regardless of citizenship. The European Court of Human Rights has even found that nationality is an element of the social identity of a person, itself a part of an individual's private life protected by Article 8 of the European Convention on Human Rights.

Middle East and North Africa

The Middle East and North Africa accounts for twelve of the 27 states whose nationality laws do not allow nationality to be transmitted via women. It is also home to an estimated 374,237 stateless persons (not including Palestinians). Within the region, only 2 countries have signed and ratified both the 1954 and 1961 Statelessness Conventions, and no country in the regions have a procedure to identify stateless persons or provide any protected status for stateless individuals. Although the Arab Charter on Human Rights and the Convention on the Rights of the Child in Islam protect a right to a nationality, both documents are also non-binding elements of international law. In conjunction with this lack of regional legal documents enshrining a right to a nationality, the Middle East and North Africa lack any legal framework which could codify existing standards or reflections of emerging good practices.

Questions to Consider

What system does your state use for establishing nationality, and why has it chosen this?

Which, if any, of the highlighted key issues apply to your assigned country? Are there others specific to your country or its region?

How has your country overcome these obstacles, or what examples exist elsewhere?

What, if any, international organizations are working on goals which could complement eradicating statelessness, and how could these programs be modified or implemented differently to serve our goals?

Case Study: Rohingya in Myanmar

The current situation in Myanmar highlights not only some of the root causes which can create stateless persons, but also the cyclical nature that statelessness can have, especially when involving the aforementioned key questions. For example, the government of Myanmar (then called Burma) created the Burma Citizenship Law in 1982 using strictly a *jus sanguinis* system of determining nationality. Attached to this apparatus, however, the law also included provisions detailing multiple tiers of citizenship attainable.

Under the law, individuals could obtain one of three classifications of citizenship: citizenship, associate citizenship, or naturalized citizenship. In order to qualify for the first and highest caliber of citizenship, individuals must belong to one of one hundred thirty-five "national races" or prove that their ancestors lived in Myanmar before 1823. The second classification requires proof that one's pre-1823 ancestor was a citizen of another country, and applicants for the third tier must provide "conclusive evidence" that ancestors lived in Myanmar before 1948 and prove fluency in a national language.

For a number of reasons, these classifications and their requirements are obstacles for the Rohingya population of Myanmar. The Rohingya are a generally Muslim people who trace their history in Myanmar to the 15th century; however, in Myanmar, most of the estimated 1 million people are legally considered "resident foreigners". This is because, for many Rohingya persons, it is very difficult, if possible at all, to meet the requirements for any of the three strata of citizenship. The first is nearly impossible for the Rohingya population because Rohingya is not one of the 135 recognized "national races" laid out in the 1982 law. Moreover, because the law places the burden of proof for pre-1823 residency on the individual, it is very difficult for an individual to decisively prove historical roots spanning almost two hundred years. Itis just as difficult to meet the requirements of the second tier of citizenship, which would require proof of citizenship from another country. The third tier is therefore the most attainable for most Rohingya; however, it does require that any applicant be fluent in a national language, the list of which does not include the Rohingya language. Additionally, due to conflicts which broke out following World War II, many Rohingya were displaced and fled to Bangladesh, making affirmatively proving residency that much more difficult.

These complications are further impeded by less formal aspects of politics. For example, many Rohingya who do manage to qualify reported having to pay bribes of around $300 USD in order to process their applications favorably. This is a considerable hardship considering numerous other factors which affect the Rohingya. Additionally, whereas Myanmar in general has a poverty rate of 37.5%, the Rakhine State has a poverty level of 78%, making such bribes all the more difficult. Organizations such as Human Rights Watch and the International Labor Organization have also documented widespread use of forced labor and arbitrary confiscation of property. Due to most Rohingyas' statuses as "resident foreigners", they also are subject to restrictions to the freedom of movement, denied access to higher education, and are prohibited from holding public office or working in civil service. They have also been required to seek government permission to marry, which requires the submission of photos that would be incompatible with Rohingya Muslim faith.

From this situation, conflict has arisen both in history and more recently. In August 2017, an armed group in Rakhine State began attacks on state infrastructure. This prompted military responses from the Myanmar government, causing 700,000 Rohingya to flee and the destruction of Rohingya property. Those who fled face now more difficulties in obtaining citizenship. For example, Rohingya refugees have historically received refugee status in some states, such as Bangladesh, but no legal status in others, or even been documented as illegal immigrants in some countries. Because the opportunities for work and dignity for these refugees are

limited, many are in danger of human trafficking or other exploitation. Furthermore, because they are not considered citizens of any state, their progeny will continue to be unable to claim citizenship of any country which does not have *jus solis* systems in place for nationality acquisition.

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