Legal Committee

President's Letter

Oakland University Model United Nations

March 27-28, 2020

Welcome to OUMUN 2020! My name is Ethan Bradley, and I will be your chair for the Legal Committee. I am a sophomore, studying political science and philosophy. I have been doing Model United Nations since my freshman year of high school, and this is my third semester with Oakland University Model UN. I also volunteer as a staff member for the Great Lakes Invitational Model UN conference. Your co-chair will be Alex Hoefel, who is a senior here at Oakland University. He is a Political Science major with a history minor, and this is his third semester with Oakland University Model UN.

OUMUN is a learning conference, so you are not expected to have a perfect understanding of the rules, your country, or the topics of discussion. We will, however, expect you to put your best effort toward understanding these things. For the topics and your country, that means doing adequate research ahead of time to be able to participate in debate and write

your position paper. For the rules, that means reading the rules on our website ahead of time, attending our rules training at the beginning of the conference, or both. You will be more likely to succeed and enjoy yourself if you have a solid grasp of the rules and topics.

The most important rule will be to respect me, Alex, and your fellow delegates. If somebody makes a significant mistake, correct them politely. Don't attack people for their statements, especially because it is very likely that they do not agree with the policy they are representing. You should also respect the time of everybody involved in this conference. We participate in MUN to have an enriching experience, and that does not involve turning speeches into jokes. I hope you have fun, but formal debate is not the time. I look forward to meeting you all and chairing your committee.

More information about each committee, rules of procedure, and policies for the conference can be found on the conference website.

Introduction to the Legal Committee

The mandate of the Legal Committee is laid out in Article 13, paragraph 1 (a), of the United Nations Charter, which states:

1. *The General Assembly shall initiate studies and make recommendations for the purpose of:*
    a. *promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;*[1]

This has allowed the Legal Committee to be heavily involved in the negotiation of treaties related to general international law, including the Protection of Diplomats Convention[2] and the Rome Statute, which established the International Criminal Court[3]. While the Legal Committee

[1] https://www.un.org/en/sections/un-charter/chapter-iv/index.html
[2] https://www.un.org/en/ga/sixth/71/dipl_prot.shtml
[3] https://www.un.org/press/en/1998/19981022.gal3080.html

cannot create treaties alone, it has broad power in assisting with the creation of treaties, which it then recommends to states for ratification.

The Legal Committee very rarely acts on its own, so you should not be focusing on immediate solutions. Instead, you should be working to create a legal framework for the topics you are given, which another committee would be able to use to develop specific actions. The actions of the United Nations require a solid foundation of international law, and the Legal Committee exists to lay that foundation.

Immunity of State Officials from Foreign Criminal Jurisdiction

Every nation has its officeholding lawbreakers, and they are punished in accordance with the law of their nation. The perpetrators of these crimes are officials of the nations in which they violated the law, so there is little debate of jurisdiction and immunity. However, some officials commit crimes in other nations, or commit crimes so terrible that their actions are perceived as crimes against international law and humanity. The issue of state officials and their immunity to foreign - or international - prosecution is an important one today, much like it has been in the past. The trials of Axis war criminals after the events of the Second World War[4] provide an excellent example of the lack of immunity to international prosecution for those who commit truly abominable crimes. However, many nations with these criminals are arguing in favor of their sovereignty and the integrity of their own justice systems and refusing to allow foreign prosecution of their own criminals, especially current and former Heads of State. The UN has prior experience with this issue, so much has already been done for the question of immunity.[5] Unfortunately, despite decades of experience with this issue, the UN cannot actually force

[4] https://www.jus.uio.no/english/services/library/treaties/04/4-06/london-agreement.xml
[5] https://legal.un.org/ilc/documentation/english/a_cn4_601.pdf

offending nations to do anything about this, so what mechanisms need to be enacted to better enforce or entice cooperation?

If a government official commits a crime in a foreign country, or against foreign people in his or her country, then are they prosecuted by the victims, their country, or by an international court? Some International criminals have been tried and convicted, primarily in the International Criminal Court, but convictions achieved in the ICC have only reached 5 as of November 2019, despite over 20 years of service and more than 30 additional indictments[6]. Several nations simply refuse to cooperate with the ICC, and others defend their criminals. Specifically, many national leaders and other particularly high-ranking officials have dodged prosecution by claiming that they only committed crimes in the course of discharging their duties, and the UN has previously adopted a resolution that seems to back the concept of personal immunity[7], which dictates that certain officeholders - primarily Presidents, Prime Ministers, and other Heads of State - are immune to prosecution for actions they committed in the service of their nations. Many heads of State have been arrested and prosecuted before, though, so there is also precedent for denying immunity to some criminals who do not benefit from personal immunity.

The immunity of states as a whole is another problem the UN has yet to satisfactorily address. Prosecuting heads of state is one thing. they are usually prominent, easy targets, and the logical choice to go after when attempting to prosecute for a serious crime committed by a nation. However, prosecuting other members of a state, or a state itself, is another. Under the United Nations Convention on Jurisdictional Immunities of States and Their Property[8], states are effectively immune to prosecution, unless consent is given in an international agreement, written

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[6] https://www.cnn.com/2016/07/18/world/international-criminal-court-fast-facts/index.html
[7] http://www.idi-iil.org/app/uploads/2017/06/2009_naples_01_en.pdf
[8] https://treaties.un.org/doc/source/RecentTexts/English_3_13.pdf

contract, or declaration before a court. However, a state cannot invoke immunity in certain circumstances, such as a case involving bodily harm or property damage to the citizens of another nation, for example. Unfortunately, many states are still able to dodge prosecution for such actions. The UN has historically had difficulty enforcing treaties due to a lack of institutional strength. To have an effective resolution, it must ensure or at least entice enforcement. Any nation can agree to act on a resolution, but not all do so.

As stated before, many nations have argued for immunity for their officials. For example, Robert Mugabe, when he was the leader of Zimbabwe, was accused by many across the world of committing "crimes against humanity". However, the case being built against him was rejected by the United Kingdom, despite their arrest of former Chilean President Augusto Pinochet on similar charges in the past. The charges were dropped because Mr. Mugabe was a current head of state at the time, and, while Chile was party to the 1984 Convention Against Torture, Zimbabwe was not[9].

Questions to Consider:

- Should we continue with pre-established UN precedent and reinforce what has already been done and said, or do we strike off in a new direction?
- Should heads of state get personal immunity for crimes committed in the course of carrying out their office? What about former Heads of State?
- How should states be enticed to accept and enforce cooperation with UN Immunity Resolutions?
- Should current officeholders be punished with the same standards as former officeholders?

[9] https://www.legal-tools.org/doc/ac15e8/pdf/

- What has your country done with Immunity? Is it a party to any particular agreements or statutes? Does your country have a history with this topic - positive or otherwise?

Additional Resources:

- Rome Statute of the International Criminal Court
- Convention against torture and other cruel, inhuman or degrading treatment or punishment
- Convention on the Prevention and Punishment of the Crime of Genocide
- Immunity of State Officials From Foreign Criminal Jurisdiction

Protection of the Environment and Cultural Artifacts in Relation to Armed Conflicts

Armed conflict consistently results in unintended damage to places, people, and objects that are not the target of any attack. The international community has long worked to limit this damage. The Fourth Geneva Convention forbids killing or injuring civilians during wartime, even in occupied territory[10]. The 1989 Convention on the Rights of the Child prohibits any child under the age of 15 from engaging in armed conflict[11]. A series of treaties have limited the types of weapons which are allowed to be used in war, including banning the use of nuclear, chemical, and biological weapons[12]. However, the questions of protecting the environment and cultural artifacts have yet to be fully addressed by the international community.

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[10] https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols#gs.ruxgbc
[11] https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=78E5DB8C13F849ECC12563CD0051F974
[12] https://ihl-databases.icrc.org/ihl#view:_id1:_id2:_id260:repeat1:1:labelAnchor

The Legal Committee has drafted principles for the protection of the environment during armed conflict. The draft principles include provisions for the environment to be treated as civilian ground, and thus disallowed as a target for attack. It is also expected that groups engaged in conflict take some precautions to ensure that they do not accidentally harm the environment[13]. The General Assembly has taken note of this effort, but more work remains to be done before these principles can be adopted into law. So long as these principles are incomplete, they have little impact on the actual process of war.

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict provides similar protections for cultural property, which is defined as "property of great importance to the cultural heritage" of a people, as well as any building or landscape in which such property is kept or displayed[14]. However, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) has criticized this definition for being too imprecise and out-of-date, especially as it lacks any provision for the protection of digital cultural property[15]. The same UNESCO review criticizes the 1954 Hague Convention for failing to enforce provisions against cultural war crimes. There is no international institution fully capable of punishing cultural war crimes when individual nations refuse to do so.

Many African countries, including Benin and Kenya, have recently undertaken efforts to reclaim artifacts that were removed while they were under colonial rule. While no international law about cultural property existed at the time that these artifacts were taken, the 1954 Hague Convention has been used to argue that these artifacts should be returned.

Questions to Consider:

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[13] https://legal.un.org/ilc/reports/2015/english/chp9.pdf
[14] http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html
[15] https://unesdoc.unesco.org/ark:/48223/pf0000100159

- The principles drafted by the Legal Committee for the protection of the environment during war are linked below. Are these principles comprehensive enough?
- Should any of these principles be removed? Are there others that should be included?
- What institution should ensure the protection of the environment and cultural property during war?
- How should cultural property be defined?
- Is your country a signatory to the agreements which are mentioned above? Is your country involved in any other agreements for the protection of cultural artifacts or the environment during conflict?

Additional Resources:

- Convention for the Protection of Cultural Property in the Event of Armed Conflict
- Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict
- Legal Committee Report on the Protection of the Environment During Armed Conflict