DELEGATE BACKGROUND GUIDE

LEGAL COMMITTEE

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Committee Information

Founded in 1947, the Legal Committee is a subsidiary body of the United Nations General Assembly. The current chair of the Committee is Mozambique Ambassador to the United Nations Pedro Comissário Afonso. Its role in the United Nations is to serve as "the primary forum for the consideration of legal questions." As a General Assembly standing committee, every member state of the United Nations is entitled to having a representative in the Legal Committee. Observer states may also attend and provide input, although they do not have voting rights.

The stated goal of the Legal Committee, as codified in the UN Charter in Chapter IV, Article 13, Section 1, Subsection A, is to "initiate and make recommendations for the purpose of promoting international cooperation and encouraging the progressive development of international law." To that end, the Committee aims to draft comprehensive recommendations on international law. As with all UN Committees, these recommendations are not binding, but can best be understood as creating an ideal framework for how nations should conduct themselves. This makes it essential for delegates to negotiate between establishing clear, powerful guidelines on a realm of international law and making those guidelines popular enough to be adopted by member states.

The Committee has established some of the most influential courts and conventions in the entirety of the United Nations, including the 1998 Rome Statute of the International Criminal Court, which created the International Criminal Court in The Hague to prosecute crimes against humanity. It has also passed the 1961 Vienna Convention on Diplomatic Relations, the 1969 Vienna Convention on the Law of Treaties, and the 1999 International Convention for the Suppression of the Financing of Terrorism.

The Legal Committee receives reports from groups including the International Law Commission, the UN Commission on International Trade Law, and Measures to Eliminate International Terrorism. It adheres to a mixed decision making rule, meaning that many decisions are made by verbal consensus rather than a stricter voting procedure, although formal votes are still possible if the need arises. Recommendations passed by the Legal Committee must be voted on by the General Assembly to be officially adopted.

Delegates should pay particular attention to the text of the International Convention on Forced Disappearances, the Geneva Conventions, and the Basic Principles and Guidelines on the Right to a Remedy and Remediation in this committee, as these are some of the most widely cited treaties pertaining to transitional justice.

Topic 1: Transitional Justice

The Current Situation

While political rhetoric often centers on how to end these tragedies, there are few guidelines for how nations can rebuild afterwards. This is where transitional justice, or the process by which nations can address histories of human rights violations, becomes of immense importance. How do we hold the perpetrators of widespread abuses accountable for their crimes? How do we ensure that nations learn from their dark histories and protect the rights of their people going forward?

In this topic, delegates will have to create universal guidelines for the implementation of transitional justice, bearing in mind the diverse cases in which it might become applicable. Transitional justice is traditionally broken down into three subcategories: truth-seeking, victim reparations, and prosecutions. Each of these topics is explored in depth in this background guide, both through a broad overview and through the case studies afterwards. Delegates will be expected to address each of these topics in the draft resolution.

When considering truth seeking, how can we gather objective data on human rights abuses that were carried out in secret? As to the treatment of victims, what are appropriate, feasible reparations to provide to them? And what constitutes a fair punishment when we prosecute the masterminds behind such heinous crimes?

Victims and Reparations

When exploring the dynamics of transitional justice, reparations is a natural starting point, as this subject area most directly provides justice for victims of mass human rights abuses. The ‘UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ includes the right of victims to reparations – although such reparations can take many different shapes and forms. While the concept of providing reparations is quite routine, and victims of even minor crimes are often provided restitutions in the form of monetary compensation, transitional justice poses a unique challenge. The sheer quantity of victims, as well as the magnitude of suffering endured, makes it difficult to establish fair reparations for their suffering. Proving in a court of law that an individual has personally suffered a rights violation can also be near impossible.

Furthermore, requiring victims to offer up evidence that they were abused can often add more trauma to their experience – forcing a victim to recount a rape or torture episode may greatly exacerbate psychological harm. It is sometimes prudent therefore to provide reparations on a mass scale, rather than negotiating them on a case-by-case basis, but such an approach can also potentially minimize the experience of individual victims. Reparations must also be enacted in tandem with other

policy measures such as truth seeking and prosecutions, in order to send a firm message that the abuse victims endured will never be repeated.

Reparations are often overlooked, as victims' rights are not seen as threats to stability. However, most advocacy groups agree that reparations are an essential part of the healing process for an entire country, as they demonstrate that governments take human rights abuses and the consequences of prior actions. Indeed, according to the UN Office of the High Commissioner for Human Rights (OHCHR), "the fundamental obligation of a massive reparations scheme is not so much to return the individual to his or her status quo, but to recognize the seriousness of the violation of the equal rights of fellow citizens and to signal that the successor regime is committed to respecting those rights." Delegates should thus consider reparations not only from a humanitarian standpoint, but also a political one. Making amends to victims, apart from being the ethical course of action, holds "strategic value, in terms of long-term political advantages and producing a sustainable peace."

Legal Obligations

Victims have a right to reparation. This refers to measures to redress violations of human rights by providing a range of material and symbolic benefits to victims or their families as well as affected communities. Reparation must be adequate, effective, prompt, and should be proportional to the gravity of the violations and the harm suffered.

The High Commissioner, on the occasion of the 15th Anniversary of the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of gross violations of international human rights law and serious violations of international humanitarian law, highlighted the "catalytic power that genuine remedy and reparations can have on the daily life of victims, families, communities and entire societies."

Reparation Measures

1. **Restitution,** which should restore the victim to their original situation before the violation occurred, e.g. restoration of liberty, reinstatement of employment, return of property, return to one's place of residence.
2. **Compensation,** which should be provided for any economically accessible damage, loss of earnings, loss of property, loss of economic opportunities, moral damages.
3. **Rehabilitation,** which should include medical and psychological care, legal and social services.
4. **Satisfaction,** which should include the cessation of continuing violations, truth-seeking, search for the disappeared person or their remains, recovery, reburial of remains, public apologies, judicial and administrative sanctions, memorials, and commemorations.
5. **Guarantees of non-recurrence**, which similar to satisfaction, practitioners of transitional justice may aim to implement more sweeping reforms in the wake of rights violations to ensure that they never occur again. This may include constitutional amendments and

restructuring of the political system such as through consociationalism; however, experts admit that, “this is the least developed area… and needs significant research.” In other words, delegates have plenty of room to think creatively about solutions.

Past Implementation of Reparations

The United Nations’ ‘Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ establishes that “the party responsible for the violation or abuse is primarily responsible for providing reparation.” (*OHCHR | Transitional Justice and Human Rights*, n.d.). In many cases, this means that the state itself can be held accountable and tasked with providing reparations. However, in practice, holding a state accountable poses a daunting challenge, and enforcing this standard may require intense public pressure by citizens. The state is also often at least partly responsible for major incidents of human rights violations, even if it is not held directly culpable. As it is tasked with safeguarding the basic rights of its citizenry, any large-scale abuse of these rights requires the state to intervene. Failure to do so may also require a state to undertake carefully thought- out reparations.

The process of establishing a system for reparations is quite complex, and requires making often somewhat arbitrary judgment calls. Active efforts should be undertaken to identify as many victims as possible and publicize to affected communities the opportunity to receive at least some reparations. Victims are often identified by a lower standard of evidence than used in most courts of law, a necessity given the nature of widespread rights abuses. For instance, victims of Pinochet’s regime in Chile were systematically incarcerated and tortured. Rather than requiring each victim to prove their torture, investigators simply established that the victim had been imprisoned, and then assumed that the victim had also endured some form of torture. Governments can also help the process by lengthening deadlines for victims applying to receive reparations and allowing victims to mail in applications rather than submit them in person.

After establishing who qualifies as a victim, these individuals are typically broken down into categories based on what crimes they have suffered. Such categories typically include such horrific atrocities as rape, torture, kidnapping, and murder. Families of direct victims are often included as a category themselves. Reparations are then tailored to each general type of crime. It is also often necessary to decide who deserves immediate attention, and thus delegates in this committee may need to establish in their draft resolutions which type of crime must be addressed first, and which victims may have to take lesser priority, at least in the short term. The Cost of Reparations Payment amounts to victims vary wildly, and there is little identifiable rhyme or reason to the exact sum paid – indeed, what price tag can be placed on human suffering or human lives? In South Africa, victims of apartheid were paid around US $5,000 each. In the United States, victims of the Japanese internment camps in World War II were paid US$20,000. Argentina was more generous, providing US $224,000 to relatives of los desaparecidos, with President Carlos Menem using the salary of the highest paid government officials

as the basis of compensation. Some argue that reparations differ from typical forms of compensation because it must also make up for a "loss of opportunity".

This opportunity loss is quite difficult to calculate exactly. When a physical object is taken away, a court can order the price of that item (and perhaps quite a bit more) be paid to the victim. Yet when years of a victim's life are taken away by wrongful imprisonment, when a victim suffers from trauma for the rest of their life and thus struggles to find employment, when a victim is killed, it becomes near impossible to quantify that loss. The overall cost of reparations, meanwhile, is similarly varied depending on the overall number of victims and what other social services are provided to them.

Delegates should think about whether victims should receive a lump sum payment or a monthly pension as a result of abuses suffered. Many argue that pensions better enhance quality of life, whereas lump sums give off the distasteful impression that a human life has received an equivalent monetary value. However, pensions provide less immediate relief to victims, and there is no guarantee that a victim will live long enough to receive a payment equivalent to what they might have received in a lump sum payout.

Truth Seeking

In the wake of mass human rights violations, victims and their families often have a very simple request: they want the truth, and they have a right to know it. Casting light on the darkest crimes against humanity cedes some control of the narrative back to victims, preventing sympathizers from minimizing past crimes. This is part of truth-seeking's essential purpose, not only to validate and grieve the suffering endured by all too many souls, but also to perpetually remind the public of the dangers of ignoring tyranny, abuse, and injustice. Truth-seeking aims to collect data and report on the specific details of human rights violations, and through this grisly research ensure that future generations learn from the horrors of their past.

Truth Commissions

Truth-seeking is typically carried out by specially formed, temporary investigative teams called 'truth commissions.' Delegates in this committee will thus be tasked with considering the specific guidelines for forming unbiased, highly skilled, well-respected commissions. These commissions are distinct from the traditional legal processes of investigation, prosecution, and conviction; they are unable to directly punish perpetrators, and typically can only go so far as to recommend institutional reforms to stop the abuse from being repeated. However, it would be patently false to argue that truth commissions are toothless. Indeed, their function lends them a unique role in the transitional justice process. By focusing on documenting patterns of rights violations over time, truth commissions can look at the "big picture" while prosecutors must focus on specific offenders. This empowers researchers to focus on underlying cultural and political factors that may have played into crimes, as well as "the internal structure of abusive forces, such as death squads or the intelligence branch of the

armed forces." Commissions are also expected to communicate the results of their findings with the public, thus potentially allowing them to have a larger impact than even court cases.

Past Actions

There have been over twenty truth commissions established around the world, and while their names may vary – some countries use the term Commissions of Inquiry, others Historical Clarification Commission – their underlying purpose remains the same. Truth commissions are usually short-term bodies that are dissolved after their research has been published, although some become permanent fixtures in their nations. Furthermore, they are "officially sanctioned by the government," giving them access to government records and other avenues of research that outside bodies may find out of reach. However, there is also much variance in truth commissions' mandates and function. Some examine crimes committed by both sides in a conflict, as in South Africa and Chile, while others focus on a specific type of crime, such as in Argentina, where investigators published the report Nunca Más, a profile of forced disappearances. The effectiveness of truth commissions also varies and can have a profound effect on their eventual impact. Those granted the resources and access needed to conduct a thorough investigation can produce reports that enter the public conscience and are a source of validation and dignity for victims. Without adequate support, however, truth commissions falter.

The Process of Truth-Seeking

Truth commissions are usually created by either an executive decree or legislation. Decrees are more controversial and often have less power than formal legislation, but they can also be passed much more quickly. Different countries have thus chosen different approaches. Most Latin American countries have established commissions by executive decree, whereas African nations have mainly utilized legislation.

Investigators focused on truth-seeking should focus on identifying who the abusers were, what underlying political, cultural, and social factors caused the abuse, what the abuses were, and what eventually happened to individual victims. The International Convention for the Protection of all Persons from Enforced Disappearances codifies the "right of relatives of the missing or disappeared to learn the fate and whereabouts of their loved ones" as well as the right to the truth more generally. It is the task of truth commissions to follow through on safeguarding these rights. Moreover, they must then make recommendations based on their research as to how governments can implement cultural and policy reforms to ensure rights will never be abused in the future.

The Role of International Law

The majority of truth commissions make reference to specific codes of international human rights law, thus making it particularly important that delegates in this committee are well-versed in milestone human rights treaties such as the International Convention on Forced Disappearances, the Geneva

Conventions, and the Basic Principles and Guidelines on the Right to a Remedy and Remediation. In countries such as El Salvador, investigators have been able to use international law to argue that armed rebels holding "de facto government control over a territory… held obligations in accordance with international law."

At times, the best truth commissions will also investigate the role of the international community in participating – either actively or by turning a blind eye – to crimes. El Salvador's Truth Commission acknowledged the role of the US government in enabling rights abuses. In cases such as this, international treaties can play an essential role, enabling commissions to denounce the hypocrisy of signatories and dictating potential steps a complicit nation should undertake in recompense.

Prosecutions

Prosecuting perpetrators is, at a cursory glance, the most straightforward option for implementing transitional justice, yet it can also be one of the most challenging. Indeed, the Office for the High Commissioner for Human Rights notes that, "the number of violations reaching the threshold of crimes under international law is so high that even a properly functioning justice system working at full capacity would not be able to handle such a large number of cases." The logistics of effectively collectively evidence on mass executions and regimes of torture is daunting, and it can be impossible to prosecute every person responsible for the brutality.

In part due to these barriers, one must consider the true purpose of prosecutions in these cases. After all, even vengeance can feel insufficient. There can be no fair exchange of an eye for an eye when millions of eyes have borne witness to tragedy, when millions of eyes have been shut forever, and a perpetrator has but two. The crimes that lead to transitional justice often inspire indescribable rage and pain. Sating the need for punishment is thus perhaps an impossible challenge. While many perceive the criminal justice system as a means by which to exact revenge on criminals, prosecutions in the context of transitional justice are perhaps an inappropriate place to think of revenge. This in turn calls into question the ongoing debate over the proper punishment for perpetrators. Can a country heal from a legacy of human rights abuses by executing those responsible, or does this set a precedent for the continuation of state sanctioned violence?

Role of the International Community

The international community often tries to play a role in prosecutions, and courts such as the International Criminal Court (ICC) have been utilized in the past and have jurisdiction over many of the crimes that lead to the need for transitional justice, such as genocide, crimes against humanity, and war crimes. However, many argue that it is important to incorporate the nation in question as well. They propose a "hybrid prosecution mechanism… made up of international and national personnel." The rationale behind this body is that in many cases, a nation lacks the appropriate legal infrastructure to handle such high profile, complex prosecutions. Using a hybrid form of prosecution incorporates

the country as stakeholders in the process, while taking advantage of better-established international courts of justice. Building such a partnership is easier said than done, however. Delegates will need to carefully consider how prosecutorial and defense powers are distributed, as well as a way to incentivize nations into cooperating with international justice systems.

Conflicting Motivations

Delegates will need to mediate between three main parties in the wake of abusive regimes, each wanting very different things. The perpetrators unsurprisingly want to avoid any responsibility for their actions. The victims, meanwhile, want justice, which often means convicting perpetrators. And finally, the newly formed government primarily wants to survive and restore stability – which often conflicts with prosecutions and punishment. Delegates thus need to weigh- up these competing interests. They must consider what is the ethical decision to make, but must also understand the complex circumstances faced by post conflict nations, which may prohibit them from following the most ethical course of action.

The answer to the above question seems all too easy. Our gut instinct is to prosecute and imprison those responsible. And while this may appear to be the ethical decision, it is not necessarily the option chosen by many transitional governments – and for good reason. In many cases, the perpetrators are members of a military junta. Even after being overthrown, the military retains much of its power, and by attempting to prosecute its members, “the government may run the risk of provoking a violent military reaction and hence putting the fragile democracy in potential danger.” While it may be infuriating to let the military evade justice for their crimes, the cost of prosecuting them may be too high.

Implementation

In order to organize an effective prosecution, several basic criteria must be met. Lawyers must be well versed in the specific type of law being practiced, which may differ greatly than traditional criminal law. The party organizing the trial must be able to process “large amounts of complicated evidence… [and] handle a complicated trial.”While these requirements may seem obvious, in practice, many countries lack the properly trained lawyers and infrastructure to handle such a large case. This is why “hybrid” courts have become so popular as an alternative. These courts are by definition temporary and have staffers from both domestic and international origins. Most interestingly, and perhaps most challengingly, they must fuse national and international law. Delegates should consider how to reconcile these different forms of law when they come into conflict.

International Criminal Court

The International Criminal Court was established by the Rome Statute in 2002 and has jurisdiction in four types of war crimes, “grave breaches of the Geneva Conventions; other serious violations of the laws and customs applicable in international armed conflict; serious violations of Article 3 common to

the four Geneva Conventions; and other serious violations of the laws and customs applicable in armed conflicts not of an international character." The Geneva Conventions are four treaties on the treatment of persons during times of war. In the context of transitional justice, the most relevant document to examine is the fourth Convention, which establishes the rights of civilians to humane treatment.Common Article 3, meanwhile, deals with circumstances in which a conflict is domestic in scope, such as a civil war, although other forms of rebellion are not applicable. Its jurisdiction is also limited to the 123 member states that have ratified the Rome Statute or to referrals from the Security Council. However, in general, the ICC can be understood as having the jurisdiction to handle cases dealing with genocide, mass forced disappearances, torture, and rape, and other similar human rights abuses.

The ICC is different from hybrid tribunals because it is a purely international body. As a fledgling court, it has begun establishing a strong reputation for itself as a "court of last resort, intervening only when national authorities cannot or will not prosecute." Its focus thus far has heavily skewed towards African nations, attracting some criticism. It convicted Democratic Republic of Congo militia leader Thomas Lubanga for war crimes and sentenced him to fourteen years in prison. However, it struggles from a lack of resources; it has no police force and relies on nations to arrest suspects and transfer them to the court's location in The Hague. Its funding primarily comes from key member states, such as Japan, Germany, France, and the United Kingdom. The United States, Egypt, Iran, Israel, and Russia have signed the treaty but have not ratified it, while other high-profile nations such as India and China have not even signed it.

Case Study - The Syrian Civil War

Syria's story is just beginning, and this committee's objective is in part to help shape its narrative. The Syrian Civil War is changing day by day. By the time this committee meets, the information is this background guide will be woefully out of date. The war could well be, at least officially, over by then. Thus, this study will instead explore the origins of the conflict, as well as proposals from leading experts on transitional justice as to how it might be applied in Syria for future years.

History of the Conflict

The history of political authoritarianism and state- sanctioned violence in Syria extends for decades. In 1963, a state of emergency was declared, granting the new Baathist government the power to rule under martial law. The state of emergency has remained in place ever since. In 1970, Bashar al-Assad's father, Hafez alAssad, rose to power in a coup, and swiftly set about consolidating power by developing "a vast security apparatus capable of operating independently of the national army and police." Protests against his rule triggered a series of violent clashes and a network of clandestine prisons to torture and indefinitely hold dissidents. In one particularly grisly massacre, members of the Muslim Brotherhood party were targeted after several members of Assad's party, the Baathists, were assassinated. His younger brother, Rifaat, spearheaded a mixture of bombings and raids that may have

killed up to 40,000 people in retaliation. To this day, thousands of those "disappeared" under the elder Assad have never been found.

Bashar al-Assad took over from his father in 2000, following in his father's footsteps by quelling protests with violence and allowing "corruption, rising poverty and a growing sense of economic injustice … to alienate large segments of the population." As Assad's loyalists grew wealthier and wealthier, the general population watched with mounting fury. Government corruption coupled with the worst drought in the nation's history extending from 2006 to 2010, impoverished hundreds of thousands and drove rural farmers into the cities, heightening political tensions. Eventually, these conditions would culminate in the start of widespread protests during the Arab Spring, a wave of protests that swept across many Arab nations in 2011.

The very start of the current civil war can be traced to 18 February 2011 in the capital city, Damascus, when a small crowd of Syrians gathered to protest the police, who had beaten a young man. Shortly afterwards, several dozen teenagers in Deraa were arrested for writing anti- Assad graffiti. Protests against the regime swelled in these two cities, spreading to a national scale by 25 March. The army retaliated viciously, killing hundreds of protesters in Deraa on 11 April 2011. In the ensuing days, the army continued to brutally attack protesters, triggering defections by soldiers who could not bring themselves to fire upon defenseless civilians. On 29 July, many of these defectors announced the formation of the Free Syrian Army (FSA) to protect civilians from their own military. By November, the conflict had begun to take the shape of a full-on war, with daily conflicts between the army and the FSA. The Syrian army began to deliberately target civilians, especially Sunnis, in their assaults, while the FSA took control of several towns and cities.

Assad has consistently attempted to discredit his opponents by denouncing them as "Sunni Islamic extremists in the mold of al-Qaeda." His efforts to do so have been made infinitely easier by the entry of the Islamic State in Iraq and Syria (ISIS), a Sunni splinter group from al-Qaeda that has gained international condemnation for their brutal rule over areas of Syria and Iraq, along with recent terror attacks on Western cities. ISIS seeks to destroy Assad's rule and establish a caliphate, or religious state governed by sharia law. ISIS is also fighting moderate anti-Assad groups including the FSA. Assad has cleverly avoided directly fighting ISIS for the most part, allowing them to attack his moderate rivals, thus presenting the Syrian people and international community with a clear choice: him, or a terrorist group known for public beheadings. As ISIS continues to suffer defeats and international attention has focused on the group's atrocities, the odds of the FSA winning the war shrink, and the odds of Assad clinging to power once the dust settles grow.

What Now?

No side in the civil war is blameless. Independent researchers with the United Nations have found evidence of war crimes committed by all groups, ranging from murder to torture to rape. Assad's forces have engaged in chemical warfare, firing sarin gas at rebel-held Damascus neighborhoods, an action

that President Obama had previously said was the “red line” that if crossed, would result in American military intervention. Yet Obama recanted his threat shortly after the reported attack, and Western powers continued to avoid engaging directly in the conflict. There are also reports of ISIS using sulfur mustard, another chemical weapon. Documenting these rights violations and prosecuting perpetrators will be a massive undertaking, but the main obstacle will be simply convincing the victors to hold themselves accountable.

Over 4.5 million Syrians have been scattered across Europe during the war, while 6.5 million remain internally displaced inside the country’s borders. Providing any sort of reparations to refugees, assuming the victors can even be persuaded to offer reparations, will prove incredibly difficult given their dispersal across an entire continent. Resettling these refugees, and easing their transition into new lives in foreign countries, is a burden likely to fall onto European nations. Expecting the Syrian government to assist them is optimistic to the point of insanity, given both the enormous cost of war and the likelihood of an Assad victory. It is impossible to imagine Assad apologizing, let alone offering financial restitution, to the victims of the civil war. Delegates must then consider the extent of transitional justice. If those responsible for violence are unwilling to make amends, are others responsible for doing so?

Finally, bringing ISIS to justice will be a Herculean undertaking. While all the signs point towards the military defeat of ISIS in coming months, the scars left by the jihadist group will take decades to heal. Their usage of extortion, torture, rape, and murder is widespread and well documented. Civilians will both need assistance in the form of new infrastructure, psychological and medical treatment, and humanitarian aid, and some semblance of justice. It is unlikely that any prominent leaders of the group will go to trial for their crimes; death on the battlefield, or a life on the run, sheltered in sympathetic communities, is much more probable. While prosecutions are unlikely, truth-seeking remains a viable option and may allow victims the chance to at least share their stories. Indeed, providing some form of transitional justice for victims of ISIS will likely be easier than for victims of Assad. If Assad triumphs, he may be persuaded to provide aid to survivors of ISIS as a way to win back some international legitimacy and provide a contrast with the universally hated group.

Committee Objectives

Given that this committee is establishing global guidelines for transitional justice, **only one draft resolution can be passed and it must have significant support amongst the committee for it to go to a vote.** The product you will be expected to create in this committee differs from a standard draft resolution. It should be formatted as a set of guidelines that (hopefully) will have won the approval of your fellow delegates in the Legal Committee and thus in an ideal world would be adhered to by a myriad of nations. Your set of guidelines needs to be broad enough to encompass the many different cases in which transitional justice is applicable. There is no easy formula for transitional justice. Guidelines therefore must be adaptable to different circumstances, giving particular regard to cases in

which governments are reluctant to acknowledge past human rights violations and need additional incentive to implement transitional justice policies.

Given that this committee focuses in part on the Syrian Civil War, guidelines should be easily applicable to this case study. Such a task is no doubt challenging, and delegates may find it helpful to organize their draft resolutions with different sections for each of the main three dimensions of transitional justice described in this guide: reparations, truth-seeking, and prosecutions. Additional areas that may merit specific language include the protection of at- risk demographics including ethnic minorities, women, and children, and recommendations on granting amnesties – if they should be granted at all.

As this topic is at the intersection of law, policy, and ethics, incorporating some of its more abstract concepts, such as the discussion on the ethical dimensions of transitional justice, may appear to be a daunting challenge. You are not expected to have a specific part of your draft resolution addressing ethics; putting standalone academic, philosophical concepts into an UN resolution makes little sense. Rather, the language in your set of guidelines should show that you have at least considered the underlying ethics behind your decision-making. Many of your recommendations will undoubtedly be controversial from an ethical standpoint. It is your job to understand that policies, especially in a case such as this one, are reflections of values and ethics, and therefore that these values and ethics need to be justified. This justification can be included in the substantive text of your guidelines or in preambulatory clauses, and will thus make the role of preambulatory clauses more important than in most committees. These clauses should explain specifically why you are justified in recommending certain actions, rather than broadly “condemning acts of genocide” and implying that your solution is inherently the ethical one.

Bloc Positions

Forming blocs with common ground will challenge delegates, as many countries may find that they agree on one pillar of transitional justice and clash on the other two. Delegates may find it easier to single out one topic to advocate for, merging with other delegates that are experts on another pillar; however, given the contentious nature of many policy proposals, this will still require careful efforts at compromise. Potential ideological divisions and potential blocs are described below. However, delegates should bear in mind that their particular country may deviate from common consensus.

1. **Developed Countries / Developing Countries**

   Developed countries, especially the United States, Canada and Europe, are more likely to demand tribunals and truth-seeking, as such measures are often associated with crimes committed in other countries and thus pose little burden. Developing countries will be more split, as some will desire tribunals as a way to hold perpetrators accountable, while others will worry about the toll this will take on legal infrastructure and national unity. Developed

countries may be willing to endorse higher financial reparations than developing nations given their larger budgets. However, given that these countries might also be expected to pay the expenses of transitional justice in other nations, through the usage of tribunals and the distribution of reparations, they might also be reluctant to make large monetary commitments. Additionally, many developed countries have been asked by citizens to pay reparations in the past – and refused to do so. The United States, for instance, has consistently refused to make reparations to descendants of slaves. Given this history, developed countries may actually be more hesitant to endorse transitional justice than developing ones, as doing so will require them to pay a hefty bill that has accrued through the centuries.

2. Latin America

Latin American countries have a lengthy and recent history of engaging in transitional justice. As such, a bloc of these nations could position themselves as the leading experts on the topic, and steer debate towards solutions employed by their governments. However, given the controversial strategies employed by these nations, including amnesties for perpetrators, they may also be some of the more conservative voices in the committee.

3. The Middle East

Middle Eastern and North African countries still handling the results of the 2011 Arab Spring, such as Tunisia, Egypt, and Libya,134 have perhaps the most pressing need for transitional justice, and thus may rally together to promote a strategy that appeals to their populations while avoiding costly and logistically challenging measures. Other neighboring countries may wish to avoid drastic recommendations, given the region's volatile political climate. These countries will also need to grapple with the question of Israel. Given their support of Palestine, they may want harsher transitional justice recommendations in the hopes that Israel one day must provide reparations and other aid to the Palestinian people. Whether this desire will circumvent their interests, however, remains to be seen.

4. East Asia

Most East Asian countries will similarly be reluctant to recommend significant reforms. Countries like China and Myanmar have track records of abusing and imprisoning citizens, and are unlikely to endorse proposals that would hold their governments accountable. They would be much more likely to support guidelines that require other nations to provide reparations for past crimes committed within their borders. The Nanking Massacre, when Japanese soldiers slaughtered hundreds of thousands of Chinese - and raped between 20,000-80,000 women - has affected relations between China and Japan to this day. China would welcome the chance to demand that Japan provide reparations, and many other countries may also seek to utilize transitional justice guidelines to insist that their neighbors are held responsible for war crimes and crimes against humanity

Guiding Questions

1. How should transitional justice be implemented in an ethical and fair way on the world stage?

2. How can we ensure that victims are given reparations when there is a violation of human rights/humanitarian law?

3. How should perpetrators of human rights abuses be punished by the justice system?

4. What is the role of the international community in ensuring that human rights abuses do not take place?

5. How can the UN ensure that people are held accountable for human rights abuses?

6. What is your country's involvement in the Syrian Civil War? If your country isn't involved, what is your country's opinion on the war?

7. Are there any steps that the UN can take to attempt to end the Syrian Civil War?

Topic 2: Regulating Multinational Corporations

Introduction

MNCs with great social and political capital have operated with little accountability since they originated. Currently, international law does not have regulations for corporations or mechanisms to ensure compliance. With MNCs based in many countries and outsourcing to many more, jurisdiction is difficult to establish for these corporations. Despite being international bodies, MNCs frequently fall under national labor codes. Because there is no consistency across national laws, they also fail to regulate MNCs. As a result, MNCs can evade both national and international regulations. Consequently, corporations carry out practices that negatively affect climate change and exploit workers. Despite committing countless crimes that are economic and social in nature, few international proceedings have held these corporations liable. Although corporations are often seen as "legal persons" in the eye of the law through what is known as corporate personhood, they are not held to the same standards as individuals when it comes to illegal actions.

While certain countries are starting to take strides toward regulating the actions of their MNCs, the international stance remains unclear. This allows the damage caused by such corporations to grow exponentially and worsen as time goes on. Although MNCs have revolutionized the global community and play an integral role in our world, international law must be restructured.

This topic explores the complex concerns that arise when considering the regulation of MNCs. Questions of national vs. international interests, failures of the past, and substantive changes for the future must be carefully considered. Whether through successful legislation from national parties, or the creation of brand new legal frameworks, resolving this issue will require a strong knowledge of the history of corporations, national stake in such an issue, and other considerations. Throughout this discussion, delegates will navigate questions of corporate personhood, current environmental measures, and the international courts' effectiveness on this topic. Ultimately, delegates should work towards creating substantive recommendations and advisory notices that relevant UN bodies and committees can then act upon.

History and Description of the Issue

The Rise of and Exploitative Nature of MNCs

The origin of MNCs can be traced back to the late sixteenth century, with the creation of European trading companies, particularly English and Dutch ones. Among the most prominent of these was the Dutch East India Company, founded in 1602 and entrusted with exploiting resources from the colonies. These companies became one of the pillars of capitalist development and an essential vehicle for European imperialism in the world.

The colonial history behind MNCs are the foundation for their exploitative practices today. With semi-governmental powers and complete support from the monarch, the DEIC could wield its power strategically. Such freedom allowed for the easy exploitation of employees and the general public while Dutch officials accumulated wealth. Any time the DEIC faced shortages of supply, it "dramatically lowered salaries for all of the already underpaid agents, regardless of rank". (Backer) A supply shortage occurs when the demand for a product exceeds the supply of that product. Further costs to produce more products are taken from employee wages and may lead to inadequate compensation. As such, slave labor was crucial in allowing the MNC to accumulate wealth without losing profit. It is widely accepted that The Dutch East India Company's peak worth reached an amount equivalent to USD 7.9 trillion today through such business practices. Through the exploitation of workers in other countries, the ability to cut wages without explanation, and semi-governmental power, the DEIC set the stage for the future behaviors of multinational corporations.

Modern MNCs parallel the business practices of the past while also facing barriers of the present. Wealth disparity continues to increase as MNCs pay less than livable wages and avoid paying taxes. The combined wealth of the eight richest men in the world is the same as the combined wealth of the poorest half of the world. Despite this large inequality, few measures have been taken to correct it. All eight of these men own and lead the current largest MNCs in the world, which includes names such as Warren Buffet (Berkshire Hathaway), Jeff Bezos (Amazon), Mark Zuckerberg (Facebook), and Michael

Bloomberg (Bloomberg L.P.). By moving production to developing countries, MNCs can “own a majority stake in factories with sweatshop conditions”' (Britannica) without worrying about their corporate responsibility. In 2014, the International Labor Organization estimated that USD 150 billion is generated annually through forced labor. Just as the Dutch East India Company exploited workers and used forced labor for production, current MNCs use similar business practices.

While the DEIC paved the way for principal business concepts, it also served as a model of corruption for future MNCs to follow. Exploitative practices continue to surround MNCs, but they are no longer the sole areas to redress. In the current global community, MNCs have often ignored their economic responsibility. Several MNCs find ways to evade and lessen their tax payments by taking advantage of ambiguous tax laws. Often, federal governments prioritize corporate interests over the general public. In 2017, corporate tax was lowered from 35 percent to 21 percent in the United States of America, which hurt low and middle-income households.Although MNCs are integral to the trade of goods and services, there is a large gap in who benefits from it economically. Whether it is through the exploitation of workers or ways of evading economic responsibility, modern MNCs require reform, and current legislation must be examined to address such problems.

The Scope of International Law

Today, scholars widely accept that MNCs are an incredibly “important actor in contemporary international relations.” (GL et al.) Widely influential legal professionals, including Professor Seymour Rubin of the American Society of International Law, echo these beliefs. By analyzing economic patterns, historical examples, and the relationships between MNCs and governments, academics and leading professors find consensus on this understanding. While the DEIC outwardly broadcasted its semi-governmental powers, current MNCs hide their similar levels of authority and control. Despite playing a large role in international relations, no international legal authority governs MNCs. Corporations are currently seen as “incorporated under the laws of a particular country, undertaking business activities beyond the borders of that particular country.” This means there are no international laws in place to restrict MNCs. This system does not allow countries to hold their corporations accountable for their actions overseas. While federal governments can supervise corporate behavior in their own country, it becomes increasingly difficult in other countries. Questions also arise over which labor codes should be enforced. If an MNC based out of the United States or Sweden has factories in Bangladesh, which country’s employment standards must be met? Similarly, should wages be determined based on the country of work or the home of the MNC? Such questions have no real answer in international law. As a result, MNCs can pay low wages and avoid the restrictive labor codes of their countries. By outsourcing work to developing countries, MNCs reduce costs for information technology (IT) and similar services by up to 60 percent. Although outsourcing may benefit the economies of underdeveloped countries, further regulations would create a universal standard for MNCs and protect workers’ rights.

Modern history has allowed MNCs to grow in global reach, influence, and economic strength. In 2002, ExxonMobil was worth around USD 63 billion—comparable to the GDP of Chile and Pakistan. The benefits of outsourcing for MNCs far exceed the benefits to these countries' economies. MNCs often allow interference from their home countries in corporate affairs. This practice allows them to maintain strong relations with their home countries if they experience difficulties in their outsourcing countries. Corporations still operate as separate bodies and evade blame from their home countries when it is beneficial. The current system allows MNCs to claim national status when it may assist them and reject it when the international status is more appealing. It is therefore evident that "until a coherent body of laws is created by [countries], [MNCs] will continue to operate in a confusing spine of legal conflict." (Oyebode).

While many have suggested international regulatory agencies and other forms of restricting MNCs, the global community hasn't agreed on any single framework. Creating laws to regulate MNCs will help lessen the currently ignored problems. Without legal powers over MNCs, exploitation and economic shortcuts will continue. The International Labor Organization (ILO) ensures that human rights are protected. However, without legal frameworks to control MNCs, human rights protections have no standing over corporations. Similarly, while the UN Tax Committee focuses on forming proper tax systems, MNCs easily avoid taxes through lobbying and, at times, corruption. The few international regulations that have been enacted have been unable to cover the full reach of these companies. Past efforts (including the ILO Tripartite Declaration of Principles Concerning Multilateral Enterprises and Social Policy) could not restrict MNCs. In 1977, the ILO first approved the Tripartite Declaration of Principles Concerning Multilateral Enterprises and Social Policy (also known as the MNE Declaration). This Declaration was amended on several occasions to account for the rapidly changing status of MNCs. However, its main goal of encouraging "the positive contribution which [transnational] enterprises can make to economic and social progress and the realization of decent work for all" never changed (Diller). Despite having a clear goal, the MNE Declaration did not require a precise definition for MNCs. Similarly, the Declaration had no framework to decide what qualifies as child labor, unlivable wages, equal opportunity, and many other important terms. As such, the Declaration failed to create a strong framework to restrict MNCs from exploiting their workers. Additionally, the MNE Declaration proposed no way to make sure that MNCs would comply with its goals.

The most important aspects missing from past efforts— including the MNE Declaration—are "mandatory and verifiable reporting systems, mechanisms for monitoring corporate activity and compliance, and enforcement mechanisms which are effective beyond national boundaries." (de Jonge) Reporting systems must be widely implemented and required for MNCs. Similarly, they must be verifiable to ensure accountability. Such systems would allow MNC activity, wages, and working conditions to be verified. Implementing accountability systems may combat MNCs' exploitative practices. Mechanisms for monitoring corporate activity would allow a greater look into the dealings of corporate officials. These measures may assist in monitoring MNCs' economic operations and tax-related behaviors. Finally, enforcement mechanisms will allow the accountability system to be

widely accepted. Without forms of enforcement, MNCs will continue to exploit workers and avoid their corporate responsibilities. These proposed measures are just the first steps for creating a legal framework to regulate MNCs. Further measures can be taken to ensure corporate responsibility. Loopholes in past regulations have allowed MNCs to continue their harmful practices without facing any consequences. Because current international laws are loosely defined, they are unsuccessful in regulating MNCs. As such, it is important to clearly define MNCs in future legislation.

Corporate Personhood

The legal theory of corporate personhood gives corporations the same standing as a person. Implementation of corporate personhood allows corporations several rights and responsibilities. Most notable are the rights to own property, sue and be sued, be punished for illegal activity, and be subject to taxation. (Millon) By treating corporations as legal persons, bodies of law also hold them accountable for the legal responsibilities of a human being. This means that the legal responsibilities of corporations fall on the company itself rather than its employees. Employees cannot be held liable for civil and criminal acts committed by their corporation. The actions of corporations are not considered the faults of the individuals making business decisions. Rather, only the corporation is to be blamed.

While the concept of corporate personhood did not formally exist until the creation of the DEIC, the basic ideology behind it likely emerged in India as early as 800 BC. Since then, the ideology has developed into a widespread, almost universal identifier for MNCs. Landmark case law in many countries has allowed corporations to identify as legal persons. Distinguishing MNCs as legal entities allows certain forms of accountability. The ability to be sued or forced to pay taxes allows governments to regulate certain corporate behavior. Concerned individuals and impacted parties have the ability to raise concerns if MNCs violate the law of their nation, particularly in cases of employee abuse, money laundering, or tax evasion.

Regarding the national legal process, corporate personhood successfully protects the rights of corporations while still maintaining their legal responsibilities. Nonetheless, this cannot be said for international law. MNCs fall under the jurisdiction of international courts. The European Court of Human Rights (ECHR) grants MNCs protections under the European Convention on Human Rights. This means that corporations can be considered victims of human rights abuses. Like corporate personhood, this ruling treats corporations as legal persons. Nonetheless, the court does not extend legal responsibility to corporations when they have committed human rights abuses. The ECHR (and other international courts) grant corporations legal personhood for their rights but not for their responsibilities. This distinction means that MNCs are objects of international law but are not subjects of it. While they are protected under it, they are not held accountable under international law. International courts operate with a nation-centric model. Only a country can be held responsible for infringements of human rights laws caused by their MNCs.

Responsibility Evasion

Analyzing international law demonstrates that there are few global regulations placed on MNCs. Without global tax systems or universal labor laws, MNCs avoid accountability. Over time, corporations have adapted to avoid even the little regulations their federal government imposes. Tax law and corporate working conditions are nationally determined. Nevertheless, many large corporations find ways to evade these responsibilities. The Institute on Taxation and Economic Policy (ITEP) found that at least 55 of The United States' largest corporations paid no federal taxes in the 2020 fiscal year. With the United States being home to the greatest number of MNCs worldwide, corporate laws need to be strict. However, many countries have tax breaks that allow the system to be abused. In the United States, The Tax Cuts and Jobs Act (TCJA) lowered corporate tax from 35 percent to 21 percent. Additionally, corporations move money to subsidiaries in other countries. This method allows corporations to pay significantly less in income tax or hold their money for long periods.

Illegal actions like these tax havens are incredibly difficult for government agencies to notice. As a result, corporations avoid their economic responsibility without any penalties. MNCs can save billions of dollars through this method without raising wages for employees or providing them with more benefits. By avoiding their economic responsibilities, MNCs force the general public to compensate for them. Federal taxes rise to adjust for the income taxes that MNCs fail to pay. In 2020, Nike did not pay any federal income tax through such practices. Despite earning almost USD 2.9 billion, Nike received a USD 109 million tax return. Tax benefits intended to help struggling companies during the COVID-19 pandemic have been used by MNCs to continue accumulating wealth. The current lack of structures to restrict MNCs allows continued exploitation of the tax system. This exploitation harms the general public, who bear the burden of MNCs.

Many measures have been taken by countries and intergovernmental organizations to combat this issue. Over time, however, corporations have worked around these restrictions. The European Coalition for Corporate Justice has proposed methods to "require [European Union] companies with more than 500 employees and turnover of EU 150 million to prevent human rights and environmental abuses along their full supply chains, by carrying out so-called 'due diligence.'" (Brussels) This is one of the first concrete proposals of this nature by an intergovernmental body. However, this approach highlights the problem with attempts to restrict MNCs. The draft would allow companies to protect their practices by forcing third parties to verify their actions. This would mean that the legal discipline would be given to third parties instead of the MNCs responsible for illegal acts. Current drafts do not force MNCs to take responsibility for their actions. Although this draft has potential, it does not solve many major problems.

Through MNCs being treated as objects instead of subjects and a lack of enforceable accountability systems, MNCs thrive under international law. Imbalances in the system—especially on the international level— make it very difficult to hold them accountable. MNCs have access to unlimited funds and incredible attorneys, thus making legal conflicts an uphill battle for others.

Bloc Positions

1. High CIP (Competitive Industry Performance) with High Industry Regulations

Countries with high CIP scores and high industry regulations may be seen as a model for addressing this issue. High industry restrictions suggest an effort toward MNC regulation. These scores are only possible if a country's federal government has implemented strong regulations on the actions taken by its institutions. Additionally, high CIP scores offer valuable insight into the success of an industry. Countries with higher CIP scores are often indicative of a flourishing industry. Economic growth continues each year, and federal regulations do not particularly hinder industries. Despite the current exploitative practices of MNCs, it is undeniable that they play a large role in the global community. As a result, countries must ensure that regulations are not hindering economic growth.

Considerations of labor laws and environmental policy are implemented into CIP scores. Thus, the economic growth of MNCs is relevant to federal regulations. Countries in this category are able to regulate labor issues and environmental impact without harming their industries. It would be ideal for all countries to strive for these distinctions. At this time, Mexico is one country that falls in this category. With a relatively high CIP (ranked 20 out of 152 in 2018), Mexico consistently exhibits economic growth in its industries. Additionally, Mexico has high governmental regulation of industry activity. Canada falls into this bloc as well. With relatively high governmental regulations and a CIP of 19/152, it operates similarly to Mexico. This combination may be one that other countries strive for. The international policy of these countries may be optimistic about the international regulations of MNCs. Such countries may also act as leaders in drafting potential legislation for this topic. Successful federal law from these countries can act as a potential basis for international legal doctrines.

2. High CIP with Low Industry Regulations

Countries that fall into this category may be particularly inflexible in their approach to this topic. These countries additionally offer a haven for MNCs at this time. By setting headquarters in countries with CIP and low regulation, MNCs benefit greatly. MNCs receive the benefits of a growing economy without concern over federal regulations. By offering great opportunities for economic growth, countries in this bloc have the means for strong institutions. Conversely, a lack of regulations allows MNCs to operate without any forms of accountability. This bloc is likely to host a majority of the countries with many MNC headquarters. The opportunity these countries provide for MNCs is unmatched. Subsequently, countries in this bloc may be the largest proponents of this issue. Since problematic MNCs are often in these countries, this bloc may have the most difficult transition in implementing regulations. Countries such as Germany and the United States of America enjoy economic growth without the hindrance of MNC regulation. By allowing MNCs to perform unchecked, these countries have financially benefited greatly. Conversely, they exhibit a disproportionately high level of exploitation

and environmental damage. Due to the political sway MNCs often have on legislation, many of these countries refuse to implement any regulations at this time.

3. Low CIP with Low Industry Regulations

Countries in this bloc may have a significantly different approach to this issue. Having a low CIP, these countries have lacked industrialization. In the scope of this issue, these countries likely do not have many MNCs based in them. On the other hand, this bloc may represent many countries where outsourcing occurs for MNCs. Without industry progression, there is little need for regulation. While the CIP scores of these countries may suggest a weak economy, these delegations will likely focus on economic growth. To grow past the need for MNC factories and outsourcing, these countries must boost their own economy. Nonetheless, it is important to stimulate growth without sacrificing regulations. Countries in this bloc will subsequently have to balance both indices.

Unlike countries with high CIPs, this bloc may approach the issue by proposing new methods of economic growth. These methods will have to be sustainable and confined to any proposed regulations. Although there is currently an absence of regulations, these blocs will adopt a multifaceted approach. Armenia ranked 103/152 for CIP in 2018.82 The federal government has also imposed very few regulations on industry management.83 Similarly, Moldova falls into this bloc with few restrictions and a rank of 111/152 for CIP.84 Due to this situation, Armenia may first prioritize economic growth before desiring industry regulations. The nature of countries in this bloc may raise issues on the necessity of regulations. Countries with High CIP have long been the largest cause of harm under MNCs. As a result, countries in this bloc may assert that they are being forced to create federal regulations due to the actions of other countries. Through these considerations of international policy, this bloc could resist universal standards for all countries to follow.

Committee Objectives

An important step in international law is the acknowledgment of current gaps, such as the regulation of MNCs. It may be difficult to navigate federal and international interests along with the application of new international law. Without current means to enforce or wholly apply international law to corporations, the Legal committee is the body responsible for discussing new legal actions. Questions of MNC autonomy, federal restrictions, and corporate personhood leave much to be established while creating regulations for MNCs. Although the Legal Committee offers a strong backdrop for negotiating such discussions, it lacks the decision-making power to draft legislation, as the Legal Committee is a legal advisory forum. The mandates of committees such as UNIDO, UNCTAD, and international courts of human rights may be able to legislate the measures set forth by the Legal Committee. As the leading legislative body of the United Nations, the Legal Committee must take the first step toward reform. The unique role of the Legal Committee places it as the precedential body to motivate legal action on an international level. It is, therefore, the responsibility of the Sixth General Assembly to draft substantive proposals to assist in reevaluating MNCs. Delegates will be faced with the challenge and opportunity to

set forth the first, most landmark steps toward the international regulation of multinational corporations.

Guiding Questions

1. What legal precedent present does your country have on multinational corporations or national corporations within the country to regulate them?

2. What multinational corporations are active players in your country's economy? How does it affect the national economy?

3. What economic benefit do multinational corporations provide to your country? Or, what economic drawbacks do multinational corporations have in your country?

4. What specific exports and imports are most prevalent in your country? How do these affect your country's actions in regulating these multinational corporations?

5. What labor codes and tax laws apply to and are properly upheld in your country? How effectively are corporations held accountable for their employees' wages and their economic responsibilities?

6. What influences do multinational corporations have on your country? Are there allegations or past examples of corruption related to multinational corporations? What effects have they caused in acquiring a country's industries?

Closing Remarks

I hope that this background guide has proven to be informative and engaging, and that it provides some context into the exceptionally challenging and exciting topics we will be discussing. While this guide covers a wide variety of content, please bear in mind that it hardly scratches the surface of a topic that some academics have dedicated their entire careers to studying. I hope that as you continue your preparations for our committee and write your own position papers, that you bear in mind the unique dilemmas we will grapple with throughout TMUN. My primary hope for you this weekend is that you walk away with a deeper knowledge of our topic area, not with a gavel in hand. Delegates who are truly passionate about this topic and immerse themselves in understanding its details will benefit both in the committee room and outside of it.

Best,
Sarah Hu, Director of the Legal Committee, Toronto Model United Nations 2023.

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