

LEGAL COMMITTEE

BACKGROUND GUIDE

A stylized world map in shades of blue and white, centered on the Atlantic Ocean. Overlaid on the map is the NHSMUN 2010 logo, which consists of the text "NHSMUN" and "2010" flanking a circular graphic of white squares arranged in concentric, slightly offset rings.

NHSMUN 2010

NATIONAL HIGH SCHOOL MODEL UNITED NATIONS • MARCH 17-20, 2010

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NATIONAL HIGH SCHOOL MODEL UNITED NATIONS

The 36th Annual Conference • March 17-20, 2010

October 2009

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Secretary-General
University of Pennsylvania

Jerry Guo
Director-General
Dartmouth College

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Conference Director
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Under-Secretary-General
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Chris Talamo
Under-Secretary-General
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Dear Delegates,

Let me be the first to welcome you to the 2010 National High School Model United Nations Conference! My name is Max Ross, and I serve as the Under-Secretary-General (USG) of the General Assembly Mains Committees (GA Mains). As far as my duties as USG are concerned, I stay heavily involved with your Directors, Assistant Directors, and Chairs during both the preparation and simulation parts of the conference. Essentially, my job is to ensure that all aspects of the GA Mains committees run smoothly, from the time that topics were selected last spring to the time that actual debate takes place in committee this winter. You will soon see for yourselves that your dais is both exceptionally talented and extremely dedicated, and there is no doubt that this will be reflected in your experience at the conference. My advice to you: come well prepared, have an open mind, and get as much out of the experience as you possibly can! The conference will only be as great as its delegates are, and I have no doubt that all of you will help make NHSMUN 2010 productive and enjoyable for all.

Now, a little bit about myself: I was born and raised in New Jersey, and despite the bad rap that out-of-state residents frequently give it, I would never want to grow up anywhere else! I'm currently a junior at Dartmouth College in Hanover, New Hampshire, where I'm studying Romance Languages and International Studies. I have a number of hobbies and passions, but none is quite as thrilling as the airing of a new episode of *LOST*. That's right—if you would ever like to discuss theories, characters, or your favorite scenes of what I consider to be one of the finest shows in the history of television (or if you are not a *LOST* fan and need someone to explain why it is a valuable time investment), please contact me!

Including my years as both a delegate and staff member, this year's conference will be my seventh consecutive NHSMUN, six of which I have spent on GA Mains. Needless to say, I am very fond of these larger committees. I greatly enjoy the diverse perspectives that surface during debate, and I'm sure that this year will be no exception. Although I will not be sitting on the dais, I will be floating around the different GA Mains committees and ensuring that everything is going smoothly. I will be highly accessible throughout the conference, and if you see me walking by, please stop me and introduce yourself!

Your esteemed Directors and Assistant Directors have been hard at work for the past year working with the rest of staff to ensure that you will have the best experience possible at the conference. I'd like to ask all of you to put effort into these topics and to respect the mission of our conference and the integrity of our staff.

I'm very excited to meet all of you in March! Until then, please feel free to contact me at the email address or telephone number below with any questions or concerns that you may have.

Sincerely,

Max Ross
Under-Secretary-General, GA Mains
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NHSMUN is a project of the International Model United Nations Association, Incorporated (IMUNA). IMUNA, a not-for-profit, all volunteer organization, is dedicated to furthering global issues education at the secondary school level.



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Dear Delegates,

I would like to welcome you personally to NHSMUN 2010! My name is Caroline Corley, and I will be your Director for the Legal Committee this year. I was born and raised in Columbia, South Carolina; however, I have recently been transplanted to New York City where I am a sophomore at Columbia University. My major is American History with a focus on the Southern United States, and I am toying with the idea of pursuing a Portuguese concentration as well. In other words, I am taking full advantage of my liberal arts institution. My hobbies include reading on the steps of Low Library, complaining about New York weather, practicing my shaky Portuguese, and seeking decent sweet tea in Manhattan. (If y'all are curious, the best I have found so far is at Rack & Soul on 109th St. and Broadway, but it will set you back a steep \$3.) I play tennis, but my favorite sport otherwise is SEC football. Columbia is not exactly known for its prowess in the sport, so I watch ESPN every weekend to see what games I can catch. Go Gamecocks! But enough about me – let's talk about the reason y'all are really attending this conference!

The Sixth Committee has an extremely broad mandate, which will allow us to tackle diverse and challenging topics. During our three days of debate, we will be discussing the Legal Aspects of Odious Debt and Genocide and International Law. I worked hard to pick two topics I thought would test your perception of problems in the international community, and I hope the end result will be creative and downright brilliant resolutions! These topics are tailored specifically to our committee's mandate, and should provide a solid foundation for your debate. One thing I would like to address here is that, while debate is a substantial part of the Model UN experience, compromise is the most important part of any committee. Especially in the Legal Committee, which works off of a consensus principal in the actual General Assembly, compromise is essential. It will be my job during committee to help y'all formulate working papers and eventual resolutions, and I will do my very best to facilitate cooperation and compromise.

On that note, I will be available before and during the conference if you have any questions concerning our two topics. Please do not hesitate to e-mail me during your preparation process – I promise I'm nice! I know this Legal Committee will be the best ever, and I cannot wait to meet y'all in March!

Cheers,

Caroline Corley
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2920 Broadway
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A NOTE ON RESEARCH AND PREPARATION

Delegate preparation is paramount to a successful and exciting National High School Model United Nations 2010 Conference. We have provided this Background Guide to introduce the topics that will be discussed in your committee; these papers are designed to give you a description of the topics and the committee. They will not give you a complete description of the topic areas and they will not contain the most up-to-date information, particularly in regards to rapidly evolving issues. We encourage and expect each delegate to fully explore the topics and be able to identify and analyze the intricacies of the issues. Delegates must be prepared to intelligently utilize their newly acquired knowledge and apply it to their own countries' policy. You will find that your state has a unique position on the topics that cannot be substituted for or with the opinions of another state.

The task of preparing and researching for the conference is challenging, but it can be interesting and rewarding. We have provided each school with a copy of the **Delegation Preparation Guide**. The Guide contains detailed instructions on how to write a position paper and how to effectively participate in committee sessions. (**Note:** some position papers have unique guidelines that are detailed within respective committees' Background Guides.) The Guide also gives a synopsis of the types of research materials and resources available to you and where they can be found. A brief history of the United Nations and the NHSMUN conference are also included. The annotated rules of procedure complete the Delegate Preparation Guide.

An essential part of representing a nation in an international body is the ability to articulate that state's views in writing. Accordingly, it is the policy of NHSMUN to require each delegate (or double-delegation team) to write position papers. The position papers should clearly outline the country's policies on the topic areas to be discussed and what factors contribute to these policies. In addition, each paper *must* address the Research and Preparation questions at the end of the committee Background Guide. Most importantly, **the paper must be written from the point of view of the country you are representing at NHSMUN 2010** and should articulate the policies you will espouse at the conference. All papers should be typed and double-spaced. The papers will be read by the Director of each committee and returned at the start of the conference with brief comments and constructive advice.

You are responsible for sending a copy of your paper to the Director of your committee. Additionally, your delegation is responsible for bringing a bound copy of all of the position papers—one for each committee to which your school has been assigned—to **the conference** (to be submitted during registration). Specific requirements of the bound copy have been sent to the faculty advisor/club president. In addition to position papers, each delegation must prepare one brief summary statement on the basic economic, political, and social structures of its country, as well as on its foreign policy. Please mail country summary statements to the Director-General of NHSMUN 2010 at the address below. All copies should be **postmarked** no later than **February 16th** and mailed to:

Jerry Guo, Director-General
Hinman Box 658
Dartmouth College
Hanover, NH 03755

Caroline Corley, Director
3817 Lerner Hall
2920 Broadway
New York, NY 10027

(Country Summaries)

(Individual papers)

Delegations are required to mail **hard copies** of papers to the Director-General and Directors.
NHSMUN Staff will not consider e-mail submissions as an adequate substitution.

Delegations that do not submit position papers to Directors or Summary Statements to the Director-General will be ineligible for awards.

COMMITTEE HISTORY

The Sixth Committee of the United Nations (UN) is responsible for codifying and developing international law. It works mainly by taking topics and formulating solutions using legal framework, including international statutes and conventions. The Legal Committee ultimately receives the work of smaller committees, such as the International Law Commission (ILC) and ad-hoc bodies. It was established in 1946 to alleviate the international need for a body to devise, define, and structure international law so that the intents and purposes of the UN in the legal domain would be clear (“Legal Committee”).

According to Chapter IV, Article 13 of the UN Charter, the Sixth Committee works “for the purpose of promoting international cooperation in the political field and encouraging the progressive development of international law and its codification” (UN Charter). To fulfill its mandate, the committee reviews and revises the work of other committees to ensure its terms and functions are legally sound. The committee is also a major driving force behind the creation of international treaties and other agreements.

The Legal Committee continuously reviews international law to guarantee that it remains pertinent and effective. This requires its members to be candid about their beliefs over pieces of international law, including treaties and resolutions, during discussion and debate. The Committee unofficially requires a consensus of the entire body before an agreement is reached, and to go outside of this consensus ideology is seen as a breach of trust in the body. The celebration of consensus lends validity and strength to the actions of the Sixth Committee (“Consensus”).

The jurisdiction of the Legal Committee is arguably the broadest of the General Assembly Main Committees. The agenda for the Committee’s 64th session included eliminating international terrorism, dealing with the criminal accountability of UN officials and experts during missions, and how justice is administered within the UN itself. The wide range of topics and their importance to the international community illustrates the extensive jurisdiction of the body as well as its significance in the UN and in the world.

SIMULATION

Because of the broad jurisdiction and the complex nature of issues dealt with by the Legal Committee, much work will have to be done by delegates to ensure that working papers are thorough and realistic. Compromise is the most important part of this Committee, and any resolutions passed will need the support of many delegates to make them feasible in the realm of international law. Delegates can turn to treaties, formal agreements, protocols, and even domestic legislation to assist them with research and to provide a jumping off point for the creative process of writing working papers and coming up with solutions to the topics presented. The Sixth Committee is unique in that delegates can rely so heavily upon written documents to find exactly what needs to be revised or expanded upon; however, delegates should never plagiarize from international documents. Coming up with new and original ideas is what committee and debate are for, and it will be obvious if part of a working paper is not the delegate's own. If each delegate focuses on creativity and compromise through every committee session, the Legal Committee will be extremely successful in tackling its two topics.

Each General Assembly Mains Committee employs a Director, an Assistant Director, and a Chairperson. The main focus of the Director is to guide the flow of debate within the committee; the Director will accomplish this in several ways including talking individually with delegates and ensuring that caucus blocs devise working papers that are on topic and contain solid substantive material. The Assistant Director will aid the Director in keeping debate on topic and will also be available to answer any questions delegates may have concerning the topic. The Chairperson will mostly remain on the dais and will be responsible for all dealings of parliamentary procedure. If you have any questions or concerns at any time during committee, all three of these individuals will be there to answer them or to direct you to someone who can.

Parliamentary procedure can be a bit tricky in large committees, especially if one is not particularly experienced with using it. This is why the chairperson will be on the dais at all times; they are there to direct debate, which will fall into three main categories – formal, informal, and caucusing. Formal debate allows delegates on the speaker's list to present their nations' policy and ideas, and it can also be followed up by a short question and answer session if the committee deems this necessary. Informal debate includes moderated caucuses and allows for delegates to quickly communicate opinions and ideas. Informal debate is especially useful during the writing of working papers to feel out what needs to be included and what the committee is mostly against. Informal debate must be tempered with the structure of formal debate in order for a committee as large as the Legal Committee to be kept focused. Finally, there is caucusing, which delegates will mostly use to formulate working papers. Caucusing will allow delegates to establish relationships and to foster compromise.

Working papers (informal draft resolutions) are undoubtedly the most important part of the committee. As the Sixth Committee, we deal with codifying and interpreting international law and know the power of words. At any given time—hopefully beginning the second committee session—there will be many working papers circulating through the room. This allows many different delegations to get their ideas across, and it also allows them to see what other delegations have similar ones. If similarities are found, the Director strongly encourages compromise to combine two or more working papers. This is extremely important because the Legal Committee will not pass more than a few resolutions. In fact, the Director will strongly encourage that only one resolution is passed, hopefully with the support of a strong majority of the Committee. Again, compromise is essential, and the Director will be there to bring delegations with similar thoughts together to work on building stronger and more substantial working papers.

As long as decorum is maintained throughout each committee session, this process should go smoothly. Each delegation should come having researched both topics and with unique ideas to share with the committee. It is important that both members of a two-person delegation are familiar with each topic because the involvement of both members in committee is imperative. If you have any questions concerning research or the committee itself before NHSMUN 2010 begins, please feel free to contact the Director or the Assistant Director. We are both available to assist you and would be happy to help with your preparation.

Something that will aid in delegate preparation is a new program NHSMUN is starting this year: blogs. Each Director and Assistant Director will maintain a committee blog covering new developments and critical analysis of issues related to the topic. Delegates are encouraged to comment on the staff's posts and ask questions; starting a dialogue before the conference will lead to more comprehensive and effective solutions. View the committee blog at:

<http://nhsmun2010legal.wordpress.com>

The staff will update the blog at least three times a month. **Delegates are highly encouraged to stay updated on new posts and whatever information the dais provides.**

LEGAL ASPECTS OF ODIIOUS DEBT

TOPIC A

INTRODUCTION

Debt forgiveness is a major issue worldwide, especially during this time of economic crisis that can easily open the way to political instability. Regime changes resulting from political turmoil can have many devastating consequences. Infrastructure may be damaged, lives can be lost, and the political, social and legal landscapes within countries can be changed instantaneously. A new government begins on shaky ground, overshadowed by the past regime's actions and decisions; this includes the past regime's debt, which must be paid despite the new state's financial instability. This is where the concept of odious debt comes into the picture. Odious debt is loosely defined as debt that is "contracted against the interests of the population of a state, without its consent, and with the full awareness of the creditor" (Khalfan). Essentially, it is debt contracted by a government for purposes that are against the interests of the citizens of the state, and in order for it to be labeled "odious," the creditor must be aware of the purpose for the loan. For these reasons, odious debt cannot be enforced against a debtor state. The odious debt doctrine exists to protect the citizens of a newly independent state that is in a tremendous amount of debt.

Usually, government officials who exploit their positions for personal gain are the individuals who acquire odious debt on behalf of governments; however, such debt cannot be undone in the event of a regime change unless a tribunal decides that it is indeed odious debt, regardless of the economic and social ramifications for the citizens. A problem arises within this process because there is no standard for odious debt in international law. It has not been officially defined, nor are there well established guidelines for determining whether or not debt is odious. In today's international community, it is usually only the major creditor countries, such as the United States, that are effectively able to fight to label debt odious—and they choose their battles carefully. The clearest example of this is the battle over Iraq's accumulated debt under the rule of Saddam Hussein. The U.S. and Iraq both tried to erase the debt completely, but their efforts were not successful. They did manage, however, to relieve Iraq of a vast majority of its debt by surpassing the use of the odious debt doctrine (Bolton). This is just one example of the confusion caused by the odious debt doctrine. Many other countries have tried to write off their debts as odious, including South Africa and Argentina. South Africa believes the debts it acquired under its apartheid regime should be internationally recognized as odious, and Argentina shares the same sentiment about the debt it accrued during its major financial crisis in 2001.

As mentioned before, tribunals play a huge role in determining the status of debt. Tribunals are bodies created under international law that have the authority to make legal decisions about certain situations. These tribunals can be at a national level or an international level, such as the World Bank's International Centre for Settlement of Investment Disputes. These tribunals work on a case-by-case basis, and cases usually take a long time to settle, which can perpetuate the suffering of individuals who are affected by odious debt. The people of the debtor countries pay the price of inefficient international law practices, and this must be fixed. A system should be developed that allows for the expedient determination of odious debt, as well as a clear and internationally recognized definition of odious debt, so that this issue does not continue to plague developing countries.

HISTORY AND DESCRIPTION OF THE ISSUE

Basics of the Odious Debt Doctrine

Odious debt has been defined as debt that is acquired against the interests of the people the government is serving. It is important to note that debt, under the currently accepted doctrine, can only be odious if there has been a succession of states, not just a regime change. In other words, the state must decide itself that it is a successor state and have this decision supported by the international community. However, this is a difficult decision to make, as successor states generally inherit customs, law, territory, etc. from the predecessor state.

This definition of odious debt can be accredited to Alexander Sack, who is also responsible for outlining three debt-specific tests to determine whether or not debt is odious. Firstly, his tests require that debt have been contracted without the consent of the people. Secondly, there must be an absence of benefit. The money must have been used against the favor of the state. Thirdly, the creditor must have been aware of the absence of consent and the absence of benefit. This is by far the most subjective of the tests and provides the grounds for the arguments of those who disagree with the odious debt doctrine. Ideally, if a state is able to claim that these tests were fulfilled, the debt would be labeled odious and it would be unilaterally repudiated by the state itself; the rest of the international community, including the creditors of the debt, would grant debt forgiveness, and the odious debt doctrine would be used whenever necessary. There is always room for conflict, however, and more often than not, creditors go to tribunals to protect their rights (Yianni). The definition of odious debt provided by Alexander Sack is subjective at best, and the doctrine itself is rarely, if ever, used in international law. Also, it should be noted that Sack's definition and standards are based solely on the debt itself and barely take into consideration the morality of the regime in question (Bolton).

Odious debts can be further divided into two distinct categories: hostile debts and war debts. Hostile debts are accrued through the suppression of secessionist movements and the conquering of peoples. War debts are contracted through the engagement of a state in war with another state (or the preparation to do so), which the state eventually loses. In this instance, the enemy state is not responsible for the payment of debt, so the state itself is burdened. War debt and hostile debt represent two of the many kinds of odious debt indistinctly covered in the Vienna Convention on the Succession of States in respect of Treaties of 1978 and the Vienna Convention on the Succession of States in respect of State Property, Archives, and Debts of 1983. The 1978 Vienna Convention is the only international treaty that deals with odious debt; however, it is extremely vague and mostly addresses debt forgiveness.

Odious Debt in International Law

The phrase "odious debt" is never used in either of the Vienna Conventions; however, at the time the 1978 Convention was drafted, Special Rapporteur of the International Law Commission (ILC) Mohammed Bedjaoui believed that odious debt was an umbrella term that covered all debt contracted by a predecessor state that was contrary to the good of the successor state. He also included all debt that was contracted for purposes contradictory to international law (especially the UN Charter) in his definition. These two Conventions are extremely important precisely because they make no mention of the term "odious debt"; the ILC intended for it to be addressed using the other provisions in the Conventions, but clearly this has not been effective. This illustrates the hesitancy of the international community in the past to grapple with the issue, but it has become too important to ignore any longer. Even with its exclusion of odious debt, the 1978 Convention has only been signed by 20 states and ratified by 15. The 1983 Convention fared much worse and has only six signatories and five ratified parties (Mrak 76).

State succession is important when discussing odious debt because, as it stands now, debt may only be called "odious" in cases of state succession, not government succession. Government succession is generally considered to be institutional regime change; the best example of government change takes place in democracies whenever a new head of state is elected. If a new leader is elected whose policies are radically different from those of his predecessor, the transition is still generally considered government succession. It should be noted, however, that even this distinction is by no means a consensus, and the fine line between the two kinds of succession is still hotly contested. Even in the case that state succession is well agreed upon, the new government must present its case for odious debt to a tribunal before any debt forgiveness can be granted. The 1978 and 1983 Conventions on State Succession both include what is called the "clean slate rule." This rule is intrinsically connected to odious debt and is present in Article 16 of the 1978 Convention and Article 38 of the 1983 Convention (Howse). Article 16 of the 1978 Convention reads, "a newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates" (Vienna Convention). Allowing new states to pick and choose which treaties they wish to continue to be a part of creates the backbone of what the 1983 Convention uses to dismiss a new state of debts. Article 38 of the 1983 Convention states:

“When the successor State is a newly independent State, no State debt of the predecessor State shall pass to the newly independent State, unless an agreement between them provides otherwise in view of the link between the State debt of the predecessor State connected with its activity in the territory to which the succession of States relates and the property, rights and interests which pass to the newly independent State.” (Vienna Convention)

Essentially, the Convention takes the concept of odious debt and applies it to all of the debt of a predecessor state, creating what would indeed be a clean slate. It is clear that any newly independent state would choose not to enter into an agreement with the predecessor state when it has the chance to receive full debt forgiveness. Clearly, a truly “clean slate” is difficult to achieve, and some scholars believe that this is the reason why the Convention does not have many signatories (Howse). The difficult question is where to strike the balance between the “clean slate rule” and the obligation of states to pay off debt.

There is a theory of “maintenance” in the international community when it comes to debt forgiveness. It has clearly been explained that some debt should be forgiven if a preceding regime was corrupt or if money was spent in ways that harmed the interests of the new state. There is, however, debt that is contracted by building and keeping up infrastructure or by doing other things that help the population of the territory of a newly independent state. This debt is not odious and should not be excluded under Article 38 of the 1983 Convention. There is also the threat that cutting off all financial ties to a predecessor state could throw a newly independent state into financial limbo and make it more unstable. The effort to avoid unjust debt forgiveness and to keep the financial workings of a new state in top order is what is referred to as “maintenance” (Howse).

Though many conventions for defining odious debt have been proposed, the international community has yet to pass an international standard. There are many lessons to be drawn from the two Vienna Conventions on State Succession, and the upheld intellectual legal standards, including Sack’s rules on odious debt and the ever-important concept of “maintenance.” Integrating the strengths of each of these proposals into one comprehensive resolution is important for achieving a globally acceptable solution.

Odious Debt and Sanctions

Economic sanctions are tools used by states to punish or control the actions of other states, state actors, or other non-state parties. They can potentially be strong tools for preventing the contraction of odious debt, but there are doubts about their efficacy. They come in the form of export controls, trade embargoes, or restrictions on state aid, financing, and investment. The broader forms of economic sanctions more commonly used before the 1990s proved to be devastating to the civilians in a targeted country; however, in the past decade, the international community has moved more towards the use of “smart sanctions,” which target certain goods and markets to maximize effectiveness against an unwanted party and to minimize the negative effects on a state’s economy as a whole (Alexander). Sanctions have received many negative reactions from critics who believe they are not effective and only serve to hurt the populations of target states. Additionally, sanctions are not addressed anywhere in international law. Many claim that these sanctions seem to be only a slap on the wrist for dictators and other unsavory government officials, but is there a way to reverse this and use them as a preventative measure against odious debt?

The origins of economic sanctions in international law can be found in Chapter VII of the UN Charter. More specifically, Article 39 of the UN Charter gives the UN Security Council the power to “make recommendations, or decide what measures shall be taken [...] to maintain or restore international peace and security” (Charter). Arguably, under this Article, the Security Council has free reign to decide where and when economic sanctions are used; the only real restraining measure is that nine of the fifteen members of the Council have to vote in favor of any actions taken (Alexander). Since the Gulf War in 1990, the Security Council has become the figurehead for economic sanctions in the international community, as it is the main encouraging body for states to apply and enforce them. Before the Council took this position, states were usually responsible for imposing sanctions unilaterally and encouraging cooperation from there. Now, it has

taken on a leadership role because it provides a common forum for the most politically powerful countries. It is important to note, however, that there are no explicit restrictions or guidelines for economic sanctions in international law (Alexander). This significantly complicates decisions of whether or not debt accrued during a fallen regime was odious, as many failing regimes subject to sanctions are forced to increase their foreign debt to try to protect their administration. A comprehensive solution should also look to determine whether or not debt accrued during a sanction, UN approved or otherwise, is truly odious.

Customary international law is a source of law defined by the upheld customs of states and the manner in which they have historically interacted; customary law may seem ill defined, but actually plays an important role in modern international law. These customs are upheld by the International Court of Justice (ICJ) and the UN and are strongly related to *opinio juris*, which is the belief that something was done because of legal obligation or necessity. *Opinio juris* does not require previously codified international law to be used in a court situation, and it is a substantial reason for the codification of new international law. Sanctions fall into the realm of customary international law, which means that there are few (if any) documents that set guidelines for their content or implementation. According to Professor Kern Alexander,

“Unless there is a specific treaty obligation to the contrary [...] states have the authority under customary international law to impose economic sanctions against other states or parties regardless of whether the target of the sanctions has breached an international legal obligation against the sanctioning state.” (Alexander 63)

Without treaties or other legal obligations, states have the freedom to impose economic sanctions against whomever they see fit, which may or may not be in the best interests of the international community. Even if each state has its own legal practices concerning sanctions, it is not certain that there will always be an overlap of these principles in regard to other states. In light of this, many scholars believe that sanctions should be written into international law. Perhaps allowing certain sanctions after different requirements have been met would curtail any unnecessary hardships on the populations of affected states (Choi). There is also the issue of personal human rights—even the basic rights of dictators and corrupt government officials must be protected. Odious debt doctrine strives to protect the basic human rights of civilians, including their leaders, no matter how corrupt he or she may be. Without this measure, international sanction law would quickly lose respect and not be as effective as it needs to be to curtail odious debt.

There is a movement in the international community to use loan sanctions instead of trade sanctions to deal with corrupt regimes. Loan sanctions, which are imposed by a state or third party to prevent the acquisition of certain loans by an individual or group of people, deal specifically with a government’s ability to borrow; therefore, if a state’s debts were declared odious in advance – that is, before state succession had a chance to occur – it would give lenders fair warning as to the intentions of the borrower (Choi). Also, if powerful members of the Security Council were to enforce this and take legal measures to ensure the safety of the assets of the successor state, it would clearly have an impact on the borrowing power of corrupt leaders.

There are many issues that come with the doctrine of loan sanctions. What standards would be used for odiousness? There needs to be a clear definition of odious debt, especially if it is going to be declared during the corrupt regime. Would this preemptive debt cancellation still hold if there is not full state succession and only a change in regimes? Would loan sanctions still be imposed in the realm of humanitarian loans? Finally, who decides when loan sanctions get imposed and against which parties (Jayachandran)? Loan sanctions provide an interesting substitute for trade sanctions, but they also come with their share of risks. They have the potential to be extremely effective, but there is always the threat that they will not work and that the general population will be harmed as a result. There is also the possibility of losing diplomatic cooperation with a state (Choi). The use of loan sanctions reverses the generally held backward thinking model of odious debt, but if they are going to be used, work must be done to ensure the protection of innocent people.

Sanctions are inherently connected to odious debt because they provide an avenue for prevention of odious debt and of human rights violations in general. They are not currently recognized explicitly in international law, and codifying guidelines for sanctions would be extremely important in the fight against the contraction

of odious debt. Also, because of the ultimate results of the more commonly used economic sanctions, loan sanctions should be considered in dealing with corrupt regimes; however, even the cleaner and more efficient strategy of loan sanctions requires work on the part of the international community to standardize and enhance their results.

Case Study: Iraq

Iraq's experience with the odious debt doctrine illustrates the positive and negative sides of having a detailed set of guidelines in international legislation to deal with corrupt regimes. These guidelines could include a comprehensive definition of odious debt, a mechanism to deal with the labeling of certain debt as odious, and/or provisions concerning the use of sanctions to prevent odious debt. Iraq seemed like the perfect candidate to enliven the debate over whether or not the odious debt doctrine was valid. In the time between the regime change prompted by the United States military and the later debt negotiations, many legal scholars and commentators claimed that Iraq should be granted complete debt forgiveness after Saddam Hussein's 20 year reign.

Some believed that Iraq should refuse, on the grounds of odious debt, to repay any debts to creditors unless they could present valid proof that a debt was contracted to benefit the population of Iraq. One scholar, celebrated economist Dr. Joseph Stiglitz, suggested the creation of an international bankruptcy court to deal with Iraq and other similar cases. This was certainly a more moderate view, as it did not guarantee that Iraq would be granted complete debt cancellation. He saw the volatile state of the new Iraq's economy and the ad hoc basis with which these financial cases were dealt, and he believed that setting up a court would expedite the process as much as possible and save the Iraqi people from further hardship. However, due to concerns about the legitimacy of Iraq's claims and the influence of the US in supporting them, the opinions of the international community, as well as the United States and Iraq, moved away from support of the odious debt doctrine (Damle).

The Paris Club is a collection of the nineteenth wealthiest countries that focuses on debt relief, restructuring, and cancellation. In 2004, the Paris Club negotiated debt relief for Iraq and granted it an 80% reduction; estimates of Iraq's total debt in 2003 spanned from US\$125 billion to over \$300 billion. However, the Iraqi government ultimately sought this debt relief on grounds of invigorating the new regime, not on odiousness. It argued that its trade partners would benefit from lower oil prices and a stronger foundation for trade. The success of the debt relief actions of Iraq was founded on the basis of international bankruptcy. This practice works well for states that have the support of powerful nations, such as the United States, because of shared interests, such as cheap oil. Also, the political instability of Iraq was cited as a reason for the quick work of the Paris Club in dealing with the country's debt. It was assumed that once political stability was achieved in Iraq, it would carry over to the rest of the Middle East. The issue with this bankruptcy practice arises when it comes to states that experience long-term distress under corrupt regimes and do not have the support of wealthier nations (Damle). Iraq did not continue fighting for unilateral debt repudiation, and less fortunate developing countries are paying the price.

The debt relief strategy of Iraq did highlight a grey area in international debt relief that includes odious debt as a moral baseline. Although Iraq did not depend on the odious debt doctrine or use it openly in its battle for debt cancellation, it is clear that the Paris Club used it in negotiations nonetheless (Damle). It cannot be accurately determined how much of a role odiousness played in the Paris Club negotiations, but the morality of the Hussein regime did play a role along with economics and political instability in its final decision.

The move away from cries of odious debt in Iraq also serves as an examples of the weaknesses of the doctrine. In order to enact the doctrine, Iraq would have been required to procure an in-depth analysis of all the debts incurred by Saddam's regime. This would have been extremely time-consuming and perhaps impossible, given the negligent recordkeeping practices of the former government. On a larger level, granting debt relief on the basis of odiousness to Iraq would have set that instance as a precedent for future cases of odious debt. Countries everywhere would have clamored for debt relief and compared their situations to that of Iraq under Saddam Hussein. This would have taken power from sovereign creditors, such as the United

States and major third parties companies, and given it to developing nations with massive amounts of debt (Damle). With this in mind, it is clear why the United States and Iraq chose to move away from the odious debt doctrine; wealthy countries must protect their interests. But where does this leave the odious debt doctrine today? Can common ground be found between debtor states and creditor states? Would a more forward thinking doctrine, such as that used in loan sanctions, have benefited Iraq? What can be done to end the suffering of heavily indebted states?

CURRENT STATUS

Zimbabwe

Iraq's failure to follow through with its original intentions of using the odious debt doctrine to cancel its debts has left much of the developing world in a gray area. The most recent case for odious debt comes from Zimbabwe; many scholars and leaders within the country and around the world are making the case for significant debt reduction. After a regime change that occurred in February 2009, the government of Zimbabwe inherited approximately US\$4.7 billion in debt. Currently, the country owes over US\$5.2 billion in external debt and has only US\$597 million to spend. It is clear that Zimbabweans are feeling the effects of this debt; the International Labor Organization (ILO) has estimated the unemployment rate to be near 95%, and the state's industrial sector is only operating at 20% of its full potential.

With this in mind, France is considering cancelling the US\$560 million Zimbabwe owes in order to alleviate some of the hardships on the population and set an example for the rest of the international community. If a major creditor state such as France did cancel debt on these grounds, it could be considered a step towards the support of more economically prosperous countries for the creations of a feasible odious debt doctrine. Zimbabwe could become an example for other states seeking debt relief on the grounds of odious debt. If Zimbabwe wishes to unilaterally repudiate its debt, however, it needs to begin audits and investigations into creditors and loans spent during the last regime. There will also be need for a tribunal to try the case, but many in the country are continuing the call to establish an international bankruptcy court or something similar to try the case and others like it (Kwenda).

UN Conference on the World Financial and Economic Crisis

The UN Conference on the World Financial and Economic Crisis and Its Impact on Development was held in New York City from 24 to 26 June 2009. It was developed for world leaders to discuss the effects of the current economic situation, which is by many accounts the worst the world has seen since the Great Depression. One of the major focuses of this summit was the plight of the developing world, which contributes the least to the economic crisis but unfortunately is hurt the worst. The Commission of Experts of the President of the UN General Assembly on Reforms of the International Monetary and Financial System released a report prior to the Conference that covered much of the material under discussion. One of the most important parts of this report is the segment on the institution of a debt restructuring court. It argues that new debt restructuring procedures are needed because the existence of two distinct sets of guidelines for dealing with debt—one for Heavily Indebted Poor Countries (HIPC) and other developing states and one for the rest of the international community—is insincere and inefficient. One set of procedures is mandatory, and it must allow for a clean start based on each country's individual needs and circumstances. It must also be expeditious, transparent, and accessible for all countries (Report).

The Panel of Experts, with this in mind, suggested the development of a debt restructuring court, which would work off of a single set of guidelines and ensure a fair hearing for all states seeking debt relief. Hopefully, this court would be able to work with the International Monetary Fund (IMF), World Bank, and other regional organizations to help each state maintain a semblance of financial stability while the trial is ongoing. The only roadblocks there seem to be with this idea are how the uniform set of international law that deals with debt restructuring will be formulated and the decision determining which international body will control the new court. The IMF, as a major creditor, has interests that could conflict with impartial trials, and the World Bank has received some negative responses from the actions of its ICSID (Report).

This Conference certainly brought more attention to the issue of odious debt by strongly urging the international community to create a court to deal with it and other means of debt relief, but the court has not been created yet and there is still much to be done. There is still a dreadful lack of legislation dealing with odious debt, and millions of innocent citizens are suffering worldwide. As long as there is no precedent for the odious debt doctrine to be used and no international body to use it, the international economic crisis will continue to take a toll on states that have strong cases for debt relief based on odiousness. The longer the international community debates about the necessity and feasibility of codifying odious debt into international law, the more hardships these states will be forced to endure.

BLOC POSITIONS

Major Creditor States (Germany, Japan, United States)

Member states that lend large amounts of money, especially to developing states, will be mainly concerned with ensuring that these debts are repaid. As evidenced by the reversal of the United States on its stance to label the debt in Iraq “odious” before the debt reduction negotiations in 2004, these countries will probably want to move away from establishing a concrete doctrine of odious debt in international law. These countries will most likely also favor loose restrictions over the use of sanctions if they are legalized because sanctions are one of the most frequently used ways for them to assert their power in the international community. Members of this bloc position include the nineteen member states of the Paris Club and most certainly include all members of the G-10.

Major Debtor States (Nicaragua, Rwanda, Sierra Leone)

Those member states that have received large amounts of foreign aid and are currently experiencing financial instability caused in part by external debt will be mainly concerned with protecting the well-being of their populations and cancelling as much debt as possible. The current situation in Zimbabwe perfectly reflects the standpoint of these countries, which typically have catastrophically high unemployment rates and no real means to pay off debt. These states will want a broad definition of odious debt to be codified into international law, and they will certainly want an international body to be created in order to deal with each case of odious debt fairly. They will want to push past the political sway of major creditor states as to benefit as many developing countries as possible. Members of this bloc position will mainly be the 38 countries identified as HIPC.

Moderate Debtors and Creditors (Argentina, Iceland, South Africa)

These member states are neither major lenders nor major debtors, and they will be concerned with their own situations and what would be best for them in terms of odious debt. On the one hand, countries like South Africa and Argentina will want less stringent odious debt guidelines. South Africa has been in the process of canceling much of the debt accrued under its apartheid regime since 1997 and would greatly benefit from debt relief, but it is still a relatively prosperous state. After experiencing a financial crisis in 2000, Argentina has been in and out of trials with international tribunals attempting to cancel some of its debt on grounds of odiousness. Again, debt cancellation would benefit Argentina, but the country is not in as dire a situation as the HIPC. On the other side of this bloc position falls countries like Iceland, which are not members of the Paris Club but have the potential to be lenders and would like to protect future interests.

COMMITTEE MISSION

The Sixth Committee of the UN General Assembly is charged with the task of determining the place of the odious debt doctrine in today’s world. It is especially important now because of the devastating economic crisis that is affecting developing countries with large amounts of external debt. The interests of these major debtor states as well as the countries that lent them money must be balanced in order to create an effective way to deal with odious debt.

The Legal Committee is responsible for suggesting the creation of international law by the ILC as well as codifying guidelines for the labeling of debt as odious. There are many questions to consider here. What exactly falls under the category of “odious debt”? Is state succession necessary or should regime changes be considered for debt relief under the doctrine as well? Should international multilateral lenders, such as the IMF, be held to the same standards as state lenders? Finally, is there a need for an international court to deal with cases of debt relief, especially those including odious debt? This last question is especially crucial, and much of debate will focus on discussing how this body is to be organized should it be deemed necessary.

There is also a great need in the international community for sanction reform. Targeted sanctions have become more heavily used in the recent past, but are these really successful? Loan sanctions will be discussed, especially in light of other “smart sanctions,” and a solution must be reached that upholds the importance of the basic human rights in any sanctioned state. The major debate here will be whether or not there should be a set of standards in place in international law dealing with sanctions, including where and when they can be imposed. Essentially, the Sixth Committee will deal with strengthening the ability of international law to handle odious debt and sanctions that could prevent it.

GENOCIDE AND INTERNATIONAL LAW

TOPIC B

“Genocide [...] presents one of the most complete and glaring illustrations of the violation of international law and the laws of humanity.”

-- Raphael Lemkin, Polish attorney and professor

INTRODUCTION

Genocide is a violent reality experienced by every generation in one form or another. It is the highest mode of human rights violation as well as the most difficult to prevent or end. Despite the passage of international legislation after World War II that deals with the crime, genocide continues to this day. This illustrates the inadequacy of the measures in existence and acts as a call for the international community to step up and end the practice of genocide.

Raphael Lemkin, a man who lost most of his relatives during the Holocaust, coined the term “genocide” in 1944. Since 1933, he had advocated for the creation of international legislation to outlaw the practice of genocide, but he was met with opposition by staunch defenders of national sovereignty who believed mass killing occurred too seldom in history to warrant such action. When Adolf Hitler’s Nazi army began bombing Warsaw in 1939, Lemkin fled to the United States where he took a job at a university. Lemkin worked throughout World War II to convince world leaders that genocide was a real problem and that it was happening in Hitler’s Europe. His actions led to the UN drafting of a convention to deal with genocide at the end of the war (Totten 33).

The UN began attempting to deal with the atrocities it had witnessed during World War II by creating a definition of genocide that could be applied in international law. The Legal Committee created a subcommittee to deal with the drafting of a resolution that would act as a sort of call to action for the UN and would also provide a rather rudimentary definition of genocide. The Legal Committee, and later the General Assembly, unanimously passed this first resolution, but it was hotly contested in the Economic and Social Council and underwent great revision before the Convention on the Prevention and Punishment of the Crime of Genocide (UNCG) was finalized and passed on 9 December 1948.

Since the end of World War II, there have been repeated allegations of genocide in Rwanda, the former Yugoslavia, Cambodia, Uganda, Sudan, and many other places. The UNCG is arguably one of the most important pieces of international law because the crime of genocide is devastating and because so many states have had to deal with it since the Convention was passed. Genocide is of the utmost importance, and the Legal Committee must examine international law and legal practices in order to allow for the prevention of genocide in the future and to find a way to expeditiously try those guilty of it. It is the Sixth Committee’s mission to institute legislation for the betterment of mankind, and genocide is certainly a major threat in the international community today.

HISTORY AND DESCRIPTION OF THE ISSUE

The 1946 Resolution

UN Resolution 96(1), the precursor to the 1948 UNCG included the international community’s initial definition of genocide. The definitions provided in both the first and the final resolutions are based off of the philosophy of Raphael Lemkin. The 1946 Resolution states, “Many instances of such crimes of genocide have occurred, when racial, religious, political, and other groups have been destroyed entirely or in part” (General Assembly 96(1)). The most important aspects of this definition of genocide are the inclusion of “political and other groups” and the ambiguity of required destruction as “entirely or in part.” In fact, the former debate

aged in the UN General Assembly for two whole years before it was finally able to pass the final UNCG on 9 December 1948. It is even still a contentious topic today (Totten 38).

When it was originally passed, a group most notably led by the Soviet Union and Poland detested the inclusion of “political and other groups” in the 1946 Resolution. The Soviet Union argued adamantly that this definition did not conform to the “scientific definition of genocide” and that it would “distort the perspective in which the crime should be viewed and impair the efficacy of the Convention” (Totten 60). Poland took this argument a step further by contending that political groups were too different, too indistinguishable from each other, and that their inclusion would “weaken and blur the whole Convention” (Totten 60). Yet another argument against the inclusion of political groups was that membership in political groups was purely voluntary; however, the French argued that in the future, genocide would most likely be based mainly on political divisions. Perhaps the strongest argument in defense of the inclusion of political groups was that “those who committed the crime of genocide might use the pretext of the political opinions of a racial or religious group to persecute and destroy it, without becoming liable to international sanctions” (Totten 37). It seemed that a definition of genocide involving political groups would make it into the Convention, but about a month before it was passed, Iran, Egypt, and Uruguay motioned to reopen the question over their inclusion. A compromise was reached to remove them because many countries, including the United States, were mainly concerned with getting the Convention passed into international law and feared this issue would forsake it (37). Legal scholars have continued to debate the question of political groups for the past 50 years, and many feel it is time for the UNCG definition of genocide to be revisited and revised to accommodate for the lessons the international community has learned.

The United Nations Convention on the Prevention and Punishment of Genocide (1948)

Debate over the place of genocide in international law culminated with the passing of the UNCG in 1948, and the international community hoped that it had seen the last of genocide. If it had not, it was fully confident that this Convention would provide the legal framework needed to end the crime immediately and prevent it from ever happening again. The definition finally decided upon by the UN that was included in the UNCG reads:

“In the present Convention, genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.”
(RES/GA/260(III))

Unfortunately, there are still many debates over this definition of genocide that need to be addressed.

Critics argue that firstly, the UNCG is too inclusive in its stance on genocide because it includes “mental harm” and “forcibly transferring children of the group to another group” as well as the actual physical harm of members of certain groups. Secondly, some believe the Convention is too exclusive; they feel that political and cultural groups need to be added to those protected under its legislation. Thirdly, there is opposition to the phrasing “in whole or in part” because it suggests that there is a certain number that comprises a “part” of a protected group, but this number is never enumerated. This makes it difficult to distinguish between sporadic massacres and genocide, and it continues to be a frustrating problem for ensuring the punishment of those responsible for genocide. The modern distinction, established only by convention and not by any binding document, is that massacres, while devastating and a clear and direct violation of international law, do not target a specific group enumerated by the UNCG. Finally, there is much dissent over the inclusion of “intent” in the definition because it is such an ambiguous term and can rarely be proved in a court of law. This is perhaps the most important ideological debate in motion today about the UNCG because of its impact in international courts and tribunals (Totten 63). These arguments against certain aspects of the

UNCG should be kept in mind when reviewing the Convention itself and when analyzing past and present cases of genocide, especially the current situation in Sudan.

One important concept to consider when discussing the shortcomings of the UNCG is the international idea of *jus cogens*, which has been expressed by many to cover genocide. *Jus cogens* is the legal term for an action that constitutes a peremptory norm in international law. This means that the action takes precedence over treaties and other provisions already in international law because of its dire importance. The basis for the *jus cogens* doctrine can be found in the Vienna Convention on the Laws of Treaties, and it is an almost universally accepted part of international law, although scholars and attorneys differ on exactly which crimes fall under its jurisdiction. Commonly accepted to fall into the *jus cogens* norm are fundamental human rights violations, which almost certainly include genocide as well as crimes against humanity, war crimes, and slavery (Sadat). This is an important concept to understand because it could allow an international court or tribunal to surpass the provisions of the UNCG in any case deemed necessary. For instance, if a social group or gender group (e.g., women, transgendered individuals, homosexuals) were specifically targeted in an act of mass violence, it could be considered genocide under international law and treated as such in a trial process even if these groups are not specifically listed in the Convention (Totten 60). The problems here, however, is that the international community cannot fully rely upon the *jus cogens* doctrine being invoked in an instance of genocide not included in the UNCG because of the controversial nature of labeling such atrocities as “genocide.” It should perhaps be considered an argument toward the expansion of the definition of genocide instead of a comfort that validates the status quo.

Case Study: Darfur

In 2001, two rebel groups, the Sudanese Liberation Army/Movement (SLA/M) and the Justice and Equality Movement (JEM), formed to provide a resistance front to Sudanese President Omar al-Bashir and his Khartoum government. The main focus of these groups is ending the “racial discrimination” of the current administration, which favors Northern tribes conventionally referred to as “Arab” in nearly every aspect of its policies, from employment availability to social order. In response to these groups, a series of militias known collectively as the janjaweed have risen against the rebels, though they have indiscriminately targeted civilians in their attacks. Many have accused al-Bashir’s government of funding these militias, an allegation that has recently led to the creation of an arrest warrant for al-Bashir by the International Criminal Court. The main victims of these attacks were three African tribes: the Fur, the Masaalit, and the Zaghawa. The intent of the Sudanese government is to clear the country of rebel groups; essentially, to al-Bashir, rebel groups and ethnic groups are one and the same. Estimates of the death toll are anywhere from 100,000 to 400,000 people (Collins 18).

As the SLM/A gained strength, so too did the janjaweed militias, and by 2006, over 2,000 villages had been destroyed by the janjaweed. These militias respect no borders, and have been known to raid into neighboring countries to pursue refugees fleeing the conflict. In the Central African Republic, about 200,000 people have been displaced because of the bloodshed, and over 236,000 Sudanese refugees have sought refuge across the border in Chad (Paterson). The atrocities are in no way limited to the janjaweed, though. Through their attacks on cities in Darfur, the rebel groups have also displaced countless scores of civilians, and they have even been known to attack aid workers and convoys to pillage the resources they carry. The UN has called the violence in Darfur “the world’s gravest human rights abuse,” and it is clear that hundreds of thousands of Sudanese people lack basic human rights (Paterson). Though many have accused al-Bashir and his government of compliance and even support for these rebels, the lack of concrete evidence has made it difficult to form a strong case against him. Even if such evidence were available, would this constitute genocide? This is a question the international community has been grappling with since the start of the atrocities in 2003.

As early as September 2004, many states, including the United States, already began to individually declare the conflict in Darfur to be genocide. As a state party to the UNCG, the US fulfilled its duty under Article VII and transferred responsibility to prevent further violence in Darfur to the UN and its appropriate organs (Collins 21). That same year, the Security Council released Resolution 1556, calling for the disarmament of

janjaweed militias in Darfur. The Resolution focused mainly on encouraging member states to implement sanctions against oil and other goods upon which the Sudanese government relied. The resolution passed with an astounding majority: 13-0-2 (S/RES/1556).

The UN Security Council also passed Resolution 1564 in 2004, which most notably created an International Commission of Inquiry on Darfur to investigate whether or not the violence in the country constituted genocide. After an expensive investigation, the Commission decided that the violence taking place in Darfur coincided with Article II of the UNGC. Paragraph 507 of the Commission's report describes the situation:

“There is no doubt that some of the objective elements of genocide materialized in Darfur. As discussed above, the Commission has collected substantial and reliable material which tends to show the occurrence of systematic killing of civilians belonging to particular tribes, of large-scale causing of serious bodily or mental harm to members of the population belonging to certain tribes, and of massive and deliberate infliction on those tribes of conditions of life bringing about their physical destruction in whole or in part.” (Report)

The Commission went on, however, to say that the bloodshed in Sudan *did not* qualify as genocide under the internationally accepted legal definition because it could not prove that the Sudanese government had an “intent to destroy” any particular group protected under the UNGC (Report). One piece of evidence cited as an example against the government's “intent to destroy” is that it took survivors from destroyed villages and placed them in camps for internally displaced persons (IDPs). Also, janjaweed forces apparently spared some villages of mixed ethnic composition (Collins 112). If not, what lessons can be learned from the actions of the committee, and how can they be codified into and enforced by international law?

Another noteworthy step taken by the Security Council in reference to Darfur was its referral of the situation to the International Criminal Court (ICC). Security Council Resolution 1593 was passed in 2005 by a vote of 11-0-4. Not only did Resolution 1593 refer the situation in Sudan to the Prosecutor of the ICC, it necessitated the cooperation of all government and non-government groups involved in the conflict with the Court (SC/8351). The Security Council took further action on 31 July 2007, when it passed Resolution 1769. This resolution created the African Union/United Nations Hybrid Operation in Darfur (UNAMID), which was really a way to reinforce the flailing African Union Mission in Sudan (AMIS) by sending in UN peacekeepers (Stuart). UNAMID is still functioning in Sudan, and its mandate was extended until 31 December 2009. In his annual report, Secretary-General Ban Ki-moon strongly recommended a further extension to 31 July 2010 (Africa). The Security Council has obviously taken an active political role over the conflict in Darfur, but the results of its action have been negligible.

The International Court of Justice

Article 92 of the UN Charter established the ICJ as its main judicial organ. It solely deals with legal cases between states, and it offers legal advice to the rest of the UN and to other organizations. Under Article 94 of the Charter, all member states of the UN are subject to the rulings of the ICJ “in any case to which it is a party”; however, if a state does not comply, a case may be brought to the Security Council (UN Charter). It should be emphasized that each member state has the choice to become party to a case, which could severely limit the ability of the ICJ to punish a state guilty of genocide. There is a coalition of 65 states, however, that wants to see ICJ decisions be made compulsory for all UN member states (Evans 99). It is a matter of national sovereignty that may never be reconciled.

Perhaps the most intriguing aspect of the ICJ and its role in punishing genocide is its decision in the *Bosnia v. Serbia* case in 2007. Bosnia and Herzegovina brought charges of genocide against Serbia and Montenegro for the mass atrocities committed against Bosnian citizens during the 1990s. The ICJ not only accepted the trial, but it determined that genocide had occurred in Srebrenica. In the end it did not decide that the genocide could be attributed to the entire state of Serbia; however, this declaration that states could be held accountable for genocide under the UNGC was extremely important in international law. Until then, punishments for acts of genocide were solely focused on holding individuals responsible for their actions, not

states. This decision radically changed the interpretation of the UNCG, and it has faced much criticism from legal scholars internationally. They cite the idea of collective guilt as the driving measure behind punishing a state instead of individuals, and they believe collective guilt will only serve to perpetuate discrimination (Mohamed). Regardless of dissent, the role of the ICJ is important in questions of genocide, and state responsibility should be kept in mind when formulating solutions.

The International Criminal Court and Its Predecessors

In 1993, the UN Security Council adopted Resolution 827, which created an international ad hoc tribunal to investigate and try those involved with the atrocities in the territory of the former Yugoslavia. This court was named the International Criminal Tribunal for the Former Yugoslavia (ICTY), and it was given the ability to try individuals for severe breaches of the Geneva Conventions, genocide, war crimes, and crimes against humanity. It was authorized under the Security Council's duties under Chapter VII of the UN Charter to protect the peace and stability of the international community. During the process of writing Resolution 827, the Security Council had to grapple with the question over national sovereignty. Did the Council uphold national sovereignty and just accept that these individuals would go unpunished, or would it be feasible to create an international tribunal to try them and to ensure that their crimes did not go unpunished? Eventually, it chose the latter and the ICTY was formed (Birdsall). The ICTY is still functioning today, and most trials are predicted to end by early 2012. The formation of the ICTY led the Security Council to take a similar step when faced with the genocide in Rwanda just one year later.

After realizing the threat of escalating violence in Rwanda, the Security Council passed Resolution 955 in November 1994. This resolution created the International Criminal Tribunal for Rwanda (ICTR), which, like the ICTY, was meant to try individuals for serious violations of human rights—including genocide (“General Information”). In 1998, the ICTR made its place in history when it found Jean-Paul Akayesu guilty of the crime of genocide. Akayesu was the former mayor of a town in Rwanda called Taba. He was the first person ever to be tried by an international court and found guilty of genocide, but he was not the last. The ICTR has been essential in developing case-law precedents for genocide, and it established the standard that sexual violence can be a means to carry out genocide. In effect, the targeting of Tutsi women for rape and other sexual crimes was deemed to cause “serious bodily or mental harm to members of the group” (Totten 48). The ICTR is still a functioning body, and it is predicted to complete all of its work sometime in 2011. Both the ICTY and the ICTR were fundamental in the later creation of the ICC.

After the relative success of the ICTY and the ICTR, the international community decided it was time to create an international court that would be built off of these tribunals but have a much broader jurisdiction. Between 1994 and 1998, the Preparatory Committee on the Establishment of the ICC debated and created Rome Statute, which passed with 120 countries supporting it at the Rome Conference of 1998. The Rome Statute created the ICC as a body independent of the UN, but cooperation between the two bodies has been great since the Statute entered into force on 1 July 2002. The jurisdiction of the ICC allows it to try individual for charges of genocide, war crimes, and crimes against humanity; in fact, the Rome Statute directly incorporates several clauses of the UNCG (“History of the ICC”). It should be noted, however, that a sizable minority of countries have not yet ratified the Rome Statute, and are thus not subject to the Court's jurisdiction. The refusal of nearly half of the UN member states to join the ICC has greatly reduced its judicial power (Wade). It has still had a great impact on the international community, and it has taken on cases concerning the Central African Republic, Darfur, the Democratic Republic of Congo, and Uganda. As of now, it has not charged any person with the crime of genocide.

The International Court of Justice (ICJ) and the International Criminal Court (ICC) are the two international courts that offer the best means for stopping and preventing genocide. Both courts have dealt with issues of genocide in the past, but they handle them in different ways. The question over which court is most effective rests on the question of which is better—punishing the individual or the entire state. Should one even be used over the other, or can they work effectively in tandem to fight genocide?

CURRENT STATUS

In March 2009, the ICC issued a warrant for the arrest of Sudanese President Omar al-Bashir for five counts of crimes against humanity, including murder, torture, and rape, and two counts of war crimes for “intentionally directing attacks against civilians and for pillaging” (Gray). This is the first indictment of a head of state by the ICC, and, much to the chagrin of many in the international community, it does not include any charges of genocide. The Court refused to include any charges of genocide because it believed the chief prosecutor, Luis Moreno-Ocampo, does not have sufficient evidence to back up the claim. Moreno-Ocampo, however, has appealed the court’s decision and argues that there is not enough evidence at the current time because al-Bashir is threatening witnesses who would be willing to provide information and evidence to the ICC. He goes one step further and accuses the Court of requiring too much evidence for the beginning of the trial process. He claims the level of evidence the ICC wants right now is a level not needed until the actual trial is taking place (Gray). Cases including allegations of genocide hinge upon the inclusion of “intent” in the UNCG and whether or not the guilty party, in this case al-Bashir, intended to target certain ethnic groups in his violent undertakings. Many scholars claim the International Commission of Inquiry held a standard of evidence far too high to be outside of a court of law; in other words, it should have taken the step of asserting that genocide was taking place in Darfur instead of gingerly stepping around it and citing a lack of substantial evidence. These are criticisms that will follow any accusation—or lack thereof—of genocide, and perhaps they expose a weakness in international law.

Regardless of the absence of genocide charges against al-Bashir, he is still a wanted man. He has stopped making trips abroad in order to avoid arrest by the ICC, which has jurisdiction in many of his allies’ countries (Sudan has never ratified the Rome Statute). In a rather surprising move, the African Union passed a resolution in early July that terminated all cooperation with the ICC over the warrant for al-Bashir. A few members have even gone as far as to publically condemn the actions of the AU, including Botswana and Chad, claiming that Libya pressured the AU into taking this action. The resolution originally called on all members to end cooperation with the ICC outright and disallow any indicted African persons from being apprehended by the Court. After much debate, this provision was revised to grant only al-Bashir immunity and to continue all other relations with the ICC (“African Union”). The AU acted unilaterally against the ICC—an organization it has traditionally supported—because it believed that the removal of al-Bashir from office would only further destabilize his country.

The international community has a valuable tool at its disposal when dealing with genocide, the UNCG. The Convention, however, has many shortcomings and is still a topic of intense debate 50 years after its creation. The large number of genocides that have taken place worldwide since it was written unfortunately evidences the inadequacies of the UNCG, but these atrocities did encourage the international community to create a court to deal with massive human rights violations, the ICC. This has spurred more debate over the validity of the Court and its place in the international legal system. The Legal Committee will have to grapple with the terms of the UNCG and decide whether or not the document needs to be revised or perhaps even replaced altogether.

BLOC POSITIONS

A total of 140 states have ratified the UNCG, which makes it a nearly universal piece of international legislation. Not every state believes that genocide should be dealt with the same way, however, and there is no clear separation in the approaches of each country. Division can be seen in the way each state addresses the need for an international court—mainly the ICC—and in each state’s experience with genocide. Factors such as membership to prominent regional organizations and economic stability also play a role within these partitions, and these bloc positions are only suggested to guide each delegation in the right direction with its research.

Members of the ICC (Brazil, Germany, South Africa)

Members of the ICC are those states that have ratified the Rome Statute. It is key to remember that membership to the Court does not necessarily mean endorsement of all of the Court's decision—remember the example of the African Union in response to al-Bashir's indictment. Those who have signed and ratified the Rome Statute are willing to give up national sovereignty in the name of international justice and believe that other countries should make the same sacrifice. They also believe that mostly individuals are responsible for crimes that violate essential human rights, including genocide, and that the ICC is perfectly capable of giving these individuals a fair trial. When analyzing a country's dedication to the ICC, read over reactions to earlier cases and warrants the ICC has issued. Also review the country's reaction to the ICTY and ICTR. Countries that support the ICC will want the Court to handle punishment for those guilty of the crime of genocide.

Non-Members of the ICC (China, Japan, United States)

Non-members of the ICC, most notably the United States, China, Japan, and Iran, strongly favor national sovereignty over the proceedings of the Court. They have the option of assenting to the use of the Court for certain trials, much as the abstention of the United States in the Security Council vote allowed the referral of the situation in Sudan to the ICC. As a general rule, however, these countries do not believe that justice for those guilty of genocide lies solely in the use of the ICC. Countries that do not support the Rome Statute should look other places for the punishment of genocide, including – but not limited to – domestic legislation and the ICJ.

States that Have Experienced Genocide (Bosnia and Herzegovina, Rwanda, Somalia, Sudan)

These countries are special cases because they either have dealt with genocide in the past or are currently dealing with it. Mostly, these states will want an expeditious trial process and extremely harsh punishments for those guilty of genocide. They will want justice for what has happened in their past, and they will push the Committee to want the same. International and/or regional cooperation will be key because many of these states are economically or politically unstable as a result of their pasts. Resources, including peacekeeping and rule of law, are necessary for combating genocide, and these countries will expect the full dedication of the entire international community. Regional organizations will be an important part of the process for these states because they also witnessed the atrocities of genocide. Again, the process of punishment will differ based on support of different international courts. The major driving notion behind these states' policies will be the prevention of genocide in the future.

COMMITTEE MISSION

It is widely agreed that genocide is one of the most unforgivable offenses in the international community today. As former UN Secretary-General Kofi Annan noted, “when it comes to laws ... we are blessed with what amounts to an international bill of human rights, among which are impressive norms to protect the weakest among us, including victims of conflict and persecution” (Kimani). Still, the implementation of legislation dealing with the prevention and the punishment of genocide is mired in a slew of complicated legal questions. We have much to learn from the past, and countries should take their own experiences and histories and work together towards the creation of international law that will effectively fight and end genocide.

The main focus for the Legal Committee will be the United Nations Convention on the Punishment and Prevention of Genocide—its strengths and its weaknesses. Delegates should review the document before the Conference because it will be continually discussed. Areas of concern that should be addressed include the insertion of certain groups in the definition of genocide and the exclusion of other. Also, the important question over “intent,” and whether or not it is a crucial aspect of the Convention, will be covered. Delegates should also be very familiar with the Rome Statute, which is the charter document of the ICC, and Articles 93 and 94 of the UN Charter, which established the ICJ. Review of the Statute of the International Court of

Justice is also suggested. It is the primary focus of the Sixth Committee to suggest what should be codified into international law, which is why delegates must be well versed in the international law already in place.

The ICC and the ICJ are the two most important tools for the enforcement of international law, especially concerning genocide, and delegates need to understand the roles of these two Courts. It is here that the question of regional organizations and their role will come into play, as well as debate over the level of cooperation between the UN and the ICC in dealing with genocide. The UN Security Council will be a major factor in this discussion, as it deals directly with the ICC, the ICJ, and controls UN peacekeeping operations.

Finally, it needs to be stressed that there will be no simple solution to the problem of complacency in the face of genocide. Any resolution passed will need to include provisions for the future prevention of genocide, which will necessitate more expeditious action on the part of the international community. It will also need to deal with law enforcement at the international level, which means determining the roles of the ICC, ICJ, and domestic courts. Essentially, the Sixth Committee will be charged with the task of crafting a resolution that will ensure the protection of international human rights and make sure that we have seen the last of genocide.

RESEARCH AND PREPARATION QUESTIONS

As mentioned in the Note on Research and Preparation, it is imperative that delegates answer each of these questions in their position papers.

TOPIC A

1. What is your country's stance on the legitimacy of the odious debt doctrine?
2. Has your country ever experienced debt it thought to be odious? If so, what were the circumstances and how was it resolved (or not resolved)?
3. Has your country ever imposed any sort of sanction or had sanctions imposed against it?
4. Does your country have any domestic legislation dealing with odious debt and how it is to be handled?
5. What external debt does your country currently face? What are the circumstances behind this debt? Does it place your country as a major debtor state?
6. Does your country in general a lender or creditor state, and does that impact your country's policy?
7. What are your country's main suggestions for debt relief internationally?

TOPIC B

1. Has your country ever been subjected to genocide? If so, explain the situation.
2. Is your country party to the Rome Statute? Has it consistently supported the decisions of the ICC? If your country is not party to the Rome Statute, please explain the reasons for this decision.
3. Has your country ever been involved in a trial in the ICC or the ICJ? If so, please explain.
4. What domestic legislation does your country have that deals with genocide?
5. Does your country currently have any sanctions enacted against it? If so, for what reasons?
6. Is your country strongly involved in a regional organization? Has this regional organization taken any actions against genocide?
7. What measures has your country taken to fulfill the requirements of the UNCG?

IMPORTANT DOCUMENTS

The following documents have been hand-selected by Directors to further aid in delegate preparation. Please make a concerted effort to read and analyze these documents prior to the conference.

TOPIC A

Howse, Robert. "The Concept of Odious Debt in Public International Law." United Nations Conference on Trade and Development. Jul. 2007. <http://www.unctad.org/en/docs/osgdp20074_en.pdf>

This discussion paper approved by UNCTAD provides clear background on the odious debt doctrine as well as where it is present in international law and international custom. It also discusses where odious debt has been used in the past, and this section includes useful examples to complement the discussion of Iraq and Zimbabwe in the background guide.

"Report of the Commission of Experts to the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System." UN Conference on the World Financial and Economic Crisis and Its Impact on Development. New York. 24-26 Jun. 2009.

<<http://www.un.org/ga/president/63/interactive/financialcrisis/PreliminaryReport210509.pdf>>

This document illustrates the importance of odious debt today, especially in light of the current economic crisis. It also shows what the international community is willing to do and takes into consideration the pros and cons of creating an international debt restructuring court.

"Vienna Convention on Succession of States in respect of State Property, Archives and Debt." United Nations. 8 Apr. 1983. <http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_3_1983.pdf>

This is currently the only place where odious debt is alluded to in international law outside of custom law. Please pay special attention to Article 39.

TOPIC B

A/CONF.183/9. "Rome Statute of the International Criminal Court." United Nations. 17 Jul. 1998.

<<http://untreaty.un.org/cod/icc/statute/romefra.htm>>

This is the complete text of the Rome Statute. Please be very familiar with Part II "Jurisdiction, Admissibility and Applicable Law."

A/HRC/10/30. "Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Efforts of the United Nations System to Prevent Genocide and the Activities of the Special Adviser to the Secretary-General on the Prevention of Genocide." United Nations. 18 Feb. 2009. <<http://daccessdds.un.org/doc/UNDOC/GEN/G09/114/42/PDF/G0911442.pdf?OpenElement>>

This is the annual report covering the actions of the UN concerning genocide. It is a good way to get a notion of what the UN is doing now in order to improve it in the future.

"Convention on the Prevention and Punishment of the Crime of Genocide." United Nations. 9 Dec. 1948.

<<http://www.un.org/millennium/law/iv-1.htm>>

This is the complete text of the UNCG. This will be the most discussed document by far during debate, and delegates need to be well versed in its terms.

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A/63/445. “Revitalization of the Work of the General Assembly.” 17 Nov. 2008.

<http://www.un.org/ga/search/view_doc.asp?symbol=A/63/445>.

Outlines agenda of the Sixth Committee in its 64th session (2008).

“Charter of the United Nations.” 26 Jun. 1945. <<http://www.un.org/aboutun/charter/>> 10 Aug. 2009.

Provides the foundation of all action undertaken by organs of the United Nations and outlines the basic human rights guaranteed to all citizens of the international community.

“Consensus, Not Confrontation Sought Over Controversial Issues in International Law.” UN Chronicle Online Edition. 2004. United Nations. 20 Aug. 2009.

<<http://www.un.org/Pubs/chronicle/2004/issue1/0104p30.asp>>.

Outlines the emphasis on cooperation that exists in the sixth committee in addressing the complicated issues associated with codifying international law.

“Legal Committee: Strengthening the 'Rule of Law, Disciplining Peacekeepers and Protecting the Environment.” 2006. UN Chronicle General Assembly Coverage. United Nations. 20 Aug. 2009.

<<http://www.un.org/Pubs/chronicle/2006/webArticles/ga/6qa.htm>>.

Provides the text of an interview with H.E. Juan Manuel Gómez Robledo, the chair of the Legal Committee.

TOPIC A

UN Sources

“Chapter VII: Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.”

United Nations Charter. United Nations. 26 Jun. 1945.

<<http://www.un.org/en/documents/charter/>>.

Chapter of the UN Charter that deals with international peace and security.

Howse, Robert. “The Concept of Odious Debt in Public International Law.” United Nations Conference on Trade and Development. July 2007. <http://www.unctad.org/en/docs/osgdp20074_en.pdf>.

Extremely informative background information on odious debt doctrine and where odious debt stands in international law.

“Report of the Commission of Experts to the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System.” UN Conference on the World Financial and Economic Crisis and Its Impact on Development. New York. 24-26 Jun. 2009.

<<http://www.un.org/ga/president/63/interactive/financialcrisis/PreliminaryReport210509.pdf>>.

Useful conference document, discusses idea of debt restructuring court.

“Vienna Convention on Succession of States in respect of State Property, Archives and Debt.” United Nations. 8 Apr. 1983.

<http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_3_1983.pdf>.

Useful document to be familiar with, includes “clean slate” rule.

“Vienna Convention on Succession of States in respect of Treaties.” United Nations. 23 Aug. 1978.

<http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf>.

First suggestion of odious debt in international law, precedes “clean slate” rule.

Non-UN Sources

Bolton, Patrick. "Odious Debts or Odious Regimes?" *Law and Contemporary Problems* 70.4 (2007): 83-107.
Analysis of debt relief negotiations for Iraq and the standpoint of both Iraq and the United States during the process.

Choi, Albert H., and Eric A. Posner. "A Critique of the Odious Debt Doctrine." *Law and Contemporary Problems* 70.3 (2007): 33-51.
Defines and discusses role of sanctions in odious debt doctrine, good source for information on loan sanctions.

Damle, Jai. "Odious Debt Doctrine after Iraq." *Law and Contemporary Problems* 70.4 (2007): 139-56.
Provides information about how the negotiations for debt relief in Iraq shaped the odious debt doctrine.

Dickerson, A. M. "Insolvency Principles and the Odious Debt Doctrine: The Missing Link in the Debate." *Law and Contemporary Problems* 70.3 (2007): 53-79.
Provides argument for cancelling Iraqi debt on terms of the bankruptcy law of the United States, moves focus away from humanitarian debt relief.

Feinerman, James V. "Odious Debt, Old and New: The Legal Intellectual History of an Idea." *Law and Contemporary Problems* 70.4 (2007): 193-220.
Good source for general ideological background of the odious debt doctrine.

"From Illegitimacy to Responsibility: Transforming Development Finance." *Choike*. Ed. Ashfaq Khalfan. 2006. 1 July 2009.
<http://www.euroad.org/uploadedFiles/Whats_New/Events/AC2006report.pdf>.
Provides different perspectives on odious debt doctrine.

Gray, David C. "Devilry, Complicity, and Greed: Transitional Justice and Odious Debt." *Law and Contemporary Problems* 70.3 (2007): 137-64.
Does its best to connect international justice with the odious debt doctrine, makes suggestions about legislation to deal with odious debt.

Jayachandran, Seema, and Michael Kremer. "Odious Debt." *The American Economic Review* 96.1 (2006): 82-92.
Explains how loan sanctions can be used to prevent odious debt, also discusses weaknesses of loan sanctions.

Kern, Alexander. *Economic Sanctions; Reassuring Public Policy Law, Regulation and Policy*. New York: Palgrave Macmillan, 2008.
Excellent source for background information on economic sanctions and their use.

Kwenda, Stanley. "Zimbabwe Can't Repay Loans; Insisting on 'Debt Strategy'" *IPS Inter Press Service*. N.p., 6 July 2009. 06 July 2009. <<http://www.ipsnews.net/news.asp?idnews>>.
Background on situation in Zimbabwe, how Zimbabwe's debt may qualify as odious.

Mrak, Mojmir. *The Succession of States in Respect to Treaties, State Property, Archives, and Debts (Developments in International Law, V. 33)*. New York: Springer, 1999.
General background information, useful for dates and other factual and historical pieces of information.

Ramasastri, Anita. "Odious Debt or Odious Payments? Using Anti-Corruption Measures to Prevent Odious Debt." *The North Carolina Journal of International Law and Commercial Regulation* 32.4 (2007): 819-39.
Discusses ways other than international legislation to prevent odious debt.

Tarullo, Daniel K. "Odious Debt in Retrospect." *Law and Contemporary Problems* 70.4 (2007): 263-74.
Discusses political and legal approaches to the odious debt doctrine, especially debates preventative measures such as labeling debt odious before the end of a regime.

Yianni, Andrew. "Is There a Recognized Legal Doctrine of Odious Debts?" *The North Carolina Journal of International Law and Commercial Regulation* 32.4 (2007): 749-71.
In depth information about history of odious debt doctrine and different approaches.

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<<http://www.un.org/ecosocdev/geninfo/afrec/vol20no2/202-protecting-civilians.html>>.

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Official press release from the UN discussing Security Council actions taken regarding Darfur.

"Report of the International Commission of Inquiry on Darfur to the United Nations Security Council." 25 Jan. 2005. <http://www.un.org/News/dh/sudan/com_inq_darfur.pdf>.
This report is invaluable because of the insight it gives into the way UN bodies, including the ICC, usually deal with alleged cases of genocide.

"Rome Statute of the International Criminal Court." 17 Jul. 1998. <<http://untreaty.un.org/cod/icc/statute/romefra.htm>>.
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