

The Disarmament and International Security Committee

Letter from Board of Executives

Dear Delegates,

We are thrilled to invite you all to the academic simulation of the United Nations General Assembly - The Disarmament and International Security Committee at **CANMUN 24'**

We trust that this experience will improve your public speaking abilities and that you will find out about a pressing world issue that complicates the existence of numerous individuals in our nation as well as abroad. Please note that the following guide, as the name suggests, is merely to provide you with a background of the agenda and cannot serve as a credible source of information. Your real research lies beyond this guide, and we look forward to seeing strong content and debate from you. The agenda at hand is vast and complex and a successful discussion on it would require the collective participation of all of you. It shall be your prerogative to decide the direction in which you want to take this committee. The background guide is designed to help everyone understand foundational things about the agenda, and we strongly recommend that you do further research on your own. We also suggest understanding how various rights get affected (legally).

Before coming for the meeting, it is vital to divide the agenda into specific subtopics and pose inquiries to yourself about the plan. Making chits and directed gathering points beforehand would give you an edge. That said, we also want you to understand that a Model UN is more about collaboration and coming together to solve global issues than it is about competition and we sincerely hope that the entire committee comes with the right spirit to this conference. It is also crucial to enhance your leadership skills and lobbying capacity since we would give equal importance to overall participation in the committee. We would be using the UNA-USA rules of procedure to facilitate this simulation.

Take the initiative to research properly. **PLEASE READ THE GUIDE.** While it is a clear agenda, it is still open to interpretation and there shall be no direction of debate that shall be provided by the Executive Board. Delegates are required to direct the council at all stages unless stagnation occurs. The agenda of an MUN is a beautiful experience and is not as difficult as it may seem. We hope to see a great level of effort and enthusiasm from you all so that we all can take back a great experience.

With warm regards,

Head Chair - Mithun C, Vice Chair - Dhruv Bajaj, Moderator - Ayaan Sachdeva

Executive Board,

DISEC

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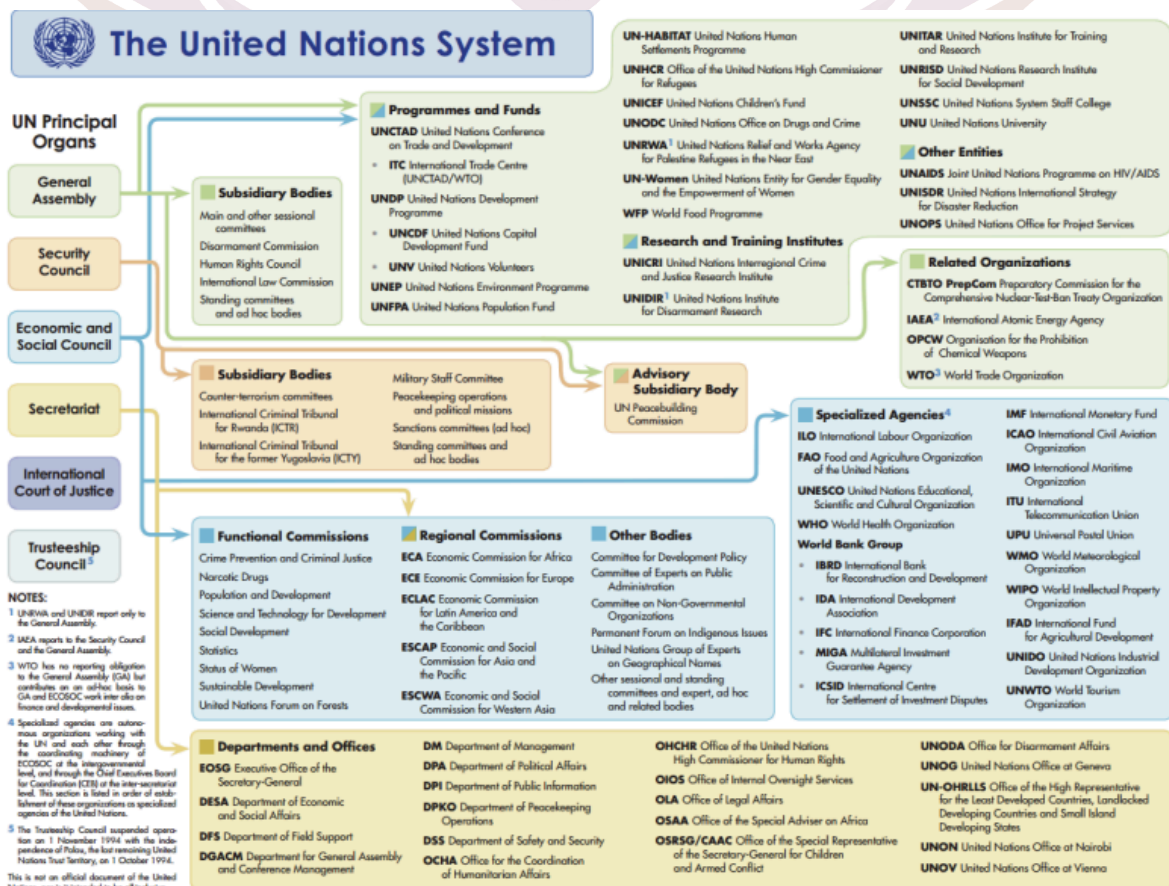
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About the United Nations, the DISEC and its Mandate

The United Nations Organisation was founded on October 24, 1945, after 29 nations had ratified the United Nations Charter. The UN Charter, which established the organisation, was adopted on June 25, 1945, following the drafting process that began on April 25, 1945, when 50 nations met in San Francisco, California for a conference. The UN's mission and work have been guided by the purposes and principles contained in its founding Charter.

The UN Charter established 6 principal organs(mentioned in Article 7 of the Charter):

- 1) The General Assembly
- 2) The Security Council
- 3) The Economic and Social Council
- 4) The Trusteeship Council* (Not functional currently)
- 5) The International Court
- 6) The Secretariat



While the function and mandate of all these 6 principal organs are beyond the scope of this guide's discussion, we shall briefly discuss the functions of 3 to better understand the UN System.

The Security Council (UNSC) is analogous to the Executive branch of a government (Note that the UNSC has in the past taken legislative decisions, for example by establishing the ICTY, but this discussion is beyond the scope of this guide). It consists of 15 member states, 5 of which are permanent and 10 of which are non-permanent and are elected to the council for a term of 3 years. The Security Council is arguably the most "effective" organ of the 6 as its decisions are binding on all member states of the UN. Article 25 of the UN Charter states:

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter

The Security Council is bestowed upon certain special powers under **Chapter 7** of the UN Charter which allows it to assess a conflict either as a **Threat to Peace**, as a **Breach of Peace**, or as an **Act of Aggression**. Having made this assessment, the Security Council may take any action that it feels is necessary for the "maintenance of International peace and security" including economic sanctions, and military action among others.

The need to have a brief understanding of the mandate of the Security Council lies in the fact that as members of the DISEC, you will often find yourself as a committee, requesting the Security Council to take action on a certain matter that the DISEC is not mandated to.

The International Court of Justice (ICJ) is analogous to the Judiciary of a government. The ICJ is mandated with(as established in the **Statute of the International Court of Justice**):

1) Settling legal disputes submitted by states to it in accordance with International Law. In this case, the court's judgement is binding on the members of the dispute.

2) Providing **Advisory Opinions** to legal questions posed to it by member states/UN Organs/Specialised Agencies. These are not binding but help answer relevant and important questions in International Law.

The United Nations General Assembly (UNGA) is the main policy-making organ of the UN analogous to a legislature, comprising every UN member state, each having one equal vote (unlike UNSC where permanent members have the power to veto substantive matters). It is central to the UN system as it is entrusted with making key

decisions like the appointment of the Secretary-General (on the UNSC's recommendation), the election of non-permanent members to the Security Council, approving the UN Budget while also hosting world leaders on an annual basis during the General Assembly week.

Key achievements of the General Assembly include the passing of the Universal Declaration of Human Rights (UDHR) in 1948, the Treaty on the Non-Proliferation of Nuclear Weapons (1968), and the First ever UN Youth Strategy in 2015 as part of the Sustainable Development Goals.

Another important resolution that is often invoked in MUNs is the Uniting for Peace resolution, also known as General Assembly Resolution 377(V), adopted in 1950. It allows the General Assembly to consider a matter that the Security Council is currently seized of (In legal terms, being seized of a matter signifies that the SC has decided to exercise its primary responsibility to maintain international peace and security by addressing the issue at hand by taking up and considering the matter). Suppose the Security Council fails to exercise its primary responsibility of maintaining international peace and security due to a lack of unanimity by permanent members (due to a veto). In that case, the General Assembly may consider the issue with the view of making recommendations

The Disarmament and International Security Committee (DISEC) was established in 1946 as the first committee of the United Nations General Assembly tasked with addressing issues related to disarmament and threats to international peace and security.

The UNGA also subsequently established the Disarmament Commission (UNDC) in 1946 to assist the DISEC in formulating principles of cooperation in disarmament and armament regulation.

The DISEC also played a key role in the adoption of the **Treaty on Non-Proliferation of Nuclear Weapons** (TNP) in 1968 which aimed to prevent the spread of nuclear weapons and promote disarmament. It also adopted Resolution 1378 (XIV), the first GA resolution with co-sponsorship from every member state. In 1970, it also established the Conference on Disarmament to promote discussion of disarmament issues (note that the Conference is not formally a part of the UN system).

The **DISEC** being the First Committee under the UNGA is tasked with policy-making responsibilities rather than with the consideration of ongoing conflicts. The Security Council's job is short-term dispute settlement as what some International Law experts

would call the job of a “policeman”. The Security Council is mandated solely to consider a matter that currently endangers international peace and security and aims for immediate dispute settlement. On the contrary, the DISEC aims at legislating and drafting policies that will last for the next generation to come and guide through times of crisis. Its job is not to settle a dispute that started today but to prevent such disputes from arising tomorrow having reviewed today's disputes.

Some common topics that appear on the floor of the Disarmament and International Security Committee are:

- Cyber Security and Warfare
- Ethics of Drones
- Fourth Generation Warfare
- Nuclear Proliferation
- Illicit Arms Trade
- Aerial Policing and Conflict
- Weapons of Mass destruction

In general, the DISEC, like other GA committees, may discuss those issues concerning which the Security Council may carry out enforceable decisions and measures such as economic sanctions (Chapter VII mandate). In other words, DISEC may not impose sanctions or authorise military action in its resolutions but rather serves as a recommendatory body, voicing the opinions of UN member states on critical security issues to bodies that can take action based on these recommendations, such as the Security Council. Such recommendations may not solely be limited to the UNSC, but any UN body/member state.

How to prepare for Model United Nations? An Overview:

General Research and Preparation Guidelines

There are three consistently significant parts of representative planning. They are useful; meaningful; and positional planning. Practical readiness outfits the representatives with essential apparatuses, including a comprehension of the guidelines important to acting on the board of trustees. The meaningful component gives preparation of explicit data on the subject regions. At long last, positional planning requires the understudies to embrace viewpoints that are not their own. In light of this, the EB gives three instruments to help you: this Guide to Delegate Preparation, Background Guides, and position papers. Together, these will guarantee you will be prepared for the gathering. Past perusing and understanding the material we have given, the more pragmatic experience you can gain through banter, goal composing, making introductions, and so forth, the more ready you will be.

Meaningful Preparation

The Background Guides are a consequence of broad exploration and exertion concerning the Executive Board and are the establishment of considerable groundwork for every advisory group. We recommend that you read them, talk about them, and read them once more. On the off chance that an agent has not perused and ingested the data in the Background Guide, the person won't contribute adequately to the board. An ambitious beginning on the Background Guides will empower you to completely comprehend the subjects and start to tissue out your thoughts. Advise yourself that you should go about as policymakers, dissecting and shaping the data you have gotten into arrangements and goals. Conversations with different representatives will likewise assist you with fostering your thoughts. While the Background Guide will give a large portion of your meaningful readiness, autonomous exploration is valuable, fulfilling, and important for a fruitful gathering.

Positional Preparation

We expect representatives to receive the situation of a particular country all through the UN reproduction. This is a vital component of the "global" experience of a model UN as it powers representatives to analyse the point of view, issues, and arrangements of one more country at an exceptionally major level. It is additionally quite possibly the most troublesome part of MUN because understudies should go up against the natural inclinations of their own public viewpoints and authentic data. The position papers are the focal point of positional planning before the meeting. Albeit generally short, we request that you invest energy and exertion in investigating and keeping in touch with them.

Materials arranged by the EB are not intended to fill in for your exploration. All things being equal, they ought to give a beginning stage, motivating you to ask yourself inquiries about the current issues. The best-arranged agents are those who accept the given materials as the start of their exploration and dig further into the theme regions. Past these materials are a large

group of data administrations, starting with United Nations sources. UN's assets regularly have ordered measurements, outlines, and charts which you may discover supportive in understanding the issues. Most UN report communities convey records of UN gatherings; maybe the most ideal approach to comprehend your nation's position is to see it iterated by its diplomat.

Explicit assets to research include:

- ***Yearbook of the United Nations:*** The Yearbook is a decent beginning stage for your examination. The Yearbook will provide general data on what has been done on your theme during a specific year. It likewise gives exceptionally accommodating references to past articles and goals.
- ***United Nations Chronicle:*** This magazine gives you general data on the procedures of the UN. Watch out for exceptional reports on your theme region, which will advise you about the point and countries' situations on it.
- ***UN Document Index:*** This record for all UN reports comes in three distinct renditions: UNDI (1950-1973), UNDEX (1970-1978), and UNODC (1979-present). Contingent upon which of the three you are utilizing, you will track down a subject record, a nation file, and an alphanumeric rundown of all reports distributed (this is helpful because each panel has its novel alphanumeric prefix and accordingly you can track down every one of the records put out by a board of trustees during a specific year paying little heed to the particular theme.
- ***UN Resolutions:*** This arrangement is both significant and extremely simple to utilize. The record is aggregate from 1946, which implies that you need just check the most current list to track down every one of the goals on your point that the UN has at any point passed.
- ***Other UN Sources:*** Depending on the subject, there may be extra pertinent UN sources. Check for books and exceptional reports put out by the WHO. Past United Nations sources, notwithstanding, are general wellsprings of data. Explore your school and nearby libraries. Look at diaries, periodicals, and papers for more current sources. Remember to ask the curators for help.
- ***Books:*** Up-to-date books are probably going to give you a profundity and exactness that is hopeless from UN sources or periodicals. Try to check library postings for bound materials. Book research, in any case, can take a decent arrangement of time, so use prudence when choosing books.
- ***Periodicals:*** Periodicals are valuable for straightforward, current data on points (the Reader's Guide to Periodical Literature and InfoTrack fill in as a record for these materials). Try not to anticipate that they should supply you with the profundity of data you will require for the Conference.
- ***People:*** A regularly ignored source; individuals can help you extraordinarily in your exploration. A few groups to remember are bookkeepers, individual agents, personnel counselors, and your board of trustees' Director, Moderator, and Assistant Directors.

Not only can these individuals help you discover what you are searching for, but they may likewise suggest new sources that you had not thought of. Try not to spare a moment to call or email your advisory group Director.

- ***Embassies and Consular Offices:*** Contact the government office or consular office of the country that you are addressing. These spots are happy to help you in your exploration via mailing factual information and other unclassified data.

Research Aid

(This is just a suggested pattern, you can research your way, individual differences make us all special but these suggestions may aid you in understanding where to start)

1. Start from knowing:

- a. United Nations
- b. Your committee
- c. The mandate of the committee (functions and power)
- d. Bodies it works with
- e. The final result of your committee
- f. Funding channels

2. Know your Agenda:

- a. Historical background
- b. Current trends
- c. Future aims
- d. International legal instruments

3. The agenda covers the following areas:

- a. Political
- b. Economic
- c. Social
- d. Technology and its role
- e. Arms and army strength
- f. Legalities
- g. Impacts and implications of (a-z) on historical background, current trends, future aims and international legal instruments.

Note: International legal instruments apply to Nations for them to reach individuals they should be incorporated in domestic law as individuals are subjects of it i.e. domestic law applies to citizens. So it is crucial to understand the relationship between the two and bridge the gap for effective implementation.

4. Know your country:

- a. Historical background, Current Trends, and Future aims of the agenda from your country's perspective.
- b. Political, Economic, Social, Technology and its role, Arms and army strength and Legal aspect related situation in your nation. (emphasis on High-value resources, crisis, support services, governance, political system and administrative conditions)
- c. Membership and participation in regional organisation
- d. International organisations other than the UN
- e. Allies and non-allies (friends and enemies) of your nations

NOTE: Research alone is not enough, as it would be simply reading out from the internet what is needed is to "Analyze" i.e. to present your understanding of the research.

Addendum 1: Nature and Proof of Evidence

Documents from the following sources will be considered as credible proof for any allegations made in committee or statements that require verification:

Reuters: Appropriate Documents and articles from the Reuters News agency will be used to corroborate or refute controversial statements made in committee.

UN Documents: Documents by all UN agencies will be considered sufficient proof. Reports from all UN bodies including treaty-based bodies will also be accepted.

National Government Reports: Government Reports of a given country used to corroborate an allegation on the same aforementioned country will be accepted as proof. The documents stated above will hold a binding nature of establishment.

Other sources like Wikipedia, Amnesty International, or newspapers like the Guardian, so on and so forth will not be accepted as credible proof; but may be used for better understanding of any issue and even be brought up in debate, if the information given in such sources is in line with the beliefs of a government or a delegate.

Introduction to the Agenda

1. What are PMSCs?

PMSCs are private business concerns that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, the provision of armed guards and the protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner

detention; and advice to, or training, local forces and security personnel. Since the end of the Cold War, demand for PMSCs has increased to such an extent that there is now a major PMSC industry offering an ever wider range of services, with some companies employing well beyond 10,000 staff.

2. What is the status of PMSCs staff under international humanitarian law?

The status of the personnel of PMSCs in an armed conflict is determined by international humanitarian law, on a case-by-case basis, in particular according to the nature and circumstances of the functions in which they are involved.

Unless they are incorporated into the armed forces of a State or have combat functions for an organised armed group belonging to a party to the conflict, the staff of PMSCs are civilians. Accordingly:

- they may not be targeted;
- they are protected against attack unless and for such time as they take a direct part in hostilities.

If, however, the staff of PMSCs carry out acts that amount to taking a direct part in hostilities:

- they lose protection from attack during such participation;
- if captured they can be tried for merely participating in hostilities, even if they have not committed any violations of international humanitarian law

Guarding military bases against attacks from the opposing party, gathering tactical military intelligence and operating weapons systems in a combat operation are examples of direct participation in hostilities in which PMSC personnel may be involved.

On the notion of direct participation in hostilities, see ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law.

If they are operating in situations of armed conflict the staff of PMSCs must respect international humanitarian law and may be held criminally responsible for any violations they may commit. This holds whether they are hired by States, international organisations, or private companies.

3. Are employees of PMSCs not simply modern-day mercenaries?

The definition of mercenaries given by Article 47 of Additional Protocol I is very restrictive. To be a mercenary, an employee of a PMSC has to meet certain strict and cumulative criteria.

For a start, no one who is a national of any of the parties to the conflict can be a mercenary. Furthermore, a person must be employed to be directly involved in combat and motivated by the desire for private gain. Then the person must be doing that to be considered a mercenary. As a result, most PMSC employees do not fall under the definition.

A State that has ratified either or both of the UN and African conventions against “mercenarism” has an obligation to prosecute and punish mercenaries. From a humanitarian law viewpoint, the only consequence of the law of being a mercenary is that a mercenary is not entitled to combatant or prisoner of war status when participating in an international armed conflict. However, a mercenary is still entitled to adequate conditions of detention and has the right to a fair trial.

4. Are there any international Initiatives for the regulation of PMSCs?

Several international initiatives have been undertaken to clarify, reaffirm or develop international legal standards regulating the activities of PMSCs and, in particular, ensuring their compliance with standards of conduct reflected in IHL and human rights law.

Following a joint initiative of the Swiss Federal Department of Foreign Affairs and the ICRC, the 2008 Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict was endorsed by 17 States. This Document reaffirms the existing legal obligations of States concerning PMSCs and recommends a catalogue of good practices for the practical implementation of existing legal obligations. The number of Montreux Document participants has now risen to 54 States and three international organisations.

5. What steps can PMSCs take to ensure that their staff respect international humanitarian law?

Different measures both before and during a deployment are essential to ensuring that the staff of PMSCs respect international humanitarian law. These can include:

- vetting procedures for the hiring of staff;
- proper training in international humanitarian law;
- standard operating procedures and rules of engagement that comply with international humanitarian law;
- internal disciplinary procedures.

6. What is the responsibility of States concerning PMSCs they hire?

States cannot absolve themselves of their obligations under international humanitarian law by contracting PMSCs. They remain responsible for ensuring that the relevant standards are met and that the law is respected.

Should the staff of the PMSCs commit violations of international humanitarian law, the State that has hired them may be responsible if the violations can be attributed to it as a matter of international law, especially if the PMSC acts under instructions or control of the State authorities.

States must ensure that the staff of such companies respect international humanitarian law. Important measures for achieving this include:

- requiring the staff to be properly trained in international humanitarian law;
- requiring that the PMSCs' rules of engagement and standard operating procedures comply with international humanitarian law.

Moreover, States must ensure that mechanisms exist for holding accountable the staff of PMSCs suspected of violating international humanitarian law.

7. What is the responsibility of States in whose territory PMSCs are incorporated or operate?

All States have a responsibility to respect and ensure respect for international humanitarian law, including by the staff of PMSCs. States in whose territory PMSCs are incorporated or operate are in a particularly favourable position to affect their behaviour through national law.

One way for the State in question to exercise some control and oversight could be by establishing a licensing/regulatory system. Key elements of a possible national regulatory framework could include determining which services may or may not be carried out by PMSCs or their personnel. The question of whether a particular service could cause the PMSC personnel to become involved in direct participation in hostilities should be taken into account).

States could make the issue of licences subject to the PMSCs' meeting certain criteria, including requirements that they:

- train their staff in IHL;
- adopt standard operating procedures/rules of engagement that respect IHL and appropriate disciplinary measures.

The State could also make approval for every contract dependent on the nature of the proposed activities and the situation in the country where the PMSC will operate. It could impose sanctions for operating without having obtained the necessary authorizations or in violation thereof (e.g. withdrawal of operating licence, loss of bond, criminal sanctions...).

Such a regulatory system should be complemented by a functioning system for bringing to justice those accused of having committed violations of international humanitarian law.

Legalities

International Humanitarian Law is the domain of International Law that governs the behaviour of parties in an armed conflict. It is synonymous with jus in bello. It overlaps with the jus ad bellum which shall be discussed further.

The Geneva and Hague Conventions are key sources of the jus in bello. Important provisions in these treaties include

- 1) The Principle of Discrimination
- 2) The Principle of Responsibility
- 3) The Principle of Proportionality

Note: The Principle of Proportionality has distinct ramifications in a jus in bello and a jus ad bellum context. The Principle in a jus ad bellum context simply means that “you can do no more than what is required to defend yourself” (Refer to Article 51 of the Charter: Right to Self-Defense). Meanwhile, the Principle in jus in bello context requires that any attack during an armed conflict must not cause harm to civilians or civilian objects that is excessive about the anticipated military advantage gained.

An example of this (my view):

The Israeli attack on Gaza currently underway is proportional in a jus ad bellum sense, as it is in response to an attack by Gaza that threatened the Territorial Integrity of the Israeli state, hence justifying an action in self-defense. Hence under jus ad bellum, it can be argued that Israel did have the right to attack Gaza (hence being proportional in a jus ad bellum context).

On the contrary, Israel is violating jus in bello by conducting civilian hostilities in Gaza. Hence, although the Israeli attack is justified under Int'l Law under the pretext of Self-defense(jus ad bellum), the way/manner in which Israel is conducting such an attack is unlawful under IHL (jus in bello)(hence it is not proportional under jus in bello).

The Geneva Conventions of 1949 are a set of jus in Bello, addressing issues such as the protection of civilians in wartime and the need for proportionality when force is used. The Hague Conventions of 1899 and 1907, as well as the 1977 Protocol Additional to the Geneva Conventions, also set out rules for the conduct of hostilities and protect war victims, such as the sick and wounded, shipwrecked, and civilians.

1. The Geneva and Hague Conventions and certain important provisions

While the Geneva Conventions primarily govern the protection of war victims and are calibrated on the “peace-time-like” rules, the Hague Conventions govern the methods of warfare, conduct of hostilities, and occupation and are geared towards “military” events.

The Geneva Conventions have arguably gained the status of customary international law. This means that they are considered binding on all states, including those which have not ratified them. Today, most states believe that the four 1949 Geneva Conventions, as well as most provisions of the 1977 Additional Protocols, have become part of Customary International Law.

A custom is a practice in international law that is not laid down in any treaty as such but still is binding on member states.

For a principle/practice to become custom, it needs to pass the following thresholds:

- 1) **state practice**: a good number of states must incorporate that principle/practice within the domestic jurisdiction of that state
- 2) **opinion juris**: Although this is not a term defined in international law, it essentially means the “opinion of the jurist”. This could include opinions of jurists of international courts such as the ICC, ICJ, or any tribunals, or even the domestic courts of states (reflected from the citation of the **Canadian Supreme Court judgement on the secession of Quebec** in international law during discussions of the customary nature of the Right to Self Determination)

Provisions of the Geneva Conventions that are relevant to our discussion on PMSCs and IHL are:

1) Humane Treatment:

This provision is found in all four Conventions and their first Additional Protocol. Commonly known as the “Martens clause,” it states that “in cases not covered by the [Geneva] Conventions or by this Protocol, the human person remains under the protection of the principles of humanity and the dictates of the public conscience” (Additional Protocol I, Article 1(2); Geneva Convention I, Article 63; Geneva Convention II, Article 62; Geneva Convention III, Article 142; Geneva Convention IV, Article 158).

2) Protection of Wounded and Sick:

The specific provisions for the protection of the wounded and sick are detailed in each of the four Geneva Conventions. For example, Article 15 of the First Geneva

Convention provides protections for wounded and sick military personnel, and Article 79 of the Additional Protocol I contains detailed provisions for the protection of civilian medical personnel and units.

3) Protection of Civilians and Prisoners of War:

The protection of civilians and prisoners of war is detailed in each of the four Geneva Conventions and their Additional Protocols. For instance, Article 17 of the Additional Protocol I provides special protections for women and children, and Article 81 contains measures of protection for journalists.

Some important Hague Conventions include:

1) Hague Convention IV of 1907:

This convention regulates the laws and customs of war on land and contains important provisions such as the treatment of civilians and prisoners of war, the means of injuring the enemy, and the rights and duties of the occupying power.

2) Hague Convention V of 1907:

This convention addresses the rights and duties of neutral powers in case of war on land.

While these conventions do not explicitly apply to PMSCs and other non-state actors, it is for delegates of the committee to determine the legal personality of these PMSCs under international law and hence review the applicability of various provisions of customary International Humanitarian Law and the Geneva and Hague Conventions on these parties either by

- 1) Deciding which provisions of the Conventions are customary and hence reviewing their direct applicability to PMSC activities*
- 2) amending them and providing legal personality to PMSCs under these conventions (or by)*

2. Right to Self-Defense against PMSCs

The Right to Self-Defence falls under **jus ad bellum** which deals with the question of “When may States use force?”. While this does not explicitly fall under the domain of International Humanitarian Law, it holds paramount importance in the current discussion on PMSCs in International Law.

The Right to Self-Defence, as we know it in the 21st century, is arguably best defined in **Article 51** of the **United Nations Charter** which states,

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations until the Security Council has taken the measures necessary to maintain international peace and security.

While the principle of self-defense certainly finds its roots in customary law, the UN Charter is arguably the source of the Right to Self-Defence. This argument is furthered as the North Atlantic Treaty in its Article 5 references Article 51 of the UN Charter when it sets out its mandate as an organisation acting under the Right to Collective Self-Defence. Note that this Right to Collective Self-Defense is limited to the period until the Security Council has become seized of the matter (a fancy way for the SC to say: “We are taking control of this situation”).

The Caroline Test sets forth criteria that must be met for an act of self-defence to be considered lawful:

- 1) **Necessity:** It just means that the State must only resort to the use of Self-Defence due to there existing no other option/means to resolve the situation.
- 2) **Proportionality:** In the case of jus ad bellum, the principle of proportionality only means “you may do no more than what is required to defend yourself”.
- 3) **Immediacy:** The threat must be imminent, leaving no time for deliberation or recourse to other authorities. Deals with “within what time period can a state conduct “defensive” operations?”. You can begin defending yourself before the attack even takes place, but you may not retaliate too long after the attack has taken place or even too early when there is no considerable threat.

So to use the Michael Schmitt analogy to explain the Caroline Test: Suppose I am on the street and I see you down the street (you are a very dangerous-looking guy to me). In that case, that doesn't give me the right to shoot you because you look like a potential threat to me or because I became frightened. If you come towards me with a huge gun and make threatening gestures, only then can I defend myself. If you knock me to the ground and then I wake up 10 minutes later, drive to your house and then strike you back, that wouldn't be self-defence, but instead, it would be “retaliation”. But, if you knock me to the ground, I immediately stand back up and knock you down too, that would be self-defence!!

Important Case Studies of the Right to Self Defence include:

1) ICJ Nicaragua v. United States of America:

In this case, the ICJ essentially stated that when a State “A” supports a non-state actor in an attack against State “B”, then State “B” can not only attack the non-state actor in self-defence but also the State “A” because it provided support to the non-state actor. The above is known as the Effective Control test which means that the State must have effective control over the group for self-defence to extend against that State too. Only “Weapons and Logistical support” does not classify as effective control of that

State. The intent of the State and any form of request/order by the State for the non-state actors to go and attack country “B” can be considered proof of effective control.

2) 9/11 and the US invasion of Afghanistan

Initially, an “armed attack” under Article 51 of the UN Charter was understood to be an attack by a member state on another. While the actions on 11th September by Al-Qaeda (a non-state actor) were initially classified as a criminal act, reasoning that Al-Qaeda, the International community very quickly started to treat it as an armed attack under Article 51 of the UN Charter.

The SC Resolutions 1368(passed immediately after the attack), and 1373(2 weeks after 9/11) recognised the “Inherent right of self-defence” of the USA. After the USA began operations against Al-Qaeda, the SC continued to pass resolutions that reaffirmed and referred to earlier resolutions that recognised the US’s “Inherent right to self-defence”.

It can hence be argued from this precedent of the Security Council that the term “armed attack” under Article 51 of the UN Charter can also be applied to an attack by a non-state actor like an extremist/terrorist group.

3) Israeli Wall case and Uganda v. Congo

In these cases, the ICJ established that the Right to self-defence applies to defence against a non-state actor only if a State supports the non-state actor.

4) The USA and Pakistan analogy

If another country “X” is allowing non-state actors to use their territory to wage attacks against you (Pakistan allowed Al Qaeda to use Pakistani territory to attack the US), you (in this case: USA) are first obliged to tell country “X”(Pakistan) to comply with international law and not allow the use of their territory for an attack on the sovereignty of your state. After that, if country “X” does not comply with such a request, you may use your right to self-defence against that state while adhering to the principles of **necessity and proportionality**.

These Case Studies are imperative to our agenda as they define an “armed attack” (under Article 51) to include attacks by non-state actors. This precedent hence can form a baseline for the application of the Right to Self-defence against Private Military and Security Companies as they too may be termed as “non-state actors”.

3. Legality of drone operations under International Law

This is still a debated topic, but concerning jus ad bellum, it is widely believed that if the state consents to the 3rd party's use of such weaponry on their territory, then it is lawful. It may be unlawful given the way it is conducted either under Criminal Law or even Jus in Bello, but the fact that these operations are being conducted is not unlawful given that the aforementioned condition of consent is met.

The use of Drones and other modern equipment has been integral to the operations of PMSCs in the 21st century. Hence a discussion of Drone operations and the use of other new technologies in attacks by PMSCs would be imperative in the Executive Board's opinion.

4. Law of Cyber Warfare and PMSCs

This is a relatively new domain of International Law, mostly guided by and within the bounds of International Humanitarian Law. One of the primary efforts in this field of law is the Tallinn Manual.

The Tallinn Manual is an academic study that addresses the application of international law to cyber warfare. It was first published in 2013 and is not an official NATO manual, but rather an independent academic research product (funded by NATO). The manual was produced by a team of legal scholars and practitioners and identifies the international law principles applicable to cyber warfare, providing 95 "black-letter rules" governing cyber operations. It is a comprehensive and authoritative attempt to analyze the application of international law to cyberspace. The Tallinn Manual 2.0, released in 2017, broadens the scope to assess how international legal principles can be applied to cyber operations. Work on the Tallinn Manual 3.0 is currently underway. The manual is not a legally binding document but is influential in shaping the understanding of the legal framework for cyber operations. It is a valuable resource for scholars, policymakers, and legal practitioners involved in cyber law and policy.

A few key topics in the discussion of this domain of law are

1. Defining what constitutes a "use of force" (Article 2(4) of the UN Charter) and an "armed attack" (Article 51 of the UN Charter) in a cyber context
2. Consideration of "Data" as an "object" under international law and assessment of what standards apply to its protection

An important case study with regard to this would be the Stuxnet Case. Stuxnet is speculated to be a US-Israeli cyber operation that targeted Iranian nuclear assets and damaged around 1000 Iranian centrifuges.

The Tallinn Manual which defines the law of cyber warfare states:

"Acts that injure or kill persons or damage or destroy objects are unambiguously uses of force"

It also classifies the same as an armed attack if the damage is significant (**The USA v. Nicaragua** case established that a violent “use of force” is classified as an “armed attack”).

Hence since the centrifuges were physically damaged in this case, it would classify as a use of force (if a State did it). Hence if the US and Israel were proved to be part of this operation, it would be a violation of International Law (according to the Tallinn Manual) since this operation neither had the authorisation of the SC nor would classify as an act of self-defence (The only instances where a state is allowed to use force against another state)

5. Montreux Document on Private Military and Security Companies

This is a non-legally binding document that contains a compilation of certain relevant legal obligations and good practices concerning International Humanitarian Law and International Human Rights Law which apply to PMSCs.

Note that these obligations are those of States and not those of the PMSCs themselves.

It lists about 70 recommendations for state practices, such as verifying company track records, examining procedures used to vet staff, conducting prosecution when breaches of law occur, and ensuring compliance and personnel training compatible with International Humanitarian and Human Rights Law.

It outlines the responsibilities and roles of the following actors:

- a) Contracting States: States that engage PMSCs
- b) Territorial States: States within whose territory PMSCs operate
- c) Home States: States where PMSCs are based/headquartered

6. Legal Personality of PMSCs and other non-state actors under international law

PMSCs are considered private business concerns that provide military and/or security services, and they are increasingly being recognized as important players in the international legal arena, hence also partially governed by principles of Private International Law which this committee is not explicitly mandated to discuss.

Private Military and Security Companies (PMSCs) are not explicitly defined under international law. However, they can be recognized and regulated through various legal documents and initiatives, as mentioned below:

- 1) Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies (2008)

- 2) UN Working Group's Guidelines (2009)
- 3) International Code of Conduct for Private Security Providers and the United Nations Guiding Principles of Business and Human Rights
- 4) Draft Convention on Private Military and Security Companies

Although they are not exclusively defined under international law several international legal documents and initiatives address the regulation and oversight of PMSCs (some of them are named above), including their legal status and accountability. A

It is for delegates of this committee to determine if there is a need for greater representation and personality of PMSCs under international law and take necessary action under the mandate of this committee.

Case Studies

1. Afghanistan

International PMSCs first arrived in Afghanistan after 9/11. The number of Afghan security firms increased rapidly during this period as well. Since then, armed PMSC personnel have been implicated in violence against civilians and extrajudicial killings, as well as human rights abuses, in particular, the exploitation of civilians including extortions, protection rackets, kidnapping, human trafficking, theft and looting. Employees of international PMSCs have evaded criminal prosecution abroad as well as at home.

Afghan security firms were found to have been involved in power struggles between competing clans, militias or warlords. Audits also revealed significant corruption, waste and inefficiency.

It is clear that at the crux of these issues again lies the fact of lack of transparency and accountability by clients, state owners, home countries and management themselves.

2. Democratic Republic of Congo

The UN peacekeeping missions MONUC (1999-2010) and MONUSCO (since 2010) have contracted a wide range of services, including unarmed security, transport and vehicle maintenance.

However, the number of PMSCs licensed to work in the country has been fairly small, since the government of the DRC has imposed legal restrictions on the use and operations of PMSCs, including prohibitions on armed security guards and companies not registered in the country.

This led to the following problems: -

- a. The lack of options led to curtailed competition and weak standards, particularly because local standards and licensing frameworks did not depend upon professional vetting training.
- b. The prohibition of privately hired armed guards opened a market for the public armed forces or police to be hired as additional security providers. This has exacerbated already existing corruption and abuse in the public sector, where senior staff sometimes keep the proceeds of the contracting for themselves.

3. The Iraq War

The outsourcing of military personnel from 2003 to 2011 during the Iraq War popularized PMSCs in the modern era. In particular, the private contractor Blackwater USA garnered significant international attention. In a series of human rights abuses documented by the media and released to the public, the United States government was criticized for allowing PMSC employees stationed in the Abu Ghraib prison to commit acts of rape, starvation, torture, and other crimes that resulted in the mistreatment of detainees under American control.

CACI, one of the PMSCs present at Abu Ghraib, denied the liability of their contractors in committing offences as the company believed all actions were under the oversight of the United States military. This event led to the belief that the United States, along with other contracting nations, did not possess the means necessary to monitor the actions of PMSCs effectively. To this day, there is uncertainty surrounding the degree to which PMSC contractors were convicted due to their ambiguous legal nature. In 2011, the United States Supreme Court refused to consider a lawsuit detailing the torture of approximately 250 Iraqi prisoners. The lawsuit was aimed towards PMSCs CACI and Titan Corporation, whose employees were present in abuses that occurred specifically in 2003 and 2004.

Despite investigations that proved a minimum of five contractors culpable, only eleven soldiers employed by the United States military were prosecuted out of all the members that were involved in interrogations at Abu Ghraib. At this point, it should be noted that offences of “universal jurisdiction”, such as war crimes or torture, (violations of jus cogens) are considered so grave that they can be prosecuted by any state.

4. The Israel-Palestine Conflict

In addition to significant military aid from the United States and Europe, reports indicate that the Israeli military has engaged Western mercenary groups in the ongoing conflict with Gaza. Spanish mercenary Pedro Diaz Flores revealed that numerous mercenary groups, including those affiliated with American Private Military Companies (PMCs), are actively collaborating

with the Israeli army. These mercenaries are reportedly well-compensated and equipped, undertaking roles such as providing security support for arms convoys and Israeli forces in the Gaza Strip.

Evidence from social media posts by the American PMC, Forward Observations Group (FOG), suggests their presence in the occupied Palestinian territories, supporting the Israeli regime. This development raises questions about accountability and the international community's role in addressing the escalating situation in Gaza.

Amidst these dynamics, the involvement of US military personnel and recent covert arms transfers, such as providing bunker-busting bombs to Israel's air force, has garnered attention. Reports indicate that some of these US-provided weapons, including phosphorus shells, have been used in the conflict and are contributing to civilian casualties in Gaza. This information raises concerns about the impact of international involvement on civilian populations and prompts discussions about the role of the international community in mitigating the suffering of Palestinians.



Questions a Resolution May Answer

- 1) What legal personality do PMSCs have under International Law with special emphasis on legal personality to prosecute violations (if any) of jus in bello and International Criminal Law (especially violations of the Rome Statute)?
- 2) What is the legal basis for the applicability of the Right to Self-Defence in a case where a state would have to defend itself from a PMSC?
- 3) What principles of the Tallinn Manual (1.0 and 2.0) would be applicable in the realm of cyber-warfare when PMSCs are a “party” to the dispute
- 4) How would the principles of jus ad bellum and jus in bello apply to drone operations when performed by a PMSC?
- 5) What Steps may states undertake for the ratification of the Montreux Document?
- 6) Is the present definition(s) of PMSCs adequate to ensure accountability and transparency? Is there any amendment/recommendation necessary?
- 7) What threats do PMSCs pose when nations are unable to monitor their actions? What are the legal implications of this?
- 8) What are the gaps/loopholes in the current legislatures that allow PMSCs to operate in a grey area in IHL? How can this be addressed by the UNGA?
- 9) How can the United Nations ensure that PMSCs are held accountable for non-law-abiding offences?
- 10) What monitoring framework can be set up by contractors and clients to keep a check on corruption as well as prevention of espionage?
- 11) What is the implication that PMSCs will have concerning warfare in the future and how can we safeguard against the same?