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Abduction and Forced Sale of Persons

Introduction

Human trafficking is one of the most prevalent infringements on basic individual rights plaguing the 21st century world. While not all people are directly affected by these crimes, every single person has the potential to be targeted and be a victim, and constitutes a modern form of slavery. Human trafficking can victimize nearly anyone regardless of age, gender, race, religion, or sexual orientation. Because of the severity of human trafficking, these crimes are committed against all of the core values that the member states of the United Nations strives to protect and uphold year after year. Human trafficking also directly funds other forms of criminal activities at both the state and international levels. Aside from trafficking in general, the UN system has a specific concern regarding trafficking related to child soldiers. Not only are these young children being used by others for selfish purposes, but these purposes expose children to extreme conditions and violence. Member states and policymakers must remain cognizant of the severity of the issue of trafficking, and make use of existing legal frameworks to combat trafficking in all its forms.

Prevalence of Human Trafficking

The United Nations, according to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, defines human trafficking as the recruitment, transportation, or harboring of persons, by means of the threat or use of force or

other forms of coercion, or abduction, for the purpose of exploitation. This exploitation can include but is not limited to prostitution, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.[1] Interpol breaks human trafficking into three main categories: trafficking for sexual exploitation, trafficking for forced labor, and the trafficking of organs.[2] The forced labor category, while including many forms of *de facto* slavery, also includes the phenomenon of child soldiers. The first two types of common trafficking as stated by Interpol, trafficking of women for sexual exploitation and trafficking for forced labor, occur in nearly every state in the world.[3] This means that almost every state is affected in one or more ways by being a source, transit or destination country.[4]

With an estimated industry worth of $32 billion USD and 2.4 million people in trafficked servitude, human trafficking is one of the biggest social problems facing international peace today.[5] Along with the steady growth of sex trafficking, the last decade has additionally shown a sharp spike in sex tourism activities. Sex trafficking and sex tourism differ in that in sex trafficking, the victim is brought to the customer, whereas with sex tourism the customer comes to the victim in a foreign destination.[6] Victims of sex tourism are still being trafficked even if they are not actually being transported to different geographic locations; they are being harbored against their will and unable to escape their situation. The extent to which sex trafficking and sex

[1] "United Nations Convention Against Organized Crime and the Protocols Thereto", *UNODC,* 2000, http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf Accessed July 12, 2014.
[2] "Types of Human Trafficking", *Interpol*, http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking. Accessed July 14, 2014.
[3] Ibid.
[4] Ibid.
[5] "United Nations Voluntary Trust Fund for the Victims of Human Trafficking", *UNODC,* http://www.unodc.org/unodc/en/human-trafficking-fund.html. Accessed July 15, 2014.
[6] Princeton. "Sex Tourism." https://www.princeton.edu/~achaney/tmve/wiki100k/docs/Sex_tourism.html. Accessed July 15, 2014.

tourism occur is difficult to pinpoint because of how secretive the operations are, and how the spread of information is disseminated throughout the criminal organizations responsible.

There are three main conditions that help criminals in committing acts of human trafficking. The first, which plays a role in almost every single issue or conflict that faces the world today, is state sovereignty. The question of who does what and for/to whom is always a difficult question to answer. No matter which country, big or small, developed or less developed, they have a right to their own national sovereignty.[7] Any action taken against a certain state, even if it is "in their best interest," can very quickly be seen as hostile by the affected country. The sheer number of victims and criminals involved makes it very hard not only to find those affected by the practice but also to decide the right course of action that would best protect the victims, and to then cooperate with local and national authorities to implement such measures. The next difficulty that anti-trafficking efforts face is organized crime. A large portion of the human trafficking occurrences are involved with one or more organized crime groups.[8] The sophistication of these organizations and the money they also provide from other illegal activities allow them to hide the trafficking to a greater extent.

Finally, similar to issues with organized crime, political instability causes large problems for anti-trafficking efforts throughout the world.[9] Having an unstable government in a state can create openings for human trafficking groups. Persons may come into power that have their own agenda and therefore do not care about trying to prevent trafficking within their jurisdiction; or, in some cases, may be involved in trafficking somehow and are making profits. Secondly,

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[7] "Charter of the United Nations," *United Nations*, http://www.un.org/en/documents/charter/chapter1.shtml. Accessed July 15, 2014.
[8] "United Nations Convention Against Organized Crime and the Protocols Thereto", *UNODC,* 2000, http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf Accessed July 12, 2014.
[9] Ibid.

instability can leave large areas of various states without any functioning institutions at all, allowing criminal organizations to operate more freely. Indeed, there is a correlation between regions with a number of states facing political instability, and the effectiveness of anti-trafficking efforts. According to the US Department of State, as of their 2014 Trafficking in Persons report, states in the regions of Sub-Saharan Africa, the Middle East, and Southeast Asia are the regions that have had the most difficulty in combating human trafficking.[10]

Trafficking of Child Soldiers

A child soldier is anyone who is participating in any facet of military life whether it is a frontline soldier or the camp cook.[11] It is estimated that about 300,000 child soldiers are fighting in armed conflicts around the world.[12] Non-state actors such as rebel groups and militias, as well as state entities, are all involved in the use of child soldiers in many regions. Some of the children enlist willingly in hopes of having protection or a steady source of food, but most are coerced into service with these armed forces.[13]

As of today there are many existing documents by the United Nations in various different committees, including the Security Council, that condemn the recruitment and targeting of child soldiers. However, the areas in which groups that exploit child soldiers operate makes it difficult for national and international, state and non-state, actors to step into the conflict and provide aid. Entities involved in the use of child soldiers are often found in areas experiencing political instability within various states, often far from major population centers or other infrastructure

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[10] Kate Hodal, "US penalizes Malaysia for shameful human trafficking record." *The Guardian*, http://www.theguardian.com/global-development/2014/jun/20/malaysia-us-human-trafficking-persons-report. Accessed July 15, 2014.
[11] "United Nations Convention Against Organized Crime and the Protocols Thereto", *UNODC,* 2000, http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf Accessed July 12, 2014.
[12] "Child Soldiers." *United Nations*, http://www.un.org/Pubs/CyberSchoolBus/briefing/soldiers/soldiers.pdf. Accessed July 12, 2014.
[13] Ibid.

that might otherwise support an organized governmental response against such entities. Among the states most affected by this phenomenon are of the Central African Republic, Democratic Republic of the Congo, Chad, Nigeria, Uganda, Thailand, Burma, Sri Lanka and Colombia, *inter alia*.[14]

Merely rescuing child soldiers from their enslavement is only the first step in combating the use of child soldiers, however. Disarmament, demobilization and reintegration (DDR) programs are vitally necessary in order to repair the psychological damage caused by the crimes committed against child soldiers. Reintegration is not easy, however. In 2005 it was reported that 800 child soldiers, who had escaped from a Ugandan anti-state militant group, joined the Ugandan national army.[15] Due to a lack of proper rehabilitation, child soldiers such as these - who often lack basic education or skills in other areas due to their captors' negligence - may rejoin the fight rather than attempt to navigate what is an unfamiliar world outside of combat. Without proper readjustment to civilian life, many former child combatants, who may now be young adults, cause stress on themselves and their communities. A large number of them who are not properly reintegrated join criminal enterprises, or continue to exhibit desensitized and aggressive behavior that creates insecurity and a fragile peace.[16]

The issue of child soldiers is not solely limited to males, as might be assumed. In fact, as many as 40% of child soldiers involved in armed conflicts around the world are girls.[17] Girls in these situations face even more hardships than their male counterparts. Female victims of the

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[14] "Child Soldiers." *United Nations*, http://www.un.org/Pubs/CyberSchoolBus/briefing/soldiers/soldiers.pdf. Accessed July 12, 2014.
[15] "Ugandan Army Recruiting Children." *BBC*, Last modified 2005. http://news.bbc.co.uk/2/hi/africa/4266789.stm (Accessed July 12, 2014).
[16] Siddarth Chatterjee, "For Child Soldiers, Every Day is a Living Nightmare", *Forbes*, December 9 2012, http://www.forbes.com/sites/realspin/2012/12/09/for-child-soldiers-every-day-is-a-living-nightmare/. Accessed July 11, 2014.
[17] "Analysis: Girl Child Soldiers Face New Battles in Civilian Life." *IRIN*, http://www.irinnews.org/fr/report/97463/analysis-girl-child-soldiers-face-new-battles-in-civilian-life. (Accessed July 12, 2014).

child soldier trade are witness to and party to all of the same sorts of violence and isolation as male victims are, and are at significantly increased risk of sexual assault. On top of all this, girl soldiers essentially become separated from the boys and adult combatants. This isolation unfortunately also extends to the rehabilitation process as well. Despite comprising approximately 40% of the child soldiers fighting in conflicts throughout the world, only about 7% of the children assisted by DDR programs are girls.[18]

Existing Legal Framework for Combating Human Trafficking

The General Assembly adopted Resolution 44/25 in 1989, and with it, the Convention on the Rights of the Child.[19] Article 35 of the Convention applies to trafficking of children for any reason, whether as child soldiers, labor, or any other purpose; the clause calls upon States to take appropriate action to prevent such trafficking at the national level.[20]In 2000, the international community adopted the UN Convention against Transnational Organized Crime via Resolution 55/25, which aimed to set guidelines for, and establish an international law framework for, combating organized crime in all its forms.[21] Subsequent to this, the General Assembly devised the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, which entered force in 2003.[22] The Protocol constitutes the first binding instrument on the issue of trafficking, and establishes a legally binding definition of trafficking for the first time as well.

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[18] Ibid.
[19] "Convention on the Rights of the Child", *Office of the High Commissioner for Human Rights*, 1989, http://www.ohchr.org/en/professionalinterest/pages/crc.aspx.
[20] Ibid.
[21] "Convention on Transnational Organized Crime", *UNODC*, 2000, http://www.unodc.org/unodc/treaties/CTOC/.
[22] Ibid.

In July of 2005 the United Nations Security Council adopted Resolution 1612.[23] This specific resolution outlines an assessment and monitoring system for high risk areas for child soldiers. This was a large step forward in terms of providing assistance tovictims of trafficking that have been, or are being, used as child soldiers. The resolution also recognizes that the issue of combating the use of child soldiers requires a collaborative effort across various entities, and calls for cooperation amongst the Security Council, UNICEF, various peacekeeping missions, and others. Following this, in 2009, the Human Rights Council adopted Resolution 11/3, which further expanded the framework against trafficking, and also addressed issues such as revictimization of victims, and acknowledged the role of emerging technologies such as the internet in trafficking.[24]

The General Assembly additionally launched the Global Plan of Action to Combat Trafficking in 2010, which expanded on the Convention and Protocol, and also established a volunteer trust fund to assist trafficking victims.[25] This fund is administered by the United Nations Office on Drugs and Crime (UNODC), which handles the United Nations oversight and legal framework towards combating human trafficking.[26] This trust fund is earmarked to assist in DDR efforts for the estimated 2.4 million current victims of human trafficking.[27] Though the trust fund is not sufficient to provide services to all current victims of trafficking, it is an important tool in assisting with the DDR process.

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[23] "Resolution 1612", *United Nations Security Council*, 2005, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/439/59/PDF/N0543959.pdf?OpenElement.
[24] "Resolution 11/3", *UN IANWGE*, 2011, http://www.un.org/womenwatch/daw/vaw/humanrights/A_HRC_RES_11_3.pdf.
[25] "General Assembly Launches Global Plan of Action Against Trafficking in Persons", *United Nations General Assembly,* 31 August 2010, http://www.un.org/press/en/2010/ga10974.doc.htm.
[26] "Human Trafficking and Migrant Smuggling." *UNODC*, http://www.unodc.org/unodc/human-trafficking/. Accessed July 14, 2014.
[27] "United Nations Voluntary Trust Fund for the Victims of Human Trafficking", *UNODC,* http://www.unodc.org/unodc/en/human-trafficking-fund.html. Accessed July 15, 2014.

In addition to the UN system itself, Interpol also plays a significant role in combating trafficking of persons. One of the greatest tools they have at their disposal is the I-24/7 network.[28] I-24/7 is a data and communications-sharing network between law enforcement agencies in Interpol-affiliates states, that allows Interpol to share data with member states securely and on a standardized system known as the Human Smuggling and Trafficking message system.[29] This allows all types of organizations throughout the world who are a part of the Interpol and other authorized users - 190 National Central Bureaus and dozens more partner users - to report cases and share sensitive information on a standardized format with one another.[30]

First and foremost there is need for affirmative political action. For instance, the United States has laws (the Child Soldier Prevention Act) that prevent military aid to countries and groups that employ child soldiers. However, parties have been exempt from these laws at the discretion of the American government.[31] It is counterproductive to the global good as a whole when certain parties become exempt. A strict and across the board stand against aid to countries and groups that employ child combatants, not only by the United States government but all states, is necessary. Similar to those who are not directly involved in conflict it is imperative that those who are start addressing the needs of children and engage in warfare in a different manner

[28] "Interpol Tools", *Interpol*, 2014, http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/INTERPOL-tools. Accessed July 15, 2014.
[29] Ibid.
[30] "Data Exchange", *Interpol,* 2014, http://www.interpol.int/INTERPOL-expertise/Data-exchange/I-24-7. Accessed July 15, 2014.
[31] Siddarth Chatterjee, "For Child Soldiers, Every Day is a Living Nightmare", *Forbes*, December 9 2012, http://www.forbes.com/sites/realspin/2012/12/09/for-child-soldiers-every-day-is-a-living-nightmare/. Accessed July 11, 2014.

with matters involving them. This could include not targeting for recruitment or violence places where there are a large amount of children such as hospitals and schools or refugee camps.[32] [33]

Conclusion

For those stuck in any kind of trafficking situation, every day is a nightmare. Whether it is being a young sex slave at a tourist destination or a trafficked laborer taken to work in a sweatshop, there is never safety or solace. It is even worse for children, especially those that are child soldiers, because they may not even know what is happening or have not known anything different with their lives. Human trafficking is one of the great problems facing our world today with an estimated 2.4 million people being trafficked at any given time. So far there have been great leaps in the rights of children and human rights as a whole in the past few decades and while many states are doing their part to curb trafficking within their own borders not enough is being done on an international level. This is the time for the UN to make a decision as to its stance on human trafficking starting now, looking forward towards the future.

Questions to Consider:

1. Is your state a party to the Convention on the Rights of the Child and the Convention against Transnational Organized Crime? Why or why not?
2. How does trafficking affect your state? Is your state a source of, or destination of, trafficked persons?
3. What steps has your state taken to prevent trafficking in persons within its borders or internationally? Have these measures been successful?

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[32] "Child Soldiers." *United Nations*, http://www.un.org/Pubs/CyberSchoolBus/briefing/soldiers/soldiers.pdf. Accessed July 12, 2014.
[33] Ibid.

4. Is the current anti-trafficking framework sufficient? Why or why not? If not, what additional measures would your state argue for?
5. On the issue of child soldiers specifically, what is the relationship between the use of child soldiers, and the political stability of the areas in which child soldiers are used? What solutions does your state propose?

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"Resolution 1612". *United Nations Security Council*. 2005. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/439/59/PDF/N0543959.pdf?OpenElement.

"Resolution 11/3". *UN IANWGE*. 2011. http://www.un.org/womenwatch/daw/vaw/humanrights/A_HRC_RES_11_3.pdf.

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Addressing Equitable Distribution of Healthcare Services and Treatments

The World Health Organization (WHO) estimates the at least one billion people exist without access to needed health services and over 150 million people are subjected to financial catastrophe each year due to healthcare costs, with 100 million pushed below the poverty as a result of paying for the services they receive.[1] In addition to lack of access and undue financial burdens, the WHO has underlined the shortage of trained health care workers and accurate medical data as critical shortfalls encumbering the achievement of global health and human development. The WHO predicts that in the next twenty years "40-50 million new health care workers will need to be trained and deployed" to meet the world's healthcare needs and that 38 million of the annual 56 million deaths go unregistered due to a lack of requisite technology and personnel for reporting and archiving as well as a de facto absence of a formal health sector in many areas. This data represents one of the most significant challenges facing the international community and affects individuals in developed and developing countries alike.[2]

These global trends have fueled an increased focus on the issue of ensuring universal health coverage. According to the WHO, "universal health coverage means that all people receive the health services they need without suffering financial hardship when paying for them. The full spectrum of essential, quality health services should be covered including health promotion,

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1 "Universal Health Coverage (UHC) Fact Sheet," *WHO*, September 1, 2014, accessed 26 October 2014.
2 Ibid.

prevention and treatment, rehabilitation and palliative care."[3] The United Nations, through normative frameworks such as the Universal Declaration of Human Rights (UDHR) and the Outcome Document of the Open Working Group on Sustainable Development Goals as well as "boots on the ground" initiatives by its Specialized Agencies and Funds and Programmes, plays a critical role in ensuring that universal health coverage is actualized at the global, regional, and local levels. With States, international governmental organizations, and global financial institutions struggling to maintain stability in the aftermath of the 2008 global financial crisis, in addition to shifting population dynamics that increase both the need for and burden of providing accessible health services, an integrated, international strategy for achieving Universal Health Coverage has never been more necessary.

Contemporary discussions surrounding universal health coverage are firmly rooted in an idea conceptualized during the years immediately following the founding of the United Nations: health as a fundamental human right. The notion of the right to health was first codified in 1946 in the preamble to the WHO Constitution, which defines health as "not merely the absence of disease or infirmity," but "complete mental, physical, and social well-being." The Constitution further reinforces the idea that not merely subsistence level health standards but the highest attainable level of health is the birthright of every human regardless of race, religion, political affiliation, economic, or social condition.[4]

The international community reiterated health as a human right two years later with the passage of the Universal Declaration of Human Rights (UDHR). Article 23 of the UDHR specifically highlights the necessity of medical care and social services to achieving proper

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3 "Universal Health Coverage (UHC) Fact Sheet," *WHO*, September 1, 2014, accessed 26 October 2014.

4 World Health Organization, *The constitution of the World Health Organization* (Geneva, WHO Press, 1946)

standards of human health.[5] The right to health has been fortified by its mention in a number of international covenants and conventions, including the International Covenant of the Elimination of all Forms of Racial Discrimination (1965), Covenant on the Elimination of All Forms of Discrimination Against Women (1979), Convention on the Rights of the Child (1989), Convention on the Rights of Persons with Disabilities (2006), and most notably, the International Covenant on Economic, Social, and Cultural Rights (ICESCR, 1966).

The ICESCR calls upon State Parties to take necessary steps to reduce the stillbirth-rate and infant mortality and to make provisions for the healthy development of children; improve all aspects of environmental and industrial hygiene; prevent, treat, and control epidemic, endemic, occupational and other diseases; and create conditions which assure medical services and medical attention to all in times of sickness.[6] General Comment 14 of the ICESCR, issued in 2000, notes that State Parties "have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services."[7]

Despite the longstanding nature of the universal health coverage debate at the international level, many myths about what UHC entails still exist and continue to plague both domestic and multilateral, international dialogue on the subject. Universal health coverage does not, as many assume, refer to free coverage for all health related services. Governments cannot bear the burden of providing equitable and universal healthcare on their own. An integrated and much more nuanced approach must be implemented to ensure that every individual can achieve

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[5] United Nations, General Assembly, *Universal declaration of human rights,* Resolution 217 A (III) (10 December 1948)

[6] *International Covenant of Economic, Social, and Cultural Rights,* New York, 16 December 1966.

[7] *International Covenant of Economic, Social, and Cultural Rights,* New York, 11 August 2000, *General Comment No. 14.*

the highest attainable standard of health. According to the WHO, "An important component of UHC is health financing where attention needs to be paid to raising sufficient funds, minimizing out of pocket payments through prepayment and pooling, and using available funds (including donor funding where relevant) efficiently and equitably."[8] The WHO goes on to explain that, while financial risk protection is an important step in health sector reform, truly universal health coverage entails much more than just health financing. It also involves ensuring access to health service delivery systems, a trained health workforce, reliable health facilities or communications networks, readily available health technologies and information systems, quality assurance mechanisms, and good governance and legislation.[9]

It is also important to note that achieving universal health coverage does not stop at health sector interventions, but directly impacts, and is in turn impacted by, economic and social issues. This is perhaps one of the most important arguments in favor of increasing international focus on healthcare, as high standards of human health allow children to sustain their education, increases the earning potential of adults, has the ability to lift individuals and families out of poverty, and fosters an environment necessary to long-term economic growth at all levels. In light of this, it must also be recognized that the ideas of social equity, human development, and universal health coverage are not only mutually reinforcing, but that each of these concepts is necessary to the full realization of the others.

Any discussion regarding the equitable distribution of healthcare services must be adequately informed of the basic structure of a health system as it relates to the majority of countries with formal health sectors. Healthcare is usually categorized into three or more

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[8] "UHC Fact Sheet," accessed 26 October 2014.
[9] Ibid.

progressive strata. The first of these is known as primary care, and consists of locally based, point of entry services such as urgent care centers, hospitals, and the offices of general practitioners. Medical professionals involved in primary care include and primary care physicians, family physicians, nurse practitioners and medical assistants. The services involved in primary care include regular check-ups, vaccinations, treatments for common ailments, and family planning. Primary care is seen as the front line of any formal health sector and is vital to ensuring health at the population level.[10]

Secondary care refers primarily to medical specialists who rely largely on referrals from primary care workers, though patients with some knowledge of their specific medical issues may seek out secondary care first. Secondary care includes system specific specialists including cardiologists, urologists, optometrists, and dermatologists, among others. It also is used in situations requiring acute or skilled attendants, such as during childbirth, medical imaging, hospice care, or emergency medical services.[11]

Tertiary care represents the most advanced and specialized sector of healthcare services. Individuals requiring tertiary care services require highly complex health interventions, including advanced and long-term treatment, such as cancer management, neurosurgery or cardiac surgery, and severe burn treatment.[12]

Secondary and tertiary care have less of an affect on health outcomes at the population level, but are highly relevant on the individual level. However, the WHO underscores the fact that these specialized services are most lacking in those areas where they are most needed, namely areas without access to primary care such as rural communities. Without the widespread

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[10] World Health Organization, WHO Regional Office for Europe, *Modern Healthcare Delivery Systems, Care Coordination and the Role of Hospitals* (Copenhagen, WHO Press, 2012)
[11] Ibid.
[12] Ibid.

availability of primary care, ailments that could be treated in their early stages develop into much more serious and complex health issues.[13]

The WHO stresses that individuals require a better understanding and relationship with the healthcare systems they rely on, and that individuals within the health sector in turn need to be more cognizant of the needs of the communities in which they live. The WHO states that "UHC emphasizes not only what services are covered, but also how they are covered through focusing on people-centred health care and integration of care…Health systems should be organized around the needs and expectations of people in terms of holistic long-term health to help them better understand their own health-care needs."[14]

While the aspect of universality requires that health sector issues be addressed in both developed and developing countries alike and for individuals at all levels of the socio-economic spectrum, the most challenging obstacle to overcome is ensuring access to populations and regions which typically exist outside the realm of formal health structures. Individuals living below the poverty line and in rural areas far removed from service centers suffer from healthcare deficits in the largest number due simply to the fact that their needs are outweighed by their means. An additional barrier to ensuring proper standards of health in the developing world is that health related aid is often neglected in regions affected by epidemics such as HIV and AIDS, malaria, and the Ebola virus in favor of costlier retroviral drugs and vaccines.[15]

Social exclusion plays a prominent role in preventing individuals with greater levels of need from accessing health services. For instance, LGBT individuals often forgo sexual health screenings out of fear of negative repercussions from their families and communities should they

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[13] World Health Organization, WHO Regional Office for Europe, *Modern Healthcare Delivery Systems, Care Coordination and the Role of Hospitals* (Copenhagen, WHO Press, 2012)

[14] "UHC Fact Sheet," accessed 26 October 2014.

[15] "Health Care Around the World." - Global Issues. http://www.globalissues.org/article/774/health-care-around-the-world (accessed 27 October 27 2014).

test positive or explain to doctors the factors related to their sexuality that affect their sexual health and increase potential risks. Additionally, fears surrounding social exclusion due to unplanned and premarital pregnancy prevent many women from seeking prenatal care and other reproductive health services. Corruption also influences access to health services in areas where high demand for specific drugs, such as malaria medication, leads to an increase in the value of drugs and treatment. Good governance, legislation, and an active civil society are vital to ensuring that health resources are distributed fairly and equitably. A lack of economic development drives many individuals from developing countries to seek economic opportunities in the health field outside of local communities and regions. This "brain drain" creates a reliance on medical aid that in turn exacerbates economic hardships at all levels. For individuals facing any of these intersecting challenges, factors which limit access to healthcare exacerbates and reinforces the need for those services, leading to the increasingly cyclical nature of healthcare exclusion.[16]

The WHO places special emphasis on monitoring mechanisms to address many of these issues. According to the WHO, "Monitoring should be placed within a broader health systems performance framework which allows health workers, medicines, technologies to be tracked, and impacts on health and financial security to be measured."[17] The added value of international standards of health data monitoring is also highlighted. The WHO continues by stating "there is also value in a global framework for monitoring UHC that uses standardized measures that are internationally recognised so that they are comparable across borders and over time."[18]

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16 "Health Care Around the World" (accessed 27 October 2014)

17 "UHC Fact Sheet," accessed 26 October 2014.

18 Ibid.

The Millennium Development Goals largely failed to address the complex factors behind global health trends and ensuring equitable access to healthcare services. Their focus lay primarily in mitigating specific epidemics such as HIV and AIDS, leaving general and holistic care by the wayside.[19] This neglect has lead to a renewed discussion of the role of healthcare in United Nations development strategies and to its increased role in the post-2015 Development Agenda. The Open Working Group on Sustainable Development Goals (OWG) was established in 2013 by the General Assembly in response to the call by the outcome document of the United Nations Conference on Sustainable Development (Rio+20) for a new development agenda. The Rio+20 outcome document, entitled *The Future We Want,* elaborated that "the OWG will decide on its methods of work, including developing modalities to ensure the full involvement of relevant stakeholders and expertise from civil society, the scientific community and the United Nations system in its work, in order to provide a diversity of perspectives and experience."[20]

The outcome of the year-and-a-half long negotiations among members of the OWG is a document that outlines the development goals for the post-2015 Development Agenda, to be finalized in September 2015. While an impressive list of seventeen goals are included within the documents, each with numerous sub-goals and indicators, Goal 3 is entitled 'Ensure healthy lives and promote well-being for all at all ages,' validating the importance of health to human development amongst members of the international community. Goal 3.8 commits all Member States to "achieve universal health coverage (UHC), including financial risk protection, access to quality essential health care services, and access to safe, effective, quality, and affordable

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19 "Health MDGs," Action for Global Health, accessed 27 October 2014, www.actionforglobalhealth.eu/index.php?id=216

20 United Nations, General Assembly, *The Future We Want,* A/RES/66/288 (27 July 2012)

essential medicines and vaccines for all."[21] Following the approval of the post-2015 Development Agenda, it will be the job of Member States and the United Nations Development System to ensure that universal health coverage is achieved internationally. Special initiatives and partnerships between States, global financial institutions, the WHO and other UN Specialized Agencies, and the UN Funds and Programmes, and civil society will encompass the next fifteen years of global efforts in achieving the goal of equitable distribution of healthcare services and treatments.

With the finalization of the post-2015 Development Agenda imminent, it is more important than ever for Member States to outline concrete steps to achieving the goal of universal health coverage. While the principle of universality cannot be overlooked, dialogue should focus improving access to vulnerable populations and those currently existing outside of formal healthcare systems in order to ensure true equity in the distribution of services and treatments. This equity relies on both addressing local and regional needs and variations in cultural practices as well as strengthening international standards and cooperation. An integrated approach between State actors, non-governmental organizations, and the UN system can and should be utilized to ensure the right to the highest attainable standard of health for every person, regardless gender, race, location, and socio-economic status.

[21] United Nations, Open Working Group on Sustainable Development Goals, *Introduction to the Proposal of the Open Working Group on Sustainable Development Goals* (19 July 2014)

Questions for Delegates

1. Which healthcare-financing model does your country utilize?
2. What, if any, reforms have been made to your country's healthcare system in the past few years?
3. What are your country's policies on specific sexual and reproductive health services such as contraception and abortion? Are there any special requirements or restrictions on healthcare workers or insurance companies regarding these services?
4. Which of the major conventions, covenants, and resolutions that mention UHC has your country signed? Which have they not and why?
5. What stance did your country take during the Open Working Group discussions on health? (4th and 11th sessions)

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Other Important Resources

1. The World Health Report 2013
2. **Open Working Group On Sustainable Development Goal – Country Statements (4th and 11th Sessions)**

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Sixth Committee

State Sovereignty and the Responsibility to Protect

"If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica— to gross and systematic violations of human rights that offend every precept of our common humanity?"

-Kofi Annan, Millennium Report of the Secretary General 2000

Introduction

Tragedies, now categorized and defined as mass atrocities, have existed long before any notion of collective responsibility and before the concept of individual sovereignty. For decades, the international community has repeatedly and categorically condemned genocide, crimes against humanity, ethnic cleansing, and war crimes. While international law has clearly established a norm for international conflicts, those conflicts occurring within the borders of a single state have only recently been addressed with the adoption and implementation of the Responsibility to Protect principles. Approaching the 10-year anniversary of the publication of *A more secure world: Our shared responsibility*, the global community has an opportunity to reflect on the effect of the principles of the Responsibility to Protect. The existence of mass atrocity crimes, as recently as 2013, is testament to the current shortcomings of the Responsibility to Protect framework. While both incorporating critical opinions and maintaining the spirit set forth

in the 2004 formation of the High Level Panel on Threats, Challenges, and Change, the scope and implementation of the Responsibility to Protect need to be further evaluated, developed, and defined.

R2P in Civil Society

Through the course of the Cold War period, the global community clung tightly to a conventional approach to national sovereignty, which was established by Article II (7) of the UN Charter. Many member states were too preoccupied fighting external wars to give much thought to the topic of how to handle the domestic conflicts of other member states. Additionally, the rapid growth of the United Nations body from 1945-1989 brought aboard many states that held strong national identities, which supported the nonintervention norm.[1] During this period, there were a number of tragedies to which the principles of the Responsibility to Protect could have applied. These incidents were not region specific, occurring in Central and South America, Oceania, Asia, the Middle East, and Africa.

After conflicts in Bosnia and Rwanda, international civil society organizations began to focus on the issue of humanitarian intervention. The International Commission on Intervention and State Sovereignty (ICISS) were the first to introduce the concept of "Responsibility to Protect" in 2001 with their independent report of the same name.[2] The intent of the Responsibility to Protect report was to encourage member states to work,

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[1] Gareth Evans, "The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All," 8 August 2009, Kindle Location 526, Brookings Institution Press.

[2]Gareth Evans, and Mohamed Sahnoun, *The responsibility to protect report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre, 2001.

prevent and respond to potential human rights catastrophes, or mass atrocities, in a more effective way.[3] To specify the narrowed scope of the document, ICISS defined "mass atrocities" to include only genocide, crimes against humanity, war crimes, and ethnic cleansing.

To work within the confines of the UN Charter, the previously established legal definitions of these mass atrocities were used, when possible. Genocide had been previously defined very specifically in the 1948 Genocide Convention, which was again used to establish the Rome Statute of the International Criminal Court in 1998.[4] [5] The Convention defined genocide as a number of violent acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.[6] The legal definitions used for both war crimes and crimes against humanity were directly borrowed from the Rome Statute. Both are similarly described as "grave breaches of the 1949 Geneva Convention" as a part of a "widespread and systematic attack on civilians."[7] [8]

Unlike Genocide, Crimes Against Humanity, and War Crimes, Ethnic Cleansing is not clearly legally defined. However, it is covered by an overlap of the previously established terms. Additionally, for the purpose of policy making decisions, it is not necessary to distinguish between any of the four crimes nor is it necessary to provide

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[3] Gareth Evans, "The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All," 8 August 2009, Kindle Location 707, Brookings Institution Press.

[4] "Convention on the Prevention and Punishment of the Crime of Genocide," *United Nations General Assembly,* 9 December 1948, Treaty Series, vol. 78, p. 277. See Appendix

[5] "Rome Statute of the International Criminal Court", (last amended 2010), 17 July 1998.

[6] "Convention on the Prevention and Punishment of the Crime of Genocide," *United Nations General Assembly,* 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277. See Appendix

[7] "Rome Statute of the International Criminal Court", Article 7(last amended 2010), 17 July 1998. See Appendix

[8] Ibid Article 8. See Appendix

labels for particular situations.[9] With established legal definitions, ICISS developed a clear model as to exactly what types of scenarios were within the scope and jurisdiction of the Responsibility to Protect.

The ICISS plan also developed expectations for specific "responsibilities" of sovereign states as well as an implementation plan for the worst case scenario of possible intervention. A new vision of sovereignty came into view that shifted focus away from an issue of control towards a responsibility of the sovereign state's government. The Primary Principle of the Responsibility to Protect puts the onus on the state; "State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself."[10] However, while ICISS emphasized the Primary Principle, the strongest opinions from the international community came in regards to the second principle, which "yielded the principle of nonintervention to the international responsibility to protect" in cases where the state is unwilling or unable to prevent serious harm due to war, insurgency, or repression.[11]

The other important contribution of the ICISS plan spelled out what a possible intervention would look like in practice and how it would be implemented. The international community had 3 "responsibilities." First and most important was the responsibility to *prevent* situations that might develop into mass atrocities through the use of "least intrusive measures" such as assistance in state building, remedying of

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[9] Gareth Evans, "The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All," 8 August 2009, Kindle Location 363, Brookings Institution Press.

[10] Gareth Evans, and Mohamed Sahnoun, *The responsibility to protect report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre, 2001.

[11] Ibid

grievances, and ensuring rule of law.[12] Second and most controversial was the responsibility to responsibility to *react* which could involve coercive measures such as sanctions, all the way up to military intervention in cases that met the threshold for legality and legitimacy in accordance with Articles 7 and 24 of the UN Charter.[13] [14] Finally, the 2001 Plan established the responsibility to *rebuild*, especially after military intervention, which included recovery, reconstruction, and reconciliation to address causes of harm that the intervention was intended to halt or prevent.[15]

Introduction of R2P to the United Nations

With momentum building behind the new approach to the maintenance of peace, Kofi Annan formed a High Level Panel on Threats, Challenges, and Change to further investigate the applicability of the Responsibility to Protect in the larger context of the United Nations General Assembly. The mission of the Panel was to develop clear and practical measures for ensuring effective collective action, based upon a rigorous analysis of future threats to peace and security.[16] While the document *A more secure world: Our shared responsibility* addressed a more broad context of security, including poverty, disease and environmental degradation, it "endorsed the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-

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[12]Gareth Evans, and Mohamed Sahnoun, *The responsibility to protect report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre, 2001.

[13] Ibid

[14] UN Charter

[15] Gareth Evans, "The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All," 8 August 2009, Kindle Location 925, Brookings Institution Press.

[16] A more secure world: Our shared responsibility

scale killing, ethnic cleansing or serious violations of humanitarian law which sovereign governments have proved powerless or unwilling to prevent."[17] To qualify the Security Council to make such decisions, the Panel also developed the 5 basic criteria for legitimacy, which aimed to not bypass the Security Council's authority, but rather to ensure the Security Council worked better than it previously had.[18]

The culmination of this emerging norm's momentum came in 2005 at the 60th session of the UN General Assembly; with 191 member states present, the GA unanimously adopted A/RES/60/1, officially adopting the Responsibility to Protect as a part of the World Summit Outcome Document.[19] However, the new document, A/RES/60/1, was not quite as aggressive as the ICISS Plan or even the plan presented by the Panel. To garner more support from the entire body, it had a strengthened focus on prevention and encouraged assistance be given to countries that were susceptible to internal stressors.[20] While it stressed the importance of measures other than military force, it still acknowledged the possibility through Chapter VII enforcement, but stopped short of adopting the rigid criteria authorizing military force.[21]

Implementation of R2P

After the conceptual guidelines of the Responsibility to Protect had been adopted, the Secretary General shifted the focus on to operationalizing and implementing the

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[17] *A more secure world: Our shared responsibility report of the Secretary General's High Level Panel on Threats, Challenges, and Change,* P. 106, 2004.
[18] Ibid 106-107
[19] "Resolution 60/1", *United Nations General Assembly,* October 24, 2005, http://unstats.un.org/unsd/mdg/Resources/Attach/Indicators/ares60_1_2005summit_eng.pdf.
[20] Gareth Evans, "The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All," 8 August 2009, Kindle Location 1011, Brookings Institution Press.
[21] Ibid 1017

Responsibility to Protect. In his Report from 2009, the Secretary General noted that the best way discourage states from the misuse of the Responsibility to Protect for inappropriate purposes was to develop fully the United Nations strategy, standards, processes, tools and practices for the responsibility to protect.[22] The ambitious efforts put forth in the Secretary General's Report do a great deal to elaborate on the structure and implementation of the Responsibility to Protect within the realm of the United Nations. The Report separates the principles of the Responsibility to Protect into 3 Pillars: Pillar 1 addresses the responsibilities of the states to protect their civilians, Pillar 2 addresses the use of international assistance in a non coercive measure, such as capacity building, and Pillar 3 addresses the threshold for a timely and decisive intervening response from the international community.[23]

The Secretary General expounded further on recommendations of how to implement the 3rd Pillar, which was without question the most controversial Pillar. Countries were initially reluctant to adopt the principles of the Responsibility to Protect and focused solely on the possibility of military intervention. The Secretary General attempted to ease the tension by expressing the strong preference for the use of Pillar 3's non-coercive and non-threatening measures, such as international mediation, peaceful dialogue, fact-finding missions and on-site investigations, before any consideration of coercive measures such as diplomatic sanctions.[24] However, the Report clarifies that an investigation is not a substitute for a "timely and decisive" protective measure, rather that

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[22] "Secretary-General's Report A/63/677", *United Nations General Assembly,* January 12, 2009, http://unispal.un.org/UNISPAL.NSF/0/EEF9DE1F698AA70D8525755100631D7C.

[23] Ibid

[24] Ibid Paragraphs 51& 52

it should be considered an initial step in ensuring the protection of a state's civilians.[25] In another effort to stress the inclusion of the General Assembly in the decision making process, the Report refers to Article 24 of the Charter to clarify that the Security Council has "primary", but not total, responsibility for the maintenance of peace and stability. Additionally the General assembly is empowered through Articles 11, 12, 14 and 15 to make recommendations for maintaining international peace and stability, especially under the "Uniting for Peace" procedure, when the 5 Permanent members lack unanimity on a specific situation.[26]

Since his first report of 2009, the topic has been revisited by the General Assembly annually with informal dialogue amongst a growing number of Member States. Each year the dialogue changes focus to develop a better understanding of all aspects of the Responsibility to Protect. Most recently, Member States addressed the breadth of available tools that fall under the 3rd pillar that are not necessarily coercive measures. Since this dialogue, many states have implemented domestic policies that strengthen their societies and help prevent the possibility of atrocity crimes.[27]

Ongoing/Recent Crises and Documented Pushback

With the Peace of Westphalia widely recognized as the start of sovereignty as it is known today, individual sovereign states in all hemispheres have repeatedly failed to prevent or halt genocides, war crimes, crimes against humanity, and acts of ethnic cleansing. Through the course of these atrocities, progress to prevent these tragedies has

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[25]"Secretary-General's Report A/63/677", *United Nations General Assembly,* January 12, 2009, http://unispal.un.org/UNISPAL.NSF/0/EEF9DE1F698AA70D8525755100631D7C.

[26] Ibid Paragraph 63

[27]"Secretary-General's Report A/67/929", *United Nations General Assembly,* July 9, 2013, http://responsibilitytoprotect.org/SG%20report%202013(1).pdf.

been slow, with little to no improvements until the last twenty years. Since the introduction of the Responsibility to Protect as a global norm, civil society organizations, the UN, and other regional actors have recommended or invoked the Responsibility to Protect in 16 different sovereign states. These situations are present in numerous different regions on three different continents. Peacekeeping missions have been authorized in the Central African Republic, Cote d'Ivoire, Cyprus, D.R. of the Congo, the Golan Heights, Kosovo, Lebanon, Liberia, Mali, Pakistan, Sudan, and South Sudan.[28] Each of these were approved in an effort to halt or prevent mass atrocities within the guidance of the principles of the Responsibility to Protect.

The use of these peacekeepers or other intervention based approaches to conflict resolution have not always successfully passed through the Security Council. Currently, much of civil society strongly desires the United Nations Security Council to become more involved in conflict regions such as Nigeria, Zimbabwe, and most recently Syria. While as recently as 2011, the Security Council made enormous progress towards adopting the Responsibility to Protect as a norm by passing S/RES/1973, regarding the widespread and systematic attacks on civilian populations in Libya. The resolution authorizes member states or regional organizations to take all necessary measures to protect the civilians in Libya.[29] With the intervention authorization being so broad and the language of the resolution so strong, several Security Council members abstained from voting in order to reinforce their support for the traditional definition state sovereignty.

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[28] "United Nations Peacekeeping Operations: Principles and Guidelines", *United Nations Department of Peacekeeping Operations,* January 2010, http://pbpu.unlb.org/pbps/Library/Capstone_Doctrine_ENG.pdf.

[29] "Security Council Resolution 1973", *United Nations Security Council,* March 17, 2011, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/268/39/PDF/N1126839.pdf?OpenElement.

Although the Security Council was able to make large and historical strides with regards to Libya, the most recent conflict in Syria has further divided the Security Council. Resolutions have been approved that still support the 3rd Pillar of the Responsibility to Protect. In 2012, S/RES/2042 acknowledged the widespread violations of human rights in Syria, but left the conflict resolution in the hands of the Syrian Government, aside from a team of 30 unarmed military observers to act as a liaison between the Security Council and the Syrian Government.[30] As the situation further deteriorated in 2014, the Security Council extended their efforts to embrace the 3rd Pillar of the Responsibility by providing exclusively humanitarian aid intervention across conflict borders into refugee camps without the approval of the Syrian Government.[31] While other proposals including military intervention have been proposed, China and Russia have signaled that they would not vote to approve such a measure as the threshold for military intervention has not been met and that state sovereignty must prevail until that point.

Conclusion

Since civil society began to develop the idea of a collective responsibility to protect civilians in the early 2000s, the international community has grown to become more and more favorable to the norm each year. However, the principles of the Responsibility to Protect have yet to be unanimously accepted and embraced by the General Assembly, which is evidence that there is still work to be done. As with every

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[30] "Security Council Resolution 2042", *United Nations Security Council,* April 14, 2012, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20SRES%202042.pdf.

[31] "Security Council Resolution 2165", *United Nations Security Council,* July 14, 2014, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2165.pdf.

issue arising within the General Assembly, the goal of consensus does not change despite differences of policies between Member States. Political gaps are regularly bridged and with respect to the Responsibility to Protect, the aim is no different. Considering the absence of full support, a significant number of Member States still feel alienated by the policy and remain concerned with the issue of state sovereignty. Substantial progress can be made through a thorough analysis of current policies, thoughtful discussion aimed at bridging political divides, and an open minded approach to the issues regarding the prevention of, reaction to and rebuilding after atrocities.

Questions to Consider

1. Has your country ever been involved in an act of outside intervention? Either receiving aid or providing assistance to other countries in turmoil.
2. Has your country ratified the Rome Statute? Are they a State Party to the ICC?
3. What is your country's voting record regarding active Peacekeeping Missions?
4. Is your voting bloc regularly involved in intervention efforts with the international community?

What is your country's stance on what constitutes a legal and necessary intervention?

Appendix

For the purpose of the Sixth Committee, legal definitions are of the utmost importance and each term pertaining to the Responsibility to Protect has a very narrow definition. This appendix provides the full legal definitions for the Atrocity Crimes covered by the Responsibility to Protect. These definitions were not established in the process of developing Responsibility to Protect policy, rather each definition was already in existence in the legal realm and had been accepted by the General Assembly. Additionally, the 5 Basic Criteria for Legitimacy is included to demonstrate the high standards approach taken by the Security Council, when considering the use of military intervention.

Article 2 of 1948 Genocide Convention

1. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

Rome Statute-Article 7: <u>Crimes against humanity</u>

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Rome Statute-Article 8: War Crimes

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.

5 Basic Criteria of Legitimacy as required by the Security Council

1) In considering whether to authorize or endorse the use of military force, the Security Council should always address - whatever other considerations it may take into account - at least the following five basic criteria of legitimacy:

(a) *Seriousness of threat.* Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force? In the case of internal threats, does it involve genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?

(b) *Proper purpose.* Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?

(c) *Lastresort.* Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?

(d) *Proportional means.* Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?

(e) *Balance of consequences.* Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?

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Measures to Eliminate International Terrorism

In the wake of the attacks on September 11, 2001, the world has seen a staggering increase in violent terrorist organizations, such as the Islamic State of Iraq and Syria (ISIS) and Hezbollah, whose very existence threaten the peace and stability of all Member States. Despite being widely acknowledged as one of the most pressing issues of the 21st century, there is no singular binding document that contains a standard for identifying and prosecuting terrorists under international law. There is also no singular, legal definition of the term terrorism. The lack of a comprehensive and universally agreed definition of terrorism has limited the implementation and effect of international efforts, such as the Declaration of Measures to Eliminate Terrorism, to stem the increase of terrorist activity. The lack of consistency under international standards severely inhibits the strength of the international community to act quickly and effectively in the face of a terrorist threat. Nevertheless, recent conflicts along with various national and international initiatives have accentuated the importance of developing, implementing and enforcing legal frameworks to prevent and combat terrorism.

In December of 1994, the General Assembly adopted Resolution 49/60, entitled the Declaration of Measures to Eliminate International Terrorism.[1] The Declaration explicitly excludes political, religious, and related considerations as justification for terrorist acts. It

[1] "Resolution 49/60. Measures to Eliminate International Terrorism," *United Nations,* accessed July 3rd, 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/49/60

explicitly notes that "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the consideration of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them." [2] In 1999, the General Assembly adopted the International Convention for the Suppression of the Financing of Terrorism, which mandated that States take appropriate domestic legal measures to track and halt the financing of terrorist groups by third parties, as well as promoting cooperation between police and appropriate judiciary bodies.[3] The General Assembly adopted the Convention on Transnational Organized Crime via A/RES/55/25 of 2000, which addresses organized crime as a whole. The Convention on Transnational Organized Crime includes measures aimed at strengthening legal institutions, and provides anti-money laundering and anti-corruption measures, and addresses human trafficking and arms trafficking as well.

Additionally, Security Council Resolution 1373 of 2001 provides a legal basis for action against those who give "any form of support, active or passive, to entities or persons involved in terrorist acts".[4] Resolution 1373 also established the Counter-Terrorism Committee (CTC) to oversee the progress of the implementation of the resolution by Member States.[5] Security Council Resolution 1540 (2004) addressed the connections between terrorism, non-state actors, and weapons of mass destruction (WMD) and imposed obligations on Member States to develop national legal framework to deal with threats to security as a result of these connections. States are required to prohibit terrorists from developing, acquiring, manufacturing, possessing,

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[2] "Resolution 49/60. Measures to Eliminate International Terrorism," *United Nations,* accessed July 3rd, 2014, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/49/60

[3] "International Convention for the Suppression of the Financing of Terrorism." United Nations General Assembly. UN News Center. December 9, 1999. Accessed October 30, 2014. http://www.un.org/law/cod/finterr.htm.

[4] "Security Council Unanimously Adopts Wide-Range Anti-Terrorism Resolution." UN News Center. September 28, 2001. Accessed October 30, 2014. http://www.un.org/press/en/2001/sc7158.doc.htm.

[5] "About the Counter-Terrorism Committee," *United Nations,* accessed July 13rd, 2013, http://www.un.org/en/sc/ctc/aboutus.html

transporting, transferring or using nuclear, chemical or biological weapons and their means of delivery, "in particular for terrorist purposes."[6]

In 2004, the Security Council passed Resolution 1566, presenting a partial explanation of a terrorist act as "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism..."[7] This partial definition is in accordance with previous sectoral conventions and treaties, especially the 1994 Declaration on Measures to Eliminate International Terrorism and the 1999 Terrorist Financing Convention..[8]

There is currently a comprehensive draft Convention on International Terrorism (CCIT) that is undergoing negotiations in Sixth Committee and the General Assembly's Ad hoc Committee.[9] The CCIT would define the term *terrorism* as:

> "Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:
>
> (a) Death or serious bodily injury to any person; or
>
> (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or

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[6] "Security Council Resolution 1540," *United Nations,* accessed July 10th, 2014, http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1540(2004)

[7] "Security Council Resolution 1566," *United Nations,* accessed July 13rd, 2014, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/542/82/PDF/N0454282.pdf?OpenElement

[8] United Nations General Assembly. "Measures to Eliminate International Terrorism." UN News Center. December 9, 1994. Accessed October 30, 2014. http://www.un.org/documents/ga/res/49/a49r060.htm.

[9] United Nations General Assembly. "United Nations Action to Counter Terrorism." UN News Center. January 1, 2014. Accessed October 30, 2014. http://www.un.org/en/aboutun/copyright/

(c) Damage to property, places, facilities, or systems referred to in paragraph 1b of this article, resulting or likely to result in major economic loss. when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act."[10]

However, discussion on the CCIT is currently deadlocked due to disagreements over the agreed language in the definition.[11] Negotiations have also stalled in the issue of scope due to disagreements over acts of resistance to foreign occupation and state terrorism. While some Member States proposed to exclude actions of legitimate freedom fighters, others insisted to include their acts in the scope.[12]

In addition to the Declaration, the CCIT, and the various Security Council resolutions mentioned above, the international community has adopted fourteen universal legal instruments and four amendments to prevent terrorist acts in specific sectors, including Amendments to the Convention on the Physical Protection of Nuclear Materials (2005), the Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005), and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.

As mentioned above, discussion over the legal definition of terrorism is hotly contested by various parties, especially in relation to legitimate and illegitimate non-state actors (i.e. freedom fighters). Discussions about the definition of terrorism must take into account the differences between legitimate and illegitimate non-state actors during an armed conflict. However, it should also be noted that national liberation movements often engage in violence

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[10] United Nations General Assembly, Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, Sixth session (28 January-1 February 2002), Annex II, art. 2.1.

[11] Christian Walter, "Defining Terrorism in National and International Law," *United Nations Office on Drugs and Crime,* accessed July 10th, 2014, https://www.unodc.org/tldb/bibliography/Biblio_Int_humanitarian_law_Walter_2003.pdf

[12] Mahmoud Hmoud, "Negotiating the Draft Comprehensive Convention on International Terrorism," *Roskilde University,* accessed July 10th, 2014, http://www.akira.ruc.dk/~fkt/filosofi/Artikler%20m.m/ICC/Hmoud%20-%20Negotiating%20the%20Draft%20Comprehensive%20Convention%20on%20International%20Terrorism.pdf

toward civilians, which can lead to accusations of terrorism.[13] In the event of such armed conflicts, other international laws relating to human rights and the protection thereof can be utilized in order to determine the legitimacy of the involved actors and orient the actions of the international community. For example, during the conflict in Libya in 2011, the Security Council adopted Resolutions 1970 and 1973 condemning the crimes of the Libyan government against its civilians and allowing for international intervention in Libyan territory for the protection of civilians under attack from a regime that was deemed to have lost its legitimacy.[14] Although the resolutions did not recognize the legitimacy of the opposing non-state parties, most notably Libya's National Transitional Council, these non-state actors were also not considered illegitimate. In fact, it has been argued that the National Transitional Council could be regarded as a national liberation force based on the International Humanitarian Law in reference to article 3 common to the four 1949 Geneva Conventions and the 1977 Additional Protocol to the Geneva Conventions.[15]

Also included in this differentiation between legitimate and illegitimate non-state actors are various separatist, nationalist and rebel organizations, such as the POLISARIO in Western Sahara, or the FLEC in Angola. Several organizations straddle this line as well; groups such as the PKK in the Kurdistan region, the ETA in Spain, and the IRA in Ireland have nationalist motives but use tactics similar to many outright terrorist groups. It is crucial to note, however, that while terrorism may not hold claim to an internationally recognized definition, terrorist groups share several characteristics that enable them to be labelled and treated as terrorist

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[13] Harvard International Review. "Definition of Terrorism and Self-Determination." December 20, 2008. Accessed October 30, 2014. http://hir.harvard.edu/archives/1757

[14] Walker, Joel. "Addressing Non-State Actors" 62:5. 1 November 2011. 11 October 2014

[15] Kubo Macak, and Noam Zamir, "The Applicability of International Humanitarian Law to the Conflict in Libya," *International Community Law Review,* accessed July 14th, 2014, http://www.academia.edu/2765950/K_Macak_and_N_Zamir_The_Applicability_of_International_Humanitarian_Law_to_the_Con_ict_in_Libya_2012_14_4_International_Community_Law_Review_403

organizations. Organization such as the FARC or Brazilian *favelas* gangs, engage in a multitude of criminal activity, including but not limited to drug trafficking, human trafficking, and fraud in order to generate revenue.[16] Most of these groups are involved in arms trafficking as well, establishing a symbiotic relationship between black markets and the militant groups they sell to.[17] The diverse activities that various terrorist groups partake in make it so that the numerous elements of international law that apply to such activities must be both strengthened and adapted. This is complicated due to lacking legal institutions in many areas where non-state actors operate, as well as the tendency of many organizations to ignore pre-established borders.[18]Furthermore, States, non-governmental organizations (NGOs), and other entities have continually contested the legal and humanitarian rights of members of terrorist organizations and other non-state actors, the various legal frameworks that apply to their criminal activities, and a multitude of other problems.

Additionally, expecting both States and terrorist organizations to adhere to general norms, rules, and laws governing conflicts and war has been extraordinarily problematic in the past. Therefore, to address non-state actors from a legal perspective, the international community must consider three general international level categories. States must compose a legal framework that will cover the diverse illegal activities of non-state actors. Additionally, States must find ways to induce non-state actors to abide by rules and norms of conflict. Finally, States must come to a consensus on how humanitarian and human rights laws apply to the members of violent non-state actors.

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[16] Williams, Paul. "Violent Non-State Actors and National and International Security." International Relations and Security Network, 2008.
[17] Ibid.
[18] Walker, Joel. "Addressing Non-State Actors" 62:5. 1 November 2011. 11 October 2014

Despite the numerous options available, the most imperative non-definitional issue when suppressing the rise of terrorism is enforcement and cooperation at the national level, as some states lack the capability or will to implement many recommendations, both from UN bodies and non-governmental organizations. For example, the International Criminal Court (ICC) is a legal body reserved for the most serious of offences, but cannot be used to easily limit the activities of non-state actors. Established by the Rome Statute and entering force in 2002, the ICC has an official relationship agreement with the United Nations[19], and provides a court of last resort if lower jurisdictions are unable (or in some cases unwilling) to prosecute offenders. The ICC has the jurisdiction to prosecute individuals for crimes against humanity, war crimes, and crimes of genocide however, terrorism does not definitively nor consistently fall into those three categories. As such, prosecuting acts of terror in the ICC proves a more difficult task than expected.

The legal status of separatist and secessionist groups is a hotly contested topic, and one with little in the way of clear answers. The International Covenant on Civil and Political Rights, as well as the Charter of the United Nations itself, guarantee self-determination of peoples, which can be seen as a partial justification for nationalist and secessionist movements.[20] Additionally, the International Court of Justice (ICJ) recognizes this as a universally binding norm of international law.[21] Furthermore, the right to secede from an existing state is also similarly questionable – it is neither specifically granted nor denied, and while it may be held as

[19] Beytenbrod, Steve. "Note: Defining Aggression: An Opportunity to Curtail the Criminal Activities of Non-State Actors." Brooklyn Journal of International Law, 2011.
[20] Higgins, Noelle. "International Humanitarian Law and the Promotion of Human Security: The Regulation of Armed Non-State Actors: Promoting the Application of the Laws of War to Conflicts Involving National Liberation Movements". Human Rights Brief, 2009.
[21] Ibid

legitimate in certain circumstances, this legitimacy is implicit rather than explicit.[22] If the right does arise, it does so when the normal routes to self-determination through existing political channels have been blocked by the existing parent government.[23] In conjunction with this, if the ability to exercise the right of self-determination through non-violent channels is blocked, then the use of force seems to be at least implicitly accepted by the international community, even if it is not an explicitly defined right. The current status quo seems to be that certain instances of violent non-state actors, in the case of secessionist groups, can be justified in their use of force as long as it can be characterized as a last resort. With that said, however, these justifications are often contested, leaving many such groups as having a questionable status under international law.

Discrepancies on the nature of terrorism and the accountability of terrorists act have raised controversies in most discussions about counter-terrorism measures and have stalled the draft comprehensive convention for years. Nevertheless, instead of continuing the ad hoc approach of the CTC and omitting definition, Member States are encouraged to create a uniform, universally accepted definition of terrorism, which entails the differentiation of terrorism and other related forms of violence, as well as the differences between legitimate and illegitimate non-state actors in armed conflicts. The existence of such definition will be substantial in determining perpetrators, the gravity of their acts, and levels of sanctions from appropriate judicial powers, therefore further strengthening the legal framework against terrorism.

While working toward a general consensus on comprehensive measures and on a final, binding, and comprehensive definition of terrorists and terrorist acts, a sectoral, narrow approach

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[22]The North Atlantic Treaty Organization. "The Kosovo Crisis in an International Law Perspective: Self Determination, Territorial Integrity, and the NATO Intervention." June 30, 2001. Accessed October 30, 2014. http://www.nato.int/acad/fellow/99-01/kumbaro.pdf.

[23] Ibid.

should also be utilized with respect to existing legal instruments. As new forms of technology continually emerge and are often subjected to criminal misuse by terrorist networks, it is important to constantly revise and amend the existing legislative framework against terrorism, particularly the older sectoral conventions such as the 1988 Airport Protocol or the 1988 Maritime Convention.[24] The possibility of new protocols, conventions, or amendments to previous conventions could also be subject to discussion. It is only through consensus and cooperation on these revisions and updates that the international community can develop a proper and effective international legal framework to combat terrorism that respects basic legal rights while, at the same time, adequately addressing the legal challenges to actively addressing the criminal acts of terrorists.

Questions to Consider

1. Does your country have a legal definition of terrorism? If yes, then what is it? If no, then why?
2. What steps has your State taken to implement instruments such as SC Resolutions 1373 and 1540?
3. Is your State a party to the various Conventions relating to terrorism, such as the Convention Against Transnational Organized Crime and the International Convention for the Suppression of the Financing of Terrorism? If not, why not?
4. Does your State distinguish between various types of non-state actors, i.e. between terrorists and secessionist/liberation movements? Does your State have any formal or informal diplomatic relations with any non-state actors of either category?
5. How does your State view the ICC's role in prosecuting terrorists? Is there a role for the ICC at all?

[24] Walker, Joel. "Addressing Non-State Actors" 62:5. 1 November 2011. 11 October 2014

6. What rights do those suspected of terrorist acts have under the current international law framework? In what ways does this need to be addressed when updating that framework?

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"Security Council Resolution 1970 (2011)." United Nations. Accessed July 14th, 2014. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/245/58/PDF/N1124558.pdf?OpenElement.

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Protection of Civilians in Armed Conflict

Protection of civilians in armed conflict has become increasingly more difficult over the last century. Despite significant advances within the international community with regard to the development of binding standards regarding conduct in conflict zones, civilians are still subject to danger and violations of basic human rights from new and old threats alike. This is especially true given that many modern conflicts involve non-state actors of various kinds; as such, modern battlefields are often residential areas and urban centers, putting civilians at increased risk of physical harm, loss of livelihood, or predation by combatants. Similarly, given the new dynamics of modern conflicts, States themselves have increasingly begun to sidestep elements of key international standards for conduct in conflicts. By analyzing the frameworks of current International Humanitarian Law, and acknowledging the new threats posed by modern technologies and tactics, new standards can be set to protect civilians and guarantee their inalienable human rights.

International Humanitarian Law, otherwise known as the law of armed conflict, is a set of treaties and conventions that seek to protect civilians and noncombatants, as well as regulate the means and ways of combatants fighting conflicts. These laws are broken into two streams of laws known colloquially as the Law of Geneva, and the law of the Hague. The law of the Hague

pertains to combatants and the methods and conduct of combat, whereas the Law of Geneva constitutes binding norms pertaining to treatment of civilians and victims of wars, and the obligations that combatants have towards them.[1] The Law of Geneva comes primarily from the Geneva Conventions; the Conventions collectively comprise of four treaties, and three additional protocols, that establish the standards of international laws and regulations for the humanitarian treatment of civilians in war. Before the Second World War, the Geneva Conventions protected only wounded, sick, shipwrecked or captured combatants, but during the Second World War, civilians became the the target of all manner of excessive violence, such as mass extermination, indiscriminate attack, hostage-taking, and pillage of personal belongings.

The Fourth Geneva convention was adopted on the 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War.[2] While the first three Conventions adopted were crucial developments in limiting damage to combatants and those in the area around combatants, The Fourth Convention represented a great stride towards protection of civilians in that it protects "persons taking no active part in the hostilities," and "who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals" as outlined in articles 3 and 4.[3] It is of further importance to note that article 3 specifically applies to conflicts "not of an international character," or in other words, is also applicable to internal conflicts. The Fourth Convention gives special attention to civilians that are sick, injured, or are expectant mothers as outlined in article 16, and outlines the protection of civilians in hospitals and hospital staff, as well as protection for land sea and air

[1] "Law of Geneva and law of the Hague", *ICRC*, 2014, https://www.icrc.org/eng/resources/documents/misc/57jrlq.htm.
[2] "Convention (IV) relative to the Protection of Civilian Persons in Time of War", *ICRC,* 1949, https://www.icrc.org/ihl/INTRO/380.
[3] Ibid.

transports as noted in articles 18 through 22.[4] Articles 24 through 34 deal with protection of civilians rights, such as disallowing hostage taking or torture of civilians, as well as not allowing the coercion of civilians to disclose information. Articles 35 through 46 extend protection to nationals of a third state that, while not taking part in hostilities, find themselves in a conflict area. Articles 14 and 15 specifically give protection to neutral zones in which "Any Party to the conflict may, either direct or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction".[5] In addition to the Fourth Geneva Convention, a second Additional Protocol, adopted by the international community in 1977, further extended protections to various people not specifically mentioned in the previous conventions, in particular with the intent of clarifying the rights of persons involved in, and the obligations of belligerents involved in, non-international conflicts.[6] Article 2 of the 1977 Protocol II reaffirms that humanitarian protections and rights apply to all civilians in conflicts "regardless of any adverse distinction founded by race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status".[7] Further, the protocol looks to protect civilian objects vital to their survival, such as food, stores, live stocks, and water, as well as religious and cultural objects as outlined in articles 14 and 16.[8]

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[4] Ibid.
[5] "Convention (IV) relative to the Protection of Civilian Persons in Time of War", *ICRC,* 1949, https://www.icrc.org/ihl/INTRO/380.
[6] "Protocol Additional to the Geneva Conventions of 12 August 1949…" *ICRC*, 1977, https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AA0C5BCBAB5C4A85C12563CD002D6D09&action=openDocument.
[7] Ibid.
[8] Ibid.

Aside from the Conventions themselves, the international community - through the United Nations system - has repeatedly reaffirmed these principles in numerous ways, and has sought to address the numerous issues relating to their implementation. In 2006, the General Assembly adopted Resolution 60/147, which contains a series of recommendations and guidelines regarding the right of redress and remedy in the case of violations of both human rights law and humanitarian law.[9] The annex further indicates that states are obligated under international law to incorporate elements of international humanitarian law, including but not limited to the Geneva Conventions, their Protocols, and the Hague Convention, into their domestic statutes.[10]

Despite the comprehensive set of protections and standards delineated by the Geneva Conventions, their Protocols, and the Hague Convention, there are still numerous issues with the application of these norms by various States. When confronted with situations in which the Conventions should be applied, many States cite various grounds on which to assert that the Conventions are not applicable not applicable to the conflict in question. Further, the unclear legal status of territories, claims to rights over such territories, annexation or reclaiming of territory, and other scenarios can lead to situations where it is unclear as to which set of standards in fact apply, giving States additional room to subvert or sidestep various obligations. In recent years, additional doctrines for ignoring elements of the Conventions have been devised, including but not limited to: combating "unlawful combatants", police actions, and formal interventions in ongoing foreign conflicts.[11] Because of these various doctrines for refusal, the elements of International Humanitarian Law are not enforced as they should be, thus leading to

[9] "Basic Principles and Guidelines on the Right to a Remedy…" *UNHCR Refworld*. March 21 2006. http://www.refworld.org/docid/4721cb942.html.
[10] Ibid.
[11] "General problems in implementing the Fourth Geneva Convention", *ICRC*, October 27, 1998, https://www.icrc.org/eng/resources/documents/misc/57jpf6.htm.

conflicts in which repeated attacks against, and predation of, civilian persons occur with alarming frequency.

This also leads to situations in which humanitarian workers - whether from State entities, non-governmental organizations, or affiliated with the United Nations system - are also less protected than they should be. The First Geneva Convention laid out rules to protect wounded soldiers and medics, and to the creation of relief societies in each country. These bodies became known as Red Cross Societies, referring to the universal emblem adopted in the Conventions to identify and protect medical units. The International Committee of the Red Cross (ICRC), established in 1863 is one of many bodies which works to provide humanitarian help for people affected by conflict and armed violence, as well as promoting International Humanitarian Law.[12] As a third party giving assistance to civilians caught in conflicts, the ICRC are to be given protection and allowed access to civilians to complete their work as well as protection for civilians not taking part in hostilities. However, on numerous occasions the ICRC and other relief organizations have either not been allowed entrance into zones or areas that require humanitarian assistance, or have been put in threat of imminent harm for "helping enemy combatants".[13]

Articles 14 and 15 specifically give protection to neutral zones in which "Any Party to the conflict may, either direct or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without

[12] "About the International Committee of the Red Cross", *ICRC*, October 29, 2010, https://www.icrc.org/eng/who-we-are/overview-who-we-are.htm.
[13] "General problems in implementing the Fourth Geneva Convention", *ICRC*, October 27, 1998, https://www.icrc.org/eng/resources/documents/misc/57jpf6.htm.

distinction".[14] However, many states do not acknowledge these claims because they claim the conflict is not a conflict, but a police situation occurring within their State; alternately, it may not be a State entity committing the offenses directly, but rather entities such as private defense contractors instead. The most high-profile instances where international humanitarian law fails to be applied, however, is in the case of occupations. An occupation, in international law, is defined thusly: "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised".[15] However, in most cases, occupied territory is treated more as annexed territory, and thus a state refuses to abide by its obligations. This can be seen in Israel's occupation of the West Bank since 1967.[16] The West Bank previously belonged to Jordan, and a group of people known collectively as Palestinians still live in the West Bank, where currently 2.6 million Palestinians live.[17] These Palestinians now live in an occupied state in which humanitarian laws should apply. The United Nations Security Council affirmed this in 1967 when it adopted Resolution 237, which specifically noted the applicability of the Fourth Geneva Convention.[18]

Despite this, Israel has on various occasions failed to implement, or outright ignored, various elements of international humanitarian law, including allowing torture, and unlawful seizure of land that is vital to the people of the West Bank. The Security Council has repeatedly noted Israel's reluctance to properly apply Geneva Conventions protections to individuals in the

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[14] "General problems in implementing the Fourth Geneva Convention", *ICRC*, October 27, 1998, https://www.icrc.org/eng/resources/documents/misc/57jpf6.htm.
[15] Ibid.
[16] "Primer on Palestine, Israel, and the Arab-Israeli Conflict", *Middle East Research Project*, 2014, http://www.merip.org/primer-palestine-israel-arab-israeli-conflict-new.
[17] Ibid.
[18] "Resolution 237", *UNISPAL*, June 14 1967, http://unispal.un.org/unispal.nsf/0/E02B4F9D23B2EFF3852560C3005CB95A.

West Bank or Gaza, including but not limited to Resolution 465 of 1980, Resolution 681 of 1990, Resolution 1322 of 2000, Resolution 1544 of 2004, and a host of others.[19] In the Second Additional Protocol to the Geneva Convention, articles 14 forbids occupying forces from "prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works".[20] However, Israel has seized land previously used by Palestinians and has given the land to Israeli citizens instead.[21] In addition, Palestinians living in Israeli controlled areas are frequently subjected to confinement, mandatory curfews, closure of areas of cities, and checkpoint stops.[22]

In the Third Geneva Convention, article 43 states that the population can be broken down into two categories: civilian or combatant. Combatants are members of armed forces, or volunteer groups operating under commands that would contribute to armed conflict. A civilian is a person not partaking in a conflict in any way; if arms are taken up by civilians, in defense of their territory or otherwise, they become combatants. However, a grey area has arisen and given rise to a separate legal term used by some States: "unlawful combatants". The term unlawful combatants has a very broad definition and is used however a state deems necessary, but a loose definition of unlawful combatants is usually defined as combatants who refuse to follow the International Humanitarian Law to gain a military advantage over the enemy or combatants wearing civilian clothing such as spies and saboteurs or combatants who use civilians as

[19] Jeremy Hammond, "Rogue State: Israeli Violations of UN Security Council Resolutions", *Foreign Policy Journal*, January 27, 2010, http://www.foreignpolicyjournal.com/2010/01/27/rogue-state-israeli-violations-of-u-n-security-council-resolutions/view-all/.
[20] "Protocol Additional to the Geneva Conventions of 12 August 1949…" *ICRC*, 1977, https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AA0C5BCBAB5C4A85C12563CD002D6D09&action=openDocument.
[21] "Primer on Palestine, Israel, and the Arab-Israeli Conflict", *Middle East Research Project*, 2014, http://www.merip.org/primer-palestine-israel-arab-israeli-conflict-new.
[22] "Humiliation at the checkpoints", *Haaretz*, July 8, 2003, http://www.haaretz.com/print-edition/opinion/humiliation-at-the-checkpoints-1.93502.

shields.[23] Because of these tactics, many countries refuse to give such persons any status recognized under the Geneva Conventions or its protocols when dealing with persons termed unlawful combatants.[24] Many States claim that article 4 of the Fourth Geneva Convention allows for interpretation of unlawful combatants; the article reads as follows: "Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are."[25] However, other articles, such as article 5 of the Fourth Geneva Convention and Article 45 of the First Protocol, imply or provide for protection for the majority of those ordinarily classified as "unlawful combatants", thus making the exact protections afforded to unlawful combatants very difficult to determine.[26]

The trend towards the use of the term "unlawful combatants", or similar terms, is most clear with respect to members of terrorist organizations or other non-state actors. Groups such as Al-Qaeda, Hamas, the FARC, and others, actively fight in armed conflicts against state actors. However, many in their ranks are not nationals of the state in which they are fighting, and come from other states who have diplomatic ties with the state in conflict but do not openly engage in hostilities. These problems are best represented in the current issue with the Islamic State (IS), known variously as ISIS, ISIL, or Da'esh. IS began as an al-Qaeda offshoot involved in the ongoing fighting in Syria, with nationals from as many as 80 different countries, then ultimately

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[23] Rene Vark, "The Status and Protection of Unlawful Combatants", *Juridica International*, 2005, http://www.juridicainternational.eu/public/pdf/ji_2005_1_191.pdf.
[24] Ibid.
[25] "Convention (IV) relative to the Protection of Civilian Persons in Time of War", *ICRC,* 1949, https://www.icrc.org/ihl/INTRO/380.
[26] Rene Vark, "The Status and Protection of Unlawful Combatants", *Juridica International*, 2005, http://www.juridicainternational.eu/public/pdf/ji_2005_1_191.pdf.

began claiming land with the goal of declaring a new Caliphate.[27] While IS has attempted to portray itself as a state, capable of providing services to people in the territory it claims, it is not a party to the elements of international humanitarian law, but those that fight for it are also nationals of other states that are parties to the Geneva Conventions and similar instruments. This makes it extremely difficult to determine what standards and obligations apply, both to states fighting IS, and to IS itself.

This dilemma is evident in numerous conflicts involving non-state actors. In Colombia, for example, the decades-long conflict between the government and the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) has seen numerous violations of international humanitarian law on both sides over the years, with civilians sympathetic to both sides of the conflict being victimized by both the FARC and state entities via targeted killings, looting, torture, and numerous other violations.[28] Similarly, with respect to the conflict in the State of Israel and the Occupied Territories, Hamas has routinely targeted civilians via suicide bombings, while Israel has used significant force against Palestinian non-combatants as well.[29] Violations of international humanitarian law thus unfortunately characterize many internal conflicts, despite the applicability of the Second Protocol to the Geneva Conventions.

In addition to unlawful combatants, private military and security companies (PMSCs) have seen an increase in their use in modern conflicts. PMSCs are routinely used for base

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[27] Somini Sengupta, "Nations Trying to Stop Their Citizens From Going to Middle East to Fight For ISIS", *New York Times*, September 12, 2014, http://www.nytimes.com/2014/09/13/world/middleeast/isis-recruits-prompt-laws-against-foreign-fighters.html?_r=0.

[28] "War Without Quarter: Colombia and International Humanitarian Law", *Human Rights Watch*, 187:7, October 1, 1998, http://www.refworld.org/docid/3ae6a7e30.html.

[29] "Primer on Palestine, Israel, and the Arab-Israeli Conflict", *Middle East Research Project*, 2014, http://www.merip.org/primer-palestine-israel-arab-israeli-conflict-new.

defense, administration of detention facilities, and similar duties.[30] Because PMSCs do not follow the normal military chain of command, oversight of PMSCs is a significant problem, and there have been reports of private contractors taking part in the ill-treatment of detainees on behalf of state actors.[31] Not only have states been hiring PMSCs, but private companies have also contracted with such organizations to defend facilities in conflict zones. Thus, cases of PMSCs using excessive force on behalf of private firms is also a concern.[32] International humanitarian law covers the activities of PMSCs in a *de jure* sense, as outlined in the Montreaux Document adopted by the International Committee of the Red Cross in 2008.[33] However, in practice, the lack of oversight combined with the deniability afforded by the use of a non-state entity has made it difficult for states to hold PMSCs accountable for violations of international humanitarian law.

The Hague Conventions, the Geneva Conventions, and their additional protocols are the foundation for international humanitarian law, and are the primary protections for civilians in conflict. They set basic protection for civilians that apply to all people regardless whatever subcategories they may belong to. However, even with these instruments in place, many civilians are still in great danger from conflicts of all sorts, and from State and non-State entities alike. By acknowledging the weak points in the current international humanitarian law regime such as those relating to occupied territory and police actions, as well as responding to emerging factors such as PMSCs and the use of the term "unlawful combatants", the international community can

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[30] "A humanitarian perspective on the privatization of warfare", *ICRC*, September 14, 2012, https://www.icrc.org/eng/resources/documents/statement/2012/privatization-war-statement-2012-09-06.htm.
[31] Ibid.
[32] Ibid.
[33] "Montreaux Document", *ICRC*, September 17 2008, https://www.icrc.org/eng/resources/documents/publication/p0996.htm.

thus strengthen protections for all persons involved in conflict and perhaps prevent future violations of the principles of respect for human life and human rights.

Questions to Consider:

1. Is your State a party to the Geneva Conventions and their Protocols, as well as the Hague conventions? Did your State ratify them with reservations or in total? If so, why?
2. What steps, in terms of military doctrine, has your State undertaken in order to ensure that its armed forces respect the letter and spirit of the Conventions?
3. In cases where a State commits acts that violate international humanitarian law, how does your State believe such cases should be handled? What issues does your State see with the enforcement of such law?
4. What is the best method to ensure that non-combatants are protected on both sides of a given conflict?
5. What protections does your State provide for "unlawful combatants"? How should "unlawful combatants" be treated under international humanitarian law?
6. What obligations do non-state actors have with respect to international humanitarian law? Can IHL be binding on non-state actors?
7. With regard to state-sponsored actors such as private military contractors, what protections do they have? What obligations do they have? Is a State responsible for the activities of such groups, and if so, what is the remedy for if PMCs violate international humanitarian law?

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United Nations High Commissioner for Refugees

UNHCR: Statelessness and the Right to a Nationality

Definitions, Mandates, and Numbers

"Nationality provides people with a sense of identity and is key to full participation in society."[1] Lack of a nationality excludes people from participating in politics and may lead to various forms of discrimination – lack of a permanent residence, limited access to educational opportunities and health services, and loss of freedom of movement and the right to travel.[2] It also may have a negative impact on the communities in which such persons live. Yet despite these problems, millions of people each year find themselves without a nationality – they are stateless.

The 1954 Convention relating to the Status of Stateless Persons defines a stateless person as "a person who is not considered as a national by any State under the operation of its law."[3] The 1954 Convention was complemented by the 1961 Convention on the Reduction of Statelessness, which entered into force on 13 December 1975. Under Article 11 of the 1961 Convention, "the Contracting States shall promote the establishment within the framework of the United Nations, . . . of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate

[1] "Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness," UNHCR publication 2010, p.2.
[2] Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness," UNHCR publication 2010, p.2.
[3] 1954 Convention relating to the Status of Stateless Persons, Article 1, paragraph 1.

authority.[4] In General Assembly resolutions 3274 (XXIX) of 10 December 1974 and 31/36 of 30 November 1976, the United Nations General Assembly designated the Office of the United Nations High Commissioner for Refugees (UNHCR) as that body.[5] Subsequently, in GA resolution 50/152 of 21 December 1995, the GA "entrusted UNHCR with a global mandate to identify, prevent and reduce statelessness and protect stateless persons, specifically requesting that the Office 'provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation.'"[6] Additional Executive Committee Conclusions and General Assembly resolutions have identified four areas the Office is authorized to act: "identification, prevention and reduction of statelessness and the protection of stateless persons."[7] Regional treaties also recognize the right to a nationality and supplement UNHCR's role by establishing further obligations of States. These include the African Charter on the Rights of the Child, the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights, the European Convention on Human Rights, the Arab Charter on Human Rights, and the Organization of Islamic Cooperation's (OIC) Covenant on the Rights of the Child in Islam.[8]

UNHCR has exercised its mandate with mixed results. There were few accessions to the two conventions for several decades. For instance, through 1994 there were only 41 accessions to the 1954 Convention and only 17 accessions to the 1961 Convention. However, advocacy efforts, including a special High

[4] 1961 Convention on the Reduction of Statelessness, Article 11.
[5] Noted in UNHCR's publication on the Convention on the Reduction of Statelessness, February 2011, p. 4; GA resolutions 3274 (XXIX) of 10 December 1974 and 31/36 of 30 November 1976.
[6] Quoted in UNHCR's publication on the Convention on the Reduction of Statelessness, February 2011, p. 4; GA resolution 50/152 of 21 December 1995.
[7] UNHCR, The State of the World's Refugees: In Search of Solidarity, 2012, p. 92.
[8] UNHCR, The State of the World's Refugees: In Search of Solidarity, 2012, p. 96.

Commissioner's Dialogue on Stateless Persons in 2011 to commemorate the 50th anniversary of the 1961 Convention, and greater awareness of the problem have led to numerous accessions in the last two decades. There are now 83 States Parties to the 1954 Convention and 59 States Parties to the 1961 Convention;[9] 24 States have acceded to one or both Conventions since 2011.[10]

But accession does not solve the problems presented by stateless persons or overcome the challenges that they face. UNHCR estimates that there are approximately 3,469,000 documented stateless persons and that there are probably close to 12 million stateless persons overall.[11] This disparity between recorded and estimated numbers highlights one of the major problems facing UNHCR and the international community – the difficulty of determining who is stateless and documenting them. In some cases stateless persons are reluctant to consult with or report to governments or UN officials for fear of deportation. In other cases, governments themselves do not have adequate documentation procedures. And since stateless people do not always live in camps, it is also difficult for UNHCR to document them as well. Moreover, there are legal issues regarding citizenship status that may lead to large numbers of former citizens being deprived of citizenship, for instance in the case of succession states in the former Soviet Union or the deprivation of citizenship for some Palestinians living in Jordan.[12] Some states do not regard these people as stateless. UNHCR reports that it only has accurate data on stateless persons from 75 out of the 94 countries known to have populations of stateless

[9] General Assembly Resolution 68/141, operative paragraph 8. In addition four States (Belgium, Gambia, Georgia, and Paraguay) acceded to one or both Conventions in July 2014, which brings the totals to 83 and 59 respectively.
[10] UNHCR Briefing Note – I July 2014.
[11] UNHCR, Global Trends 2013, study released 20 June 2014, p. 49; see also "Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness," UNHCR publication 2010, p.1.
[12] Human Rights Watch, "Stateless Again: Palestinian-Origin Jordanians Deprived of their Nationality, 2010 report.

people.[13] And as new complex emergencies arise that may result in more statelessness, the numbers of stateless as well as the problems of identifying them will continue to grow.

In a 2010 survey at the end of the year UNHCR estimated that the largest stateless populations (over 100,000) where data were available were in Estonia (100,000), Iraq (120,000), Latvia (326,000, though Latvia referred to them as non-citizens), Myanmar (797,000 residents of the northern Rakhine State), Nepal (800,000 refugees from Bhutan whose return Bhutan refuses to accept), Syria (300,000), and Thailand (542,000).[14] However, there are no data for such countries as Bhutan, the Democratic Republic of the Congo, Eritrea, Ethiopia, India, Indonesia, Lebanon, Pakistan, and Sri Lanka,[15] many of whom are likely to have fairly large numbers of undocumented stateless persons. In the case of the Bidoon (stateless people in the Gulf States), their nomadic life style and lack of legal status leaves them stateless, but because of their lifestyle, they are very difficult to document.[16] Finally, there are national groups such as the Kurds or Palestinians, some of whose members seek to have their own state, where the total numbers are not available but most likely exceed several hundred thousand or in the case of the Palestinians a few million.[17]

The situation regarding the Palestinian population is especially complex from a legal standpoint. Some Palestinians have been provided with documentation by neighboring states, but the documentation falls short of full citizenship. Others have been granted citizenship status by the Palestinian Authority that now also has observer

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[13] UNHCR, Global Trends 2013, study released 20 June 2014, p. 31.

[14] UNHCR Global Trends 2010, Table 7, Stateless Persons. Earlier groups whose status has been resolved for the most part include the Hill Tamils in Sri Lanka and Nubians in Kenya. See UNHCR, The State of the World's Refugees: In Search of Solidarity, 2012, p. 100.

[15] UNHCR Global Trends 2010, Table 7, Stateless Persons.

[16] UNHCR, The State of the World's Refugees: In Search of Solidarity, 2012, p. 102.

[17] For a general brief discussion of "The challenges of counting stateless people" see UNHCR, The State of the World's Refugees: In Search of Solidarity, 2012, Box4-4, pp. 108-109.

state representation in the United Nations. But whether these actions or forms of documentation constitute full citizenship status, which would mean they would not qualify as stateless persons, is still open to debate. Regardless of their current status, since in terms of humanitarian assistance they come under the auspices and mandate of the United Nations Relief Works Agency (UNRWA) in Palestine, including Gaza, UNHCR does not deal with them as stateless persons and their situation would not come under the authority of UNHCR or its Executive Committee. Thus, resolutions addressing their situation would not be appropriate for this session of MUN.[18] However, if Palestinians have sought refuge beyond areas of UNWRA's operations (Jordan, Syria, Lebanon the West Bank and Gaza), they could be considered under UNHCR's stateless mandate if they are stateless according to the international definition.[19]

Almost equally alarming as the large numbers of stateless persons who can be identified, and the even larger number who cannot, is the fact that UNHCR itself is only providing direct assistance to approximately 200,000 of the 3.4 million,[20] meaning that any support for stateless people must come from governments who in many cases are not equipped or are unwilling to provide sufficient support for them.

The Root Causes of Statelessness

The root causes of statelessness are similar to those for displacement of people in general – natural disasters, conflict, human rights violations, poverty. But statelessness may also result from state succession. This includes either the coming into being of new states with somewhat artificial borders that cross natural ethnic

[18] Interview with UNHCR staff focal point on the Middle East; see also Abbas Shiblak, "Stateless Palestinians," Forced Migration Review, No. 26, pp. 8-9 and "Stateless Again" Human Rights Watch Report, January 2010, www.hrw.org.
[19] "Stateless Palestinians," Forced Migration Review, No. 26, p. 9.
[20] UNHCR, Global Trends 2010, Table 7, Stateless Persons.

boundaries as was the case in the Middle East, or where new states come into being following the collapse of a predecessor state as witnessed after the demise of the Soviet Union or the break-up of the former Yugoslavia.

Regarding conflict and/or human rights violations, in the case of refugees, in particular refugee children, those children born in the recipient or host country may not be granted citizenship by that country. Yet the country of origin from which their parents fled may also deny the child citizenship since she was not born in that country. In protracted situations where these children reach adulthood in the refugee camp, they still may not have obtained a nationality unless the host country or country of origin is willing to grant citizenship. These situations highlight the two major criteria upon which citizenship is granted (aside from a naturalization process), *jus soli* ("*law of the soil*") and *jus sanguinis ("law of blood")*.[21] In the former case, states grant citizenship automatically to anyone born on the state's territory; in the latter, states grant citizenship based on blood ties. It is up to the state to determine which criterion(a) to use but many refugee children born outside their parents' home country would not qualify under either criterion.

In addition, the parents themselves may have become stateless if they renounced their previous nationality, due to the fear of persecution if they were to return home, without gaining citizenship in a different country. Another family related cause of statelessness occurs in those States that discriminate against women, in this case mothers.[22] In some states, mothers may not pass their nationality on to their children. Thus, if the father has died or there is a divorce, a child who would have obtained her father's nationality at a designated age, may no longer be able to

[21] See UNHCR, The State of the World's Refugees: In Search of Solidarity, 2012, p. 99.

[22] A March 2012 UNHCR survey found that "40 countries still discriminate against women with respect to these elements." UNHCR, The State of the World's Refugees: In Search of Solidarity, 2012, p. 106.

obtain that nationality and will not be granted the nationality of her mother.[23]

In terms of the first form of state succession referred to above, Laura van Waas, in a report prepared for UNHCR entitled "The situation of stateless persons in the Middle East and North Africa," a region UNHCR refers to as MENA, suggests that state succession was one of the primary reasons that led to several hundred thousand Bidoon in the Gulf Region and over 200,000 Kurds in Syria and Lebanon becoming stateless.[24] However, several countries, including Egypt, Algeria, Iraq, Morocco, Tunisia, Indonesia, Sierra Leone, Bangladesh, Zimbabwe and Kenya, have adopted national laws "to grant women equal rights to pass their nationalities on to their children."[25]

In the case of the collapse of a state or changes in boundaries, examples from the former Soviet Union are instructive. Two of the newly independent Baltic states (Estonia and Latvia) enacted citizenship laws that discriminated against people of Russian descent, many of whom had lived in one of those Republics for decades prior to the collapse of the Soviet Union. The new citizenship laws required that these former citizens pass a language exam in order to qualify for citizenship, a criterion that was applied to everyone, but one that was particularly hard to meet for many older Russians since they had not learned the native language during their time in the Republic when it was still a part of the USSR.[26]

In addition, the General Assembly addressed this issue through a draft

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[23] "Helping the World's Stateless People," UNHCR publication 2011, p.4.

[24] Laura van Waas, "The situation of stateless people in the Middle East and North Africa," report prepared for UNHCR, October 2010, p. 2.

[25] UNHCR, The State of the World's Refugees: In Search of Solidarity, 2012, p. 106.

[26] Based in part on interview with UNHCR delegate to the General Assembly's Third Committee. The Russian Federation regularly raises concerns about the treatment of these people during debates on human rights in the Third Committee. For an analysis of some of the legal issues involved as well as those involved in asylum deliberations in the United States, see Maryellen Fullerton, "The Intersection of Statelessness and Refugee Protection in US Asylum Policy," JMHS Volume 2 Number 3 2014 (pp. 144-164) published by the Center for Migration Studies of New York.

proposal of the International Law Commission and subsequent resolutions.[27] General Assembly resolution 55/153 contains the draft proposal for a possible convention on the topic of "Nationality of natural persons in relation to the succession of States." While no particular State is mentioned, those drafting the document obviously had in mind events occurring in both the former Soviet Union and the former Yugoslavia. The draft proposal lays out guidelines to follow in granting inhabitants of these territories nationality either in the predecessor State or successor State, while ensuring that whatever is done does not cause the individual concerned to become stateless. While there are some limiting conditions, in most cases it is recommended that the individual have the option of taking the nationality of either of the two States. Further, all Member States were requested to comment on the possibility of agreeing to a convention on this issue.[28] However, after several years where the item was discussed in the Sixth Committee with no resolution of the issue (1954, 1955, 1963, and 1966), the General Assembly gave up and in the latest resolution (A/RES/66/92, OP4) decided that, upon the request of any State, it will revert to the question of nationality of natural persons in relation to the succession of States, in particular concerning the avoidance of statelessness."[29] In other words, the GA will not consider the issue unless a Member States asks to do so and that is not likely to happen in the immediate future.

There are other causes of statelessness. Some people become stateless simply through prolonged absence abroad or by renouncing their previous nationality, although States, according to the 1961 Convention, are not to facilitate this unless that

[27] A/RES/54/112, 55/153, 59/34. 63/118, and 66/92.
[28] A/RES/55/153. State comments were included in reports to the General Assembly – A/59/180 and Add.1 and 2; A/63/113; and A/66/78 and Add.1.
[29] A/RES/66/92, operative paragraph 4.

person has a guarantee of obtaining a different nationality.[30] And finally, failure to register children at birth or complex bureaucratic procedures may make it difficult to obtain citizenship, even if in other ways the stateless person was qualified to receive it.[31]

An example of problematic bureaucratic procedures, although it is more than simple red tape, was the recent decision by the Dominican Republic's Supreme Court to withdraw citizenship from thousands of Haitians who were born in the Dominican Republic to undocumented Haitian workers going back as far as 1929 and who have lived in the Dominican Republic since birth. The decision affects over 200,000 people leaving them stateless. The decision has been criticized extensively by UNHCR and others in the international community, and negotiations have been taking place between the governments of Haiti and the Dominican Republic, but thus far it remains in effect.[32]

The Rights and Obligations related to Stateless Persons: The Conventions

Article 15 of the Universal Declaration of Human Rights (UDHR) states that everyone has a right to a nationality.[33] The Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and the Convention on the Elimination of Discrimination Against Women also recognize the importance of and the right to a nationality.[34] But enjoying this right, of course, is not the reality confronted by millions of stateless persons or the international community itself. The 1961 Convention on the Reduction of Statelessness, in its effort to reduce statelessness, calls upon States Parties to the Convention to provide citizenship to

[30] "Helping the World's Stateless People," UNHCR publication 2011, p.4.
[31] "Helping the World's Stateless People," UNHCR publication 2011, p.4.
[32] New York Daily News, October 13, 2013; Miami Herald, December 18, 2013
[33] Universal Declaration of Human Rights, adopted by the General Assembly 10 December 1948.
[34] "Helping the World's Stateless People," UNHCR publication 2011, p.6.

people born on their territory or who have resided in their territory for a specified period of time; such persons should be able to receive or apply for citizenship of that country. But it is States who determine the standards for granting nationality; the Convention sets out limits only where withdrawal of a nationality would result in a person becoming stateless.[35] The Convention also provides guidelines for granting citizenship to stateless children born in that country or when one or both parents are of the nationality of that country (Articles 1-4); when statelessness has occurred due to a loss of or renunciation of nationality (Articles 5-7) or deprivation of nationality (Articles 8-9), or in cases of State succession or changes in territorial boundaries (Article 10).[36] While the country provides the national legislation governing the process of granting nationality and there are exceptions that could lead to a rejection of an application for citizenship status, the net result, if countries were to live up to the guidelines in the Convention, would be a reduction in statelessness. However, since less than half the Member States are parties to the Convention, and while many who are not parties to it follow the guidelines, the lack of universal coverage and adherence means that many States do not contribute to a resolution of the problem.

For those people who are stateless, it is the 1954 Convention that provides a statement of their rights and obligations, as well as the obligations of states within whose territory they reside. Article 2 notes that stateless persons must conform to the laws of the country where they are living. But subsequent articles spell out their rights in a variety of areas: religious freedom and the ability to provide religious education for their children (Article 4); freedom regarding marriage (Article 12); intellectual property rights (Article 14); access to Courts and legal assistance (Article

[35] "Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness," UNHCR publication 2010, p.3.

[36] 1961 Convention on the Reduction of Statelessness, primarily Articles 1 through 10. The legal issues and procedures are obviously more complex than what can be resented in this brief summary.

16); elementary education (Article 22); public relief and assistance (Article 23); labor legislation and social security (Article 24); and freedom of movement and the ability to obtain travel documents (Articles 26-28). In addition, there are other instances in which they are to be given "treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances." This applies to rights regarding property (Article 13); freedom of association (Article 15); work and self-employment (Articles 17-19); housing (Article 21); and education beyond elementary school (Article 22).

In addition to enacting legislation that should enable stateless persons to enjoy these rights, States Parties to the Convention are to apply its provisions "without discrimination as to race, religion or country of origin" (Article 3) and, as noted in several Articles above, provide at a minimum the same level of treatment accorded to aliens (Article 7, paragraph 1). Finally, Article 32 states that "The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

Problems facing Stateless Persons

Stateless persons face a number of problems in terms of human rights and daily life. Especially where national legislation does not provide them with adequate legal protection, they face discrimination in a number areas including education, employment, practicing their cultures, and freedom of movement. They often will not have adequate housing and health care. And they may have limited resources available to them to try to remedy these situations. There are also psychological impacts as well. Being stateless means lacking a sense of identity and limits their

ability to participate in the political process since they usually do not have the right to vote.[37] As noted earlier, this may also have a negative impact on their communities, since stateless persons cannot fully contribute to the community itself either because of local discrimination or the stateless person's lack of identity with the community. The long-term effects of lack of education or employment, the need for health care, and other factors can ultimately contribute to greater poverty if these conditions are not remedied.

Policies and Programs: UNHCR and Government Efforts

While not all stateless people are refugees, they are often in refugee-like situations. This is one of the reasons UNHCR received the mandate to help them. But as is the case today with refugees, the majority of stateless people live in urban areas, rather than refugee camps or similar situations. Thus, UNHCR's work on behalf of stateless persons is often conducted on a more abstract or legal level than typical operations out in the field designed to assist displaced persons in camps. And this work ultimately relies on the political will and cooperation of national governments who are the only actors who can grant citizenship and thus reduce the number of stateless persons throughout the world. Nevertheless, UNHCR has undertaken a number of steps in cooperation with governments and other humanitarian actors to try and reduce statelessness.

First, UNHCR has constantly advocated for accession to the two Stateless Conventions. The Conventions provide guidelines that, if followed, would diminish the number of stateless persons. And with a greater number of States adhering to the Conventions, the international community would develop more consistency and uniformity in how stateless persons were treated, promote a "rule of law," and more

[37] "Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness," UNHCR publication 2010, p.2.

efficient regulation of migration.[38] Each year the annual resolution on the work of UNHCR, the so-called "Omnibus Resolution" (in 2013 A/RES/68/141) contains two paragraphs on statelessness. One (OP9) "*Re-emphasizes* that prevention and reduction of statelessness are primarily the responsibility of States, in appropriate cooperation with the international community"; a second (OP 8), inter alia, calls upon States that have not done so to consider acceding to the Conventions.[39] UNHCR's Executive Committee also encouraged States to give consideration to acceding in Conclusion 106 adopted by consensus at its 2006 annual session.[40] The Human Rights Council made a similar plea at its 2010 Session.[41]

Second, in 2011 the High Commissioner for Refugees, Mr. Antonio Guterres, chaired a high-level dialogue at UNHCR headquarters in Geneva on the question of statelessness (December) at which over 60 states made pledges to accede to the Conventions or to adopt improved legislation to address the problems of statelessness. UNHCR has provided an overview of the pledges that were made and the extent to which they have been implemented in a report entitled "Draft Overview of Implementation of Pledges (Extracts Relating to Statelessness)."[42] In September of 2014, UNHCR will convene the First Global Forum on Statelessness. While the results of the forum are not available as of this writing, a summary may be obtained at a later date from the UNHCR website.

Third, UNHCR works extensively with its usual partners in the humanitarian area to promote concern for stateless persons, raise awareness of the issue, and

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[38] "Helping the World's Stateless People," UNHCR publication 2011, p.6.
[39] A/RES/68/141 of 18 December 2013 "Office of the United Nations High Commissioner for Refugees"
[40] "Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness," UNHCR publication 2010, p.11.
[41] "Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness," UNHCR publication 2010, p.11.
[42] UNHCR , Division of International Protection, "Draft Overview of Implementation of Pledges (Extracts Relating to Statelessness)," 1 August 2013, pp.1-26., www.unhcr.org

improve protection for them or their access to basic human rights. These partners include UNICEF, the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), numerous non-governmental organizations (NGOs), regional organizations and civil society.[43]

Fourth, UNHCR works closely with Governments to provide technical advice and encouragement regarding national legislation to address the concerns of stateless people. While the establishment of such legislation is ultimately the responsibility and prerogative of the State, UNHCR can provide useful information on legislation and best practices in other countries.[44] Such practices could include simplifying application procedures, prohibiting withdrawal of nationality if it would result in statelessness, allowing women to pass on their nationality to their children, ensuring birth registration, the granting of residence permits, providing for the right to travel and return, access to employment, improved access to education and health services, and ultimately, for some, the granting of citizenship.[45] Other strategies could include having a clear vision and a regional focus; investing in research on the need for attention to and reforms in dealing with statelessness; building "broad coalitions, involving a diverse range of actors – including the affected population"; and promoting media coverage and the use of new media "such as blogs and a Facebook campaign."[46]

To assist governments in developing legislation and promoting best practices, UNHCR has developed a *Handbook on Protection of Stateless Persons*, which was launched (published) on 30 June 2014. The Handbook provides background

[43] "Helping the World's Stateless People," UNHCR publication 2011, p.8.
[44] "Helping the World's Stateless People," UNHCR publication 2011, pp.6-8.
[45] Laura van Waas, "The situation of stateless people in the Middle East and North Africa," report prepared for UNHCR, October 2010, *passim*.
[46] Laura van Waas, "The situation of stateless people in the Middle East and North Africa," report prepared for UNHCR, October 2010, p.41.

information, definitions of statelessness and other relevant terms, a guide on how to establish and coordinate statelessness determination procedures and assess evidence, relevant international law, the relationship between refugees and stateless persons, migration issues, and annexes that include the two Conventions, a list of States Parties, relevant General Assembly resolutions, and UNHCR Executive Committee Conclusions that addressed statelessness from 1995, 2003, and 2006.[47]

Finally, out in the field, UNHCR has begun a very extensive registration and documentation program to assist refugees, internally displaced persons, and stateless persons in obtaining documents to give them an identity and access to legal procedures and travel opportunities. This effort places extensive emphasis on birth registration. UNHCR also provides training programs for government officials regarding registration and documentation procedures.[48]

Many Governments have taken steps to reduce statelessness. As noted earlier, several have acceded to the Conventions. Others, such as France, Hungary, Italy, Latvia, Mexico, and Spain, have procedures in place to determine statelessness and Slovakia, Georgia, and Moldova are in the process of doing so.[49] Kenya, Lithuania, Georgia, Brazil, Indonesia, Iraq, Kyrgyzstan, and Nepal have adopted new legislation that is meant to respect the rights of stateless people, end discrimination, provide greater opportunities for the stateless or, most beneficially, provide them with citizenship and a nationality.[50] Those States that have not done this thus far, should consider doing so in the future.[51] All States, however, could share best practices,

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[47] UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: http://www.refworld.org/docid/53b676aa4.html [assessed 8 July 2014].
[48] "Helping the World's Stateless People," UNHCR publication 2011, pp.6-8.
[49] UNHCR, The State of the World's Refugees: In Search of Solidarity, 2012, p. 107.
[50] UNHCR, The State of the World's Refugees: In Search of Solidarity, 2012, pp. 110-112.
[51] Delegates can check the status of their country regarding the Conventions at various UN websites including that of UNHCR (www.unhcr.org).

reexamine their existing legislation in the light of best practices, take steps to improve educational opportunities, ensure that stateless persons have access to health services, promote more effective registration and documentation, ensure freedom of movement, and implement any pledges they have made.

Recommendations for a Resolution

Generally, resolutions regarding UNHCR and the issues it addresses are adopted by consensus. This is true both for its Executive Committee Sessions held each October in Geneva (by unwritten rule) and in the General Assembly's Third Committee deliberations on the work of the Office (UNHCR) each November (by tradition – at least the last 50 years). The primary reason for this is because questions relating to UNHCR are considered humanitarian rather than political in nature, despite the fact that there are obvious political issues and ramifications involved. In addition, resolutions adopted by consensus, though often watered down, carry more weight than those adopted by a vote. Delegates should, therefore, attempt to reach consensus at Model UN on one comprehensive resolution that would address the issue of statelessness and the treatment of stateless persons.

Delegates could consider doing the following:

(a) Encourage Governments to consider acceding to one or both of the stateless Conventions.

(b) Encourage Governments to share best practices in terms of programming and legislation relating to stateless persons.

(c) Call for greater cooperation between UNHCR, Governments, and NGOs to assist stateless persons.

(d) Encourage donors to provide additional financial and technical support to UNHCR and other States dealing with issues relating to stateless persons.

(e) Call upon Governments to adhere to pledges they have made regarding stateless persons.

(f) Suggest new methods or programs to address the causes of statelessness.

(g) Suggest other ideas that they deem appropriate.

Questions to Consider

1. Are there stateless persons within your country? What has your government done with regard to these persons in terms of their legal status, opportunities for citizenship, programs for education, health care, the right to pursue a livelihood, etc.?

2. Has your government developed appropriate registration and documentation procedures?

3. Have you acceded to either or both Conventions? If not, could you consider doing so?

4. Have you made any pledges regarding stateless persons? Have you kept them?

5. Does your government provide any funding to assist UNHCR in carrying out its mandate to assist stateless persons or to stateless persons directly? Could it consider doing so? Can it provide funds to other countries?

6. Are there best practices or lessons learned your government can share with others regarding how best to address the problem of statelessness?

7. Are there areas where your country could cooperate with other States or regional organizations to find regional solutions to the problem of statelessness, especially in situations similar to those faced by Muslims in the Rakhine State, refugees in Nepal, or Kurds or other stateless persons in the Middle East?

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MUNFW 65th Session

United Nations High Commissioner for Refugees

Urban Displacement

"These rights include, but are not limited to, the right to life; the right not to be subjected to cruel or degrading treatment or punishment; the right not to be tortured or arbitrarily detained; the right to family unity; the right to adequate food, shelter, health and education, as well as livelihoods opportunities."

–The Rights of a Refugee

Following the turmoil of World War II, the official United Nations refugee agency was established as the Office of the United Nations High Commissioner for Refugees on 14 December 1950, replacing the short-lived International Refugee Organization (IRO).[1] Grounded in Article 14 of the Universal Declaration of Human Rights of 1948, which recognizes the rights of persons to seek asylum from persecution in other countries, the General Assembly adopted the United Nations Convention Relating to the Status of Refugees.[2] The original mandate was to provide assistance and relief for the large number of refugees in Europe as a result of the devastating war. Optimistically, which later proved to be unrealistic, the original mandate of the Office was for a three-year time frame to complete its work. But the agency has continued to be in high demand as the conflicts around the world continued to displace hundreds of thousands from their homes. Beginning in 1953 the mandate was extended for five-year periods over the next half century. The Convention Relating to the Status of Refugees remained unchanged until

[1] History of UNHCR

[2] "Convention and Protocol Relating to the Status of Refugees."

it was amended by the adoption of the 1967 Protocol on the Status of Refugees. This Protocol broadened the definition of refugees to apply to all people across the globe who met the definition of a refugee, not just those in the geographic region of Europe; the Protocol also removed the temporal limits that had restricted the scope to persons fleeing from events prior to January 1, 1951.[3] In 2003, after over 50 years of assistance to refugees, the mandate of the United Nations High Commissioner for Refugees was extended by General Assembly resolution 58/153, entitled "Implementing actions proposed by the United Nations High Commissioner for Refugees to strengthen the capacity of his Office to carry out its mandate." The resolution called for removing "the temporal limitation on the continuation of the Office . . . until the refugee problem is solved."[4]

The 1951 Refugee Convention defines a refugee as someone who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country."[5] In 1969 the Organization for African Unity (OAU) expanded the definition of a refugee, at least on the continent of Africa, to also include individuals fleeing from violent conflict or natural disaster through the 1969 OAU Refugee Convention. Not only did this convention expand the definition, but it also solidified the framework set by the 1951 UN Refugee Convention.[6]

The Office of the High Commissioner for Refugees mission is to provide legal protection to refugees of all types and resolve refugee problems worldwide by finding durable solutions – either voluntary repatriation, local integration, or resettlement in third countries. With a staff of

[3] "Convention and Protocol Relating to the Status of Refugees."
[4] Hanhimaki, Jussi M. *The United Nations: A Very Short Introduction*; see also A/RES/58/153, OP9, and its corresponding report A/58/410.
[5] "Refugees." *UNHCR News*.
[6] Q&A: OAU Convention Remains a Key Plank of Refugee Protection in Africa after 40 Years."

8,600 people in more than 125 countries, UNHCR continues to try and aid over 11 million refugees. (The 4.5 million Palestinian refugees do not come under UNHCR's mandate and are the responsibility of the United Nations Relief and Works Agency – UNWRA.) In addition to refugees, through various General Assembly resolutions, UNHCR's mandate has been extended to internally displaced persons (IDPs) where the country concerned consents to UNHCR's assistance.[7] Consequently, UNHCR now assists some 33.9 million persons at risk in our world and has a mandate to assist stateless persons as well.[8]

UNHCR has carried out its work in an ever-changing world. Over 50% of the world's population now lives in cities and that number is increasing as the Earth becomes more heavily urbanized. The refugee population has followed this trend with millions of refugees, over half the total refugee population, now residing in cities and towns instead of camps.[9] One reason for this is that not all refugees have access to camps nor do all countries provide refugee camps or other organized settlements. As a result, urban areas end up being the only viable option for many. In other cases, refugees settle in urban areas to be closer to relatives or friends who may be able to provide them with housing and other forms of assistance.

This recent phenomenon presents a multitude of problems but a sliver of hope. Urban refugees are faced with a number of challenges and protection risks ranging from "the threat of arrest and detention, *refoulement*, harassment, exploitation, discrimination, inadequate and overcrowded shelter, as well as vulnerability to sexual and gender-based violence (SGBV), HIV-AIDS, human smuggling and trafficking."[10] Although the 1951 Convention on Refugees protects them from *refoulement*, being sent back to their country of origin where they may risk

[7] Mike McBride, "Anatomy of a Resolution: the General Assembly in UNHCR History," New Issues in Refugee Research, Policy and Evaluation Unit, UNHCR, 2009.
[8] "About Us." *UNHCR News*.
[9] UNHCR Policy on Refugee Protection and Solutions in Urban Areas
[10] UNHCR Policy on Refugee Protection and Solutions in Urban Areas.

persecution, not all Member States abide by the Convention. Another issue relates to the demographics of refugees. In the past, urban refugees have been mostly young men. Now, a larger number of refugees fleeing to urban areas are women and children, who tend to be at a higher risk of suffering from challenges and dangers mentioned above. The percentage of women living in primarily urban settings went from 46 to 48 percent from 2012 to2013; the corresponding figures for children were 39 to 46 percent.[11]

At the same time, according to UNHCR official Paul Spiegel, "Having refugees amongst the local communities is better for so many different reasons: it allows them to be more self-reliant, reduces long-term dependence and UNHCR can use its funding to improve existing communities."[12] According to Alexander Betts of Oxford University's Refugee and Forced Migration Studies programme, a program in Uganda that allows refugees to live and work outside of refugee settlements has reduced their dependence on aid. Betts notes the program has tried to do research that "offer(s) data that can demonstrate that governments prepared to offer basic economic freedoms [to refugees] can in turn reap benefits."[13]

Until recently, the UN refugee agency had its primary focus on refugees who resided in camps. Since urban refugees are now in the majority, a new focus has been placed on urban displacement, and in 2009 UNHCR issued its new "Policy on Refugee Protection and Solutions in Urban Areas" to address the problems of urban refugees.[14]

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[11] UNHCR, "UNHCR Global Trends 2013," pp. 35-37. These numbers are imprecise. They do not include all urban refugees and the categories may also include some who are not actually in an urban setting. UNHCR only has accurate, disaggregated data on about 65 percent (by age) and 71 percent (by sex) of the total refugee population of 11.7 million (the total number at the end of 2013.

[12] "New thinking needed on food aid for refugees in Arica," IRIN humanitarian news and analysis, 7 July 2014.

[13] "New thinking needed on food aid for refugees in Africa," IRIN humanitarian news and analysis, 7 July 2014.

[14] UNHCR, "Policy on Refugee Protection and Solutions in Urban Areas," www.unhcr.org

UNHCR defines an "urban" area as "a built-up area that accommodates large numbers of people living in close proximity to each other."[15] But there are also areas surrounding the urban zones that are considered "peri-urban," which include suburbs, slums or squatter settlements where many reside but are not included in official statistics and reports. This limits the ability of the UN refugee agency to keep track of and assist all refugees. Consequently, UNHCR has undertaken an extensive registration and documentation program in cooperation with national governments and local communities.

The displacement of refugees brings up the question of who is responsible for their well-being. While UNHCR has the mandate to assist refugees and assists governments with refugee status determination procedures, the resolution on the work of the Office (most recently A/RES/68/141, "Office of the High Commissioner for Refugees") and, in fact, every General Assembly resolution on the work of the Office since 1990, includes the statement that "the protection of refugees is primarily the responsibility of States, whose full and effective cooperation, action and political resolve are required to enable the Office . . . to fulfil its mandated functions, . . ."[16]

It is within this context that UNHCR tries to provide assistance to urban refugees. The 1951 Convention on Refugees lays down a minimum standard for how refugees are to be treated. The standard includes access to the courts, to primary education, to work, and to the provision of documentation.[17]

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[15] What? - URBAN REFUGEES | Raising the Voice of the Invisible

[16] A/RES/68/141 OP7. This paragraph has been repeated each year since 1990 in the annual resolution on the work of the Office discussed in the Third Committee of the General Assembly each November and adopted by the General Assembly itself each December. Similar paragraphs are adopted regarding internally displaced persons and stateless persons.

[17] "Convention and Protocol Relating to the Status of Refugees." The original documents for refugees were established by Fridtjof Nansen and were known as Nansen passports. Nansen, a well-known Norwegian scientist, author, explorer, professor, and Nobel Peace Prize winner, was asked by the League of Nations to assist in the repatriation of prisoners of war from Russia. A year later the Council of the League and the International

UNHCR's key principles for assisting urban refugees are (1) to ensure that cities are recognized in urban areas for refugees to reside and exercise the rights to which they are entitled, and (2) to maximize the protection space available to urban refugees and the humanitarian organizations that support them.

Protection space is considered to be a legitimate place for refugees to enjoy their rights as human beings, including those stemming from their status as refugees.[18] Protection space is not static; instead it expands and contracts as the given political, economic, or social circumstances fluctuate. There is no legal definition, but under the concept, refugees should be protected from refoulement, eviction, arbitrary detention, deportation, harassment or extortion by the security services. They should also be allowed to "enjoy freedom of movement and association and expression, and protection of their family unity, adequate shelter and living conditions," as well as other rights that can be found in the UNHCR Policy on Refugee Protection and Solutions in Urban Areas.[19]

But access to urban refugees can often be difficult; refugees are frequently confined to slums and shanty towns that are an expensive journey away from UNHCR offices. Most refugees are scattered throughout the urban area and there is no guarantee that the refugees have knowledge of UNHCR and the services it can provide.[20] To address this issue at the national level UNHCR works with sister humanitarian agencies, development agencies, UN country teams, and national governments. But in urban settings, it is particularly the women, the elderly, unaccompanied children, and persons with disabilities who are often overlooked and hard to

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Committee of the Red Cross instituted the High Commission for Refugees, administered by Nansen, who thus became the first High Commissioner for Refugees. He resigned from the post in the 1930s. For further information on Nansen, see "Fridtjof Nansen – Biographical," on the web.

[18] UNHCR Policy on Refugee Protection and Solutions in Urban Areas.

[19] UNHCR Policy on Refugee Protection and Solutions in Urban Areas. (see paragraph 21)

[20] UNHCR Policy on Refugee Protection and Solutions in Urban Areas (see paragraph 75)

reach. Providing aid to these groups and others must be done in partnership with municipal authorities, police, local businesses, health administrators, NGOs, and civil society institutions.

One example of successful partnership can be found in Quito, Ecuador. Ecuador welcomed 55,000 refugees from Colombia in 2011. With such large numbers, the process for getting all refugees the paperwork and documents they needed took time. The Government launched an "Enhanced Registration Programme" that allowed for more than 27,000 refugees to be registered. In addition, the Quito municipal government helped coordinate efforts between local institutions, civil society, and church organizations with UNHCR. This led to adoption of the Municipal Decree and set a precedent for other cities to protect "human mobility" by allowing refugees and migrants to benefit from social programs implemented in the poorer neighborhoods.[21]

Monitoring the health, nutritional status, and access to education for refugees is one of the goals of UNHCR that is often hard to accomplish when refugees are not in camps. Partnership with local authorities and health officials can increase access to primary education and basic healthcare for refugees and improve protection and sustainability. The Mexico Plan of Action in 2004 is a successful example of dialogue between municipal leaders, society organizations, and UNHCR in the hope of generating access to education, healthcare, and sustainable income-generating activities. Since then, Kenya, Colombia, and Costa Rica are among those countries that have joined forces with UNHCR to improve collaboration on urban refugee policies.[22]

An additional problem facing urban refugees is related to what is often termed mixed migration. Many people cross borders in the search of economic prosperity. These people are

[21] UNHCR, The State of the World's Refugees: In Search of Solidarity, 2012, pp. 145-160.
[22] UNHCR, The State of the World's Refugees: In Search of Solidarity, 2012, pp. 145-160.

economic migrants and must not be confused with refugees. Refugees are fleeing across borders out of fear for their livelihood and life. Under international law, the two groups should be treated differently. If someone is determined to be a refugee fleeing out of fear of persecution, normal immigration rules established by the State that might limit the entry of such individuals do not apply under the principle that all human beings have a right to seek asylum.[23] Determining who is an economic migrant and who is truly a refugee is another issue that the UNHCR and Governments must address in order to protect legitimate refugees from refoulement and xenophobia. This is where appropriate documentation plays an important role in protecting refugees from discriminatory treatment.

Finally, another large inhibitor of relief to urban refugees is an unfortunately common setback: finances. The UNHCR budget has increased dramatically since its inception, but the refugee numbers and crises have also surpassed all expectations. Providing assistance to refugees in general is extremely expensive, with urban refugee assistance being the priciest. The other finance issue lies within host governments for whom resources may be limited and refugees are not a priority. UNHCR has created a Comprehensive Needs Assessment (CNA) process that focuses on the real needs of persons of concern to determine the real cost. Local funding, resources, and acceptance of refugees are often hard to come by, especially when tension between refugees and the resident population is present. If either the refugee or local population is too large, pressure is put on resources and services that are already strained by the current urban poor in the area, deterring the host government and city from welcoming refugees with open arms.[24]

[23] "Convention and Protocol Relating to the Status of Refugees."
[24] UNHCR Policy on Refugee Protection and Solutions in Urban Areas. (see paragraph 18 and 33)

There are many steps that Member-States and UNHCR can take for the future. Providing urban refugees with legal status, residence rights and the right to work is imperative to a refugee's success. The incentive for the cities and the Member-State's whole country would be an addition to the workforce and local economy. There are a number of community outreach methods and programmes that UNHCR has adopted and can be tailored to each national context. These include: the engagement of trained refugee outreach volunteers, local community centers, an active programme of community communications and an establishment of Field Offices. [25] Particular attention should be placed on women and children refugees as they are at greater risk for violation of protection space.

Most Member States who have urban refugee populations have acceded to the Refugee Convention and "provide refugees with a legal status, residence rights and the right to work" .[26] The High Commissioner for Refugees encourages all Member States to sign on to the Refugee Convention and to uphold its standards to the best of their ability.[27] Member states can also ensure that urban refugees maintain their right to the solutions of voluntary repatriation, local integration, or resettlement. Each country should consider whether or not they have helped implement these solutions and what else they can do for urban refugees.

Promoting self-reliance and livelihoods is one of the main goals the UN Refugee Agency. Through vocational training, skills development, language programmes and livelihood programmes, cities can promote refugee self-reliance. With the combination of the United Nations High Commissioner for Refugees, municipal services, and Member States, urban refugees can benefit from the pursuit of positive and proactive approach.

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[25] UNHCR Policy on Refugee Protection and Solutions in Urban Areas. (see paragraph 79)

[26] 143 States have acceded to the 1951 Convention relating to the Status of Refugees; 144 States have acceded to the 1967 Protocol relating to the Status of Refugees; 139 States have acceded to both.

[27] See A/RES/68/141, OP6; 148 States have now ratified either or both the 1951 Convention or 1967 Protocol.

Another important role for States, especially donor countries, is to contribute to international solidarity and burden-sharing. As noted above, funding is an important element of UNHCR's programming and always in short supply. Donor countries can assist UNHCR directly or provide bi-lateral assistance to countries hosting large numbers of refugees. Over 80 percent of the current refugee population coming under UNHCR's mandate resides in developing countries, those countries least able to provide financial assistance yet who bear the largest burden in hosting refugees. Donor countries should consider how best they can provide funding, ideally funding that is adequate, predictable, timely, and unearmarked.[28]

These efforts, carried out in a coordinated manner in the spirit of international solidarity and burden-sharing by States, UNHCR, non-governmental organizations, and civil society, can benefit not only the urban refugees themselves, but ultimately the entire international community. As the President of UNHCR's Executive Committee stated in his summary comments at the 2013 Executive Committee Session in Geneva, "For as long as human memory extends, people everywhere have sheltered strangers in need. Let us stand together to protect this fundamental human value, for the millions of people around the world who depend on it. And let us join our efforts to make sure that those who help them are supported in doing so."[29]

[28] See various reports of the High Commissioner as well as various General Assembly resolutions on the Office.

[29] Report of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees 64th Session (A/68/12/Add.1), "Chairperson's summary of the general debate, p. 12.

Questions to Consider

1) What has your country done to help aid the refugee situation?
2) What more could your country do to help aid refugees?
3) What steps can your country encourage the international community to take? -- host states, donors, international organizations, NGOs.
4) What can UNHCR do beyond what they have already done in general? Do assist your own situation with regard to urban refugees?
5) What was the importance of Resolution 46/182: "Strengthening of the coordination of humanitarian emergency assistance of the United Nations?" What does your country think are the main principles that should be upheld from the resolution? Are some of them out of date given changing needs and circumstances regading humanitarian assistance, in particular assistance to refugees and other displaced persons.
6) What else does your country want the international community to do to promote and encourage international solidarity and responsibility-sharing?

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United Nations High Commissioner for Refugees

Addressing the Integration of Displaced Persons in the Transition from Relief to Development

The Office of the United Nations High Commissioner for Refugees was created as a temporary agency with a three-year mandate in 1950 intending to aid the European refugees that resulted from World War II. This led to the adoption of the Refugee Convention in Geneva the following year, which was also created for and limited to European refugees. It was not until about fifteen years later that the 1967 Protocol removed the geographical limits placed by the 1951 Convention and allowed for expansion of refugee aid worldwide.[1] Shortly after, in 1969 the Organization of African Unity Refugee Convention broadened the definition of a refugee to include those fleeing from violent conflict or natural disaster.[2] Because it was proposed to be only a temporary agency, the UNHCR mandate was updated every five years; however, in 2003 it was amended to be a permanent body "until the refugee problem is solved."[3]

According to its Statute, the High Commissioner's mandate is to provide legal protection for refugees and seek durable solutions to their plight.[4] The durable solutions include voluntary repatriation in safety and dignity, local integration, and resettlement, but repatriation and, consequently reintegration into their country of origin, is the preferred and most common

[1] UNHCR, *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, 2011.
[2] UNHCR, *Q&A: OAU*, 2009.
[3] UNHCR, *How UNHCR is Run and Structured*, unhcr.org. See also A/RES/58/153, OP 9.
[4] A/RES/428 (v) of 14 December 1950: Statute of the Office of the United Nations High Commissioner for Refugees, Chapter 1, paragraph 1.

solution for refugees and the goal of internally displaced persons as well.[5] How to make that reintegration sustainable – how to have en effective transition from relief to development – is the major theme to be addressed in this paper and by delegates in the Committee.[6]

Currently, the agency works in 126 countries with 135 main location offices and 279 sub-offices and field offices and deals with over 40 million displaced persons.[7] Within those millions, 23.9 million are internally displaced persons, 11.7 million are refugees or persons in refugee-like situations, 414,000 are returnees, roughly 3.5 million are stateless persons, and 1.17 million are asylum seekers.[8] While the people in these categories all classify as displaced persons, it is crucial to understand the difference between the ones referred to most often. The 1951 Refugee Convention states that a refugee is someone who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country."[9] Internally displaced persons are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."[10]

[5] See any General Assembly resolution on the work of the Office, most recently A/RES/68/141.
[6] See A/RES/68/141, OP 31
[7] UNHCR, *A Global Humanitarian Organization of Humble Origins*, unhcr.org.
[8] UNHCR, Global Trends 2013, p. 49. These data are as of 31 December 2013 and change daily, especially given the current crises (as of this writing) in Syria, Ukraine, South Sudan, the Central African Republic, as well as other on-going/protracted refugee situations.
[9] 1951 Refugee Convention
[10] A/Res/68/180

In UNHCR's first attempts to deal with reintegration, which began in the early 1990s, the Office learned that there was little opportunity for local integration and resettlement; it then developed innovative methods that would "foster community cohesion and ensure the provision of basic infrastructure, such as water, shelter, roads and livelihoods support."[11] During the next fifteen years, UNHCR worked with partners to build programmes that would aid returnees and their communities with the tools for reestablishment. For much of this time, UNHCR believed its work stopped once it handed over its reintegration activities to its development partners; however, there were few stories of success. In 2003, UNHCR partnered with the United Nations Development Programme and the World Bank to create a "Framework for Durable Solutions," which announced the "4Rs" approach.[12] According to the Handbook for Repatriation and Reintegration Activities, the concepts of the 4Rs programme included;

> an integrated approach (involving actors, institutions and different phases of post-conflict recovery) to post-conflict situations; an effort to bring together humanitarian, transition development approaches in a structured manner throughout the different stages of a reintegration process; a framework for institutional collaboration for the implementation of reintegration operations in post-conflict situations; and a tool to maximize flexibility for field operations to pursue country specific approaches.[13]

While the development of the 4Rs programme has shown to be resourceful and effective, UNHCR and other agencies continue to face many challenges as the 4Rs themselves are difficult to implement.

[11] UNHCR'S ROLE IN SUPPORT OF THE RETURN AND REINTEGRATION OF DISPLACED POPULATIONS: POLICY FRAMEWORK AND IMPLEMENTATION STRATEGY, 2008

[12] UNHCR'S ROLE IN SUPPORT OF THE RETURN AND REINTEGRATION OF DISPLACED POPULATIONS: POLICY FRAMEWORK AND IMPLEMENTATION STRATEGY, 2008

[13] Handbook for Repatriation and Reintegration Activities, 2004

Repatriation, the first R, suggests that the displaced persons must have a voluntary desire to repatriate "to their country of origin in safety and in dignity."[14] Often displaced persons do not wish to return to their homeland as they feel shameful or still fear for their lives. Reintegration, the second R, implies that the returning displaced persons will have a secure life. Agencies must be sure that formerly displaced persons will not suffer attacks, harassment, intimidation, persecution, or any type of harmful action including discrimination in regard to their displacement while in the process of reintegration. Furthermore, formerly displaced persons must have the right to the use of all national and sub-national protection mechanisms while also enjoying a satisfactory standard of living (inclusive of all means of survival such as food, water, shelter, etc.) and have the ability to reunite with their families if they choose to.[15]

However, the greatest difficulties tend to fall under the last two Rs: rehabilitation and reconstruction. Rehabilitation suggests that "the restoration of social and economic infrastructure (e.g. schools, clinics, water points, public facilities and houses) destroyed during conflict in areas of return [must be in condition] to enable communities to pursue sustainable livelihoods" while reconstruction states that there must be a "(re)establishment of political order, institutions and productive capacity to create a base for sustainable development."[16] Rehabilitation and reconstruction tend to be the steps with the least success because of the lack of communication and coordination among agencies and between agencies and the Government, particularly in situations where a conflict is continuing. The ability to facilitate the transition from relief to development must come from both agencies and the governments involved in order to result in a long term development, peace, and stability.

[14] Handbook for Repatriation and Reintegration Activities, 2004
[15] NEW ISSUES IN REFUGEE RESEARCH; When the displaced return; challenges to 'reintegration' in Angola, 2008
[16] Handbook for Repatriation and Reintegration Activities, 2004

A recent and significant example of this problem is UNHCR's largest repatriation program of the past decade, which involves the return of millions of Afghans. Following the withdrawal of the Soviet Union, over 2.6 million Afghan refugees were still registered in Iran and Pakistan while about 400,000 internally displaced persons remained in Afghanistan. Over the past few decades, while many of these people have returned, experience in Afghanistan suggests that the transition from relief to development faces challenges when local culture and political economy do not work progressively with "modern development practices." For a while, voluntary repatriation was considerably high in Afghanistan. However, the country's population increased by an estimated 20 percent, resulting in a lack of availability in housing, land, and services. Also, returns from exile and migration from rural areas of the country into cities has left many municipal services serious strained. In the last two decades, Afghanistan has fallen back into conflict twice after developing agreements that did not properly cover the political and structural challenges they were facing. While the reintegration of returnees depends on the stability of Afghanistan, humanitarian and development actors must create better communications with local governments so they know how to "reduce the vulnerability and strengthen the resilience of Afghan refugees."[17] In other situations, instability within a country makes it difficult for humanitarian and development agencies to coordinate with each other or with the government itself. This has been the case in Somalia and Sudan, among others, where continuing conflict or insecurity have made it difficult to begin rehabilitation and reconstruction efforts and inhibited the return of both refugees and internally displaced persons.

Most resolutions drafted by the United Nations regarding displaced persons also emphasize "that protection of and assistance to internally displaced persons are primarily the

[17] The State of the World's Refugees; In Search of Solidarity, 2012

responsibility of States, in appropriate cooperation with the international community."[18] General Assembly resolution 68/180 on "Protection of and assistance to internally displaced persons," adopted on 18 December 2013, describes exactly what Member States should be doing during the transition of relief to development during reintegration as it:

> Calls upon States to provide durable solutions, including within their national development plans, and encourages strengthened international cooperation, in particular between humanitarian and development actors, including through the provision of resources and expertise to assist affected countries, in particular developing countries, in their national efforts and policies related to assistance, protection and rehabilitation for internally displaced persons and the integration of the human rights and needs of internally displaced persons into both rural and urban development strategies, as well as the participation of both internally displaced persons and host communities in the design and implementation of those strategies.[19]

A crucial factor that Member States should look into regarding the development process is the prevention of natural disasters, as those are often the cause for a growing number of displaced persons. The Resolution on the International cooperation on Humanitarian Assistance in the field of Natural Disasters, from Relief to Development acknowledges that there are growing difficulties in dealing with the effects of natural disasters, which tend to strike rural and urban poor communities in the developing world. Many of these difficulties have to do with the increasing rate of climate change as well as the global financial and economic crisis. However, the United Nations must continue to stress that "humanitarian and development organizations [must] improve their coordination of disaster recovery efforts, from relief to development, inter alia, by strengthening institutional, coordination and strategic planning efforts in disaster

[18] A/Res/68/141
[19] A/Res/68/180

preparedness, resilience-building and recovery, in support of national authorities, and…ensuring that development actors participate in strategic planning at an early stage."[20]

Ultimately, the development process of reintegration that allows for sustainable development for formerly displaced persons comes down to the ability of humanitarian agencies, donors, development actors and all actors or providers involved to continue working together, and "in close cooperation with the Special Rapporteur, to provide a more predictable response to the needs of internally displaced persons, including long-term development assistance for the implementation of durable solutions"[21] The United Nations Development Group (UNDG), a committee chaired by the United Nations Development Programme (UNDP), aims to coordinate development efforts among development agencies, humanitarian agencies, and representatives from non-governmental organizations.[22] UNDG's most recent work plan from 2013-2014 emphasizes its focus on a "coordinated and coherent UN system-wide approach towards the integration of human rights principles and international standards into UN operational activities for development" among other goals.[23] With this, UNDG is able to guide agencies into thinking about how their humanitarian efforts may affect efforts to promote development. Those guidelines used by the agencies are also reflective of the Country Teams' efforts, which are headed by a Resident Coordinator (RC); UNDG hopes to empower them with the ability to

[20] A/Res/68/103
[21] A/Res/68/180
[22] The United Nations Development Group (UNDG) was established in 1997 as part of Secretary-General Kofi Annan's reform proposals. "UNDG unites the 32 UN funds, programmes, agencies, departments, and offices lus five observers that play a role in development" (www.undg.org). UNHCR joined he group in 2003.
[23] UNDG Human Right Mainstreaming Mechanism Draft Work Plan, 2013-2014

"implement the agreed upon new arrangements to support the RC system, and ensuring quality to achieve improved development results" at the country level."[24]

UNHCR's latest approach regarding the transition from relief to development is the Transitional Solutions Initiative (TSI) that calls for significant collaboration with UNDP and the World Bank to provide a smooth transition for returnees. The TSI was established in collaboration with UNDP and the World Bank to try and overcome the lack of success in getting displacement issues on the development agendas of governments and development agencies. It builds on previous efforts such as the Brookings process, the 4Rs, and regional efforts previously undertaken by UNHCR and/or UNDP and the World Bank as well as various reports from the Secretary-General on Peacebuilding.[25] The TSI has been the subject to two round table discussions in Amsterdam (April 2013) and Copenhagen (April 2014), which led to an agreement to establish a "Strategic Engagement Group" (SEG) for TSI+ and in mid-2013 a "friends of TSI+" group to further develop a mission statement and terms of reference for the approach.[26] Pilot projects have been started in Colombia and East Sudan, but it is too early to measure their success at this point. TSI's goal "is to work towards including displacement needs on the developmental agenda for sustainability of interventions for refugees and IDPs and local community members well into recovery and development programming."[27] It recognizes that many of the challenges faced with displacement include loss of housing, land, and jobs as well as food insecurity and the scarcity of education and health. Therefore, the Initiative will draw on the following:

[24] UNDG RC SYSTEM MANAGEMENT FRAMEWORK
[25] Concept Note: Transitional Solutions Initiative: UNDP and UNHCR in collaboration with the World Bank www.endingdisplacement.org/concept-paper.
[26] UNHCR and UNDP, Background note for Copenhagen Roundtable, 2-3 April 2014, "Unlocking Displacement Solutions – Storyline," www.endingdisplacement.org/history-background.
[27] Concept Note: Transitional Solutions Initiative: UNDP and UNHCR in collaboration with the World Bank

a. global awareness created through the Secretary General's report on Peacebuilding in the Immediate Aftermath of a Conflict, International Network on Conflict and Fragility (INCAF) report, and the IASC Humanitarian Reform process in particular the Early Recovery Cluster, and other on-going work and evaluation reports;

b. current conducive policy environment of linking humanitarian assistance to recovery and development, and crafting related operational and financing instruments;

c. greater global recognition that displacement has development challenges, which if not addressed, may have negative political and security consequences; and,

d. greater recognition of development challenges posed by displacement through the work done by the World Bank. [28]

With this, UNHCR, UNDP, the World Bank, national governments and regional organizations, NGO's, and other actors hope to be able to provide sustainable solutions that will improve the quality of life for returnees. Another key principle that the TSI recognizes is the need for national ownership as an overarching goal. It is crucial that the country involved be a leading actor in what is being done regarding development for its returning people.

As mentioned above in A/RES/68/141 and A/RES/68/180, national governments are held responsible for the sustainability of their returning refugees or IDPs. Though resolutions as that one already exist, resolutions with more specifics regarding the development planning regarding returnees would result in a more secure process. Member States should compose resolutions that include the promise of restoration of property rights (if homes were lost), education for children, and medical and counseling services—especially for women who suffered trauma after displacement. States should also pass legislation that promotes local community participation of returnees in all aspects including the social, political, and economic life of the community. In these resolutions, Member States should make note of the importance of cooperation between humanitarian agencies, development actors, and national governments. In the operative

[28] Concept Note: Transitional Solutions Initiative: UNDP and UNHCR in collaboration with the World Bank

paragraphs, Member States can recommend how each actor (UN agencies, NGOs, Development Actors, Donors, etc) can best help such as setting up programs and including the needs of the displaced in these programs, providing more funding, or sharing best practices and lessons learned.

Questions Delegates should consider:

1. Has your country acceded to the 1951 Convention or 1967 Protocol? If not can you consider doing so? Why or why not?
2. Even though your country is part of the consensus on resolutions such as A/RES/68/141 and 180, do you have concerns about the substance of those resolutions? Are there additional points you think should be added to them?
3. Does your country face a problem with returning populations?
    a. If so, what are the likely numbers?
    b. If so, according to the current situation of your country, is it capable of a successful transition from relief to development? (Are civil or natural disasters a challenge?)
    c. If so, to what extent have you included them in your development planning?
4. Do you need to adopt national legislation to ensure returnees' human rights, in particular those relating to women and children, to health and education and to restoration of property rights? How will you go about this?
5. What programs have you developed to promote the participation in local communities or to provide a sustainable future for formerly displaced persons?
6. To what extent do you cooperate with agencies such as UNHCR or UNDP or with NGOs working with those organizations?
7. If your country is not faced with a problem of returning populations, what support do you give to those countries that are faced with the problem? To agencies such as UNHCR, UNICEF, or UNDP? Can you give more?
8. Regardless of your country's situation are you aware of or can you share best practices with others to facilitate a better transition from relief to development?

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The Implications of New Technology for Copyright Law and Intellectual Property

Copyright law and intellectual property rights have been a longstanding concern of the international community. The Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights both recognize intellectual property as a human right.[1] The United Nations Educational, Scientific, and Cultural Organization (UNESCO), as well as other international bodies, have made various recommendations to help protect the rights of copyright holders. Actions taken to protect copyright and intellectual property have been threatened by the emergence of new technologies that make it easier for people to illegally access protected works. Despite the global nature of this problem, there is no universally accepted solution, and most laws and regulations exist at the national level. UNESCO member states should examine how the international community can improve upon existing treaties and how they can be adapted to fit the demands of the rapidly evolving digital environment.

One of the most pivotal steps towards a global approach to copyright laws and intellectual property was the formation of the World Intellectual Property Organization (WIPO) in 1967.[2] Its purpose, as stated by Article 3 of the Convention to Establish the World Intellectual Property Organization, is "to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other

[1] "Approaching intellectual property as a human right," *Copyright Bulletin* 35, no. 3 (2001): 10, accessed July 15,2014, http://unesdoc.unesco.org/images/0012/001255/125505e.pdf

[2] "Inside WIPO" *World Intellectual Property Organization*, http://www.wipo.int/about-wipo/en/

international organization."[3] WIPO defines copyright as the legal rights that creators have over their literary and artistic works and intellectual property as the rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.[4]

Since the creation of WIPO, innovations in digital technologies and their increasing availability have challenged the traditional balance between access to copyrighted materials and the rights of their producers. With the invention of technologies including the internet, file-sharing services, and, most recently, 3-D printing, individuals are able to access, reproduce, and distribute copyrighted materials more widely and often at no cost. In many countries, piracy and counterfeiting have become low risk and high profit crimes, with few legal repercussions to deter infringers.[5] UNESCO has noted the negative impacts on cultural industries and development, which can't compete with low cost of pirated or counterfeit goods. Piracy and counterfeit trade has also been linked to organized crime, its profits used to fund other crimes, such as human and gun smuggling, drug trafficking, and money laundering. Regardless of these challenges, the economic value of copyright industries globally has reached an all-time high, accounting for billions of dollars and millions of jobs.[2]

Consisting of 185 member states,[6] WIPO has been instrumental in coordinating a global approach to these issues. As a special agency of the United Nations, WIPO offers a range of global services for protecting intellectual property across borders. Three of its most important services are the International Patent System, the International Trademark System, and the

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[3] "Convention Establishing the World Intellectual Property Organization," *World Intellectual Property Organization* (1967), http://www.wipo.int/treaties/en/text.jsp?file_id=283854

[4] "What is copyright?" *World Intellectual Property Organization*, http://www.wipo.int/copyright/en/#copyright

[5] "World Anti-Piracy Observatory: Consequences of Piracy," *United Nations Educational, Scientific and Cultural Organization*, http://portal.unesco.org/culture/en/ev.php-URL_ID=39442&URL_DO=DO_TOPIC&URL_SECTION =201.html

[6] "Inside WIPO" *World Intellectual Property Organization*, http://www.wipo.int/about-wipo/en/

International Design System.[7] Administered by WIPO and established by the Madrid, Hague, and Lisbon treaties respectively, these services allow businesses and individuals to register patents, trademarks, and designs in multiple countries at once.[8] Businesses can also use arbitration and mediation resources offered by WIPO to settle intellectual property battles outside of court and across borders.[9] In order to help facilitate the use of these services in developing countries, WIPO also offers technical training and capacity building tools to regional and national organizations. These services include online registry and filing systems, access to electronic databases, and educational materials on copyright and intellectual property law.[10]

Many of the WIPO administered treaties have played a key role in shaping the international approach to copyright law. One of the earliest intellectual property treaties, the Berne Convention for the Protection of Literary and Artistic Works of 1886 is now overseen and revised by WIPO. Last amended in 1979, the Berne Convention provides the basis for many of the treaties and agreements that have since followed.[11] Protections outlined by the convention include automatic copyright, meaning signatories are prohibited from requiring formal registration of works, and the length of copyright terms.

In 1996, the international community adopted two WIPO administered treaties to address the growing concern over digital copyright and intellectual property, the first of which is the WIPO Copyright Treaty (WCT). The WCT addresses the protection of works and rights of their creators in the digital environment.[12] It grants authors the right of distribution, the right of rental,

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[7] "Intellectual Property Services," *World Intellectual Property Organization*, http://www.wipo.int/services/en/
[8] Ibid.
[9] Ibid.
[10] "Cooperation," *World Intellectual Property Organization*, www.wipo.int/cooperation
[11] "Berne Convention for the Protection of Literary and Artistic Works," *World Intellectual Property Organization* (1886), http://www.wipo.int/treaties/en/text.jsp?file_id=283698
[12] "WIPO Copyright Treaty," *World Intellectual Property Organization* (1996), http://www.wipo.int/treaties/en/text.jsp?file_id=295166

and the right of communication to the public to the authors of protected works. In addition to the protection of traditional media, the WCT also acknowledged the protection of computer programs and some databases.[13] The second is the WIPO Performances and Phonograms Treaty, which grants audio performers the economic rights in the performances on fixed phonograms, as well as the right to distributions, the right of rental, and the right of making works available.[14] It also grants them rights to object to any modification of their work and certain rights to live performances.[15]

Known collectively as the Internet Treaties, these agreements have hugely influential in the discussion of technology and intellectual property. The Internet Treaties have influenced legislation on the regional and national level. One notable example is the Digital Millennium Copyright Act of 1998 in the United States, which criminalizes the use of technology and services that violate copyright law.[16] Similarly, the European Union Copyright Directive was adopted in 2001, which added several provisions to the Internet Treaties, including the right of reproduction in the digital environment, and the technological measures for protection.[17]

In addition to WIPO, the World Trade Organization and UNESCO have also administered intellectual property-related agreements. One of the most significant of these agreements is the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Adopted in 1996, TRIPS seeks to set minimum standards for copyright protection

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[13] Ibid.
[14] "WIPO Performances and Phonograms Treaty," *World Intellectual Property Organization* (1996), http://www.wipo.int/treaties/en/text.jsp?file_id=295578
[15] Ibid.
[16] "Impact of the Internet on Intellectual Property Law" *World Intellectual Property Organization*, http://www.wipo.int/copyright/en/ecommerce/ip_survey/chap3.html
[17] Ibid.

amongst WTO members while respecting their diverse legal systems.[18] It also established the TRIPS council, which examines how states apply the principles of the agreement. TRIPS is one of the most widely recognized intellectual property treaties, as all 158 members of the WTO are party to the TRIPS Agreement.[19] UNESCO intellectual property agreements have largely been focused on the protection of cultural artifacts and traditions. To this end, UNESCO has administered a number of agreements to safeguard cultural property, including the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the Convention for the Safeguarding of the Intangible Cultural Heritage, and Convention on the Protection and Promotion of the Diversity of Cultural Expressions.[20]

Despite efforts toward international cooperation, copyright law has been a source of tension between several countries. China, a member of WIPO since 1980, is often cited for the high level of copyright violations within the country. In 2007, the International Federation of the Phonographic Industry estimated that almost 99% of all music accessed online in China violated copyright laws.[21] The Chinese government has come under fire for policies that fail to enforce copyright laws. In 2007, the United States filed a formal complaint with the World Trade Organization over China's refusal to grant copyright protection to works that had not been approved by government censors.[22] In 2009, the WTO ruled that China had violated existing trade agreements.[23] The various actions taken by multinational organizations and regional

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[18] "Trade Related Aspects of Intellectual Property Rights," *World Trade Organization*, http://www.wto.org/english/tratop_e/trips_e/trips_e.htm
[19] Ibid.
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[23] Ibid

governments have done little to halt the spread of copyright piracy online. Researchers estimate that between 400,000 and 600,000 films are downloaded through file sharing networks and unauthorized video streaming websites daily.[24] In addition to the illicit distribution of films, copyright holders have to contend with the growing popularity of fan films featuring characters used without permission. WIPO has proposed the creation of a treaty to address the concerns of broadcasting organizations and provide internet-specific protections that might not be covered by other agreements, such as TRIPS.[25] Another increasingly popular technology that has copyright holders concerned is 3-D printing. 3-D printing, also called direct digital manufacturing, allows user to create objects from digital files. While not nearly as accessible as other innovations mentioned, experts have already hailed 3-D printing as the "democratization of manufacturing."[26] There is growing concern that 3-D printing will make it easier for people to share and copy object designs, and that the ease of producing these copies will lead to decreased investing on research and development by manufacturers.[27] Intellectual property policymakers have struggled to find a way to protect these designs while encouraging exploration of the technology and further innovation.

The push for greater control of intellectual property by the major copyright industries has been the center of growing controversy over the past decade. The widespread use of the internet has often been touted as a way of removing barriers to accessing knowledge, sometimes at the expense of copyright holders. Opponents of expanded digital copyright laws argue that these protections reduce the ability of individuals and states to ensure that copyright meets its basic

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[24] "Impact of the Internet on Intellectual Property Law" *World Intellectual Property Organization*, http://www.wipo.int/copyright/en/ecommerce/ip_survey/chap3.html
[25] Ibid
[26] Catherine Jewell, "3-D printing and the future of stuff," *WIPO Magazine* (2013), http://www.wipo.int/wipo_magazine/en/2013/02/article_0004.html
[27] Ibid

goals of expanding the pool of available knowledge.[28] In 2012, the Human Rights Council adopted A/HRC/20/L.13, which asserted that the same rights that people have offline are also protected online, and encouraged states to promote and facilitate access to the internet.[29] There is growing concern that efforts to establish global copyright laws will impede the flow of information, especially in regards to developing countries.[30] Recent efforts to establish international agreements on intellectual property rights have been met with great resistance. In 2011, Australia, Canada, the European Union, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea, Switzerland, and the United States began negotiating the conditions of the Anti-Counterfeit Trade Negotiation.[31] The treaty, which exists outside of any existing international organizations, establishes international guidelines for the enforcement of intellectual property laws. Shortly after the agreement's formal publication, thousands of Europeans took to the streets in protest.[32] Protesters argued that ACTA would stifle freedom of expression over the internet and the lack of transparency in its negotiations.[33] Government support for ACTA quickly declined. While many of its negotiators are now signatories, only one country (Japan) has ratified the treaty.[34]

Addressing copyright law and intellectual property rights on the international level is a complex issue, made more difficult with today's rapid technological advancements. So far,

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[28] "A Citizen's Guide to WIPO" *Center for International Environmental Law* (2007), http://www.ciel.org/Publications/CitizensGuide_WIPO_Oct07.pdf
[29] "The promotion, protection, and enjoyment of human rights on the Internet," *Human Rights Council* (2012), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/20/L.13
[30] "A Citizen's Guide to WIPO" *Center for International Environmental Law* (2007), http://www.ciel.org/Publications/CitizensGuide_WIPO_Oct07.pdf
[31] "Anti-Counterfeiting Trade Agreement" Office of the United States Trade Representative (2012), http://www.ustr.gov/acta
[32] "Euro MMP Martin dismisses anti-counterfeiting treaty," *British Broadcasting Corporation* (2012), http://www.bbc.com/news/technology-17728045
[33] Ibid.
[34] "Conclusion of the Anti-Counterfeiting Agreement by Japan," Ministry of Foreign Affairs of Japan (2012), http://www.mofa.go.jp/policy/economy/i_property/acta_conclusion_1210.html

efforts toward a global approach have been wrought with controversy and debate. UNESCO members must address how to settle copyright disputes between countries with vastly different copyright laws, while maintaining national sovereignty.Members of UNESCO must examine how the international community can protect intellectual property rights while respecting national laws, the freedom of expression, and the right to access information.

Questions:

1. What laws and regulations regarding copyright and intellectual property does your state have in place? What can the international community take away from the successes and challenges of these laws?
2. In what ways can the current UNESCO and WIPO treaties and agreements on copyright law and intellectual property be improved?
3. What is the relationship between intellectual property, copyright, and access to knowledge? How does the right to internet play a role in this debate?
4. While there has been a growing push for digital copyright regulations, it is often remarked that laws have been slow to catch up to technology. How can the international community ensure that its efforts are consistently up-to-date with current technology?
5. Some human rights activists claim that expanded enforcement of digital copyright law could encroach upon free speech. How can countries deter online piracy without infringing upon the right to expression over the internet?
6. What are the implications of international standards for intellectual property rights?

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Rule of Law in the Digital Frontier: Cyberwarfare

Although it is generally understood what constitutes a cyberattack and what does not, there is no internationally agreed upon definition of a cyberattack. Since there is no consistency, as technology and society advances it makes it increasingly difficult to combat such attacks. The tactics of cyberterrorists are constantly evolving, such as in the case with the Stuxnet virus in Iran, and yet the world remains undecided on a comprehensive definition to address the evolving cyberworld.

Cyberwarfare: What is it?

One of the largest difficulties with applying international law to cyber attacks is the lack of consistency in the definitions that constitute these attacks. The literature on "cyber attack(s)" reveals two predominant understandings of the term: some speak of the use of computers and computer networks as *instruments* of attack, and some speak of computers and networks as the *objects* of attack."[1] However, both of these definitions still leave out integral parts of what constitutes cyberwarfare. The U.S. National Research Council defined cyber attack as "the use of deliberate actions—perhaps over an extended period of time—to alter, disrupt, deceive, degrade, or destroy adversary computer systems or networks or the information and/or programs resident

[1] Nguyen, Reese. "Navigating Jus Ad Bellum in the Age of Cyber Warfare." California Law Review, 1085. Accessed July 13th, 2014. **http://scholarship.law.berkeley.edu/californialawreview/vol101/iss4/4**

in or transiting these systems or networks."[2] This definition, although broad and encompassing, still makes no mention of the means by which the attacks have been conducted. By focusing on the objects of the attacks, it seems as though conventional weapons such as bombs and missiles could "…alter, disrupt, deceive, degrade, or destroy adversary computer systems or networks," much the same that "electromagnetic pulse energy can be manipulated to overwhelm computer circuitry or jam communications."[3] Since definitions focusing on the objects of attack are overly broad and therefore malleable, it makes sense to focus on the definition of a cyber attack as one that describes the *means* of the attack. For example, an "air attack" is commonly understood to be an attack *from* the air and not *on* the air, much in the same way a "cyber attack" ought to refer to an attack through cyberspace and not necessarily on it. Since there is no internationally agreed upon definition of a cyberattack, the most scholarly and all encompassing definition of cyberwarfare is, according to the California Law Review:

> a hostile act using computer or related networks or systems to cause disruption or destruction for a political or national security objective. Under this construction, a cyber attack is hostile (as such is the nature of attack) and uses computers or their networks to conduct the attack, but leaves open what type of disruption or damage it may cause. The attack is constrained only by its political or national security objective, which distinguishes a cyber attack subject to international law from a cyber crime subject to domestic law. [4]

The anatomy of a cyber attack has two main components: exploiting the target's weaknesses and delivery of the payload. The weaknesses constitute susceptibility or a flaw in the

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[2] Owens, Williams et al. "Technology, Policy, Law, and Ethics Regarding U.S. Acquisition and Use of Cyberattack Capabilities." U.S. National Research Council. Accessed July 14th, 2014. http://sites.nationalacademies.org/CSTB/cs/groups/cstbsite/documents/webpage/cstb_050541.pdf

[3] Navigating Jus Ad Bellum, 1087

[4] Navigating Jus Ad Bellum, 1089-1090

system, an access path for reaching that flaw, and the hacker's ability to exploit the flaw. The payload that is delivered by the hacker refers to the actions (depending on the motive of the attack) that can be executed once the flaw has been exploited. Almost every cyber system has inherent characteristics and/or flaws that can leave it vulnerable to an attack. Such vulnerabilities can include "...design or implementation defects introduced inadvertently or intentionally into software, hardware, or the seams between software and hardware."[5] It is also possible for an attacker to hide as an authorized user to attack communication channels, other legitimate users, or service providers. A cyberattack can gain access "...remotely through networks, or locally through close access, such as insertion of data-carrying external media (such as USB thumb drives), local software or hardware installation (compromised third-party security software), or elsewhere in the system supply chain (during design, development, testing, production, distribution, or maintenance)."[6]

Types of Cyberattacks

There are two different types of cyberattacks that are used: Penetration Attacks and Denial of Service attacks. Penetration attacks constitute an attacker accessing a system either directly or remotely to deliver their payload, thus allowing them to "access or alter files for a variety of objectives."[7] One of the most common objectives of a penetration attack is to deliver Malware. Malware "is code or software that is specifically designed to damage, disrupt, steal, or in general inflict some other 'bad' or illegitimate action on data, hosts, or networks."[8] Malware is especially dangerous because the code will be written to automatically execute the payload and

[5] Navigating Jus Ad Bellum, 1092
[6] Ibid
[7] Navigating Jus Ad Bellum, 1094
[8] "What is the Difference: Viruses, Worms, Trojans, and Bots?" Cisco. Accessed July 16, 2014. http://www.cisco.com/web/about/security/intelligence/virus-worm-diffs.html

self-propagate, thus making it more dangerous than an attacker's direct manipulation.[9] Some of the most common forms of Malware are viruses, worms, Trojans, and bots.

Viruses will attach themselves to software inside of the victim's computer, "using that software to execute its payload to alter or damage the computer, self-replicate, and spread to other computers when the host file or program to which the virus is attached is intentionally transferred from one computer to another."[10] Viruses are very similar to Trojans, the only difference being the manner in which the Malware is spread. Trojans will disguise themselves as trusted and legitimate forms of software that once opened by the unsuspecting user will infect their computer. Trojans, however, "do not self-replicate, unlike true viruses and worms."[11] Worms are very similar to viruses, in that they self replicate; however, viruses require the sharing of an infected file, but worms will replicate independently of the infected files. In order for worms to spread, they seek out a vulnerability in one computer and network and use the existing file-transport or information transport features contained within the system, thus allowing them to travel unaided. Due to this feature of self-propagating, worms will spread at a much faster rate than viruses. Finally, and quite possibly the most dangerous of the types of Malware, are botnets. Botnets are an assortment of hundreds to hundreds of thousands (and possibly even a million) different infected computers with viruses, Trojans, and/or worms that allow a single attacker, or "botmaster," to hide behind a virtual army of "zombie-bots", which can then be controlled remotely by the botmaster. "A continuous broadband connection facilitates a communications channel between the botmaster and his zombie-bots, which may initially sense and probe their immediate environment, examine system files, and relay the

[9] Navigating Jus Ad Bellum, 1094
[10] Navigating Jus Ad Bellum, 1094-1095
[11] Navigating Jus Ad Bellum, 1095

information to the botmaster. With the benefit of this information, the botmaster can then upgrade that merely investigatory payload to a destructive payload specifically tailored to the target system."[12] The most dangerous aspect of the botnets is the relative anonymity they provide to the botmaster, and, obviously, the destructive capabilities of a botnet. "The zombie-bots…serve as further attack intermediaries that provide a buffer between the botmaster and his targets and conceal the source of attack."[13]

Aside from penetration attacks there are also Denial of Service (DoS) attacks. These attacks are not as malicious in nature as penetration attacks because they do not delete or alter computer system resources, but their effects can cause very real issues by:

> flooding a specific target with bogus requests for service, thereby exhausting the resources available to the target to handle legitimate requests for service and thus blocking others from using those resources. Since attacks coming from a single source can easily be blocked by denying all requests from that source, attackers employ botnets to conduct distributed denial-of-service (DDoS) attacks from multiple machines.[14]

Because there are requests from thousands to hundreds of thousands of users, the server is unable to differentiate between real users and attack zombie-bots, therefore the attack becomes almost impossible to stop since the attack cannot be stopped from a single source. Although DDoS attacks seem to be nothing more than a mere nuisance, they can still cripple the systems they are attacking. For example, in the 2007 Estonian DDoS attack there were in upwards of one million zombie bots used as a part of an organized botnet, each in control of thousands of computers. These zombie bots mercilessly flooded government, media, and financial institution websites,

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[12] Navigating Jus Ad Bellum, 1095-1096
[13] Navigating Jus Ad Bellum, 1096
[14] Navigating Jus Ad Bellum, 1097

thus rendering these sites inaccessible for hours at a time. This attack was especially crippling for Estonia due to their heavy use of information technology.[15] As the world becomes more and more dependent on information technology, the very real consequences of DDoS attacks will be larger and larger as well.

Major Issues in Combating Cyber Attacks

As technologies advance, so do the methods by which various actors perform illegal activities. In today's society, many different physical systems are controlled by computers and microprocessors, thus making the threat of cyber attacks much more difficult and complex. Traditionally, cyberattacks and Malware have only had direct effects on the systems that they attacked, but now with the rise of cyber-physical technology those effects have much more damaging and unintended consequences. For example:

> In 2010, the Stuxnet worm, a self-replicating computer virus targeting computers that regulate automated physical processes, took control of Iran's nuclear centrifuges at Natanz and caused about one-fifth of them to spin out of control and self-destruct. Iran's uranium enrichment operations halted, resulting in an estimated several years of delay in the country's nuclear arms development program. Responsibility for Stuxnet has been attributed to Israel and the United States.[16]

Because this attack was on the computers controlling the centrifuges and not the centrifuges themselves, this would put any indirect attack on cyberphysical systems in a legal gray area, due to the indirect nature of the attack.

Further, the unintended consequences of cyberattacks also complicate the issue given that other systems can be harmed or disabled by various sorts of cyberattacks:

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[15] Navigating Jus Ad Bellum, 1097-1098
[16] Navigating Jus Ad Bellum, 1082

the Sapphire worm took down servers in South Korea, the suspected target of the attack, but its consequences were more wide-ranging. Sapphire also disrupted internet services in Thailand, Japan, Malaysia, the Philippines, and India; disconnected a city's 911 emergency service and caused problems for thirteen thousand Bank of America ATMs in the United States; postponed a Canadian national election; and cancelled airline flights.[17]

Moreover, because Malware is autonomous from its author and acts automatically, "...the attacker cannot scale back or halt the extent of damage once the malware is released—the damage spreads as surely as the virus or worm spreads—and an attack on systems in South Korea becomes an attack on systems in Thailand and Japan, Canada and the United States."[18]

Further complicating the issue in combating cyberwarfare is the inherent inaccuracies and lack of test runs with the Malware. "The malware's targeted environment often is not and cannot be accurately reproduced before the malware is released. And in contrast to…[conventional] attacks, cyber attacks require intelligence information that is difficult to obtain through traditional intelligence methods..."[19] The unpredictable nature of Malware makes the odds of having unintended consequences much higher.

The other glaring issue in the fight against cyberwarfare is anonymity. As discussed with the botnets earlier, attackers are able to masquerade behind a virtual wall of zombie-bots, while still having the capability to deliver a malicious payload. "Botmasters create command-and control centers that direct the bot army. These centers act as barriers that shield the originator of the attack from detection, while the innocent computer systems drafted into the botnet serve at

[17] Navigating Jus Ad Bellum, 1100
[18] Navigating Jus Ad Bellum, 1101
[19] Navigating Jus Ad Bellum, 1102

the front lines of attack."[20] Further complicating this issue is that the main source of identifying people's exact location via the Internet—IP Addresses—is easily circumvented. "…Because these…[IP addresses] are often transmitted without mechanisms to authenticate their origin, the source IP address can easily be forged, or "spoofed," to conceal the sender's identity. Thus, this ability to easily conceal one's identify by "spoofing" their IP address allows the attackers to remain virtually anonymous.

Problems with International Law Governing Cyberwarfare

Cyberattacks have emerged only in recent times as technology has advanced, which makes it very hard for them to be governed by international law due to the lack of precedent and clear definitions in the U.N. Charter or treaties and conventions. Due to this lack of precedent in international law, "fundamental differences among the world's major cyber-powers about the scope of activities that should be prohibited under an international cyber attack agreement."[21]

The most common passage in the Charter that is cited to defend the United Nation's right to govern cyberwarfare is in Chapter 1, Article 2, subsection 4 of the U.N. Charter, which states "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[22] Further, Article 51 of the charter proscribes "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..."[23] Both of these definitions are equally mum about cyberwarfare. Moreover, both definitions are equally ambiguous, such that "use of force" and "armed attack" are not clearly defined. At either end of the spectrum it is easy

[20] Navigating Jus Ad Bellum, 1105
[21] Navigating Jus Ad Bellum, 1111
[22] Charter of the United Nations
[23] Ibid.

to tell what *is* and what *is not* a use of force, but what exactly constitutes an "armed attack" and thus retaliatory measures by the victim state has been debated for decades. In Nicaragua v. United States, the case most important case that interpreted Articles 2(4) and 51 of the U.N. Charter, the International Court of Justice (ICJ) found that not every use of force constituted a retaliatory attack. Despite this finding, the ICJ declined to define "use of force" or "armed attack" "or to address what would constitute permissible responsive action, if any, when force falls short of armed attack."[24] Since the Charter is so ambiguous and the ICJ has declined to clearly define these terms, the only option is to look to cases such as *Nicaragua v. United States* to show examples of what is and what is not an armed attack.

While the exact definition of an armed attack, or the definition of a cyberattack in general, is not yet settled in the international arena, the international community has addressed the defensive side of the issue in numerous ways. The General Assembly adopted Resolution 58/199 in 2004, establishing guidelines for protecting what are termed "critical information infrastructures," including power, transportation, finance, food, water and health infrastructure[25]. Similarly, according to the report "Cyberwarfare and International Law," published by the United Nations Institute for Disarmament Research, while a cyberattack is difficult to define, any variety of cyberattack that rises to the level of a use of force constitutes an armed conflict to which international humanitarian law applies[26]. As such, the development of guidelines for defining cyberattacks - and defining the level at which a cyberattack becomes a use of force - is absolutely vital to not only defending against such attacks, but also applying humanitarian protections to civilians affected by cyberattacks.

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[24] Navigating Jus Ad Bellum, 1115

[25] "Resolutuion 58/199", *UN General Assembly*, January 30 2004, Accessed October 4 2014, https://www.itu.int/ITU-D/cyb/cybersecurity/docs/UN_resolution_58_199.pdf

[26] Melzer, Nils. "Cyberwarfare and International Law," *United Nations Institute for Disarmament Research* (2011): 23.

One of the core ideologies of the United Nations as stated in the Preamble to the Charter is to regulate nation-states' interactions with each other in order to avoid a third world war, but also to protect and promote human rights and human development. It makes sense then that under the U.N. Charter, the U.N. ought to act accordingly to attempt to regulate cyberwarfare. With the rise of cyberphysical technologies and the abilities to destroy them from behind a computer screen, it becomes increasingly important for the U.N. to regulate cyberattacks in the interest of preserving human rights and development. Moreover, as seen in Estonia, it is possible to render government websites and services virtually useless with DDoS attacks, thus further jeopardizing citizens' rights and development. Cyberwarfare, in its very meaning, intends to disrupt the political independence of the victim state, thus necessitating the United Nations to take action to combat the 21st century's new style of warfare. It is then the job of this committee to create a comprehensive definition of a cyberattack, and to create meaningful, fresh ideas in how to best regulate and govern cyberattacks.

Questions for Consideration:

1. Does your country already have a definition of what constitutes a cyberattack?
2. Does your country have the capability to either suppress or end a cyberattack?
3. What are your country's laws currently regarding cyberattacks?
4. What is your country's ability to withstand a cyberattack? Have they ever had to withstand a cyberattack?

5. What is your country willing and able to do to help the international community and most importantly under-developed states with regards to cyberattacks?

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Maintaining and preserving cultural artifacts and landmarks

Harnessing the power of culture and its influence on the socialization between nations continues to be one of the major tenets of the United Nations' international policymaking efforts. Culture and heritage have been and continue to be two powerful driving forces in political and social cooperation, constituting a source of identity and cohesion for communities disrupted by bewildering change and economic instability. The United Nations Economic, Scientific and Cultural Organization (UNESCO) acts as the prime source of international policies addressing culture's influence on contemporary global issues and affirms that a human-centered approach to social, economic and political development is essential for powerful and lasting change within the global community. As an advocate for the protection of global cultures, UNESCO has played a significant role in preventing damage to particular areas of the world known for their cultural or historic significance. UNESCO has outlined the heavy of role culture and the importance of preserving the diversity of the global community in the Universal Declaration on Cultural Diversity. Culture strengthens capacities worldwide for creation, builds partnerships in the public sector, private sector, and civil society, and draws together the common heritage of humanity. The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to

human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous persons. Through the protection of cultural landmarks and artifacts, as well as world heritage sites, the global community draws together under a common cause of protecting humanity's roots, preserving precious treasures of our past and paves the way for greater global cooperation among diverse cultural groups.

One of the first examples of UNESCO taking an active role in preserving cultural landmarks was the decision to build the Aswan Dam in Egypt, which would have flooded the valley containing the Abu Simbel temples, a treasure of ancient Egyptian civilization. In 1959, after an appeal from the Egyptian and Sudanese governments, UNESCO launched an international safeguarding campaign. Archaeological research in the areas to be flooded was accelerated. The Abu Simbel and Philae temples were dismantled and reassembled with extreme precision by domestic and international efforts spearheaded by a number of Swedish firms.[1]

The campaign took five years and cost about US$42 million, half of which was donated by some 50 countries, showing the importance of solidarity and nations' shared responsibility in conserving outstanding cultural sites.[2] Its success led to other safeguarding campaigns, such as saving the ruins at Moenjodaro in Pakistan, and restoring the Borobudur Temple Compounds in Indonesia.[3] [4] All of these heritage sites had been damaged by natural means and faced greater threats to the sustainability to their structures. The ruins at Moenjodaro faced salinity in the groundwater, and the Borobudur

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[1] "Abu Simbel – unparalleled relocation project", *Atlas Copco*, 2014, http://www.atlascopco.com/history/evolution/projects/abusimbel/.
[2] Ibid.
[3] "Moenjodaro", *World Heritage Site*, 2014, http://www.worldheritagesite.org/sites/moenjodaro.html.
[4] "Borobudur Temple Compounds", *UNESCO,* 2014, http://whc.unesco.org/en/list/592.

Temple Compounds suffered from excessive tourism, stone erosion and damaged structural integrity. Consequently, with the help of the International Council on Monuments and Sites (ICOMOS), UNESCO initiated the preparation of a draft convention on the protection of cultural heritage.

In 1972, UNESCO hosted the World Heritage Convention (WHC) with the primary goal of identifying potential sites that hold essential cultural significance for global citizens as well as specific peoples within the selected site's region. The WHC places the duties of identifying, protecting and preserving potential sites on member states. Each state party to the Convention pledges to conserve both world heritage and national heritage in the states' territory to keep heritage sites safe in times of conflict as well as pledging to sustain the landmarks and cultural connections that helped identify the significance of the site.[5] States are encouraged to implement regional policies and programmes to protect and preserve these sites, as well as conduct research to provide a practical purpose for the site in the everyday lives of peoples within the region. The Convention also establishes an Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value formally known as the World Heritage Committee. Comprised of 191 member states, the committee is mandated with addressing issues regarding current World Heritage sites as well as the declaration of new sites.[6] The WHC - both the Convention itself, and the Committee - is therefore the primary instrument for the protection and preservation of cultural landmarks and other sites of historical and cultural importance.

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[5] "The World Heritage Convention", *UNESCO*, 1972, http://whc.unesco.org/en/convention/.

[6] "States Parties", *UNESCO*, 2014, http://whc.unesco.org/pg.cfm?cid=246.

The WHC also outlines the World Heritage Fund and the commitments each state agrees to upon signing the Convention. Periodic reporting on preservation progress within each territory is crucial to the work of the Convention as they allow members to assess the conditions of each site, decide on specific programme requirements, and resolve recurring issues and conflicts.[7] It also encourages state parties to strengthen the public's appreciation for World Heritage properties and to enhance their protection through educational and information programmes. In addition to these measures, the international community had adopted numerous other instruments. In 2005, member states of UNESCO adopted the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which deliniates general guidelines for the protection of cultural expression in all its forms, both with respect to current expression and historical artifacts. [8]

As of the 38th session of the World Heritage Committee in 2014, there are 1007 registered World Heritage sites. Among these, 779 are labeled cultural sites, 27 of which have been labeled "in danger" by the Committee.[9] In order to preserve all sites, with specific emphasis on sites endangered by forces such as natural disasters, human conflict, looting or other harmful influences, UNESCO and various governing bodies within respective regions have implemented protective policies and programmes. Some have found success in the past, while others has fallen notably short of their intended goals.

There are five regions under the World Heritage Convention: Africa, Asia and the Pacific, Arab States, Europe and North America, and Latin America and the Caribbean.

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[7] "Periodic Reporting", *UNESCO*, 2014, http://whc.unesco.org/en/periodicreporting/.

[8] "Convention on the Protection and Promotion of the Diversity of Cultural Expressions", *UNESCO*, 2005, http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[9] "World Heritage List Statistics", *UNESCO*, 2014, http://whc.unesco.org/en/list/stat.

Each region sets unique objectives and has their own methods for reporting to the World Heritage Convention. For example, the Africa Region has constructed a 2012-2017 Action Plan with objectives that include but are not limited to: (1) improving the representation of African heritage sites on the World Heritage List through the preparation of successful nomination dossiers, (2) improving the state of conservation at World Heritage properties, by effective risk management, increased community involvement and direct economic benefits to local communities, and (3) effectively managing existing properties by recognising, documenting and formalising traditional management systems and fully incorporating them into existing management mechanisms[10].

Contrarily, the Asia and Pacific region, as well as the Europe and North America regions, conduct two cycles of periodic reporting in order to consolidate unique objectives and plans for the various sites in the region. The first cycle for Asia and the Pacific began in 2003, which led to the successful production of a comprehensive publication entitled "Synthesis Regional Periodic Report for the Asia-Pacific Region 2003." The subsequent progress and follow up to the first cycle was fruitfully achieved through the implementation of two regional programmes; "Action Asia 2003-2009" and "World Heritage-Pacific 2009", which directly respond to the conclusions, recommendations, and action plans resulting from the first cycle. The World Heritage Committee launched the second cycle of Periodic Reporting for the Asia and Pacific at its 34th session in Brasilia, Brazil. All 41 State Parties to the Convention in Asia and the Pacific actively participated in this cycle and worked together on this vital component of

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[10] "Africa", *UNESCO World Heritage Centre*, 2012, http://whc.unesco.org/en/Africa.

the Convention. The results of the second cycle were presented to the World Heritage Committee at the 36th session in St. Petersburg, Russian Federation during 2012.[11]

In the Caribbean, States have made progressive steps in creating programmes to combat the destruction and degradation of heritage sites. Capacity Building is one of the key issues in the Region. The lack of management capacity and expertise has been identified by the Latin America and Caribbean Region states as one of the pressing needs that prevents the assurance of better protection for the World Heritage sites in the region. The Caribbean Capacity Building Programme (CCBP) was conceived by the region's states and endorsed by the World Heritage Committee in 2004. The programme responds the Latin America and the Caribbean Periodic Report which illustrated how most of the Caribbean States Parties still lack the capacity and expertise needed to enable full protection and management of the present World Heritage sites and to identify new world heritage sites.[12] [13]

The main regions of concern include the Arab States, Latin America and the Caribbean, and Africa. Within the Arab State region, the Taliban destroyed several cultural heritage sites that housed Buddha statues within Afghanistan, blowing the statues up with dynamite.[14] This included the destruction of more than a dozen Buddha statues in the Kabul museum. The destruction of these artifacts in Afghanistan remains a serious

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[11] "Asia & Pacific", *UNESCO World Heritage Centre,* 2014, http://whc.unesco.org/en/287.

[12] "Periodic Report 2004, Latin America and the Carribean", *UNESCO World Heritage Centre,* 2004, http://whc.unesco.org/en/series/18.

[13] "Carribean Capacity Building Programme", *UNESCO*, 2004, http://whc.unesco.org/en/activities/475/.

[14] Ahmad Rashid, "After 1700 years, Buddhas fall to Taliban dynamite", *The Telegraph*, March 12 2001, accessed September 15 2014, http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/1326063/After-1700-years-Buddhas-fall-to-Taliban-dynamite.html.

concern. Teams from UNESCO as well as the International Committee for Museum Security (ICMS) are engaged in the reconstruction of the destroyed artifacts.[15]

Sites will retain their "in danger" status until voted on by the World Heritage Committee body to remove sites from the list. For example, as of June 2014, the old city of Jerusalem and its Walls has retained its "in danger" status due to the serious contention in the region. According to the resolution, Jerusalem and its walls, including Al-Magharbeh Gate, are under continuous danger as a result of Israeli policies.[16] Omar Awadallah, an official in the Palestinian foreign ministry, said that UNESCO originally included the old city of Jerusalem in the list of World Heritage Sites in 1982 after an application filed by Jordan, the declared guardian of the city of Jerusalem. The site has been a main topic for debate during the 38th Session of the WHC. Other endangered sites in the region include the Ancient Cities of Aleppo, Bosra, Damascus, and the Ancient Villages of Northern Syria, all located in the Syrian Arab Republic. These four sites were indicated as heritage sites in danger.[17]

Sites in danger are not strictly limited to historical or cultural sites, but natural sites as well. Tanzania's Selous Game Reserve has been listed as a World Heritage Site in Danger in June 2014 due to unprecedented levels of illegal wildlife trade, as announced at the 38th annual World Heritage Committee meeting in Doha, Qatar.[18] Elephant and rhino poaching triggered by the international demand for ivory and rhino horn, continues

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[15]Joanna Kakissis, "Bit by bit, Afghanistan Rebuilds Buddhist Statues," *NPR*, July 27 2011, accessed September 15 2014, http://www.npr.org/2011/07/27/137304363/bit-by-bit-afghanistan-rebuilds-buddhist-statues.

[16]"UNESCO places Jerusalem on 'List of World Heritage in Danger'", *Middle East Monitor*, June 24 2014, accessed September 16 2014, https://www.middleeastmonitor.com/news/middle-east/12332-unesco-places-jerusalem-on-list-of-world-heritage-in-danger.

[17] "List of World Heritage in Danger", *UNESCO*, 2014, http://whc.unesco.org/en/danger/.

[18] "Selous Game Reserve", *UNESCO World Heritage Centre*, 2014, http://whc.unesco.org/en/list/199.

to escalate in Selous, one of the largest remaining wilderness areas in Africa. Also discussed at the meeting in Doha, Australia's Great Barrier Reef faces a range of threats, including water quality impacts, climate change and proposals for coastal developments. The site will be considered for possible inscription on the World Heritage Danger List in 2015.[19] As of the 38th Session of the Committee in 2014, only one World Heritage site listed as being in danger has been removed, United Republic of Tanzania, Ruins of Kilwa Kisiwani and Ruins of Songo Mnara.[20]

Another significant issue, aside from cultural landmarks, is the issue of cultural artifacts. Artifacts such as ceramics, artwork, literature, *inter alia*, are often the target of looters and other predation, particularly in combat zones or areas where museums and landmarks are not properly maintained or guarded. Many cultural artifacts disappeared during the 2003 invasion of Iraq, for example. The most troubling and damaging example of this was the looting of the Iraq National Museum in Baghdad during 2003, though a number of other sites in Iraq were damaged and looted as well in the years following the invasion.[21] Looters are also known to have targeted artifacts found at landmarks such as the Pyramids at Giza and nearby sites for decades.[22]

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[19] "Illegal trade puts more world heritage sites in danger," *IUCN*, June 18 2014, accessed September 16 2014, http://www.iucn.org/?16000%2FIllegal-trade-puts-more-World-Heritage-sites-in-danger.

[20] "Committee Decisions", *UNESCO World Heritage Centre*, 2014, http://whc.unesco.org/en/decisions/6146/.

21 "Oriental Institute of the University of Chicago to Examine the Looting of the Iraq National Museum and Mesopotamian Archaeological Sites", *University of Chicago*, 2014, https://oi.uchicago.edu/museum-exhibits/special-exhibits/oriental-institute-university-chicago-examine-looting-iraq-nation-0.

[22] Betsy Hiel. "Egypt's ancient treasures being lost to looters", *Pittsburgh Tribune-Review,* 2011, http://triblive.com/usworld/world/3499557-74/pyramid-egypt-red#axzz3G5RDTdPL.

Numerous bodies of the United Nations have been active in addressing the issue of looting. As far back as 1954, the international community adopted the Convention for the Protection of Cultural Property in the Event of Armed Conflict, which obligates states involved in armed conflict to deter looting, and ensure that occupying powers collaborate with local institutions to ensure that cultural artifacts are protected.[23] In 1987, the General Assembly adopted resolution 42/7, which established guidelines for the return of cultural artifacts to their countries of origin.[24] The General Assembly has periodically revised and updated these guidelines as well, most recently by adopting resolution 67/L.34, which additionally calls for awareness-raising and training campaigns, and for states to cooperate with the UN Office on Drugs and Crime (UNODC) and Interpol in combating the trafficking of such artifacts.[25] In 1995, the international community adopted the Convention on Stolen or Illegally Exported Cultural Objects, which provides a claim mechanism for identifying stolen cultural artifacts, while also also protecting the rights of the holders of such stolen property in the event that the object or objects was not known to have been stolen.[26] The Security Council has even been active on the issue of cultural artifacts being stolen or damaged; in 2003 the Security Council adopted Resolution 1483 regarding the Iraq conflict, and included a clause calling for the facilitation of returning artifacts of historical and cultural import to Iraqi control, setting a

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[23] "Convention for the Protection of Cultural Property in the Event of Armed Conflict", *UNESCO*, 1954, http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html.
[24] "Resolution 42/7", *United Nations General Assembly,* 1987, http://www.international.icomos.org/publications/93touris19.pdf
[25] "Resolution 67/L.34", *United Nations General Assembly,* 2012, http://www.un.org/ga/search/view_doc.asp?symbol=A/67/L.34.
[26] "Convention on Stolen or Illegally Exported Cultural Objects", *UNIDROIT,* 1995, http://www.unidroit.org/instruments/cultural-property/1995-convention.

precedent for the importance of returning and safeguarding such artifacts in modern conflicts.[27]

In order to properly address the issue of maintaining and preserving cultural artifacts and landmarks, regions have developed different methods that cater to their specific site requirements, but threats continue to occur within regions ridden by conflict among parties. Each region has unique requirements and means for monitoring and protecting the sites located within their regions. The reporting methods adopted by the World Heritage Committee helps consolidate information and maintain ties to with each state that has taken upon the responsibility of protecting heritage sites within their borders, allowing for the international community to properly address recurring issues and discuss the proper treatment of each site. The instruments adopted by various organs of the United Nations also facilitate awareness-building, preservation campaigns, and training for those directly involved in the protection of artifacts and landmarks. But as the cases of Iraq, Egypt, Jerusalem, Australia, and others indicate, there are still areas in which the existing framework for preservation can be both improved and better applied to ensure that irreplaceable pieces of history are not lost.

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[27] "Resolution 1483", *United Nations Security Council*, 2003, http://www.unesco.org/culture/laws/pdf/resolution1483_iraq_en.pdf.

Questions to consider:

1. What heritage sites are located in your country and what steps does your country take to preserve said sites?
2. What are the main areas of conflict with cultural and historical landmarks and artifacts? According to your country, which regions or heritage sites require the most attention, if any?
3. What policies has your country or region adopted in regards to cultural tourism? How does tourism affect world heritage sites?
4. How have heritage sites with “in danger” statuses been recovered and preserved in the past?
5. Which organizations has the World Heritage Committee partnered with in the past in order to address world heritage site issues? How have these organizations played a role in actions toward world heritage sites?
6. Is your state a party to instruments such as the Convention on Stolen or Illegally Exported Cultural Objects, the Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Convention Concerning the Protection of the World Cultural and Natural Heritage, among others?

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"Resolution 1483". United *Nations Security Council*. 2003. http://www.unesco.org/culture/laws/pdf/resolution1483_iraq_en.pdf.

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Equitable Representation of Women and Minorities in Government

The Universal Declaration of Human Rights (UDHR), adopted in 1948, recognizes the equal and inalienable rights of all human beings without distinction of any kind.[1] This reaffirms equal rights for women and minorities. There is no agreed definition that incorporates all possible groups that may be considered minority groups, but the term can generally be understood to correspond to persons belonging to groups in the non-dominant position which include, *inter alia*, stateless persons, migrants, victims of forced displacement, persons with disabilities, people living with HIV/AIDS and lesbian, gay, bisexual, or transgender (LGBT) persons. Ensuring fair and equal representation for all such groups is vital to ensuring that the rights of such groups are protected, in accordance with agreed international human rights standards. Beyond that, the incorporation of women and minorities in government has the potential to improve the efficiency of government, both in terms of limiting corruption, and in terms of aiding development efforts through ensuring the full participation of disadvantaged groups in society.

The International Covenant on Civil and Political Rights (ICCPR), adopted by the General Assembly in 1966, is a multilateral document that commits its parties to respect and promote the political and civil rights of these individuals, including freedom of speech, freedom

[1] "The Universal Declaration of Human Rights." *UN News Center*. December 10, 1948.

of assembly, and electoral rights.[2] One of the fundamental objectives for the achievement of equality, development and peace, as promoted by the UDHR, is the full participation and representation of women and minorities in the decision-making process. Article 25 of the ICCPR states that the basis of equal representation holds that women and minorities have the right to take part in public affairs, including the right to vote, the opportunity to be elected to public office, and to have equal access to public services.[3]

Consequently, to lay down a comprehensive set of rights from a gender perspective, Member States adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979.[4] The Convention positively affirms the principle of equality by urging State parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."[5] CEDAW emphasizes the need for equality of access to education, equality in the workforce, and equality in the political arena, among other areas.[6] While CEDAW is a significant element of the international community's efforts to ensure equal rights and representation for women, it does not enjoy universal ratification; moreover, a number of Member States that have ratified the

[2] "International Covenant on Civil and Political Rights." International Covenant on Civil and Political Rights. December 16, 1966.
[3] "Women and Elections." *United Nations*, 2014, http://www.un.org/womenwatch/osagi/wps/.../WomenAndElections.pdf
[4] "Convention on the Elimination of All Forms of Discrimination against Women." *Office of the High Commissioner for Human Rights*. September 3, 1981.
[5] "Convention on the Elimination on All Forms of Discrimination Against Women," *United Nations*, 1979, http://www.un.org/womenwatch/daw/cedaw/
[6] Ibid.

Convention have done so with specific reservations, and thus do not consider themselves bound by the entire treaty.[7]

In the spirit of CEDAW, the General Assembly adopted the Beijing Platform for Action in September of 1995. As the principal international action plan on women's rights, the Beijing Platform states that the empowerment and autonomy of women and the improvement of their political status is essential for the achievement of both transparent and accountable government and administration, as well as sustainable development in all areas of life. In 2005, the Beijing Platform was renewed until 2020. In 2013, UN Women began the Beijing+20 campaign, which seeks to expand the fight for gender equality in the UN Women's Beijing +20 Action Plan.[8] The Action Plan supports a comprehensive, multilateral approach to empowering women by partnering with national movements and women's machineries to act as catalysts for social and political change.[9]

Similar to CEDAW and the Beijing Action Plan, the UN Declaration on the Rights of Indigenous People, adopted on September 13, 2007 by the General Assembly, is a landmark step towards ensuring indigenous rights, in particular their inclusion in government affairs. The Declaration states that "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State."[10] It also states that indigenous peoples are entitled to all human rights and fundamental freedoms set forth in the UN Charter, UDHR, and international human rights laws, including the

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[7] "Convention on the Elimination of All Forms of Discrimination against Women", *UN Treaty Center*, 2014, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

[8] "Beijing 20." *UN Women*. May 22, 2014.

[9] Ibid.

[10] "UN Declaration on the Rights of Indigenous People." *United Nations General Assembly*, September 13, 2007, Accessed October 21, 2014. http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

right to freely participate in government.[11] The Declaration reflects the need to protect the rights of indigenous people in general; as indigenous peoples comprise one of the most disenfranchised minority categories in many States, the Declaration has particular relevance to their political representation.

However, the aim of equitable participation of women and minorities in government cannot be fully achieved because of several factors that hinder their rights in the political arena. Women and minorities continue to struggle to take part in the decision-making process as a result of poverty and lack of economic resources. They are challenged by their socio-economic status, which in some cases cause them to earn less while having to prioritize the needs of their families. Lack of education and leadership training, particularly in rural areas, hinder the ability of women and minorities to participate fully in the political process. For example, the indigenous Batwa people have limited access to educational opportunities which results in an extremely low literacy rate. Consequently, the Batwa earn well below the average per capita income of $200 USD.[12]

Minority participation in government is also hindered by institutional barriers that prevent women and minorities from voting. Lack of identification is one of the most common obstacles faced by women and minorities with regards to voting. Lack of identification can be a result of racial suppression, inability to pay state identification fees, or an inability to read and/or write in order to properly fill out the paperwork required to obtain an identification card. Beyond lack of identification, the actual act of physically voting can become a burden to those living in impoverished areas. In many third world nations, polling stations are limited and the distance

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[11] "UN Declaration on the Rights of Indigenous People." *United Nations General Assembly*, September 13, 2007, Accessed October 21, 2014. http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

[12] "Unrepresented Nations and Peoples Organization." *UNPO: Batwa*, March 25, 2008.

needed to reach a polling station from a rural area is a burden to most rural families. Electoral fraud is also a serious problem in many countries, especially those with transitional governments. Electoral fraud includes vote rigging, intimidation, vote buying, intentionally spreading misinformation, and misleading or confusing ballots.[13]

The internal culture of political parties can also be a major obstacle to the participation and representation of women and minorities in the government. Political parties decide matters of candidate selection, and their decision-making bodies are often mostly composed of male members of the majority. As the internal hierarchy and procedures of many political parties can be rigid or uncompromising, women and minorities can find it difficult to overcome institutional obstacles and achieve positions of any significant political importance. For instance, Lebanese women gained suffrage in 1952, however only 2.3 percent of the Lebanese parliament is composed of women.[14] Overall, political parties tend to marginalize both the struggle and voices of women and minorities, making it difficult to increase participation levels.[15]

Because of the challenges that women and minorities face, various resolutions have been adopted to encourage Member States to promote political participation and representation of disadvantaged groups. In 1990, the UN Economic and Social Council (ECOSOC) adopted Resolution 1990/15, which urges "governments, political parties, trade unions, and professional and other representative groups to adopt a 30 percent minimum proportion of women in

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[13] "Election Crimes: An Initial Review and Recommendations for Future Study." December 1, 2006. Accessed October 24, 2014. http://www.eac.gov/assets/1/workflow_staging/Page/57.PDF

[14] Fahmiyah Sharafeddine, "Step Towards Equality: Quota for Female MPs in Lebanese Parliament", *Al-Monitor*, Febuary 12, 2012, http://www.al-monitor.com/pulse/culture/2012/02/is-the-lebanese-society-prepared.html#.

[15] "Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership." October 27, 2005. Accessed October 14, 2014.

leadership positions, with a view to achieving equal representation."[16] Additionally, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN Minorities Declaration), adopted in 1992, grants minorities the right to participate in decisions which will affect them at the national and regional levels. Furthermore, the General Assembly adopted A/RES/58/142 (2003) which expresses the importance of ensuring that women are given equal opportunity in reconciling their familial and professional responsibilities. It also stresses the importance of developing programs that will educate and train women with regard to skills such as campaigning techniques and public speaking, in an effort to provide potential women candidates with the tools to overcome institutional and cultural barriers to their participation in politics.[17] In 2011, the General Assembly adopted Resolution 66/130, which calls for the removal of barriers that discriminate against women directly or indirectly, and to take important measures that will encourage them to participate in all levels of the decision-making process.[18]

In addition to these instruments, the international community has established several programs specific to gender rights issues, most notably the United Nations Entity for Gender Equality and the Empowerment of Women, also known simply as UN Women, adopted through UN General Assembly Resolution 64/289 in 2010. The organization is committed to promoting women's leadership and political participation. UN Women provides civic education for voters as well as sensitization campaigns on gender equality for female political candidates. Moreover, UN Women encourages women's fair access to political spheres as voters, candidates, elected

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[16]"Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership." October 27, 2005. Accessed October 14, 2014.

[17]Ibid.

[18]"Global Norms and Standards: Leadership and Political Participation", *UN Women*, 2014, http://www.unwomen.org/en/what-we-do/leadership-and-political-participation/global-norms-and-standards.

officials and civil service members through legislative and constitutional reforms. Working in tandem with UN Women is the United Nations Girl Up program, which seeks to empower young girls by providing them with opportunities to become global leaders by channelling their energy to raise awareness and funds for United Nations programs that assist some of the world's hardest-to-reach adolescent girls.[19]

Equitable participation and representation of women and minorities in government is not a far-fetched dream, but it also cannot be done easily. Incessant efforts are needed to fully achieve this goal of equity. Denying or limiting the role of women and minorities in the process of governance is not only an affront to the rights of such individuals, but also a threat to development and good governance programs. A government that excludes, either by law or by custom, certain categories of people is a government that excludes itself from potentially valuable talent, and a government that widens and inflames divisions between majority and minority groups. There have been, in recent years, significant successes in the status of women even in states that are affected by conflict. This is evident in countries such as Rwanda, wherein equality is incorporated in its new constitution, and in Liberia and Kosovo through anti-corruption campaigns. The international community must continue to build on these successes, and find ways to achieve equivalent results in other states as well, in keeping with the highest standards of respect for equality, justice and human rights.

Questions to Consider:

1. What are the key developments in the participation of women in the political process in your state?

[19] "Leadership", *Girl Up*, 2014, http://www.girlup.org/learn/leadership.html.

2. What are the current persisting barriers that hinder women and minorities in participating in government?
3. What are the mechanisms of your government which encourage the participation of women in accordance with the Resolution A/RES/66/130?
4. What are some possible measures that the international community should take in increasing the participation of women and minorities in government?
5. How should the international community address the issues regarding the equitable representation of women in government?
6. How successful has your state been in implementing the principles of the UN Minorities Declaration? What obstacles still remain that hinder its implementation, if any?

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MUNFW 65th Session

Human Rights Council

Ensuring the Dignity and Rights of Persons with Respect to Sexual Orientation and Gender Identity

International human rights law upholds the principles of equality and non-discrimination in the application of recognized rights. Everyone is entitled to all rights and freedoms set forth in the Universal Declaration of Human Rights (UDHR) without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[1] Furthermore, Article 2 of the International Covenant on Civil and Political Rights calls for State parties to respect and recognize the rights of all individuals within its territory and subject to its jurisdiction without distinction of any kind.[2] Despite the failure to explicitly state sexual orientation as part of the prohibited grounds of discrimination, the United Nations Human Rights Committee confirmed that sexual orientation is indeed included in the understanding of sex as a prohibited basis for discrimination.[3] The UN General Assembly (GA) affirmed, in a statement made in 2008 that human rights are for all regardless of sexual orientation or gender identity.[4]

Despite efforts of the international community and the UNHRC, discrimination and violence based on sexual orientation and gender identity has been prevalent in many countries,

[1] "The Universal Declaration of Human Rights", *UN News Center*. December 10, 1948. Accessed October 17, 2014.

[2] "International Covenant on Civil and Political Rights", *United Nations General Assembly*, December 19, 1966.

[3] "Sexuality Under the ICCPR", *Australian Human Rights Commission*, November 19, 2007, Accessed October 17, 2014.

[4] "Letter Dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations Addressed to the President of the General Assembly", December 22, 2008, Accessed October 17, 2014.

some of which have legal measures that institutionalize violence and discrimination against LGBT persons. Today, seventy-seven countries, mostly in Asia and Africa, have laws that criminalize homosexual acts.[5] Five of these countries penalize those engaged in homosexual acts with death.[6] This underscores the urgency and necessity behind advancing efforts to curb discrimination through the United Nations system.

The case of Toonen v. Australia is the first recorded legal challenge to discriminatory practices against LGBT persons, wherein the ruling confirmed the repealing of offending laws that interferes with the rights of individuals regardless of sexual orientation.[7] On 25 December 1991, Mr. Nicholas Toonen, an Australian citizen and a frontline member of the Tasmania Gay Law Reform Group, submitted his complaint to the UN Human Rights Committee. In his complaint, Mr. Toonen claimed to be a victim of the State party (Australia), whom he argued violated his rights under Article 2 paragraph 1, Article 17 and 26 of the International Covenant on Civil and Political Rights. He cited the Tasmanian Criminal Code, particularly Sections 122(a) and (c) and 123, which criminalized various forms of sexual contact between men - including sexual contact between consenting adult homosexual men done in private - in his complaint as violating international law that protects his right to privacy and non-discrimination. He further argued that the above-mentioned sections of the Tasmanian Criminal Code gives power to Tasmanian police officers to investigate intimate aspects of his private life. Furthermore, the criminal code allowed police officers to detain him in the case of proven involvement in prohibited sexual activities.

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[5]"Discriminatory Laws and Practices and Acts of Violence against Individuals Based on Their Sexual Orientation and Gender Identity", *Office of the High Commissioner for Human Rights*, November 17, 2011.

[6]"Where Is It Illegal to Be Gay?" *BBC News*. February 10, 2014, Accessed October 17, 2014.

[7]"Sexuality Under the ICCPR," *Australian Human Rights Commission*, November 19, 2007, Accessed October 17, 2014.

As a response, the State party conceded that Toonen had been a victim of arbitrary interference with his privacy. Moreover, Australia admitted that the legislative provisions challenged by Toonen could not be justified on the grounds of public health and morality. The State party expressed that it did not seek to claim that the challenged laws are based on reasonable and objective criteria. However, Australia sought the guidance of the Committee in the inclusion of sexual orientation in the "other status" clause found Article 2 paragraph 1 and Article 26 of the International Covenant on Civil and Political Rights.

On 31 March 1994, the Human Rights Committee ruled that the challenged provisions of the Tasmanian Criminal Code failed to withstand reason and logic. Furthermore, the Committee declared that the challenged provisions of the criminal code interfered with Toonen's right to privacy found in Article 17 of the International Covenant on Civil and Political Rights. Consequently, under Article 2 paragraph 1 of the Covenant, Mr. Toonen is entitled to restitution, which the Committee determined to be the repealing of the provisions of the Tasmanian Criminal Code that interferes with his aforementioned right. Since the Committee ruled the violations under Article 2 paragraph 1 and Article 17 of the Covenant, the Committee did not consider it necessary to determine violation under Article 26 of the Covenant. On the issue whether to consider sexual orientation as other status declared in Covenant, the Committee declared sexual orientation as part or included in sex, which is explicit in the Covenant. Up to this date, the resolution on the inclusion of sexual orientation as a prohibited basis for discrimination guides several treaty bodies of the UN such as the Committee on Economic, Social and Cultural Rights, Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women.

Other states have experienced similar movement away from discriminatory practices. Brazil, for example, has also made efforts to include sexual orientation and human rights in the context of the UN ever since the UN World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001. In another effort to do so, the delegation of Brazil introduced a resolution prohibiting discrimination on the basis of sexual orientation drawing conviction from the Universal Declaration of Human Rights during the 59th Session of the United Nations Commission on Human Rights (UNCHR). Australia, European Union and Canada were the initial supporters of the resolution.

In 2003, Brazil took a step closer to initiating a discussion on violence and discrimination based on sexual orientation when it introduced Resolution E/CN.4/2003/L.94 or the Resolution on Human Rights and Sexual Orientation before the UNCHR. The resolution received strong opposition from conservative states such as Pakistan, Vatican City, Zimbabwe, Malaysia, Saudi Arabia and Bahrain. Countries in opposition urged other countries to vote against the resolution. They argued that the Commission should not waste its time on a topic not worthy of UN discussion and even claimed that the resolution was an insult to all Muslims around the world. Consequently, Pakistan, leading the Organization of Islamic Conference, suggested a no-action motion to avoid putting the resolution to a vote. With twenty-four votes against the no-vote motion, twenty-two in favor and six abstentions, the Commission moved on to the debate regarding the resolution. However, the opposition used delaying tactics such as threatening to submit hundreds of amendments to the resolution, mostly deleting the words sexual orientation in every clause, and moving to a procedural debate consuming the remaining time of the

meeting. As a result, the Chair proposed considering the resolution in next year's session. The motion received twenty-four votes in favor, seventeen against and ten abstentions.[8]

Before the 60th Session of the UNCHR, however, Brazil withdrew the resolution, citing concerns that a lack of international support and international political will would doom the proposal in any case. Some observers indicate that Brazil's withdrawal of the resolution was a result of intense pressure from Islamic countries and lack of support from EU countries. Moreover, some argue that Egypt may have threatened to veto the proposal for Brazil to host the Arab League-Latin American Summit if Brazil did not withdraw the resolution.[9] While the proposed resolution did not contain the strongest language possible, it would have been the first UNCHR resolution to directly link human rights to sexual orientation and the first to condemn discrimination against people based on their sexual orientation.[10] The case of this proposed draft underlines the severe difficulties involved in fostering any progress on the topic.

Since no other country was willing to sponsor the Brazilian resolution on human rights and sexual orientation, this constituted a failure to include violence and discrimination experienced by LGBT persons in high-level discussions. The topic was not re-addressed at a high level until the 60th anniversary of the UDHR, when a Joint Statement on Sexual Orientation, Gender Identity and Human Rights was presented before the GA.[11] Sixty-six Member States

[8]"Human Rights and Sexual Orientation and Gender Identity", *Amnesty International*, 2004, http://www.amnesty.org/en/library/asset/ACT79/001/2004/en/a1e0b38f-d5fe-11dd-bb24-1fb85fe8fa05/act790012004en.pdf.
[9]Ibid.
[10]Ibid.

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"General Assembly – Joint statement on sexual orientation and gender identity ", *Arc International*, 2008, http://arc-international.net/global-advocacy/general-assembly/ga_jointstatement_en.

from the Organization of American States, European Union, Africa and Asia supported the first ever statement addressing rights and violations based on sexual orientation and gender identity at the GA. The statement reaffirms the principle of universality, equality and non-discrimination of human rights. It expresses concerns over violations of human rights and fundamental freedom based on sexual orientation or gender identity. The statement also condemns these human rights violations, and urges States to take all necessary legislative or administrative measures to protect LGBT persons from criminal penalties, arrests or detention due to their sexual orientation and gender identity. Furthermore, it calls on relevant international human rights mechanisms to commit to promote and protect the human rights of all persons, regardless of sexual orientation and gender identity. The joint statement is a non-binding document but constitutes a leap toward the inclusion of sexual orientation and gender identity in the UN language.

In 2011, the HRC adopted the first UN resolution on human rights, sexual orientation and gender identity. The Council, through Resolution 17/19, calls on the UNHCHR to commission a study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity.[12] By adopting this resolution, States also decide to convene a panel discussion during the nineteenth session of the HRC to discuss the issue of discriminatory laws and practices, and acts of violence, against individuals based on their sexual orientation and gender identity. The panel discussion will make use of the information and data gathered in the study commissioned by the UNHCHR.[13] In pursuant with Resolution 17/19, the High Commissioner for Human Rights presented the report on

[12] "A/HRC/RES/17/19", *Human Rights Council*, 2011, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement.

[13] "A/HRC/RES/17/19", *Human Rights Council*, 2011, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement.

Discriminatory Laws and practices and acts of violence against individuals based on their sexual orientation and gender identity during the nineteenth session of the HRC.[14] The 25-page report highlighted violations of the principles of universality, equality and non-discrimination in the application of human rights.[15] The High Commissioner for Human Rights also noted in A/HRC/19/41 (2011) that the different State responsibilities under International Human Rights Law must be observed without distinction on the grounds of sexual orientation and gender identity. The responsibilities mentioned are the protection of life, liberty and property, the prevention of torture and other cruel, inhumane or degrading treatment, the protection of the right to privacy and against arbitrary detention, and the protection of the right to freedom of expression, association and assembly.[16] Following report 19/41, the HRC adopted Resolution HRC/27/L.27/Rev.1 in 2014.[17] This resolution expands on 2011's Resolution 17/19 and calls for an updated version of report 19/41, and emphasizes researching and developing best practices with regard to rolling back discriminatory policies.

The report on discriminatory laws and practices commissioned by the UNHCHR cited incidents of violence such as killings, rape, torture and other forms of cruel, inhumane and degrading treatment. Despite the scarcity of data, the final output of the report managed to put together relevant cases and data to paint a picture of the current situation of LGBT-related violence. Included in the report are data on the murder of at least 31 LGBT persons in Honduras during an 18-month period, the murder of 44 LGBT persons in Europe in 2009, the 988 hate-

[14] "A/HRC/19/41", *Human Rights Council*, 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf.
[15] Ibid, 4.
[16] Ibid, 5-8.
[17] "Resolution 27/L.27/Rev.1", *UN Human Rights Council*, 2014, http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/27/L.27/Rev.1.

crimes related cases in United Kingdom of Great Britain and Northern Ireland and a number of sexual abuses committed by police officers against LGBT persons.[18]

According to data from the HRC's report 19/41, seventy-seven States, Uganda being the most recent, have laws criminalizing homosexuality.[19] While in the case Toonen v. Australia, the Committee ruled that laws criminalizing private, consensual homosexual acts violate a person's right to privacy under the International Covenant on Civil and Political Rights, and thus called to repeal such offending laws, many States remain firm in criminalizing sexual acts of LGBT persons. Some States need not to establish or prove the LGBT person's engagement in homosexual acts. Their law simply penalizes LGBT persons for defying social norms and gender roles. Other States have laws criminalizing homosexuality using colonial-era legislation wherein they prohibit either certain types of sexual activity or any intimacy or sexual activity among same-sex couples.[20] Criminal penalties range from years imprisonment to the death penalty. At least five States penalize being LGBT and engaging in homosexual acts with death.[21]

International efforts vary from being discrete to being vocal in including the issue of sexual orientation and gender identity based violence and discrimination. Despite recent progress within the HRC and various organs of the United Nations, many are still suffering from the ill-treatment of others solely because of their sexual orientation and gender identity. Violence and discrimination against LGBT persons persists, and is increasing in number and severity. The biggest challenge faced by the LGBT community and LGBT advocates remains the legal

[18] "A/HRC/19/41", *Human Rights Council*, 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf.
[19] Ibid.
[20] "A/HRC/19/41", *Human Rights Council*, 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf.
[21] "Criminalization", *UN Free & Equal*, 2014, https://unfe-uploads-production.s3.amazonaws.com/unfe-43-UN_Fact_Sheets_-_FINAL_-_Criminalization_%281%29.pdf.

measures that perpetuate gender-based violence and discrimination. Such measures protect the violators rather than the victims, encourage violence rather than tolerance, and subscribe to homogeneity rather than diversity.

Under international law, States have the main responsibility of upholding and protecting the rights of their citizens without distinction and biases, and criminalization of same-sex relationships undermines this responsibility. UN Secretary-General Ban Ki-moon reiterated during the launching of Free & Equal Campaign, "these laws [criminalizing consensual, adult same-sex relationship] violate basic rights to privacy and to freedom from discrimination. Whether enforced or not, they actively encourage intolerant attitudes, giving homophobia a State seal of approval."[22] The penalties cited in laws that prohibit homosexual acts and same-sex relationships are alarming. In Brunei, homosexuality is considered a crime and the government has recently implemented the stoning of homosexuals to death as a punishment, replacing the original penalty of ten-year imprisonment.[23] Recently, Uganda joined the list of countries that criminalize homosexuality when its President signed the Anti-Homosexuality Act on 24 February 2014.[24] The Uganda anti-homosexuality law states that homosexual acts incur lifetime imprisonment while the attempt to commit homosexuality corresponds to seven years imprisonment.[25] But due to unconstitutional protest raised by gay rights campaigners in Uganda, the Constitutional Court had to deliberate the newly signed law. On August 1, 2014, the court ruled that the process of enacting the anti-homosexual law was illegal, declaring the law null and

[22]"Discrimination against Lesbian, Gay, Bisexual, Transgender people must end, says Secretary-General in message at Free & Equal launch," *United Nations*, April 30, 2014.
[23] Sharia Brunei, 'Stone the gays' law to be phased in starting today" *Jihad Watch*, 2014, http://www.jihadwatch.org/2014/05/sharia-brunei-stone-the-gays-law-to-be-phased-in-starting-today.

[24] "Uganda: Anti-Homosexuality Law Challenged," *Human Rights Watch*, March 11, 2014, http://www.hrw.org/news/2014/03/11/uganda-anti-homosexuality-law-challenged.
[25]"Uganda: Law Rolls Back Basic Rights," *Human Rights Watch*, February 24, 2014, http://www.hrw.org/news/2014/02/24/uganda-law-rolls-back-basic-rights.

void. Despite such victory, colonial-era laws penalizing homosexuality are still implemented in the country.[26]

In some cases, legal measures are established for the purpose of protecting LGBT persons but they lack proper enforcement to promote tolerance and downgrade discrimination and violence. Many LGBT persons around the world are still tormented with different physical and psychological violence they experience from homophobic, biphobic and transphobic individuals and groups. South Africa is the first African country to provide constitutional protection to LGBT persons in 1996 and the only African country to recognize same-sex marriage.[27] Nevertheless, there are still cases of crimes against LGBT persons that not only increase in number but as well as the severity and brutality of practices. Corrective rape is a rampant crime against lesbians, wherein perpetrators believe that a lesbian girl can turn into a heterosexual by having sex with a man. Ever since the release of the 1998-2000 report of the UN Office on Crime and Drugs, South Africa is known to be the rape capital of the world with an estimate of 500,000 rape cases every year.[28]

To greater extent, South African men even murder lesbians after raping them. The case of Sizakele Sigasa, a women's and gay rights activist, not only proves that hate crimes continue to exist even in a country where legal measures are available to protect the LGBT community but also reflects the gravity of violence against lesbians in their country. Sizakele and her friend

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[26] David Smith, "Uganda anti-gay law declared 'null and void' by constitutional court," *The Guardian*, August 1, 2014, http://www.theguardian.com/world/2014/aug/01/uganda-anti-gay-law-null-and-void.

[27] Jane Thirikwa, "Growing Violence Against LGBT Community in South Africa," *Human Rights Campaign*, September 13, 2013, http://www.hrc.org/blog/entry/growing-violence-against-lgbt-community-in-south-africa.

[28] Patrick Strudwick. "Crisis in South Africa: The shocking practice of 'corrective rape'-aimed at 'curing' lesbians," *The Independent*, January 4, 2014, http://www.independent.co.uk/news/world/africa/crisis-in-south-africa-the-shocking-practice-of-corrective-rape--aimed-at-curing-lesbians-9033224.html.

experienced verbal abuse when a group of men started name-calling them. They were eventually gang raped, tortured and shot in the head.[29] No one was ever convicted for the crime.

Moreover, murdering of individuals because of their sexual orientation and gender identity, particularly transgender individuals, continues to increase. The Trans Murder Monitoring (TMM) project, aimed at systematically monitoring, collecting and analyzing reports of homicides of trans people worldwide, reported an estimate of 1,123 killings of trans people in 57 countries worldwide from 2008-2012.[30] As the data showed, most of those reported cases of murder occurred in the Latin America region followed by Northern America and Asia. Yet, these are only the number of reported cases. Many cases remain to unreported and unresolved which makes the total number of violence more significant.

The UN remains firm in its stand that human rights are for all human beings regardless of their categorization. It upholds the principles of equality and non-discrimination in the application of all human rights. Similar to other status specified in different human rights treaties and resolution, as discussed earlier, sexual orientation and gender identity should not become a basis for discrimination and hinder individuals to enjoy and exercise their rights.

Questions:

1. What are other cases of gender-based violence and discrimination that are prevalent in your country?
2. How does your country view the issue of homosexuality and the LGBT community?

[29] Ibid.

[30] "Constant rise in murder rates: Transgender Europe's Trans Murder Monitoring project reveals more than 1, 100 reported murders of trans people in the last five years," *Transgender Europe*, http://www.transrespect-transphobia.org/uploads/downloads/2013/TMM-english/TvT-TMM2013-Update-PR_EN.pdf.

3. Does your country have existing laws that criminalize sexual acts among consensual adult same-sex relationships?
4. Should conservative States consider the resolution passed by the Human Rights Council on human rights, sexual orientation and gender identity in reviewing their anti-homosexual laws?

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Ensuring the Land and Natural Resource Rights of Indigenous Peoples

About 15 percent of today's most impoverished come from the world's indigenous peoples, which has a population of around 370 million.[1] Their survival depends largely on the resources available in the traditional lands they inhabit, which make up 20 percent of the earth's territory.[2] While many efforts are already being undertaken to address poverty, many indigenous peoples suffer from human rights violations that prevent them from fully benefiting from these efforts.

Human rights violations committed against indigenous peoples are rooted in issues concerning the rights of indigenous peoples over their ancestral lands, territories and natural resources. Ancestral lands and territories form a core part in indigenous peoples' identity and spirituality and are deeply rooted in their culture and history.[3] Land plays a vital role in the indigenous peoples' assertion of self-determination which they consider a "prerequisite to the enjoyment of all other human rights", including the right to development [4]. Hence, in order to protect their human rights and tackle the root causes of their poverty, efforts at the local, national

[1] Joji Carino. "Poverty and Well-being." *State of the World's Indigenous Peoples.* UN Department of Economic and Social Affairs.http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf

[2] Neva Collings. "Environment." *State of the World's Indigenous Peoples*

[3] *Backgrounder: Indigenous Peoples – Land, Territories and Natural Resources.* http://www.un.org/esa/socdev/unpfii/documents/6_session_factsheet1.pdf

[4] Dalee Sambo Dorough. "Human Rights." *State of the World's Indigenous Peoples*

and international levels must put great emphasis on ensuring the land and natural resource rights of indigenous peoples.

In the 1950s, following the decolonization era, many indigenous rights organizations emerged in an effort to seek recognition as peoples and to struggle against further dispossession of land and marginalization. These movements have been able to raise greater interests in countries such as Australia, North America, New Zealand and some Latin American states.[5] Among the first international efforts made in response to these movements were the ILO Convention 107 (1957) and later on, the ILO Convention 169 (1989) – both of which address the position of indigenous peoples in mainstream society and economy. In 1982, through the Economic and Social Council (ECOSOC) resolution 1982/34, the first ever United Nations mechanism exclusively dedicated to indigenous issues - the Working Group on Indigenous Populations - was established. The Working Group's efforts led the General Assembly to adopt the Declaration on the Rights of Indigenous Peoples in 2007.[6] Since then, the United Nations system has been playing a vital role in addressing issues concerning indigenous peoples, such as that of lands, territories and natural resources.

The turning point in the discussion of indigenous peoples' rights over their environment, lands and natural resources took place at the Rio Earth Summit in 1992 which resulted to three documents namely, the Rio Declaration, Agenda 21 and the Convention on Biological Diversity.[7] These documents acknowledge not only special relationship of indigenous peoples to

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[5] Jayantha Perera. Introduction to *Land and Cultural Survival – The Communal Land Rights of Indigenous Peoples in Asia.* Asian Development Bank. http://www.adb.org/sites/default/files/pub/2009/land-cultural-survival.pdf

[6] *The Working Group on Indigenous Populations: its elimination and future within the Human Rights Council (HRC).* Indigenous Peoples' Center for Documentation, Research and Information. http://www.docip.org/Previous-Working-Group-on-Indi.66.0.html

[7] Jayantha Perera. Introduction to *Land and Cultural Survival*

their lands and territories, but also their roles in their conservation. Agenda 21, in particular, recognizes the role of indigenous peoples in the decision-making processes concerning the sustainable development practices on their lands. In order to promote awareness and cooperation as well as expert advice on dealing with indigenous issues, the UN Permanent Forum on Indigenous Issues was established in 2000. This mechanism works alongside the other two UN bodies specifically dealing with indigenous issues, the Special Rapporteur on the Rights of Indigenous People and the Expert Mechanism on the Rights of Indigenous Peoples. The Special Rapporteur's mandate is to promote laws, policies and programs to implement international standards of indigenous peoples' rights as well as to address alleged violations of these rights. The EMRIP, on the other hand, provides the Human Rights Council with study and research-based thematic expertise on indigenous peoples' rights.

The Sixth Session of the Permanent Forum in 2007 emphasized the fundamental significance of territories, lands and natural resources to indigenous communities' cultural development, poverty reduction, good governance and conflict prevention and resolution. It also acknowledged the struggles of indigenous peoples against numerous cases of discrimination arising from the management of their lands without their consent. In the Session's resulting recommendations, the Permanent Forum strongly urged for the adoption of the UN Declaration on the Rights of Indigenous Peoples to further reinforce the legal framework of indigenous peoples' rights, including their right to land and natural resources. Also highlighted was the role of governments in ensuring the consistency of programmes concerning indigenous lands to internationally recognized standards for indigenous peoples' rights protection. The UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (A/RES/61/295),

with nine of 46 articles stressing the rights of indigenous peoples over their lands, territories and natural resources. Article 26, in particular, states that:

> 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
>
> 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
>
> 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.[8]

In spite of the efforts in the past few decades, however, indigenous peoples' struggles to assert their rights over their lands persist. While globalization provides opportunities for indigenous communities to create networks in effort to claim these rights, it also gives "easier access to multinationals to exploit the lands and natural resources in which indigenous peoples depend."[9] States are being confronted with foreign and domestic pressures to increase their economic growth. Minority Rights Group's 2012 report on the State of the World's Minorities and Indigenous Peoples mentioned that in response to these pressures, states tend to work alongside private corporations for natural resource development projects. The problem, however, is that most of the areas targeted for such purposes are the lands occupied by indigenous peoples and while they often generate great revenues, the benefits are not all-inclusive. Development activities such as logging, dams, oil, gas and mineral extractions, commercial fisheries,

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[8] *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295).* http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

[9] Naomi Kipuri. "Culture." *State of the World's Indigenous Peoples*

ecotourism and large-scale agriculture have detrimental consequences to indigenous peoples' livelihood, health, culture, environment and enjoyment of their human rights.

One of the most protested cases of violation of indigenous peoples' land and natural resource rights is the dispossession of lands. The UN Department of Economic and Social Affairs (DESA) also reported in its State of the World's Indigenous Peoples 2009 Report that, in countries that have at least recognized indigenous peoples' land rights, it is not uncommon that processing of land titles and demarcations are delayed or brushed off in the event of reforms in leadership and policies. There are also cases wherein land title-holding indigenous communities are robbed off of their lands due to states' deliberate negligence of their rights in favor of mining and logging projects. These instances occur without free, prior and informed consent of the affected indigenous communities. Other large-scale development activities include subsoil resource extractions, plantations and industrial plants establishment, scientific research- and tourism-based developments disguised as 'protected areas,' construction of ports, transportation networks, dams, military bases and toxic waste dumps. These activities not only result to the dispossession of lands but also displacement, loss of livelihood, environmental destruction, negative health impacts and in some cases, violence in terms of physical abuse, torture and even death. Furthermore, many developers do not extend compensations to indigenous peoples for their losses hence some are forced to work in others' lands, and often in some form of bonded labor, in order to survive.[10]

Due to their close relationship with their environment and natural resources, indigenous peoples are also considered among the most vulnerable to the consequences of climate change. In said DESA report, it was mentioned that among others, the changes in migratory patterns of

[10] Corinne Lennox. "Natural Resource Development and the Rights of Minorities and Indigenous Peoples." *State of the World's Minorities*

animals, availability of water resources and grazing areas bring about adverse effects in the traditional hunting, fishing and agricultural practices of indigenous peoples. Indigenous communities also suffer from climate change's negative health impacts and endure dents in tourism revenues at the same time.[11] This adverse effect to their economy, along with the depletion of natural resources for their traditional medicines, makes it even more difficult for indigenous peoples to gain access to proper health care. Traditional cultural and ritual practices also take the blow as sacred sites are also in danger of vanishing should effects of climate change not be mitigated. Among the reported instances of indigenous peoples' struggles in surviving the impacts of climate change include the forced relocation of indigenous communities in the Arctic due to the decline in traditional food sources. In Africa, traditional agricultural practices were disrupted due to frequent droughts and in the Pacific areas, indigenous peoples suffer from coast erosions and experience rising sea levels. These changes in the environment leave the indigenous communities few options other than relocate to other indigenous territories to gain access to natural resources. They become indigenous "environmental refugees" and their unwelcome presence in other indigenous territories often have negative social, spiritual, cultural and economic implications.[12]

Indigenous women are particularly affected by these situations. Not only do they experience threats of losing their shelter and access to natural health care, their burdens in securing their family and own daily needs have also significantly increased. It has become increasingly difficult for them to gain access to water, fuel and traditional food sources hence

[11] Naomi Kipuri. "Culture." *State of the World's Indigenous Peoples*
[12] Ibid.

they need to take greater lengths to secure them.[13] Some have also been forced to leave their income-earning activities, thus making them financially dependent on men.[14]

While in principle international treaties and laws acknowledging indigenous peoples' relationship with their land, environment and natural resources involve indigenous peoples in decision-making processes; the realization of the principle is not quite evident in actual practice. Indigenous peoples may have gained greater recognition but "current treaty-based framework of international environmental law" still gives states sovereign rights over indigenous lands and natural resources.[15] This leaves indigenous peoples' political power limited and dependent on state decisions and consequently, their efforts in the international arena are still often marginalized. Also, at the national level, the failure of governments to address this reality mixed with the frustrations over poverty, inequality and displacement tend to lead indigenous peoples into taking extreme measures to defend their rights.[16] Minority Rights Group acknowledges that despite the numerous indigenous peoples' initiatives to take legal action to secure land and natural resource rights, their resource usually cannot match those of their opponents from public and private sectors. Hence, resolutions through legal means do not always appeal to indigenous peoples as a sustainable course of action. Their land issues' immediate need of attention often leads them into resorting to short-term responses that do not always end peacefully.

While indigenous peoples have witnessed increased recognition of their rights over their lands and natural resources at the international level, the main problem lies in its non- or poor translation of this recognition into concrete outputs at the national and international levels. Even

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[13] Corinne Lennox. "Natural Resource Development and the Rights of Minorities and Indigenous Peoples." *State of the World's Minorities*

[14] Neva Collings. "Environment." *State of the World's Indigenous Peoples*

[15] Ibid.

[16] Corinne Lennox. "Natural Resource Development and the Rights of Minorities and Indigenous Peoples." *State of the World's Minorities*

though collectively, indigenous peoples are being heard in international fora, their voices remain marginalized, if heard at all, within the borders of the states they reside in. To sum this up, UNDESA pointed out the factors leading to this challenge: "structural discrimination of indigenous peoples at all levels in many countries, lack of political will to prioritize indigenous issues and provide funds to address them, low level of efficacy of indigenous participation in national policy formulation and implementation and lack of awareness of international commitments amongst government officials as well as indigenous peoples themselves."[17]

The Permanent Forum, however, released the Study on best practices and examples in respect of resolving land disputes and land claims (E/C.19/2014/7) in its Thirteenth Session, which reflected the establishment of commissions in Bangladesh and the Philippines to address land disputes involving indigenous peoples. While it is facing problems regarding internal politics and inadequate resources, the Chittagong Hill Tracts Land Disputes Resolution Commission in Bangladesh serves as model in terms of a state's attempt to provide "quick, inexpensive, fair and sustainable remedies for land disputes" and to acknowledge the role of traditional institutions in such processes.[18] Another practice highlighted in the Study is the establishment of the National Commission on Indigenous Peoples of the Philippines which requires states and private corporations to obtain free, prior, and informed consent of indigenous peoples prior to conduct of mining activities in their ancestral domains and lands. Issuing certificates of ancestral domains titles and ancestral land titles is one of the core mandates of the Commission, along with the establishment of model ancestral domain communities through

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[17] Neva Collings. "Environment." *State of the World's Indigenous Peoples*

[18] *Study on best practices and examples in respect of resolving land disputes and land claims, including consideration of the National Commission on Indigenous Peoples (Philippines) and the Chittagong Hill Tracts Land Dispute Resolution Commission (Bangladesh) and the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights (E/C.19/2014/7).* UN Permanent Forum on Indigenous Issues. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/248/14/PDF/N1424814.pdf?OpenElement

development and peace and the enforcement of human rights and indigenous peoples' empowerment. These examples of resolving land disputes are not without flaws, however. Much still remains to be done to ensure that the mandates of institutions such as the two mentioned are met through full participation of all involved sectors. Revisions and additional mechanisms continue to be options in efficiently ensuring land and natural resource rights of indigenous peoples.

Another additional effort to ensure the land and natural resource rights of indigenous peoples is the attempt to come up with a mechanism that would secure accountability in states' actions in respect to the rights of indigenous peoples. In the Study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples focusing on a voluntary mechanism (E/C.19/2014/7), a need to establish a mechanism to monitor the content and weight of the Declaration on the Rights of Indigenous Peoples was raised. An optional protocol was recommended to facilitate said action in the context of rights to land, territories and natural resources, to self-determination and to free, prior and informed consent. The optional protocol is supposed to emphasize the role of the Declaration in settling land dispute between indigenous peoples and states, such that it could be a major factor in litigation or in complaints brought before human rights treaty bodies. This particular mechanism must be "(a) voluntary (b) confined to the Declaration's provisions that pertain to lands, territories and resources (c) negotiated through extensive dialogue between indigenous peoples and nation States and (d) negotiated on the basis of an 'agreement in principle'."[19]The two studies show that much still remains to be done by states, indigenous communities, the private sector and other concerned groups, in order to pursue economic development without compromising indigenous peoples'

[19] UN Permanent Forum on Indigenous Issues. *E/C.19/2014/7 - Study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples focusing on a voluntary mechanism.* UN Permanent Forum on Indigenous Issues. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/252/08/PDF/N1425208.pdf?OpenElement

access to their lands and natural resources. The Declaration of Sta. Cruz by the G77 states and China in Sta. Cruz, Bolivia on June 2014 which recognizes indigenous peoples' participation in addressing economic and environmental issues showcases yet another effort of states to highlight the importance of indigenous peoples' land and natural resource rights to development.[20]

The protection and promotion of land and natural resource rights are essential in indigenous peoples' holistic development and enjoyment of all other human rights. In order for them to exercise their full potential in sharing their unique knowledge and capabilities in achieving greater development, national and international efforts must take into account their empowerment in all aspects of human life. A human rights-based approach is therefore vital in this process. Indigenous peoples must have equal opportunity to participate in addressing matters concerning themselves without fears of discrimination and other human rights violations. The United Nations has long since established mechanisms to address indigenous issues and while ensuring land and natural resource rights of indigenous peoples still remains difficult, the UN must continue to strive for its realization.

Questions:

1. Are there any existing mechanisms in your country that specifically cater to the protection and promotion of rights of indigenous peoples? If so, how effective are they?
2. What actions has your country undertaken to ensure the land and natural resource rights of indigenous peoples?
3. How are violations against indigenous peoples rights, especially land and natural resource rights, addressed in your country?

[20] *Declaration of Sta. Cruz.* http://www.g77bolivia.com/en/declaration-santa-cruz

4. How does your state involve indigenous peoples in decision-making processes at the national level?
5. Has your state worked with other states and international organizations to promote and protect the land and natural resource rights of indigenous peoples? If so, what are the outcomes of your collective efforts?
6. What more can be done by the United Nations and the whole international community to ensure the land and natural resource rights of indigenous peoples?

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.php%3Fid%3D1114&ei=20WlU-LmJcrNkQW16YGgDw&usg=AFQjCNGyGL4J0R6K_DZMvNz8G7hmJc9h2Q&sig2=V_tX2pmUvhTjTjKBvyWdoQ&bvm=bv.69411363,d.dGI.

E/C.19/2014/7. UN Permanent Forum on Indigenous Issues. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/248/14/PDF/N1424814.pdf?OpenElement.

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International Maritime Organization

The Law of the Sea in Its Relevance to Disputed Waters

The goal of the International Maritime Organization (IMO) is to assist Member States in utilizing their marine resources in an environment free of conflict and conducive to development, all while successfully safeguarding the rule of law in these areas. Throughout the years, the United Nations (UN) has been actively engaged in encouraging and guiding the development and eventual adoption of the Law of the Sea Convention (UNCLOS). They continue to be involved in its adoption by monitoring States' developments as they relate to the Convention and providing assistance in both the ratification and implementation process.

The introduction of a clear definition of what constitutes "territorial waters," a 12-mile belt of coastal waters from the coastal baseline of a state, has resolved some conflicting claims, as navigating these territorial waters is now protected by legal principles.[1] Coastal nations are granted extensive and exclusive economic rights over a 200-mile wide zone along their shores. Organizations such as the International Seabed Authority, which manages activities in the deep seabed beyond national jurisdiction, as well as the International Tribunal for the Law of the Sea, which has the ability to settle ocean related disputes that arise from the application or interpretation of the Convention, are in place to make sure these conflicts can be reached swiftly and peacefully.

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[1] United Nations. *The United Nations Convention on the Law of the Sea (A historical perspective).* http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm (accessed July 1, 2014).

Across the globe, governments are taking calculated steps to extend areas of adjacent ocean within their jurisdiction. Member States are exercising their rights over neighboring seas to capitalize on the resources of their waters and on the advantages of shipping and fishing in these regions. For the most part, this practice has been carried out in a manner consistent with the Convention, as it has become the international standard for all actions dealing with the oceans and the law of the sea. However, disputes remain that UNCLOS has not been sufficient to fully resolve, as it does not enjoy universal ratification from Member States and because of differing interpretations of how the Convention should be adopted.

The United Nations Convention on the Law of the Sea

Established in 1982 after the third United Nations Conference on the Law of the Sea (UNCLOS III), the United Nations Convention on the Law of the Sea (UNCLOS) established for the first time a universal set of rules for the sea, bringing order to a system "fraught with potential conflict."[2] Its scope is vast, covering all ocean space and the uses of all its resources, as well as basic law and order. UNCLOS is often referred to as the "constitution of the sea,"[3] based on the idea that problems faced by Coastal States are closely interrelated and these issues must be addressed as a whole, not argued through individual conflicts.

The conference also implemented the International Tribunal for the Law of the Sea (ITLOS), establishing an international framework for law over the ocean, its uses and resources[4]. The Tribunal consists of an 11-member Seabed Disputes Chamber that has the power to settle disputes between party states that arise out of the Convention's interpretation or application.

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[2] United Nations. *Oceans: The Source of Life*. http://www.un.org/depts/los/convention_agreements/convention_20years/oceanssourceoflife.pdf (accessed July 1, 2014).

[3] United Nations. "A Constitution for the Oceans." . http://www.un.org/depts/los/convention_agreements/texts/koh_english.pdf (accessed July 1, 2014).

[4] International Tribunal for the Law of the Sea. "The Tribunal." https://www.itlos.org/index.php?id=15&L=0 (accessed October 11 2014).

To successfully navigate through territorial conflicts, the Convention had to first set limits. Prior to the adoption of the Convention, States could not agree on how narrow or wide territorial belts should be, necessitating a clear definition of the line separating national and international waters. The implementation of exclusive economic zones (EEZs) established an area over which the state has special rights over the exploration and use of marine resources. The zone extends to a distance of 200 nautical miles from its coastal baseline, granting sovereign rights to the states over resources below the surface of the sea. However, the exact extent of EEZs, as well as the rights of coastal states to these waters, continues to be a common source of conflict.[5]

The document of 1982 has been amended and debate has continued on a variety of major issues including territorial jurisdiction, navigational and transit routes, fishing rights and environmental protection, all of which rely heavily on the rights of States in conjunction with their EEZs. For instance, residents of other States fishing in an EEZ must comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State.

Spratly Islands and the South China Sea

One example of ongoing territorial disputes can be seen in the South China Sea, where several islands have been subject to competing claims of sovereignty by neighboring states. Countries vying for control in the region include China, the Philippines, Malaysia, Taiwan and Vietnam. The interests of the various nations include acquiring rights to fishing areas,

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[5] United Nations. *Third United Nations Conference on the Law of the Sea*. http://www.un.org/documents/ga/res/37/a37r066.htm (accessed July 1, 2014).

potential exploitation of suspected crude oil and natural gas under the surface and the strategic control of important shipping lanes.[6]

As a result of these conflicts, the Association for Southeast Asian Nations (ASEAN) drafted the Declaration on the Conduct of Parties in the South China Sea in 2002 as an attempt to reiterate the need for peaceful solutions to conflicts between countries involved in disputes. As well as reaffirming their commitment to UNCLOS, the declaration stressed the need to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability." The document also stressed the importance of holding dialogues and exchanging views to resolve territorial disputes, as well as working toward a formal Code of Conduct.[7]

Despite these goals, the declaration was not a binding agreement and took nearly 10 years to implement, due to repeated conflicts over resources in the South China Sea. In 2011, China and Vietnam agreed upon guidelines for the implementation of the Declaration of Conduct in order to maintain the goals set forth in the declaration.[8] However, significant progress of guidelines have not been met due to a lack of trust between ASEAN countries and China, each claiming that the other claimant states have not demonstrated goodwill in adhering to the agreed upon principles.[9]

Arctic Ocean Northwest Passages – Canada, US, EU

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6 University of Bern. *The Spratly Islands dispute: Multilateral negotiations within ASEAN and with China.* http://www.iew.unibe.ch/unibe/rechtswissenschaft/dwr/iew/content/e3911/e4043/e434096/addor_lam-rachel_ger.pdf (accessed September 5, 2014)

7 Association of Southeast Nations. *Declaration on the Conduct of Parties in the South China Sea*. http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea (accessed July 1, 2014).

8 Durham University. *China and Vietnam agree principles for resolving maritime disputes*. https://www.dur.ac.uk/ibru/news/boundary_news/?itemno=12969 (accessed July 1, 2014).

9 Center for Strategic and International Studies. *A Code of Conduct for the South China Sea?* http://csis.org/files/publication/Pac1245A.pdf (accessed July 1, 2014).

The Northwest Passage is a sea route through the Arctic Ocean amidst the Canadian Arctic Archipelago. The Canadian government claims the waters fall within their jurisdiction, giving Canada the right to control transit through these waters. However, most maritime nations, including the United States, consider them to be international waters, where foreign vessels have the right of "transit passage."[10] According to guidelines set forth by UNCLOS, if the area is classified as international waters, Canada would have the right to enact environmental regulations and shipping laws, but not the right to close the passage. In 1986, the Canadian government reaffirmed their rights to the waters, but the United States once again refused to recognize their claim. In 1988, the governments of Canada and the U.S. signed an Arctic Cooperation agreement that did not deal with any questions of sovereignty and merely allowed the two countries to collaborate in functional terms.[11]

Since the signing of the agreement, Canada's Joint Task Force has declared that the military would no longer refer to the region as the Northwest Passage, but as the Canadian Internal Waters.[12] Canada maintains that the waters of the Northwest Passage constitute their own internal waters under both historic title and through inclusion within straight baselines.[13] However, under UNCLOS, States have the right to submit claims for territorial expansions and extensions of their continental shelves.

Northern Europe, Canada, and Russia – Arctic Ocean

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10 Kraska, James. "International Security and International Law in the Northwest Passage."*Vanderbilt Journal of Transnational Law* 42: 1127.

11 United Nations. *Agreement on arctic cooperation.* https://treaties.un.org/doc/publication/unts/volume%201852/volume-1852-i-31529-english.pdf (accessed June 1, 2014).

12 Petersen, Luke R. *International Strait or Internal Waters?* http://www.uscg.mil/proceedings/summer2009/articles/44_Petersen_International%20Strait%20or%20Internal%20Waters.pdf (accessed July 1, 2014).

13 Parliament of Canada. *Controversial Canadian Claims over Arctic Waters and Maritime Zones.* http://www.parl.gc.ca/Content/LOP/researchpublications/prb0747-e.htm#claim1 (accessed September 5, 2014).

Under international law, no country currently owns the North Pole or the region of the Arctic Ocean surrounding it. The five surrounding countries, the Russian Federation, the United States, Canada, Norway and Denmark, are already allotted an EEZ adjacent to their coasts, with the waters beyond the territorial sea considered international waters. The area beyond the EEZs and extended territories are administered through the UN International Seabed Authority.

Upon ratification of UNCLOS, a country has a 10-year period to submit a claim for territorial expansion that will give exclusive rights to resources in the designated area.[14] Norway, Russia, Canada and Denmark have all ratified the convention and launched projects to provide a basis for claims on extended territories beyond their EEZs. The United States has signed, but not yet ratified UNCLOS, and is therefore ineligible to file a claim for an extended continental shelf.

The waters surrounding the North Pole hold a great potential value, as petroleum and natural gas reserves are known to exist below the seafloor. However, many of the Arctic gas and oil resources exist within uncontested EEZs, leaving only a small area to be available for gas and oil exploration. The Intergovernmental Panel on Climate Change has maintained in the past that the acceleration of climate change will prompt severe changes and potentially a race for untapped resources in the region.[15]

Australia lays claim that the regional Antarctic is an EEZ

The Australian Antarctic Territory is a section of Antarctica which was claimed by the United Kingdom and placed under the authority of the Commonwealth of Australia in 1933. In 1961, the Antarctic Treaty declared an "enunciation by any Contracting Party of previously

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[14] Spielman, Brian. *An Evaluation of Russia's Impending Claim for Continental Shelf Expansion*. *EMORY INTERNATIONAL LAW REVIEW* 23: 314.

[15] Intergovernmental Panel on Climate Change. *Polar regions (Arctic and Antarctic)*. https://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-chapter15.pdf (accessed July 1, 2014).

asserted rights of or claims to territorial sovereignty in Antarctica."[16] As a result, only four other states currently recognize Australia's claim to sovereignty in Antarctica: United Kingdom, New Zealand, France and Norway.[17] As a nation that does not recognize the Australian claim to the Australian Antarctic territorial waters, Japan continued to allow ships to conduct whaling in these areas. However, in 2014, the International Court of Justice declared that Japan must halt all current whaling operations in the Southern Ocean. The decision came after Japan violated three provisions of the International Convention for the Regulation of Whaling (ICRW) and the court could find no scientific merit in Japan's whaling program.[18]

Currently, the Australian Antarctic territorial waters are international waters that Australia claims fall within the EEZ of the Australian Antarctic. Though the waters fall within the provisions of the UNCLOS definition of an EEZ, Australia's Antarctic claim is contested because of the dispute by several states over the Australia's sovereignty over the region. However, under the Antarctic Treaty of 1961, the Arctic region is to be exclusively used for peaceful purposes and shall not become the scene of international discord or contention among Member States.[19] Article IV of the treaty also states that, "No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force." There are currently 50 states signed on to the treaty, with 29 countries holding consultative voting status, as they have demonstrated a

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16 United Nations. *Antarctic Treaty*. http://disarmament.un.org/treaties/t/antarctic/text (accessed July 1, 2014).
17 Parliament of Australia. *Chapter Six: Antarctic Territories*. CHAPTER SIX: ANTARCTIC TERRITORIES (accessed July 1, 2014).
18International Court of Justice. *Whaling in the Antarctic (Australia v. Japan: New Zealand Intervening)* http://www.icj-cij.org/docket/files/148/18136.pdf (accessed September 5, 2014).
19 Conference on Antarctica. *The Antarctic Treaty.* http://www.ats.aq/documents/ats/treaty_original.pdf (accessed September 5, 2014).

commitment to the Antarctic by conducting significant research. Representatives of the Treaty parties meet each year at the Antarctic Treaty Consultative Meeting.[20] Over the years, they have adopted recommendations and negotiated international agreements for governance of the region. Three of these agreements are still in use, and, together with the original Treaty, provide the rules which currently govern activities in Antarctica, known as the Antarctic Treaty System (ATS).[21]

Summary

As the UN continues to push Member States to adopt the UNCLOS goals, important challenges will continue to present themselves, such as the application of new provisions in accordance with the spirit of the original Convention. In looking toward the future, IMO emphasizes the importance of providing assistance to developing States who cannot capitalize on or defend their sovereign rights when it comes to territorial disputes. Many countries that have established their EEZs are not in a position to exercise all their rights and perform the duties enumerated in the Convention, and often the legal frameworks prove useless in providing any concrete resolutions. Further clarifying EEZs and the utilization of resources are long-term goals for all coastal states, as well as short-term goals to be met by most developing countries.

The UN will play a major role in monitoring and collecting information on implementing a new legal framework for the law of the sea for coastal States. It will also continue to report on activities of State conflicts and developments. This information will be vital to States in the acceptance and ratification of the Convention, as well as its successful implementation.

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[20] Antarctic Treaty System. *The Antarctic Treaty Consultative Meeting (ATCM)* http://www.ats.aq/e/ats_meetings_atcm.htm (accessed September 5, 2014).

[21] British Antarctic Survey. The Antarctic Treaty – Background Information. http://www.antarctica.ac.uk/about_antarctica/geopolitical/treaty/index.php (accessed September 5, 2014).

Questions

1. How has your nation adopted the goals of the UNCLOS? If not, why?
2. How can IMO establish clearer definitions for territorial waters and EEZs?
3. What can be done to convince more coastal States to sign on to UNCLOS?
4. What tools can be used to spark a dialogue about ongoing territorial disputes?
5. How can countries currently involved in disputes work to reach a peaceful resolution?

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International Maritime Organization

Responsibility and Compensation for Sea Rescues

The International Maritime Organization (IMO) is the global standard-setting authority for the safety, security and environmental performance of international shipping. The role of the Organization is to create a regulatory framework for waterway usage that is fair and effective, that can be universally adopted and universally implemented.[1] Current regulations put into place by the international community, and overseen by the IMO, stress the need for rescuing persons in danger of being lost at sea, in the case of wrecks, storms, or other accidents and disasters. This enshrines long-standing maritime traditions regarding the obligations of shipmasters and their crews into international law. However, there are deficits in the relevant language that do not specify numerous issues relating to sea rescues, including which authorities are specifically responsible in regions where disputes over maritime borders exists, how or if these authorities must be compensated, whether non-state actors also bear the responsibility for rescue, the rights of those who are rescued by a ship of a different nationality, the rights of refugees that are rescued at sea, and a host of other issues both large and small. It is vital that these questions must be resolved, in order to protect both the lives and the human rights of those who are victims of tragedies at sea, while also clarifying both the rights and obligations of Member States with regard to jurisdiction and responsibility.

[1] "Introduction to IMO", *International Maritime Organization*, 2014, http://www.imo.org/About/Pages/Default.aspx.

In 1974, States adopted the International Convention on the Safety of Life at Sea (SOLAS), the first of four major conventions relating to conduct and rescue at sea.[2] Regulation 15 of SOLAS obligates State parties to arrange for monitoring its coastlines for persons in distress, including various maritime safety facilities. Under SOLAS, States must make all practicable efforts to provide infrastructure to support rescues at sea in its coastal waters. In conjunction with this, SOLAS also establishes numerous guidelines for minimum safety and operations standards for ships, in order to reduce the frequency and severity of accidents.[3] In 1996, States adopted the International Life-Saving Appliances Code as an amendment to SOLAS, to provide a comprehensive listing of standards for rescue devices to be used at sea.[4] The initial adoption of SOLAS was followed by the International Convention on Maritime Search and Rescue (SAR), adopted in 1979.[5] SAR deliniates additional requirements for information sharing, cooperation, and coordination between States with respect to maintaining a sea rescue capacity. Moreover, SAR specifically states that the nationality of those to be rescued is irrelevant, and States must render assistance regardless of the origin or nationality of those who are in need of assistance.[6] The SAR Convention does not, however, have significant guidelines regarding the rights of rescued persons after rescue.

The United Nations Convention on the Law of the Sea was adopted by the international community in 1982, with the aim of providing a comprehensive set of rules and guidelines to

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[2] "International Convention on the Safety of Life at Sea", *International Maritime Organization*, 1974, http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-%28SOLAS%29,-1974.aspx.
[3] "International Convention on the Safety of Life at Sea", *International Maritime Organization*, 1974, http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-%28SOLAS%29,-1974.aspx.
[4] "International Life-Saving Appliances Code", *Maritime Safety Committee*, 1996, http://www.imo.org/blast/blastDataHelper.asp?data_id=15410&filename=48%2866%29.pdf.
[5] "International Convention on Maritime Search and Rescue", *United Nations*, 1979, https://treaties.un.org/doc/Publication/UNTS/Volume%201405/volume-1405-I-23489-English.pdf.
[6] Ibid.

govern conduct at sea, and the rights and responsibilities of States with respect to activities at sea.[7] Under Article 98 of UNCLOS, a ship, its master, and its crew are obligated to aid any individual or individuals they come across that are in need of assistance, to respond to distress calls, and to assist other ships in the event of a collision, "in so far as he can do so without serious danger to the ship, the crew or the passengers".[8] This strengthened the binding obligation upon individuals and State entities to participate in sea rescues. Lastly, the IMO adopted the International Convention on Salvage in 1989, which further clarified matters relating to rescue operations, salvage, and the rights and responsibilities of States.[9] Article 10 echoes similar language in the previous Conventions by requiring ships to render assistance and requiring States to adopt such statutes domestically; the language also exempts the owner of a ship from liability if its master and crew fail to act.[10] Article 16 exempts the persons whose lives are saved from being obligated to pay their rescuer, but does entitle such rescuers to a share of whatever payment is due for the salvage operation in general.

Despite these obligations, numerous elements of the four Conventions give States specific rights with respect to both the conduct of rescue, and the jurisdiction of States with respect to rescue. Article 9 of the International Convention on Salvage protects the right of coastal states in whose waters an incident occurs to direct any salvage or rescue operation.[11] While this is an important provision with respect to sovereignty rights, it is also problematic given the varying capacity possessed by States to conduct and oversee such operations, and also

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[7] "UNCLOS and Agreement on Part XI", *United Nations Division for Ocean Affairs*, 1982, http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.
[8] "UNCLOS and Agreement on Part XI", *United Nations Division for Ocean Affairs*, 1982, http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.
[9] "International Convention on Salvage", *International Maritime Organization*, 1989, http://www.jus.uio.no/lm/imo.salvage.convention.1989/.
[10] Ibid.
[11] Ibid.

with respect to situations where competing claims to sovereignty over an area of coast exist. Similarly, Article 92 of UNCLOS provides that a ship, and those on that ship, falls under the jurisdiction of the state whose flag a ship is flying, or *flag state*.[12] Thus, by rescuing an individual or group of individuals, a ship is effectively placing those persons not just under its care, but also under the temporary jurisdiction of its flag state.

This raises questions as to what rights the rescued possess until they are repatriated, or in the case of refugees, whether they should be repatriated at all. Neither UNCLOS, nor SAR, or any of the other primary Conventions provide for any clarity as to the rights of persons that have been rescued, save for their right to be rescued in the first place. This applies to the issue of what should be done with those rescued after they have been rescued - where they should be disembarked, who is obligated to provide post-rescue assistance, if and how they are to be repatriated, and so on. Cases such as the *Tampa* incident, where a Norwegian ship, the *Tampa,* was refused entrance into Australian waters and ports, and thus unable to disembark the over 400 persons its crew rescued from a ferry accident, illustrate this point.[13] In addition, no provision is made for the rights and treatment of those rescued, raising the specter of potential mistreatment in the case of persons belonging to a protected group in their home State, but not in the flag state of their rescuers. This also touches on the question of what rights they possess in terms of asylum and treatment. The *Tampa* incident also illustrates this particular issue; some of those rescued were essentially refugees, and when initially the *Tampa* was to return them to Indonesia, the ship's captain ultimately decided to take them to Australia instead in accordance with their

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[12] "UNCLOS and Agreement on Part XI", *United Nations Division for Ocean Affairs*, 1982, http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.

[13] Frederick J. Kenney Jr. and Vasilios Tasikas, "The *Tampa* Incident: IMO Perspectives and Responses...", *Pacific Rim Law and Policy Journal Association*, 2003, http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/721/12PacRimLPolyJ143.pdf?sequence=1.

wishes, thus leading to the dispute with Australia.[14] While this event was eventually resolved peacefully and the refugees' wishes were ultimately complied with, it underlined the need for additional clarity with respect to the rights of the rescued.

Entities such as the International Court of Justice and the European Court of Human Rights, as well as the UN High Commissioner for Refugees (UNHCR), have asserted that human rights law applies extraterritorially in certain cases where a State is exercising its jurisdiction, whether it is in the form of a ship for which it is the flag state, or State entities themselves exercising that jurisdiction.[15] This legal opinion is not universally accepted, however, and it has not been enshrined explicitly in any binding instruments of international law. Various agencies have been active in attempting to provide guidelines that protect the rights of the rescued, however. In 2001, following the *Tampa* incident, the IMO Assembly adopted Resolution A.920(22), calling for a comprehensive review of instruments and policies related to sea rescues.[16] In 2004, the IMO's Maritime Safety Committee adopted Resolution MSC.167(78), which stated that states should ensure they have the capability to assist and relieve ships and their crew when necessary during rescue operations.[17] The UNHCR states that the duty to rescue "ends when passengers have been disembarked at a place of safety", implying an obligation upon States to allow ships passage and entrance to their ports regardless of the passengers' origin, but this is a non-binding standard.[18] The UNHCR has also proposed a Model Framework with

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[14] Ibid.
[15] Anne T. Gallagher, Fiona David, *The International Law of Migrant Smuggling*, (New York: Cambridge University Press, 2014) pp. 468-472.
[16] "Resolution A.920(22)", *International Maritime Organization,* November 29, 2001, http://www.imo.org/OurWork/Facilitation/IllegalMigrants/Documents/Resolution%20A.920%2822%29.pdf.
[17] "Resolution MSC.167(78)", *Maritime Safety Committee*, May 20, 2004, http://www.imo.org/OurWork/Facilitation/IllegalMigrants/Documents/MSC.167%2878%29.pdf.
[18] "The treatment of persons rescued at sea:...", *UNHCR*, 2006, http://www.unhcr.org/4d94865e9.pdf.

respect to the treatment of refugees and asylum-seekers rescued at sea, but this has not yet materialized.[19]

Additionally, none of the Conventions specifically address compensation for those involved in rescue operations. While the International Convention on Salvage deliniates guidelines for compensation with regard to salvage of vessels and equipment in Articles 12 and 13, the aforementioned Article 16 exempts the rescued from having to pay compensation to the rescuer.[20] This does not, however, indicate either way as to whether the vessel the rescued persons were on, its owner, its flag state, or the state the rescued person is a citizen of, should be or are responsible for providing some form of compensation. The International Convention on Salvage does provide a complaint and claim system to arbitrate disputes over compensation and to investigate and resolve misconduct on the part of those participating in salvage, which can be extended to misconduct relating to failing to observe the duty to rescue, there is no corresponding mechanism to ensure compensation. This is particularly important because large rescue operations can impose a significant cost, especially on privately owned and operated ships; without a compensation mechanism and prompt assistance from States, the prospect of large rescue operations might not only deter commercial ships from lending assistance, but make it impossible for them to do so in a logistical sense.

Another obstacle to the effective implementation of the four Conventions is the ratification status of UNCLOS. To date, only 166 Member States have ratified the Convention, with notable holdouts including the United States, Iran, Turkey, Venezuela, and Israel.[21] In

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[19] "Trafficking or transport of illegal migrants by sea", *International Maritime Organization*, 2014, http://www.imo.org/OurWork/Facilitation/IllegalMigrants/Pages/Default.aspx.

[20] "International Convention on Salvage", *International Maritime Organization*, 1989, http://www.jus.uio.no/lm/imo.salvage.convention.1989/.

[21] "Chronological lists of ratifications of…" *United Nations Division for Ocean Affairs*, 2014, http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm.

addition, numerous States ratified with reservations, and have engaged in competing and varying interpretations of UNCLOS's provisions, especially with respect to exclusive economic zones (EEZs) and maritime borders, such as China.[22] This leads to a further lack of clarity as to which State is responsible for overseeing rescue operations in given coastal waters, which State can or cannot refuse entry to its waters to rescue vessels, and to where rescued persons should be disembarked once rescued. Additionally, some entities, such as Palestine and the breakaway region of Somaliland, occupy high-traffic coastal regions but are not universally recognized States or parties to the Conventions. This further increases the likelihood of disputes regarding search and rescue in those regions, as does the presence of various non-State actors in addition to varying State authorities and authorities purporting to represent unrecognized States. The lack of ratification of or accession to UNCLOS and the other Conventions also makes inter-State coordination difficult with regards to sea rescue efforts, threatening to create situations where jurisdictional disputes take precedence over the rescue operations themselves and needlessly putting lives at risk.

The right to rescue reflects the most basic and long-standing of nautical traditions, and itself can be considered a human right as enshrined by numerous binding instruments of international law. However, other rights must not be infringed upon or abrogated in the process of, or aftermath of, rescue. States must continue to move towards more thorough implementation of the four Conventions relating to rescue of persons at sea, while also incorporating elements of the IMO and UNHCR's guidelines for the treatment of persons rescued at sea. In conjunction with this, States must also consider the question of compensation for both State and private rescuers, as well as the question of whether a comprehensive framework, amendment to one of

[22] "Declarations or Statements", *United Nations Division for Ocean Affairs*, 2014, http://www.un.org/depts/los/convention_agreements/convention_declarations.htm.

the existing Conventions, or separate Convention regarding the rights of rescued persons, is necessary. With consensus on these varying issues relating to sea rescue, Member States can not only improve the ability of public and private actors to engage in rescue of persons at sea, but can also ensure that the rights of such persons are enshrined in both international and national jurisprudence and law.

Questions to consider:

1. Is your State a party to UNCLOS? Why or why not?
2. What domestic steps has your State taken to implement the four Conventions related to sea rescue?
3. What has your State done to coordinate with other States with respect to rescue operations, including technical and logistical cooperation?
4. Should those involved in rescue operations be compensated? If so, by whom?
5. Does your State consider the principles of the four Conventions to be binding even on non-parties to them (i.e. are they considered customary international law)? Are they binding on non-state actors?
6. What rights do those that are rescued have until they are repatriated? Whose jurisdiction applies to them? What obligations does this impose on that jurisdiction?
7. What rights do refugees or other migrants have if rescued at sea? In what ways does international human rights law apply?

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Kenney. Frederick J. Jr. and Vasilios Tasikas. "The *Tampa* Incident: IMO Perspectives and Responses...".

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"Resolution A.920(22)". *International Maritime Organization.* November 29, 2001. http://www.imo.org/OurWork/Facilitation/IllegalMigrants/Documents/Resolution%20A.920%2822%29.pdf.

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"Trafficking or transport of illegal migrants by sea". *International Maritime Organization*. 2014. http://www.imo.org/OurWork/Facilitation/IllegalMigrants/Pages/Default.aspx.

"UNCLOS and Agreement on Part XI". *United Nations Division for Ocean Affairs*. 1982. http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.

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International Maritime Organisation

Climate Change and Maritime and Coastal Borders

In late June 2014, Kiribati finalized a purchase of about 20 sq km on the island of Vanua Levu within the Fiji Islands. The radical move is considered by the country's President Anote Tong and many other leaders of small islands as a precautionary move to protect the long term security of food and land for his people in the likely event of Kiribati becoming completely submerged within the next century.[1]

The United Nations and all of its agencies share the same view as the majority of the scientific community, that the global climate is rapidly changing and human beings significantly contribute to climate change.[2] While every country is affected by the consequences of the changing climate, small island developing states (SIDS) are increasingly vulnerable to climate change and sea-level rises due to their smaller land masses and reliance on coastal ecosystems for their livelihood. While there is no accepted definition of a small island developing state, the Office of the High Representative of the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS) represents about 38 self-identifying SIDS. The UN formally recognized SIDS as a specialized group of states in regards to the effects of climate change during the 1992 United Nations Convention on Environment and

[1] "Besieged by the Rising Tides of Climate Change, Kiribati Buys Land in Fiji." June 30, 2014. Accessed October 30, 2014. http://www.theguardian.com/environment/2014/jul/01/kiribati-climate-change-fiji-vanua-levu.

[2] United Nations News Center. "Science and Solutions - UN and Climate Change." UN News Center. January 1, 2014. Accessed October 30, 2014. http://www.un.org/climatechange/science-and-solutions/.

Development with a section of chapter 17 of Agenda 21 exclusively for a the sustainable development of SIDS.[3] [4] Multiple UN agencies, including the International Maritime Organization (IMO), have since made the protection and sustainability of SIDS a priority within their respective environmental programs. With the release of the Intergovernmental Panel on Climate Change's fifth assessment report, it is important for UN agencies, such as the IMO, and the governments of Member States to come together for comprehensive and swift action against the effects of climate change in order to ensure the survival of SIDS, as well as develop a framework to address the effect that rising sea levels will have on maritime borders.

The IPCC fifth assessment report includes a separate chapter completely focusing on how the global climate specifically affects SIDS, although not all SIDS are represented due to the sparsity of long-term, quality-controlled climate data[5]. Available data has shown that SIDS are and will continue to be disproportionately affected by the lasting effects of the warming planet economically, as well as in regard to rainfall, sea life, and sea levels. The average temperature of Pacific Island SIDS have risen at a rate of 0.1 to 0.2°C per decade during the 20th century, following the average trend for warming global temperatures.[6] While SIDS temperature rises do not significantly differ from the global rises in temperature, higher global temperatures have impacted sea levels as well as SIDS biodiversity and water resources.[7]

The amount of rainfall has decreased annually for most SIDS. Over the past 100 years,

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[3] International Year of Small Island Developing States. "Small Island Developing States and the United Nations." UN News Center. September 1, 2014. Accessed October 30, 2014. http://www.un.org/en/events/islands2014/smallislands.shtml.

[4] UN Conference on Environment and Development. "Agenda 21: Sustainable Development of Small Islands." January 1, 1992. Accessed October 30, 2014. http://www.sidsnet.org/sites/default/files/resources/agenda_21_ch17-section_g.pdf.

[5] Climate and Development Knowledge Network. "The IPCC's Fifth Assessment Report." January 1, 2014. Accessed October 30, 2014. http://cdkn.org/wp-content/uploads/2014/08/IPCC-AR5-Whats-in-it-for-SIDS_WEB.pdf.

[6] Ibid

[7] Nurse, Leonard. "Small Islands." Accessed October 30, 2014. http://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap29_FINAL.pdf.

Islands in the Caribbean have recorded an average reduction of rainfall by 0.18 mm per year, a trend projected to continue well through the 21st century.[8] A reduction of rainfall negatively affects the ability of SIDS to collect fresh water within already limited resources.[9] The Hawaiian Islands have recorded a decrease of streamflow over the course of nearly 100 years, greatly reducing the availability of freshwater for human use and ecological progress.[10] A study of the Mauritius Kestrel has shown that reduced rainfall over the past 50 years has led to a reduction in reproduction within the species do to the timing of breeding and the abundance of food available do not coincide. While tourism, urbanisation, and an increasing demand for fresh water are all factors, the backbone of the issue is reduced rainfall and increased global temperatures. However, Seychelles has recorded an increase of average rainfall during the last 100 years, due to the weather occurrence of the El Nino Southern Oscillation (ENSO).[11] Increased rainfall, especially rainfall associated with ENSO, can lead to major flooding and landslides, damaging SIDS ecosystems and economies. ENSO has also been shown to cause extreme droughts, as well as an increase in hurricanes that make landfall.

SIDS are extremely dependent on coastal and marine resources for their livelihood, however coastal and marine ecosystems have already been affected by rising temperatures and sea levels, as well as overfishing and pollution. Coral reefs are a valuable resources for small islands, providing sediment to coastlines that reduces erosion, as well as providing shelter for nearly 25 percent of marine species.[12] Due to increasing water temperatures and sea levels, coral

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[8] Nurse, Leonard. "Small Islands." Accessed October 30, 2014. http://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap29_FINAL.pdf.
[9] Ibid
[10] Ibid
[11] Ibid
[12] The Nature Conservatory. "Coral Reefs: Coral Bleaching What You Need to Know." | The Nature Conservancy. March 1, 2014. Accessed October 30, 2014. http://www.nature.org/ourinitiatives/urgentissues/coralreefs/coral-reefs-coral-bleaching-what-you-need-to-know.xml

reefs are at an increasing risk of coral bleaching. Coral bleaching occurs when the necessary environment for the unicellular algae-like organisms known as zooxanthellae that live within the tissues of coral can no longer be maintained, causing the coral to go into stress and expel the zooxanthellae.[13] Because the zooxanthellae give the coral its coloration, as well as provide the coral with carbohydrates through photosynthesis, the loss of zooxanthellae leads to a whiter, bleached like appearance. Coral cannot live long-term without zooxanthellae, so if reabsorption does not occur within a short period of time, the coral will die.[14] Occurrences of coral bleaching include multiple atolls within the Phoenix Islands that are apart of Kiribati. The Phoenix Islands reported in 2003 that multiple bleaching events led to a nearly 100 percent coral mortality rate in its lagoon.[15] The Indian Ocean has seen a multitude of severe bleaching occurrences, including events in Rodrigues Island, Seychelles, the Maldives, and the Chagos Islands. Coral bleaching has a detrimental impact on coastal fisheries that are crucial to the economies and well-being of SIDS.[16] In Papua New Guinea, over 60 percent of coastal fish are dependent on the coral reefs, and while there is evidence that reefs can recover from coral bleaching events, reefs may not be able to reach their original state for coastal species to thrive.

With the global temperature increasing, major land ice such as glaciers have begun to melt thus leading oceans to expand and rise. The global mean sea level rose at an average of 1.7 mm per year between 1900-2010 and increased to a rate of 3.2 mm per year from 1993-2010.[17] Data from SIDS in the tropical western Pacific Ocean shows an increase in sea levels at a rate of

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[13] Ibid
[14] Ibid
[15] Nurse, Leonard. "Small Islands." Accessed October 30, 2014. http://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap29_FINAL.pdf.
[16] Ibid
[17] Wong, Poh Poh. "Coastal Systems and Low-Lying Areas." January 1, 2014. Accessed October 30, 2014. http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap5_FINAL.pdf.

12 mm a year from 1993-2010, four times the global average.[18] Rising sea levels contribute to a multitude of issues for SIDS and low lying coastal borders, including exacerbating storm surges from ENSO, coastal erosion, ocean acidification, loss of property, and negative impacts on agriculture and groundwater resources. The IPCC report states that even if drastic and immediate changes are made to combat climate change, sea levels and temperatures will continue to rise till well within the 22nd century, affecting the livelihood of 500 million people and the very existence of many SIDS.

The first and second United Nations Convention on the Law of the Sea (UNCLOS) meant to replace the 17th century "Freedom of the Sea" concept, but left open the issue of territorial waters. The creation of the third UNCLOS aimed to govern the seas in a way that the previous conventions could not. It has laid out specific guidelines in determining territorial waters, as well defining Exclusive Economic Zones (EEZ).[19] EEZs are sea zones include the 12 nautical miles of territorial waters, stretching from the coastline outward 200 nautical miles. Within these EEZs, states have the right to exploration and the use of the marine resources. When EEZs from multiple states overlap, it is up to the states to determine maritime boundaries.[20] While generally in a shared EEZ most states default to the nearest country for the boundary, many disputes have arisen over certain states right to marine resources within shared EEZs.

Climate change also has an effect beyond the possible submerging of low-lying areas and SIDS. The disputed claims over the Northwest Passage is accelerated by the effects of climate change on Arctic ice. With warming global temperatures, later freezing and early melting periods during arctic winters have led to the melting of ice packs within the Northwest Passage. With

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[18]United Nations Environment Programme. "Emerging Issues for Small Island Developing States." June 1, 2014. Accessed October 30, 2014. http://www.unep.org/pdf/Emerging_issues_for_small_island_developing_states.pdf.
[19]UN Department of Ocean Affairs. "Preamble to the United Nations Convention on the Law of the Sea." UN News Center. January 1, 1982. Accessed October 30, 2014.
[20]Ibid

less ice in the way, navigation throughout the passage has been made easier, thus increasing the possibility of the passage becoming a shipping lane. The Canadian government has made the claim that the passage is within its territorial waters, thus allowing them to ban transit at any time. Most maritime states, including the United States and members of the European Union, disagree and insist that the passage is an international strait, allowing foreign vessels the right of passage. As an international strait, Canada would have the right to enforce environmental, fishing and smuggling regulations, but not be allowed to close the passage. The dispute is ongoing, though Canada and the US have agreed to let the United States Coast Guard research within the passage, despite the fact the passage is outside the United States' EEZ.[21] Many of the other territories throughout the Arctic have been and continue to disputed, especially with ice continuing to melt, allowing more land and oil resources to claimed and collected. An example of this is the Arktika 2007 expedition by the Russian Federation, where a Russian crew explored the ocean bottom of the North Pole for the first time, leaving a small Russian flag where they collected soil and water samples. The United States, Canada, Norway and Denmark, the other countries bordering the arctic, were concerned that Russia might try to claim the Arctic. Russian official disputed this claim, stating the exploration was only to prove that Russia's continental shelf extended to the North Pole.[22]

The International Maritime Organization (IMO) is one of multiple competent organizations mentioned in UNCLOS to fully address and enforce the guidelines laid out in the convention.[23] The IMO was created in Geneva as the Inter-Governmental Maritime Consultative

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[21]Than, Ker. "Arctic Meltdown Opens Fabled Northwest Passage." LiveScience. September 14, 2007. Accessed October 30, 2014. http://www.livescience.com/1884-arctic-meltdown-opens-fabled-northwest-passage.html.
[22]McDowell, Mike, and Peter Batson. "Last of the Firsts: Diving to the Real North Pole." Http://www.explorers.org/flag_reports/Mike_McDowell_Flag_42_Report.pdf. August 7, 2007. Accessed October 30, 2014. http://www.explorers.org/flag_reports/Mike_McDowell_Flag_42_Report.pdf.
[23]International Maritime Organization. "Implication of the United Nations Convention on the Law of the Sea for the

Organization in 1948, meeting for the first time in 1959 with the mandate of creating measures to insure the safety and security of international shipping as well as preventing marine pollution.[24] The Marine Environment Protection Committee (MEPC), a committee within the IMO, is specifically dedicated to the prevention and control of pollution of ships, in an effort to combat and prevent further global climate change.[25]

While sections of UNCLOS and various organizations within the UN have made efforts to try and prevent the continued damage of global warming, there is currently no plan laid out in the event of the total loss of a country's land due to the effects of climate change. In the event of coastal borders changing as a result of climate change, states can request a change in EEZ boundaries under UNCLOS, however compensation and legal issues that may arise from the lost of land and resources in the result of changing boundaries in not addressed.[26] These concerns were first expressed when the General Assembly adopted Resolution 47/189 in 1992, which acknowledged the specific threat of climate change to SIDS, and called for a conference on the sustainable development of SIDS, to be held in Barbados in 1994.[27] This led to the Barbados Declaration and the Barbados Programme of Action, which was adopted by Member States attending the conference established in Resolution 47/189.[28] The Declaration and Programme of Action specifically acknowledged the disproportionate impact of climate change on SIDS, especially with respect to their minimal contribution to climate change, and called for universal

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International Maritime Organization." January 19, 2012. Accessed October 30, 2014. http://www.imo.org/OurWork/Legal/Documents/Implications of UNCLOS for IMO.pdf.

[24] International Maritime Organization. "Frequently Asked Questions." IMO. January 1, 2014. Accessed October 30, 2014. http://www.imo.org/About/Pages/FAQs.aspx#9.

[25] International Maritime Organization. "Structure of IMO." IMO.org. January 1, 2014. Accessed October 30, 2014. http://www.imo.org/About/Pages/Structure.aspx#4.

[26] Di Leva, Charles, and Sachiko Morita. The World Bank. Accessed October 30, 2014. http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/L&D_number5.pdf.

[27] "Resolution 47/189", *United Nations General Assembly*, 1992, http://www.un-documents.net/a47r189.htm.

[28] "United Nations Conference on Environment and Development", *United Nations General Assembly*, 1994, http://www.un.org/esa/dsd/dsd_aofw_sids/sids_pdfs/BPOA.pdf.

ratification and accession to instruments such as the United Nations Framework Convention on Climate Change (UNFCCC). In conjunction with that goal, the Programme of Action suggested a comprehensive effort to survey and catalogue areas vulnerable to climate change-related effects, as well as the development of regional and multilateral support systems to assist SIDS in mitigating the effects of climate change.[29] The Barbados Programme of Action has undergone periodic review by the General Assembly, and through this review process the General Assembly provided an additional framework, with additional guidelines and recommendations, via the adoption of Resolution 59/311 in 2005. This framework included the adoption of the Mauritius Strategy regarding the sustainable development of SIDS, as a complement to the existing Barbados Programme of Action.[30] In 2012, the General Assembly adopted Resolution 67/206, designating 2014 the International Year of Small Island Developing States.[31] Despite all of this, however, the threats to the long-term economic viability and territorial integrity of SIDS have not yet been resolved.

The United Nations High Commissioner for Refugees (UNHCR), as well as SIDS and other countries affected, have expressed the concern that climate change is also a humanitarian issue that will lead to large numbers of people becoming displaced. UNHCR considers those who are displaced by climate change as internally displaced people (IDPs), as should be afforded the same protection under the 1998 Guiding Principles on Internal Displacement.[32] However, if people are forced to flee internationally, they would not be considered refugees or migrants

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[29] "United Nations Conference on Environment and Development", *United Nations General Assembly*, 1994, http://www.un.org/esa/dsd/dsd_aofw_sids/sids_pdfs/BPOA.pdf.
[30] "Resolution 59/311", *United Nations General Assembly*, July 14, 2005, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/59/311&Lang=E.
[31] "Resolution 67/206", *United Nations General Assembly*, December 21, 2012, http://www.un.org/ga/search/view_doc.asp?symbol=A/C.2/68/L.67&Lang=E.
[32] Office for the Coordination of Humanitarian Affairs. "Guiding Principles on Internal Displacement." UNHCR News. September 1, 2004. Accessed October 30, 2014. http://www.unhcr.org/43ce1cff2.html.

under any current refugee framework.[33] In the event of a SIDS being completely submerged, the people of that country would qualify as stateless persons. Even if a SIDS continues to exist within the boundaries of another country, it is unknown whether or not that government can ensure that all rights awarded by citizenship can be given.[34] UNHCR has concluded that existing frameworks do not completely cover the needs of those forced to relocated due to climate change, but any approach that is adopted must be rights-based.

Even if immediate, drastic measures are implemented today, the effects of climate change will continued to be felt into the 22nd century. Due to their low-lying coastal borders, SIDS and other coastal nations have been and will continue to be the most affected by the results of the changing climate. While UNCLOS and subsidiaries within the UN have made great strides to reduce and prevent long term effects of climate change, there are currently no instruments available to address the implications of a country becoming completely submerged. Efforts must made to ensure that the sovereignty and livelihood of SIDS and other coastal countries remains intact, even if their country becomes inhabitable.

Questions to consider:

1. Does your country adhere to international climate control efforts? If so, in what ways are they effectively or ineffectively implemented? If not, why?
2. Has your country ratified UNCLOS? If not, why?
3. What is your country's policy on the protection and sustainable development of small

[33] United Nations High Commissioner for Refugees. "UNHCR Policy Paper: Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective." UNHCR News. October 1, 2008. Accessed October 30, 2014. http://www.unhcr.org/4901e81a4.html.

[34] United Nations High Commissioner for Refugees. "UNHCR Policy Paper: Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective." UNHCR News. October 1, 2008. Accessed October 30, 2014. http://www.unhcr.org/4901e81a4.html.

island developing states whose coastal borders are threatened by climate change?

4. Should Member States seek to address this issue through existing mechanisms, or seek to create new instruments in order to address the threat of climate change to SIDS?
5. What are the weaknesses in international policy in regards to climate change and their effects on vulnerable coastal borders?? How can those weaknesses be strengthened and implemented on a domestic level?
6. How should the international community approach the issue of state sovereignty when dealing with adherence to UNCLOS?

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