# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table of Contents</td>
<td>2</td>
</tr>
<tr>
<td>Letter from the Chair</td>
<td>3</td>
</tr>
<tr>
<td>The Sixth (Legal) Committee</td>
<td>4</td>
</tr>
<tr>
<td><strong>The Refugee Convention</strong></td>
<td>6</td>
</tr>
<tr>
<td>Background</td>
<td>6</td>
</tr>
<tr>
<td>Refugee distribution between countries</td>
<td>8</td>
</tr>
<tr>
<td>Status determination</td>
<td>9</td>
</tr>
<tr>
<td>Definition of a refugee</td>
<td>10</td>
</tr>
<tr>
<td>Relevant Documents</td>
<td>11</td>
</tr>
<tr>
<td>Questions to Consider</td>
<td>11</td>
</tr>
<tr>
<td><strong>The International Criminal Court</strong></td>
<td>12</td>
</tr>
<tr>
<td>Background</td>
<td>12</td>
</tr>
<tr>
<td>Lack of ratifications</td>
<td>14</td>
</tr>
<tr>
<td>Prosecutorial discretion and decision making</td>
<td>15</td>
</tr>
<tr>
<td>Failure to convict</td>
<td>16</td>
</tr>
<tr>
<td>Relevant Documents</td>
<td>16</td>
</tr>
<tr>
<td>Sources</td>
<td>16</td>
</tr>
<tr>
<td>Questions to Consider</td>
<td>17</td>
</tr>
</tbody>
</table>
Letter from the Chair

Dear Delegates,¹

On behalf of the Legal Committee staff and everyone here at SMUNC, I am thrilled to welcome you to SMUNC 2019! My name is Kevin, and I’m a sophomore double majoring in public policy and computer science. We have an exciting weekend ahead of us, and I am looking forward to getting to know you throughout the conference!

The United Nations has a long and rich history of promoting peace and spreading democracy and respect for the rule of law. In doing so, it has sponsored and adopted international agreements and conventions, some of which have become integral to our modern international community. Along with the other members of the Legal Committee, you are responsible for the advancement of the laws and legal principles that increasingly affect the lives of everyone in the world. This year, the Legal Committee has before it two major pillars of the modern international system: the law of refugees as codified in the Convention and Protocol Relating to the Status of Refugees, and the enforcement of international criminal law as institutionalized in the International Criminal Court. It is on you, the delegates, to choose how we spend our time together.

Whether this is your first Model UN conference or you’re a battle-hardened veteran of MUN, each and every one of you has something to contribute to this committee. Your fellow delegates and I will be learning from, and with, you. Please don’t be a stranger—if at any time you have a question, comment, concern, cute cat photo you’d like me to see, or anything else, I am always reachable by email at kevinsli@stanford.edu. Additionally, in order to be eligible for awards, please send me your position paper with the title “LEGAL_School Name_Country” by midnight Pacific Time on November 1, 2019. I’m looking forward to meeting you all at SMUNC 2019!

Sincerely,

Kevin Li ‘22

¹ Photo taken at the Iowa State Fair, August 2019.
The Sixth (Legal) Committee

In 1945, when diplomats and world leaders gathered in San Francisco for the United Nations Conference on International Organization to establish the United Nations, they were keenly aware of the importance of international law to maintaining a peaceful and harmonious world. When they adopted the Charter of the United Nations, their very first mandate to the General Assembly was to “initiate studies and make recommendations for the purpose of promoting international co-operation in the political field and encouraging the progressive development of international law and its codification”.

In order to give the topic appropriate consideration, the General Assembly, in turn, established the Sixth Committee and vested it with jurisdiction over all legal matters pertaining to the international system and the United Nations.

The Sixth Committee is one of the six main General Assembly committees, before which every member of the United Nations is entitled to attendance and equal voting power. Its remit is broad, and issues considered by it increasingly affect individuals in addition to states. The Sixth Committee has been highly influential in the adoption of multilateral treaties relating to everything from the law of international law itself, such as through the Vienna Convention on the Law of Treaties and the Vienna Convention on Succession of States in respect of Treaties, to regulation of topics traditionally viewed as outside the scope of international law, such as through the 2005 United Nations Declaration on Human Cloning and the International Convention for the Suppression of Terrorist Bombings. In doing so, it has contributed to a dramatic increase in the reach of international law.

The Sixth Committee is not a crisis committee. While it certainly may take note of global crises and develop responses to them, much of its work deals with the sustainable, long-term development and perfection of international law. The topics before the Sixth Committee this year are not limited in scope to a single crisis or issue, and the delegates will choose which topics, subtopics, and specific issues to spend time on.

In addressing the topics before it at the Stanford Model United Nations Conference this year, the Sixth Committee may consider resolutions that seek to, inter alia, establish international norms, provide for the enforcement of international law,

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declare interpretations of existing international law, create a framework for future revisions of international law, or recommend amendments and protocols to existing treaties and conventions. Although the specifics of the final work product of the Committee will depend on the arguments presented the delegates and the persuasiveness thereof, the conclusions of the Committee will be presented in the form of resolutions. Delegates are reminded that work should not begin on writing resolutions until the committee sessions, and that the process of collaborating in authoring resolutions will be as, or more, important and enlightening as the content of the resolutions themselves.
Background

Over the course of thousands of years leading to the development of the modern international system, the right to seek asylum from persecution became an entrenched part of customary international law. Its inclusion in the Universal Declaration of Human Rights accelerated the process of codifying the right, leading to the historic 1951 Convention Relating to the Status of Refugees. Because it was

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5 In this background guide, the words “asylum” and “refugee” are used roughly synonymously. Though the specific legal terms vary by country, as used in this document, both terms refer to the protections afforded by nations in accordance with the Convention and Protocol Relating to the Status of Refugees.
initially intended primarily to address fallout from World War II, the Convention applied only to refugee claims arising from “events occurring in Europe before 1 January 1951” unless a party opted to apply it more broadly. Nonetheless, the Convention was broadly signed and ratified, and was instrumental in establishing codified international principles and norms surrounding the right to asylum. Among other things, its provisions:

- Define a “refugee” for international law purposes as someone who “As a result of events occurring before 1 January 1951 and owing to 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 or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

- Establish the principle of non-refoulement and prohibit countries from returning (deporting) refugees to any country where they would be in danger from persecution based on race, religion, nationality, membership of a particular social group or political opinion.

- Prohibit countries from penalizing refugees for illegal entry or presence.

- Prohibit discrimination against refugees in a wide array of areas, including religion, judicial access, and public assistance.

In 1967, the Protocol Relating to the Status of Refugees was adopted, removing the requirement that refugee claims be limited to those arising from events occurring in Europe before 1 January 1951. As of April 2015, there are 145 States Parties to the 1951 Convention and 146 States Parties to the 1967 Protocol, and many of its provisions are considered to be part of customary international law in states that have not ratified the Convention and Protocol. The Convention and Protocol remain the most important instruments of international refugee law.

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6 Simply reaching a uniform definition of a refugee was a great accomplishment in international law.
7 There are some exceptions. For example, a person who has committed a serious crime is not protected by the Convention, even if they would otherwise have been classified as a refugee.
8 Subject to the provision that “they present themselves without delay to the authorities and show good cause for their illegal entry or presence”.
According to the office of the United Nations High Commissioner on Refugees (UNHCR), the principal United Nations office with jurisdiction over refugees, there are now over 70 million forcibly displaced people of concern to the UN worldwide, including 41.3 million internally displaced people, 25.9 million refugees, and 3.5 million asylum seekers. These figures include 25.9 million people under the age of 18. 37,000 people are forced to flee their homes because of armed conflict and persecution. Organizations such as the Brookings Institute argue that the crises in handling global refugee care have been exacerbated by a “rise of populism and anti-immigration politics” in some large countries, such as European Union member states and the United States.\(^\text{10}\)

Because there have been no substantive updates to globally-accepted international refugee law since the adoption of the Convention and Protocol, many problems have developed which have not seen solutions, or even consideration, from the international community. Delegates to the Sixth Committee may consider any issues in refugee law, including these issues.

**Refugee distribution between countries**

Under the Convention and Protocol, the only state with responsibility for a refugee is the state that the refugee is currently physically present in. Countries near a conflict or other event that displaces many people often see a large influx of refugees, which may be seen as an inequitable distribution of the costs of care. However, other countries may not see it as their responsibility to contribute to the costs of care for refugees far from their borders.

The present refugee crisis arising from the Syrian Civil War, for example, has caused around 5.6 million Syrians to flee Syria. As of September 2019, 3.6 million (over 64%) of those refugees are located in Turkey, with hundreds of thousands more in each of Lebanon, Jordan, Iraq, and Egypt. These numbers are especially significant in comparison with the small populations of the host countries. For example, Jordan’s population is 9.7 million, including 662,000 Syrian refugees. Lebanon’s proportion is even greater; its 6.1 million residents include 924,000 Syrian refugees. In comparison, most richer countries with stronger economies and

greater capacity to protect refugees have hosted a far smaller share of refugees from Syria.\textsuperscript{11,12}

Delegates may wish to consider provisions that would result in changes in the distribution of refugees among different countries.

\textbf{Status determination}

The rights outlined in the Convention and Protocol apply only to refugees who have been officially determined to be refugees. In order to be officially determined to be a refugee, states conduct “refugee status determinations” in order to reserve the rights under the Convention and Protocol to \textit{bona fide} refugees [to the exclusion of] economic migrants. The Convention and Protocol are almost entirely silent on the determination process (including the timeline of the process and the procedural rights of the asylum seeker), and thus, different countries apply widely varying procedures. Additionally, even if refugees qualify under the official definition, countries may deny refugee status for security reasons, without appeal to an independent body. Finally, the particular political climate in a country at a given time may result in more strict or loose application of the Convention and Protocol.

In the chapter of \textit{An Introduction to International Refugee Law} (2013) authored by Md Jahid Hossain Bhuiyan titled “Loss and Denial of Refugee Status”, Bhuiyan argues that the failure of the Convention and Protocol to mandate a particular determination process caused the present condition where “the refugees in some countries do not enjoy the necessities they deserve under international law and they are not granted refugee status following the concerned states’ strict procedure on the determination of refugee status”.

States may argue, however, that increasing the level of specificity in international law for status determination procedures may fail to take into account the unique circumstances each state faces.

Delegates may wish to consider provisions that would result in changes to refugee status determinations and/or the degree to which refugee status determinations are uniform across countries.

Definition of a refugee

The Convention and Protocol limit refugee status to those who might be persecuted on the basis of “race, religion, nationality, membership of a particular social group or political opinion”. This definition was written in the wake of World War II, when most refugees fit squarely in this definition; refugees who qualified typically faced persecution on the basis of race, religion, nationality, membership of a particular social group, or political opinion (e.g. Nazi Germany under Hitler).

Today, this definition does not cover many individuals that the public might understand to be refugees. For example, individuals fleeing war may not qualify as refugees under this definition unless there is an indication that they will be persecuted on the basis of race, religion, nationality, membership of a particular social group or political opinion (not merely generic armed conflict). Additionally, states have increasingly limited the scope of the refugee criteria; the government of the United States, for example, has taken legal action to prevent domestic violence survivors and victims of gang violence to qualify for refugee status as members of a “particular social group”.13

Developments since the adoption of the Convention and Protocol have also had a potential impact on the classification of displaced persons: in particular, while climate refugees (or what the UNHCR calls “persons displaced in the context of disasters and climate change”)14 receive no protection under the Convention and Protocol, the World Bank expects them to number in the tens of millions in coming decades.15

Delegates may wish to consider whether revisions to the definition of a refugee are appropriate, and which changes their state should support.

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14 Climate change and disaster displacement. UNHCR. Available at https://www.unhcr.org/en-us/climate-change-and-disasters.html
Relevant Documents

- The Charter of the United Nations
- The Convention and Protocol Relating to the Status of Refugees

Questions to Consider

Questions your delegation may wish to consider include, but are not limited to:

- How many refugees does your state currently host? Is this above or below the typical proportion in your state?
- Should refugee status determinations be additionally regulated?
- Should the definition of a refugee be expanded or changed? How do the values of your nation influence your delegation’s views on this topic?
- Would your state see an increase or decrease in the number of resident refugees under changes to the Convention and Protocol?
- What incentives are necessary to cause states to contribute to the international system of refugee protection?

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The International Criminal Court

Background

International criminal law has existed in limited forms for quite some time. While most international law only governs relations between states (not individuals), certain acts by individuals have become subject to regulation in international law. Piracy on the high seas, for example, has long been understood to be a violation of the law of nations. However, there was no mechanism for international enforcement of these prohibitions; violations were typically punished in national courts or, in the case of early “war crimes”, summarily punished following the conclusion of a conflict as a matter of victor’s justice.

Following World War II, United States Secretary of the Treasury Henry Morgenthau Jr. advocated that German “Arch Criminals ... whose obvious guilt has generally been recognized by the United Nations” be identified, apprehended, and summarily “put to death forthwith by firing squads made up of soldiers of the United Nations”. Though likely shocking today, at the time, this was a fairly normal suggestion. After all, there had never in history existed an international criminal tribunal, and victors in war resolved any disputes however they liked.

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Facing public backlash, however, the Allied Powers overruled Morgenthau’s recommendation and convened the first modern international tribunal to adjudicate and punish violations.

The famous Nuremberg trials in Germany, together with the International Military Tribunal for the Far East, were vested with jurisdiction over not only war crimes (unsatisfactory conduct in violation of the laws of war), but also crimes against peace (unsatisfactory conduct which causes war to break out) and crimes against humanity (serious criminal conduct against civilian populations). These international tribunals were established by the victors of World War II, the Soviet Union, the United Kingdom, the United States, and France, which collectively decided the rules of procedure, appointed the judges, and prosecuted the cases.

After the trials concluded and the appeals exhausted, the International Military Tribunal, the Nuremberg Military Tribunals, the International Military Tribunal for the Far East, and various other tribunals with jurisdiction over violations of international criminal law during World War II all dissolved. The pattern persisted for several decades: without a permanent international court with jurisdiction over the violation of international criminal law, ad hoc tribunals were established after a conflict to try those crimes.

Most notably, the UN Security Council, acting under its binding authority under Chapter VII of the UN Charter, established the International Criminal Tribunal for the former Yugoslavia\(^{19}\) (ICTY) to adjudicate violations of international law during the Yugoslav Wars\(^{20}\) and the International Criminal Tribunal for Rwanda (ICTR) to adjudicate violations during the Rwandan genocide and related events.\(^{21}\) The ICTY and ICTR had jurisdiction over genocide, crimes against humanity, and serious breaches of the Geneva Convention. The ICTY additionally had jurisdiction over breaches of the laws or customs of war.

The establishment of the ICTR and ICTY placed focus on the need for a permanent international court to individual violations of international criminal law. In 1998, the General Assembly adopted the Rome Statute, the treaty that established the International Criminal Court and its rules and procedures. In establishing a

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\(^{19}\) Formally, the “International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991”.


permanent International Criminal Court, the Rome Statute created a substantial continuing administrative apparatus to support the operations of the Court, including an independent Prosecutor of the International Criminal Court with substantial autonomy to decide which cases to investigate and charge.

Following in the footsteps of the ICTR and ICTY, the International Criminal Court was vested with jurisdiction over the same categories of crimes that the international community had come to understand as international crimes in previous international criminal tribunals: genocide, crimes against humanity, war crimes, and the crime of aggression. The Court’s jurisdiction was limited to crimes committed within the borders of states which had ratified the Rome Statute (or voluntarily accepted the Court’s jurisdiction), or crimes committed by nationals of those states. Further, any crimes committed before the vesting of jurisdiction (crimes committed before ratification by the state, for example) are excluded from the jurisdiction of the Court.

The Court, in deciding whether to exercise jurisdiction over a particular case, is required to consider the principle of complementarity, which states that the Court should not assume jurisdiction unless no state is willing and able to investigate and prosecute criminal violations of international law themselves.

The Court has faced a number of significant criticisms of its performance and effectiveness as a court and as an international institution, as set forth below. Delegates to the Sixth Committee may consider any matters relating to the Rome Statute and the International Criminal Court, including these issues.

Lack of ratifications

The Rome Statute has been ratified by 122 states, which constitutes roughly 60% of the number of members of the United Nations. The Rome Statute has not been ratified by a number of states, including the United States, Russia, China, or India, limiting its effectiveness, jurisdiction, funding, and prestige. As a result, the international community continues to lack a standing international criminal tribunal with jurisdiction approaching worldwide recognition. Indeed, only two of the five permanent members of the UN Security Council (the United Kingdom and

22 Each of these is defined in much greater detail in the Rome Statute, which is fairly extensive. See Articles 5-8 of the Rome Statute.
23 The Security Council may also expand the jurisdiction of the Court in a manner similar to its creations of the ICTR and ICTY.
24 Article 17 of the Rome Statute.
France) are parties to the Rome Statute, meaning that the three others (the United States, Russia and China) have significant influence on the Court’s jurisdiction and activities in accordance with the Rome Statute’s specification of the role of the Security Council but are not themselves subject to its jurisdiction.

The failure of the Rome Statute to be ratified by more parties has led to difficulties enforcing even the Court’s existing jurisdiction. The United States, for example, has retaliated against the Court’s Prosecutor (by denying a visa to enter the United States) for investigating the actions of the United States military in Afghanistan, where the Court does have jurisdiction (as Afghanistan is a party to the Rome Statute).25,26

Delegates may wish to consider whether measures should be taken to increase recognition of the Court jurisdiction, and what role the Court should play in the present international system with a significant number of states refusing to ratify the Rome Statute.

Prosecutorial discretion and decision making

The Prosecutor of the International Criminal Court is vested with significant discretion in opening cases (subject to the approval of the Court), conducting inquiries, and managing the prosecutorial caseload. Elected by secret ballot of the parties to the Rome Statute, the Prosecutor has been accused of bias and politicization of the role, especially by the African Union, which asserts that states in other regions have been investigated less vigorously than states in Africa in comparison with their conduct.27 The Prosecutor has argued that such criticism is unfounded.28 Delegates may wish to consider the level of independence vested in the Office of the Prosecutor, and the way that prosecutorial decisions are made as structured under the Rome Statute.

Failure to convict

The Court has been criticized for its failure to convict defendants, especially high government officials, who have been accused of international crimes. Critics have claimed that the failure of the Court to convict particular individuals amounts to a failure of the Court to serve its purpose of acting as a deterrent for severe crimes and of providing victims of crime with vindication and a process for justice.\textsuperscript{29} Defenders of the Court note that the nature of a fair criminal court is that there will be judgments of not guilty, and that criticism of a court for convicting some and acquitting some defendants amounts to criticism of a court for doing its job.\textsuperscript{30}

Delegates may wish to consider the Court’s structure and powers under the Rome Statute, which may include the claimed failure of the Court to serve its function through these acquittals, or the level of judicial independence accorded judges of the Court by states parties to the Rome Statute.

Relevant Documents

- The Rome Statute of the International Criminal Court

Sources


Questions to Consider

- How well has the International Criminal Court lived up to its goals?
- To what extent does the existence of the International Criminal Court interfere with national sovereignty? How should this inform the Court’s structure, jurisdiction, and powers?
- Should changes be made to the Court to encourage additional states to ratify the Rome Statute?