

Commission on Crime
Prevention and
Criminal Justice

CCPCJ

MUNUC 36

Model United Nations at the University of Chicago

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CHAIR LETTERS

Dear Delegates,

Welcome to MUNUC and CCPCJ!

My name is Laura Giugno, and I will be co-chairing the Commission on Crime Prevention and Criminal Justice. My co-chair Olivia and I are looking forward to running this committee for MUNUC 36 and hearing your discussion on these serious issues. I am a fourth year at UChicago, planning to major in Political Science, Philosophy, and Law, Letters & Society! I am originally from Rochester, New York and have competed in rhetorical activities all four years of high school, in Lincoln Douglas Debate. My main involvement on campus is at the Institute of Politics, working to help with the coordination of events to facilitate student political engagement. I have also been involved in the Chicago Debate Society, which provides another perspective to the rhetorical activities and engagement with others that MUNUC will give you. I also interned at the Public Defender's Office in New Orleans the previous summer, and this issue on criminal justice reform is close to my heart. I am excited to see how you all engage with the debate about these topics that we will have during MUNUC and how you communicate the crux of the argument.

Over the course of the committee, you will have an opportunity to discuss issues pertinent to criminal justice reform and policy on public safety. You'll get to come up with creative solutions to discuss how countries around the world handle rehabilitative justice versus a more punitive justice. The discussion that we will have involving the criminal justice system will touch on the challenging balancing act between mercy and safety. It will look at the successes and failures that each country deals with in striking this balance. The background guide, created by Olivia and I, should provide a good starting place for much of your research. We are looking forward to hearing everyone's ideas and research on how to address these salient issues.

If you have questions, concerns, comments, or want to chat, please reach out to me by email at lauragiugno@uchicago.edu! I am looking forward to seeing you all for the conference in February!

Best wishes,

Laura Giugno

To the members of the CCPCJ:

My name is Olivia Degen, and I am your co-chair for the Commission on Crime Prevention and Criminal Justice for MUNUC 36! Laura and I are very much looking forward to running this committee this year and have some really interesting topics set up. I am very excited to hear all your ideas! Here at UChicago, I am on the Pre-Med track and am double majoring in Biology and Romance Languages and Literature with a concentration in Spanish. I am in my fourth year at UChicago, and I am an alumnus of Li Po Chun United World College in Hong Kong. In high school, I did Model UN for three years, and I decided to continue being involved with MUN in college on the side of the dais. For the last two years, I was on the dais for the Organization of American States, and last year I co-chaired the CSD with Laura. It was a great experience, so I am super excited to be chairing this committee! Outside of Model UN, I work for a lab in the biopsychological department and am also involved with the ISAC museum here on campus.

Laura and I have put together this Background Guide, which is a really great place to start with your research! Our two topics, while based around similar themes regarding rights and rehabilitation, touch upon very different topics. For the topic of restorative justice and reducing recidivism, we will have a focused look at prison systems across the globe, analyzing the effectiveness of different ideologies implemented by penal institutions. For the topic of international tribunals and accountability, we will discuss how nations can work together to prosecute crime on the international scale and what the responsibilities of individual nations are in the maintenance of international justice. Both topics should open some very interesting debates, and I am looking forward to hearing everyone's perspectives and plans!

If you have any questions, comments, concerns, or just want to tell me something interesting, please feel free to email me at odegen@uchicago.edu. I cannot wait to see everyone in February!

Take care,

Olivia Degen



HISTORY OF THE COMMITTEE

The Commission on Crime Prevention and Criminal Justice (CCPCJ) was established by the Economic and Social Council (ECOSOC) in 1992 as one of its functional commissions at the request of General Assembly resolution 46/152.¹ CCPCJ works as a policymaking body which is focused entirely on international law in the field of criminal justice. CCPCJ holds both annual and intersessional meetings, and it may set up committees on an as-needed basis in consultation with the Secretariat of the Secretary-General. Every three years, ECOSOC elects 40 member states to form the CCPCJ, and there is a set proportion of countries from different regional groups appointed to the commission.

The commission has set priorities, including international action to prevent crime, with an emphasis on how crime prevention protects the environment, recommendations for crime prevention, and improvement of criminal justice administration.² CCPCJ also works as an implementing body for the United Nations Congress on Crime Prevention and Criminal Justice, and since 2006, it has served as a governing body for the United Nations Office on Drugs and Crime (UNODC).³ CCPCJ creates policy through discussion with expert groups and then drafts resolutions and decisions based on these discussions. Additionally, the commission works to encourage adherence to the 2030 Sustainable Development agenda; it has recognized that crime prevention and sustainable development are mutually reinforcing.⁴

¹ “General Assembly - Forty-Sixth Session” (Geneva: United Nations, December 16, 1981).

² “United Nations Commission on Crime Prevention and Criminal Justice” (Vienna: UNODC, n.d.).

³ “15th Session of the CCPCJ,” UNODC, 2006, https://www.unodc.org/unodc/en/commissions/CCPCJ/session/15_Session_2006/CCPCJ_15.html.

⁴ “The Commission on Crime Prevention and Criminal Justice,” UNODC, 2023, <https://www.unodc.org/unodc/en/commissions/CCPCJ/index.html>.

TOPIC A: RESTORATIVE JUSTICE AND REDUCING RECIDIVISM

Statement Of The Problem

The word *justice* has a variety of meanings; it is the administration of the law in some cases, and in other respects, it can refer to fairness. In the United States, the Department of Justice is tasked with “uphold[ing] the rule of law, to keep [the] country safe, and to protect civil rights.”⁵ Despite this, the United States has the highest level of incarceration in the world and spends over 80 billion USD annually on incarceration. According to the Department of Justice Office of Justice Programs, society follows therapeutic, preventive, and punitive ideologies when it comes to coping with crime, with each ideology being implemented to different extents.⁶ According to a 1979 article from the *Journal of Humanics*, the punitive ideology predominated in the United States, despite its ineffectiveness, due to the social functions of punishment, like deterrence, retribution, and incapacitation. Now, almost 50 years later, can the world trust that punishment has a purpose? Can society as a whole accept non-punitive forms of justice?

⁵ “About DOJ,” Justice, May 12, 2023, <https://www.justice.gov/about>.

⁶ F B Raymond, “Reasons We Punish,” OJP, 1979, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/reasons-we-punish#:~:text=In%20the%20punitive%20ideology%20the,deterrence%2C%20retribution%2C%20or%20incapacitation.>

These questions lead us to the notion of *restorative justice*. According to a 1998 report from the U.S. Department of Justice Office of Justice Programs, “the guiding principles of restorative justice are: 1) crime is an offense against human relationships; 2) victims and the community are central to justice processes; 3) the first priority of justice processes is to assist victims; 4) the second priority is to restore the community, to the degree possible; 5) the offender has personal responsibility to victims and to the community for crimes committed; 6) stakeholders share responsibilities for restorative justice through partnerships for action; and 7) the offender will develop improved competency and understanding as a result of the restorative justice experience.”⁷ This report, from over two decades ago, highlights the importance of restorative justice, even when written from an American perspective. In spite of these findings, the United States and other nations have remained focused on punitive justice, rather than on restorative justice. Punitive justice relies on punishing criminal offenders and removing them from society. This is reflected, for example, in the use of

⁷ “Restorative Justice On-Line Notebook,” OJP, January 1998, <https://www.ojp.gov/library/publications/restorative-justice-line-notebook#:~:text=The%20guiding%20principles%20of%20restorative,the%20degree%20possible%3B%205.>

three-strikes laws and mandatory minimum sentencing in modern legal institutions.⁸

Recidivism refers to the relapse of past convicts into criminal behavior and has been a point of contention in criminal justice systems since their inception.⁹ Recidivism rates vary significantly around the world, potentially due to stark differences in reporting and data collection by different nations. One 2020 study conducted by American and British researchers found large variations in re-arrest, reconviction, and reimprisonment rates between countries, with differences of up to 40 percent. The same study also concluded that recidivism rates are not comparable between countries because of differences in reporting.¹⁰ Therefore, when determining how theories of justice affect recidivism, studies have to be conducted within

particular nations to account for these variations in the data.

Among nations that make specific, concerted efforts to record recidivism rates, the United States and Norway stand out for being at two opposite sides of the spectrum. Norway has a reconviction rate of about 20% within two years of release from prison.¹¹ In the United States, on the other hand, two-thirds of former convicts are rearrested and over half are reincarcerated within three years of their release.¹² Generally speaking, American ex-convicts are left with few opportunities for employment following their release from prison, and as the prison system provides convicts with other criminal connections, it is relatively easy for released former convicts to fall back into their old patterns of crime. On the other hand, Norway serves as a model system when it comes to rehabilitating prisoners and reducing the cycle of incarceration that results in high recidivism rates.

According to one study performed in 1985 by the U.S. Department of Justice Office Programs on prisons in Texas, there are a number of factors that are highly associated with recidivism. While

⁸ Bettina Muenster, “Perspectives on Punishment: An Interdisciplinary Roundtable on Punitiveness in America,” John Jay, accessed August 20, 2023, <https://johnjay.jjay.cuny.edu/punitivenessinamerica/roundtable.asp>.

⁹ “Recidivism,” National Institute of Justice, accessed August 20, 2023, <https://nij.ojp.gov/topics/corrections/recidivism#:~:text=Recidivism%20is%20one%20of%20the,intervention%20for%20a%20previous%20crime>.

¹⁰ Denis Yuxhnenko, Shivpriya Sridhar, and Seena Fazel, “A Systematic Review of Criminal Recidivism Rates Worldwide: 3-Year Update,” National Library of Medicine, November 3, 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6743246/#:~:text=Overall%2C%20for%202%2Dyear%20follow,are%20not%20comparable%20between%20countries>.

¹¹ “Recidivism Rates by Country 2023,” World Population Review, 2023, <https://worldpopulationreview.com/country-rankings/recidivism-rates-by-country>.

¹² Liz Benecchi, “Recidivism Imprisons American Progress,” Harvard Political Review, August 8, 2021, <https://harvardpolitics.com/recidivism-american-progress/>.

this study was conducted almost four decades ago, it seems that its findings probably still stand true today. Importantly, ex-convicts with juvenile criminal histories were more likely to be reincarcerated than those without.¹³ Additionally, releasees with multiple prior convictions were more likely to return to prison. One finding that is especially relevant to this topic was that poor institutional adjustment was actually correlated with a higher recidivism rate; this means that the more uncomfortable prisoners felt in prison, the more likely they were to return after release (surprisingly). Recidivists also tended to have unstable employment histories.¹⁴ Neither race nor time spent in prison statistically correlated with recidivism rates. Knowing these factors allows us to explore what is working so well in the Norwegian system.

Interestingly, Norway had a punitive justice system until 1968.¹⁵ In the years shortly before the change of focus in Norwegian incarceration, the population grew increasingly unhappy with the punitive system. In 1975, Norway abolished juvenile delinquency centers, and in the 1990s, Norway began officially prioritizing

¹³ M Eisenberg, “Factors Associated with Recidivism,” OJP, 1985, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/factors-associated-recidivism>.

¹⁴ Ibid.

¹⁵ Thomas Mathiesen, “The Prison Movement in Scandinavia,” *Jstor*, 1974, 45–50, <https://doi.org/https://www.jstor.org/stable/29765889>.

rehabilitation of prisoners.¹⁶ Nowadays, Norwegian prisons continue to focus on rehabilitation and reintegration. Prisoners work during the day, but there are also a variety of programs available during free time, involving music, cooking, and recreational activities.¹⁷ Prisons have relatively small capacities — in fact, Halden, which is one of Norway’s largest prisons, houses only 251 inmates.¹⁸ Inside, prisoners are kept in a dorm-room style interior, and small groups of inmates come together to cook their own meals in full kitchens. This is in stark contrast to the large dining halls that are typical of prisons in other countries, but it is meant to mimic life outside of prison more closely. Since 2014, the Norwegian Education Act has ensured that inmates have the same access to education as the general population.¹⁹ There are also job

¹⁶ Tapio Lappi-Seppälä, “Nordic Youth Justice,” *Jstor* 40, no. 1 (August 2011): 199–264, <https://doi.org/https://www.jstor.org/stable/10.1086/661113>.

¹⁷ Jeff Taylor, “Prisons in Norway: Inside a Norwegian Jail,” *Life in Norway*, April 9, 2022, <https://www.lifeinnorway.net/prisons/>.

¹⁸ Jessica Benko, “The Radical Humaneness of Norway’s Halden Prison,” *The New York Times*, March 26, 2015, <https://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html>.

¹⁹ Paai Chr Breivik, “The Norwegian Education System in Prisons” (Vestland: County Governor of Vestland, February 18, 2018).

training programs available.²⁰ While the United States and Norway are two examples of nations that have made concerted efforts to report recidivism rates, there are many others that do not.



Figure 1. An inside look into a Norwegian prisoner's room²¹

Like the United States, South Africa also has one of the highest recidivism rates in the world, although studies haven't conclusively pointed to one percentage value. The recidivism rate in South Africa is around 50% to 70% in three years, but some estimates suggest the rate is as high as 90%.²² Not only does South Africa have a high rate of violent crime, but its prison conditions are

particularly poor. Prisoners suffer from extreme overcrowding, insufficient access to healthcare, and improper sanitation and living conditions.²³ HIV infection prevalence among South African prisoners is almost double that of South Africa's general population according to some estimates.²⁴ Prisoners were also found to have undiagnosed tuberculosis in a number of health surveys, further pointing to the inadequacy of South African healthcare inside of the penal system.²⁵ These unfortunate prison conditions, combined with the fact that many South African prisoners have difficult lives outside of prison as well, means that recidivism rates have stayed high despite slight improvements in prison conditions in recent decades. The situation is not at all bleak,

²⁰ Manudeep Bhuller, "Policies to Reintegrate Former Inmates Into the Labor Force" (Oslo: University of Oslo, 2016).

²¹ *An inside Look into a Norwegian Prisoner's Room*, BBC (BBC), accessed August 20, 2023, https://ichef.bbci.co.uk/news/976/cpsprodpb/DA80/production/_107763955_cell976.jpg.

²² "The South African Criminal Justice System: A Systems Perspective," Africa International Advisors, October 6, 2022, <https://www.africaia.com/insights/the-south-african-criminal-justice-system-a-systems-perspective>.

²³ "Prison Conditions and Treatment of Inmates," Sonke Gender Justice, September 5, 2018, <https://genderjustice.org.za/project/policy-development-advocacy/prisons-transformation-policy-reform-advocacy-and-accountability/prison-conditions-and-treatment-of-inmates/>.

²⁴ Mabuto, Tonderai, Daniel M. Woznica, Gloria Lekubu, Nieser Seatlholo, etc. "Observational Study of Continuity of HIV Care Following Release from Correctional Facilities in South Africa - BMC Public Health." BMC Public Health, March 12, 2020.

<https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-020-8417-2#:~:text=In%20southern%20African%20correctional%20facilities,prevalence%20%5B2%2C%20%5D>.

²⁵ Lilangane Telisinghe, Katherine L. Fielding, and Justin L. Malden, "High Tuberculosis Prevalence in a South African Prison: The Need for Routine Tuberculosis Screening," PLOS ONE, January 30, 2014,

<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0087262>.

however; one study conducted in 2015 showed that the availability of educational programs in South African prisons reduced recidivism rates by at least 29%.²⁶



Figure 2. A look into Drakenstein Correctional Centre, Western Cape, South Africa²⁷

Like South Africa, Brazil does not report official recidivism rates based on government data. However, most studies report a recidivism rate of at least 70% in five years.²⁸ Incarceration rates in Brazil are rising. Between 2000 and 2015, the

United States reported a 14% increase in the number of incarcerated people; Brazil's prison population increased by 170% within the same time period.²⁹ Because of this swift change in incarceration rates, Brazilian prisons are overcrowded and are operating at occupancy levels of at least 143%.³⁰ In recent years, a nonprofit organization in Brazil has opened private prisons under a system called the Association for the Protection and Assistance to the Convicted (APAC).³¹ APAC prisons focus on rehabilitation, work, and study, and prisoners are referred to by their names.³² They are not overcrowded like other Brazilian prisons, and the recidivism rate from APAC prisons ranges

²⁶ Michael N Khwela, "Effects of Incarceration on Recidivism in South Africa," *Journal of Public Administration* 50, no. 2 (June 1, 2015), <https://doi.org/https://journals.co.za/doi/abs/10.10520/EJC183271>.

²⁷ *A Look into Drakenstein Correctional Centre, Western Cape, South Africa*, ENCA (ENCA, December 2022), https://www.enca.com/sites/default/files/2022-12/prison_raid.jpeg.

²⁸ Amira Chowdhury, "The Story behind Brazil's Prison Crisis," *Penn Political Review*, August 11, 2019, <https://pennpoliticalreview.org/2019/08/the-story-behind-brazils-prison-crisis/>.

²⁹ Lara Bartilotti Picanco, "Brazil's Mass Incarceration Policy Has Not Stopped Crime," *Wilson Center*, August 30, 2019, <https://www.wilsoncenter.org/blog-post/brazils-mass-incarceration-policy-has-not-stopped-crime>.

³⁰ "Brazil," *World Prison Brief*, January 1, 2020, <https://www.prisonstudies.org/country/brazil>.

³¹ Eleonore Hughes, "In Brazil, Prisons without Guards Offer Inmates Path to Recovery," *Al Jazeera*, May 17, 2023, <https://www.aljazeera.com/news/2023/5/16/in-brazil-prisons-without-guards-offer-inmates-path-to-recovery>.

³² Alex Gray, "This Brazilian Prison Gives Inmates the Keys to Their Cells," *WE Forum*, September 24, 2018, <https://www.weforum.org/agenda/2018/09/in-these-humane-brazilian-prisons-inmates-hold-the-keys-to-their-cells/>.

between 7% and 20%.³³ Despite the fact that APAC prisons are also less costly than typical Brazilian prisons, they are largely seen as failing to be tough on crime by the Brazilian justice system.³⁴

The aforementioned case studies are only meant to provide a meager oversight to the relationship between recidivism rates and prison conditions. Each nation is affected by the particular problems facing their penal system, and we look forward to seeing you discuss what faces your delegation in committee.

History Of The Problem

Throughout the past century, mass incarceration has become a significant problem in countries around the world. These problems are incredibly country specific, with the Sentencing Project, a Washington, D.C.-based research and advocacy center, reporting that there is “a nearly 40-fold difference between the highest and lowest rates.”³⁵

³³ Marcelo, “Encantadores de Histórias Se Apresentam Em Manhumirim,” FBAC, November 25, 2011, <https://fbac.org.br/encantadores-de-historias-se-apresentam-em-manhumirim/>.

³⁴ “Recidivism Success of Social Enterprise Ignored by Brazilian Govt,” University of Huddersfield, 2018, <https://www.hud.ac.uk/news/2018/may/recidivism-successofsocialeenterpriseignoredbybraziliangovt/>.

³⁵ “Incarceration Rates in an International Perspective.” *The Sentencing Project*, 22 May 2023, www.sentencingproject.org/policy-brief/incarceration-rates-in-an-international-perspective/.

Prison rates communicate important information about the values that a society has and the priorities that are contained within policy.

Mass incarceration is a problem that has wide ranging effects. To exemplify this, we can use the United States as an example. The U.S. prison population has exploded since the 1970s, growing fivefold³⁶ in the subsequent decades. The impacts of this are well documented, resulting in disparate impacts in outcome that are disproportionately affected by race and class. The problem is compounded by the idea that incarceration patterns reproduce themselves in society. With an absence of rehabilitative justice in jails, there has been a fear that the conditions that lead to incarceration are reproduced across generations, leading to cyclical poverty as families are broken apart.³⁷ Incarceration also contributes to a decrease in employment after the fact,³⁸ with numerous impacts playing out from that.

³⁶ Western, Bruce, and Muller, Christopher. *Mass Incarceration, Macrosociology, and the Poor - Sage Journals*, journals.sagepub.com/doi/10.1177/0002716213475421. Accessed 25 Aug. 2023.

³⁷ Western, Bruce, and Muller, Christopher. *Mass Incarceration, Macrosociology, and the Poor - Sage Journals*, journals.sagepub.com/doi/10.1177/0002716213475421. Accessed 25 Aug. 2023.

³⁸ Western, Bruce, and Muller, Christopher. *Mass Incarceration, Macrosociology, and the Poor - Sage Journals*, journals.sagepub.com/doi/10.1177/0002716213475421. Accessed 25 Aug. 2023.

Difficulties with employment translate to difficulty with income, increasing instability, and making poor situations harder to escape from.

These differences in part come from different ideas and opinions about how incarceration should be approached, and the overarching values that underlay society. Criminal justice systems tend to embrace an approach to criminal justice that is either punitive or restorative. Restorative justice focuses on repairing harms that were done to the community and the victim and creating conversations that focus on healing the harm caused by the crime.³⁹ Punitive justice, on the other hand, relies on a principle of punishment—an idea that a wrong was perpetrated and the member of society that was responsible for the harm ought to be punished. Both types of justice have been around for centuries, with an early example of punitive justice being the code of Hammurabi,⁴⁰ which focused on punishment that was proportionate to the crime that was committed. Restorative justice also has ancient roots, such as in justice systems that existed in Africa before the arrival of European colonists

and in the practices of First Nations in Canada.⁴¹

These practices were tied up with the idea of restoring the equilibrium of the community, involving the perpetrator of the crime with the determination of the proper steps to take in the aftermath.

These undertones and ideologies exist in justice systems across the world. In the United States, restorative justice programs in Orange County, California focus on providing meditation between child offenders and the victims of their actions. This allows the county to avoid high juvenile incarceration rates and save money on incarceration, while still finding ways to repair the harm that was caused.⁴²

Canada has led the way in restorative justice programs. In a report by the Solicitor General of Canada, he found that restorative justice programs that dealt with minor offenses resulted in the satisfaction of both the victim and the offender as they worked to repair the damage that was perpetuated by their crime. Likewise, he found that restorative justice for serious crimes

³⁹ Armour, Marilyn. "Restorative Justice: Some Facts and History." *Tikkun*, Duke University Press, 26 Mar. 2012, muse.jhu.edu/article/469534/pdf.

⁴⁰ "The Code of Hammurabi." Translated by L W King, *The Avalon Project: Code of Hammurabi*, avalon.law.yale.edu/ancient/hamframe.asp. Accessed 25 Aug. 2023.

⁴¹ Strong, K.H. (2014). History of Restorative Justice. In: Bruinsma, G., Weisburd, D. (eds) *Encyclopedia of Criminology and Criminal Justice*. Springer, New York, NY. https://doi.org/10.1007/978-1-4614-5690-2_472

⁴² Mark S. Umbreit; Marilyn Peterson Armour, "Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community," *Washington University Journal of Law and Policy* 36 (2011): 65-90

was also met with support. The main form that these programs took were conversations between the offender, the victim, and relevant members of the community. These conversations often focused on the harm that was caused by the crime and the different ways that the offender would be able to repair the harm to the other individual and/or larger community. These programs focus less on direct punishment of the offender, since some programs even allow the offender to go from prison to a halfway house, instead, in order to provide restitution to the victim of their crime. This policy resulted in “generally positive attitudes among the victims and the more that the offender repaid the victim the more likely he was to complete his halfway house placement.”⁴³ These programs have also been implemented as a method to divert offenders from prison sentences to alternative sentence plans. These programs result in a lower recidivism rate for the individuals that were involved.

America, however, has had a significantly more punitive prison system than most other countries. The U.S. has a more significant reliance on criminal sentences than other countries, relying “on incarceration for 70% of criminal sanctions,

while in Germany, it’s 6%.”⁴⁴ Diverse counties in the United States tended to be more punitive and have more severe punishments. The US has “the highest prison population rate in the world: 686 per 100,000 of the national population at the end of 2001, almost five times the overall world rate.”⁴⁵ The high incarceration rate shows the punitive philosophy that underpins the system, with harsh sentences and significant consequences.

Past Actions

The United Nations began publishing guidelines on the treatment of prisoners within the first decade of its inception. Following the dissolution of the International Penal and Penitentiary Commission in 1955, the first UN Congress on the Prevention of Crime and the Treatment of Offenders took place, and at this conference, the Standard Minimum Rules for the Treatment of Prisoners were adopted.⁴⁶ These rules cover topics

⁴⁴ Counts, Laura. “Criminal Punishment Is Harshest in Racially Diverse Counties, Study Finds: Haas News: Berkeley Haas.” *Haas News | Berkeley Haas*, 25 Feb. 2020, newsroom.haas.berkeley.edu/criminal-punishment-is-harsher-in-racially-diverse-counties-study-finds/.

⁴⁵ Walmsley, Roy. *Global Incarceration and Prison Trends*, www.unodc.org/pdf/crime/forum/forum3_Art3.pdf. Accessed 25 Aug. 2023.

⁴⁶ Alfred Torrie, “First United Nations Congress On the Prevention of Crime and the Treatment of Offenders,” *Sage Knowledge* 15, no. 3 (1957): 210, <https://doi.org/https://journals.sagepub.com/doi/abs/10.1177/001789695701500324>.

⁴³ *Restorative Justice: Promising Beginnings - Public Safety Canada*, www.publicsafety.gc.ca/cnt/rsrscs/pblctns/prmsg-bgns/prmsg-bgns-eng.pdf. Accessed 25 Aug. 2023.

including food, clothing and bedding, accommodation, discipline, contact with the outside world, work, and more.⁴⁷ In 2015, these rules were revised and adopted again by the UN General Assembly; the revised UN Standard Minimum Rules for the Treatment of Prisoners are now also known as the Nelson Mandela Rules.⁴⁸

Beyond the Standard Minimum Rules for the Treatment of Prisoners, the UN has adopted other rules to inform the actions of justice systems across the world. In 1990, the General Assembly adopted a set of rules that offered alternatives to incarceration: the Standard Minimum Rules for Non-custodial Measures, also known as the Tokyo Rules.⁴⁹ This set of rules covers the implementation of non-custodial measures, including supervision and conditions, but also thoroughly touches upon staff recruitment and training, the use of volunteers, discipline upon breach of conditions, and more.⁵⁰ The UN also adopted a set of standard penal rules focused on women in 2010, which are known as the UN Rules for the Treatment of

Women Prisoners and Non-custodial Measures for Women Offenders, or the Bangkok Rules.⁵¹

These rules involve particular considerations such as gender-specific healthcare or hygiene products for menstruation.⁵² However, while the UN has long focused on penal institutions in terms of a wide variety of conditions and circumstances, the UN has only focused on recidivism rates specifically within the last decade.

The UN Office on Drugs and Crime (UNODC) has published a series of handbooks meant to support nations in crime prevention and criminal justice. As part of the Criminal Justice Handbook Series, the Introductory Handbook on The Prevention of Recidivism and the Social Reintegration of Offenders was published first in 2012, and then again as a revised version in 2018.⁵³ While these documents do recommend a certain collection of reintegration strategies, the focus on recidivism is limited. In addition, within the years since the release of these handbooks, little attention has been given to recidivism on an international scale. In order to counteract this problem and to promote the successful reintegration of offenders, it is first important to

⁴⁷ “Standard Minimum Rules for the Treatment of Prisoners” (Geneva: United Nations, May 1977).

⁴⁸ “Nelson Mandela Rules,” UN Events, July 2018, https://www.un.org/en/events/mandeladay/mandela_rules.shtml.

⁴⁹ “Alternatives to Imprisonment and Restorative Justice” (Vienna: UNODC, December 1990).

⁵⁰ “United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)” (Vienna: OHCHR, December 1990).

⁵¹ “UN Bangkok Rules,” Penal Reform, December 20, 2021, <https://www.penalreform.org/issues/women/bangkok-rules/>.

⁵² “The Bangkok Rules” (Vienna: UNODC, March 16, 2011).

⁵³ “Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders” (New York: UNODC, 2012).

ensure that individuals have the tools and resources to effectively separate themselves from prison life.

In 2021, General Assembly resolution 76/182 encouraged member states to focus particularly on reducing reoffending rates.⁵⁴ Expert groups from various regions convened in 2022, and in May 2023, a working paper centered on reoffending was published by the Secretariat.⁵⁵ This working paper mentions the relationships between recidivism and youth, the lack of promotion of rehabilitation, particular social reintegration challenges, pretrial detention, and more. Additionally, the working paper mentions restorative justice specifically in many spots throughout the document. More meetings on this topic are also expected to take place in September 2023, after the writing of this background guide. *For reference and in addition to your other research, checking out the updates from these meetings will likely be helpful.

Note: the information below comes directly from the aforementioned working paper from the Secretariat, and the following table is simply meant to summarize the developments of UN discussions that have taken place up to this point.

⁵⁴ “Official Document System of the United Nations,” United Nations, 2023, <https://documents.un.org/prod/ods.nsf/home.xsp>.

⁵⁵ Ibid.

<p>Core principle I – from the aforementioned working paper</p> <p><i>All decisions regarding the treatment of offenders should be tailored to address their individual circumstances and based on thorough and continuing assessments of their risks, needs, capacities, and dispositions.</i></p>	<p>Draft model strategy No. 1</p> <p><i>Decisions should be based on individual assessments that are tailored to the local context and evaluated for their accuracy. States should ensure the involvement of the justice sector, social services and other relevant actors in the conduct of individual assessments and their cooperation in the sharing of relevant information.</i></p>
<p>Core principle II</p> <p><i>Imprisonment should be avoided unless strictly necessary, as it may worsen the conditions that contributed to an individual’s criminal conduct and aggravate pre-existing challenges in offenders’ social integration.</i></p>	<p>Draft model strategy No. 2</p> <p><i>States should consider establishing directions in favor of the diversion of offenders in certain types of cases, or for certain types of offenses or offenders.</i></p>
	<p>Draft model strategy No. 3</p> <p><i>States should develop and prioritize the use of alternatives to pretrial detention as an important measure to address offending or reoffending, and should offer support to those who are released from such detention.</i></p>
	<p>Draft model strategy No. 4</p> <p><i>Sentencing should allow for non-custodial options whenever appropriate, including for repeat offenders. States should limit the use of mandatory and short-term prison sentences and require the provision of pre-sentence reports.</i></p>

	<p>Draft model strategy No. 5</p> <p><i>States should prioritize the provision of community supervision and support to offenders by suitably qualified and trained professionals with adequate resources. Conditions attached to non-custodial measures should be individualized, proportionate, unambiguous, limited to those necessary to address the risk, needs and situation of the offender, and subject to regular review and modification.</i></p>
<p>Core principle III</p> <p>Rehabilitation programmes and other interventions intended to prevent reoffending must respond to the needs of individual offenders and the factors that cause them to commit crime.</p>	<p>Draft model strategy No. 6</p> <p><i>All rehabilitation programmes, whether in community or custodial settings, should be evidence-based, age-sensitive, gender-responsive and regularly reviewed.</i></p> <hr/> <p>Draft model strategy No. 7</p> <p><i>Restorative justice programmes should be made available as an alternative to, or in combination with, conventional criminal justice interventions. Subject to consent and relevant safeguards, such programmes have the potential to facilitate victims' access to justice, while also enabling offenders to take responsibility for the damaging impact of their offenses on victims and the community at large, thereby increasing their rehabilitation and social reintegration prospects.</i></p> <hr/> <p>Draft model strategy No. 8</p> <p><i>States should limit the availability, usage and continuation of criminal records and registers to increase the likelihood of the successful reintegration of offenders.</i></p>
<p>Core principle IV</p>	<p>Draft model strategy No. 9</p>

<p><i>The prevention of reoffending by former prisoners depends not just on suitable rehabilitation programmes, but also on ensuring safe, secure and humane custodial environments and carefully managed reintegration processes.</i></p>	<p><i>Prison authorities should intensify efforts to comply with the Nelson Mandela Rules and other relevant standards to reduce the likelihood of reoffending upon release.</i></p>
	<p>Draft model strategy No. 10</p> <p><i>The maintenance of contact with family and friends while in prison is essential for prisoners' successful reintegration, and the importance of maintaining and developing family relationships should be explicitly stated and reflected in prison policies and regulations.</i></p>
	<p>Draft model strategy No. 11</p> <p><i>Programmes designed to address the causes of offending should be available to all offenders; programmes offered in prisons should additionally be aimed at increasing the social reintegration prospects of prisoners upon their release, while avoiding the potential for exploitation.</i></p>
	<p>Draft model strategy No. 12</p> <p><i>Prison authorities should cooperate closely with criminal justice practitioners, as well as relevant government and non-government stakeholders, to ensure a seamless transition for offenders from the custodial environment to the community, including through the provision of support in the areas of housing, employment and health and social welfare. Preparation for reintegration should begin at the time of an offender's admission to prison, and support should extend beyond the time of release or post-release community supervision, reinforcing progress made in prison and continuing for as long as necessary.</i></p>
<p>Core principle V</p>	<p>Draft model strategy No. 13</p> <p><i>Clear protocols should be agreed for cooperation and collaboration among criminal justice agencies and with other relevant stakeholders.</i></p>

<p><i>Reducing reoffending requires the active participation of not only the justice sector but all sectors of society, and significant amounts of time and resources must be invested in partnerships, outreach, training and sustainability measures.</i></p>	<p>Draft model strategy No. 14</p> <p><i>The potential for volunteers and civil society organizations to contribute to the rehabilitation and social reintegration of offenders should be recognized, promoted and supported.</i></p> <hr/> <p>Draft model strategy No. 15</p> <p><i>States should design and implement campaigns to raise public awareness and understanding of initiatives to reduce reoffending, in particular campaigns to encourage acceptance of and support for the use of non-custodial measures and other measures for the reintegration of offenders.</i></p> <hr/> <p>Draft model strategy No. 16</p> <p><i>States should recognize and promote the critical role that criminal justice personnel can play in the reduction of reoffending. Professional training programmes should be developed and provided with adequate resources in line with international standards and good practices, and opportunities should be provided for exchange and capacity development within the justice sector and with other relevant actors.</i></p> <hr/> <p>Draft model strategy No. 17</p> <p><i>States should review existing legal and regulatory frameworks and develop national strategies and action plans aimed at the reduction of reoffending.</i></p>
<p>Core principle VI</p> <p><i>States should invest in research, including comparative research, into</i></p>	<p>Draft model strategy No. 18</p> <p><i>Those undertaking research or presenting data should provide clear definitions and scientific analysis to support their findings and should consider a range of indicators beyond rates of reoffending. All research should take into account cultural differences and potential biases.</i></p>

Possible Solutions

Although there is a long history of UN recommendations in relation to penal institutions, recidivism is a topic that has only been a point of interest in recent years. As such, CCPCJ has so much to offer countries and individuals on an international scale. Recent expert meetings have highlighted various areas of interest with regards to the problem that reoffending poses, and CCPCJ should build upon these findings to eventually pass a resolution that can help nations successfully implement policies to reduce their recidivism rates at the national level.

To continue, reducing recidivism is about restorative justice, as we have seen from the evidence mentioned in the Statement of the Problem. Not to mention, the expert groups from the UN meetings that have taken place just this year have also acknowledged that fact. Still, despite all of this, there are still nations that do not see rehabilitation as justice, often for social or cultural reasons. In order to keep debate interesting, we as chairs for this committee would really like to see delegates effectively wording reasons to either support or discourage

rehabilitation in criminal justice depending on the policies of the nations they represent. This is not to say that we want a committee where potential violations to human rights are being ignored, but at the same time, it is important (and necessary) that all blocs do not agree. More on this will be mentioned in the Bloc Positions section.

It is also worth considering the extent to which new trends toward mass incarceration have affected recidivism rates in recent years. According to each nation's penal policies, we ask that delegates work towards determining whether mandatory minimums for lower-level offenses are necessary. How might community interventions work to improve society as a whole? Regardless of where each nation stands on the extent to which prisons should be inherently punitive, it is clear that detention as a juvenile is highly correlated with future reoffending. How can juvenile incarceration be avoided, and to what extent are children able to be rehabilitated more effectively than adults? What specific recommendations should be provided to the multitude of juvenile detention centers that exist around the world?

Furthermore, regardless of where each nation stands on restorative justice, prison conditions have been directly linked to recidivism rates. In committee over the course of the weekend, we will also like to focus on prison conditions as they relate to recidivism. In other words, the conditions in prisons must be sufficient to support mental and physical wellbeing. What recommendations should prisons undertake to reduce recidivism?

Throughout the weekend of the conference, we hope to see delegates propose solutions that involve the consideration of both the policies of the delegation they represent as well as the data brought forth in this background guide. While a recent working paper on reoffending is mentioned here, we hope to see working papers that mirror national policies a bit more while still keeping these expert recommendations from international representatives in mind.

Bloc Positions

Each country has different considerations that are relevant and pertinent regarding their views on incarceration and a punitive justice system. Countries that are trying to establish law and order might place an emphasis on a criminal system that is stable and that ensures justice is delivered to all no matter one's economic status or social position. Other countries might try to create a more lenient criminal justice system,

acknowledging past punitive decisions and adjusting to the realities of crime in their population. Regardless, each country will have a slightly different approach to pursuing criminal justice. Outlined here are some of the positions that countries and regions have taken in the past, when discussing issues of crime prevention and criminal justice. Please do not feel constrained by these positions, but rather use them as a launching point to explore the different philosophies that underpin discussions of criminal justice. We do expect that you meaningfully explore the facets of these systems— we prioritize lively debate over consensus, as it shows that you are meaningfully engaging in the different philosophies that exist.

Africa

Africa tends to have a smaller criminal justice system than some of the other major regions that we will be examining in this committee. In Africa, on average, there is the highest ratio of citizens to police officers. East Africa, for example, has the highest number of residents per police officer, with almost 1000 inhabitants for every police officer.⁵⁶ As a whole, the continent has almost 800 residents per police officer. Similarly, Africa

⁵⁶ Shaw, Mark, Jan van Dijk, and Wolfgang Rhomberg. "Determining Trends in Global Crime and Justice: An Overview of Results from the United Nations Surveys of Crime Trends and Operations of Criminal Justice Systems." UNODC. Accessed August 26, 2023. https://www.unodc.org/pdf/crime/forum/forum3_Art2.pdf.

has a high ratio of citizens to magistrates, with the continent of Africa having about 30,000 residents per magistrate, which is the second highest ratio only to Asia.⁵⁷ While this high spending on the police suggests a more punitive system, this could also be a symptom of the necessity of a functioning criminal justice system to maintain a stable government. However, this is not to say that there are no elements of restorative justice in Africa today. In Uganda, a part of their justice system involves a restorative practice, with “three stages of restorative justice practices, including mediation, restorative circles and restorative conferencing”.⁵⁸ All of this information then leads to questions related to the role that criminal justice plays in state legitimacy and ensuring the law is upheld, along with spaces where restorative justice methods can play a large role.

⁵⁷ Shaw, Mark, Jan van Dijk, and Wolfgang Rhomberg. “Determining Trends in Global Crime and Justice: An Overview of Results from the United Nations Surveys of Crime Trends and Operations of Criminal Justice Systems.” UNODC. Accessed August 26, 2023. https://www.unodc.org/pdf/crime/forum/forum3_Art2.pdf.

⁵⁸ Alemika, Etannibi E O, Richard Bowd, Simon Robins, J Nnamdi Aduba, Emily I Alemika, Irvin Kinnes, and Annie Barbara Chikwanha. “The Theory and Practice of Criminal Justice in Africa.” African Human Security Initiative. Accessed August 26, 2023. https://www.files.ethz.ch/isn/104299/MONO161_FULL.pdf.

Nordic Countries

Criminal justice systems in Nordic countries tend to be notable in two ways. The first is that criminal law tends to be slightly moralistic, particularly regarding laws on sex and drugs. The second is that the severity of punishment, length and rate of imprisonment, and rate of violence tend to be low. The justice system does not allow for life imprisonment or capital punishment, and it limits the length of prison sentences. Instead, the justice system tends to focus on rehabilitation as opposed to punishment. Often held up as a model of modern day criminal justice reform, due both to the humane practices of the justice system and the low level of violent crime and homicide, Nordic countries implement a justice system without plea bargaining and a strong burden of proof placed on the public prosecutor, who is a career civil servant.

Sentences in Nordic countries also tend to have many alternatives to traditional imprisonment, such as community punishments and fines. These present a way to deliver measures of justice without turning to traditional forms of imprisonment. The countries also have relatively clear sentencing guidelines, and a shielding from public pressure in sentencing, due to the nature

of the role of judge and prosecutor as career civil servants.⁵⁹

North America And South America

The legal systems are, of course, many and varied throughout the North American and South American continent. The United States and Canada both originate in British common law, but the United States tends to lean more punitive than Canada. In Canada, the death penalty has been abolished and they have appointed judges,⁶⁰ shielding judges from political motives. The United States, however, still has the death penalty in 27 states, and the country as a whole experiences high rates of imprisonment. Despite a precipitous drop in violent crime in the late twentieth century, a push for punitive measures in the criminal justice system has increased.⁶¹ Political rhetoric around criminal justice and safety has resulted in a much harsher justice system.

⁵⁹ Lappi-Seppälä, Tapio, and Michael Tonry. "Crime, Criminal Justice, and Criminology in the Nordic Countries." *Crime and Justice* 40, no. 1 (2011): 1–32. <https://doi.org/10.1086/660822>.

⁶⁰ Written on Behalf of Barrison Law. "Differences between the Canadian and American Legal Systems." Barrison Law, November 22, 2015. <https://criminallawoshawa.com/differences-between-the-canadian-and-american-legal-systems/>.

⁶¹ Adler, J. S. "Less Crime, More Punishment: Violence, Race, and Criminal Justice in Early Twentieth-Century America." *Journal of American History* 102, no. 1 (2015): 34–46. <https://doi.org/10.1093/jahist/jav173>.

In South America, there are mixed approaches to criminal justice, with some systems skewing towards punitive justice, and others towards restorative justice. For example, in Chile, restorative justice efforts have been introduced to use mediation as opposed to sentencing practices. The scope of cases referred for restorative justice meditation was wide, ranging from theft to minor injuries. While the program has not yet become a mainstream practice, due to pressure to maintain punitive elements of the system, the development of this program shows a more open approach to restorative justice practices.⁶²

Asia

In Asia, despite obvious diversity in legal systems, it tends to be the case that social control plays a large role in views on criminal justice. Asia justice systems tend to be community oriented, focusing on solutions that would allow one to move past the crime that they committed. While criminal justice systems in Asia are impacted by the legacy of colonialism, they tend to be marked by a belief in strong punitive justice for those who break the social contract and state centrality. Asian countries tend to still have strict drug laws with severe punishments. Justice systems also tend to place the state as central in the system to control

⁶² Díaz Gude, Alejandra, and Iván Navarro Papić. "Restorative Justice and Legal Culture." *Criminology & Criminal Justice* 20, no. 1 (2018): 57–75. <https://doi.org/10.1177/1748895818796549>.

crime, not using private prisons to assist with the prison population, and introducing preventative action to stop crime from being committed in the first place.⁶³ However, for minor offenses, restorative justice systems are growing in popularity, which keeps in line with the goal of assisting community healing.

China's criminal justice system tends to skew more punitively in its delivery of justice. China's justice system does not subscribe to the division between the state and the judicial system—rather the CPC strictly oversees the justice system. This creates political incentives for the party in the administration of justice, many of which do not frequently exist as strongly in systems that do have independence of the judiciary. China still has the death penalty as a punishment for crimes, suggesting that there is an ideological philosophy towards punitive justice as opposed to restorative justice.

The criminal justice system of China also tends to make access to legal counsel difficult, along with giving advantages to the prosecution, such as greater access to evidence. However, in recent years, China has been moving towards legal reform and taking steps to protect the rights of defendants. An example of this is the March 2012

adoption of amendment eight to the Criminal Law and Criminal Procedure Law, which mandates that the human rights of defendants are protected.⁶⁴

Europe

Europe has had a varied relationship with punishment and criminal sentencing, as opposed to diversion programs, much like the United States. In Eastern Europe and Central Europe, the rates of imprisonment have sharply fallen over the last thirty years. However, much of this decrease occurred soon after 1989, and lasted for about a decade, where the levels then again increased and stabilized. These rates of imprisonment still remain high compared to Western Europe. Some countries in Europe, such as Germany, have found success using diversion programs and penalties as opposed to prison sentences. Quality of life in prisons also varies quite significantly based on the country. In France and Germany, the quality of life of prisoners is comparatively good. In England, however, prisoners tend to be treated poorly and, despite terrible conditions being frequently documented, they do not receive any relief from England's government.

⁶³ Zhong, Hua, and Serena Yunran Zhang. "Social Control of Crime in Asia." Oxford Research Encyclopedia of Criminology and Criminal Justice, 2021.
<https://doi.org/10.1093/acrefore/9780190264079.013.623>.

⁶⁴ "China's Criminal Justice Reforms." Institute for Security & Development Policy, October 2020.
<https://isdpc.eu/content/uploads/2020/10/Chinas-Criminal-Justice-Reforms-BG-07.10.20.pdf>.

Glossary

All definitions listed below are from Oxford English Dictionary⁶⁵

Incarceration: (*noun*) The action of incarcerating or fact of being incarcerated; imprisonment.

Punitive: (*adjective*) Inflicting or intended to inflict punishment; retributive, punishing.

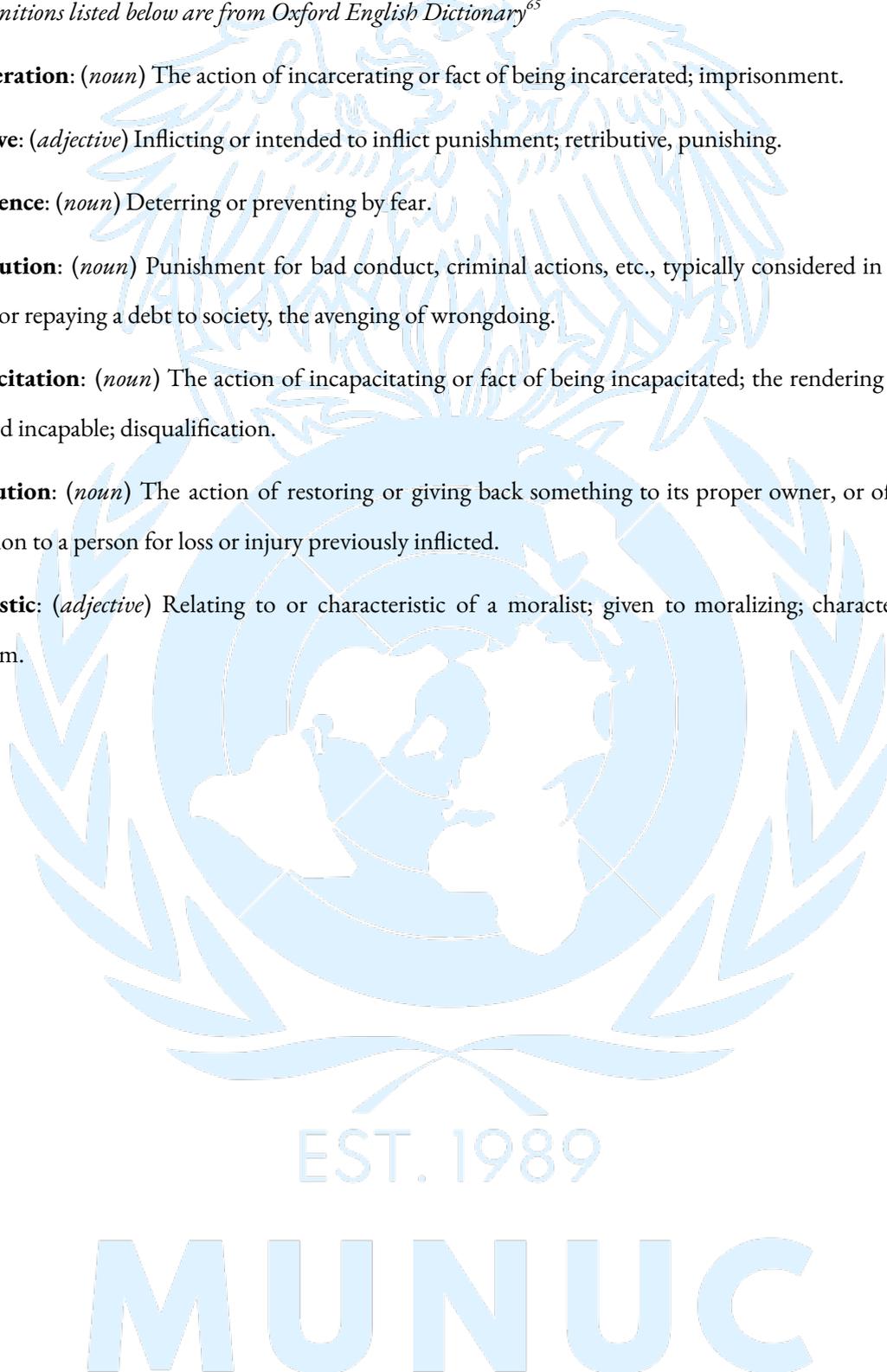
Deterrence: (*noun*) Deterring or preventing by fear.

Retribution: (*noun*) Punishment for bad conduct, criminal actions, etc., typically considered in terms of redress or repaying a debt to society, the avenging of wrongdoing.

Incapacitation: (*noun*) The action of incapacitating or fact of being incapacitated; the rendering or being rendered incapable; disqualification.

Restitution: (*noun*) The action of restoring or giving back something to its proper owner, or of making reparation to a person for loss or injury previously inflicted.

Moralistic: (*adjective*) Relating to or characteristic of a moralist; given to moralizing; characterized by moralism.



⁶⁵ Simpson, John A. *Oxford English Dictionary*. Oxford: Clarendon Press, 1993.

TOPIC B: INTERNATIONAL CRIMINAL TRIBUNALS AND ACCOUNTABILITY

Statement Of The Problem

What does one do if a crime is committed that is so atrocious, it violates agreed upon behaviors of human conduct throughout the world? If the state that this atrocity was committed in has a fair mechanism of enforcement, then it would seem possible to handle this on a local level. However, if these crimes were committed in the name of nationals, were committed during times of war, or were committed by leaders of countries that would have plausible legal shielding, how can the international community ensure that accountability is taken for crimes that are committed?

Law has historically been something local—created by the country that one lives in and upheld by that country. However, there are some fundamental laws that are agreed upon by the international community— laws protecting human rights and stopping mass atrocities from happening without consequences when carried out by the government. The need for this stems from the reality that political and military leaders are often not held accountable for the atrocities

that they commit in the name of nationalism, by their own government.⁶⁶

However, there are a number of issues that can be posed when trying to convene internationally to enforce agreed upon universal standards. The first is in prosecuting crimes that breach international law while maintaining the sovereignty of the states involved. The responsibility of prosecuting these crimes and bringing perpetrators to justice often still falls on the states that were affected. Legality also tends to be an issue with addressing international crimes, especially if the crime committed has been recognized both as a violation of international law and a violation that can be punished by the international community.

These challenges are significant, but they are not impossible to overcome. There have been examples in history of the successful joining together of the international community for the purpose of bringing those who committed crimes violating international law to justice. The most famous example of attempting to hold perpetrators of a mass atrocity accountable is the Nuremberg trials. The Nuremberg trials were arranged by the allied powers at the end of World

⁶⁶ Murphy, Ray. *International Criminal Accountability and the International ... - Eth Z*, www.files.ethz.ch/isn/10699/doc_10730_290_en.pdf. Accessed 25 Aug. 2023.

War II in order to indict and try leaders of the Nazi Party for the mass genocide that they oversaw and carried out. Lasting from November 20, 1945 until October 1, 1946, the Nuremberg tribunal tried military and political leaders of the Nazi Party, ending with the conviction of 19 defendants and the acquittal of three. After the main trials concluded, twelve additional military tribunals were held from December 1946 to April 1949. These trials were against “177 high-ranking physicians, judges, industrialists, SS commanders and police commanders, military personnel, civil servants, and diplomats.”⁶⁷ Of these, 142 were found guilty and given at least some form of punitive sentence.⁶⁸ The Nuremberg trials show a successful example of when the international community was able to convene to deliver justice for atrocities that broke a shared code of human decency.



Figure 3. The Nuremberg Trials, 1945-46⁶⁹

Despite the effectiveness of the Nuremberg trials, the international community did not develop a permanent international court until 1998, which they then named “the International Criminal Court (ICC).” The purpose of the ICC was to enforce the most serious of international laws, including laws against genocide and crimes against humanity. The ICC was never meant to replace the judicial enforcement of individual states, but rather to supplement these systems. Because of this, the ICC has very limited jurisdiction.⁷⁰

The ICC is not without significant flaws. Like the UN, the ICC relies heavily on getting the support of the international community to actually deliver and enforce its decisions. Major states, such as the United States and China, are able to

⁶⁷ “The Nuremberg Trials: The National WWII Museum: New Orleans.” *The National WWII Museum* | New Orleans, www.nationalww2museum.org/war/topics/nuremberg-trials. Accessed 25 Aug. 2023.

⁶⁸ “The Nuremberg Trials: The National WWII Museum: New Orleans.” *The National WWII Museum* | New Orleans, www.nationalww2museum.org/war/topics/nuremberg-trials. Accessed 25 Aug. 2023.

⁶⁹ Pingnews.com. “Public Domain: Nuremberg Trials, 1945-46 (HD-SN-99-02955 - Dod/Nara).” *Flickr*, Yahoo!, 25 Aug. 2023, www.flickr.com/photos/pingnews/1857858274/.

⁷⁰ Murphy, Ray. *International Criminal Accountability and the International ... - Eth Z*, www.files.ethz.ch/isn/10699/doc_10730_290_en.pdf. Accessed 25 Aug. 2023.

exert significant influence, as they can choose to ignore the rulings of the ICC. In addition, the ICC does not have an effective means of enforcement, so it relies on large states to back it and provide it legitimacy. This is problematic on two levels. The first is that this reliance decreases the accountability of large states to the international community. Because certain superpowers have so much leverage over the ICC, the ICC carries less sway over them, and there is less of a mechanism to hold these states accountable. The second is that this reliance creates fear that prosecution by the ICC is politically motivated. Because certain states carry a large sway, smaller states that take opposing positions in the international community may be fearful that the ICC will prosecute them with the encouragement of large states. The prosecution is deliberately separate from the UN Security Council because of this fear, making it more challenging for this to be the case. While the Security Council does have the ability to refer cases to the ICC for prosecution if a crime that is under the ICC's jurisdiction has been committed, the prosecutor is able to then determine how to act in regards to those cases, meaning there is often the threat of bias.⁷¹

Limitations concerning international mechanisms of enforcing justice also stem from

⁷¹ Murphy, Ray. *International Criminal Accountability and the International ... - Eth Z*, www.files.ethz.ch/isn/10699/doc_10730_290_en.pdf. Accessed 25 Aug. 2023.

whether or not countries view them as legitimate. If a state refuses to recognize the ICC and thus refuses to ratify the statute that is responsible for the ICC, they will not be under its jurisdiction. Thus, the international community can only take action for crimes committed in states that have actually ratified the ICC. The perception that sharing the power of prosecution with the International Criminal Court is a violation of a nation's sovereignty makes it harder for the ICC's rulings to have teeth.⁷²

Regardless, the ICC was initially deemed to be a triumph in international law, since it was regarded as a way to ensure that members of society that committed atrocities would be held accountable at an individual level. These issues outlined above have come more to bear in the past few decades, due to the weak record of actual convictions that it was able to produce. Despite being operational since 2002, the ICC was only able to achieve 8 convictions from its inception to 2020. One of these convictions was overturned and four of the convictions only resulted in light sentences of less than 3 years. While it is, of course, necessary to assume innocence in any defendant and high rates of conviction are themselves not a cause for celebration, the prosecutor has been criticized in the past for bringing weak cases to the court and not

⁷² Murphy, Ray. *International Criminal Accountability and the International ... - Eth Z*, www.files.ethz.ch/isn/10699/doc_10730_290_en.pdf. Accessed 25 Aug. 2023.

compiling compelling evidence. This lack of success in holding people accountable makes it harder for the court to deter bad behavior— there is no fear that the court will actually be able to punish people who violate international law. This is further exacerbated by a breakdown of cordiality between judges, who frequently do not get along.⁷³ All of this creates harm not just towards the actual work that the ICC is able to do, but to the perception of international law as something with force that ought to be respected. While the ICC is a potential step towards international communication and coordination in legal matters, it is not yet sufficient to ensure that international law is upheld.



Figure 4. The International Criminal Court assembles⁷⁴

⁷³ Sterino, Milena. *The International Criminal Court: Current Challenges and Prospect Of...*, scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2580&context=jil. Accessed 25 Aug. 2023.

⁷⁴ “Category:International Criminal Court.” *Wikimedia Commons*, commons.wikimedia.org/wiki/Category:International_Criminal_Court. Accessed 25 Aug. 2023.

With all of these challenges facing the ICC—challenges of legitimacy, of organization, of jurisdiction, and of impartiality—how can the international community come together to make sure that international law is upheld? This is the fundamental question that you all must grapple with in this session. However, there are a couple of places that are fruitful to start.

First, any international court must be able to hold individuals accountable for the breach of law that they perpetrate. The act of putting together cases against individuals allows the prosecution to try more cases and to have more targeted cases, as opposed to less focused cases. Prosecution also requires a strategy of cases to take up and try before the court. The future case selection of the prosecution should take into account the ability of the prosecution to win the case before the court.⁷⁵ Having a more successful record of prosecution will allow the court to appear strong. This would also assure the public that the prosecutors involved were competent and able to do their jobs. The international community must also work together to make clear the jurisdiction that the ICC has, such as by avoiding conflict between the ICC and national court systems. It is essential that national court systems do not feel that their sovereignty is being infringed upon.

⁷⁵ Sterino, Milena. *The International Criminal Court: Current Challenges and Prospect Of...*, scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2580&context=jil. Accessed 25 Aug. 2023.

Second, the international community must work together to create “buy in” so that the ICC is seen as legitimate. If countries opt out of the ICC or sign treaties that refuse to extradite nationals of the treaty nations if they are asked to do so by the ICC—treaties like the ones that the United States has signed—the ICC loses much of its power. Winning cases establishes that the ICC is a serious branch of international law enforcement, but creating strong relationships with the states that have a large amount of international sway serves to allow cooperation with the orders of the court.

The ICC and mechanisms of upholding international law face many challenges from both individual states and internal practices. However, accountability is important if laws are broken. Without this accountability, international law has no real meaning and there is no pressure on individuals to avoid taking actions that break the law. Creating a better international system of justice is thus of the utmost importance.

History Of The Problem

As international criminal tribunals do not have a very long history, international organizations have always had difficulty in ensuring compliance with international law. The accountability of nations when it comes to international law has nominally been in conflict with the concept of national sovereignty. Despite the fact that nations in

violation of international law have attempted to use the concept of national sovereignty to avoid scrutiny from other nations and the international community, the existence of permanent international courts has been a point of discussion — and contention — since the 1870s.

Gustave Moynier was a Swiss lawyer and jurist who co-founded the International Committee for Relief to the Wounded in 1863.⁷⁶ This committee became the International Committee of the Red Cross in 1876.⁷⁷ Moynier first proposed the creation of a permanent international legal organization in 1870, but in the same commentary he rejected this approach. However, after a swift change in political circumstances brought about by the Franco-Prussian War, Moynier once again proposed the creation of an international legal institution in 1872.⁷⁸ This idea was cast aside for decades, until the worldwide shock provoked by World War I.

⁷⁶ International Committee of the Red Cross. “History of the ICRC.” International Committee of the Red Cross, November 30, 2020. <https://www.icrc.org/en/document/history-icrc>.

⁷⁷ “Significant Dates in the History of International Humanitarian Law and the Red Cross and Red Crescent Movement.” ICRC, January 1, 2009. <https://www.icrc.org/en/doc/resources/documents/misc/mouvement-date-011006.htm>.

⁷⁸ Hall, Christopher Keith. “The First Proposal for a Permanent International Criminal Court.” ICRC, March 31, 1998. <https://www.icrc.org/en/doc/resources/documents/article/other/57jp4m.htm>.

The Treaty of Versailles was a peace treaty that was signed in 1919 after the end of World War I.⁷⁹ In this treaty, Germany was held responsible for the war, which resulted in the imposition of extensive penalties.⁸⁰ The treaty proposed the establishment of an international court that would prosecute the Kaiser and war criminals for their actions during World War I, but this court was never actually formed. Despite this, the proposal for the formation of a special tribunal to try the Kaiser can be found in the Treaty of Versailles, Part VII, Article 227.⁸¹ However, in the period between World War I and World War II, little headway was made in the creation of an international judicial system to judge criminals on an international scale, yet this all changed in the 1940s, when the Allied governments began denouncing the Japanese and German governments for war crimes.

⁷⁹ “The Treaty of Versailles, 1919.” Palace of Versailles, June 22, 2021. <https://en.chateauversailles.fr/discover/history/key-dates/treaty-versailles-1919>.

⁸⁰ “Treaty of Versailles: Definition, Terms, Dates & WWI - History.” History.com. Accessed August 24, 2023. <https://www.history.com/topics/world-war-i/treaty-of-versailles-1>.

⁸¹ The Avalon Project : The versailles treaty June 28, 1919. Accessed August 24, 2023. <https://avalon.law.yale.edu/imt/partvii.asp>.

First came the Moscow Declaration of 1943, also called the Moscow Declaration on Atrocities.⁸² This declaration was jointly issued by the U.S. President Franklin D. Roosevelt, Soviet leader Joseph Stalin, and British prime minister Winston Churchill.⁸³ This particular declaration focuses on the actions of German forces during World War II, which, in the words of the declaration, consisted of “atrocities, massacres and cold-blooded mass executions.”⁸⁴ The Moscow Declaration not only condemned the actions of the German forces, but it also declared that war criminals should be sent back to the nations in which their crimes were committed to be judged according to the laws of these countries

⁸² “Protocol, Signed at Moscow, November 1, 1943.” U.S. Department of State. Accessed August 24, 2023. <https://history.state.gov/historicaldocuments/frus1943v01/d684>.

⁸³ “Moscow Declaration on Atrocities (1 November 1943).” CVCE.EU by UNI.LU. Accessed August 24, 2023. https://www.cvce.eu/en/obj/moscow_declaration_on_atrocities_1_november_1943-en-699fc03f-19a1-47f0-aec0-73220489efcd.html#:~:text=On%201%20November%201943%2C%20Franklin,crimes%20perpetrated%20by%20the%20Nazis.

⁸⁴ “Moscow Declaration on Atrocities (1 November 1943).” CVCE.EU by UNI.LU. Accessed August 24, 2023. https://www.cvce.eu/en/obj/moscow_declaration_on_atrocities_1_november_1943-en-699fc03f-19a1-47f0-aec0-73220489efcd.html#:~:text=On%201%20November%201943%2C%20Franklin,crimes%20perpetrated%20by%20the%20Nazis.

post-liberation.⁸⁵ While this declaration laid out a tentative plan for the prosecution of international war criminals, it notably does not call for the creation of an international court system.



Figure 5. Joseph Stalin, Franklin D. Roosevelt, and Winston Churchill, collectively known as “The Big Three” during World War II⁸⁶

Two years later, the Potsdam Declaration, or the Proclamation Defining Terms for Japanese Surrender, was jointly issued by U.S. President Harry S. Truman, Chairman of China Chiang Kai-shek, and British Prime Minister Winston

Churchill.⁸⁷ The primary purpose of this declaration was to draw on previous declarations and ideas but overall, to outline the potential penalties to be suffered by Japan as the conditions of their surrender in World War II. Unfortunately, The Potsdam Declaration, while pointing out that Japanese war criminals must be judged for their crimes, contained even less specificity on how justice will be carried out than the Moscow Declaration from two years prior.⁸⁸ Perhaps this vagueness is a reflection of the willingness to create international organizations — including international courts — in 1945, after the world suffered from yet another war on a global scale.

As mentioned in the Statement of the Problem, the Nuremberg Trials took place between 1945 and 1946 and were an example of international cooperation with an explicit focus on justice. Following the example of the Nuremberg trials, American military leader Douglas MacArthur ordered the creation of the International Military Tribunal for the Far East (IMTFE) in 1946; these

⁸⁵ “The Moscow Conference, October 1943.” Avalon Project - Documents in Law, History and Diplomacy. Accessed August 24, 2023. <https://avalon.law.yale.edu/wwii/moscow.asp>.

⁸⁶ Michal. “The Big Three: The National WWII Museum: New Orleans.” The National WWII Museum | New Orleans, June 23, 2017. <https://www.nationalww2museum.org/war/articles/big-three>.

⁸⁷ “Potsdam Declaration.” Wikiwand. Accessed August 24, 2023. https://www.wikiwand.com/en/Potsdam_Declaration.

⁸⁸ “Potsdam Declaration.” Nuclear Museum. Accessed August 24, 2023. <https://ahf.nuclearmuseum.org/ahf/key-documents/potsdam-declaration/>.

trials are now known as the Tokyo Trials.⁸⁹ These trials took place between 1946 and 1949, and justices were selected from eleven Allied nations to pass verdicts on war crimes committed by Japanese officials.⁹⁰ Despite the international cooperation demonstrated by the Allies in the Nuremberg trials and the Tokyo trials, the international community still had no permanent court to try criminals on a global scale.

In 1948, the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, or the Genocide Convention.⁹¹ This convention both defined genocide and established an international commitment to upholding human rights. In addition, The Genocide Convention placed the obligation for genocide prevention primarily

onto states.⁹² Despite this, the convention also stated that perpetrators should face prosecution in international tribunals.⁹³ Due to the effects of the Cold War, no such permanent international tribunal was established until several decades later.

As a reaction to the growing international drug trade and resulting violence, the Permanent Representative of Trinidad and Tobago to the United Nations penned a letter to the Secretary General in 1989, which revived the idea of creating an international court.⁹⁴ The International Law Commission responded by resuming work on writing an international statute for a criminal court.⁹⁵ By the 1990s, the need for international criminal tribunals became abundantly clear due to the crises posed by Balkan conflicts and ethnic cleansing in Rwanda,

⁸⁹ “Tokyo War Crimes Trial: The National WWII Museum: New Orleans.” The National WWII Museum | New Orleans. Accessed August 24, 2023. <https://www.nationalww2museum.org/war/topics/tokyo-war-crimes-trial>.

⁹⁰ Linder, Doug. “Tokyo War Crimes Trials (1946-48): Bibliography and Selected Links.” UMKC Law. Accessed August 24, 2023. <http://law2.umkc.edu/faculty/projects/ftrials/tokyo/tokyolinks.html>.

⁹¹ “United Nations Office on Genocide Prevention and the Responsibility to Protect.” United Nations. Accessed August 24, 2023. <https://www.un.org/en/genocideprevention/genocide-convention.shtml#:~:text=The%20Genocide%20Convention%20was%20the,during%20the%20Second%20World%20War>.

⁹² Convention on the prevention and punishment of the crime of genocide. Accessed August 24, 2023. https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

⁹³ “Evolution of International Criminal Justice.” International Criminal Court Project, August 24, 2023. <https://www.aba-icc.org/about-the-icc/evolution-of-international-criminal-justice/>.

⁹⁴ “Request for the Inclusion of a Supplementary Item in the Agenda of the 44th Session :” United Nations. Accessed August 24, 2023. <https://digitallibrary.un.org/record/72158?ln=en>.

⁹⁵ Projects on the codification of international crimes - cairn.info. Accessed August 24, 2023. <https://www.cairn.info/revue-internationale-de-droit-penal-2015-3-page-1163.htm>.

among other instances of criminal human rights violations.

Finally, in 1993, the United Nations Security Council established the first temporary UN international criminal tribunal, the International Criminal Tribunal for the Former Yugoslavia (ICTY).⁹⁶ This tribunal focused specifically on war crimes that took place during conflicts in the Balkans.⁹⁷ One year later, the Security Council established another international court, the International Criminal Tribunal for Rwanda (ICTR).⁹⁸ This tribunal was the first international court to prosecute leading officials for human rights violations in Africa.⁹⁹



Figure 6. Judges of the ICTR, pictured in 2009. The ICTR was closed in 2015¹⁰⁰

After years of discussion by various UN committees, the Rome Statute of the International Criminal Court was ratified at the Rome Conference in 1998.¹⁰¹ This statute officially established the International Criminal Court (ICC) as an institution.¹⁰² The Rome Statute came into legal effect in 2002, and the ICC held its inaugural session in 2003.¹⁰³ In the same year, the Republic of Uganda became the

⁹⁶ “Updated Statute of the International Criminal Tribunal for the Former Yugoslavia.” ICTY. Accessed August 24, 2023. https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf.

⁹⁷ “International Criminal Tribunal for the Former Yugoslavia: United Nations International Criminal Tribunal for the Former Yugoslavia.” International Criminal Tribunal for the former Yugoslavia | United Nations International Criminal Tribunal for the former Yugoslavia. Accessed August 24, 2023. [https://www.icty.org/#:~:text=The%20International%20Criminal%20Tribunal%20for%20the%20former%20Yugoslavia%20\(ICTY\)%20was,the%20Balkan%20in%20the%201990s](https://www.icty.org/#:~:text=The%20International%20Criminal%20Tribunal%20for%20the%20former%20Yugoslavia%20(ICTY)%20was,the%20Balkan%20in%20the%201990s).

⁹⁸ “International Residual Mechanism for Criminal Tribunals.” Home | United Nations International Criminal Tribunal for Rwanda. Accessed August 24, 2023. <https://unictr.irmct.org/>.

⁹⁹ “United Nations Audiovisual Library of International Law.” United Nations. Accessed August 24, 2023. <https://legal.un.org/avl/ha/ictr/ictr.html>.

¹⁰⁰ “Rwanda: International Tribunal Closing Its Doors.” Human Rights Watch, October 28, 2020. <https://www.hrw.org/news/2015/12/23/rwanda-international-tribunal-closing-its-doors>.

¹⁰¹ “Rome Statute of the International Criminal Court.” OHCHR. Accessed August 24, 2023. <https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court>.

¹⁰² “Rome Statute.” International Criminal Court. Accessed August 24, 2023. <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

¹⁰³ “ICC - Welcome by the Prime Minister of the Kingdom of the Netherlands, Dr Jan Peter Balkenende, at the Inaugural Session of the International Criminal Court.” International Criminal Court. Accessed August 24, 2023. <https://www.icc-cpi.int/news/icc-welcome-prime-minister-kingdom-netherlands-dr-jan-peter-balkenende-inaugural-session>.

first nation referred to the ICC due to abuse of civilians by the UPDF, the Ugandan army.¹⁰⁴

Past Actions

Ensuring that international law is upheld is a problem that has plagued the world community since the idea emerged that there is a law which binds all of humanity regardless of their state. The idea of international law as an area to be studied is a byproduct of the increased globalization of the post industrial world. In the late 1800s, the history of international law began to develop a pool of research. However, the history of international law can be traced from antiquity, in the relations between the states of Egypt, Babylonia, the Hittite Kingdom, Mesopotamia and the Assyrian Empire through the twentieth century. After World War I, the League of Nations was a beginning attempt to establish a mechanism to codify and mechanize international law. The League of Nations was ultimately a failure, being unable to stop World War II from occurring and failing to enforce the code of law that was established.¹⁰⁵

¹⁰⁴ “Uganda.” Human Rights Watch World Report 2003: Africa: Uganda. Accessed August 24, 2023. <https://www.hrw.org/legacy/wr2k3/africa13.html>.

¹⁰⁵ Amerasinghe, C F, *The Historical Development of International Law* - JSTOR HOME, Mohr Siebeck GmbH & Co. KG, www.jstor.org/stable/pdf/40799974.pdf. Accessed 25 Aug. 2023.

After World War II, the United Nations built on the ideas of the League of Nations and was established as an international peacekeeping body to outline certain agreements. The end of World War II also saw the Nuremberg Trials, discussed more extensively in a previous section, which is a major modern example of the international community coming together to prosecute war crimes of individual actors. In the years after the Nuremberg trials, the United Nations dealt with breaches of international law on an ad hoc basis, such as with the Yugoslav crisis and the Rwandan genocide. However, these were frequently thought of as less effective measures, and did not provide a strong deterrent due to the ad hoc nature.¹⁰⁶

A standing mechanism to enforce international law against specific crimes that violate the most sacred tenets of international law was created in 2002 with the establishment of the International Criminal Court (ICC). The ICC has been joined by 123 countries. However, the ICC has not been signed, or has been signed but not ratified, by a number of major countries, limiting its efficacy. For example, China is not a signatory to the ICC and the United States signed the Rome Statute creating the ICC but never ratified it through the

¹⁰⁶ “The Role of the International Criminal Court.” *Council on Foreign Relations*, Council on Foreign Relations, www.cfr.org/background/role-international-criminal-court. Accessed 25 Aug. 2023.

legislature. Despite this challenge, the ICC is the current way that the international community has to enforce international law.

The ICC has four areas of jurisdiction of international law that they will prosecute individuals under: genocide, war crimes, crimes against humanity, and crimes of aggression. Crimes come before the ICC in three ways. The first is if a member country asks for the court to intervene in a situation that is happening in their own territory. The second is for the UN security council to refer a case that they see for the ICC to review. The third is for the ICC to open a case against actions that occurred in a member state.¹⁰⁷

Despite multiple challenges, the ICC has had some success in trying individuals who commit crimes against humanity. For example, when trying al Mahdi for war crimes committed in Timbuktu involving the destruction of culture, the case found that there was sufficient evidence to investigate. Bringing al Madhi to The Hague to be charged with war crimes resulted in a short trial and a guilty plea. The guilty plea included a charge for the destruction of property that held cultural significance— the guilty plea served not only to bring justice to the perpetrators of war crimes, but it also shaped international law in that

it viewed the destruction of property that is of cultural significance as a serious crime.¹⁰⁸

Figure 7. The International Criminal



Court¹⁰⁹

The ICC, despite its successes, still faces many challenges in its quest to uphold international law. The investigation that is done by the ICC is reliant on the goodwill of countries where the crime was committed to cooperate throughout the investigation. It also depends on the goodwill of countries involved to extradite criminals to the Hague. Not to mention, the inquiries that are done by the ICC are unique in that they are focused on prosecution on the basis of humanity, as opposed to a specific government. This requires a level of legitimacy that the ICC relies

¹⁰⁷ “The Role of the International Criminal Court.” *Council on Foreign Relations*, Council on Foreign Relations, www.cfr.org/backgrounder/role-international-criminal-court. Accessed 25 Aug. 2023.

¹⁰⁸ *Humanity and Its Beneficiaries: Footing and Stance-Taking in An ...*, www.journals.uchicago.edu/doi/full/10.1086/705279. Accessed 25 Aug. 2023.

¹⁰⁹ STRINGERimage, et al. “Istock.” *iStock*, www.istockphoto.com/photos/the-international-criminal-court. Accessed 25 Aug. 2023.

on in order to effectively be able to make their case.¹¹⁰

International Law has been created and upheld in unique ways for thousands of years. In recent decades, as the world has become increasingly interconnected and conflicts have pulled in a greater portion of the world, countries have begun to look for new and different ways to make sure that international codes of human rights are respected. Past action on this matter has looked like ad hoc committees formed in the wake of an atrocity, such as the Nuremberg trials. It has also recently been codified in the form of the ICC, which is a standing judicial body that will hopefully be able to enforce international law. Still, while the ICC has had some successes, there are still many issues that are faced in ensuring accountability for international crimes that need to be examined going forward.

Possible Solutions

Creating accountability in the international community is a thorny issue we will attempt to work through over the course of this committee. While there are multiple challenges that are posed to the ICC, there are many ways that it could be improved. Considering the problems that were raised in previous sections, it will be the job of the

¹¹⁰ *Humanity and Its Beneficiaries: Footing and Stance-Taking in An ...*, www.journals.uchicago.edu/doi/full/10.1086/705279. Accessed 25 Aug. 2023.

delegates to come up with a variety of solutions to problems of jurisdiction, legitimacy, sovereignty, and buy-in. Any attempt to uphold international justice will have to come up with a way around those challenges. It will also have to avoid any appearance of political motivation and favoritism towards certain countries, which makes the process of choosing who gets to be a part of the ICC and carry out justice a challenge. When considering the representation of nations in the ICC, think about which nations tend to have a disproportionate voice and which nations are left out of having representation?

The ICC also has to grapple with developing a clear jurisdiction and code of international law. The benefit of attempting to carry out laws of a sovereign nation is that there is usually a significant amount of litigation that already exists, and the laws are extensive. People breaking local law is not a rare occurrence, leaving plenty of opportunities for the law to be clearly defined over the course of many trials. International Justice Law, on the other hand, does not have this luxury. The ICC's jurisdiction is limited to the most serious crimes that violate international agreement. This means that it is rare for cases to come before the ICC— in the two decades it has existed, the number of cases that it has tried are only in the tens. Due to the rarity of litigation, international law and burdens of proof are still being fleshed out. Without a clear directive and guidelines, the ICC's ability to try cases is

significantly limited. Buy-in is another significant problem facing the ICC and criminal tribunals—without cooperation from the international community, the directives of international courts mean nothing.

What are some possible remedies for the challenges facing the ICC and other mechanisms of enforcing international justice? First, the ICC can work to prosecute more cases against individuals, and choose to bring cases before the court where the prosecution has a strong case. Narrower cases against individuals also tend to be more successful than sweeping cases. The ICC could also work to change the procedures of the court to make it easier for cases to be presented to the ICC. Removing some of the barriers that occur before a case is even brought to trial could streamline the process and free up resources to look into these cases. An example of this is the pre-trial chamber, which slows the process of cases being tried before the court. Finally the ICC should work to foster better communication between the states that have already ratified its treaty. The ICC has no power without the cooperation of member states. By using open communication and garnering support from powerful countries, the ICC would be able to increase its ability to function on the world stage.¹¹¹

¹¹¹ Sterino, Milena. *The International Criminal Court: Current Challenges and Prospect Of...*, scholarcommons.law.case.edu/cgi/viewcontent.cgi?article=2580&context=jil. Accessed 25 Aug. 2023.

The ICC must also finally clarify questions of prosecutorial procedures to mitigate the infighting that has been occurring in ICC. The laws that the court uses to guide its prosecution, along with the relevant international law that the court is prosecuting a person on the basis of, needs to be made clear among members.¹¹² The ICC must reaffirm its commitment to be an independent arbiter of justice and to avoid any implications that it is unduly swayed by certain powerful players on the international stage.

For the ICC to succeed, it is imperative that the body addresses these issues and finds a way to resolve them. However, perhaps the answer to international justice is not a standing organization like the ICC. Perhaps the way to ensure that international law is upheld is to create ad hoc tribunals on a case by case basis. Ad Hoc tribunals have a couple of advantages. They require a good working relationship with the government where the crime was committed, as they are ultimately local and require access. They also tend to be more focused, where they are responding to a particular crisis, as opposed to multiple different crises. The very fact that these would take place in the country affected seems to have an advantage, both with the relationships

¹¹² Sen, Ashish. “The International Criminal Court Needs Fixing.” *Atlantic Council*, 16 Aug. 2019, www.atlanticcouncil.org/blogs/new-atlanticist/the-international-criminal-court-needs-fixing/.

required with the country and the access to evidence.¹¹³

Regardless of how international tribunals to enforce criminal international law are created, they all have the same purpose— to hold actors who decide to break international law accountable for their decision and to serve as a deterrent to others who might eventually break international law. To ensure that actors are held accountable, international criminal courts must have the buy-in of member states, especially the state where the crime happened, an appearance of legitimacy, and a clear directive. Despite the work that has been done on accountability mechanisms for international law in the years following World War II, the current system of justice arguably does not have any of these three components. It is the job of this committee to either reform the system that already exists (the ICC), through giving it the components necessary for success, or to come up with an innovative new mechanism to allow for the enforcement of international law.

Bloc Positions

When it comes to upholding human rights, all nations are technically held to an international

¹¹³ Guilfoyle, Douglas. “Reforming the International Criminal Court: Is It Time for the Assembly of State Parties to Be the Adults in the Room?” *EJIL*, 7 May 2019, www.ejiltalk.org/reforming-the-international-criminal-court-is-it-time-for-the-assembly-of-state-parties-to-be-the-adults-in-the-room/.

legal standard. While there have been examples of international criminal tribunals being used to provide justice in cases of violations of human rights, there are also violations of human rights currently taking place across the globe. Additionally, a number of nations voted against the Rome Statute of the International Criminal Court.¹¹⁴ Bloc positions will be explored more thoroughly below and will be sorted by geographical location — not by correlation of national policy. Note that the nations mentioned in this section will not be a complete list of all the countries represented in this committee. Adhering strictly to national policy as it affects your delegation in the UN will be necessary in a committee like this; we do not want debate to get stagnant or to be too repetitive!

The Americas

Out of nations that have not ratified the Rome Statute, relatively few are from the Americas and the Caribbean. Signatories to the Rome Statute that have not ratified the statute include the United States, Bahamas, Jamaica, and Haiti.¹¹⁵

¹¹⁴ “The Role of the International Criminal Court.” Council on Foreign Relations. Accessed August 24, 2023.

<https://www.cfr.org/backgrounder/role-international-criminal-court>.

¹¹⁵ Parliamentarians for Global Action. “Signatories Which Have Not Ratified.” Parliamentarians for Global Action - Mobilizing Legislators as Champions for Human Rights, Democracy and a Sustainable World., January 16, 2022.

<https://www.pgaction.org/ilhr/rome-statute/signed-but-not-ratified.html>.

Interestingly, the U.S. directly participated in the negotiations which led to the creation of the ICC but did not ratify the Rome Statute.¹¹⁶ American critics of the Rome Statute say that international prosecution of U.S. citizens would constitute a violation of national sovereignty. For Jamaica, its leaders have expressed its intention to commit to the ICC in the near future, but they have yet to ratify the relevant UN statute.¹¹⁷

Europe, Russia

The majority of Europe has signed and ratified the Rome Statute, and therefore recognizes the ICC. Monaco, Russia, and Ukraine are the only countries in this geographical group that have signed, but not ratified, the Rome Statute. Ukraine has not ratified the statute due to the 2001 ruling made by Ukrainian officials that the treaty was not compatible with the national constitution.¹¹⁸ Similarly to Ukraine, Russia

signed the Rome Statute but never became a ratified member of the ICC. In response to an ICC report that called the Russian annexation of Crimea an occupation, Russia formally withdrew its signature from the Rome Statute in 2016.¹¹⁹

Oceania

Solomon Islands is the only country in Oceania that has not ratified the Rome Statute but is still a signatory to the treaty.¹²⁰ A number of other Pacific island nations have not joined the ICC, but discussions in 2019 demonstrated that nations such as Tonga and Tuvalu considered signing the Rome Statute in the near future.¹²¹

Africa

A number of nations in Africa are not state parties to the Rome Statute and do not recognize the ICC. While there are African nations that are members of the treaty, there are a number of criticisms of the ICC that have been raised recently by African delegations regarding alleged

¹¹⁶ “The US-ICC Relationship.” International Criminal Court Project, August 24, 2023. <https://www.aba-icc.org/about-the-icc/the-us-icc-relationship/#:~:text=May%206%2C%202002,State%20Party%20to%20the%20ICC.>

¹¹⁷ “Jamaica Signals Intention to Ratify Rome Statute.” Jamaica Information Service. Accessed August 24, 2023. [https://jis.gov.jm/jamaica-signals-intention-to-ratify-rome-statute/.](https://jis.gov.jm/jamaica-signals-intention-to-ratify-rome-statute/)

¹¹⁸ “Ukraine.” Ukraine | Coalition for the International Criminal Court. Accessed August 24, 2023. <https://www.coalitionfortheicc.org/country/ukraine#:~:text=Ukraine%20signed%20the%20Rome%20Statute%20on%2020%20January%202000%2C%20but,the%20ICC%20for%20many%20years.>

¹¹⁹ “Russia Withdraws from International Criminal Court Treaty.” BBC News, November 16, 2016. <https://www.bbc.com/news/world-europe-38005282.>

¹²⁰ “UNTC.” United Nations. Accessed August 24, 2023. https://treaties.un.org/Pages/showActionDetails.aspx?objid=080000028002630e&clang=_en.

¹²¹ “Pacific Islands Roundtable on Ratification and Implementation of the Rome Statute, Port Vila, 31 May 2019.” International Criminal Court, May 31, 2019. <https://www.icc-cpi.int/about/cooperation/pacific-islands-roundtable-ratification-and-implementation-rome-statute-port-vila.>

unfair targeting of Africa by the ICC prosecutor.¹²² According to some, this bias of the ICC is a reflection of the initial enthusiasm of African nations to join the ICC.¹²³ Despite this point of view, the African Union adopted a non-binding resolution in 2017 which called for its members to abandon the ICC.¹²⁴

Asia

China, Indonesia, and North Korea never signed the Rome Statute, and Thailand is a signatory to the Rome Statute but not a state party, which means it is not bound by its content.¹²⁵ Aside from these eastern Asian countries, a number of countries in the Middle East are also not state parties to the Rome Statute and therefore are not members of the ICC. Iraq and Saudi Arabia

never signed the Rome Statute, and a number of Middle Eastern countries are signatories to the statute but have not ratified it.¹²⁶ Among these countries are Bahrain, Iran, Israel, Kuwait, Oman, Syria, UAE, and Yemen.¹²⁷

¹²² “Africa Debate - Is the ICC Targeting Africa Inappropriately?” The International Criminal Court Forum. Accessed August 24, 2023. <https://iccforum.com/africa>.

¹²³ Hart, Laurel. “The International Criminal Court: Biased or Simply Misunderstood?” UNA_UK, January 15, 2022. <https://una.org.uk/magazine/2018-1/international-criminal-court-biased-or-simply-misunderstood>.

¹²⁴ Nantulya, Paul. “What’s next for Africa and the International Criminal Court.” Africa Center for Strategic Studies, December 12, 2017. <https://africacenter.org/spotlight/whats-next-africa-international-criminal-court-icc/>.

¹²⁵ Parliamentarians for Global Action. “Signatories Which Have Not Ratified.” Parliamentarians for Global Action - Mobilizing Legislators as Champions for Human Rights, Democracy and a Sustainable World., January 16, 2022. <https://www.pgaction.org/ilhr/rome-statute/signed-but-not-ratified.html>.

¹²⁶ “The Role of the International Criminal Court.” Council on Foreign Relations. Accessed August 24, 2023.

<https://www.cfr.org/backgrounder/role-international-criminal-court#:~:text=Some%20forty%20countries%20never%20signed,Syria%2C%20and%20the%20United%20States>.

¹²⁷ “The Role of the International Criminal Court.” Council on Foreign Relations. Accessed August 24, 2023.

<https://www.cfr.org/backgrounder/role-international-criminal-court#:~:text=Some%20forty%20countries%20never%20signed,Syria%2C%20and%20the%20United%20States>.

Glossary

All definitions listed below are from Oxford English Dictionary¹²⁸

International Law: (*noun*) The body or branch of law concerned with dealings between nations; a law of this kind.

Ratify: (*verb*) To confirm or validate (an act, Agreement, gift, etc.) by giving formal consent, approval, or sanction (esp. To terms or arrangements drawn up by another party).

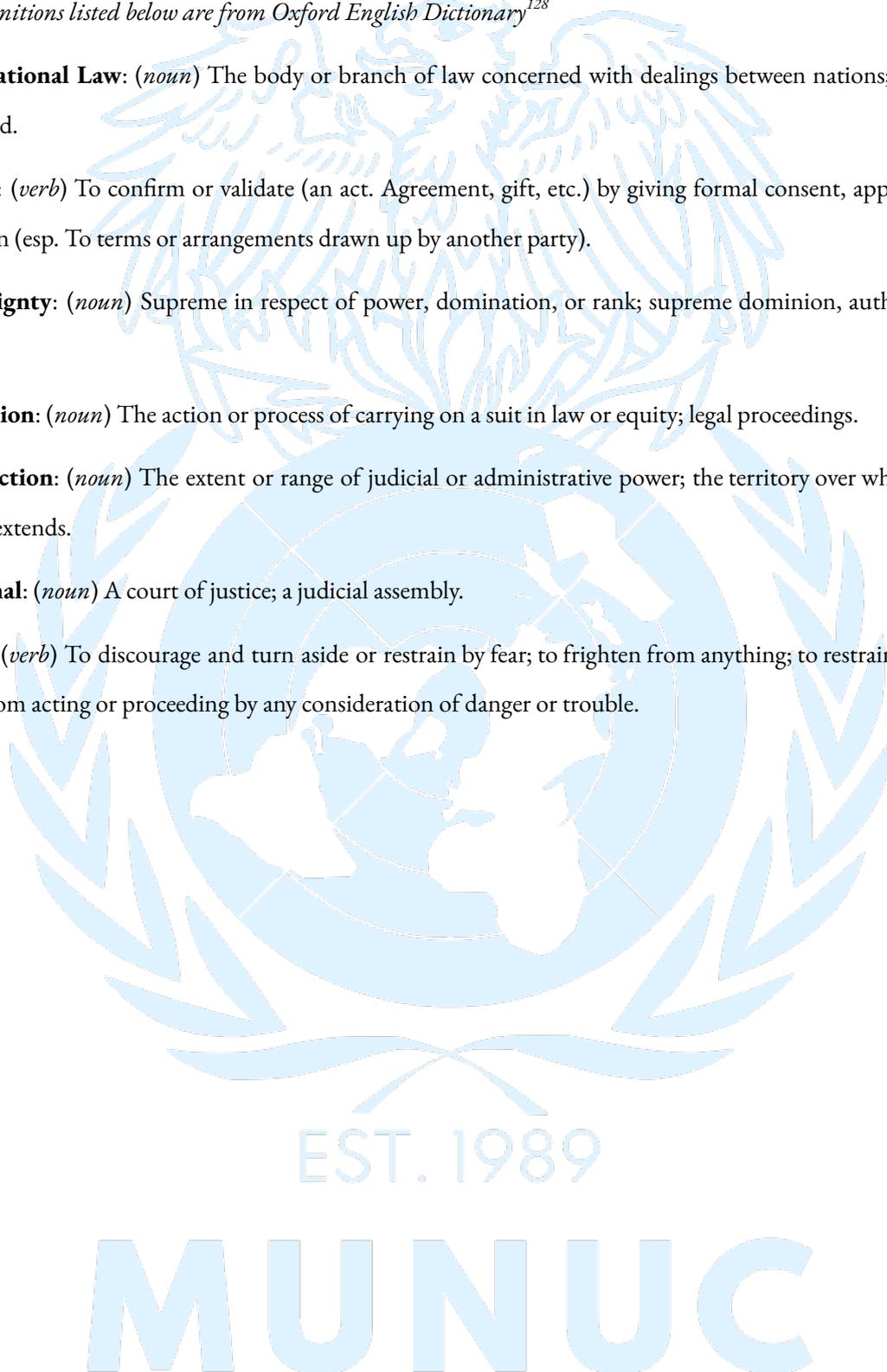
Sovereignty: (*noun*) Supreme in respect of power, domination, or rank; supreme dominion, authority, or rule.

Litigation: (*noun*) The action or process of carrying on a suit in law or equity; legal proceedings.

Jurisdiction: (*noun*) The extent or range of judicial or administrative power; the territory over which such power extends.

Tribunal: (*noun*) A court of justice; a judicial assembly.

Deter: (*verb*) To discourage and turn aside or restrain by fear; to frighten from anything; to restrain or keep back from acting or proceeding by any consideration of danger or trouble.



¹²⁸ Simpson, John A. *Oxford English Dictionary*. Oxford: Clarendon Press, 1993.

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