

# SYMMUN '16

March 26-27



BACKGROUND GUIDE- JLC

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## SCOPE AND APPLICATION OF THE PRINCIPLE OF UNIVERSAL

### JURISDICTION

Dear Delegates,

It gives us distinct pleasure to welcome you to SYMMUN'16! We are really looking forward to orchestrating a simulation of the International Law Commission for this conference. The topic selected for discussion is "Scope and application of the principle of universal jurisdiction"

Remember, a thorough understanding of the problem is the first step to solving it. However, bear in mind that this Background Guide is in no way exhaustive and is only meant to provide you with brief background information to establish a platform for beginning the research. Delegates are highly recommended to do a good amount of research beyond what is covered in the Guide.

This agenda remains an integral part of today's world politics and has effects spread over vast interdependent areas, making extensive research a priority.

We invite you to step into the shoes of a diplomat to debate and negotiate one of the most pressing issues of our generation while facing an experienced group of fellow delegates in the apex body of the United Nations.

We sincerely hope that this conference shall be an unforgettable experience for all of us. We look forward to meeting you all at SYMMUN'16.

Your Executive Board,

Mr. Varun Khare- Chair ([varunkhare94@gmail.com](mailto:varunkhare94@gmail.com))

Miss. Krishna Parkhani- Vice Chair ([k309parkhani@gmail.com](mailto:k309parkhani@gmail.com))

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## COMMITTEE SIMULATION

### The Role of the Delegates

The role of the delegate is to accurately represent the view of their nation, actively engage in debate, and negotiate effectively and respectfully with fellow delegates. Both the conference and the ILC cannot function properly without the participation of delegates. Delegates must put forth the best effort to make the conference as close to reality as possible, in order to be fully immersed in the experience of international negotiations. Delegates should work together to find a solution to the many issues that plague international law, attempting to make a meaningful difference in the international community. Delegates should work towards passing one resolution as a committee.

To fully participate in debate, delegates should prepare by doing research prior to the conference. This includes researching the topics that have been presented and the assigned nation's stance on each topic. It is also encouraged to have an overall understanding of nation, especially their laws as it applies to the ILC. To facilitate debate, researching current policies towards the topics can serve as a foundation to a number of possible solutions. Other areas of interest to research would be the historical attitudes of the nation towards the topics, in order to understand the current political climate towards the issues, as well as the economic capabilities of the nation. Strong delegates will conduct strong research, and will therefore be effective and accurate during debate.

Delegates are expected to follow the rules of parliamentary procedure during formal and informal debates, as well as the general conference rules, even while outside debate. Delegates are expected to be professional, as debate cannot move forward unless communications are respectful. It is important to keep in mind that delegates are to be respected even if their nation's viewpoints are opposing. Creative thinking and a positive attitude are also highly encouraged.

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## INTRODUCTION

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The International Law Commission is an outcome of the various attempts undertaken to codify the international law. It was the Resolution of the Assembly of the League of Nations on 22 September 1924 which established the Committee of Experts for the Progressive Codification of International Law which began the journey for the

establishment of ILC. The purpose for setting up of the committee was making recommendations as to which issues required to be addressed in international law and the desirable steps towards that end.

On 11 December 1946, the General Assembly passed Resolution 94 to establish a committee of legal experts. This Committee was to make recommendations to the Secretary-General of the UN on the ways in which the General Assembly could encourage the progressive development of international law and its codification. The committee of experts consisted of 17 members and convened from May 12 to June 17, 1947. It recommended establishing a permanent UN commission to promote these objectives.

On 21 November 1947, Resolution 174 was passed by the UN General Assembly which provided for the creation of an "International Law Commission" to fulfill the obligations of the Charter. To the resolution was attached the statute of the Commission, which defined its purposes as being:

Promotion of the codification of international law.

Solving problems in the domain of public and private international law.

The working procedure of the Commission is regulated by its statute, which was approved by the General Assembly on 21 November 1947 and amended on 12 December 1950, 3 December 1955, and 18 November 1981.

It consists of 34 members (originally 15) who all are experts on international law, elected by the General Assembly to the position from a list of candidates nominated by governments of member states in the UN. These members act as individuals and not as officials representing their states.

The commission can be set into action in following ways:

One of the ways for setting the commission into action for the codification of principles of international law is, when requested to do so by the General Assembly. In such a case, one of the members of the Commission is appointed as Special Rapporteur on that subject and he/she prepares a plan of work regarding the issue in question. Governments are requested to submit their written opinions on the issue in question. The rapporteur then writes a report of his or her recommendations on the

subject under discussion and this report must be approved by the rest of the commission as well as by the Secretary-General of the UN before it becomes an official document of the Commission. The commission then reconsiders the report after receiving additional written opinions from governments, and the report is then submitted to the General Assembly for approval.

Another way is when a request is made either by a government, an inter-governmental organization or a UN agency to the Commission to draft proposals for international conventions on various issues. In such a case, the commission formulates a plan of work and receives written opinions from governments on the issue in question. The final draft is also submitted to the General Assembly.

The commission also works independently of external requests by its regular work of considering questions of international law. In such cases also, all recommendations for actions are submitted to the General Assembly for the final approval. The commission's independent deliberations usually take place in its annual sessions.

The International Law Commission was established by the General Assembly, in 1947, to undertake the mandate of the Assembly, under article 13 (1) (a) of the Charter of the United Nations to "initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification".

The international Law Commission endeavours to develop and codify international law and it derives its mandate from the Statute of the International Law Commission. The most notable contribution of the Commission has been the development of the Nuremberg Principles. It has formulated statutes for the International Criminal Court and primarily worked in the sphere of Public International Law.

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## **HISTORY OF THE PRINCIPLE OF UNIVERSAL JURISDICTION**

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Universal jurisdiction is the power of a country to legislate, implement, judge and punish a person for crimes committed outside the country's borders. A remarkable example would be the Nuremberg trials in lieu of the atrocities carried out by the Nazis during World War II. Not only were the perpetrators prosecuted before an

international military court but also in the domestic courts of countries having formulated the Nuremberg Charter. Furthermore, these principles were unanimously adopted by the General Assembly and this led to the codification and subsequently prosecution for international crimes like crime against peace, crime against humanity and genocide.

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## PRINCIPLE OF UNIVERSAL JURISDICTION

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“This principle provides every state with jurisdiction over a limited category of offenses generally recognized as of universal concern, regardless of the situs of the offense and the nationalities of the offender and the offended. While the other jurisdictional bases demand direct connections between the prosecuting state and the offense, the universality principle assumes that every state has an interest in exercising jurisdiction to combat egregious offenses that states universally have condemned.” The principle of universal jurisdiction is classically defined as 'a legal principle allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim. The rationale behind it is based on the notion that 'certain crimes are so harmful to international interests that states are obliged to bring proceedings against the perpetrator, regardless of the location of the crime and the nationality of the perpetrator or the victim'. Universal jurisdiction allows for the trial of international crimes committed by anybody, anywhere in the world. The principle of universal jurisdiction allows States and international bodies to conduct trial for the most serious offences recognised under international law; thereby preventing impunity. Impunity refers to the exemption from punishment. In most cases of atrocities meted out by officials of the State enjoying the protection of a sovereign government; the trials for their prosecution are either biased or conducted negligently. Sovereign immunity also allows the perpetrators to go scot free. These include the offences of war crimes, crimes against humanity and genocide to name a few.

## RECOGNITION OF THE PRINCIPLE OF UNIVERSAL JURISDICTION IN DOMESTIC LAWS

Various domestic legislations recognise the principle of universal jurisdiction, either through the Constitution or specific provisions of the prevalent penal statutes. E.g. New Zealand's International Crimes and International Criminal Court Act of 2000 defines war crimes, crimes against humanity and genocide in accordance with the Geneva Conventions and the Rome Statute, and its Section 8(1)(c) provides that individuals may be prosecuted in New Zealand for these crimes regardless of

“(i) the nationality or citizenship of the person accused;  
(ii) whether or not any act forming part of the offence occurred in New Zealand; or  
(iii) whether or not the person accused was in New Zealand at the time that the act constituting the offence occurred or at the time a decision was made to charge the person with an offence.”

Canada is another example of a State that provides domestic exercise of universal jurisdiction, in its Crimes Against Humanity and War Crimes Act of 2000. For genocide, crimes against humanity, or war crimes as defined in the Act, section 9(1) provides that proceedings may commence in any territorial division in Canada for those offences “alleged to have been committed outside Canada for which a person may be prosecuted under this Act [...], whether or not the person is in Canada.”

While some countries have adopted this principle as a part of their domestic framework, controversy ensues about the scope of universal jurisdiction; as to which crimes could be tried, therein. Furthermore the applicability of this principle should be based on homogenous standards in light of the Charter of United Nations, such that political interference does not lead to a biased trial.

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## ROLE OF UNITED NATIONS

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The 66th Session of the General Assembly highlights the divergent views on the issue and the delegates are encouraged to dwell upon the relevant General Assembly Resolutions pertaining to the scope of universal jurisdiction and the

challenges involved in adopting the same. “Concerning the scope of the principle, delegations highlighted the importance of agreeing on a definition of universal jurisdiction and the need to distinguish it from other related concepts, such as international criminal jurisdiction, the obligation to extradite or prosecute, as well as other related principles and rules of international law. Some delegations acknowledged that universal jurisdiction contributed to the implementation of complementarity as enshrined in the Rome Statute of the International Criminal Court; it was nevertheless pointed out that it was conceptually different from the exercise of international criminal jurisdiction. It was also observed by some delegations that universal jurisdiction was linked to the obligation to extradite or prosecute (*aut dedere aut judicare*), while some other delegations pointed out that universal jurisdiction was conceptually different from that obligation. It was further noted that the obligation to extradite or prosecute was generally considered to derive from a treaty obligation, whereas universal jurisdiction was perceived more as an entitlement than an obligation.”

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## RELEVANCY OF UNIVERSAL JURISDICTION

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With globalisation and increase in international armed conflict crime is no longer restricted to the territorial constraints of one country. Furthermore, internal armed conflict leads to heinous persecution of civilians and vulnerable sections of society. Thus universal jurisdiction aims at increasing cooperation in the form of extra territorial application of criminal law. With certain countries not having ratified the Rome Statute of the International Criminal Court (ICC), the applicability of universal jurisdiction vis-a-vis the sovereignty of a nation and its diplomatic relations with the world community is of particular relevance, since ICC does not exercise universal jurisdiction. The Court does not have universal jurisdiction. The Court may only exercise jurisdiction if:

- The accused is a national of a State Party or a State otherwise accepting the jurisdiction of the Court;
- The crime took place on the territory of a State Party or a State otherwise accepting the jurisdiction of the Court; or



- The United Nations Security Council has referred the situation to the Prosecutor, irrespective of the nationality of the accused or the location of the crime. It is not only one of the methods of strengthening the applicability of public international law but also leads to the protection of human rights, with better implementation of existing treaties and conventions on human rights.

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## POSSIBLE MODERATED CAUCUS TOPICS

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Scope of universal jurisdiction

Universal jurisdiction and sovereignty

Domestic law and universal jurisdiction

Applicability of universal jurisdiction to armed conflict

Universal jurisdiction and complementarity

ICC and universal jurisdiction

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## RELEVANT SOURCES FOR RESEARCH

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- I. General Assembly Resolution No. 68/117  
[http://www.un.org/en/ga/sixth/69/universal\\_jurisdiction.shtml](http://www.un.org/en/ga/sixth/69/universal_jurisdiction.shtml)
- II. General Assembly Resolution dated 30th October 2014  
[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/C.6/69/L.8](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/C.6/69/L.8)
- III. Official Website of the United Nations  
[www.u HYPERLINK "http://www.un.org/"n.org](http://www.un.org/)
- IV. Official Website of the International Law Commission  
<http://legal.un.org/ilc/ilcintro.shtml>
- V. Report of the Secretary General on Universal Jurisdiction  
[http://www.fd.uc.pt/igc/pdf/mne/varios/uj\\_3.pdf](http://www.fd.uc.pt/igc/pdf/mne/varios/uj_3.pdf)