

War Crimes Tribunal





Dear Advisors and Delegates,

Hello and welcome to UMMUN 2006! My name is Grace Pan and I will be the director for the War Crimes Tribunal this year. My Assistant Director, Soumya Rangarajan, and I are excited in inviting you to explore our committee as your possible choice for the conference in January. The preparation for the nineteenth session of the University of Michigan Model United Nations is well under way!

If there are any questions or concerns about the overview of topics or the committee in general, please do not hesitate to ask. My experience with Model UN at Michigan has been nothing short of rewarding and exciting because of the talented and passionate students that participate. I look forward to working with all of you soon!

Best,

Grace Pan, Director

Soumya Rangarajan, Assistant Director



DAIS STAFF

- Director - Grace Pan
- Assistant Director - Soumya Rangarajan

COMMITTEE MISSION

Differing slightly from the other committees in Model UN, the War Crimes Tribunal is based loosely on the International Criminal Court. Our goals parallel with that of the Court; our identical purpose is to conduct trials concerning possible violations of international law. Participants (usually 8-10 delegates) will research two different cases in the attempt to be able to argue the merits for either the Prosecution or the Defense. While the assignment of students to the Prosecution or the Defense will be determined at the conference at the discretion of the directors, the case topics and the rules of procedure will be mailed to the delegates in advance. Therefore, participants will be able to prepare themselves adequately for the actual conference. The War Crimes Tribunal strives to increase awareness concerning the many crimes against humanity occurring in all parts of the world, as well as to foster delegate interest in the legal field. Along with improving skills in legal research and argumentative public speaking, delegates will hopefully gain a better sense of the line between the legal tactics of warfare and crimes against humanity. Prior delegates have consistently enjoyed their work in this committee, describing it as demanding, meaningful, and rewarding.



OVERVIEW OF TOPICS

THE SUDANESE CONFLICT IN DARFUR

This topic will deal with the actions of Sudanese President Omar el-Beshir and his Khartoum government while they attempt to halt the territorial rebellion. Throughout the conflict, much of the offensive has been concentrated against civilian populations due to a lack of troop strength. Recently, the U.S. has declared the situation amounts to genocide while the U.N. has had little success in instituting peacekeepers. The question to be determined by the War Crimes Tribunal is whether there is ample evidence to determine that President el-Beshir is responsible for genocide and therefore in violation of applicable war crimes conventions. We will concentrate on both the genocide convention to which Sudan is party and also the Geneva Conventions.

THE MAOIST INSURGENCY IN NEPAL

This topic will deal with the continuing conflict between King Gyanendra, who usurped power from the parliamentary government in early 2005, and the Maoist insurgents who now control 70% of Nepal. Hundreds of thousands of Nepalese have either become refugees in India or are now internally displaced persons within their own country. There have been terrible atrocities committed on both sides by the Maoists and the Royal Nepalese Army, but particularly egregious has been the brutal arrest and torture of children accused of participating in the insurgency by the royal police, such as the February 2005 Kapilavastu killings. The question to be determined by the War Crimes Tribunal is whether the Nepali government is responsible for war crimes and crimes against humanity, as defined by the Geneva conventions and the Rome Statute of the ICC, in their extrajudicial execution of supposed insurgents yet to be tried or even charged of such involvement.

THE GAMBELLA REGION CONFLICT IN ETHIOPIA

This topic will deal with the difficult controversies and questions arising from the continuing conflicts in Ethiopia's Gambella region. The conflict is uncontrolled between the Anuak, an indigenous people originating from Gambella, and the Highlanders, a local term used for the Ethiopians who have recently moved to the region. The question to be determined by the War Crimes Tribunal is whether the Prime Minister of Ethiopia, Meles Zenawi, has violated international standards of conduct through the Ethiopian government's lack of action. Participants will analyze the Geneva Convention and the extent to which its protections are applicable to the respective conflict. Specifically, provisions dealing with collective punishment will be concentrated on, which is defined by targeted reprisals against those who have not participated in the aggression. In the end, the Court will have to decide whether Meles Zenawi has committed war crimes due to inappropriate actions and violence by their military.



COURT PROCEDURE

The order of the pre-trial procedures will be as follows (time subject to modification due to specific needs):

- A) Opening of the court by the presiding judge
- B) Assignment of delegates to the Prosecution or Defense
- C) Preparation time (for purposes of writing indictment and research)
→SUGGESTED TIME: 1 hour
- D) Reading of the indictment
- E) Preparation time (for purposes of research) →SUGGESTED TIME: 45 minutes
- F) Any pre-trial challenges, such as defense contests of court jurisdiction
- G) Preparation time (additional research for formulating case theory)
→SUGGESTED TIME: 1 hour
- H) Submission of evidence
- I) Preparation time (for purposes of reviewing opposing evidence)

The order of the trial will be as follows with time maximums not negotiable:

- A) Opening statement by Prosecution (10 minutes)
- B) Opening statement by Defense (10 minutes)
- C) Presentation of arguments and evidence by Prosecution (30 minutes)
- D) Presentation of arguments and evidence by Defense (30 minutes)
- E) Prosecution rebuttal (20 minutes)
- F) Defense rebuttal (20 minutes)
- G) Closing statement by Prosecution (10 minutes, may reserve time for rebuttal)
- H) Closing statement by Defense (10 minutes)
- I) Closing rebuttal by prosecution (only if time has been reserved and remains)

Following the conclusion of the trial:

- A) Deliberation by Judges (closed to delegates and advisors)
- B) Delivery of verdict by Presiding Judge



COURT RULES

Article I. General Provisions

Rule 101. Language

The official language of the Court is English.

Rule 102. Judges

- (a) Conference Staff will serve as judges, with one Presiding Judge directing the proceedings
- (b) The Presiding Judge will rule on and oversee all matters of procedure as outlined in this document; he or she will have wide latitude in maintaining decorum and correcting procedural errors, and for maintaining fairness in the courtroom.
- (c) The Judges will, in closed chambers, determine guilt or innocence by consensus; in the case of a tie, the Presiding Judge's vote will carry the decision

Rule 103. Agents of the Court

- (a) Two parties, the Office of the Prosecutor and the Representatives of the Accused, will be represented by delegates acting as agents
- (b) Delegates will be assigned by the Judges to represent either the Office of the prosecutor or the accused individual
- (c) In this document, "Prosecutor" will refer to representatives of the Office of the Prosecutor, and "Defendant" will refer to representatives of the accused individual

Rule 104. Mode and Order of Presentation

- (a) Scope of Opening and Closing Statements. Specific evidence may not be presented in opening statements. Also, no new evidence may be presented in closing statements
- (b) Scope of Prosecution and Defense Rebuttals. The Prosecution's rebuttal may only include discussion of evidence and arguments initially presented by the Defense and the Defense's rebuttal may only include discussion of evidence and arguments presented in the Prosecution's rebuttal.
- (c) The Judges may interrupt a speaker at any time during the presentation of arguments, including but not limited to the following: (1) requesting clarification of specific facts in the case; (2) returning the Court to decorum; (3) calling the speaker to order

Rule 105. Decorum and Objections

- (a) Delegates may not address opposing Counsel in open court



- (b) Advisors and Conference Staff are asked to submit any requests or points of information in writing while either the Prosecution or Defense has the floor
- (c) No delegate may interrupt the speech or speaking time of opposing Counsel at any time; any procedural challenges must be made in writing, specifically refer to the rule in question, and be presented to the Judges
- (d) In the case of a written objection, both sides will then have an opportunity to respond before the Court rules concerning its validity

Rule 106. Submission of Evidence

- (a) The Prosecution and Defense may each submit evidence to the Court
- (b) All evidence must be submitted in written or printed form (black and white only); evidence not submitted in the proper manner or time shall not be presented in Court
- (c) All evidence submitted will be made available to both the Prosecution and Defense

Rule 107. Statute of Limitations

The crimes within the jurisdiction of the Court are not subject to any statute of limitations

Rule 108. Breadth of the Rules

Due to the limitations resulting from much of the evidence presented to this Court being gathered on the Internet along with the inability to question and cross-examine actual witnesses, generally applicable rules regarding topics such as hearsay, lack of personal knowledge, and expert testimony are not relevant to the proceedings of this Court. However, we will strive to uphold all court rules able to be feasibly applied and which follow in the official rules.

Article II. Jurisdiction

Rule 201. General Rule

- (a) The jurisdiction of the Court is limited to only the most serious crimes of concern to the international community as a whole, and consists only of the following offenses:
 - 1. Genocide
 - 2. Crimes against humanity
 - 3. War crimes
- (b) Definitions for the terms used in Section 201(a) are those given by the Rome Statute of the International Criminal Court (See Article VI) These definitions will be strictly adhered to, and will not be extended by analogy. In the case of ambiguity of a definition of a crime as it refers to an action or inaction on the



part of the Defendant, the definition will be interpreted in favor of the Defendant.

- (c) The Court has no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of the crime

Rule 202. Exercise of Jurisdiction

- (a) The Court may not supercede the judicial system of any nation, unless evidence is brought showing an unwillingness or inability to genuinely prosecute the individual
- (b) The Court has jurisdiction over cases referred to it by the Security Council; this jurisdiction supercedes the exception made in Section 202(a)
- (c) The Court's declaration of jurisdiction over a case does not imply jurisdiction over each alleged crime; the Court's jurisdiction over each crime may still be challenged

Rule 203. Challenges to Jurisdiction

- (a) Challenges to the Court's jurisdiction over specific crimes may be brought by:
 - 1. The Defendant
 - 2. A nation which has jurisdiction over the case or crime, on the basis that it is currently prosecuting a case, or already has done so
- (b) The Court shall not be barred from exercising its full jurisdiction over any individual, regardless of full or partial immunity granted by national law or international treaty
- (c) Such challenges must be made prior to opening arguments in the time period designated for such challenges
- (d) Once opening arguments have commenced, jurisdiction is assumed over all crimes still present in the indictment
- (e) The Court is the sole determiner of whether a case or crime is within its jurisdiction

Article III. Relevancy and Its Limits

Rule 301. Definition of Relevant Evidence

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 302. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible

Relevant evidence is admissible, except as otherwise provided in these Rules. Irrelevant evidence is not admissible.



Rule 303. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, if it confuses the issues, if it is misleading, or if it causes undue delay, wastes time, or is a needless presentation of cumulative evidence.

Rule 304. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character Evidence. Evidence of a person's character or character trait, is not admissible to prove action regarding a particular occasion, except:

- (1) Character of accused. Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
- (2) Character of victim. Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a case to rebut evidence that the victim was the aggressor;

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) Evidence of the character or character trait of the accused is generally not admissible unless character evidence is first introduced by the Defense

Rule 305. Methods of Proving Character

(a) Reputation or opinion. In all cases where evidence of character or a character trait is admissible, proof may be made by evidence as to reputation or in the form of an opinion.

(b) Specific instances of conduct. In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Rule 306. Habit; Routine Practice

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization, on a particular occasion, was in conformity with the habit or routine practice



Article IV. Criminal Responsibility

Rule 401. General Rule

(a) The Court will find the Defendant responsible and liable for punishment of a crime for which the Court has jurisdiction if the Defendant is found to have:

- (1) committed the crime, whether individually, jointly, or through another person; OR
- (2) ordered, solicited, or induced the commission of the crime; OR
- (3) aided, abetted, or otherwise directly assisted in the commission of the crime; OR
- (4) attempts to engage in any activity defined by Sections 301(a)(1), (2), or (3), and is unsuccessful due to circumstances independent of his or her control

(b) A military commander or person effectively acting as a military commander will be found criminally liable by this Court if:

- (1) the commander knew or should have known that the forces under his or her control were committing such crimes; AND
- (2) the commander failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of the crimes or to submit the matter to the competent authorities for investigation and prosecution
- (3) This Section, Section 301(b), will also apply to a superior officer whose subordinates commit such crimes

(c) The Defendant will be presumed innocent until the Court is convinced of his or her guilt beyond a reasonable doubt

Rule 402. Exclusion from Criminal Responsibility

A person shall not be found criminally liable by the Court if evidence is conclusive demonstrating that the Defendant:

- (1) suffered at the time of the alleged commission of the crime, or currently suffers from, a mental disease or defect which prevents that person from appreciating the unlawfulness or nature of his or her conduct, or seriously inhibits his or her capacity to conform to the law; OR
- (2) acted in reasonable self-defense; OR
- (3) committed the act or acts under serious duress, including but not limited to (a) threat of death; (b) imminent bodily harm to his or herself.



Article V. Penalties and Appeals

Rule 501. Penalties

Should the Court find the accused criminally responsible for one or more crimes within its jurisdiction, it may impose one or more of the following penalties for each crime:

- (1) Imprisonment, up to life, depending on the gravity of the crime;
- (2) A fine, not to exceed 75% of the individual's total assets;
- (3) Seizure of any or all proceeds, property, and assets derived directly or indirectly from the specific crime

Rule 502. Appeals

(a) In the case of an unfavorable verdict, the Defendant may appeal at the end of the trial; at that time the reason for appeal must be delivered in writing to the Judges

(b) The appeal, unedited by the Court, will be appended to the Court's decision

Article VI. Applicable Definitions (Derived from the Rome Statute of the International Criminal Court)

Genocide

For the purpose of the Court, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Crimes against humanity

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

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;



- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

War crimes

For the purpose of this Statute, "war crimes" means:

- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Willful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Willfully causing great suffering, or serious injury to body or health;
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) Unlawful deportation or transfer or unlawful confinement;
 - (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:



- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital



treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;



- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) Taking of hostages;
 - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive



emblems of the Geneva Conventions in conformity with international law;

- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (v) Pillaging a town or place, even when taken by assault;
 - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
 - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) Killing or wounding treacherously a combatant adversary;
 - (x) Declaring that no quarter will be given;
 - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is



protracted armed conflict between governmental authorities and organized armed groups or between such groups.