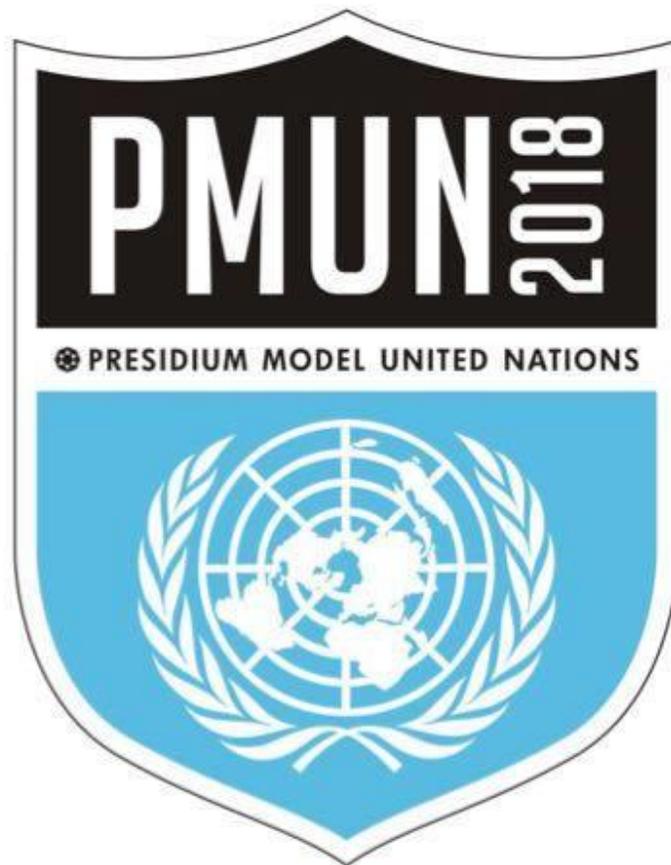


**PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018**

*“The Promotion and Strengthening of rule of law in conflict situations  
with emphasis on post conflict peacebuilding”*



**PRESIDIUM *for*  
YOUTH EMPOWERMENT**

---

**UNITED NATIONS SECURITY COUNCIL (UNSC)  
TOPIC STUDY GUIDE PREPARED FOR PMUN 2018**

## **PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018**

### ***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

Hon’ble Delegates,

Greetings! We welcome you all to the simulation of the United Nations Security Council.

We request all participant delegates to keep a few pointers in mind before reading the background guide. The background guide is divided into different sections. The first section is about the UNSC and its function and powers. The functions and powers of all councils and committees are outlined by their mandate, which also defines the scope of debate in council. The mandate also defines what kind of actions can be taken by the UNSC and how it is separate from the actions taken by other committees. The second section clearly marks the sources that will be accepted as proof/evidence in the committee. In situations where the Executive Board asks a delegate for proof/evidence to back up their statements, any source might be brought up for debate if it has institutional backing, and might even be accepted as the belief of the country. But no sources, other than those mentioned in this section will be accepted as credible.

However, research can be done and debate can continue using any source as such. Even Wikipedia is a source (yes!), but only to understand the overview of the theme and not to gather facts and figures. Delegates are advised to cross-check statements and speeches with the mentioned credible sources to be on a safe side. Many sections are followed by or include links which will help in understanding the agenda better, attaining relevant documents and guide you for further research on the issue. Delegates are requested to visit and explore these links too.

The guide has been prepared to give you an idea of the functioning of the council as well as the very pertinent agenda that the council shall deal with. But, this guide is merely a facilitator to help you kick start your research and you, as delegates must feel free to go beyond the scope of the guide. The purpose of this guide is only to provide you initial assistance to initiate your research.

Diplomacy is the first lesson that MUNs offer and thus, you as delegates are expected to be extremely courteous towards your fellow delegates as well as teachers and members of the Executive Board. As delegates you are expected to promote the interests of your nation but at the same point respect the differences of opinion to achieve a solution in accord and harmony.

Logic and foreign policy combined with in-depth research and knowledge are necessary to be a successful delegate. We wish that you will not be intimidated by your competitors. It’s great to win an award but its better if you don’t win but take back lessons with you which help you for a lifetime. For this one conference, let us all make winning incidental but learning purposeful. Let’s dedicate the two days of this conference to develop passion for this activity.

**PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018**

***“The Promotion and Strengthening of rule of law in conflict situations  
with emphasis on post conflict peacebuilding”***

We now leave you with our best wishes and I hope that at the end of this three day venture we will all emerge a little wiser. Please feel free to contact us, we will be more than happy to solve your queries.

Regards,

**The Executive Board**

## **PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018**

### ***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

#### **How to Research?**

Following is a suggested pattern for researching (if required):

- Researching and understanding the United Nations and the Committee/Council being simulated – Its Mandate, including understanding historical work done on the agenda.
- Research on the allotted country. Understanding its polity, economy, culture, and history etc. – especially those relevant to the agenda at hand.
- Comprehending the Foreign Policy of the allotted country. It includes understanding the ideology and principles adopted by the country on the agenda. It further includes studying past actions taken by the country on the agenda and other related issues –specifically analyzing their causes and consequences.
- Reading the background guide thoroughly.
- Researching further upon the agenda using the footnotes and links given in the guide and from other sources such as academic papers, institutional reports, national reports, news articles, blogs etc.
- Understanding policies adopted by different blocs of countries (example: NATO, EU etc.) and major countries involved in the agenda. Including their position, ideology and adopted past actions.
- Characterizing the agenda into sub-topics and preparing speeches and statements on them. It is the same as preparing topics for the moderated caucuses and their content.
- Preparing a list of possible solutions and actions the UNSC can adopt on the issue as per your country’s policies.

## **PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018**

### ***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

- Assemble proof/evidence for any important piece of information/allegation you are going to use in committee
- Keeping your research updated using various news sources, especially news websites given in the proof/evidence section.

Again. This is not by any means an exhaustive list. It is only indicative of what all can be done by delegates to refine their research.

## PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018

### ***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

#### **About UN Security Council**

Under the Charter of the United Nations, the Security Council has primary responsibility for the maintenance of international peace and security. It has 15 Members, and each Member has one vote. Under the Charter, all Member States are obligated to comply with Council decisions. The Security Council takes the lead in determining the existence of a threat to the peace or act of aggression. It calls upon the parties to a dispute to settle it by peaceful means and recommends methods of adjustment or terms of settlement. In some cases, the Security Council can resort to imposing sanctions or even authorize the use of force to maintain or restore international peace and security.

The Security Council also recommends to the General Assembly the appointment of the Secretary-General and the admission of new Members to the United Nations. And, together with the General Assembly, it elects the judges of the International Court of Justice.

*You are also advised to look into the practice of the UN Security Council and how the Charter affects the same. This will be highly informative as to the inner workings of the SC and hence, debate on it.*

- <http://www.un.org/en/sc/repertoire/actions.shtml>
- <http://www.un.org/en/sc/>
- [The Charter of the United Nation](#)

Also note, that this session of the UN Security Council will be a regular session. By a regular session we simply mean two things:

1. We are simulating a meeting which has been called within the regular schedule of Security Council to discuss a matter of utmost urgency and concerning international peace and security. *(Please refer to Rule 1-3 of the [Provisional Rules of Procedure of the Security Council](#))*
2. Most Rules of Procedures remain the same, however certain deviations in the same may be notified by the President in order to ensure smooth functioning. Delegates shall have the right to seek Points of Enquiry on the ROP, but will not be allowed to raise Points of Order on the same as these “deviations”, if any, are done only to aid debate, and the President has the powers under the SC Procedure Guidelines to do the same. *(Please refer to Article 30 of the [UN Charter](#))*

## PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018

### *“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”*

Also, please remember that a regular session does not mean that the delegates will be given a crisis situation eventually. **The delegates are requested not to ask the Executive Board for the same.**

Also, we request delegates not to question the technicality and validity of the meeting itself, it is very well technical and valid under the UN Charter. Secondly, we request you not to utilize too much time discussing the ROP in case you feel that it is not the ROP you know about! **The President’s decision on all matters relating to the Rules of Procedure shall be final. Furthermore, the President will, at the start of the meeting, convey to all delegates the relevant deviations in the ROP that they must take note of for this meeting.**

## PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018

### *“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”*

#### Proof/Evidence in Council

Evidence or proof is from the following sources will be accepted as credible in the committee:

##### 1. News Sources

- a. **REUTERS** – Any Reuters’ article which clearly makes mention of the fact stated or is in contradiction of the fact being stated by another delegate in council can be used to substantiate arguments in the committee. (<http://www.reuters.com/> )
- b. **State operated News Agencies** – These reports can be used in the support of or against the State that owns the News Agency. These reports, if credible or substantial enough, can be used in support of or against any country as such but in that situation, they can be denied by any other country in the council. Some examples are
  - i. RIA Novosti (Russia) <http://en.rian.ru/>
  - ii. IRNA (Iran) <http://www.irna.ir/ENIndex.htm>
  - iii. Xinhua News Agency and CCTV (P.R. China) <http://cctvnews.cntv.cn/>

2. **Government Reports:** These reports can be used in a similar way as the State Operated News Agencies reports and can, in all circumstances, be denied by another country. However, a nuance is that a report that is being denied by a certain country *can still be accepted by the Executive Board as credible information*. Some examples are,

- a. **Government Websites** like the State Department of the United States of America <http://www.state.gov/index.htm> or the Ministry of Defense of the Russian Federation <http://www.eng.mil.ru/en/index.htm>
  - i. **Ministry of Foreign Affairs** of various nations like India (<http://www.mea.gov.in/>) or People’s Republic of China (<http://www.fmprc.gov.cn/eng/>).
  - ii. **Permanent Representatives** to the United Nations Reports <http://www.un.org/en/members/> (Click on any country to get the website of the Office of its Permanent Representative.)
  - iii. **Multilateral Organizations** like the NATO (<http://www.nato.int/cps/en/natolive/index.htm>), ASEAN (<http://www.aseansec.org/>), OPEC ([http://www.opec.org/opec\\_web/en/](http://www.opec.org/opec_web/en/)), etc.

## PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018

### *“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”*

3. **UN Reports:** All UN Reports are considered are credible information or evidence for the Executive Board of the UNGA – 1 (DISEC).
  - a. **UN Bodies** like the UNSC (<http://www.un.org/Docs/sc/>) or UNGA (<http://www.un.org/en/ga/>).
  - b. **UN Affiliated bodies** like the International Atomic Energy Agency (<http://www.iaea.org/>), World Bank (<http://www.worldbank.org/>), International Monetary Fund (<http://www.imf.org/external/index.htm>), International Committee of the Red Cross (<http://www.icrc.org/eng/index.jsp>), etc.
  - c. **Treaty Based Bodies** like the Antarctic Treaty System (<http://www.ats.aq/e/ats.htm>), the International Criminal Court (<http://www.icc-cpi.int/Menus/ICC> )

**NOTE:** Under no circumstances will sources like Wikipedia (<http://www.wikipedia.org/>), Amnesty International (<http://www.amnesty.org/>), Human Rights Watch (<http://www.hrw.org/>) or newspapers like the Guardian (<http://www.guardian.co.uk/>), Times of India (<http://timesofindia.indiatimes.com/>), etc. be accepted as PROOF/EVIDENCE. But they can be used for better understanding of any issue or even be brought up in debate if the information given in such sources is in line with the beliefs of a Government.

## PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018

### *“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”*

#### Documents, Treaties, Conventions etc. To Understand

Following is the list of documents that need to be perused by all delegates before they come to the council. Please understand that you need to know the following aspects regarding each of the mentioned documents:

- **The reason** why this document exists (for e.g. the Geneva Conventions were enacted to lay down the rules of war and for the treatment of all parties concerned in the wars.)
- **The nature** of the document and the force it carries, i.e. whether it is a treaty, a convention, a doctrine, or a universally accepted custom or norm.
- **The areas** where the document can be applied or has jurisdiction on (for e.g. international humanitarian law applies only to situations of armed conflict, whereas the human rights laws applies at all times of war and peace alike.)
- **The contents** of the document at hand. You need not memorize any articles or rules of any convention or treaty, but should know what the document has to say in various situations that may arise in the council.

The delegates must have the understanding of the following:

#### 1. UN Charter

The Charter of the United Nations was signed on 26 June 1945 at San Francisco by the nations represented at the United Nations Conference on International Organization, most of them earlier allies in the Second World War. The allies began being referred to as the 'United Nations' towards the end of that war. The Charter came into force on October 24 1945. Since that time all members joining have had to declare themselves bound by both documents - though practice has demonstrated on too many occasions that that declaration has not been taken too seriously. Once again, a written constitution is one thing, actual behavior is another.

- <http://www.un.org/en/documents/charter/>
- <http://research.un.org/en/docs/charter>

#### 2. Geneva Conventions

***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

The Geneva Conventions comprise four treaties, and three additional protocols, that establish the standards of international law for the humanitarian treatment of war. The singular term Geneva Convention usually denotes the agreements of 1949, negotiated in the aftermath of the Second World War (1939–45), which updated the terms of the first three treaties (1864, 1906, 1929), and added a fourth treaty. The Geneva Conventions extensively defined the basic, wartime rights of prisoners (civil and military); established protections for the wounded; and established protections for the civilians in and around a war-zone. Moreover, the Geneva Convention also defines the rights and protections afforded to non-combatants, yet, because the Geneva Conventions are about people in war, the articles do not address warfare proper — the use of weapons of war — which is the subject of the Hague Conventions (First Hague Conference, 1899; Second Hague Conference 1907), and the bio-chemical warfare Geneva Protocol (Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, 1925).

- [http://en.wikipedia.org/wiki/Geneva\\_Conventions](http://en.wikipedia.org/wiki/Geneva_Conventions)
- <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>

### **3. Responsibility to Protect**

The Responsibility to Protect (R2P or RtoP) is an emerging norm that sovereignty is not a right, but that states must protect their populations from mass atrocity crimes—namely genocide, crimes against humanity, war crimes and ethnic cleansing. The R2P has three foundation "pillars":

- i. A state has a responsibility to protect its population from genocide, war crimes, crimes against humanity, and ethnic cleansing.
- ii. The international community has a responsibility to assist the state to fulfill its primary responsibility.
- iii. If the state manifestly fails to protect its citizens from the four above mass atrocities and peaceful measures have failed, the international community has the responsibility to intervene through coercive measures such as economic sanctions. Military intervention is considered the last resort.

***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

While R2P is a norm and not a law, it is firmly grounded in international law, especially the laws relating to sovereignty, peace and security, human rights and armed conflict. R2P provides a framework for using tools that already exist, i.e. mediation, early warning mechanisms, economic sanctioning, and chapter VII powers, to prevent mass atrocities. Civil society organizations, states, regional organizations, and international institutions all have a role to play in the R2P process. The authority to employ the last resort and intervene militarily rests solely with United Nations Security Council.

Criticisms of the R2P include a "moral outrage and hysteria [that] often serve as a pretext for ‘interventions by the civilised world’ or ‘the international community’ and for ‘humanitarian interventions’, which often conceal the true strategic motives, and it thus becomes another name for proxy wars."

- [http://en.wikipedia.org/wiki/Responsibility\\_to\\_protect](http://en.wikipedia.org/wiki/Responsibility_to_protect)
- [http://en.wikipedia.org/wiki/International\\_Commission\\_on\\_Intervention\\_and\\_State\\_Sovereignty](http://en.wikipedia.org/wiki/International_Commission_on_Intervention_and_State_Sovereignty)
- <http://responsibilitytoprotect.org/ICISS%20Report.pdf>
- [http://www.globalr2p.org/media/files/2010\\_a64864.pdf](http://www.globalr2p.org/media/files/2010_a64864.pdf)
- [http://www.globalr2p.org/media/files/2011\\_a65877.pdf](http://www.globalr2p.org/media/files/2011_a65877.pdf)
- [http://www.globalr2p.org/media/files/unsg-report\\_timely-and-decisive-response.pdf](http://www.globalr2p.org/media/files/unsg-report_timely-and-decisive-response.pdf)
- <http://www.globalr2p.org/media/files/n1338693.pdf>

Any other treaty or convention or custom that has relevance to the theme of armed conflict, terrorism and/or external aggression must also be perused by the delegates in the same manner as described above. One relevant examples could be:

**4. Customary International Law / Customary International Humanitarian Law**

Customary international law consists of rules that come from "a general practice accepted as law" and exist independent of treaty law. Customary IHL is of crucial importance in today's armed conflicts because it fills gaps left by treaty law and so strengthens the protection offered to victims.

## PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018

### ***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

- a. <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law>
- b. <https://www.icrc.org/customary-ihl/eng/docs/Home>
- c. [http://www.law.cornell.edu/wex/customary\\_international\\_law](http://www.law.cornell.edu/wex/customary_international_law)

#### **5. The concept of ‘jus cogens’ or peremptory norms**

**And so on..**

***Please note: This is not an exhaustive list! There are many more sources that you may find very useful as a delegate within committee proceedings. Feel free to research on them and use them as part of your arguments in the committee.***

***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

**What is Rule of Law?**

The *Oxford English Dictionary* has defined "rule of law" this way:

The authority and influence of law in society, esp. when viewed as a constraint on individual and institutional behavior ;(hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.

UN perspective on Rule of Law

‘A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.’

Link for Understanding - [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2004/616](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616)

(For the United Nations, justice is an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant. The international community has worked to articulate collectively the substantive and procedural requirements for the administration of justice for more than half a century.)

**What is conflict and post conflict situation?**

Basic definition: post-conflict is a “conflict situation in which open warfare has come to an end. Such situations remain tense for years or decades and can easily relapse into large-scale violence

In post-conflict areas, there is an absence of war, but not essentially real peace.

**What is peace building?**

***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

In December 2005, the intergovernmental advisory body “Peacebuilding Commission” (PBC) was established according to UN General Assembly resolution 60/180 and the Security Council resolution 1645. The PBC consists of 31 Member States and membership is designed to reflect the UN’s most significant peacebuilding bodies. Seven members are chosen from the General Assembly (UNGA), seven from the Economic and Social Council (ECOSOC), seven from the Security Council, five from the Member States who provide military personnel and civilian police to UN missions and five from providers of assessed contributions to UN budgets and of voluntary contributions to UN funds, programs and agencies.

Within the UN system, the PBC is unprecedented in its organization and mandate, as it is the first single organ combining capacities and expertise from many UN organs that deal with different aspects of peacebuilding, benefitting from the UN experience in this field and streamlining the efforts to increase UNs efficiency in providing international peace and security. The PBC was designed “to bring together all relevant actors, to marshal resources and advise on, and propose integrated strategies for post-conflict peacebuilding and recovery” as well as those designed to “lay the foundation for sustainable development.” Furthermore, the PBC supports peace building activities which directly contribute to post-conflict stabilization and makes recommendations, monitors progress, garners financial support for peacebuilding, and works heavily with partners in the UN system. The PBC also communicates with the UN Secretariat through the Peacebuilding Support Office (PBSO). The PBSO was created to support and advise the PBC, coordinate UN agencies in their overall peacebuilding efforts, and to administer and oversee the Peacebuilding Fund (PBF). Another component of the PBC is the Working Group on Lessons Learned. It evaluates past post-conflict reconstruction efforts. The gathered experiences are then used to advance existing post-conflict and peacebuilding strategies as well as to develop new approaches to peace consolidation.

Current countries on the PBC agenda include Burundi, Sierra Leone, Guinea, Guinea-Bissau, Liberia and the Central African Republic. The work of the PBC should aim at developing best practices and expanding the period of attention given to regions that undergo post-conflict recovery.

**Topic I: Reconciliation in Post-War Countries**

Reconciliation is a key objective in building sustainable peace and preventing a relapse into conflict. It is about rebuilding relationships among people and groups in society and between the state and its citizens. The process is highly context sensitive, and each society has to tailor its approach to the nature of the conflict and the character of the transition.

After the Cold War the peace and security concept of post-conflict peacebuilding emerged at a time when the worldview on conflict, peace, and security was changing significantly. In 1992, peacebuilding was defined as the “action to identify and support structures which will tend to

## **PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018**

### ***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

strengthen and solidify peace in order to avoid a relapse into conflict.” This was further specified in the 2000 Brahimi Report, which stated that the focus of peacebuilding activities should be: holding democratic elections to ensure the legitimacy of a post-conflict government; building governmental institutions, establishing the rule of law and respect for human rights and the promotion of national reconciliation.

Furthermore, it recommended the establishment of Demobilization, Disarmament and Reintegration (DDR) programs, which call for disarming combatants, as well as providing and supporting them with opportunities for sustainable economic reintegration.

Peacebuilding has since evolved into a multifaceted process. It now incorporates transitional justice, education, the provision of basic services, employment and the concept of security sector reform, which aims to ensure the security of a country by reforming its military and police, and strengthening its legislative and judicial institutions. It is necessary that democratic processes and structures are in themselves the most effective means for the peaceful prevention and management of conflict, especially in post-conflict contexts, where the most urgent need is for mechanisms that will, first and foremost, ensure that there will be no return to the violence of the past. In addition to that, the Peacebuilding Fund (PBF) is funded by donations from Member States and other organizations and provides direct monetary support for peacebuilding activities and prevention.

Questions delegates have to focus are how the reconciliation can be achieved in different countries and to what extent the PBC should focus on the reconciliation in Post-War countries. Additionally, is a revision of the PBF guidelines necessary?

### **Topic II: Intensifying Cooperation on UN Peacebuilding Missions: Measures to Increase the Partnership of Member States and Non-State Actors**

The PBC is a central multilateral player in post-conflict reconstruction and development, as well as peace and security throughout the UN’s peace agenda, and partner to the countries on its agenda. It has demonstrated its utility in combating unemployment, corruption and drug trafficking. It has also established “Gender Parity Programs” as well as garnered crucial donations through special conferences that support this avenue of work. However, the PBC is also subject to criticism. Some argue that the PBC works in an area already crowded with UN agencies, and that it lacks the institutional capacity to coordinate all of them. As the UN moves ahead, the PBC will undoubtedly continue to grow in its influence and significance in the realm of peace, security, and prosperity for any post-conflict or emerging country. The PBC will continue to manage key organizational challenges, including the need for increased leadership and coordination in the field, improved planning capacities, and adequate funding. Despite these

***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

challenges, the PBC remains a vital UN organ in overseeing the transition of a country from conflict to peace.

**(NOT TO BE IGNORED)** One question delegates have to outline is how the success of UN Peacekeeping missions can be best achieved. Currently several peace agreements exist, but some of the key actors are not in compliance with them. Several questions stand out. Is there a possibility to bring all involved actors to adhere to the peace agreements already made and intensify on them? What might a comprehensive peacebuilding approach look like that incorporates NGO activities and interests? To what extent should NGOs take place in PBC missions? Is the international community able to use these cooperations and develop them further in order to create a safe environment for the civil society?

**Peacemaking can take place only when there is a consent-based recognition of legitimacy between the parties involved**

When we discuss peacemaking, peacekeeping, and peacebuilding as a means to attain the UN Charter's goal “to save succeeding generations from the scourge of war” we must make a distinction between peacemaking, peacekeeping, and peace enforcement. They reflect the express and implied boundaries and potential interpretations of chapters VI and VII of the UN Charter.

Chapter VI of the UN Charter talks about peacemaking as a non-restrictive list of peaceful, diplomatic, and judicial means of resolving disputes. Peacekeeping is situated before peace enforcement and before the sanctions regime as seen in chapter VII of the UN Charter. Peacebuilding is more than a process that has a broad post-conflict agenda and more than an instrumentalist method to secure peace.

**Recommendations from the UN Panel –**

The Panel’s proposed ECPS Information and Strategic Analysis Secretariat (EISAS) would create and maintain integrated databases on peace and security issues, distribute that knowledge efficiently within the United Nations system, generate policy analyses, formulate long-term strategies for ECPS and bring budding crises to the attention of the ECPS leadership. It could also propose and manage the agenda of ECPS itself, helping to transform it into the decision-making body anticipated in the Secretary-General’s initial reforms. The Panel proposes that EISAS be created by consolidating the existing Situation Centre of the Department of Peacekeeping Operations (DPKO) with a number of small, scattered policy planning offices, and

## PRESIDIUM MODEL UNITED NATIONS CONFERENCE 2018

### *“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”*

adding a small team of military analysts, experts in international criminal networks and information systems specialists. EISAS should serve the needs of all members of ECPS.

Research Link - <http://www.un.org/documents/ga/docs/55/a55305.pdf>

#### Case Studies

##### Afghanistan

(Assumed as a case of Individual responsibility United States of America) (War on Terrorism)

**\*\* The same will be explained with the help of arguments and counter arguments\*\***

**Argument:** The Geneva Conventions do not apply to a war against terrorism.

**Response:** The U.S. government could have pursued terrorist suspects by traditional law enforcement means, in which case the Geneva Conventions indeed would not apply. But since the U.S. government engaged in armed conflict in Afghanistan – by bombing and undertaking other military operations – the Geneva Conventions clearly do apply to that conflict. By their terms, the Geneva Conventions apply to “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties.” Both the United States and Afghanistan are High Contracting Parties of the Geneva Conventions.

**Argument:** A competent tribunal is unnecessary because there is no “doubt” that the detainees fail to meet the requirements of Article 4(A)(2) for POW status.

**Response:** Article 5 requires the establishment of a competent tribunal only “[s]hould any doubt arise” as to whether a detainee meets the requirements for POW status contained in Article 4. The argument has been made that the detainees clearly do not meet one or more of the four requirements for POW status contained in Article 4(A)(2) – that they have a responsible command, carry their arms openly, wear uniforms with distinct insignia, or conduct their operations in accordance with the laws and customs of war. However, under the terms of Article 4(A)(2), these four requirements apply only to militia operating independently of a government’s

***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

regular armed forces – for example, to those members of al-Qaeda who were operating independently of the Taliban’s armed forces. But under Article 4(A)(1) these four requirements do not apply to “members of the armed forces of a Party to the conflict as well as members of militia ... forming part of such armed forces.” That is, this four-part test would not apply to members of the Taliban’s armed forces, since the Taliban, as the de facto government of Afghanistan, was a Party to the Geneva Convention. The four-part test would also not apply to militia that were integrated into the Taliban’s armed forces, such as, perhaps, the Taliban’s “55th Brigade,” which we understand to have been composed of foreign troops fighting as part of the Taliban.

Administration officials have repeatedly described the Guantanamo detainees as including both Taliban and al-Qaeda members. A competent tribunal is thus needed to determine whether the detainees are members of the Taliban’s armed forces (or an integrated militia), in which case they would be entitled to POW status automatically, or members only of al-Qaeda, in which case they probably would not be entitled to POW status because of their likely failure to meet the above-described four-part test. Until a tribunal makes that determination, Article 5 requires all detainees to be treated as POWs.

**Argument:** Even members of the Taliban’s armed forces should not be entitled to POW status because the Taliban was not recognized as the legitimate government of Afghanistan.

**Response:** As Article 4(A)(3) of the Third Geneva Convention makes clear, recognition of a government is irrelevant to the determination of POW status. It accords POW status without qualification to “[m]embers of regular armed forces who profess allegiance to a government or an authority not recognized by the detaining power.” That is, the four-part test of Article 4(A)(2) applies only to militia operating independently of a government’s armed forces, not to members of a recognized (Article 4(A)(1)) or unrecognized (Article 4(A)(3)) government’s armed forces. Thus, whether a government is recognized or not, members of its armed forces are entitled to POW status without the need to meet the four-part test.

This reading of the plain language of Article 4 is consistent with sound policy and past U.S. practice. As a matter of policy, it would undermine the important protections of the Third Geneva Convention if the detaining power could deny POW status by simply withdrawing or withholding recognition of the adversary government. Such a loophole would swallow the detailed guarantees of the Third Geneva Conventions – guarantees on which U.S. and allied troops rely if captured in combat. This reading is also consistent with past U.S. practice. During the Korean War, the United States treated captured Communist Chinese troops as POWs even though at the time the United States (and the United Nations) recognized Taipei rather than Beijing as the legitimate government of China.

***“The Promotion and Strengthening of rule of law in conflict situations with emphasis on post conflict peacebuilding”***

**Argument:** Treating the detainees as POWs would force the United States to repatriate them at the end of the conflict rather than prosecuting them for their alleged involvement in terrorist crimes against Americans.

**Response:** POW status provides protection only for the act of taking up arms against opposing military forces. If that is all a POW has done, then repatriation at the end of the conflict would indeed be required. But as Article 82 explains, POW status does not protect detainees from criminal offenses that are applicable to the detaining powers’ soldiers as well. That is, if appropriate evidence can be collected, the United States would be perfectly entitled to charge the Guantanamo detainees with war crimes, crimes against humanity, or other violations of U.S. criminal law – more than enough to address any act of terrorism against Americans – whether or not a competent tribunal finds some of the detainees to be POWs. As Article 115 of the Third Geneva Convention explains, POWs detained in connection with criminal prosecutions are entitled to be repatriated only “if the Detaining Power [that is, the United States] consents.”

**Argument:** Treating the detainees as POWs would preclude the interrogation of people alleged to have information about possible future terrorist acts.

**Response:** This is perhaps the most misunderstood aspect of the Third Geneva Convention. Article 17 provides that POWs are obliged to give only their name, rank, serial number, and date of birth. Failure to provide this information subjects POWs to “restriction” of their privileges. However, nothing in the Third Geneva Convention precludes interrogation on other matters; the Convention only relieves POWs of the duty to respond. Whether or not POW status is granted, interrogators still face the difficult problem of encouraging hostile detainees to provide information, with only limited tools available for the task. Article 17 states that torture and other forms of coercion cannot be used for this purpose in the case of POWs. But the same is true for all detainees, whether held in time of peace or war. (See, e.g., Article 2 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which the U.S. has ratified: “No exceptional circumstance whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” See also Articles 4 and 5, making violation of this rule a criminal offense of universal jurisdiction.)

Article 17 of the Third Geneva Convention provides that POWs shall not be “exposed to any unpleasant or disadvantageous treatment of any kind” for their refusal to provide information beyond their name, rank, serial number, and date of birth. That would preclude, for example, threats of adverse treatment for failing to cooperate with interrogators, but it would not preclude classic plea bargaining – that is, the offer of leniency in return for cooperation – or other incentives. Plea bargaining and related incentives have been used repeatedly with success to induce cooperation from members of such other violent criminal enterprises such as the mafia or drug traffickers. These would remain powerful tools for dealing with the Guantanamo detainees even if a competent tribunal finds some of them to be POWs.