

United Nations Security Council

Background guide



SNISMUN 2025

**Agenda: Discussing the Validity of Absolute Immunity
in the Prosecution of Core International War Crimes**

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1. Letter from the Executive Board

Greetings Delegates,

Welcome to the United Nations Security Council at SNISMUN 2025. You are about to engage with one of the most complex and consequential issues at the intersection of international law, politics, and morality: the conflict between the pursuit of justice for the gravest crimes known to humanity and the long-standing principle of absolute immunity for state officials.

This agenda demands a sophisticated understanding of legal principles, but more importantly, it requires political courage and strategic thinking. The Security Council is not a court of law; it is a political body where law, power, and diplomacy collide. Your challenge is to navigate this terrain, representing your national interests while contemplating the future of the international legal order. This background guide provides the essential foundation defining key terms, outlining the legal debate, and presenting major stakeholder perspectives.

However, this is merely a starting point. We expect you to conduct deep, independent research into your country's specific legal positions, historical actions, and political alliances. Scrutinize treaties, ICJ rulings, and national statements. We urge you to move beyond abstract legal debates and focus on pragmatic, politically viable solutions that this Council might endorse. We look forward to three days of rigorous, insightful, and consequential debate!

Sincerely,
The Executive Board

2. Nature And Proof Of Evidence

The following sources' documents will be regarded as reliable evidence for any claims made in committee or assertions that need to be confirmed:

1. **Reuters:** Any contentious remarks made in committee will be supported or refuted by records and stories from the Reuters News agency.
2. **UN Documents & International Court Rulings:** All UN agencies' documents, including Security Council resolutions, General Assembly resolutions, ICJ and ICC statutes, and rulings, should be regarded as adequate evidence. Official records of state parties to international treaties shall be accepted.

Other sources, such as Wikipedia, Human Rights Watch, and Amnesty International, or newspapers like the Guardian and Washington Post, will not be recognized as reliable evidence. However, they can be used to gain a better understanding of any topic and may even be brought up in a debate if the information they provide is consistent with the views of a delegate or a government.

3. Introduction To Committee

“Justice and power must be brought together, so that whatever is just may be powerful, and whatever is powerful may be just.”

– Blaise Pascal, French Philosopher

The core mandate of the Security Council, contained in Article 24 (1) of the UN Charter, gives it “primary responsibility for the maintenance of international peace and security”.

The Security Council acts on behalf of the entire UN and has the authority to bind all members of the organization. The Security Council aims to peacefully resolve international disputes in accordance with Chapter VI of the UN Charter, which

authorizes the Security Council to call on parties to seek solutions via negotiation, arbitration, or other peaceful means. Failing that, Chapter VII empowers the Security Council to take more assertive actions, such as imposing sanctions or authorizing the use of force “to maintain or restore international peace and security.”

The Council is composed of 15 Member States, with five permanent members –China, France, the Russian Federation, the United Kingdom, and the United States –and ten non-permanent members who are elected for 2-year terms.

A/RES/1991 (XVIII)¹ distributes the non-permanent seats regionally: 5 African and Asian Member States –one seat conventionally reserved for an Arab Member State, 1 Eastern European Member State, 2 Latin American and the Caribbean Member States, and 2 Western European and other Member States.

4. Introduction To Agenda

“No one is above the law.”
– Ancient Legal Maxim

The prosecution of core international crimes—genocide, war crimes, crimes against humanity, and aggression—is a cornerstone of the modern human rights framework. However, a significant obstacle often arises: the claim of “*immunity*”.

Immunity is a principle of international law that protects state officials from foreign legal processes. It is divided into two types:

¹ ‘See Assembly resolution 1991(XVIII)’

1. **Functional Immunity (ratione materiae):** Protects acts performed in an official capacity. This immunity is permanent but does not extend to private acts or, crucially, to international crimes.

2. **Personal Immunity (ratione personae):** Protects high-ranking state officials (Heads of State, Heads of Government, Foreign Ministers) for the duration of their office, shielding them from the jurisdiction of foreign domestic courts for both public and private acts. This is often referred to as "absolute" immunity during their term.

The central debate before this Council is the **validity of this absolute personal immunity** when it is invoked to block the prosecution of core international crimes. Does the imperative to end impunity for atrocities override the traditional rules of state sovereignty and interstate commerce?

The Core Conflict:

Pro-Immunity Position: Absolute immunity is essential for the smooth conduct of international relations. It allows leaders to govern, travel, and engage in diplomacy without fear of politicized lawsuits in foreign courts. Challenging this principle is a slippery slope that could lead to chaos and retaliatory prosecutions, undermining the international system.

Anti-Impunity Position: The nature of core international crimes is so heinous that they can never be considered "official acts." The duty to prosecute these crimes, under treaties like the Geneva Conventions and the principle of *jus cogens* (peremptory norms), trumps the rules of immunity. No individual, regardless of position, should be able to hide behind state office to escape justice for such acts. This Council must deliberate on whether and how to reconcile these two fundamental pillars of international order.

5. Key Concepts & Legal Frameworks

A. Core International Crimes:

- Genocide: Acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.
- War Crimes: Serious violations of the laws and customs of war (e.g., torture, indiscriminate attacks, using prohibited weapons).
- Crimes Against Humanity: Widespread or systematic attack directed against any civilian population (e.g., murder, enslavement, deportation).
- Crime of Aggression: The use of armed force by a State against the sovereignty, territorial integrity or political independence of another State.

B. Key Legal Instruments:

- Rome Statute of the ICC (1998): Established the International Criminal Court. Article 27 explicitly states that official capacity "shall in no case exempt a person from criminal responsibility," and immunities attached to official capacity "shall not bar the Court from exercising its jurisdiction."
- ICJ Jurisprudence:
 - a. Arrest Warrant Case (2002): The ICJ found that a sitting Foreign Minister enjoys absolute immunity from foreign domestic courts. However, the court noted this immunity does not apply before "certain international criminal courts" where jurisdiction is granted by international law (e.g., the ICC, UN tribunals).
- Certain Questions of Mutual Assistance (2008): Reinforced that sitting Heads of State enjoy immunity before foreign domestic courts.
- The Principle of Jus Cogens: A peremptory norm of international law from which no derogation is permitted (e.g., prohibition of torture, genocide). Many legal scholars and some courts argue that immunity cannot be invoked to shield violations of jus cogens norms.

6. Stakeholder Analysis

Permanent Five (P5) Members:

United States / Russia / China: Traditionally strong defenders of absolute sovereignty and immunity. They are not parties to the Rome Statute (ICC) and are likely to view any erosion of immunity as a threat to their own leadership and a tool for political manipulation. They will prioritize stability and the inviolability of state-to-state relations.

France / United Kingdom: Parties to the Rome Statute. They support international justice in principle but have also been cautious about mechanisms that could target their own officials or soldiers. They may seek a middle path, supporting international courts while remaining skeptical of universal jurisdiction by national courts.

States Parties to the International Criminal Court (ICC):

Over 120 countries are members. They have already accepted the principle in Article 27 of the Rome Statute that official capacity is no bar to prosecution before the ICC. This bloc is likely to be more open to limiting absolute immunity, especially for non-ICC states, to ensure there is no impunity gap.

States Pursuing Universal Jurisdiction:

Countries like Germany, Belgium, and Spain have national laws allowing their courts to prosecute international crimes regardless of where they were committed or the nationality of the perpetrator. These states often champion the idea that immunity cannot block such prosecutions for core crimes.

The African Union (AU) Bloc:

Many AU members have expressed strong skepticism toward the ICC, perceiving its focus as disproportionately African. They often cite the abuse of universal

jurisdiction and the erosion of immunity as a form of neo-colonialism. They are likely to be a powerful voice defending absolute immunity for sitting officials.

The International Criminal Court (ICC):

While not a state, the ICC is a key stakeholder. Its very existence is predicated on the principle that official capacity is irrelevant for core crimes. The ICC would be the primary beneficiary of any Security Council action that strengthens this norm or refers to situations where immunity is being claimed (e.g., a referral for a non-member state).

7. Case Studies & Precedents

Pinochet (UK House of Lords, 1999): A landmark case where a UK court found that the former Chilean head of state could not claim immunity for acts of torture (a crime against humanity) as these were not "official functions." This case significantly weakened the concept of immunity for ex-officials for international crimes.

Omar Al-Bashir (Sudan): The ICC issued arrest warrants for the sitting Sudanese President for genocide and war crimes in Darfur. The UNSC had referred the situation to the ICC. This created a direct conflict: the ICC (and its state parties) had an obligation to arrest him, while other states, citing the ICJ's Arrest Warrant case, claimed he enjoyed immunity as a sitting Head of State. This legal contradiction remains unresolved.

ICJ Germany v. Italy (2012): The ICJ ruled that Italy had violated Germany's sovereignty by allowing civil claims against Germany for war crimes committed during WWII, as Germany enjoyed state immunity. This case reaffirmed the strength of state immunity, even for violations of jus cogens norms, in civil proceedings. Its logic is often extended to criminal cases by proponents of immunity.

8. QARMA (Questions a resolution must answer)

1. Under what specific circumstances, if any, should the personal immunity of a sitting Head of State or Government be invalidated before international or foreign domestic courts for core international crimes?
2. How can the Security Council reconcile the ICJ's stance (upholding immunity in domestic courts) with the ICC's stance (rejecting immunity for its proceedings)?
3. What is the appropriate role for the Security Council in enforcing international criminal law against officials of states that are not parties to the Rome Statute?
4. Should the distinction between a sitting official (with absolute immunity) and a former official (with only functional immunity) be maintained, clarified, or abolished?
5. How can the Council prevent the politicized abuse of universal jurisdiction while upholding the duty to prosecute grave crimes?
6. What mechanisms, such as a referral to the ICC or the establishment of a special tribunal, could the Council employ to address a situation where a state is shielding its officials by claiming immunity?
7. How can any proposed solution balance the need for justice with the pragmatic need for diplomatic engagement and conflict resolution, which often requires negotiating with incumbent leaders?

*Note: This guide is for reference only. Nothing mentioned in this guide or any other publication by the EB can be used as proof of fact.