



THE GENERAL ASSEMBLY SIXTH COMMITTEE: LEGAL

Purview of the Simulation: The General Assembly Sixth Committee addresses issues relating to international law. The Committee not only drafts new international law, but also offers interpretations of existing international law as well as recommendations for members to implement international regulations through national law. The Committee also considers legal issues which affect the United Nations Secretariat and

operations. The Sixth Committee does not resolve legal disputes; that is the responsibility of the International Court of Justice. For more information concerning the purview of the UN's General Assembly as a whole, see page 17.

Website: <http://www.un.org/ga/sixth/index.shtml>

CRIMINAL ACCOUNTABILITY OF UNITED NATIONS OFFICIALS AND EXPERTS ON MISSION

Recently, criminal accusations have been made against United Nations officials and experts on mission, particularly in the area of sex crimes, in the Member States where they have been assigned. These include recent reports of atrocities committed by UN peacekeepers operating in Haiti, Somalia and the Democratic Republic of the Congo. The prosecution of such crimes has been hindered by the problem of jurisdictional gaps. Often, both the host State in which crimes have allegedly been committed by foreign nationals, as well as the State whose nationals have been accused of committing a crime, lack the jurisdiction to prosecute such allegations. Moreover, the United Nations' Secretariat cannot hold accused persons criminally accountable, nor is the Secretariat permitted to conduct an investigation or enforce the extradition of accused offenders.

In light of the damaging impact on the reputation and credibility of the United Nations, Member States have acknowledged the need to demonstrate zero tolerance for criminal activities committed by UN officials. The Secretariat is committed to facilitating international co-operation between all Member States to prosecute offenders. However, matters are complicated by the absence of an international statute or code identifying which crimes are punishable. Additionally, alleged offenses often occur in conflict or post-conflict environments, where the criminal justice system may be impaired or non-existent. Further, Member States have varying definitions of procedural due process, and there is disagreement between States as to what penalties for criminals are just.

One area of deep concern pertains to allegations of sexual crimes. The Secretariat has sought to address this, in part, through data collection to establish the extent of the problem. As reported to the General Assembly in 2007, in the calendar year 2006 a total of 357 allegations of sexual exploitation and abuse were reported to the Office of Internal Oversight Services. The Secretary-General has been requested to bring credible criminal allegations to the attention of the Member States against whose nationals such allegations were made. However, sexual crimes are widely underreported for a variety of reasons, including stigmatization and fear on the part of victims.

In response to continued reports of criminal acts committed by UN officials and experts on mission, the Secretary-General assembled a Group of Legal Experts (Group) for a report on the situation. Since then, a variety of proposals to strengthen the accountability of UN officials and experts on mission have been discussed.

However, consensus has not yet been reached on a wide range of details. For instance, there is debate over whether the Secretariat should attempt to define crimes or criminal activity for the sake of uniformity, and if so, what such guidelines should be. Another unsettled question is which avenue Member States should take to gain jurisdiction over criminals (i.e., legislatively by code or statute, amendment to the constitution, etc.). Additional issues include whether the UN or Member States would finance the investigations, trials, and imprisonment of offenders, and what defenses ought to be available for alleged criminals who are nationals of other States;

Similarly, the international community must decide if Protocol I of the Geneva Conventions provides any sort of jurisdiction or benefits for civilian victims in regard to protecting them from UN representatives. Member States must also determine if the UN ought to provide for an appellate court of review, and if so, whether such a court would be based on common law or civil law, and finally, whether Member States would bear responsibility for appeals in their State.

The Secretary-General has indicated a desire to avoid specifying offenses and appropriate punishments, instead preferring to find avenues for States to exercise jurisdiction. While the United Nations has expressed a preference that the host State be responsible for investigating, trying, and prosecuting alleged crimes by UN officials and experts on mission, it has offered to incorporate the United Nations Police (UNP) to facilitate trials in the host State. Operating in an ancillary capacity, the UNP would provide assistance to the host State in all stages of investigation.

Significant concerns have been expressed by Member States over the idea of an executive mandate issued by the Secretariat, and so other proposals have centered on either the modification of Member States' jurisdictional boundaries in order to share exercise of jurisdiction, or the creation of a hybrid tribunal to adjudicate crimes. It has been proposed that hybrid tribunals, similar to the United Nations Transitional Administration in East Timor, may be more likely to meet international standards of human rights and to promote confidence in the potential legal system. However, these tribunals are also resource-intensive and would require the consent of the host State.

The international community has acknowledged the need to establish procedures by which UN officials and experts on mission may be held liable for their actions in the field. While the goals have been identified, the means and ways have yet to be decided. Further discussions are required amongst Member States to establish consensus on what steps may be taken next.

Questions to consider from your government's perspective on this issue include:

- How are principles of diplomatic immunity and the responsibility to protect impacted by criminal behavior by UN officials and experts on mission?
- How can Member States hold peacekeepers liable for their actions?
- What form should a tribunal or court with jurisdiction over these proceedings take, and what avenues of appeal will be available for the accused?
- Should the Secretariat be responsible for defining criminal activity? How will jurisdiction be gained by Member States? Who will finance investigations and oversee appellate courts of review? Finally, does Protocol I of the Geneva Conventions provide any guidance in this matter?

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A/61/645
A/60/980
A/59/710
A/C.6/62/L.10
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Additional Web Resources:

www.un.org/law/criminalaccountability - Ad Hoc Committee
www.uncjin.org - United Nations Criminal Justice Information Network
www.unicri.it - United Nations Interregional Crime and Justice Research Institute

STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS

The relationship between the international community and the Geneva Conventions is structurally fundamental to the universal adherence to international humanitarian law. Prompted by the aftermath of World War II, the Convention and its protocols were formed as an initiative of the International Committee of the Red Cross (ICRC) to supplement definitive rules for limiting the barbarity of war and protecting the individual from it.

A cornerstone of international humanitarian law, the Convention consists mainly of the four Geneva Conventions of 1949 and the two additional Protocols of 1977. The four core Conventions specifically address wounded soldiers on the battlefield (First Convention), the wounded and shipwrecked at sea (Second Convention), prisoners of war (Third Convention), and civilians and prisoners of war under enemy control (Fourth Convention). With the recent accession of Montenegro and Nauru, the Conventions have achieved universal recognition.

Since the Geneva Conventions of 1949, additional Protocols have been implemented to fully establish and provide international law within the scope of the UN. Protocol I develops the rules of the First and Second Conventions, dealing with the wounded, shipwrecked, sick, missing and dead, but extending protection to civilian medical workers. Protocol I also provides a more detailed definition of “combatants” and their expected conduct and also discusses civil defense and relief as matters directly related to human rights. Additionally Protocol II provides major improvements in extending special protection to those who take no part in hostilities (including medical and religious personnel, units displaying the red cross or red crescent, cultural objects, and places of worship). In this respect, Protocol II was a groundbreaking accomplishment for protecting relief work which is of a strictly neutral and humanitarian nature.

In December 2005, the ICRC called the attention of the international community to the new problems with the global recognition of the customary emblems of humanitarian aid. Article 38 of the First Convention confirmed the establishment that the red cross or red crescent mounted on a white background signifies neutrality and humanitarian aid. However, these emblems are often perceived as having political and religious connotations, which has the potential to compromise the respect, efficiency and safety of those involved in the Red Cross and Red Crescent movement. This confusion has also led some states and relief movements to refuse to adopt these emblems, compromising the universality of the relief organization. To correct this, the states party to the Geneva Conventions adopted a third protocol additional to the Conventions in 2005. This Protocol, relating to the adoption of an Additional Distinctive Emblem, establishes the red crystal as an image devoid of any political, religious or any other connotation that could

be efficiently used in humanitarian efforts world-wide. The Additional Protocol III calls for the red crystal to be recognized as a substitute for the red cross or red crescent and serves to prevent the future proliferation of other emblems.

While the Additional Protocols have become the accepted form of international law related to armed conflicts and their subsequent victims, the Protocols lack actual enforcement and discretionary power, while concerns over sovereignty hinder the enforcement of international law. At times, Member States have disregarded the Protocols. In 2008, the General Assembly expressed its concern over the increasing numbers of civilians being targeted in armed conflicts and emphasized the urgent need to apply international humanitarian law.

In response to the Secretary-General's 2008 report on the status of the Protocols Additional to the Geneva Conventions, Member States also stressed the need for those States that have not already done so to ratify the Rome Statute of the International Criminal Court and other relevant legal instruments. Member States who had not yet done so were similarly urged to adopt the Additional Protocols and to make use of the International Humanitarian Fact-Finding Commission, where appropriate. Also discussed was the development of the 2008 Montreux Document, which reaffirmed the obligation of States to ensure that private military and security companies operating in armed conflicts do so in compliance with international humanitarian law. The document lists over 70 recommendations for Member States with regard to best practices concerning oversight and regulation of private security companies. It also calls for greater accountability, calling upon Member States to take concrete steps to ensure the prosecution of private military and security company personnel when serious breaches of law occur.

The relevance of the Geneva Conventions and its Additional Protocols has also taken on renewed prominence in light of the global war on terrorism. Human rights observers have criticized the practice of "extraordinary rendition" tactics on suspected terrorists, and some states have issued arrest warrants for agents who are suspected of engaging in these proceedings. Many states party to the Geneva Convention have expressed significant concern over the treatment of individuals being held at the detention centers at the Guantanamo Bay Naval Base in Cuba. The discussion raises questions about the Protocols' efficacy and relevance to global terrorism.

Changes in the shape and context of modern warfare have presented new challenges for international humanitarian law. A thorough examination of the existing sources of international humanitarian law is required to regulate the international law of war and protect the innocent affected by armed conflict. The Sixth Committee, with jurisdiction in issues relating to international law through the interpretation of existing international law, as well as the implementation of international regulations and norms through national law, must discuss ways of clearly defining implementation and enforcement standards within the Protocols.

Questions to consider from your government's perspective on this issue include:

- Have the current mechanisms to regulate the international law of war been sufficient? Have they been successful?
- What steps can the international community take to further enforce the Geneva Convention and its Additional Protocols?
- Are there more effective or efficient ways to protect civilians during armed conflict than the Protocols already in place?

- What is the scope with which the Additional Protocols of the Geneva Convention can actually be applied within governments? International Legal Personalities? The UN as a whole?

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A/C.6/63/SR.13, 14, and 26
A/C.6/63/L.15
A/C.6/59/L.1
Montreux Document
Rome Statute
Geneva Convention and its Additional Protocols

Additional Web Resources:

- www.icrc.org - International Red Cross and Red Crescent
www.unhchr.ch - Office of the United Nations High Commissioner for Human Rights
www.icc-cpi.int - International Criminal Court