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 20.

Please note: When considering the reports of sub-committees that may change the UN Charter or other legal documents, the Sixth Committee may act on provisions within that report and write resolutions appropriately to carry out any recommendations from such reports. When a topic results in a recommendation to change the UN Charter, the provisions laid out in Chapter XVIII and elsewhere in the Charter must be followed in the GA Plenary session, followed by submission of any approved portion to the Member States before ratification. Similarly, if this committee recommends the formation of a new treaty or comparable legal agreement, a treaty conference would be called for during the GA Plenary session, to be held at a later date.
Website: http://www.un.org/ga/sixth/index.shtml

Nationality of Natural Persons in Relation to the Succession of States

Every person has the right to be a citizen of his or her country. "Natural persons" are defined as actual persons (in contrast to legal entities, such as corporations). The two most common principles in determining nationality are "the law of the soil" and the "law of the blood." Jus soli, the "law of the soil," recognizes citizenship in the country of birth. Jus sanguinis, the "law of blood," recognizes citizenship in the country of the parents. In many cases, nationality can also be acquired by a process of naturalization, and some states confer their citizenship by a simple declaration. However, the nationality of natural and legal persons is affected by the succession of states. "State succession" refers to events such as secession, transfer of part of a state's territory, unification or dissolution. The number of refugees throughout the world shows that states do not always follow international norms for determining and conferring nationality on natural persons. Examples can be found in Israel, the Former Republic of Yugoslavia, Viet Nam, Central and Western Africa, and Iran.

The topic of nationality has been an important part of international discourse ever since mass de-nationalization events were associated with the atrocities of World War II, namely the refugee situations created by the Holocaust. The International Law Commission (ILC) was created in 1947 by the UN General Assembly. Article 15 of the Universal Declaration of Human Rights (UNHR) of 12 December 1948 recognizes that every person has a right to a nationality and that no person should be arbitrarily deprived of their nationality. The Convention on the Reduction of Stateless Persons was adopted in 1954, and the Convention on the Reduction of Statelessness was adopted in 1961. These Conventions affirm that the rights of the stateless person must be protected and place an obligation on ratifying States to eliminate statelessness.

The breakup of the Soviet Union and Yugoslavia in the early 1990s demonstrated that, while the right to nationality may be recognized, a clear framework is needed to protect that right and provide guidance to States. Throughout the 1990s, the International Law Commission (ILC), different working groups, the Secretary-General, Special Rapporteurs, this body, and the General Assembly as a whole all addressed the topic.
In 2000, the General Assembly adopted Resolution A/55/153, which declares that "every individual who, on the date of the succession of states, had the nationality of the predecessor state, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the states concerned, in accordance with the present articles." In Resolution A/RES/59/34, the General Assembly re-invited Governments to consider issues of nationality of natural persons in relation to the succession of states. The most recent manifestation of these discussions was A/RES/63/118 which, like earlier resolutions, encourages States to consider the elaboration of legal instruments, regionally or sub-regionally, regulating questions of nationality. This resolution also invites Governments to take into account the draft articles originally submitted by the ILC. These various documents recognize the legitimate interests of the state and the individual and the importance of preventing statelessness. They urge States to enact nationality laws, to respect family unity, and to prohibit discrimination. They also seek to prohibit a predecessor state from withdrawing a person's nationality in certain instances. One of the challenges facing this body is to determine if the ILC's work, found in the annex of A/RES/55/153, could contribute to the elaboration of another instrument in the future.

The continued existence of statelessness and/or the risk of becoming stateless clearly demonstrates that work on mitigating the effects of the succession of states on the nationalization of natural and legal persons is still needed. Although there have been numerous attempts to ensure that every person has an opportunity to obtain a nationality, there has never been an effective, comprehensive convention or other legal document drafted.

The development of human rights laws has imposed new restrictions on the discretionary power of states with respect to nationality. While nationality is essentially governed by domestic law, certain restrictions on the freedom of action of states derive from international law, which therefore has a role to play in this area. The human rights aspect of the topic is particularly highlighted in this respect.

The main function of international law concerning the protection of human rights, in the context of State succession, is to prevent either the detrimental effects of the unjustified withdrawal by the predecessor State of its nationality from certain categories of persons or the unjustified refusal of the successor State to grant its nationality to certain individuals. In contrast, the function of the principle of effective nationality is to control the abusive exercise of the discretionary power of the State to grant its nationality by depriving such nationality of its effects vis-à-vis third-party States.

This body should consider whether the topic should be addressed by general statements of principles and guidelines for future cases of State succession or by legally binding instruments. Article I of the 1930 Convention on Certain Questions relating to the Conflict of Nationality Laws recognized that "It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States insofar as it is consistent with international conventions, international custom, and the principles of law recognized with regard to nationality." The principle that nationality is determined by internal state law is broadly accepted (A/CN.4/467). Thus, a primary issue is to determine the extent to which international norms can or should constrain this traditional state power. Would a general statement of principles achieve the proper balance, or does the rise of human rights as an international norm justify the codification of legal obligations?

Questions to consider from your government's perspective include the following:

- What, if anything, may be done to provide a framework to guide future determinations of nationality in situations of State succession?
- How might any instrument balance the human right to a nationality, the effects of statelessness, the respect for a person's choice of nationality with the inherent right of each State to determine who its citizens are?
- How can disputes where no states are willing to accept stateless persons be resolved?
- If this body should take further action, what form of action should be taken? Specifically, to what extent should the principles and rules to be drafted constitute binding international law?

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A/CN.4/L.507
A/CN.4/497
A/CN.4/493
A/CN.4/474
A/CN.4/467
A/C.6/63/SR.11
A/C.6/63/L.14
A/C.6/59/SR.15
Statute of the International Law Commission, Adopted by the General Assembly in resolution 174 (II) of 21 November 1947, as amended by resolutions 485 (V) of 12 December 1950, 984 (X) of 3 December 1955, 985 (X) of 3 December 1955 and 36/39 of 18 November 1981.

Additional Web Resources

www.un.org/law/ilc/ - International Law Commission
http://unhcr.org – UN High Commissioner for Refugees

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Reform of the United Nations has been on the agenda almost since the organization's founding in 1945. Created at the height of American power at the dawn of the Cold War, the UN system essentially reflects the balance of power in 1948. The victorious Allies of World War II saw themselves as the only states powerful enough to enforce the global peace and usher in the "end of war" envisioned in the Charter. These circumstances were used to justify the Security Council veto granted to the Permanent Five (P5), their initial monopoly of power in bodies like the Commission on Human Rights and ECOSOC, and the requirement for P5 consensus on changes to the UN Charter. The dynamic established in the 1940s rapidly changed following the explosion in UN membership in the 1960s and 1970s. New African Member States and the rising Non-Aligned Movement sought to change the balance of power and limit the hegemonic power of the P5. The Security Council and ECOSOC were expanded in 1965 (and ECOSOC again in 1973), but since then, change has been limited and sporadic.

Yet the movement for UN reform advanced in other ways. In 1974, the General Assembly established an Ad Hoc Committee on the Charter of the United Nations to review and consider recommendations in regards to making the UN a more effective institution in meeting its goals. In 1975, the General Assembly restructured the Ad Hoc Committee into the Special Committee on the Charter of the United Nations on the Strengthening of the Role of the Organization. The Special Committee considers proposals dealing with the maintenance of international peace and security, the expansion of cooperation between Member States, and the promotion of the rules of international law. Additionally, the Special Committee examines ways of improving the working methods of UN bodies and suggests broader reforms that would not require amending the UN Charter. While the Committee has no permanent mandate, the GA has requested it to reconvene every year since its founding.

Numerous concepts considered part of the modern UN originated in the Special Committee, including the concept of open informal negotiations on resolutions; the goal of consensus on resolutions; and the wide-spread use of fact-finding missions. Some of its past tasks from the Sixth Committee include streamlining the General Assembly negotiation process, setting guidelines for peaceful settlement of disputes, and making suggestions on how to strengthen the GA's role in peace and security matters.

Other initiatives by the Committee have not been so successful. Sanctions reform has largely languished, and efforts to shape the role of the General Assembly vis-à-vis the Security Council on issues of international peace and security have stalled. While some members of the Non-Aligned Movement continue to advance a more robust role for the General Assembly on peace and security issues in the Special Committee, they have not succeeded in convincing the majority to specify what expanded role is appropriate for the GA.

The Special Committee convened for its annual session from 1-9 March 2010. As instructed by the GA, the Committee continued to consider proposals regarding the maintenance of international peace and security in all its aspects. The Committee also reviewed the provisions of the Charter of the United Nations dealing with the provision of assistance to third-party States (those States not targeted, yet negatively affected by Chapter VII international sanctions). Other items of discussion included the promotion of peaceful settlements of dispute between States, the consideration of proposals to improve the efficiency of the Committee's working methods, and the consideration of proposals passed on from the General Assembly.

In regard to the relationship between the GA and the Security Council on matters of peace and international security, the Special Committee is now considering a proposal by Cuba. It asks the Secretariat to expand the General Assembly's defined jurisdiction in urgent matters of peace and international security. This concept is opposed by permanent members of the Security Council and supported by many members of the Non-Aligned Movement. While its ramifications are unclear, a stronger General Assembly role could provide a stopgap mechanism in the case of inaction by the Security Council. It could, however, also lead to contradictory signals from the UN, weakening the entire UN system's response. The Special Committee has also taken up the discussion of States' unilateral use of force under the broad definition of self-defense. Another paper, submitted by Belarus and the Russian Federation, seeks to clarify the legitimacy of the use of force without Security Council authorization. At the heart of the debate is the U.S. invasion of Iraq in 2003, which lacked Security Council authorization. Currently, the draft paper seeks an International Court of Justice (ICJ) advisory opinion, though it would not be legally binding.

In 2009, the Committee also produced a document laying out principles governing the use of sanctions. Despite malaise expressed by permanent members of the Security Council, the Special Committee will continue its work on the effects of sanctions on third-party states during its 2010 session. While it was widely agreed that sanctions were an important tool of the international system, there was also concern that sanctions could have negative consequences for civilian populations or for third-party States unrelated to the intended target. A working paper from the Russian Federation recommended that future sanctions should have a greater level of transparency to show the specific implications and effects of sanctions. It was suggested that appropriate bodies craft sanctions to include timetables, benchmarks, and other mechanisms aimed at improving the targeting and calibration of sanctions to ensure effectiveness and avoid unintended harm to third parties. Several States support requesting a ruling from the ICJ on the legal consequences of the imposition of sanctions, the imposition of unilateral sanctions in violation of international law, and the responsibility of the UN and the Security Council with regard to unlawful sanctions and harmful consequences upon third-party States and their civilian populations.

With the Secretary General's recent attention on issues arising from the imposition of sanctions and in light of several States' unilateral use of force in the past decade, the Special Committee will continue to place a great deal of importance on these issues. Because of the nature of the Committee, delegations should prepare substantive draft proposals on the reform of the United Nations as if it were emerging from the Special Committee deliberations. Proposals should focus around one of the issues that the Special Committee is currently addressing.

Questions to consider from your government's perspective include the following:

- In what ways should the General Assembly take action on issues of peace and security (for example, mediation and dispute-resolution, fact-finding concerning human rights violations, or some other actions)? If the Security Council has discussed an issue but not produced a resolution or statement, does this burden fall to the General Assembly?
- What exceptions exist to the need for Security Council authorization for use of armed force, outside of self-defense? What role should the International Court of Justice play in the promotion of international peace and security? Were armed interventions in Iraq and in the former Yugoslavia illegal?
- What new mechanisms could be suggested to the General Assembly and the Security Council to promote the effectiveness of international sanctions while mitigating negative and unintended consequences for untargeted populations?
- What steps toward these ends can the General Assembly enact without amendments to the UN Charter itself?

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A/64/225
A/64/125
A/63/33 and preceding
A/59/2005
A/AC.182/2000/INF/2
GA/L/3152
GA/L/3137
Charter of the United Nations

Additional Web Resources

www.globalpolicy.org/un-reform.html - Global Policy Forum, UN Reform

www.un.org/law/chartercomm/ - Special Committee on the Charter of the United Nations and on the Strengthening the Role of the Organization

www.un.org/law/repertory/ - Repertory of Practice of United Nations Organs

www.un.org/Depts/dpa/repertoire/ - Repertoire Of The Practice Of The Security Council

www.un.org/reform/ - Reform at the United Nations

www.un.org/depts/dhl/reform.htm - Bibliography of published monographs (through 1996) on UN reform