



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 24.

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 appropriate 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>

CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES

Diplomacy is the activity of preventing and solving conflicts by representatives of two or more states with expectations toward peaceful agreements; it is the preferred mechanism through which governments and international bodies communicate and conduct business. Thus, keeping diplomatic channels between countries clear and secure is of utmost importance, which requires guaranteeing the security, protection, and safety of diplomats, consular representatives and related facilities. There are several conventions in place to ensure the protection of such sites and personnel; however, these protections are not always realized on the ground due to some practical difficulties of defending them and because embassies and consular missions are targeted because of their symbolic weight.

Based on mutual consent between the sending state and hosting state, diplomatic missions and their staffs are granted immunities from the hosting state's laws and taxes. Hosting states are also charged with the responsibility to protect these sites; however, the protection and safety of diplomatic missions has not always been assured. Throughout the 1960s and 1970s, international organizations and groups of states worked to codify international law on the issue. The Vienna Conventions of 1961 and 1963 established a baseline for diplomatic relations and legal protections for those who were responsible for executing their government's interests. These established that such persons were immune from search, requisitions, and legal attachment or execution by the host state and that the host state had the duty to protect diplomatic missions' personnel, premises, and materials. When, during the Cold War, attacks on diplomatic officials and embassies and consular buildings increased, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, established a juridical protocol for handling violations of the principles of diplomatic protection. The 1973 Convention asked that host countries cooperate fully in the apprehension of criminal elements involved in hostilities

against diplomatic persons, and in the acquisition of evidence to that end.

In 1980, the General Assembly passed resolution 35/168 which sought to ameliorate these incidents and create a new agreement between states that would uphold the integrity of diplomatic immunity. In 1987, A/RES/42/154 added that all states report to the Secretary-General and make use of that office for peaceful settlement of any disputes that may arise. In addition, resolution 49/49, proposed in 1994, sought to further protection for diplomats and expanded it substantially, so as to protect more individuals in varying degrees of diplomatic service.

Though many steps have been taken to create a legal framework that allowed diplomats to work with impunity, there were complaints that diplomatic immunity was being abused, especially in the case of physical altercations and higher-level crimes. The conventional immunity guaranteed for diplomatic representatives—especially the exceptions written into the 1961 Convention and how to apply them—are still the subject of some debate. Additionally, per the 1987 resolution, reporting such incidents to the Secretary-General has been seen as a way to further cooperation between states and bring offenders to justice.

Recent resolutions have also emphasized the importance of diplomats and consular officials respecting the laws of host nations and working to ensure that diplomatic missions maintain the highest standards of integrity by ensuring all work carried out under the provisions of diplomatic protection are compatible with international law and customs.

The more important issues, however, in current discussions revolve around the ongoing crises in the Middle East and Africa and around the question of non-state actors and protections during civil wars. These crises have vaulted this particular agenda item back onto the Sixth Committee's agenda after a period of relative quiet. In both cases, successful protection of diplomatic missions is likely to require extensive information and intelligence sharing between countries as the international community works to prevent terrorist attacks and the targeting of foreign embassies as a way to undermine

governmental legitimacy and efficacy. Though agreeable in principle, information and intelligence sharing is often difficult in practice.

The General Assembly might consider measures and mechanisms to improve such cooperation and information sharing. The UN has also encouraged states to engage in close cooperation on practical measures to increase the security and safety of diplomatic and consular missions. What, exactly, these practical measures might entail could be a subject for discussion.

Finally, an important point for discussion will be how the international community could enhance the protection of diplomatic missions and international organizations in fragile or failed states, where resources and priorities are limited and already stretched. Member States will need to discuss the appropriate international response when states are consistently unable to assure the protection of diplomatic missions, or when states appear to be targeting (or supporting attacks on) foreign missions in other countries.

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

- How are the protection, safety and security of diplomatic personnel assured when non-state actors are involved?
- What assurances can be given by the state against hostilities from non-state actors? Can non-state actors be held accountable for diplomatic violations?
- How can the protection, safety and security of diplomatic personnel be assured and structured in the event of civil war?
- What recourse might states have if a host nation is unwilling or unable to provide appropriate protection for diplomatic and consular missions?

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UN Documents

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- A/59/507
- A/61/452

- A/63/121
- A/65/471
- A/65/792
- A/RES/49/49
- A/RES/53/97
- A/RES/55/149
- A/RES/61/31
- A/RES/63/126
- A/RES/65/30

Vienna Convention on Diplomatic Relations 1961

Vienna Convention on Consular Relations 1963

1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents

Additional Web Resources

www.un.org/en/ga/sixth/65/DiploProtect.shtml – GA 6th Committee – Diplomatic Protection

www.un.org/en/ga/sixth/65/ProtSecSaf.shtml – GA 6th Committee – Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives.

INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW

In order to address compensation when states or other actors are injured through the hazardous activities of another actor across an international border, the UN General Assembly adopted resolution 51/160. Hazardous activities are defined as any activity that involves a risk of causing significant harm. The goal has been to hold states accountable for their activities and to set up avenues for compensation of victims of these hazardous activities.

Due to the challenging nature and complexity of the issue, the topic has been divided into two sub-topics: prevention of transboundary damage from hazardous activities, and international liability in case of loss from transboundary harm arising out of hazardous activities. In working on this issue, the UN General Assembly Sixth Committee has worked closely with the International Law Commission.

In 2001, the Commission drafted the basis for a future Convention to address this issue. It recommended that the GA take up this basis and expand upon it. The Commission continued to work on this issue, addressing the two subtopics in subsequent sessions. It drafted very specific recommendations, which the Sixth Committee noted with appreciation in its sixty-second session and asked Member States to consider as a starting point for future action. It also invited Member States' continuing comments. The GA similarly recommended Nations' attention and welcomed comments, but was careful to point out that doing so would not prejudice any future action around this topic.

The Sixth Committee addressed this topic again in its sixty-fifth session. It acknowledged the work of the Commission and recognized that the principles drafted by the Commission were already being used by States and judicial bodies as authoritative guidance in these issues. The Committee also noted that some Member States had already taken to making bilateral agreements outside the UN process.

While some Member States focused on the substance of the previously drafted convention, most were more concerned with the form of the draft articles and draft resolutions. States disagreed on whether there was a need for a Convention, or whether the instructive, but not binding, principles and articles were all the action needed. States were divided on the best course forward: some called for a wait-and-see approach, while others called for going ahead with the Convention-drafting process, and still others somewhere in between. Ultimately, the Committee passed a resolution without a vote that invited further comments on the topic, especially relating to any practical application of the Commission's draft articles and principles. It also requested the Secretary-General to report on decisions of international judicial bodies that made use of the articles and principles.

In the future, Member States need to decide what the appropriate role for the principles and articles drafted by the Commission should be. A Convention would allow countries to have another opportunity for input into the accountability of these actors. The Convention drafting process can be long and drawn out, which is something countries opposed to this type of regulation may consider a positive. Drawing the process out allows countries to continue to be at the bargaining table without being bound by the Convention that may result. Conversely, a Convention may allow nations to codify tenets that are already gaining wide acceptance in the international community. Codification would allow uniform interpretation and for clear recourse if violations occur. Additionally, the body may want to examine industry-specific agreements or guidelines rather than a general convention. Focusing on a particular industry may make it easier to achieve an agreement among Member States, and may allow stronger enforcement language than if the Convention focuses on hazardous activities generally.

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

- If a Convention is not drafted, how can Member States hold actors outside their borders accountable for damage incurred within their territory? Is this sufficient?
- Member States have started to make agreements amongst themselves regarding this topic. Is this an area that is better handled through bilateral agreements or a broader treaty?
- What should the role be of drafted but not passed Principles/Conventions in international law? Should these be seen as binding and instructive by courts?

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A/RES/62/68
A/RES/65/28
A/C.6/65/SR.17

Additional Web Resources

- untreaty.un.org/ilc/summaries/9.htm - International Liability for Injurious Consequences arising out of Acts not Prohibited by International
- www.un.org/en/ga/sixth/65/TransboundHarm.shtml - Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm (Agenda item 81)