



THE GENERAL ASSEMBLY SIXTH COMMITTEE

LEGAL

PURVIEW OF THE GENERAL ASSEMBLY SIXTH COMMITTEE

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 United Nations's General Assembly as a whole, see page 24.

Please note: When considering the reports of sub-committees that may change the United Nations 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 United Nations 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>

THE RULE OF LAW AT THE INTERNATIONAL AND NATIONAL LEVELS

The rule of law refers to a set of legal concepts that the international community has accepted as key to both the fair administration of justice within a sovereign country and the fair administration of justice between sovereign countries. The notion of the rule of law long predates the establishment of the United Nations and, in its earliest iterations (dating as far back as 1760 BC in the form of laws promulgated by the King of Babylon), it simply meant the codification and presentation of law to the public. The concept has evolved, over time and across the globe, to encompass the principles of supremacy of law, accountability of government to the wishes of the public and the importance of an independent judiciary.

At the United Nations, rule of law at the international level addresses elements relevant to the ways in which Member States relate to and interact with each other, including the right to self-determination of all peoples and sovereign equality before the law, respect for and fulfillment of international obligations in good faith, non-use or threat of use of force, and peaceful dispute resolution between States. At the national level, rule of law as defined by the United Nations takes the form of a Constitutional system as the supreme law of the land supported by a clear and consistent legal framework and strong institutions of justice, governance, security, and human rights that are well structured, financed, trained and equipped, as well as contributions from public and civil society that strengthen the legitimacy of those institutions and hold them and public officials accountable.

Some Member States may not view the implementation of rule of law principles to be in their best interest because the rule of law could detract from their own power and ability to control government resources—or they may have publicly supported the rule of law but not executed any actual improvements within their own borders. However, individual Member States have much to gain from better implementation of rule-of-law principles, especially in transitional periods. During times in which the government of a Member State is in flux, such as during the recent transitions of the Arab Spring, there is a window of opportunity for the incoming government to better implement the rule of law. The United Nations can assist in this regard by providing experts and resources to assist with nation-building. Additionally, when national governments fail due to various crises such as natural disasters and wars, international rule of law principles and resources can help to fill the gap until a functioning government can be reinstated.

Although the concept is not expressly mentioned in the Charter of the United Nations, maintaining and promoting rule of law is inextricably linked to its primary purposes. The principles of rule of law also pervade the Charter. It charges the United Nations with promoting respect for international legal obligations by providing mechanisms for the codification and wide-spread acceptance of international law in the form of treaties and agreements initiated by the General Assembly. The Charter established the International Court of Justice, which is responsible for independent adjudication of disputes between States at the international level. Finally, it establishes the right of self-determination and equality before the international legal order for all States and peoples, regardless of size and strength.

The Universal Declaration of Human Rights states that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.” It has only been in the past two decades that the issue has gotten regular and specific attention at the United Nations. In 1993, the Vienna World Conference recommended that the United Nations establish a comprehensive program to help States build up infrastructure to help maintain adequate rule of law. Since that time, the United Nations has undertaken a number of initiatives and activities to promote and maintain rule of law at the international level and to assist States with establishing it at the national level.

The Millennium Declaration in 2000 declared that rule of law is critical to the accomplishment of the Millennium Development Goals. In 2004, Secretary-General Kofi Annan issued a report on the rule of law and transitional justice in conflict and post-conflict societies that set forth a comprehensive definition of the rule of law. The report defined the rule of law as a principle of governance encompassing equality before the law, independence of the judiciary, consistency with international human rights law, and separation of powers. The Security Council, which has adopted a number of resolutions on the importance of the rule of law, regularly uses the definition from the Secretary-General's report as a guide to focus on the scope of the topic and it has widely been accepted as the official United Nations definition of the concept.

Current efforts at the United Nations are focused on strengthening and coordinating United Nations rule of law activities, particularly regarding the interrelationship between rule of law and areas such as peace and security, development and the protection and promotion of human rights.



The 2005 World Summit outcome and a number of reports from the Secretary-General contributed to a renewed interest in rule of law by the General Assembly in 2006. This interest led to the establishment in 2007 of the Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General and supported by the Rule of Law Unit, which coordinates United Nations efforts to support and promote the rule of law at international and national levels.

During the High-Level Meeting on the Rule of the Law held by the General Assembly on 24 September 2012, the General Assembly adopted the Declaration on the Rule of Law at the National and International Levels. It stresses the interrelationship between the rule of law and the three pillars of the United Nations: peace and security, development, and human rights. Follow-up and implementation remain concerns.

In June 2013, the Secretary-General issued a report titled “Measuring the Effectiveness of the Support Provided by the United Nations System for the Promotion of the Rule of Law in Conflict and Post-Conflict Situations,” which heavily discusses the High Level Meeting on the issue of the rule of law, and also looks into ways in which the effectiveness of the rule of law is being carried out by the United Nations. The Report indicated that special attention with respect to this particular aspect of the rule of law is needed in the Middle East and sub-Saharan Africa. Additionally, the Secretariat has launched reforms to the system of peacekeeping operations to aid in the maintenance of the rule of law. The reforms aim to create a global focal point for the police, justice and corrections fields to aid in the maintenance of the rule of law in conflict and post-conflict zones.

Looking ahead, there are several issues that the United Nations should consider addressing, including capacity-building, asset recovery, peace-building, conflict prevention and the logistical and policy concerns surrounding the management of crisis and conflict situations and the aftermath of those situations. At the national level, technical capacity and political reforms will be key in creating effective strategies between Member States while focusing on justice, peace and democracy. Many Member States have also expressed a desire to ratify and implement effective international instruments pertaining to the rule of law at the national level.

Questions to consider from your government’s perspective on this issue include the following:

- How can States work with associations and civil society organizations to improve the rule of law through international and national cooperation?
- What policy barriers remain to the development of robust national and international rule of law?
- How must the rule of law adapt to accommodate regional cultures and traditions while maintaining core principles, such as equality, before the law?

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CRIMINAL ACCOUNTABILITY OF UNITED NATIONS OFFICIALS AND EXPERTS ON MISSION

Under international law, wrongdoers should be held accountable for their crimes, subject to due process of law. Unfortunately, this has not always been the case for United Nations officials and experts on mission. Accountability of United Nations officials has been a problem for years. In the early 1990s, peacekeepers in the Balkans and Southeast Asia were accused of numerous illegal activities, including the operation of prostitution rings. The issue has returned to the spotlight because of recent allegations of misconduct by United Nations peacekeepers and other officials. Allegations include criminal sexual abuse and exploitation committed by United Nations officials in developing countries, specifically in Mali, Haiti, Sierra Leone, Guinea and Liberia.

While the work of United Nations officials and experts on mission is undoubtedly important, the General Assembly has recognized the extremely detrimental and negative effects that the criminal acts of these officials can have on the image, credibility, impartiality and integrity of the United Nations as a whole. This is particularly true for serious crimes such as sexual exploitation and abuse. These allegations ultimately damage the United Nations’ ability to operate as a neutral, objective and credible actor, particularly in conflict zones. Moreover, they represent an affront to the ideals of human dignity that form the core of the United Nations’ mandate.

While issues of criminal accountability affect both civilian personnel and peacekeepers, allegations of misconduct arise mostly from United Nations Peacekeeping missions. The lack of an internal United Nations system for individual criminal accountability and justice, combined with the fact that Peacekeepers are typically not citizens of the Member States in which their missions are located, often causes the criminal acts of these officials to fall into a jurisdictional gap. The Member State in which the



crime occurred and the Member State of which the offending official is a citizen may both claim rights to prosecute, and each may have valid concerns about the other's ability and willingness to prosecute. For example, the Member State where the crime occurred may not have a functioning criminal justice system, while the Member State of citizenship may choose not to prosecute or may be seen as too lenient on the accused.

One of the first United Nations discussions on this issue occurred in 1996, when the study *Impact of Armed Conflict on Children* revealed that the arrival of peacekeepers was correlated with a significant increase in child prostitution in six countries under examination. In 2000, the United Nations released the Report of the Panel on United Nations Peace Operations, commonly known as the Brahimi Report. The Brahimi Report took on the issue seriously and made a number of recommendations to isolate flaws and increase accountability for peacekeeping personnel. The Secretariat accepted the recommendations, but full implementation remains a challenge.

In 2005, the Secretary-General's Special Advisor, Prince Zeid Ra'ad Zeid al-Husseini, published a report entitled "A comprehensive strategy to eliminate future exploitation and abuse in United Nations peacekeeping operations." In response, the Secretary-General released new rules and regulations for peacekeeping missions. These codes of conduct are outlined in two publications: *Ten Rules: Code of Personal Conduct for Blue Helmets (Ten Rules)* and *We Are United Nations Peacekeepers*. These publications sought to deal with an additional issue identified over the course of a decade: the inconsistent training provided to peacekeepers, in particular. Unlike civilian employees of the Secretariat, peacekeepers are employed by their home government—and those governments are responsible for both paying and initially training peacekeepers from their home country. Insufficient training in their obligations and responsibilities is a major issue for peacekeepers.

In 2005, the General Assembly also moved quickly to create the Ad Hoc Committee on the Criminal Accountability of United Nations Officials and Experts on Mission. Additionally, the Sixth Committee convened a group of legal experts in 2005 to examine how best to consider this issue in light of the original principles contained in the United Nations Charter. The group has since expressed support for strict adherence to the zero-tolerance policy in order to close jurisdictional gaps. This is a complicated issue due to the many varying ways in which Member States extend their domestic laws internationally or to nationals acting on foreign soil.

This debate continues today, and Member States will need to consider what additional steps can be taken in this regard. Striking the proper balance on criminal accountability has been difficult for the United Nations. While it is important to close jurisdictional gaps and hold perpetrators of crimes accountable, this interest must also be balanced against ensuring due process of law for the accused. Processes that strip the accused of due process rights are also inconsistent with the spirit of the United Nations. The Sixth Committee does need to examine where jurisdictional gaps exist and how Member States and the Secretariat can work together to ensure accountability. Closing jurisdictional gaps for peacekeepers is especially important, given the volume of allegations arising from peacekeeping operations. Finally, the Sixth Committee might consider how adequate training of United Nations personnel might complement the existing rules and enforcement mechanisms. Both civilian personnel and peacekeepers may not have a sufficient understanding of their legal obligations while on missions, especially given differing legal environments and cultural norms between countries.

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

- How can the United Nations reduce misconduct through training, rule-setting and enforcement?
- What is the right balance between holding perpetrators accountable and ensuring that adequate due process is provided for the accused?
- Where do jurisdictional holes exist that allow allegations to go uninvestigated or unprosecuted?

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