Study Guide for
General Assembly
Protection, Safety and Security of Diplomatic Missions and Representatives with special emphasis on Conflict Areas

![Image of Indian policemen watching security and forensic officials examine a car belonging to the Israel Embassy after an explosion in New Delhi. (MUSTAFA QURAISHI/AP)](image)

**Sixth Committee (Legal) – Background**

The Legal Committee was created in 1947 as the primary committee of the General Assembly to discuss legal matters. The Sixth Committee acts as a forum for discussion of issues concerning international law and creation of resolutions for those issues. Its role largely consists of developing and progressing international law, along with protecting basic human rights and freedoms. One of the roles of this committee, as defined by Article 13 of the United Nations charter, is to “initiate studies and make recommendations for the purpose of: (...) encouraging the progressive development of international law and its codification.” It also deals with drafting international conventions, in combination with the International Law Commission.

As in all the major committees in the General Assembly, all UN member states are allowed to participate in the Legal Committee. Voting in the Committee follows the principle of “one state, one vote”. The delegates strive to cooperate to achieve international peace and safety through making legal recommendations. Specific issues that are considered to be more
important, such as those related to peace and security, require a two-thirds majority, while others require only a simple majority. The Committee meets annually in parallel with the General Assembly’s session. The General Assembly presents the Committee at the beginning of sessions with a list of agenda topics for discussion. Once the topics have been formally negotiated, adopted resolutions are submitted to the Plenary of the General Assembly for its final adoption. If an issue is considered to be of particularly great complexity, it may be submitted to the International Law Commission or a special subsidiary body for further discussion.

Consensus is preferred over a formal vote in the Sixth Committee, which follows a “mixed decision-making rule”. Most resolutions are adopted by acclamation, unanimity, or consensus. Apart from matters internal to the General Assembly, such as United Nations elections, committees are only empowered to make recommendations to Member States but the Legal Committee has nevertheless made ground breaking contributions to the development of international law. The Legal Committee has also passed several landmark resolutions, including the Legal Principles governing Friendly Relations and Co-operation among states. The Committee has tackled issues from human cloning to international terrorism to the protection of victims of war.

The Legal Committee’s agenda has historically been shorter and more streamlined relative to other committees, which kept it focused but still allowed for the committee to cover a wide array of topics. This agenda has seen a steady rise in the amount of issues as a result of increasing problems that must be addressed through cooperation among different states. Recent issues that have sparked a lot of debate are measures to redouble efforts and combat violence against diplomats and also the criminal accountability of United Nations officials and experts on a mission.

Overview

The rules of international law governing diplomatic relations have been the product of a long-established state practice evidenced not only by the practice per se but also by the legislative provisions and judicial decision of domestic or national law. The law has now been codified to a considerable extent in the Vienna Convention on Diplomatic Relations. However, diplomatic relations between states are established by mutual consent.

Article 2 of the Convention states aptly:

_The establishment of diplomatic relations between states and of permanent diplomatic missions, takes place by mutual consent._

In essence, no state can be forced into establishing diplomatic relations with another state.

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Having agreed to the establishment of diplomatic mission, the receiving state must take the necessary steps to accord the agent of the sending state with the necessary facilities to enable him to discharge his functions efficiently and effectively. Put differently, the principle of extending diplomatic privileges and immunities to diplomatic agents is “to ensure the efficient performance of the functions of diplomatic missions” which consist inter alia in:

(a) Representing the sending State in the receiving State;

(b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;

(c) Negotiating with the Government of the receiving State;

(d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;

(e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.\(^3\)

Thus, there is a stronger reason for according diplomatic immunities: they are needed for the efficient performance of the functions of a diplomatic mission and also because diplomatic agents are the personal representatives of foreign sovereigns. Indeed, the practice of according immunities to diplomatic agents which dates back to ancient times, has developed through treaties and customs, and has been followed by all members of the international community. To date, the Vienna Conventions on Diplomatic Relations (1961) and Consular Relations (1963)\(^4\) are annuncitory of existing rules and practices on diplomatic immunities which are reciprocally given by all states without any discrimination.

By far, the most significant of immunities and privileges accorded under the Vienna Convention on Diplomatic Relations relate to the *inviolability of diplomatic premises and diplomatic bags*. Article 22 of the Convention states:

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

\(^3\) Article 3 of the Vienna Convention on Diplomatic Relations

\(^4\) Signed at Vienna on 24th April 1963.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 25 and 26 of the Convention provide that the receiving state “shall accord full facilities for the performance of the functions of the mission,” and that subject to legal restrictions established for reasons of national security, the receiving state “shall ensure to all members of the mission freedom of movement and travel in its territory.” The convention also establishes the inviolability of archives, papers, documents, and official correspondence of the mission. It also provides simply that “the diplomatic bag shall not be opened or detained.” Paragraphs 2, 3 and 4 of Article 27 declare:

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

Since the Vienna Convention on Diplomatic Relations establishes the inviolability of premises of diplomatic mission as well as the inviolability of the archives, papers, documents and official correspondence of a diplomatic mission, it is obvious that a violation of any fraction of these immunities and privileges constitutes a serious breach, and indeed, a violation of international law.

The Committee’s say

At its sixty-seventh session, the General Assembly’s sixth committee, convened on 24th October, 2012, condemned surge of attacks on diplomatic missions, saying host states must fulfill protection obligations and deal with the violations in the sternest manner possible. The need for it was especially reiterated by United States representative recalling that on 11 September 2012, his country’s Ambassador to Libya, Christopher Stevens, was killed during an attack on the American mission in Benghazi. American missions in Egypt, Yemen, Tunisia, Pakistan and Sudan, as well as the missions of many other States, had also been assaulted recently and that it was crucial that States redouble their efforts to combat and prevent such violence.
Libyan men protest against Islamic militias in Benghazi, Libya, in September. The attack that killed U.S. Ambassador Christopher Stevens and three other Americans has sparked a backlash among frustrated Libyans against the heavily armed gunmen who run rampant in their cities. (AP/Mohammad Hannon)

Bahrain’s representative, on the other hand, echoed an interesting take on the security collaboration between the UN and the host country on contingency planning, information exchange, and risk assessment, especially pointing out that the burden on host countries to protect such officials was not theirs alone and that diplomatic and consular personnel must also follow the laws and security measures of host States. This was, of course, in direct contradiction with the views asserted by Secretary General Ban Ki-moon, particularly in reference to his annual report to the General Assembly on the protection of UN staff and the security of humanitarian personnel, where he noted that “primary responsibility for the security and protection of the United Nations and associated personnel rests with the host governments”, commending those governments and national and local authorities and officials “who continue to observe the internationally agreed principles on the protection of humanitarian and United Nations personnel”.

A sign of consensus in the international community was highlighted by Saudi Arabia’s representative, asserting that attacks on diplomatic and consular missions and security personnel were a clear and gross violation of International law and a strong reference to the General Assembly resolution 66/12\(^6\), which had resulted from the kidnapping of a Saudi diplomat in Yemen and the assassination of a Saudi diplomat in Karachi, was made in the committee. Also, a strong urge to include the *United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law*\(^7\) in the regular budget was stressed upon by many countries alike.

In condemning acts of violence against diplomatic and consular missions and representatives, the General Assembly had adopted a resolution in 2010\(^8\) and in 2011, it also came together to deplore the plot to assassinate the Ambassador of Saudi Arabia to the United States.

Thus, the committee, in action, has shown a personal stake in diplomatic protection, as diplomacy is one of the founding pillars of international relations.

**International Instruments**

- **Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents – 1973**

  The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (also referred to as the “Protection of Diplomats Convention”) was adopted by the United Nations General Assembly on 14 December 1973. It is one of a series of “sectoral” anti-terrorism conventions negotiated within the United Nations and its specialized agencies. It built on the great codification conventions in the field of privileges and immunities, including the Vienna Conventions on Diplomatic and Consular Relations.

  A particular difficulty (as with other anti-terrorism conventions, not least the still to be concluded general convention) arose over the question of national liberation movements. The solution eventually found was to include a paragraph in the resolution adopting the Convention (resolution 3166 (XXVIII)), in which the General Assembly considered that its provisions “could not in any way prejudice the exercise of the legitimate right to self-determination and independence, in accordance with the purposes and principles of the Charter of the United Nations

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and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, by peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination and apartheid”

This was acceptable because it could be read as not purporting to make any exception to the crimes covered by the Convention or to qualify in any way the obligations assumed by States parties to the Convention. Unusually the Assembly decided that the resolution should be published together with the Convention.9


The objective of the Convention on the Safety of United Nations and Associated Personnel (the Convention) is to ensure the safety and security of United Nations and associated personnel by requiring Parties to take all necessary measures to protect United Nations and associated personnel to establish criminal offences punishable by appropriate penalties, and to cooperate in the prevention of such crimes and in providing assistance to one another in connection with criminal proceedings.10

As early as 1948, with the killing of United Nations peacekeepers in Palestine, culminating in the assassination of Count Bernadotte, the Palestine Mediator, and his assistant, Colonel Serot, in Jerusalem, it became clear that the United Nations was not always welcomed by all the parties involved in a conflict.11

However, for the next 45 years, the threat to United Nations personnel was not sufficiently serious to be considered an obstacle to the performance of the function of the Organization. It was accepted that United Nations personnel would be exposed to occasional threats. Minor and infrequent threats were viewed inherent in the environment in which the Organization operated. But as of 1992, the nature and the frequency of threats began to change. The threat to United Nations personnel was directed explicitly to voice disagreement with and opposition to the decisions of the Organization with regard to its Charter mandates. United Nations personnel were now targeted precisely because they worked for the Organization.

In addition, United Nations operations in impoverished areas of the world led to further resentment on the part of the local population who viewed United Nations personnel as representing a superior economic class. This generated animosity against United Nations personnel justifying, in the mind of the local population, attacking United Nations personnel and property.

By 1992, it became clear that the Organization should be taking some steps. In his *An Agenda for Peace*, the Secretary-General of the United Nations at the time, Boutros Boutros-Ghali, commented that an ineluctable consequence of the increased role of the Organization in preventive diplomacy, peacemaking and peacekeeping operations seemed to be an escalation to an intolerable level in risks to life and limb of United Nations and associated personnel. He admitted that there had been “an unconscionable increase in the number of fatalities” of United Nations personnel and indicated that “innovative measures will be required to deal with the dangers facing United Nations personnel” (para. 66). It was against this factual background and in response to concerns expressed by the Secretary-General that in 1993 New Zealand and Ukraine proposed the drafting of a convention for the protection of United Nations personnel leading to the adoption of the Convention on the Safety of United Nations and Associated Personnel on 9 December 1994 (General Assembly resolution 49/59).

The Convention imposes an obligation on a State hosting a United Nations operation to protect United Nations personnel and property. Considering that many United Nations operations are conducted in failed States or States where Governments usually do not have complete police power over their territory, clearly there can be no realistic expectations for such protection. There was no illusion that the effect of the Convention on preventing or reducing attacks against United Nations personnel would be at best minimal.

The purpose of the Convention is to prevent or at least reduce any impunity for those who attack United Nations personnel or property. As in the case of any other penal legal instrument, it was the hope of its negotiators that this Convention would have some indirect effect on reducing attacks against United Nations personnel and property. However, since the adoption and the entry into force of the Convention, attacks against United Nations personnel have continued and in some cases even escalated.
Deliberations

The ongoing altercations revolving around the continuing crises in the Middle East and Africa and around the protection, safety and security of diplomatic personnel with the involvement of non-state actors and protections during civil wars is forming a more significant part of the larger deliberations on this agenda item. Protection of diplomatic missions is likely to require intelligence and extensive information sharing between countries as the international fora works to prevent terrorist attacks and the targeting of foreign embassies as a way to undermine governmental command and legitimacy. Though mutually acceptable in principle, information and intelligence sharing is often difficult in practice.

The committee might wish to consider mechanisms and measures to improve such cooperation and information sharing. As aforementioned, the UN has encouraged states to engage in healthy co-operation on practical measures to enhance the safety and security of diplomatic and consular missions. What, exactly, these practical measures might entail could be a subject for further deliberation.

Finally, a crucial point for discussion could be the international community resolving to enhance the protection of diplomatic missions and representatives in fragile or failed states, unwilling or unable to provide appropriate protection for diplomatic and consular missions, where resources and priorities could often be stretched and limited.

Following links may be deemed necessary by the delegates for further reading on the agenda item:

- [http://www.mfa.gov.tr/data/Kutuphane/MultilateralConventions/ViennaConventiononDiplomaticRelations.pdf](http://www.mfa.gov.tr/data/Kutuphane/MultilateralConventions/ViennaConventiononDiplomaticRelations.pdf) (for reference to the optional protocols)
taking
peace
forward