

Forum: General Assembly 6 - Legal

Issue: Measures to enhance the protection and safety of diplomatic missions

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Introduction

This research report pertains to a critical issue the United Nations (UN) faces today in regards to their diplomatic missions. The UN currently has 273 active diplomatic missions around the world (United Nations) and a majority of them face serious issues. UN Personnel sometimes engage in undiplomatic behaviour or locals don't treat these foreign officers with dignity and respect. Asides from basic societal issues, sometimes matters can get so out of hand to the point where UN personnel have threats to their lives. The issue can be looked upon from two main angles: The abuse of diplomatic immunity granted to UN personnel and the unfortunate circumstances that arise due to various societal norms.

Being granted diplomatic immunity is a right obtained by many UN officials working in areas outside of their home country. However, recently it seems as if UN personnel are forgetting the fact that with this right comes great responsibility. The idea of diplomatic immunity came around to make the life of diplomats easier in foreign countries and to not have them be in constant quarrels with the governments of the areas they are in. Each government varies in terms of policies on what is acceptable or not, and diplomats are people who do not originate from the same land they are living in and are people who may or may not share the same set of moral values as the government of the country they are residing in. Thus, the idea of diplomatic immunity came about to waive certain laws and regulations for people not native to the country that has these set of rules. This may range from the consumption of alcohol in many Muslim countries where it is forbidden, or to the accidental murder or manslaughter of individuals by peacekeepers from different countries.

Diplomatic Immunity grants individuals an extreme benefit to their everyday lives but it was created with the intent to ease them with their work. One of the many reasons governments set laws and rules for their citizens to abide by, is to discourage people from non-civic behavior. This does not mean that society would collapse without the presence of a set document of rules, but proves to say that a governing body is essential for a society to function smoothly and effectively. So if individuals of a foreign nation are granted the privilege of being exempt from certain laws, they should be respectful and grateful

that they are treated a little bit differently from the average citizen of that nation, and in return not abuse the privilege granted to them.

However these days that does not seem to be the case. UN personnel are abusing their diplomatic immunity more often and no legal repercussions are occurring. If a UN ambassador is allowed to consume alcohol in a muslim country, but then drives to a destination and kills someone on the way, should they still be covered by diplomatic immunity? That is an issue that must be looked upon when arguing this resolution from the point of diplomatic immunity.

In addition to diplomatic immunity, we must look at the unfortunate circumstances that arise when foreign people in positions of authority are sent to work in places where they are not well received. In many developing countries there are not enough higher managerial jobs for local staff. This is because companies wish to develop the business and nation by bringing in individuals who are more experienced and can lead the firm in the right direction. Consequently, this creates hostility in the local workforce as when they see foreigners come to take their jobs they feel threatened.

Though the UN office cannot be filled with a local, just the fact of seeing a foreigner can be enough to trigger a malicious response from an individual. Sometimes UN personnel do not act in proper ways with local people which further distances them from each other. However, the name of the UN is being put under serious negative light from the actions of its employees. How can we be expected to maintain international peace and security, when people who are employed for the sole purpose of that, cannot maintain it themselves?

Definition of Key Terms

Diplomatic Missions

“A diplomatic mission involves a group of people from a state or an international inter-governmental organisation (such as the United Nations) present in another state to represent the sending state/organisation officially in the receiving state.”

United Nations Personnel

“People employed in the United Nations who are engaged in serving the UN by undertaking different tasks such as military service”.

Diplomatic Immunity

The privilege of exemption from certain laws and taxes granted to diplomats by the state in which they are working.

Criminal Misconduct

Criminal misconduct is wrongful, improper, or unlawful conduct motivated by premeditated or intentional purpose or by obstinate indifference to the consequences of one's acts. Criminal misconduct is punishable by death in some countries. The United Nations views this as a very serious crime and can choose to persecute cases like these in the ICJ.

Official Misconduct

Official misconduct, or malfeasance in office, is the commission of an unlawful act, done in an official capacity, which affects the performance of official duties. Malfeasance in office is often grounds for a for cause removal of an elected or appointed official by statute or recall election.

Criminal Activity

Criminal activity is an act harmful not only to some individual or individuals who the act may pertain to, but also to a community, society or the state ("a public wrong"). Such acts are forbidden and punishable by law.

Background Information

Diplomatic Immunity

Diplomatic Immunity is a privilege given to most UN officials to exclude them of legal consequences that may arise due to some actions that pertain to their job. However diplomatic immunity is still granted to people even when they are not working or are on their "off hours". Most cases of abuse of diplomatic immunity spur from UN officials when they are not on the job. Cases such as drunk driving and driving past traffic lights are found to be most common but serious cases such as vehicular manslaughter have occurred with the UN officials being the perpetrators. Cases like these grant UN personnel a "get out of jail free card" without having any legal implications whatsoever. Diplomatic Immunity was created to help diplomats with their risky work in foreign countries and to protect them for their work, not to have a select number of people be regarded as "untouchable" for the crimes they commit in foreign lands.

Unlawful Activity

Criminal Misconduct

Though it may not be frequent but criminal misconduct undertaken by UN personnel still exists in today's world. With numerous cases of UN peacekeepers and other official personnel mercilessly killing civilians and women and children, this issue needs to be deeply examined as well.

However, the Diplomatic Immunity granted to UN personnel also waives the official of having to deal with any criminal misconduct they may have committed while acting on behalf of the UN.

Official Misconduct

Official misconduct proves to be the least common out of both unlawful activities, but this misconduct comes under an “area of grey.” UN officials are strictly told to maintain peace and not interfere with local matters unless violence occurs, but sometimes they break these rules for the greater good. Sometimes they go against these policies set forth for the protection of people whom they are meant to be protecting. Thus essentially the question to ask here, is if official misconduct is even “misconduct” in some special cases.

Hostility in Foreign Lands

Sometimes the blame isn't entirely on UN personnel but falls on the local people of the foreign land in which UN officials work. Sometimes unfortunate situations arise where due to frustration and continuous oppression people of the local land start giving death threats to UN officials and start unlawfully interfering with their day to day lives. Even though the UN office cannot be filled with a local, just the fact of seeing a foreigner is enough to cause problems for the local workforce.

Major Countries and Organizations Involved

Mali

In 2016, the third year in a row, the greatest loss of life was recorded in Mali, where at least 23 personnel were killed in ambushes, by improvised explosive devices or when their vehicles hit landmines. In 2015, at least 25 personnel, including 11 peacekeepers and 14 civilians and associated personnel, were killed in Mali. In 2015, at least 51 United Nations and associated personnel were killed in the line of duty, the highest number ever recorded by the Standing Committee. Among those killed were 27 peacekeepers, including 2 police officers, and 24 civilians. In 2014, at least 61 United Nations personnel were killed: 33 peacekeepers, 16 civilians, 9 contractors and 3 consultants. In 2013, at least 58 were killed in deliberate attacks: 33 peacekeepers and 25 civilians and associated personnel. In 2012, at least 37 United Nations personnel — 20 civilians and 17 peacekeepers, 2 of them police officers — were killed. On the 31st of May Eric Flory, a civilian contractor from France, and two security guards from Mali working for MINUSMA, are killed when a camp in another area of the city is attacked by unknown assailants.

Papua New Guinea

On the 15th of February, Amer al-Kaissy, an Iraqi national who served as liaison officer for the United Nations Assistance Mission in Iraq (UNAMI) in Diyala, was verified murdered. Abducted in April 2015, in Diyala Governorate by unidentified persons, his body bore signs of execution by a single gunshot.

Sudan

On the 9th of March, Edward Mxolisi Mnyiphika, a South African UN Official with the African Union-United Nations Hybrid Operation in Darfur (UNAMID), was killed and another UN official was injured in an attack by an unknown armed group 40 kilometres south-west of Kutum, North Darfur, as the officials were travelling from Kutum to Djarido.

African Union

A continuing trend of unsafe diplomatic missions arises with those deployed from the African Union. For some reason, UN personnel from the African Union are most likely to be targeted, perhaps due to their race. Racial killings is another issue this resolution deals with and solutions to this need to be found immediately.

Timeline of Events

Date	Description of event
August 19, 2003	Sérgio Vieira de Mello, a Brazilian United Nations diplomat who worked for the UN, was killed in the Canal Hotel Bombing in Iraq along with 20 other members of his staff
March 10, 2010	North Korean Diplomat of the UN to Bangladesh was found guilty of carrying approximately \$1.4 million worth of illegal gold but told authorities in Dhaka that his diplomatic immunity protected him from having his bags searched.
October 6, 2010	Executive Director of the UN responds to diplomatic immunity abuse by saying when facing “crucial, global challenges [the UN] needs sustainable funding” (UN Third Committee)
February 5, 2016	Assistant Secretary General for Field Support, Anthony Banbury resigns from his position in lieu of recent events saying “I love the UN, but it’s failing”
May 18, 2016	Six Chadian UN Officials brutally mutilated in Mali
May 31, 2016	Shen Liangliang, a Chinese UN Official with MINUSMA is murdered
December 19, 2016	Moalosi Albert Mokhothu, a South African UN official with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) is killed in Butembo, North Kivu, during an exchange of fire with

suspected combatants of a Mayi Mayi armed group. Two other peacekeepers from South Africa are injured.

Relevant UN Treaties and Events

United Nations General Assembly Resolution A/69/210

“The present report has been prepared pursuant to paragraphs 16 and 17 of General Assembly resolution 68/105. Section II contains information received from Governments on the extent to which jurisdiction, in particular over crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission, is established under their national laws. Section III provides information on cooperation among States and with the United Nations in the exchange of information and the facilitation of investigations and prosecution of such individuals. Sections IV and V relate to information on the activities within the Secretariat.”

United Nations General Assembly Resolution A/65/112/

Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives was discussed.

United Nations General Assembly Resolution A/67/126/

“Under this draft resolution, the General Assembly would request the Secretary-General to submit to the Assembly at its sixty-ninth session a report containing information on the state of ratification of and accessions to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives; and a summary of the reports received from States on serious violations of the protection, security and safety of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations and actions taken against offenders, as well as of the views of States with respect to any measures needed to enhance the protection, security and safety of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations.”

Previous Attempts to solve the Issue

Since this issue is a fairly new one, no concrete solutions have been properly discussed in a UN setting. United Nations personnel who are fortunate enough to receive diplomatic immunity cannot be tried for crimes they commit in other countries and their host nation does not have the power to try them for a crime that was committed outside the state's land so no real solutions have come about.

Possible Solutions

Implementing UN Resolutions

The sole purpose of the United Nations is to maintain international peace and security. With the help of all member nations implementing well thought out resolutions may prove to benefit the way UN Personnel operate. UN personnel hold various nationalities and if countries work together to put forth creative solutions to problems they may see with the citizens of their respective countries, the United Nations could become a much more efficiently run organization.

Conditional Diplomatic Immunity

Another solution to this problem may be to have UN offenders have their diplomatic immunity waived, and be punishable by the law in which the crime was committed. Many countries are in favor of this and this has constantly been brought up as a solution to the problem in the United Nations

Re-Inventing Diplomatic Immunity to Abide by Universal Laws

Another way this problem could be solved is to reinvent diplomatic immunity. There are universal laws vaguely established by different entities, but the United Nations can come together to establish a concrete set of these laws, that diplomatic immunity can be waived for. Through this, the UN can ensure that diplomatic immunity can be waived when in regard to a serious issue violating human rights or international law.

Having the Offenders Tried in their Home Country

This solution counters the previous one proposed. Problems with the previous ones could be that some countries diligently believe in the right to life, whereas in others certain crimes can be punished by death. Delegates in favor of this theory must present a concrete case as to why this solution holds more merit than the previous one.

Making the United Nations Vet their Personnel More Thoroughly

A part of why this problem exists today is that the United Nations tend to sometimes accept the personnel they are given from member nations. Due to this sheer laziness and unprofessionalism sometimes convicts with a criminal history are hired as a part of the UN personnel. But how can criminals be expected to maintain international peace and security if they have not done so in their own home country.

Creating a Better Environment in Local Areas

Since a lot of personnel are sometimes treated unfairly because they are foreigners, having seminars in local areas with both parties present might be beneficial to ease tensions between the two groups. This would result in locals getting to know their foreign officers better and thus not deeming them as much of a threat as they previously did.

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