



General Assembly

Eleventh Session

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Sixth Committee – Legal

This group focuses on legal questions. The UN wants all states to agree to international laws. This can happen if they make them together. They also want to make sure people know the laws. This can happen if they are written down and published. This makes it easier for states to work together. It also stops wars from happening. They also ask states to make laws to protect citizens.

Every year the General Assembly gives this group a discussion list. If the legal question is difficult or complex this group asks for help from the **International Law Commission**. This committee has a tradition of consensus. States reach agreement without having to take a vote. This makes sense because if you want everybody to follow a law they should agree it is a good idea.

This group works closely with the **International Law Commission**. They passed resolutions on international terrorism, human cloning, and taking hostages.

Agenda Item 79 – Diplomatic Protection

Background

A lot of people confuse Diplomatic Protection with Diplomatic Immunity. Diplomatic Immunity is given to diplomats of a government who enter (with permission) into another country in order to do work for their own country. An ambassador or anybody who is sent from their home country to work at an embassy has Diplomatic Immunity. This law allows diplomats to do their jobs in safety. They do not have to fear being jailed or mistreated by the country they are working in. This is very important for countries to be able to work together. However, this is not Diplomatic Protection.

Diplomatic Protection is the right of every country to protect its citizens even when they are in another country. In 1758, Emmerich de Vattel, a Swiss expert on the law wrote, "Whoever ill treats a citizen indirectly injures the State, which must protect that citizen." In the past, this was used to justify invading other countries. Often, it was developed countries using force against former colonies or weaker/poorer countries. Diplomatic Protection was used to justify the Boer War. There were many British people living in Transvaal (now part of South Africa). Britain said it wanted to protect the rights of British people living in the country, but they also wanted to control the large Witwatersrand gold mines. Britain won the war and forced the areas they controlled to become colonies.

The US also has a history of using Diplomatic Protection to force other countries to do what they wanted. From the 1890s to the 1930s the US had a pattern of using their military to influence countries in Latin America and the Caribbean. These actions are called the Banana Wars. The US became involved in occupations and military actions in order to protect the interests of American businesses in the region.

Background

The use of Diplomatic Protection to justify wars upset a lot of countries. Many former colonies were especially not happy because it meant they always had to fear a more powerful country invading because one of their citizens said they had been treated unfairly. For this reason, many countries adopted the Calvo Doctrine. This is a belief that countries cannot use Diplomatic Protection in order to resolve a problem until ALL the other ways of resolving the problem in the country are exhausted. Many Latin American countries include this idea in their Constitutions.

After World War II, it was furthered decided that the use of force was not an appropriate way for countries to resolve these types of disputes. The idea of Diplomatic Protection became part of international law. Countries could sue other countries on behalf of their citizens in the International Court. These cases are brought to the International Court of Justice. The states must prove two things before the case can go ahead:

- 1) The person or people negatively affected has citizenship of the country suing. They have not changed their citizenship between the time they were mistreated and they brought the case.
- 2) They have tried all other ways of fixing the problem in the country in which they have the problem.

Recent Developments

Although it might seem funny, corporations are treated as people under the law. This means that they can sue and be sued. They have the right to enter into contracts and have their assets protected. Therefore, corporations have a nationality. Walmart and Apple are American because they were incorporated (turned into a legal business) in the US. Nintendo is Japanese and Ferrari is Italian. That means if any of these companies want to claim diplomatic protection they need to get their home countries to do so. This type of personhood also applies to planes and ships.

Diplomatic Protection is a right that countries have but they are not required to *exercise* that right. This means that they can choose to sue another country on behalf of one of their citizens *if they want*. However, they do not need to. An interesting case is of Omar Khadr. Omar Khadr was a young Canadian whose family took him to Afghanistan. When he was 15 he was wounded in a firefight between American soldiers and the Taliban. Khadr survived and was put in prison by the American military.

Khadr spent 13 years in prison. 10 of those years were in Guantanamo Bay. While he was there he was mistreated by guards. He was also a child and did not receive special care or consideration because of his age. Canada allowed the US to keep him in custody and was not working to make sure his rights were protected. Diplomatic Protection might have been used in this situation. Canada could have sued the US on behalf of Khadr to protect his rights. However, Canada *chose* not to do this. In the end, Khadr sued Canada for not protecting his rights and he was given a C\$10.5 million in compensation.

In December 2007, the General Assembly passed a resolution that outlined the articles they proposed to define Diplomatic Protection. However, the committee believes it is extremely important to create a convention on Diplomatic Protection. 10 years later a convention has not happened. If there is a convention it will become official international law between the states that sign. How can this be made a priority for states?

Barcelona Traction Case

This is a case that was decided by the International Court of Justice in 1970. Barcelona Traction, Light and Power Company (BTLP) was originally created as a company in 1911 in Canada. It mainly supplied power services to places in Spain and most of the people that owned a part of the business lived in Belgium. When Spain had a dictator, the courts gave everything BTLP owned to Juan March who said he was owed money by the company.

The investors in Belgium were obviously angry and Belgium brought Spain to the International Court of Justice in *Belgium v. Spain*. However, the court decided that BTLP was Canadian and only Canada could sue. Canada did not

Calvo Doctrine

Carlos Calvo came up with this idea in 1868. This idea was a way of delaying countries from using Diplomatic Protection too quickly. It suggested that individuals needed to use the courts of country they had a problem with before they turned to their home country for support. At this period in time many European countries were using the threat of force in order to force payment to corporations or individuals working in other countries. The Calvo Doctrine said that armed intervention or occupation was not a fair response to a debt.

Nottebohm Case

Nottebohm was a German who moved to Guatemala. He never became a Guatemalan because he avoided paying taxes this way. In 1939, he decided it would be better to become a citizen of Liechtenstein because Germany was about to be involved in a war. He changed citizenship in less than a year. He went back to Guatemala but when WWII started he was arrested and sent to the US. They said he was a German. Liechtenstein sued Guatemala. However, the court decided that although he had a Liechtenstein passport he was not really from there. He had no connection to the country. Therefore, it is not enough to have a passport from a country – you need to show you are really an actual citizen for Diplomatic Protection to work.

Current Members of the International Court of Justice

President Ronny Abraham France	Vice-President Abdulqawi Ahmed Yusuf Somalia	Judge Hisashi Owada Japan	Judge Peter Tomka Slovakia
Judge Mohamed Bennouna Morocco	Judge Antônio August Cançado Trindade Brazil	Judge Christopher Greenwood United Kingdom	Judge Xue Hanqin China
Judge Joan E. Donoghue USA	Judge Giorgio Gaja Italy	Judge Julia Sebutinde Uganda	Judge Dalveer Bhandari India
Judge Patrick Lipton Robinson Jamaica	Judge James Richard Crawford Australia	Judge Kirill Gevorgian Russian Federation	Mr. Phillippe Cuvreur Belgium

Guiding Questions

1. Is your country effective at protecting its citizens when they are abroad? Why?
2. Research the Boer War, the Boxer Rebellion, or one of the Banana Wars. How did Diplomatic Protection play a role in this war?
3. What are some reasons a country might choose to use diplomatic protection. Why might a country choose not to use diplomatic protection?
4. Research one of the members of the International Court of Justice. Why would this person be respected to make decisions on the international level?
5. The Nottebohn case showed that a passport does not make someone a national of a country. How can you tell the difference between a national and a citizen of convenience?
6. Some scholars think diplomatic protection can be used to help people who are suffering human rights abuses. How might this help?
7. Should countries be required to help all their citizens who get into trouble abroad? Why or why not?
8. Does the problem exist in your community?
9. Who is working on it? NGOs, not for profits, other groups or individuals?
10. Knowing about this problem, how does it impact your world view?
11. How could you make an impact on this issue through your life choices?

Resources

Title	Hyperlink	How is it helpful?
<i>Can China Protect Its Citizens</i>	http://thediplomat.com/2013/07/can-china-protect-its-citizens-abroad/	Article about China and whether they have enough manpower to protect their citizens.
<i>International Law Commission</i>	http://legal.un.org/ilc/	The official website of the International Law Commission
<i>Dual Citizenship Can Complicate Diplomatic Protection</i>	http://www.cbc.ca/news/canada/mohamed-fahmy-case-dual-citizenship-can-complicate-diplomatic-protection-1.2684357	A news story about how having two nationalities can make life more difficult when you are charged with a crime abroad.
<i>Audiovisual Library of International Law</i>	http://legal.un.org/avl/ls/Dugard_DP.html	A video by John Dugard explaining how Diplomatic Protection works.
<i>Diplomatic Protection and Individual Rights</i>	http://www.harvardilj.org/wp-content/uploads/January-2016_Vol-57_Leys1.pdf	A Harvard paper on Diplomatic Protection in the modern era.
<i>The Diallo Case</i>	https://www.voltterrafietta.com/the-diallo-case-republic-of-guinea-v-democratic-republic-of-congo-a-rare-instance-of-diplomatic-protection-before-the-international-court-of-justice/	Overview of a case that went before the ICJ.
<i>US State Department</i>	https://www.state.gov/p/eur/rt/hl/cst/c11383.htm	A webpage where the American government says it will protect people who are harmed by another nation.
<i>International Court of Justice</i>	http://www.icj-cij.org/en	The official site of the International Court of Justice
<i>Articles on Diplomatic Protection</i>	http://undocs.org/A/RES/62/67	A document created as a jumping off point to start a convention.



General Assembly

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Agenda item 79

Resolution adopted by the General Assembly on 13 December 2016

[on the report of the Sixth Committee (A/71/510)]

71/142. Diplomatic protection

The General Assembly,

Recalling its resolution 62/67 of 6 December 2007, the annex to which contains the text of the articles on diplomatic protection, commending the articles to the attention of Governments,

Recalling also that the International Law Commission decided to recommend to the General Assembly the elaboration of a convention on the basis of the articles on diplomatic protection,¹

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

Noting that the subject of diplomatic protection is of major importance in relations between States,

Taking into account the comments and observations of Governments² and the discussions held in the Sixth Committee, at the sixty-second, sixty-fifth, sixty-eighth and seventy-first sessions of the General Assembly, on diplomatic protection,

1. *Commends once again* the articles on diplomatic protection³ to the attention of Governments, and invites them to submit in writing to the Secretary-General any further comments, including comments concerning the recommendation by the International Law Commission to elaborate a convention on the basis of the articles;¹

2. *Decides* to include in the provisional agenda of its seventy-fourth session the item entitled “Diplomatic protection” and, within the framework of a working group of the Sixth Committee, in the light of the written comments of Governments, as well as views expressed in the debates held at the sixty-second, sixty-fifth, sixty-eighth and seventy-first sessions of the General Assembly, to continue to examine

¹ Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10), para. 46.

² See A/62/118 and Add.1, A/65/182 and Add.1, A/68/115 and Add.1 and A/71/93 and Corr.1.

³ Resolution 62/67, annex.



the question of a convention on diplomatic protection, or any other appropriate action, on the basis of the above-mentioned articles and to also identify any difference of opinion on the articles.

*62nd plenary meeting
13 December 2016*
