

The Question of Criminal Accountability and Immunity of UN Personnel

The United Nations Legal Council

Legal Context

UN personnel range from the officers who oversee various missions in impoverished or war-torn countries, to medical staff, translators, diplomats, local help, and even to the blue-helmeted peacekeepers sent from troop-contributing member states. They are an essential part of the UN, working to promote global peace and security by carrying out the mandates set forth in the UN's many programs and missions.

Due to the fact that they often carry out work of a very sensitive, controversial and politically-charged nature, certain high-ranking members of UN missions are provided with immunity from personal arrest, detention, and litigation, to protect them from arbitrary and politically-motivated assault. These immunities are legally set out in the *UN Charter, Article 105*, which states that "the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary in the fulfillment of its purposes," as well as in the 1946 *Convention on the Privileges and Immunities of the United Nations*. United Nations personnel and property have various levels of immunity.

Limits to Immunity

Limits on the immunity of UN personnel do exist, however. Only certain experts and high-ranking UN officials are accorded full immunity, while lower-ranking support and administrative staff are usually only issued "laissez-passer" documentation which ensures them quick passage through airports and simplified visa procedures. Military members of national contingents have the privileges and immunities specified in status-of-forces agreements set forth before the commencement of peacekeeping operations. Furthermore, it must be highlighted that personnel of the UN are only immune from national jurisdiction with respect to acts performed in the course of their official function on behalf of the mission, and that this right to immunity can be waived by the Secretary-General if he believes it would impede the course of justice. Thus, if criminal infringements occur, legal precedent exists for eliminating immunity, thereby allowing a state to persecute the individual concerned. However, it is often the case that the state in which an infraction occurred does not have a legal system which complies with minimum international human rights standards. This makes it difficult for the Secretary-General to justify waiving immunity, since it is likely that the employee would not have access to a fair and just trial. Therefore, full criminal accountability is often forgone, and the employee is either asked to resign, or, if part of a peacekeeping force, the military member of the contingent concerned is ordered to repatriate. This eliminates the possibility of continued criminal activity by the individual, but does not provide for the rehabilitation of the victims or act as a sufficient deterrent for others. Furthermore, it limits the ability of host governments to prosecute the UN employee or peacekeeping soldier who has committed the crime, increasing the governments' feeling of powerlessness in the face of threats to the wellbeing of their citizens.

Prevalent Problems

Overall, it is clear that diplomatic immunity of UN personnel is an important component to the functioning of UN programs, but it also has several drawbacks. Its key benefits include protection from arbitrary persecution, unimpeded ability to fulfill job duties, and ease of movement worldwide. Its major drawbacks are lack of clear criminal accountability, increased vulnerability of local populations (which are often already under distress) and decreased cooperation between the UN and local authorities. As a result, the developed countries of the West, which supply the most peacekeeping troops and support personnel, place a high value on the immunity of their UN employees. Developing or war-torn countries, meanwhile, which are sometimes negatively impacted by the criminal infringements of UN personnel, and who are forbidden by international law from persecuting those involved, favour criminal accountability. Apart from lobbying for a greater capacity to hold UN employees accountable for their actions, these states may also refuse to allow the UN to operate within their borders in future missions. Such consequences could set a dangerous precedent in the international community, and have a severely adverse effect on the ability of the United Nations to fulfill its mandate internationally.

Recent Cases and Solutions

A recent example of this issue was the sexual exploitation of local girls by troops and civilian staff of MONUC, the UN's peacekeeping operation in the Democratic Republic of Congo, in 2004. A report issued on the matter by the UN on March 24, 2005 entitled "*A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations*," highlighted the difficulties with holding personnel accountable, reiterating the lack of a just local legal system to persecute civilians, while stating that with respect to "military members of national contingents, troop-contributing countries are often reluctant to admit publicly to acts of wrong doing and consequently lack the will to court-martial alleged offenders." The report made several further recommendations, suggesting that "personnel who violate the standards ... ought to be subjected to disciplinary action unless, in the case of staff or experts on mission, the Secretary-General, in lieu of such action, accepts an immediate resignation and a designation that the individual is never to be re-employed by the United Nations is placed in his or her profile," as well as that "troop-contributing countries ... institute disciplinary action against military members of their contingents."

Along with these after-the-fact reports and recommendations, the UN has several documents which it distributes to staff participating in missions, such as the "*We are United Nations Peacekeepers*" pamphlet distributed to peacekeepers. The latter includes guidelines such as: "we will never ... bring discredit upon the United Nations, or our nations through improper personal conduct, failure to perform our duties or abuse of our positions as peacekeepers ... abuse alcohol, use or traffic in drugs ... use unnecessary violence or threaten anyone in custody ... commit any act that could result in physical, sexual or psychological harm or suffering to members of the local population, especially women and children ... participate in any illegal activities, corrupt or improper practices." However, despite these non-binding documents, criminal activities are still conducted with impunity, and the UN lacks an effective, workable, coherent and uniform plan to hold its employees accountable while ensuring their safety.

Key Questions

- Who should be accorded immunity? Should everyone be criminally accountable?
- How can UN personnel be protected during operations but still held accountable for their actions?
- How can we define what was done “while on the course of official function on behalf of the mission” and what was an individual’s personal undertaking?
- If personnel should be persecuted for criminal acts, under which country’s jurisdiction, or in which court?
- How can governments be encouraged to court martial their peacekeepers if they commit a criminal act?
- Should the guidelines for proper behaviour for staff and peacekeepers become obligatory and enforceable? How?
- What would constitute effective accountability? Is resignation or repatriation enough, or should employees be sent to court under criminal law?

Helpful Links

- 1946 Convention on the Privileges and Immunities of the UN:
http://treaties.un.org/doc/Treaties/1946/12/19461214%2010-17%20PM/Ch_III_1p.pdf
- Summary of a General Assembly Debate on Accountability versus Immunity, with statements by many key countries:
<http://www.un.org/News/Press/docs/2011/gal3413.doc.htm>
- <http://www.bbc.co.uk/> for searching for news articles relating to recent abuses etc.

Helpful Books

- “Law and Practice of the United Nations: Documents and Commentary” by Simon Chesterman, Thomas M. Franck, and David M. Malone
- “The Protection of Diplomatic Personnel” by J. Craig Barker
- Any recent (2006 or newer) international law or international criminal law textbook or handbook.