

# LEGAL COMMITTEE

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*Undersecretary-General*

Aileen Nowlan, *Chair*

The Ivy League  
Model United Nations Conference  
Nineteenth Annual Session

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Undersecretary-General,  
Operations



Dear Delegates,

Welcome to the General Assembly of ILMUNC 2003! The GA is the largest deliberative organ of the United Nations, composed of representatives of all member states. This year, ILMUNC is simulating five GA committees with topics ranging from the regulation of chemical weapons to the prohibition of human cloning.

My name is Shanshan Cao, and I am the Under Secretary General of the General Assembly. This very long title basically means I will be in charge of the five GA committees – my responsibility is to make sure each committee runs smoothly and that delegates enjoy themselves and are engaged in productive debate and negotiation.

I am currently a sophomore at Wharton, University of Pennsylvania, and my concentration is Finance and Accounting. I have been involved with Model United Nations for five years, starting as a freshman in high-school. In my junior year, my school attended ILMUNC, and I enjoyed the conference so much that it became one of my main considerations when applying for college.

I hope you will enjoy ILMUNC as much as I did, and I encourage you to email me any questions you have concerning UPenn's Model United Nations program or just applying-to-college concerns in general.

See you at conference!

Sincerely,

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Esteemed Delegates,

Welcome to the 19<sup>th</sup> Annual Session of the Ivy League Model United Nations Conference, hosted by the University of Pennsylvania. My name is Aileen Nowlan, and I am a student at the Wharton School of Business at the University of Pennsylvania. My focus is on legal studies, management, and political science. I am also conducting research on corporate social responsibility and business ethics in transition economies, finishing a paper for publication in an academic journal, and organizing a conference on corporate responsibility and sustainable competitiveness at the World Bank Institute in early December. I have been a delegate, chair or secretary-general of Model United Nations conferences for six years and am always available for questions about the substance or the philosophy of our committee.

As a delegate to the Legal Committee of the General Assembly, you have the opportunity to debate issues of international significance in one of the most controversial and dynamic fields of international relations. Laws regulate the international economic, political and social environment that binds nations together. Intranational and international laws are also sometimes the source of conflict and strife. International law gained prominence under the auspices of the United Nations in the past half-century, as a means to prevent repetition of the ravages of the World Wars. Precedent is now being set that determines how successful international law and the organs that enforce it will be as a tool for strengthening ties between nations, protecting the rights of states and citizens, and forestalling conflict.

I look forward to meeting you all in January. Please feel free to contact me with any questions at [anowlan@wharton.upenn.edu](mailto:anowlan@wharton.upenn.edu).

Best,

Aileen Nowlan  
Chair, Legal

Topic One

**Human Cloning**

**Introduction**

One of the most controversial issues debated now is the reproductive cloning of human beings. The rapid development of science and technology creates a new realm of prospects for the improvement of the health of individuals and mankind in general. However, this same rapid development also imposes a potential threat for the very existence of mankind. These new sciences and technologies, if used unethically and immorally, present potential dangers to the integrity and dignity of the individual. The issue of human cloning raises ethical, scientific, and moral concerns, which could threaten the very concept of human identity. Thus, the Legal Committee must decide a course of action for the international community by assessing the advantages and disadvantages of human cloning.<sup>1</sup>

For those less acquainted with Legal, it serves as the Sixth Committee in the General Assembly, and this breadth allows it to cover a broad spectrum of topics concerning legal issues in the world.

**Statement of the Problem**

Ever since the first successful cloning of Dolly the sheep, the idea of human cloning has been the subject of controversy and intense moral debate. If human cloning is used as a tool for the only purposes of medicine and research, many people agree that it is advantageous in the areas of the following:

- Rejuvenation, may someday be possible to reverse the aging process because of what we learn from cloning;
- Human cloning technology could be used to reverse heart attacks, especially when heart disease is the number one killer in the United States and several other industrialized countries;
- Human stem cells can be grown to produce organs or tissues to repair or replace damaged ones;
- Infertility, infertile couples could have children;
- Plastic, reconstructive, and cosmetic surgery;
- Breast implants;
- Defective genes;
- Down's syndrome. Those women at high risk for Down's syndrome can avoid that risk by cloning.
- Ability to cure cancer.

This list is only a small fraction of the endless possibilities and benefits human cloning technology may bring to society. The alleviation of suffering is tremendous and this new science can create a jump in advancing the treatment of diseases previously believed

to be incurable. However, human cloning also brings many moral and ethical issues into question:

- Human cloning represents the possible commercialization of human life;
- Human cloning would create a class of human beings who exist as the means to achieve the ends of others;
- Human cloning is exploitative human experimentation;
- Human cloning upsets social order;
- Human beings have a right not to be created as objects of experimentation;
- Human cloning is an offense to the inherent dignity and individuality of human life;
- Human cloning would be a gateway technology for the further genetic manipulation and control of human beings.<sup>2</sup>

For the purposes of this paper topic, it is the committee members' job to explicitly find a solution to the issues regarding human cloning and outline a course of action for the international community to monitor and restrict biomedical research involving cloning.

**History**

The Human Genome Project began in 1990. This was a thirteen year project coordinated by the U.S. Department of Energy and the National Institutes of Health to identify all the genes in the human DNA, determine the sequences of the makeup of human DNA, and store this information in databases. Additionally, it aimed to improve tools for data analysis, transfer related technologies to the private sector, and address the ethical, legal, and social issues that may arise from the project.<sup>3</sup>

In 1994, Neal First produced genetic copies of calves from embryos. They grow to at least 120 cells. The following year, Ian Wilmut replicated Neal First's experiment with differentiated cells from sheep, but put embryo cells into an inactive state before transferring their nuclei to sheep eggs. The eggs developed into normal lambs.

In 1996, Dolly, the first animal cloned from adult cells, was born. In response to the announcement of Dolly's creation in 1997, President Bill Clinton proposed a five-year suspension on the activity of cloning. On March 1997, only a week after the Dolly announcement, scientists brought cloning technology closer to humans by twinning rhesus monkeys from embryos. Three months later, Wilmut and his colleagues announced they had created a lamb with a human gene in every cell of its body.

On January 2000, Britain became the first country to grant a patent for cloned early-stage human embryos. The company, Geron Corporation, who received the patent, claimed that there was no intention of creating cloned humans.

On March 2000, the group that created Dolly the

sheep announced the production of the first cloned pigs in hopes that pigs could be genetically engineered for use in human organ transplants.<sup>4</sup>

### Relevant International Action

The Legal committee, on December 2001, created an Ad Hoc Committee and in their March 2002 meeting started a Working Group to further debate the issue of human cloning.<sup>5</sup> These committees were formed to consider the international convention against the reproductive cloning of humans and to create a mandate for the negotiation of an international convention. This mandate included a list of existing international instruments and a list of legal issues to be addressed.<sup>6</sup> In resolution 56/93, the Assembly also decided that the session of the Ad Hoc Committee would be provided with information and technical assessments by experts on genetics and bioethics.

The World Health Assembly stated the position that “the use of cloning for the replication of human individuals is ethically unacceptable and contrary to human integrity and morality.” The organization recognized the need to respect ethically acceptable scientific activity. Therefore, the organization asserted that related research and development should be carefully monitored and assessed. The resolution of the World Health Organization requested the Director General to inform the Member States and create a public debate on the issue of human reproduction.<sup>7</sup>

The United Nations Development Program (UNDP) claimed that every technological advance brought potential risks and benefits. Therefore, the UNDP supported science and technological advancement, despite the potential risks and dangers, due to three reasons:

- Potential benefits are at least as great as the risks. The possibilities of advancements are too tremendous to abandon.
- Cost of inertia versus the costs of change. New technologies improve greatly on the ones they replace.
- Means of managing risk. The potential harms of advancements can be managed and taken under control.<sup>8</sup>

### Analysis

#### *Executive Summary*

Since the announcement in February 1997 of the first successful cloning of Dolly the sheep, the prospect of human cloning has been the subject of considerable public attention and sharp moral debate. The intense attention given to human cloning in both its potential uses, for reproduction as well as for research, raises fundamental issues about human identity and individuality. If used properly and cautiously, genetics research

holds great promise for treating disease and alleviating suffering; however, if abused, the very foundations of human society could be undermined. It is clear that the field of biomedical research holds great implications on society - therefore, its possible benefits as well as implications must be weighed carefully before reaching an agreement concerning the future of human cloning.

#### *Definition of Important Terms*

Before continuing the debate, it is crucial for the committee to have a working definition of the basic terminologies concerning human cloning. The following definitions were taken by the Ad Hoc Committee from the EU Parliament.<sup>9</sup>

- **Viable Embryos** - embryos which are free of biological characteristics likely to prevent their development;
- **Human Cloning** - the creation of embryos having the same genetic make-up as another human being, dead or alive, at any stage of their development, without any possible distinction as regards the method used;
- **Reproductive Cloning** - human cloning for the purpose of reproduction;
- **Therapeutic Cloning** - human cloning for the purpose of deriving stem cells from viable cloned embryos for genetics research and cell reproduction;

The above terminologies provide the basic foundation on which the Legal committee must build on in order to reach an agreement concerning human cloning at a multilateral level. They are by no means limiting, and member states should seek to expand or clarify definitions when drafting resolutions.

#### *Reproductive vs. Therapeutic Cloning*

Human procreation provides the major context for considering the prospect of cloning, especially reproductive cloning. Advocates of reproductive cloning believe it should be allowed because it would enable infertile people to have children, enable parents to replace a dead child, and is a fundamental reproductive right. However, critics cite that the number of infertile couples for whom cloning would be the only way to bear a child is extremely small. In addition, even if the method could be perfected for use for this limited group, it would be almost impossible to prevent its use from spreading. Furthermore, allowing reproductive cloning could open the doors for developing the technology to manufacture “designer babies” through human genetic manipulation and control.

Therapeutic cloning in its own right comes in two basic forms: 1) therapy treatment for inherited mitochondrial diseases and 2) experimentation involving stem cells derived from cloned embryos. The first



implication of therapeutic cloning relates more to reproductive cloning. Mitochondrial disease is transmitted to the baby from the maternal line because mitochondrial DNA is only inherent in egg cells. Given current technology, these diseases can sometimes be treated post-fertilization, but the most effective treatment would be to prevent the initial inheritance of the defective mitochondrial DNA. At present, this can be achieved through not having children, adoption, or by having children through in-vitro fertilization with a donated and unaffected egg. However, for those women wishing to have children genetically related to them, the only solution is by using a de-nucleated egg and a nucleus transferred from an adult somatic cell.<sup>10</sup>

The broader understanding of therapeutic cloning is the derivation of stem cells from cloned embryos, a process which ultimately leads to the destruction of the embryo. Member states such as the UK currently allow research using stem cells procured from early embryos no longer needed for infertility treatment ("spare embryos") based on the notion that a) these embryos were created for the ultimate purpose of reproduction, not research and b) spare embryos would be terminated once a successful implantation occurs. However, research involving cloned embryos raises new concerns for many people, including those opposed to all embryo research, because it implies that embryos are solely created as a product source. Advocates of therapeutic cloning claim that the "benefits of being able to develop an individual's own cells to create a new source of cells for their own future treatment make this action ethically justifiable."<sup>11</sup> While research on embryos created by cell nuclear replacement does involve using them as a means to an end, this can be said to apply to some degree to all research using embryos.

#### *Current UN Status*

With the establishment of the Ad Hoc committee on an International Convention against the Reproductive Cloning of Human beings in December 2001, and the subsequent opening of the Working Group during the Sixth committee's first meeting in September 2002, the United Nations has reached a pivotal point in the debate over the legal and ethical issues of human cloning. At the conclusion of its September sessions, member states of the Legal committee have agreed that a ban on cloning is necessary in the protection of international human rights. However, the committee could not reach a consensus on the specifics concerning the treaty - members were divided on whether the ban should apply only to "reproductive cloning" or to human cloning itself.

Currently, there are two proposals on the floor - one sponsored by the United States and Spain advocating a total ban on cloning, and the second by Germany,

pushing for a partial ban that prohibits reproductive cloning. The United States and Spain want a moratorium on all human cloning, and clarified that such a moratorium would not prohibit cloning techniques to produce DNA molecules, organs, plants, tissues, and cells other than human embryos, or animals other than humans.<sup>12</sup>

#### *Points to Consider*

It is worthwhile to mention that a ban on human cloning does not imply a ban on genetics research. Pro-life organizations provided information showing that adult stem cells have proven to be more successful than embryonic stem cells in the treatment of genetic diseases. They also cite research which show embryonic cells may cause tumors.

The international arena has already reached an agreement that human cloning produces a net negative impact on society and should therefore be banned. Biomedical research in this field should be heavily regulated in order to prevent the development of technologies capable of fully cloning humans. However, in order to tackle the issue of human cloning, the Legal Committee must first decide on which policy to reinforce - a complete ban on all forms of cloning, or a partial ban solely on reproductive cloning. In making this decision, members must consider 1) the viability of enforcing either policies and 2) garnering enough support in the committee to reach a timely decision.

Modern genetics research has led to the development of new technologies capable of human cloning at an incredible speed. Therefore, the effective implementation of an international guideline on the ban of human cloning must arrive soon. States supporting a complete ban argue that an effective ban on reproductive cloning requires a ban on all types of cloning, including therapeutic cloning, since the scientific techniques employed are extremely similar in both cases. However, opponents cite that while there is an international consensus on the need to ban reproductive cloning, no such consensus exists on therapeutic cloning and other forms of genetic engineering. They warn that "any such attempt at a complete ban could undermine the efforts of the international community to achieve the expeditious drafting of a convention against reproductive cloning." Therefore, states such as Germany proposed that the Legal Committee work on a step-by-step approach, focusing first on a ban on all reproductive cloning, and subsequently, on measures pertaining to therapeutic as well as other forms of cloning.<sup>13</sup>

#### **Possible Solutions**

In addition to the two solutions offered previously, the Legal Committee must negotiate other terms

between member states to form a legal and ethical guideline for the field of cloning research. Below is a list of possible actions the committee should consider.

1. The establishment of institutions in member states to assess the ethical, social and human questions raised by the biomedical research concerning human cloning, and the timely exchange of information between member states regarding such assessments;
2. Member states should assess current national laws in place to restrict human cloning and report to the Secretary-General on such activities to ensure the principles set forth in the Universal Declaration on the Human Genome and Human Rights are taken into account;
3. The Legal committee should also encourage states to pass regulations to include the following:

*-Transparency & Accountability:* increasing the transparency of human genome research projects in an effort to account for the exact uses of human embryos.

*-Breadth of Scope:* policies should pertain to publicly and privately funded research projects

*-Protection of egg donors:* prevent the inducement or exploitation of poor or vulnerable women etc.

4. Other important points to keep in mind:

*-Definitions:* setting and expanding working definitions of related terms

*-Specifics on the prohibition of reproductive cloning*

*-National implementation-* guideline of implementing the UN resolution at a national scope and possible ramifications of violations

*-Reporting and monitoring mechanism -* collection of data on current research in human cloning and reporting of relevant data to the UN

*-Assistance for implementation -* assistance from the Legal committee as well as other related organs of the UN such as WHO, UNDP, etc.

## Conclusion

Until recently, there were few ethical, social, or

legal discussions about human cloning via nuclear transplantation, since the scientific consensus was that such a procedure was not biologically possible. With the creation of Dolly, the entire situation has taken a dramatic turn. Human cloning presents an ethical as well as legal dilemma for the international arena. While benefits of genetic research are alluring, it is crucial for member states to keep in mind the extent of the impact human cloning can have on societal order.

Ultimately, the committee must decide for itself which policy it should pursue by considering the benefits of a timely resolution and the costs it may incur by not fully addressing the issues of forms of human cloning other than reproductive cloning. In addition, a detailed guideline must be set in place to monitor current research of human genomes, restrict human cloning, and prevent possible breaches of UN resolutions.

## Endnotes

<sup>1</sup>GA Resolution 56/93

<http://daccess-ods.un.org/doc/UNDOC/GEN/N01/479/51/PDF/N0147951.pdf?OpenElement>

<sup>2</sup>Foundational Statement of Americans to Ban Cloning  
<http://www.cloninginformation.org/statement.htm>

<sup>3</sup>About the Human Genome Project  
<http://www.ornl.gov/hgmis/project/about.html>

<sup>4</sup>History of Cloning  
<http://www.reproductivecloning.net/hosting/waite/>

<sup>5</sup>Ad Hoc Committee on International Convention Against Human Cloning  
<http://www.un.org/law/cloning/index.html>

<sup>6</sup>International Convention against the reproductive cloning of human beings <http://www.un.org/law/cod/sixth/57/current.htm#162>

<sup>7</sup>World Health Assembly States Its Position on Cloning for Human Reproduction <http://www.who.int/archives/inf-pr-1997/en/97wha9.html>

<sup>8</sup>Managing the Risks of Technological Change  
<http://www.undp.org/hdr2001/chapterthree.pdf>

<sup>9</sup>Information document prepared by the Secretariat  
[http://www.un.org/law/cloning/documents/1st\\_session/english/a\\_ac263\\_2002\\_inf1e.pdf](http://www.un.org/law/cloning/documents/1st_session/english/a_ac263_2002_inf1e.pdf)

<sup>10</sup>The ethics of reproductive and therapeutic cloning  
<http://www.wits.ac.za/bioethics/genethics.htm>

## Topic Two

**Liability for Transboundary Environmental Damage****Introduction**

In January of 2000, 100,000 tons of cyanide-laden sludge leaked into the Danube River from a mine in Baia Mare, Romania. "With concentrations of 2.7 milligrams of cyanide per litre of water recorded several hundred kilometres from the source, 130 times the safe limit, the water is now lethal...toxic heavy metals have leaked out too, and these will stay for perhaps five years in the mud of the Tisza's river bed. Unlike cyanide, these do not kill animals or fish instantly; but, when concentrated, they can cause long-term ill-health and cancers."<sup>1</sup>

This accident highlights the difficulty of sharing responsibility for a river that is 2,850km long and part of a drainage system that reaches into 17 countries, many of them politically unstable, covering 817,000 square kilometers. Despite the vast legal issues that arise in dealing with the consequences of such accidents, international law remains relatively silent on the issue of compensation for contamination or exploitation of resources.

This Committee is charged with the responsibility of filling this void in international law, making a standard that can be applied not just to cyanide spills in the Danube, but to all unlawful exploitation or contamination of resources.

**Statement of the Issue**

The fundamental legal concept guiding all relations between states is the sovereignty of states. The principle of sovereignty includes the right to use and exploit natural resources within their territory; but sovereign states also have the right not to have their resources infringed upon. Sovereignty implies the right of independent exploitation of natural resources as long as they do not interfere with the interests of other states enjoying the same right. Unfortunately, the principle of sovereignty does not clean up a contaminated river or replenish resources. This Committee must create a framework that will provide legal recourse in situations like the Baia Mare accident. Establishing responsibility for accidents such as the Baia Mare incident will encourage prevention of future accidents and provide compensation for illegally consumed natural resources.

**History of the Issue and Relevant International Action**

Given that the nature of the topic is to establish a legal standard for future cases, there is not particularly

a history of the issue. Cases of industrial accidents occurring reach the front pages of the newspapers frequently. In January of 2001 an Ecuadorian oil tanker ran aground and deposited three million liters of crude oil into the sea (the largest oil spill to date).<sup>2</sup> Only a few months later, in March of 2001, a tanker and freighter collision resulted in more than 2,000 of the 30,000 tonnes of oil to leak into the water off the northern coast of Germany.<sup>3</sup>

Unfortunately, oil spills have become one of the more common and public causes of environmental damage affecting the resources of multiple parties, but they are only a small fraction of cases that this committee must deal with. There are countless opportunities for transboundary pollution to occur, including the possibility of mismanaged nuclear or industrial waste (as was the case in the Baia Mare accident) or poorly cared for dams (resulting in flooding down stream).

Growth of population, the need for economic development, ever growing consumerism and materialism have resulted in cities becoming congested, rivers and oceans becoming polluted, forests becoming depleted, land becoming scarred, toxic and hazardous wastes abounding. In all cases injured parties seek retribution, and through the past two decades several concepts have been developed in international law. But all of them encounter serious difficulties when applied to specific cases and are frequently inapplicable. As a result, transboundary environmental damage is rarely repaired<sup>4</sup>.

In the past three decades, states have concluded a number of conventions containing primary liability rules with respect to some specific risk creating activities, especially in the areas of international maritime, nuclear, and space law. These conventions may serve as an important model for considering these draft articles.

Liability for damage caused by maritime transport of oil emerged in 1967, immediately after the accident of the oil carrier 'Torrey Canyon' that caused hitherto unprecedented damage in the English Channel. The accident led many to acknowledge that the risks relating to the transport of oil had considerably increased with the operation of super tankers and the growth of maritime transport in general. Legal measures undertaken attempted to shift the costs of risks of environmental pollution to those parties gaining profit from that activity. The representatives of Western states were particularly opposed to holding states responsible for risks created by private industry for its own economic interest.<sup>5</sup>

In 1968, major oil companies adopted voluntarily a private liability regime, which covered 90 percent of the world tanker fleet within a year. This voluntary acceptance of responsibility shifted the concept of liability from the state to the private industry. Oil transportation is an industry that is sufficiently profit-



able so as not to require a shift of economic risks of costly environmental damage to the state.<sup>6</sup>

The Space Liability Convention<sup>7</sup>, in contrast, holds states entirely responsible for damage. Reparation of damage takes place exclusively among states; insurance companies, persons privately responsible and domestic courts as well as private victims remain outside of the Convention. The space industry submitted numerous proposals attempting to achieve liability guidelines that would hold both private industry and the state responsible for paying reparations. But from the outset the United States proposed an exclusive liability<sup>8</sup> for the controlling state without private participation.

The regulatory goal of international law on liability for nuclear damage was entirely different from both maritime transportation of oil and space liability. Primarily, it was undertaken to relieve the nuclear supply industry of the incalculable risks posed by high compensation claims. The private industry is thus held partially responsible (to the extent that their insurance can cover) and the state is responsible for the remainder. This convention emerged in the 1950's, at a time when insurance companies were certainly not capable of covering the incalculable economic risks.<sup>9</sup> The United States was especially influential in developing this regime because it wanted to exploit fully the benefits of nuclear power, which could not have been achieved if the industry was forced to cover the entire burden of liability.

These three conventions are basically the extent of actual protocol dealing with transboundary damage. But, the international community has stated a general agreement on the necessity of developing a law that would deal with all types of transboundary pollution.

On 16 June 1972, The Stockholm Declaration was adopted, concluding a conference on "the Human Environment". Principle 21 of the Stockholm declaration summarizes the rights and responsibilities of States with regard to the exploitation of resources:

"States have, in accordance with the Charter of the United Nations and the principles of Environmental law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction."<sup>10</sup>

The declaration goes on to address the issue that is before this Committee, stressing the need for cooperation in developing this area of international law: "States shall cooperate to develop further the international law regarding liability and compensation for the

victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such states to areas beyond their jurisdiction."<sup>11</sup> These early statements (1972) have guided the topic of liability for transboundary environmental damage, but despite this clear stated objective there is no clear legal standard.

In a 1996 advisory opinion, "Legality of the Threat or Use of Nuclear Weapons" the International Court of Justice confirmed that there was, "the existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or areas beyond national control is now part of the corpus of international law relating to the environment."<sup>12</sup>

The topic of international liability has been on the agenda of the International Law Commission and the Sixth Committee since 1978, General Assembly resolution 32/151 of 19 December 1977. Since 1978, Special Rapporteurs on the topic have submitted more than 17 reports outlining the scope of the topic and possible solutions. Over the past 25 years draft articles have been proposed and debated by the sixth committee.

In 1996, the International Law Commission established a Working Group to review the topic in all its aspects in light of the various Special Rapporteur reports and Sixth Committee (this Committee) debates on the issue. The 1996 Working Group produced a summary report of the deliberations to that point; portraying a complete picture of the topic relating to the principles of prevention and of liability for compensation or other relief along with draft articles and related commentaries.<sup>13</sup>

In 1998, the International Law Commission received and considered the first report of the Special Rapporteur, and adopted a set of 17 draft articles on prevention of transboundary damage from hazardous activities. The Commission then sent the draft articles to all Governments for comments. Comments were submitted to the Secretary-General by 1 January 2000.<sup>14</sup>

Having received comments from various governments, the drafting committee attempted to address all concerns and submitted a new set of draft articles to the International Law Commission for adoption. On 2 August 2001 the Commission adopted the draft preamble and draft articles to the General Assembly with the recommendation that this Committee consider the draft articles and request a convention be held for debating and adopting a final set of draft articles on prevention of transboundary harm from hazardous activities.

## Analysis

This committee has the opportunity to fill a gap in international law that was first recognized in the 1972 Stockholm Declaration. In the interim 30 years, states have suffered tragic accidents, reeking havoc on

their environment, without the ability to hold any other state or party liable for their material losses. (Unless the damage is a result of maritime oil transportation, space use, or nuclear energy.) The Stockholm Declaration sought to hold countries and private industry responsible for accidents that are not explicitly prohibited. Since it would not be possible to establish a unique convention for every type of transboundary damage (as was done with maritime transportation of oil, space use, and nuclear energy), the international community sought to establish a catch all convention that would apply to all types of otherwise unaddressed environmental damage.

At this point, the system set in motion 30 years ago, deferring to the International Law Commission, and from them to a special Working Group, has finally reached its conclusion. Despite the elaborate procedure used to draft this agreement, it is the responsibility of this Committee to debate and finalize the agreement before it is proposed to the global community. This Committee must decide what changes should be made to the articles, debate the merit of the draft articles, propose amendments, decide whether to endorse the draft articles or return them to the drafting committee, and decide the best forum for adopting these articles.

The issues that have been controversial through the drafting process are the distinction between liability and prevention, reimbursement and punishment, State responsibility and private responsibility, the type and scope of cases that would be governed by this agreement, and the form of the agreement. And these topics are likely to again be issues of debate.

The drafting committee provided some questions to consider along with the draft articles. Those questions are:

- (a) The degree to which the innocent victim should participate, if at all, in the loss;
- (b) The role of the operator in sharing the loss;
- (c) The role of the State in sharing the loss, including its possible residual liability;
- (d) Whether a separate set of guidelines should be established for ultra-hazardous activities;
- (e) Whether the threshold for triggering the application of the guidelines should be "significant harm", or whether a higher threshold should be determined;
- (f) The inclusion of the harm caused to the global commons within the scope of the current endeavor;
- (g) Models which could be used to allocate loss among the relevant actors;
- (h) Procedures for processing and settling claims of restitution and compensation, which may include inter-State or intra-State mechanisms for the consolidation of claims, the nature of available remedies, access to relevant forums and the quantification and settlement of claims.<sup>15</sup>

Questions 'a' through 'c' deal with the issue of who should be held responsible for the damage. There are varying levels of responsibility that can be established. The three protocols discussed above, maritime oil transportation, space use and nuclear energy, are three different methods of dividing responsibility. One of the important issues to keep in mind here is that legal norms will only be effective if decision-makers believe they are authoritative. If a convention is established that places excessive burden on one party or another that party will simply refuse to accept to pay. Many argue that a key to prevention of these accidents is holding States responsible, at least partially. If states are forced to shoulder part of the economic burden they will be encouraged to properly regulate their private industry.

Questions 'd' through 'f' deal with defining the cases that this convention will apply to. Perhaps more risky activities (ultra-hazardous) should be dealt with by a separate set of guidelines, since more risky activities are more likely to cause accidental damage they should be held to a higher level of liability. The risk of applying this to all activities is that companies might refuse to pay for damage that was not the result of an ultra-risky activity. Also, what should be the threshold for triggering the application of these guidelines; should the threshold be based on a monetary estimation of the resources lost, a monetary estimation of the costs to clean up the accident? Perhaps the threshold should be based on the overall impact on the country (since larger countries have more resources, an accident affects a smaller percent of their resources than the same sized accident occurring in a smaller country). And finally, should this protocol be applied to pollution of the global commons, when no one state is directly harmed but all states suffer the cost of the damage. An example of polluting the global commons would be green house gas emissions; these emissions do not directly affect one country (or a limited number of countries) in a quantifiable manner, but the total damage resulting is still real.

Questions 'g' and 'h' address the administrative aspects of the convention. What body should adjudicate claims resulting from transboundary pollution? How will the settlement be allocated between affected countries in cases where multiple countries are harmed by the pollution? Should the multiple states each bring cases separately or should the private company/country be ordered to pay a set amount that is then divided between the various states affected by the damage. These are only a few of the questions that must be dealt with concerning the administration of the articles. This committee must either address these issues or establish a working body to deal with the administration of the articles upon ratification and provide a mandate for that body.

Finally, this committee must decide on the best forum for adopting the draft articles. The forum that was suggested by the drafting committee was an

international convention on liability for transboundary pollution that would meet with the final goal of adopting the articles. This committee should decide on the framework for the convention, the timing of the convention, the location and so on.

### Possible Solutions

This is a unique topic for this committee, because the solution to the problem has essentially been given to the committee. This committee set in motion the process of drafting these articles three decades ago as the solution to the problem of transboundary pollution. The task of this committee then is to finish the process, and provide for the legal settlement of disputes arising from transboundary pollution. However, this committee should not hastily accept the draft articles simply because they were thirty years in the making. It is still the responsibility of this committee to provide workable legal standards, and if these draft articles do not fit that requirement then they should be returned to the drafting committee (with suggestions). The other possibility is that this committee accepts the draft articles and implements the final stage of the process, ratification.

### Bloc Positions

Positions towards these articles do not necessarily fall into the usual regional blocs. Instead, blocs emerge based on economic situation. Such as: developed states with mostly privatized industry, developing states with state owned industry, developing states trying to attract private investment, states at risk based on their geography.

Developed states with mostly privatized industry do not want to be held responsible for the pollution that is a result of private industry. States with state owned industry also want to minimize state responsibility, because that would protect a large portion of their industry from being under the authority of this convention. Developing states trying to attract private investment would be in favor of less responsibility being placed on the private sector as a means for attracting investment. And finally, states that are at risk based on their geography (for example, coastal states or down stream states) want more accountability for both state and private sector. They want the state to be compelled to prevent environmental pollution and they want to be compensated for accidents that occur despite these preventative measures.

A good source of information on bloc positions is the debates surrounding the Kyoto protocol, the responses to the first set of draft articles submitted to the Secretary-General by 1 January 2000, and the previous debate of this committee on the issue. They Kyoto protocol, while addressing a different topic than these draft articles, deals with a similar topics so that the

debate generated by the protocol is also a good indicator of debate on these articles. In 1998 the International Law Commission conveyed copies of the draft articles to all governments for comment. Countries wishing to comment did so by 1 January 2000. While not every country chose to comment, the comments can be a useful source of information for other countries in similar situations to countries that did choose to comment. These comments as well as highlights of the Legal committees debate on the topic, and reports of the International Law Commission are available through the UN. (Document numbers, titles and URL's available in bibliography.)

### Conclusion

While this topic is in a unique format from other topics before the Legal Committee, it is important for the committee to deal with. This committee has the chance to finish a project it started over thirty years ago. Many people have worked hard on the drafting of these articles and it is the duty of this committee to bring those articles in front of the international community for final ratification. The Draft Articles are included below. Draft articles on

### Prevention of transboundary harm from hazardous activities

adopted by the International Law Commission at its fifty-third session (2001)

(extract from the Report of the International Law Commission on the work of its Fifty-third session, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), chp.V.E.1)

November 2001

### E. Text of the draft articles on Prevention of Transboundary Harm from Hazardous Activities

#### 1. Text of the draft articles

97. The text of the draft preamble and draft articles adopted by the Commission at its fifty-third session are reproduced below.

### PREVENTION OF TRANSBOUNDARY HARM FROM HAZARDOUS ACTIVITIES

The States Parties,

Having in mind Article 13, paragraph 1 (a) of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Bearing in mind the principle of permanent sovereignty of States over the natural resources within

their territory or otherwise under their jurisdiction or control,

Bearing also in mind that the freedom of States to carry on or permit activities in their territory or otherwise under their jurisdiction or control is not unlimited,

Recalling the Rio Declaration on Environment and Development of 13 June 1992,

Recognizing the importance of promoting international cooperation, Have agreed as follows:

## **Article 1**

### **Scope**

The present articles apply to activities not prohibited by international law which involve a risk of causing significant transboundary harm through their physical consequences.

## **Article 2**

### **Use of terms**

For the purposes of the present articles:

(a) "Risk of causing significant transboundary harm" includes risks taking the form of a high probability of causing significant transboundary harm and a low probability of causing disastrous transboundary harm;

(b) "Harm" means harm caused to persons, property or the environment;

(c) "Transboundary harm" means harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin, whether or not the States concerned share a common border;

(d) "State of origin" means the State in the territory or otherwise under the jurisdiction or control of which the activities referred to in article 1 are planned or are carried out;

(e) "State likely to be affected" means the State or States in the territory of which there is the risk of significant transboundary harm or which have jurisdiction or control over any other place where there is such a risk;

(f) "States concerned" means the State of origin and the State likely to be affected.

## **Article 3**

### **Prevention**

The State of origin shall take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof.

## **Article 4**

### **Cooperation**

States concerned shall cooperate in good faith and, as necessary, seek the assistance of one or more competent international organizations in preventing significant transboundary harm or at any event in minimizing the risk thereof.

## **Article 5**

### **Implementation**

States concerned shall take the necessary legislative, administrative or other action including the establishment of suitable monitoring mechanisms to implement the provisions of the present articles.

## **Article 6**

### **Authorization**

1. The State of origin shall require its prior authorization for:

(a) Any activity within the scope of the present articles carried out in its territory or otherwise under its jurisdiction or control;

(b) Any major change in an activity referred to in subparagraph (a);

(c) Any plan to change an activity which may transform it into one falling within the scope of the present articles.

2. The requirement of authorization established by a State shall be made applicable in respect of all pre-existing activities within the scope of the present articles. Authorizations already issued by the State for pre-existing activities shall be reviewed in order to comply with the present articles.

3. In case of a failure to conform to the terms of the authorization, the State of origin shall take such actions as appropriate, including where necessary terminating the authorization.

## **Article 7**

### **Assessment of risk**

Any decision in respect of the authorization of an activity within the scope of the present articles shall, in particular, be based on an assessment of the possible transboundary harm caused by that activity, including any environmental impact assessment.

## **Article 8**

### **Notification and information**

1. If the assessment referred to in article 7 indicates a risk of causing significant transboundary harm, the State of origin shall provide the State likely to be affected with timely notification of the risk and the assessment and shall transmit to it the available technical and all other relevant information on which the assessment is based.

2. The State of origin shall not take any decision on authorization of the activity pending the receipt, within a period not exceeding six months, of the response from the State likely to be affected.

## **Article 9**

### **Consultations on preventive measures**

1. The States concerned shall enter into consultations, at the request of any of them, with a view to achieving acceptable solutions regarding measures to be



adopted in order to prevent significant transboundary harm or at any event to minimize the risk thereof. The States concerned shall agree, at the commencement of such consultations, on a reasonable time-frame for the consultations.

2. The States concerned shall seek solutions based on an equitable balance of interests in the light of article 10.

3. If the consultations referred to in paragraph 1 fail to produce an agreed solution, the State of origin shall nevertheless take into account the interests of the State likely to be affected in case it decides to authorize the activity to be pursued, without prejudice to the rights of any State likely to be affected.

## **Article 10**

### **Factors involved in an equitable balance of interests**

In order to achieve an equitable balance of interests as referred to in paragraph 2 of article 9, the States concerned shall take into account all relevant factors and circumstances, including:

(a) The degree of risk of significant transboundary harm and of the availability of means of preventing such harm, or minimizing the risk thereof or repairing the harm;

(b) The importance of the activity, taking into account its overall advantages of a social, economic and technical character for the State of origin in relation to the potential harm for the State likely to be affected;

(c) The risk of significant harm to the environment and the availability of means of preventing such harm, or minimizing the risk thereof or restoring the environment;

(d) The degree to which the State of origin and, as appropriate, the State likely to be affected are prepared to contribute to the costs of prevention;

(e) The economic viability of the activity in relation to the costs of prevention and to the possibility of carrying out the activity elsewhere or by other means or replacing it with an alternative activity;

(f) The standards of prevention which the State likely to be affected applies to the same or comparable activities and the standards applied in comparable regional or international practice.

## **Article 11**

### **Procedures in the absence of notification**

1. If a State has reasonable grounds to believe that an activity planned or carried out in the State of origin may involve a risk of causing significant transboundary harm to it, it may request the State of origin to apply the provision of article 8. The request shall be accompanied by a documented explanation setting forth its grounds.

2. In the event that the State of origin nevertheless finds that it is not under an obligation to provide a notification under article 8, it shall so inform the request-

ing State within a reasonable time, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy that State, at its request, the two States shall promptly enter into consultations in the manner indicated in article 9.

3. During the course of the consultations, the State of origin shall, if so requested by the other State, arrange to introduce appropriate and feasible measures to minimize the risk and, where appropriate, to suspend the activity in question for a reasonable period.

## **Article 12**

### **Exchange of information**

While the activity is being carried out, the States concerned shall exchange in a timely manner all available information concerning that activity relevant to preventing significant transboundary harm or at any event minimizing the risk thereof. Such an exchange of information shall continue until such time as the States concerned consider it appropriate even after the activity is terminated.

## **Article 13**

### **Information to the public**

States concerned shall, by such means as are appropriate, provide the public likely to be affected by an activity within the scope of the present articles with relevant information relating to that activity, the risk involved and the harm which might result and ascertain their views.

## **Article 14**

### **National security and industrial secrets**

Data and information vital to the national security of the State of origin or to the protection of industrial secrets or concerning intellectual property may be withheld, but the State of origin shall cooperate in good faith with the State likely to be affected in providing as much information as possible under the circumstances.

## **Article 15**

### **Non-discrimination**

Unless the States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who may be or are exposed to the risk of significant transboundary harm as a result of an activity within the scope of the present articles, a State shall not discriminate on the basis of nationality or residence or place where the injury might occur, in granting to such persons, in accordance with its legal system, access to judicial or other procedures to seek protection or other appropriate redress.

## **Article 16**

### **Emergency preparedness**

The State of origin shall develop contingency

plans for responding to emergencies, in cooperation, where appropriate, with the State likely to be affected and competent international organizations.

#### Article 17

##### Notification of an emergency

The State of origin shall, without delay and by the most expeditious means, at its disposal, notify the State likely to be affected of an emergency concerning an activity within the scope of the present articles and provide it with all relevant and available information.

#### Article 18

##### Relationship to other rules of international law

The present articles are without prejudice to any obligation incurred by States under relevant treaties or rules of customary international law.

#### Article 19

##### Settlement of disputes

1. Any dispute concerning the interpretation or application of the present articles shall be settled expeditiously through peaceful means of settlement chosen by mutual agreement of the parties to the dispute, including negotiations, mediation, conciliation, arbitration or judicial settlement.

2. Failing an agreement on the means for the peaceful settlement of the dispute within a period of six months, the parties to the dispute shall, at the request of any of them, have recourse to the establishment of an impartial fact-finding commission.

3. The Fact-finding Commission shall be composed of one member nominated by each party to the dispute and in addition a member not having the nationality of any of the parties to the dispute chosen by the nominated members who shall serve as Chairperson.

4. If more than one State is involved on one side of the dispute and those States do not agree on a common member of the Commission and each of them nominates a member, the other party to the dispute has the right to nominate an equal number of members of the Commission.

5. If the members nominated by the parties to the dispute are unable to agree on a Chairperson within three months of the request for the establishment of the Commission, any party to the dispute may request the Secretary-General of the United Nations to appoint the Chairperson who shall not have the nationality of any of the parties to the dispute. If one of the parties to the dispute fails to nominate a member within three months of the initial request pursuant to paragraph 2, any other party to the dispute may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute. The person so appointed shall constitute a single-member Commission.

6. The Commission shall adopt its report by a

majority vote, unless it is a single-member Commission, and shall submit that report to the parties to the dispute setting forth its findings and recommendations, which the parties to the dispute shall consider in good faith.

#### Endnotes

<sup>1</sup> "Death on the Danube". The Economist. February 5, 2000. [http://www.economist.com/displayStory.cfm?Story\\_ID=329687](http://www.economist.com/displayStory.cfm?Story_ID=329687)

<sup>2</sup> "Iguanas hit by Galapagos spill" British Broadcasting Corporation. June 5, 2002. <http://news.bbc.co.uk/1/hi/sci/tech/2027935.stm>; "Brazil battles to contain spill" British Broadcasting Corporation. March 21, 2001. <http://news.bbc.co.uk/1/hi/world/americas/1231702.stm>

<sup>3</sup> "Denmark struggles to contain slick." British Broadcasting Corporation.. March 29, 2001. <http://news.bbc.co.uk/1/hi/world/europe/1250466.stm>

<sup>4</sup> Francioni, F. et al. 'Forms of International Responsibility for Environmental Harm'. International Responsibility for Environmental Harm (1991). 15-25.

<sup>5</sup> 'Oil Pollution of the Sea', 9 Harvard International Law Journal. (1969) 334-335.

<sup>6</sup> Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP) 1968, 8 ILM (1969) 498.

<sup>7</sup> Convention on International Liability for Damage Caused by Space Objects, 1972, 10 ILM (1971) 965.

<sup>8</sup> C. Christol. The Modern International Law of Outer Space. (2<sup>nd</sup> ed. 1984) 12 seq.

<sup>9</sup> Bestler, 'Atomic Risks: Third Party Liability and Insurance', in The Industrial Challenge of Nuclear Energy. (Amsterdam Conference)(1958) 278.

<sup>10</sup> Stockholm declaration. [http://www.unesco.org/iau/tfsd\\_stockholm.html](http://www.unesco.org/iau/tfsd_stockholm.html)

<sup>11</sup> Stockholm declaration. [http://www.unesco.org/iau/tfsd\\_stockholm.html](http://www.unesco.org/iau/tfsd_stockholm.html)

<sup>12</sup> ICJ reports 1996, p 15, para 29.

<sup>13</sup> International Law Commission Report, 1996.

Chapter V. <http://www.un.org/law/ilc/reports/1996/chap05.htm>

<sup>14</sup> International Law Commission Report, 1999.

Chapter IX. <http://www.un.org/law/ilc/reports/1999/English/chap9.htm>

<sup>15</sup> <http://www.un.org/law/ilc/sessions/54/54sess.htm>

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## Topic Three

**International Terrorism****Introduction**

In 1996, under the initiative of the Secretary-General, the General Assembly established the Ad Hoc Committee on International Terrorism, open to all member states, specialized agencies, and the International Atomic Energy Agency (IAEA). In Resolution 51/210 on December 12, 2000, the General Assembly, *inter alia*, decided the Ad Hoc Committee should “continue the elaboration of a draft comprehensive convention on international terrorism, with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, and that it should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.”<sup>1</sup> Furthermore, it decided that this objective should continue within the framework of a Working Group that would report to the Sixth Committee, beginning with the fifty-sixth session of the General Assembly of 2001. The working group has expanded on the proceedings of the Ad Hoc meetings and convenes both inside and outside GA meetings to tackle the issues currently surrounding international terrorism.

**Statement of the Issue**

While the working group convenes on its own to coordinate work on the “elaboration of a draft comprehensive convention on international terrorism,” the Sixth Committee, Legal, is entrusted with undertaking the issues of international terrorism in United Nations plenary sessions.

Even though international terrorism has always been an important concern in the global community, it has taken on a new significance in the twenty-first century, especially following the events of September 11, 2001. Ever since that date, the United States has been at the forefront of an intense, ongoing worldwide campaign to fight “terrorism” around the world. Its determined stance and powerful actions, both diplomatic and military, have unleashed a furor of controversy and acrimonious debates in the international arena.

Today, the world is at a crucial juncture concerning terrorism. For better or for worse, the advent of globalization has drawn countries and individuals into greater contact with each other due to the rapid development of communication and travel. No longer are

countries isolated from the issues concerning international terrorism, nor can nations claim to not have a stake involved. The proliferation of nuclear, biological, and chemical weapons gives rise to a greater concern. Not only is there a fear that weapons of mass destruction may be used by nation states, but the thought of individual terrorist groups and organization gaining possession of these weapons is extremely disturbing. Obviously, it is an international predicament that requires a global solution. No single country is capable of tackling and resolving terrorism solely on its own.

**History**

International terrorism has manifested itself in various forms over the past century, in many corners of the world. In different situations, the word “terrorism” can be applied to hijackings, kidnappings, insurgencies, and many other instances of violence. Throughout the twentieth century, much debate has risen as to what constitutes terrorism, since the usage of the word is dependent on perception. What one group may view as terrorism, another side may see as a legitimate struggle or just use of force.

The rise of terrorism as perceived in the modern sense began without much uproar, as it arose under cover of the Cold War. With most of the world preoccupied with the threat of nuclear war between the United States and United Soviet Socialist Republic, terrorism was not perceived as a top priority on the international agenda. Thus, although terrorism was occurring in various parts of the world, it went largely overlooked in global discussions.

However, the relative indifference on the part of the international community began to change in the 1970s as more countries became directly and increasingly drawn into the mix. The 1971 war between India and Pakistan, in which Bangladesh won its independence from the latter, was the last and most serious of the three disputes between the arch rivals. Following this conflict, various violent organizations rose in Pakistan, and with the backing of the government and military, became a formidable opposition to India’s Kashmir policy. While Pakistan claims that these groups, such as Jaish-e-Mohammed and Lashkar-e-Taiba among many others, are “freedom fighters” attempting to “liberate” the Kashmiri people, India asserts they are terrorists who are infiltrating across the border, killing innocent civilians, and inflicting tremendous hardships on the Kashmiri population.<sup>2</sup> At least thirty thousand people are estimated to have died from terrorism in the Kashmir region since the 1980s alone.

The Middle East also erupted as a hotbed of violence following the wars of 1967 and 1973, which collectively featured Israel against Egypt, Syria, Jordan and other Arab states. Even though a full-blown military conflict between the groups has not occurred



since, bouts of violence occur almost daily and have claimed many lives. The main thrust of the Arab nations' argument is that Israel commits "state-sponsored" terrorism by occupying the Palestinians' homeland, killing innocent civilians, and displacing hundreds of thousands of refugees. On the other hand, Israel asserts it is willing to negotiate, yet faces an unyielding Arab force that denies the nation's right to exist and commits terrorism through suicide bombings and other acts of violence against Israeli citizens.<sup>3</sup>

The United States was initially drawn into the fray of international terrorism in 1979, beginning with the fiercely anti-western Ayatollah Khomeini seizing power and the storming of its embassy in Tehran by thousands of Iranian students who held the American staff held hostage for a year. This instance marked the rise of anti-Americanism in the Islamic world, particularly from Middle Eastern countries, focusing on what they see as unreasonable US support of Israel and American degradation of Islamic values. This extreme repulsion of America and Israel eventually gave rise to several groups that would commit acts of violence to this day, most notably the Lebanese Hezbollah and the Iranian Hamas.

The next decade, the 1980s, marked a turning point in the world as the Cold War reached its final stages. To fend off the Soviet invasion of Afghanistan, the United States poured thousands of dollars and arms into the Central Asian nation. A large portion of these reinforcements were directed to mujahideen soldiers, including Osama bin Laden and his Al-Qaeda network, a decision that would come back to haunt the US later. This significant event marked the declining stage of the Cold War, and the "modernization" of the concept of international terrorism.

In the interim, the relationship between the United States and the Islamic world began to deteriorate. During the Iran-Iraq war from 1980-1988, the US incurred the wrath of both sides for dealing arms with each country. Iran then stepped up its support of Hamas and other organizations as long as Israel maintained its current position in the West Bank. The US and Iraq proceeded to go to war in 1990, and Washington claimed evidence of Iraqi President Saddam Hussein's involvement in sponsoring acts of terror in the Middle East. Muammar Qaddafi, president of Libya, was also repeatedly accused by the US of funding terrorist activities throughout the world, and Libyans were convicted of the bombing of Pan Am Flight 103 over Lockerbie, Scotland in 1988.<sup>4</sup> Thus, the rising tensions between the United States and the Islamic world continued to escalate, with recurrent episodes of violence, sanctions, and overall hostility, in a manner that would come to take center stage in the focus on international terrorism.

### Relevant International Action

The Working Group, created during the second meeting of the Sixth Committee, has primarily been entrusted with reaching an agreement concerning international terrorism. At its meeting during February 2001, according to Resolution 51/210, L/2974, "delegations reiterated their unequivocal condemnation of terrorism in all its forms and manifestations. They emphasized that terrorism was undermining fundamental human rights and threatening international peace and security, as well as the stability of states. All acts of terrorism, regardless of motive or origin, they stressed, were criminal and unjustifiable."<sup>5</sup> Essentially, the committee underlined the need to increase and strengthen international cooperation for combating terrorism by instituting an effective legal system. It defined nuclear terrorism to be the usage or threatened usage of nuclear weapons to harm individuals, states, and the environment. Also included is the unauthorized receipt, through theft, fraud, or forcible seizure, of nuclear materials. However, the actual definition of terrorism was ambiguous at best and remains a constant debate today. While concrete steps were not established, the meeting was important and laid the groundwork and direction for future discussions.

In its meetings during November 2001, the committee made some headway on the issue of international terrorism. In operational clause 2 of Draft Resolution A/C.6/56/L.22, which was later adopted by the committee, it "Reiterates that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them."<sup>6</sup> This phrase is ostensibly the most clear and recent representation of the word terrorism according to the United Nations. The Draft Resolution is also more specific and forceful in addressing international terrorism. It appeals to states to join existing treaties to combat international terrorism, and calls upon all states to enact domestic legislation to implement the provisions of those conventions and protocols in order to facilitate global cooperation and bring to justice perpetrators of terrorist acts.<sup>7</sup>

Furthermore, among many other clauses, it decided that the Sixth Committee should "continue the elaboration of a draft comprehensive on international terrorism and nuclear terrorism as a means of further developing a comprehensive legal framework of conventions dealing with international terrorism, and that it shall keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations."<sup>8</sup>

In its meetings of October 2001, the Working Group formed the primary basis for international

cooperation, through a series of complicated, albeit vague aspects. Articles 6 and 8 through 12 of Document A/C.6/56/L.9 declare that all countries who are party to the draft comprehensive convention on international terrorism are responsible for complying with the agreement except when the perpetrators, victims, destruction, and other aspects of the terror act occur solely within the boundaries of a state. When parties across national boundaries are involved, "the relevant States Parties shall strive to coordinate their actions appropriately."<sup>9</sup> Obviously, this unspecific phrase leaves much room for maneuvering and disagreement as to how to coordinate actions. Moreover, there is potential conflict in the overlapping of national and international laws concerning acts of terror. Although theoretically the international law should be in accordance with domestic statutes for participatory nations, this is not always the case, and disputes can be especially problematical during extradition cases. Thus, while much progress has been made, more specifics need to be addressed concerning the international cooperation of terrorist activities.

The Vienna-based United Nations Terrorism Prevention Branch, created in 1999, is a good start to facilitating worldwide collaboration. It researches terrorism trends and assists countries in upgrading their capacities to investigate and prevent terrorist acts.<sup>10</sup> However, the Branch is an arm of the United Nations Office for Drug Control and Crime Prevention, so it must be coordinated with the Sixth Committee. To date, there have been twelve major international terrorism conventions signed.<sup>11</sup> Most have focused on preventing civil aviation hijackings, stopping the transportation of nuclear materials, protecting government infrastructure, and cutting off the financing of terrorist organizations.

## Analysis

September 11, 2001 was the day that changed the international terrorism landscape forever. Before that date, terrorism was already a prominent issue; however, the magnitude and symbolism of 9/11 cannot be overlooked. The United States, the world's leading and seemingly invincible super-power, was hit with a series of devastating blows never seen before. Thousands of innocent civilians died in New York City, Washington DC, and Pennsylvania, and the intensity concerning terrorism talks in the diplomatic arena has skyrocketed.

From that day forward, terrorism has been brought to the forefront of international discussions as the world has placed a heightened importance on resolving the issue. The events of September 11, 2001, while tragic, were a wakeup call to the world. What if nuclear weapons had been on the planes that crashed into the buildings? What if crop-duster airplanes, which the terrorists attempted to acquire, had been

flown over the land dropping hazardous biological and chemical materials?

Terrorism in this day and age has the potential to be far more devastating than ever before as a result of the technical progresses in weaponry and the increased communication and travel of globalization. Furthermore, terrorists' targets have increased dramatically over the years and are also more mobile. Foreign terrorists wishing to strike have not only the traditional fixed targets such as embassies but also an increasing number of targets overseas—from the widespread commercial activities of businesses to citizens of a nation living or traveling abroad to suicide bombings, which have picked up over the past year. US missionaries in Colombia, European tourists in Kashmir, and car dealers in Greece have all been hit by terrorists in recent years.<sup>12</sup> Terrorists have extended their reach by building globe-circling infrastructures. The Lebanese Hezbollah has a presence on six continents, while other terrorist organizations, with agendas as diverse as the Iranian or the Sri Lankan Liberation Tigers of Tamil Eelam, maintain cells far from the lands where their goals and grievances are focused.<sup>13</sup> As a result, the selling, transport, and storage of weapons of mass destruction has come under meticulous review as of late.

Several organizations and countries have come under intense scrutiny, especially after the events of 9/11. Evidence of al-Qaeda attempting to procure such weapons illustrates the reality of such a threat being a clear and present danger. Pakistan has come under fire for its ability to safeguard its nuclear warheads from being taken over by Islamic fundamentalists, and with its nuclear scientists' and military intelligence's connection with al-Qaeda. Russia has been criticized for the deteriorating condition and weak protection of its own nuclear missiles. Furthermore, evidence has shown Russia, China, North Korea, and Iran selling and transporting both nuclear and conventional weapons to other countries. In addition, Iran, Pakistan, Iraq, Libya, Sudan, North Korea, Lebanon, Syria, and Saudi Arabia are all accused of illegally channeling funds to designated terrorist groups.

However, the accused countries repeatedly deny these accusations, and acrimonious debates have ensued. Yet, in its effort to eradicate the al-Qaeda organization, the US has appealed to many Arab nations in order to gain their support. A staunch ally of Israel, it has taken a more active role in the Middle East by stating its support for a Palestinian state provided acts of terrorism against Israeli citizens cease, and holding off on a military attack of Iraq, which it believes is clandestinely developing biological weapons and funding terrorist groups.

## Possible Solutions

International terrorism is an extremely difficult

dilemma to resolve because it has such a broad view with multiple perspectives, many of which do not overlap. Aside from the various perceptions as to what constitutes terrorism, nations have primarily been concerned with that which only directly affects themselves. Terrorism taking place in one part of the world has largely gone unnoticed in other areas of the globe. However, impending nuclear threats in the twenty first century and the advent of globalization has brought the world onto one stage, and all nations must take an active role in combating terrorism; they can no longer ignore acts of terror or reach a bickering stalemate.

The first and most essential step to resolving international terrorism is to achieve a clear definition of terrorism. While this may seem like an easy task, it is in fact the most difficult concept on which to agree. Since all different "terrorist" situations around the world involve different histories, stability of political systems, and social conditions, attaining a universal, an all-encompassing definition of terrorism is unrealistic. However, the Sixth Committee should at least define the minimum standards which identify "terrorism", and adopt those as guiding principles. Such a starting-point definition would then pave the way to fruitful discussions determining which acts constitute "terrorism" and which ones represent a "legitimate struggle." Although it is not a perfect solution, it is a vital step that could be applied on a case-by-case basis to the various situations around the world, perhaps even in conjunction with the International Criminal Court.

In addition, the United Nations has the infrastructure to aid nations in setting up workshops and training courses to combat crimes related to terrorism. This, along with a timely collection and assessment of information regarding to the current status of preventative measures (ie national laws) member states take against acts of terrorism, will help formulate new methods of prevention.<sup>14</sup>

While information assessment is crucial to evaluating the current status preventative measures against international terrorism, a more direct step is to cut off the funding and weaponry which support terrorist organizations. To this end, the Sixth committee has repeatedly stressed the importance of member states to "refrain from financing, encouraging, providing training for or otherwise supporting terrorist activities;"<sup>15</sup>

## Bloc Positions

United States: The United States is spearheading the global campaign against terrorism, particularly against Osama bin Laden's al-Qaeda organization, for the September 11 attacks on its homeland. While it has appealed to the world, particularly Arab nations, to support its cause, it is intent on subjugating al-Qaeda regardless. Their position can be illustrated by George

W. Bush's stance, "You are with us, or you are against us." It is trying to maintain its friendship with Israel, yet is careful not alienate the Arab states, who it also depends on for oil. The US also has strong reservations about Iraq, which it has held off due to international pressure. While an attack is not imminent, it is surely being considered in the not too distant future. Furthermore, the US is extremely concerned with the selling and development of nuclear materials, especially by the "Axis of Evil"-Iran, Iraq, and North Korea.

Europe: While the United Kingdom has been America's staunchest ally in the war on terror, the rest of Europe has maintained a somewhat subdued role. Although it sympathizes with the US's role in Afghanistan, it is against US intervention in Iraq, and is a bit put off by the war rhetoric and highhandedness of the Bush administration. Europe would like to see the US military action cease once it has conducted its operations in Afghanistan, and primarily use negotiations to solve the terrorism issues.

Africa: The nations of Africa, especially the Islamic nations, are opposed to American intervention in Afghanistan. While the people of their countries hold protests against US actions, the governments have been less vocal in their opposition, as many rely on Western aid, and to a certain extent sympathize with US. However, they would like to see military actions end as quickly as possible.

Middle East: Many speculate that September 11, 2001 attacks occurred due to American support of Israel. Israel, a close US ally, finally believes the US has experienced the terrorism that it goes through on a regular basis, and has used this leverage to launch incursions into the West Bank in response to Arab suicide bombings and terrorist attacks by Hamas and Hezbollah. Many Arab nations, while publicly sympathizing with the US, think America had it coming through its blatant support of Israel and alienating of the Palestinian cause. The Arab nations are determined to end what they perceive as Israeli state-sponsored terrorism, achieve Palestinian statehood, and are strongly opposed to military action in Iraq. A significant amount of extremism and terrorist activities occurs in response to this volatile situation, and the governments must consider public opinion.

Latin America: Latin America, much of which is dependent on the US for aid, has supported American action in Afghanistan. However, Latin America may soon find itself drawn into the international fray, as it is becoming a haven for Islamic extremists, particularly the tri-border between Argentina, Brazil, and Paraguay.

Russia and former Soviet Republics: Russia's relations



with the US have improved dramatically since September 11. Facing its own problem of terrorist activities and turmoil from separatists in Chechnya, who are supported by al-Qaeda, it is keen on seeing the war on terrorism expand so it can crackdown in the region in spite of protests from human rights observers. The former Republics in Central Asia have been key allies of US operations in Afghanistan, and are keen on receiving Western aid to combat Islamic extremism.

**South Asia:** Although India's relations and cooperation with the US have also improved dramatically, it is frustrated by what it sees as Washington's double standard regarding terrorism. It is angered that the US can attack Afghanistan, yet essentially prevents India from lashing back at Pakistan for supporting terrorist activity in India, including a direct attack on its Parliament, and in Kashmir as well. Pakistan, who claims the infiltrators are "freedom fighters" trying to liberate Kashmir, it has tried to clamp down on terrorist activities and claims there is no longer infiltration or terrorism occurring. India claims evidence to the contrary, and the two countries have been at the brink of war twice since December 2001, which could be devastating since both possess nuclear weapons.

**East and Southeast Asia:** Japan has been a strong US ally in its operations, even contributing military vessels. China has also softly approved of the military operations, as it tries to put down what it claims is a terrorist insurgency in its western Xinjiang province. The Philippines is also in favor of the war on terror, as it has gained millions of dollars in aid to fight its Abu-Sayyaf guerillas in its territory. The people of Malaysia and Indonesia, the most populous Muslim nation in the world, are strongly opposed to US action, yet the governments have maintained softer stances.

## Conclusion

The dilemma of international terrorism simply has no easy solutions. Although the US's war on terrorism is taking center stage, it is important that countries not lose sight of the big picture – that is, what happens after Afghanistan? The acts of September 11, 2001 were not isolated incidents. Simply ignoring the issue of terrorism after the war is over may fatefully leave the door open to many similar, perhaps worse, tragedies. A long-term solution is needed, especially one that addresses nuclear, biological, and chemical acts of terror. Furthermore, the Sixth Committee must integrate the perspectives of all nations on terror: Israel and the Arab countries in the Middle East over the West Bank and Gaza strip, India and Pakistan over Kashmir, the US on Iraqi biological weapons development, sales of nuclear materials to nations, etc. These countries must find some common ground on which they can relate to

each other, and not simply ignore problems in other parts of the world. International terrorism can only be resolved if taken step by step, with concern for the betterment of the entire world.

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## Notes

<sup>1</sup> <http://www.un.org/law/cod/sixth/56/sixth56.htm>

<sup>2</sup> <http://www.worldandi.com/public/2002/may/kashmir.html>

<sup>3</sup> <http://www.msnbc.com/news/677951.asp>

<sup>4</sup> <http://www.cnn.com/2001/LAW/01/31/lockerbie.verdict.05/>

<sup>5</sup> 21<sup>st</sup> Meeting of Ad Hoc Committee on Assembly, 23 February 2001. Document A/C.6/55/L.2.

<sup>6</sup> [http://www.un.org/law/cod/sixth/56/english/a\\_c6\\_56\\_l22e.pdf](http://www.un.org/law/cod/sixth/56/english/a_c6_56_l22e.pdf)

<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> <http://www.un.org/law/terrorism/english/ac656l9e.pdf>

<sup>10</sup> <http://www.undcp.org/terrorism.html>

<sup>11</sup> [http://www.undcp.org/terrorism\\_conventions.html](http://www.undcp.org/terrorism_conventions.html)

<sup>12</sup> <http://www.terrorism.com/realnews/realnews.shtml>

<sup>13</sup> Ibid

<sup>14</sup> Measure to Eliminate Terrorism <http://www.un.org/terrorism/a56160.pdf>

<sup>15</sup> <http://www.un.org/terrorism/a55614.pdf>