History of the Sixth Committee

The Sixth Committee of the United Nations General Assembly is primarily concerned with the formulation and application of international law. Throughout its near six decades of existence, the Sixth Committee has made many important contributions to the international community’s understanding of international law, the necessity of human rights and the promotion of fundamental freedoms. Since many of the world’s most pressing issues are either legal in nature or have implication for international law, the Sixth Committee is a UN body that most readably debates pressing global concerns.

The Sixth Committee of the United Nations General Assembly called its first session to order in 1948. The mandate of the Committee is anchored in the UN Charter under Chapter IV, Article 13, Section 1, Subsection A, which empowers the General Assembly to “initiate and make recommendations for the purpose of promoting international co-operation and encouraging the progressive development of international law and its codification.”¹ From its inception, the Sixth Committee has served to develop international law with a special emphasis on the protection of basic human rights and freedoms.

Even though its work is limited to making non-binding recommendations, the Committee has played a significant role in influencing the world understanding of international law and code. Beginning in 1958, the committee held the Conference on the Law of the Sea, adopting several conventions regarding the protection of marine life and the marine environment and the underwater testing of nuclear weapons. A series of other important legal agreement following, including the Vienna Convention on Diplomatic Relations in 1961, the Legal Committee the Vienna Convention on the Law of Treaties in 1969, the Convention on the Safety of United Nations and Associated Personnel in 1994 and the International Convention for the Suppression of the Financing of Terrorism in 1999. One of the highlights of the Sixth Committee’s work came with establishment of the Rome Statue of the International Criminal Court in 1998, which set up the International Criminal Court in Hague for bringing to justice those who committed crimes against humanity.²

² Rome Statute of the International Criminal Court, Article 1; Article 5; Article 6; Article 7; Article 8. untreaty.un.org/cod/icc/statute/romefra.htm
In the wake of the Second World War, the founders of the UN Charter, in an effort to spare future generations from the negative effects of war and conflict, robustly included a general prohibition on the use of force under Article 2 of the Charter. However, the UN Charter continued to recognize the realities of global conflicts and threat perceptions. Hence, Article 51 of the Charter served as the singular exception to the application of force, namely in scenarios of self-defense.

**Discussion of the Problem and Key Questions for Debate**

Unlike most other committees, where delegates first deliberate over which issue will receive the most attention, the Sixth Committee, also referred to as the Legal Committee or simply Legal, will discuss one theme, namely the legality of preemptive strikes based in the name of anticipatory self-defense.

Several key questions automatically arise in the discussion on when and under what conditions the requirements for self-defense are fulfilled. Should states be permitted under any circumstances to use anticipatory, preemptive military action in the absence of an armed attack? How compatible is Article 51 to emergence of new threats in the 21st century? Stated differently, does the UN Charter Article 51 maintain a legal foundation that properly addresses threats arising from non-state actors, i.e. terrorists, or states that harbor and support such groups? Is there sufficient flexibility in the interpretation of Article 51 so as to guarantee deterrence from applying force except as a last resort? Do examples from today meet the dimensions of necessity and proportionality? As delegates assigned to this committee, you should revisit these questions in your negotiations with your counterparts.

At the center of the debate surrounding preemption and anticipatory self-defense are the concepts of necessity and proportionality. Necessity determines whether a situation meets the minimum threshold for the use of force, also commonly defined as the requirement that no alternate action be possible. In other words, the requirement of necessity needs to be clearly linked to an inevitability of the danger. If a threat scenario reaches the level of imminence, meaning an attack or strike is expected at any moment, then the necessity for self-defense is fulfilled.

Conversely, the concept of proportionality determines which counter-measures fall under acceptable forms of preemption relating to the size, duration, target of the
response and measure of the response meted out. In Hungary v. Slovakia concerning
the Gabčíkovo-Nagymaros Project, the ICJ articulated the test of proportionality to
require “the effects of a countermeasure be commensurate with the injury suffered,
taking account of the rights in question.” Does a state have the
right to massive preemptive strikes
in the face of an imminent attack? Or
should any anticipatory strike in
self-defense serve the purpose of
reducing the threat and avoiding all-
out conflict? It will be your job as
delegates to more delineate which
cases warrant which responses and
to create a resolution that best
preserves global peace without
underestimating the threat of
possibly belligerent actors.

Article 51 of the United Nations Charter

Article 51 of the UN Charter serves as the primary point of departure for any debate
on preemptive strikes or anticipatory self-defense. It states:

Nothing in the present Charter shall impair the inherent
right of individual or collective self-defense if an armed
attack occurs against a Member of the United Nations,
until the Security Council has taken measures necessary
to maintain international peace and security. Measures
taken by Members in the exercise of this right of self-
defense shall be immediately reported to the Security
Council and shall not in any way affect the authority and
responsibility of the Security Council under the present
Charter to take at any time such action as it deems
necessary in order to maintain or restore international
peace and security.

The international community had typically seen the application of Article 51 from
one of two perspectives. For some, Article 51 contains a broad interpretation of
what self-defense means in the face of some possibility of attack. Conversely, Article
51 can only be activated under very specific conditions, in which an armed attack or
similar form of aggression is about to be carried. Regarding state behavior and
customary international law, the second interpretation, before the United States’

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incursion of Afghanistan in October of 2001, no other state practice can be used to support a broad reading of Article 51.

As mentioned above, one of the most pertinent questions directed to you and your fellow delegates is the current applicability of Article 51 and the right of anticipatory self-defense in the face of new security threats in the 21st century. These were no better articulated than in the wake of the terrorist attacks of 11 September 2001. A few months after the attack, in his State of the Union Address to the United States Congress in January 2002, President George W. Bush spoke of the “war on terror” and the new emerging threat from the “Axis of Evil,” consisting of Iraq, Iran, and North Korea, countries he singled out on the basis of a concern that they were developing Weapons of Mass Destruction (WMDs), which these states might use against the US.5 As part of the global war on terror, a US National Security Strategy further articulated the Bush Doctrine in the following manner: “while the US will constantly strive to enlist the support of the international community, we will not hesitate to act alone if necessary, to exercise our right to self-defense by acting pre-emptively against such terrorists.”6

Proposed Solutions

The Dangers in Authorization of Unilateral Anticipatory Use of Force

Several well-known academic have research the issue of international relations and anticipatory self-defense. Dean Harold Koh of Yale Law School argues that the international community would be better served to abandon the use of unilateral action. In its place, he argues that unilateral action should always be forbidden and that in a sense, if it is broken, the legality of the belligerent state should be determined on a case-by-case basis.7 Is the United Nations equipped to deal with unilateral action on a case-by-case basis?

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A More Central Role for the UN and an Accommodation of Unilateral Action

In 2003, then Secretary-General Kofi Annan set up a High-Level Panel (HLP) to look at alternative methods to the Bush Doctrine, which he identified as being driven by the feeling of being “uniquely vulnerable.” The High-Level Panel produced a report, entitled “A More Secure World: Our Shared Responsibility.” The results of the panel suggested five guidelines when deciding whether to authorize the use of force:

1. seriousness of threat
2. proper purpose
3. last resort
4. proportional means
5. balance of consequences.\(^8\)

While the guidelines have been debated back and forth between proponents and detractors, as of 2012, Annan’s recommendations have not been implemented in any policy capacity.

The Multilateral Option

The divisions among member states in the UN run deep. There are situations where the use of force is challenged, but there are good reasons to sometimes accept anticipatory self-defense as legitimate. However, it seems difficult, if not completely impossible, to create a new rule that will be able to accommodate legitimate concerns of states without at the same time leaving the door wide open for abuse. So what, if anything, can legitimize the use of force?

Despite all the differences between states, a good point of convergence appears to be the agreement that strengthening multilateralism is always desirable. It thus seems to follow logically that a solution that strengthens the role of the United Nations would be preferable for most states. One obvious procedure need not be reinvented: the authorization of the Security Council. Although commentators often point out that this is unrealistic due to the nature of the Council and the possibility of a veto, it is important to note that the days of the “automatic” veto characterizing the period during the Cold War are a thing of the past. Negotiations can lead to a reasonable solution, and the system of leverage and checks and balances present is even desirable, given both the purpose of the UN and the gravity of an armed attack and its consequences. At the same time, perhaps better solutions that emphasize the centrality of the UN in the process might be available. An option such as the creation of new organs that rule on the legality on the use of force that is not responding to an immediate threat is one such possibility. However, it does raise the question of what enforcement mechanisms can be used to ensure objective assessment and limit potential abuse. At any rate, a solution to this problem is likely to be favored by a majority only if it does stress multilateralism.

\(^8\) http://www.un.org/secureworld/
Questions for a Resolution

- In your opinion, what constitutes a credible reason for anticipatory self-defense?

- If anticipatory self-defense can be considered legal, what are the limitations to resorting to anticipatory self-defense? Is it limited to intra-state conflict? Can it be resorted to unilaterally?

- Are there any enforcement mechanisms can be used to monitor the use of anticipatory self-defense?

- Should terrorism and WMD as 21st century threats be dealt with as a separate issue?

- Can United Nations organs address these challenges more effectively than unilateral action from a single state?

- Should new United Nations organs be established to address these issues more specifically?