

Issues of International Law Interest before the 64th Session of the United Nations General Assembly

By [Larry D. Johnson](#)

Introduction



The sixty-fourth session of the UN General Assembly (GA) officially opened on September 15, 2009 with an agenda of 168 items ranging from issues of disarmament to development in Africa.^[1] The main part of the session will take place between now and December 15, 2009, and the session will officially close on September 13, 2010. The Assembly

works through plenary meetings and six main committees, including the Legal Committee (Sixth Committee). This Insight provides a guide to issues of international law interest expected in the Sixth Committee, plenary meetings and meetings of other committees. Given the time and space limitations, “perennial” items are not discussed in detail unless they are particularly newsworthy. Readers should consult the annotated provisional agenda^[2] that provides the background to all items, other than those newly added.

Relevant Legal Issues in the Sixth Committee

The Sixth Committee generally examines traditional items such as reports of the International Law Commission (ILC), the UN Commission on International Trade Law, the Special Committee on the United Nations Charter, and the Committee on Host Country Relations and reviews the progress of these bodies. Other items, which are the subject of reports by committees or working groups engaged in preparing draft conventions, include issues surrounding “criminal accountability of UN officials and experts on missions” and “measures to eliminate international terrorism.” Finally, the Sixth Committee will examine an item which is also before the Administrative and Budgetary Committee (Fifth Committee), namely the legal aspects of reports submitted on the item on the administration of justice at the UN, including the rules of procedure of the newly established UN Dispute Tribunal and of the UN Appeals Tribunal. Those rules of procedure have been submitted to the GA for approval.^[3]

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Of the subsidiary bodies' reports before the Sixth Committee, the report of the ILC^[4] is of particular interest this session, as the Commission completed its first reading of draft articles on the responsibility of international organizations. This first draft will be sent to governments and international organizations (IOs) for comments, with the expectation that the Commission will take up the topic again in 2011 in order to finalize a text in light of additional comments and observations made in the Sixth Committee this session.

The text had as its basis the ILC's 2001 set of draft articles on the responsibility of states for internationally wrongful acts, and consists of sixty-six draft articles. The draft covers various aspects of consequences under international law for internationally wrongful acts committed by or involving IOs, including responsibility towards member and non-member states. Notably, the draft does not deal with issues of responsibility of an IO toward an individual or any entity other than a state or IO. The Commission stated that while not covered within the scope of the draft, the international responsibility of IOs may accrue to individuals, such as with regard to obligations under international law concerning employment and to breaches committed by peacekeeping forces.

Of particular interest is the "new" definition of an international organization. According to the ILC, the term international organization covers organizations established by a treaty or other instrument governed by international law and possessing their own international legal personality. The Commission noted that such "other instrument" could be a resolution adopted by an international organization or by a conference of states. The definition also notes that such organizations may include as members, in addition to states, "other entities," which the commentary explains includes IOs. This definition differs from prior ILC drafts and treaties that included in the definition the term "intergovernmental." The Commission stressed that this "new" definition was not intended for all purposes.

In a somewhat related development, the Sixth Committee will be faced with four requests to accord observer status to four organizations in the GA: the International Humanitarian Fact-Finding Commission; the Global Fund to Fight AIDS, Tuberculosis and Malaria; the International Olympic Committee; and the International Conference on the Great Lakes Region of Africa. The GA's criteria for observer status is set out in a 1994 Assembly decision, which stipulates that observer status should be confined to states and intergovernmental organizations whose activities cover matters of interest to the Assembly. The GA has granted observer status to certain entities not intergovernmental in character according to the UN's Protocol and Liaison Service.^[5] Explanatory memoranda submitted by Members discuss how the organizations sponsored by them met the GA 1994 "intergovernmental organization" and other criteria, in the light of GA practice.^[6]

With regard to the relatively new rule of law item, at this session the Committee is to focus on promoting the rule of law at the international level and has before it the first annual report by the Secretary General (SG) on UN efforts to strengthen engagement on the rule of law at the national and international levels.^[7]

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A new item added this session is the “scope and application of the principle of universal jurisdiction.” This item was added on the request of Tanzania on behalf of the African Group and should be of high interest, possibly provoking an interesting if not lively discussion. The initial request was for an item entitled “Abuse of the principle of universal jurisdiction”^[8] but that request was deferred.

Relevant Legal Issues in Plenary and other Main Committees

As for legal items taken up in plenary, perennial legal items include the reports of the International Court of Justice (ICJ), the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court (ICC). With the exception of the latter report, the GA does not adopt resolutions on those items. Also, the GA in plenary discusses the item on oceans and the law of the sea, resulting in lengthy and detailed resolutions. Finally, the GA will continue discussing the question of equitable representation on, and increase in the membership of, the Security Council and related matters, an item on which an Open-Ended Working Group of the GA has been working. This much discussed matter is also taken up in intergovernmental negotiations on Security Council reform in informal meetings of the plenary.

One should note that there are perennial items of international legal interest on the agendas of other Main Committees. To mention just two: the Social, Humanitarian and Cultural Committee (Third Committee) discusses the promotion and protection of human rights while the Economic and Financial Committee (Second Committee) discusses protection of global climate for present and future generations, which no doubt would take into account the results of the Copenhagen Conference on Climate Change in December 2009.

Several other items on the plenary agenda of contemporary interest to international lawyers could lead to contentious debates. The report of the Human Rights Council (HRC) is considered both in the plenary and in its Third Committee. Much attention has been given to the recently issued report of the Independent International Fact-Finding Mission^[9] on the Gaza Conflict (the so-called “Goldstone Report”). The report contains various recommendations to a number of UN bodies, Israel, responsible Palestinian authorities and the international community, including the HRC. In its recommendations, the Report requests that the SG bring the report to the attention of the Security Council under Article 99 of the Charter; submit the report to the GA with a request that it be considered; and formally submit the report to the Prosecutor of the ICC. While initially the HRC had postponed consideration of a draft resolution fully endorsing all recommendations of the Goldstone Report^[10] until the March 2010 session of the HRC,^[11] in mid-October, the HRC adopted a resolution—by a vote of twenty-five in favor, six against, and eleven abstentions^[12]—not only endorsing the recommendations of the Goldstone report, but also recommending that the Assembly consider that report during “the main part of the its 64th session.” Thus, the Goldstone report may well be considered anytime before mid-December 2009.

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Another matter that may come up during the current session is the GA's request of last year for an advisory opinion of the ICJ on whether the unilateral *declaration of independence of Kosovo* is in accordance with international law. The Court has scheduled oral hearings for December 1, 2009. Should the ICJ deliver its opinion prior to September 13, 2010, the Assembly may discuss the item during the current session.

Additionally, the GA will examine the credentials of all representatives of Member States when it takes up the report of its Credentials Committee. This item has been very controversial in the past, e.g., the rejection of South Africa's credentials in 1974 and failed attempts to reject Israeli credentials in the 1980s. On September 25, 2009, in the course of general debate statements, the Foreign Minister of the Democratic Republic of the Congo (DRC) rose to a point of order on noticing that the next speaker was to be the "President of the High Transitional Authority" of Madagascar.^[13] Speaking on behalf of sixteen African countries, he objected to the participation of Madagascar in the general debate. The President of the GA ruled that pursuant to the relevant rule of procedure the Madagascar representative could participate provisionally, and that the Credentials Committee would meet on the matter the next day, reporting back to the GA within a matter of days. The DRC Foreign Minister then challenged the GA President's ruling, which was over-ruled, thus denying the Madagascar representative the right to speak. Four members voted in favor and twenty-three against the ruling, with six abstentions. The matter was decided by a vote of twenty-seven out of 192 Members. The press release indicated almost 160 States absent, although it is most likely that many were present, but simply did not vote. Not having anticipated a challenge to credentials, most had probably not analyzed the political/legal implications of the issue nor received instructions from their governments. The absent (or not voting) delegations included all five permanent members of the Security Council and most members of all regional groups other than the African Group.

This also raises the question of what will happen to Madagascar credentials when the Credentials Committee meets and reports to the plenary, which recent year has been near the end of the main part of the session, in December. If there are more challenges to a Madagascar representative speaking in GA meetings, the Committee might have to meet before that time. No doubt legal advisers all over the world are poring over credential challenge precedents not only concerning South Africa and Israel, but also Hungary, Cambodia, Afghanistan, and others.^[14]

Finally, note should be taken what is not on the agenda: "the responsibility to protect."^[15] Pursuant to a resolution adopted the last day of the previous session, the GA decided to continue its consideration of the item, but it did not indicate at what session.^[16]

About the Author

Larry D. Johnson, an ASIL member, is adjunct professor at the Columbia Law School, and former UN Assistant Secretary-General for Legal Affairs.

Endnotes

[1] Agenda, General Assembly, Allocation of Agenda Items for the Sixty-Fourth Session of the General Assembly, U.N. Doc. A/64/252 (Sept. 18, 2009), available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/252>.

[2] Provisional Agenda, General Assembly, Annotated Preliminary List of Items to be Included in the Provisional Agenda of the Sixty-Fourth Regular Session of the General Assembly, U.N. Doc. A/64/100 (June 15, 2009), available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/100>.

[3] The Secretary-General, *Report of the Secretary-General on the Approval of the Rules of Procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, delivered to the General Assembly*, U.N. Doc. A/64/229 (Aug. 4, 2009), available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/229>.

[4] International Law Commission, *Report of the International Law Commission, delivered to the General Assembly*, U.N. Doc. A/64/10 (May to Aug. 2009), available at [http://www.unog.ch/80256EDD006B8954/%28httpAssets%29/B94DE6453302A8CCC1257649003334CC/\\$file/ILS+Report_A.64.10_E.pdf](http://www.unog.ch/80256EDD006B8954/%28httpAssets%29/B94DE6453302A8CCC1257649003334CC/$file/ILS+Report_A.64.10_E.pdf).

[5] Over seventy international organizations/entities have been accorded GA observer status. See United Nations Protocol's Blue Book, Permanent Missions to the United Nations, No. 298 (Mar. 2008), (last updated with ST/SG/SER.A/298 (Feb. 29, 2008)), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/256/57/PDF/N0825657.pdf>. The Secretariat lists as “intergovernmental organizations” having observer status such organizations as the International Criminal Court, the International Tribunal for the Law of the Sea and the Permanent Court of Arbitration. It also lists as “other entities” having such status the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, the Inter-Parliamentary Union and the Sovereign Military Order of Malta.

[6] See Letter from the Permanent Representative of Switzerland to the United Nations Addressed to the Secretary-General, U.N. Doc. A/64/142 (July 7, 2009); and Note *Verbale* from the Permanent Mission of the United Republic of Tanzania to the United Nations Addressed to the Secretary-General, U.N. Doc. A/64/144 (July 14, 2009), available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/64/144>. The latter document submitted by Tanzania refers to a paper prepared by Professor W. Michael Reisman, Opinion as to the Qualifications of the Global Fund for Observer Status at the United Nations (unpublished paper).

[7] The Secretary-General, *Annual Report of the Secretary-General on Strengthening and Coordinating United Nations Rule of Law Activities, delivered to the General Assembly*, U.N. Doc. A/63/298 (Aug. 17, 2009), available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/298>.

[8] Letter from the Permanent Representative of the United Republic of Tanzania to the United Nations, Request for the Inclusion of an Additional Item in the Agenda of the Sixty-Third Session: Abuse of the Principle of Universal Jurisdiction, U.N. Doc. A/63/237 (Feb. 3, 2009), available at

<http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/237>.

[9] Human Rights Council, Human Rights in Palestine and Other Occupied Arab Territories, *Report of the United Nations Fact Finding Mission on the Gaza Conflict*, U.N. Doc. A/HRC/12/48 (Sept. 25, 2009), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>.

[10] Human Rights Council, Draft Resolution, Situation of Human Rights in the Occupied Palestinian Territory, Including East Jerusalem, U.N. Doc. A/HRC/12/L.12 (Sept. 25, 2009) and Corr. 1, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/12/L.12>.

[11] For a summary of the Goldstone Report, see David Kaye, *The Goldstone Report*, ASIL INSIGHTS, Oct. 2, 2009, available at <http://www.asil.org/insights091001.cfm>.

[12] Human Rights Council, Resolution, Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem, U.N. Doc. A/HRC/RES/S-12/1 (Oct. 21, 2009), available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/HRC/RES/S-12/1>.

[13] See Press Release, General Assembly, Leaders from Developing World Vow to Win Struggle to Ensure Democracy, Peace, Development with Help of United Nations, as Assembly Debate Continues, U.N. Doc. GA/10863 (Sept. 25, 2009), available at <http://www.un.org/News/Press/docs/2009/ga10863.doc.htm>.

[14] Note that this case is different from that of Honduras. In June 2009, the GA adopted a resolution without a vote calling upon States to recognize no Government other than that of the Constitutional President Mr. Zelaya Rosales.

[15] See General Assembly, Draft Resolution, Responsibility to Protect, U.N. Doc. A/63/L.80/Rev.1 (Sept. 10, 2009), available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/L.80/Rev.1>.

[16] *Id.*