

Forum: General Assembly 6th Committee

Issue: Criminal accountability of United Nations officials and experts on mission

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Introduction

The UN has had the role of maintaining peace and cooperation between states since its founding in 1945. In order to achieve this goal UN officials and experts regularly have to visit other states to exercise their duties. This is a function of vital importance to the UN and should it not be seen through with proper diligence and discipline it can affect both the state and the UN negatively. However, the case is such that while on mission officials take advantage of their diplomatic immunity and position to commit crimes of various degrees. A list of crimes that have been committed include sexual exploitation and abuse, corruption and fraud, smuggling, firearms violations and distribution of child pornography. All these crimes damage not only the local population but also the UN as a whole. Citizens are abused and UN funds are used for private purposes. Furthermore, this reduces the trust of people in the UN, making it even harder for the UN to carry out its duties. Despite the multiple attempts of the UN to combat it it still persists due to disagreement on how to deal with it. Consequently, this is a problem of vital importance and should be combatted before it permanently affects the UN's ability to operate.

Definition of Key Terms

Criminal accountability

Criminal accountability is a synonym for criminal liability. Liability is, according to the legal dictionary by Farlex, “the legal responsibility for one's actions”. Criminal liability is “the failure to meet that responsibility” which leaves the individual in question subject to a lawsuit for any resulting damages.

Diplomatic immunity

Diplomatic immunity, according to the legal dictionary by Farlex is “A principle of International Law that provides foreign diplomats with protection from legal action in the country in which they work.” This does not exempt them from certain types of crime like those under the Rome Statute

of the ICC (International Criminal Court). In the case of UN officials and experts this immunity can be waived at the discretion Secretary General or by the Security Council.

Complainant

As defined by resolution A/RES/62/214 5c, complainants are “Persons who allege, in accordance with established procedures, that they have been, or are alleged to have been, sexually exploited or abused by United Nations staff or related personnel, but whose claim has not yet been established through a United Nations administrative process or Member States’ processes, as appropriate”

Victim

As defined by resolution A/RES/62/214 5c, victims are “Persons whose claims that they have been sexually exploited or abused by United Nations staff or related personnel have been established through a United Nations administrative process or Member States’ processes, as appropriate”. This differentiates them from complainants whose claim has not been proven or processed by the UN.

Background Information

General overview of the problem.

This is a long-standing problem of the UN and one that has yet to be effectively tackled. In an effort to combat the problem, in a report of the Secretary General a list of all noted cases of allegations against UN officials since July 1st, 2007 has been made. This numbers 151 noted cases since then. The issue that arises, however, is that of the proper follow up on these cases. Of the 124 cases referred to member states only 24 have been followed up and investigated on. This means that just a fifth of all allegations have been properly investigated and therefore the large majority of offenders is not prosecuted or tried and consequently continue to commit offenses unpunished. On the other hand, 27 cases were reported to the Secretary General, all of which have been closed or were at the time of the report still ongoing. Multiple resolutions have been passed on the topic, however, the problem still persists as there is a lack of unified response on the topic as each state has different views as to how to effectively combat the problem.

Furthermore, officials are often not adequately trained, and their actions not coordinated which leads to multiple law violations. All this leads to a decline of trust in the UN as an increasing number of victims and host states are victims of the unlawful manner of the officials. This disrupts the proper cooperation between states and corrodes the image of the UN and the rights it protects. Past incidents include sexually abuse of both minors and adults, many cases involving fraud and corruption. There are few cases of assault or violation of firearms laws and almost none of theft. The two most common

violations are also the ones hardest to investigate considering that in the case of sexual abuse the victim is often too frightened to defend itself, and in the case of corruption neither party involved in it is likely to confess. Additionally, it should be noted that the vast majority of crimes happen by peacekeeping forces which is logical considering that they are sent to areas of great distress and thus can commit crimes with greater ease since they either remain unnoticed or can't be easily prosecuted.

2017 has been the year with the most allegations against UN officials per year so far, at 35. This can be taken as sign that officials are being more closely monitored and thus their crimes exposed, or that there is a larger amount of officials committing crimes.

Process of persecution of officials

The process for the persecution of officials is generally unclear and opinions of states vary. Multiple states believe it is a problem that should be treated on a case-by-case basis instead of establishing a general procedure. However, as it currently stands the procedure is as follows. First, the host country files a complaint against the official to the UN Secretary General or the party to which the official is subject to as well as to the country of origin of the official. When that is done the host state proceeds with the investigation of the matter. In case the host state is unable to do so other member states can assist such as the state of origin and in the case diplomatic immunity is disrupting the process it can be waived by the responsible UN body. Finally, after the investigation has taken place the official is tried in the state of origin.

Problems that arise and difficulties that prevent solution of the problems

There are multiple factors which hinder the efforts to combat this problem and are not easily resolved. First of all, arises the problem of difference of laws between states. Due to the different laws in each state each individual case is handled differently from state to state so the question of which state should be the one to try the official rises. As mentioned above it is generally considered that the state of origin should be responsible for the trial but due to law differences it may be unable to do so. This can be covered by the International Criminal Court but only for very specific crimes which are not generally those that are violated (considering murder and sexual exploitation are only in the ICC jurisdiction if they are "part of a widespread or systematic attack" as stated in the Rome Statute) so the ICC can rarely intervene in these cases. Furthermore, different entities within the UN also have a different way of handling cases which is another hindering factor in the establishment of a general procedure.

Moreover, it is often that neither host nor state of origin is able to adequately prosecute and try the official in question especially since many of the top peacekeeper contributors are LEDCs without adequate access to the necessary resources. Due to this and multiple other reasons which aren't always clear, there is a tendency to not follow up on investigations of officials, letting many escape unpunished. Moreover, many officials are not adequately trained to carry out their duties with proper diligence and discipline resulting in the violations of law.

Finally, there is a disagreement between states as to whether or not a convention to establish a clear procedural guideline is necessary. Some states believe that it is necessary to combat the problem immediately and as such a convention is necessary. However, others believe it is premature to discuss a convention as there are multiple other problems that need to be addressed first which will more effectively solve the issue, such as strengthening domestic legal institutions.

Major Countries and Organizations Involved

Country or Organization

United Nations Secretary-General (UNSG_

The Secretary General is the primary body that most officials answer to and as such is responsible for waiving the immunity of many of them. The UNSG is also referred to in most resolutions on the topic as one of the most important factors in solving the problem. It is worth noting that all cases referred to the UNSG were followed up on.

UN Special Coordinator

The UN special coordinator was appointed by Ban Ki Moon in 2016 in order to improve and coordinate UN response to sexual exploitation and abuse, mainly by peacekeeping forces. In January 2017 the Special Coordinator with other high-ranking officials created a task force to devise and present a strategy to combat the problem.

United Nations Department of Peacekeeping Operations

Most of the violations are made by peacekeeping forces who are sent to states which are in a dire situation and therefore are unable to prevent the crimes committed by them. Moreover, most peacekeepers are from LEDCs which also raises problems as to how they will be tried if complaints are raised against them.

Pakistan

Pakistan is one of the largest contributors of peacekeeping forces placing 5th worldwide and is also the most outspoken state against a convention on the issue. It believes it is premature to discuss any measures before first strengthening law institutions and justice systems in states. Furthermore, it proposed a draft resolution on the topic which was passed without a vote (**A/C.6/72/L.18**).

Timeline of Events

Date	Description of event
February 13 th , 1946	Convention on the privileges and immunities of the United Nations
October 22 nd , 2014	GA6 69th session 17th meeting on the issue of criminal accountability of UN officials
December 28 th , 2016	Follow up on accusations against UNOCI (United Nations Operation in Côte d'Ivoire) official for reception of bribes
January 2017	Creation of task force consisting of UN special coordinator and other officials to devise a strategy to combat the issue
May 31 st , 2017	Follow up on accusations against MONUSCO (United Nations Organization Stabilization Mission in the Democratic Republic of the Congo) official for sexual abuse of a minor
July 28 th , 2017	Report of Secretary General on the topic of criminal accountability of United Nations officials and experts on missions
October 6 th , 2017	GA6 72nd session 8th & 9th meeting on the issue of criminal accountability of UN officials
November 6 th , 2017	Draft resolution adopted on criminal accountability of United Nations officials and experts on mission
2016-2017	Ongoing case against official(s) from MINUSTAH (United Nations Stabilization Mission in Haiti) for involvement with a gang involved in theft of vehicles and firearm possession.

Relevant UN Treaties and Events

- United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel, 7 March 2008 (**A/RES/62/214**)
- Criminal accountability of United Nations officials and experts on mission, 18 December 2013 (**A/RES/68/105**)
- Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, 18 June 2002 (Secretary General's bulletin) (**ST/SGB/2002/9**)

- Criminal accountability of United Nations officials and experts on mission, 13 December 2016 (**A/RES/71/134**)
- Convention on the privileges and immunities of the United Nations, 13 February 1946
- Criminal accountability of United Nations officials and experts on mission, 31 July 2014 (Report of the Secretary General) (**A/69/210**)
- Criminal accountability of United Nations officials and experts on mission, 28 July 2017 (report of the Secretary General) (**A/72/205**)
- Draft Resolution on criminal accountability of United Nations officials and experts on mission, 6 November 2017 (**A/C.6/72/L.18**)

Previous Attempts to solve the Issue

This issue has been a constant topic on the agenda of the GA6 and efforts and debates are constantly made in order to resolve the issue, which have not so far proven successful. In the most recent assembly on the issue the question of a convention arose, a topic on which opinions were divided. In the final draft resolution, no mention of a convention was made but it was decided that the issue is added to the next session of the GA6 to be further discussed.

Furthermore, multiple resolutions have been passed on the topic as can be seen above. However, the solutions proposed are not clear and decisive enough and have not been implemented properly resulting in very small progress. A positive result of these resolutions is the list of all allegations against officials which was compiled. On the other hand, coordination and response seem to still be lacking due to the large number of cases not followed up on. The general guidelines and foundation are present in the resolutions passed regarding cooperation and improvement and implementation of laws. However, the prosecution process is not explained and the resolutions are strongly repetitive, repeating past ones and moving the issue to be discussed in a future session.

Finally, multiple Secretary Generals have made an effort to combat the issue, most prominently Ban Ki Moon with the appointment of the UN Special Coordinator and Antonio Guterres with the report detailing all allegations up to July 2007 allowing easier tracking of all cases since then.

Possible Solutions

Most solutions on the topic have already been proposed by states but their implementation is proving to be the harder part. First of all, officials require better training in order to uphold high standards of behavior while on missions. It is important to note that not all states are able to adequately train their officials in which case assistance must be provided in order to achieve that purpose. Furthermore guidelines must be introduced and followed to ensure that basic crimes are covered by the law of all

states so that discrepancies due to conflicting laws during persecution processes are avoided and again in the case of states that are not able to do so on their own assistance must be provided while ensuring that the sovereignty of the state isn't infringed upon.

Furthermore, and possibly the most important measure is a clear guideline as to how the procedure of prosecution should be. First of all, must be established if the issue will be treated on a case-by-case basis or if there will be a general guideline. If it is on a case-by-case basis, guidelines must be set as to the cooperation of the states involved and a measure to ensure productive cooperation and minimize arguments for example through a 3rd party overseeing the matter. In the case of a general guideline, it should be clear who is responsible for the investigation and who is responsible for the trial. Additionally, measures to assist states unable to try or investigate the matter should be mentioned as well as the possibility of the intervention of 3rd parties such as the ICC.

Finally, all these could be discussed in a convention specifically for this topic, however, this is not supported by all states as it is considered premature to do so before solving more domestic issues.

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Appendices

I. Secretary General report detailing all accusations since July 2007

<http://undocs.org/A/72/205>

II. List of peacekeeper contributions by country

<https://peacekeeping.un.org/en/troop-and-police-contributors>

III. Overview of most recent convention along with summaries of the positions of each country that spoke

<https://www.un.org/press/en/2017/gal3546.doc.htm>

Forum: General Assembly 6th Committee

Issue: Legal measures to eliminate international terrorism

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Introduction

In our modern day and age, it is no longer surprising to hear of the latest terror attack on the news. We have grown almost disaffected with these atrocities, and many of us have come to acknowledge them as part of everyday life. While there are some factors of terrorism one cannot account for or change, such as geography, the root causes of terrorism boil down to a few basic problems. Terrorists groups stem from very specific conditions and senses of instability, and by ignoring their violence and considering it inevitable, we only make the problem worse.

Countries have tried to find a unified singular solution to this issue, yet often come up short. Political conflict and personal interests, as well as the complexity of the issue, often get in the way of such legislation. Bias and discrimination often play a role as well. Muslims are often associated with terrorism due to the recent rise in terrorist groups in the Middle East, leading to much of the legislation meant to target terrorist to be pointed at Muslims instead. Not only is this wholly ineffective, it also completely fails to address non-Muslim terrorism, a growing phenomenon worldwide, and leads to terror attacks being committed against Muslims to be ignored.

Muslim on Muslim terrorism is also prominent. The Middle East sees many attacks from so-called “Muslim” coalitions, such as ISIS, on mosques. In the region. Sunni and Shia power struggles often lead to the creation of insurgent groups, highlighting the struggle between ethnic groups for dominance and control. To eliminate terrorism, we must begin by destroying these root causes of it, and learn to communicate openly with each other. In doing so we will be able to take up a united front in the fight against terror, but we must remember that what we are trying to combat here today is but a concept, and as such cannot be destroyed. We must then focus on eliminating the appeal of terror and ensuring countries have the means to combat rising insurgent groups as they come. This report will discuss the most effective legislation to counter international terrorism as well as providing information on international terror and how it came to affect us so greatly.

Definition of Key Terms

International Terrorism

International terrorism is specified as terrorism committed by foreigners to the country or region in which it took place. However, many such terrorist acts can be linked to organizations that target people locally as well, and any organization that is based in multiple countries is international. In addition, some attacks are caused by nationals to a country who have been radicalized by a foreign terrorist group, and thus their attacks can be considered acts of “international” terrorism, too. Such groups often recruit globally as well, and while they may usually operate in one country their members may be from around the world (United Nations).

Terrorism and Terrorist Attacks

Countries have trouble agreeing on a concrete definition of this term, often because any act of violence can be seen as a terrorist act, but in regards to this issue many agree that this violence must be due to political aims to truly be considered terrorism. Some consider terrorism any politically-based violence committed with the purpose of inciting fear. With regards to the perpetrators of this violence, there is once again a lack of consensus. While it was originally agreed that a state or military could not commit “terrorist” acts, more and more nations have either admitted to supporting certain terrorist groups or are known to be colluding with them, leading the global perspective on this topic to shift. In addition, it was once the case that violence during a civil war was unaffiliated with terrorism, however the rise of ISIS in Syria and Iraq has greatly altered that mind-set. Terrorist attacks come in many forms. Recently, suicide bombings have been among the most common forms of attack, but other forms, such as biological attacks and the use of vehicles to cause harm, can be just as deadly (United Nations).

War on Terror

After the attack on the Twin Towers in America, on September 11, then-US President George Bush and his administration declared that a “war on terrorism” had begun. While the term was never officially used, it is widely accepted to refer to international legislative and military campaign launched after the 9/11 attacks. This ‘war’ included not only actual invasions in Iraq and Afghanistan but also increase airport security and the founding of the US National Security Association (NSA), which has the power to monitor any online or phone communications. Many other countries, mainly members of the North Atlantic Treaty Organization and especially England, joined the US in its effort to eradicate terrorism (CIA). However, it should be noted that the term and the movement invoked harsh criticism. The concept of a war on terror has proven

highly contentious, with many claiming that public fear from the terrorism threat was exploited for the sake of long-standing military and policy objectives. Critics also argue that to declare war on a concept, without identifying a specific enemy, is nearly impossible and condemn military action and intervention; decreeing it useless and inflammatory (Amnesty International). The Obama administration often rejected the term and declared the “war” over in 2013, with the President stating that the military and intelligence agencies will not wage war against a tactic but will instead focus on a specific group of networks determined to destroy the US (CIA).

ISIS

The US has identified one of these groups as ISIS, the Islamic State in Iraq and Syria. This militant group, arising from an Al-Qaeda aligned group named *Jama'at al-Tawhid wal-Jihad* in 1999, participated in the Iraqi insurgency following the 2003 invasion of Iraq by Western forces. They have since spread to Syria and have cells all over the world. ISIS has claimed responsibility for a majority of recent terrorist attacks, including the 2017 Istanbul Nightclub shooting and Baghdad bombings. ISIS is notorious as the “new face of terrorism” and often explicitly discussed in terms of international terrorism (Amnesty International).

Refugees

Refugees are displaced people who are forced to migrate to a new country for safety reasons, and in relation to this issue to avoid terrorist groups. While most refugees are victims of the attack, a very small minority are radicalized and been identified as responsible for attacks. Certain nations thus consider that refugees pose a terrorist threat to national security, which has increased both regular security checks and led to all-out bans of refugees from terrorist0ridden countries in certain countries. It should however be noted that while refugees can be perpetrators of terrorist attacks, these people are rare and do not reflect the intentions of the millions of people seeking refuge from conflict. In addition, terrorist organizations have been known to radicalize locals as well, so the threat, while international, is not entirely foreign (United Nations).

Background Information

Recent and Impactful Terrorist attacks

Considering the amount of attacks in recent years, not all could be included. The attacks here are the ones who were either essential in triggering legislation or largely changing public opinion on terrorist attacks.

9/11

The attack commonly referred to as 9-11 is the incident in which two hijacked planes were deliberately crashed into the Twin Towers. 3,000 people died in the ensuing collapse of the buildings, and Al-Qaeda took responsibility for the attack. This attack is so important not only because it was the first of its kind but also because it triggered major legislation in the US and around the world. As stated above, it led to the founding of the NSA and other anti-terrorism organizations. It also paved the way for the ensuing “war on Terror” and invasions of Iraq and Afghanistan, and led to a higher standard of safety regulations in airports. The attack is often deemed responsible for putting Al-Qaeda into the limelight, causing the mastermind behind the attack, Osama Bin Laden, to be hunted down and killed years later (Jenkins).

Brussels Bombings

More recently, on 22 March 2016, three coordinated suicide bombings occurred in Belgium: two at Brussels Airport in Zaventem, and one at Maalbeek metro station in central Brussels. These attacks came as a shock to most Europeans as a reminder to how close these threats may be, largely changing their outlook on refugees and immigrants and raised awareness for the spread of terrorism (Since 9/11).

Pan Am Flight 103

Pan Am Flight 103 was bombed in mid-air while on route from Heathrow to JFK, was bombed down in mid-air. This attack is particularly important because it was directly linked to the Libyan government, who was suspected of aiding militant groups in perpetrating it and later claimed responsibility. Because of this, the attack has caused many to reevaluate their definitions of terrorists to include attacks caused by states or state actors (Jenkins).

Root Causes of Terrorism and Terrorist Acts

While it is often hard to pick a single root cause for these attacks, a certain combination of the following six factors are often at play in some way. These are either methods existing groups use to garner support or conditions that lead to the creation of such groups.

Poverty and Unemployment

When many people find themselves unable to support their families and afford a basic lifestyle, they turn against the government institution that they deem responsible for their suffering. A lack of jobs, especially, can be directly linked to the government, and large poverty and corruption rates often are as well. In these cases, terrorist groups provide an alternative for impoverished people, who join in the hopes of bettering their lives. They can be bribed with food and basic commodities which leads them to viewing these groups as revolutionary and a path forward. Many do not realize what exactly they have been coerced into joining. Boko Haram has often

used this tactic. The former Prime Minister of Nigeria claims that in order to garner initial support, the group played on the people's desperation to get many to rally around them and as a very effective tool in radicalization (United Nations).

State Violence

In dictatorial regimes, resentment for the government can also stem from state violence. This is the case where terrorist groups gather support as an alternative and a way to end the corruption of political leaders, a tactic that helped ISIS garner support in Syria. In these situations, they gather members and supporters under the guise of fighting the corrupt state, but often change their targets to civilians or other different-minded rebel groups to achieve their ends later on (United Nations).

Conflict between Ethnic Groups

Conflict between ethnic groups can also lead to the creation of terrorist organizations. Most notorious in this category is the recurring Sunni and Shia conflict in the Middle East. The two factions of Islam tend to fight for dominance and control over regions. Often, one group will find a government with another group majority as unrepresentative of them, and where there is animosity between the groups those who feel that way choose to strike back against the government they deem corrupt. This type of conflict is especially dangerous because it is not only rooted in hatred and discrimination but also because governments of one ethnic group will often stand by said group and only intervene for the sake of their own relations and gains. This may lead to governments supporting terrorist groups as long as the fight is in their best interests, further increasing conflict in the region (World Atlas).

Radicalization

These methods are often implemented along with radicalization, a brainwashing method terrorist groups use to turn people in favor of their cause. These instances are particularly common with religiously based terrorist groups like Al-Qaida who use social media to convert teens to their brand of Islam. In claiming their actions represent a religion or other form of accepted belief system, terrorist groups can more easily convince others that they are doing the right thing (United Nations).

Foreign Interference

There are many cases in which foreign powers have directly supported, or collaterally created, terrorist groups. The case of Qatar possibly funding the Muslim Brotherhood is one such example, and many have made cases that the US invasion of Iraq did nothing but create contempt for the West and lead to the conception of ISIS. Whether or not these particular examples can be proven however, the fact remains that in creating a common external threat many extremists have been able to gain followings (United Nations).

Major Countries and Organizations Involved

United States of America

The United States has already been mentioned in regards to its War on Terror and past interventions with terrorist groups. Still today, the USA plays a leading role in the fight against terror and provides huge support for the rebel forces fighting ISIS in Syria (BBC). On a more local level, the US maintains extreme tracking of civilian communications systems to monitor terrorist related conversation. Earlier this year, Executive Order 13769, so-called the “Muslim ban,” banned nationals from certain (predominantly Muslim) countries from entering the US from January to March of last year. It was then followed by Executive Order 13780, which not only decreased the number of annual refugees the US admitted but also suspended refugee admissions for 120 days and banned Syrian refugees indefinitely. Whilst many nationals speak out against the ban and deem it inhumane, President Donald Trump and his supporters have not backed down (Amnesty International).

European Union

Countries in the EU have suffered multiple terrorist attacks as of late, especially in France and more recently the United Kingdom. While the EU is attempting to formulate a single plan of action, countries are having trouble reaching consensus on many points. On the issue of refugees and immigration, Hungary has consistently been against their country accepting refugees, and have been fighting against pressure from other countries, such as Germany, on the issue. They maintain that their citizens are their priority and that they will not sacrifice their safety for refugees. These and other such disagreements have kept the EU back from pushing major legislation and hindered their progress in this fight (Amnesty International).

Nigeria

Often overlooked due to the Western bias of media, Nigeria actually has the highest number of annual terrorist attacks, mainly due to Boko Haram. The country is unable to defend itself as it is a poorer nation with a weaker government, thus the terrorists in the area tend to roam free. Nigeria provides a case study for countries who, due to their third world status, cannot as easily combat terrorism on their own, furthering the vulnerability of their citizens (Amnesty International).¹

The Arab League

Countries in the Arab League have often been in conflict with each other about their respective involvement and support for terrorist groups. While no concrete evidence can be found to back

any claims, it is important to note that a majority of the time these countries will back groups that, while some may consider terrorist, can be seen as political parties, such as the Muslim Brotherhood who took control in Egypt before a military coup took them out of power. Qatar especially has been accused of links to Al-Qaeda and ISIS, which lead Saudi Arabia, Egypt, Bahrain, and the United Arab Emirates to sever all ties with it. While the US government has voiced its support for their actions, it continues to sell the small nation billions in weapons. It should be noted that the conflict in the Middle East is often between the two Islamic factions: Sunni and Shia. Because of this, when civil war erupts in a country, its neighbours choose sides by finding the group most aligned to their faction. This often leads Arab countries to interfere in ways that escalates the conflict for their own ends, further degenerating the situation (Amnesty International).

Egypt

Terrorist groups in Egypt have conducted numerous deadly attacks over the recent years. The most prominent of these groups is a branch of ISIS known as the Sinai Province (ISIS-SP). The group originated as Ansar Bayt al-Maqdis in 2011, an anti-Israel coalition that mainly targeted Jerusalem, before pledging allegiance to ISIS in 2014. In the coming years they would continue to attack Israel with rockets, up until the Coup-d'état in Egypt ousted the Islamist government of Mohammad Morsi. ISIS-SP has declared the current government of Abdul Fattah al-Sisi apostates and have turned their attention to attacking and murdering various members of the government and police force (Amnesty International).

The group is small, with active member estimates between 1,000 and 1,500. It's influence in the region stems from its connection to ISIS and support from local villagers. Since the group has become a part of ISIS, its attacks have become more sophisticated, leading to higher casualty counts and prompting the Egyptian government to proclaim a state of emergency in 2014, then to launch an ongoing military operation, The Martyr's Right, in the region in late 2015. Village support has also hindered the dismantling of this group. In the Sinai region of Egypt, poor infrastructure and lack of government spending has led locals to become disaffected with the government, and many have turned on El-Sisi believing him to be a military dictator. While many of these locals are not active ISIS-SP members, they often will support the groups in providing refuge from police forces and otherwise obstructing government efforts (BBC).

The Egyptian Government however has not always been praised for its counterterrorist tactics. While it has put considerable efforts in combatting terror groups, its means have often been questioned by Western powers and human rights groups. Amnesty International alleges that "the authorities used mass arbitrary arrests to suppress demonstrations and dissent, detaining journalists, human rights defenders and protesters, and restricted the activities of human rights organizations" (Amnesty International). Specifically, the Parliament has passed laws that weaken the country's fair trial system and given police forces what can be seen as dictatorial power. The situation in Egypt highlights the importance of keeping in line with human rights laws as well as fighting terrorism, rather than sacrificing the former for the latter (Amnesty International).

Yemen

The situation in Yemen is a clear indicator of how foreign interference in a country can create instability. Its political system is currently in limbo, with no single group in charge of the country and multiple terrorist groups involved. The problem in the country is essentially a power struggle: After the unification of Northern and Southern Yemen in 1990, the country has always been destabilized or corrupt with fighting from leaders of both former countries wanting control. The conflict may have been less severe if not for the intervention of other states in the area, mainly Saudi Arabia and Iran, who've supported opposing sides from the start. While neither is a terrorist organization they have both committed what many would consider terrorist attacks, bombing hospitals and civilian dwellings in the area (BBC).

Pakistan

By neighboring Afghanistan, Pakistan has been the target of many attacks from the Taliban. However, they have been repeatedly accused of supporting the coalition's endeavors in Afghanistan and harboring members. This double standard has not only inflamed the situation in Afghanistan but also weakened the defenses in Pakistan. Many of their efforts to suppress the Taliban have failed, and they are said to have the highest number of troop and civilian losses due to terrorism. However, they continue to sponsor terrorist groups they believe pose a threat to the United States. More recently, the latter has stated that both countries are trying to find a common ground and combat terrorism together, but progress is yet to be made (World Atlas).

China

The issue in China is not so much terrorism, but how the government defines it. Religious repression and censorship of information are often conducted under the guise of "counter-terrorism". The result is a state where dissent and peaceful protest are considered criminal, and people's rights are ignored. China serves as another cautionary tale when combatting terrorism. Countries cannot be too severe so as to infringe on the people's rights, but firm enough to effectively fight terror (Amnesty International).¹¹

Timeline of Events

Date	Description of event
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September 11 th , 2001	Twin Towers attack in the US that triggered major legislation
September 20 th , 2001	U.S. President declares the start of the War on Terror, allied countries follow
March 11 th , 2004	Suicide bombing of Madrid trains by a group affiliated with Al-Qaida
July 7 th , 2005	UK's first suicide bombings, carried out by Islamic group
September 8 th , 2006	UN adopts Global Counter Terrorist Strategy, first time such a plan is agreed on.
2013	Obama declares the War on Terror over
2014	Highest number of civilian casualties due to terrorism in recent history
April 14 th , 2014	Chibok Schoolgirls Kidnapping, Nigeria
August 17 th , 2015	The Bangkok bombing kills 20 and injures 125
March 22 nd , 2016	Brussels bombings occur, ISIS takes credit
June 12 th , 2016	Orlando Nightclub shooting occurs in Pulse, a gay nightclub
July 14 th , 2016	A truck ploughs through civilians during Bastille Day celebrations
December 19 th , 2016	Berlin Christmas Market attack
April 7 th , 2017	Stockholm attack
May 22 nd , 2017	A bomb explodes at an Ariana Grande concert in Manchester
August 17 th , 2017	A van ploughs into crowds in Barcelona, killing thirteen people
November 24 th , 2017	Attackers shoot and detonate a bomb in Al-Rawda mosque, Egypt, killing 305.

Relevant UN Treaties and Events

- UN Global Counterterrorism strategy^{iv}
- Measures to Eliminate International Terrorism, 17 February 1995 (A/RES/49/60)
- Measures to Eliminate International Terrorism, 6 September 1996 (A/51/336)
- Measures to Eliminate International Terrorism, 16 September 2016 (A/RES/68/11)

Previous Attempts to solve the Issue

Use of force and military interventions

While the Global War on Terrorism may have ended, military intervention with the hopes of stopping terrorist groups has not. A US-led coalition continues to support the rebels in Syria with the hopes of taking down ISIS, for example. The problem with such coalitions, however, is that they often cause countries to go head to head. In Syria for example, the multifaceted nature of the civil war has led to certain nations, mainly Russia and its allies, to support the elected government of Syria. Sunni nations in the Middle East, as well the United States, side with the rebels. This often leads to both groups fighting each other rather than ISIS, and allowing the situation to escalate (United Nations).

International Agreements

The Global Counterterrorism strategy is the main agreement put together with the hopes of countering terrorism. This document highlights the importance of its four pillars: “addressing the conditions conducive to the spread of terrorism, preventing and combatting terrorism, building States’ capacities and strengthening the role of the UN, and ensuring human rights and the rule of the law”. These pillars provide a four-pronged approach to fighting terrorism and are used as the basis of many recent solutions (United Nations).

Possible Solutions

The first step in stopping international terrorism is to agree on a legal definition of the term ‘terrorism’. Ensuring that all countries are on the same page will allow debate of the issue to be more focused, and pressure countries to halt their support of terrorist groups. Then, short-term solutions must be found. While attacks and war against terrorist groups have rarely proven successful, they may still be necessary, especially in regions where these attacks are frequent. Countries further from the conflict can strengthen immigration checks to stop terrorists from entering the country and start campaigns to counter those of terrorist groups to stop them from gaining members.

In the digital age however It should be noted that a lot of recruitment occurs online. Countries should place immense focus on social media and its use by these groups in recruiting members. Currently, sites often react to terrorist presence by blocking the offending users, but this is a largely reactionary tactic. Screening and censorship at an earlier stage may be necessary to cut off recruitment, and monitoring of internet spaces is recommended. However, countries should remain wary of using censorship, as the tactic is known to anger civilians and causes more harm than good.

Another possible avenue for solution is a long-term plan. It consists of helping poor and unstable countries not in violently combatting terrorism but in becoming stronger, more stable, and educating their people. This method involves tackling and preventing the aforementioned root causes of terrorism, rather than terrorists themselves. It includes developing these countries' economies and eradicating corruption in government through more democratic systems and prosecution of the perpetrators of state violence. Countries should also focus on resolving conflict within their ethnic groups in a peaceful manner and ensuring that no group is oppressing another. Increasing intercultural and ethnic communication is essential, as it allows those of different backgrounds to come together and peacefully resolve issues, rather than resorting to the violence from which terrorism so often erupts. Countries must learn to step back and not involve themselves in a country's issues unless absolutely necessary, lest they inadvertently radicalize people in the region. At the same time however, strong global communication and cooperation is essential in keeping the peace.

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Appendix

- I. An up-to-date list of countries with most terrorism can be found here: www.worldatlas.com/articles/the-global-terrorism-index-countries-most-affected-by-terrorist-attacks.html.
- II. Useful information on all countries can be found in the Amnesty International Country Reports (www.amnesty.org/en/countries/) and the BBC Country Profiles (news.bbc.co.uk/2/hi/country_profiles/default.stm). These pages should give you all some insight as to your countries' policies on terrorism and kick start your research.
- III. A more comprehensive list of attacks can be found at since911.com/explore-911/terrorism-timeline#jump_time_item_489.

- IV. This document, found at www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy, will give you lots of insight on the best and most straight-forward approaches to combatting international terrorism. In addition to the “Possible Solutions” segment, this should serve as a general outline of how you can approach the issue in a logical way, and will be especially useful in finding the current laws and their limitations.

Forum:	General Assembly 6 th Committee
Issue:	Enhancing the power of the International Criminal Court (ICC)
Student Officer:	Kyril Kibbelaar
Position:	Chair

Introduction

The International Criminal Court (ICC) is a legal body concerned solely with justice, yet due to its noteworthy independent power, it has significant political impact. Therefore, understanding the ICC's function and its history is of vital importance in the sphere of international politics. The International Criminal Court is an intergovernmental organization and international tribunal that sits in The Hague in the Netherlands. The ICC has the jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, war crimes, and the crime of aggression. Formally established on July 1, 2002 and active since 2003, the ICC - to which 123 States adhere to - has had a controversial history.

Successes of the ICC include the swift and overwhelmingly favorable adoption of the Rome Statute. Among particularly the world's smaller nations, perceptions of the ICC are quite favorable and improving. The ICC (and the Rome Statute) proved itself to be rather flexible at the Review Conference of the Rome Statute of the International Criminal Court, which acts as a promising indication for future attempts to revise the function of the ICC.

and Successes of the International Criminal Court (ICC) (Donovan, Dan).

Failures of the ICC include its penchant for lengthy, ineffective proceedings and its lacking witness protection. It has also become evident that the role of the chief prosecutor is essential to the court's success, and many detractors of Moreno-Ocampo, the first chief prosecutor of the ICC, stated that his faults led to an ineffective, inefficient ICC at his helm. The recent disillusionment of many African States with the Court due to its perceived biases is perhaps the most notable indication of the ICC's shortcomings (Aggad, Faten, and Apiko, P).

Our aim in tackling this issue is to create a more efficient, strong ICC that more consistently puts out quality content so it may fulfill its potential and work to create a more just world.

Definition of Key Terms

Rome Statute of the International Criminal Court

The Rome Statute is the treaty that formally established the ICC when it was adopted in Rome on July 17, 1998. It entered force on July 1, 2002 and currently 123 member states adhere to it. The Rome Statute is of great importance because it formally established the ICC's functions, jurisdiction, and structure. Hence all delegates should be familiar with its contents if they wish to write effective resolutions and participate in constructive, fluid debate.

The Four Core International Crimes

The Rome Statute also established the four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. All four crimes have been defined by the Rome Statute - genocide, crimes against humanity, and war crimes in 1998 and the crime of aggression more recently in 2010. Briefly put, genocide consists of any of those measures instituted with the intent of destroying, in whole or in part, a national, ethnical, racial or religious group; crimes against humanity are any acts committed as part of a system attack against any civilian population; war crimes are those acts that violate the Geneva Conventions of 1949; the crime of the aggression is characterized as the planning, preparation, initiation or execution of an act of aggression by a State leader that constitutes a manifest violation of the Charter of the United Nations. An act of aggression is understood as any use of armed force by one State against another State's sovereignty, territorial integrity, or political independence. These four core international crimes are important because they are not subject to any statute of limitations.

'Statute of Limitations'

In common law systems, a statute of limitations establishes the maximum amount of time after which an event has occurred that legal proceedings can be begun. After a statute of limitations on a crime has passed, no action can be taken against the perpetrator of the alleged crime. The crimes within the jurisdiction of the ICC aren't subject to any statute of limitations.

Review Conference of the Rome Statute of the International Criminal Court

From May 31 to June 11, 2010, a Review Conference of the Roman Statute of the International Criminal Court was held in Kampala, Uganda. During said conference, amendments to the Roman Statute were considered. Two amendments were adopted, one that defined the crime of aggression and another that made it a war crime to employ poison, "asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices," or expanding bullets in non-international conflicts (the Rome Statute had only made those war crimes if they took place in international conflicts).

Victim participation

Victims of crimes that are within the ICC's jurisdiction can apply to participate in court proceedings through a lawyer, apply for reparations, seek assistance, and submit communications to the Office of the Prosecutor. Victims can make opening and closing statements, consult with the record of proceedings, receive notification of all public and confidential filings that affect their personal interests, and Examine evidence if it is believed that will help in determining the truth. As the participation of victims with the ICC is governed by the vague Article 68(3), determining when victims have been allowed to participate has been left to the jurisprudence of the court. While victim participation can be helpful both as a rehabilitative measure for the victim to establish context for the court, the use of victims may slow and/or politicize proceedings, heighten costs, and present further logistical challenges (Evenson, Elizabeth, and Burnett, Maria).

Reparations

Victims can seek reparations for the harms they have suffered. Reparations are (in this context) compensations given to victims. Reparations may consist in monetary compensation, return of property, rehabilitation, medical support, victims' services centres, or symbolic measures like apologies or memorials. If there is a conviction at the end of a trial, the Trial Chamber has the authority to demand the convicted subject pay reparations to the victims of the crimes said subject was found guilty of committing. These reparations may be ordered to be paid through the Trust Fund for Victims and may be awarded on an individual and/or collective basis. How reparations would be rewarded is determined by the court in accordance with what would be most appropriate. Thus the ICC holds the responsibility of not only serving justice, but also helping victims rebuild their livelihoods (Aubry, Sylvain, and Henao-Trip, María Isabel).

Background Information

In order to understand how to best enhance the power of the ICC, it is crucial to understand its stated purpose, jurisdiction, structure, and operations. The primary purpose of the ICC is to, as stated by the preamble of the Rome Statute, "put an end to impunity for the perpetrators" of the most serious crimes of concern to the international community as a whole (namely the four core international crimes), "and thus to contribute to the prevention of such crimes". In order to do so, the ICC has the function of presiding over the prosecution of those individuals who commit the most serious crimes within States' borders. As the mandate of the ICC is purely judicial, it is not subject to political control. Thus all decisions made by the body are based on legal criteria and are rendered by impartial judges (United Nations).

Jurisdiction

In regards to the jurisdiction of the court, the ICC is a permanent autonomous body that can try only individuals who were over the age of 18 when the events in question were committed. No adult

individual is free from persecution by the ICC, even if they have been given amnesty by their respective State. This differentiates the ICC from the International Court of Justice (ICJ), which deals with inter-State conflicts. Furthermore, it must be understood that the ICC only takes action in cases when States have proven unable or unwilling to investigate and try those accused of committing international crimes. Otherwise, jurisdiction over such cases lies in the hands of national courts. In addition, the ICC only has jurisdiction over those events that have occurred after July 1, 2002, when the Rome Statute became enforced. Moreover, if a State becomes party to the Rome Statute after its initial enforcement, the ICC only has jurisdiction over those events that occurred within that nation after the entry into force of the Roman Statute for that State. This can only be changed if a State makes a declaration accepting the ICC's jurisdiction retroactively. Additionally, the ICC doesn't have the jurisdiction to try citizens of a state that hasn't ratified a treaty unless their alleged crimes took place on the territory of a State Party. When a new State becomes party to the Roman Statute, it enters into force on the first day of the month after the sixtieth day after it was initially ratified by said State (United Nations).

Structure

In regards to the structure of the ICC, it is composed of four individual organs, each of which has a specific role and mandate: the Presidency, the Office of the Prosecutor, the Chambers, and the Registry. The Presidency consists of three judges - a President and two Vice-Presidents - that have been elected by an absolute majority of the 18 judges of the ICC for a maximum of two three-year terms. The roles of the Presidency include being responsible for the administration of the court (with exception of the Office of the Prosecutor), representing the Court to the outside world, helping with the organization of the work of the judges, ensuring the enforcement of sentences imposed by the Court, among other tasks (United Nations).

The Office of the Prosecutor

The Office of the Prosecutor receives and analyzes information on situations within the jurisdiction of the ICC, analyzes situations referred to it in order to determine whether there is a justifiable basis to initiate an investigation into any of the four core international crimes and to bring the perpetrators of these crimes before the ICC. There are three divisions within the Office of the Prosecutor. The Investigation Division is responsible for conducting investigations with the aim of determining the truth, the Prosecution Division, although it has a role in the investigative process, primarily litigates cases before the various Chambers of the Court, and The Jurisdiction, Complementarity and Cooperation Division assesses information received and situations referred to the ICC, analyzes cases to determine their admissibility, and helps secure the cooperation required by the Office of the Prosecutor in order to fulfill its purpose (United Nations).

The Divisions and Chambers

There are three judicial divisions within the ICC to which the 18 judges - who were all elected by the Assembly of States Parties - are assigned. These are the Pre-Trial Division, the Trial Division,

and the Appeals Division. These Divisions each correlate directly to the Pre-Trial, Trial, and Appeal Chambers, which the judges of each respective Division are assigned to. The Pre-Trial Chambers deal with all issues which arise before the trial phase begins. This includes supervising how the Office of the Prosecutor carries out its investigatory and prosecutorial activities, guaranteeing the rights of suspects, victims and witnesses during the investigatory phase (as well as determining the admissibility of their participation), deciding whether or not to issue warrants of arrest or summons to appear at the Office of the Prosecutor's request, whether or not to confirm the charges against a person suspected of a crime, and ensuring the integrity of proceedings. The Trial Chambers tries cases after an arrest warrant has been issued. Its responsibilities include ensuring trials are fair and efficient, determining the guilt of the accused, imposing a sentence (that may not exceed thirty years in prison or life-imprisonment), and ordering for reparations to be made. The Appeals Chamber, which is made up by the President of the Court and four other judges, may uphold, reverse or amend the decision of a Pre-Trial or Trial Chamber, order a new trial before a different Trial Chamber, or revise a final judgment of conviction or sentence (United Nations).

The Registry

The Registry is the Court's official channel of communication and has primary responsibility for the ICC's public information and outreach activities. It also provides administrative and operational support to the Chambers and the Office of the Prosecutor, supports the Registrar's (head of the Registry) activities in relation to defence, victims, communication and security matters, ensures that the Court is properly serviced, and develops effective mechanisms for assisting victims, witnesses and the defence in order to protect their rights under the Rome Statute and the Rules of Procedure and Evidence (United Nations).

The Three Main Issues of the ICC

There are three main issues that the ICC can be seen to have. These are the issue of legitimacy and credibility, the issue of selectivity, and the issue of autonomy.

The Issue of Legitimacy

The ICC is inherently limited as its authority stems from an acceptance of its legitimacy by the international community. If a wide swath of States were to reject its legitimacy and authority, the Court's sentences would become powerless and the Court would lose credibility. A notable area of concern lies in the fact that three out of the five permanent members of the UN Security Council (UNSC), China, Russia, and the United States, are all not party to the Rome Statute. It is unlikely that any of these three States would ratify the Rome Statute, yet it must be noted that increased participation by these states - with the exception of Russia, which in November 2016 cut ties with the ICC - with the ICC in recent years seems to indicate a growing acceptance of the ICC's legitimacy. However, politicization threatens to undercut that acceptance. As is indicated by

the throwing out of prosecution evidence in the crimes against humanity case against Kenya's deputy president, William Ruto in 2016 due to outside political pressures, the ICC - although a judicial body - is influenced by political circumstances. As the legitimacy and integrity of the ICC lies in its independence, it is vital to ensure that it is ensured by all means. That certain states (like in the case of Bashir in 2009) do not implement ICC requests indicates that they do not consider them as binding, which thus calls the legitimacy of the ICC further into question.

The Issue of Selectivity

In regards to selectivity, disparaging remarks have been levied against the ICC for its selection of cases to pursue. The most notable of criticisms made has been that the ICC has concentrated on crimes solely committed in Africa (arrest warrants against named individuals have only been named in African countries). The fallout from this criticism has resulted in multiple African nations threatening to renege from their adherence to the ICC, with Burundi being the first nation to do so in 2017.

The Issue of Autonomy

In regards to autonomy, power politics, as alluded to briefly previously, have a large bearing on the Court's independence. The UNSC can any moment decide to delay an ICC investigation or prosecution in accordance with Article 16 of the Rome Statute, meaning even non-party States like China, Russia, and the United States can have large undue influence on the Court. In the cases of Joseph Kabila in the DRC in 2004, Yoweri Museveni in Uganda in 2004, François Bozizé in the Central African Republic in 2005, and with the government in Mali in 2012, the ICC was used as political tools by the State leaders to act against rebels. The tendency for the ICC's independence to be easily infringed is one that needs to be addressed.

In an effort to solve these issues, the Strategic Plan of the International Criminal Court of 2013 to 2017 was developed. A link to a July 2015 update to the plan can be found in the appendices. It should be noted that measures within the Strategic Plan should not be copied but rather used as sources of inspiration that can be improved upon (United Nations).

Major Countries and Organizations Involved

African Union

The African Union has had a very tumultuous relationship with the Court. It is perhaps the most outspoken opponent of the ICC, despite having 33 signatories to the Roman Statute (34 prior to the withdrawal of Burundi on October 27, 2017). The root of these strained relations is clearly the perception that the ICC is biased against African nations. The two most notable instances of opposition between the two parties were In August 2009 when the African Union made it clear that its member states would not

cooperate with the ICC in order to arrest Bashir and on February 1, 2017, when the African Union called for the mass withdrawal of member states from the ICC (Aggad, Faten, and Apiko, P).

Human Rights Watch (HRW)

The Human Rights Watch (HRW) is one of the foremost advocates for the increased protection of victims in ICC proceedings. An organization largely concerned with both impact of the ICC on local levels and seeing perpetrators of international crimes brought to justice, it is evident that the HRW is one of the premier policy-influencers in answering this question.

Russia

In November 2016, Russia took the step of removing its signature from the Rome Statute, which it had never signed. That indicated the cutting of ties completely with the ICC. Vladimir Putin, the President of Russia, stated that the reason for these measures was that the ICC is “one-sided and inefficient” and had failed to live up to its obligations to the international community. Russian detractors, however, have stated that the reason for this cutting of ties was Russia’s relationship with Syria. Nevertheless, this act was a severe blow to the ICC’s legitimacy (Walker, Shaun, and Bowcott, Owen).

The United States of America

The hegemonic state, the United States is the most significant non-ratifier of the Rome Statute. This presents a threat to the ICC’s legitimacy. It is unlikely that the United States will ratify the Rome Statute anytime soon, as officials state the ICC could indict US military officials for war crimes when they conduct foreign operations with “legitimate uses of force”. The United States did sign the Rome Statute in 1998 under Bill Clinton, yet it failed to be ratified (Global Policy Forum, editor).

Further Non-Signatories of the ICC

In addition to the aforementioned States, there are further States who haven’t signed the Rome Statute. These include India, Pakistan, Sri Lanka, Turkey, Israel, Lebanon, Nicaragua, Cuba, Mauritania, Libya, Togo, Sudan, South Sudan, Ethiopia, Somalia, Equatorial Guinea, Rwanda, Swaziland, Vatican City, Belarus, Iraq, Kazakhstan, Saudi Arabia, Qatar, Azerbaijan, Turkmenistan, Nepal, China, Bangladesh, Bhutan, Myanmar, Laos, Vietnam, Malaysia, Singapore, Indonesia, Papua New Guinea, North Korea, Brunei, Palau, Micronesia, Kiribati, Niue, Togo, Tonga, and Tuvalu. States who have signed the Rome Statute yet not acceded to it consist of Algeria, Angola, Armenia, the Bahamas, Bahrain, Cameroon, Egypt, Eritrea, Guinea-Bissau, Haiti, Iran, Jamaica, Kuwait, Kyrgyzstan, Monaco, Morocco, Mozambique, Oman, São Tomé and Príncipe, the Solomon Islands, Syria, Thailand, Ukraine (although in the case of Ukraine a declaration accepting the jurisdiction of the Court for a limited time period was made on April 17, 2014 and extended indefinitely on September 8, 2015), the United Arab Emirates, Uzbekistan, Yemen, and Zimbabwe.

Timeline of Events

Date	Description of event
December 9, 1948	The first step towards the establishment of an international permanent criminal tribunal manifested in UN General Assembly Resolution n. 260 9 December 1948, the Convention on the Prevention and Punishment of the Crime of Genocide.
July 17, 1998	The Rome Statute of the International Criminal Court was adopted.
July 1, 2002	The Rome Statute of the International Criminal Court entered into force and the ICC was formally established.
March 11, 2003	The inaugural session of the ICC was held.
July 8, 2005	The ICC issued its first arrest warrants for five senior leaders of the Lord's Resistance Army (LRA) for Crimes against Humanity and War Crimes committed in Uganda since July 2002.
2006	The ICC's first pre-trial hearings were held.
May 31 - July 11, 2010	Amendments to the Rome Statute of the International Criminal Court were considered during a Review Conference of the Rome Statute of the International Criminal Court held in Kampala, Uganda.
March 14, 2012	By finding the Congolese dictator Thomas Lubanga guilty of recruiting and using child soldiers, the ICC issued its first verdict since having been established.

- October 26, 2016 Burundi, South Africa and the Gambia announced their intentions to withdraw from the Rome Statute due to a perceived ICC bias against African states. Following the election of a new Ghanaian president in December of the same year, Ghana rescinded its withdrawal. South Africa too rescinded its withdrawal after its High Court found that the country's withdrawal would be unconstitutional. Nevertheless, South Africa remains committed to withdrawing and other African states including Kenya, Namibia, and Uganda may soon follow in withdrawing from the ICC.
- October 27, 2017 Burundi became the first country to withdraw from the ICC (Moore, Jina).

Relevant UN Treaties and Events

- Roman Statute of the International Criminal Court, 17 July 1998
 - Defined the ICC, its purpose, structure, jurisdiction, etc. (United Nations)
- Relationship Agreement between the United Nations and the International Criminal Court, 20 August 2004
 - Defined the terms on which the United Nations and the Court were brought into relationship (United Nations)
- General Assembly Resolution 58/318, 13 September 2004
 - Approved the Relationship Agreement (United Nations)

Previous Attempts to solve the Issue

- International Criminal Court Strategic Plan (2013 – 2017)
 - In recognition of the ICC's shortcomings, this plan was agreed to with the aim of improving the Court. This document lays out judicial and prosecutorial, managerial, and cooperation and support goals and objectives. This has helped increase efficiency in the Court yet failed to address the three overarching issues of legitimacy, subjectivity, and authority.
- International Criminal Court Strategic Plan of the Office of the Prosecutor (2016 - 2018)
 - Serving as a complement to the general Strategic Plan, this plan addresses more specific concerns regarding the OTP and solutions to them.

Possible Solutions

In regards to the issue of legitimacy and credibility, the ICC would become more legitimate/credible if it gave more weight to victims' views in decisions about their legal representation. This is important as a main plank of the Roman Statute is the participation of victims in the court. Because the victims are represented, it is important to ensure that the representatives are independent of the Court, from the situation country or who have special knowledge of the situation country, and have a permanent link with a team in the field. This would preserve the voice of the victims. Criteria should be developed to determine when the ICC will provide support to victims to choose counsel and when it will make that decision for them

The ICC should also be given more autonomy as many of those who question the ICC's credibility point out its bias against certain states (namely African states) results from a lack of true autonomy (hence undermining the notion of universal justice). The ICC would have greater autonomy if a majority of states in the world were party to the Statute and systematically respected its obligations, because the autonomy of the court is determined by the goodwill of states parties and non-party states to the ICC Statute. The ICC would also be more autonomous if it had the ability to act more independently from states, investigate criminals on all continents, whether state officials or not, have the means to deliver justice in a fair way and in a short period of time, defer prosecutions at the local level.

The ICC would also be perceived as more legitimate if situations under preliminary analysis could be addressed more consistently and quickly in an effort to increase transparency and thus trust in the ICC in the eyes of the general public. Therefore, the Office of the Prosecutor should submit evaluation reports of the conditions for opening an investigation under Article 53(1) of the Roman Statute to the Pre-Trial Chamber.

In regards to the aim of increasing the efficiency of the ICC, States should be expected to provide both greater political and greater diplomatic support as the ICC doesn't have its own police force and thus depends on cooperation with states. Furthermore, states should be encouraged to refrain from meeting with those who have had arrest warrants issued against them. In addition, as Non-governmental Organizations (NGOs) have been critical to the function of the ICC and because the relationship between the Court and these third-party actors isn't well defined, it would be beneficial to define these relationships and provide written guidelines to NGOs as to what form of evidence collection would be most useful to the ICC (and specifically the Office of the Prosecutor). There should also be greater aims to implement technology to aid in investigations. Performance indicators could also be created to better identify progress and faults in the following of the Roman Statute. Drawing inspiration from the Statement to the 13th Session of the Assembly of States Parties New York by the Open Society Justice Initiative, the indicators could be analyses of the system's reach, depth, and strength. Finally, within the

current legal framework the ICC can freeze the assets of the accused (an action which states are meant to abide by). However, this ability needs to be reinforced. A framework needs to be set up through which a method for administering and monitoring seized assets with efficiency can be accomplished (Gegout, Catherine).

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Forum: General Assembly 6th Committee

Issue: Strengthening the Rule of Law through Ombudsman institutions

Student Officer: Sofia Bilder

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Introduction

The current ombudsman system has existed since the early 19th century, where it originated in Sweden. However, the concept of the ombudsman has existed for centuries. During the Qin dynasty in ancient China, a representative for the people oversaw the emperor's government and registered complaints. Korea's Joseon Dynasty counted with the service of an undercover official selected by the king who monitored government officials in local provinces. In Rome, the Tribune acted as an ombudsman by using its veto power to protect the plebeians, or ordinary citizens. Ancient China, Korea and Rome laid down the foundations for modern-day Ombudsman Institutions, which were further shaped into their modern state in the 19th century.

Sweden in 1809 saw the next large development in the ombudsman profession. Under the 'Instrument of Government', a crucial component of the Swedish constitution, the first parliamentary Ombudsman was established. Its role was to monitor public officials and their activities, as well as to promote the protection of the rights and liberties of citizens. The model spread throughout Scandinavia, becoming increasingly popular as countries sought more intensely to protect human rights and hold government officials accountable for their actions.

Today, over 130 nations count with the service of a national ombudsman institution. Within these states, the ombudsman acts as a guardian of the rule of law. As such, Ombudsman Institutions have a duty to protect citizens, mediate conflicts and defend the rule of law in their respective countries or sectors. It is through them that nations have the capacity to strengthen the rule of law through the accountability of all, the promulgation of equality and increased transparency in legislations and within national governments.

Definition of Key Terms

Law

In *Black's Law Dictionary*, the law is defined as “that which is laid down, ordained, or established.” A law is something that “that must be obeyed and followed by citizens, subject to sanctions or legal consequences.”

Rule of Law

In report S/2004/616 of the Secretary-General, the rule of law is “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”

Ombudsman

The term 'ombudsman' comes from the Swedish word for representative. The International Ombudsman Association (IOA) defines an ombudsman as someone who "assists individuals and groups in the resolution of conflicts or concerns." In essence, an ombudsman is both a mediator and an advocate who can work at a regional, national, or international level. The term 'ombudsperson' may also be used.

Institutions

As defined by the Governance and Social Development Resource Centre (GSDRC), institutions are “the formal and informal rules and norms that organise social, political, and economic relations.” Institutions have the ability to change, develop, and create development outcomes that are positive or negative.

Alternative dispute resolution (ADR)

Alternative dispute resolution encompasses the use of processes and techniques for the resolution of conflicts. It is a mean for disputing parties to settle disputes without the need to resort to litigation. The use of ombudsmen is an example of ADR.

Background Information

Since 1809, the ombudsman profession has greatly expanded. Today, several kinds of ombudsman institutions exist. These can have varying objectives, such as, ensuring the protection of human rights, combating government corruption, or defending those who have been victims of varying forms of malpractice.

As a whole, Ombudsman Institutions strive to ensure that the rule of law is upheld, ensuring that the legal rights of citizens are protected and that all are held accountable for their actions. The increasingly large presence of ombudsmen in governments and organisations has demonstrated the effectiveness of the framework in respecting, promoting and ensuring equality under the law.

Types of Ombudsman Institutions

Various types of Ombudsmen institutions exist. These have varied functions, features and presence in countries around the world. When categorized, it is evident that there are substantial differences between the various types of Ombudsman Institutions (OI). However, in practice, most OIs focus on a broad range of issues, almost always in different categories. The list below includes the four main types of ombudsman institutions and is non-exhaustive.

Classical Ombudsman

A classical ombudsman "investigates complaints against the public administration, makes recommendations to be taken by the administration, and tries to get these recommendations adopted." The investigation of cases, mediation of conflicts, provision of solutions, and the submission of an annual report are the primary tasks of a classical ombudsman. Some Ombudsman Institutions have been granted extended legal powers, which facilitates the adoption of recommendations.

Human Rights Ombudsman

The role of a human rights ombudsman is primarily to ensure the observance of human rights. A human rights ombudsman's role is to research, monitor, educate the public and report on human rights violations, as well as the human rights situation in the country in which they serve. They are particularly present in Eastern Europe, Central Asia and Latin America, where human rights are a concern.

Anti-Corruption Ombudsman

Corruption and a mission to curb it are the objectives of an Anti-Corruption Ombudsman. To accomplish this task, Ombudsmen supervise the conduct of public officials, collect and review declarations, investigate local instances of corruption and educate the public on the issue. Anti-Corruption ombudsmen are used extensively in Asia and Africa.

Auditing Ombudsman

Auditing Ombudsmen primarily conduct audits within government bodies regarding the practices and procedures they employ. Unlike most ombudsmen, they have the power to conduct investigations without first receiving a complaint. Countries that currently utilize this ombudsman model include Australia and Ethiopia.

Role of Ombudsmen in strengthening the Rule of Law

Ombudsmen play a key role in strengthening the Rule of Law. The influence of ombudsmen on legal frameworks can be primarily observed in four areas: transparency, accountability, prevention of escalation of conflicts and resolution of conflicts. Ombudsmen have the capacity to prevent the escalation of conflicts and begin the process of conflict resolution, although in most instances they do not have the legal capacity to execute this change. However, ombudsmen exist not only for the purpose of mediation. Their task as defendants of citizens and protectors of the law is to ensure that no one is above the law, even those who create it, and that those who violate the law are held accountable for their acts. Through the services they provide, they have the ability to increase transparency and accountability in the government. Due to these factors, ombudsmen have come to be rightly viewed as the 'guardians of the rule of law'.

Transparency

The use of ombudsmen has allowed for greater transparency within local, regional and national politics. This is significant as transparency can be a form to combat institutional corruption and hold senior officials accountable. Moreover, transparency within a legal setting is significant as it indicates the adaptability of the law. This adaptability can be achieved through the work of ombudsmen, particularly in the mediation process. When citizens bring forward claims regarding unjust or unclear laws, the ombudsman is able to achieve a greater sense of transparency by providing solutions to open issues.

Accountability

Accountability under the law refers to a theory where one can be “liable in a civil lawsuit or culpable in a criminal matter.” An ombudsman “receives complaints from aggrieved persons against government agencies, officials and employers or who acts on his or her own motion, and has power to investigate, recommend corrective actions and issue reports.” (International Bar Association) Moreover, the ombudsman’s unique role as a liaison between citizens and the government allows it to ensure the accountability of government officials.

Prevention of escalation of conflicts

Due to their roles as mediators, ombudsmen can prevent the escalation of conflicts. By providing solutions to disputes, the ombudsman has the ability to mediate said conflicts, which can result in their resolution and they can moreover prevent their escalation.

Resolution of conflicts

When granted sufficient legal powers, ombudsmen can effectively contribute to the resolution of the disputes they mediate. Since the use of ombudsmen is a form of ADR, they present a fast, effective, and inexpensive form to resolve conflicts without the need to resort to a court of law. As

was previously mentioned, the ability to enforce these solutions vary depending on the legal power of an ombudsman. However, the decisions of the ombudsman are never legally binding.

Major Countries and Organizations Involved

Sweden

Sweden was the first nation in modern times to establish the use of ombudsmen. In 1809, a parliamentary ombudsman was appointed under the 'Instrument of Government', one of the fundamental laws within the Swedish constitution. Its primary aim was to oversee the compliance of laws and decrees by public authorities. However, the parliamentary ombudsman could also criticise dubious laws, prosecute unlawful actions and ensure equality in a court of law. Today, Sweden also counts with an Equality Ombudsman and an Ombudsman for children, whose task it is to defend equality and the rights of children. Other non-government appointed ombudsmen are present in Swedish society, such as the Consumer Ombudsman, Press Ombudsman and *Sameombudsmannen*. These defend consumer rights, compliance with media industry ethics, and the rights of Sweden's Sami minority, respectively.

Poland

Poland saw the establishment of its national ombudsman at the same time as the end of its communist regime. In 1987, Poland established its ombudsman office, becoming the first country in the Soviet bloc to do so. For a period of two to three years, the ombudsman operated in a non-democratic regime, which had advantages but also posed various disadvantages. Today, the Polish ombudsman follows the Scandinavian mode which calls for them to be appointed by parliament, grants them the right to control the administration of justice and practice due to their authority and influence.

United States of America

The United States is one of the only western countries to not count with the service of a federal ombudsman. In the country, the role and duties of the ombudsman are assumed by the US congressman. Some of the reasons proposed as to the lack of a federal ombudsman include: large population size (particularly in relation to Sweden), the country's constitutional doctrine of the separation of powers, an independent judiciary and the ombudsman's role within a court of law.

European Union

Under the Maastricht treaty (1992), which called for the establishment of the European Union, the European Ombudsman was formed. The office investigates claims within the European Union which have been put forward by individuals or companies. These claims are frequently directed towards bodies and institutions of the European Union who have been accused of misadministration.

International Ombudsman Association (IOA)

The International Ombudsman Association (IOA) was founded in 2005 in order to further the work of organizational ombudsmen (ombudsmen who work within an organisation) and to ensure their laboral standards. It supports organizational ombudsmen in various areas of the professions and counts with over 900 members.

United Nations Ombudsman & Mediation Services (UNOMS)

The UNOMS is the United Nation's Ombudsman organization. As such, it works to intervene in and resolve conflicts within the UN. It lends its services to UN employees, to whom it provides aid through informal means. It is a place for employees to take forward their work related concerns when they do not know how, where, and in what manner to express these. UNOMS is able to achieve its objectives through "conflict coaching, giving feedback to UN offices, by using shuttle diplomacy, mediation, and other tools." The UNOMS work occurs on a global scale, furthering the mission of the United Nations and helping those who work for the organization.

Organization of News Ombudsmen (ONO)

The Organization of News Ombudsmen connects with news ombudsmen around the world, organizing conferences and discussions connected to the issues ombudsmen work with. The purpose of a news ombudsman is to "receive and investigate complaints from newspaper readers or listeners or viewers of radio and television stations about accuracy, fairness, balance and good taste in news coverage." A news ombudsman has the power to recommend appropriate measures which serve "to correct or clarify news reports."

Timeline of Events

Date	Description of event
1713	King Charles XII of Sweden creates the post of ombudsman, a representative who would ensure the good conduct of royal officials.

1809	Under the Instrument of Government, Sweden becomes the first country to commission a Parliamentary Ombudsman. This event marked the earliest establishment of an ombudsman institution.
1920	Finland establishes a Parliamentary Ombudsman, becoming the second nation in the world to do so.
1970s	Ombudsman Institutions begin to expand into countries such as New Zealand, Canada, Australia and many Central and Eastern European nations. Various African and South American nations also see the rise of Ombudsman Institutions.
1983	At the national level, 21 countries had implemented an ombudsman institution with an additional 6 implementing regional or provincial ombudsman.
1992	The European Union drafts the Maastricht Treaty, which provided a framework for the European Ombudsman.
1995	The European Parliament elects the first European Ombudsman, Jacob Söderman.
2001	At the national level, 110 countries have established ombudsman institutions, with many nations having ombudsman institutions at regional, city, and provincial levels.

Relevant UN Treaties and Events

- Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, 20 November 2012 (**A/RES/67/1**)
- Report of the Secretary-General, Delivering justice: programme of action to strengthen the rule of law at the national and international levels, 16 March 2012 (**A/66/749**)
- Report of the Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies, 23 August 2004 (**S/2004/616**)
- Secretary-General bulletin, Office of the Ombudsman — appointment and terms of reference of the Ombudsman, 15 October 2002 (**ST/SGB/2002/12**)

Previous Attempts to solve the Issue

Since 1809, Ombudsman Institutions have become increasingly present in governments, multinational companies and educational establishments. Their increased presence in governmental and other frameworks has greatly contributed to the strengthening of the Rule of Law. However, in order to truly fulfil their duties, ombudsmen institutions must be well established and hold a certain degree of

legal power. At this point, only some states have taken measures to resolve the principal issues facing ombudsmen institutions. For the most part, these attempts have been successful, leading to the increased power and effectiveness of said institutions. The two most successful measures in this pursuit have been the establishment of Ombudsman Institutions and the extension of their legal powers.

Establishment of Ombudsman Institutions

The most influential factor in the strengthening of the rule of law through Ombudsman Institutions has undoubtedly been the formation of said structures. The rate at which they have expanded since 1809 is one of the many indicators supporting this statement. Increasingly, nations have turned to the service of ombudsmen in order to effectively fulfill their legal duties. The work of ombudsmen in the majority of these nations has greatly improved corruption, human rights issues and transparency in said governments. Moreover, the establishment of these institutions has greatly strengthened the rule of law as it has fulfilled both of the underlying principles that compose it: everyone is accountable under the law and that all laws should be publicly promulgated and enforced.

However, in some instances simply establishing an Ombudsman Institution has not directly strengthened the rule of law within a nation. Some of these frameworks have failed to elicit any real change in governments or have their proposed solutions adopted.

Extended legal power for ombudsmen

In cases where the establishment of Ombudsman Institutions has not successfully strengthened the rule of law, firmer policies have been put in place. In some cases, this has caused for ombudsmen to be granted extended legal powers. Oftentimes, this has allowed for an the ombudsman's recommendations to be adopted with more ease, which has been particularly beneficial. The adoption of said solutions has allowed for the enforcement of laws and the protection of citizen's rights, two critical aspects of the rule of law.

The extension of legal power for ombudsmen can be observed throughout the world, however those who have benefitted the most from this change have been younger OIs. Therefore, many well-established OIs continue to struggle with the adoption of resolutions, which is why this process has not been globally effective.

UN Resolutions

Although the UN has passed resolutions regarding ombudsman institutions, these have been mostly ineffective in eliciting real change as they primarily focus on the UNOMS. Reports of the Secretary General, however, have provided insightful information regarding Ombudsman Institutions and how these have influenced the rule of law in a beneficial manner.

Possible Solutions

The role of ombudsman institutions in strengthening the rule of law is a significant one. As such, more concrete measures need to be established to allow for the proper creation, maintenance, and execution of these structures. Without them, ombudsman institutions globally will not have the capacity to reach the full extent of their potential. However, when given the right framework and the necessary tools to carry out their functions, ombudsmen have the opportunity to defend the law, ensure it is followed and promote equality under the law.

Increase of power

An increase of legal power could be beneficial for OIs in the adoption of its recommendations. Granting extended legal powers can grant the ombudsman the ability to: "appeal to courts, participate in court proceedings, file applications in administrative proceedings, propose legislative amendments, and recommend disciplinary or criminal proceedings". (World Bank) Moreover, power is a key component for the effective functioning of OIs. The power held by these should be clearly established and stated in legal and administrative issuances. In order to carry out the necessary investigations, ombudsmen must also have the ability to obtain all necessary documents, require witness testimony and inspect government premises.

Independence

Another key solution that must be put in place for the work of ombudsman to be furthered is independent from the executive power, which in many cases encompasses the parliament. In order for the system to function, ombudsmen cannot be liaised to the power due to a risk of influence. This could result in corruption, one of the very things the ombudsman attempts to counter. While maintaining this independence, the ombudsman cannot be subordinate to the executive and administrative branches it investigates. Additionally, ombudsmen must have financial independence, which will allow it to monitor the funds necessary to execute its tasks.

Resources

The ombudsman must have the resources necessary to carry out its functions. Without the correct resources, ombudsmen are unable to effectively handle complaints and engage in the mediation process. The necessary quantity and quality of these resources is dependent on several factors. The most significant among these are the design of the institution, the abilities of its administration, and the expertise provided by staff. Not all OIs will require the same level of resources, however providing them with the general tools will be an important step towards ensuring the effectiveness of the system. A lack of resources can be detrimental to the mission of OIs, which is why these are necessary to ensure the competence and effectiveness of the system.

Public Awareness

Public awareness can greatly influence a cause, conflict, or problem. This is especially true for ombudsmen as the system relies on the public to receive complaints. Therefore, the general public should acknowledge the existence of the ombudsman and the purpose it serves. Should the public be made more aware about OIs, undoubtedly, the service would become increasingly popular as a tool for ADR. This would ensure that the law is fair and respected and that all are able to seek justice, even if they cannot take their case to a court of law. In essence, the greater public awareness becomes, the more effective the role of ombudsmen will be in strengthening the rule of law.

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