

Background Guide Topic Three

The criminal accountability of United Nations officials and experts on missions

Introduction

The United Nations takes great pride in the work of its experts and officials while they are abroad on UN peacekeeping missions or events of other sorts. However, the UN cannot stand for the blackening of its credible and legitimate name due to crimes committed by its very own under the banner of the UN. Events such as these take away from the authority and legitimacy of the UN and they also lead to a jurisdictional nightmare as all parties involved try to determine who is best qualified to adjudicate when these sort of events go to trial. It is imperative that the UN decide how such violators are to be taken care of and what sort of processes should be put in place for beginning or even conducting trial for the violators and what the appropriate punishments are.

In 2003, during the sixty-third session of the Sixth General Assembly, a statement on behalf of the Secretary General was released detailed how various countries intend to deal with their national serving as UN experts and officials and commit crimes of a serious nature while on mission. The report also detail the process by which allegations may be brought against such nationals and it finishes by suggesting the implementation of greater training and other measures to strengthen the existing measures and standards of conduct for UN officials.¹ The report was an excellent way by which to lay out the standards to which the UN aims to hold its experts and officials accountable; however, the very fact that the world is still witnessing violations of law on the part of UN representatives indicates that these standards are not yet being forcibly employed.

For the vast majority, the UN boasts an exceptional staff of well qualified individuals. It only takes a few instances and a few violators, however, to begin to tarnish the good name that the UN has earned in the international community. These violators must be dealt with in a cohesive and comprehensive manner that leaves little room for the question of how best to adjudicate their trials. The UN must also make efforts to assure member nations – especially nations in which there are current ongoing peacekeeping missions – that the quality of the UN staff is beyond reproach. Special efforts need to be made with regard to reaching out to these countries and doing what is necessary to repair the damage caused by our experts and officials. The 2003 report by the Secretary General failed to address these

1 <http://cdu.unlb.org/Portals/0/Documents/KeyDoc14.pdf>

issues in a thorough way and that is what currently lies at stake for the 2010 meeting of the Sixth General Assembly.

History

Criminal accountability for United Nations (hereinafter, UN) workers remains one of the most difficult aspects to enforce particularly because of the complex legal web of appropriate jurisdiction. Whether or not UN peacekeeping workers who commit crimes should be tried by their native country or whether they should be tried in the country in which the crime was committed or whether even the UN as a whole should be responsible for reprimanding them are all very real, very difficult questions currently facing the 6th General Assembly. Thus it is evident that part of the problem lies with enforcing an awareness of UN zero-tolerance standards, but in reality part of the problem lies with determining who has the right of adjudication in such circumstances. The past instances of violations on the part of UN officials, UN peacekeeping missions, and UN troops all constitute dark stains on the history of the UN's good work and simultaneously constitute a real swipe at the validity and legitimacy of UN actions and efforts around the world.

\In 2005, Secretary General Kofi Annan was forced to admit, pursuant to a classified UN report, the violation and exploitation of war refugees in the Democratic Republic of the Congo by UN peacekeepers, officials, experts, and administrative staff members. The violations, which numbered over 150 in total, ranged from pedophilia to rape to prostitution.² Later, more allegations were filed against UN workers in the African nation of Burundi as well. As a whole, the consensus seems to be that the atmosphere created by UN workers and officials is one of a predatory sex culture among refugees. There were reported accounts of UN workers who demanded sexual favors from the refugees in exchange for food, and other accounts UN peacekeeping troops who would rape women at gunpoint.

These horrific revelations and violations are not, however, among the first of their kind. The year 2001 saw violations on the part of UN troops and officials in such nations as Sierra Leone, Liberia, Kosovo, and Guinea. In fact, that same year, the UNHCR released a statement indicating that violations on the part of the UN in the region of West Africa in particular were "endemic". Though Kofi Annan publicly announced a zero-tolerance sexual violence policy on the part of UN peacekeepers, the main bulk of

2 <http://www.weeklystandard.com/Content/Public/Articles/000/000/005/081zxelz.asp>

the problem lies with the UN troops. The problem here is that UN troops fall specifically under the categorical jurisdiction of their individual nation-states and not the jurisdiction of the UN as an international organization. Thus it still remains up to the individual member nations to enforce rules regarding sexual violence and inappropriate behavior.

In early April of this year, three top tier UN officials were charged with accepting multi-million dollar bribes from the regime of Saddam Hussein. One of the largest UN humanitarian aid efforts ever undertaken is the Oil-For-Food program, which began in 1996 with the purposes of helping Iraqi citizens following the First Gulf War.³ Pursuant to a US investigation in this year, evidence has arisen indicating that Saddam diverted approximately 5 million US dollars from this program's fund directly to his personal bank account through bribes made to highly-ranked UN officials. One of these officials is Cyprus native Benon Savan, the undersecretary general who was in charge of this program for approximately six years. Originally, UN action was to dismiss allegations against Savan, though afterwards Kofi Annan announced that there was to be a full investigation led by the former chairman of the US Federal Reserve Bank. Savan decided to retire from his position following the investigation and continued allegations. This entire event, known collectively as the UN Oil-For-Food Scandal, has been a rather dark stain on the reputation and good name of the UN.

Apart from instances of economic crimes in foreign countries by foreign officials and regimes, the United Nations must also combat instances of bribery on the part of company executives. One of the most recent instances includes an event of bribery which occurred in early September of this year. This latest circumstance involved the Vice President of Sales for an American company which produces such products as body armor and other protective gear. During his trial in early September, Richard Bistrong pleaded guilty in US federal court to having bribed UN officials with lucrative contracts. These bribes included over 200,000 US dollars to UN officials in order to achieve a contract deal worth six million US dollars to provide body armor to UN peacekeeping mission.⁴ How the UN will deal with those officials guilty of accepting bribe money remains to be seen, but it is entirely evident that this sort of inappropriate behavior cannot be tolerated.

3 <http://abcnews.go.com/WNT/Investigation/story?id=131619&page=1>

4 <http://www.foxnews.com/us/2010/09/16/executive-pleads-guilty-bribing-officials-win-body-armor-contracts-fla-company/>

It is evident that the United Nations body, in particular the legal committee, must work to enforce and maintain the integrity of its officials in order to uphold the good name and authority of the organization as a whole. It must be made clear that instances such as the aforementioned violations will not be tolerated, and it must be underscored that the UN has the intention of creating, implementing, and enforcing new policy measures to ensure that this sort of violence or corruption or bribery will not go unpunished.

Current Situation

Evidently it has come to the attention of the United Nations (hereinafter, UN) that there is a critical need for a more defined approach with regard to dealing with those UN officials and experts who commit criminal acts while officially in other countries partaking in work for the UN. It almost goes without saying that these sorts of acts constitute “breach[es] of trust which affect the image, credibility, and efficiency of the organization”.⁵ It is imperative that the Sixth General Assembly work towards the establishment of a zero-tolerance policy as quickly as possible. Serious crimes committed by UN personnel cannot be tolerated for they undoubtedly put a black mark on the good name of the UN and mark a serious detriment to the credibility and authority of the organization itself.

Currently, a large part of the problem stems from the fact that the country of nationality of the offender does not possess applicable jurisdiction for dealing with the offender because the crime was committed in another country. Exacerbating this problem is the fact that the government of the country where the crime actually took place is not entirely at liberty to prosecute the individual due to jurisdiction problems or even diplomatic immunity.

Part of the problem lies with the fact that each member country deals with this situation in a separate manner. Though the UN requires training of all its employees, standards have not been set on what to do with those experts or officials found guilty of committing sexual abuse or other crimes while on mission in foreign countries on behalf of the United Nations.

In current debates, the idea has been raised that whatever action taken should extend to all UN personnel not only on peacekeeping missions (where the vast majority of violations occur) but also to

⁵ <http://www.un.org/ga/sixth/62/CrimAcc.shtml>

UN personnel who find themselves on any mission connected in any way, shape, or form to the UN⁶.

This body needs to define, based off of past and future offenses, what constitutes a crime and what differentiates a “crime” from a “serious crime” since there is no set universal standard definition for these words when it comes to international law. Also, this body needs to decide what reparations and remedies, if any, should be accorded to the victims of crimes committed by UN experts and officials. Finally, this body must examine proper paths to be taken to implement deterrence of future crimes and they must decide how best to prosecute UN experts and officials found guilty of committing such crimes.

Directive

Criminal offenses committed by personnel under the banner and employment of the United Nations (hereinafter, UN) cannot be tolerated or dealt with lightly as they constitute a serious blow to the international credibility and reputation of the UN. The UN cannot function as a legitimate, authoritative peacekeeping organization if members of its official staff, while on missions in member countries, conduct themselves in such a way as to warrant criminal prosecution in either their home country or the country of offense. In such instances, this very fact implies a problem of jurisdiction: which country has the rights and the power to adjudicate in such a circumstance? Should it be the country of origin of the offender, the country in which the offense took place, or should the UN have a separate body solely for the purpose of reprimanding its own officials? These are the questions which plague the Sixth General Assembly as they are very real concerns to the UN at large.

Delegates should begin to research past offenses of UN experts and officials and should be knowledgeable about whether such crimes have occurred in their respective nations or whether any of their UN nationals are guilty of committing such crimes. They should be knowledgeable regarding how their country deals with their UN nationals who commit crimes in foreign countries while on mission, if applicable. They should begin to formulate opinions on how best to try these individuals and should consider who, in these circumstances, would actually hold proper authority over the violators. Delegates should understand the difficulty of adjudication in this instance especially since the only attempt at universal jurisdiction (the International Criminal Court) does not have the authority to

⁶ <http://www.un.org/ga/sixth/62/CrimAcc.shtml>

prosecute individuals who are not guilty of crimes of war, crimes against humanity, crimes of aggression, or genocide. What then is to be done with UN experts or officials who commit crimes against other persons and economic crimes as well? Delegates should begin to consider such aspects as extradition rights and investigation rights as well as the establishment of mutual assistance and information-sharing between the country of violation, the country of origin, and the United Nations. Finally, delegates should begin to contemplate where priority in jurisdiction lies and how they might go about convincing other delegates to comply with their views and proposed solutions.