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“Protecting Freedom in the Global Age ”

GA6: Legal Committee

The issue of prosecuting criminals/terrorists with respect to their birth countries

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Forum: GA6 - Legal Committee

Issue: The issue of prosecuting criminals/terrorists with respect to their birth countries

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Introduction

The issue of the prosecution of criminals and terrorists with respect to their birth countries is an issue that should be separated into two sub-categories: criminal activities and terrorism. Taking the prosecution of these two acts as one would not be appropriate as the scopes of their consequences are vastly different. That being said, neither should be overlooked in the final proposed solution of the issue.

Ever since the 9/11 attacks on the New York World Trade Center in 2001, the world has faced an emerging threat that has constantly been on the rise - terrorism. With this significant international threat comes the demanding task of bringing the guilty to justice. Unlike conventional crimes, terrorism usually creates a threat to an entire nation's people and its government. Therefore it causes more disruption than the initial physical after effects of the terror act itself. After a terrorist attack, national security comes into question and other countries, especially those geographically and politically close to the country take



The 9/11 Attacks on the World Trade Center, NY in 2001. Source: Time Magazine.

notice of the threat. Terrorists usually have idealistic motives behind the violence they create and most of them are aimed at supporting their religious ideologies. For a better impact on the global scene, terrorism is mostly aimed at people of a different nation. This means that terrorists can be, and mostly are foreigners to the country they carried out the attack at. When this is the case, a series of complicated procedures take place as the two countries - the terrorists' country of origin and that of his/her detention - have talks over where and how the criminal should be prosecuted.

Due to this statistic mentioned above, foreigners are suspected of criminal activities much more than locals in many countries. A country's justice system only has full jurisdiction over its own citizens therefore "foreign

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criminals” pose a problem when it comes to standing a trial. In which way the law is broken does not make much of a difference, all cases are a challenge for both the local and motherland authorities. Smoothing such processes would provide convenience for government employees and free large amounts of valuable court time in either respective country.

Many examples of such crimes and their difficult aftermath can be found. Cases concerning the United States of America (USA) are some of the most complicated and the country is where most of the curious cases are prosecuted at. This is mostly due to the fact that the US is the superpower of the world, which means they have the capability of intervening with a lot of international crimes and illegal activities.

(Image: A typical US Law Court. Source: law.com)



Definition of Key Terms

Terrorism

In November 2004, the United Nations (UN) Secretary General of the time Kofi Annan defined terrorism as “any act intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act”. Despite the words of the UN Secretary General, a universally agreed definition of terrorism does not exist. This is mainly due to the fact that countries define terrorism mostly according to what’s convenient to them in particular. Political and emotional factors play great roles in how terrorism is defined.

Prosecution

If someone is prosecuted, they are officially accused of committing a crime in a law court. Any act that goes against a country’s legislation is bound to be prosecuted. If the defendant is a foreigner in the country that they committed the crime, things get more complicated. Non-Governmental Organizations have been established to help with the complications that thousands of such criminals face abroad.

International Law

International law, in its broadest sense is what regulates government to government or citizen to foreign government relations. They are especially relevant in cases involving the government of where the crime took place and a foreign criminal.

Extradition

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An extradition is when a criminal is delivered by a government to another. It can have a variety of reasons and whether it will be carried out or not depends on the treaties between the two countries. If the criminal/fugitive has sought asylum in a country, that country has the choice between granting the asylum or sending him back. High status asylum seekers are mostly wanted badly by their' home countries, which can cause them to be extradited (against their will) back to their country of origin.

Universal Jurisdiction

Universal jurisdiction allows criminals to be taken into trial by any state or international organization that proves they have a right to do so, regardless of where the crime was committed or the origins of the criminal.

Extraterritorial Jurisdiction

Slightly different from Universal Jurisdiction, this is a country's legal right to apply to prosecute a crime that has happened inside the borders of another state. Universal Jurisdiction does not look at if the crime was committed in another state, disputed areas and international waters are included in the definition.

Consular Assistance

Consular assistance is any help and advice that a country provides to its citizens who are abroad either for living or travelling. It is guaranteed to the citizens of the 180 countries that signed the Vienna Convention of 1963 on Consular Relations. Despite this, criminals have not been granted their rights in some cases such as the LeGrand family case which will be explained in detail further on.



The French Consulate in New York, US. Source: Wikipedia.

General Overview

Every modern day country has a justice system. Each countries' system is unique and has its own set of rules. Knowing your countries' justice system is not enough to be able to understand court procedures all over the world. Consequently, one of the greatest challenges a criminal faces in a foreign country is that they are unfamiliar with how things work. The criminal therefore needs someone to assist him in defending himself in unfamiliar surroundings. Countries with evolved justice systems usually can provide the defendant with a lawyer and a fair trial, but this is not the case with a majority of countries.

According to research done by a German news agency¹, foreigners' likelihood of committing crimes is higher when their percentage in the population is taken into account. In a given community, the percentage of criminals in the foreigner population is higher than the criminal percentage in the local population. This means

¹ Deutsche Welle - DW <https://www.dw.com/en/opinion-lets-hope-it-wasnt-a-foreigner/a-49835225>

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there is a significant amount of cases in courts around the world with defendants who suffer from being a foreigner, which is why it is very important to bring universal solutions to this problem.

With a detainee being a foreigner comes the problem of where he will be prosecuted, and that is where the main problems regarding this issue start. Currently, some countries have laws that outline what happens in such cases but most countries do not. Even the ones who do don't usually obey them, so it is mostly a case specific situation where every case requires a unique approach. This is very time consuming and inefficient for both prosecutors and detainees. A UN resolution that specifically tackles the prosecution of foreigners has not passed before and would be a great improvement in international jurisdiction.

Guantanamo Bay Detention Camp

The Guantanamo Bay detention camp has been a part of the US Naval Base of the same name since 2002. It was opened with orders from President George W. Bush as a result of the war on terror. The first detainees were Al-Qaeda members suspected to have a role in the 9/11 attacks. The identities of those detained in the camp were initially kept secret in order to “ensure the safety of their families” but were later released. It is now known that there are prisoners from at least 50 different nationalities being held. It was later revealed that detainees are not allowed basic US Trial rights because they are in Cuban territory and this received negative reactions from the international community.



Detainees arriving at the camp. Source: Amnesty International

Amnesty International reports condemn the US because of the unlawful acts they carry out at the camp. Indefinite detention without any trial and torture to the detainees are considered breaches of human rights and as evidence of the violation of the Fifth and Fourteenth Amendments of the US Constitution. Later in 2011, WikiLeaks leaked federal documents revealing that 150 innocent Afghans and Pakistanis were being held in the camps and many other gruesome facts.

The Camp remains a dark stain in the name of American Justice to this date and still detains 41 prisoners.

The Julian Assange Case

Julian Assange is an Australian Editor who founded WikiLeaks, a website that releases classified documents. The website has a range of hackers that help it with the releases, and they were behind the leaks concerning the Guantanamo Bay documents in 2011. Following the leaks, Assange was granted asylum by the Ecuadorian government and has stayed in the London Embassy to Ecuador for 7



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years since 2012, until he got arrested in the April of 2019. He now faces US conspiracy charges, some of the most serious to date.

Julian Assange (right) at the London Embassy

Good for Mr. Assange, he has a competent lawyer, Jennifer Robinson. Since his arrest, the Australian government has stated that he “will not get any special treatment”² and that he will be given the same support as any other Australian citizen. Ms. Robinson has argued that Australia is neglecting their citizen to avoid trouble with the US. She called his government to support him and bring him back to his home state, but has not been successful. Now, Assange faces a system he is entirely unfamiliar with and a high chance that his trial will end in the US Government’s favor as both the victim and the judge are the United States.

The LeGrand Family Case in the International Court of Justice (ICJ)

On January 7th, 1982, two German brothers robbed a bank in the United States, killing one and injuring several. Subsequently they were arrested by the local authorities and sent to a local court, where they were given several charges including murder. The court decided that they be sentenced to death. Karl Le Grand was executed despite pleas by German officials. Germany carried the case to the ICJ hours before Walter LeGrand’s execution, which was consequently delayed. Despite the court proceeding, Walter LeGrand was executed 9 days after his brother. The lack of communication between the two states’ authorities caused the executions to be carried out without the provision of any consular assistance to the criminals, despite the fact that the US is obligated to do so according to the Vienna Convention.

Major Parties Involved and Their Views

International Criminal Court (ICC)

The International Criminal Court takes cases that are alarming to the international community and cannot be properly investigated and taken to trial at a national court. Judges and prosecutors come from many different states from around the globe and change every year. This ensures that the ICC is free of any patriotism or bias in their decisions, at least in theory. In recent years, states have lost confidence in the function of the ICC. Some believe it always leans to the US side while others think it simply isn’t as efficient as it should be. Fixing the ICC is therefore another issue that needs to be considered.



*ICC Headquarters in The Hague, Netherlands.
Source: ATLANTIC COUNCIL*

² CNBC -

<https://www.cnbc.com/2019/04/12/australian-pm-scott-morrison-on-wikileaks-julian-assange-arrest.html>

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Delegates must not forget that the ICC only takes cases concerning individuals that are a threat to the international community (those involved with extreme terrorism, organized crime, crimes against humanity etc.).

United States of America

The United States of America is the country that deals the most with criminals and terrorists that are not their citizens. As a global superpower with a military and intelligence system that has a finger in all major conflicts in the world, they detain many war criminals, international drug traffickers, organized crime leaders and any other similar criminals. Some of these criminals are US citizens but a great majority are citizens of other countries. The US exercises its right to extraterritorial and universal jurisdiction often with matters that concern the security of its citizens or that pose an international threat.

Amnesty International

Amnesty International is a non-governmental organization (NGO) that fights for human rights around the globe. International Justice³ is one of their specialties and they assist people who are at the risk of an unfair trial or an unlawful sentence without expecting anything in return.

Their belief is that many victims are denied justice and those who are responsible of devastating crimes continue to occupy positions from where they can continue committing violations of fundamental rights. They deliver assistance when countries do not prosecute criminals because they lack the political will to do so or have weak systems full with corruption that cannot deliver a fair verdict.

Timeline of Events

Date of Event	Description of Event
September 28, 2001	UNSC Resolution 1373 is accepted in the Security Council.
January 11, 2002	First detainees are brought into the Guantanamo Bay detention camp.
July 1, 2002	International Criminal Court is founded in The Hague, The Netherlands.
May 2007	Martin Scheinin of the United Nations Human Rights Council (UNHRC) released a report saying that the US is violating international law in the Guantanamo Bay detention camps.
April 25, 2011	The Guantanamo Bay files began to be leaked (779 in total).

³ Amnesty International - International Justice <https://www.amnesty.org/en/what-we-do/international-justice/>

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September 24, 2014	UNSC Resolution 2178 is accepted in the Security Council.
April 11, 2019	Julian Assange is arrested by local UK police, awaiting the decision on his extradition to the US.

Treaties and Events

United Nations Security Council Resolution 1373

This resolution that took effect in 2001 after the 9/11 attacks requires member states to put law into place that criminalizes any action that supports terrorist activities including helping with the funding and organization. It emphasizes the importance of bringing terrorists to justice and giving sentences that are harsh enough considering what they have done.

United Nations Security Council Resolution 2178

This resolution can be considered an extension of Resolution 1373 that addresses the challenges posed by foreign terrorist fighters (FTF) and insures that they are brought to justice under the appropriate conditions.

Evaluation of Previous Attempts to Resolve the Issue

No direct attempt at solving the issue of foreign criminals/terrorists being brought to justice has been made by the United Nations or any other international organization until this point. Conventions have seldom addressed the issue, but these solutions have not found their way into the UN yet. Solutions regarding foreign terrorists have been suggested in the UNSC Resolution 2178, but it did not tackle the differences that the homeland country and affected country might have to resolve. Therefore every case until today has been approached individually as no international law has clear outlines regarding such cases.

Vienna Convention on Consular Relations

This convention, a part of the Vienna Convention of 1963 outlines the rules and procedures between consulates and their host countries. It provides Consulates of independent states immunity. It has been ratified by 180 states. It is significant as consulates and consuls are foreigners' first address when they need help. It is the consul who would interact with the host country should a foreigner commit a crime there.

Possible Solutions

A solution to this problem needs to be one that looks at the issue from a global perspective and puts an end to the pain and difficulties that foreign criminals endure. Firstly, all member states should have laws that give foreign criminals rights to a fair trial. Criminals must be provided with assistance in communicating and

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understanding the charges that they face. Also a way to ensure the criminals well being to his/her family and country must be devised. Communications between the home state and affected state must be ensured to run smoothly and in a manner that minimizes miscommunication. It would also be beneficial if cases were analyzed and put in a list of how serious they are as it would help with determining the nature of prosecution.

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