

Forum:	Human Rights Committee (HRC)
Issue:	Setting legal guidelines for the prosecution of juvenile, unlawful or foreign combatants
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Introduction

Violent conflicts and clashes have been an unchangeable reality for the entirety of the lifespan of human civilization. The nature of these clashes, however, have changed remarkably over the course of the last few centuries. More advanced technologies have been increasingly used in these wars and the size of the armies of nations have increased, as well; but as these changes were happening, war was being made more humane as well. International law was developed over time, to regulate by what rules war should be waged, stemming back to the Old Testament and beginning to be commonly adopted with the Lieber Code from the American Civil War, which prohibited unethical means of combat and some ill-wishing actions against civilians, even as strategies (“Law of War”). Since then, both the conflicts themselves and the rules thereof have changed considerably.

Firstly, combat was carried into cities and other urban areas. This change prompted, in turn, a change in the laws by which war was regulated; so the Geneva Conventions were born in the new century. These regulated many issues with regards to war and the treatment of prisoners and civilians therein. The concept of war crimes also became a household term during this time, although it had been born before. Courts were set up to prosecute persons alleged of misconduct in wars and legal sanctions began being handed out for crimes in combat (“Law of War”) (*Rome Statute*); this was truly groundbreaking.

Towards the end of the 20th century, the visage of combat changed once more; militias and terrorist groups became the new means of fighting. Countries, for the most part, stopped waging wars directly against one another or through other proxy nations; contemporary combat instead focused on fighting

these terrorist groups. These groups became more and more powerful, developed into multinational conglomerate terror organizations such as the Islamic State, or Daesh, and al-Qaeda or they marketed themselves under many names, to garner as much support as possible, like monolithic business enterprises. These juggernauts of terror were, by definition, above the law and they had no hesitation in contravening the law any further. Child soldiers were hired with the promise of better life conditions, foreigners were compelled to join from nations overseas through successful media campaigns, and even some prisoners were let loose with some charges and impelled to join these militias. Some countries, especially LEDCs (Less Economically Developed Nations) had no chance to but reciprocate, or so they claimed; some nations legalized the (sometimes extrajudicial) conscription of children into the national armed forces and others hired paid soldiers from nations abroad.

However, no significant legislation has been drafted thus far on these modern means of combat, mostly due to how little time has passed since its onset but also partially due to the unlawful nature of most parties involved in the issue making it difficult to convict the culprits in this issue. It is up to the delegates of this house to take part in the response of the international community through legislation to the recent wave of developments in the combat zones. Humanitarian measures must be taken to mend the damages done by violence to a large portion of the human population, especially in the underprivileged LEDCs; it must not be forgotten that legislation must be for the people's benefit and, thus, must not infringe their rights. It must not also be forgotten what has led to this modern means of combat, the polarization of communities in the countries ailed by these groups, sometimes instigated by third parties, that led to the eruption of violence and the creation of and contribution to the same. It must be kept in mind that tackling the causes of a problem may be just as effective as treating its symptoms.

Definition of Key Terms

Prosecution: Prosecution refers collectively to the acts of legally accusing someone of an offense and then trying to get legal sanctions imposed on the accused party via judiciary procedures for the perpetration of the aforementioned offense (“Prosecute”) (“Prosecution”).

Combatant: A combatant is a person involved in physical fighting; this fighting might be or not be during a war and the party that the combatant fights for might be a country or an extrajudicial militant entity (“Combatant”) (“Rule 3. Definition”).

Juvenile Combatant: Juvenile combatants, also known as child soldiers, are underage combatants in active service either in a state's military or in a militia. It must be noted that the usage of the phrase

“juvenile combatants” excludes those in military academies, as they are not considered to be actively in combat, unlike the phrase “child soldiers”. The use of juvenile combatants is an offense deemed illegal by Convention on the Rights of the Child and as a result, their prosecution must include special treatment, especially considered that they are considered unfit to take for themselves some essential decisions in most countries.

Unlawful Combatant: Unlawful combatants are combatants, or all degrees, who take actions contravening the Laws of War and considered to be war crimes. The International Criminal Court is an international judiciary body set up specifically to sentence unlawful combatants for their heinous acts but it currently has limited recognition, causing it to be rather ineffective for prosecution purposes (Mofidi) (“Unlawful Combatant”).

Foreign Combatant: Foreign combatants are combatants who do not possess citizenship to the country they engage in combat in. They are often attracted by the impactful propaganda produced by the terrorist organizations’ media teams but some fall under this status because they serve as combatants in multinational terror organization that control land in many different countries -since terror acknowledges no political borders- and they have been transferred in between (Morris).

Laws of War: Laws of war are strictures for general conduct in times of war. Generally speaking, terrorist do not abide by these, since they are non-state entities that have no international obligation to do so. Their origins date back to Abrahamic religions in Europe and Mahabharata in India but since then have been laid upon international treaties and frameworks, including the 1899 and 1907 Hague Conventions, 1949 Geneva Conventions, 1977 Geneva Protocols, 1980 Convention on Certain Conventional Weapons, 1997 Ottawa Treaty, 1998 Rome Statute that established the International Criminal Court, and the 2000 Optional Protocol on the Involvement of Children in Armed Conflict that concerns our topic directly. These regulations have all touched upon one or more aspects of war and tried to set out rules to make war more humane and fair, as well as less harmful to civilians and unprotected prisoners of war (“Law of War”).

War Crime: War crimes are offenses that constitute of the infringement of the aforementioned laws of war. Dealing deliberate harm to civilians without any direct tactical military advantage gained thereby and perpetrating genocide are relatively common examples of war crimes (*Rome Statute*).

General Overview

As stated in the introduction of this report, the modern face of military combat is radically different than that of the previous centuries, but international legislation about combat has lagged behind the developments in combat, creating many gaps in the legislation for the prosecution of combatants. Particularly, the issues of juvenile, foreign, and unlawful combatants have recently been on the rise, creating a need for internationally agreed-upon guidelines and frameworks on the question of their prosecution.

Juvenile Combatants

Juvenile combatants began being used more and more in conflicts around the globe, both by states' and terrorist groups' armed forces, despite growing international awareness of the rights of children. The latter development stimulated the creation of many treaties on the issue of administering juvenile justice that ensured special prosecution procedures for juvenile delinquents of all sorts and some internationally-accepted documents focusing on the issue of juvenile combatants began including measures for the prosecution of them, based on the previously-mentioned treaties (Leveau). While this has provided some basis for the prosecution of juvenile combatants, it remained short of the comprehensive frameworks required to deal with this major issue, scorching especially the African continent (Grossman).

The case of Omar Khadr, on the issue of prosecution of juvenile combatants, is of particular importance. Khadr was a 15-year-old fighting for Al-Qaeda at the time of his capture, which immediately followed the killing of a US military officer. The United States failed to treat him according to international standards regarding the prosecution of children and kept him without trial for five years in Guantanamo Bay, a US prison that its government uses to implement otherwise illegal measures on the prisoners held there, using its special status on the island of Cuba. The US government labeled him as an "*unlawful enemy combatant*" and used this label to prosecute him like adult combatants of the same category. These practice fell against the United States of America's own official policies on the matter, which clearly state that the persons who enlisted and forced Khadr to remain a part of the militant group, not Khadr himself, should be responsible for the acts he committed but no significant action has been taken to ameliorate this situation (*The Omar Khadr Case*).

Unlawful Combatants

Unlawful combat became more and more common in the new century, with the shift in the focus of military from international conflicts to internal conflicts with terrorist groups. The preference of these groups to plague and base themselves in cities combined with the reality that their legal status does not bind them to accepted laws of war has caused breaches of the said laws, constituting unlawful combat to

become more and more common (Vark). While there has been significant work conducted under the roof of the United Nations since the Second World War in the field of prosecuting war criminals through the establishment of many criminal courts for adjudicating the cases of unlawful combatants, the recent, more substantive efforts made in this regard, especially the establishment of the International Criminal Court, has not garnered as much support as the previous actions on the issue. This is partly due to the fact that some major nations beginning to conduct clandestine operations through other military entities that may constitute war crimes, partly due to the view of many LEDCs that the Court merely is a tool for Western imperialism, and partly due to the lack of proper representation some Member States believe to have in the Court. Nonetheless, the Court is currently the primary organ for the prosecution of unlawful combatants in wars between Member States. However, it currently is unable to prosecute terrorists and militants group members accused of such unlawful acts (Cohen). A change in the Rome Statute to allow for the prosecution of terrorists in the Court would be a groundbreaking development in the resolution of the issue, as currently, international legislation on unlawful non-state combatants' prosecution, simply put, is lacking (Dörmann).

Foreign Combatants

The question of foreign combatants also is an issue of recent and increasing significance. One reason why this is the case is foreign intervention in Civil Wars. While there is plenty of legislation available on this regard as conventional foreign military support in wars has long been a part of warfare, the new form of this support has not been. For example, while the Russian Federation provides open support to the Assad Government forces in the Syrian Civil War, it has also been accused of hiring mercenaries to join the conflict on the government's side, mercenaries who cannot be treated as members of the armed forces of their nation of origin, because they have no such formal affiliation. Similarly, some governments have also hired mercenaries from other countries to support their side on the warfield. The unofficial status of such mercenaries in the armed forces of that nation complicates the legal status of such persons (*International Convention*).

Another reason why foreign combatants have become recently more common are the foreign combatants fighting for terrorist militant groups, who comprise of two main types. The first type is those who have come from other countries to join those groups after being inspired and influenced by the propaganda operations of the militant groups. The Islamic State, also known as Daesh, has enlisted many foreign militants through this means, as well as through various intriguing awards promised for those who join it voluntarily. The second type is those combatants who were transferred across the different nations a terror organization may operate in. An example for this category may have been a militant belonging to the Islamic State fighting in Syria despite being originally from Iraq (Morris). The two types of foreign

combatants under this category are also distinct and proper legislation must be implemented regarding the prosecution of such combatants accordingly.

Timeline of Events

27 July 1929	The first version of the Third Geneva Convention, "Convention relative to the Treatment of Prisoners of War" was signed ("Geneva Convention (1929)").
20 November 1945 - 1 October 1946	The Nuremberg Trials, the first international effort on penalizing unlawful combatants, were conducted ("Nuremberg Trials").
12 August 1949	A significantly altered version of the Third Geneva Convention, alongside the three other Geneva Conventions, was signed ("Geneva Conventions").
8 June 1977	Additional Protocol I to the Geneva Conventions was signed ("Geneva Conventions").
29 November 1985	The Beijing Rules on the Administration of Juvenile Justice was signed (<i>United Nations</i>).
20 November 1989	Convention on the Rights of the Child was introduced to the UN General Assembly for signature and acceptance, including measures on the prosecution of children (<i>Convention on the Rights</i>).
17-18 July 1998	The Rome Statute, establishing the International Criminal Court, was signed (<i>Rome Statute</i>).

25 May 2000	Optional Protocol on the Involvement of Children in Armed Conflict, raising the minimum age for combat to 18 was signed (<i>Optional Protocol</i>).
27 July 2002	Omar Khadr was captured in Afghanistan by US forces (Lafayette).
2 February 2007	Montenegro signed the Geneva Conditions, making the four Geneva Conventions the first international treaties in human history to reach universal acceptance ("Geneva Conventions of 1949).
February 2007	The Paris Conference on Children Associated With Armed Forces or Armed Groups was held, resulting in the Commitments, Principles, and Guidelines of the same name, constituting the most recent major international treaty to be signed on the matter of the prosecution of juvenile combatants (<i>The Paris Principles</i>).

UN Involvement

International Criminal Court: Although it officially is an organization separate from the United Nations, its ties to the UN Security Council are indelible and its origins also depend on the UN. Its job is to prosecute unlawful combatants and commanders for the wars crimes they have committed, according to the Rome Statute. It, however, is unable to prosecute unlawful combatants from conflicts with terrorist organizations (Cohen).

UN Office of the High Commissioner for Human Rights: It is its duty to track the situations around the world threatening human rights and recommend appropriate action to the UN about the same. Its scope of human rights also included child rights, therefore it has served an important function in the movement against the use of juvenile combatants in violent conflicts.

Office of the Special Representative of the Secretary-General for Children and Armed

Conflict: The representative works to protect the “*well-being of children affected by armed conflict*”. Their work includes giving yearly report to the UN General Assembly and the Human Rights Council on their issue of focus, as well as facilitating cooperation between Member States in resolving the issue (“Mandate”).

Relevant UN Documents

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), 29 November 1985 (A/RES/40/33)

This document is of particular relevance to the issue at hand since it highlights how juvenile criminals, not necessarily those arrested on charges of terrorism, should be prosecuted according to the UN (*United Nations*).

Children and Armed Conflict, 18 June 2015 (S/RES/2225)

This resolution, although pertaining to the involvement of children in armed conflicts more generally, still touches upon some measures suggested for the prosecution of children forced to serve in militant groups. It emphasizes that the “*deprivation of liberty of children should be used only as a measure of last resort and for the shortest appropriate period of time*” and that rehabilitation and reintegration of the children should be sought instead (*Resolution 2225*).

Children and Armed Conflict Report of the Secretary-General, 5 June 2015 and 4 August 2015 (A/69/926–S/2015/409)

This report, written by the Secretary-General of the UN, investigates the use of children in various conflicts around the world, touches upon the use of children as juvenile militants in them, and also discusses some instances in which the children have been treated just like adults during the prosecution procedures. In Article 268 of this document, the Secretary-General calls upon Member States to consider and implement alternatives to imprisonment when prosecuting ex-soldier children. He also states that the minimum standards of juvenile justice, as highlighted in The Beijing Rules mentioned above, and the best interest of the child -not of any other party- must be considered during the prosecution process. This

affirms UN's stance that juvenile prosecution, by no means, should be done as an act of avenging or setting an example but only as a means of rehabilitation (*Children and Armed*).

Bringing Terrorists to Justice: Challenges in Prosecutions Related to Foreign Terrorist Fighters, 23 February 2015 (S/2015/123)

This document discusses at length the problems with the prosecution of international combatants not hired by states. This document is essential reading for delegates for its analysis of many facets of the topic at hand, such as but not limited to an analysis of the current laws and possible sanctions to such individual currently, new challenges the prosecutors must now face in our present day, and how the process of creating new legislation targeting foreign combatants is going (*Bringing Terrorists*).

Analysis and Recommendations with Regard to the Global Threat from Foreign Terrorist Fighters, 19 May 2015 (S/2015/358)

Section F of this document discusses the prosecution of foreign terrorist fighters and highlights some major concerns with the prosecution of such individuals. Some concerns listed in this section include the problems with the differentiation of humanitarian workers and combatants when they return to their nations of residence, the difficulty of obtaining directly incriminating evidence from the war zone, and complexities with proving criminal intent (*Analysis and Recommendations*).

International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 4 December 1989 (A/RES/44/34)

This document also is of substantial importance to the delegates of this house as it discusses the other type of foreign combatants, those hired by recognized states -as well as by militant groups- as mercenaries to bolster their armed forces. It asks for the states in which the combatants have engaged in warfare to prosecute the combatants, applying to them the same laws applied for any other similar grave offense, and for the results of these proceedings to be conveyed to the Secretary-General, who is, in turn, tasked with conveying the result to all other parties involved in the case (*International Convention*).

Treaties and Events

Geneva Conventions

Geneva Conventions is a set of four conventions, all revised for the last time or written in 1949, and three additional protocols, the first two of which were signed in 1977, that deal with humanitarian treatment of persons involved in warfare. The articles of relevance in these conventions come from the third convention, due to its topic of focus, as well as from the first protocol, the topics of which are prisoners of war and the protection of victims of international conflicts, respectively (“Geneva Conventions.”).

Article 13 of the Third Geneva Convention guarantees the humane treatment of prisoners (*Convention (III) Relative to the Treatment of Prisoners of War: Humane Treatment of Prisoners*) and Article 82 states that the hosting state’s legislation will apply during the judicial prosecution of combatants, without any discrimination based on the fact that the prisoners of war are belonging to a foreign entity (*Convention (III) Relative to the Treatment of Prisoners of War: Applicable Legislation*); Article 16 deals with equality of treatment by banning nationality-based discrimination in the treatment of prisoners of war and allowing age-based preferential treatment of prisoners of war (*Convention (III) Relative to the Treatment of Prisoners of War: Equality of Treatment*). This is an important precedent set for the treaties that follow the Geneva Conventions, as it sets out the principles in the treatment of juvenile and foreign combatants. It also lists the penalties that may be given to captured combatants, creating guidelines for prosecution of the same.

The first protocol also includes some substantial guidelines on the treatment of children in armed conflicts. Article 77 states that no children under the age of fifteen should come into direct contact with the hostilities of war, that especially the states should not enlist minors under the age of fifteen in the army, that child prisoners should be held separately from adults, and that they must not be sentenced to execution (*Protocol Additional*).

Geneva Conventions’ universal acceptance -of the main conventions, not of the additional protocols, the first of which still features over 150 signatories- has made them the first international treaty to reach that status and make the measures highlighted in them a basic guideline for all nations on the face of earth to follow on this topic (“Geneva Conventions of 1949”). Thus, it would be sensible for all delegates to not contradict the measures suggested therein and take it as a framework on which resolutions to the issue may be constructed.

Convention on the Rights of the Child

This document, as signed in 1989, is nearly universally ratified or acceded to, with the sole exception of the United States of America (“11. Convention”), highlights what is now commonly referred to as child rights. In Article 38, the use of children under the age of fifteen in armed conflicts is prohibited and states are encouraged to take all measures possible to prevent the same (*Fact Sheet*). In Article 39,

rehabilitation of children from armed conflicts is touched upon and Article 40 deals entirely about the administration of juvenile justice. That article also suggests not-institutionalized measures be implemented when dealing with underage contraveners of law (*Convention on the Rights*).

African Charter on the Rights and Welfare of the Child

This document, signed in 1990 under the predecessor organization of the African Union, the Organization for African Unity, focuses on the rights of children in a more general manner. It only focuses on African States, which are of particular importance in this topic due to the comparatively more common enlisting of juvenile combatants in the continent, both in state and militias. While most African states have signed and ratified the document, some have not, such as the Central African Republic, Democratic Republic of the Congo, South Sudan, and Somalia, which are somewhat unstable regions that are of special importance to this issue due to the same reason ("African Charter").

Article 17 of the Charter deals with juvenile justice and reiterates the principle that punishment of children should be for their reformation, rehabilitation and reintegration; while emphasizing that the prosecution of juvenile delinquents, regardless of the charge, should be conducted under a different light, with the consideration of their age. Article 22 of the document states that all signatory states should "*take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child*". Considering Article 2's definition of a child as any person under the age of 18, this treaty goes a step further than the previous treaty by increasing the age of eligibility to become a soldier by 3 years and in that regard, is of particular significance. However, as previously mentioned, the actual implementation of this clause is, simply stated, lacking (*African Charter*).

Rome Statute

The Rome Statute of 1998 is of utmost significance for establishing the International Criminal Court, the first international judiciary body the purpose of which is to convict individuals of their war crimes, regardless of the war in which the crime took place. In the Statute, a list of war crimes are provided under Article 8, as well as specifying exactly how the criminal proceedings in the court will be conducted. If ratified universally or nearly so, it would be an effective universal guideline for the conviction of unlawful combatants; however, it has also gained fame for its lack of ratification by many Member States (*Rome Statute*). At this time, 123 countries have ratified the document with major non-ratifiers being Russian Federation, United States of America, Israel, some African States and nearly all of the states in Asia and the Middle Eastern and North African region ("10. Rome Statute").

Optional Protocol on the Involvement of Children in Armed Conflict

This protocol, drafted in the year 2000, focuses solely on the issue of juvenile combatants and just in its first article, bans Member States from enlisting soldiers under the age of 18 for the purpose of taking part in the hostilities, bringing the international standards in this regard up to the standards of the African Union, which had implemented similar measures 10 years prior. It also sets up many guidelines for the the enlisting of children under the age of 18, only if for purposes other than being placed on the frontlines of a conflict. Article 4 of the Protocol prohibits non-state actors from enlisting juveniles under the age of 18 for any military purpose, but due to the obvious outlawed status of militant groups, this article has limited applicability. The sixth and seventh articles of the Protocol highlight, just like many previous UN Documents and treaties on the matter, the importance of psychological recovery and social reintegration of ex-juvenile combatants, instead of their prosecution, as a solution to the matter (*Optional Protocol*). The Protocol has been widely, although not universally, ratified (“11.b Optional”).

Paris Commitments and the Principles and Guidelines on Children Associated With Armed Forces or Armed Groups

In February 2007, a conference on the issue of child soldiers took place in the city of Paris, with participation of around 50 Member States and with the support of just as many other nations. This conference resulted with the acceptance of the Paris Commitments and Principles. Section 8 of the Principles states that juvenile justice for ex-combatants should be administered with special considerations due to the ages of the said combatants. It suggests the membership of armed groups should not constitute by itself grounds for punishment of children, encourages juvenile combatants’ rehabilitation, reintegration and return to their host communities, and encourages alternatives to judicial proceedings to be sought when juvenile combatants are being tried for their crimes committed during their membership of the armed forces. The Principles also touches upon what should be done for foreign juvenile combatants upon their capture by encouraging the best interests of the child being taken as the basis of justice and by permitting and recommending the children be treated as refugees seeking for asylum should it be decided that it would be in the child’s best interests to remain in the nation of capture (*The Paris Principles*).

Evaluation of Previous Attempts to Resolve the Issue

Although there have been many treaties signed and ratified by most Member States and many UN resolutions passed on issues such as judicial proceedings of prisoners of war, rights of children in armed

conflicts, use of foreign mercenaries in armed conflicts, and a structure exists for the prosecution of unlawful combatants (Cohen), either the measures that actually work to solve the issue has not been accepted or the measures accepted fail to address the current situation in all of these documents, with regard to the issue at hand. This is why the delegates, when drafting their resolutions, should bear in mind that their measures will only be effective if they are likely to be accepted by most Member States and that their resolutions must cover the previously non-mentioned parts of the issue at hand.

Possible Solutions

The nature of this problem makes it highly multifaceted and it only would make sense for the solutions to this problem to be multifaceted, as well. Firstly, to deal with the issue of unlawful combatants, the delegates should consider expanding the mandate of the International Criminal Court to enable it to prosecute individuals for their acts contravening the laws of war even outside of traditional wars between nations, also during conflicts between governments and militant groups. It is also important to expand the recognition of the International Criminal Court if this means of solution of the problem is pursued, as only that way may it prosecute unlawful combatants effectively (Cohen).

Secondly, the ratification of the treaties and the acceptance of the UN resolutions previously mentioned in this report can be expanded, as a means of creating universal guidelines on which any additional measures implemented via the delegates' resolutions can be based. For doing this, however, the delegates must consider the reasons why these actions have not been taken already by some Member States and must find ways to incentivize them in a way that would overcome these obstacles.

Lastly, actual frameworks must be created by the delegates for the prosecution of the three types of combatants covered in the issue. The delegates may choose to organize conferences in which treaties on the matter at hand may be discussed or may directly express ideas they may have. If they choose to do the latter, they must recall that for these solutions to actually be implemented, they must be suitable for acceptance by most Member States, as the mandate of the UN General Assembly does not allow it to enforce its decision on its Member States.

Notes from the Chair

The delegates of this house should keep in mind that their resolutions should address the prosecution of the three types of combatants covered in the issue, not other aspects of the combatants such as their

hiring. It must also be kept in mind that resolutions should address the prosecution of all three types of combatants included in the issue, not just one or two of them.

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