

Forum: Legal Committee (GA6)

Issue: Criminal Accountability of U.N. Officers

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INTRODUCTION

On 24 October 1945, the United Nations was founded with a sole major aim: establishing and sustaining peace and security throughout the world. To this day, long after its foundation, the UN has completed major peacekeeping and humanitarian missions, intervening in situations where human rights violations and crises were present. Therefore, the UN as a whole has always been known with its credibility, integrity and unbiased position in critical conflicts where peace and security is at stake. However, allegations regarding criminal misconduct of the UN officers and peacekeepers who are protected under impunity have struck a major blow on the organization's trustworthiness and uprightness. While the impartiality and the key position of the organization in preeminent political and humanitarian conflicts are still undoubted, its credibility in terms of criminal misconduct is in question.

It has long been understood that the UN and its officers have absolute immunity from the jurisdiction of national courts (Freedman 241). The UN Convention on the Privileges and Immunities of the United Nations, Article 4, and Section 14 explicitly states "Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations." Thus, it is seen that the reason behind the judicial immunity of the UN is consequently to be able to safeguard, exercise and execute its mandates independently, since in lack of immunity, governments via their judicial systems can possibly try to manipulate UN officers in situations where is a critical action to be taken or prominent decision to be made, often conflicting with that government's policies.

On the other hand, Article 5, Section 25 of the Convention remarks that "The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations," granting absolute immunity can be waived in situations where criminal misconduct is present and the related officer has taken advantage of the privilege given to them. However, it wouldn't be wrong to say that the exercise of this statement is rather poor. This is mostly due to procedural matters and other subtle details that are of criteria to waive an officer's immunity, but this inefficiency unfortunately results in many

criminal misconduct allegations that are being left hanging in the air and the impression of the UN avoiding accountability.

If not all, many allegations of criminal misconduct of the UN officers have been reported during the Peacekeeping Operations that have been conducted especially in Less Economically Developed Countries (LEDCs). Those allegations vary in a wide range from Sexual Exploitation and Abuse (SEA) being in the first place, to unrightfully equipping property. However, in order to better conceptualize the issue at hand, it is important to acknowledge that missions have been conducted "with a generous interpretation of what counts as 'official duties' in a peacekeeping context."¹ Additionally, it is not often seen where immunity of a peacekeeper is waived, mainly and often due to mistrust in the credibility of the national judicial system of the host country at hand. This is often an important point to touch upon and remember since any kind of dubious treatment that personnel with waived immunity could face hampers the integrity and reliability of the UN as an institution.

Undoubtedly, the United Nations is one of the rare organizations that have utmost importance for the world. However, it is apparent that there are cases that are impeding the UN's prestige and its legislations require revisions in order to ensure the organization and its personnel's criminal accountability, and consequently justice for all.

DEFINITION OF KEY-TERMS

Criminal Accountability

Being obliged to take the responsibility and accept the consequences of one's criminal actions in front of the judicial system

Immunity

In political terms, the state of being immune to a specified degree from the consequences and liabilities of any crimes committed

Impunity

Similar to immunity, the state of being exempt from any possible juristical processes that would occur as a result of committing crimes

¹ Jennings, Kathleen. "The Immunity Dilemma: Peacekeepers' Crimes and the UN's Response." *E-International Relations*, 25 Sept. 2017, www.e-ir.info/2017/09/18/the-immunity-dilemma-peacekeepers-crimes-and-the-uns-response/.

Functional Immunity

Immunity that is granted to personnel when they are only actively on duty

Diplomatic Immunity

Immunity that is granted to an official which covers one not only in times of active duty, but also when the official is off-duty

Misconduct

Improper behavior and mismanagement of a duty, which can also manifest itself in terms of neglect of duty

The UN Personnel

Personnel that has a contract with the UN, whether part-time or full-time, which states that they are on duty under the name and provision of the UN

The UN Peacekeeping

The UN task force which includes various personnel such as peacekeeping troops, doctors, journalists and that often mediates politically conflicted zones in order to secure sustainable peace and security for the civilians in the region

Sexual Exploitation and Abuse

A breach of the provisions of ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse), or the same definitions, as adopted for military, police and other United Nations personnel².

Host Country

A country which hosts specified UN operations or activities for a temporary time, including humanitarian missions and peacekeeping operations

² "Glossary on Sexual Exploitation and Abuse." *HR Portal*, 24 July 2017, hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf

BACKGROUND INFORMATION

Immunity of the UN Officers

When the UN was first established, provisions regarding immunity and legal rights of its personnel were first embedded into the United Nations Charter which is analogous to the constitution of a country. The [UN Charter](#), Chapter 16, Article 104 generously states that "The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes," which basically foresees possible situations where the UN personnel might find themselves in need of extended legal rights, and sets forth that this is only for the sake of fulfilling its purposes and executing its required exercises. Article 105 continues, detailing the previous article further with a heavy highlight on the fact that such privileges and immunity play an important role when independent exercise of its mandate is reliant on those.

Thinking from a broader perspective, it is then seen that immunity in needed conditions are a must for the UN Officers, especially high-ranking ones. For instance, in a conflict zone where the UN is present and the security of civilians are threatened by the policies of the government, it is at the utmost importance for the head officer in the region to be able to execute necessary actions to protect civilians without feeling being threatened and manipulated by the risk of being arrested and possibly sentenced by the opposing government. As distinct from this example, a real life scenario can easily be conceived, in which unintended and accidental damage against civilian property or civilians itself is made (Of course, in any case where a civilian is damaged by the UN troops, investigations are carried out and if the incident is declared to happen due to distinct misconduct of the operation, immunities are waived and individuals in charge are taken to the court.). In those cases, where operational misconduct is due to circumstances that are not under the control of the UN troops, it is often understandable to have functional immunity against the often-distrustful judicial systems of the host countries. Consequently, it is critical to once again acknowledge that the UN is an institution that is obliged to safeguard its personnel. Furthermore, many other possible scenarios can be created where functional immunity is a must for the UN to ensure the safeguarding of their personnel's'. Thus, from possible scenarios, it should be clearly seen that immunity is the key element that actually grants the independent functioning of the UN operations.

Currently, the UN Secretariat employs approximately 40,000 staff, which have different kinds and degrees of immunities. However, it is accurate to say that the UN staff in general possess functional immunity, while higher-ranked officers and the Secretariat possess diplomatic immunity. Having two different concepts, it is important to define them one by one. The

Convention on the Privileges and Immunities of the United Nations (CPIUN) recognizes and defines "functional immunity" as to "Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity." This is the type of immunity that overall enjoyed by the UN officials, and most importantly, as the name itself explains, functional immunity is only inclusive of acts done by an UN officer in their official capacity. Additionally, it wouldn't be wrong to say that functional immunity can be viewed as "part-time immunity," so it is only legitimate when the officer is on duty. Moreover, diplomatic immunity can be viewed as "full-time immunity", which encompasses functional immunity and keeps its addressees exempt from jurisdiction and prosecution of the host countries' laws. However, it is still an obligation for an UN officer that possesses diplomatic immunity to respect and obey the laws of the country that they are posted to. However, in theory it is still illegal for a host country to start the prosecution process for an officer that has diplomatic immunity, regardless of the crime.



Figure 1: The UN troops in a conflict zone in DR Congo, preparing to launch an offense against rebels, 2013³

Immunity of the UN Officers in Peacekeeping Context

Regarding the fact that many reported criminal misconduct cases are directly related with the UN Peacekeepers, it is important to gain a bit of insight on how immunity works under a peacekeeping context and what are some extraordinary situations that impede the course of justice. The UN Peacekeepers possess functional immunity, which has been explained in the first part. Thus, they are untouchable by the law when they are on duty. Yet, the Secretary General has the discrete right to waive a Peacekeeper's immunity, if that is seen required by the commission. However, it is mostly rare to see the Secretary General waiving a Peacekeeper's immunity. There are mainly three reasons for that, listed below, each stipulating due to the complex nature of Peacekeeping operations.

³ Krikorian, Lena. "UN Peacekeeping Missions Are Ineffective and Do More Harm than Good." *Polemics*, 7 Jan. 2018, www.polemics-magazine.com/opinion/un-peacekeeping-missions-are-ineffective-and-do-more-harm-than-good.



Figure 2: The UN peacekeepers after an armed engagement in a conflict zone⁴

When the immunity of a Peacekeeper is waived, it means that the individual is open and vulnerable to the jurisdiction and prosecution of the host country, which means to hand an officer to another country's judicial system. This is often evaded by the UN, mainly and usually due to "qualms about the integrity, legitimacy, and functioning of host states' judicial and corrective systems: because protecting the rights and security of UN Peacekeepers is a foremost concern of the institution, waiving peacekeeper immunity where there are doubts about the kind of treatment they face will prejudice the interests of the UN."⁵ Thus, it is often spotted that Peacekeeping Operations have a "generous" sense of what official duties are, so that the difference between the functional immunity a Peacekeeper possess and full-immunity is mostly rather subtle. At last, Peacekeepers could possibly be prosecuted in their own country, even though there are not many examples of it. Many countries don't even have legislations on the criminal matters of a citizen abroad. On the other hand, even if there is required legislation, data transaction, evidence collection and transportation and the general operation of a trial conducted like that is in most cases so lethargic that it eventually gets inefficient in addressing justice. Unfortunately, it is again evident that the scope of the

⁴ Bakri, Nada. "6 U.N. Peacekeepers Killed in Lebanon." *The New York Times*, The New York Times, 25 June 2007, www.nytimes.com/2007/06/25/world/middleeast/25lebanon.html.

⁵ Jennings, Kathleen. "The Immunity Dilemma: Peacekeepers' Crimes and the UN's Response." *E-International Relations*, 25 Sept. 2017, www.e-ir.info/2017/09/18/the-immunity-dilemma-peacekeepers-crimes-and-the-uns-response/.

"functional immunity" is often much broader in the peacekeeping context than what was originally intended in the first place.

Reported Criminal Misconduct Allegations

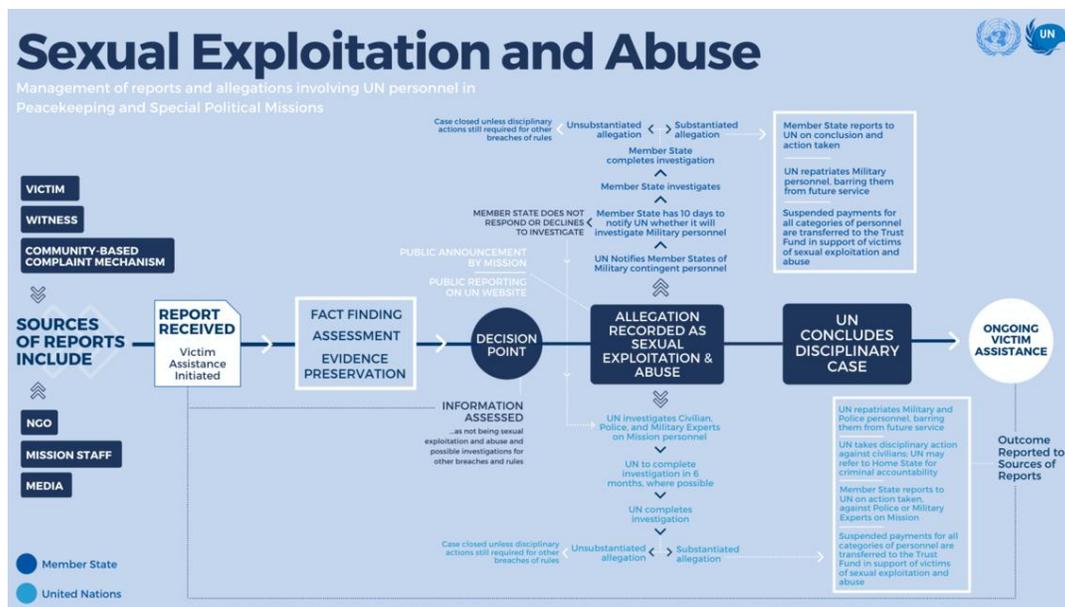


Figure 3: The management of reports of SEA in the UN⁶

As the previous parts also touched upon, reported criminal misconduct allegations of the UN officers are usually concerning the Peacekeepers that are on active duty in some of the poorest and most vulnerable countries in the world. There is a wide range of allegations regarding Peacekeepers, however, the majority is often regarding Sexual Exploitation and Abuse (SEA). As a side note, it is good to know that there is a subtle difference between "Exploitation" and "Abuse." Sexual exploitation allegations usually define situations in which the poor and vulnerable, especially women and children, are left with no choice but to have intercourse with Peacekeepers in exchange for a few dollars. Sexual exploitation is unfortunately so widespread in poor countries with Peacekeeping missions present, majorly due to basic resources being so insufficient for survival. Sexual abuse on the other hand, is any case in which the victim is forced and sexually abused by a Peacekeeper (This is a specified definition of sexual abuse.).

⁶ "STANDARDS OF CONDUCT Peacekeeping." *United Nations*, United Nations, peacekeeping.un.org/en/standards-of-conduct.



Figure 3: An image of some peacekeeping troops, also known as the 'Blue Helmets'⁷

The fourth of the ten rules that are present in the Code of Personal Conduct for Blue Helmets⁸ precisely states "Do not indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population or UN staff, especially women and children."⁹ However, it is obvious that this principle majorly failed to be implemented in deployment areas. Some of the countries where SEA by the UN Peacekeeping troops are reported include Haiti, Democratic Republic of Congo, Mozambique, Bosnia, East Timor, Cambodia, and Iraq. Unfortunately, the list goes by. It is evident that those countries' vulnerable civilians are not the only ones, thus not the last ones to suffer from irresponsible and inhumane activities of the Peacekeepers. Relatively recently, in the Central African Republic, sexual abuse allegations committed by the Peacekeepers have boosted as the UN Secretariat stayed relatively passive on the matter. Yet, it is not unanticipated to see that criminal misconduct among the UN troops increasing, regarding the fact that the functional immunity they possess in deployment areas mostly

⁷ "Peacekeeping Troops Could Be Deployed to Protect Cultural Heritage from Destruction in Syria." *Artnet News*, 19 Oct. 2015, news.artnet.com/app/news-upload/2015/10/un-blue-helmets.jpg.

⁸ An alternative name referring to the UN Peacekeeping.

⁹ Askin, Kelly. "Global: Ending Impunity for Crimes Committed by UN Peacekeepers." *International Bar Association*, www.ibanet.org/article/cebc5f69-a238-49bb-b85a-5e8d878fe485.

protect them from the consequences of their crimes. The problem here is that, as stated many times previously, Peacekeeping missions often take place in countries where governments, and naturally judicial systems have failed, so that waiving the immunity of a Peacekeeper would only create prejudice to the interests of the UN. Hence, it is often the Peacekeeper's home country's responsibility to execute the prosecution process and render justice, however this method often fails too, majorly due to reasons listed in "Immunity of the UN Officers in Peacekeeping Context" section.

It is undoubted that SEA cases are human rights violations of utmost importance, and even though some steps are being taken by the UN Secretariat to prevent those cases, they are still failing to put an end to those violations. Hence, the most important thing to concentrate on is to derive possible methods that could moderate, identify and end or at least significantly decrease criminal misconduct committed by the Peacekeepers by getting to the bottom of the issue while being aware of the legal loophole arising from their functional immunity.

MAJOR COUNTRIES AND ORGANIZATIONS INVOLVED

Haiti

Haiti is unfortunately one of the many countries that have been affected by the SEA activities of the UN Peacekeeping troops. The "United Nations Stabilization Mission in Haiti" ("MINUSTAH") has ended in 2017, yet it has left an emotional and psychological trauma on its most vulnerable addressees: women. For years, the Associated Press and other mass media outlets have published highly credible reports of sexual abuse and exploitation by the Peacekeeping troops¹⁰ in Haiti, however, it was already late when the UN Secretariat had made a move concerning the issue.

The Central African Republic (CAR)

In 2013, after long years of instability, the Central African Republic had a major political breakdown, and immediately afterwards, the country became a warzone with militia and ex-government forces raging all over. After seeing the suffering of civilians from human rights violations and having no access to basic humanitarian needs, the "Multidimensional Integrated Stabilization Mission in the Central African Republic" ("MINUSCA") has created and assigned by the United Nations Security Council to secure and stabilize the region by at least securing basic needs of civilians that are suffering from plentiful human rights violations. Hence, in the

¹⁰ Wheeler, Skye. "UN Peacekeeping Has a Sexual Abuse Problem." *Human Rights Watch*, 28 Oct. 2020, www.hrw.org/news/2020/01/11/un-peacekeeping-has-sexual-abuse-problem.

upcoming years of the mission, reports issuing SEA cases in exchange for food or money have arisen.

The Human Rights Watch (HRW)

As a major organ in monitoring research and moderating reports regarding the state of human rights throughout the world, the HRW has recently, and during the last decade, have published many reports showcasing the urgency of the situation. Additionally, their research on this specific matter has been used as advisory by the Secretariat while taking steps to prevent SEA cases.

TIMELINE OF EVENTS

| DATE | DESCRIPTION OF EVENT |
|------------------|--|
| 13 February 1946 | Adoption of the Convention on the Privileges and Immunities of the United Nations (CPIUN) by the General Assembly |
| May 1948 | Establishment of the first UN Peacekeeping Mission |
| 9 October 2003 | Publishing the report of the Secretary General on Special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) |
| May 2015 | Launch of the "Code Blue Campaign" by AIDS-Free World to end Sexual Exploitation and Abuse by the UN Peacekeepers |
| 16 February 2016 | Publishing the report of the Secretary General on Special measures for protection from sexual exploitation and sexual abuse (A/70/729) |
| 11 March 2016 | Adoption of Resolution 2272 by the Security Council |

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| 18 September 2017 | Establishment of the Office of Victims' Rights Advocate (OVRA) |
| 21 September 2018 | Adoption of Resolution 2436 on United Nations Peacekeeping Performance by the Security Council |
| 20 December 2018 | Adoption of the resolution on criminal accountability of United Nations officials and experts on mission (A/RES/73/196) |

RELEVANT UN RESOLUTIONS, TREATIES AND EVENTS

The Convention on the Privileges and Immunities of the United Nations¹¹

Treaty established following Article 104 and 105 of the UN Charter, encompassing broad detailing on the functioning, principles and limits of the immunity of the UN, 13 February 1946

ST/SGB/2003/13¹²

The first report of the Secretary General on Special measures for protection from sexual exploitation and sexual abuse which sets forth provisions regarding prohibition of SEA activity, 9 October 2003

A/70/729¹³

The report of the Secretary General on Special measures for protection from sexual exploitation and sexual abuse, 16 February 2016

Security Council Resolution Resolution 2272¹⁴

This resolution was perhaps the most effective among all previous attempts. It was the first resolution of the UNSC specifically issuing SEA, setting guidelines and provisions for

¹¹ <https://www.un.org/en/ethics/assets/pdfs/Convention%20of%20Privileges-Immunities%20of%20the%20UN.pdf>

¹² ST/SGB/2003/13 - E - ST/SGB/2003/13 -Desktop, undocs.org/en/ST/SGB/2003/13.

¹³ A/70/729 - E - A/70/729 -Desktop, undocs.org/A/70/729

¹⁴ S/RES/2272(2016) - E - S/RES/2272(2016) -Desktop, undocs.org/S/RES/2272(2016)

approaching those cases and executing necessities for the course of justice. The resolution especially puts more pressure on the countries that are sending UN officers, not only limited to Peacekeepers that are alleged to take part in SEA of the vulnerable. Thus, the resolution also requests the replacement of the units of a Member in the specified region, if they fail to extensively investigate and prosecute SEA cases that are caused by their own forces. Hence, the resolution deems it necessary to provide any and all kinds of assistance to the victims on the way to ensure accountability. Still, even though this resolution was a big step towards addressing the issue, the enforcement of the prosecution process is drastically inadequate and weak.

Establishment of the Office of Victims' Rights Advocate (OVRA)

Office formed to support the rights of victims of sexual exploitation and abuse by the UN Peacekeeping forces, via utilizing a trust fund and legal support when needed, 18 September 2017

Resolution 2436¹⁵

The UN Security Council Resolution that highlights the concerns and mandates of the UN Peacekeeping troops, while also thoroughly evaluating their performance on field, 21 September 2018

A/RES/73/196¹⁶

The UN GA6 Resolution, emphasizing the importance of the issue criminal accountability of the UN personnel on mission, referring to many other valuable resolutions regarding the issue, 20 December 2018

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

After the identification and widespread acknowledgement of the issue of SEA cases of the UN Peacekeeping forces and the issue of criminal accountability of them, the institution started on deriving proactive methods to both prohibit any criminal misconduct cases, and ensure criminal accountability. As for the training of the Peacekeeping troops, there was always the mandatory pre-deployment training which also included educational addressing on SEA. However, it would be so fanciful to say that this training itself has eliminated the problem.

¹⁵ *S/RES/2436(2018) - E - S/RES/2436(2018) -Desktop*, undocs.org/S/RES/2436(2018)

¹⁶ *A/RES/73/196 - E - A/RES/73/196 -Desktop*, undocs.org/en/A/RES/73/196

On 9 October 2003, the Secretary General published a report on special measures for protection from SEA. The major aim of this report was to set forth a strict prohibition on this issue and to eliminate it from its root. Hence, if it was to be eliminated from its root, accountability wouldn't be a thing to deeply consider. Yet, the report itself was unable to prevent further human rights violations. Meanwhile, all Peacekeepers were protected under immunity, which was making them unreachable by the law.

In May 2015, the "Code Blue" campaign was launched, hoping to provide justice for victims of SEA and put an end to those SEA cases. The campaign was seen to have three major aims: "removal of any possibility of immunity (regarding the Peacekeeping troops), system-wide, external and independent investigation, and engaging with campaigners from all over the world."¹⁷ The campaign is obviously fulfilling its third aim and working towards the second one, however it would be so unrealistic to say that progress has been made regarding the first aim. This is of course due to the "immune nature of immunity" inside the UN.

POSSIBLE SOLUTIONS

The issue at hand is already pretty complex, and it is undoubted that there are a huge variety of possible steps to be taken. However, the most crucial step that the delegates can take, in terms of feasibility, would be to create temporary civilian and military courts in the regions where Peacekeeping Operations are ongoing. Those courts must include personnel including professional judges, prosecutors, and investigators from the contributing Members, who will be impartial in all cases. This way, without violating the functional immunity of the officers, it would become possible to ensure criminal accountability. Thus, with the presence of a controlling mechanism, it would be immediately seen that criminal misconduct cases will plummet.

On the other hand, one might think that immunity itself is pretty destructive and that the UN should get rid of it. However, trying to get rid of immunity would be a major blow on both independence and integrity of the UN. Of course, there would be people abusing this right, but the main point here is to prevent this abuse. Instead, delegates should concentrate on creative ways to eliminate the abuse of functional immunity in a conflicted context.

Another point in this matter which often seems trivial is the admission process of the concerned officers. Intuitively, it is apparent that a more demanding selection process would yield better results in combating criminal misconduct. This is an effortless matter that the Secretariat itself can easily coordinate and moderate.

¹⁷ "Original Campaign Goals." *Code Blue*: www.codebluecampaign.com/about-the-campaign.

Last but not least, Members themselves should be directed and guided through in the process of revising their legislations for citizens interacting with criminal misconduct abroad. In many cases, the service of justice is often interrupted because of the procedural and legislative weaknesses and insufficiencies of the related officer's home country. Hence, efficiency in data and evidence transaction, access to the victim and witnesses should be better prioritized. Besides, transparency is another factor that can't be sunk into oblivion. Transparency in all contexts represents consensual trust between sides, and in order to rightfully and effectively conduct any prosecutions, Members must not be hesitant to share the data they gathered during their investigation. The extent of this transparency is ultimately at the Members' and the UN's discretion.

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