

Forum: 6th Committee of the General Assembly
Issue: Improving the legal protection of whistleblowers
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Description of the issue and background information

A whistleblower is generally defined as a person who reports about suspected misconduct or illegal actions at work or in an organization in the hope of stopping it. Since the term misconduct is not clearly specified it can be interpreted in many ways and can therefore include for example:

- a violation of a law, rule etc.
- a direct threat of public health and safety
- corruption

It is distinguished between internally whistle blowing, meaning that the person exposes his point within the company or organization, and externally whistle blowing, referring to the direct report of the person to an organ not working in the affected company, such as law enforcement agencies or the media. Furthermore the whistleblower has the opportunity to use a third party service exposing misconduct without disclosing his own identity.

The dilemma which can arise is the question if the whistleblower has acted helpful and heroic or if he published information which is important to keep secret. Since whistle blowing got more attention in the past years through the media, especially through the fast development of the internet, this moral question has to be dealt with to decide how whistleblowers should be treated. This includes a discussion about the right of asylum which differs from every country and is mostly decided upon treaties existing between countries with good relationships.

Until now, there are no international rules how to treat whistleblowers, although these are very necessary. Therefore the delegates of the 6th committee should find a solution on this issue every member state of the United Nations can accept in order to not burden relations between countries.

Historical background

It is reasonable to assume that whistleblowers have been around since time immemorial. But since technology is improving very fast, whistleblowers have better opportunities to spread there information and therefore are becoming more attention.

But especially in countries with corruption, whistleblowers who want to uncover the circumstances and the wrongdoing of their government are arrested or killed to not led the population know about those.

There were many important whistleblowers during the past centuries helping governments and people to see the truth. In the early 1900's, Edmund Morel brought the Congolese King's Corruption to light, which lead to many changes in the trade policy of Congo and Great Britain. But there were also whistleblowers which no party wanted to listen to, like Jan Karski, a Polish Resistance fighter, who tried to inform the USA about the conditions of Jews in Germany during World War II and their extermination.

Right of asylum has been an accepted concept for over one thousand years, and it persists into modern times. Asylum, however, is limited by diplomatic ties between countries; for example, due to treaties, citizens of the USA cannot seek asylum in any NATO countries. It is possible that the first laws governing asylum in England were made circa 600 AD by King Ethelbert. These laws surrounded the right of criminals to seek sanctuary in or near churches, and most likely evolved through the Norman Era with details on radii of sanctuary outside churches and criminals having the option to be tried by the courts or banished.

To further explain the dilemma of deciding if a whistleblower is a traitor or a hero, the case of Mordechai Vanunu is very interesting to analyse. He was involved in Israel's nuclear program when he sent detailed and classified information about this to the British Press in 1986. He was captured by the Israeli Secret Service while fleeing through Europe and received eighteen years in prison after a trial which was kept secret and during which he was not allowed to talk to the press. After this he claimed that Israel tried to drive him to insanity.

In the opinion of Israel Vanunu was a traitor because he revealed state secrets and received a punishment for his actions. On an international standpoint it seems to some that he was not treated fairly.

These different opinions beg the question, to what extent countries have the right to punish whistleblowers that acted against their rights and are therefore seen as traitors. This question has not only occurred in the past few years, but was always of importance if different countries and different opinions were included and was difficult to answer since.

Current Situation

In the 21st century Julian Assange and Edward Snowden have been two of the most popular whistleblowers.

With the founding of the not-for-profit media organization WikiLeaks in 2006 Assange got much attention from all over the world because of his goal to bring important news and information to the public. Especially in 2010 the interest of the media rose when WikiLeaks published 92.000 reports on the war in Afghanistan, including diplomatic cables and military documents of the United States of America. Bradley Manning supplied WikiLeaks with some information and especially a video of U.S. bomb strikes killing civilians. He was arrested for his actions. Assange himself considered to be prosecuted by the US Department of Justice and has a European Arrest Warrant regarding an alleged sexual assault incident. Since 2012 he is living in the Ecuadorian embassy in London though the Ecuadorian government has granted him asylum. From this place he continues to publish information on WikiLeaks and has stayed prominent through this. Furthermore he showed support to many whistleblowers, such as Edward Snowden.

A current example for a whistleblower who is seen as a traitor from the one site and as a hero on the other is Manning. The US government decided that he broke the law with sending US army information to WikiLeaks and he was therefore sentenced on 20 charges and received 35 years in prison. Through his actions anyone, and especially those in a possibly unstable emotional state, have access to extremely sensitive information and that is creating a great danger. Some people rather see Manning as a hero and a great role model for other persons to publish information about such huge organizations.

Edward Snowden became popular in summer 2013 when he leaked details of surveillance programs run by the USA and UK to spy on countries, including their own population. This information included tracking internet use and phone data of the heads of state.

Snowden justifies his actions with saying that every American citizen should be aware of the infringing of their privacy through the NSA information-gathering programs. Many people are of the same opinion as Snowden, because they think, that it is important to know what their government is doing, but others are thinking about the safety of their country and that secretly gathered information could help to improve and ensure this. Since Snowden has an arrest warrant in the US, which makes it impossible for him to go to any member state of the NATO without being arrested, he fled over Hong Kong to Moscow until Russia eventually granted him asylum. Through this step of Russia saving a, in the eyes of the US government, criminal the relationships between both countries are tensed. The former USA Secretary of State Condoleezza Rice considered Russia's grant of asylum a "slap in the face" of America

and noted that they “have very few overlapping interest any longer”¹, referring to some issues including Snowden and the situation in Syria. Furthermore Barack Obama withdrew from a bilateral presidential summit with Russia in September 2013 which proves that the relationship has deteriorated.

To further explain the current situation of whistleblowers, it is not only important to mention the popular ones, who provide the world with important information but also those who uncover secrets of little countries or less economically developed countries (LEDCs), where the rate of corruption is high. For example there were two Burmese government officials sentenced to death and one was arrested for publishing secret information regarding a tunnel system through Burma. In countries like Burma, where the military has a lot of power through corrupt governments and state officials and there is not as much transparency guaranteed through the media, whistleblowers are treated ethical in only few cases. The United Nations should make an effort to find solutions to protect whistleblowers from unethical treatment, which sometimes violates the Human Rights, and therefore also observe the development of LEDCs and work together with persons wanting to report wrongdoing of their governments. Not only LEDCs are affected from corruption, but also in more economically developed countries (MEDCs) or newly industrializing nations can corruption of governments occur and whistleblowers are not treated fairly. In the People’s Republic of China six whistleblowers have been harassed since spring 2013. Although the world is appreciating the tries of China to reduce the corruption in their country, whistleblowers have no rights and take a very high risk when uncovering secret information.

Another way of treating whistleblowers is shown by countries like Ecuador, which are publically open for whistleblowers but do not accept them uncovering their own state secrets including details about corruption in their country. Ecuador granted asylum to Julian Assange (as mentioned before) and almost to Edward Snowden which make some people think that the Ecuadorian government is only doing this to offend the USA. But Ecuador itself is not treating whistleblowers in their country that kindly. Since the current president, Rafael Correa, came into power independent television stations and newspapers were closed and the aggression against journalists increased dramatically.

To not only elaborate on the different opinions and actions of countries it is also important to mention the development of whistle blowing through the internet which is a very fast growing platform. Information is spread easily and it is used for promoting transparency, the fight against corruption. But it is also necessary to keep in mind that national legislations, like the Espionage Act in the USA, create grey zones in terms of future actions with regards to the definition of whistleblowers.

All in all there are existing national legislations for the protection of whistleblowers, for example the Whistleblower Protection Act of the United States of America, but there has to be an international agreement in order to not cause any tension between countries and to clarify the rights of whistleblowers.

Possible Solutions

Like already mentioned above the legal protection of whistleblowers is connected to the dilemma of a whistleblower being a hero or a traitor. On the one site it is important that each government is controlled by the people and misconduct is reported, but on the other site it is necessary that each state maintains some secrets in order to ensure the safety of the country. This moral question has to be solved, in order to find long lasting solutions. Furthermore there has to be an international agreement, so that relationships between countries are not tensed through different opinions about the treatment of whistleblowers.

¹ <http://www.cbsnews.com/news/condoleezza-rice-russian-asylum-for-snowden-is-a-slap-in-the-face-to-us/> (07/06/2014)

National laws have to be formatted related to the issues of whistleblowers, corruption and asylum and should leave no room for interpretation. No government is admitting corruption or violations against Human Rights and that is why all should be in favour of the improvement of the protection of whistleblowers and the fight against corruption.

The Rules of Asylum are mostly defined in treaties of some countries, like the NATO, but should be clarified on an international basis, in order to prevent tensions between countries, like it is the case between the USA and Russia.

The international community must look for a way to enforce ethics through solid rules and a destination for rule-breaking whistleblowers. The United Nations Office on Drugs and Crime (UNODC) should look for some manner to enforce ethical treatment of whistleblowers, and this can be pursued in many ways. All encompassing and unambiguous laws, made to be upheld by every government could work alongside a court to judge infractions. Of course, whistleblowers would need to be protected for a court to investigate and rule upon any situation. Once the global community can define how much sovereignty is applied to asylum and cases of protecting whistleblowers, steps can be made to support the mistreated with outside intervention. Solidity is a necessary addition to all existing laws and frameworks, and will be required for new laws and frameworks as well. Lastly, the international community may find that by supporting free media or spreading whistleblowers' stories, they may make it impossible for corrupt countries to rid themselves of these whistleblowers without committing the global media equivalent of suicide. Therefore, the UNODC could look into ways to spread whistleblowers stories and keep them alive and protected.

But in order to find a helpful solution on the issue of the protection of whistleblowers, countries can not only look outside of their borders and deal with whistleblowers of other countries but also need to look inside their borders and recognize possible problems. To achieve this, the global community maybe has to help each other and countries should note wrongful treatment of whistleblowers.

Positions of countries

All countries

The discussion about the legal protection of whistleblowers is a very tensed one because it is currently of high importance through Edward Snowden and Julian Assange. Some countries will want to deal with their whistleblowers on their own and will not agree to an international agreement which can make the debate difficult. Apparently, nearly no country will admit corruption of their government or want to talk about this critical issue.

Many countries will, however, express their opinion about other countries whistleblowers and corruption. This can make the debate very interesting and can create tensions.

Of course some countries will want to find a democratic solution on an international basis.

Western nations

The majority of the western nations want a democratic solution which does protect whistleblowers against unethical treatment and a violation of Human Rights but which also includes the guarantee of the security of their nations. As long as no state secrets are revealed, like Snowden and Manning did, and no law is broken, they will fight for an international peaceful agreement. Since the western nations apart from the USA profit from the information Snowden and WikiLeaks published, they are having a different opinion on these cases.

All in all it can be said that all western countries want to help the world to find democracy and therefore fight for the rights of whistleblowers and against corruption.

Russia and China

Since Russia and China are both known of having corruption within their own borders, they will not let any solution pass which includes actions about this issue or Human Rights in their countries. China was the first destination Snowden fled to and Russia granted him asylum which creates tension between both countries and western nations, especially the USA. Both being powerful countries with distinct opinions, they will likely play a large role in any debate, and often have contrasting opinions to those of western nations like the European Union.

Countries with significant corruption problems

Countries, where corruption is a great problem will mostly accept international help, because this is usually known to be beneficial. However, significant involvement or concrete actions within their own borders are opposed in the majority of the cases. Especially in those countries whistleblowers have to be protected because they are noting misconduct and giving evidence for corruption which should be fought by the UN. Since the governments will not be willing to let this information out of their country, whistleblowers are mostly not treated right and a violation of the Human Rights is occurring in many cases.

Countries internationally supporting whistleblowers

Ecuador is a good example (as already mentioned above) for a country, which is helping international whistleblowers but does not have democratic rights for them within their own borders. To keep the attention from this, those countries will want to support whistleblowers originating from other countries but are less interested in changing something in their own one.

Helpful questions to prepare

- Which opinion does your country have on the issue of whistleblowers?
 - Is it supporting some whistleblowers currently?
 - How are whistleblowers treated in your country?
 - What laws relating to this issue exist in your country?
- Does your country want an international agreement about the legal protection of whistleblowers? → Solutions?
- Does your country have a problem with corruption?
- To what extent should governments have the right to keep information secret and limit the press?
- What measures can be taken to support whistleblowers in countries with a high corruption rate?
- How can whistleblowers be protected from violations of Human Rights or unethical treatment?
- How is decided, if a whistleblower is a traitor or a hero?

Helpful links and sources

- <http://en.wikipedia.org/wiki/Whistleblower>
- <http://www.whistleblowers.gov/>
- http://en.wikipedia.org/wiki/Whistleblower_Protection_Act
- <http://www.cbsnews.com/news/condoleezza-rice-russian-asylum-for-snowden-is-a-slap-in-the-face-to-us/>
- <http://www.unpost.org/un-whistle-blower-protection/#ixzz361wmZYsa>
- <https://www.facebook.com/pages/WILPF-The-Whistleblower-and-UN-Security-Council-Resolution-1325/196423803743401?sk=info>