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**TITLE**

**ROLE OF UN PEACEKEEPING IN PROTECTION AND PROMOTION OF HUMAN  
RIGHTS**

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## INTRODUCTION

Historically, the concept of peacekeeping has no means associated exclusively with the United Nations.<sup>1</sup> Therefore, it is understandable that there occurs some confusion regarding what exactly peacekeeping defines. In this sense the UN Charter fails to provide clarity for specific issues contributed to international conflicts.<sup>2</sup> However, the concept of peacekeeping, although, the authorization lies between Chapter 6 and Chapter 7. Chapter 6 states the Security Council's authorization to monitor and interfere disputes, while Chapter 7 describes the power to regulate economic, diplomatic, military sanctions, and the use of military force.<sup>3</sup> The UNPK is based on the principles of creating unbiased environment for the hostile parties for easing the solution of the conflict and form enough space for political negotiations.<sup>4</sup> The United Nations's three basic peacekeeping principles, are: consent, impartiality and non-use of force, except in self-defense and defense of the mandate.<sup>5</sup> 'Consent' by the parties to the peace- or cease-fire agreement, is a dynamic and multilayered concept; it is essential for mission success and must be constantly managed, but it is understood that it may often be lacking at the tactical level.<sup>6</sup> 'Impartiality' means that the mandate must be applied without favour or prejudice to the parties to the peace agreement, and should not be confused with 'neutrality'.<sup>7</sup> 'Non-use of force' is re-interpreted to refer to the strategic level, i.e. Non-use of peace enforcement.<sup>8</sup> The UN is best suited to undertake consent based operations, but introduce the concept 'robust peacekeeping' to signify recognition that the use of force at the tactical level may be necessary to defend the mission and its mandate from spoilers, and to protect civilians.<sup>9</sup>

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<sup>1</sup> RAY MURPHY, UN PEACEKEEPING IN LEBANON, SOMALIA AND KOSOVO: OPERATIONAL AND LEGAL ISSUES IN PRACTICE, 1 (2009).

<sup>2</sup> *Id.*

<sup>3</sup> Revolvly, LLC. ""History+of+United+Nations+peacekeeping" on Revolvly.com." *All Revolvly Quizzes*, <https://www.revolvly.com/main/index.php?s=History%2Bof%2BUnited%2BNations%2Bpeacekeeping>.

<sup>4</sup> Peace Support Operations Of The United Nations International Law Essay, UKESSAYS, <https://www.ukessays.com/essays/law/peace-support-operations-of-the-united-nations-international-law-essay.php>.

<sup>5</sup> Cetric De Coning & Julian Detzel, UN PEACEKEEPING OPERATIONS, p. 2, [https://docs.unocha.org/sites/dms/Documents/DPKO%20Capstone%20doctrine%20\(2008\).pdf](https://docs.unocha.org/sites/dms/Documents/DPKO%20Capstone%20doctrine%20(2008).pdf).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

The first use of peacekeeping forces by the UN as an interfering action for ceasing fire between conflicting parties was implemented in 1956.<sup>10</sup> During the Cold War period peacekeepers were allowed to use force only for self-defense and are known as first-generation peacekeepers (classic peacekeeping)<sup>11</sup>. After the end of the Cold War the UN Peacekeeping (UNPK) faced new challenges, which were more complicated from political and financial point of view. The changes exercised in the peacekeeping system gave birth to the era of second-generation of peace operations. Unlike the first-generation of peacekeeping, the second-generation of peacekeepers were given the right to employ force for reasons other than self-defense.<sup>12</sup> Another significant change was made by employing civilian personnel for peacekeeping mission. In 1992, when Boutros Boutros-Ghali took the Secretary General's chair at the UN, he created the Department of Peacekeeping Operations (DPKO) in order to provide administrative and technical part of peace operations.<sup>13</sup> The DPKO has personnel over 122,000 with 118 countries contributing military and police to 16 peacekeeping operations in different parts of the world. The authorized budget for peacekeeping was 7.06 billion US Dollars for 2012, which is less than 0.5 per cent of the world's military expenses.<sup>14</sup> Nowadays the UN Peacekeeping forces are carrying their duties in 6 parts of the world: America (Haiti), Europe (Cyprus, Kosovo), Asia (Afghanistan, Kashmir), Middle East (Golan Heights, Iraq, Lebanon), Africa (Western Sahara, Abyei, Central African Republic, Cote d'Ivoire, South Sudan).<sup>15</sup>

Debates among scholars were held regarding the issue whether the language and cultural variety among peacekeepers will cause operational difficulties and may have negative consequences on mission success. Thus, it is presumed that the less is the number of the

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<sup>10</sup> Karen Mingst & Jacques Fomerand, *Peacekeeping, peacemaking, and peace building* Encyclopædia Britannica (2017),

<https://www.britannica.com/topic/United-Nations/Peacekeeping-peacemaking-and-peace-building>.

<sup>11</sup> Solakova, Plamena. "Generations of UN Peacekeeping Operations." *Academia.edu.*,

[http://www.academia.edu/11587824/Generations\\_of\\_UN\\_peacekeeping\\_operations](http://www.academia.edu/11587824/Generations_of_UN_peacekeeping_operations).

<sup>12</sup> Lynch, Fomerand, et al, *supra* note 10.

<sup>13</sup> "Department for Peacekeeping Operations. United Nations Peacekeeping." *United Nations*.

<http://www.un.org/en/peacekeeping/about/dpko/>.

<sup>14</sup> "Shaping Our Food an Overview of Crop and Livestock Breeding. Edited by A. Lehrman. Swedish University of Agricultural Sciences (SLU), Uppsala, Sweden. Published in 2014, Pp. 176. ISBN 978-91-637-5757-0 Available at

[Http://tr.anpdm.com/track?t=c&mid=11856281&uid=603295709&&&http://www.slu.se/shapingourfood/en.](http://tr.anpdm.com/track?t=c&mid=11856281&uid=603295709&&&http://www.slu.se/shapingourfood/en.)" *Animal Genetic Resources/Ressources GÃ©nÃ©tiques Animales/Recursos GenÃ©ticos Animales* 55 (2014): 143. Web. page 11

<sup>15</sup> "United Nations Peacekeeping | Peacekeeping Missions ." *Better World Campaign*.

<https://betterworldcampaign.org/un-peacekeeping/>.

states contributing to the mission, the greater their chances are to succeed in the mission.<sup>16</sup> Another hypothesis is that peacekeeping forces will succeed if they are from the same region as the conflict.<sup>17</sup> There are 4 types of peacekeeping missions that can be operated: observer mission, traditional mission, multi-dimensional mission and robust mission. Rules of engagement are defined as directives issued by the competent military authority that portrays the limitations under which forces will initiate or will engage in combat with other forces.<sup>18</sup>

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<sup>16</sup> Nsia-Pepira, Kofi (2011) "Robust Peacekeeping? Panacea for Human Rights Violations,"Peace and Conflict Studies: Vol. 18: No. 2, Article 4, page 269, <http://nsuworks.nova.edu/pcs/vol18/iss2/4>

<sup>17</sup> *Id.* at 270

<sup>18</sup> *Id.* at 273

## CHAPTER 1. UNLAWFUL ACTIONS COMMITTED BY UNPK

Despite all successfully implemented missions by the UNPKO, certain issues have occurred concerning human rights grave violations by the UN troops. After the fall of President Siad Barre in 1991, Somalia was engaged in fights between hostile tribes and the Somali government as well as the judicial system remained ineffective.<sup>19</sup> The African Union Mission in Somalia (AMISOM) can definitely be considered as a complete failure by the UNPK. Human rights monitors have reported cases of sexual violence for Somali of women and children. These reports have also shown that attacks on women and children were sometimes carried out by men in uniform, which actually means that peacekeeping troops were among the perpetrators on sexual abuse. The 2012 report has shown that over 1,700 women and children were involved in sexual abuse in Somalia. The UN reported that the entrance of peacekeeping troops in Somalia is associated with a dramatic increase in child prostitution.<sup>20</sup> The AMISOM forces held detainees without charge and without notifying their families. The victims of such attitude were also denied in access to a lawyer and right of appeal. Some peacekeepers cruelly tortured and murdered detainees, while others arbitrarily fired upon civilians in the street. The abuses in Somalia generated a rapid media attention in large part because some of the more gruesome atrocities were caught on camera.<sup>21</sup> Regarding this incident in which U.N. forces opened arbitrary fire into a crowd of civilians in Somalia, a nurse at one of the hospitals to which the injured were carried reacted by stating simply: “We are not in the United Nations. We are out of it.”<sup>22</sup>

The practice of national courts with regard to the prosecution of their own troops serving in the UN forces has been less than encouraging. Particularly, in the Brocklebank case, who was a member of the Canadian military forces serving in UNITAF in Somalia in 1993, was accused for aiding the torture of a Somali civilian who was eventually beaten to death while

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<sup>19</sup> Wilson, Richard J., and Emily Singer Hurvitz. "Human Rights Violations by Peacekeeping Forces in Somalia." Human Rights Brief 21, no. 2 (2014): 2-8,  
<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1909&context=hrbrief>

<sup>20</sup> *Id.* at 1.

<sup>21</sup> Tom Dannenbaum, TRANSLATING THE STANDARD OF EFFECTIVE CONTROL INTO A SYSTEM OF EFFECTIVE ACCOUNTABILITY: HOW LIABILITY SHOULD BE APPORTIONED FOR VIOLATIONS OF HUMAN RIGHTS BY MEMBER STATE TROOP CONTINGENTS SERVING AS UNITED NATIONS PEACEKEEPERS ACADEMIA.EDU - SHARE RESEARCH, at 119.

<sup>22</sup> *Id.* at 120.

in custody.<sup>23</sup> The Martial Court of Canada decided that Private Brocklebank had no legal obligation to ensure the safety of the prisoner because neither the Geneva Conventions nor 2nd Additional Protocol applied to Canadian Forces in Somalia.<sup>24</sup>

A case related to human rights grave violations by peacekeepers mission (MINUSCA) took place in Central African Republic (CAR) in 2014. The peacekeepers deployed by UN from the same country had sexually abused children in exchange for food or by paying an amount equal to 50 US cents for sex.<sup>25</sup> The UN in the CAR reported about over 100 sexual abuse cases in 2014, says in Al Jazeera report, and the majority of victims are children.<sup>26</sup> In the CAR the UNPK has also been accused of inaction when, for example more than 75 people including civilians were killed in the north during an outbreak of violence in September 2016.<sup>27</sup> The rights group, Amnesty International, reflected on this case, saying MINUSCA was poorly trained and lacks the resources it needs to adequately protect civilians.<sup>28</sup> Jean-Serge Bokassa, the interior Minister of the CAR, accused the peacekeepers of colluding with armed militias.<sup>29</sup>

Despite the fact that the mission in Democratic Republic of Congo (formerly Zaire) is the most expensive UNPK operation (MONUSCO). Human rights grave violations took place in this state as well.<sup>30</sup> The former UN Secretary-General Kofi Annan has recognized that human rights gross violations were committed by the peacekeepers. Kofi Annan's special representative in DRC William Lacy Swing says: "We are shocked by it, we're outraged, we're sickened by it. Peacekeepers who have been sworn to assist those in need, particularly those who have been victims of sexual violence, instead have caused grievous harm."<sup>31</sup>

During certain investigations and monitors numerous cases of human rights violations were illustrated in many articles and journals. In February, 2011, two girls from Congo, Gisèle, then 14, and her sister Espérance, 15, were attacked by five soldiers, three from the UNPK

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<sup>23</sup> T. MCCORMACK & AVRIL McDONALD, YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW – 2003, at 226 (2006).

<sup>24</sup> *Id.*

<sup>25</sup> Kwame Akonor, UN PEACEKEEPING IN AFRICA A CRITICAL EXAMINATION AND | KWAME AKONOR | SPRINGER, at 2, <http://www.springer.com/us/book/9783319391601>

<sup>26</sup> *Id.*

<sup>27</sup> Tomi Oladipo, THE UN'S PEACEKEEPING NIGHTMARE IN AFRICA BBC NEWS (2017), <http://www.bbc.com/news/world-africa-38372614>

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> AKONOR, *supra* note 25, at 36-37.

<sup>31</sup> The U.N. Peacekeeping Scandal in the Congo: How Congress Should Respond, THE HERITAGE FOUNDATION, <http://www.heritage.org/report/the-un-peacekeeping-scandal-the-congo-how-congress-should-respond>.



staff and two from the Congo's notoriously undisciplined army. While the Congolese were beating Gisèle, Espérance was raped and beaten by the three white MONUSCO soldiers. She was badly injured and pregnant.<sup>32</sup> Another grave abuse happened with Joaki and Chantal from Uvira (eastern Congo). They both were 14 years old. They encountered two Uruguayan peacekeepers in Uvira, eastern Congo. Whose names are widely known. Even though sex with a minor constitutes rape under Congolese law, the two girls got pregnant and both became children having children. The perpetrators returned to Uruguay and left without relevant punishment.<sup>33</sup> But the victims appear to be more numerous than the United Nations has reported so far.<sup>34</sup> In a corner of the capital city known as Castors, near the U.N. headquarters in the country, The Washington Post interviewed seven women and girls who described contact with peacekeepers that violated U.N. regulations against sexual exploitation and abuse.<sup>35</sup> Five of them said they exchanged sex for food or money sometimes, as little as \$4, while their country was rocked by civil war and families were going hungry. Only two had reported their cases to the United Nations.<sup>36</sup>

From January 1<sup>st</sup> 2004 to 9<sup>th</sup> December 2005 investigations were carried out against 278 peacekeeping personnel. As a result up to 16 civilian personnel were dismissed on disciplinary grounds. Also, 16 members of formed police units and 122 military personnel including 6 commanders were fired from the operation.<sup>37</sup> Unfortunately, despite these developments there left a wide spread perception that the UN military staff are not accountable for their violent conduct and de facto tolerance on their behavior remains unchanged.<sup>38</sup>

Some researchers claim that possible solution for the problem could be increasing the number of peacekeeper women in peacekeeping missions, thus reducing the risk of sexual exploitation, decrease in cases of HIV/AIDS, a decline in the number of brothels around

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<sup>32</sup> Gerald Caplan, Peacekeepers gone wild: How much more abuse will the UN ignore in Congo? The Globe and Mail (2012),

<http://www.theglobeandmail.com/news/politics/second-reading/peacekeepers-gone-wild-how-much-more-abuse-will-the-un-ignore-in-congo/article4462151/>

<sup>33</sup> *Id.*

<sup>34</sup> The growing U.N. scandal over sex abuse and 'peacekeeper babies', THE WASHINGTON POST, [http://www.washingtonpost.com/sf/world/2016/02/27/peacekeepers/?utm\\_term=.93096d7903b9](http://www.washingtonpost.com/sf/world/2016/02/27/peacekeepers/?utm_term=.93096d7903b9)

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> MURPHY, *supra* note 1, at 231.

<sup>38</sup> *Id.*

peacekeeping bases, and a reduction in the number of babies fathered and abandoned by peacekeepers.<sup>39</sup> That is why nowadays women are more likely to be deployed by DPKO than men.

The case in Liberia differs from the states mentioned above from violations perspective. The latest materials concerning human rights violations address not rape but transactional sex. Such phenomenon runs against UN policy in another way. A study in Monrovia, Liberia in the summer of 2012 shows that more than half of the women in the range of 18–30 have committed transactional sex and over three-quarters had such experience with UN personnel, usually for money.<sup>40</sup>

A relatively successful operation performed by UN forces was the mission in Sierra Leone, where the “blue helmets” (UN peacekeeping forces) proved that despite the failed missions in Africa there were also effective operations implemented in the Continent.<sup>41</sup> Closely connected to the crisis in Liberia some troubles occurred in Sierra Leone. The risen civil war stimulated the UNPK in 1999 to bring together its peacekeeping strength against the threats risen in the African state.<sup>42</sup> The UN went in with a sense that this mission had to succeed. Unfortunately, it brought one failure after another.<sup>43</sup> Up to five hundred blue helmets fell into a hostage situation, leading Great Britain to send an independent force to rescue most of them. Despite the inauspicious beginning, the blue helmets achieved some successes from 2001 onward.<sup>44</sup> In the aftermath of the rebel attack, Special Representative Okelo with West African states initiated a series of diplomatic efforts aimed at opening up dialogue with the rebels.<sup>45</sup> In May 1999 the Government launched negotiations with the rebels on 7 July 1999 in Lome parties signed an agreement to end aggressions. Also, the parties requested an expanded role for UNOMSIL.<sup>46</sup> On 20 August the UN Security Council authorized an increase in the number of military observers to 210.<sup>47</sup> Successful national elections were held

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<sup>39</sup> Olivera Simie, Does the Presence of Women Really Matter? Towards Combating Male Sexual Violence in Peacekeeping Operations, *International Peacekeeping*, 188-199 (2010), <http://www.tandfonline.com/doi/full/10.1080/13533311003625084?scroll=top&needAccess=true>.

<sup>40</sup> AKONOR, *supra* note 25, at 53.

<sup>41</sup> *Id.* at 19.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> UNAMSIL: United Nations Mission in Sierra Leone - Background, UNITED NATIONS, <http://www.un.org/en/peacekeeping/missions/past/unamsil/background.html>

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

in 2002, followed by local ones in 2004. More than half a million refugees and displaced people were resettled. With the war over and the needs now centering on continued infrastructure building, Martin-Brule calls the 2001–2004 phase of the Sierra Leone intervention, unlike earlier parts, a clear success.<sup>48</sup>

Unlike the Sierra Leone, the case in United Nations Mission in Haiti (UNMIH) is also one of the disgraceful pages in UN history. The UN Office of Internal Oversight services reported about shocking facts revealed after investigators interviewed 231 Haitian women who claimed they were compelled to have sexual acts with the peacekeepers in exchange for baby care items, medication, household items, shoes, cell phones, laptops and perfume, as well as money.<sup>49</sup> The example of Haiti clearly illustrates that a domestic culture of impunity and the failure of the Sri Lankan government to hold its military accountable for systematic abuses has far reaching consequences for the people they sworn to protect. If Sri Lankan troops are able to act with *de facto* impunity at home, it is not difficult to understand why these same troops would consider that their actions abroad are likely to be dealt with in a similar manner.

<sup>50</sup> In 2002, humanitarian personnel in West Africa were accused of sexually exploiting refugee children, usually girls. Up to sixty-seven aid workers from over 40 agencies were accused of offering children money, food and other goods in exchange for sex.<sup>51</sup> When we think of peacekeeping missions, we often envision blue helmeted soldiers sent to conflict-ridden zones, helping those most in need. We rarely think of peacekeepers as exploiters themselves. Yet, a recent report of the UN Secretary-General concedes that sexual exploitation and abuse (SEA) by peacekeepers is a major problem in peacekeeping missions.

<sup>52</sup> Sexual exploitation and abuse threatens the wellbeing of individuals and communities, and it undermines the legitimacy of peacekeeping missions.<sup>53</sup>

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<sup>48</sup> *Id.*

<sup>49</sup> UN peacekeepers sexually abused hundreds of Haitian women & girls – report, RT INTERNATIONAL, <https://www.rt.com/news/266179-un-peacekeepers-haiti-sexual/>.

<sup>50</sup> UN Peacekeeping and the Sri Lankan Military, Impunity without borders, (nov. 5, 2015), <https://www.srilankacampaign.org/impunity-without-borders-un-peacekeeping-and-the-sri-lankan-military/>

<sup>51</sup> Stopping Human Trafficking, Sexual Exploitation, and Abuse by International Peacekeepers, U.S. Department of State, <https://www.state.gov/j/tip/rls/tiprpt/2007/86207.htm>.

<sup>52</sup> Preventing Sexual Exploitation and Abuse in Peacekeeping Missions, POLITICAL VIOLENCE AT A GLANCE (2016), <https://politicalviolenceataglance.org/2016/01/15/preventing-sexual-exploitation-and-abuse-in-peacekeeping-missions/>

<sup>53</sup> *Id.*

The Secretary-General Kofi Annan qualified these actions as "violation of the fundamental duty of care".<sup>54</sup> He noted that: "I am afraid there is clear evidence that acts of clear misconduct have taken place. This is a shameful thing for the UN to have to say and I am absolutely outraged by it. We cannot rest until we have all such practices from MONUC, from any other peacekeeping operation, and indeed anywhere in the Organization that they might occur. And we must make sure that those involved are held fully accountable."<sup>55</sup>

During the major UN peacekeeping summit, a famous celebrity and human rights activist Angelina Jolie has called for the prosecution of those peacekeepers who commit abuses. "We all know that the credibility of UN peacekeeping has been sadly undermined by the actions of a few intolerable cases of women and children being sexually exploited by the very people in charge of protecting them," says Jolie.<sup>56</sup>

After two decades of continuing human rights violations by the peacekeepers, Kofi Annan has issued a Bulletin on Protection from Sexual Exploitation and Abuse, (the zero tolerance policy) called prohibiting the peacekeepers undergo into any sexual relations with the members of local community.<sup>57</sup> By the establishment of the ZTP, new reporting guidelines were aimed at helping local habitants to come forward and at encouraging peacekeepers to report on each other.<sup>58</sup> The bulletin consisted of 7 sections and was entered into force on October 15, 2003.<sup>59</sup> Further, the Department of Field Support's CDU launched the Misconduct Tracking System (MTS), a global database and confidential tracking system for all allegations of misconduct.<sup>60</sup> Both the CDU and the field mission teams track actions taken in handling allegations of sexual exploitation and abuse through the MTS.<sup>61</sup> More recently, the system has been used to vet UN international staff members applying to work in field

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<sup>54</sup> Owen Bowcott, REPORT REVEALS SHAME OF UN PEACEKEEPERS THE GUARDIAN (2005), <https://www.theguardian.com/world/2005/mar/25/unitednations>.

<sup>55</sup> MURPHY, *supra* note 1, at 232.

<sup>56</sup> Latifah Muhammad, ANGELINA JOLIE STUNS IN CHIC BLACK DRESS AT UN PEACEKEEPING SUMMIT IN LONDON -- SEE THE PICS! ENTERTAINMENT TONIGHT (2016), [http://www.etonline.com/news/197572\\_angelina\\_jolie\\_stuns\\_in\\_chic\\_black\\_dress\\_at\\_un\\_peacekeeping\\_summit\\_london/](http://www.etonline.com/news/197572_angelina_jolie_stuns_in_chic_black_dress_at_un_peacekeeping_summit_london/).

<sup>57</sup> Marie Deschamps, Hassan B. Jallow, Yasmin Sooka, Taking Action On Sexual Exploitation and Abuse by Peacekeepers, 4 (Dec. 17, 2015), <http://www.un.org/News/dh/infocus/centafricrepub/Independent-Review-Report.pdf>.

<sup>58</sup> Kathleen Jennings, The UN's Shame: Sexual Exploitation and Abuse in UN Peacekeeping, 21 October 2015, <http://www.e-ir.info/2015/10/21/the-uns-shame-sexual-exploitation-and-abuse-in-un-peacekeeping/>

<sup>59</sup> UNST, (Oct. 9, 2003), Doc. SGB/2003/13, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=ST/SGB/2003/13](http://www.un.org/en/ga/search/view_doc.asp?symbol=ST/SGB/2003/13)

<sup>60</sup> JENNA STERN, REDUCING SEXUAL EXPLOITATION AND ABUSE IN UN PEACEKEEPING, p. 13.

<sup>61</sup> *Id.*

missions.<sup>62</sup> Also, database interface projects were completed in 2013 to ensure that potential military observers, police officers and military staff officers are screened against records of prior misconduct. An information-sharing agreement formalized the processes whereby UN volunteers who have previously served in peacekeeping operations are being screened against MTS records, and the UN is currently exploring methods of screening military contingent and police personnel.<sup>63</sup>

The UN OIOS (Office of Internal Oversight Services) investigations on abuses by peacekeeping forces was launched in 2004. Many experts considered these investigations inefficient. The point is that UN could filter “criminal peacekeepers,” but was unable to take persistent efforts to hold them liable after returning home.<sup>64</sup> By many experts the most efficient way of keeping the perpetrators responsible is to ensure national prosecutions take place. Superior officers cannot be kept liable for the actions of their subordinates, but the international humanitarian law provides template regarding the principles of command responsibility.<sup>65</sup> Superiors must be accountable for the actions of subordinates, when they knew or could have known about the engagement of these subordinates in criminal activity. The failure of cooperation with investigation should not be tolerated.<sup>66</sup>

Unfortunately, almost none of the defined criminal responsibility by the Security Council were properly implemented. The cases of sexual abuse and exploitation (SEA) have not received a proper investigation and the committed crimes were left without appropriate consequences, which was full of potential danger of upcoming abuses.<sup>67</sup>

An independent team of experts AIDS-Free World submitted an assessment (the “Expert Team’s Report”[ii]) in November 2013 addressing the issue of UNPK violations. AIDS-Free World has sent a copy of a report by an anonymous UN source, because they knew that the UN would do everything not to disclose it and because they feared that as it is highly critical of the UN Secretariat and Troop Contributing Countries, the Expert Team’s Report would be

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> MURPHY, *supra* note 1.

<sup>65</sup> *Id.* at 236.

<sup>66</sup> *Id.*

<sup>67</sup> Joan Mariner, UN peacekeepers – ‘zero tolerance’ means not shielding rapists, 20 Aug. 2015, <https://www.amnesty.org/en/latest/news/2015/08/un-peacekeepers-zero-tolerance-means-not-shielding-rapists/>

quashed.<sup>68</sup> The team reported to the Secretary General that: “The UN does not know how serious the problem of SEA is because the official numbers conceal what appears to be vital amounts of underreporting of the SEA. There are many reasons why, and these include:

- (1) Fear of reporting inside and outside the UN /stigmatizing of whistleblowers within the UN and sometimes outside /culture of silence particularly within military and police,
- (2) a sense of futility about reporting because of long delays in the enforcement process in NY and in mission and the rarity of remedial outcomes including rarity of victim assistance, and
- (3) record keeping problems, with numbers not matching from one source to another.

and that: “In all the missions we visited the UN personnel could point to a great number of suspected or quite apparent cases of SEA that are not being counted or investigated.”<sup>69</sup>

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<sup>68</sup> UN Experts' unseen peacekeeping report: sexual exploitation and abuse - AIDS Free World, UN EXPERTS' UNSEEN PEACEKEEPING REPORT: SEXUAL EXPLOITATION AND ABUSE - AIDS FREE WORLD, [http://www.aidsfreeworld.org/Newsroom/Press-Releases/2015/Open-Letter-to-UN-Missions.aspx#\\_edn2](http://www.aidsfreeworld.org/Newsroom/Press-Releases/2015/Open-Letter-to-UN-Missions.aspx#_edn2).

<sup>69</sup> *Id.*

## CHAPTER 2. LAW AND POLICY DEBATE ON CURRENT ROLE IN HUMAN RIGHTS PROTECTION

The current role in human rights protection can be described as quite vulnerable as far as reportedly there are grave violations of human rights happening every day. The Human Rights Council (established in 2006) is the institution responsible for human protection and promotion as well as error correction of its predecessor body- the discredited Commission on Human Rights. According to a view, however, the Council has not performed better than the Commission.<sup>70</sup> Therefore, it is considered essential to establish a set of international framework to regulate those abuses and law violations and to address military, private security and freedom expression issues as well.<sup>71</sup>

Among the numerous failures of the Human Rights Council G. Robertson stresses Libya's case as the apex of its malfunctioning. As A. Elsner mentions, Libyan dictator Muammar al-Qaddafi's attack on his own people portrays the UN's two-facedness, double-standards and complete lack of credibility when it comes to dealing with international human rights.<sup>72</sup>

To continue, not only the Council is perceived as failing in human rights protection, it is also publicly accused of their "politicization".<sup>73</sup> A debate held by the General Assembly (specifically by the Third Committee) on October 28, 2008 reveals concerns towards the "politicization" issue. The Indian representative along with like-minded people expresses a view that several individual states have performed intrusive monitoring deemed as a violation

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<sup>70</sup> The U.N. Human Rights Council: Politicized or Political?, Baines Report, <http://bainesreport.org/2010/11/un-human-rights-council-politicized-or/>,

<sup>71</sup> OHCHR | Human Rights Council continues general debate on the promotion and protection of all human rights, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16467&LangID=E>

<sup>72</sup> Alan Elsner, UN's Failure on Libya Exposes Its Hypocrisy on Human Rights The Huffington Post (2011), [http://www.huffingtonpost.com/alan-elsner/uns-failure-on-libya-expo\\_b\\_827162.html](http://www.huffingtonpost.com/alan-elsner/uns-failure-on-libya-expo_b_827162.html).

<sup>73</sup> SPEAKERS WARN AGAINST POLITICIZATION OF HUMAN RIGHTS ISSUES ON UNITED NATIONS AGENDA, AS THIRD COMMITTEE CONTINUES WIDE-RANGING DEBATE | Meetings Coverage and Press Releases, United Nations, <https://www.un.org/press/en/2008/gashc3929.doc.htm>

of human rights. It is concluded that the international community has to address those abuses via interactive dialogues.<sup>74</sup>

In 2012, Maria Prosviryakova, a Russian Council blogger, goes further in her blog about the UN “politicization” issue, stating that it has numerous times failed to protect civilians from mass attacks and human rights abuses in such countries as Rwanda, Syria and Somalia, thus allowing horrifying levels of sufferings.<sup>75</sup> As S. Lowe mentions, the UN not only failed the mission to prevent the genocide in Rwanda, but also allowed for mass executions and human rights violations committed mostly towards ethnic Hutu and Tutsi populations.<sup>76</sup> By C. McGreal’s words, the Rwandan genocide was the UN’s complete failure, however, not the worst one, as a year later in 1995 Dutch peacekeepers aborted their mission in Srebrenica where 8000 Muslim men became victims of a harsh massacre.<sup>77</sup> Overall, he rates the peacekeepers activities as an illusion of security.<sup>78</sup> R. Kleinfeld shares C. McGreal’s idea that the UN peacekeepers are of no substantial use. Moreover, he claims that they brought cholera to Haiti and supported prostitution in Bosnia.<sup>79</sup> However, evidence proves that the UN has not always been as inefficient as the authors mention. In contrast with the Rwandan, Somalian and other aborted missions, in 1973 the UN condemned war crimes and crimes in Libya, undertaking all the necessary steps to provide peace and human rights protection in the country.<sup>80</sup>

To continue, Prosviryakova states that since 1991 up to 2012 there was a dramatic increase in the number of peacekeepers- from 11.000 to nearly 120.000.<sup>81</sup> However, in the absence of the rule of law foreign interference which peacekeepers bring about cannot guarantee defense against human right violations or genocides within the countries.<sup>82</sup> Moreover, because of their big number most of them perform ill-defined jobs.<sup>83</sup>

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<sup>74</sup> *Id.*

<sup>75</sup> [http://russiancouncil.ru/en/blogs/maria/?id\\_4=172](http://russiancouncil.ru/en/blogs/maria/?id_4=172)

<sup>76</sup> <https://www.quora.com/Why-do-some-say-the-United-Nations-failed-in-Rwanda>

<sup>77</sup> Chris McGreal, What's the point of peacekeepers when they don't keep the peace? The Guardian (2015), <https://www.theguardian.com/world/2015/sep/17/un-united-nations-peacekeepers-rwanda-bosnia>.

<sup>78</sup> *Id.*

<sup>79</sup> Rachel Kleinfeld, Beef Up UN Peacekeepers; Let Them Kill Bad Guys Carnegie Endowment for International Peace, <http://carnegieendowment.org/2014/01/29/beef-up-un-peacekeepers-let-them-kill-bad-guys-pub-54376>.

<sup>80</sup> *Supra* note 75.

<sup>81</sup> *Id.*

<sup>82</sup> Rialize Ferreira, THE CONSEQUENCES OF HUMANITARIAN PEACEKEEPING IN AFRICA, <https://www.ajol.info/index.php/smsajms/article/viewFile/48736/35088>

<sup>83</sup> Chris McGreal, 70 years and half a trillion dollars later: what has the UN achieved? The Guardian (2015), <https://www.theguardian.com/world/2015/sep/07/what-has-the-un-achieved-united-nations>



Finally, Prosviryakova expresses her concern over the “politicization” of intervention as a means for a state to propagate their political agenda in others, hereby likely causing more harm than good.<sup>84</sup> A. Rhodes adds that authority states utilize appropriate strategies to present their intervention and policies as a means to protect and promote human rights, which does not always correspond to the reality.<sup>85</sup> R. Freedman mentions that authority countries even shelter right abusers in the UN if those assist in implementing their hidden political and economic objectives.<sup>86</sup> Secretary-General Ban Ki-moon, though, blames governments and not the UN in brutal violations of human rights. He states that they restrict people’s basic human rights and detain those who fight for them, primarily pointing to non-governmental organizations which are not allowed to perform their vital work.<sup>87</sup>

H. Allen and A. T. Yuen, scholars at the association “International Studies Quarterly”, join Prosviryakova in her doubts concerning the efficacy of the peacekeepers intrusion. They mention that since 1990s peacekeepers have been sent to intrude in civil wars and exercised all the possible means to manage the conflict, however not a few times they have surpassed the acceptable border of “all means necessary”. In other words, they have employed force beyond self-defense. Moreover, they claim that the UN is quite “choosy” when it comes to sending missions to particular countries.<sup>88</sup> A common assertion is that the UN sends peacekeepers to states where the permanent members of the Security Council hold national interests.<sup>89</sup> To go further, Allen and Yuen mention that nowadays we lack any kind of statistical analyses which might point to the efficacy of peacekeepers activities. Thus, it is impossible to claim they address the problems they are sent for or have hidden political intentions. Finally, they find evidence that the United Nations Security Council (UNSC) employs oversight to keep control over missions meant for more complicated conflicts.

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<sup>84</sup> *Supra* note 75.

<sup>85</sup> The UN’s Politicized Human Rights Vision, American Thinker, [http://www.americanthinker.com/articles/2016/08/the\\_uns\\_politicized\\_human\\_rights\\_vision.html](http://www.americanthinker.com/articles/2016/08/the_uns_politicized_human_rights_vision.html).

<sup>86</sup> Failing to Protect, Rosa Freedman - Oxford University Press (2017), <https://global.oup.com/academic/product/failing-to-protect-9780190222543?cc=us&lang=en&>

<sup>87</sup> American Thinker, *supra* note 85.

<sup>88</sup> International Studies Quarterly, The Politics of Peacekeeping: UN Security Council Oversight Across Peacekeeping Missions > International Studies Association, <http://www.isanet.org/Publications/ISQ/Posts/ID/3570/The-Politics-of-Peacekeeping-UN-Security-Council-Oversight-Across-Peacekeeping-Missions>, <http://www.isanet.org/Publications/ISQ/Posts/ID/3570/The-Politics-of-Peacekeeping-UN-Security-Council-Oversight-Across-Peacekeeping-Missions>

<sup>89</sup> Michael Gilligan & Stephen John Stedman, Where DO the Peacekeepers go?, at 2, <http://www.nyu.edu/gsas/dept/politics/faculty/gilligan/peacekeepers.pdf>

Overall, they view the UN as a rather bureaucratized institute which has a lot of room for improvement.<sup>90</sup> M. S. Butt, Pakistani representative at the 32<sup>nd</sup> and 33<sup>rd</sup> Third Committee meetings, mentions that the UN has numerous failed to safeguard member states from human right violations and at this moment it is crucial to establish new safeguards against obstacles and discrimination to human rights. Moreover, he states that there is evidence proving selectivity in human rights promoted, as well as political and economic exploitation.

<sup>91</sup> Another major concern expressed by Butt relates to the discrimination towards Islam and Muslims. According to him, not only Muslims are negatively stereotyped, but there are also a lot of offensive materials on Islam. Freedom of expression may allow to cover it in media, yet the material itself should not offend or defame religion. These are some crucial problems which Butt urges international human rights law to address.<sup>92</sup> United States representatives at the Human Rights Council agree that religious issues are among human right issues that still need to be addressed. They expand the list of countries concerned from Islamic to Buddhist-China, Myanmar, Iraq, Iran and others. Furthermore, it is mentioned that restrictions by governments over religious freedom and its harsh violations stretch roots for violent conflicts worldwide.<sup>93</sup>

J. R. Vreeland and A. Dreher discuss the issue of “legitimacy” in the United Nations highlighting how governments employ trade money to accomplish their political considerations and influence.<sup>94</sup> It is typical to authority member states, though. There is evidence that legitimacy has been a tool to those states to fulfill their hidden political purposes.<sup>95</sup> The United States serves as a vivid example. As a dominant country it always does whatever it wants regardless of what it is allotted to by the UN. Since 1945 it has always

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<sup>90</sup> *Id.*

<sup>91</sup> National Efforts to Protect Human Rights, Effectiveness of Human Rights Council and Special Procedures among Issues, as Third Committee Debate Continues | Meetings Coverage and Press Releases, United Nations, <https://www.un.org/press/en/2010/gashc3989.doc.htm>

<sup>92</sup> *Id.*

<sup>93</sup> OHCHR | Human Rights Council continues general debate on the promotion and protection of all human rights, OHCHR | Human Rights Council continues general debate on the promotion and protection of all human rights, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16467&LangID=E>

<sup>94</sup> The Political Economy of the United Nations Security Council: Money and Influence, Kindle Cloud Reader, <https://read.amazon.com/kp/embed?asin=B00J8LQL64&tag=bing08-20&linkCode=kpp&reshareId=YCHFRDXYKD3014NJQZGM&reshareChannel=system>

<sup>95</sup> Ian Hurd, *After anarchy: legitimacy and power in the United Nations Security Council* p. 25 (2008). [https://books.google.am/books?hl=ru&lr=&id=XgXp2wcSbQEC&oi=fnd&pg=PR7&dq=un+legitimacy+issues&ots=\\_yO0e0jORM&sig=XBs8ob2pa25WBXqs98t3gsXPbD8&redir\\_esc=y#v=onepage&q=un%20legitimacy%20issues&f=false](https://books.google.am/books?hl=ru&lr=&id=XgXp2wcSbQEC&oi=fnd&pg=PR7&dq=un+legitimacy+issues&ots=_yO0e0jORM&sig=XBs8ob2pa25WBXqs98t3gsXPbD8&redir_esc=y#v=onepage&q=un%20legitimacy%20issues&f=false)

provided nearly the quarter of the UN budget which assumes it has a big say in its decisions.<sup>96</sup> The same goes with the other four permanent member states- China, Russia, France and the United Kingdom. Due to their funding, their word is more accountable than that of the other less powerful and poorer states.’ Thus, the unequal distribution of power within the SC gives birth to an anachronistic state.<sup>97</sup>

However, the UN is not all about failures. Judge R. Hudgins, the President of the International Court of Justice reminds of SC success stories which are not a few. Firstly, there is day-to-day compliance with international law. Secondly, the rule of law is being effectively promoted in post-conflict societies with the aim to ensure political stability and legitimacy in those countries. Finally, there is a well-designed and developed framework for addressing and suppressing international terrorism.<sup>98</sup> This is what Russian Federation representatives at the Human Rights Council, though, do not agree with. They state that terrorism and extremist ideologies are still problems on the forefront.<sup>99</sup>

According to an opinion, a reason why the UN has not solved the above-mentioned problems yet is that the means chosen are not pragmatic enough. If it aims at addressing human rights violations, it has to go beyond observation and public denunciation. Furthermore, it should develop depoliticized tools based on non-selectivity and universality principles, that is to say- one decision or law for everyone.<sup>100</sup> It is also important to establish strict control over peacekeepers’ functions, their providers and financial supporters. What’s more, one should clearly know his own country’s personnel and fiscal assistances to such missions, thus partially pointing to his country’s policy toward given solutions.<sup>101</sup> Others suggest the Third Committee of the General Assembly becoming the basic institution to address human rights violations. The successful management of violations in Belarus, Iran, Burma and North

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<sup>96</sup> The United Nations and its problems, History Learning Site, <http://www.historylearningsite.co.uk/modern-world-history-1918-to-1980/the-united-nations/the-united-nations-and-its-problems/>.

<sup>97</sup> The United Nations: Strengths and weaknesses, International Association for Political Science Students (2015), <http://www.iapss.org/wp/2015/03/12/the-united-nations-strengths-and-weaknesses/>.

<sup>98</sup> SECURITY COUNCIL, FOLLOWING DAY-LONG DEBATE, UNDERSCORES CRITICAL ROLE OF INTERNATIONAL LAW IN FOSTERING GLOBAL STABILITY, ORDER | Meetings Coverage and Press Releases, United Nations, <https://www.un.org/press/en/2006/sc8762.doc.htm>

<sup>99</sup> Human Rights Council Report, *supra* note 70.

<sup>100</sup> B.G Ramcharan, The law, policy and politics of the UN Human Rights Council, 186 (2015).

<sup>101</sup> United Nations Peacekeepers: Which Countries Provide the Most Troops and Funding?, Best Delegate, <http://bestdelegate.com/united-nations-peacekeepers-which-countries-provide-the-most-troops-and-funding>

Korea speak in its favor.<sup>102</sup> To address selectivity problems, it is suggested to divide discussion topics into regional segments, thus allowing for equal treatment across regions.<sup>103</sup> A pragmatic way of improving the Human Rights Council work is to make sure The General Assembly uses its power to suspend the Council members' membership rights in case they have performed gross systematic violations.<sup>104</sup> In addition, it has to be more welcoming towards civil society contributions, especially in states or regions where their engagement is reported as underdeveloped.<sup>105</sup> Their involvement in human rights violations management often plays a vital role in designing follow-up resolutions and recommendations at local level.<sup>106</sup> Another major problem is that new initiatives are mostly tabled due to local political considerations rather than because they promote international human rights. Furthermore, some participants doubt whether tabled resolutions are subjected to proper negotiation.<sup>107</sup> To address those problems, it is proposed to encourage States support on initiatives, such as those backed by Norway and Turkey and cover less items tabled for discussion, concentrating on the qualitative output rather than on the quantitative one. Also, it has to reassure that violations are tackled in a non-politicized way and that states involved are motivated to meaningfully address those violation issues.<sup>108</sup> At the 2016 March sessions, the Egyptian representatives proposed their notion of HRC improvement saying that "Any process to review or improve the working methods of the Human Rights Council should be mandated, consensual and comprehensive".<sup>109</sup> "These elements have constituted the founding basis for the establishment of the Human Rights Council and they should continue to govern any process related to reviewing its method of work."<sup>110</sup> At the time, the US President G. Bush and his administration suggested to prohibit HRC membership for any country with a high rate of human rights violation and elect HRC members based on two-thirds of votes, thus

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<sup>102</sup> The U.N. Human Rights Council, *supra* note 70.

<sup>103</sup> *Id.*

<sup>104</sup> Six steps to strengthen the UN Human Rights Council, ISHR (2016), <http://www.ishr.ch/news/six-steps-strengthen-un-human-rights-council>

<sup>105</sup> *Id.*

<sup>106</sup> Permanent Mission of Mexico, The Human Rights Council at 10 - improving relevance, strengthening impact: The Operation of the Council - how to better deliver on its mandate, 2015, at 3, <http://www.universal-rights.org/wp-content/uploads/2015/04/Mexico-Meeting-Glion-2015.pdf>

<sup>107</sup> *Id.* at 2.

<sup>108</sup> *Id.*

<sup>109</sup> Dictators at UN oppose even the suggestion of human rights reform, UN Watch (2016), <https://www.unwatch.org/dictators-invoke-procedure-oppose-meaningful-reform-hrc/>

<sup>110</sup> *Id.*

hoping to exclude rights violators in the Council. Despite their high practicality, this proposal did not survive negotiations.<sup>111</sup> Currently, the US President administration urges the Council to withdraw right-abusing member states, as America does not want to support rights violations with its own funding (the annual funding by the US is \$3 billion).<sup>112</sup> Among major violators China, Congo, Qatar and Saudi Arabia are mentioned and what is remarkable is that none of the mentioned states have ever been subjected to the Council resolution.<sup>113</sup> Zionist Organization of America (ZOA) National President Morton A. Klein mentioned, “We praise the Trump Administration and Ambassador Haley for their forthright and principled stand against the pernicious bias that permeates the UN system and especially the utterly corrupt Human Rights Council. However, there is little use in the US protesting the HRC’s abuses and biases while funding its ongoing operations.”<sup>114</sup>

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<sup>111</sup> UN Human Rights Council 2017: Almost 1 in 4 Members Abuse Human Rights, CNS News (2017), <http://www.cnsnews.com/news/article/patrick-goodenough/un-human-rights-council-2017-almost-1-4-members-abuse-human-rights>

<sup>112</sup> US exit from United Nations could become reality with fresh bill, RT International, <https://www.rt.com/usa/374754-us-leave-united-nations-bill>

<sup>113</sup> Trump right in boycotting U.N. Human Rights Council, Jewish Journal, <https://jewishjournal.org/2017/03/30/trump-right-in-boycotting-u-n-human-rights-council/>

<sup>114</sup> *Id.*

### CHAPTER 3. GAPS IN INTERNATIONAL LAW NORMS FORMING THE LEGAL BASIS OF UNPK

Since 1945, when the United Nations was founded it was conceived as a tool to face the most dangerous global challenges risen in the international system. Its main purpose was to eliminate the potential negative effects of globalization, such as the spread of transnational threats, and to promote peace and security. The United Nations shall ensure that the UN forces and operations shall conduct their activities with full respect for the provisions of international law and the spirit of the general conventions and protocols applicable to the conduct of military staff.<sup>115</sup> Particularly these international conventions include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 on the Protection of Cultural Property in the event of armed conflict.<sup>116</sup>

The ‘protection of civilians’ mandate in the United Nations peacekeeping operations fulfils a critical role in realizing broader protection objectives, which have in recent years become an important focus of international relations and international law.<sup>117</sup> The concepts of the ‘protection of civilians’ constructed by the humanitarian, human rights and peacekeeping communities have evolved somewhat separately, resulting in disparate understandings of the associated normative bases, substance and responsibilities.<sup>118</sup> If the UN peacekeepers are to effectively provide physical protection to civilians under threat of violence, it is necessary to untangle this conceptual and normative confusion.<sup>119</sup> The practical expectations of the use of

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<sup>115</sup> McCormack, McDonald, *supra* note 23, at 222.

<sup>116</sup> *Id.*

<sup>117</sup> Haidi Willmot and Scott Sheeran, THE PROTECTION OF CIVILIANS MANDATE IN UN PEACEKEEPING OPERATIONS: RECONCILING PROTECTION CONCEPTS AND PRACTICES ICRC (2013),

<https://www.icrc.org/eng/resources/documents/article/review-2013/irrc-891-892-willmot-sheeran.htm>

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

force to protect civilians must be clear, and an overarching framework is needed to facilitate the spectrum of actors working in a complementary way towards the common objectives of the broader protection agenda.<sup>120</sup>

The International ICRC (International Committee of Red Cross) is fully aware of the challenges facing the UN peacekeeping operations, as it work alongside them in many places, such as South Sudan, Mali and the Democratic Republic of the Congo.<sup>121</sup> The ICRC notes that it sees that the UN peacekeeping operations are conducted in ever more violent and complex situations that are rapidly changing and present numerous challenges.<sup>122</sup> Also, their operations are increasingly multidimensional, with peacekeepers required to mediate between opposing parties, deliver essential services, promote the rule of law, handle detainees and ensure that civilian camps are protected.<sup>123</sup>

The allocation of responsibility between states participating in operations, international organizations and the host state has to be as clear-cut as possible.<sup>124</sup> Even if their capacities do not always match their responsibilities, multinational forces will be exposed to public scrutiny and their troops will be expected to show exemplary conduct.<sup>125</sup> The measures taken by the UN peacekeeping missions, in particular, to ensure that the parties to a conflict comply with international humanitarian law (IHL) may also play an essential role in improving the plight of the civilian population.<sup>126</sup>

Although many times the UN system had proved to be successful in resolving a number of global issues, during the last decades, it has faced some vital deficiencies and weaknesses.<sup>127</sup> There are numerous approaches to the legal basis for UN peacekeeping missions under the Charter. One of them is that peacekeeping is established under article 40, 41, 42. Another way is that the exact basis is not needed, since the UN possesses an inherent and implied

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<sup>120</sup> *Id.*

<sup>121</sup> Peacekeeping operations: ICRC statement to the United Nations, 2016, INTERNATIONAL COMMITTEE OF THE RED CROSS (2016), <https://www.icrc.org/en/document/peacekeeping-operations-icrc-statement-united-nations-2016>

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> International Review of the Red Cross, MULTINATIONAL OPERATIONS AND THE LAW, p. 476.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Chiarra Villani, THE UNITED NATIONS: STRENGTHS AND WEAKNESSES, <http://www.iapss.org/wp/2015/03/12/the-united-nations-strengths-and-weaknesses/>.

power. There are also other provisions of international law that are relevant to use of force. For instance, the law of armed conflicts and human rights.<sup>128</sup>

Much debate rose around the UN intervention nature to a conflict zone. The Chapter 6 of the UN Charter regulates the legal framework of traditional peacekeeping, which normally can be established by an agreement between two states in a conflict or between parties within a state. In contrast, Chapter 7 of the UN Charter enforcement operations are installed upon a response to an agreed threat to an international peace.<sup>129</sup> The difficulty occurs while gaining consensus among the permanent members of the Security Council (SC), which are the US, France, China, Russia and the United Kingdom. Each of the SC permanent states tries to use the provisions of Chapter 7 to influence on the conflicting area by individual approach.<sup>130</sup> The interveners should follow no interests as the primary motivating force for intervention. This means that they should not intervene at all, unless the UN monitored and ensured the compliance of international legal and moral principles.<sup>131</sup>

The Humanitarian intervention can be defined as follows: Humanitarian intervention is the use of force by a state (or states) within the territory of another state in order to protect the fundamental human rights of that state and are committed or condoned by the authorities of that state unable or unwilling to prevent them.<sup>132</sup> The existence of international dispute or a dispute within a state is also required in order to have the right of intervention.

The Permanent Court of International Justice (PCIJ) defined that a dispute is the conflict of legal views or interests between two persons (Greece v. Great Britain, 1924).<sup>133</sup> International practice also has provided separate distinction between “justiciable” or “legal” disputes, which are subject to legal settlement or political disputes. Only the help of diplomatic negotiation, good offices, mediation, conciliation, etc. can solve political disputes. After the World War 1<sup>st</sup> the Covenant of the League of Nations implied that only certain types of

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<sup>128</sup> MARC WELLER, ALEXIA SOLOMOU & JAKE WILLIAM. RYLATT, THE OXFORD HANDBOOK OF THE USE OF FORCE IN INTERNATIONAL LAW, 359 (2015).

<sup>129</sup> RAMESH CHANDRA THAKUR & ALBRECHT SCHNABEL, UNITED NATIONS PEACEKEEPING OPERATIONS: AD HOC MISSIONS, PERMANENT ENGAGEMENT, 61 (2001).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 250.

<sup>132</sup> BOLESŁAW ADAM. BOCZEK, INTERNATIONAL LAW: A DICTIONARY (2005), page 404.

<sup>133</sup> *Id.* at 361.



international disputes are subject to submission judicial settlement.<sup>134</sup> However, under the article 36 (1) of the Statute of PCIJ is clearly states that “all cases” are admissible to ICJ.<sup>135</sup>

In order to understand the scope of activities and possible issues of UNPK there is also a need to define the nature of international armed conflict. The law on armed conflict (LOAC) clearly regulates the distinction between international and non-international armed conflicts.

<sup>136</sup> The International armed conflict arises when a state gets involved in armed activities against another state or states.<sup>137</sup> The LOAC also applies while total or partial military occupation, even if the occupation meets no armed resistance. The use of armed force should be more than one active hostile activities in order to be considered as international armed conflict.<sup>138</sup> Non-international armed conflicts (also known as internal armed conflicts) take place only within the territory of a state. Armed forces of any other state should be absent in order to be considered as a non-international armed conflict.<sup>139</sup>

When the UN begins a new peacekeeping operation, it establishes with the host state either a status of force agreement (SOFA) or a status of mission agreement (SOMA) that regulate the rights and obligations of the peacekeepers.<sup>140</sup> Since, the number of accused and rarely held responsible for human rights grave violations is relatively high; it seems that there is a lack of a better legal regulation of the UN peacekeeping status. The immunity instruments granted to them by SOFA suspects doubts regarding the legitimacy of the peacekeepers presence in the conflict areas.<sup>141</sup> The main goal of immunity granted to international organizations such as the UN is to protect their personnel from unilateral interference by the individual government of the state in which they are located.<sup>142</sup> In general, the immunity granted to the peacekeepers is the main reason of the impunity of the offensive actions of peacekeepers. The article 46 of the 1990 Model Status of Forces Agreement provides that all UN peacekeeping staff are immune from any legal liability in the state, where they act. At the same time article 47(b)

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<sup>134</sup> Adam, *supra* note 40, at 362.

<sup>135</sup> *Id.*

<sup>136</sup> Frederick Rawski, TO WAIVE OR NOT TO WAIVE: IMMUNITY AND ACCOUNTABILITY IN U.N. PEACEKEEPING OPERATIONS, 18 Conn. J. Int'l L. 103, 103 (2003), <http://heinonline.org/HOL/LandingPage?handle=hein.journals%2Fconjl18&div=8&id=&page>.

<sup>137</sup> *Id.*

<sup>138</sup> The Law of Armed Conflict, at 10, [https://www.icrc.org/eng/assets/files/other/law1\\_final.pdf](https://www.icrc.org/eng/assets/files/other/law1_final.pdf)

<sup>139</sup> *Id.*

<sup>140</sup> Wilson, Hurvitz, et al, *supra* note 19, at 3.

<sup>141</sup> Anton's Weekly International Law Digest on WordPress.com, ANTON'S WEEKLY INTERNATIONAL LAW DIGEST, <https://awild.org/page/69/>.

<sup>142</sup> Rawski, *supra* note 136.

defines that if the military member has been accused, he or she is a subject to the exclusive jurisdiction of their appropriate participant state.<sup>143</sup> It turns out that the hosting state does not have any jurisdiction over the peacekeepers and thus it cannot prosecute those, whose criminal performance is taking place in its own territory. The UN staff possesses immunity from local jurisdictions and have been subject only to their home country's national laws. Laws differ from state to state and certain acts and practices may be legal in one place while they constitute a serious crimes in another jurisdiction.<sup>144</sup>

The undertaking by troop-contributing States to ensure that their contingents respect international humanitarian norms was included in the Model Agreement between the United Nations and Member States Contributing Personnel and Equipment to United Nations Peace-keeping Operations ('Model Agreement') submitted by the UN Secretary-General, to the UN General Assembly (United Nations, General Assembly; 'UNGA') in 1991.<sup>145</sup> The Model Agreement states in its Art. 28 that the peace operation 'shall observe and respect the principles and spirit of the general international conventions applicable to the conduct of military personnel' and that the troop-contributing State 'shall therefore ensure that the members of its national contingent serving with the United Nations peacekeeping operation be fully acquainted with the principles and spirit of these Conventions'. The Model Agreement was designed to be used as a blueprint for individual agreements with troop contributing States, although formal agreements along the lines of the Model Agreement were not always concluded with these States.<sup>146</sup> In contrast to the Model Agreement, for a long time it was not envisaged for status of armed forces on foreign territory agreements (SOFA) between the UN and host States of a peace operation to include a provision on international humanitarian law.<sup>147</sup> This happened for the first time in the Agreement on the Status of the United Nations Assistance Mission for Rwanda ('UNAMIR') concluded in 1993.<sup>148</sup> Other SOFAs concluded since 1993 include a similar clause. It must be noted that the reference in these agreements was originally to the 'principles and spirit' of international humanitarian law conventions, but since the promulgation of the UN Secretary-General's

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<sup>143</sup> Wilson, Hurvitz, et al, *supra* note 19, at 3.

<sup>144</sup> U.S. Department of State, *supra* note 51, at 8.

<sup>145</sup> United Nations and International Humanitarian Law, OXFORD PUBLIC INTERNATIONAL LAW (2016), <http://opil.oup.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1675>

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

Bulletin on Observance by United Nations Forces of International Humanitarian Law ('Bulletin') this has been changed to 'principles and rules'.<sup>149</sup>

A peacekeeping operation can have up to five categories of personnel: Military personnel, UN volunteers, civilian police and military observers. Each of them has a different legal status and level of immunity.<sup>150</sup> Military personnel, who comprise the great majority of peacekeepers, are subject only to the jurisdiction of the TCC (troop contributing country). Therefore, their grant of actual immunity is limited to official duty acts, but their immunity from local law is complete. Several problems make TCCs unlikely to actually exercise jurisdiction over their troops with the result that many offensive actions by deployed peacekeepers simply go unpunished.<sup>151</sup>

The International Humanitarian Law perfectly applies to state-led forces authorized by the Security Council under Chapter 7. For instance, the coalition forces in the 1991 Gulf War, UNITAF in Somalia, NATO in the former Yugoslavia in the early 1990s, and international forces in Haiti and Timor-Leste.<sup>152</sup> In such cases the Security Council authorizes the state-led forces as a collective entity but each UN member state to use force. States participating in such state-led forces are controlled by their respective governments, but normally coordinate military operations through unified command. Therefore, International Humanitarian Law applies to each participating state completely.<sup>153</sup> There is much ground to claim that IHL applies to UN forces and another party to the conflict equally. IHL applies whenever there is an armed conflict within the meaning of common Article 2 and Article 3 of the Geneva conventions of 1949, as well as Article 1 of Additional protocol 1 of 1977, and Article 1 of Additional protocol 2 of 1977.<sup>154</sup> This stems from the almost universally accepted principle of the distinction between *jus ad bellum* (used to refer to the determination of whether a given war can be entered into justly) and *jus in bello* (whether a war is conducted justly).<sup>155</sup>

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<sup>149</sup> *Id.*

<sup>150</sup> U.S. Department of State, *supra* note 51.

<sup>151</sup> *Id.*

<sup>152</sup> McCormack, McDonald, *supra* note 23, at 204.

<sup>153</sup> *Id.* at 207

<sup>154</sup> *Id.* at 208

<sup>155</sup> *Id.*

Both the ICRC and the International Conference of the Red Cross and Red Crescent have on many occasions expressed their opinion on the applicability of IHL to the UNPK.<sup>156</sup> At the official level, they mention the Memorandum entitled “Application and dissemination of the Geneva Conventions” of 10 November 1961, addressed to the States party to the Geneva Conventions and Member states of the UN, in which the ICRC draws the attention of the UN Secretary-General to the necessity for ensuring application of the Conventions by the forces placed at the disposal of the United Nations.<sup>157</sup> Since the UN, as such, is not party to the Conventions, the ICRC considers that each State remains individually responsible for the application of these treaties whenever it provides a contingent for UNPK.<sup>158</sup> In consequence the, the State should do what is necessary, especially by issuing appropriate instructions to the troops before they are posted abroad.<sup>159</sup>

The Memorandum also stressed that by virtue of Article I common to the four Conventions, which also requires the High Contracting Parties to ensure respect for the Conventions, the States providing contingents “should each, where necessary, use their influence to ensure that the provisions of humanitarian law are applied by all the contingents concerned, as well as by the unified command”.<sup>160</sup>

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<sup>156</sup> Umesh Palwankar, APPLICABILITY OF INTERNATIONAL HUMANITARIAN LAW TO UNITED NATIONS PEACE-KEEPING FORCES ICRC (1993), <https://www.icrc.org/eng/resources/documents/article/other/57jmbh.htm>

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

## CONCLUSION

Although the term “peacekeeping” is not stipulated in the United Nations Charter according to some views it is already needed. In 1945, when the Charter was signed by the required number of states the concept of peacekeeping was not evolved in the UN system. By the time the UNPK added the number of peace missions as well as peacekeeper’s authorities during the operations. During the decades the number of deployment to blue helmets multiplied several times and over 45 years later after signing the UN Charter, the UN created the Department of Peacekeeping Operations. Besides the military troops, the Department also launched the deployment of civilian personnel. All the mentioned above leads to the conclusion that the absence of concept of peacekeeping is not satisfactory anymore, since during the last several decades the UNPK became a huge department with immense number of staff and implements quite complex peace missions around the world.

Nowadays the UNPK performs in up to 16 conflict zones. The overall budget of the department is less than 1 percent of the world’s military expenses, which unfortunately illustrates that the UN member states does not consider the peace promotion in the world a vital issue for their safety and for humanity in general. Although, the US and China are the states, which financial contributions to the UNPK are bigger than that of other member states,

the economical wealth allows such states to increase their financing several times. Besides the lack of financial issue a bigger problem is that almost always the UNPK performs as a tool for political interests of the UN permanent member countries.

Recently, the UNPK Department actively encourages and takes steps to deploy more women into military staff of peacekeepers. This phenomenon is represented, as taking measures for bringing to balance the gender equality, since in the official website of the UNPK Department says nothing about the vital issues and problems of the organization. In fact, the real purpose of the department is to prevent sexual abuses and exploitations committed by the peacekeeping troops mentioned in Chapter 1 of this thesis. Otherwise, it would be too obvious that the SEA cases are taking place too often. According to many experts, a better solution of preventing the SEA cases would be the presence of domestic prosecutors during peacekeeping operations. The impunity of the perpetrators among blue helmets is more likely to be a legal issue but there are numerous cases when the investigations of detecting the criminals were deliberately left incomplete in order to avoid mass media attention, and consequently, the possible damage of the reputation of the United Nations. The impunity of such actions might have much more serious consequences if the inactions of appropriate authorities take place. For instance, the one who commits human rights grave violations while serving in peacekeeping forces will continue the same criminal behavior after returning home. Christian Saunders, the UN director of the Office of the Under-Secretary-General for Management, told Al Jazeera's The Stream that this was about to change.<sup>161</sup>

“There is no longer going to be impunity,” he said, adding that UN Secretary-General Antonio Guterres is going to work with member states to ensure abusers are “held criminally responsible” for sexual abuse.<sup>162</sup>

The statistics of UNPK operations in Africa are showing that the bigger is the mission the bigger is the risk of human rights violations. The cases in Congo, Central African Republic, Haiti, Liberia, where the serving staff was comparably bigger are a good example of such experience. The overall staff serving in the Democratic Republic of Congo was about 20.000 uniformed personnel. Consequently, it was the mission, where the SEA cases were widely

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<sup>161</sup> Morocco World News, UN Peacekeepers: ‘There Is No Longer Going to Be Impunity’ Morocco World News (2017),

<https://www.moroccoworldnews.com/2017/04/212782/un-peacekeepers-there-is-no-longer-going-to-be-impunity/>

<sup>162</sup> *Id.*

spread. When the number of serving personnel is so big it is getting more difficult to organize their trainings and information-sharing strategy. The variety of languages is one more barrier in adequate trainings of UN forces. The established Zero Tolerance Policy in 2006 considered unsuccessful, as the outcome of the project was quite poor. A possible failure of ZTP could be the fact that it was envisaged only for UN staff and the videos and trainings involved only peacekeepers, instead the project had to involve general informative strategy, including the local communities as well.

On 23 January 2017 – Approving an updated United Nations whistleblower policy today, Secretary-General António Guterres is seeking to enhance protection for individuals who report possible misconduct or cooperate with duly authorized audits or investigations.<sup>163</sup>

As part of his reform agenda, the Secretary-General has made it a priority for the UN to have a whistleblower protection policy that meets the highest possible standards, and the updated plan aims to ensure the Organization functions in a more open, transparent and fair manner.<sup>164</sup>

The whistleblowing policy is not a new idea in UN “anti SEA” measures. However the experience the UN authorities had before was not efficient.

The UN is implementing more than 40 proposals from the Secretary-General’s report Special measures for protection from SEA, adopted by the General Assembly in May 2015.<sup>165</sup> The most significant measures include: Establishing Immediate Response Teams in peacekeeping missions to gather and preserve evidence for use in investigations; Adopting a six-month timeline for completion of investigations of sexual exploitation and abuse and calling on Member States to adhere to the same timeline; Developing an enhanced complaint reception framework to ensure mechanisms within communities where people can come forward, in confidence, to raise complaints regarding UN personnel; Strengthening administrative measures against staff members found to have committed these acts, including withholding entitlements and; Suspending pay to troop and police contributing countries in connection with suspects on the basis of credible evidence; Establishing a trust fund to provide support

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<sup>163</sup> Secretary-General Guterres approves updated UN whistleblower protection policy, UN News Center (2017), <http://www.un.org/apps/news/story.asp?NewsID=56026#.WQbJV19OLIU>

<sup>164</sup> *Id.*

<sup>165</sup> Fact Sheet on Sexual Exploitation and Abuse, <http://www.un.org/en/peacekeeping/documents/2015factsheet.pdf>.

and assistance to victims, complainants and children born as a result of sexual exploitation and abuse.<sup>166</sup>

In General the UN peacekeeping operations has played a vital role in post war period and until now in promotion peace and security. Despite all failed missions and unlawful activities it is still one of the most significant elements, which prevents most dangerous threats to global security.

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<sup>166</sup> *Id.*



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