

Human Rights Violations by UN Peacekeepers: An End to Impunity

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Abstract

Peacekeeping Operation (PKO) is significantly a worthwhile strategy for preservation and restoration of international peace and security. Promotion and protection of human rights in peacekeeping operations is a phenomenon and cannot be the only responsibility of the United Nations. However, as the most important actor of the international system, it has the primary responsibility to promote and protect human rights in peacekeeping operations because human rights issue has become very significant in the sense that unfortunately, in most cases, peacekeepers are involved in gross human rights violation in the course of operation that damage overall reputation of UN. Hence, application and enforcement of international human rights law in peacekeeping operations are essential in order to shelter the civilian from attacks, torture, and other forms of human rights violations. This paper examines the UN's efforts to address human rights in PKOs, and also targets to find out the actual scenario of human rights in PKOs and proposes some policies.

Keywords

United Nations Peacekeeping Operations Peacekeepers Human Rights Impunity

1 Introduction

The promotion and protection of human rights is one of the basic objectives of the United Nations.¹ As a UN activity, a Peacekeeping Operation (PKO) is a significantly worthwhile strategy for the preservation and restoration of international peace and security. It has been contributing to the protection of international peace and security since its inception and has saved the lives of millions of civilians affected by armed conflicts. This is an effective way to help to resolve conflict among countries. With the approval of the conflicting parties, a PKO can create a suitable atmosphere of sustainable peace that can establish democracy, human rights, and good governance.² It also allows humanitarian action for restoring social and political institutions whose functioning have been disrupted and deteriorated by the conflict. The promotion and protection of human rights in peacekeeping operations is a phenomenon that cannot only be a responsibility for the UN. However, as the most important agent of the international community, the UN has the primary responsibility to promote and protect human rights; particularly in peacekeeping operations. Peacekeeping operations in this generation are not only limited to military activities but are also available in nation-building processes, the democratic and sustainable development of government, and ensuring human rights.³

The application and enforcement of international human rights law in peacekeeping operations are essential in order to shelter civilians from attacks, torture, and other violations of physical and moral integrity. Hence, peacekeepers should respect and uphold the tenets of international human rights and humanitarian law during their operations. In spite of having guidelines on human rights principles in a PKO, human rights are being neglected and violated in many operations due to a lack of human rights education amongst the peacekeepers.⁴ It can be argued that the peacekeepers can play a better role than locals in protecting human rights because of their active participation in the operation. Unfortunately, in most cases, peacekeepers have been involved in gross human rights violations that damage the reputation and prestige of the UN. At the same time it effectively bars and hinders the ability to maintain peace, and furthermore the credibility of UN peacekeepers among local and

1 UN Charter, Article 1:3

2 A. E. Eckert (1996) 'United Nations peacekeeping in collapsed states' *Journal of International Law and Practice*, p. 5.

3 Markus Schmidt, United Nations, in D. Moeckli, et al, (eds), (2010) *International Human Rights Law*, Oxford: Oxford University Press, p. 421.

4 Howland, Todd: (2006) "Peacekeeping and Conformity with Human Rights Law: How Minustah Falls Short in Haiti", in: *International Peacekeeping* Vol. 13, No. 4, pp. 462-476.

international bodies as well as the UN itself is called into question.⁵

There is extensive literature on the issue of human rights in peacekeeping missions. Katayanagi,⁶ Kupper,⁷ and Cohn⁸ have highlighted the human rights issue and its application in PKOs. Human rights components are required in all operations so that the peacekeepers can comply with this obligation.⁹ J.-M. Guéhenno¹⁰ argued that peacekeepers must obey human rights law in their operations. The protection of civilians and upholding human rights are the most vital responsibility of peacekeepers.¹¹ As the use of force in PKOs is allowed, it should be justified.¹² And if peacekeepers utilize the use of force without justification and are involved in human rights violations, they should be investigated properly, and if found guilty, they must be punished.¹³ The mechanisms of the UN for the prosecution of perpetrators of human rights violations in PKOs are too weak to convict them. Prosecution is subject to the authority of the state from where the troops emanate, and since that state is generally reluctant, violators may enjoy impunity.¹⁴ Granting immunity for human rights violations in PKOs and states' reluctance to prosecute can increase human rights violations in PKOs by peacekeepers. Impunity in UN operations should be reviewed, and a standard investigation system for human rights abuses in PKOs is essential in order to make peacekeepers more accountable.

2 Application of International Human Rights Law in Peacekeeping Operations

The Charter of the UN is the revolutionary foundation in the field of international human rights law. It accepts growing demands for human rights suggesting and recommending new protection for the fundamental human rights of the individual against his or her own state. This is aimed to be achieved by a commitment to 'reaffirm faith in fundamental human rights, in the dignity of and worth of a human person, in the equal rights of men and women and of nations large and small'.¹⁵ Therefore, all international human rights initiatives have been started by the UN and it can be said that all activities of the UN, including PKOs, should deal with instances of compliance with human rights principles as Charter-based obligations.¹⁶ As initial measures, human rights laws were considered in formulating administrative regulations for the Kosovo and East Timor operations.¹⁷

5 R. Dallaire, (2003) *Shake Hands with the Devil*, Arrow Books, London, p. 184.

6 M. Katayanagi (2002) *Human Rights Functions of United Nations Peacekeeping Operations*, *International Studies in Human Rights*, Pp. 260–268.

7 J. Kuper (2005) 'Military training and Children in Armed Conflict Law, Policy and Practice' p. 25.

8 I. Cohn (1999) 'The protection of children's rights in peacemaking and peacekeeping process' *Harvard Human Rights Journal* p. 21. Available online at <http://www.aw.harvard.edu/students/orgs/hrj/iss12/cohn.shtml> Last visited 18 February, 2011.

9 Markus Schmidt, *op.cit.* 421.

10 J.-M. Guéhenno: (2008), "United Nations Peacekeeping Operations: Principles and Guidelines", Department of Peacekeeping Operations, Department of Field Support, Peacekeeping Best Practices Section Division of Policy, Evaluation and Training Department of Peacekeeping Operations, United Nations Secretariat, One UN Plaza, New York, p. 27. http://www.peacekeepingbestpractices.unlb.org/Pbpps/Library/Capstone_Doctrine_ENG.pdf last visited 15.03.2011.

11 Erin A. Weir (July 2009) "Refugees International, Great Expectations: UN Peace Keeping and Civilian Protection", Washington D.C., pp. 4–5.

12 Dan Kuwali (February 2002), "Use of Force and Human Rights Some Thoughts and some insights", Copenhagen, Denmark, pp. 2–3.

13 A. J. Miller (2006), 'Legal Aspects of Stopping Sexual Exploitation and Abuse in UN Peacekeeping Operations' 39 *Cornell International Law Journal*, p. 71. & A. Shotton (2006), 'A Strategy to address Sexual Exploitation and Abuse by United Nations Peacekeeping Personnel' 39 *Cornell International Law Journal*, p. 97.

14 Cohn, *op. cit.*, 153.

15 Jean E. Krasno (2005), *The United Nations: Confronting the Challenges of a Global Society*, Viva Books Private Limited, India, p. 80.

16 Hannum, H. "Human Rights" in Schachter, O. and Joyner, C.C. *United Nations Legal Order Vol. 1* (1995) p. 345 & Jennings, R. and Watts, A. (eds) *Oppenheim's International Law Vol. 1* (9th edn) (1996) p. 998.

17 Kosovo, *unmik/reg/1999/1* of 25 July 1999, and East Timor *untaet/reg/1999* of 27 Nov 1999.

As human rights are UN Charter provisions, compliance with human rights principles in PKOs is required. Human rights in PKOs have become extraordinarily significant in recent years because peacekeepers have also been involved in human rights violations. According to Boris Kondoch, “Before the end of the Cold War United Nations peacekeepers had no specific mandate in connection with human rights. The vast majority of the missions were traditional peacekeeping missions with a mandate to monitor cease-fire agreements and buffer zones”.¹⁸ In the post-Cold War international order, human rights have become a standard part of peacekeeping, and hence the OHCHR now performs a decisive role in peacekeeping operations.¹⁹ The OHCHR is also involved in making peacekeeping regulations, and a Rapid Response Unit has been created for the development of the human rights situation in the mission.²⁰ The UN Special Components of Human Rights in peacekeeping operations include a supervisory mechanism for human rights abuses, the investigation of specific cases, and the prevention of violations by active attendance, facilitating reconciliation, building confidence, and generally stimulating human rights through education. It is emphasized how peacekeepers should treat the local civilian population.

The necessary norms for the protection of the life, liberty, safety and security of the person have been recognized in international law provisions, particularly in international human rights law. Hence, international human rights law is a key component of PKOs because international human rights laws apply at anytime and anywhere. “United Nations peacekeeping personnel whether military, police or civilian – should act in accordance with international human rights law and understand how the implementation of their tasks intersects with human rights”.²¹ The International Covenant on Civil and Political Rights (ICCPR) has direct relevance to peacekeeping operations. Since the major contributors to PKOs, for example the USA, Australia, Canada, France and the UK, are states parties to the ICCPR, they are obliged to protect and promote human rights in PKOs as parties to the ICCPR. As a central authoritative body, the UN itself is not a party to the ICCPR, but it is also bound to promote human rights as customary obligations in all its activities. The issue which is raised here is whether troops who operate outside their territory are bound by the Covenant. The Human Rights Committee has committed itself to resolving this ambiguity as “The Committee considers it necessary to draw the attention of States Parties to the fact that the obligation under the Covenant is not confined to the respect of human rights but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction.”²² The Committee has here clearly highlighted its jurisdiction rather than territory which is the basic notion of the implementation of the ICCPR in PKOs. Regarding the extraterritorial application of the ICCPR, the Human Rights Committee has also stated that a “State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that state party, even if not situated within the territory of the State Party”.²³ Sarah Joseph mentioned in this connection “The focus of the Committee in defining the extent of jurisdiction seems to be on states’ relationship with the relevant impugned act and the person affected, rather than its relationship with the territory where a relevant act takes place”.²⁴ Persons affected by the effective control of a state’s agent and

18 Boris Kondoch, Human Rights Law and UN Peace Operations in Post Conflict Situations, p. 44 <http://peacekeepingboris.beeepworld.de/articles.htm> Last visited 18.02.2011.

19 Jean E. Krasno (2005), The United Nations: Confronting the Challenges of a Global Society, Viva Books Private Limited, India, p. 100.

20 Moeckli, Shah & Sivakumaran (Eds), (2010) International Human Rights Law, Oxford University Press, p. 421.

21 J.-M. Guéhenno: op. cit. p. 27.

22 Human Rights Committee as expressed in its General Comments to Article 2.

23 Human Rights Committee General Comments No. 31, 2004.

24 D. Moeckli, et al (eds), op. cit, p. 165.

persons living within the territories are deemed to enjoy the benefits of the ICCPR as well. As a result, it is of no relevance whether the affected persons are domiciled or whether they are aliens in the territory in conflict. Consequently it is clearly acknowledged that “The enjoyment of Covenant rights is not limited to the citizens of State Parties but must also be applicable to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves under the territory or subject to the jurisdiction of the State Party”.²⁵ On the basis of the above-mentioned General Comment, the use of human rights law in PKOs is justified.

3 Challenges to Upholding Human Rights in Peacekeeping Operations

Upholding human rights is an essential part of United Nations peacekeeping operations. PKOs should respect human rights and try to improve human rights conditions in the missions which are already mentioned in their mandates. Peacekeepers should also make every effort to ensure that human rights are respected in their operations. They should not become perpetrators of human rights violations. According to Decision No. 2005/24 of the Secretary-General’s Policy Committee on Human Rights in Integrated Missions, it is strictly laid down that “United Nations peacekeeping personnel should respect human rights in their dealings with colleagues and with local people, both in public and private lives.” If they violate human rights, they must be held to account and punished. In most modern conflicts violations of human rights are normal phenomena. “Many of the worst human rights abuses occur during armed conflict and the protection of human rights should be at the core of action taken to address it. All United Nations entities have a responsibility to ensure that human rights are promoted and protected by and within their field operations”.²⁶ The integration of human rights and the sustainability of human rights programmes should always be a key factor in the planning of multi-dimensional United Nations peacekeeping operations.

Use of Force in the Protection of Human Rights in PKOs

The use of force in support of human rights in PKOs relate to the level of the utilization of weapons for protecting victims in armed conflicts. Civilians should be protected in armed conflicts. As already mentioned, United Nations peacekeeping operations are deployed on the basis of a resolution of the United Nations Security Council. Although Security Council mandates may vary in different situations depending on the pattern of clashes, they generally support the implementation of its agreements with the parties to the conflict.²⁷ As the UN Charter elucidates and underpins the significance and practice of human rights law universally, human dignity, morality, principality, integrity and privacy should accordingly be constituted nationally and transnationally. It is explicitly laid down in the UN Charter that the application of human rights should have unbiased and universal acceptability in all contexts; the realization of each interdependent aspect depends on the realization of the others and interrelated aspects cannot be denied or suspended without putting the whole framework at risk and also inalienably they cannot be taken away. In this regard, it can be contended that governments cannot ‘cherry pick’ the rights they want to protect. Hence, creating a localized exception to ensure human rights is not a justification. The use of force should not be exercised in field operations while ignoring human rights and humanitarian norms. Human rights and the human rights component are an important concern for the Council while entering into agreements concerning its operations.

25 United Nations Office of the High Commissioner for Human Rights Unedited Version: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant: 05/05/2003.

26 Decision No. 2005/24 of the Secretary-General’s Policy Committee on Human Rights in Integrated Missions states that human rights should be fully integrated into peace operations and all human rights functions should be coordinated by one component. The Office of the High Commissioner for Human Rights (OHCHR) is responsible for providing expertise, guidance and support to the human rights components of multidimensional United Nations peacekeeping operations.

27 J.-M. Guéhenno: “United Nations Peacekeeping Operations: Principles and Guidelines”, op. cit., p. 16.

Boutros Boutros-Ghali, the former Secretary-General of the UN, pointed out that “*Actions taken by the United Nations Security Council to resolve conflicts, to keep or enforce peace, or to implement peace agreements within national borders, are becoming more and more numerous. Consequently, political, military, human rights and humanitarian components have become deeply interrelated in United Nations operations*”.²⁸ Humanitarian actions contribute to the implementation of basic human rights related to the safety and dignity of the persons affected and should be supported through appropriate implementation measures. Diplomatic efforts for the implementation of international human rights law, humanitarian law, and refugee law, as well as a strong international presence, contribute to enhancing the safety of vulnerable persons or groups and to deterring violations of these laws under peacekeeping operations.

The responsibility to protect civilians is an essential part of the PKOs. Keeping civilians safe during a conflict is the most prominent issue facing peacekeepers (Weir, 2009). The concept of “the responsibility to protect” was well structured in PKOs by the International Commission on Intervention and State Sovereignty (ICISS) in 2001. The Commission highlighted that the protection of civilians is the responsibility of the state where the conflict occurs. States are responsible for protecting people within their borders.²⁹ To harm civilians in the name of the use of force is totally unacceptable. It is to be expected that innocent civilians are at risk in an armed conflict. Killings, rapes, sexual violence and hijackings have become regular phenomena for PKOs as a reason for the use of force. In spite of the difficulties that peacekeepers face in protecting civilians in an armed conflict, they are still obliged to protect civilians’ rights. Peacekeepers should not name and shame perpetrators in the presence of civilian, but they can arrest those responsible and conduct investigations.³⁰

Justification for Peacekeepers Resorting to the Use of Force

The rule against intervention in internal affairs encourages states to solve their own problems and to prevent them from spilling over into a threat to international peace. According to Dan Kuwali, “The ‘just cause’ theory provides a benchmark for determining the situation when rules protecting sovereignty yield to intervention to protect the rights of individuals at risk”.³¹ The fact remains that the use of force requires justification. Due to the use of force, civilians can be killed and injured, and their property can be damaged. It can also create a humanitarian crisis and the use of force must always be justified. Thus, it is necessary to justify military intervention in the form of PKOs. Dan Kuwali has argued that the use of force can be justified in PKOs if it satisfies six compulsory principles which are “the just cause threshold, for precautionary principles, which include right intention, last resort, proportional means and reasonable prospects of success and the requirement of right authority”.³² Generally, military interventions are not authorized by the UN. The UN prohibits the use of force with some exceptions which are mentioned in Article 2(4). However, the Charter of the UN also provides for exceptions to the prohibition of the use of force in Articles 39, 51 and 53. Under Articles 39, 52, and 53 the use of force will be allowed in some cases, such as self-defence, rigorous human rights violations, aggression and civil war. It is not allowed without justification. But justification is very complicated as serious human rights violations and the level of the use of force are extremely difficult to determine.³³

28 Boutros Boutros-Ghali, (July 2009) “An Agenda for Peace” UN Document dpi/1247, New York: United Nations, 31.

29 Erin A. Weir “Refugees International, Great Expectations: UN Peace Keeping and Civilian Protection”, Washington D.C., pp. 4–5, http://reliefweb.int/sites/reliefweb.int/files/resources/526ABD14A623D630C1257607002CD5E5-RI_jul09.pdf.

30 Ibid.

31 Dan Kuwali., op. cit., pp. 6–7.

32 The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty (ICISS), December 2001, cited in Human Rights Crises: NGOs Responses to Military Interventions, 2002 International Council on Human Rights Policy, Versoix, Switzerland, p. 34.

33 Dan Kuwali., op. cit., pp. 6.

Humanitarian Intervention and the Protection of Civilians

Humanitarian actions and the protection of civilians are a commitment on the part of international organizations, and this includes “peacekeeping operations”. Peacekeeping activities, rules and guidelines have also developed in response to the changing nature of conflict and political conditions; from the consensus-based “interposition” forces characteristic of the Cold War era to multifunctional peace-building missions, from irregular ventures into peace enforcement to qualified provisional administrations. UN peacekeeping operations have deployed such mixed arrangements of tasks that a simple classification is not really possible. While some scholars have proposed to distinguish between four “generations” of peacekeeping, reflecting the expansion of tasks from “peacekeeping” and “peace-building” to “peace enforcement” and “statebuilding”.³⁴ others simply choose “enforcement” as a criterion for differentiation. Generally, peacekeeping personnel not only cannot use force but they must also refrain from interfering in the internal affairs of host states. They are only permitted to use force in the case of self-defence, mainly when they are physically attacked, i.e. they may use force in order to declare their right to self-determination, freedom of movement, and even other broad enforcement rights, for example, ensuring the delivery of humanitarian assistance. It was not until October 22, 1999, however, that the Security Council for the first time authorized a peacekeeping force, the United Nations Mission in Sierra Leone (UNAMSIL), to use force in order to “afford protection to civilians under imminent threat of physical violence”.³⁵ After the approval of the pragmatic resolution on the protection of civilians in armed conflicts, it was unanimously agreed that casualties among civilians in armed conflict states would be strongly condemned. As official approval for the protection of civilians in armed conflicts, we can cite from the UN Security Council Resolution in question: “civilians account for the vast majority of casualties in armed conflicts and are increasingly targeted by combatants and armed elements”, and the UN Security Council also strongly condemned the “deliberate targeting of civilians”, and expressed “its willingness to respond to such situations of armed conflict where civilians are being targeted, including through the consideration of appropriate measures at the Council’s disposal in accordance with the Charter of the United Nations”.³⁶ Therefore, civilian casualties in armed conflicts which comprise human rights violations are strongly seen as a grave attack against the UN peacekeeping system. The involvement of peacekeepers in human rights violations has become a serious issue which the UN Security Council has immediately addressed. The protection of civilian rights in armed conflicts has developed into an important item on the agenda of the UN Security Council.

Human Rights Violations by Peacekeepers

Although peacekeepers are charged with protecting human rights in missions, they are nevertheless responsible for committing mass violations of human rights. Keeping the peace and upholding human rights are often required in operations, but the consequences are massive when innocent people, especially women, children and civilians, are victims of human rights violations by peacekeepers who are responsible for protecting them from third party violations. During these operations, peacekeepers work and live in another country for extended periods of time and they become real actors in that country because they are active participants in the missions and are also contributors to everyday life in the country. As a result, peacekeepers can play a better role than locals in protecting and promoting human rights. However, if they so desire, they can also play an immense role in violating human rights.³⁷ In many cases, peacekeepers are involved in mass human rights violations; for example, many

34 Gareis, Sven Bernhard and Johannes Varwick : (2003) Die Vereinten Nationen. Aufgaben, Instrumente und Reformen, 3rd edn. Bonn, pp. 4–5.

35 Debiel, Tobias. (2003) United Nations Peacekeeping Forces and the Protection of Civilians in Armed Conflict, Bonn, p. 221, See e.g. for Bosnia-Herzegovina: S/res/761 of 29 June 1992, for Somalia: S/res/794 of 03 December 1992.

36 S/res/1265, pc 4, oc 2 and 10.

37 Karley Ziegler., “Challenges of Peace Operations: Into the 21st Century”, Report on the VIII Seminar of the Challenges Series Human Rights and Gender Issues in Peacekeeping, Pearson Peacekeeping Centre Cornwallis, Nova Scotia, Canada 28 May to 1 June 2001, pp. 39–41.

civilians are reportedly killed during UN peacekeeping operations. Sexual abuse by UN personnel is a common allegation against them in the course of peacekeeping operations. There have been cases where peacekeepers have participated in rapes and engaged in prostitution in different UN operations. There are allegations of rape and prostitution concerning peacekeepers in almost every operation, for example in one particular case UN peacekeepers patronized a club called 'Little Lagos' where girls as young as 12-years of age were engaged in prostitution, were forced into sex acts and were sometimes photographed by UN peacekeepers in exchange for \$10 or food or other commodities.³⁸ In order to shore up the reputation of the peacekeeping operations, the UN should immediately put an end to these crimes through its code of discipline. Fortunately the problem of peacekeepers' involvement in extra-legal activities has been recognized as an urgent issue that needs to be addressed. Having highlighted the violations committed by peacekeepers, particular attention will be paid to sexual abuse, trafficking and the exploitation of women and children by peacekeepers as these constitute some of the greatest violations of human rights committed by peacekeepers during peacekeeping operations.

Sexual Abuse of Women and Children during Peacekeeping Operations

Peacekeepers have committed serious crimes and sexual misconduct in recent years. According to Brett D. Schaefer, "There have been numerous reports of serious crimes and sexual misconduct committed by U.N. personnel, from rape to the forced prostitution of women and young girls. The most notorious of these reports have involved the U.N. Mission in the Democratic Republic of Congo (MONUC)".³⁹ However, allegations of sexual exploitation and abuse by UN peacekeepers have also occurred in Bosnia, Burundi, Cambodia, Congo, Guinea, Haiti, Kosovo, Liberia, Sierra Leone, and Sudan.⁴⁰ Aid workers and peacekeepers sexually abused young children in war zones and disaster zones in Ivory Coast, southern Sudan, and Haiti in May 2008. They were not subjected to any punishment for these crimes. According to a report issued by Save the Children, "children as young as six are trading sex with aid workers and peacekeepers in exchange for food, money, soap and, in very few cases, luxury items such as mobilephones".⁴¹ In the Democratic Republic of Congo from 2007 to 2008 violation rates were still particularly high: there were 56 cases of serious offences in 2008, among them 38 instances of alleged sexual abuse and exploitation. The UN has announced a zero tolerance policy in cases of sexual abuse and any other misconduct during peacekeeping missions. Still, appropriate disciplinary action still remains inadequate and the perpetrators of these crimes are rarely punished.⁴²

Exploitation and Trafficking During Peacekeeping Operations

Exploitation and trafficking are also common problems in peacekeeping operations. It is fairly difficult to differentiate between victims of trafficking and local prostitution in various mission areas.⁴³ Exploitation and trafficking by peacekeepers during their operations are not limited to certain countries as they have occurred in almost all

38 Colum Lynch (Sunday, March 13, 2005), U.N. Faces More Accusations of Sexual Misconduct, Washington Post Staff Writer; Page A22 & Whitworth Sandra, (2001), UNTAC. Challenges Seminar Series. Cornwallis, Canada: Pearson Peacekeeping Centre.

39 Brett D. Schaefer, (July 29, 2009) The Heritage Foundation, "United Nations Peacekeeping: Challenges and Opportunities Testimony before The United States House of Representatives Committee on Foreign Affairs", Margaret Thatcher Center for Freedom, Washington D.C., pp. 6-8

40 Kate Holt and Sarah Hughes, "U.N. Staff Accused of Raping Children in Sudan," The Daily Telegraph, Available online at <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/01/03/wsudan03.xml>; last visited 2 March, 2011 Kate Holt and Sarah Hughes, "Sex and the U.N. (March 13, 2005): When Peacemakers Become Predators," The Independent, January 11, 2005, at Misconduct, The Washington Post, p. A22, Available online at <http://www.washingtonpost.com/wp-dyn/articles/A302862005Mar12.html>. last visited 2 March, 2011.

41 Corinna Csáky, "No One to Turn To: The Under-Reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers," Save the Children, 2008.

42 UN team looking into alleged sexual misconduct by blue helmets in DR Congo, Available online at <http://www.UN.org/apps/news/story.asp?NewsID=31574&Cr=monuc&Cr1=#>. Last visit: 18/06/2014.

43 United Nations Peacekeeping (March 2004) "Human Trafficking and United Nations Peacekeeping" DPKO Policy Paper p. 7.

countries. The UN has been rapidly losing its reputation and been tarnished with a negative image because of these allegations. According to the former UN Secretary-General, Kofi Annan, “sexual exploitation and abuse by humanitarian staff cannot be tolerated. It violates everything the United Nations stands for. Men, women, and children displaced by conflict or other disasters are among the most vulnerable people on earth. They look to the United Nations and its humanitarian partners for shelter and protection”.⁴⁴ Exploitation and sex trafficking have become an enduring part of the post-peacekeeping economy. Sexual activities on both sides, such as supply and demand, significantly tarnish the positive image of peacekeeping operations. Even though such activities relate to some women and girls earning money, they destroy the reputation of PKOs. At the same time, these kinds of sexual activities by women and young girls carry a sardonic message for the roles of women in society.⁴⁵

4 Conclusion and Policy Implications

As can be seen nowadays, some of the most serious threats to international peace and security are armed conflicts and human rights violations not only among nations, but among warring factions within a State. The gravity of domestic violence sometimes spills over borders which endangers the security of other States and that results in complex humanitarian emergencies. The prevalent human rights abuses in internal conflicts are now among the most atrocious phenomena in the world. In this day and age, ensuring human rights in times of peacekeeping operations is a very salient issue. Peacekeepers today are routinely mandated to promote and protect human rights in UN operations. The nature of a UN peacekeeping operation and the capabilities required to support peacekeepers are guided by the mandated tasks, the concept of operations and the accompanying Rules of Engagement and other directives pertaining to the use of force. The definitive responsibilities that a UN peacekeeping operation is tasked to carry out are laid down in the Security Council mandate. The tasks of UN peacekeeping operations, according to their mandate, will differ from situation to situation, on the basis of the role assigned to the operation by the UN Security Council. UN peacekeeping operations are usually deployed within a peace process and they also have a responsibility to ensure that human rights are promoted and protected through and within their operations. They must respect and enforce international human rights and humanitarian law. Moreover, they are bound by international human rights and humanitarian law as they have individual responsibility to promote, protect and advocate human rights during their missions.

The Office of the High Commissioner for Human Rights (OHCHR) is the most important agency which is responsible for the promotion and protection of human rights, including in peacekeeping operations. It should play a vital role in upholding human rights particularly in peacekeeping operations by means of supervision. Furthermore, UN peacekeeping operations should devote serious attention to maintaining gender rights in their operations. Women and children are particularly vulnerable in times of war. Hence the two mainstream gender issues should be made a mandatory requirement in all activities within the operations. In this regard, it is generally considered that the international community would be better served if women, girls and children are protected from human rights violations particularly from trafficking and sexual abuse by peacekeepers.

The protection of civilians by peacekeeping missions is the key role which generally confirms the validity and reliability of the United Nations' activities. The UN and other regional organizations responsible for peace support operations should include international human rights agreements on their agenda so that their contingents

44 Ndulo, Muna, “The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers during Peacekeeping Missions” (2009, Cornell Law Faculty Publications, Paper 59, Berkeley Journal of International Law, Vol. 27:1 P. 130, <http://scholarship.law.cornell.edu/facpub/59>).

45 Jennings, Kathleen, Peacekeeping Economies and the Sex Industry: Implications for UN Gender Policy, Policy Briefing, March, 2011, P. 2 Available online at http://www.microconflict.eu/publications/PB8_KJ.pdf.

will be aware that any breaches of such human rights will attract sanctions under international law. Members of United Nations Peacekeeping operations should also be made fully aware of the requirements of the Four Geneva Conventions on the treatment of war victims. Humanitarian law safeguards a subset of human rights from which states cannot derogate even in the extreme case of armed conflicts. The principal legal instruments which define humanitarian law are the four Geneva Conventions of 12 August 1949. Almost all UN member states have ratified these conventions; thus the rights of wounded and the sick in the field, those shipwrecked at sea, prisoners of war and civilians in times of war are universally protected. The special needs of women and children are also included in peacekeeping documents.

Members of Peacekeeping Operations who violate international humanitarian laws should also be subjected to the International Criminal Tribunals in order to serve as a deterrent for other peacekeepers. For example, the Nuremberg and Far East Tribunals prosecuted crimes committed during the Second World War. International Criminal Tribunals were established for the former Yugoslavia (ICTY) and Rwanda (ICTR), a Special Court for Sierra Leone was also established and the International Criminal Court was approved in July 1998 to redress any of the grievances under international humanitarian law around the world. The international criminal court will provide a forum for the punishment of human rights violations after they have been committed, but it may also serve as a preventative measure. Because the court functions all the year-round and hears individual or group accusations, regardless of nationality, it may provide a threat to potential criminals. The knowledge that prosecution is a viable recourse for the victims may serve to mitigate abuses by UN Peacekeepers.

The United Nations should introduce gender perspectives in its peacekeeping operations to ensure that women are not victims of human rights violations by peacekeepers in any form. This should also be included in their peace pacts as part of their training manuals and handbooks. The mandates for most multidimensional peacekeeping operations will include specific tasks related to the protection of women, children and civilians. Furthermore, awareness packages and guidelines for missions should be developed so as to include a local content. Awareness of trafficking should be embedded in a programme for broader awareness of exploitation and abuse, and this awareness should determine the conduct of UN personnel. Training materials should be developed for a peacekeeping audience, focusing on the roles and responsibilities of all peacekeepers as well as specific responsibilities for key individuals like senior managers, the police, contingent commanders, etc. from the outset of the mission. UN missions are expected to play a role in combating trafficking by reporting incidents to the competent authorities and tracking the problem as it relates to UN missions. Where anti-trafficking operations are mandated by the Security Council, the Department of Peacekeeping Operations (PKO) should be able to provide the mission with proper guidance on how to provide proactive support to the host government and partners. The process of recruiting UN peacekeepers should be such that the best personnel who have demonstrated a track record of a high degree of discipline and professionalism should be selected to make up national contingents as this will help to reduce incidents of human rights violations by members of peacekeeping operations. Again an external oversight body completely independent of the UN and staffed by non-UN officials should be established to act as a watchdog over UN operations, including humanitarian programmes and peacekeeping operations.⁴⁶

In healing the wounds of conflicts, post-conflict reconciliation has provided for a forum for perpetrators and victims to air their accusations, apologies or confessions. It should also include an avenue for human rights investigations to expose perpetrators and serve as a deterrent to possible offenders. Provisions for investigating past violations

⁴⁶ Nile Gardiner., "The U.N. Peacekeeping Scandal in the Congo: How Congress Should Respond", Heritage Lectures No. 868 Delivered March 1, 2005 p. 5.

should be ensured in order to determine individual and collective responsibility and to provide a full account of the truth to the victims, their relatives and society in general. Investigations must be carried out by independent bodies. International involvement should also be included in the investigation of violations. The results of an investigation must be made public. On the basis of these results, the violators of human rights within the missions will be brought to justice. The agreements on the peacekeeping operations should take note of provisions for the investigation of human rights abuses. On the basis of such investigations, the perpetrators must be brought to justice. All investigations must be impartial and independent. In this regard, it will certainly be essential to establish an investigation commission. The commission should also ensure international participation so as to guarantee neutral investigations. As for the universal acceptance of the investigations the result of these investigations must also be published and made public.





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