

# WORKING PAPERS

## The UN Security Council and Common Article 1: Understanding the Role of Peacekeeping Operations in Ensuring Respect for IHL

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*“...[[I]f the primary responsibility for securing compliance with international humanitarian law still rests with the belligerents and humanitarian organizations, the Security Council can play a complementary role by using its broad powers. The Council’s action, however, by no means could or should replace that of other actors, in particular the I[n]ternational C[ommittee of the] R[ed] C[ross].”<sup>1</sup>*

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<sup>1</sup> M. Roscini, “The United Nations Security Council and the Enforcement of International Humanitarian Law”, 43 *Israel Law Review* 2 (2012), p. 359.

# I. INTRODUCTION

Although not mentioned in the Charter of the United Nations (the Charter), peacekeeping has, since the establishment of the first mission by the Security Council in May 1948,<sup>2</sup> become one of the most essential tools at the organisation's disposal for fulfilling its mandate to maintain international peace and security.<sup>3</sup> Such tool gradually evolved<sup>4</sup> from straightforward military operations to multidimensional mandates with an ever-increasing number of activities aimed at protecting civilians from the violence of armed conflict.<sup>5</sup> If the contribution of peacekeeping operations to the preservation of human dignity has often been examined through the lens of the protection and promotion of human rights,<sup>6</sup> the same does not necessarily hold true with regards to international humanitarian law (IHL).<sup>7</sup> With the intent of contributing to filling a gap, this paper aims at assessing whether – and, if so, how – mandating peacekeeping operations contributes to ensuring respect for IHL in the sense of article 1 common to the Geneva Conventions of 1949 (common article 1). It will

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<sup>2</sup> Mandated by Security Council's resolution 50, the United Nations Truce Supervision Organization (UNTSO) was dispatched to the Middle East and has been operating there for over 70 years. For more information on the mission's continuing mandate and activities, see: <https://untso.unmissions.org/>.

<sup>3</sup> See notably J. Labbé and A. Boutellis, "Peace operations by proxy: implications for humanitarian action of UN peacekeeping partnerships with non-UN forces", 95 *International Review of the Red Cross* 891/892 (2013), p. 541.

<sup>4</sup> For an institutional account of the evolution of peacekeeping operations, see Department of Peacekeeping Operations and Department of Field Support, *United Nations Peacekeeping Operations: Principles and Guidelines* (the so-called "Capstone Doctrine"), 2008, p. 13-46, available at: [https://peacekeeping.un.org/sites/default/files/capstone\\_eng\\_0.pdf](https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf). For an academic account, see chiefly C. Foley, *UN Peacekeeping Operations and the Protection of Civilians*, Cambridge University Press, Cambridge, 2017, p. 59-105; P. Labuda, "Peacekeeping and Peace enforcement", in *Max Planck Encyclopedia of Public International Law*, para. 6-14, available at: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e364> (last updated in September 2015); and R. Hatto, "From peacekeeping to peacebuilding: the evolution of the role of United Nations in peace

notably highlight elements worth considering by members of the Security Council who contemplate using peacekeeping for promoting respect for this legal framework.

After some preliminary remarks, the paper lays out the obligation to ensure respect for IHL per common article 1 and examines its applicability to the United Nations, with a specific focus on peacekeeping operations. It then assesses how modern multidimensional mandates engage in activities aimed at, or amounting to, promoting compliance with IHL that arise from the Security Council's engagement on thematic agenda items: Protection of Civilians in Armed Conflict; Women, Peace and Security; and Children in Armed Conflict. Finally, it briefly touches upon the relevance of the United Nations' Human Rights Due Diligence Policy.

operations", 95 *International Review of the Red Cross* 891/892 (2013), p. 495-515.

<sup>5</sup> By way of illustration, the United Nations' website for peacekeeping includes (under the section "what we do") an entire section of several pages dedicated to the protection of civilians as a feature of modern peacekeeping. These are available at: <https://peacekeeping.un.org/en/protecting-civilians>.

<sup>6</sup> See for instance P. Labuda, above footnote 4, para. 50-56; N. Di Razza and J. Sherman, *Integrating Human Rights Into the Operational Readiness of UN Peacekeepers*, International Peace Institute (IPI), April 2020, available at [https://www.ipinst.org/wp-content/uploads/2020/04/2004\\_Integrating-Human-Rights.pdf](https://www.ipinst.org/wp-content/uploads/2020/04/2004_Integrating-Human-Rights.pdf); and K. Nsia-Prepia, *UN Robust Peacekeeping, Civilian Protection in Violent Civil Wars*, Palgrave Macmillan, New York, 2014, p. 7-40.

<sup>7</sup> Most of the existing scholarship examines whether and on what grounds such a legal framework applies to peacekeeping operations. T. Ferraro, "The applicability and application of international humanitarian law to multinational forces", 95 *International Review of the Red Cross* 891/892 (2013), p. 561-612, undoubtedly remains the reference on the issue.

## II. PRELIMINARY REMARKS

Before delving into the heart of the matter, let us make three necessary clarifications on methodology, material scope and terminology, respectively.

- Having opted for a traditional method of research, all examples of peacekeeping operations' relevant practice stem from the work of others who were able to conduct field research and/or interview practitioners.
- The scope of this paper excludes special political missions that – despite also being dispatched by the Security Council in view of discharging its duties under the Charter – are characterized by a functioning and goals different from those of peacekeeping operations.<sup>8</sup> Such distinction is notably illustrated by the fact that each tool depends from a different department within the United Nations.<sup>9</sup> Similarly, we will not explore the very many (legal and/or policy<sup>10</sup>) issues associated with peacekeeping **in armed conflict**: such as the legality of the

use of lethal force by peacekeepers;<sup>11</sup> the increasingly blurred delineation between robust peacekeeping, peace-enforcement, Chapter VII of the Charter and the responsibility to protect (so-called “R2P”);<sup>12</sup> or sexual exploitation and abuse by peacekeepers.<sup>13</sup> However, we will briefly touch upon the United Nations' potential status as a party to an armed conflict for the purposes of determining the applicability of common article 1.<sup>14</sup>

- On terminology, we will use – and have in fact already used – the words “peacekeeping operations” and “peacekeeping missions” and “peacekeeping” as synonyms. We have chosen not to refer to “peace operations” because of the phrase's broad reach.<sup>15</sup>

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<sup>8</sup> For a brief overview of the characteristics and role of special political missions, see notably A. Sarfati, *Transitions from UN Special Political Missions to UN Country Teams*, IPI, April 2021, p. 5-6, available at <https://www.ipinst.org/2021/04/transitions-from-un-special-political-missions-to-un-country-teams>.

<sup>9</sup> Peacekeeping missions fall under the responsibility of the Department of Peace Operations (DPO, formerly known as DPKO) while special political missions depend from the Department of Political and Peacebuilding Affairs.

<sup>10</sup> For an exhaustive overview of the policy debates about peacekeeping, refer to IPI's dedicated research available at <https://www.ipinst.org/tag/peacekeeping>.

<sup>11</sup> See notably P. Labuda, above footnote 4, para. 38-43; M. Ali Khalil, “Legal Aspects of the Use of Force by United Nations Peacekeepers for the Protection of Civilians”, in H. Willmot, R. Mamiya, S. Sheeran and M. Weller (eds), *Protection of Civilians*, Oxford University Press, Oxford, 2016, p. 205-223; and N. D. White, “Peacekeeping or war-fighting?”, in N. D. White and C. Henderson (eds), *Research Handbook on International Conflict and Security Law: Jus ad Bellum, Jus in*

*Bello and Jus post Bellum*, Edward Elgar, Cheltenham (UK) and Northampton (USA), 2013, p. 585-592.

<sup>12</sup> Let us simply note that - as explained in the Capstone Doctrine, above footnote 4, p. 19 – robust peacekeeping involves use of force at the tactical level while peace enforcement concerns the strategic level. See also M. Ali Khalil, above footnote 11, p. 209-210; C. Foley, above footnote 4, p. 36-58; N. D. White, above footnote 11, p. 583-585; and P. Labuda, above footnote 4, para. 35-36.

<sup>13</sup> See notably O. Simic and M. O'Brien, “Peacekeeper Babies: An Unintended Legacy of United Nations Peace Support Operations”, 21 *International Peacekeeping* 3 (2103), p. 345-363.

<sup>14</sup> See below p. 5-6.

<sup>15</sup> In the so-called “Brahimi Report”, the UN uses indeed the phrase as an umbrella term covering “conflict prevention and peace-making; peacekeeping; and peace-building.” See Panel on United Nations Peace Operations, Report delivered to the General and the Security Council, 21 August 2000, UN Doc A/55/305 – S/200/809, para. 10.

### III. COMMON ARTICLE 1 AND THE UNITED NATIONS

#### 1. A (BRIEF) REMINDER ON BOTH COMMON ARTICLE 1 AND THE EVER-LASTING DEBATE AROUND ITS EXTERNAL POSITIVE DIMENSION

Let us start by recalling the exact terms of common article 1, a provision that has attracted a renewed stream of attention following the publication of an updated version of its commentary by the International Committee of the Red Cross (ICRC).<sup>16 17</sup> It reads:

**The High Contracting Parties undertake to respect and ensure respect for the present Convention in all circumstances.’<sup>18</sup>**

<sup>16</sup> Published in 2016, the commentary is available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD>

<sup>17</sup> For extensive contemporary scholarship on common article 1, which notably focuses on ensuring respect, see R. Geiss, “The Obligation to Respect and Ensure Respect”, in A. Clapham, P. Gaeta and M. Sassòli (eds), *The 1949 Geneva Conventions: A Commentary*, Oxford University Press, Oxford, 2016, p. 111-135; E. Massingham and A. McConnachie (eds), *Ensuring Respect for International Humanitarian Law*, Routledge, London, 2020; M. N. Schmitt and S. Watts, “Common Article 1 and the Duty to “Ensure Respect”, 96 *International Law Studies* (2020), p. 675-706; V. Robson, “The Common Approach to Article 1: The Scope of Each State’s Obligation to Ensure Respect for the Geneva Conventions”, 25 *Journal of Conflict and Security Law* 1 (2020), p. 101-115; and M. Zwanenburg, “The “External Element” of the Obligation to Ensure Respect for the Geneva Conventions: A Matter of Treaty Interpretation”, 97 *International Law Studies* (2021), p. 621-651.

<sup>18</sup> Emphasis added.

<sup>19</sup> ICRC, updated commentary of common article 1, above footnote 16, para. 143-149 (State’s organs and other attributable entities) and para.150-152 (population under State’s authority); and R. Geiss, above footnote 17, p 118.

It goes without saying that this provision entails **an internal dimension**: *i.e.* a State is to ensure respect for IHL by its organs, other entities whose conduct is attributable to it, as well as by the population over which it exercises authority.<sup>19</sup> By contrast, some commentators have rejected the existence – as a matter of law – of **an external positive dimension** to common article 1 requiring States **not involved** in armed conflict to **(pro)actively** take measures aimed at inducing compliance with IHL.<sup>20</sup> If Zwanenburg concludes that the debate cannot be conclusively settled by faithfully applying the rules on treaty interpretation,<sup>21</sup> others argue in favour/acknowledge the existence of such a dimension.<sup>22</sup> It is obviously the case of the ICRC.<sup>23</sup> In their view, common article 1 entails an obligation of due diligence compelling States to “[...] do everything in their power to ensure respect [for IHL] by others that are [p]arty to a[n] international or non-international armed] conflict.”<sup>24</sup> States nonetheless retain some

<sup>20</sup> See for instance C. Focarelli, “Common Article 1 of the 1949 Geneva Conventions: A Soap Bubble?”, 21 *European Journal of International Law* 1 (2010), p. 125-171; M. N. Schmitt and S. Watts, above footnote 17, p. 696; and V. Robson, above footnote 17, p. 102-103.

<sup>21</sup> M. Zwanenburg, above footnote 17, p. 649-651.

<sup>22</sup> See for instance M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar, Cheltenham (UK) and Northampton (USA), 2019, p. 126-128; S. McCosker, “Ensuring respect for IHL in international community”, in E. Massingham and A. McConnachie (eds), *Ensuring Respect for International Humanitarian Law*, Routledge, London, 2020, p. 24-25; L. Boisson de Chazournes and L. Condorelli, “Common Article 1 of the Geneva Conventions revisited: Protecting collective interests”, 82 *International Review of the Red Cross* 837 (2000), p. 68-71 and 76-84; and A. Breslin, “A Reflection on the Legal Obligation for Third States to Ensure Respect for IHL”, 22 *Journal of Conflict and Security Law* 1 (2017), p. 5-24 and 37.

<sup>23</sup> ICRC, updated commentary of common article 1, above footnote 16, para. 153-157 and 164-173.

<sup>24</sup> *Ibid.*, para. 153. It is worth noting that the commentary previously establishes the relevance of common article 1 in relation to both types of armed conflicts (in paragraphs 126-125), and that it later deals with the standard of due diligence (in paragraph 165-166).

latitude in determining which measures to take.<sup>25</sup> Finally, in addition to common article 1, there exists a corresponding duty of customary nature.<sup>26</sup>

Having summarily outlined the debate, this paper will now proceed from the assumption that the external positive dimension of common article 1 – in other words, States not involved in armed conflict shall ensure the belligerents’ respect for IHL – does exist, including on a customary basis. For the sake of pragmatism, let us also emphasize that one can always encourage States to act in furtherance of common article 1 **as a matter of policy**.

## 2. *QUID OF THE UNITED NATIONS?*

Turning our attention to the United Nations – and specifically to the Security Council as one of its principal organs<sup>27</sup> **and** the only one to have established peacekeeping missions<sup>28</sup> – begs the following questions:

- Can States resort the United Nations, and *a fortiori* to the Security Council, to comply with their obligation to ensure respect for IHL under common article 1?

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<sup>25</sup> *Ibid.*, para. 165. While S. McCosker, above footnote 22, focuses on tools in the realm of humanitarian diplomacy, U. Palwankar, “Measures available to States for fulfilling their obligation to ensure respect for international humanitarian law”, 298 *International Review of the Red Cross* (1994), p. 227-240, offers a catalogue ranging from diplomatic measures to coercive measures, taken either individually or in cooperation with international organizations. The updated commentary of common article 1, above footnote 16, paragraphs 174-183, also provides a list of possible measures.

<sup>26</sup> Rule 144 of the ICRC’s customary IHL study; and M. Sassòli, above footnote 22, p. 125 and footnote 269.

However, those arguing against the external positive dimension of common article 1 also question its customary counterpart. See notably V. Robson, above footnote 17, p. 107-109.

<sup>27</sup> Article 7 al. 1 of the Charter.

<sup>28</sup> P. Labuda, above footnote 4, para. 16.

<sup>29</sup> In addressing the **broader** issue of the Security Council’s competence to deal with IHL, M. Roscini, “The United Nations Security Council and the Enforcement of

- As an international organization, is the United Nations itself bound by common article 1,<sup>29</sup> including in its external positive dimension, in the context of/in relation to peacekeeping operations?
- If one answers the preceding question in the affirmative, which entities are the addressees of United Nations’ measures: troops contributing countries (TCCs) and/or (other) parties to the conflict?

We will examine these in turn.

### A. THE UNITED NATIONS AS A TOOL FOR COMPLYING WITH COMMON ARTICLE 1

Article 89 of Protocol I additional to the Geneva Conventions of 1949<sup>30</sup> (additional Protocol I) explicitly envisages that States can act collectively through the United Nations in view of ensuring respect for IHL.<sup>31</sup> The establishment of peacekeeping operations – especially when their mandate involves protecting civilians from violence – is incidentally deemed an appropriate measure towards such goal.<sup>32</sup>

International Humanitarian Law”, 43 *Israel Law Review* 2 (2012), p. 340, interestingly argues that common article 1 constitutes a ground for the organ to exercise its powers under Chapter VII of the Charter to ensure respect for IHL in all circumstances; *i.e.* including in the absence of a threat to international peace and security.

<sup>30</sup> “In situations of serious violations of the [Geneva] Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in cooperation with the United Nations and in conformity with the [...] Charter.”

<sup>31</sup> ICRC, updated commentary of common article 1, above footnote 16, para. 182. Interestingly, M. Sassòli, above footnote 22, p. 130, questions the appropriateness of the United Nations as a forum for dealing with violations of IHL.

<sup>32</sup> ICRC updated commentary of common article 1, above footnote 16, para. 182; rule 144 of the ICRC’s customary law study; L. Smith, “The obligation to ensure respect for IHL in the peacekeeping context”, in E. Massingham and A. McConnachie (eds), *Ensuring Respect for International Humanitarian Law*, Routledge, London, 2020, p. 146; S.

However, it is important to emphasize that common article 1 can never serve a ground additional to those foreseen by the Charter<sup>33</sup> for authorizing the use of force under *jus ad bellum*.<sup>34</sup>

## **B. THE UNITED NATIONS AS BOUND BY COMMON ARTICLE 1 IN RELATION TO/IN THE CONTEXT OF PEACEKEEPING OPERATIONS**

Let us first emphasize that – even if one was to argue and/or conclude that United Nations is not bound by IHL – States acting on behalf of the organization always retain their own obligations, and must thus still ensure respect for that legal framework.<sup>35</sup>

As an international organization, the United Nations cannot become a party to treaties such as the Geneva Conventions of 1949. In short, it can be bound by IHL either because of the customary nature of the relevant rules or by having undertaken to respect them.<sup>36</sup> After several years of (internal and external) debate,<sup>37</sup> the United Nations instructed its forces engaged in peacekeeping to comply with the “fundamental rules and principles” of IHL mentioned in a 1999 Secretary General’s Bulletin – thus making a unilateral commitment.<sup>38</sup> Although the document does not mention common article 1 – it rather deals with rules applicable to the United Nations’ direct involvement in armed conflict, such as means and method of warfare or the treatment of detainees – D. Shraga considers that

the provision bounds the organization on that very basis.<sup>39</sup> In any case, since (as stated above) common article 1 has reached customary status, the United Nations shall ensure respect for IHL in the context of peacekeeping missions. In the words of the ICRC, “[t]his is particularly the case where the organization has been mandated to use force [for the purpose of protecting civilians] or engages in operations in support of other [p]arties to the conflict.”<sup>40</sup>

It goes without saying that IHL is a legal framework applicable during (international or non-international) armed conflicts.<sup>41</sup> However, because common article 1 applies in all circumstances,<sup>42</sup> the United Nations does not need to be involved in a conflict to be obligated to ensure respect for IHL. Such an involvement (or the absence thereof) will nonetheless determine the addressees of associated measures.

## **C. WHOSE RESPECT FOR IHL IS THE UNITED NATIONS TO ENSURE IN RELATION TO/ IN THE CONTEXT OF PEACEKEEPING OPERATIONS?**

Answering this question requires determining which entity qualifies as a party to the armed conflict.

It seems evident that – depending on the type of armed conflict – the host State and/or non-State armed groups fulfilling at least the criteria

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McCosker, above footnote 22, p. 30; and A. Breslin, above footnote 22, p. 34-35.

<sup>33</sup> Articles 42 (authorisation by the Security Council under Chapter VII) and 51 of the Charter (acting in self-defense).

<sup>34</sup> Rule 144 of the ICRC’s customary IHL study; and M. Happold, “Comment – obligation for States contributing to UN peacekeeping missions under Common article 1 of the Geneva Conventions”, in H. Krieger, *Inducing Compliance with International Humanitarian Law, Lessons from the African Great Lakes Region*, Cambridge University Press, Cambridge, 2015, p. 383.

<sup>35</sup> M. Sassòli, above footnote 22, p. 195-196

<sup>36</sup> *Ibid.*, p. 194.

<sup>37</sup> For a summary of the relevant positions and arguments raised by both the ICRC and the United Nations, see notably

D. Shraga, “The United Nations as an actor bound by international humanitarian law”, 5 *International Peacekeeping* 2 (1998), p. 65-68.

<sup>38</sup> United Nations Secretariat, Secretary General’s Bulletin on the observance by United Nations forces of international humanitarian law, 6 August 1999, UN Doc ST/SGB/1999/13.

<sup>39</sup> D. Shraga, above footnote 37, p. 71-72.

<sup>40</sup> ICRC updated commentary of common article 1, above footnote 16, para. 142.

<sup>41</sup> With the exceptions of the few conventional provisions and customary rules applicable in peacetime, such as customary rule 142 and article 47 of Geneva Convention I.

<sup>42</sup> ICRC, updated commentary of common article 1, above footnote 16, para. 184-191.

set out in article 3 common to the Geneva Conventions of 1949 will qualify. **Quid from a multinational perspective?** The answer will depend from a combination of (cumulative) factors, which T. Ferraro sets out and analyses in great detail.<sup>43</sup> For our present purposes suffice it to state that, if such a determination obviously relies exclusively on the prevailing facts,<sup>44</sup> peacekeepers' involvement in hostilities must first fulfil the conditions pertaining to either an international<sup>45</sup> or non-international<sup>46</sup> armed conflict.<sup>47</sup> Then, having determined peacekeepers' participation in the conflict, one must determine which entity – the United Nations or respective TCCs – exercise command and control over the operation. The entity that does will be the one qualifying as a party to the conflict.<sup>48</sup>

Based on the above-mentioned elements, the United Nations itself is a party to the (international or non-international) armed conflict when exercising command and control over the peacekeeping operation. In that first scenario, the organization must ensure that its TCCs respect IHL “[...] in essentially the same way as States must [...] ensure respect [...] by their armed forces.”<sup>49</sup> Incidentally, it typically inserts a provision to this effect in the Status of Forces Agreement (SOFA) concluded with host States.<sup>50</sup>

The United Nations must equally ensure compliance with the legal framework by the other parties to the conflict. Conversely, if it does **not** exercise command and control over a peacekeeping mission, only TCCs will qualify as parties to the armed conflict. In that second scenario, the organization shall ensure their respect for IHL on the same basis than for other

belligerents: the external positive dimension of common article 1.<sup>51</sup>

### 3. CONCLUSION

For the sake of clarity, let us summarize the section 2 of Chapter III as follows:

- It is uncontested that States – acting through the Security Council – have dispatched peacekeeping missions in view of notably ensuring compliance with IHL. Such a conclusion stands whether one accepts that common article 1 implies an external positive dimension as a matter of law. For our purposes, knowing whether their support to the relevant resolution was motivated by law, policy or a mixture thereof is equally irrelevant.
- If one accepts that common article 1 has reached customary status, the United Nations – including when it is **not** itself party to an armed conflict – has to do everything in its power to ensure respect for IHL by all warring parties. This is based on the provision's external positive dimension.
- In the context of peacekeeping operations, one must first determine whether peacekeepers' involvement in hostilities meet the criteria for conflict classification. If that is the case, one must then identify which entity exercises

<sup>43</sup> T. Ferraro, above footnote 7, p. 573-595.

<sup>44</sup> *Ibid.*, p. 573.

<sup>45</sup> *Ibid.*, p. 575-576.

<sup>46</sup> *Ibid.*, p. 577-579 and 583-587.

<sup>47</sup> It is worth highlighting that T. Ferraro, *ibid.*, p. 580-583 does also question the relevance of the “classical” conditions for classifying a situation in case of multinational forces' involvement.

<sup>48</sup> *Ibid.*, p. 588-593. On p. 593-594, T. Ferraro explains that, because of the its unique organisational structure, NATO

can sometimes be a party to the conflict at the same time as its TCCs. It is not the case for the United Nations.

<sup>49</sup> ICRC, updated commentary of common article 1, above footnote 16, para. 140. It thus seems redundant to state that, in such a scenario, the United Nations must first and foremost abide by IHL.

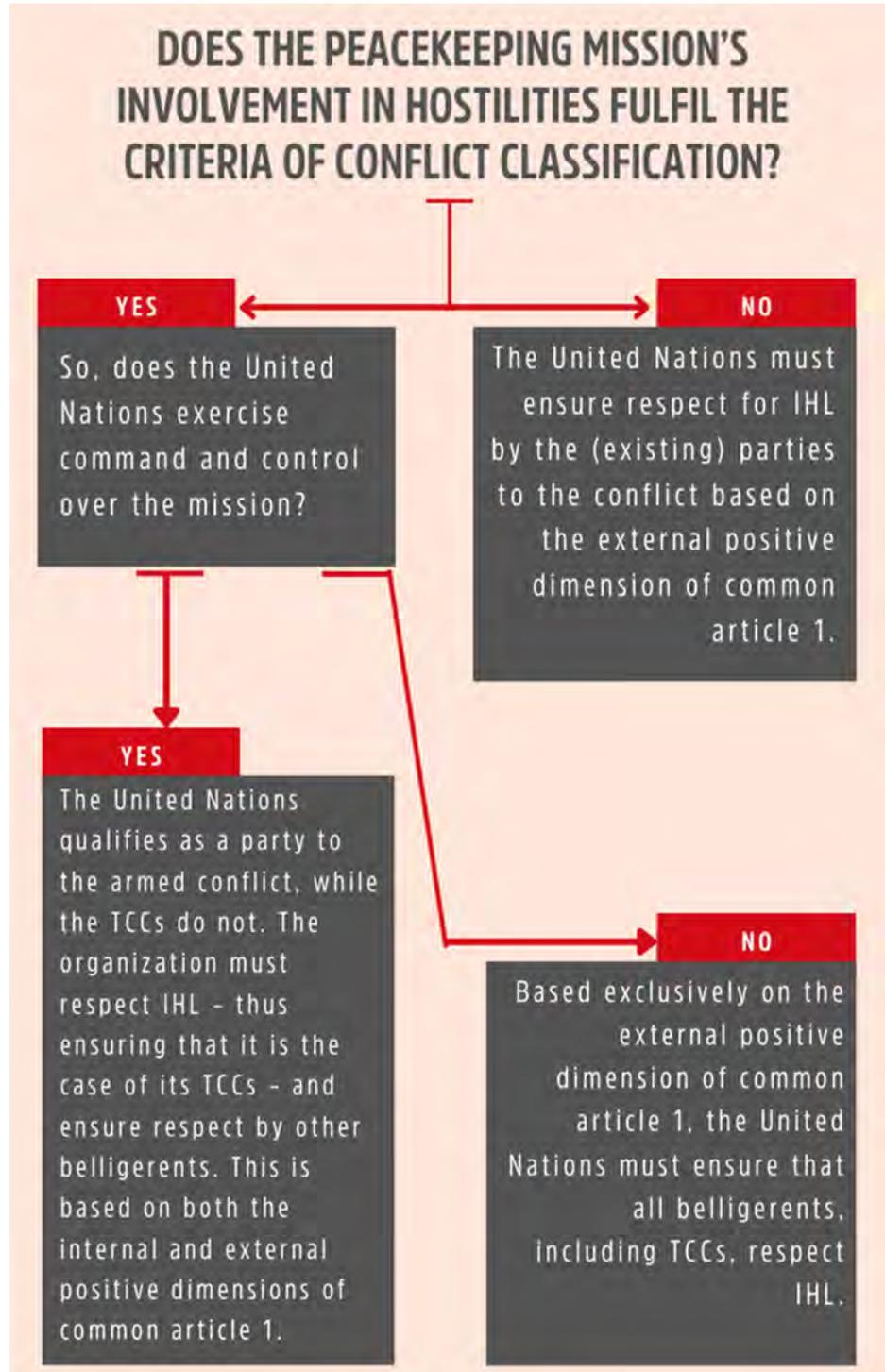
<sup>50</sup> See notably D. Shruga, above footnote 37, p. 68.

<sup>51</sup> *Ibid.*, para. 142.

command and control over a mission – thus qualifying as a party to the conflict.

Alternatively, one could also use the schema below.

- When exercising command and control over a peacekeeping mission, the United Nations is a party to the armed conflict. In that instance, both the internal and external positive dimensions of common article 1 find relevance. In other words, the organization must not only respect IHL – and consequently internally ensure respect by its TCCs – but also ensure that other parties to the conflict do the same.
- When it does not qualify as a party to the armed conflict because of lack of command and control, the United Nations must ensure that both TCCs and other belligerents respect IHL. This is based on the external positive dimension of common article 1.



If common article 1 does require the United Nations to ensure respect for IHL, some authors consider that it has failed to appropriately articulate the scope of such an obligation from a peacekeeper's perspective.<sup>52</sup> Moving from the abstract to the concrete, we will now examine whether and how modern multidimensional peacekeeping operations engage – based on their respective mandates – in activities aimed at, or amounting to, promoting compliance with IHL.

If, due to limited scope the next section will focus on engagement with existing parties to an armed conflict, it goes without saying that the United Nations also has tools to leverage vis-à-vis TCCs in order to ensure respect for IHL. These notably include pre-deployment training on IHL<sup>53</sup> and human rights screening as foreseen by the dedicated policy applicable to United Nations personnel.<sup>54</sup>

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<sup>52</sup> See for instance L. Smith, above footnote 32, p. 155.

<sup>53</sup> N. D. White, above footnote 11, p. 580 and footnote 33, explains that, for instance, the personnel of African Union Mission – a mission that is supported by United Nations although not deployed by it – received such a training in 2012. S. Adamczyk, *Twenty years of protections of civilians at the UN Security Council*, Humanitarian Policy Group (HPG), Policy Brief 74, May 2019, p. 10, available at: <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12709.pdf>, points out that there's scope for greater engagement on this front.

<sup>54</sup> L. Smith, above footnote 32, p. 157. The policy is available at: [https://police.un.org/sites/default/files/policy\\_on\\_human\\_rights\\_screening\\_of\\_un\\_personnel\\_december\\_2012.pdf](https://police.un.org/sites/default/files/policy_on_human_rights_screening_of_un_personnel_december_2012.pdf).

<sup>55</sup> Because of the relatively limited resources allocated to this research, we will not touch upon the many intricacies associated with – and influencing – the establishment or renewal of peacekeeping missions: such as the power dynamics and “inequality of arms” between elected and permanent members of the Security Council; the clout of penholdership; and tensions between this organ and the General Assembly's Special Committee for Peacekeeping (C34). For detailed analysis of how such challenges play into the mandating of peace operations (*i.e.* both peacekeeping

## IV. PEACEKEEPING OPERATIONS AND ENSURING RESPECT FOR IHL: TALKING THE TALK, WALKING THE WALK?

### 1. A REMINDER OF THE (VERY) BASICS

Before delving into the specifics, let us give an overview of the institutional framework pertaining to peacekeeping operations.<sup>55</sup>

#### A. MANDATING

Peacekeeping missions are established by the Security Council and thus considered subsidiary organs of the United Nations),<sup>56</sup> and their mandates usually renewed on an annual basis<sup>57</sup> with the support of all of the organ's members.<sup>58</sup>

missions and SPMs), see Security Council Report, *Is Christmas Really Over? Improving the Mandating of Peace Operations*, Research Report No. 1, 22 February 2019, available at: [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research\\_report\\_council\\_mandating\\_february\\_2019.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_council_mandating_february_2019.pdf)

<sup>56</sup> P. Labuda, above footnote 4, para. 17. Interestingly, on para. 18-19, he also examines which (exact) legal basis under the Charter allows for the establishment of peacekeeping missions.

<sup>57</sup> Security Council Report, above footnote 55, p. 3. If certain missions were exceptional in that they were always renewed every six months (for instance UNFYCIP in Cyprus), there has been a recent increase of six-months renewals. MINURSO in Western Sahara and UNISFA in Abyei are now concerned.

<sup>58</sup> *Ibid.*, p. 4 and 8. When it comes to peacekeeping, members of the Security Council ascribe a certain importance to unanimity – perhaps even more so than for other workstreams – because of its strong and unified political signal.

<sup>59</sup> A mission's mandate essentially consists in its "[...] broad marching order, identifying its overall 'deliverables'".<sup>60</sup> However – and despite the acknowledged need for clarity, focus, sequencing, prioritization and operational pragmatism in mandating –<sup>61</sup> "Christmas tree" mandates constitute an ever-lasting challenge for peacekeeping. Indeed, relevant resolutions are only getting longer and often include identical language for many tasks.<sup>62</sup> Such a tendency results in a challenging disconnect between a peacekeeping mandate, the circumstances prevailing on the ground and the (financial and human) available resources.<sup>63</sup> Consequently, there is a need for further enhancing the Security Council members' understanding of how peacekeeping mandates effectively translate into action.<sup>64</sup> This also concerns tasks that were devised to explicitly or implicitly contribute to

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<sup>59</sup> For a useful overview of how negotiations are usually conducted, see Security Council Report, above footnote 55, p. 2-4, 10 and 11. It is worth noting that both the C34 and the Informal Expert Group on the Protection of Civilians also play a positive role during such a process. For more information on the Informal Expert Group, see notably Émilie Max, *Room for manoeuvre? Promoting international humanitarian law and accountability while at the Security Council: a reflection on the role of elected members*, Academy Briefing No. 17, Geneva Academy of International Humanitarian Law and Human Rights, October 2020, p. 27 and footnote 104, available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/Briefing%2017.pdf>.

<sup>60</sup> Security Council Report, above footnote 55, p. 2.

<sup>61</sup> See for instance Action for Peacekeeping (A4P), Declaration of Shared Commitments on UN Peacekeeping Operations, para. 5, available at: <https://peacekeeping.un.org/sites/default/files/a4p-declaration-en.pdf>. Launched in September 2018 by the Secretary General with the purpose of renewing the international community's political commitment to peacekeeping, the declaration has reached over 150 endorsements.

<sup>62</sup> Security Council Report, above footnote 55, p. 2 and 5. By way of example, in 2018, the mandate of the United Nations Mission in South Sudan (UNMISS) listed 209 tasks; see UNSC Res 2406, 15 March 2018.

<sup>63</sup> *Ibid.*, p. 6. It is worth noting that, under the Trump administration, the United States strongly advocated for a significant reduction of the peacekeeping budget. Other permanent members of the Security Council, chiefly Russia and China, have also used the 5<sup>th</sup> committee of the General

ensuring respect for IHL.

## B. PEACEKEEPING PRINCIPLES

Despite significant evolution since 1948,<sup>65</sup> the United Nations has regularly reaffirmed the relevance of the basic principles of peacekeeping: consent of the parties, impartiality, and the non use of force except in self-defence and defence of the mandate.<sup>66</sup> They are also known as the "trinity of virtues",<sup>67</sup> and we will consider them briefly.

- Peacekeeping operations are to be deployed with the **consent** of the main parties to the conflict.<sup>68</sup> In contemporary practice, this mostly implies securing that of host States<sup>69</sup> although "[o]btaining [...] the consent of the

Assembly (ACABQ) to address substantive issues, such as the inclusion of human rights activities in peacekeeping.

<sup>64</sup> *Ibid.*, p. 11. This could notably be achieved by institutionalizing (more) regular dialogue between the Security Council and TCCs and host States, respectively; by organizing thematic Arria-formula meetings; and by further relying on the Informal Expert Group on the Protection of Civilians.

<sup>65</sup> See above p. 1.

<sup>66</sup> See for instance A4P, above footnote 61, para. 3; Capstone Doctrine, above footnote 4, p. 31-35;

High-Level Independent Panel on United Nations Peace Operations (HIPPO), Report delivered to the General and the Security Council, 7 June 2015, UN Doc A/70/95-S/2015/446, para. 124-129; and UNSC Res 2223, 28 May 2015, preambular paragraph 3.

<sup>67</sup> P. Labuda, above footnote 4, para. 3, 14 and 19.

<sup>68</sup> Capstone Doctrine, above footnote 4, p. 31.

<sup>69</sup> See chiefly P. Labuda, *With or Against the State? Reconciling the Protection of Civilians and Host-State Support in UN Peacekeeping*, IPI, May 2020, p. 2, available at: [https://www.ipinst.org/wp-content/uploads/2020/05/2005\\_Reconciling-POC-and-Host-State-Support.pdf](https://www.ipinst.org/wp-content/uploads/2020/05/2005_Reconciling-POC-and-Host-State-Support.pdf). R. Hatto, above footnote 4, p. 498, points out that the absence of consent by non-State armed groups might have negative consequences on the safety of peacekeepers; and so does N. D. White, above footnote 11, p. 581.

other parties remains an important objective [...] and should be pursued to the extent possible.”<sup>70</sup> Reflected in the conclusion of a SOFA with the United Nations,<sup>71</sup> host State’s consent is sometimes withdrawn, which ultimately results in the departure of the peacekeeping mission.<sup>72</sup>

- Peacekeepers can **only use (lethal) force** in self-defence<sup>73</sup> and in defence of the mission’s mandate.<sup>74</sup>
- Peacekeeping operations are to be conducted **with impartiality**, in that their implementation should not favour nor prejudice any party to the conflict. If peacekeepers should avoid/refrain from engaging in activities that risk triggering perceptions of bias, they are **not** to be neutral in the execution of their mandates.<sup>75</sup> Such an approach allows a peacekeeping mission to take coercive action against spoilers when necessary.<sup>76</sup>

Notwithstanding their importance for the United Nations, one must emphasize that adherence to the above-mentioned principles

<sup>70</sup> HIPPO, above footnote 66, para. 127.

<sup>71</sup> See notably N. D. White, above footnote 11, p. 576-577. For more information on the typical content of SOFAs, see P. Labuda, above footnote 4, para. 21.

<sup>72</sup> P. Labuda, above footnote 69, p. 2. This report generally provides an excellent and exhaustive overview of dynamics (positively or negatively) influencing the degree of host State’s consent to peacekeeping. See also L. Smith, above footnote 32, p. 148.

<sup>73</sup> N. D. White, above footnote 11, p. 585-587. As explained by P. Labuda, above footnote 4, para. 40, a peacekeeper’s right to self-defence differs from that of civilians under national criminal and/or civil laws.

<sup>74</sup> For more information on the legality and modalities of the use of force by peacekeepers, see above footnote 11.

<sup>75</sup> Capstone Doctrine, above footnote 4, p. 33. P. Labuda, above footnote 69, p. 12-13, explains how challenging preserving impartiality in volatile situations of armed conflict can be.

<sup>76</sup> N. D. White, above footnote 11, p. 587.

<sup>77</sup> HIPPO, above footnote 66, para. 125.

“[...] should never serve as an excuse for [a peacekeeping mission’s] failure to protect civilians [...]”.<sup>77</sup>

## 2. PROTECTING CIVILIANS IN THE CONTEXT OF PEACEKEEPING OPERATIONS

As previously mentioned, protecting of civilians from the violence of armed conflict has emerged, over the past 20 years, as a core feature of multidimensional peacekeeping operations.<sup>78</sup> However, it is worth noting that the lexicon associated with protection has been used disparately, and notably so across the peacekeeping community.<sup>79</sup> For our present purposes, we will focus on - and examine in turn - relevant activities arising from the Security Council’s work on the thematic agenda items on the Protection of Civilians in Armed Conflict (for which we will use the acronym “PoC”)<sup>80</sup>, Women, Peace and Security, as well as Children and Armed Conflict.<sup>81</sup>

<sup>78</sup> See above p. 1; and P. Labuda, above footnote 69, p. 4.

<sup>79</sup> H. Willmot and S. Sheeran, “The protection of civilians mandate in UN peacekeeping operations: reconciling protection concepts and practices”, 95 *International Review of the Red Cross* 891/892 (2013), p. 518. As late as 2009, an independent study commission by both the then DPKO and OCHA even noted that “[n]o [Security] Council document offers an operational definition of what protection of civilians means for peacekeeping missions; not has the Council tasked the [United Nations] Secretariat [...] to do so. See V. Holt and G. Taylor, *Protecting Civilians in the Context of UN Peacekeeping Operations, Successes, Setbacks and Remaining Challenges*, 2009, p. 57, available at [https://reliefweb.int/sites/reliefweb.int/files/resources/B752FF2063E282B08525767100751B90-unocha\\_protecting\\_nov2009.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/B752FF2063E282B08525767100751B90-unocha_protecting_nov2009.pdf).

<sup>80</sup> By contrast, we will not use the acronym to refer to the overarching/umbrella concept of protecting civilians from violence. This terminological choice aims at mirroring that of the United Nations’ website mentioned above in footnote 5.

<sup>81</sup> Capstone Doctrine, above footnote 4, p. 16.

## A. PoC<sup>82</sup>

It goes without saying that this Security Council's agenda item has the biggest "common contact surface area" with the topic at hand. This does not only hold true because, according to the DPO, more than 95 percent of peacekeeping operations active in 2020 had mandates that included the protection of civilians.<sup>83</sup> To the contrary, PoC developed – at the same time **and** for the same conceptual reasons – than the introduction of related protective language in the mandates of peacekeeping operations. Evolving alongside one another since the late 1990s, both tendencies "[...] have become increasingly and more increasingly intertwined."<sup>84</sup>

### i. Setting the (historical) stage

By way of reminder, let us note that peacekeeping operations were already involved in the protection of civilians prior to 1999.<sup>85</sup> Yet, their mandates had only contained implicit direction about their roles in this regard.<sup>86</sup> Against the background of peacekeeping's

dramatic failures in both Rwanda and former Yugoslavia throughout the 1990s, the Security Council began debating the opportunity of increasing United Nations' involvement on the matter, including through more robust peacekeeping mandates.<sup>87</sup> 1999 ultimately resulted in two landmark decisions by the organ: resolutions 1265 and 1270.<sup>88</sup> The first created a thematic agenda item dedicated to the protection of civilians in armed conflict, and notably acknowledged both a "deep concern" at the erosion in respect for IHL **and** the potential role of peacekeeping operations.<sup>89</sup> The second established the United Nations Mission in Sierra Leone (UNAMSIL): the first peacekeeping mission with the **explicit** mandate (under Chapter VII) to "[...] take the necessary action [...] within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence [...]"<sup>90</sup> It is worth highlighting that resolution 1270 also specified – in the very next operational paragraph – the importance of ensuring that UNAMSIL included personnel with appropriate training in IHL.<sup>91</sup>

For the next 20 years, the Secretary General's annual reports on PoC have continuously

<sup>82</sup> For an overview of the Security Council's engagement on IHL via the PoC agenda item, including of its evolution since 1999, see Émilie Max, above footnote 59, p. 26-32.

<sup>83</sup> Security Council Report, *Monthly Forecast, May 2020*, 30 April 2020, p. 22, available at: [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2020\\_05\\_forecast.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2020_05_forecast.pdf). Based on the DPO's 2020 Handbook on the Protection of Civilians in United Nations Peacekeeping (Handbook), p. 3, available at: [https://peacekeeping.un.org/sites/default/files/dpo\\_poc\\_handbook\\_final\\_as\\_printed.pdf](https://peacekeeping.un.org/sites/default/files/dpo_poc_handbook_final_as_printed.pdf), the figure is a little lower and seven out of the 12 peacekeeping missions currently active have protection mandates: UNIFIL (Lebanon), UNAMID (Darfur), MONUSCO (Democratic Republic of the Congo), UNMISS, UNISFA, MINUSMA (Mali) and MINUSCA (Central African Republic). And out of these seven, only four (MONUSCO, UNMISS, MINUSMA and MINUSCA) operate in situations of armed conflict per the classification of RULAC database: <https://www.rulac.org/>.

<sup>84</sup> C. Foley, above footnote 4, p. 105.

<sup>85</sup> H. Willmot and S. Sheeran, above footnote 79, p. 519-520, mention the 1960 United Nations' Operations in the Congo (ONUC) as well as the United Nations' Protection Force

deployed to the Former Yugoslavia as examples, and cite relevant mandate language.

<sup>86</sup> V. Holt and G. Taylor, above footnote 79, p. 42 and footnote 32.

<sup>87</sup> H. Willmot and S. Sheeran, above footnote 79, p. 520-521; and V. Holt and G. Taylor, above footnote 79, p. 43.

<sup>88</sup> UNSC Res 1265, 17 September 1999; UNSC Res 1270, 22 October 1999.

<sup>89</sup> Preambular paragraph 7 and operational paragraph 11, respectively.

<sup>90</sup> Operational paragraph 14. For a detailed account of the negotiations that lead to such language, see V. Holt and G. Taylor, above footnote 79, p. 36-42. On p. 47-51, they also provide an analysis of the Security Council's understanding of PoC as included in the mandates of the subsequent peacekeeping missions such as the *Mission de l'Organisation des Nations Unies en République Démocratique du Congo* (MONUC, which is MONUSCO's predecessor). Interestingly, H. Willmot and S. Sheeran, above footnote 79, p. 541, point out that the members of the Security Council were well-aware of the ground-breaking character of their decision.

<sup>91</sup> Operational paragraph 15.

emphasized that, beyond its inherently humanitarian character, protecting civilians from the violence of armed conflict requires not only inclusion but also prioritization in peacekeeping.<sup>92</sup> Such prioritization has even become a firmly established practice, with a significant body of policy and guidance on the operational approach to the protection of civilians in armed conflict.<sup>93</sup>

## ii. Towards a broader conception of protection in peacekeeping

While bearing in mind that what matters is the nature of peacekeepers' activities on the ground rather than their labels,<sup>94</sup> let us take a closer look at the language used by the Security Council in mandating peacekeeping operations to protect civilians from the violence of armed conflict.

Since 1999, the mandates of most peacekeeping operations have included language on the protection of civilians similar to that of UNAMSIL.<sup>95</sup> Such language demonstrates that the concept was originally exclusive conceived – because of the very reasons that first prompted its explicit inclusion in peacekeeping – as physical protection from the threat of imminent violence.<sup>96</sup> As years progressed, there has been a gradual shift towards a broader

conception of protection of civilians in peacekeeping.<sup>97</sup> As notably reflected in the wording of resolutions 1674 and 1874,<sup>98</sup> the range of peacekeepers' activities aimed at protecting civilians has expanded to include a wide variety of tasks such as the facilitation of local ceasefire agreements;<sup>99</sup> the facilitation of humanitarian assistance;<sup>100</sup> the dissemination of information about IHL;<sup>101</sup> supporting parties to the conflict in organizing the training of armed forces on IHL;<sup>102</sup> the prevention of sexual violence;<sup>103</sup> as well as human rights and IHL monitoring, reporting and advocacy.<sup>104</sup> By way of additional examples, the Security Council recently emphasized that peacekeeping operations could also contribute to the creation of a secure environment enabling the delivery of medical assistance<sup>105</sup> and assist relevant national authorities in the protection of cultural heritage.<sup>106</sup>

To sum up, protecting civilians in the context of peacekeeping is now defined as consisting in:

**“without prejudice to the primary responsibility of the host state, integrated and coordinated activities by all civilian and uniformed [peacekeeping] mission components to prevent, deter and respond to threat of physical violence against civilians,**

<sup>92</sup> Report of the Secretary-General on the protection of civilians in armed conflict, 7 May 2019, UN Doc S/2019/373, para. 8 and 16.

<sup>93</sup> *Ibid.*, para. 16.

<sup>94</sup> E.-C. Gillard, *UN-OCHA perspective*, contribution presented/delivered at the Seminar on International Peace Operations and International Humanitarian Law organized by the International Institute of Humanitarian Law (San Remo) on 27 March 2008, p. 47, available at: [https://iihl.org/wp-content/uploads/2018/03/IIHL\\_Peace-Ops-IHL.pdf](https://iihl.org/wp-content/uploads/2018/03/IIHL_Peace-Ops-IHL.pdf).

<sup>95</sup> H. Willmot and S. Sheeran, above footnote 79, p. 521. On footnote 16, they also provide an exhaustive list of all peacekeeping missions concerned.

<sup>96</sup> H. Willmot and S. Sheeran, above footnote 79, p. 534.

<sup>97</sup> The same holds true for the Security Council's understanding of the protection of civilians as a thematic issue, which significantly evolved in the two decades since resolution 1265. See Émilie Max, above footnote 59, p. 26-27.

<sup>98</sup> UNSC Res 1674, 28 April 2006, operational paragraph 16-17 and 19-20; and UNSC Res 1894, 11 November 2009, operational paragraphs 15(b) and 18-28.

<sup>99</sup> Report of the Secretary-General on the protection of civilians in armed conflict, above footnote 92, para. 12.

<sup>100</sup> UNSC Res 1674, operational paragraph 16.

<sup>101</sup> *Ibid.*, operational paragraph 17.

<sup>102</sup> UNSC Res 1894, operational paragraph 7(d). P. Labuda, above footnote 69, p. 9, interestingly warns against the limited impact and/or sustainability of training if addressees do not take ownership.

<sup>103</sup> *Ibid.*, operational paragraph 19.

<sup>104</sup> H. Willmot and S. Sheeran, above footnote 79, p. 538.

<sup>105</sup> UNSC Res 2286, 3 May 2016, operational paragraph 10.

<sup>106</sup> UNSC Res 2347, 24 March 2017, operational paragraph 19.

within the mission's capabilities and areas of deployment, through the use of all necessary means, up to and including deadly force."<sup>107</sup>

Furthermore, it encompasses three "tiers" of action: (I) protection through (political) dialogue and engagement, (II) physical protection and (III) the establishment of a protective environment.<sup>108</sup>

### 3. OTHER RELEVANT AGENDA ITEMS<sup>109</sup>

In extending its apprehension of the protection of civilians for the purposes of peacekeeping, the Security Council has considered other specific themes and made similar usage of landmarks resolutions to recognize the needs of at-risk groups.<sup>110</sup>

Resolution 1325 on **Women, Peace and Security** generally called for the expansion of the role of women in United Nations' field-based operations and - more importantly for our purposes - the creation of a separate gender components in peacekeeping (gender and/or women-protection advisors), as well as the conducting of appropriate training for missions' civilian personnel.<sup>111</sup> Resolution 1820 further tasked the Secretary-General with developing guidelines and strategies in order to allow peacekeeping operations to appropriately protect civilians from conflict-related sexual violence.<sup>112</sup> On that latter issue, peacekeepers are

generally mandated in support of the Special Representative of the Secretary-General on Sexual Violence in Conflict.<sup>113</sup> A notable example of impactful peacekeepers' engagement against sexual violence consists in the work undertaken by MONUC per resolution 1794.<sup>114</sup> By actively and consistently engaging with the national authorities, the mission (now called MONUSCO) apparently triggered some change in behaviour.<sup>115</sup> Similar efforts have recently been undertaken by MINUSCA and UNMISS.<sup>116</sup>

Since resolution 1379, peacekeeping missions are also mandated with the responsibility of **protecting children in armed conflict**<sup>117</sup> and thus include (a) child-protection adviser(s) (CPA).<sup>118</sup> Resolution 1612 further emphasized peacekeepers' responsibility on the matter, and demanded that, when preparing a mission, the Secretary-General assesses the need for as well as the number and roles of CPAs.<sup>119</sup> The text also created a dedicated Working Group of the Security Council, which notably makes recommendations on peacekeeping mandates.<sup>120</sup> Positive examples of peacekeeping missions' engagement in favour of child protection include the relevant work of UNAMID, UNAMISS<sup>121</sup> and MONUSCO.<sup>122</sup>

<sup>107</sup> Handbook, above footnote 83, p. 3, emphasis added.

<sup>108</sup> H. Willmot and S. Sheeran, above footnote 79, p. 534 and footnote 98; and P. Labuda, above footnote 69, p. 4 and footnote 29.

<sup>109</sup> For an overview of the Security Council's engagement on IHL via the WPS and CAAC agenda items, see Émilie Max, above footnote 59, p. 32-34.

<sup>110</sup> V. Holt and G. Taylor, above footnote 79, p. 57.

<sup>111</sup> UNSC Res 1325, 31 October 2000, operational paragraphs 4-6. For more information on gender-advisors, see <https://peacekeeping.un.org/en/promoting-women-peace-and-security>.

<sup>112</sup> UNSC Res 1820, 19 June 2009, operational paragraph 9.

<sup>113</sup> L. Smith, above footnote 32, p. 158.

<sup>114</sup> UNSC Res 1794, 21 December 2007, operational paragraph 18.

<sup>115</sup> P. Labuda, above footnote 69, p. 8.

<sup>116</sup> *Ibid.*, p. 9.

<sup>117</sup> L. Smith, above footnote 32, p. 157.

<sup>118</sup> UNSC Res 1379, 20 November 2001, operational paragraph 10(a). For more information on CPAs' work, see <https://peacekeeping.un.org/en/child-protection-advisers>.

<sup>119</sup> UNSC Res 1612, 26 July 2005, operational paragraphs 10 and 12.

<sup>120</sup> *Ibid.*, operational paragraph 8(a).

<sup>121</sup> L. Smith, above footnote 32, p. 157-158.

<sup>122</sup> P. Labuda, above footnote 69, p. 8.

## 4. CRITICAL APPRAISAL

Peacekeeping operations' broad mandate to protect civilians from the violence of armed conflict fulfils a critical role,<sup>123</sup> and yet both United Nations' internal reviews over the past 20 years and independent observers have consistently highlighted the same fundamental challenges.<sup>124</sup> In addition to being inter-related, they mostly derive – in one way or another – from inadequate or insufficient Security Council's support to peacekeeping. Among the many issues that we came across during our research, the following are worth mentioning:

- States' lack of restraint in pushing for the inclusion of specific issues in mandates<sup>125</sup>, which, combined to the difficulty in revising agreed language, results in “Christmas-tree” resolutions;<sup>126</sup>
- the lack of clarity on the normative framework **and** practical substance of the mandate to protect civilians, which can lead to different – and sometimes even contradicting – understanding by TCCs and the United Nations or between TCCs themselves, including on the use of force;<sup>127</sup>
- the lack of coherence between mandates and available/allocated (human and financial) resources, that effectively

impedes peacekeepers from carrying out their mandate,<sup>128</sup> and

- the lack of “sustained attention” by the Security Council as regards the actual implementation of the mandate to protect civilians, which, in turn, implies that neither the United Nations' Secretariat nor member States link such a mandate to operational strategies (in the form of policies, guidance and training) and/or commensurate political strategy.<sup>129</sup>

If the Security Council - and *a fortiori* the broader United Nations membership – does not address the difficult legal and political questions associated with the above-mentioned challenges, one risks triggering the further standardization of mandate language, the projection of increasingly unrealistic expectations on peacekeepers' capabilities<sup>130</sup> and, from an overarching perspective, the ultimate undermining of the mandate to protect civilians.<sup>131</sup>

## 5. THE UNITED NATIONS' HUMAN RIGHTS DUE DILIGENCE POLICY (HRDDP)

Because its inclusion in relevant mandates “[...] has provided important leverage to the efforts of peacekeeping missions to influence compliance with international humanitarian

<sup>123</sup> H. Willmot and S. Sheeran, above footnote 79, p. 518.

<sup>124</sup> See most notably Center for Civilians in Conflict (CIVIC), *POC20: Twenty Years of the Protection of Civilians – Challenges, Progress and Priorities for the Future*, September 2019, available at: [https://civiliansinconflict.org/wp-content/uploads/2019/10/CIVIC\\_UNREPORT\\_FINAL2.pdf](https://civiliansinconflict.org/wp-content/uploads/2019/10/CIVIC_UNREPORT_FINAL2.pdf); and S. Adamczyk, above footnote 53.

<sup>125</sup> V. Holt and G. Taylor, above footnote 79, p. 76.

<sup>126</sup> Security Council Report, above footnote 55, p. 5.

<sup>127</sup> H. Willmot and S. Sheeran, above footnote 79, p. 518; and S. Adamczyk, above footnote 53, p. 5.

<sup>128</sup> S. Adamczyk, above footnote 53, p. 5; and A4P, above footnote 61, para. 5.

<sup>129</sup> V. Holt and G. Taylor, above footnote 79, p. 74; and S. Adamczyk, above footnote 53, p. 8.

<sup>130</sup> V. Holt and G. Taylor, above footnote 79, p. 74.

<sup>131</sup> H. Willmot and S. Sheeran, above footnote 79, p. 538. Going even further such tendencies could actually result in undermining the effectiveness of the use of force by peacekeepers.

law [...]”,<sup>132</sup> this paper would not be complete without (briefly) mentioning the HRDDP.<sup>133</sup>

Adopted as an internal policy in 2011 and made public in 2013,<sup>134</sup> the HRDDP constitutes one of the most prominent tools that the United Nations can – and should – use to mitigate the risks of potentially lending support to violations of IHL.<sup>135</sup> It does so by establishing a framework of due diligence applicable to all United Nations’ entities providing support to non-United Nations security forces, and essentially conditions such a support to respect for international law.<sup>136</sup> The policy adopts a broad understanding of support, which can notably consist in training; advisory services; capacity and institution-building; financial; and tactical and operational support.<sup>137</sup>

As (re)affirmed in the A4P,<sup>138</sup> the HRDDP obviously concerns certain activities undertaken by peacekeeping missions’ in support of either States’ or non-State armed group’s forces.<sup>139</sup> In short, pursuant to the policy, peacekeepers are to **not** provide support to, significantly engage with, or even suspend support to non-United Nations security forces if there are substantial grounds to believe that “grave violations” of IHL are being committed.<sup>140</sup> So far, the implementation of the HRDDP by peacekeeping operations has been either challenging and uneven (in the DRC and South Sudan)<sup>141</sup> or

minimal due to limited cooperation with host States (in South Sudan and Darfur).<sup>142</sup>

## V. CONCLUDING REMARKS

In closing, it is hoped that the following considerations, framed in general terms, will be helpful to (prospective or current) members of the Security Council that contemplate using peacekeeping for promoting respect for IHL.<sup>143</sup>

- If tasks aimed at preventing and suppressing violations of IHL should ideally be included in the mandates of peacekeeping operations,<sup>144</sup> States should remain mindful of challenges inherent to the “Christmas tree” effect. They should equally ensure – or at least strive towards ensuring – that such tasks can be effectively and adequately implemented by peacekeepers; *i.e.* appropriate strategic guidance is provided by the United Nations’ Secretariat, sufficient (human and financial) resources are allocated to missions, and there is commensurate political will emanating from the Security Council. In other words, members States’ engagement should not stop once a mandating resolution has been adopted

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<sup>132</sup> Report of the Secretary-General on the protection of civilians in armed conflict, above footnote 92, para. 17.

<sup>133</sup> Human rights due diligence policy on United Nations support to non-United Nations security forces, UN doc A/67/775 – S/2013/110, 5 March 2013.

<sup>134</sup> J. Labbé and A. Boutellis, above footnote 3, p. 555. On p. 553-554, they provide a useful reminder of incidents within MONUC that prompted the need for such a policy.

<sup>135</sup> In its recently published booklet on support relationships in armed conflict, the ICRC’s argumentation pertaining to “peace operations” relies on the HRDDP. See ICRC, *Allies, Partners and Proxies, Managing support relationship in armed conflict to reduce the human cost of war*, 2021, p. 36, available at: [https://shop.icrc.org/allies-partners-and-proxies-managing-support-relationships-in-armed-conflict-to-reduce-the-human-cost-of-war.html?\\_\\_store=en](https://shop.icrc.org/allies-partners-and-proxies-managing-support-relationships-in-armed-conflict-to-reduce-the-human-cost-of-war.html?__store=en).

<sup>136</sup> See notably P. Labuda, above footnote 69, p. 5, 14-16; J. Labbé and A. Boutellis, above footnote 3, p. 554-556.

<sup>137</sup> HRDDP, above footnote 133, Principle 8.

<sup>138</sup> A4P, above footnote 61, para. 22.

<sup>139</sup> L. Smith, above footnote 32, p. 156.

<sup>140</sup> HRDDP, above footnote 133, (core) principle 1.

<sup>141</sup> L. Smith, above footnote 32, p. 156; and P. Labuda, above footnote 68, p. 15.

<sup>142</sup> P. Labuda, above footnote 69, p. 14.

<sup>143</sup> For detailed recommendations pertaining to the protection of civilians in peacekeeping, see CIVIC, above footnote 124, p. 8-9; S. Adamczyk, above footnote 53, p. 9-10; and P. Labuda, above footnote 69, p. 34-39.

<sup>144</sup> S. McCosker, above footnote 22, p. 30; and A. Breslin, above footnote 22, p. 35.

but should rather consist in a continuous and iterative process. A process during which States should obviously be mindful of the unavoidable trade-offs resulting from each decision.

- Certain activities (such as training on IHL) included in peacekeeping operations' mandates in order to protect civilians from the violence of armed conflict should consistently be implemented in close cooperation with the ICRC, other humanitarian organizations and relevant agencies of the United Nations. This was already envisaged in resolution 1265.<sup>145</sup> These entities should also be consulted at the early stages of the process of mandates' elaboration and/or renewal, notably through the Informal Experts Group on PoC.<sup>146</sup>
- “[...][W]hat makes [the HRDDP] truly remarkable is the opportunity it creates for proactive and constructive engagement [...] to protect civilians”<sup>147</sup>, and yet it is still seriously misunderstood.<sup>148</sup> States and the United Nations should therefore not only commit to an effective and efficient implementation of the policy in the context of peacekeeping, but also support further dedicated research.<sup>149</sup>

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<sup>145</sup> Operational paragraph 20.

<sup>146</sup> See above footnote 59.

<sup>147</sup> J. Labbé and A. Boutellis, above footnote 3, p. 555.

<sup>148</sup> P. Labuda, above footnote 69, p. 16.

<sup>149</sup> L. Smith, above footnote 32, p. 157. For that matter, P. Labuda is currently working on a publication entitled “Joint

Operations with Host State Forces, the Human Rights Due Diligence Policy and Accountability for the Protection of Civilians in UN Peacekeeping”, see <https://www.patryklabuda.com/publications>.

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