



## International Humanitarian Law in Contemporary Peacekeeping Operations: Challenges and Opportunities

Wing Commander (Dr) UC Jha (Retd)

### Introduction

The United Nations (UN) is an independent global organisation for maintaining peace and security in the world. The Security Council, while acting on behalf of the UN, has been entrusted with this responsibility of maintaining peace and security. The Charter provides that the UN shall not intervene in the domestic jurisdiction of any state, except in enforcement measures taken under Chapter VII. Peacekeeping operations have traditionally been associated with Chapter VI of the Charter, dealing with the 'Pacific Settlement of Disputes'. However, the Security Council is not required to refer to a specific chapter of the Charter when passing a resolution authorising the deployment of a peacekeeping operation and has never invoked Chapter VI. In recent years, the Security Council has adopted the practice of invoking Chapter VII of the Charter when authorising the deployment of peacekeeping operations in volatile post-conflict settings where the state is unable to maintain security and public order.

The UN does not have its own military force and depends on contributions from Member States. In the past 75 years, UN peacekeepers have worked to save and change lives in the world's most fragile situations. Even though peacekeeping operations are not expressly mentioned in the Charter for the maintenance of international peace and security, peacekeeping is the largest and most visible representation of the UN. The UN has been deploying military personnel for service in peace operations since 1948. There are currently 12 peacekeeping operations led by the Department of Peace Operations. As of May 2024, 120 countries have contributed nearly 63,000 military, police, civilian employees, volunteers, and contractors in support of these UN peacekeeping operations around the world.<sup>1</sup>

The UN military personnel can be called upon to:

- Protect civilians and UN personnel.
- Monitor a disputed border.
- Monitor ceasefire.
- Monitor and observe peace processes in post-conflict areas.
- Provide security across a conflict zone.
- Provide security during elections.
- Assist in-country military personnel with training and support.
- Support free and fair elections.
- De-mining actions and minimise the risk of landmines.
- Disarm ex-combatants.
- Assist ex-combatants in implementing the peace agreements.

UN peacekeepers come from all walks of life, and have diverse backgrounds. When serving under the UN, they are united by a commitment to maintain or restore world peace and security. They share a common purpose: to protect the most vulnerable and provide support to countries transitioning from conflict to peace. The roles and responsibilities of peacekeepers are evolving as peacekeeping mandates become more complex and multidimensional. One of the biggest changes peacekeeping has seen over 75 years of its existence has been the increasingly multidimensional nature of UN peacekeeping operations. Military peacekeepers are often deployed in inhospitable and dangerous places where they face multiple challenges, especially when protecting civilians.

## Legal Framework

International law and precedent determine which legal instruments are available for a peacekeeping mission. The UN is composed of various bodies, including the General Assembly and the Security Council. In addition, several other UN bodies, such as the World Health Organisation or regional organisations, may participate in peacekeeping operations. Peacekeepers typically comprise military personnel, police, and civil servants. UN Security is governed by five main legal documents, outlining the responsibilities of all stakeholders:

- The UN Charter—Articles 104 and 105.<sup>2</sup>
- Convention on the Privileges and Immunities of the UN, 1946 and 1947.
- Convention on Safety of UN and its Personnel of 09 Dec 1994, and its Protocol of 2005.
- Annual resolutions of the General Assembly on the safety and security of UN personnel and associated personnel.
- UN Security Management System, Security Policy Manual.<sup>3</sup>

Other documents which are related to peacekeeping operations are as follows:

- Secretary-General's Bulletin on International Humanitarian Law (IHL), 1999.
- Secretary-General's Bulletin, Special Measures for Protection from Sexual Exploitation and Sexual Abuse, 2003.
- The UN Security Council Resolution 1325 (2000): More role for women in peacekeeping.
- Model memorandum of understanding for UN and Troop Contributing Country (TCC), 2007.
- The Conduct and Discipline Units at Headquarters and mission-based teams.

- UN Secretariat: Office of Internal Oversight Services to investigate white-collar frauds and serious misconduct.
- Domestic laws of peacekeeping country. In addition, peacekeeping personnel are to adhere to the: Ten Rules-Code of Conduct for Blue Helmets.<sup>4</sup>

Peacekeeping forces are deployed based on the consent of the host state or states. This is typically reflected in the negotiation and adoption of a Status of Forces Agreement between the UN and the host state, governing matters as the legal status of the military and police contingents, communications, freedom of movement, use of flags, uniforms, and weaponry, disciplinary jurisdiction over peacekeepers (generally by the TCC), privileges and immunities of the force, and any claims procedures allowing access to justice for the local population.

**The United Nations had maintained that the international law of armed conflict does not apply to the peacekeepers because they are not combatants; they are not engaged in military offensive operations, and they are authorised to use force only in self-defence.**

## International Humanitarian Law and Peace Operations

IHL protects innocent civilians and limits the means and methods of warfare. The key principles of IHL include distinction (between civilians and combatants, and civilian objects and military objectives), proportionality (the anticipated

military advantage of an attack should not outweigh the expected harm to civilians and civilian property), precautions (to prevent, as far as possible, harm to civilians), and military necessity (necessary to accomplish a legitimate military objective).

Initially, there was some doubt about the applicability of IHL to UN forces. In 1972, proposals were made that the Additional Protocol I to the Geneva Convention of 1949 include a provision under which the Geneva Conventions would be open for accession by the UN, to apply each time the UN forces are engaged in operations. However, these proposals were not adopted following an explanation on behalf of the Secretary-General that such 'Accession would raise questions as to the legal capacity of the UN to become a party to multilateral treaties'. The UN had maintained that the international law of armed conflict does not apply to the peacekeepers because they are not combatants; they are not engaged in military offensive operations, and they are authorised to use force only in self-defence.

## Secretary-General's Bulletin on International Humanitarian Law

In 1995, the International Committee of the Red Cross convened a group of experts tasked with identifying the core IHL provisions applicable to UN peacekeeping operations. The proposal of this group formed the "Secretary-General's Bulletin on the Observance by UN Forces of IHL". The Bulletin (vide Section 10), entered into force on 12 Aug 1999.<sup>5</sup> The instructions contained in the Secretary-General's Bulletin apply to UN peacekeeping forces under UN command and control when they are actively engaged as combatants in situations of armed conflict. They apply in Chapter VII operations or Chapter VI operations in self-defence, to the extent and for the duration of their engagement.

The ten-section bulletin includes the principles of distinction between civilians and combatants and between civilian objects and military objectives, means and methods of warfare, treatment of civilians and persons *hors de combat* (out of the fight), treatment of detainees, and protection of the wounded, the sick and medical and relief personnel. The fundamental principles and rules of IHL applicable to UN forces conducting operations under UN Command and Control are as follows:

- **Impartiality.** Impartiality always guides the actions of a military component of a UN peacekeeping operation. Impartiality is understood as an objective and consistent execution of the mandate, regardless of provocation or challenge. It does not mean inaction or overlooking violations. UN peacekeepers must be impartial in their dealings with the parties to the conflict, but not neutral in the execution of their mandate; they must actively pursue the implementation of their mandate even if doing so goes against the interests of one or more of the parties. If the peacekeeping force is perceived as being partial, people may lose confidence in the UN's ability to act as a neutral party, which can damage the credibility of the mission and threaten the peace process. At worst, a perception of UN partiality could lead parties to the conflict to withdraw their consent to the presence

**United Nations peacekeepers must be impartial in their dealings with the parties to the conflict, but not neutral in the execution of their mandate; they must actively pursue the implementation of their mandate even if doing so goes against the interests of one or more of the parties.**

of the mission and return to violence as a means of resolving the conflict.

- **Consent and Cooperation.**

Peacekeeping and progress towards a just and sustainable peace rely on the consent and cooperation of the parties to the conflict. In the absence of free consent, the military component and the peacekeeping operation may find it challenging to implement their mandate. There is often very little trust between parties in the immediate post-conflict phase, and consent for a UN intervention may be uncertain. While political and military leaders may consent to a UN military presence, groups of combatants lower down the chain of command may disagree with their leaders and challenge the authority or mandate of the peacekeeping operation through violence or other acts of non-cooperation. Consent at all levels must be encouraged by building confidence among the parties and enhancing their stake in and ownership of the peace process. Impartiality is the best guarantee that a mission will gain and retain the consent of all parties.

- **Appropriate Use of Force.**

Since peacekeeping operations require the consent of the parties to a conflict, military forces under UN command are not usually required to use force beyond that necessary for self-defence. Self-defence includes the right to protect oneself, other UN personnel, UN property and any other persons under UN protection. The use of force by the military component will depend on the mandate of the peacekeeping operation and the rules of engagement. The rules of engagement for the peacekeeping operation must clarify the different levels of force that can be used in various circumstances, how each level of force should be applied and any authorisations that may need to be obtained from commanders.

- **Unity and International Character.**

To be effective, a peacekeeping operation must function as an integrated unit reflecting the will and presence of the international community as a whole. This is particularly true for a military

component composed of several different national contingents. Military forces under UN command must always respect the international character of their duties and not serve any national or other interests. International forces may be vulnerable to attempts by parties to a conflict to exploit differences between the contingents. Maintaining the integrated, strictly international character of the operation is the best safeguard against such attempts and enhances the legitimacy of the overall mission.

## Respect for Principles of International Humanitarian Law

The fundamental principles of IHL, as described above, apply to military forces under UN command. In the case of violation of IHL, UN military personnel are subject to prosecution under their national systems of military justice. Military forces under UN command must make a clear distinction between civilians and combatants and direct military operations only against combatants and military objectives. The right of a UN force to use means and methods of combat is also not unlimited. A UN force must respect the rules prohibiting or restricting the use of certain weapons and methods of combat under the relevant instruments of IHL.<sup>6</sup> In the treatment of civilians, women and children require special protection from rape, enforced prostitution, and any other form of indecent and criminal assault.

## Respect for Local Laws and Customs

All peacekeeping operation personnel must respect local laws and customs and maintain the highest standards of integrity in their conduct. When a peacekeeping operation includes a military component, specially formed military units of several thousand personnel, the presence of the peacekeeping operation is seen and felt throughout the mission area. Respect for the peacekeeping force is directly related to its success in maintaining high standards of professionalism, integrity, and impartiality and in its general behaviour in interactions with the local

population. This respect is required to sustain the cooperation and consent of the local population. Although a peacekeeping mission and its personnel enjoy certain privileges and immunities accorded to the UN to facilitate its effective operation, these do not change the obligation of all mission personnel to obey local laws and respect social, cultural and religious norms. In their behaviour, military personnel must always maintain exemplary standards of conduct, following the Code of Conduct. Those who breach the Code must be duly disciplined by their national authorities, including the imposition of legal sanctions when appropriate.

## Challenges and Opportunities

Contemporary conflicts are frequently characterised by civilians bearing the brunt of hostilities, the destruction of cities, many displaced persons, arbitrary restrictions on humanitarian access, deliberate attacks on medical personnel and facilities, sexual violence committed against women and girls, but also men and boys, as well as ill-treatment of persons deprived of their liberty. Some of the challenges and

opportunities for IHL in the peacekeeping missions are as follows:

- **Challenges.**

- **The Classification of Conflict with Multiple Parties.** To determine which body of international law governs a situation of violence—i.e., International Human Rights Law (IHRL) only, or IHL and IHRL—it is necessary to examine whether the situation amounts to an armed conflict. IHL recognises two kinds of armed conflicts: International Armed Conflict (IAC) and Non-International Armed Conflict (NIAC). The differences between the rules of IHL which are applicable in two classical categories of armed conflict have somehow diminished in recent years. Some of the rules which were exclusively applicable in IAC have been extended to NIAC. This has also led to a debate about whether there is a need for the unification of IHL and whether the classification of armed conflict into IAC and NIAC would be

**The rules of International Humanitarian Law are supposed to be implemented by State institutions. But in many situations these institutions are too weak or they do not exist anymore. In addition, we may have contractors, warlords, terrorists, foreign fighters, etc. who make the issue complicated.**

useful in the protection of victims of armed conflict. The rules of IHL are supposed to be implemented by State institutions. But in many situations, these institutions are too weak or they do not exist anymore. In addition, we may have contractors, warlords, terrorists, foreign fighters, etc., who make the issue complicated. The insurgents may take refuge among the general population or refugees, leading to a situation where it becomes difficult to identify the parties to the conflict.<sup>7</sup> During armed conflict, the peacekeepers may find it challenging how IHL or human rights would apply to such captured persons.<sup>8</sup>

- **Party to an Armed Conflict.** In order to carry out peace operations, the UN relies on its member states to provide armed forces at its disposal. When TCCs send armed forces for UN Peacekeeping missions, they never transfer full authority over them to the UN. TCCs always retain some form of authority and control over the armed forces they lend, even when they are operating on behalf of the UN. These troops continue to act simultaneously as organs of their respective states. TCCs never delegate 'Full Command' to the UN involved in peace operations but generally transfer only 'Operational Command' or 'Operational Control' to them. This dual status of the armed forces involved in peace operations conducted under the UN complicates the issue of who should be considered a party when hostilities reach the threshold of armed conflict: UN or TCC.<sup>9</sup> Another related issue is the circumstances under which a peacekeeping mission becomes involved in armed conflict. There is the possibility that a UN peacekeeping mission supports government forces by sharing operational intelligence and thus indirectly becoming a party to an existing conflict. For example, the peacekeeping operation in Mali, the UN Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA), has shared intelligence and conducted joint

**When a peacekeeping mission engages in military operations, it becomes a party to an armed conflict on the same basis as any armed force. Once it becomes a party to an armed conflict, all military personnel would collectively lose the protection given to civilians under International Humanitarian Law, until the end of the armed conflict.**

patrol with the French forces deployed pursuant to a Security Council mandate. Therefore, any support provided by a UN peacekeeping mission to state's armed forces, such as the provision of intelligence for use in ongoing military operations, could make the mission a party to an armed conflict. When a peacekeeping mission engages in military operations, it becomes a party to an armed conflict on the same basis as any armed force. Once it becomes a party to an armed conflict, all military personnel would collectively lose the protection given to civilians under IHL, until the end of the armed conflict.<sup>10</sup>

- **Robustness and Application of International Humanitarian Law.** The Security Council has gradually adopted the notion of 'Robust Peacekeeping' and rejected the idea that the mere presence of blue-helmeted soldiers on the ground helps quell combat. This poses a significant challenge to the applicability of IHL. The concept of robust peacekeeping operations or, in other words, the use of force was never defined. For instance, Resolution 1565 regarding the UN Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO), mentions, "To use all necessary means, within its capacity and in the areas where its armed units are deployed". This vagueness in the Resolution leads to multiple interpretations, allowing UN peacekeepers to act according to what they believe is right. The ambiguities in the statements of the mandate and IHL suggest that modern peacekeeping requires a proper, clear, and distinct guidance taking into consideration all possible outcomes that peacekeeping forces may face on the ground.<sup>11</sup>

- **Use of Force and Increasing Casualties.** Historically peacekeepers have been military personnel, trained to fight and win wars. However, when deployed in the UN peacekeeping operations these soldiers do not wage wars to defeat specific enemies. Instead, when peacekeepers use force, it is supposed to be for a particular purpose with explicit limitations.<sup>12</sup> The UN Department

of Peace Operations document defines the term 'Force' as the use of, or threat to use, physical means to impose one's will. The UN document further clarifies, "In peacekeeping operations, peacekeepers are authorised to use force in self-defence and to execute their mandated tasks in appropriate situations. Depending upon the mandate, this may include the authorisation to use force for the protection of civilians. The objective of the use of force in peacekeeping operations is to influence and deter, not necessarily to defeat threats seeking to threaten or harm UN personnel or associated personnel or the civilian population. In some cases, the use of force may also be authorised to respond to other threats, including those caused by armed spoilers intending to distract peace processes".<sup>13</sup> This limitation of, 'Where', 'When' And 'How' to use force or the modern forces has posed a fundamental set of challenges for modern military operations.<sup>14</sup> According to White (2015), "At its core the limited use of force available to peacekeepers means self-defence, which includes a peacekeeper using force in defence of his own life; his comrades and any person entrusted in his care; as well as defending his post, convoy, vehicle or weapon. Beyond this there has been a continuing lack of clarity as to whether the force could also 'Defend' its mandate".<sup>15</sup> Due to these ambiguities, peacekeepers have been on the receiving end. As reported, 4,380 personnel have lost their lives serving in UN operations, including nearly 1,000 killed by violence; with India having maximum fatality (178) while serving in 26 missions.<sup>16</sup> One of the major reasons for this has been issue of 'Unclear, unimplementable, and undeliverable mandates' by the Security Council.<sup>17</sup>

- **Sexual Violence and Exploitation by Peacekeeping Units.** Under IHL, one of the major responsibilities of a commander in an armed conflict is to ensure effective penal action against the violators of IHL. Peacekeepers, police members, and civilian personnel serving in peacekeeping missions have engaged in

**Under International Humanitarian Law, hospitals and medical facilities are granted protected status. However, these protections are not absolute, and certain conditions may result in the loss of that protected status.**

sexual harassment, behavioural misconduct, and misunderstanding related to local customs, mishandling of UN property, and discrimination based on age, race, and gender.<sup>18</sup> For example, more than 100 Sri Lankan peacekeepers were repatriated from the mission for sexual exploitation and harassment.<sup>19</sup> There have been many such cases involving peacekeepers from other countries as well. Such unlawful actions tarnish the reputation of the UN, undermine the success of an operation, and even affect the safety and security of the blue helmets. Unfortunately, a force commander in a UN mission does not have any authority to initiate or take disciplinary action against any such violator.<sup>20</sup> The countries to which such violators belong rarely take any action against them after repatriation.<sup>21</sup>

One of the emerging issues in IHL is that states and international bodies are required to provide reparations when they are responsible for violations of rules of international law. This is international state responsibility.<sup>22</sup> In terms of substantive justice, the International Criminal Court has ordered various forms of reparations corresponding to different categories referred to in the UN Principles: compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition, as individual and/or collective measures.<sup>23</sup> The UN practice of repatriating any UN personnel implicated in sexual exploitation or abuse must be discontinued as it has a double-negative consequence. It not only removes the alleged offender from any effective prosecution in the cases of alleged wrongdoing but also removes them from any jurisdiction within which the victim would have any chance of securing an appropriate reparations.<sup>24</sup>

- **Urban Warfare.** While IHL is clear in its principles, the challenges of implementing IHL in peacekeeping operations in urban areas are complex. In densely populated urban areas, the inevitable proximity of military targets to civilians makes it difficult to ensure that attacks are proportionate and do not harm civilians. Under IHL, hospitals and medical facilities

are granted protected status. However, these protections are not absolute, and certain conditions may result in the loss of that protected status. Military operations by peacekeepers in urban settings are particularly complex. The fear of surprise attacks is likely to reduce the ability of peacekeepers to properly identify enemy forces and military objectives, posing a serious challenge to the principle of distinction.

- **Environmental Protection.**

In addition, the urgent deployment of thousands of civilians, police, and military personnel requires a large amount of logistical support in countries with very little infrastructure. UN forces may have to generate their own electrical power, use a fleet of vehicles and aircraft, which emit greenhouse gases and cause potential soil pollution. They also generate a significant amount of solid waste (hazardous and non-hazardous) and require the use of potable and non-potable water; this can negatively impact the host country's environment.<sup>25</sup> In places where water is a scarce resource, the local community may see the UN mission as a resource competitor. The peacekeeping missions need to achieve maximum efficiency in their use of natural resources and operate at minimum risk to people, societies, and ecosystems; contributing to a positive impact on these wherever possible.

**Even if one argues that the United Nations is not bound by International Humanitarian Law, the states acting on behalf of the organisation always retain their own obligations and must thus still ensure respect for that legal framework.**

- **Opportunities.**

- **Ensuring better respect for the International Humanitarian Law.**

The most important issue in ongoing conflicts is the lack of political will among belligerent parties to respect IHL. The serious violations of IHL that occurred during the recent armed conflict in Syria, Russia-Ukraine and now Israel-Hamas, and elsewhere mobilised public opinion to find new ways for the international community to put an end to such violations. The Article 1 obligation to 'Respect and ensure respect' for the Four Geneva Conventions encompasses two sets of duties. First, a party to the Geneva

Conventions must 'Respect' the treaty by honouring its provisions and refraining from any direct violations. Second, that party must 'Ensure respect for' the treaty by positively influencing the conduct by other actors in accordance with its provisions. Thus, under its primary duties, a state cannot commit atrocities against protected persons/civilians, and under its secondary duties, the state cannot take actions that facilitate or tolerate the commission of atrocities by other actors. Even if one argues that the UN is not bound by IHL, the states acting on behalf of the organisation always retain their own obligations and must thus still ensure respect for that legal framework. Today, common Article 1 has reached customary status, and the UN must ensure respect for IHL in the context of peacekeeping missions.<sup>26</sup>

- **Employing New Means of Warfare.**

The UN is gradually using sophisticated technologies for the protection of civilians. The use of attack helicopters was an important means of robust peacekeeping in the Central African Republic. In protecting Haitian civilians from gangs in 2007, night vision devices were effectively used by the UN peacekeepers. Similarly, non-lethal weapons deployed in the Democratic Republic of the Congo (DRC), helped the UN deal with civilian threats without recourse to lethal force.<sup>27</sup> All these proven technologies have helped peace operations save civilian lives. UN missions should be equipped with advanced weapon systems to demonstrate to the conflicting parties their capacity for overwhelming force. The Dutch and Swedish contingents in the Mali mission have deployed drones. The drones have spotted illegal checkpoints and illicit mining, surveyed destroyed villages, located rebel camps, and determined the presence of weaponry.<sup>28</sup> Keeping in view the safety of peacekeepers, the feasibility of using robotic weapon systems, lethal drones, or cyber weapons as new means of warfare must be examined.<sup>29</sup>

- **Use of Non-Lethal Weapons (NLWs).**

The UN forces have been using Riot-Control Agents (RCAs) during their deployment in various missions.<sup>30</sup> The

Chemical Weapons Convention allows RCAs for domestic law enforcement purposes. There is a possibility of the use of NLWs in peacekeeping missions.<sup>31</sup> To deal with violent offenders, hostile crowds, and a host of threats to UN personnel and civilians, NLWs should be an available option.<sup>32</sup> Such weapons can assist with arrests while posing little or no danger to the local population. Tasers are now routinely used by police forces in several countries. With proper training and supervision, they could become part of the UN's NLW for peacekeeping.<sup>33</sup> Both lethal and NLWs can incorporate password protection and biometric identification, such as digital locks, to make sure that the intended user is the one operating the device. This can reduce the danger of misuse and theft of weapons.

• **Information Warfare.**

In a number of UN missions, disinformation has targeted UN peacekeeping operations, particularly in the Central African Republic (MINUSCA), Mali (MINUSMA), and the Democratic Republic of the Congo (MONUSCO). This includes false allegations that UN peacekeepers are trafficking weapons to armed groups, supporting terrorists, and exploiting natural resources. This disinformation makes peacekeeping operations difficult and places the safety of peacekeepers at risk.<sup>34</sup> The UN staff at headquarters and at missions do attempt to clarify their positions to address disinformation against the UN. However, the UN response has been very slow in addressing disinformation. Sun Tzu said, "For to win one hundred victories in one hundred battles is not the acme of skill. To subdue an enemy without fighting is the acme of skill". The information tools available for information operations in support of peace missions must be exploited to their full extent. Information warfare is any action to deny, exploit, corrupt, or destroy the enemy's information and its functions; protecting ourselves against

those actions and exploiting our own military information functions.<sup>35</sup> In most cases, UN peacekeeping missions will not be manipulating data to present a false picture; they should project a more accurate accounting of events to the leadership and population of the parties to the conflict. The character of war is constantly evolving, and the force commanders must ensure that information is effectively exploited in the peacekeeping missions as a method of warfare.<sup>36</sup>

## Challenges Faced by the Peacekeepers in Africa

Peacekeeping and conflict resolution in Africa face serious challenges due to the complex nature of conflicts and the presence of a large number of non-

**The fact that International Humanitarian Law (IHL) is applicable to United Nations peacekeeping operations does not mean that all those peacekeeping operations are bound by IHL applies when an armed conflict exists and is relevant to peacekeepers only when they are involved in operations in the territory in which they are deployed.**

state actors. Today, nearly 41,000 peacekeeping personnel are deployed in five missions across Africa. This includes: Abyei (UNISFA), the Central African Republic (MINUSCA), DRC (MONUSCO), Somalia (UNSOM), South Sudan (UNMISS), and Western Sahara (MINURSO).<sup>37</sup> In most of these countries, civil wars and insurgencies have killed thousands of civilians and destabilised surrounding regions. The mission mandates

in these countries have become stretched, and the responsibilities of peacekeepers are sometimes blurred. There is a serious disconnect between the troop-contributing nations and those that fund missions. Wealthy nations contribute funds but send relatively few troops, whereas countries that send troops for peacekeeping missions have very little say in how missions should be mandated and designed.

For instance, for MONUSCO, maintaining control in a vast and geographically challenging region is a difficult task. In most cases, peacekeeping troops could not take any proactive actions and have only reacted.<sup>38</sup> In some key areas, unsuitable individuals have been sent by the troop-contributing countries, thus affecting the efficacy of the mission. The mission has also suffered for financial reasons. MONUSCO has faced public criticism in the DRC for its limited success in reining in non-state armed groups,



ensuring the protection of civilians and achieving peace.<sup>39</sup> Consequently, the DRC government has expressed a desire to end MONUSCO's mandate in a timely manner. The UN and its member states must ensure the protection of civilians to minimise the expectation gap. It must be very clearly stated what the UN mission will be able to achieve and what must not be expected from it.

## Conclusion

Modern UN peacekeeping operations are becoming civilianised, whereby the large military peacekeeping component is matched by the inclusion of civilian administration, humanitarian assistance, policing, electoral, and human rights monitoring and economic revival functions and personnel.<sup>40</sup> Although, peacekeeping has no express legal basis in the UN Charter, these operations are conducted in a manner consistent with the Secretary-General's Bulletin of 1999. The fact that IHL is applicable to UN peacekeeping operations does not mean that all those peacekeeping operations are bound by IHL

applies when an armed conflict exists and is relevant to peacekeepers only when they are involved in operations in the territory in which they are deployed.

The armed conflicts in the last two decades have generated a range of challenges to UN peace operations. The growing importance of non-state actors, including transnational illicit networks, globally connected violent extremist groups, and private actors wielding new technologies, poses a serious challenge to peacekeeping missions. The military components of peacekeeping missions may not be sufficiently equipped to face such challenges. The UN must adopt a strategy for technology and innovation for peacekeeping. This article attempts to highlight a number of legal challenges to IHL that UN peacekeeping could currently be facing. In addition, there are a few opportunities that military contingents must exploit to ensure better protection of civilians which has now become a centrepiece of conflict management at the UN. It must be clearly understood that peacekeeping alone cannot provide solutions to contemporary problems given the ever-increasing complexities of the existing world order.

## Endnotes

1 In addition to 12 peacekeeping missions, the UN Department of Peacekeeping Operations directs one political mission: the UN Assistance Mission in Afghanistan (UNAMA). Accessed on 20 Jul 2024 from: [https://peacekeeping.un.org/sites/default/files/02\\_country\\_ranking\\_74\\_may\\_2024.pdf](https://peacekeeping.un.org/sites/default/files/02_country_ranking_74_may_2024.pdf).

2 Article 104 of the UN Charter states, "The Organisation shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes". Article 105 provides, "1. The Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes. 2. Representatives of the Members of the United Nations and officials of the Organisation shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation".

3 The Security Policy Manual (SPM) constitutes a policy framework for enabling the conduct of UN operations while ensuring the safety and security of UN personnel. The Security Policy Manual contains a series of security policies that guide all actors within the United Nations Security Management System (UNSMS), including the UN Department for Safety and Security (UNDSS).

4 The TEN Rules, accessed 20 Jul 2024 from: [https://www.un.org/en/ethics/assets/pdfs/ten\\_rules.pdf](https://www.un.org/en/ethics/assets/pdfs/ten_rules.pdf).

5 UN Document: No. ST/SGB/1999/13 of 06 Aug 1999.

6 Section 6 of the Secretary-General's Bulletin, UN Document: No. ST/SGB/1999/13 of 06 Aug 1999.

7 For more details, see: Bednar Daniel and Markova Viktoria Bednar, "Selected Legal Issues Related to the Legal Status of the Individuals Participating in the International Armed Conflict on the Territory of Ukraine", *Syracuse Law Review* (Vol. 73, 2023), pp. 451-276.

8 The Secretary-General's Bulletin of 1999 and the Interim Standard Operating Procedures (SOP) on Detention by UN peacekeeping operations were providing at that time the minimum rules on the humane treatment of captured persons and the conditions of any facility in which captured persons are to be held. However, the Bulletin merely lays down some basic principles. Moreover, the Interim SOP on Detention was not crafted with a situation in mind in which a United Nations peacekeeping operation captures persons in the course of an armed conflict.

- 9 Ferraro Tristan, "The applicability and application of international humanitarian law to multinational forces", *International Review of the Red Cross* (Vol. 95, No. 891/892, 2013), pp. 561–612.
- 10 Mathias Stephens, "UN Peacekeeping Today: Legal Challenges and Uncertainties", *Melbourne Journal of International Law* (Vol. 18, 2017), pp. 1-16.
- 11 The attack led by UN peacekeeping forces on armed groups developed into a warlike situation that resulted in high casualties. In regards to this event, the Department of Peacekeeping Operation (DPKO) and the then force commander Babacar Gaye remarked that "It may look like war, but it is peacekeeping". Lacey Marc, "UN forces tougher tactics to secure peace", *The New York Times*, 23 May 2005.
- 12 Williams Paul D. and Bellamy Alex J., *Understanding Peacekeeping* (UK, Polity Press, 2012), p. 307.
- 13 The UN Department of Peacekeeping Operations, Guidelines on the Use of Force by Military Components in UN Peacekeeping Operation (Ref: 2016.24, January 2017), pp. 29. Accessed 20 Jul 2024 from: <https://info.publicintelligence.net/UN-PeacekeepingForces-2017.pdf>.
- 14 The use of force in peacekeeping operations must comply with international laws, including applicable international humanitarian law and human rights norms, principles and standards. At all times, the use of force must be consistent with the principles of necessity, proportionality, legality, distinction, precaution, humanity and accountability. Any force used must be limited in its intensity and duration to what is necessary to achieve the authorized objective and, commensurate with the threat. For more details see: White Nigel D., "Peacekeeping and International Law", in KoopsJoachin A. et.al., (ed), *The Oxford Handbook of United Nations Peacekeeping Operations*, (Oxford University Press, 2017), pp. 43-59.
- 15 While Nigel D., "The use of weapons in peace operations", in Casey-Maslen Stuart (ed), *Weapons Under International Human Rights Law*, (Cambridge: Cambridge University Press, 2015), pp. 196-237.
- 16 Figure as on 30 May 2024, accessed on 20 Jul 2024 from: <https://peacekeeping.un.org/en/fatalities>.
- 17 Findlay Trover, *The Use of Force in UN Peace Operations*, (Oxford University Press/SIPRI, 2002), p. 351.
- 18 Simic Olivera and Melanie O'Brien, "Peacekeeper Babies': An Unintended Legacy of United Nations Peace Support Operations", *International Peacekeeping* (Vol. 21, No. 3, 2014), pp. 345-363; Peltier Elian, UN Peacekeepers in Haiti Said to Have Fathered Hundreds of Children, *The New York Times*, (18 Dec 2019); Lee Sabine and Bartels Susan, 'They put a few coins in your hands to drop a baby in you' – 265 stories of Haitian children abandoned by UN fathers, *The Conversation*, (17 Dec 2019).
- 19 In Nov 2007, 114 members of the 950 member Sri Lankan Army peacekeeping mission in Haiti were accused of sexual misconduct and abuse. 108 members, including 3 officers of the 950-member-strong Sri Lanka peacekeeping contingent, were sent back after being implicated in alleged misconduct and sexual abuse. Accessed 20 Jul 2024 from: [https://colombogazette.com/2017/11/09/un-takes-note-of-claims-made-against-sri-lankan-army/#google\\_vignette](https://colombogazette.com/2017/11/09/un-takes-note-of-claims-made-against-sri-lankan-army/#google_vignette).
- 20 Troop-contributing countries currently have 'Exclusive' criminal jurisdiction over their troops, which are immune from the jurisdiction of host states. Mathias Stephen, UN Peacekeeping Today: Legal Challenges and Uncertainties, *Melbourne Journal of International Law* (Vol. 18, 2017), pp. 1-16.
- 21 The Security Council on 11 Mar 2016, adopted Resolution 2272 which focused solely on addressing sexual abuse by UN peacekeepers. The Member States are called upon to investigate and hold perpetrators accountable, and to repatriate units 'When there is credible evidence of widespread or systematic sexual exploitation or abuse'; they are urged to take 'Concrete steps aimed at preventing and combating impunity' for these crimes.
- 22 Salmon Elizabeth and Leon-Acevedo J. P., Reparation for Victims of Serious Violations of International Humanitarian Law: New Developments, *International Review of the Red Cross*, (Vol. 104, No. 919, Jun 2022), pp. 1315-1343.
- 23 UN General Assembly Resolution adopted on 15 Dec 2005, UN Principles 19-23; UN Doc. A/RES/60/147 dated 21 Mar 2006.
- 24 Evans Christine, *The Right to Reparation in International Law for Victims of Armed Conflict*, (Cambridge: Cambridge University Press, 2012), pp. 299.

25 Peacekeeping Without Accountability: The United Nations' Responsibility for the Haitian Cholera Epidemic, Yale Law School, pp. 80; UN peacekeepers from Nepal introduced cholera to Haiti (MINUSTAH) in 2010. The disease killed over 8,100 people and made hundreds of thousands sick. The UN has acknowledged that it played a role in an outbreak of cholera in Haiti. Scientific studies have shown that Nepalese UN troops were the source of the disease - but the UN repeatedly denied responsibility until now. The UN still maintains that it is protected by diplomatic immunity from claims for compensation from victims' families. UN admits role in Haiti's deadly cholera outbreak, *BBC News*, (19 Aug 2016). Accessed 20 Jul 2024 from: <https://www.bbc.com/news/world-latin-america-37126747>.

26 IHL is a legal framework applicable during (international or non-international) armed conflicts. However, because common article 1 applies in all circumstances, the United Nations does not need to be involved in a conflict to be obligated to ensure respect for IHL. When exercising command and control over a peacekeeping mission, the UN is a party to the armed conflict. In that instance, both the internal and external positive dimensions of common article 1 find relevance. Tatiana Avanthay, *The UN Security Council and Common Article 1: Understanding the Role of Peacekeeping Operations in Ensuring Respect for IHL*, Working Paper, The Geneva Academy of International Humanitarian Law and Human Rights (Oct 2021), pp. 21.

27 In Somalia, in the early 1990s, US forces had to deal with rock-throwing children and people stealing equipment from vehicles, even when they were moving. The soldiers explored nonlethal alternatives, including tent pegs, batons, sticks and cayenne pepper spray to repel unarmed Somalis who harassed them. The pepper spray became so effective that, by the end of the tour, the troops found that simply waving a can in the air was enough to warn Somalis off. Dorn A. Walter, *Crucial Technologies for the Protection of Civilians by UN Peace Operations*, *Global Governance*, (Vol. 29, 2023), pp. 245-258.

28 Dorn A. Walter, *Smart Peacekeeping: Toward Tech-Enabled UN Operations* (New York: International Peace Institute, 2016), p. 36.

29 Dorm, op cit., p. 250.

30 There is no internationally agreed definition of an 'Incapacitating chemical agent' (RCA). RCAs are a class of NLWs that include tear gas, pepper spray, and other irritants, lacrimators (or tear producers), and sternutators (or cough and sneeze producers). Almost every RCA causes pain and affects unprotected eyes, skin, and respiratory organs to control the individual's activities.

31 In 2000, when US military police units were deployed to Kosovo, NLWs were part of their mission packages. The military police conducted peace support operations, civil-military operations, and provided support to local law enforcement for various missions. The non-lethal options provided the means to protect US troops, deal with a dangerous and unruly mob, and keep the moral high ground by not jeopardising unnecessary casualties. Capstick Paul R., *Non-Lethal Weapons and Strategic Policy Implications for 21<sup>st</sup> Century Peace Operations*, US Army War College (2001), p. 25.

32 States shall ensure that, prior to the procurement of, and equipping of law enforcement officials with, less-lethal weapons or items of related equipment, a legal review is conducted to determine whether this would, in some or all circumstances, be prohibited by any rule of international or domestic law, in particular human rights law. *The United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, United Nations High Commissioner for Human Rights, New York, 2020.

33 A few NLW technologies, which can be incorporated in the UN peace missions, are as follows: (a) Crowd Control: To influence the behaviour of a potentially hostile crowd, as well as the capability of controlling a rioting mob, two situations generally encountered in peace support operations. (b) Incapacitation: To capture specified individuals, such as those hiding in a crowd, without harming individuals nearby. Incapacitation effects should be reversible under the guiding principles. They should be able to be directed either at a group or at individuals. (c) Area Denial: To create physical barriers or systems that cause discomfort (or pain) to those who enter the denied area. (d) Clearing Facilities: To facilitate military operations in urban areas by reducing the risks of civilian casualties and collateral damage, while simultaneously minimising the advantages accruing to opponents defending a built-up area. (e) Entanglement Munitions: Mainly nets to stop and check vehicles. For more details see: Jha U.C. and Khera Kishore Kumar, *Modern Non-Lethal Weapons*, (New Delhi: Vij Books India Pvt Ltd, 2021), pp. 92-110.

34 Trithart Albert, *Disinformation Against UN Peacekeeping Operations*, International Peace Institute, (November 2022), pp. 1-16. Accessed 20 Jul 2024 from: <https://www.ipinst.org/2022/11/disinformation-against-un-peacekeeping-operations>.

35 Borden Andrew, What is Information Warfare? Accessed 20 Jul 2024 from: <https://www.airuniversity.af.edu/Portals/10/ASPI/journals/Chronicles/borden.pdf>.

36 Biller Jeffrey, The Strategic Use of Ransomware Operations as Method of Warfare, *International Law Studies* (Vol. 100, 2023), pp. 483-512.

37 As on 30 Jun 2024, Accessed 03 Aug 2024 from <https://peacekeeping.un.org/en/troop-and-police-contributors>.

38 Eberle Beat, The Future of MONUSCO, GIS Reports, 22 Nov 2023. Accessed 03 Aug 2024 from: available at: <https://www.gisreportsonline.com/r/un-drc-monusco/>.

39 Klobucista Claire and Mariel Ferragamo, The Role of Peacekeeping in Africa, *Council on Foreign Relations*, 12 Dec 2023. Accessed 03 Aug 2024 from: <https://www.cfr.org/background/role-peacekeeping-africa>.

40 In 2017 the UNDP interviewed 495 young African men who had voluntarily joined violent extremist groups. The study found they were motivated by a sense of grievance toward, and a lack of confidence in, their governments. For them, the extremist ideologies were a way to escape a future with no possibility of positive change. The study concluded that improved public policy and governance was a far more effective response to violent extremism than a military one. Jett Dennis, Does peacekeeping have a future? Here's a discussion of the fundamental challenge it faces today, *The Foreign Service Journal*, May 2019, accessed on 20 Jul 2024 from: <https://afsa.org/why-peacekeeping-fails>.

#### About the Author



**Wing Commander (Dr) UC Jha (Retd)**, a military veteran, did his PhD in Law and Governance from Jawaharlal Nehru University. His research focuses on the military legal system, the international humanitarian law and human rights law and their impact on the functioning of the armed forces. His work comprises 30 books and over 150 articles published in various journals and newspapers. His recent books include Chinese Military Legal System; Biological Weapon: Coronavirus, Weapon of Mass Destruction?; Human Rights in the Armed Forces: An Analysis of Article 33; Modern Non-Lethal Weapons: Concepts, Application, Legal and Moral Perspective; and Nuclear Weapons: Untangling the Societal Enigma.

#### About the USI

The United Service Institution of India was founded in 1870 by a soldier scholar, Colonel (later Major General) Sir Charles MacGregor 'For the furtherance of interest and knowledge in the Art, Science and Literature of National Security in general and Defence Services, in particular'. It commenced publishing its Journal in 1871. USI also publishes reports of its members and research scholars as books, monographs, and occasional papers (pertaining to security matters). The present Director General is Major General BK Sharma, AVSM, SM\*\* (Retd).



### United Service Institution of India (USI)

Rao Tula Ram Marg, Opposite Signals Enclave, New Delhi-110057  
Tele: 2086 2316/ Fax: 2086 2315, E-mail: [dde@usiofindia.org](mailto:dde@usiofindia.org)