

# No peace to keep, only civilians to protect

Reconciling politics & protection within UN Peacekeeping Operations through international law

Master's Thesis in International Operational Law  
Swedish Defence University, 2023  
15 ECTS

Anna Örnéus

## **Table of contents**

<b>Table of contents</b>	<b>1</b>
<b>1. Introduction</b>	<b>2</b>
<b>2. Normative and (or) legal framework [copied title] / The Legal Framework</b>	<b>3</b>
2.1 The UN Charter and the Implied Power of Peacekeeping	3
2.2 International Humanitarian and Human Rights Law	5
<b>3. The Peacekeeping Framework</b>	<b>6</b>
3.1 The Reinterpreted Principles	7
3.2 The Primacy of Politics	9
3.3 Stabilization and the Extension of State Authority	10
<b>4. Protection of Civilians Framework</b>	<b>11</b>
4.1 The Policy Framework and Conceptual Understanding	11
4.2 Political Violence, Political Protection	13
4.3 An Obligation to Protect?	14
<b>5. Reconciling Politics and Protection</b>	<b>17</b>
<b>Bibliography</b>	<b>20</b>

## 1. Introduction

With mounting pressure on the international community “to do something” when faced with human suffering, blue helmets are deployed to areas where there is “little or no peace to keep.”<sup>1</sup> To this end, the Security Council has developed a practice of authorizing Protection of Civilians (PoC) mandates under Chapter VII of the UN Charter. It has been nearly a quarter of a century since the deployment of the first peacekeeping operation authorized with the protection of civilians. Yet, the dire need for strengthened protection of civilians and compliance with international humanitarian and human rights law remains.<sup>2</sup>

The concept of the UN acting as a protector first gained traction following its failure to do so when faced with mass atrocities in the 1990s.<sup>3</sup> The inaction of peacekeepers when confronted with violations of international law sparked the reassessment and reimagining of what peace operations are to entail, eventually resulting in the robust protection mandates of today. The first thematic resolution on protection and subsequent mandate was adopted in 1999.<sup>4</sup> Since then, the PoC agenda has expanded significantly and become an integral part of peacekeeping mandates. The priority of protection is reflected in the mandates, the continued thematic resolutions issued by the Security Council reaffirming the practice, as well as the Secretary General’s annual reports on “the protection of civilians in armed conflict.”<sup>5</sup>

Together with the ‘primacy of politics,’ the concept of protection of civilians has become a cornerstone of contemporary peacekeeping and a core obligation.<sup>6</sup> These mandates, and peacekeeping as a phenomena, have been coloured by an increasing willingness to utilize military means to manage conflict, as opposed to political tools to keep peace. Essentially, PoC embodies the reinterpreted the reimagined role of the peacekeeper. Protection is understood to as, the mission being authorized to:

without prejudice to the primary responsibility of the host state, integrated and coordinated activities by all civilian and uniformed mission components to prevent, deter or respond to threats of physical violence against civilians within the mission’s capabilities and areas of deployment through the use of all necessary means, up to and including deadly force.<sup>7</sup>

If PKOs are to operate in ongoing conflicts and prevent civilian suffering at the hands of governments and spoilers alike, they must use force in an effective manner, but perhaps more importantly, find practicable strategies to reap the benefits gained by robust action and sow them to ensure political change. If the PKO is unable to leverage the military gains obtained through robust use of force, the risk of undermining both its role and the possibility of a political peace process remains.

The protection of civilians and the primacy of politics, the two central pillars of contemporary peacekeeping, are seemingly in juxtaposition, with the former potentially reducing the political will and

<sup>1</sup> High-level Independent Panel on Peace Operations, ‘Uniting our strengths for peace: politics, partnership and people,’ UN Doc. A/70/95–S/2015/446 (2015) [HIPPO Report], paras 107-108.

<sup>2</sup> Secretary-General Report on the Protection of Civilians in armed conflict, UN Doc S/2023/345 (2023), para 91.

<sup>3</sup> Mona A. Khalil, ‘Legal Aspects of the Use of Force by United Nations Peacekeepers for the Protection of Civilians’ in Haidi Willmot et al. (eds.) *Protection of Civilians* (2016), p. 205

<sup>4</sup> SC Resolution 1265, SC Resolution 1270

<sup>5</sup> See for example, the renewed MONUSCO mandate, SC Resolution 2640 (2022) UN Doc S/RES/2640, para 26(c); SC Resolution 2573 (2021) UN Doc S/RES/2573; and Report of the Secretary-General, ‘Protection of Civilians in Armed Conflict’ (2022) UN Doc S/2022/381.

<sup>6</sup> HIPPO

<sup>7</sup> PoC policy

consent of the host state effectively creating a tension with the latter as the PKO may struggle to implement the political objectives of the mission.<sup>8</sup> To give too much weight to the military nature of peacekeeping comes at the cost of political solutions that may reduce PKO ability for political maneuver. Similarly, the focus on PoC risks inducing a militarized approach. The use of force is necessary in modern peacekeeping, especially in relation to PoC, but military action should be guided by a political direction – not the other way around. The essential question to ask when considering the continued evolution of UN Peacekeeping and the role of civilian protection within it is then how to reconcile the two parallel pillars. The legal implications of the mandate and whether such an obligation to protect can form part of the ‘comprehensive and integrated approach’ remain unclear. To this end, this paper seeks to explore whether the task of extending state authority is contradictory to protection of civilian mandates.

## **2. Normative and (or) legal framework [copied title] / The Legal Framework**

In essence, the evolution of peacekeeping has been reactionary, with praxis leading doctrine as opposed to the other way around. This improvisational character has been held to be a virtue as the lack of conceptual clarity enables flexibility and pragmatism.<sup>9</sup> However, it has also created a complex normative framework based on both law and policy, meaning both legal and internal operational frameworks shape the practice of peacekeeping.

The framework governing the protection of civilians consists of the UN Charter, Security Council mandates and resolutions, as well as operational instruments such as Status of Forces Agreements (SOFAs) and Memorandas of Understanding (MoU). Other internal policies and principles also play a key role. Furthermore, both the development and the implementation of protection mandates have been shaped by other bodies of law, such as international humanitarian and human rights law. The scattered legal framework paired with the dominant role of politics necessitates making a clear distinction between legal and policy positions, and in the case of the former, delineate between legal authority and obligation.<sup>10</sup>

### **2.1 The UN Charter and the Implied Power of Peacekeeping**

The concept of the UN ‘protecting civilians’ derives from the Security Council authorizing peacekeeping operations, placing the legal foundation for the protection of civilians lies in the UN Charter. At heart, the Charter is a collective security agreement. Member states renounce the individual use of force<sup>11</sup> except in self-defense<sup>12</sup> in favor of the pacific settlement of disputes or collective enforcement.<sup>13</sup> Whilst the Charter disables the individual state to use force in its international relations, it enables the Security Council to authorize the use of force to fulfill its primary responsibility to maintain international peace and security.<sup>14</sup> Council decisions are binding upon member states<sup>15</sup> and obligations under the Charter prevail in the event of conflicting international obligations.<sup>16</sup> The binding nature of Security Council decisions was confirmed

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<sup>8</sup> Ralph Mamiya, ‘Protection of Civilians and Political Strategies,’ International Peace Institute (2018) 4 and 14.

<sup>9</sup> Trevor Findlay, *The Use of Force in UN Peace Operations* (Oxford University Press, 2002), p. 4.

<sup>10</sup> Scott Sheeran, ‘The Use of Force in United Nations Peacekeeping Operations,’ in Marc Weller (ed.), *The Oxford Handbook on the Use of Force in International Law* (Oxford University Press, 2015), p. 356.

<sup>11</sup> UN Charter, Article 2(4).

<sup>12</sup> *Ibid*, Article 51.

<sup>13</sup> *Ibid*, see Chapter VI and VII.

<sup>14</sup> *Ibid*, Article 24.

<sup>15</sup> *Ibid*, Article 25, 43 and 48.

<sup>16</sup> *Ibid*, Article 103.

in the International Court of Justice (ICJ) Advisory Opinion on *Namibia*. The Court elaborated that decisions of the Security Council are binding on the entirety of the UN membership because “to hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter.”<sup>17</sup>

In executing its primary responsibility, the Security Council must act in accordance with the purposes and principles of the UN.<sup>18</sup> As seen in the development of the protection of civilians framework, the balancing act between the principles of state sovereignty and non-intervention<sup>19</sup> with the promotion of human rights has become increasingly challenging.<sup>20</sup> The intentional focus on inter-state relations in the Charter reflected the challenges faced by the international community at the time of drafting. The drafters neither foresaw the dominance of intra-state relations nor the “people-centered” approach to maintaining international peace.<sup>21</sup> Nevertheless, the Security Council has determined that non-international armed conflicts and the consequences thereof, such as widespread violations of international humanitarian and human rights law, may constitute a threat to the peace.<sup>22</sup> In such instances, to fulfill its primary responsibility, it may decide to deploy a peacekeeping mission with a mandate to protect civilians under Chapter VII.<sup>23</sup>

There is no mention of ‘peacekeeping’ in the Charter as it was not a creation of the drafters, but an invention of necessity following the failure to establish a standing armed force under the authority of the Organization.<sup>24</sup> Nevertheless, the legal basis of peacekeeping lies within the Charter. In the *Reparations for Injuries* Advisory Opinion, the Court found that the UN possessed an international legal personality not equivalent to that of a state due to the implied powers of the organization.<sup>25</sup> It established that the rights and duties of the UN “must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice” as it otherwise would be left unable to fulfill the intentions of its founders.<sup>26</sup> By entrusting the UN with certain functions, such as the maintenance of international peace and security, the member states have bestowed the organization with the required competence to enable the envisioned function.<sup>27</sup> Consequently, the ICJ held that under international law, the UN must be “deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary *implication* as being essential to the performance of its duties.”<sup>28</sup>

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<sup>17</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971, ICJ Reports 1971, [Namibia Case], para 118.

<sup>18</sup> UN Charter, Article 24(2).

<sup>19</sup> *Ibid*, Article 2(1) and 2(7).

<sup>20</sup> *Ibid*, Article 1(3); Haidi Willmot and Ralph Mamiya, ‘Mandated to Protect: Security Council Practice on the Protection of Civilians’ in Marc Weller (ed.), *The Oxford Handbook of the Use of Force in International Law* (Oxford University Press, 2015), p. 378.

<sup>21</sup> *Ibid*, pp.378–379.

<sup>22</sup> *See, e.g.*, Security Council Resolution 1296, UN Doc S/RES/1296 (2000).

<sup>23</sup> UN Charter, Article 2(7); Chapter VII.

<sup>24</sup> *Ibid*, Article 43 and 47; Russel Buchan and Nicholas Tsagourias, *Regulating the Use of Force in International Law: Stability and Change* (Edward Elgar Publishing, 2021), p. 196.

<sup>25</sup> *Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion of 11 April 1949, ICJ Reports 1949 [Reparations for Injuries].

<sup>26</sup> *Ibid*, pp. 179-180.

<sup>27</sup> *Ibid*, p. 179.

<sup>28</sup> *Ibid*, p. 180 (emphasis added).

Building on the theory of implied powers, the ICJ elaborated on the legality of peacekeeping in the *Certain Expenses* Advisory Opinion.<sup>29</sup> It held that the Security Council's responsibility for international peace and security was "primary, but not exclusive" and clarified that only the Council conferred with the power to order enforcement action under the Charter.<sup>30</sup> Indeed, both the General Assembly and the Secretary-General have a role to play in the maintenance of peace and security, although their work consists of reports and recommendations, as opposed to legally binding decisions.<sup>31</sup> The Court elaborated that both the purposes of the organization and the powers it is conferred with to achieve them are broad, but neither is unlimited. Nevertheless, it is up to each organ to "determine its own jurisdiction," and therefore, when an action is taken to achieve the common purposes entrusted to the organization, it is assumed to be within the capabilities of the organ and not *ultra vires*.<sup>32</sup>

Much effort has been made to determine whether peacekeeping falls within Chapter VI or VII, or somewhere in between.<sup>33</sup> Traditionally, peacekeeping has been associated with the former despite it having never been invoked by the Council in relation to deployment. The UN's position is that it need not refer to a specific Chapter when authorizing a deployment. More recent practice, however, has been to invoke the latter. With the operational context becoming increasingly volatile, the reference to Chapter VII is seen as both an assertion of the legal authority and political resolve of the Council.<sup>34</sup> As a consequence, the differentiation between peacekeeping and peace enforcement has become increasingly contentious. The ambiguous nature of Chapter VII was elaborated on in the *Namibia Case*. In the words of the Court:

It cannot be said that the Charter has left the Security Council impotent in the face of an emergency situation (...) Articles of Chapter VII of the Charter speak of "situations" as well as disputes, and it must lie within the power of the Security Council to police a situation even though it does not resort to enforcement action against a State.<sup>35</sup>

Consequently, questions relating to the legal basis and limitations of peacekeeping remain relevant in relation to modern peacekeeping generally, and Chapter VII protection mandates specifically, as the authorized tasks and use of force have expanded. However, one must not ascribe too much value to the identification of a specific article within the Charter from which to infer peacekeeping. The reference in Article 24(2) to specific powers "under certain chapters of the Charter does not exclude the existence of general powers" of the Security Council to give effect to its responsibilities conferred in 24(1).<sup>36</sup> Placing the legal basis for peacekeeping within the general powers of the Security Council is coherent with its responsibility to determine threats to the peace and the necessary respondent actions.

In sum, the Council must define its own jurisdiction, be trusted to act within the responsibilities it has been bestowed, and have the capabilities to do so. Peacekeeping is an implied power as well as an

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<sup>29</sup> *Certain Expenses of the United Nations (Article 17(2) of the Charter)*, Advisory Opinion of 20 July 1962, ICJ Reports 1962 [*Certain Expenses*].

<sup>30</sup> *Ibid*, p. 163.

<sup>31</sup> UN Charter, Articles 10-14; 99.

<sup>32</sup> *Certain Expenses*, p. 168.

<sup>33</sup> Buchan and Tsagourias, pp. 197-199.

<sup>34</sup> UN Department of Peacekeeping Operations (DPKO), 'United Nations Peacekeeping Operations: Principles and Guidelines' (2008) [Capstone Doctrine], pp. 13-14.

<sup>35</sup> *Certain Expenses*, p. 167.

<sup>36</sup> *Ibid*, p.177; *Namibia Case*, para 110; see also UN Charter, Article 24.

example of the Charter's inherent flexibility. Due to the nature of the Security Council's responsibilities, too restrictive a view of the powers conferred in the Charter may be counterproductive. If the Organization is unable to respond to emergent challenges faced by the international community, it may be unable to fulfill its primary purpose.

## 2.2 International Humanitarian and Human Rights Law

Protection of civilians mandates derive their authority from the UN Charter and are primarily defined by the internal law of the Organization.<sup>37</sup> However, the normative development of civilian protection within peacekeeping has been heavily influenced by international humanitarian and human rights law.<sup>38</sup> Both bodies of law contain legal obligations to protect civilians. The most relevant norms in relation to protection, as understood in the UN context, are arguably the principle of distinction, the prohibition of ill-treatment and torture, and the right to life.<sup>39</sup> Moreover, there is a Charter obligation "to promote universal respect for, and observance of, human rights and fundamental freedoms."<sup>40</sup>

The authorizing of UN Peacekeeping missions to protect civilians goes beyond these well-established norms of protection as it recognizes the right of the international community to pursue norm fulfillment by means of force.<sup>41</sup> This progressive interpretation of the Charter's implied authority raises questions as to whether the protection mandates create a separate legal obligation to protect. Furthermore, the extent to which international human rights and humanitarian law are applicable to UN peacekeeping operations remains contested.<sup>42</sup> However, it is worth noting that the UN has made claims to be bound by both IHRL and IHL in the implementation of peacekeeping mandates.<sup>43</sup>

## 3. The Peacekeeping Framework

The UN protecting civilians is an example of challenges in the field driving doctrine as it has led to a reimagining of what peacekeeping entails, especially in the reassessment of its principles of consent, non-use of force (except in self-defense and defense of the mandate) and impartiality.<sup>44</sup> Effectively, peace operations are used as a conflict management tool.<sup>45</sup> This development has created tension between proponents of a militarized approach and those calling for the primacy of politics, with some arguing that a doctrinal shift has taken place toward peace enforcement.<sup>46</sup>

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<sup>37</sup> Article 25, Chapter VII

<sup>38</sup> See Section 4 below elaborating on the role of international humanitarian and human rights law in the normative development of the Protection of Civilians Framework.

<sup>39</sup> Terry Gill, Dieter Fleck, William Boothby, and Alfons Vanheusden (eds.), *Leuven Manual on the International Law Applicable to Peace Operations* (Cambridge University Press, 2017), pp. 176-178.

<sup>40</sup> Human Rights Committee, General Comment No. 31 (2004), para 2; UN Charter, Article 1(3).

<sup>41</sup> Willmot and Mamiya, p. 380.

<sup>42</sup> Conor Foley, *UN Peacekeeping Operations and the Protection of Civilians: Saving Succeeding Generations* (Cambridge University Press, 2017), pp. 155-206; Siobhán Wills, *Protecting Civilians: The Obligations of Peacekeepers* (Oxford University Press, 2009), pp. 88-170.

<sup>43</sup> Secretary-General's Bulletin, 'Observance by United Nations Forces of International Humanitarian Law,' UN Doc ST/SGB/1999/13 (1999); Human Rights Due Diligence Policy on United Nations Support to Non-United Nations Security Forces, UN Doc A/67/775-S/2013/110 (2013) [HRDDP].

<sup>44</sup> *Ibid*, paras 124-130.

<sup>45</sup> Alex Bellamy and Paul Williams, 'Trends in Peace Operations, 1947-2013' in Joachim Koops et al. (eds.) *The Oxford Handbook of United Nations Peacekeeping Operations* (Oxford University Press, 2015), 30.

<sup>46</sup> John Karlsrud, 'The UN at war: examining the consequences of peace-enforcement mandates for the UN peacekeeping operations in the CAR, the DRC and Mali,' *Third World Quarterly* (2015); See also Carlos Alberto

In the balancing act between maintaining its core principles and reducing passivity in order to meet the need for protection, the UN has placed an increased focus on extending state authority.<sup>47</sup> To this end, ‘stabilization’ is applied as a political strategy, effectively promoting the proactive use of force to protect civilians but also to strengthen the state against spoilers.<sup>48</sup> Such missions include for example, MONUSCO in the Democratic Republic of the Congo, MINUSMA in Mali, and MINUSCA in the Central African Republic. Today, most UN Peacekeeping Operations are deployed with a Protection of Civilians mandate.<sup>49</sup> Consequently, the so-called ‘robust turn’ in UN PKOs is not so much a burgeoning development as a well-established phenomenon.

### 3.1 The Reinterpreted Principles

Despite the fact that the peace operations are tasked to navigate new and increasingly volatile contexts, the traditional principles of consent, non-use of force, and impartiality are still held to be central components to mission success.<sup>50</sup> However, the “contemporary challenges” have required a “flexible and progressive interpretation” of the traditional peacekeeping principles.<sup>51</sup>

Consent, although not a legal requirement under Chapter VII of the Charter, is continuously sought by the Security Council when authorizing protection mandates.<sup>52</sup> It is seen as a political and operational necessity as opposed to a legal requirement. It can be said to express the weight given to state sovereignty in the Charter.<sup>53</sup> Obtaining the consent of the main parties to the conflict has traditionally been seen as a key component of mission success for two main reasons. First, it reflects their respective commitment to the political peace process. Secondly, it enables the PKO to operate freely to fulfill its mandate, as consent and commitment are thought to be linked to cooperation.<sup>54</sup> However, contemporary missions are deployed to contexts void of any robust political process and solely rely on host government consent. Instead, the consent and commitment of other parties are reduced to a future aim, or rather postponed until the mission has successfully created an environment conducive to a political process.<sup>55</sup>

The complexities of the new operational environments paired with the authorized tasks create challenges for the missions to navigate and maintain consent. In situations without a political process, host-state consent can be described as consisting of the agreement to (i) mission presence and (ii) the mission’s mandate. The complexities of the new operational environments paired with the authorized tasks create challenges for the missions to navigate and maintain the fluctuating host-state consent. Especially because protection tasks may cause consent to deteriorate if perceived to challenge the state’s

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dos Santos Cruz et al., ‘Improving Security of United Nations Peacekeepers: We need to change the way we are doing business (2017) [Cruz Report]; and HIPPO Report

<sup>47</sup> Karlsrud, p. 41.

<sup>48</sup> Charles T. Hunt, ‘All Necessary Means to What Ends? The Unintended Consequences of the ‘Robust Turn’ in UN Peace Operations,’ *International Peacekeeping* 24, no. 1 (2017), 112.

<sup>49</sup> HIPPO Report, para 90. *See also* UNDPO, ‘Protecting Civilians,’ available at <https://peacekeeping.un.org/en/protecting-civilians>.

<sup>50</sup> *Ibid*, paras 124-125.

<sup>51</sup> *Ibid*, paras 125, 129.

<sup>52</sup> UN Charter, Article 2(7) and Chapter VII; Benjamin f. Kusi, ‘United Nations Peacekeeping: A View from the Ground,’ in Robin Geiß and Nils Melzer (eds.) *The Oxford Handbook of the International Law of Global Security* (Oxford University Press, 2021), pp. 792-793.

<sup>53</sup> UN Charter, Article 2(1).

<sup>54</sup> Capstone Doctrine, pp. 31-32.

<sup>55</sup> HIPPO Report, paras 10, 27.



sovereignty or implicate the Government in violations.<sup>56</sup> Indeed, the securing of consent in no way guarantees that the visions of the Security Council authorizing the mission and the Government agreeing to mission presence align. The issuing of consent may be strategic from the hand of the Government, seeking legitimacy. Consequently, it may turn against the mission if it perceives it as a threat to its authority or uses it as a scapegoat in the ongoing turmoil.<sup>57</sup>

Consent is usually reflected in the adoption of a SOFA governing the legal matters of mission presence, as well as the respective rights and obligations of the mission and state. Such agreements are seen to bestow the mission with the necessary freedom of action to enable mandate implementation.<sup>58</sup> They embody the commitment to the mission's mandate and contain standards in case of violations. The role of the SOFA may therefore be incremental to observing and managing the fluctuating consent and identifying where responsibilities and expectations diverge.<sup>59</sup>

The obtaining of consent is seen as a key differentiation between peacekeeping and other forms of crisis management, such as peace enforcement or even the waging of war. The strong will to uphold traditional ideas of consent, despite the lack of legal necessity, reflects the ambivalence of what peacekeeping is thought to entail. A collective security system centered around peacekeeping and not enforcement 'protects' state sovereignty.<sup>60</sup> It is within this grey zone protection missions find themselves. In reality, consent is often not always strictly consensual but coerced.<sup>61</sup> Similarly, although missions remain labeled as peacekeeping operations, they are authorized with coercive or 'enforcement' capabilities under Chapter VII. The Security Council has therefore carved out a type of mission somewhere in-between the two, not peacekeeping or peace enforcement but peacekeeping with enforcement capacity.<sup>62</sup>

Whereas the understanding of the principle of consent has somewhat narrowed, the principle of non-use of force has expanded significantly in tandem with the changing expectations of what a peacekeeping mission is set to achieve. The Brahimi Report stated that when deployed, missions "must be prepared to confront the lingering forces of war and violence, with the ability and determination to defeat them" and held that in order to be "a credible force for peace," they must be equipped to act accordingly.<sup>63</sup> Furthermore, it held that peacekeepers should have presumed authorization to stop violence against civilians even when there is no explicit authorization.<sup>64</sup>

In contemporary missions, much weight is given to not only the self-defense on behalf of the peacekeepers but also the defense of the mandate. The latter covers the use of force to defend the people they are mandated to protect, as well as the mission at large and the mandate. Furthermore, such defense is not limited to reactionary but also includes proactive uses of force. Such actions must be

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<sup>56</sup> Sofía Sebastián and Aditi Gorur, 'UN Peacekeeping & Host-state Consent: How Missions Navigate Relationships with Governments,' (2018) *Stimson Center*, pp. 5-6.

<sup>57</sup> Aditi Gorur, 'Managing Host-state Consent and the Protection of Civilians,' in Lisa Sharland (ed.), *Evolution of the protection of civilians in UN Peacekeeping*, ASPI Special Report (2019), p.13.

<sup>58</sup> Nigel D. White, 'N White XXX p. 48-50; add SOFA; Capstone 31

<sup>59</sup> Sebastian and Gorur, pp. 16-17, 25.

<sup>60</sup> Nicholas Tsagourias, 'Consent, Neutrality/Impartiality and the Use of Force in Peacekeeping: Their Constitutional Dimension,' *Journal of Conflict and Security Law* 11:3 (2007), pp. 466-68.

<sup>61</sup> **Coerced consent - which source?**

<sup>62</sup> Tsagourias, p. 472.

<sup>63</sup> Report of the Panel on United Nations Peace Operations, UN Doc A/55/305-S/2000/809 (2000) [Brahimi Report], p. viii.

<sup>64</sup> *Ibid*, para 62.

context-dependent and may range from deterrence to direct confrontation. The actual use of force may be superfluous if the mission is perceived to have sufficient capability and determination to wield it.<sup>65</sup>

The differentiation between peacekeeping and peace enforcement is further made in relation to the type of force used. Whereas peacekeeping entails force at the tactical level with host-state consent, enforcement does not demand consent and occurs at the international or strategic level.<sup>66</sup> The Security Council's authorization of force on the international plane, otherwise prohibited under Article 2(4) of the Charter, shows the special role of the Organization and its unique power under *jus ad bellum*.<sup>67</sup>

Impartiality is to be understood as adherence to the Charter principles. It is to be equated with even-handedness in the implementation of the mandate and not neutrality or appeasement in situations with clear "aggressors and victims."<sup>68</sup> The need to maintain consent and cooperation cannot become an excuse for inaction when faced with parties violating the international norms and principles the peacekeeping operation is set to uphold.<sup>69</sup> Missions are only neutral in so far as they implement their mandated protection tasks irrespective of the origin of the threat. It must be determined to respond "to the actions of different parties based not on who has acted but by the nature of their actions."<sup>70</sup>

Traditionally, the three core principles have been understood to be "inter-related and mutually reinforcing," but the significant change in mandated tasks and operational environment may arguably have impacted their interoperability. Perhaps especially when considering the change in the understanding of impartiality as it reconfigures the role of the peacekeeper from a passive observer into an assertive enforcer. The expectation that peacekeepers be unbiased and informed remains, but the change has occurred in relation to the source from which they base their actions. Whereas traditional peacekeeping requires impartiality in the observation or implementation of a peace agreement, robust missions are to implement more normatively ambitious mandates. The background from which peacekeepers derive authority and decide upon action is broader, invoking the Charter, international law, and international norms. The most significant change with regard to the principles is that missions have transformed from acting impartial between parties to "claiming authority *over* parties."<sup>71</sup> Consequently, the progressive reinterpretation poses a seemingly contradictory challenge in the implementation of robust protection mandates. A peacekeeping mission may find itself in a situation where it is mandated to protect civilians from the Government whose authority it is tasked to extend and which it is reliant upon for consent.

Impartiality is not understood as equal treatment of parties based on agreed-upon terms of action within the confines of a peace agreement, but rather as the enforcement of mandated tasks, such as the protection of civilians, unto all parties to the conflict.<sup>72</sup> In essence, impartial implementation of the mandate takes precedence, downplaying the role of consent. This brings the continued relevance of the principles into question. Especially the role of consent in protection mandates and whether it is possible to reconcile the new role of peacekeeping operations as a referee or enforcer of international standards

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<sup>65</sup> Capstone Doctrine, para 128; *see also* the Kigali Principles on the Protection of Civilians, pledges 3 and 8, available at <https://www.globalr2p.org/wp-content/uploads/2015/05/KP-Principles-13-April-2020.pdf>.

<sup>66</sup> Capstone Doctrine, pp.34-35.

<sup>67</sup> Sheeran, pp. 356-357.

<sup>68</sup> Brahimi Report, para 50.

<sup>69</sup> Capstone Doctrine, p. 33.

<sup>70</sup> HIPPO Report, para 126.

<sup>71</sup> Emily Paddon Rhoads, 'From Passive to Assertive Impartiality,' *Taking Sides in Peacekeeping: Impartiality and the Future of the United Nations* (OUP, 2016), pp. 65-70.

<sup>72</sup> Troels Gauslå Engell and Katja Lindskov Jacobsen, 'Unintended Consequences of the Primacy of Politics in UN Peace Operations' *Global Governance* 25 (2019), 257.

whilst being dependent on a potential perpetrator for mission presence. The question is then whether the mandates create a separate legal obligation to protect civilians and whether it is possible to fulfill it whilst continuing to insist on the political necessity of host-nation consent.

### **3.2 The Primacy of Politics**

Although the shift toward robust enforcement is a natural progression from the increased focus placed on protection activities in the midst of ongoing armed conflict, the UN Framework has simultaneously called for the “primacy of politics” in peacekeeping.<sup>73</sup> In essence, the counter-reaction to robustness has been to emphasize the original purpose of peacekeeping, to reduce tensions and facilitate the political space required to address the causes of conflict in an independent manner. Opponents of militarization hold that the role of missions is to be an enabler, not an enforcer.<sup>74</sup>

The report embodies the Organization’s dual ambition of providing physical protection of civilians whilst simultaneously promoting political progress. The report condemns inaction, stating that peacekeepers facing a protection crisis “must use every tool available to them to protect civilians under imminent threat” and not be onlookers whilst “civilians are threatened or killed.”<sup>75</sup> Such action must be both proactive and effective yet realistic in relation to mission capabilities. To that end, it urges caution in “mandating of enforcement tasks to degrade, neutralize or defeat a designated enemy” as it may threaten the mission at large.<sup>76</sup> In sum, it has been adamant that the progressive interpretation of peacekeeping must be cognizant of the political aspects of protection and the necessity of politics to achieve lasting peace.<sup>77</sup>

### **3.3 Stabilization and the Extension of State Authority**

The idea that peace cannot be achieved by means of force but that it can facilitate the creation of a space in which it can be built has arguably influenced the robust turn and its political underpinnings.<sup>78</sup> It raises interesting questions about whether the forceful implementation of protection mandates can be reconciled with the primacy of politics. However, with the adoption of ‘stabilization’ as the underpinning political strategy, this may be called into question.

Stabilization is yet another layer in the already dense normative framework, and in typical fashion, the exact extent of what stabilization entails within the UN Framework awaits clarification.<sup>79</sup> Whilst it can be said to have evolved in response to criticisms of missions' lack of progress toward peace when deployed to conflicts. However, caution is warranted in conflating new demands on missions for a coherent doctrine. Nevertheless, stabilization as a strategy has come to influence the aim and design of peacekeeping missions.<sup>80</sup> Three trends can be derived from Security Council practice: (i) mandated to use offensive force to neutralize spoilers and/or stabilize the (ii) hostile environment to which they are

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<sup>73</sup> HIPPO, paras 43 & 44; *See also* Christine Gray, ‘The 2015 Report on Uniting Our Strengths for Peace: A New Framework for Peacekeeping’ *Chinese Journal of International Law* (2016).

<sup>74</sup> Louise Riis Andersen, ‘The HIPPO in the room: the pragmatic push-back from the UN peace bureaucracy against the militarization of UN peacekeeping,’ *International Affairs* 94:2 (2018), pp. 359-360.

<sup>75</sup> HIPPO Report, p. 11.

<sup>76</sup> *Ibid*, p.12.

<sup>77</sup> *Ibid*, p. 10.

<sup>78</sup> Brahimi Report, p. viii

<sup>79</sup> HIPPO Report, paras 113 - 114

<sup>80</sup> Hunt, p. 112; Riis Andersen, p. 352

deployed, and (iii) focus on the protection of civilians.<sup>81</sup> It relies on a division of labor between the military branch, neutralizing spoilers, and the civilian branch to rebuild state institutions.<sup>82</sup>

The uncertainty is concerning for two reasons. First, the relationship between stabilization and protection is not sufficiently understood. Stabilization risks diluting the protection agenda as it remains unclear to what degree tasks of ‘extending state authority’ or ‘stabilization’ are goals in their own right or tools to protect.<sup>83</sup> Second, the mission establishing partnerships with conflict parties and the subsequent impact on mandate implementation is problematic.<sup>84</sup> It makes the mission dependent on its ability to sustain alliances and force agreements with the host state. Although cooperation with governments has long guided peacekeeping, as seen in the key role of consent, the radical difference lies with the missions siding with government forces. The assumption that extension of the state authority will translate into the protection of civilians risks “risks underplaying human rights abuses and violations” committed by the government. The extension of coercive state power may come at the expense of legitimate authority and civilian harm.<sup>85</sup>

Stabilization puts a strain on peacekeeping in general and protection in particular, and “makes it extremely complicated and politically sensitive” for peacekeeping operations to successfully embody the role of an impartial human rights monitor.<sup>86</sup> Arguably, the use of force should be confined to protection and not neutralization.<sup>87</sup> Thus, the question is not only whether or not the militarization of peacekeeping can be reconciled with the primacy of politics in general but whether that is possible when the political strategy is influenced by norms of stabilization.

## **4. Protection of Civilians Framework**

### **4.1 The Policy Framework and Conceptual Understanding**

In recent years, great developments have been made in terms of operationalizing and expanding the protection framework. Primarily by creating a Protection of Civilians Policy with an accompanying Handbook to inform implementation.<sup>88</sup> They set out that the PoC mandate is guided by a set of “legal and practical principles” and that it is rooted in the Charter and international law. All missions implementing a PoC mandate must be cognizant of the fact that it is a priority mandate and a whole of mission activity grounded in international law and peacekeeping principles. Furthermore, whilst the primary responsibility of protection lies with the host state, the mission has an active duty to protect.<sup>89</sup> To be able to act accordingly, the Protection of Civilians response must strive to be flexible in light of the changing conflict environment and work to prevent, pre-empt, respond to, and consolidate against threats to the civilian population. Consequently, depending on the context, the three tiers are not necessarily sequential and may be implemented either simultaneously or independently.<sup>90</sup>

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<sup>81</sup> Riis Andersen, p.352

<sup>82</sup> Louise Wiuff Moe, ‘The Dark Side of Institutional Collaboration: How Peacekeeping-counterterrorism Convergences Weaken the Protection of Civilians in Mali,’ *International Peacekeeping* 28:1 (2021), p.8.

<sup>83</sup> Hunt, p. 114.

<sup>84</sup> *Ibid*, p. 118

<sup>85</sup> Wiuff Moe, pp. 15-17

<sup>86</sup> *Ibid*, p. 8; Hunt, p. 121.

<sup>87</sup> Karlsrud, p. 50.

<sup>88</sup> DPKO, ‘Policy: The Protection of Civilians in United Nations Peacekeeping’ (2019) [PoC Policy]; The Protection of Civilians in United Nations Peacekeeping Handbook (2020) [PoC Handbook].

<sup>89</sup> PoC Policy, paras 26-39.

<sup>90</sup> *Ibid*, paras 41-42

The operationalization of protection divides the implementation of mandated action into three separate, non-sequential but mutually reinforcing tiers: (i) dialogue and engagement; (ii) physical protection; and (iii) creating a protective environment.<sup>91</sup> It embodies both the proactive use of force under Tier II and the primacy of politics primarily under Tier I. Arguably, this understanding of protection reinforces the progressive reinterpretation of the core principles and reiterates that they can “never be an excuse for failure to protect civilians.”<sup>92</sup>

Tier I places focus on the role of peacekeeping in pursuing political solutions to conflict. It holds that the activities set to promote political processes, such as advocacy, community engagement, and reconciliation, must “feed into and be aligned with the mission’s overall political strategy.”<sup>93</sup> Crucially, the policy identifies potential threats to civilians to emanate from both within and outside of state institutions. The mission should therefore identify risks and advocate to enhance the capability of the state to fulfill its primary responsibility to protect civilians.<sup>94</sup> All support to non-UN forces, as well as any instances of joint uses of force, must adhere to the Human Rights Due Diligence Policy (HRDDP).<sup>95</sup> It requires risk assessment and mitigating actions to reduce civilian harm. In so doing, the HRDDP seeks to prevent the UN from enabling violations of international humanitarian, human rights, or refugee law.<sup>96</sup> The ambition is that its application will reduce civilian victimization whilst holding the recipient government accountable, albeit lacking consistent application in practice.<sup>97</sup> The role of the HRDDP is important as it foresees and seeks to counteract the mission having to strengthen the capacity of a potential perpetrator. Through this caveat, the policy seeks to mitigate the risk of the UN assuming the role of an enabler.

Tier II effectuates the strategic goal of providing physical protection and is included in the very definition of the mandate: to “prevent, deter or respond to threats of physical violence against civilians (...) through the use of all necessary means, up to and including deadly force.”<sup>98</sup> Peacekeepers may provide physical protection by their presence, through interpositioning, facilitating refuge, or by the threat or use of force.<sup>99</sup> Effective prevention, deterrence, pre-emption, and response to threats against civilians require missions to be able to be both proactive and rapid to protect. If non-forcible measures are insufficient in relation to the threat, the force used may be of a greater caliber than that of the threat if such action is coherent with the protection objective.<sup>100</sup> This includes situations where the threat emanates from the host state, even though it may jeopardize mission presence.<sup>101</sup>

Whilst Tier I and II respectively embody the primacy of politics and the robust turn, Tier III is most closely aligned with stabilization with activities conducted in support of state authorities. The protection objective of establishing a protective environment seeks to consolidate norms of protection, most often through programmatic activities on re-establishing the rule of law or security sector reform.

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<sup>91</sup> *Ibid*, para 40.

<sup>92</sup> *Ibid*, p.7.

<sup>93</sup> *Ibid*, paras 44-49.

<sup>94</sup> *Ibid*, para 49.

<sup>95</sup> *Ibid*, paras 52, 58.

<sup>96</sup> HRDDP, UN Doc A/67/775-S/2013/110 (2013).

<sup>97</sup> Charles T. Hunt and Shannon Zimmerman, “Twenty Years of the Protection of Civilians in UN Peace Operations” *Journal of International Peacekeeping* 23 (2019), pp. 60-61.

<sup>98</sup> PoC Policy, para 18.

<sup>99</sup> *Ibid*, para 54.

<sup>100</sup> *Ibid*, paras 55-57.

<sup>101</sup> *Ibid*, para 61.

Tier III has an inherent focus on the State as they seek to contribute to capacity building with the aim of preventing future outbreaks of violence.<sup>102</sup>

Consequently, PKOs are, in effect, mandated with the contradictory task of both supporting and attacking the government it is dependent on for consent to mission presence. Herein lies the inherent difficulty in impartially implementing a mandate to physically protect civilians. The Policy partly acknowledges this conundrum by merging politics and force. Tier II also promotes the primacy of politics, in a way, as it calls for early political engagement to enhance and monitor state protection abilities.<sup>103</sup> Such actions are reflective of Tier I and III. Arguably, this further reinforces the centrality of politics in protection, as well as the idea of the tiers being mutually reinforcing. However, where “engagement is fruitless, clearly ineffective or simply not an option in the time available,” the mission must be prepared to use force. If such an armed confrontation is imminent, it may seek guidance from the DPKO and/or the Security Council on how to proceed.<sup>104</sup> This shortcoming exposes not only the tension between consent and the PoC framework but also the dissonance in proclaiming the primacy of political solutions when effectively siding with a party to the conflict. This dilemma is nevertheless left unresolved and illogically postponed to the hypothetical yet realistic moment before an imminent confrontation with governmental forces.

#### **4.2 Political Violence, Political Protection**

The protection of civilians is intended to be part of a comprehensive and integrated approach.<sup>105</sup> This builds on the assumption that the various moving parts of peacekeeping (the principles, the political strategy of stabilization, and the protection tasks) are synergetic. However, the lack of clarity pertaining to the scope of protection and how it is to coexist with the UN's role of being an impartial yet cooperative enforcer prompts a reassessment. If the contemporary understanding of impartiality within the peacekeeping context is to be equated with the mission's ability to implement the mandate, then its ability to address host-state violations would be the ultimate test of adhering to the principle. It would attest to the UN effectuating its claim to be a guarantor of international standards.

The issue's core lies in the competing tasks of extending state authority and interjecting with force in response to state violations. The protection framework holds this to be possible in principle, stating that protection is to be pursued “irrespective of the origin of the threat.”<sup>106</sup> In practice, this has been proven a challenge because peacekeepers are hesitant to risk crossing the government and jeopardize their consent.<sup>107</sup> The inability or unwillingness of the peacekeeping operation to act decisively against state violations may negatively impact the mission's perceived impartiality. It may be perceived as weak.<sup>108</sup>

Assertively enforcing the protection agenda is not without risk to the political leeway of the mission and its ability to fulfill its mandate. In order to be effective in mandate implementation, the mission must be cognizant of the political nature of both violence and protection. Both activities seeking to target conflict prevention and civilian protection may be viewed by the parties to the conflict as biased

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<sup>102</sup> *Ibid*, paras 71-77.

<sup>103</sup> *Ibid*, para 61.

<sup>104</sup> *Ibid*, para 62.

<sup>105</sup> *Ibid*, para 7.

<sup>106</sup> HIPPO Report, para 126.

<sup>107</sup> UNGA, ‘Report of the Office of Internal Oversight Services, Evaluation of the Implementation and Results of Protection of Civilians Mandates in United Nations Peacekeeping Operations,’ (2014) UN Doc A/68/787 [OIOS Evaluation], paras 40-9.

<sup>108</sup> Khalil, p. 220.

endeavors. Just as violence is political, so is protection.<sup>109</sup> To act decisively and apply the mandated tasks to state and non-state actors alike becomes essential. Otherwise, the mission risks losing its perception of being impartial; both victim and perpetrator may claim bias. The former by being equated with their aggressor, and the former by nature of being targeted. If the mission is inconsistent in its application of the mandate, switching between passive and assertive interpretations of impartiality, it may cause the mission to lose its credibility in the eyes of the parties to the conflict. Resulting in no longer being seen as an ‘honest broker.’ Furthermore, as discussed above, there is reason for caution in assuming that the extension of state authority translates to protection. There is a real risk of the UN enforcing structures that will endanger civilians and perpetuate conflict.<sup>110</sup> Although the HRDDP is intended to safeguard against the UN taking part in the very behavior it is tasked to prevent, the practicability of the policy remains in question as application varies.<sup>111</sup> Consequently, emphasis must be placed on effectuating the role of impartial enforcer, looking to actions as opposed to actors, when providing protection. Otherwise, the UN may be disqualified in the eyes of the parties to the conflict to participate in or facilitate a peace process.<sup>112</sup>

With peacekeepers being deployed to ongoing armed conflicts where civilian lives are at stake, the mission must implement the mandate and ensure protection. However, if the PoC Framework is to be successful, or indeed ‘comprehensive and integrated,’ it must find a way to reconcile its provision of short-term physical protection with creating conditions conducive to the peaceful settlement of the conflict. Otherwise, the role of the UN may be ineffective and undermine conflict resolution. The extent of protection obligations remaining uncertain opens up questions relating to what role international law is to play within the Protection Framework and whether an obligation to protect could play into that.

### **4.3 An Obligation to Protect?**

The PoC concept originated from the Security Council seeking to improve its ability to strengthen the legal and physical protection of civilian populations in times of armed conflict.<sup>113</sup> The violation of the rights afforded to civilians under international humanitarian and human rights law is not only a consequence of conflict but a cause for its perpetuation.<sup>114</sup> Consequently, systemic and widespread violations of the law demand the attention and action of the UNSC as they may constitute a threat to international peace and security.<sup>115</sup> Consequently, protection is intrinsically tied to the Organization’s primary responsibility for international peace and security.

Emphasis is placed on the need for a comprehensive and integrated approach to protection.<sup>116</sup> The primary means through which to effectuate the necessary protection is by mandating a peacekeeping mission, but the methods through which it is to ensure protection vary. Comprehensive protection may entail the facilitation of “economic growth, good governance, democracy, the rule of law, and respect for,

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<sup>109</sup> Troels Gauslå Engell and Katja Lindskov Jacobsen, ‘Unintended Consequences of the Primacy of Politics in UN Peace Operations’ *Global Governance* 25 (2019), 257; Jenna Russo and Ralph Mamiya, ‘The Primacy of Politics and the Protection of Civilians in UN Peacekeeping,’ (2022) *International Peace Institute*, p. 14.

<sup>110</sup> Russo and Mamiya, p. 15; Wiuff Moe, p. 15.

<sup>111</sup> Hunt, p. 115; Hunt and Zimmerman, p. 61.

<sup>112</sup> Gauslå Engell and Lindskov Jacobsen, pp. 264-65.

<sup>113</sup> UNSG POC Report 1999; Statement by the President of the Security Council, UN Doc S/PRST/1999/6, 12 February 1999, p. 3.

<sup>114</sup> UNSG POC Report 1999 para 27-28

<sup>115</sup> UNSG Report para 30-31; Res 1296 para 13; Res 1894 para 3

<sup>116</sup> POC policy; Res 1894 para 28

and protection of human rights.”<sup>117</sup> With time, new issues have been brought to the fore, depending on the challenges faced on the ground. The most recent reports highlight, for example, the need for protection with regard to food insecurity and conflict-driven hunger, the impact on the environment and climate change, as well as medical aid.<sup>118</sup>

To this end, the first protection mandate was issued in 1999. Acting under Chapter VII, the Security Council authorized the UN Mission in Sierra Leone (UNAMSIL) to take the necessary action “within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence.”<sup>119</sup> However, as stated in the PoC Handbook, in contemporary authorizations:

the word ‘imminent’ has since been removed and the mandate now requires the protection of civilians under ‘threat of physical violence.’ This language change clarified that a mission can and should take proactive and preventive action to protect civilians under threat and that these actions can include all necessary means (including the use of deadly force).<sup>120</sup>

In the discussion leading up to its adoption, this development was described as introducing “a new, fundamental political, legal and moral dimension” and a commitment that the Security Council will not remain indifferent to attacks against civilian populations.<sup>121</sup> By moving toward proactive use of force and protection, the Council recognized a link between the persons entitled to protection and the international community.<sup>122</sup> Since then, however, there has been little effort to clarify the delineation between the political, legal, and moral dimensions of protection. As described in the previous sections, the UN has gone to great lengths in expanding the practice of peacekeeping. In seeking to clarify what protection entails and how it is to be implemented, it has become obscure. The legal underpinnings and intentions of protection have been obscured in the expansive policy framework.

The “general, de-legalized reference to threat of physical violence” conceals potential indecision or disagreement within the Council. The uncertainty can therefore be argued to be a product of political necessity as it enables varying interpretations to coexist. It also infuses the concept with a high degree of subjectivity, which becomes consequential in mandate implementation.<sup>123</sup> Intentionally vague formulations may promote the popularity of the concept but may also impede effective implementation and hollow out the intended purpose, as is the case of the PoC framework. When evaluating the implementation of protection mandates in 2014, the Office of International Oversight Services (OIOS) found that peacekeepers were reluctant to employ proactive force against host authorities as it was seen to be an unrealistic undertaking due to political and military restraints on missions.<sup>124</sup> Importantly, it

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<sup>117</sup> Security Council Resolution 1894, UN Doc S/RES/1894 (1999), para 28.

<sup>118</sup> See, e.g., the latest Report of the Secretary-General on the Protection of civilians in armed conflict, UN Doc S/2023/345 (2023).

<sup>119</sup> Security Council Resolution 1270, UN Doc S/RES/1270 (1999), para 14.

<sup>120</sup> PoC Handbook, p.8

<sup>121</sup> Security Council Meeting Record S/PV.4054, 22 October 1999, p. 16.

<sup>122</sup> Willmot and Mamiya, p. 388.

<sup>123</sup> PoC Policy, para 22; Ralph Mamiya, ‘A History and Conceptual Development of the Protection of Civilians,’ in Haidi Willmot et al. (eds.) *Protection of Civilians* (2016), pp. 78-80; Siobhán Wills, ‘International Responsibility for Ensuring the Protection of Civilians,’ in Haidi Willmot et al. (eds.) *Protection of Civilians* (2016), pp. 228-231.

<sup>124</sup> OIOS Evaluation, paras 40-9.



identified a lack of understanding “concerning *the mission’s legal obligation to act*, including with force, when host Governments cannot or will not do so.”<sup>125</sup>

The dissonance identified in the 2014 OIOS Evaluation resonates throughout the UN Peacekeeping and Protection frameworks. Two main aspects have fueled the continuance of the concept being shrouded in a legal-political limbo, both underpinned by the difficulty of the UN in balancing state sovereignty with mandate implementation. First, the Responsibility to Protect (R2P) and its conflation with PoC has colored the protection agenda.<sup>126</sup> In particular, the backlash following the mandate authorizing action in Libya may “have had the unintended effect of undermining the protection of civilians agenda.”<sup>127</sup> Concerned with the conflation of PoC and R2P, the Secretary-General elaborated in his 2012 thematic report that PoC is “a legal concept” relating to “violations of international humanitarian and human rights law in situations of armed conflict,” whereas R2P is a political concept concerned with war crimes, crimes against humanity and genocide.<sup>128</sup> The Secretary-General has not elaborated on how or in what manner it is a legal concept. Second, the “undue reliance on the primary responsibility of the host State.”<sup>129</sup> From the very beginning, PoC has been about the UN taking on a supporting role in ensuring that the protections afforded to civilians in armed conflict are upheld. This is understood to entail international humanitarian law, international human rights law, and international refugee law.<sup>130</sup> Whilst the concept of protection contained in the mandate builds on and is intimately connected with these bodies of law, it is “de-linked” and separate. Nevertheless, the mission must implement the mandate in accordance with these legal frameworks.<sup>131</sup> Where the government is unable or unwilling to uphold these protection standards, the UN has a responsibility to intervene. The mandate allows for the mission to assist and to act independently.

The primary responsibility of the host state to protect civilians does not dilute the obligation of the UN, and where unarmed strategies fail, missions with authorization and capacity to do so are obligated to use force.<sup>132</sup> PoC is a priority mandate, meaning that missions are obligated to refocus resources toward that aim as needed to ensure that the PoC strategy is aligned with its capabilities.<sup>133</sup>

In situations where state security forces pose threats of physical violence to civilians, particularly where such violence is imminent or ongoing, the mission may also intervene to physically protect civilians (...) There is a risk that such intervention may result in withdrawal of host state consent. However, the mission has *a responsibility and obligation* to intervene and stop violence against civilians by state security forces, including through the use of force.

Consequently, there are those that argue that protection mandates entail both a right and a duty to protect within its capabilities and areas of deployment. As well as those arguing that the obligation to protect

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<sup>125</sup> *Ibid*, para 40 (emphasis added).

<sup>126</sup> See World Summit Outcome Document, UN Doc A/RES/60/1 (2005), paras 138-139.

<sup>127</sup> SG Report 2012, para 19; SC Res 1972 (2011).

<sup>128</sup> Report of the Secretary-General, UN Doc S/2012/376 (2012), para 21.

<sup>129</sup> Khalil, p. 212.

<sup>130</sup> Security Council Resolution 1265.

<sup>131</sup> PoC Handbook, p. 9; SG 2012 report, para 19.

<sup>132</sup> HIPPO Report, paras 85, 90-92.

<sup>133</sup> PoC Handbook, p. 117.

civilians is assumed in the absence of a formal mandate to protect.<sup>134</sup> However, the predominant view is that PoC is “a general, non-legalised concept” intended to address a wide range of threats facing civilians in conflict settings and that mandates entail an authority rather than a legal obligation to protect. The main contention to the existence of an obligation is arguably the distinct lack of legally defined triggers. It is held that practice does not reflect the existence of such an obligation.<sup>135</sup> However, in light of initiatives such as the Kigali Principles, questions arise about whether this is changing.<sup>136</sup> Moreover, the argument has been made that the UN should impose a minimum legal obligation to sustain the momentum of the protection agenda and ensure the political longevity of the protection agenda.<sup>137</sup>

## 5. Reconciling Politics and Protection

Both the peacekeeping and protection framework fall short of providing clear guidance as to the legal implications of protection mandates. Despite the great strides made in developing policy frameworks to interpret and operationalize the PoC mandates, questions remain as to the scope of the obligation it entails - is it a discretionary right, moral obligation or a legal requirement? Due to the lack of clarity, it is not possible to say that the UN Peacekeeping framework does not contain an affirmative obligation to protect – yet. However, within the framework, as it stands there is definitely room for such an interpretation. Indeed, the understanding of physical protection within the protection framework is not as broad as the critics argue. Peacekeepers are to intervene and prevent physical threats within its capabilities and geographical reach. The lack of a clear delineation of the nature and scope of authorized action risks conflating the law with politics and policy. With the continued expansion of peacekeeping practice, the lack of a clear scope curtails implementation.

The two central pillars of contemporary peacekeeping, protection of civilians and the primacy of politics, are seemingly juxtaposed. Consequently, the essential question to ask when considering the future of UN Peacekeeping and the protection framework, is how to reconcile the two. The issue lies in protection potentially damaging the political will and consent of the host-state. To curtail this, mission focus has been placed on strengthening state authority in an attempt to negate the perceived threat to state sovereignty. To this end, stabilization underpins the political strategy and the use of force. However, cooperation with the government may in turn damage and inable the mission to fulfill the political objectives of the mission.<sup>138</sup> The issue of adopting stabilization as the political strategy into which mandated action is to adhere risks giving too much weight to a militarized approach, at the cost of political solutions. Stabilization may reduce the peacekeeping operations ability for political maneuver. Similarly, the focus on PoC risks inducing a militarized approach. The use of force is necessary in modern peacekeeping, especially in relation to PoC, but military action should be guided by a political direction – not the other way around. The danger of losing sight of the mission’s political objectives in increasingly militarized environments become increasingly important in light of PoC mandates supporting governments committing abuses, as seen in the case of MINUSMA.<sup>139</sup> Mission efforts to strengthen the

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<sup>134</sup> Khalil, pp. 211-212, 222-223; Gill, Fleck, Boothby, and Vanheusden., pp. 176, 178.

<sup>135</sup> Emily Paddon Rhoads and Jennifer Welsh, ‘Close Cousins in Protection: the evolution of two norms,’ *International Affairs* 95:3 (2019), 601-603; Scott Sheeran and Catherine Kent, ‘Protection of Civilians, Responsibility to Protect, and Humanitarian Intervention: Conceptual and Normative Interactions,’ in Haidi Willmot et al. (eds.) *Protection of Civilians* (2016), p 46; EPR & Welsh r2p; Gilder 2023

<sup>136</sup> See the Kigali Principles, pledges 3, 8 and 13.

<sup>137</sup> Gilder 2023, p. 31-32

<sup>138</sup> Ralph Mamiya, ‘Protection of Civilians and Political Strategies,’ *International Peace Institute* (2018) 4 and 14.

<sup>139</sup> Mamiya, 3-6.

state's ability to fulfil its primary responsibility to protect the civilian population should focus on comprehensively "building legitimacy, ensuring accountability and rebuilding the social contract" within society.<sup>140</sup> This is an inherently political undertaking which cannot be effectively implemented if the mission is dependent on the state.

Protection mandates rely on a division of responsibility between the host-state and the mission. The primary responsibility to provide protection lies with the state, with the UN serving a complementary role, stepping in during exceptional and turbulent circumstances. What can be and should be questioned as one reflects on the future of peacekeeping is the weight given to state security. Indeed, the understanding of state authority as the central concept of the protection framework may produce a militarized approach. Hence the importance of finding paths forward to successfully reconcile the two. Even if such a reconciliation may be managed, the inherent contradiction of the mission being reliant on a potential perpetrator for consent is seemingly inscapable due to the weight given to sovereignty. However, it is important to remember that:

State sovereignty, today it clearly carries with it the obligation of a State to protect the welfare of its own peoples and meet its obligations to the wider international community. But history teaches us all too clearly that *it cannot be assumed that every State will always be able, or willing, to meet its responsibilities to protect its own people and avoid harming its neighbours. And in those circumstances, the principles of collective security mean that some portion of those responsibilities should be taken up by the international community.*<sup>141</sup>

If PKOs are to be deployed to and expected to operate in ongoing conflicts to prevent civilian suffering at the hands of governments and spoilers alike, it required an effective use of force. This does not necessarily threaten state sovereignty as much as it seeks to balance sovereignty with protection norms, as is enshrined in the Charter.<sup>142</sup> The UN Peacekeeping framework must find practicable strategies, and arguably move away from stabilization, to be able to reap the benefits gained by robust action and sow them to ensure political solutions. Otherwise, the risk is that the UN instead contributes to the perpetuation of conflict by undermining both the possibility of political peace process, and the missions role within it. The future of the protection framework lies in the UN re-establishing itself as an assertively impartial force, working in the interest of the civilian population to ensure their rights under international humanitarian and human rights law.

Importantly, however, is that the UN Peacekeeping operations are primarily defined by the internal law of the Organization. Consequently, it is also therein which the solution lies. In order to get a definitive answer as to what protection entails, it must come from the Security Council affirming that there is a legal obligation. The organ must define its own jurisdiction.<sup>143</sup> This becomes tricky, to say the least, in a state-centric organization with an executive organ dependent on the political will of great powers with vested interests. The contemporary peacekeeping framework is arguably moving away from a 'people-centred' approach to peace and protection, toward a state-centred framework as seen in the use of stabilization as a political underpinning for strategy. Undoubtedly, the capacity for both approaches lies

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<sup>140</sup> Russo and Mamiya, 15.

<sup>141</sup> Report of the High-level Panel on Threats, Challenges and Change, 'A More Secure World' UN Doc A/59/565, para 29 (emphasis added).

<sup>142</sup> UN Charter, Article 1(3) and 2(1).

<sup>143</sup> *Certain Expenses*, p. 168.

within the Charter. It is a balancing act that has been ongoing since the Organization was founded and one that is likely to continue. Therein too lies the reason for hope. The concept of the UN protecting civilians is a product of a progressive interpretation of the Charter, and reflective of a people-centred approach to international peace and security.

The task of peacekeepers to extend state authority is contradictory to the obligation – be it moral or legal – to protect. The physical protection of civilians is not mutually exclusive to the primacy of politics. The issue of contemporary peacekeeping lies not in the fact that peacekeepers wield lethal force, but that their use is guided by stabilization. Consequently, if the two pillars of protection and politics are not reconciled, they risk undermining the UN Peacekeeping framework at large. The idea of the UN acting as a protector and guarantor of international law was a monumental achievement that has yet to live up to its full potential. In the words of the Secretary-General, the protection of civilians and the implementation of international humanitarian and human rights law “demands far greater political will on the part of all parties to armed conflict and of all States and other relevant stakeholders,” arguably this includes the UN and its own implementation of civilian protection.<sup>144</sup> The value of recognizing that Protection of Civilians is a legal obligation would be that it could strengthen the foundation upon which the UN claims assertive impartiality; thereby enabling it to act as a guarantor of both the international rights of individuals and international peace for all.

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<sup>144</sup> Secretary-General Report on the Protection of Civilians in armed conflict, UN Doc S/2023/345 (2023), para 91.

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