

UN Peacekeeping and Ambiguity in Normative UN Norms

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When UN peacekeeping missions get deployed, adherence to the UN norms helps the missions get legitimacy, earn credibility, and find better acceptance in society. The UN norms namely the three principles of peacekeeping, which were conceptualised in 1958 have further evolved with different interpretations making the norms ambiguous impacting the performance of the UN peacekeeping operations.

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When the peacekeeping operations of United Nations (UN) get deployed, they are expected to follow UN norms, as it provides credibility and legitimacy to peacekeeping. What are UN norms? Laurence described

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norms as 'Collective expectations for the proper behaviours of actors with a given identity'.¹ The list of the norms is not finite, and it can range from anything that is expected from a peacekeeper such as adherence to the principles of peacekeeping, maintaining good conduct and discipline, sensitivity to gender, environmental friendliness, and respect for human rights, etc.²

Barring the principles of peacekeeping, most of the norms are clear-cut. In the case of peacekeeping principles, there is however a huge gap between theories and their practice. As a result, interpretation of the principles is highly contested impacting the implementation of the mandate. This article discusses the ambiguity in the norms of principles of UN peacekeeping also called UN Peace Operations, by drawing examples from a historical perspective and illustrations from a few past and contemporary peace operations, and how it impacts the performance of UN peace operations.

THE AMBIGUITY IN UN NORMS: PRINCIPLES OF PEACEKEEPING AND CHALLENGES TO UN PEACE OPERATIONS³

The first aspect affecting mission performance relates to the principles of peacekeeping. *Consent, impartiality, and use of minimum force* are the three principles of peacekeeping, which at times are referred to as the *holy trinity*.⁴ It was Dag Hammarskjöld's study of peacekeeping, which was presented to the United Nations General Assembly after the deployment of the United Nations Emergency Force in 1956 that led to the identification of certain basic principles that would later provide an acceptable framework for the subsequent peace operations.⁵ As a principle, UN peace operations are deployed with the consent of the main parties to the conflict. This signifies a commitment by them to the political process and their acceptance of the UN peace operation, with the necessary freedom of action, both political and physical, to carry out its mandated tasks. Regarding impartiality, UN peace operations are expected to remain impartial in their dealings, and failure to adhere to this principle may undermine their credibility, followed by the withdrawal of consent. Use of minimum force means that it will be used only as a last resort and that too in self-defence unless it is an enforcement action.

Whalan explained that when the peacekeepers' actions are in coherence with UN norms and adhere to the principles, peacekeeping is legitimised. She further noted, 'Peacekeepers are legitimised when the local actors perceive them to be legitimate'.⁶ However, these principles

have their limitations in terms of their interpretations by the Troop Contributing Countries (TCCs), thus creating confusion in the field and, many times, resulting in inaction on the part of the peacekeepers. The often talked about inability of the peacekeepers to implement the mandate, more specifically when it comes to saving human lives, seems more because of a lack of clarity in understanding the principles and less due to a lack of will and inadequate capability.

Consent

Availability of consent at both the strategic and operational and tactical levels is rare. Often, consent given is out of compulsion and therefore conditional, either due to threat or some other incentive. Therefore, it is difficult to ascertain what the principle of consent covers and entails. Conditional consent would imply the host state agreeing to the deployment of the peacekeepers applying different conditions for the mandate, Status of Force Agreement (SOFA) and use of force, etc.⁷ And when the agreed conditions are diluted, consent is withdrawn. Withdrawal of consent at the tactical level does not necessarily mean the withdrawal of consent at the strategic level (because there are smaller groups in intra-state conflicts and the orders originating at the apex level need not necessarily be strictly complied with at the lowest level).

However, the withdrawal of consent at the strategic level is bound to affect the peace operation at the operational and tactical levels. Curran noted that the absence of consent of the main parties to the conflict puts the peacekeeping mission at risk of conflict and enforcement action. He mentioned that at the same time, ‘a blind reliance on the consent of all parties (large and small) may lead a peacekeeping force to lose not only effectiveness but also legitimacy’.⁸ In Cambodia, the Khmer Rouge earlier consented to the peace process but later withdrew. It was a case of withdrawal of consent at the tactical level.

However, due to the maturity and ability of the senior mission leaders in understanding the bigger picture of the peace process, the United Nations Transitional Authority in Cambodia (UNTAC) was able to fulfil the better part of the mandate.⁹ Somalia can be cited as an opposite example of how the mission leader managed to persuade the rebel leader to give his consent—a consent that was initially denied, then given, and later again withdrawn, with catastrophic results for the mission.

While explaining peace operations in a complex environment of intra-state conflict where there is no effective government, Alao, Mackinlay

and Olonisakin observed that ‘in the absence of an effective government from which to obtain the consent, a strong regional consensus was needed. It might exercise an overwhelming pressure, confronting the lawless and imposing unbearable financial deprivation or arrestable rewards’.¹⁰ In an environment where there is a large number of armed groups, external powers intervene to change the course of the conflict to their advantage. The consent, therefore, does not remain the prerogative of the host government.

As a result, it becomes extremely difficult or near impossible to obtain the consent of a similar degree from all the parties to the conflict. Consent then gradually becomes irrelevant and is replaced by consensus. This was the case in Somalia where there was an institutional collapse by the time the peace operation was to be deployed.¹¹ Doyle and Sambanis reported that because of the lack of legitimate central authority in Somalia, most local warlords favoured war to maximise their control over their territory.¹² Given the events leading to the civil war in the wake of the overthrow of Mohamed Siad Barre who had ruled the country for more than two decades, no leader could give consent. Between two primary disputants who were fighting for power, Ali Mahdi consented. But Aideed had to be persuaded by Mohamed Sahnoun, the Special Representative of the Secretary-General (SRSG), to accept the deployment of 500 peacekeepers for the protection of humanitarian convoys.

However, Aideed withdrew his consent when Secretary-General Boutros Boutros-Ghali recommended to the Security Council to deploy 3,000 peacekeepers without consulting either Sahnoun or Aideed. This enraged Aideed, who considered this a breach of faith. What followed immediately was an escalation of violence. The first catastrophic event took place in June 1993 in which 24 Pakistani troops were killed and 56 injured while trying to inspect a weapon storage site belonging to Aideed. The attack on the Somalis during a peace meeting by the American-led peacekeeping mission on 12 July 1993 ended the remaining hope for salvaging the peace. As reported by Peterson, who was reporting from the front lines in Africa for London’s *Daily Telegraph*, the Somalis wanted peace and a peace agreement could have been achieved. But the attack by more than half a dozen Cobra helicopters first by Tube-launched, Optically tracked, Wire-guided (TOW) missiles and then by 20 mm cannon guns killed hundreds of civilians. A few of them were killed while trying to run away. It was a Bloody Monday and for Somalis, an act of war.¹³ Later, on 3 and 4 October 1993, during the US Army Rangers’ raid

on Aideed's compound, 18 Rangers were taken as hostages and killed, and one was dragged through the streets of Mogadishu. The withdrawal of consent by Aideed was the turning point for the peacekeeping mission in Somalia.¹⁴

The initial consent for the deployment of the mission in Somalia was possibly influenced by the personal motives of the main parties to the conflict. On the one hand, the main rivals—Ali Mahdi and Mohammed Aideed—considered the presence of the UN mission and the task of protecting the personnel, installations, and equipment of the UN and its agencies as a clear threat and obstruction to their power struggle.¹⁵ On the other hand, these two leaders desperately needed the UN to obtain economic aid even though remaining sceptical of the international organisation's likely hidden agenda.¹⁶ What followed thereafter in Somalia, and its consequent effect on the subsequent missions elsewhere (for example, in Rwanda), is a sad commentary on the UN's peacekeeping history.¹⁷

The question that arises therefore is what happens if the host state withdraws consent? However, as observed by Oleksiuk, unless the Security Council decides, the peacekeeping mission can continue to be in place.¹⁸ Without going into the legality of this issue, in such a case, there will be no support from the host state. Withdrawal of consent may not be direct but may come in form of restricting the peacekeepers' freedom of movement in operational activities as well as obstructing the mission's logistics as happened in the case of the UN Mission in Ethiopia and Eritrea (UNMEE). A study report by the Norwegian Institute of International Affairs (NUPI) that wanted to find out why the Security Council terminated UNMEE on 31 July 2008 could not find any definite answer. It was however implied that it was the withdrawal of consent, that evolved gradually in the form of imposing restrictions justified by security and technical reasons, making the mission untenable to implement its mandate.¹⁹

The next related question is about the feasibility of mounting a peacekeeping mission without the consent of the host state or the authority in power even if that authority has not been recognised by the international community. Earlier in 2006, based on a US-drafted resolution, the Security Council wanted to deploy an UN-led force in Darfur but Sudan did not agree despite the conclusion of the Darfur Peace Agreement. Later, however, coming under the pressure of sanctions, Sudan agreed to a joint UN and African Union force, the United Nations

Hybrid Operations in Darfur (UNAMID).²⁰ Whineray called this a success for the Security Council but Sudan not agreeing to the UN-led mission was a big blow to the reputation of the Security Council.²¹

The second case in point is Afghanistan. Soon after the US withdrawal from Afghanistan, there was a flurry of discussion amongst scholars who believed that a UN peacekeeping mission in Afghanistan would be a good idea primarily to assist the civilian population recover from hunger and poverty. A few scholars were vociferous about their conviction that only the UN peacekeeping mission can rescue the Afghan women who have been persecuted by the Taliban for years. In this regard, Day reported that it is not what the UN can do but what are the risks involved in a UN peacekeeping operation. He suggested that this question should be posed to the Afghan people.²² The Taliban who fought for years to see the day when the US and its allies withdraw always look at the UN as nothing else but a proxy of the West. That apart, any reference to the right of women will be taboo.²³ Therefore, the Taliban is very unlikely to give any quarter to an idea like UN peacekeeping.

Therefore, since consent is one of the founding principles of peacekeeping, traditional peacekeeping operations (peace enforcement operation under Article 42 is however different) cannot take place without the consent of the host state (including the authority that is ruling the host state). When the host states give consent, as described by Labuda, it is like codifying the host state's consent to the different conditions for deployment of the peacekeeping force.²⁴

Impartiality

Impartiality is the second principle of peacekeeping.²⁵ This principle however is either not understood or is confused, or deliberately misinterpreted. Though derived from the report by Hammarskjöld, this was not mentioned as *impartiality* but inferred from what Hammarskjöld explained,

While the United Nations must reserve for itself the authority to decide on the composition of such elements, it is obvious that the host country, in giving its consent, cannot be indifferent to the composition of those elements. To limit the scope of a possible difference of opinion, the United Nations in recent operations has followed two principles: not to include units from any of the permanent members of the Security Council; and not to include units from any country which, because of its geographical position

or for other reasons, might be considered as possibly having a special interest in the situation which has called for the operation.²⁶

Even though it is referred to as impartiality in the Capstone Doctrine, the Brahimi Report referred to it as *neutrality/ impartiality* leaving it open for scholars and academicians to split hair in various academic discourses. According to Yamashita, 'Impartiality and neutrality both meant equidistance, and there was no conceptual distinction between the two'. In his article explaining how impartiality has been put into practice, he went on to state, 'Impartiality is here defined as loyalty to the mission mandate and the Charter principles. Impartiality in this understanding constitutes a different code of action from neutrality because it potentially enables peacekeepers to use force against those who act against their mandates and the "Charter Principles" on which they are based'.²⁷ This corroborates what is mentioned in the Capstone Doctrine:²⁸

The need for even-handedness toward the parties should not become an excuse for inaction in the face of behaviour that works against the peace process. Just as a good referee is impartial, but will penalize infractions, so a peacekeeping operation should not condone actions by the parties that violate the undertakings of the peace process or the international norms and principles that a United Nations peacekeeping operation upholds. Notwithstanding the need to establish and maintain good relations with the parties, a peacekeeping operation must scrupulously avoid activities that might compromise its image of impartiality.

Given the complex internal conflicts where extreme violence has become the norm, reining in warmongers (multiple parties to the conflict) requires well-trained and well-equipped military peacekeepers, who have always been at a premium, except for the Permanent Members of the UNSC and a few other developed nations. Besides, as observed by Fraser, 'The decision to deploy peacekeepers in and of itself is not neutral and is reflective of the political and strategic interests of the UN Security Council in general, and the P5 in particular'.²⁹ Therefore, the very rationale of neutral troops as envisaged by Hammarskjöld does not make sense. Over time, as UN peace operations became more practical alternatives for conflict resolution, impartiality, rather than neutrality, has assumed greater importance.

The shift in conceptual thinking from neutrality to impartiality took place around 1998, after the debacles in Srebrenica and Rwanda.

Even then, neutrality and impartiality were often confused with different meanings and significance. Neutrality usually means not taking sides with warring parties, and impartiality refers to non-discrimination, that is, peacekeepers must be neutral but implement the mandate without favour and prejudice to any party.³⁰ Describing this as ‘the neutrality–impartiality dilemma’, Malito has questioned the very concept of the possibility of peace in a neutral space.³¹ Given the multiple groups fighting in the same conflict and with high chances of either lack or withdrawal of consent by one or more groups, the peace operation cannot remain impartial even in principle.³² However, to some, impartiality is synonymous with neutrality, and not taking action against perpetrators of violence because of a lack of understanding of the mandate is considered impartial.

Impartiality is not limited to deeds alone but also to the way stakeholders look at the peacekeepers’ impartial status. There is no better example to understand this relationship than look at what happened when Hutu militias came down on the Tutsis in Rwanda on 6 April 1994 and killed Prime Minister Agathe Uwilingiyimana who was a moderate Hutu, in addition to killing 10 Belgian peacekeepers.³³ Even though General Dallaire, the FC of the United Nations Assistance Mission in Rwanda (UNAMIR), tried his best to protect the civilians with whatever little means the mission had, one of the military contingents stood by silently as mute spectators to what was happening, possibly waiting for orders from their national capital. France, Italy, Belgium, and the USA instructed their contingents to evacuate only their nationals.³⁴ These nations probably wanted to remain neutral by not taking action against the perpetrators of violence. According to General Dallaire, it was ‘cynical manoeuvring by France, Belgium, and the USA’.³⁵

Commenting on the implications for the impartiality of UN peace operations, Rhoads quoted Mona Khalil (former senior UN legal officer), ‘requires UN peace operation to act independently when host government is unable or unwilling and even to take action against the host government forces where and when they pose a threat to civilians’.³⁶ Rhoads’s observation was in the context of a lack of response on the part of the UNMISS during the violence in July 2016, when the government forces were the perpetrators of the violence. On 11 July 2016 about 80–100 government soldiers from the Sudan People’s Liberation Army (SPLA) stormed the compound of Terrain Hotel. They singled out the Americans, abused and beat them, and thereafter shot dead the South

Sudanese reporter, John Gatluk, who worked for *Internews* (a US-funded media development organisation) right in front of the foreign aid workers, gangraped several foreign women, and carried out mock executions. Desperate pleas to the UN peacekeeping mission, located less than a mile away, went unheeded.³⁷ It is still not clear if the peacekeeping contingent/s, located not far away, was/were either incapable of or unwilling to respond to the calls for help to avoid putting the interest of its/their TCCs in South Sudan at risk.

She also provided an opposite example that is, the impartial stand taken by the UN in the same mission following the civil war in 2013. When tens of thousands of civilians in an attempt to save their lives, fled to the UN camp looking for shelter, the UN eventually ended up sheltering over 2,00,000 Internally Displaced Personnel (IDPs) in various UN bases across the country. In response, the UN took away the state-building and peacebuilding functioning of UNMISS by its resolution 2155 (May 2014). This was a strong signal from the UN that a government that abuses its people, will not be supported.³⁸ This antagonised the government and they viewed UNMISS as an adversary and not as impartial. While the actual reason as to why the peacekeepers did not react in July 2016 is difficult to state, UNMISS failed to take an impartial stand to protect the civilians.³⁹ Earlier, during the interview with Alexandra Novosseloff and Jason Stearns on her book *'Taking Sides': The Challenges of Impartiality in UN Peacekeeping Operations*, Rhoads, observed:

Impartiality has been a core norm of UN peacekeeping since its inception during the Cold War. It is a norm in that it prescribes how peacekeepers should behave: namely, that they are unbiased and informed when making decisions or taking action. It is integral to the identity of peacekeepers, to what peacekeeping is and what it is not (i.e. warfighting), and to the values and principles that the UN seeks to project. It is a form of authority derived not only from a lack of bias but critically from what peacekeepers, like other 'impartial actors', are supposed to represent and further in the absence of particular interests. These are largely the values outlined in a mission's mandate, which relate to the specific mission context as well as to broader norms of international peace and security.⁴⁰

She however cautioned that translating the concept of impartiality to deeds on the field can be tricky. Referring to the mission–state relationship in DRC, she highlighted the challenges of the peacekeepers

to be impartial when the state itself or elements of the state pose a threat to the civilians whom the peacekeepers are required to protect.

The behaviour of the Belgium contingent from the time 450 para commandos landed in Rwanda in November 1993, is another example of the dilution of the impartial status of the peacekeepers. Belgium's impartial status, being the former colonial master of Rwanda, has been doubted by the Government of Rwanda. Their attitude further vitiated the atmosphere. Most of the soldiers had joined UNAMIR after their tour of duty in Somalia, which was a Chapter VII mission. Describing the aggressive attitude of the Belgian soldiers, General Dallaire, quoting his staff officers, mentioned: 'My staff soon caught some of them bragging at the local bars that their troops had killed over two hundred Somalis and that they knew how to kick the "nigger" arse in Africa'.⁴¹

On the other hand, France had a good relationship with the Hutu government. Therefore, when the Tutsi regained power and slowly recovered ground, they did not see France's role in Operation Turquoise as impartial. General Dallaire noted that the inertia and interference from the TCCs cost many innocent lives in Rwanda.⁴² Whether on account of the term's deliberate/unintentional misinterpretation, the history of the peacekeepers/contingent, or political manoeuvring by powerful nations, the impartial status of the peacekeeper, once lost, is difficult to get back.

After the genocide in Rwanda, Kofi Annan had stated that 'Impartiality does not—and must not—mean neutrality in the face of evil; impartiality means strict and unbiased adherence to the principles of the Charter—nothing more, and nothing less'.⁴³ Similarly, the Report of the Panel on United Nations Peace operations in 2000 also stated that 'Impartiality for the United Nations must mean adherence to the principles of the Charter and to the objectives of a mandate that is rooted in those Charter principles'.⁴⁴ The same was endorsed by the General Assembly's Special Committee on Peacekeeping Operations.⁴⁵

The idea of impartial use of force to implement the mandate continues to be debated and hence necessitates better articulations for its operationalisation. The necessity of adhering to the principle of impartiality must, however, not be restricted to the implementation of the mandate alone. It must begin with the formulation of the mandates by the UNSC. But whenever the UNSC mandate has a clear political objective, it is no longer possible for the UN to remain impartial. The *use of force*, which is intrinsically connected to the principle of *impartiality*, is the most controversial principle of the three and will be discussed in the following section.

Use of Force

Even though Hammarskjöld believed that peace operations, in general, did not involve the use of force as envisaged under Chapter VII of the UN Charter, a peace operation under Chapter VI can also use force in self-defence. There is however a misunderstanding that force can be used only under Chapter VII of the UN Charter. As analysed by Labuda, this needs some explanation and going back to what Hammarskjöld explained in his report to the General Assembly *Summary study of the experience derived from the establishment and operation of the Force*.⁴⁶

Hammarskjöld stated,

A problem arises in this context because of the fact that a wide interpretation of the right of self-defence might well blur the distinction between operations of the character discussed in this report and combat operations, which would require a decision under Chapter VII of the Charter and an explicit, more far-reaching delegation of authority to the Secretary-General than would be required for any of the operations discussed here.⁴⁷

This amplified *first*, use of force is permissible even under Chapter VI. *Second*, there is a distinction between the use of force in self-defence under Chapter VI and enforcement action under Chapter VII. *Third*, the line between the use of force in self-defence and combat action even under Chapter VI as seen later in Congo (1960–64) is blurred.⁴⁸ The line became more blurred as the subsequent peacekeeping missions got multidimensional and expansive mandates, some under Chapter VII and some with authority for wider use of force even under Chapter VI (it will be explained in more detail later).

As the peace operations evolved, along with the expanded mandates, came phrases like ‘in the defence of the mandate’, ‘robust peacekeeping’, ‘aggressive peacekeeping’, and ‘use all necessary means’, etc. When seen in the context of the spirit of the principles as illustrated by Hammarskjöld, these phrases have added further confusion to the understanding of their meaning. *One*, the principle of use of force is mentioned as ‘Non-use of force except in self-defence and defence of the mandate’ in the Capstone Doctrine. There is however no explanation on how much force is enough and what is the meaning of the defence of the mandate or is proactive use of force to implement the mandate is covered by this principle.

Two, phrases like ‘robust peacekeeping’, ‘aggressive peacekeeping’, and ‘use all necessary means’ are generally understood because of their

association with the Chapter VII mandate. At the same time, even under a Chapter VI mandate, 'Robust peacekeeping involves the use of force at the tactical level with the authorization of the Security Council and consent of the host nation and/or the main parties to the conflict'.⁴⁹ But there are examples of past missions like the United Nations Mission in Liberia (UNMIL) and United Nations Stabilisation Mission in Haiti (MINUSTAH) even though mandated under Chapter VII, were not authorised to use force.⁵⁰ On the other hand, the mandate of the United Nations Interim Force in Lebanon (UNIFIL) uses phrases like 'authorises UNIFIL to take all necessary actions' under a Chapter VI mandate.⁵¹

Even this phrase 'all necessary means' raises the question of the limit of using force. Bourgeois argued that 'necessary' cannot be a 'blank cheque.' Defining 'necessary' in the context of its legality, she concluded that UN peace operations or UN-mandated peace operations simply can't resort to any amount of force to protect civilians. The use of this phrase by the Security Council to authorise peace operations aimed at protecting civilians leaves room for discussion and ambiguity because it would be interpreted differently by different TCCs and peacekeepers as probably it suits them.⁵² To my understanding, 'necessary' means only what is 'essential' or the 'minimum' use of force that is necessary. But the question is how to determine, what is 'minimum' is?

The normative ambiguity and its legal implications in the context of International Humanitarian Law have hence further compounded the application of the principle of use of force. Mission Headquarters however, on their part try to remove the ambiguity by way of issuing guidelines to make the use of force simpler. These come in the form of RoE, which is approved at the level of UN Headquarters (HQs). The RoE, though exhaustive, are only general guidelines to the commanders for their intelligent interpretation on a case-by-case basis. There have been many instances in the past when peacekeepers did not use force even in self-defence.

The hesitation to use force could have been caused either because of an obsession with the fear of loss of legitimacy if viewed as partial by the Serbs or by the fear of sustaining casualties as a result of retaliation from rogue elements. Howard and Dayal argued on similar lines. They noted that using force not only compromises the principle of impartiality but also makes the peacekeepers vulnerable to attacks by the armed groups against whom force is used. Besides, when peacekeepers fail to implement the important mandated tasks such as the protection of innocent civilians,

it can be perceived by the local population as a consequence of either inadequate troops or a weak mandate. Therefore, a stronger mandate to use force generates hope in the ability of the peacekeepers to achieve something which they could not do earlier. Such high expectation is another negative effect of using force by the peacekeepers.⁵³

The negative impact of the use of force, which Howard and Dayal mentioned, depends on what aims and at what level the force is used. The use of force at the tactical level whether for the protection of civilians or in self-defence, however, should not be looked at from the benefit of its immediate effect. As observed by General Smith, the application of force should be to aim to alter the decision-maker's mind.⁵⁴ What he implied is that the use of force at the tactical level to save civilians under threat brings only tactical and temporary results unless it is applied to alter the decision-maker's mind. This is exactly what happened in Bosnia. There were situations when the tactical commanders took the risk of protecting civilians and when senior mission leaders did not call NATO airstrikes against the Serbs who attacked Srebrenica, killed thousands of innocent Bosnian Muslims, and took Dutch peacekeepers hostage in July 1995.

It was reported that one of the reasons for Akashi the Special Representative of the Secretary-General and the Head of the Mission and Gen Janvier the overall commander of all UN forces' decisions against calling the airstrikes was the fear of more retaliation from the Serbs.⁵⁵ According to a Human Rights Watch report, had the airstrikes been done on time, the fate of Srebrenica would have been different.⁵⁶ Quoting from the UN inquiry by the UN official, David Harland, Porter stated that the request for an airstrike by the Dutch contingent commander, Colonel Ton Karremans, was deliberately delayed by Janvier. According to Porter, 'He was, of course, playing for time, doing anything rather than taking direct action, which he believed would inflame the Serbs'.⁵⁷

This way, they failed to change the mind of the Bosnian Serb commander Ratko Mladic, who led the Army of Republika Srpska during the Yugoslav wars. To alter the mindset, one must be ready to use force and push it to the hilt and be prepared to accept the consequent risks. But the use of force alone cannot alter the mind of the enemy commander. Americans have failed in Vietnam, Somalia, Afghanistan and Syria. And so is Israel against Hezbollah. The application of lethal force failed to alter the mind of Hezbollah because of its big support base in South Lebanon and Hezbollah did not fight like a regular force in 2006 but fought from amongst its people who were not the target of

Israel. On the other hand, it had chances to succeed in Bosnia because the force would have been used against the Army of Republika Srpska.

The application of force to bring the decision-makers around will have to be based on overall vision and strategy combined with other conflict management tools. According to General Smith, there was no strategy in the Balkans. Events even though were coordinated at the theatre level, were reflexive and decisions were taken from event to event. In his opinion, 'No nation that sent forces to join United Nations Protection Force (UNPROFOR), or for that matter NATO in support of UNPROFOR, had any intention of committing those forces to battle or indeed of risking them at all. The RoE was there to control the use of force for the defensive purpose only'.⁵⁸ Those nations participated for themselves and not to bring an end to the conflict. It was evident from the decision of the British government after the attack on Srebrenica that NATO would bomb Serbs until they stopped if the Bosnian Serbs attacked Gorazde, one of the safe areas where the British soldiers were positioned. Such a resolve to use force did not apply to other safe areas where there was no presence of British soldiers. It was a decision to amplify partiality violating the second peacekeeping principle—impartiality. Adherence to the principles provides legitimacy to the UN peace operations. Instances of the UNPROFOR and UNAMIR clearly illustrate the failure on the part of senior leaders as well as that of the peacekeepers to save innocent lives.⁵⁹

With legal experts giving new twists, the principle of 'use of force' continues to be debated in various fora without any clear outcome. Nor would it be easy to provide clear guidelines for the peacekeepers using force. From a practitioner's point of view, it is the moral responsibility of peacekeepers to save the civilian population from the scourge of violence. Therefore, rather than getting into the legal trapping, when the force is used in good faith either for the protection of civilians or in self-defence, the ambiguity would begin to disappear. The next section will briefly highlight how the ambiguity in the principles impacts legitimacy.

LEGITIMACY

Novosseloff also attributed such inaction on the part of the senior leaders to their fear of losing the status of impartiality and fear of retaliation, which prevented them from using force even if it was a just and fit case.⁶⁰ Whether it was a case of abdicating moral responsibility to save human lives or was a notion of getting legitimacy by not using force that could

have influenced the decisions of Akashi and General Janvier is not known. In this regard, quoting what Paolo Tripodi observed ‘when peacekeepers are placed in a position to prevent moral catastrophes, they cannot step aside and “allow” the killing of those who believed the soldiers were there to protect them’—both Akashi and General Janvier did not fulfil their moral obligation.⁶¹ Goulart calls it a lack of ‘combat motivation’, which inspires the peacekeepers to fight armed opponents in the conflict zone. Noting that there can be several different combat motivating factors, Goulart observed that the legitimacy of the cause is the predominant factor. Citing examples from contemporary peace operations like the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and UNMISS, he explained that the sense of legitimacy of the cause for defending the sovereignty of their own country is different from that of peacekeepers taking the risk to save the lives of some foreign nationals in the conflict zone.⁶²

Building on what Novosseloff mentioned about the ‘notion of getting legitimacy’, Whalan, described the relationship between power, legitimacy, and effectiveness, and its impact on the local population in the challenging and unpredictable environment where peacekeepers are required to work. She observed that peacekeepers use the power of coercion, inducement, and legitimacy to shape the local behaviour. She, however, cautioned that inducing coercion by using force may breed resentment, which adversely affects the quality of behaviour that is expected to be shaped.⁶³

Laurence reported that impartiality is a core legitimating norm for UN peace operations, which is contested because there is a genuine shift in the explanation of impartiality. He explained such a shift by citing examples from DRC. Even though it adopted a forceful stance after Joseph Kabila came to power in 2006, MONUSCO did nothing when the rebel group M 23 (Mouvement du 23 mars) overran Goma in 2012. Later, however, the Force Intervention Brigade (FIB), comprising troops from South Africa, Tanzania, and Malawi, joined hands with the government forces and used lethal force against M 23.⁶⁴ Even though the UN officials contest that FIB was impartial because it took the side of the mandate, Laurence noted that impartiality persists but the ways of being impartial have proliferated. Therefore, according to him, ‘insisting that a force like the FIB is impartial can be a deliberate strategy for glossing over normative and political disagreements.’⁶⁵

For peace operations to succeed, the legitimacy of the operation, both at the strategic and local levels, is necessary. Legitimacy, nevertheless, is a subjective perception that varies depending on how the outcome of the operation affects different stakeholders, including the local population. When a peace operation can implement a large part of the mandate, it gains credibility. Newby put it as the ability to deter conflict and provide human security. Therefore, it has to be earned and constantly supported by evidence. Once a mission has established credibility, it earns confidence. On the other hand, local legitimacy enables the mission to win cooperation from the local population. Hence, local legitimacy is linked to trust but can be eroded over time by unreliable behaviour on the part of those who are trusted.⁶⁶ Simply because a peace operation is a multinational force that is either led or authorised by the UN does not mean that it will be viewed as legitimate by the local population.⁶⁷ Explaining this as local legitimacy, Whalan noted that ‘Local legitimacy refers to evaluations by local actors about a peace operation’s rightness, fairness, and appropriateness—that is, whether its practices rightfully cohere with the relevant framework of rules and values, are fair, and produce appropriate outcomes.’⁶⁸ In Bosnia, in the evaluations by the poor Bosnian Muslim population, the UN operation failed to protect their lives. Similarly, even though UNIFIL received legitimacy from the UN Security Council and has full support from national governments, the same may be missing at the local level. It is because some local communities contest the mandate on political grounds.⁶⁹ Howard stated that ‘the UN gains enormous moral and ethical legitimacy in the field by not using force’.⁷⁰ But not using force in Bosnia, while technically legitimate, was both morally and ethically wrong and ethically illegitimate.

Recognising its failure to save innocent civilians, the UN, at the initiative of the western nations, introduced a new concept the Responsibility to Protect (R2P), urging the member states to be more responsible when it comes to protecting civilians on humanitarian grounds. This is briefly discussed in the next section.

RESPONSIBILITY TO PROTECT

The concept of R2P, which was developed parallelly with ‘robust peacekeeping’, is based on two principles: (i) each state has the responsibility to protect its people; (ii) if a state is unable to protect, or fulfil that responsibility, other states have the responsibility to intervene.

These two principles make the protection of human rights the core obligation of a sovereign state. The UN's disasters in Somalia, Rwanda and the former Republic of Yugoslavia were critical to the development of R2P. To avoid a repetition of the Rwanda genocide, both Boutros Boutros-Ghali and Kofi Anan stimulated a discussion in the UN arguing that to prevent a humanitarian disaster, the sovereignty of the state needed to be redefined. It is however worth mentioning here that the original idea of R2P was that of Dag Hammarskjöld. When there was a tribal massacre in Kasai province of DRC in 1960, he stated that "the UN could not stand aside and remain passive in what he called – a case of incipient genocide."⁷¹

Accordingly, based on a study ordered by Anan, a 12-person International Commission on Intervention and State Sovereignty was established. The Canada-led commission, which produced the report in December 2001 is titled 'Responsibility to Protect'.⁷² The report was highly contested on the ground that since R2P can be invoked even when the Security Council is paralysed allowing either the General Assembly or a regional organisation can intervene by acting under Chapter VII and seek approval of the Security Council later. This can lead to unilateral action by one or more member states for political reasons.

R2P however was later endorsed by the member states during the 2005 high-level UN world summit because the prior sanction of the Security Council was made mandatory, and the decision would be taken on a case-to-case basis.⁷³ The Libyan intervention was the first instance and only one so far of invoking R2P with a unanimous adoption of a resolution authorising an armed intervention by the US, France and the UK.⁷⁴ The initial aim was a humanitarian intervention to protect the civilians but this seemed to have changed later to forced regime change. Consequently, initial support from the Arab League was withdrawn. It was later followed by another resolution imposing a no-fly zone, the arms embargo, a ban on all Libyan designated flights, and authorising 'use of all available means'.⁷⁵

Following the Libyan crisis, the R2P concept was heavily contested because of several reasons. It is difficult to determine the balance that R2P needs, between human security and respect for state sovereignty. The second resolution of 1973 was based on inadequate inputs and the assumption of the P3 members that intervention would be able to protect the civilians seemed to only in short-term outcomes. Since there was no clarity on how the measures for a no-fly zone would be implemented, the

ambiguous procedure would likely cause more harm than the protection of civilians.

India is sceptical about the utility of R2P. India believed that while the resolutions could be justified in principle, rather than following an ambiguous procedure, the reference to International Criminal Court (ICC), imposing an arms embargo, and freezing assets would likely produce better dividends. However, the West does not seem to be convinced by India's justification of its stand on R2P. A comprehensive analysis of India's thinking on the subject can be found in Krause's occasional paper, 'It is Changing After All: India's Stance on "Responsibility to Protect"'.⁷⁶ Krause observed that India's position on R2P is more complex and nuanced.

Even though India talks of the policy of non-intervention and respect for sovereignty, its records of interventions in its neighbourhood following different forms contradict its public claim. It is probably more because it mistrusts the West's real intentions towards the Global South and, their record of selective interventions, and attempts to use R2P in the name of Protection of Civilians (discussed next).

PROTECTION OF CIVILIANS (PoC)

Despite being a core objective of the UN, the mandate to protect civilians has become increasingly challenging. Mamiya, the author of the International Peace Institute (IPI) report, 'Protection of Civilians and Political Strategy', pointed out the tension between politics and the urgent need for the protection of civilians. According to him, such a strain can prevent creating consensus in the UNSC for taking important decisions like the protection of civilians. The UN policy of 2019 has outlined the PoC operational concept in three-tier action.⁷⁷ This concept has been largely endorsed by the member states. However, Bode and Karlsrud have observed that those who implement the concept, have a different understanding of the norm. Hence, it is challenging to practise this concept.⁷⁸ There is however a tendency in some quarters to confuse PoC as a core 'obligation' with 'responsibility'.

The centrality of PoC is well understood because saving human lives is the moral responsibility of human beings. But the primary responsibility to protect the civilians is that of the host states. Shifting the responsibility to the peacekeepers will encourage the host states to shun their obligation and would be a drain on the peacekeeping resources. It was observed similarly by Day and Hunt, 'First, the gravitational pull of PoC can

distract attention and scarce resources from other, often interdependent, priorities. Second, how PoC has been pursued can distort intended impacts and in some circumstances even harm. Third, these distractions and distortions can combine to produce dilemmas for mission leaders, Secretariat officials, and the Security Council.⁷⁹

The UN's Report of the Special Committee on Peacekeeping Operations reaffirmed the importance of the PoC as the core objective of the peacekeeping operations. Yet this report only encourages and reminds the member states and TCCs of their obligations to protect the civilians under the relevant international law.⁸⁰

Coning, while explaining stabilisation operations, stated 'There will always be a gap between doctrine and practice, but it is the responsibility of the policymakers to keep that gap as small as possible. The wider the gap the more likely there will be negative consequences'.⁸¹ Such consequences are likely to be reflected in the form of the peacekeepers' failure to protect the civilians. Being the vulnerable community, women suffer the most in conflict areas. This further gets compounded because of the presence of unauthorised arms, external mercenary elements, unsuccessful or partial Disarmament, Demobilisation and Reintegration (DDR), and the host government's armed force indulging in atrocity against women, etc.

According to a report by Soroptimist, women and girls are also victims of genocide and enslaved for labour, and the situation is exacerbated by limitations on women's participation in peace processes and decision-making in the post-conflict phase.⁸² The threat to women comes also from the peacekeepers in terms of sexual exploitation and abuse, commonly referred to as SEA. Taking note of the impact of conflict on women, UNSCR 1325 of 31 October 2000, is the landmark resolution that calls for the active participation of women in the process of peacemaking. In 1993, women made up 1 per cent of deployed uniformed personnel. In 2020, out of approximately 95,000 peacekeepers, women constitute 4.8 per cent of military contingents, 10.9 per cent of formed police units, and 34 per cent of justice and corrections government-provided personnel in UN peacekeeping missions. Participation by more women in peacekeeping can help create better awareness and can act as an inherent deterrent to SEA by the peacekeepers.

The UN has developed norms and guidelines for the protection of women in conflict areas to ensure the implementation of these guidelines and norms such as PoC Advisor, Gender Advisor and Gender Advisory Unit (GAU), Community Liaison Assistants, and Community Alert

Network. The mandate for the protection of civilians, specifically vulnerable groups like women, is now the prime goal of peacekeeping missions. But when the host government and its armed forces are incapable or perpetrators of violence against women, how can gender mainstreaming be effectively done by the UN peacekeepers to prevent violence against women?

The risk of violence against women is at an all-time high. Eradication of violence against women needs a strong commitment to ending the very source of the violence and taking away the power of the violence. Gender inequality, lack of awareness, lack of justice, lack of institutional mechanism, and abundance of illegal arms are only some of the sources of the power of violence. Therefore the strategy to prevent violence against women must include amongst many others: national legislation to empower women, the active role of the international community in the prosecution of the culprits, the legal basis of peacebuilding, economic empowerment of women, inclusive decision-making process, supporting DDR process, security sector reform, participation of women in the electoral process, promoting national institutions and coordination, liaison and partnership amongst all agencies.

At the time of writing this article, the Department of Peace Operations of the UN is in the process of reviewing the policy in an attempt to make it more practical. Effectiveness of Peace Operations Network (EPON) has recently presented its study on PoC at UNHQs New York on 11 May 2022 (I was also part of the conference). What however emerged is that PoC will remain part of the wider debate of UN peace operations as there are far too many challenges to protecting civilians. Theoretically, if the challenges that were identified by the study are addressed and recommendations are incorporated into the policy formulation, PoC would not be as difficult as it is now. Acting on the recommendations, however, is a long process.

Until then, peacekeeping missions will have to find ways to provide immediate protection to the civilians. Because being able to protect civilians from violence in the conflict zones provides local legitimacy and brings credibility to peace operations. For several reasons, there are many instances of peacekeepers shying away from their basic responsibility to protect civilians.⁸³ PoC is the responsibility of the host states. Therefore, unless the host states themselves are sincere in their commitment, violence against civilians will remain a big challenge to the international community.

No matter how good is the concept, unless those who are affected are involved in the strategy for the protection, their suffering will continue. Jose and Medie observed that since UN civilian protection is seen to be ineffective, civilians also engage in self-protection. The strategy of Civilian Self Protection (CSP), which is used globally, has three categories. *One*, 'non-engagement'. The civilians don't interact with civilians and remain away. *Two*, 'non-violent'. In this category, there is limited interaction with the armed groups like pleading, providing girlfriends, food, shelter, etc. It essentially means buying protection. *Three*, using violent means to protect themselves. They have however cautioned that such a strategy has its limitations and hence should not be treated as a replacement for the traditional protection method.

Since CSP is a survival strategy, this should be factored into the strategy for PoC to make CSP more effective.⁸⁴ Women taking to the streets with arms defying Taliban after the Taliban took over Afghanistan last year fall in the third category of CSP. As reported by Harrison, 'Women have taken up guns in northern and central Afghanistan, marching in the streets in their hundreds and sharing pictures of themselves with assault rifles on social media, in a show of defiance as the Taliban make sweeping gains nationwide. One of the biggest demonstrations was in central Ghor province, where hundreds of women turned out at the weekend, waving guns and chanting anti-Taliban slogans.'⁸⁵ One would however have to wait and see the success of such armed rebellion. These women who have taken up arms don't have much faith in the international community to protect them. While their courage in the face of death can embolden the vulnerable community across the world, the international community must step up their activities including those recommended by the UN Women and Human Rights Watch.⁸⁶

The bigger contest arises when PoC is linked to the concept of R2P.⁸⁷ Williams observed that 'The responsibility to protect (R2P) and the protection of civilians (PoC) are distinct but inevitably related ideas'.⁸⁸ Williams reported that there are similarities as well as distinctions between R2P and PoC. Lack of understanding of the difference may be problematic while operationalising R2P and PoC creating more confusion when interpreting the PoC concept. For Indian peacekeepers, as mentioned earlier in the previous section, there does not seem to be any confusion between R2P and PoC. Indian peacekeepers never shied away from using force when it came to using force to save innocent human lives.⁸⁹

GOING FORWARD

UN norms like consent, impartiality and use of force (or, impartial force) would stay in concept and part of the rhetoric the politicians use in their public discourse. The shift in the practices of the norms has been forced by the changed circumstance. But to say that all practices by the peacekeepers conform to the spirit of the norms is like in the words of Marion Laurence ‘glossing over contestation and pre-empting concerns about partiality in UN peace operations’.⁹⁰ As would have been seen in the past as well as in current peace operations, the inherent ambiguity is used to cover the lack of will to implement the mandate. In principle, these norms enjoy the support of the member states. Ambiguity in the norms is not a hindrance if the peacekeepers act in good faith. But when the ambiguity is taken advantage of and interpreted based on the associated risk in adhering to the norms in letter and spirit it influences the outcome of UN peace operations. That aside, as earlier noted by Fortna and Howard, even the term *peacekeeping* has been defined differently in different studies and hence the definition has changed as has the practice.⁹¹ Ambiguity in the UN norms, therefore, is not going to go away soon and will continue to be contested in the UN peacekeeping debates.

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