

INTERNATIONAL HUMANITARIAN LAW TRAINING AND
CREDIBILITY OF UNITED NATIONS PEACE-KEEPING
OPERATIONS

A Thesis

by

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Presented in partial completion of the requirements of
The Certificate-of-Training in United Nations Peace Support Operations

ABSTRACT

Peace-keepers are often deployed in situations where despite agreements; combatants disregard international humanitarian law and target civilians and peace-keepers themselves. These peace-keepers are expected to defend the civilians and themselves and are often in danger of being drawn into the conflict. Such situations challenge the credibility of United Nations and other peace-keeping operations and make the requirement to deploy peace-keepers well trained in international humanitarian law ever more pertinent. In analysing international humanitarian law challenges peace-keepers face in the field; this paper examines the nature of contemporary conflicts and ways of maintaining credibility of United Nations peace-keeping operations through improvement in the teaching of international humanitarian law among peace-keepers in the mission area.

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ABBREVIATIONS

AU	African Union
DPKO-TES Military	United Nations Department of Peace-keeping Operations, Division-Training and Evaluation Services
ICRC	International Committee of the Red Cross and Red Crescent
IGAD	Intergovernmental Authority on Development
KFOR	Kosovo Forces
MONUC	United Nations Organization Mission in the Democratic Republic of Congo
NATO	North Atlantic Treaty Organization
NCO	Non-Commissioned Officer
NPFL	National Patriotic Front of Liberia
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
ONUB	United Nations Operations in Burundi
ONUSAL	United Nations Observer Mission in El Salvador
ONUMOZ	United Nations Operations in Mozambique
PE	Peace enforcement
PSO	Peace support operations
RUF	Revolutionary United Front
UNPREDEP	United Nations Preventive Deployment
UNFICYP	United Nations Peace-keeping Force in Cyprus
UNHCR	Office of the United Nations High Commissioner for Refugees
UNIFIL	United Nations Interim Force in Lebanon
UNMIL	United Nations Mission in Liberia
UNOMIL	United Nations Observer Mission in Liberia
UNPROFOR	United Nations Protection Force
UNSAS	United Nations Standby Arrangement System
UNOSOM	United Nations Operations in Somalia
UNTAC	United Nations Transitional Authority in Cambodia
UNTSO	United Nations Truce Supervision Organization

CHAPTER ONE

INTERNATIONAL HUMANITARIAN LAW TRAINING AND CREDIBILITY OF UNITED NATIONS PEACE-KEEPING OPERATIONS

1 INTRODUCTION

The United Nations was founded in 1945 after the demise of the League of Nations and World War II. Article 1(1) of the Charter of the United Nations states that the purpose of the United Nations is “To maintain international peace and security and for the suppression of acts of aggression or other breaches of the peace and to bring about by peaceful means and in conformity with the principles of justice, and international adjustment of international disputes which might lead to a breach of the peace”. The means to achieve this purpose is laid out in Chapter VI AND VII of the UN Charter.

Chapter VI of the UN Charter outlines the measures for peaceful resolution which include, negotiation, conciliation, mediation, arbitration, peaceful settlement and resort to regional agencies or arrangements. Chapter VII outlines enforcement measures where peaceful means fail. It provides in the case of threat to the peace, breach of peace and an act of aggression for enforcement measures to be taken which include, arms embargo, economic sanction and in the last resort the use of force.

The founders of the United Nations had not foreseen the possibility of engaging in peace-keeping operations; thus, they are not mentioned at all in the original UN Charter. By definition, peace-keeping operations are essentially a practical mechanism used by the United Nations to contain international conflicts and facilitate settlement by peaceful means.¹

When United Nations operations have been assigned peace-keeping and peace enforcement roles without receiving military resources, equipment and logistic support commensurate to these tasks, peace-keepers have suffered heavy strains and pressures and the United Nations itself has come under attack. When mandates have been unclear or when necessary political and material support has been lacking, United Nations operations have been hamstrung.²

It has been observed that, some parties in recent conflicts have set for themselves objectives whereby the civilian population becomes the stake which is fundamentally incompatible with international humanitarian law and therefore renders respect of this law virtually impossible.³ This scenario was witnessed in the Kosovo, Sierra-Leonean and Rwandan conflicts to mention a few. As stated by Lt Gen Erik Wahlgren, the former commander of the United Nations Forces in Lebanon (UNIFIL) and the United Nations Protection Force (UNPROFOR) which operated in the former Yugoslavia, “the common aim for all United Nations Missions must be with confidence building measures, to establish as soon as possible peace and security for the local population and to pave way for a democratic society”⁴

Peace-keeping troops have a great stake in achieving this aim being the key component of the mission capable of coercive action. The use of force may help to create an environment favourable to the conduct of humanitarian operation. It may also, on a wider scale, help create the conditions necessary for a settlement of the conflict.⁵ The internecine nature of some of the conflicts witnessed recently where even peace-keeping troops are made objects of attacks and the need to achieve the aims of the peace-keeping missions have necessitated peace-enforcement under Chapter VII of the UN Charter which allows some measure of force to be used in achieving the peace-keeping

mission's objectives other than the traditional peace-keeping under Chapter VI which allowed for engagement in combat only in self defence.

Although there was originally some doubt about the applicability of international humanitarian law to United Nations forces, it is now generally accepted that humanitarian law binds United Nations forces, whether performing duties of a peacekeeping or peace-enforcement nature. The complexity of contemporary conflicts is exacerbated by the fact that many of those participating in them are not soldiers of regular armies, but militias or groups of armed civilians with little discipline and an ill-defined command structure. Fighters of this nature do not always fit easily into the matrix of international rules on combatant status. Any intervention by the United Nations may, intentionally or otherwise, alter the delicate balance of power between the warring parties and cause the United Nations forces to be perceived as not impartial or even as hostile. Maintaining neutrality in these circumstances can present peacekeepers with a dilemma, especially when they confront situations in which civilians are victimized, or when United Nations forces are themselves the subject of attack. There is also the issue of responsibility for the actions or omissions of United Nations soldiers in the field, and what to do when faced with human rights abuses and breaches of international humanitarian law.⁵

The Secretary-General's recent bulletin on the observance by United Nations forces of humanitarian law is also significant in this regard, and it imposes a duty on the United Nations to ensure that members of United Nations forces are "fully acquainted" with the relevant principles and rules. In this way, international humanitarian law is of direct relevance to States contributing contingents to peace support operations, and to the United Nations itself, even if they are not formally party to the corresponding international treaties.⁶

1.1 Statement of the Problem

One of the effects of globalisation is the increasing access to mass media and free expression of opinion. As people get better informed through the mass media, opinions are more easily formed and ultimately affect policies and decisions around the world. In respect of the United Nations, one of the consequences of this is a negative image resulting from reported violations of international humanitarian law as well as human rights law by peace-keepers.

Reports of international humanitarian law violations in the non-UN operations such as USA/IRAQ war and human rights abuses by UN peace-keepers in places like the Democratic Republic of Congo and Burundi have put military forces in international operations under the spot light regardless of under whose auspices they are serving. Violations of international humanitarian law have also resulted in great embarrassment to the countries of the peace-keeper involved and further negative image for the United Nations as was the case after the events in Mogadishu and Kosovo. However, unlike human right abuses, violations of international humanitarian law in the field have often resulted in the death or maiming of peace-keepers or of civilians who are caught up in the events.

There is thus the problem of how to ensure observance of international humanitarian law by peace-keepers at a time when reforms are the major points of discourse in the United Nations. It is of paramount importance to put in place measures such that while peace-keeping operations last, troops on the mission are able to tackle international humanitarian law issues that may crop up as well as carry out their duties reflecting compliance with the law. The means of achieving this is the thrust of this research.

1.2 Aim and Objective of Study

The aim of this study is to examine the import of international humanitarian law dissemination and training to United Nations peace-keepers. Since the United Nations does not have a standing army but depends on member countries to contribute troops, peace-keeping missions are bound to be made up of troops with different training and professional backgrounds. This study therefore looks at possible measures for ensuring a uniform level of understanding of international humanitarian law by troops and training in this respect while on a United Nations peace-keeping operation.

1.3 Significance of Study

The study is important as it seeks to proffer solutions towards improving respect for international humanitarian law by United Nations peace-keepers. Reported violations of this law have impacted negatively on the United Nations itself and taken away from its achievements while jeopardising the credibility of peace-keeping operations. This study will be of significance to the United Nations as it endeavours to maintain the credibility of its peacekeeping operations and its good image.

1.4 Literature Review

The need to ensure observance of International humanitarian law by peace-keepers has been of interest to many scholars of peace studies. Max du Plessis and Stephen Pete in their paper, “Who Guards the Guard?” Observed that, “although peace-keeping is often associated with serious crimes against helpless civilians, it is usually assumed that the peace-keepers are those attempting to prevent further atrocities, as opposed to being involved in the commission of such crimes. Sadly this is not always the case and those who are meant to keep the peace themselves become perpetrators of crimes against those under their protection.”⁷

Max and Stephen also highlighted the extent of the problem of atrocities by peace-keepers and stated that “At the least, allegations of serious atrocities committed by peace-keepers date back to the time of the UN peace-keeping mission to Somalia in 1997. Canadian, Belgian and Italian troops were alleged to have been involved in atrocities...In most cases there were hard evidences in the form of photographs taken by the offending peace-keepers themselves. Some of the soldiers involved were charged by the military authorities of their countries of origin and some even received short sentences of imprisonment. Others were not charged or were set free after investigation”⁸ In addressing the issues of abuse by peace-keepers, they posit that, “In particular; the UN regards effective monitoring and early identification of possible abuse by peace-keeping personnel as vital in combating such abuse.”

In his paper International humanitarian law training for peace support operations, Ray Murphy a member of the Irish Centre for Human Right also reflects on violations of international humanitarian law by peace-keepers in Somalia and other places. He asserts that “Unfortunately, there is now ample evidence that United Nations forces in Somalia and the former Yugoslavia did perpetrate or engage in practices and conduct that were contrary to international humanitarian law. Up to the debacle of events in Somalia, Canada had an excellent reputation as a contributor to peacekeeping operations. Although Ireland and other countries remain untarnished by their involvement in Somalia and elsewhere, there is an urgent need to highlight this area of international law and ensure that the record continues unblemished in the future. There should be no room for complacency within any military establishment.”⁹

Apart from legal measures to punish violators of humanitarian law and possible prosecution as a means of deterrence Ray Murphy also argued on the

necessity of effective training and dissemination of humanitarian law to peace-keepers. Quoting James Simpson, he asserted that “There is also the additional factor that a law that is not known cannot be applied, and knowledge of humanitarian law should not be restricted to times or situations of conflict. The degree of importance attached to it by an armed force reflects the culture in, and leadership of, that force.” He noted further that “It is a case of inculcating moral principles with a view to limiting the excessive use of violence and preserving peace. With the large numbers of military personnel participating in contemporary peace support operations, such instruction is even more imperative and should be seen in the overall context of human rights education to promote “understanding, tolerance and friendship among all nations” in accordance with the Universal Declaration of Human Rights.”

The body of law known as international humanitarian law is vast and cannot be taught in totality to troops often on a time limited mission. Again, the peace-keeping environment differs with each peace-keeping mission and so does the international humanitarian law demands. Nevertheless, there is a basic level of expectation for respect of certain humanitarian principles no matter the mission. Ray Murphy and others like him will no doubt advocate for training of the peace-keepers on the basics of international humanitarian law and those aspects of the law peculiar to the particular peace-keeping mission.

1.5 Theoretical Framework

The theoretical framework of this thesis is based on one of the microcosmic theory of violent conflict, the ‘Theory of Social Learning’. Social learning theorists like Albert Bandura posit that man has few in-born habits that are even less significant than his potential for learning.¹⁰ Bandura’s approach is summed up in the following passage:

" The social learning theory of human aggression adopts the position that man is endowed with neuropsychological mechanisms that enables him to behave aggressively, but the activation of these mechanism depends on the appropriate stimulation and is subject to critical control. Therefore the specifics and form that aggressive behaviour takes, the frequency with which it is expressed, the situation in which it is displayed and the specific targets selected for attack are largely determined by social experience."

Bandura also asserts that "most of the intricate responses people display is learned either deliberately or inadvertently, through the influence of example." ... "man's capacity to learn by observation enables him to acquire complex patterns of behaviour by watching the performance of exemplary models... In social learning theory, human functions rely on three regulatory systems. They include antecedent inducements, response feed back influences and cognitive processes that guide and regulate action. Human aggression is a learned conduct that like other forms of social behaviour is under stimulus, reinforcement and cognitive control". Thus Bandura and others like him have argued that carefully conceived and executed training programs are necessary for converting social individuals like the ordinary soldier into effective military combatants. The lesson taught would need to be retained and calls for necessary measures to enable reinforcement so as to make the effect of what has been stimulated to last and for control to become reflexive.

The peace-keeper in the field not having the luxury to consult the books at the instance of an event demanding application of international humanitarian law would need to rely on his senses and reflexes. Following Bandura's argument, a peace-keepers action when faced with such a situation would be determined by responses that have been best stimulated and which he is

conscious of as a result of its reinforcement in his psyche and the need to maintain control.

Troops acting under the auspices of the United Nations or other regional bodies would be expected to pursue the high ideals of exemplary military professionalism and controlled aggression. Their kind of aggression, whenever stimulated, being such that reflect respect for international humanitarian law. In view of the fact that most armies are trained as pure combatants and while it would be impossible to create a war in order to teach new lessons, the capacity for these will only come with specialized training to condition the troops to function appropriately in the peace-keeping environment. In general, international humanitarian law is implemented mostly through preventive measures, particularly in the dissemination of the rules¹¹

1.6 Research Propositions

The following propositions are put forward in this thesis:

1. Training in international humanitarian law improves the professional conduct of troops in a peace-keeping operation.
2. Troops that train in international humanitarian law during a peace-keeping operation will easily apply the law in the course of their duties.
3. Troops trained in international humanitarian law in the course of an operation are less likely to be involved in violations of the law.
4. Troops that act in respect of international humanitarian law in the course of a peace-keeping operation attract the respect of the population under their care.

5. Troops that are known to be trained in international humanitarian law have more freedom of action in the theatre of operation.

1.7 Research Methodology

The methodology for this research work was essentially secondary and qualitative. Materials were obtained from available literary works which include books, papers, articles and internet sources. The research developed upon the available literature on international humanitarian law and military professionalism. For each of the sources used, relevant and unbiased works were consulted to ensure the dependability of this research.

1.8 Scope and Limitation

This research work focused on international humanitarian law as it influences peace-keeping operations. Lessons were drawn from United Nations peace-keeping operations during and after the cold war. In the course of the research, generalisations were sometimes applied in some instances as specific data such as training programmes were not obtainable for a wider range of peace-keeping operations. The operations which informed most of the generalisations made took place in Africa.

1.9 Definition of Concepts

The following concepts as used in the work are defined below:¹²

- a. **Peace-keeping.** Peace-keeping (PK) operations are generally undertaken under Chapter VI of the UN Charter with the consent of all the major parties to a conflict, to monitor and facilitate the implementation of a peace agreement.

b. **Peace-Support Operations.** PSO are multi-functional operations involving military forces and diplomatic and humanitarian agencies. They are designed to achieve humanitarian goals or a long-term political settlement, and are conducted impartially in support of a UN or OSCE mandate. These include peace-keeping, peace-enforcement, conflict prevention, peace-making, peace-building and humanitarian operations.

c. **Peace-Enforcement.** Peace-Enforcement (PE) operations are coercive in nature and undertaken under Chapter VII of the UN Charter when the consent of any of the major parties to the conflict is uncertain. They are designed to maintain and re-establish peace or enforce the terms specified in the mandate.

e. **Humanitarian Operations.** Humanitarian operations are conducted to relieve human suffering. Military humanitarian activities may accompany, or be in support of, humanitarian operations conducted by specialized civilian organizations.

1.10 Organisation of Work

This research comprises 5 chapters. Chapter One covered introduction, and discussed the statement of the problem, aims and objectives of study, the significance of study, literature review, theoretical framework, hypothesis, research methodology, scope and limitation, definition of concepts and organization of work. Chapter Two discussed contemporary peace-keeping and the nature of new conflicts. Chapter Three looked at principles and their application in peace-keeping operations. In Chapter Four, the peace-keeper and training in international humanitarian law was discussed while the research closed in Chapter Five with the conclusion.

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CHAPTER TWO

2 CONTEMPORARY PEACE-KEEPING AND THE NATURE OF NEW CONFLICTS

2.1 Peace-Keeping in the United Nations Charter

The United Nations in its publication "the Blue Helmets" define peace-keeping as "an operation involving military personnel but without enforcement power undertaken by the United Nations to help maintain or restore international peace and security in areas of conflict"¹. Peace-keeping is not mentioned in the UN Charter, yet it is often described as falling between Chapter VI and Chapter VII. Peace-keeping operations have been described by Dag Hammarskjöld as "Chapter 61/2 initiatives".

Chapter VI of the United Nations Charter proposes that parties to a dispute " shall first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies, or arrangements, or other peaceful means of their own choice." Chapter VII goes on to say that, "The security council shall, when it deems necessary, call upon the parties to settle their dispute by such means." Chapter VII gives the Security Council powers to enforce decisions, including the use of armed forces if necessary, to maintain or restore international peace and security.² United Nations operations under Chapter VI are commonly referred to as peace-keeping operations while those under Chapter VII are referred to as peace-enforcement operations.

2.2 Peace-keeping in the Cold War Era

After WWII, the world went into the cold war era of thinly masked animosity between the victors of the war: the United States of America and the Soviet Republic. This period saw the emergence of many interstate wars and internal wars as countries and groups fought themselves at the behest of the world powers to propagate ideologies and spheres of influence.

The 1950s and 1960s also saw the wars of independence in Africa and other countries of the developing world. In these areas, the instrument of peace-keeping was often used to stop such conflicts from developing into greater conflagrations. Thirteen of such operations had been established between 1948 and 1988 when the Berlin wall fell and marked the end of the Cold war. These operations performed tasks of monitoring cease fires, borders and buffer zones. The peace-keeping forces of this era were usually lightly armed troops of the contributing national contingents.

2.3 Peace-keeping in the 1990s

With the end of the Cold War came a dramatic increase in the number of peace-keeping operations. In 1998, when the cold war came to an end, there were only five operations in the field: three in the Middle East, a small observer mission in Kashmir, and UNFICYP in Cyprus. By December 1994, the eve of the Fiftieth Anniversary of the United Nations, seventeen operations were deployed, nine of these were "traditional" missions , while eight were "multifunctional", that is they were mandated to fulfill a variety of unfamiliar roles in, for example prevention (UNDREP in Macedonia), intervention in active war zones (UNOMIL in Liberia, UNPROFOR in Bosnia, UNOSOM in Somalia), as well as post-settlement peace building

(ONUSAL in El Salvador, UNTAC in Cambodia ONUMOZ in Mozambique). The increase in the number of peace-keeping operations in the post-cold war world has been accompanied by a change in their very nature, more specifically: their function: the single function associated with traditional operations has evolved into a multiplicity of tasks.; their application: operations have been established to respond to their new breed of conflict in areas not previously recognized; their composition: peace-keepers now come from a medley of sources (military, civilian, police and diplomatic) nations and cultures. Contemporary peace-keeping can be appropriately characterized as multilateral, multidimensional and multinational/multicultural.³

2.3.1 Multilateral Peace-keeping

Multilateralism refers to the involvement of a number of levels of activity. On one level is the military component which comprises the land, naval and air forces of the contributing UN member states. This includes both armed and unarmed soldiers, the latter being military observers. The military components being usually responsible for such tasks as: monitoring and verification of ceasefires, cantonment, disarmament and demobilization of combatants, mine awareness education and mine clearance, provision of security for UN and other international activities in support of a peace process. Fundamentally, the military component serves in a (mutual) supporting role, maintaining a secure environment in which the civilian components can work. The civilian component using diplomatic, economic, legal, scientific, technical and humanitarian instruments and mechanisms take on responsibilities which may include the political, electoral, human rights and humanitarian.

2.3.2 Multinational/Multicultural Peace-keeping

Multinationalism and multiculturalism refers to the diversity in the make up of troops forming the military as well as civilian components of the peace-keeping missions. Coming from different countries member states of the UN, the diversity of national and cultural backgrounds have impact on the understanding and the expectations and inevitably their adaptation and contributions and in the field.

2.3.3 Multidimensional Peace-keeping

Unlike peace-keeping of the post cold war era, contemporary peace-keeping encompass tasks beyond separating belligerents and monitoring ceasefires to include military, political and humanitarian functions. Depending on the national doctrine and principles under which they operate, these operations have been referred to by various military authorities as multidimensional peace-keeping, second generation peace-keeping or peace support operations. The term peace-keeping is now used like the generic name for all peace related operations embarked upon by the UN and other regional organizations.

2.4 Perspectives on Contemporary Peace-Keeping

In Agenda for Peace(1992),UN Secretary General Boutros-Ghali introduced the idea of forming "peace enforcement units" which would be more heavily armed than traditional peacekeeping forces and which would be called upon from member states, equipped and prepared to enforce cease-fires and even peace agreements. In other to achieve rapid deployment, Boutros-Ghali requested that Governments make troops and resources

available to UN peace operations at short notice. These Standby forces were not to be used for peace enforcement actions but for Chapter VII type operations. However after consultations with member states in 1993 and 1994, the idea of the Standby Force was limited to what is now called, the Standby Arrangement System (UNSAS) which is, undoubtedly, a move towards improving deployment efficiency and speed.⁴

Lt Col Philip Wilkinson, who largely developed the new British doctrine, defined the idea of peace-support operations as follows:⁵ Peace-Support Operations (PSO) was a term first used by the military to cover both peacekeeping and peace enforcement operations, but this now used more widely to embrace in addition those other peace related operations, which include conflict prevention, peace-making, peace building and humanitarian assistance. In British usage, the military doctrine in which the doctrine is defined was issued in 1998 as Joint Warfare Publication 3.05 and replaced the earlier concept of wider peacekeeping issued in 1994. All military operations are conducted with a degree of restraint, be that only an adherence to the Law of Armed Conflict or Geneva Conventions. What makes PSO distinct is the impartial nature. PSO are neither in support of nor against a particular party, but are conducted in an impartial and even-handed manner. Rather than achieve a short-term military victory, PSO are designed to enforce compliance with the operation's mandate and to create a secure environment in which civilian agencies can rebuild the infrastructure necessary to create a self-sustaining peace.

PSO force actions are based upon judgment of the degree of compliance and/or non-compliance of the parties with the operations

mandate and not against any bias or predetermined designation. The conduct of a PSO force should be analogous to that of a third party referee and should remain that way even if only one party consistently fails to comply with the mandate and suffers the consequences. In peacekeeping mode, the level of consent is such that the referee requires relatively few resources. In peace enforcement however, the referee enough resources to enforce compliance with the mandate, no matter how much the parties may object. But the referee must not become a party to the conflict. Referee status requires a very different approach from that of player whose ambition is to defeat the other team or teams. The operational plans for ISFOR (in Bosnia and KFOR in Kosovo) all directed that military operations to enforce compliance should be conducted in an impartial and even-handed manner.

2.5 The Nature of New Conflicts

The nature of conflicts in the late 90s and early 20th century has seen dramatic change from conflicts witnessed in earlier times. The two world wars of the early 1990s were declared. The opposing sides could also be distinguished. Even civil wars and wars of independence of the 1950s and 1960s within African states where rebel groups and colonial authorities or their surrogates slugged it out were characterized with ideologies and principles though most often by driven political expediencies which were nevertheless clear. These older conflicts were usually over control of areas with the aim of wresting political power. However, the new conflicts of the late 90s and early 20th Century have been characterized with greed and often irrational violence driven in most part by economic expediencies resulting in the economic rape of states and communities.

Belligerents in contemporary conflicts use or sometimes resort to terrorist tactics to maintain hold in their areas of influence. The RUF in Sierra-Leone was infamous for amputating the arms of perceived enemies and members of the civilian population in order to force their cooperation. The Janjaweed militias in Sudan have been repeatedly accused by the United Nations and other international voices of using rape as a weapon in the conflict in Dafur. On the Dafur conflict, the IRIN newsletter reported that the Janjaweed militia targeted communities in a scorched earth campaign⁶, a tactics amounting to gross violation of both humanitarian and human right laws.

The actors in these new conflicts usually try to remain indistinguishable from the civilian population; operating from within the same population and maintaining gangster-like strangle hold on the people. Often, their aim is not to wrest political power in order to establish governments as this will mean taking up huge responsibilities. The aim of these new rebellions and wars are characteristically, to propagate and prolong conflict situations such that opportunities to plunder natural and economic resources of the areas remain. Examples of such conflicts are the Congo, Sierra-Leone and Liberian conflicts.

The National Patriotic Front of Liberia (NPFL) rebel group of Charles Taylor in Liberia was noted for its rubber, diamond and timber exploitations during the Liberian civil war of the 1990s. In Sierra-Leone, the rebel group of Foday Sankoh was more interested in exploiting the diamond resources in the country than political control. The warlords in Somalia are known to run ferocious private armies who battle themselves and everybody for control of

trade in the country. Sudan lacked a recognizable authority for most of the 1990s and early 21st Century. The new government that was formed in exile in Kenya after years of negotiations took months to step into Sudan and then has not been able to install itself in the capital because of opposition by the warlords. The same Sudan has been talked about as the destination of regional peace-keepers from the IGAD and AU countries. In July, NATO airlifted over 2000 additional peace-keepers into Dafur to help the African Union boost its presence on the ground in a concerted effort to end mass killings and rape in the region⁷. Many rebel groups like the RUF and NPLF have also been labeled terrorist groups by either government or media as against freedom fighters they would like to be called⁸.

In the absence of effective military capabilities and other multilateral mechanisms to deal properly with the crises as they occurred, the international community continued to use the only tool that was available- UN peace-keeping-with the result that, as has often been pointed out, peace-keepers were sent into situations in which the traditional role of interposing lightly armed troops between conflicting forces to preserve a tenuous cease fire or peace agreement while a more lasting end to the conflict could be worked out, was manifestly inappropriate. For instances of the former kind, highly robust combat capabilities were needed for enforcement tasks.⁹

Deciding on and implementing the right responses in such operational circumstances has become a heavy and difficult responsibility for commanders of peace-keeping operations. It is often in this kind of situations where decision battles against indecision that violations of international humanitarian and human right laws are perpetrated. Troops on

such operations may react to situations wrongly. Commanders may be so engrossed in tackling particular dire situations or sorting out political considerations while their men carry out atrocities with the ever intrusive media nearby, ready to bring news of violations home via the networks. Atrocities are sometimes committed in the full glare of peace-keepers who are unable to prevent such crimes for fear of being drawn into the conflict or for lack the resources to positively affect the situation.

Nevertheless, the recognition and reporting of international humanitarian law violations is a very important part of resolving any conflict. In these situations, the peace-keepers, especially military observers as stated by Col Antonio J Andre, Chief Operations Officer of ONUB (2004-2005), are often the eyes and ears of the United Nations and the international community. Perhaps the only persons that remains to keep tabs on developments on the ground. The recognition, recording and reporting on atrocities and the prevalence of crimes against humanity are tools the international community will use to resolve conflicts and for any future prosecutions by the International Criminal Court and other judicial authorities.

The means and ways peace-keeping missions tackle prevailing or threatening situations are also pertinent. In the kind of conflicts already appraised, the best solutions will often be to raise questions consistently with superiors and leaders of the combatants involved. Peace-keeping authorities clearly and quickly pointing out identified violations of international humanitarian law as well as situations which might lead to violations help to prevent spread of atrocities. The call for respect of international

humanitarian law and declaration of articles of the law being transgressed brings pressure to bear on international humanitarian law violators and are the first means of addressing the situation.

More United Nations peace-keeping missions are now mandated under Chapter VII. As exemplified by the mandate of new missions such as to ONUB in Burundi and MONUC in the Democratic Republic of Congo. Chapter VII mandates are given to these otherwise traditional peace-keeping missions because of the recognition that the situation may deteriorate so sharply, strong action will be needed by peace-keepers to curtail excesses of the warring groups and adequately protect the civilian population, and peace-keeping personnel and materials. The recognition now appears to be that conventional peace-keeping can transit quickly into peace-enforcement mission as happened in Democratic Republic of Congo in March 2005 when a Bangladesh peace-keeping patrol made up of a Captain and his 21 soldiers was brutally attacked by an unidentified rebel group.¹⁰ The patrolling peace-keepers were all killed. They were discovered to have been tortured and their bodies mutilated.

Peace-enforcement caveats in mission mandates permit the flexibility required by the peace-keepers in the use of force. It conversely becomes more pertinent for peace-keepers to be abreast of at least the basic requirements of international humanitarian law in the course of their operations so that peace-keepers who are deployed to prevent atrocities and report violations will not themselves become violators and subjects of the long enquires and media attention characteristic of incidences of international humanitarian law violations.

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CHAPTER THREE

3. PRINCIPLES AND THEIR APPLICATION IN PEACE-KEEPING OPERATIONS

3.1 The Peace-Keeping Theatre

To appreciate the challenges faced by peace-keepers in United Nations or regional peace-keeping operations, it is important understand the principles which are supposed to guide their actions and conduct in the peace-keeping theatre. UN peace-keeping is based upon the principle that an impartial presence on the ground can ease tension between hostile parties and create space for political negotiations. Peace-keeping can help bridge the gap between the cessation of hostilities and a durable peace, but only if the parties to a conflict have the political will needed to reach the goal. Initially developed as a means of dealing with inter state conflicts, peace-keeping has increasingly been used in intra-state and civil wars, which are often characterized by multiple armed factions with differing political objectives and fractured lines of command.¹ This is the common face of contemporary peace-keeping as seen in conflict areas the UN has intervened such as in Burundi, Sudan and Haiti to mention a few.

3.2 Principles of Peace-Keeping

Ralph Bunche is credited as having introduced the first peace-keeping principles. Bunche who was originally Deputy to the Mediator became the Acting Mediator of the United Nations Truce Supervision Observer Mission in Palestine (UNTSO) after the assassination of the Mediator Count Bernadotte in Jerusalem in September 1948. Bunch defined the principles

that were to guide to organization and functioning of UNTSO: He is especially known for first defining the principles of consent and impartiality. Bunche also made the decision that observers should not carry side arms because he felt that in a situation of tension, possible antagonists would be less prone to use their arms against UN observers if they are known to be unarmed.² The principles of peace-keeping are built on a clear and achievable mandate and sustained by the continuous active backing of the Security Council. The universally accepted principles of peace-keeping are as follows:³

Consent. UN peace-keeping operations are established with the consent and co-operation of the main parties involved in a conflict.

Impartiality. A UN force must be impartial in character. The force cannot take sides without becoming part of the conflict it has been mandated to control and resolve.

Minimum Use of Force. In peace-keeping operations, force will not be used to carry out the mandate. Minimum use of force does not exclude self defence of United Nations personnel and property. The use of force must be clearly defined in the rules of engagement (ROE).

Legitimacy. A peace-keeping mission derives its legitimacy from international support, adherence to statutory laws and conventions and the credibility of the force.

Negotiation and Mediation. Negotiation and mediation have enormous potential to de-escalate, promote a secure environment and develop peaceful and lasting solutions to a conflict.

Credibility. The credibility of a peace-keeping operation is confirmation of its ability to accomplish its mandate. To effectively carry out its mandate and earn the confidence of the parties, a peace-keeping force must be

composed of well trained personnel who are well equipped and possess high professional standards. All other principles revolve around the need to ensure credibility of the peace-keeping force deployed.

Peace-keeping missions are based on consent and can be set up only with the consent of the main parties concerned. This principle of consent also applies to troop-contributing countries which voluntarily supply the required military personnel. The two major principle of peace-keeping are impartiality and the non-use of force. United Nations military observers are usually unarmed, and, when the soldiers of the UN peace-keeping forces are provided with light arms, they are not authorized to use them (Minimum use of force) except in self defence. UN peace-keepers must act with impartiality and restraint at all times. They seek to carry out their mission by negotiation and persuasion rather than through coercion.⁴ As noted by Former United Nations Secretary General Boutros Boutros-Ghali, “effective peace-keeping requires full consent and cooperation of the parties: United Nations peace-keepers must maintain their neutrality; they must have a clear and practicable mandate; and member states must support them with the necessary human and financial resources.”⁵

The credibility of United Nations peace-keeping forces must not be jeopardised in any way as this will impact not only on the peace-keeping operations but on the United Nations as an organisation, peace-keeping being its most visible undertaking. The expectation as regards standard and professional capacities of United Nations peace-keepers are therefore very high and will only be guaranteed through adequate training.

3.3 The Objective of International Humanitarian Law

International humanitarian law is that body of international law which governs conduct in times of international armed conflict and non-international armed conflict. It does not apply to situations of internal disturbance and civil strife. The law is a collection of those international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international armed conflicts and which for humanitarian reasons limit the right of the parties to the conflict to use methods and means of warfare of their choice or protect persons and property that are or may be affected by the conflict.⁶

The main instruments of international humanitarian law are contained in the 4 Geneva Conventions of 1949 and the Additional protocols of 1977.

1. Geneva Conventions of 1949 for the
 - a. Geneva Conventions of 1949 for the Amelioration of the condition of the wounded and sick in the armed forces in the field.
 - b. Geneva Conventions of 1949 for the Amelioration of the condition of the wounded sick and shipwrecked of the armed forces at sea.
 - c. Geneva Conventions of 1949 for the Treatment of prisoners of war.
 - d. Geneva Conventions of 1949 for the Protection of civilian persons in the time of war.
2. Additional Protocols of 1977:

- a. Additional Protocols I of 1977 for the Protection of victims of international armed conflicts.
- b. Additional Protocols II of 1977 for the Protection of victims of non-international armed conflicts.

As stated by Adekunle Ajala, “the chief objective of international humanitarian law is to protect the human being and to safe guard the dignity of man in the extreme situation of war. Its provisions have always been tailored to fit human requirements and they are bound to an ideal: the protection of man from the consequences of brute force which, in most cases, is perpetrated by the state. International humanitarian law is therefore, a part of international law safeguarding human rights from abuse by state power”⁷. International humanitarian law thus seeks to attenuate the effect of armed conflict and not necessarily to prevent war. The working distinction is Jus in Belo (law in war) and Jus ad Bellum (law on the use of force).

The purpose of international humanitarian law is to limit the suffering caused by war by protecting and assisting as far as possible its victims. The law therefore addresses the reality of a conflict without considering the reasons for or legality of resorting to force. It regulates only those aspects of the conflict which are of humanitarian concern. It is what is known as jus in bello. Its provisions apply to warring parties irrespective of the reason for the conflict and whether or not the cause upheld by either party is just.⁸

In the case of international armed conflict, it is often hard to determine which state is guilty of violating the United Nations charter. The application of international humanitarian law does not involve the

denunciation of guilty parties as that would be bound to generate controversy and paralyse the implementation of this law, since each adversary would claim to be a victim of aggression. Moreover, humanitarian law is intended to protect war victims and their fundamental rights, no matter to which party they belong. That is why *jus in bello* must remain independent of *jus ad bellum* or *jus contra bellum* (law on the use of force or law on the prevention of war).⁹

On the other hand, after the experiences of World War II, the founders of the United Nations produced the Charter whose opening statement reads “We the people of the United Nations determined to save succeeding generations from the scourge of war which twice in our lifetime has brought untold sorrow to mankind....”, to maintain international peace and security and the suppression of acts of aggression or other breaches of the peace and to bring about by peaceful means and in conformity with the principles of justice, international adjustment of international disputes which might lead to a breach of the peace.¹⁰ The peace-keeping instrument though not in the charter of the United Nations has been described by Dag Hammarskjöld as chapter 71/2.

It is obvious that there is a correlation between the objectives of the UN Charter and International humanitarian law in affecting conflicts positively. International humanitarian law tries to restrain belligerents from those actions whose consequences could be harrowing and long lasting by pursuing the principles of humanity in the course of a conflict with the realization that only in this way will the possibility for reconciliation and dialogue between belligerents be feasible. On the other hand, the UN charter tries to urge the belligerents to conciliation and settlement of differences by

peaceful means. Only proffering enforcement action to achieve this objective where peaceful means bear no fruit. International humanitarian law is therefore a useful tool by which to bring about some order into a conflict situation from which the means of resolution can be put in place by the United Nations.

3.4 International Humanitarian Law Principles in Peace-Keeping Operations.

The principles of international humanitarian law reflect the realities of conflicts and most important of all do not include anything that a professional soldier could not apply in battle. They strike a balance between humanity and military necessity, and are valid at all times in all places and all circumstances.¹¹ The non-observance of international humanitarian principles in conflict areas always bring up special problems for the United Nations and peace-keepers deployed to such areas. The ICRC Teaching Files for Instructors outlines 7 basic principles of international humanitarian law. The principles are distinction, proportionality, military necessity, limitation, good faith, humane treatment and non-discrimination. The international humanitarian law principles pertinent in peace-keeping operations could be argued as the principles of distinction, limitation and good faith.

Distinction. In military operations, there should always be clear distinction between combatants and non-combatants as well as between military objectives which can be attacked and civilian objects which must be respected.

Additional Protocol I of 1977, Art 48. Basic Rule

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.¹²

In peace-keeping operations, the UN peace-keeper benefits from this principle of distinction as they are considered non-combatants. Their locations are also not to be objects of attack. In the conflict zone, the peace-keeper is considered a neutral and must not do any thing to affect the interpretation of the identity as non-combatants. Presence in the conflict zone is a hard and dangerous task and peace-keepers may sometimes be subjected to harassment or attacks which if not well managed may make the peace-keepers to engage the attacking side thereby drawing peace-keepers into the conflict. An early example of the danger to peace-keepers when distinction as non-combatants is not respected came up in the United Nation Disengagement Observer Force established in 1974 in the Middle-East. On 9 August 1974, a United Nations air-plane, flying from Ismailia to Damascus in the established air corridor , crashed as a result of anti-aircraft fire, north-east of the Syrian village of Ad Dimas. All 9 Canadians aboard were killed.¹³

Limitation. International humanitarian law places limits on the weapons and military tactics used by belligerents. Weapons which cause unnecessary suffering or superfluous injuries are prohibited. Certain tactics are also not to be employed. In Yugoslavia, the UN peace-keeping operation UNPROFOR in (March 1992 – December 1995) Bosnian Serb forces used UNPROFOR peace-keepers as human shields an act which constituted a violation of international humanitarian law. After the failure of the Bosnian Serbs to

respect the deadline for the return of heavy weapons, two NATO air strikes, on 25 and 26 May, were conducted against an ammunition dump near Pale. Bosnian Serbs reacted by surrounding additional weapon collection points. They also took 300 UNPROFOR personnel as hostages, using some of them as human shields to deter further air strikes on potential targets.¹⁴ The tactics of taking hostages is prohibited in warfare and often regarded as a terrorist act. The United Nations Security Council promptly denounced the Bosnian action.

Good Faith. The principle of good faith has been a customary principle of warfare. Belligerents are expected to show good faith in their interpretation of the law of armed conflict and in negotiations with opponents and humanitarian organizations. United Nations peace-keeping missions are more than ever deployed for humanitarian reasons. The principle of good faith as regards belligerents in humanitarian crisis is as a result of conflict is expected to be respected. The humanitarian crisis in Darfur for example is as a result of the conflict in the area and many broken agreements between the Janjaweed militia and rebel forces.

On 14 July 2005, the United Nations news service web site reported the President of the Security Council statement in which he expressed encouragement at the peace agreement between the Sudan Unity Party and the Southern rebels. The statement however stressed that for lasting peace there must be an end to the two year old conflict Darfur, which has killed at least 180,000 people and displaced 2 million others.¹⁵ Also at a summit meeting with African Leaders, the United Nations Secretary General Mr Koffi Annan spoke on the Darfur crisis and stated that serious violations of

human rights have taken place. The Secretary General also spoke about the AU effort at keeping the peace in Dafur and said that “we at the UN intend to work with them closely and give assistance and support that we can. He added that “the numbers of AU troops were expected to rise to 3500 by February”.¹⁶

The resolution of conflicts will not be possible if the principle of good faith is not observed by belligerents. Conflicts will be made to drag on as distrust of opponents linger. This in turn generates further humanitarian crisis often requiring huge expenditures on the part of the United Nations and other humanitarian bodies to stem. Some crises plagued by the lack of good faith among belligerents like the Somalia Civil war have defied resolution and several United Nation peace-keeping and humanitarian interventions.

3.5 Application of International Humanitarian Law in Peace-Enforcement Operations

Traditional peace-keeping operation come under Chapter VI of the United Nations charter and is often designed to ensure respect for cease-fires and demarcation lines and to conclude troop-withdrawal agreements. Use of force is particularly in self defence. However in peace-enforcement, the United Nations troops can resort to the use of force to achieve the mission's objectives.

Chapter VII of the United Nations Charter empowers the United Nations Security Council to authorize “such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by

air, sea or land forces of members of the United Nations.” Intervention under Chapter VII in the Korean War was marked by application of the Geneva Convention relative to the Treatment of Prisoners of War, and during the Gulf War all forces were governed by the rules of international armed conflict. These precedents did not, however, pave the way for continued expansion of that practice. Chapter VII forces operating in Somalia and Haiti sometimes applied international humanitarian law, as witnessed by their cooperation with ICRC protection delegates who visited detainees. But the decision to apply those rules was developed ad hoc, without benefit of a policy assuring clarity and consistency in meeting these challenges.¹⁷

In December 1994, the Convention on the Safety of United Nations and Associated Personnel was adopted by the UN Security Council. This treaty provides for the protection of United Nations staff on mission and punishment for those who attack them within a peacetime, law enforcement-oriented context. Article 2 specifies that the treaty does not apply to situations in which “the law of international armed conflict applies”. As was noted by Michael Hoffman, “Unfortunately, this language only increased the uncertainty surrounding Chapter VII deployments, for the treaty was adopted in response to attacks on UN personnel during peace-enforcement missions. This left the inference that states considered the law of international armed conflict inapplicable to peace-enforcement. However, that interpretation would run contrary to military realities in the field. This contradiction between theory and reality only compounds the challenge involved in merging international humanitarian law with Chapter VII operations.”¹⁸

3.6 Emerging Rules

On 6 August 1999 UN Secretary-General Kofi Annan issued to United Nations forces their first standing guidance on the application of international humanitarian law.¹⁹ Titled "Observance of United Nations Forces of International humanitarian Law", the bulletin outlined the field of application and stated that, "The fundamental principles and the rules of international humanitarian law set out in the present bulletin are applicable to the United Nations forces when in a situation of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions or in peace-keeping operations when the use of force is permitted in self-defence." This statement can be taken as an acknowledgement that if not all, at least some of the provisions of international humanitarian law do apply in peace-keeping and peace-enforcement operations.

Section 3 of the bulletin which covers the status-of-forces agreement interestingly backs the understanding of international humanitarian law by all peace-keepers when it states that " In the status of forces agreement concluded between the United Nations and a state in whose territory a United Nations force is deployed, the United Nations undertake to ensure that the force shall conduct its operations with full respect for the principles and rules of the general conventions applicable to the conduct of military personnel. The United Nations also undertake to ensure that members of the military personnel of the force are fully acquainted with the principles and rules of those international instruments. The obligation to respect the said principle and rules applicable to United Nations forces even in the absence of a status-of-forces agreement."

To ensure that the forces deployed conduct operations in accordance to conventions applicable to the conduct of military personnel would mean in accordance to such instruments as the Geneva Conventions which regulates conduct in warfare. This section could also be interpreted as stating the expectation that all peace-keepers are to be fully acquainted with these international instruments applicable to military operations of which the international humanitarian law as provided in the Geneva Conventions and related protocols is a major part. This is seen to be in consonance with the spirit of Article 83, Paragraph 1 of Protocol 1 to the Geneva Conventions which emphasizes the responsibility of the relevant authorities to see that military forces being used know and act according to international humanitarian law. The article states that "The High contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the conventions and this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage thereof by the civilian population, so that those instruments may become known to the armed forces and to the civilians." ²⁰

However the subsequent section removes the United Nations as a High Contracting Party and places the onus on troop contributing states. It nevertheless gives recognition to the dissemination and knowledge of international humanitarian law in full when Section 4 of the bulletin stated that "in case of violations of international humanitarian law, members of the military personnel of the United Nations force are subject to prosecution in their national courts." The prevention of violation will only come about by

conduct in accordance to laws which have to be taught and disseminated to become known. Like the common maxim, 'an unknown law is no law'.

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CHAPTER FOUR

4. THE PEACE-KEEPER AND TRAINING IN INTERNATIONAL HUMANTARIAN LAW

4.1 Military Professionalism

The issue of professionalism is one critical to all working groups and the military in particular. It is an aspect most armed forces try to be associated with because it gives respect and societal acknowledgement to the soldiers who are otherwise regarded as men of arms and violence. Professionalism guarantees for the military acceptability by the larger society. Among writers on professionalism and in particular military professionalism, Samuel Huntington, James R. Golden, Morris Janowitz and Amos Perlmutter are some of the renowned names.

Janowitz describes the military professional as one who is educated in political as well as military affairs, has managerial skills and cultivates a broad understanding of domestic and international affairs.¹ Huntington on his part noted that a military profession is characterized by three things: expertise, responsibility and corporateness.² The view expressed by Janowitz can be described as pragmatic while that of Huntington as traditional. Golden's view of military professionalism is moderate. Golden views military professionalism as a gradual shift towards Janowitz's pragmatic professionalism and sees a more controlled use of force and a convergence of military and civilian values.

The essential characterization of military professionalism with controlled use of force and convergence of military and civilian values bears semblance to the objectives sought by international humanitarian law. Its Sagay says international humanitarian law "seeks to mitigate the tyranny of war or armed conflict on both the combatants themselves and on the civilian population and on their properties by restricting and controlling the mode and means of armed activity, and the conduct of all persons involved in it"³

The characteristics of military professionalism and the values sought by international humanitarian law are acquired as noted by Amos Perlmutter through "long intensive training". Personal discipline and excellent leadership are vital. Both are made easier when one knows what exactly is allowed and what is not.⁴ However, on a peace-keeping mission, it is not possible to embark on long training programmes. That must be the reason why the United Nations makes it necessary for troop contributing countries to ensure training of the troops before deployment in the mission area. Nevertheless, the United Nations conducts induction courses for new peace-keepers arriving in the mission area. This is no doubt to pass on lessons deemed critical for smooth operations of the forces in the mission. The more professional the force being inducted, the easier it is for the force to take up its tasks and adapt to the prevailing situation.

4.2 Obligation for Training in International Humanitarian Law

Training is the foundation of success in any military operation. The aim of training in international humanitarian law is to influence the attitudes of the soldiers to comply with the law in the theatre of operation. The success or failure of peace-keeping operations rests to a considerable degree

on the local population's perception of the peace-keepers, so the tactical and strategic consequences of violating the laws of war during peace-keeping missions could be greater than during combat.⁵

As expressed by Brigadier-General Charles Monod at the International Institute of Humanitarian Law, "the conduct of combatants is directly determined by the actions of their commanders. This calls for dissemination, teaching and training in the appropriate cultural, social and military framework, and, of course, the acceptance of a certain discipline and hence a readiness to comply with certain rules. It follows that those in charge play a decisive role regarding effective teaching and training."⁶ The target group being identified by Monod to achieve effective dissemination is the commanders. This is so because the commanders need to be very conversant with the law as they bear the burden of being responsible for the prevention or the reporting of violations of the law of war by the men.

The Additional Protocol 1 to the Geneva Convention Articles 86 and 87 make it clear that the commanders would be held responsible if violations of the law of war are not reported where prevention was not possible.⁷

Article 87 states that:

1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.

2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.

3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

In any military unit, commanders know that the conduct of their troops in the field is their responsibility while the troops also receive their orders directly from their commanders and see them as the immediate authorities. A reflex expectation is imbibed by the men as they appreciate that they will perform tasks as taught to them by their commanders. However, Monod has observed that "Generally speaking, it is true to say that commanders at all levels are not particularly inclined to deal with problems of international law, preferring to leave this kind of activity to experts."

The first challenge therefore in the international humanitarian law dissemination and training effort is to tackle the inclination of commanders to shy off the subject. The emphasis by mission training cells that international humanitarian law is an important subject before and on the

mission will help erode aversion for the subject. Knowledge of the law is reinforced in the course of the training packages organised while on the operation. This can be done by ensuring that future commanders receive as much instruction on international humanitarian law at the formative stage by making international humanitarian law, major lessons during induction course. A look at the induction training packages of MONUC, ONUB and UNMIL for example showed little or know International humanitarian law lessons. When included, the lessons are too few to make any reasonable impact. It is recommended in addition to making more spaces for international humanitarian law lessons on induction courses that on the operation programmes be conducted.

Different missions have different humanitarian law challenges. This should necessitate the designing of packages that reflect the peculiarities of the specific missions. This way, the troops seeing the attention given to international humanitarian law instructions get the impact that on the United Nations peace-keeping mission, international humanitarian law is to be respected. The effect will be deterrence to violate the laws as troops get reinforcement of the teachings of international humanitarian law. Again, on the operations training will improve the capacity of troops to recognise and take necessary action with respect to violation by belligerents. Cases where peace-keepers are not reacting to salvage situations due to lack of comprehension of events will be reduced. Commanders on the operation will also be able to plan and give instructions which are 'proper' and give adequate guidance to the men.

A body of troop operating in a peace-keeping mission in a manner as prescribed will no doubt be perceived as a professional force and earn the respect of colleagues and in particular, the population amongst which the troops will operate. The effect will be freedom of action which translates to a smooth operation. Un-cooperating combatants will find it hard to ignore demands of such a force to respect international humanitarian law while the population will be freer in their cooperation in terms of information and civil-military relationship essential for success in any peace-keeping operation.

The second challenge in training on international humanitarian law is meeting the obligation for training as spelt out in the Geneva Conventions. As signatories or contracting parties to the Geneva conventions, Articles 47, 48, 127 and 144 respectively state that "The High Contracting Parties undertake in time of peace as in the time of war to disseminate the text of the present convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military training and , if possible, civil instruction, so that the principles may become known to the entire population, in particular the armed fighting forces, the medical personnel and the chaplains."⁸

This obligation can be met on the peace-keeping mission by first ensuring the instructors of the force training cell are well trained in international humanitarian law. The tendency to leave the instructions to ICRC staffs alone is not helpful as it gives the impression of a civil subject not worthy of serious attention by the military. The human rights instructors who also disseminate international humanitarian law from the UN Agencies

like UNHCR and OCHA leave the same impression and will often find it difficult to use examples in their instructions which the troops can really relate to as per military experience in other missions and conflicts. The identifying of potential instructors especially among officers and senior NCOs of the force units is therefore essential. These instructors if given extra instruction by the force cell training officers can be the pool for unit instruction in their various units.

International humanitarian law packages could be held at least once in every 3 months making a least 4 packages in the duration of one year in the peace-keeping theatre and 2 for the duration of 6 months. International humanitarian lessons to be taught will include revision of the basics and specific lessons tailored to the reality being faced on the ground and the stage of the operation. For example, the issues that will come up in a conflict situation will be different from those in a post conflict situation. While arbitrary killing may be experienced in a conflict situation, torture and arrests will be more of the issue in a post conflict situation.

International humanitarian law and international human rights law were major matters of discourse at the Challenges seminars organised by the Swedish National Defence College and other sister organisations to look at the challenges in contemporary peace-keeping operations. Through out the seminar series, participants generally agreed on the need for the leadership and for personnel engaged in peace operations to have a better understanding of international humanitarian law and human rights law, to address pro-actively human rights challenges within peace operations, and to recognise the obligations of peace-keepers and UN personnel under international

humanitarian law and human rights law.⁹ Within the UN System, in 2000, the Brahimi Report noted as one of its basic premises “the essential importance of the United Nations system adhering to and promoting international human rights instruments and standards and international humanitarian law in all aspects of its peace and security activities.”¹⁰

International humanitarian law and human rights law are all part of international law and complementary. However international humanitarian law is different from human rights law in some respects because in times of conflict, some human rights such as freedom of movement and freedom of association may be suppressed. Population may be encamped and freedom of movement or association denied in the times of conflict. These actions may raise questions in ordinary time when human rights rules are fully operational.

Civil military relationship is also a problem that needs to be smoothed on peace-keeping operations. As these operations become more complex and involve multidimensional elements, the need to ensure interoperability and understanding of civilian participation becomes more pertinent for the military. Soldiers are inclined to see themselves as being free to move in an area of operation and often perceive civilians as being in the wrong place in areas of conflict. On the other side, the civilian NGOs would want to relate with the military in the conflict zone based on principles espoused by the particular organisation. While some would take military escorts, others like the ICRC would refuse military escorts except in dire circumstances.

The grey area in relationship between military and civilian operators in the mission area is reduced when the military has understanding of international humanitarian law and its implementation mechanisms. From these they can understand why for example the ICRC embraces neutrality and will not want to be seen as close to the military in the conflict area. Such understanding helps interoperability and prevents ‘bad blood’ from being brewed.

The challenges project in its consideration of training methodologies discussed the phases of training as adopted by DPKO-TES. The 5 phases outlined are national training for national tasks, United Nations Generic Training-Non-Mission specific, pre-deployment training, induction training and refresher training. National training for national tasks is in other words, training that is not related to peace operations but produce the raw material from which peace-keepers-military, police and civilian- may be drawn. Pre deployment training prepares the individual for a specific mission area. The pre-deployment training is then rounded out by induction training on arrival in the mission area and, finally, as the situation changes within a mission, individuals and contingents are kept current through continuous refresher training.¹¹

4.3 Training Methodologies

International Humanitarian Law training in the peace-keeping mission would mostly involve indoor training. However, some outdoor training within the confines of contingent camps can also be done. Field exercises will not be desirable as they may unnecessarily expose the troops to hostile elements.

4.3.1 Indoor Training

Indoor training on international humanitarian law can be conducted in the form of normal dissemination lectures with computer CD-ROMs for module teaching and simulation training especially to the contingent officers and military observers. Peacekeeping civilian staffs can also benefit from these instruction methods. The training team should be raised as much as possible from the contingent officers and Senior NCOs to ease language and cultural difficulties. For other elements of the peace-keeping mission, dedicated instructors can always be provided by the force training cell while computer based training is easy since military observers and United Nations Civilian Staffs are required to be computer literate. However, the force training cells would need to issue training directives to contingent commanders, chief military observers and civilian heads of department for the training of their men. These directives will include guidelines for the organisation of the participants in the programme as well goals and objectives to be achieved. The requirement to feed back on the progress and completion of the training package will enable the training cell monitor compliance with directives issued.

4.3.2 Outdoor Training

Outdoor training in international humanitarian law will be most feasible with the peace-keeping contingents. This training will also involve mainly demonstration exercises to show aspects like arrest, searching, recognition of distinguishing signs and such lessons that have practical applications. The aim being to remove the drudgery of classroom instructions where high sounding law terminologies may be used. Practical

demonstrations have long been identified as the best tool for training especially to the junior cadre. Making use of it in international humanitarian law training will be maximizing the little training time the troops will have.

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6. Henri P M (2003), Speech delivered on inauguration of the 98th Course on the Law of Armed Conflict, 10 Mar 2003.
7. De Mullinen F (1987), Handbook of the Law of War for Armed Forces ICRC, Geneva, p 63
8. Geneva Conventions of August 12, 1949 © ICRC.
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11. Ibid p243

CHAPTER FIVE

5. CONCLUSION

The interplay of international humanitarian and peace-keeping operations has been one of the concerns the United Nations has faced in recent times. This concern was highlighted by the United Nations Secretary General with the issuance in August 1999 of a bulletin on the observance by United Nations forces of international humanitarian law. The States contributing troops for United Nations peace-keeping operations have the basic responsibility to train the troops being provided in international humanitarian law. However, the requirement for the United Nations to itself put in measures to ameliorate the understanding and observance of the law has been increasing. This is no less because of the nature of new conflicts and the compatibility of both humanitarian law principles and peace-keeping principles.

The essence in ensuring peace-keeping troops are conversant in humanitarian law is its reflection on the credibility of the force. A credible peace-keeping force will be expected to be a professional force which respects international humanitarian law. As noted by Lt Col Philip Wilkinson who largely developed the new British doctrine on peace support operations, all military operations are conducted with a degree of restraint, be that only an adherence to the Law of Armed Conflict or Geneva Conventions. The peace-keeping operation is no less a military operation. Wilkinson noted further that what makes peace support operations distinct is the impartial nature as the operations are neither in support of nor against a

particular party, but are conducted in an impartial and even-handed manner. Rather than achieve a short-term military victory, they are designed to enforce compliance with the operation's mandate and to create a secure environment in which civilian agencies can rebuild the infrastructure necessary to create a self-sustaining peace.¹ It will then be an anti-thesis for the troops who are expected to protect and help conflict communities recover to be seen as the one's committing violations of international humanitarian law.

The nature of new conflicts of the late 1990s and early 20th Century show an evolution from conflicts in which opponents are known and recognizable to one in which the identity of the opponents are becoming less obvious. Unlike the 2 World Wars of the 20 Century and the civil wars of independence in Africa, belligerents in contemporary conflicts sometimes resort to terrorist tactics to maintain hold in their areas of influence. The RUF in Sierra-Leone was infamous for amputating the arms of perceived enemies and members of the civilian population in order to force their cooperation. The Janjaweed militias in Sudan for example have been repeatedly accused of gross violations and lack of respect for international humanitarian law. Often, the aim is not to wrest political power but to propagate and prolong conflict situations such that opportunities to plunder natural and economic resources of the areas remain.

The instrument available to tackle these kinds of conflict remains peace-keeping operations. Peace-keeping troops being deployed now face greater risk of being attacked and armed confrontations with combatants even after accords and agreements to respect the presence of peace-keepers

in the conflict areas. Reports of attacks on United Nations peace-keepers abound. In March 2005, a MONUC Bangladeshi peacekeeping patrol made up of a captain and 21 soldiers was brutally attacked by unidentified rebels. All the men were killed after they were tortured and their bodies mutilated.²

More United Nations peace-keeping missions are now mandated under Chapter VII. Examples are the mandates of ONUB in Burundi established in 2004 and MONUC in the Democratic Republic of Congo established in 2000. Chapter VII mandates are given to these otherwise traditional peace-keeping missions because of the recognition that the situation may deteriorate so sharply, strong action will be needed by peace-keepers to curtail excesses of the warring groups and adequately protect the civilian population, and peace-keeping personnel and materials.

UN peace-keeping is based upon the principle that an impartial presence on the ground can ease tension between hostile parties and create space for political negotiations. Peace-keeping can help bridge the gap between the cessation of hostilities and a durable peace. The credibility of a peace-keeping operation is confirmation of its ability to accomplish its mandate. To effectively carry out its mandate and earn the confidence of the parties, a peace-keeping force must be composed of well trained personnel who are well equipped and possess high professional standards. All other principles revolve around the need to ensure credibility of the peace-keeping force deployed.

The credibility of the force is affected negatively where peace-keepers are seen to be violating international humanitarian law. On the other, hand,

the respect of the law signposts a professional force and enhances the force freedom of action. There is the growing call for better trained and professional troops to be deployed for peace-keeping operations. International humanitarian law like other laws and subjects need to be taught to be known. Training is the foundation of success in any military operation. The aim of training in international humanitarian law is to influence the attitudes of the soldiers to comply with the law in the theatre of operation. The success or failure of peace-keeping operations rests to a considerable degree on the local population's perception of the peace-keepers, so the tactical and strategic consequences of violating the laws of war during peace-keeping missions could be greater than during combat.

The first challenge therefore in the international humanitarian law dissemination and training effort is to tackle the inclination of commanders to shy off the subject. The emphasis by mission training cells that international humanitarian law is an important subject before and on the mission will help erode aversion for the subject. International humanitarian law should be made major lessons during induction course. It is recommended in that more spaces should be allotted for international humanitarian law lessons on induction courses as against the current trend. Knowledge of the law should also be reinforced in the course of the operations through the refresher training packages. However, it should be noted that different missions have different humanitarian law challenges. This should necessitate the designing of packages that reflect the peculiarities of the specific missions.

The second challenge in training on international humanitarian law is meeting the obligation for training as spelt out in the Geneva Conventions. This obligation can be met on the peace-keeping mission by first ensuring the instructors of the force training cell are well trained in international humanitarian law. Training for peace-keeping operations should include pre deployment training to prepare the troops for a specific mission area. The pre-deployment training should then be rounded out by induction training on arrival in the mission area and, finally, as the situation changes within a mission, individuals and contingents are kept current through continuous refresher training. On peace-keeping missions, International Humanitarian Law training should be conducted every 3 months. This will make a least 4 packages for troop stay of one year in the peace-keeping theatre and 2 packages for troop stay of 6 months. International humanitarian lessons to be taught should include revision of the basics of international humanitarian law and specific lessons tailored to the demands of the particular operation.

Indoor training on international humanitarian law can be conducted in the form of normal dissemination lectures with computer CD-ROMs for module teaching and simulation training especially to the contingent officers and military observers. Outdoor training should also be conducted for peace-keeping contingents. This training should mainly be in the form demonstration exercises to show aspects like arrest, searching, recognition of distinguishing signs and such lessons that have practical applications.

Peace-keeping missions' international humanitarian law training team should be raised as much as possible from the contingent officers and Senior NCOs to ease language and cultural difficulties. To this end, it is

recommended that force training cells issue training directives to contingent commanders, chief military observers and civilian heads of department for the training of their men. These directives should include guidelines for the organization of the participants in the programme as well goals and objectives to be achieved. Feed back mechanisms should also be put in place to enable the training cell monitor compliance with directives issued. As noted by the Brahimi Report, a basic premise of United Nations reform is the importance of adhering to and promoting international human rights instruments and standards and international humanitarian law in all aspects of its peace and security activities.

ENDNOTES

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