

International Operational Law and Peace Operations

Swedish Defence University

Reading Guide

22 November -

Dr Bruce 'Ossie' Oswald

Tuesday, 22 Nov 2022: 1000 – 1300h

Introduction, Types and Nature of Peace Operations

We will examine the types of peace operations (UN, hybrid, multinational and bilateral); and what peace operations seek to achieve. We will also briefly examine the history of peace operations since the creation of the UN. We will discuss some of the key legal and operational issues that arise during peace operations.

Literature

- Department of Peacekeeping Operations, Department of Field Support, *United Nations Peacekeeping Operations Principles and Guidelines (Capstone Doctrine)* (2008) <https://www.un.org/ruleoflaw/blog/document/united-nations-peacekeeping-operations-principles-and-guidelines-the-capstone-doctrine/>
- United Nations General Assembly, *A More Secure World: Our Shared Responsibility, Report of the High-level Panel on Threats, Challenges and Change*, 2 December 2004, UN Doc A/59/565 (*skim Parts 1 and 3*) <https://www.un.org/peacebuilding/content/more-secure-world-our-shared-responsibility-%E2%80%93-report-high-level-panel-threats-challenges-and>
- United Nations General Assembly and Security Council, *Report of the High-level Independent Panel on Peace Operations on Uniting Our Strengths for Peace: Politics, Partnership and People*, UN Doc A/70/95-S/2015/446 (*skim Summary and Part A*) <https://reliefweb.int/report/world/report-high-level-independent-panel-peace-operations-uniting-our-strengths-peace>
- Bellamy, Alex J and Williams, Paul D, 'Trends in Peace Operations, 1947-2013' in Koops, Joachim A, MacQueen, Norrie, Tardy, Thierry, et al (eds) *The Oxford Handbook of United Nations Peacekeeping Operations* (2015) 13
- Gill Terry, Fleck, Dieter, Boothby, William H, and Vanheusden, Alfons, *Leuven Manual on the International Law Applicable to Peace Operations* (2017) 'Planning and Policy Aspects of the European Union' (Appendix VI) 361
- Gill Terry, Fleck, Dieter, Boothby, William H, and Vanheusden, Alfons, *Leuven Manual on the International Law Applicable to Peace Operations* (2017) 'Planning and Policy Aspects of the African Union' (Appendix V) 366
- Oswald, Bruce, Durham, Helen, and Bates, Adrian, *Documents on The Law of UN Peace Operations* (2nd edn 2019) 'Introduction' 1

Wednesday, 23rd and Thursday, 24th November: 1000 – 1300h

Legal Framework Applicable to the Planning and Conduct of Peace Operations

Our focus will be on the legal framework of UN peace operations. Consequently, we will discuss the application of the UN Charter and regional arrangements; the importance of Security Council resolutions (and the doctrine of express and implied powers); the relevance of Status of Forces Agreements, and Memorandums of Understanding; the application of various treaties such as the Convention on the Privileges and Immunities of the UN, and the Convention on the Protection of UN and Associated Personnel. We will also discuss the relevance of international humanitarian law, international human rights law, international criminal law, the laws of the host state and the laws of the states contributing peacekeepers. To better understand the legal framework applicable to peace operations we will examine three Security Council resolutions.

Literature

- *Charter of the United Nations*, opened for signature 26 June 1945, UKTS 946 No. 67 (entered into force 24 October 1945) (*skim*) <https://www.un.org/en/about-us/un-charter>
- *Charter of the African Union*, opened for signature 25 May 1963, OAU Doc. (entered into force 13 September 1963) (*arts II and III*) <https://www.refworld.org/docid/3ae6b36024.html>
- *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, adopted 9 July 2002 (entered into force on 26 December 2003) <https://www.refworld.org/docid/3f4b1d374.html>
- Fleck, Dieter, 'The legal status of personnel involved in United Nations peace operations' (2013) 95 *International Review of the Red Cross* 613
- Orakhelashvili, Alexander, 'The Legal Framework of Peace Operations by Regional Organizations' (2007) 11(1) *Journal of International Peacekeeping* 111
- Oswald, Bruce, Durham, Helen, and Bates, Adrian, *Documents on The Law of UN Peace Operations* (2nd edn 2019) 'Status-of-Forces Agreement between the United Nations and Host Countries' 45
- Oswald, Bruce, Durham, Helen, and Bates, Adrian, *Documents on The Law of UN Peace Operations* (2nd edn 2019) 'Agreements between the United Nations and Contributing States' 65
- Oswald, Bruce, Durham, Helen, and Bates, Adrian, *Documents on The Law of UN Peace Operations* (2nd edn 2019) 'Articles on the Responsibility of International Organizations' 407 (*skim*)
- White, Nigel, 'Peacekeeping and International Law' in Koops, Joachim A, MacQueen, Norrie, Tardy, Thierry, et al (eds) *The Oxford Handbook of United Nations Peacekeeping Operations* (2015) 43

Security Council Resolutions

- *Security Council Resolution 918 (1994) on expansion of UNAMIR's mandate*, UN Doc. S/RES/918 (1994) <https://www.refworld.org/docid/3b00f2093c.html>
- *Security Council Resolution 1264 (1999) on INTERFET's mandate*, UN Doc. S/RES/1264 (1999) <http://unscr.com/en/resolutions/1264/>

- Security Council Resolution 1671 (2006) on the EUFOR RD Congo mandate, UN Doc. S/RES/1671 (2006) <http://unscr.com/en/resolutions/1671>

Tuesday, 29 November: Some Key Issues Arising in Peacekeeping Operations: 1000 – 1300h

There are **three** issues we will discuss: (1) the use of force by peacekeepers; (2) sexual exploitation by peacekeepers; and (3) the protection of civilians by peacekeepers.

Literature

- Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse, UN Doc. ST/SGB/2003/1 (2003) <https://www.unhcr.org/protection/operations/405ac6614/secretary-generals-bulletin-special-measures-protection-sexual-exploitation.html>
- Secretary-General, *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations*, UN Doc. A/59/710 (2005) <https://reliefweb.int/report/world/comprehensive-strategy-eliminate-future-sexual-exploitation-and-abuse-united-nations>
- Security Council Resolution 2272 (2016) of 11 March 2016 on sexual exploitation and abuse by peacekeepers <http://unscr.com/en/resolutions/2272>
- United Nations, *Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law*, UN Doc ST/SGB/1999/13 <https://conduct.unmissions.org/secretary-general%E2%80%99s-bulletin-observance-united-nations-forces-international-humanitarian-law>
- Grady, Kate, 'Sex, Statistics, Peacekeepers and Power: UN Data on Sexual Exploitation and Abuse and the Quest for Legal Reform' (2016) 79(6) *Modern Law Review* 931
- Khali, Mona Ali, 'Legal Aspects of the Use of Force by United Nations Peacekeepers for the Protection of Civilians' in Haidi Willmot et al (eds) *Protection of Civilians* (2016) 207
- Miller, Anthony J, 'Legal Aspects of Stopping Sexual Exploitation and Abuse in U.N. Peacekeeping Operations' (2006) 39 *Cornell International Law Journal* 71
- Oswald, Bruce; *Soldier Self-Defence Symposium: The Evolution of the UN Doctrine of Self-Defence in UN Peacekeeping* <https://opiniojuris.org/2019/05/01/soldier-self-defense-symposium-the-evolution-of-the-un-doctrine-of-self-defence-in-un-peacekeeping/> (2019)
- United Nations General Assembly and Security Council, *Report of the High-level Independent Panel on Peace Operations on Uniting Our Strengths for Peace: Politics, Partnership and People*, UN Doc A/70/95-S/2015/446 (*skim Parts C and D*) <https://reliefweb.int/report/world/report-high-level-independent-panel-peace-operations-uniting-our-strengths-peace>
- Shraga, Daphna, 'The Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law—A Decade Later' (2009) 39 *Israel Yearbook on Human Rights* 357
- See also:
 - <https://peacekeeping.un.org/en/protection-of-civilians-mandate>
 - <https://www.un.org/preventing-sexual-exploitation-and-abuse/>
 - <https://peacekeeping.un.org/en/principles-of-peacekeeping>

Wednesday 30th November: Responsibility and Accountability in Peace Operations: 1000 – 1300h

Discussions in class will focus on four aspects of the responsibility and accountability of peacekeepers: (1) the application of the laws of the host state and troop contributing states; (2) the responsibility of the UN and other international organization obligations for the acts the organization and peacekeepers; (3) the role of international law in protecting peacekeepers; (4) the application of the UN Human Rights Due Diligence Policy to UN peacekeepers.

Literature

- *Third-Party Liability: Temporal and Financial Limitations*, UN Doc. A/RES/52/247 (1998) (*skim*) <https://digitallibrary.un.org/record/257799>
- United Nations General Assembly and Security Council, *Human Rights Due Diligence Policy on United Nations Support to Non-United Nations Security Forces*, UN Doc A/67/775-S/2013/110
- United Nations General Assembly, *Evaluation of the Implementation and Results of Protection of Civilians Mandates in United Nations Peacekeeping Operations*, UN Doc A/68/787 <http://dag.un.org/handle/11176/387416>
- Aust, H. P, 'The UN Human Rights Due Diligence Policy: An Effective Mechanism against Complicity of Peacekeeping Forces?' (2014) 20(1) *Journal of Conflict and Security Law* 1
- Leck, Christopher, 'International Responsibility in United Nations Peacekeeping Operations: Command and Control Arrangements and the Attribution of Conduct' (2009) 10 *Melbourne Journal of International Law* 346
- Oswald, Bruce, Durham, Helen, and Bates, Adrian, *Documents on The Law of UN Peace Operations* (2nd edn 2019) 'Articles on the Responsibility of International Organizations' 407 (*skim*)
- Pacholska, M, '(Il)legality of Killing Peacekeepers: The Crime of Attacking Peacekeepers in the Jurisprudence of International Criminal Tribunals' (2015) 13(1) *Journal of International Criminal Justice* 43
- Spikers, Otto, 'Responsibility of the Netherlands for the Genocide in Srebrenica' (2014) 18 (3-4) *Journal of Peacekeeping* 281

Thursday, 1 December: Some Controversies and Uncertainties: 1000h – 1300h

The UN and international organizations as administrators of territory; command and control of peacekeepers and the doctrine of 'effective control' as between the UN and troop contributing states; the rule of law and UN peace operations; the use of force by peacekeepers; the protection of civilians; detention; and reparations.

Literature

- United Nations, *Improving Security of United Nations Peacekeepers: We Need to Change the Way We Are Doing Business*, 19 December 2017 (*skim*)

<https://peacekeeping.un.org/en/improving-security-of-united-nations-peacekeepers-independent-report>

- United Nations General Assembly and Security Council, *Report of the High-level Independent Panel on Peace Operations on Uniting Our Strengths for Peace: Politics, Partnership and People*, UN Doc A/70/95-S/2015/446 (*skim Part III*) <https://reliefweb.int/report/world/report-high-level-independent-panel-peace-operations-uniting-our-strengths-peace>
- Hunt, Charles, and Zimmerman, Shannon, 'Twenty Years of the Protection of Civilians in UN Peace Operations' (2019) 23 (1-2) *Journal of International Peacekeeping* 50
- Oswald, Bruce, 'The Rule of Law on Peace Operations: A Cornerstone of Effective Peace Operations' (2004) 8(1) *Journal of International Peacekeeping* 291
- Oswald, Bruce, 'Sexual Exploitation and Abuse in UN Peace Operations' (2016) 20 (3-4) *Journal of International Peacekeeping* 143
- Oswald, Bruce, 'UNAMIR: A Deployed Legal Officer's Retrospective' in Drew, Phillip, Oswald, Bruce, McLaughlin, Robert et al Ferst (eds) *Rwanda Revisited* (2021) 99
- Perova, Natalia, 'Disentangling 'Effective Control' Test for the Purpose of Attribution of the Conduct of UN Peacekeepers to the States and the United Nations' (2017) 86(1) *Nordic Journal of International Law* 30
- Shraga, Daphna, 'UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility Operations-Related Damage' (2000) 94(2) *American Journal of International Law* 406
- See also:
 - <https://www.un.org/ruleoflaw/thematic-areas/security/>
 - <https://www.asil.org/insights/volume/16/issue/39/copenhagen-process-principles-and-guidelines-handling-detainees>

Here are some sources which students might find relevant when planning or conducting peace operations, or when undertaking further research

Primary Documents

Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, 1 UNTS 15.

Convention on the Safety of United Nations and Associated Personnel adopted on 9 December 1994 (entered into force 15 January 1999) and the *Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel* adopted 8 December 2005 (entered into force 19 August 2010)

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976)

Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002)

Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa, and Tonga Concerning the Operations and Status of the Police and Armed Forces and other Personnel Deployed to Solomon Islands to Assist in the Restoration of Law and Order and Security, signed 24 July 2003, [2003] ATS 17 (entered into force 24 July 2003)

Agreement between the Government of Sudan and the United Nations Concerning the Status of the United Nations Mission in Sudan, <http://www.unmis.org/English/documents/sofa.pdf>

Key Texts

Bellamy, Alex J and Williams, Paul; *Understanding Peacekeeping* (2nd ed, 2010)

Bothe, Michael, 'Peace-Keeping' in Bruno Simma (ed), *The Charter of the United Nations* (2002)

Bowett, Derek, *United Nations Forces: A Legal Study of United Nations Practice* (1964)

Conforti, Benedetto, *The Law and Practice of the United Nations* (1996)

Farrall, Jeremy and Charlesworth, Hilary (eds) *Strengthening the Rule of Law through the United Security Council* (2016)

Ferstman, Carla, *International Organizations and the Fight for Accountability: The Remedies and Reparations Gap* (2017)

Findlay, Trevor, *The Blue Helmets' First War? Use of Force by the UN in the Congo 1960–64* (1999)

Foley, Conor, *UN Peacekeeping Operations and the Protection of Civilians* (2017)

Holt, Victoria K and Tobias Berkman C, *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations* (2006)

McCoubrey, Hilaire and White, Nigel D., *The Blue Helmets: Legal Regulation of United Nations Military Operations* (1996)

Nadin, Peter, *The Use of Force in UN Peacekeeping* (Routledge, 2018)

Nasu, Hitoshi, *International Law on Peacekeeping: A Study of Article 40 of the UN Charter* (2009)

Pouligny, Beatrice, *Peace Operations Seen from Below: UN Missions and Local People* (2006)

Pugh, Michael, and Sidhu Waheguru Pal Singh, *The United Nations and Regional Security: Europe and Beyond* (2003)

Sarooshi, Danesh, *The United Nations and the Development of Collective Security* (1999)

Sands, Philippe and Klein, Pierre, *Bowett's Law of International Institutions* (5th ed) (2001).

Siekmann, Robert, *Basic Documents on United Nations and Related Peace-Keeping Forces – with an Appendix on UN Military Observer Missions* (1989)

Siekmann, Robert, *National Contingents in United Nations Peace-Keeping Forces* (1991)

Wills, Siobhán; *Protecting Civilians: The Obligations of Peacekeepers* (2009)

White, Nigel, *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security* (2nd ed) (1997)

Zwanenburg, Martin, *Accountability Under International Humanitarian Law for United Nations and North Atlantic Treaty Organisation Peace Operations* (2005)

Key Journals

International Organizations Law Review

International Peacekeeping

International Review of the Red Cross

Military Law and Law of War Review

Cases

Attorney General v Nissan (Right of UK National to Compensation for Property Seized by UK Forces in Cyprus; Relationship of UK Forces to Cyprus Government and to United Nations) [1969] UKHL 3

Agim Behrami and Bekir Behrami v France (Application No. 71412/01) and *Ruzhdi Saramati v France, Germany and Norway* (Application No. 78166/01), ECHR Grand Chamber Admissibility Decision, 2 May 2007

Certain Expenses of the United Nations (article 17, paragraph 2, of the Charter) (Advisory Opinion) [1962] ICJ Rep 151

Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission of Human Rights (Advisory Opinion) [1999] ICJ Rep 3

Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao, Special Court for Sierra Leone, 2 March 2009, Case No SCSL-04-15-T

Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion) [1949] ICJ Rep 174

The Mothers of Srebrenica v The Netherlands, Supreme Court, Judgment of 19 July 2019, ECLI:NL:HR:2019:1223

The Netherlands v Hasan Nuhanović, Supreme Court of the Netherlands, First Chamber 12/03324, 6 September 2013

Key Reports

Report of the High-Level International Conference on the Protection of Civilians, *The Kigali Principles on the Protection of Civilians*, Kigali, Rwanda, 28-29 May 2015

Key United Nations Documents

Comprehensive review of the whole question of peace-keeping operations in all their aspects, UN Doc. A/RES/2006 (XIX) (1965)

Panel on United Nations Peace Operations, *Report of the Panel on United Nations Peace Operations*, UN Doc. A/55/305 – S/2000/809 (2000)

Peacekeeping Best Practices Unit, *Handbook on United Nations Multidimensional Peacekeeping Operations* (2003)

Secretary-General, *United Nations Emergency Force: Summary Study of the Experience Derived from the Establishment and Operations of the Force*, UN Doc. A/3943 (1958)

Secretary-General, *Uniting Our Strengths: Enhancing United Nations Support for the Rule of Law*, UN Doc. S/2006/980 (2006)

United Nations Department of Public Information, *A Review of United Nations Peacekeeping* (3rd ed) (1996)

Websites focusing on peacekeeping

<https://www.sipri.org/about>

<https://www.stimson.org/project/peacekeeping-reform/>

<https://www.ipinst.org/by/international-peace-academy>

<https://www.securitycouncilreport.org/whatsinblue>

<https://www.stimson.org/project/peacekeeping-reform/>

<https://www.cfr.org/background/role-peacekeeping-africa>

<https://peacekeeping.un.org/en/reinforcing-un-eu-strategic-partnership-peace-operations-and-crisis-management-priorities-2019-2021>

https://ec.europa.eu/international-partnerships/topics/resilience-peace-and-security_en

<https://www.gcsp.ch/topics/peace-operations-and-peacebuilding>

<https://www.challengesforum.org/>

<https://www.kaiptc.org/publications/monographs/>