

## Issues on the Protection of Civilians in UN Peacekeeping Operations

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*The Protection of Civilians (POC) is a newly advocated norm in the post-Cold War period. However, it still has several issues and problems to be tackled in UN peacekeeping operations. The cases of Sudan and the DRC convinced of the problem of “filling the gap”. That is, one needed to fill the gap in the definition of POC between the UN and non-UN agencies, and between military and civilian staff within the UN. One also suffers from the failure of filling the gap in the attitude towards robustness in the operations between peace enforcement operations and normal UN forces. One also identified the common issues of lack of proactive actions in some cases of UN peacekeeping in the DRC. The case of South Lebanon convinced that UN peacekeeping operations would not have capability to protect the civilians in their operational areas when the states take determination to launch the warfare bypassing UN troops.*

**Keywords:** *Protection of Civilians (POC); Peacekeeping operations; United Nations (UN); Responsibility to Protect (R2P)*

### Introduction

In the post-Cold War period, the international community has identified an overwhelming number of cases of war crimes and related human suffering, including the brutal killing of civilians, torture, and sexual violence in the midst of internal armed conflicts. United Nations (UN) peacekeeping operations have been required to be the main and presumably the best solution to the brutal conflicts. As a result, the concept and norm of “Protection of Civilians” (POC), have emerged as one of the efforts of the international community to prevent such serious war crimes and human suffering. UN peacekeeping operations have adopted such concept in their missions. In fact, POC was encouraged to apply to the tasks of UN peacekeeping operations, as a result of independent inquiries into the failure to prevent the crime of ethnic cleansing in Rwanda and Srebrenica in 1994 and 1995, respectively.

POC would not be compatible with such a current norm if UN peacekeepers end up watching helplessly while war rages, even if their main tasks are literally supposed to “keep the peace”. Meanwhile, more than two decades have passed since such a norm has been required to comply with in UN peacekeeping operations. One is wondering if it still has its efficacy, applicability and even legitimacy in UN peacekeeping operations.

This paper will focus on the principle of POC in UN peacekeeping operations. One has identified a number of issues which should be tackled. First of all, this article will introduce the basic questions on POC in applying to UN peacekeeping operations. The first question is simply on who should take the responsibility to

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protect the civilians in UN peacekeeping. The international community or the host government? The second question is on the relevance of POC with the traditional principles of UN peacekeeping operations of local consent, impartiality and a minimum use of force. The second part of this article will deal with three case studies of POC in UN peacekeeping operations. The first two cases are ones in Sudan (UNAMSIL and UNMIS) and the DRC (MONUSCO) operating in the post-Cold War period, and the other is one in South Lebanon (UNIFIL) operating since the Cold-War period.

### **Who should take the responsibility to Protect the Civilians, the International Community or the Government? The Relevance with Responsibility to Protect**

According to the Global Centre for the Responsibility to Protect, the POC refers to measures that can be undertaken to ensure the safety of civilians during times of armed conflicts and which are rooted in obligations under International Humanitarian Law (IHL), refugee law and human rights law. Under IHL, not only states but also non-state armed group have obligations towards the protection of civilians. Humanitarian organisations including the UN and NGOs have a subsidiary role to press parties to an armed conflict to uphold their protective responsibilities and alleviate human suffering when parties to the conflict fail to do so.<sup>1</sup> Therefore, POC has a legitimacy in the legal aspect.

In the UN Charter, the prohibition on the use of force is set out in its Article 2 (4).<sup>2</sup> Likewise, Article 2 (7) of the UN Charter also prohibits the UN from interfering in matters essentially within the domestic jurisdiction of states.<sup>3</sup> The international community has valued state sovereignty since the Treaty of Westphalia in 1648. The state has exclusive jurisdiction over its territory. Therefore, in UN peacekeeping operations, the host state should have primary legal responsibility for the protection of civilians.

Meanwhile, in the post-Cold period, the international community has identified numerous internal conflicts, including ones in Sierra Leone, Sudan, the DRC etc., which resulted in brutal war crimes and the following humanitarian casualties. The growing prominence of human rights in international law led some argument that a state is apparently failing to protect its own civilians from widespread violations and that even a state itself committed the war crime against its own populations. Thus, other states and international organisations such as great powers and the UN can be justified in intervening for the humanitarian purpose.

The above dilemma might be solved by the emerging concept of “Responsibility

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<sup>1</sup>Global Centre for the Responsibility to Protect, “The Relationship between the Responsibility to Protect and the Protection of Civilians in UN Peacekeeping”, April 2018, at 1.

<sup>2</sup>United Nations Charter, Article 2.4: “*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations*”.

<sup>3</sup>United Nations Charter, Article 2.7: “*Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state, or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measure under Chapter VII.*”

to Protect”, (R2P). This concept was initiated by UN member states in 2005 at the UN World Summit, consisting 3 pillars: Pillar I) every state has the responsibility to protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing; II) the wider international community has the responsibility to encourage and assist individual states in meeting that responsibility; and III) if a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter. Therefore, according to the new norm of R2P, the international community or UN peacekeepers can have the legitimacy to protect the civilians instead of the host states.

However, R2P has both positive effects and negative concerns. Alex Bellamy argued that there is a positive connection between the use of the term of R2P by government, the UN and NGOs and the possibility of the Security Council to pass the same issue:

*In a little over half (53%) of the cases of war crimes or crimes against humanity where RtoP was invoked by any actor, the Security Council adopted resolutions in relation to that crisis. This compares with only 14% of cases where RtoP was not invoked. At face value, this suggests that the Council is more likely to adopt measures when a situation is framed in RtoP terms than in relation to similar events that are not so framed.<sup>4</sup>*

Thus, Bellamy stated in 2015 that Security Council’s record in the past five years demonstrated a newly found determination to act on R2P. In fact, the Security Council invoked the norm of R2P three times more frequently in the three years after the so-called “Arab’s Spring” in Libya.

However, there would be the native concern over R2P. It is likely that R2P would be abused by political interests of member states. In fact, on R2P there is the chasm of opinion between Global North and Global South, especially the group of 77 (G-77) countries, as well as China and Russia, which have reemphasised the primacy of state sovereignty.<sup>5</sup> This fact implies a significant impact on UN peacekeeping operations since the vast majority of troop contributing states to UN peacekeeping operations are from Global South as well as China.

In fact, as Charles Cater and David Malone pointed out, while R2P remains a useful principle in the Security Council, its use will continue to depend very much on relationship among the major powers and their analysis of complex situations on the ground.<sup>6</sup> Aidan Hehir’s view on the causal factors on “an R2P action” in Libya is more radical:

*[...] it has also been noted that the causal factors which led to the decision to intervene were not related to R2P; these include the unique unpopularity of Gaddafi, the proximity of Libya to mainland Europe, Libya’s oil reserves, and most particularly, the statement made by the Arab League on 12 March 2011 calling for military action against Libya. This statement convinced the US to support action, and Russia and China not to oppose it.<sup>7</sup>*

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<sup>4</sup>Bellamy (2013) at 340.

<sup>5</sup>Williams (2017) at 542.

<sup>6</sup>Cater & Malone (2016) at 291.

<sup>7</sup>Hehir (2015) at 175.

Likewise, Graham Harrison conducted research on international involvement in Kenya's election, suggesting that influence has not been in new R2P agendas but iterations of long-standing ones in which regional geopolitics is a major concern and the US and EU have been preponderant agencies following their own familiar approaches.<sup>8</sup> Harrison warned the complete absence of any related R2P project in the growing mass violence in South Sudan as well as Mali, Chad, and Northern Nigeria.<sup>9</sup> From the totally opposite viewpoints, states might exploit humanitarian pretexts, abusing R2P in pursuit of other strategic ends.<sup>10</sup>

Selectiveness of R2P was repeated by Abiodun Williams in 2017. He argued that international engagement to prevent or halt R2P would remain conditional on a number of variables, including the complexity of the situation, the risks involved, the potential for success, the international political and financial climate, and the geopolitical importance of the country.<sup>11</sup>

How has the practicability of R2P in UN peacekeeping been? As Thomas Weiss put it, "The main challenge facing the responsibility to protect is how to act, not how to build normative consensus". In this context, Edward C. Luck argued that R2P clearly had produced more questions than answers, and that they were the kind of second-generation questions that speak to how far R2P has come along the road from theory to practice.<sup>12</sup>

### **POC as Non-consensual. Partial and Robust Operations: The Relevance with Three Main Principles of UN Peacekeeping**

Traditionally, UN peacekeeping operations have valued the basic principles of local consent, impartiality, and the minimum use of force. However, the maintenance of the principles in POC of UN peacekeeping operations has been contested since POC are occasionally governed by coercion, partiality, and overwhelming force. It can be said that POC would not be compatible with the norm of respect for state sovereignty, especially when peacekeepers are involved in internal conflicts. In this situation, UN peacekeeping would lose the principle of impartiality which means that peacekeepers themselves become a party to the conflicts. Then, UN operations would become the robust ones based on Chapter VII of the UN Charter, which include "Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression."

In fact, Alex Bellamy has argued the issues of the balance between the principle of consent and POC in UN peacekeeping operations. He pointed out two issues here. First, consensus measures would limit its effect when host governments and their militaries are willing to employ atrocity crimes to prosecute their cause. If so, peacekeeping would become more robust and increasingly become counter-insurgency operations. He pointed out that it is problematic in establishing the essence of its

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<sup>8</sup>Harrison (2016) at 150.

<sup>9</sup>Ibid., at 153

<sup>10</sup>Aistrophe, Gifkins & Taylor (2018) at 1-15.

<sup>11</sup>Williams (2017) at 542.

<sup>12</sup>Luck (2005) at 504.

doctrine and concepts. Second, even in such coercive operations, peacekeeping's consent requirement significantly limits the populations that can get international protection. Protections subjected to atrocity crimes were never likely to be protected from the atrocity committed by their own government, although basic rights free from atrocity crimes should be universal.<sup>13</sup>

Bellamy stated that there are only three options to address the above issue. The first option is quite negative. It is to recognise that since such coercive humanitarian intervention to protect civilians is not preferable nor ideal, there will be inevitably some civilians who cannot be protected. It is based on the idea that such intervention should not happen. Therefore, the human right to the POC from atrocity crime derives not from universal principle or legal obligation but from the consent of that civilian's government. The second option is to argue that there are radical policy alternatives for POC which do not involve violating a state's sovereignty. For example, POC should be conducted by unarmed civilian personnel, or concerted states should open their borders and encourage people to save themselves from atrocities by fleeing and receiving refuge. However, this option would incentivise atrocity crimes. The third option is back to the original argument; POC should include coercive humanitarian intervention with the use of force without the consent of the state. This activity would divorce from POC in normal UN peacekeeping operations. It is a different way of responding to threats to peoples' lives.<sup>14</sup> All of the above three options have some concern in which one is convinced that POC is not well compatible with the consensus measures in UN peacekeeping operations.

In terms of the use of force in POC, it can be said that there is the increasing militarisation of peacekeeping in the name of protection. The militarisation was encouraged by the Brahimi Report in 2000 which argued that use of force would be necessary to protect civilians. Similarly, UN's Cruz Report in 2017 indicated that there is a sharp increase in UN fatalities in peacekeeping and therefore the report insisted that all peacekeeping should be robust.<sup>15</sup>

However, there was essentially lacking operational clarity and consensus in the early days of the discussion on POC. For example, when considering deployment of a UN peacekeeping mission in Sierra Leone, some council members, such as Canada, Malaysia and the Netherlands, were very vocal about the need for a robust mandate to protect civilians, whereas others, such as the US and the UK, suggested that this was already allowed under the rule of engagement and Chapter VII of the UN Charter.<sup>16</sup> Even after the general establishment of the robust mandate for POC in UN peacekeeping, mandate language was not consistent from mission to mission. The mandates for MONUSCO, MINUSMA, MINUSCA and UNMISS revealed little consistency on the POC under threat of physical violence. For example, the POC mandate of UNMISS does not mention the primary responsibility of the South Sudanese government to protect civilians, while other mandates do. The mandate for MONUSCO is also the only one of the four to focus on geographic locations. The mandate states that several provinces would be the primary focus while

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<sup>13</sup>Bellamy (2024).

<sup>14</sup>Ibid, at 237-238.

<sup>15</sup>Ibid, at 232.

<sup>16</sup>Sharland (2019) at 35.

retaining a capacity to intervene elsewhere in case of major deterioration of the situation.<sup>17</sup>

In fact, some academia is critical of the current situation of POC in the use of force in UN peacekeeping operations. Alexander Gilder argued although the POC mandate in UN peacekeeping authorises the use of force, numerous missions have not responded to violence committed against civilians with the use of force, such as MONUC and UNAMID. Both of them failed to protect civilians. He stated that peacekeepers have been responding to only 20% of cases where civilian were imminent physical danger or being attacked in the area of deployment. Therefore, there is a question whether peacekeepers need a broader remit of protection. He said that force is almost never used to protect civilians under attack and peacekeeping forces favours a low-profile use of power.<sup>18</sup>

There is an essential question on POC and use of force. The component of POC has been specified in the mandates of most of the current UN peacekeeping operations on the one hand. The mandates of 90% of UN peacekeeping operations now include POC. On the other hand, legal scholars and specialists seldom investigate the legal obligation regarding POC. One should legally clarify how the UN should create POC mandates and the use force to protect civilians. Alexander Gilder argued while upper limits on the use of force are a legal necessity it should also be discussed that a minimum obligation to try to protect would provide further legal clarity and prevent in action where UN peacekeepers are unclear on their legal obligations.<sup>19</sup>

### **Protection of Civilians in UN Peacekeeping Operations - The Case of Sudan**

It was in February 1999 when the first debate on the protection of civilians was held in the UN Security Council, which then adopted a presidential statement expressing grave concern over the civilian toll of conflict casualties. Then the UN Secretary-General was requested by the Security Council to submit annual reports with recommendations on how it could improve both the physical and legal protection of civilians in situation of armed conflict.

In 1999, the UN Mission in Sierra Leone (UNAMSIL) was the first peacekeeping operation mandated to take the necessary action to afford protection to civilians under imminent threat of physical violence. However, ten years after that first Security Council debate, the UN Secretary-General acknowledged that “further efforts to strengthen POC remain crucial” in his report in May 2009. He also identified “human suffering owing to the fundamental failure of parties to conflict to fully respect and ensure respect for their obligations to prevent civilians.”<sup>20</sup> He accepted that action on the ground have not yet matched progress in words and the development of international norms and standard. The report pointed out five core challenges in conducting POC by external organisations, one of which was “enhancing

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<sup>17</sup>Gilder (2023) at 6.

<sup>18</sup>Gilder (2023) at 2-3.

<sup>19</sup>Ibid, at 5.

<sup>20</sup>UN Document S/2009/277, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, 29 May 2009, para. 4.

protection through more effective and better resourced peacekeeping and other relevant missions.”<sup>21</sup>

Therefore, while the concept and norm of POC has a legitimacy with the viewpoint of international law, it can be argued if it has sufficient efficacy and applicability in the real missions of UN peacekeeping operations.

In this context, the writer conducted the intensive research on POC in the United Nations Mission in Sudan (UNMIS).<sup>22</sup> UNMIS was established on 24 March 2005 in accordance with Security Council Resolution 1590 (2005), whose mandate centred on helping to implement the Comprehensive Peace Agreement (CPA). The CPA ended the decade-long conflict between the Government of Sudan, based in the northern part of Sudan, and the Sudan People’s Liberation Army/Movement (SPLA/M), supported mainly by people from the southern part of Sudan. The mandate of UNMIS included humanitarian activities, such as promoting human rights and protecting civilians under imminent threat of violence.

In fact, the extensive research on POC identified a number of issues in UNMIS. First, the interpretation and definition of POC in UNMIS was rather limited. In fact, as the official paper explained, UNMIS POC was not only a pilot unit, but also the only protection unit within the Department of Peacekeeping Operations (DPKO). While many other organisations in Sudan that were engaged in the mission of “protection of civilians” existed, both internal and external to UN agencies, their view towards the mission of POC was different from that of UNMIS. For example, UNHCR in Sudan took a very long-term view of protection, focusing on employment generation, and the delivery of services such as sanitation, education, and health care. While these issues were important, the approach was contradictory to that of UNMIS, which focused on short-term issues of physical security.<sup>23</sup>

The view of NGOs towards POC tended to be more similar to that of UNHCR than to that of UNMIS. Furthermore, even within UNMIS, there were a number of separate units dedicated to POC, including those in Protection, Child Protection, and Human Rights, and each of them approached the issue with very different objectives in mind. However, in reality, there was no opportunity for the disparate organisations engaged in POC to meet, exchange, and share information, or discuss opportunities to enhance their own missions of POC.

The second issue with POC in UNMIS was a lack of awareness of the mission mandate’s significance at the UN Security Council level, as well as among UNMIS personnel in the operational areas. Hitoshi Nasu claimed that the practice of POC in UN peacekeeping operations developed without much deliberation in the Security Council. For example, in the Council debates, Canada and Japan were strong advocates of the concept of POC. The UK, the Netherlands, Argentina, Namibia, Rwanda, and Uganda also enthusiastically supported the inclusion of POC in the mandate of UN and non-UN peacekeeping operations, for example, in ECOMOG, UNAMSIL, and MONUC. However, no other states provided any particular comment on the POC mandate in the Security Council. Of particular note was a lack of enthusiasm in the

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<sup>21</sup>Ibid.

<sup>22</sup>Ishizuka (2013).

<sup>23</sup>Refugee International “Sudan; UNMIS Must be More Proactive in Protecting Civilians, *Refugee International Field Report*, January 2009, at 4.

debate on POC with regard to its relevance with the mandate under Chapter VII of UN Charter.<sup>24</sup>

Likewise, at the field level, awareness or understanding of the mission's civilian protection responsibilities was also limited. In fact, some UNMIS personnel were entirely unaware of the Chapter VII component of the mandate. They believed that protecting civilians from tribal violence fell outside of the mission mandate, and was a distraction from its core business of supporting CPA implementation.<sup>25</sup> They considered that the responsibility for POC lay with the government, particularly the police and other justice sector institutions that promote and defend the rule of law. POC activities by UNMIS, in their view, would result in negative consequences in UNMIS relations with the local people, since even the mere presence of international military peacekeepers tended to create expectations among the locals that they would be protected if violence should erupt.<sup>26</sup> The third issue, closely related to the second, is a lack of proactive action by UNMIS personnel. The rule of engagement (ROE) of UNMIS instructed its troops to "use force only when absolutely necessary to achieve your imminent aim, to protect yourself, your soldiers, UN or other designated personnel, installations, equipment and civilians under imminent threat of physical violence."<sup>27</sup> Furthermore, the ROE authorised troops to "use force [...] to protect civilians under imminent threat of physical violence, when competent local authorities are not in a position to render immediate assistance."<sup>28</sup> The regulation of the use of force in the ROE was considered appropriate because of incidents occurring in Sudan during the UNMIS periods. Nevertheless, many argued that UNMIS should have been more proactive in POC. For example, the report of the Secretary-General in June 2006 stated that hundreds of UNMIS soldiers had been deployed to provide protection mainly to UN installations, personnel, military observers, and logistics staff, but not to civilians.<sup>29</sup>

In May 2008, UNMIS, in fact, faced a major challenge to its willingness to implement its POC mandate. Major conflicts between SPLA/M and the forces of the Sudanese Government broke out on May 13, 2008 in Abyei. The entire population of 30,000 civilians was forced to flee, when irregular forces, a faction of Southern Sudanese, looted and burned civilian homes, including a village that was within 45 meters of the UNMIS compound. After the civilians had fled, the UNMIS mission argued that it lacked a mandate to use force to protect civilian property. Meanwhile, US Special Envoy to Sudan, Richard Williamson, criticised UNMIS for failing to take more robust action to protect civilians in Abyei.<sup>30</sup>

In 2009, the POC Security Concept was developed by UNMIS Force HQ. However, the provisions in the Security Concept were not considered functional. According to the report of the Norwegian Institute of International Affairs (NUPI) on POC in Jonglei State in Sudan, there was little opportunity for proactive action

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<sup>24</sup>Nasu (2012) at 119-120.

<sup>25</sup>Mailer & Poole (2010) at 15.

<sup>26</sup>Refugee International (2009) at 2.

<sup>27</sup>United Nations, *Sudan's Unified Mission Plan*, Khartoum, UNMIS, E-1.

<sup>28</sup>*Ibid*, at E-2.

<sup>29</sup>UN Document S/2006/478 *Report of the Secretary-General Pursuant to Resolution 1653 (2006) and 1663 (2006)*, 29 June 2006.

<sup>30</sup>Holt, Taylor & Kelly (2009) at 329-330.



because of the absence of clear operational instructions as to when and how to react to a situation of “imminent threat” against civilians. Therefore, the report argued that any level of commanders in UNMIS tended to simply follow instructions and orders from others.<sup>31</sup>

Thus, the case of UNMIS indicates several significant challenges in terms of the POC in UN peacekeeping operations. The issues of the POC were also identified at other UN operations in Africa. For example, currently, several UN operations are the so-called “stabilisation forces”. In such forces, their mandate tasks them to contribute to restoring a maintaining order in a given situation, by protecting a government and its civilians against identified aggressors. They are, therefore, tasked to undertake robust operations, based on Chapter VII of the UN Charter. The examples of the stabilisation forces are MINUSCA in CAR, MINUSMA in Mali and MONUSCO in the DRC. In fact, these three stabilisation missions were amongst four largest UN operations deployed. In other words, the stabilisation forces whose major pillar of the mandate has the protection of civilians, deserves being researched for the analysis of POC in UN operations. In this sense, the writer conducted the research for MONUSCO in the DRC.

### **Protection of Civilians in UN Peacekeeping Operations- The Case of the DRC**

United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO) was established in accordance with Security Council Resolution 1925 (2010) on 28 May 2010. “Stabilisation” in MONUSCO meant stabilisation through the protection and promotion of human rights and the promotion of democratisation by means of the process of reliable elections. The purpose of the creation of MONUSCO was to build the state institution which creates security and justice systems and takes accountability for them. Its authorised size was the ceiling of 19,815 military personnel, with 760 military observers and staff officers, 391 police personnel and 1,050 formed police units.<sup>32</sup>

The protection of the Congolese civilians was also a key element of the mandate of MONUSCO. However, it was difficult to conclude that the POC in MONUSCO improved compared with one in the period of MONUC. The term of “stabilisation” in MONUSCO was rather nominal. For example, from 30 July to 2 August 2010 one witnessed a huge scale of systematic rapes sacrificing at least 303 women in Walikale district in North Kivu province, which was located only 30 kilometres from the MONUSCO base. In other words, MONUSCO could not prevent nor stop the systematic rapes conducted by armed factions.

In November 2012, one witnessed the brutal occupation of Goma, the capital of North Kivu province in the eastern DRC, by the M23, the Tutsi-led anti-government armed group.<sup>33</sup> MONUSCO was seriously criticised for its ineffective response in preventing the onslaught.

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<sup>31</sup>Breidlid & Lie (2011) at 20.

<sup>32</sup>MONUSCO Home pages, <http://monusco.unmission.org/>

<sup>33</sup>The M23 was said to have about 2,000 armed soldiers. Its strength in the past allegedly came from Rwanda.

On 24 February 2013, “the Framework for Peace, Security and Cooperation for the DRC and the Region” was signed by regional powers, which offered a comprehensive approach to the problem. The framework proposed a heavily-armed combat operations commanded by the UN. This framework, which the African Union assisted to put together, was signed in Ethiopia by leaders from the DRC, Angola, Burundi, the Central African Republic, Rwanda, South Africa, South Sudan, Tanzania, Uganda and Zambia. It was signed in the presence of UN Secretary-General Ban Ki-moon, who acted as one of the generators.<sup>34</sup> Thus, the Force Intervention Brigade (FIB) was established by UN Security Council Resolution 2098 (2013) of 18 March 2013. Its mandate included using all necessary means to “neutralise” armed groups which permits it to use force, including deadly force.<sup>35</sup> The FIB, with 3,069 troops”, was led by Tanzanian general, and consisted of three infantry battalions, one artillery unit, one Special Forces Unit and a reconnaissance company.

In fact, the FIB contributed to the stabilisation of the eastern part of the DRC. The FIB’s first engagement was the fight against the M23. Between July and November 2013, when the FIB, alongside FARDC units, engaged by artillery, aerial attacks, snipers etc. The offensive measures led to the victory on the side of FARDC/ FIB.

Meanwhile, several negative aspects on the FIB were also identified. For example, unlike other regular MONUSCO forces, the FIB was fighting against the anti-government armed groups with FARDC, and therefore was considered to be a party to the armed conflict. A problem is that many armed groups are unable to distinguish and separate the regular MONUSCO forces from the FIB. This situation raises two problems, from operational and legal viewpoints. Operationally, the regular MONUSCO forces, which are less heavily armed, are more physically vulnerable to unexpected attacks from anti-government military factions. From the legal aspect, now MONUSCO including the FIB which lost impartiality, is regarded a party to the conflicts and will have lost the protections afforded to them under international law such as international humanitarian law (IHL), the Convention on the Safety of United Nations and Associated Personnel (SOFA), and the Rome Statute of the International Criminal Law.<sup>36</sup>

While the FIB and FARDC, to some extent, implemented the mandates of neutralizing “several” armed groups, a number of major armed groups were still active, disrupting the local security and damaging “the Framework for Peace, Security and Cooperation for the DRC and the Region”. In fact, ADF was still brutal, targeting a number of innocent civilians. According to the Secretary-General’s report on 30 December 2014, in two months since October 2014 attacks attributed to ADF resulted in the killing of over 250 civilians.<sup>37</sup> This figure increased to 347 in his report on 26 June 2015. On 5 May 2015, a group of suspected elements ambushed a MONUSCO patrol between Oicha and Eringeti, killing two Tanzanian peacekeepers.<sup>38</sup>

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<sup>34</sup>Gberie (2013).

<sup>35</sup>Sheeran & Case (2014).

<sup>36</sup>Sheeran & Case (2014).

<sup>37</sup>UN Document S/2014/957 *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo submitted pursuant to paragraph 39 of Security Council resolution 2147 (2014)*, 30 December 2014, para. 17.

<sup>38</sup>UN Document S/2015/486 *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, 26 June 2015, para. 12.

Meanwhile, FDLR continued committing human rights abuse against the civilian population.<sup>39</sup> In North Kivu province, following operation Sukoda II conducted by FARDC against FDLR, 162 elements had been captured, 62 had surrendered and 13 had been killed. Despite this progress, the command-and- control structures of the group remained largely intact.<sup>40</sup> Some of the FDLR fighters participated in the UN-led disarmament, demobilisation, repatriation and rehabilitation (DDRR) programs. However, most of their fighters and weapons remain at large, and this small gesture may be taken by MONUSCO as a sign of sufficient gesture. Furthermore, MONUSCO and FIB was criticised of their reluctance of going after the FDLR as aggressively as it pursued the M23. Thus, the impartiality of FIB had been questioned. Above all, according to the impression of South African journalist who talked to non-government people in the region, the FIB had not done very much for a nearly a year since its establishment.<sup>41</sup>

Thus, while the FIB was effective in the limited mandate of neutralizing the armed groups in the limited areas for the short term, it is questionable that it will contribute to sustainable peace and protect civilians in the DRC.

### **Protection of Civilians in UN Peacekeeping Operations - The Case of South Lebanon**

Although the words of POC have been newly advocated in the mandate of UN peacekeeping operations since UNAMSIL in 1999, the task of protecting civilians has not been new but been conducted since the early days of UN peacekeeping operations. Such tasks were called “humanitarian assistance” or “humanitarian missions” in UN peacekeeping operations. They were not included in UN mandates, but they have been conducted by UN peacekeepers as their essential duties whether the UN operations were mandated by Chapter VI or Chapter VII of the UN Charter.

The United Nations Interim Force in Lebanon (UNIFIL) was established in 1978 after Israeli invasion in South Lebanon as the retaliation against PLO which claimed responsibility of a commando raid near Tel Aviv in Israel resulting in 37 deaths and 76 wounded among the Israeli population. The mandate of UNIFIL in Security Council Resolution 425 (1978) contained confirming the withdrawal of Israeli forces from South Lebanon, restoring international peace and security, and assisting the Government of Lebanon in ensuring the return of its effective authority in the area.<sup>42</sup>

UNIFIL has traditionally provided humanitarian assistance to local population in the area of operations. In fact, humanitarian missions have been consistently demanded since the early periods of UNIFIL. According to Bjorn Skogmo, the humanitarian tasks became even more important in the period between the second

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<sup>39</sup>FDLR is the French acronym for the Democratic Forces for the Liberation of Rwanda, originally established by ethnic Hutus who fled Rwanda after participating in the genocide of the Tutsi population.

<sup>40</sup>*Ibid.* para. 13.

<sup>41</sup>Institute for Security Studies, “Is the Force Intervention Brigade neutral?”, *ISS Today*, 27 November 2014.

<sup>42</sup>The United Nations *The Blue Helmets: A Review of United Nations Peace-keeping* (New York, the United Nations Department of Public Information, 1990), at 111-112.

Israeli invasion on 6 June 1982 and the Israeli withdrawal from Southern Lebanon in February-June 1985, when UNIFIL could do very little to implement any of the three parts of the original mandate. In this situation, it became essential to give UNIFIL meaningful tasks, both to justify its continued presence and keep up the morale of UNIFIL's troops.<sup>43</sup> In the mid-1980s, UNIFIL cooperated with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the United Nations Children's Fund (UNICEF) and the International Committee of the Red Cross (ICRC) in extending assistance to the local people. Humanitarian assistance was extended to the protection of refugees as well as local populations in Lebanon. For example, in 1985, a number of Christian refugees sought safety in UNIFIL, where they received shelter, food and other provisions. The confidence-building value of these operations became an important asset for UNIFIL.<sup>44</sup>

As stated before, in the late 1990s, the advent of the norm of POC in armed conflicts was broadly advocated in the international community. The newly advocated norm promoted the legitimacy of humanitarian assistance in UN peacekeeping operations. Meanwhile, humanitarian assistance by UNIFIL has not always been successful. In April 1996, Israel launched Operation Grapes of Wrath, a 16-day campaign to end the shelling by Hezbollah from South Lebanon. On 18 April 1996, the Israeli troops shelled a compound of the Fijian Battalion's headquarters at Qana which housed about 800 Lebanese refugees.<sup>45</sup> The shelling killed 106 civilians. Israel emphasised that it was Israeli policy to target civilians or the UN. Israel, therefore, rejected any responsibility for it, claiming that "any damage caused to UNIFIL", is "the direct consequence of terrorist aggression and Lebanese collusion." UNIFIL, to much extent, lost credibility due to the incident.<sup>46</sup>

The conflict between Israel and Hezbollah in 2006 prompted the leaders of G8 states and the UN to quickly call the swift deployment of international troops in South Lebanon. Security Council Resolution 1701 (2006) authorised an increase in the strength of UNIFIL to a maximum of 15,000 troops. One pillar of the mandate of "new" UNIFIL II was on the protection of civilians: "to "extend its assistance to help ensure humanitarian access to civilian population and the voluntary and safe return of displaced persons".<sup>47</sup>

Ray Murphy was critical of the role of UNIFIL and UNIFIL II as civilian protectors, claiming "[...] token reference to the protection of civilians [...] did not inspire confidence. [...] UNIFIL had traditionally provided humanitarian assistance to the local population in the area of operations. While useful, this could not be described as fulfilling a protection mandate."<sup>48</sup>

Murphy continued:

*In contrast to relations between the peacekeeping force and local population in the past, initially relations between UNIFIL II and the locals were strained. The Spanish and French contingents, in particular, were reputed to be overtly militaristic in*

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<sup>43</sup>Skogmo (1989) at 91.

<sup>44</sup>Ibid, at 94.

<sup>45</sup>Williams (1996).

<sup>46</sup>UN Document S/1996/337, *Israel's Shelling of UNIFIL*, 7 May 1996.

<sup>47</sup>UN Security Council Resolution 1701 (2006), 11 August 2006, para. 11.

<sup>48</sup>Murphy (2012) at 391.

*approach and disrespectful of the local population. While peacekeeping is not a popularity contest, maintaining good relations with the local population is essential, especially when tasked with their protection.*<sup>49</sup>

Essentially, there is a simple question, - which plays a more significant role to protect the civilians in South Lebanon, UNIFIL or Hezbollah? In fact, a major concern over the humanitarian assistance mission in UNIFIL is its relations to Hezbollah in Lebanon. When Israel unilaterally withdrew from Lebanon in 2000, Hezbollah filled the resulting power vacuum. Hezbollah is a Shiite Islamist political party and militant group based in Lebanon. As a political party, Hezbollah and its coalition, referred as March 8, has held 57 of Lebanon's 128 parliamentary seats since the 2009 election. Since October 2016, March 8 received 17 of 30 cabinet positions, thus establishing Hezbollah's consistent influence in Lebanon. Hezbollah has a military presence in 240 villages in southern Lebanon, according to the estimates of the Israeli Defence Forces in 2017. Hezbollah has gained grassroots popularity to integrate itself into local community and Lebanese society.<sup>50</sup> In fact, during the 2006 war with Israel, Hezbollah provided emergency relief services and distributed water, and medicine to Lebanese Shiites and Christians. One Lebanese Shiite, who was interviewed by CNN during the war, said "Hezbollah is doing all the things for the people. I don't know where the government is."<sup>51</sup> Hezbollah said that it spent \$300 million for the construction work to repair damaged or destroyed homes. The provision of Hezbollah's essential services has included health care and even veterinarians, which has been a viable alternative to the Lebanese state, enhancing its domestic popularity among the citizens. Hezbollah has created its own educational institutions that parallel to the Lebanese state. Hezbollah first opened the schools in 1993 in southern Lebanon. By 2006, approximately 14,000 students attended Hezbollah's schools. By 2013, the schools were present throughout the state.<sup>52</sup> As a result, as Lise Morje Howard described, UNIFIL's conflict resolution paradigms of funding, inaugurating, and documenting humanitarian projects can be understood as attempts to compete with Hezbollah's own humanitarian and social activities in the region.<sup>53</sup> Susann Kassem developed Howard's view:

*Hezbollah has become a respected and entrenched authority in the south. The reality is that there is little distinction between Hezbollah and the community: Hezbollah is part of the community and not an alien force that can be simply pushed out. In the bigger picture, UNIFIL's ostensible attempt to supplant Hezbollah seems quixotic.*<sup>54</sup>

At the time of writing in October 2024, the warfare between Israel and Hamas and then Hezbollah led to the new stage of the conflicts in the Middle East. In South Lebanon, the number of displaced people reached an estimated 500,000. The Israeli military used its tanks to force entry into a position of UNIFIL and launched attack

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<sup>49</sup>Ibid, at 391-392.

<sup>50</sup>Norton (2018) at 1.

<sup>51</sup>Ibid., at 26.

<sup>52</sup>Ibid., at 31

<sup>53</sup>Howard (2019) at 124.

<sup>54</sup>Kassem (2017) at 469.

as firing at the facilities. Five UNIFIL personnel were injured, and 40 contributing states to UNIFIL issued a joint statement condemning the attacks.<sup>55</sup> The current event in the Middle East convinced that UN peacekeeping operations would not have capability to prevent the invasion of host states to their enemy states nor to protect the civilians in their operational areas when the states take determination to launch the warfare bypassing UN troops.

## **Conclusion**

This paper dealt with the emerging humanitarian norm, POC. POC has legality and legitimacy in the current post-Cold War period when one identified a number of war crimes and the following humanitarian crisis. POC can be conducted and supported by another emerging norm of R2P. However, both of the norms could not get the consensus among the international community, especially, in their early periods after the establishment. Furthermore, this article convinced that such norm is vulnerable to the risk that it might be abused politically. It dealt with three cases of POC, in Sudan, the DRC and South Lebanon, all of which exemplified several significant issues and challenges in the tasks of the POC in UN peacekeeping operations. The cases of Sudan and the DRC convinced of the problem of “filling the gap”. That is, one needed to fill the gap in the definition of POC between the UN and non-UN agencies, and between military and civilian staff within the UN. One also suffers from the failure of filling the gap in the attitude towards robustness in the operations between FIB and normal MONUSCO forces. Meanwhile, both UNMIS in Sudan and MONUSCO in the DRC had the common issues of lack of proactive actions. Currently, eight out of fourteen UN peacekeeping operations still have POC at the core of their mandates, which means that 96% of deployed peacekeepers are currently tasked with protecting civilians as part of their mission objectives.<sup>56</sup> Mainstreaming the principle of the protection of civilians still seek further improvement to tackle the above issues.

Meanwhile, the POC in South Lebanon is distinguished from that of Sudan and the DRC. While much of the population is poor and access to humanitarian assistance is important in South Lebanon, they are not seriously dependent on international aids and their plight cannot be compared to that of Sudan and the DRC. However, the outbreak of hostility between Israel and Hezbollah, just like the current situation, would be catastrophic with humanitarian disasters for local civilians, which makes UN peacekeepers and their mission of POC helpless.

POC itself should be respected and valued as the newly emerging international norm in the currently international political and security climate. However, the application of POC to UN peacekeeping operations has limited effect. Protecting civilians normally requires coercive and robust measures, which might have difficulty meeting three principles of UN peacekeeping operations. This problem was identified in all of the cases of this article.

On the whole, the principle of POC was advocated with significant enthusiasm

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<sup>55</sup>*The Japan News*, 19 October 2024.

<sup>56</sup>Global Centre for the Responsibility to Protect at p. 2.

and ambition for the purpose of saving vulnerable people in war-torn situations. It wins absolute legitimacy with the viewpoint of liberalism and humanitarianism. However, this article indicated a number of issues to be tackled after about two decades of their establishment. This is not to say, POC should not have been advocated. Rather, they should be reassessed, modified and improved.

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## **Abbreviations**

- ADF: Allied Democratic Forces
- CPA: Comprehensive Peace Agreement
- DDRR: Disarmament, Demobilisation, Repatriation and Rehabilitation Program
- DPKO: Department of Peacekeeping Operations
- DRC: Democratic Republic of the Congo
- ECOMOG: Economic Community of Western African State Monitoring Group
- FARDC: Armed Force of the Democratic Republic of the Congo
- FDLR: The French acronym for the Democratic Forces for the Liberation of Rwanda.
- FIB: Force Intervention Brigade
- ICRC: International Committee of the Red Cross
- IHL: International Humanitarian Law
- MINUSCA: United Nations Multidimensional Integrated Stabilisation Mission in the Central African Republic
- MINUSMA: United Nations Multidimensional Integrated Stabilisation Mission in Mali
- MONUC: United Nations Mission in the Democratic Republic of the Congo
- MONUSCO: United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo
- NGOs: Non-Governmental Organisations
- POC: Protection of Civilians
- ROE: Rule of Engagement
- R2P: Responsibility to Protect
- SPLA/M: the Sudan People's Liberation Army/Movement
- UN: United Nations
- UNAMID: United Nations-African Union Hybrid Operation in Darfur
- UNAMSIL: United Nations Mission in Sierra Leone



UNHCR: United Nations High Commissioner for Refugees

UNIFIL: United Nations Interim Force in Lebanon

UNICEF: United Nations Children's Fund

UNMIS: United Nations Missions in Sudan

UNMISS: United Nations Mission in the Republic of South Sudan

UNRWA: United Nations Relief and Works Agency for Palestine Refugees in the Near East

