THE ACCOUNTABILITY OF THE UN PEACE OPERATIONS

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ABSTRACT

The United Nations Peace Operations tend to increase deployed in war torn regions throughout the world. Thus, accountability surrounding the deployment of the UN Peace Operations emerges as a main problem. The problems lay in the terms of the decision making process (the creation of reliable and achievable mandates made by the Security Council), how to implement the mandates in the ground and how to enforce it.

Based on jurisprudence, there are often legal vacuums on how to implement all laws in peace operations. This essay, therefore, aims to analyze the problems and tries to propose solutions based on the accountability aspect.

1. INTRODUCTION

The United Nations peace operations are perhaps the most public face of the UN's work and, arguably, best reflect its primary function as the principal institution for the maintenance of world peace. Initially, peace operations had not been foreseen as a tool for the maintenance of world peace and so were not included in the UN Charter. Indeed, peace operations was born largely out of necessity, emanating from the UN's failure to establish its own military capability and hence assume its intended collective security role, as well as from the political restrictions imposed by the onset of the Cold War.

Peace operations play their significant roles, especially in the changing context of global security. Recently, they have been

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1 This Article is dedicated to Prof. Dr. F. Sugeng Inasu, S.H. for his dedication to the Gadjah Mada University Law School and in particular for his distinguished self-developing the International Law Department at this Law School.

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Three peace operations refer to military operations that are authorized by the United Nations. These operations aim to, among other things, maintain international peace and security, to strengthen universal peace, to create peaceful settlements of disputes and to promote social, economic and humanitarian welfare. See these objectives in the Preamble and Article 1 of the Charter of the United Nations. Therefore, peace operations include peace making, peace keeping, peace building and peacemaking action under Chapter VII of the Charter, side the Charter of UN, United Nations, entered into force, 24 October 1945, 1 UNTS XVI; and are also Siekmann, Robert C.B. (1991). National Contingents in United Nations Peace-Keeping Forces, p. 1.


deployed in dealing with multifaceted dimensions of security faced by international community, such as mass atrocities, gross violation of human rights, humanitarian relief and implementation of peace agreement, caused by armed conflict whether international or civil, political and military government and uncontrolled violence.  

Because peace operations involve many actors to achieve their mandates, many legal problems arise from their relationships. Thus, accountability and enforceability of the UN peace operations highlight their two significant problems.

This essay will discuss the accountability and enforceability of the UN peace operations focused on three aspects: the influence of the political and the diplomatic background, the use of the UN law (the Charter) and other legal mechanisms (such as Security Council resolutions, General Assembly resolutions, and Secretary General Directives) available to the UN to manage and control the UN peace operations, and the use of the International Human Rights Law (IHRL).

Arguably, those aspects will determine the UN peace operations' legitimacy in the international community.

E. THE POLITICAL AND DIPLOMATIC BACKGROUND

Political and diplomatic background is, among other backgrounds, the most important aspect determining success of peace operations. Legal regime under which peace operations functions derives from it as strategic, operational and tactical levels.

At the strategic level, the political and diplomatic background contributes to the legal implication for peace operations' legitimacy (what is done), who does it and under what authority it is, accountability and enforceability (which is it) of the law(s) applied in the assessment of a potential mission, the creation of clear, credible and achievable mandate, and decision of an adequate dose base.

Further, at the operational level, a break down of the mandate and determination of goals and objectives into measurable components among players such as Special Representative of the Secretary General.

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11 Actors in this regard mean the UN itself as an international organization represented mostly by its principal organs, such as the Security Council and the Secretary General, the Troops Contributing Countries (TCC) which send their troops, Regional Security Arrangements, such as North Atlantic Treaty Organization, Non Governmental Organizations (NGOs) and Inter Governmental Organizations (IGO's), and Host State when the operation will be held.

of the Secretary General (SRSG), Force Commander (FC). NGOs and IGOS are determined by full political support by those who are governed.

Lastly, the political and diplomatic support provides resources to conduct peace operations at the tactical level, such as the agreed consent from the host country, and the adequate financial support to achieve the mandate from Member States to remedy the abysmal situation of the UN’s finance.

Failure to take the political and diplomatic background into consideration will lead to legal ambiguity which hinders the achievement of the United Nations purposes in general, loses credibility and accountability of the UN whose role is collective security for international community, and in particular endangers life of those who are innocent for such missions.

Consequently, it is critical to examine their functions to minimize or abolish political and diplomatic failure to conduct peace operations under the aegis of the UN.

II.1 At the Strategic Level

At this level, the political and diplomatic background creates responses to certain factual circumstances. Within the UN system, the Security Council has the most authoritative power to determine global security and measures of existence of any threat to the peace, breach of peace, or act of aggression, although it never discusses its jurisdiction under Article 39 to determine these existences. Consequently, the clarity of mandate formed in a resolution is a basic legal document which sets out clearly what the mandate is, either in political or in legal terms.

Therefore, the political background should be consistent with the legal power of the Security Council contained in the Charter, and should be legally attainable. The Report of the Panel for United Nations Peace Operations (the Brahimi Report) emphasizes that from a political background, the creation of mandate should be determined by the expense of specificity, unanimity and clarity by consulting the most suitable information, availability of resources, and factual situations. The Report of the Secretary General to the Security Council on the Protection of Civilians in Armed Conflict also enhances confidence and deter perception of selectivity or bias toward one region or another in the creation of mandate.

In the resolutions 819 of 1993, 16 April 1993, 324 (1993), 9 May 1993, and 836 (1993) for the creation of safe area in the former Yugoslavia, the mandate to save and defend the safe areas from the deliberate attack against individuals was lack of clarity, specificity and poor substitutes for more decisive and forceful action to prevent the unfolding horror which caused the fall of Srebrenica.

Genocide in Rwanda is another example. This horror was due to weak political consensus

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5) Ibid, para. 56 and 63.


among those who are incumbent in dealing with it in the UN. The Report of the Independent Inquiry confirms that "for too long key United Nations personnel, especially in New York, failed to heed information about impending or actual massacres, and stuck for too long to the concept of impartial peacekeeping when the stronger measures were required".31

Further, creeping mandate is another problem in the ground. This was in the case of Resolution 837 (1993), creating UNOSCEM II in Somalia, and Resolution 543 (1992), creating UNPROFOR in the former Yugoslavia. Consequently, many peace enforcers died in the battle with Aalid’s Sector in Somalia, and legal vacuum emerged for executability of the peace enforcer conducts in Kosovo.32

Moreover, this precedent will give rise to other legal consequences. First, it will create constitutional obstacles from troop contributing countries, such as in the case of neutral states (Austria, Sweden or Switzerland). They will be reluctant to actively participate in the peace operations.33 Secondly, it will attribute to different political analysis and foreign policies from the troop contributing countries because of the notion of "intervening internal affairs".34 Thirdly, it will lead to different attitude and different applicable law(s) to conduct peace operations when the nature of maintain has been shifted.35 As a result, a shift of the mandate will obstruct the existing Rules of Engagement (ROE) among those troop contributing countries with the UN. Fourthly, the above precedent will also lead failure to achieve the mission objectives due to confusion of the application of the use of force by the forces to defend the mission. This was what happened in the UNPROFOR case where it was a peacekeeping or peace enforcement operations since the Security Council was reluctant to clearly state under what Chapter it was deployed.36

If the above problems are probably taken into consideration, success of peace operations is in the hands. For example, the INTERFOR deployment marks the climax of success due to an effective application of the Defence Review Plan, civilian supervision supported by effective structure of the force institution and capable personnel deployed in East Timor.37 UNMIL is another example. One of the reasons for the success enjoyed in the Haiti mission by UNMIL was the early selection of key leaders and their participation in staff training before the mission began deploying.38 Peace operations also deal with a high multilateral lobby in a troubled situation to which jeopardizes infrastructure and supra structures. Sergio de Mello argues that "leaders within the UN system need to get commitment for decision into trust fund at an early stage of the crisis", based on his experience in Kosovo and in East Timor when those peace operations faced multilibrated objectives.39

34 Ibid.
35 Ibid.
The role of political and diplomatic effort becomes more significant in peace operations when neighboring countries become engaged in hostilities within the troubled one. The Brahimi Report emphasizes that "Neighboring States can contribute to the problem by allowing passage of conflict-supporting contraband...[T]he counter such conflict-supporting neighbors, a peace operation will require the active political, logistical and/or military support of one or more great powers," 38. This is the case in East Timor by the existence of the Military Technical Arrangement for Security in East Timor.

II.2 At the Operational Level

At this level, a situational assessment which includes political, economic and military dimensions of the situation, an assessment of the willingness of the parties to resolve their difference peacefully, cooperation from host, neighboring and de facto occupying states, a restatement of the mission assigned by the Security Council, a concept of how the mission will be accomplished, a prioritized list of objectives to be accomplished, and who is responsible for each objective relate to political background in the peace operations' conduct among those who are involved in a peace operation.

Therefore, taking the above considerations will reduce failure, tension, danger of risks, and loss of life, property and credibility can be minimized at the operational level, while legitimacy can be maintained.

INTERFET is one example of this application. The Headquarter (HQ) of the INTERFET chose decisions supporting smooth INTERFET's operation in East Timor at the operational level. The HQ INTERFET took several legal pragmatic approaches to activate creative model of agreement in respect to other contributing forces which was not yet party to the agreement when INTERFET had been deployed. Those decisions were based upon the right information and closely related to the mandate of the Security Council Resolution 1244 which endorses the maintenance of security of the region and tenure respect for Indonesian territorial integrity and sovereignty. Consequently, a speed internal consolidation of the INTERFET, and peaceful means of negotiation with Indonesia as "neighboring and/or de facto Occupying States" were an actual need. Transition of power between those bodies at the operational level is also full of political background which can be very frustrating encounters among the actors and components involving in a peace operation mission if there is no clear information of time. For example, in Kosovo at the one-year mark, the international civilian police were only at 77% of their authorized strength caused tension between KFOR, the NATO led "security presence" deployed under Security Council Resolution 1244 (1999) and UNMIK. As a result, this situation endangered the credibility of the operation in Kosovo as a whole.

IL.3 At the Tactical Level

It is argued that those at the lowest level have caused the least problems when it comes to determining the success of peace operations. The Brahimi Report recommends that at the tactical level, political preparedness from the troop contributing countries is the most significant aspect to carry out mandate. It further recommends that:

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42 Ibid.
The Secretariat should, as standard of practice, send a team to confirm the preparedness of each potential troop contributor to meet the provisions of the memorandums of understanding on the requisite training and equipment requirement, prior to deployment: those that do not meet the requirement must not deploy.

From that recommendation, troop contributing countries have to provide political intention to fulfill their preparedness by providing adequate training, equipment and financial support for the troops. The report is silent to burden a political assessment relating to the question of how depth of the application of laws which are applied in the peace operations.

It is argued that political intention to apply (duties to ensure, to respect and to protect) and to ratify certain international humanitarian and human rights laws is the most acute problem dealing with enforceability for those who are incumbent in such mission when they violate those laws. The UN system does not have such enforceability for its agents who violate the laws. Thus, the enforceability depends upon the national mechanism. From the applicable laws, it is suggested, based on enforceability mechanism, that countries which ratify most of international human rights laws and international humanitarian laws, such as the
1949 Geneva Conventions should be prioritized to be deployed in peace operations rather than those which have not ratified.

Take for example, the Indonesian political background to those laws is not appropriate because Indonesia has not ratified several major International Human Rights Law treaties and has not fulfilled its obligation to create and impose effective penal provisions for grave breaches of the Geneva Conventions 1949. Compared with Australia which has ratified major International Human Rights and Humanitarian Law treaties, it will be more appropriate to deploy Australian contingent rather than Indonesian in terms of political and legal preparedness which will determine the enforceability and legal conduct in a peace operation at tactical level.

To sum up, political and diplomatic background of peace operation depends upon various considerations of facts and attitudes of all parties involved, laws applied and changing factual bases. By identifying those components with their specific roles, legitimacy and accountability could be maintained, while failures can be reduced or abolished. The political and diplomatic background is a tool to possibly get off the bicycle, put the feet on the ground, and have a look around to see where he is, where we are and where they are, to determine the next directions of peace operation.

III. THE UN CHARTER AND OTHER LEGAL MECHANISMS

There is an argument that the UN Charter and other legal mechanisms (such as Security Council resolutions, General Assembly resolutions, and Secretary General Directives) are available to the UN to manage peace and control UN peace operations are inadequate and outdated to the accountability of the UN military forces. However, it should be noted that the UN mechanism is the only authoritative instrument to conduct peace operation including the accountability mechanism to manage and control UN military forces. With regard to this statement, it is crucial to define, to approach and to apply the notion of accountability itself in peace operations either in narrow or in broader senses which relate to management and control of military forces.

In narrow sense, the question is, therefore, whether such rules and initiatives within the UN system are adequate and appropriate to make them accountable for their actions. The answer seems to be inadequate and outdated for two reasons: first, internally within the UN

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21 The Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Opened for signature on 12 August 1949, 6 UST 3314, TIAS No. 3362, 75 UNTS 31; the Convention for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of the Armed Forces at Sea, opened for signature on 12 August 1949, 6 UST 3317, TIAS No. 3363, 75 UNTS 55; the Convention Relative to the Protection to the Prisoner of War, Opened for signature on 12 August 1949, 6 UST 3316, TIAS No. 3364, 75 UNTS 125; and the Convention Relative to the Protection of Civilian Persons in Time of War, Opened for signature on 12 August 1949, 6 UST 3317, TIAS No. 3363, 75 UNTS 287.

22 Indonesia has not ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), but according to an Indonesian Program relating to Human Rights proposed by president Habibie in 1998, Indonesia will ratify all international Human Right instruments in five years after the program announced. It means that in 2003, Indonesia will have ratified all the international human right instruments. See Boer, Human Rights, in: Human Rights in Indonesia, 1993, p. 53.

system, there is no enforceability mechanism to make them accountable, and they lack of synchronized application of rules among them. Both of them create legal ambiguity and uncertainty which in turn reduce legitimacy of the peace operations’ conduct. Secondly, externally within international mechanisms, the legal status of the UN itself as an international organization toward the International Human Rights and Humanitarian Laws is legally problematic.

In the broader sense, the notion of accountability relates to the achievement of objectives and goal of the mission of the peace operations. Therefore, the UN Charter and other legal rules within the UN system are appropriate and not out of date to determine philosophy, legitimacy and motivation of the peace operations.

III.1 Arguments Supporting the Inappropriateness of the UN system

The UN Charter provides a most general legal foundation for the peace operations which derives from its basic principles and objectives as a collective security organization. Furthermore, interpretation and creation of applicable laws by its principal organs which is binding to Member States through inter alia, resolutions either by the Security Council or by the General Assembly creates legal lacunae between principles of the peace operations that flow from the UN Charter and specific mission of the UN Security Council resolution in the ground.

The attitude of the Dutch military forces for the fall of Srebrenica under the Security Council Resolution 836 (1993) and accountabil-

challenge although the application of the law of armed conflict applies to international forces. The second challenge is on how to combat humanitarian sins with effective strategic and political management of armed forces. Questions of clear concepts and procedures for a process that have resulted in an ad hoc fashion in the precedents of 1990's crisis: the tarnishing of a peace keeping and observer into an enforcement operation.

This reality grows tremendously in terms of applicable laws which have been set up to cope with multifaceted peace operations among the UN rules, International Human Rights and Humanitarian Laws.

III.1. No Enforceability Mechanism

The very basic notion about enforceability within the UN system is that does the UN bear the international responsibility for the activities carried out by its forces? Today, there is no doubt and no one denies that UN has international legal personality bearing rights and duties after the notable ICJ's advisory opinion on the 1949 Reprisal Case*. Accordingly, the UN has the capacity to maintain his rights by bringing international claims, against the respondent state even if the latter was not one of its members which, in turn, is also capable to be claimed for its behalves.

Accountability develops tremendously within the UN system. Those developments are marked by the creation of binding rules, such as the Code of Conduct for Law Enforcement Officials 1979; the Convention on the Privileges and Immunities of the United Nations; 13 February 1946; *the Convention on the Privileges and Immunities of the Specialized Agency, 21 November 1947, the Convention on the Safety of the United Nations and Associated Personnel 1994, the Secretary- General Bulletin: Observances by United Nations Forces of International Humanitarian Law*, the General Assembly Resolution on Model Status of Forces Agreement for Peacekeeping Operation 1990, and the SC Resolution 1265(1999) especially Article 8. Although there is vast development of the rules within the UN system, there is no enforceability mechanism to make the UN military members to be held responsible for violations of international human rights and international humanitarian laws. John Cerone concludes that the UN system is not appropriate to enforce accountability for military members in peace operations due to the absence of enforcement mechanisms. He argues that "if national governments are not held responsible for the conduct their troops, no legal subject can be held accountable under international Human Rights Law for violations committed by those troops. The resulting lacuna in accountability would be anathema to the effective protection of individuals that is very purpose of the Human Rights and Humanitarian Laws"**.

III.2. Unsyncronized or Uncertain Rules within the UN System

In this instance, it is valuable to look specifically on the application of the Convention on the Safety of the United Nations and

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** ICJ Report 1949.


** Entered into force on 17 September 1946.

* Bulletin Op.Cit.to 44.


In December 1994, the UN adopted the Convention on the Safety of the United Nations and Associated Personnel. This treaty provides for the protection of UN staff on missions and for the punishment for those who attack them within a peace-time (law enforcement-oriented context). In particular, the threshold of application in Article 2 specifies that the treaty does not apply to situations in which "the law of International Armed Conflict applies".

In reality, this language only increases the uncertainty surrounding Chapter VII peace operation deployment, e.g., peace enforcement operation. This left the inference that States considered the International Humanitarian Law in applicable to peace enforcement missions which, in fact, it is very different in the field.

On 6 August 1999, the UN Secretary General Kofi Annan issued a guidance on the application of International Humanitarian Law or International Law of Armed Conflict entitled "the Secretary-General Bulletin: Observance by United Nations Forces of International Humanitarian Law". This guidance also adds degree of uncertainty or inappropriateness of the applicable law within the UN system since it is likely a legal mixed role of the Geneva Conventions. This Bulletin is adapted with certain factual experiences which vary from case to case. In addition, the creation of this Bulletin is also legally questioned.

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10 For example, the applicability of the law of armed conflict was different between ADF and NZDF during their deployment in East Timor. This difference influenced their relationship and attitude, see Kelly, McCormack, Mulglin, in 201 Op Cit., no. 27.
principle for peace operations is that troops from contributing countries have international character because they are serving under the UN and do not represent their particular countries.

The UN is not a state that can enter and be bound by those treaties. This is not always voiced by troop contributing countries to defend, their stands when they use their troops for peace operations to avoid legal responsibility for certain cases. This argument is alleged in the KFOR and in the UNPROFOR cases.

III.2 Argument Supporting Appropriateness of the UN System of Accountability

Within the broader scope of accountability, the conduct of missions in accordance with the appropriate and generally acceptable international and national rules and procedures supports the mission's legitimacy and thus its acceptability and credibility.

Whatever the respective roles of particular organs, the United Nations is central both to political legitimacy, as the only global authority in the field of peace and security, and to legal legitimacy, since the principle of non-intervention under international law is primarily enshrined through the provisions of the UN Charter and any permissible exceptions to this principle must also be viewed and defined through the Charter framework.

There are several legal facts that support appropriateness of the UN Charter and other mechanisms to manage and control peace operations enhancing accountability of the UN military forces to achieve mission objectives. First of all, the use of the Charter of the UN mechanism and authorization of the use of force by the Security Council are still fundamentals for legitimate military actions. Simma argues that the October 1999 threat of air strikes against the FRY breached the UN Charter, despite NATO's effort to rely on the doctrines of necessity and humanitarian intervention and to conform to the sense and logic of relevant Security Council resolutions.

Therefore, the use of force with the motive of humanitarian relief without the Security Council authorization is illegal and, as a matter principle, breaches international law. It further contains their implied objectives which are full of negative possibility, such as neo-imperialism, vigilante, double standards and inefficiencies.

Secondly, positive results from the creation of the UN mechanism with the organs of the Security and the Secretary-General are also important to be noted. Because the applicability of law(s) in the peace operations depends upon the factual existence in the ground, the Convention on the Safety of the United Nations and Associated Personnel 1994 and the Secretary-General Bulletin: Obsequious to United Nations Forces of International Humanitarian Law can be used as a choice of law governing their conduct to avoid legal vacuum by carrying its mandate.

In the past, the Chapter VII deployment was full of uncertainty and legal ambiguity about the application of the International Humanitarian Law. Now, the Bulletin "provides a foundation for legal advisors, commanders and civil authorities tasked to implement peace enforcement operations, so that they can ask which rules of International Humanitarian Law apply".

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60 theoory, op.cit., no. 12, p. 1.
61 idem, 6.
62 theoory, op.cit., no. 12.
63 heimler, op.cit., no 50, p. 201.
Thirdly, the UN practice toward its international responsibility for unlawful acts of the UN peace operations forces car not be neglected. It means exclusively for the conduct carried out by its agents serving in peace operations ¹. Therefore, the UN will be responsible for omission, unlawful acts and damages committed by its agents in peace operations to the extent of its operational control or authority over its forces ². It is also important to note the application of the Convention on the Privileges and Immunities of the United Nations, 13 February 1946. It provides settlement of disputes which can be used for resolving cases concerning responsibility of the United Nations military forces when they are carrying out its tasks ³.

In addition, the Model Status of Force Agreement (SOFA) for Peace Keeping Operation, 9 October 1990 also provides the same mechanism between the United Nations and the host State where peace operations are being conducted⁴.

It can be summed up that there are many efforts to improve the accountability of the UN peace operations within the UN Charter base and other mechanisms to minimize legal lacunae.

IV. THE USE OF THE INTERNATIONAL HUMAN RIGHTS LAW

Within the framework of the enforcement of the International Human Rights Law, there are legal obligations to effectively implement IHRL undertaken by subjects of international law, i.e. duties to protect, to ensure and to respect⁵.

Within the peace operations framework which constitutes peace making, peace keeping, peace building and enforcement action, duties to respect, to protect and to respect of the IHRL applies to them. Therefore, the IHRL applies in three following ways. First, it applies by means of the legal basis for the legitimate sources (just cause) to conduct peace operations either for military members or for NGOs (dues to respect [preventive action for violation]). Second, it applies to the degree of military control over individuals (dues to protect and to respect), where and when the peace operations are deployed ultimately for military members (warring parties, or factions as well military peace enforcer). Lastly, it applies by the assumption of best practice and guidance to apply that law by military members (all the duties).

IV.1. The Just Causes (Direct Application of the UN Charter)

One of the basic tenets of the United Nations is to promote and reaffirm fundamental human rights, in the dignity of and worth of human persons. Commonly, the Security Council then activates Chapter VII to conduct peace operations with the motive of humanitarian relief or intervention. Chapter VII concerns with action with respect to threat to the peace, breaches of the peace, and acts of aggression, and lays down the specific power of the Security Council in relation to maintenance of peace and security.

The activation of Chapter VII to conduct peace operations is clearly based upon the fact

¹⁰ Ibid., 72.
¹¹ Article VIII, Section 30, Op.Cit., no. 54.
¹⁴ Preamble of the United Nations, Articles 1 (3), "... encouraging respect for human rights", and Article 55, "... universal respect for observance of human rights".
¹⁵ Ibid, Article 24 (4)

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MIMBAR HUKUM
that violations of fundamental human rights breach international peace and security. Higgins argues that "military sanction for human rights violations could be pursued under the Charter of the United Nations.[1] This tendency, according to Donovan and McLaughlin, "suggests that international community is agreement to humanitarian intervention even where human rights violations fail to merit Article 33 specifications as a threat to international peace."[2]

There are many examples for this proposition, such as the textual analysis from several Security Council resolutions, e.g. resolution E/19 (1993).

This resolution states that "the continued and deliberate armed attacks and shelling of the innocent civilian population by Bosnian Serb paramilitary threat peace in the region"[3]. Further, the Security Council resolution 929 (1994) concerns with the magnitude of the humanitarian crisis in Rwanda constitutes a threat to peace and security in the region. Thus, the mandate of peace operations can be justified as an enforcement of human rights within the terms of the UN charter which "comprises all means intended and proper to induce respect for human rights."[4]

In assigning their mandates, peace enforcing either military forces or NGOs have to conduct their attitudes within the principle of IHL. This application is based on legal duties to implement institutional human rights law, i.e. duties to protect, to ensure and to respect because the effectiveness of the UN's human rights system depends on important degree upon its ability to enforce respect for legal norms from IHRL.

Therefore, preventive action to apply IHRL becomes significant in peace operations. In Resolution 1265 (1999), the Security Council requests the Secretary General to ensure that "Member States have to take appropriate measures implementing IHRL when their agents are serving peace operations (peacekeeping and peace-building activities). Consequently, training, active dissemination, education, understanding and tolerance of IHRL are ways to apply this duty by military members as well as NGOs. In this instance, Bruce Oswald argues that "we need to start training our peace keepers now about issues concerning detention, handling detainees and, at the very least, the principles and rules of International Humanitarian Law and Human Rights Law. ...[W]e should also train NGOs and other members of the UN family including the UN itself about these issues."[5]

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Duty to respect of the IHRL is also an obligation for NGOs, such as OHCHR and ICRC. The Brahami Report, once again, proposes that "OHCHR need to be more closely involved in planning and executing the elements of peace operations that address human rights, especially in complex one". The ICRC's code of conduct requires its members to respect culture and custom of the communities and countries where they are working in.

IV.2. Degree of Control over Individuals during Peace Operations

Deriving from the UN Charter, the Security Council resolution often gives mandates in peace keepers as an entity deployed under the UN auspices to exercise public authority. As a result, they control and exercise rights and duties over civilians in the area of operations within their jurisdiction. Therefore, the degree of control over civilians within their jurisdiction triggers the application of IHRL treaties or customary law in peace operations. Consequently, once peace operations deployed, irrespective of the kind of operations, authority under which Chapter apply, and legal or not, IHRL applies to military members as well as NGOs. If they violate certain human rights provisions in the IHRL treaties, they can be held accountable for their actions.

In addition to the argument above, the Code of Conduct for Law Enforcement Officials, determines that "law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession" (emphasis added). Moreover, they shall respect and protect human dignity and maintain and uphold the human rights of all persons contained in international human rights treaties/conventions.

Exercising public authority which constitutes control over individuals performed by peace operations in Kosovo and in East Timor is an example for the application of IHRL for military members and NGOs in peace operations.

IV.2.1. Peace operations in Kosovo

In Resolution 1244, the Security Council authorized the creation of KFOR, the NATO-led security presence, and UNMIK (the United Nations Interim Administration Mission in Kosovo), the public authorities that operate in Kosovo with the purposes of securing and administering the territory. KFOR exercise civilian-like functions by establishing a secure environment, ensuring public safety and order until the international civil presence can take this responsibility. While the UNMIK's mandate is to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to perform basic civilian administrative functions, to organize and oversee the development of provisional institutions for democratic and
autonomous government, to maintain civil law and order, and to protect and promote human rights'. From the constitutional basis, the mandate is the most powerful link to test the degree of control between military members and individuals in Kosovo to exercise the application of the IHRL. Control over individuals in this case relates to the fulfillment of the task and the legal products from their real relationship. The UNMIK's Chief Administrator, the Special Representative of the Secretary-General, has signed several regulations requiring the application of international human rights standards in Kosovo, such as UNMIK regulations 1999/1, 1999/2 and 1999/24.

In the UNMIK regulation 1999/24, "all persons undertaking public duties or holding public office in Kosovo shall observe internationally human rights standards". As a result, this stipulation obliges the military, NGO's, and civilian administration members to comply with the basic IHRL standards in major international human right instruments.

The next test is that do the standards in the IHRL instruments apply accordingly to them which can be used for making them accountable in Kosovo? Or in simple terms, can individuals in Kosovo make a claim to the military members or members of the KFOR and UNMIK when they violated their rights? To answer this question, Cerone argues that there are two modalities apply to this situation. They are, firstly, the application of effectiveness doctrine of the implementation of international human rights law and, secondly, the extended application of duty to respect and protect international human rights from territorial jurisdiction to the legal interpretation of jurisdiction itself contained therein which have been ratified by many contributing countries.

In arguing this proposition, he cites several legal precedents in the "Della Solidariad de Lopez v Uruguay" and in the "Lazidou v Turkey (Preliminary Objection)" cases which extend the concept of territorial jurisdiction to jurisdiction in the broad senses to apply IHRL for KFOR and UNMIK extraterritorially.

In reaching his conclusion, Cerone argues that military members serving in the KFOR and UNMIK can be held accountable for their actions in Kosovo through individual state responsibility concept. He added that "the failure of KFOR troops to meet international standards may give rise to individual state accountability, particularly in light of the substantial degree of control retained by the sending states as well as the intolerable situation that would otherwise result".

IV.2.2. Peace Operations in East Timor

Like in Kosovo, in East Timor, INTERFET was deployed to lay down a secure environment to exercise legislative, executive and judicative powers by UNTAET. In Resolution 1264 and 1272, the Security Council gives mandates to INTERFET and UNTAET to exercise public authorities. Thus, they also exercised control over East Timorese during their missique. INTERFET's mandate included the right to protect East Timorese from massive human rights violations. At that time, there was no tribunal established to try individuals alleged
to have perpetrated human rights violations in East Timor. To conduct this investigation, INTERFET used the Guidance for the Multinational Peacekeeping Force in East Timor on the Preservation of Evidence by the Office of the High Commissioner for Human Rights Law. Standards for investigation in that Guidance derives from IHRL treaty standards to enforce IHRL for a fair trial, i.e. impartial, independent and competent which is endorsed in the Commission on Human Rights Resolution 2001/70 to end culture of impunity. The right to a fair trial; i.e. impartial, independent and competent, is a basic human right which is enshrined in major international human rights conventions, declarations and other international human rights standards. Or, in other words, the right to a fair trial has become customary international law and a general principle of law that is binding on all states. Consequently, because Australia and other contingents are members of international human rights treaties, they are bound to apply human rights standards as the fulfilment of the mission, in particular for the investigation process for crimes against humanity in East Timor.

Due to necessity in the field to secure the environment, INTERFET troops found it necessary, to detain a number of East Timorese. Then, INTERFET made the Detention Management Unit (DMU) as an interim judicial system which one of the aims is to uphold their legal rights. In this process,
the concept of equality before the law articulates that the INTERFET mandate as the law either as a system or the law enforcement officials are not discriminatory in enforcing the law based on reasonable and objective criteria; i.e., race, colour, sex, language, religion, political or other opinion, national or social origin (non-discrimination).15

Here, one of the key points is that INTERFET applied international human rights, as they are relevant to the factual situation by way of guideline, and best practice principle. This step was taken as the appropriate expectation for force standards to avoid legal vacuum and to effectively apply principle of duty to respect, to ensure and to protect international human rights law.16

This existence is also endorsed by certain international human rights law which have reach the status of customary international law and/or jus cogens norms17, such as the Genocide Convention and the Torture Convention. As a result of reaching this status, the law enforcement IHR, creates obligio erga omnes either at international or at national levels. Obligio erga omnes includes all measures to be obligatorily taken, such as, inter alia, the duty from every state to prosecute or to expel perpetrators of crimes against humanity 18, no statutory limitation to prosecute perpetrators of crimes against humanity 19, and the application of universal jurisdiction 20.

V. CONCLUSION

The peace operations under the aegis the UN compacts of broad dimensions of the accountability. By identifying the element of accountability of the peace operations with their specific concerns, the accountability of the UN peace operations in the future can be enhanced to maintain international peace an security.

The influence of the political and diplomatic background, the use of the UN law (the Charter) and other legal mechanisms (such as Security Council resolutions, General Assembly resolutions, and Secretary General Directives) available to the UN to manage and control UN peace operations, and the use of the International Human Law (IHR) are still debatable in practice. Thus, they still need to be explored and analysed.
REFERENCES

Adam Roberts, "Humanitarian Issues and Agencies as Triggers for International Military Action", 839 International Review of the Red Cross (Vol. 82. 2004);
Boer Moeun, Hukum Internasional, Pengurusan Peran, dan Fungsi dalam Dinamika Global (2008);
Borhan Amrulah, "The International Responsibility of the United Nations for Activities Carried Out by UN Peace Keeping Forces", 57 Revue Egyptienne de Droit Internationale (1976);
Bruno Simma, "NATO, the UN and the Use of Force: Legal Aspects", 10 European Journal of International Law (1999);
Christopher Guestwood, "International Humanitarian Law and United Nations Military Operations, I
Cristopher L. Baleskey, "Exterritorial Jurisdiction", in MC. Bassiony, "International Criminal Law Procedure". (1986);
Christine Van den Wyngaert, "The Political Offence Exception to Extradition: The Delicate Problems of Balancing the Rights of Individual and the International Public Order" (1980);
Challenge Project, the Swedish National Defence College and Challenges Project Partner Organizations, Executive Summary, Challenges of Peace Operations; Into the 21st Century (2002);
Cladia Anacker, "The Legal Regime of Eura Omono: Obligation in International Law", 46 Austrian Journal of Public and International Law (1994);
Code of Conduct for the International Red Cross and Red Crescent Movement and NGO's in Disaster Relief, 310 International Review of the Red Cross 35 (1996);
Daniel Warner (Editor), New Dimensions of Peacekeeping (1995);
D.J. Harris, Cases and Material on International Law (5th ed. 1998);
Declan Costello, "International Terrorism and the Development of the Principle Out Of Dedere Art Judicium", 10 Journal of International Law and Economic (1975);
F.L. Fibián, Soldiers without Enemies (1971);
Fernando Troso, Humanitarian Intervention: An Inquiry into Law and Morality (1966);
H. McCoubrey and Nigel D. White, The Blue Helmets: Legal Regulation of United Nations Military Operations (1996);
Henry J. Steiner and Philip Alston, Internationāl Human Rights in Context, Law, Politics and Moral, (2000);
Jan Biwottie, *Principle of Public International Law*, (5th ed., 1998);
IA Searle, *Shearer, Starkie's International Law* (11th ed., 1994);
Shon Cerone, "Minding the Gap: Outlining KFOR Accountability in Post Conflict in Kosovo", *12 European Journal of International Law* (2001);
MC Bassouni and Edward M. Wise, *Outlawing Out Judges: The Duty to Extradite or Prosecute in International Law* (1993);
Michael J. Kelly, Timothy McCormack, Paul Mulgelthom, et al, "Legal Aspects of Australia's Involvement in the International Force for East Timor", *841 International Review of the Red Cross* (2001);
ND. White, *The United Nations and the Maintenance of International Peace and Security* (1993);
Peter Malanenczuk, *Akhurst's Modern Introduction to International Law* (7th revised ed., 1997);
R. Higgins, *Problems and Processes: International Law and How We Use It* (1994);
Report of the Secretary-General pursuant to General Assembly Resolution 53/35: The Fall of Serbienica, UN Doc. A/54/ 549 (15 November 1999);
Robert C. Sickman, "The Fall of Srebrenica and the Amends of the Dutch Fubh from an International Legal Perspective, 1 Yearbook of the International Humanitarian Law* (1998);
Robert Sickman, *Basic Documents on United Nations and Related Peace Keeping Forces* (1989);
Rudolf Bernhardt, "General Report", in Bernhardt and Smitowicz (eds), *International Enforcement of Human Rights* (1985);
Sashi Tharoor and San Dews, "Humanitarian Intervention: Getting Past the Real", *World Policy Journal* (2001);
Secretary-General's Bulletin: "Observance by United Nations Forces of International Humanitarian Law", entry into force 12 August 1999, UN Doc. ST/SG/1999/13 (6 August 1999);
Suzanna Linton, "Rising from the Ashes: The Creation of a Viable Criminal Justice System in East Timor", *25 Melbourne University Law Review* (2001);
Wiseman in H. Wiseman, *Peacekeeping: Appraisals and Proposals* (1983);