

Accountability for human rights violations by UN peacekeepers

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Accountability for Human Rights Violations by UN Peacekeepers: A Legal and Theoretical Perspective

UN peace operations have greatly expanded over the past couple of years. What started with simple observer missions has slowly but steadily evolved into far-reaching operations in which the UN takes on a major role within the administration of countries. The effects of this expansion have, however, not been universally positive. As peace operations have expanded, violations of international law by peacekeepers have become more noticeable. Mainly, the organisation has attracted criticism as it seemingly fails to offer redress for any of these violations.

This thesis aims to address this criticism. It aims to do so by offering a legal argument that the UN would be responsible for redress to individuals, combined with strong theoretical considerations on how this redress could practically be implemented. As a starting point, it argues that within international law it would be possible that the UN holds human rights obligations to individuals that fall within its effective control. This would be a consequence of the UN's status as an independent international personality combined with the customary status of these obligations. Likewise, such a conclusion would be supported by a reference to the UN Charter and public statements the organisation has made.

The obligations of these peacekeepers can also be attributed to the UN, meaning it would be responsible for their redress. The crucial argument here is that these peacekeepers act as agents of the organisation and are only in exceptional cases seen as representatives of the nations which contributed the original troops. As a general rule, it is often seen that the actions of these peacekeepers are the responsibility of the UN. In this way, the UN would also legally be responsible for redress in case of violations.

Yet, in practice, we see that many of these violations often are able to be committed with relative impunity. The organisation is protected by strong immunities, which have been interpreted in a conservative manner. This thesis argues against such an interpretation, arguing that any interpretation which leads to impunity should be rejected. In this way, it argues that whereas immunity might affect the way in which the UN offers redress, it cannot excuse itself from this responsibility to individuals.

These individuals, who are the victim of human rights violations, then ultimately also hold a claim for redress against the organisation. Practice demonstrates that the UN has tended to conform to the existing legal structure as much as possible, which in the case of human rights violations represents a strong argument for reparations being awarded to individuals. This completes the legal argument that individuals would hold a claim for redress against the UN.

A combination of these arguments leads to the conclusion that the UN is legally responsible for redress to individuals. This legal obligation does not, however, automatically translate to a suitable forum. To create a complete argument, this topic has also been approached from a theoretical angle. Here it has been demonstrated that traditional approaches surrounding justice fail to take the situation of the UN into account in these situations. This has also been traditionally advanced as many of these arguments support the strong concept of immunity.

As an alternative, this thesis proposes that inspiration can be taken from the field of transitional justice. This theoretical approach, inspired by practice, has offered strong considerations of justice in similar challenging situations. Comparing the theoretical bases and motivations from transitional justice, this research argues that this leads to many similarities in the situation in both transitional contexts. In this

way, it is argued that the accountability deficit by the UN can and should mainly be seen as an issue of transitional justice.

Such theoretical framework can lead to some novel suggestions for the accountability gap in peace operations. Using this framework leads to an argument that this view can explain the need for the UN to engage with accountability. It also helps to offer some recommendations on how to implement these notions. Practically, it leads to a recommendation for an expanded claims commission, with a potential mandate to establish a truth commission, combined with the argument for a hybrid court. In this way it offers a comprehensive solution to the accountability gap of the UN based on theory, policy, and law.