

Definitions of "Protection of Civilians" and Some Challenges : @PKO Now! No. 30

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Kiwako Tanaka
Program Advisor
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Since the United Nations Security Council Resolution (UNSCR) on Protection of Civilians (S/RES/1265) was adopted in September 1999, protection of civilians has become a major mandate of the UN Peacekeeping Operations (UNPKO). Despite this fact, there is no clear definition of "civilians" to be protected, neither in the UNSCR nor individual UNPKO mission mandates. Thus, this article provides an understanding of who to identify as civilians based on the UN Secretary-General's Bulletin and the guidance created by the International Commission of the Red Cross (ICRC). Issues that require troop-contributing countries will also be addressed.

"Protection of Civilians" in the UNSG 's Bulletin

The UN Secretary-General (UNSG) issued a UNSG 's Bulletin on Observance by United Nations forces of international humanitarian law (ST/SGB/1999/13) together with the ICRC in August 1999. In the Bulletin, the UNSG stated that "the United Nations force shall make a clear distinction at all times between civilians and combatants..." (Article 5.1) and that "civilians shall enjoy the protection..., unless and for such time as they take a direct part in hostilities." (Article 5.2) UNPKO is included in the "United Nations force" in the Bulletin. The Bulletin thus explicitly distinguishes between civilians and combatants and articulates that civilians are protected.

Guidance by the ICRC

In 2009, 10 years after the UNSG Bulletin, the ICRC , based on the Bulletin, released its "Interpretive guidance on the notion of direct participation in hostilities under international humanitarian law"¹, and indicated its own position on who the "civilians" are, what the "armed forces" are, or "organized armed groups", as well as what "direct participation in hostilities" means. In the guidance, civilians are defined as "all persons who are neither members of the armed forces of a party to the conflict nor participants in a levee en masse are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities"².

The guidance also articulated that an act is only qualified as "direct participation in hostilities" when the following cumulative criteria is met:

- 1) the act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of harm), and
- 2) there must be a direct causal link between the act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part (direct causation), and
- 3) the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).

Characteristics of Two Documents and Challenges

Both the UNSG 's Bulletin and the ICRC guidance were highly recognized as to indicate their own position, examining complex issues of current conflict situation. These documents are, nevertheless, not agreed upon or signed by troop contributing countries to the UNPKO missions. Therefore, these documents do not have legitimate authority, and in cases of the violation to the provisions of UNSG 's Bulletin, the UNSG is not authorized to impose punishment³.

While UN peacekeepers are requested to comply with International Humanitarian Laws and Human Rights Laws to carry out "protection of civilians", there are circumstances in which UN peacekeepers themselves violate the International Humanitarian Laws. It is true that some cases in which UN peacekeepers unleash violence against local civilians instead of providing protection are reported⁴.

Supposing such cases, the UNSG Bulletin also states that "in case of violations of international humanitarian law, members of the military personnel of a United Nations force are subject to prosecution in their national courts" (Article 4) and leaves the troop-contributing countries to appropriate law enforcement in cases of violation. Accordingly, to carry out "protection of civilians" in the UNPKO missions, each troop contributing- country is required to prepare judicial instruments in which such cases where their citizens' violating acts to the International Humanitarian Laws outside its judicial territory are prosecuted domestically.

End Notes

¹ Nils Melzer, Interpretive Guidance on the notion of Direct Participation in Hostilities under International Humanitarian Law, ICRC , May 2009(<http://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>)

² Ibid., p.20

³ The UN Department of Peacekeeping Operations also issued a document in 2008, stating that the "United Nations Operational Authority does not include any responsibility for certain personnel matters of individual members of military contingents and Formed Police Units, such as pay, allowances, and promotions etc. These functions remain a national responsibility" (Paragraph 7). "Authority, Command and Control in United Nations Peacekeeping Operations," United Nations Department of Peacekeeping Operations and Department of Field Support, February 2008.

⁴ Statistics of the violations to International Humanitarian Law by the UN peacekeepers are shown in the website of the UN Conduct and Discipline Unit (<http://cdu.unlb.org/AboutCDU.aspx>).