

Conduct and Discipline of the UN Peacekeepers: Response to the Violation : @PKO Now! No.36

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The last two articles (No. 14 and No. 30) explained that the "protection of civilians" is becoming an important mandate of the UN PKO missions. This article will, shifting our perspective, look at some efforts taken by the United Nations and troop-contributing countries in cases when the UN peacekeepers cause harm to local civilians instead of providing protection.

Status of Forces Agreement

When the UN PKO missions deployed, in principle, a Status of Forces Agreement (SOFA), which stipulates its status and legal rights and duties, is signed between the United Nations and the host-country¹. Uniformed personnel dispatched to the UN PKO missions are, in accordance with the Vienna Convention on Diplomatic Relations, obliged to comply with the host-country's laws and regulations without prejudice to the privileges and immunities, but, on the other hand, jurisdiction of the host-country's laws and regulations do not extend to chains of command or conditions of employment of foreign contingents. Therefore, the United Nations concludes an agreement with the host-country on matters related to criminal jurisdiction of the uniformed personnel, rules of engagement, chains of command, and governed UN mandates.

Immunities from Legal Process

For instance, in accordance with the SOFA concerning the United Nations Mission in South Sudan (UNMISS), where Japan also dispatches engineering corps of the Self Defense Force, in cases when a military personnel of national contingents assigned to the military component of UNMISS commits a criminal offense, officials of the government may take into custody that person, and shall be delivered to UNMISS together with any weapons or other items seized (Article 45)². In such situations, however, the government of South Sudan shall promptly inform the Special Representative and present him/her any evidence available to it (Article 51), and the arrested military person shall be subjected to the exclusive jurisdiction of their respective participating States with respect of any criminal offenses which may be committed by them in South Sudan (Article 51(b)).

Efforts to Maintain Discipline

Despite such immunities from legal process, once a PKO personnel commits a criminal offense, credibility to the UN PKO could be significantly deteriorated, which would then create a negative impact on the mission as a whole. To prevent such incidents, the United Nations established its Conduct and Discipline Unit within the Department of the Peacekeeping Operations in 2005³, and drew up three key principles governing the conduct of peacekeeping personnel. They include 1) the highest standards of efficiency, competence and integrity, 2) zero tolerance policy on sexual exploitation and abuse, and 3) accountability of those in command who fail to enforce the standards of conduct.

Also, particularly for the uniformed personnel, "Ten Rules/ Code of Personal Conduct for Blue Helmets", and for the military personnel, "We Are the UN Peacekeeping Personnel" are codified to ensure maintaining discipline of the PKO personnel. At the same time, the UN PKO personnel are required to fully understand the conduct of discipline through training; they use Core Pre-deployment Training Materials (CPTM), which all PKO personnel are obliged to take prior to deployment.

In addition, the 62nd United Nations General Assembly (2008) adopted its Resolution on

Criminal Accountability of UN Officials and Experts on Mission (A/RES/62/63, 8 January 2008), to ensure that crimes committed by UN personnel on mission do not go unpunished, and to urge all states to consider establishing jurisdiction committed by their nationals while serving as UN officials or experts on mission. Based on this resolution, the Secretary-General requested the member states to submit information on the extent to which their national laws establish jurisdiction over crimes of a serious nature committed by their nationals while serving as UN personnel on mission⁴.

End Notes

¹ In 1990, the UN Secretary-General, based on the accumulated Status of Forces Agreements (SOFA), drafted a comprehensive model- SOFA as well as model Memorandum of Understandings with contributing countries in 1991, and put them forward to the UN General Assembly, but neither were adopted as multilateral treaties. Thus, every time a UN PKO is deployed, an individual SOFA is concluded between the UN and the host-country.

² In cases in which the military members of UNMISS committed a criminal offense within the premises of UNMISS , the military police of UNMISS shall also have the power of arrest.

³ It is currently under Department of Field Support.

⁴ Based on the UN resolution in 2008, since the 63rd UN General Assembly, the UN Secretary-General's report, "Criminal Accountability of United Nations Officials and Experts on Mission" is submitted every year (A/63/260, A/64/182, A/65/185, A/66/174, A/67/213).