

# UN Peace Operations: The Last Frontier of the Extraterritorial Application of Human Rights

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## Abstract

The article regards a traditionally poorly explored issue: the applicability of human rights law by civil and military personnel involved in peace operations or generally in armed conflicts. As well known, the most important human rights treaties and instruments provide a restricted territorial application. In this regard, raises the possibility of an extraterritorial applicability of their relevant provisions to people however subjected to the *jurisdiction* of the signatories countries. A similar situation draws some more fundamental questions, related to the respect for human rights law by international officers and militaries during peace support operations and their accountability for violations perpetrated or anyway occurred in areas under their supervision or control. Transferring the issue on the field of a multinational or a UN led peace operation, which legal consequences occur if military contingents or detached governmental personnel act as subsidiary organs of an international or regional organization with an international legal personality?

The article further tells about the examination of the general principles regarding the use of force by UN military personnel. In addition, are evaluated possible derogations from human rights via UN Security Council Resolutions, together with a brief analysis of specific cases happened in recent peacekeeping operations. The key principles of the text rotates around the pivot of several very relevant sentences and decisions delivered by judicial and supervisory bodies established by the most important treaties on the matter. The author tries to describe the phenomenon of peace operations affirming a general extraterritorial application of human rights law which is not limited to the emergency situations encountered by military contingents on the field. The author also firmly maintains the distinction between human rights law and international humanitarian law, which therefore results in a general derogation from the

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applicable human rights provisions (*lex specialis*). The principle of accountability for the states participating in peace operations even under the UN direct command/control is described by the author through the emerging jurisprudential orientation of the relevant international supervisory bodies. This trend seems directed towards a recognition of responsibility for those countries that would omit to control the effective respect of human rights similarly to what they commonly do in their own national territory. In fact, even if a rebuttable presumption of compliance with human rights is affirmed when national state acts as an organ of international organizations in charge to promote those rights (as the UN), anyway such a presumption might be reversed in a single case and it therefore being subjected to the judgement of a competent international court or commission.

The article ends with a general call for the elimination of the existing dichotomy between the respect for human rights (traditionally inspiring UN interventions of stabilization) and the real perception of the international authorities' activity by those individuals subjected to their coercive powers. In the author's opinion, such a gap might be ascribed to the lack of effective compliance with the funding values of the intervention, functionally capable to create stability just by means of their ongoing day – by – day evaluation.