

# When Protectors Become Perpetrators Protecting Human Rights in United Nations Peace Operations

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Since 1945, the United Nations (UN) has assumed key responsibilities in the field of peacekeeping. Over 123,000 military and civil personnel are currently involved in 16 operations around the world. These peace missions mandated by the UN Security Council operate under difficult security conditions and call for great effort by personnel operating under extreme living conditions. The peace that is to be kept is often fragile. People in countries torn by civil war therefore place high hopes in the UN Blue Helmets, whose task it is to protect civilians in conflict areas.

In recent years, however, confidence in these peacekeeping missions has been repeatedly shattered. Among the major reasons are the failures of the United Nations to act during genocides in Rwanda and Bosnia and the violation of fundamental human rights by UN personnel. In particular, cases of sexual abuse by peacekeepers have undermined UN claims to provide protection for civilians. Numerous incidents have come to light in which peacekeepers have abused women and children, for example during operations in Cambodia, Sierra Leone, Liberia, Haiti, and the Democratic Republic of the Congo. Partners of the United Nations also came under criticism. In Bosnia and in Kosovo, NATO soldiers and employees of a private security firm operating in the framework of the UN police mission were involved in human trafficking. During both missions, young women from Eastern Europe were forced into prostitution and held in brothels mainly frequented by international forces. In operations run by the UN and NATO in Kosovo and in Afghanistan, terrorist suspects were captured and held without access to lawyers or appeal procedures or forwarded to facilities run by the U.S. or the Afghan authorities in the knowledge that they were being tortured there. In the Democratic Republic of the Congo and Chad, UN missions have cooperated with national security forces that include former rebel groups who have destroyed whole villages and killed hundreds of civilians.

In view of these violations of fundamental rights, the UN ought to call the perpetrators to account. While the UN Secretariat has adopted certain measures to prevent human rights violations during peacekeeping operations, so far the organization has done little to meet the demand for monitoring and sanctioning mechanisms. The question is therefore how accountability can be improved. Standards for conduct in peacekeeping operations have to be set for all implementing actors and partners, compliance with them monitored, and violations sanctioned. Given the complex governance structures of peacekeeping operations, internal accountability mechanisms, however, remain weak. This means that regional organizations, non-governmental organizations, courts, and national authorities have an increasingly important watchdog role to play. This article shows how these third parties can contribute to a pluralist accountability network for UN-mandated operations, drawing upon three examples from operations in Afghanistan, Bosnia, and Kosovo.

In Afghanistan in 2001, the UN Security Council entrusted the International Security Assistance Force (ISAF) Mission for Afghanistan to NATO with the job of providing security in certain parts of the country. Under this mandate, ISAF forces took many people into custody, handing them over to units of the U.S.-led operation "Enduring Freedom", and from 2006 onwards also to the Afghan authorities. People suspected of terrorism or of being a security threat were de-

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**Summary:** United Nations peace operations are an important instrument of the international community to protect civilians. Nevertheless, human rights violations committed in the course of these operations have caused great concern. Drawing on an analysis of the operations in Afghanistan, Bosnia and Kosovo, this article demonstrates how third parties, for example regional organizations, non-governmental organizations, courts and national actors, set standards for behavior in peace operations, monitor compliance and enact sanctions in the event of violations. This pluralist accountability is crucial for the legitimacy of UN operations, despite the fact that the UN Security Council, the Secretariat and individual states remain ultimately responsible for human rights protection.

tained indefinitely without due process, often maltreated and tortured. Although a 2007 report by Amnesty International had revealed the conditions of detentions in the Afghan facilities, nothing essentially changed in the transfer practices of the ISAF countries involved. This brought national courts into play: human rights activists took legal action, for example, in Canada, the Netherlands, and the United Kingdom. As a consequence, the Royal Court of Justice in the U.K., for instance, ruled in 2010 that prisoners were no longer to be handed over to the Afghan authorities. But the detaining authorities managed to ward off all demands for external supervision of how prisoners were treated with reference to their “terrorist background”.

The decisive turnaround only came as a result of the monitoring activities of the political mission UNAMA (United Nations Assistance Mission in Afghanistan), which the UN Security Council had mandated along with NATO. The UNAMA Human Rights Division together with the Afghan Independent Human Rights Commission (AIHRC) developed a comprehensive monitoring procedure, interviewing hundreds of prisoners. The publication of the UNAMA report in the autumn of 2012 eventually proved an effective sanctioning mechanism. As a result, NATO member states temporarily stopped the transfer of detainees. And the UN Security Council also called on the Afghan government to improve the treatment of prisoners. This example shows how national courts and human rights missions operating in parallel can help strengthen accountability for human rights violations in the context of UN-mandated peacekeeping operations.

In Bosnia as well, human rights missions operating in parallel with national courts—together with the US Congress—played a decisive role in holding human rights violators accountable. Members of the UN police mission, largely recruited for the U.S. contingent via the private military firm DynCorp, were accused of being involved in human trafficking and of having furthered the sexual exploitation of women. For quite some time the UN leadership sought to sweep these human rights violations under the carpet, even dismissing individ-

*UN soldiers are on patrol during Pope Francis' visit to the Central African Republic in 2015. Some members of this UN force were accused of severe violations of human rights in 2016 – one of a series of incidents in different countries which hosted UN troops.*

*[Photo: picture alliance/dpa]*

ual employees who reported on the subject. The Office of UN High Commissioner for Human Rights in Bosnia, by contrast, took up the issue and became a key institution for documenting human trafficking in the country. The office conducted far-reaching investigations and gave decisive support to the legal action taken against DynCorp by a dismissed employee, Kathryn Bolkovac. The court ruling that this dismissal was illegal became an important basis for publicly sanctioning the behavior of the UN mission in Bosnia and “shaming” the UN leadership. At the same time, members of the US Congress conducted hearings and initiated investigations, although these did not lead to any legal sanctions being imposed. Since the adoption of the Military Extraterritorial Jurisdiction Act of 2000, contracting partners of the U.S. Department of Defense can be called to account; the DynCorp employees, however, were under contract to the Department of State. Attempts to close this legal loophole have only recently been undertaken with the Civilian Extraterritorial Jurisdiction Acts of 2011 and 2014. Thus, without the efforts of the Office of the UN High Commissioner for Human Rights, it is highly likely that the behavior of the UN-deployed personnel in Bosnia would not have been monitored and sanctioned.

During the UN mission in Kosovo, mandated by the Security Council in 1999, the main accountability holders were instead regional organizations. With Resolution 1244, the country was placed under UN administration: the Special Representative of the United Nations Secretary-General “ruled” the country with executive powers and was entrusted with a wide range of state-building tasks. In parallel, the Organization for Security and Co-operation in Europe (OSCE) was entrusted by the Security Council with the democratization of the country and the establishment of state institutions.

The OSCE became particularly important for the protection of human rights in Kosovo. Originally responsible for overseeing national actors, it subsequently expanded its mandate, interpreting its role as human rights monitor also vis-à-vis the competent UN institutions in the country. When it came to light that the UN special representative had violated fundamental principles of the rule of law by issuing so-called “executive order detentions,” the OSCE mission in Kosovo took up investigations in Kosovo and demanded the UN to respect the rights of prisoners and to compensate individuals for violations of their rights. Together with the Council of Europe, the OSCE installed an ombudsman institution to which individuals could address complaints if they felt their rights had been violated by the international administration.

Although formally under UN mandate and only with powers of recommendation, the ombudsman was able to develop an independent position vis-à-vis the UN special representative by reporting regularly to the European institutions of the OSCE and the Council of Europe. This gave rise to a pluralistic accountability network that monitored the UN’s compliance with human rights in Kosovo. At least with regard to detention practices, the pressure exerted by the European regional organizations was effective: subsequent UN special representatives made no further use of their executive power to order detention. Unfortunately, the mandate of the ombudsman was fundamentally curtailed in 2006, so that the authority could hear only complaints against national institutions. On the urging of the Council of Europe, a Human Rights Advisory Panel was thereupon set up to deal with complaints against the UN administration. Its authority, however, was restricted to an advisory role only.

These examples from Afghanistan, Bosnia, and Kosovo suggest new avenues for enhancing accountability for human rights violations. Standard-setting, monitoring and sanctioning by external third parties ultimately lead to greater participation and transparency. The type of pluralist accountability these cases illustrate enhances the legitimacy of international organizations such as the UN by creating a broader accountability forum which includes the greater public and the international community. It meets the criteria of a society-based legitimacy perspective under which not only member states of the UN Security Council but also other actors in the international system monitor and pursue the respect of human rights. However, these examples also point to the limits of pluralist accountability: legal consequences for individual perpetrators were not

forthcoming and only exceptionally did these procedures make it possible to compensate the victims of human rights violations. Ultimately, effective protection of human rights requires a combination of effective internal and pluralist accountability mechanisms. This remains a challenge for the UN Security Council, the UN Secretariat, and individual states. They are ultimately responsible for the personnel whom they deploy in UN missions and to whom they give far-reaching powers.

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