

Human Rights and Gender Aspects in United Nations Peacekeeping Operation Mandates: How did they sneak in?

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Abstract: Human rights and gender issues within the framework of Women, Peace and Security Agenda have been introduced into the UN peacekeeping operations in different ways. Taking into account that these operations have not been foreseen in the San Francisco Charter, this article intends to reflect on the evolution of both aspects in the UN Security Council resolutions that contain the UN peace operations mandates. They are the ADN of the peace operations as legal basis of their deployment and include the objectives to be accomplished. In the actual multidimensional operations, human rights and gender related objectives have evolved to become a relevant part of peacekeeping mandates though their interaction is not always clear and their implementation under the protection of civilians' umbrella could be compromised.

Keywords: human rights, gender, peacekeeping operations, mandates, UN Security Council resolutions, protection of civilians.

Resumen: Las cuestiones de derechos humanos y de género en el marco de la Agenda de Mujeres, Paz y Seguridad se han introducido en las operaciones de mantenimiento de la paz de las Naciones Unidas de diferentes maneras. Teniendo en cuenta que estas operaciones no se han previsto en la Carta de San Francisco, este artículo pretende reflexionar sobre la evolución de ambos aspectos en las resoluciones del Consejo de Seguridad que contienen los mandatos de las operaciones de paz de la ONU. Son el ADN de estas operaciones, la base legal de su despliegue e incluyen los objetivos a

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cumplir. En las operaciones multidimensionales reales, los objetivos relacionados con los derechos humanos y el género han evolucionado para convertirse en una parte relevante de los mandatos de mantenimiento de la paz, aunque su interacción no siempre es clara y su implementación bajo la protección del paraguas de los civiles podría verse comprometida.

Palabras clave: derechos humanos, género, operaciones de mantenimiento de la paz.

I. INTRODUCTION

Peacekeeping operations have been evolving along the last decades, especially from the end of the last XX century to become multidimensional operations. It has been a response to the new challenges of the present conflicts, where border or cease-fire monitoring are not enough to guarantee sustainable end of the conflict and ultimately, peace. Human rights², and

gender issues, framed in the “Women, Peace and Security Agenda” have been incorporated to the objectives of the peacekeeping operations, acting mostly on Chapter VII mandates.

However, and despite of the common rhetoric that places human rights and gender issues at the core of sustainable peace³, not much attention has been paid to the way these two issues have been included in the peacekeeping operations mandates⁴. They are the legal and political basis that allow the development and implementation of the agreed objectives of each peacekeeping operation. Lately, their large scope has been noticed by both UN relevant actors, such as the Secretary General Antonio Guterres, referring to them as Christmas trees and the need to shrink them and make them more adjusted to the field realities. Also, scholars have wondered if this era of multidimensional peacekeeping with multi-faceted and multi-tasked peacekeeping operations is approaching the end⁵.

This article intends to explore and analyze how the promotion and protection of human rights and also gender related issues in the framework of the “Women, Peace and Security Agenda” from the Security Council have been incorporated into the mandates of the United Nations peacekeeping operations. It is acknowledgeable that mandate implementation is not within our research scope, as our purpose is focusing on the mandates themselves: objectives non-defined specifically in mandates cannot be easily taken into reality.

Each peacekeeping mandate is a legal binding document adapted to the corresponding conflict and they should be interpreted individually. They are included in United Nations UN Security Council resolutions and approved unanimously⁶, once the Security Council has declared that the situation constitutes a threat to international peace and security⁷; consensus about situations of possible human rights violations in a territory have not been easy in the present political period, despite the fact that the Security Council has used Chapter VII resolutions incrementally in time⁸ until becoming business as usual⁹. Not all these resolutions relate to peacekeeping operations, as Chapter VII includes also political missions under article 41¹⁰. However, mainly in the last decade, the percentage of resolutions within Chapter VII scope is stabilized in 50% annually, showing a sustained increase along the last two decades. Our main interest lays in analyzing if this increase in peacekeeping mandates also corresponds to the inclusion in them of human rights and gender components

and objectives.

Mandates should be “clear, feasible and respectful of International Law”¹¹ as also encourages the Agenda for Peace, a relevant United Nations policy document that would include the core principles of the new multidimensional peace operations. Our research has focused in the analysis of the mandates of the peacekeeping operations –not political missions– already finished from 1995 until 2018. We have also excluded from our study the mandates of the still existing classical peacekeeping operations, as mostly do not include human rights or gender related components¹².

Another aspect excluded corresponds to the gender related issue of the sexual exploitation and abuse (SEA) carried out by the peacekeeping military personnel and civilian in some cases¹³. It is clearly one of the challenges that the peacekeeping operations encounter regarding gender issues, but it is not properly within the activities mandated to them. It corresponds to the necessary ethical behavior that all those serving under United Nations should keep¹⁴. Despite of the gravity of this issue it was not until 2002 that such provisions were included in the PKO resolutions¹⁵. Further on, in 2003 the United Nations Secretary General issued a definition of this concept in one of his Bulletins¹⁶, stating a policy of “zero tolerance” towards the conducts

included in it. In the UN Security Council resolutions there is usually a standardized paragraph¹⁷ not included in the hardcore mandate that refers to this issue. The

development of policies by the United Nations to address the cases has not yet achieved the complete eradication of these behaviors, but State members are responsible for their military and police contingents and national tribunals should decide on each case ultimately. The analysis of sexual exploitation and abuse in peacekeeping operations is an issue on itself and exceeds the objective of this article.

Initial and extension mandates have been analyzed following a “two- steps” methodology: 1) semantic and quantitative search, based on the terms “human rights” and “gender” or “woman/en”; 2) a qualitative research, analyzing the previously extracted paragraphs of the UN Security Council resolutions where these terms were embedded. In addition to these terms, we have also considered wider concepts such as “international human rights law”, “minority”, “sexual violence”, “discrimination” among others. The main limitation of this methodology corresponds to other human rights or gender related areas that could be within UN peacekeeping operations mandates but not under this exact wording. However, this has been addressed as we have also included in our analysis those mandates where these concepts have not been found clearly, but where some functions that could be related to human rights or gender have been found. This is the case of institutional reforms, such as police reform, training or capacity building.

The methodology has also studied the UN Security Council resolutions that include the peacekeeping operations mandates to trace where human rights and gender related issues have been placed. These resolutions have an introductory part -not numbered, followed by numbered paragraphs, where the core mandate is included. Human rights and gender related issues can be spread all over the UN Security Council resolution, but only when they are placed at the core mandate itself its implementation can be ensured with adequate resources.

II. MANDATES OF FINISHED UN PEACEKEEPING OPERATIONS BETWEEN 1995 AND 2018: HUMAN RIGHTS AND GENDER GAINING ACCEPTANCE

As WOOD¹⁸ stated, UN Security Council resolutions use the preamble as a sort of dumping ground where Security Council members relegate those issues that would not be deemed to approval if part of the core mandate. This assertion should be taken carefully in the case of human rights. Our analysis of mandates of already finished peacekeeping operations (PKO) from 1995 until 2018¹⁹ shows that from 1995 until 1999, generic references to human rights are not to be found or are very scarce. But this pattern will be completely altered from 2001 on (Fig. 1) as 100% of PKO are including at least generic human rights references –not in the core mandate– but in these preliminary parts of the UN Security Council resolutions.

This means something more than being a dumping part of the resolutions, especially if we consider this factor together with those resolutions that do include human rights in the core mandate itself. In this regard, we have observed that from 1995 until 1998 only 23% of peacekeeping operations included human rights related objectives in the core mandate²⁰. However, after 1998, there has been a significant change, as 82% of them included them. Consequently, we can assert that specifically from 1998 there has been a significant increase in the presence of human rights as part of PKO mandates, both as a generic reference and as a core part of the mandate itself. The fact that they have not been excluded from the preamble reinforces that they are a fundamental factor in today peacekeeping operations, at least from a mandate perspective, not its implementation, which is not our area of analysis.

An explanation to it lies in the evolution of the peacekeeping operations, trying to adapt to the realities of the new internal conflicts and to a certain “humanization” of the Security Council, allowing for the protection of civilians, considered to be a social issue, to become a security issue and a leit motiv of these operations, specifically including gender related aspects through the Security Council Resolution 1325 (2000) and its development from 2008 until present²². The massacre of civilians in conflicts where the UN

troops where present, such as in Srebrenica (Bosnia) or Rwanda and lately Sri Lanka have pushed the Security Council agenda into this direction, making human rights related questions a relevant factor for achieving the objectives embedded in the United Nations peacekeeping operations mandates.

In the case of gender related issues, they have not been included in United Nations PKO mandates until the end of the XX century, more specifically the Sierra Leona 2001 mandate extension²³. This operation had been in place since 1999 but the original mandate did not include gender related references. The 1325 Resolution on “Women, Peace and Security” that inaugurated this Agenda within the Security Council dates from 2000. In this regard, this resolution seems very contemporary as it links human rights and gender related issues in

its paragraph 4, stating the need to address the widespread violation of the human rights of women and children, including sexual violence ensuring that all human rights monitoring positions within UNAMSIL are filled. Usually in the mandates analyzed these aspects are included and drafted in separate parts of the resolution.

This relation between human rights and gender related issues has initially experienced a similar development and evolution. Both human rights and gender issues were not expressly part of the initial core mandate of peacekeeping operations; furthermore, as human rights were being integrated into the mandate activities, same destiny happened to gender issues, as the “Women, Peace and Security Agenda” found its echo in the Security Council.

In terms of the relation between generic human rights references and those that are part of the core mandate, we have observed that there is a correlation between both in the initial PKO mandates. As Fig. 4 shows below, PKO where human rights are part of the core mandate include also several generic human rights references in other parts of the SC resolution. Consequently, it can be

asserted that both type of references complements each other and contribute to the development of a stronger human rights inclusive mandate.

Human rights and gender related issues in the framework of the Women, Peace and Security Agenda have become operational in the mandates of the United Nations peacekeeping operations from 1995 until 2018 as its evolution shows and they have done it in different ways: 1) surrounding the core mandates; 2) being placed at the center of the mandates and finally 3) through its incorporation in the extensions of the mandates.

1. Human Rights and Gender issues Surrounding the Core Mandate

There is no standard procedure or a unique way of incorporating human rights or gender to the UN Security Council resolutions including peacekeeping operations mandates. They should adapt to the particular situation on the ground, but this should not prevent mandates from adding human rights and gender related elements repeatedly and steadily. These generic paragraphs usually call both parties in conflict to make the necessary efforts to fulfill and protect human rights within the territory. Monitoring mechanisms are usually included to this purpose although not always defining the operational aspect

of it, making it more difficult to be budgeted as these paragraphs do not belong to the core mandate itself.

An example of this can be already seen in the United Nations Confidence Restoration Operation in Croatia (UNCRO) where an introductory paragraph²⁷ states the need to protect human rights by the police authorities and the need of adding a monitoring mechanism to it; also, the peacekeeping operation in Eastern Slavonia (UNTAES)²⁸, incorporates the convenience of monitoring the compliance of the parties involved to respect the highest standards of human rights and fundamental freedoms. However, this task should be carried out by a provisional police force to be created by the peacekeeping operation, as defined in paragraph 1129 of this SC Resolution. Also, this mandate sets up the need for Croatia to “remove legal

obstacles and other impediments to two-way returns, including through the resolution of property issues, the establishment of straightforward procedures for returns”³⁰.

Fundamentally, human rights have not been placed at the center of the core mandate, but one paragraph below, indicating somehow that they are “principles/standards” more than applicable norms or operational tasks of the peacekeeping operation. Furthermore, the creation and development of a monitoring police force is a relevant and frequent task in United Nations peacekeeping mandates, and it involves human rights and gender related aspects, as international police monitoring should be done according to international human rights standards, especially regarding displaced/returned populations in conflict areas.³¹

Other types of actions indirectly included in the original human rights mandates are aimed at the creation of democratic institutions within the territory, among them specifically human rights related, as Ombudsman. This corresponds mainly to missions that hold administrative functions for a nascent state, as was the case of Timor or is still today, that of Kosovo. In the case of the Transitional Administration Mission in East Timor, UNTAET,

paragraph 8 refers to the need for the mission to consult and cooperate with the people of East Timor to carry out their mandate and develop local democratic institutions, including an “independent human rights institution for East Timor”³². Again, we observe a generic reference to human rights outside the specific mandate.

Finally, another aspect in which generic human rights references can be found is regarding the training of PKO staff, by recommending that mission personnel should have received adequate training in human rights. This has also been observed in the PKO in East Timor, where paragraph 15 states the relevance that UNTAET personnel receives training in matters such as “international humanitarian, human rights and refugee law, including child and gender-related provisions”³³.

Generic human rights clauses have a positive aspect since, at least, they underline relevant aspects of human rights in resolutions that create PKO, granting them some relevance. However, it would be convenient for this first “generic” stage to be overcome by other types of resolutions in which human rights and gender issues are considered pillars of the mandate, not simple rhetoric makeup.

2. Human Rights and Gender issues at the Hardcore of the Mandate

So far, we have been able to verify that human rights and gender issues are included through generic references in UN Security Council resolutions that host the PKO mandates. In this section we will describe one step further in the integration of human rights issues in the hardcore of the mandate, thus forming an indisputable part of the mission and the main function of the PKO. In this regard, the first United Nations Observer Mission in Sierra Leone (UNOMSIL) can be considered as a milestone in the introduction of human rights as part of the core mandate.

UNOMSIL was established in the middle of a serious humanitarian situation in 1998, as set up in the introductory paragraph of the SC resolution that approves its mandate, trying to respond to the human rights³⁴ violations and the humanitarian consequences on the population, including children, an specific mention not usually incorporated in mandates previously. The mandate

of the PKO is divided between tasks attributed to military observers on one side and to a civil team on the other. Regarding the military observer, their tasks are described in paragraphs 6a) and 6b) and includes apart from monitoring the military and security situation and disarmament and demobilization of former combatants, an special paragraph, 6c), specifically dedicated to “assist in monitoring respect for international humanitarian law, including at disarmament and demobilization sites, where security conditions permit”. It is the first time where such a task is included directly in the mandate.

The civilian team also includes among its functions in paragraph 8b) “to report on violations of international humanitarian law and human rights in Sierra Leone, and, in consultation with the relevant

United Nations agencies, to assist the Government of Sierra Leone in its efforts to address the country's human rights needs". This mandate is relevant since it is the first time that the task of monitoring compliance with International Humanitarian Law and human rights has been made explicit. In short, this mandate seems to resolve and centralize the lack of systematization observed so far in the resolutions that created peacekeeping operations³⁵.

The immediate consequence was that in the next resolution that created an increased peacekeeping force in the territory of Sierra Leone in order to face the monitoring and compliance with the Peace Accords, the human rights component would play a leading role since its inception. UNAMSIL³⁶ was created in 1999 with the purpose of assisting Sierra Leone government to implement Lomé Peace Agreements. First reading of the mandate³⁷ could be interpreted as not enlarging the previous human rights related mandate significantly. It states that some of the objectives in the core mandate are "to facilitate the delivery of humanitarian assistance and (h) To support the operations of United Nations civilian officials, including the Special Representative of the Secretary-General and his staff, human rights officers and civil affairs officers".

However, this peacekeeping operation will include a new element that somehow reinforces human rights at its core, the so-called protection of civilians, framing this new operation in Chapter VII of the United Nations Charter.

This expression means that "in the discharge of its mandate UNAMSIL may take the necessary action [...] within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence"³⁸. It is the first time that an explicit reference is made to the "protection of civilians", which implies intervening in case there is an imminent threat of physical violence. In this sense, the protection of civilians is an "umbrella" protection of the basic right to life and physical integrity, basis of other human rights³⁹.

In brief, UNAMSIL mandate includes human rights and gender components in an unsystematic way: these are distributed in different paragraphs of the resolution and not in number 8, the hardcore one. However, the inclusion of the protection of civilians for the first time in a mandate constitutes a move towards a greater and radical protection of human rights⁴⁰.

Once human rights have been included in the core mandate, international peacekeeping operations under the United Nations flag will see an increase of these type of mandates, where human rights and gender related questions will be put at the center of the operation. Timor, Congo, Liberia and Sudan will be territories where this sort of New Deal in peacekeeping will be set into practice. UNMISET⁴¹ is an example of PKO where human rights have been put at the core of the mandate. It incorporates two novel approaches so far: focal points for gender and HIV / AIDS issues and, on the other hand, a Human Rights Unit. Another important aspect that has not appeared so far is the mention of internationally accepted human rights principles, which will be an integral part not only of the training but also of the capacity building that the mission should carry out according to paragraph 2. In this sense, it is unique that it relates to human rights principles and not to the International Law of Human Rights, which would give clearly human rights more legal value in the mandate.

The internationally accepted human rights principles have been chosen in order to probably soften the implementation of the mandate regarding human rights.

The continuation of this PKO, the integrated mission of the UN in East

Timor, includes since its initial resolution and its first mandate a specific human rights component in paragraph 4g), 4i) and 4k) of S/RES/1704 (2006), of August 26⁴², where direct mention is made of human rights as an integral part of the mandate. The task of the peace operation will be to assist in strengthening the capacity of institutions and society to monitor, promote and protect human rights. Coupled with this are the aspects related to the promotion of justice and reconciliation, also incorporating a gender perspective into the mandate, something unusual to date.

Along the same lines as the two PKO in Timor mentioned above, the Congo mission initiated in 1999⁴³ and it incorporated a clear mandate in human rights and fight against impunity, along with staff assigned to

this task. The situation of the vulnerable population is mentioned, separating human rights actions from the issue of displaced persons and refugees which is framed from a “humanitarian perspective”, not a legal one involving claim and protection of rights.

The functions of the human rights component were also clearly defined in paragraph 5 of the same resolution, something that had not been the usual practice until now. Among them is maintaining links with all parties to the ceasefire agreement to facilitate the provision of humanitarian assistance to displaced persons, refugees, children and other affected persons, in addition to referring specifically to the task of providing assistance in the protection of Human Rights, including the rights of the child.

Among these peacekeeping operations with specific human rights mandates we also place the PKO in Liberia, which ended in March 2018, being the last to be completed. Human rights had a preponderant role since its inception as, together with humanitarian assistance, they are one of the four pillars on which the mandate⁴⁴ is based. This is one of the first PKO elaborated under the prism of the “integrated approach”⁴⁵, which implies putting the different United Nations structures in the country under the same chain of command,

including the peace operation. For this purpose, Country Support Teams were configured, which integrated different capacities and mandates in each of the teams deployed in each province of the country. Human rights work benefits from this joint approach, since many of its activities can have a greater and more lasting impact when carried out in this type of shared context. Although it was an “ad hoc” development of the operation, it was a novelty and perhaps a way forward for the following operations.

Likewise, in the case of Sudan, it can be observed that the specific mandate on human rights is established once the relevance of human rights has been defined in two introductory paragraphs⁴⁶. This introduction serves to subsequently include human rights as a part of the operation’s mandate⁴⁷. Thus, this includes, as in the case of Liberia, support for the parties so that they can consolidate the rule of law and human rights, directly related to the implementation of the Peace Agreement. In order to make this objective possible, it is also expected that there will be an adequate human rights component in the field to carry out activities for the promotion, protection and supervision of these rights. This can be considered as one of the “pioneer” mandates to include in such a concrete way the need for a specific component in the area of human rights.

In another section of the mandate, the role of the United Nations in this field is reinforced once again, stating that they must contribute towards international efforts to protect and promote human rights in Sudan⁴⁸. And, at the end of the resolution, a paragraph⁴⁹ also urges to increase the number of human rights monitors deployed in Darfur, once again reinforcing its operational relevance. In conclusion, it is pertinent to affirm that the mandate of the Sudan operation is one of the most inclusive in the field of human rights as well as one of the most reinforced.

3. Human Rights and Gender issues in the Extensions of the Mandate

The mandates of peacekeeping operations must be adapted to the evolution that is being observed in the field. The United Nations Department of Peace Operations is interested in the fact that, once an operation has been initiated,

it will achieve its objectives. For this purpose, the Secretary General makes necessary recommendations in his periodic reports to adapt the mandates to the requirements of each specific situation. This seems to be the most common situation in the PKO already completed that we are analyzing since 1995.

Extensions seem to be the way to “adjust” original mandates to new situations not incorporated from the beginning of the PKO but considered relevant afterwards. Sometimes, mainly when human rights are mentioned generically in the mandate, they usually are not considered “operational” initially; once the PKO has been deployed and it is effectively running it is when human rights are included more specifically.

As an example, in the operations in Croatia and in Bosnia-Herzegovina, the extensions of the mandates include paragraphs affirming the need to strengthen the work on human rights. In the case of Bosnia, some provisions are clearly introduced which, on the one hand, give the OSCE a key role in monitoring and reporting the situation of human rights in the field, closely linked in this case, to the situation of minorities. On the other hand, it urges the parties to the Peace Accords to collaborate with the national institutions responsible for human rights, such as the Ombudsman and the Chamber of Human Rights⁵⁰.

These are provisions that reiterate requests already included in the initial mandates but emphasizing their lack of compliance by any of the parties. This is also the case of the East Slavonia mission, where the Croatian government is reminded of its lack of compliance with human rights in general, including the rights of persons belonging to minorities⁵¹. In this sense, the mandate and the necessary legislative indications seem clear. They are not called human rights, but they mention the right of return of refugees and displaced persons, as well as the law of appropriation and temporary administration of property of Croatia, which seems to constitute an obstacle to the realization of this right. In the case of references to human rights, it is notable that these are not included in any of the international human rights treaties, but rather that they “name” the possible rights.

In the case of Angola, the first extension of the mandate⁵² does not make a clear mention of human rights and the possible violations that were being carried out by both parties, given that the conflict in its military phase was not yet settled despite the peace agreement. It is in the second resolution⁵³, extending the mandate, when the Security Council emphasizes the importance of strengthening human rights and the rule of law. It does not establish a clear human rights activity, but it incorporates at least a generic recommendation stating the relevance of human rights protection.

UNAMSIL in Sierra Leona is also a relevant case of how the extension and modification of the original mandate incorporate elements of human rights. In addition to extending the mandate successively in order to strengthen it, the Security Council also approved resolutions that, indirectly, sought to curb serious human rights violations. In this sense, the prohibition of buying rough diamonds from the country, as well as the creation of an International Court were steps in this direction. Thus, resolution S/RES/1315 (2000)⁵⁴, establishes the creation of an independent Special Court, given the circumstances of the country, with very serious crimes and a strong need to put an end to the situation of impunity, which prevented national reconciliation and, ultimately, peacekeeping.

In short, the original generic mandates could be criticized for relegating human rights issues to those parts of the UN Security Council resolutions that part of the doctrine considers dumping ground⁵⁵, such as the preambles. They include those issues that would not be acceptable in the operative and numbered part of the resolution, such as human rights. However, and, on the other hand, the inclusion of references to human rights in these generic parts also indicates the possibility that these issues will be dealt with later, through their development through the extensions of the mandates so that their introduction in the “less operational” part of UN Security Council resolutions does not necessarily imply that they are abandoned or later despised, but that they can be retaken and converted into main elements more easily.

In conclusion, the last operations initiated at the beginning of the present century incorporate some examples of reinforced and comprehensive human rights mandates, such as the operations of Liberia and Sudan, either generically or forcefully in the original mandates or through the successive extensions of the corresponding operations. Gender issues in operations already completed have gradually strengthened their mandates, although to a lesser extent than human rights and limited to some specific aspects of the Agenda for Women, Peace and Security such as issues arising from sexual violence derived from conflict. In the next section we will see if both human rights and gender issues have become a sort of a “model” for those peacekeeping operations currently underway.

III. THE ONGOING PEACEKEEPING OPERATIONS AND THEIR INCLUSIVE MANDATES

The previous analysis has led us into the second decade of the XXI century, since the operations have been extended until very recently, such as the Liberian one, that ended in March 2018. Therefore, we have been able to verify how initially there has been an absence of human rights and gender issues in the mandates, to become slowly a sort of a reality. One aspect to note is that, the operations currently in existence are those of longer duration, if we exclude the classic border surveillance operations. These more classical peacekeeping operations will not be the subject of this study, since their tasks can be considered within the maintenance of classical peace, which did not include aspects of human rights or gender mostly⁵⁶ and nor will we include MINURSO⁵⁷. In this sense, among multidisciplinary operations, the one located in Kosovo has reached 20 years of deployment. The case of the peace operation in the Democratic Republic of the Congo (MONUSCO) is also paradigmatic regarding the 23 years of continued presence of the United

Nations in a conflict territory, although we will only analyze the last phase since June 2010. Other operations to be analyzed began in the second decade of this century, except for the one in Darfur - UNAMID- which began in 2007. If, as part of the doctrine defends, to achieve success in a peace operation time⁵⁸ is a relevant factor, it could be affirmed that the remaining active operations are born to remain still operational⁵⁹. On the other hand, it could also be argued that the current operations with reinforced mandates are not obtaining the desired results, given that the conflicts in which they have been deployed have not only not been terminated, but, sometimes, as in the case of

South Sudan, have resurfaced.

Next, we will conduct an analysis of the mandates of ongoing operations that include a reinforced human rights component; within these operations, we will address gender issues in the framework of the Agenda for Women, Peace and Security. The Department of Peace Operations states that, currently, of the 13 existing peacekeeping operations, six have human rights teams, together with five special political missions⁶⁰. We will focus on the analysis of the six peacekeeping operations under Chapter VII of the Charter, which include human rights and gender issues since their inception in their original mandates. We have identified among these operations following patterns that somehow confirm the evolution of UN peacekeeping operation mandates towards an integration of human rights and gender related aspects conceived partly as foreseen in the Women, Peace and Security Agenda. In this regard, three aspects could be highlighted. First, in these six peacekeeping operations human rights and gender are clearly introduced in the core mandate, only one exception, UNMIK in Kosovo- no gender.

Secondly, all mandates are very detailed regarding human rights and less in gender related areas; in this regard, it is important to note that it has been already clearly stated by the doctrine⁶¹ that peacekeeping mandates have narrowed the Women, Peace and Security Agenda originated in Resolution 1325 to aspects related to sexual violence derived from conflict. Some consider that peacekeeping operations have limited themselves to a sort of add and stir gender issues, limiting them to include “more women” in the military troops/ police or to tackle sexual violence⁶².

There are few guidelines that allow PKO to operationalize this Agenda and the most recent one, dating from this present year, The Handbook for United Nations Field Missions on Preventing and Responding to Conflict-Related Sexual Violence⁶³, is a very useful tool precisely oriented towards this aspect. Despite of the fact that the Women, Peace and Security Agenda has been designed through policies that advocate for participation, protection, prevention and humanitarian assistance it seems that in PKO sexual violence has become the main priority, as our mandate analysis also show us. Some authors point out that the issue of sexual violence has been developed widely by the UN Security Council resolutions developing the resolution 1325 (2000)⁶⁴ preventing other areas, such as peacebuilding to do equally⁶⁵.

Furthermore, other authors⁶⁶ have highlighted that an excessive emphasis on issues related to sexual violence can harm an analysis of inequality and lack of access to human rights such as health or education, which also have even more perverse effects on women in conflict zones. As an example, trends in maternal mortality show that the highest rates correspond to conflict areas⁶⁷.

Consequently, it does not seem that the Women, Peace and Security Agenda has been oriented mainly towards a human rights perspective, but it has focused more on aspects related to protection within an optic influenced strongly by International Humanitarian Law not as holistic as International Human Rights law. It seems that human rights related issues have been incorporated into the mandates but have not been mainstreaming into gender related issues, partly because of the interpretation and development of the Women, Peace and Security Agenda following a “victim centered” approach⁶⁸. Finally, we will analyze new challenges that emerge as these mandates incorporate human rights and gender related aspects as they collide with other objectives.

1. Detailed Mandates: Human Rights and Gender aspects at the Center of Modern Peacekeeping?

UNMIK in Kosovo is the exception that proves the rule. Human rights but not gender related issues have been introduced in the core mandate as a direct product of its time, 1999, where the Women, Peace and Security Agenda was not still in place. This is perceived in the language of resolution 1244 which, on the one hand, authorizes the armed presence in the territory of Kosovo and, on the other, establishes a Provisional Administration. The functions

of this Administration are formulated in paragraph 11 of the resolution⁶⁹, including among them “j) protect and promote Human Rights”. It also envisages coordinating with other humanitarian aid agencies and achieving the “safe and free” return of all displaced persons and refugees from Kosovo. Taking into account the complex situation in relation to human rights⁷⁰ and gender issues that occurred in the province of Kosovo, the mandate is too brief and leaves place to developing the what and the how’s, though it could have defined them more clearly, incorporating at least the Organization for Security and Cooperation in Europe (OSCE), mainly responsible for carrying out the work of institutional development, police training and the promotion

and protection of human rights⁷¹.

Furthermore, the other five peacekeeping missions analyzed have included thoroughly both human rights and gender within their core mandates although in all of them except one, they are not usually formulated together. The exception is the UNAMID operation in Sudan, the United Nations-African Union Mission in Darfur⁷², that states⁷³ clearly under the tasks attributed to “Rule of law, governance, and human rights”, that the operation should “(v) ensure an adequate human rights and gender presence capacity, and expertise in Darfur in order to contribute to efforts to protect and promote human rights in Darfur, with particular attention to vulnerable groups”.

This mandate, that has been included in a preliminary report of the Secretary General is clearly very detailed due partly to the fact that this is one inaugurates the so-called “hybrid operations” within the United Nations framework. This concept⁷⁴ relates to operations where other organizations

intervene and are part of the operations directly, as this is the case here of the African Union. This is maybe one of the reasons of the detailed description of tasks within the mandate, to guarantee the correct interpretation and ensure cooperation on clear matters between the two bodies of the operation, the United Nations and the African Union.

MONUSCO, the peacekeeping operation in the Democratic Republic of Congo, has structured its mandate in two main tasks: on the one side, protection of civilians and on the other side, stabilization and peace consolidation. Human rights and gender issues are considered a protection of civilian task⁷⁵ and include the protection of the human rights defenders and the support to the State in order to guarantee an effective protection and the application of the International Humanitarian Law and International Human Rights, including all forms of sexual and gender-based violence.

Gender related aspects have been signaled both in the introductory paragraph of the resolution⁷⁶ as a reference to the Women, Peace and Security Agenda and in the core mandate, embedded in the general recommendation to apply and respect International Humanitarian Law and human rights. Also, in a brief reference to the women protection advisers⁷⁷, that are considered part of the United Nations system-wide protection strategy in the country. The mandate has been renewed to reinforce human rights objectives⁷⁸.

As established in MONUSCO, the United Nations Mission in South Sudan, UMISS, created in July 2011, in South Sudan, places human rights related components under the protection of civilians objective⁷⁹, described in a wider context of “support the Government of the Republic of South Sudan in exercising its responsibilities for conflict prevention, mitigation, and resolution and protect civilians”⁸⁰, being human rights related mandate described as “(iii) Monitoring, investigating, verifying, and reporting regularly on human rights and potential threats against the civilian population as well as actual and potential violations of international humanitarian and human rights law, working as appropriate with the Office of the High Commissioner for Human Rights, bringing these to the attention of the authorities as necessary, and immediately reporting gross violations of human rights to the UN Security Council”.

The mandate was reinforced in 2014, as the human rights situation deteriorated⁸¹, prioritizing the new one the reinforcement of the protection of civilians⁸² “irrespective of the source of such violence, within its capacity and areas of deployment, with specific protection for women and children, including through the continued use of the Mission’s Child Protection and Women Protection Advisers”. Also, human rights have been put at the center of the mandate⁸³, but this time not directly under the protection of civilians tasks. This detailed paragraph can be considered a novelty in the way it has been drafted, as the activities to be carried out are described in a concrete way, dedicating specific references to conflict-related sexual violence and grave violations against children, that need to be investigated and punished.

Following mission mandate extensions⁸⁴, more tasks were included under the protection of civilians scope, as a reference to deter and prevent sexual and gender-based violence⁸⁵; regarding human rights, tasks have been reinforced and increased to include monitor, investigate and report on incidents of hate speech and incitement to violence⁸⁶, together with increasing cooperation with all agencies and actors that are working in human rights in the country. The last extension of the mandate took place on 12 March 2020 until 15 March 2021⁸⁷ and it intends to build upon previous mandates, including the support to the implementation of the last peace agreement called the Revitalized Agreement. Again, the protection of civilians and the monitoring and investigation of human rights violation are within the hardcore of this mandate, including the creation of an hybrid court for South Sudan, that would contribute to the fight against impunity.

Finally, both the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) and the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) fall into the category of hybrid operations, integrating additional regional military operations to implement their mandate. Human rights and gender related issues have been incorporated into the core mandate of these operations.

MINUSMA⁸⁸ was created from the integration of the AFISMA military operation, authorized by the Security Council in Resolution 2085 of December 20, 2012⁸⁹. The operation’s mandate include different tasks⁹⁰, formulated in terms of “stabilization of key population centers and support for the reestablishment of State authority throughout the country”, including the more political side that contemplates support “for

the implementation of the transitional road map, including the national political dialogue and the electoral process”. Following, the protection of civilians and promotion and

protection of human rights are incorporated as separated objectives, though complementary.

In terms of human rights promotion and protection⁹¹, it is foreseen to deploy human rights officers that will be able to “monitor, help investigate and report to the Council on any abuses or violations of human rights or violations of international humanitarian law committed throughout Mali”, unifying human rights and sexual violence in armed conflict, that are put under the same umbrella of responsibility. This unification of human rights and gender related issues has not been a clear practice until the last existing peacekeeping operations, and we must signal the convenience of it as it stands for cooperation between other components that could facilitate access to justice of sexual violence victims. Furthermore, gender related questions are included in pars. 24 and 25⁹², mentioning the Women, Peace and Security Agenda resolutions and the relevant role that women should play in the efforts to bring peace to the country. It would have been more appropriate to frame the gender perspective within the introductory part but somehow it is a clear mention that serves to the same purpose.

MINUSCA, the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic has also been launched⁹³ after one existing operation called MISCA, the African-led International Support Mission in the Central African Republic. Paragraph 30 incorporates its mandate with a high, detailed number of tasks to be performed⁹⁴, and it can be considered a real example of multidimensional operation including human rights and gender related aspects. A specific mandate for the promotion and protection of human rights has been introduced, incorporating some fundamental tasks of assistance both to the State and to information and monitoring of violations

of international humanitarian law and abuses and violations of human rights, with special reference to those carried out by armed groups. Human rights observers will be the instrument in charge of implementing this mandate⁹⁵.

Gender related aspects have been included transversally as par. 35 indicates, stating that MINUSCA should “take fully into account gender considerations as a cross-cutting issue throughout its mandate”, mentioning specifically that this perspective should be applied in following: “ensuring the full and effective participation, involvement and representation of women in all spheres and at all levels, including in stabilization activities, security sector reform and DDR and DDRR processes, as well as in the national political dialogue and electoral processes”. For achieving this objective, it would be necessary to incorporate, *inter alia*, gender advisers.

This formulation is certainly a novelty among mandates, and it shows how the Women, Peace and Security Agenda could be considered in peacekeeping operations. However, there is a shortage too: it has not been formulated within the core mandate paragraph. The lack of effective gender related tasks within the mandate has been resolved operationally as indicated by the last report of the Secretary General on the mission⁹⁶. It shows how human rights and issues related to sexual violence are treated under the same category, jointly, including the protection of children and sexual violence in conflict. Also, the extended mandate reinforces the implementation of gender related objectives, as it recommends the “deployment of Child Protection Advisers, Women Protection Advisers and Gender Advisers”⁹⁷, specialized staff able to mainstream gender throughout the peacekeeping operation.

It is highly relevant to establish accurate and comprehensive mandates that include a cross-gender perspective involving human rights work in it. This perspective is defended by several authors and also by United Nations personnel who occupy gender related functions in the field. The Gender Advisor of the UN operation in Somalia has currently defended these types of mandates, which make it possible to integrate and mainstream gender

issues. If the mandates do not expressly include these objectives, there will be no budgets that convert what has been devised into concrete realities⁹⁸.

Last but not least the multidimensionality of both MINUSMA and MINUSCA mandates is reflected in their strategies to reinforce a rule of law state through fighting impunity. Both human rights and gender related aspects are included when designing strategies that tackle the fragility of the legal systems in both countries and its strong consequences particularly on women. MINUSMA has created a “Human Rights and Protection Division” within the operation that works together with the Ministry of Justice and the Head of Human Resources of the Armed Forces, in order to monitor jointly the cases of complaints regarding human rights. Therefore, even those detained by counterterrorism operations are monitored by the same system, establishing human rights guarantees⁹⁹. In general, human rights are a relevant objective within the mandate in this operation, dedicating personnel and efforts to ensuring that they are inserted in all actions, including those that are motivated by the fight against terrorism carried out by the Sahel Group 5, as recently recognized by the MINUSMA Assistant Secretary General for Human Rights¹⁰⁰. If the work carried out by the military forces against terrorism is not completed with the passage of those arrested by a judicial system, the peacekeeping operation will not fulfill its mandate but the opposite: it can turn

against the operation itself.

Furthermore, the UN Office of the High Commissioner for Human Rights (OHCHR) maintains technical cooperation with the PKO and collaboration

is observed¹⁰¹, supported by other instruments of the United Nations system, such as the Independent Expert from Mali, whose mandate has been renewed for one more year. In its latest report about human rights, there is growing concern about its deterioration in areas occupied by extremist groups¹⁰², but also some achievements linked to the establishment of government structures dedicated in a specialized way to human rights, as well as the electoral law

-which guarantees that 30% of the electoral lists contain candidates within the various political parties for the 2018 elections¹⁰³.

Another relevant area of work regarding gender issues relates to training the Mali security and police forces together with the inaugurated dialogue with the arm groups in order to end sexual violence in conflict. One of its relevant outputs was the coordination of the visit of the Special Representative of the Secretary General for Sexual Violence in conflict with this dialogue. It contributed to strengthening institutional structures dedicated to fighting conflict-related sexual violence¹⁰⁴.

As said, MINUSCA has seemingly used this approach of reinforcing the rule of law through human rights and gender work within the PKO. The Human Rights Division of MINUSCA, has worked in collaboration with the Office of the High Commissioner on Human Rights (OHCHR) and it has played a primary role in preparing the OHCHR report¹⁰⁵ as it can serve as a deterrent for the perpetrators of future violations, given that they are aware that there is a clear attitude to attack and end the existing impunity. Also, a full section of this report is devoted to sexual violence derived from the conflict, internalizing the gender approach.

Additionally, MINUSCA has also developed a “Case Documentation

Project” to fight impunity for violations of international humanitarian law

and human rights. The Bangui Forum¹⁰⁶ agreed that issues of impunity were a serious impediment to achieving the pacification of the territory. The Prosecutor of the International Criminal Court has launched an investigation in this regard, that resulted on the partial confirmation on 11 December 2019 by the Pre-Trial Chamber II of the charges of war crimes and crimes against humanity, brought by the Prosecutor against Mr Yekatom and Mr Ngaïssona and committed them to trial¹⁰⁷.

Currently and responding to this need to work on reconciliation through transitional justice, a special criminal jurisdiction has been created in the country to try to prosecute some of the crimes committed or that may be committed against human rights. However, it is necessary to consider the human rights challenges¹⁰⁸ that it will encounter, as they are broader than the mandate conferred.

In conclusion, it can be seen that the work undertaken by both the Human Rights Division of MINUSMA and MINUSCA can be considered an example of good practice, given that it condenses new approaches

to multidimensional operations; in addition, this also includes human rights and gender perspectives and collaborating with the country's government in order to create justice-based reconciliation, aiming to the desired stabilization and peace, the mandate's main objective. Also, another element to highlight is the joint and coordinated work of institutions external to the peace operation, responding to the concept of "multidimensionality" increasingly present in

current operations. Thus, both PKO collaborate with other specialized UN human rights agencies, mainly the UN Office of the High Commissioner for Human Rights, and also in the case of gender issues, with UN Women.

2. Challenges to the Human Rights and Gender related aspects in an Era where the "Protection of Civilians" prevails

In all these operations, it seems that human rights and gender related aspects as introduced by the 1325 Security Council Resolution are part of the core mandates. It should translate in budgetary implications and in effective results. However, there are notable challenges to implementation that can be already observed as both aspects have been usually framed under the protection of civilians perspective. Even when this has not been the case, protecting civilians still demands for armed intervention that can collide with the needed neutrality when working in human rights or gender related aspects in post conflict settings.

The presidential statement from the 8521^a Security Council session on 7 May 2019 on "United Nations Peacekeeping Operations" 109 reminds States of the "efforts undertaken by the Secretary-General to mobilize all partners and stakeholders in support of more effective United Nations peacekeeping through his initiative 'Action for Peacekeeping'" 110, clearly advocating for a realistic peacekeeping able to end conflicts and human rights violations in the territories where operations are working. In the same session intervened the MONUSCO Chief in command, describing the complexity of its mandate and the objective of following an integrated approach throughout the operation, something that involves "changing the mindset of all peacekeepers, civilians, military and police, who must comprehend the environment and evolving challenges, with civilian protection as the core mandate" 111.

The hybrid model of the Sudan peacekeeping operation has revealed itself as a complex situation given that the African Union scarcely contributes with economic resources or with sufficient experience in peacekeeping operations,

creating an asymmetric relationship with the United Nations that has not always had a positive impact on the development of its mandate¹¹², especially in human rights and gender related questions, that has sometimes suffered from a lack of coordination between the two organizations. The mandate has been extended successively¹¹³ due to the lack of political solution to end the conflict.

Adding to this, there is a clear reference to the need to "comply with their obligations under international human rights law and international humanitarian law"¹¹⁴, stating also that there are "operational challenges"¹¹⁵ preventing the fulfillment of the mandate. Among them, it is clearly addressed the "visa restrictions targeted at some elements of UNAMID, particularly the human rights section", indicating the lack of support for their work. That is why par. 15 of the extended mandate makes clear reference to the support of the peacekeeping operation to the protection of human rights that the government and institutions of Sudan should implement. For that purpose, the new mandate incorporates a reinforced mission capacity¹¹⁶.

Similar challenges are experience in the gender related tasks, also reinforced in par. 27¹¹⁷ of the extended mandate, including through the swift deployment of Women Protection Advisers in order to deal with sexual violence derived from conflict. In this regard, it is needed to end up with the impunity attached to it, a challenging objective, as described in the last report of the Independent Expert on the situation of human

rights in the Sudan¹¹⁸, as legislation is not suitable and even “create obstacles to the successful prosecution of members of the Sudan Armed Forces and those of the national security agencies”. Through indirect policies, the government of Sudan prevents effective human rights and gender related work, which indicates the real difficulties that these sections sometimes face in the context of a peacekeeping operation.

In the case of South Sudan, there has been an extended mandate reinforcing human rights and gender related tasks and competencies¹¹⁹, but little progress has been seen in the pacification of the new state. There is still great instability and the mandate of the operation has not been revised “downward” in any respect. The consequences of this emphasis on human rights/gender in the new mandate are not entirely clear, as the government keeps emphasizing that the United Nations is not acting as neutrally. The reluctant attitude of government authorities to follow human rights-based policies is partly because they feel that the United Nations views government authorities and the opposition forces in the same way, rejecting the neutrality principle, basis of peacekeeping operations.

IV. CONCLUSION

From 1995 to the present, a clear evolution towards a sustained integration of human rights and gender issues in peacekeeping operations can be verified, the latter being later incorporated. Initially, peacekeeping operations included issues related to human rights in an ambiguous way and without specifying the necessary actions to be undertaken. Therefore, they were consequently located in those places of the resolution “least binding” and not in their operational and programmatic part. However, it is noteworthy the relevant role of the extensions of the mandates, which have been one of the instruments used to turn human rights into clear objectives, once the operation was launched. This way of proceeding is a foretaste of what would happen to peacekeeping operations deployed at the beginning of the XXI century, where human rights have gradually been central to mandates, as is the case of operations in Liberia and in Sudan.

Although human rights are incorporated to a greater extent in the existing multidimensional operations mandates, it is not the same with issues related to gender and the Women, Peace and Security Agenda. These are included in the mandates less frequently than human rights and focus mainly on actions related to sexual violence derived from the conflict. Gender mainstreaming is not still happening in the mandates that constitute the legal basis of peacekeeping operations.

Likewise, the link between human rights and gender issues in the mandates has not been developed strategically or operationally. Both human rights and gender work in a peacekeeping operation relate usually to the same victims, since the sexual violence derived from the conflict involves a violation of various human rights and may even be considered a crime against humanity. However, it has been detected that both spheres work in different ways in different components of the peacekeeping operations, which translates into non-complementary and also contradictory or fragmented information. Lately certain confluence has been observed in the mandate extensions of the present peacekeeping operations in the African continent, as in South Sudan, Mali or the Democratic Republic of Congo, mainly due to the severe human rights violations that are still happening despite the international presence. It is necessary to deepen the links between human rights and gender in post- conflict societies, as a way of channeling injustices and inaugurating new practices within the nascent State after the conflict.

Furthermore, both human rights and gender aspects as framed in the Women, Peace and Security Agenda are part of ongoing peacekeeping operations, especially those in Chapter VII that include the use of force to protect civilians. They have normally been categorized under the broad umbrella of civilian protection, some including very detailed tasks regarding either human rights or gender. Furthermore, the cooperation with the Office of the United Nations High Commissioner for Human Rights has been institutionalized in the mandates itself although not in its totality, aspect that would be desirable.

Finally, there are operational challenges in the implementation of human rights and gender related aspects of peacekeeping operation mandates, mainly regarding the difficulty to maintain neutrality in reinforced operations. In the peacekeeping operations in Sudan, South Sudan or the Democratic Republic of Congo, having situated human rights implementation under the protection of civilian's tasks has not contributed to ease up the situation with the host governments. However, the operations in Mali and in the Central African Republic have separated human rights tasks from protection of civilians, setting up a path for cooperation with national institutions and local communities that could alter the negative/unneutral assessment of the peacekeeping operations by the host governments. The creation of mechanisms that include sustained

work with institutions at the national level, as well as with local communities on human rights and gender aspects, undoubtedly contributes to the perception that peacekeeping operations are not agents supporting the armed struggle against insurgent factions, but neutral pacification actors. This is probably the path to follow and the effective way to protect civilians, not compromising peacekeeping principles.

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Paz y Derechos Humanos: una nueva dimensión de las operaciones de mantenimiento de la paz”

Integration of Human Rights in Peace Operations: is there an ideal model?

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The resolution includes following aspects, describing clear tasks for each of them: protection of civilians, support for the implementation of the transition process, including efforts in favor of the extension of State authority and preservation of territorial integrity, facilitation of the immediate, full, safe and unhindered delivery of humanitarian assistance, protection of the United Nations, promotion and protection of human rights, support for national and international justice and the rule of law and disarmament, demobilization, reintegration (DDR) and repatriation (DDRR).

Interview conducted by María Avello, the author, with Ms. Shipra Bose, Gender Advisor, UN Assistance Mission in Somalia. March 14, 2018. The interview was conducted by Skype with a qualitative semi-structured interview methodology, which allowed the interviewee to contribute her point of view on other issues not included in the previous script. This is not a proper peacekeeping operation, but it was established at the end of one, with which the interviewee had also held similar positions in other PKO. In addition, the perspective of someone who has been able to closely observe the relevance of the change of mandates and that they incorporate gender and Human Rights objectives in them is of interest.

Report of the Mapping Project documenting serious violations of international human rights law and international humanitarian law committed within the territory of the Central African Republic between January 2003 and December 2015

n relation to the extremely difficult human rights situation in the country both at the beginning of the conflict and during 2013, before the establishment of MINUSCA, there are several reports, both from the High Commissioner for Human Rights, as well as Amnesty International and Human Rights Watch. Below, they are quoted for informational purposes, in order to get an idea of the enormous challenges of the human rights mandate in such a territory: UN Human Rights Council, "Situation of Human Rights in the Central African Republic", A/HRC/24/59, 12 September 2013, par. 27. AI, "Central African Republic: Human rights crisis spiraling out of control", 29 October 2013, p. 16. HRW, "I can still smell the dead - The forgotten human rights crisis in the Central African Republic", 18 September 2013, p. 64. AI, "Central African Republic: Human rights crisis spiraling out of control", 29 October 2013, p. 16. UN Human Rights Council, "Situation of Human Rights in the Central African Republic",

SC/13800, Security Council 8521ST meeting (am), "Security Council Issues Presidential Statement Underscoring Key Role of Peacekeeping in Promoting, Maintaining International Peace", 7 May 2019.

Is Hybrid Peacekeeping a Model of Success? The Case of UNAMID