
Ensuring Respect: United Nations Compliance with International Humanitarian Law

*Peter F. Chapman**

INTRODUCTION

In an effort to stem violent conflict, the United Nations has increasingly turned to peacekeeping and peace enforcement operations.¹ While these forces have had success in mitigating conflict, their efforts have also been tainted by allegations of violations of international humanitarian law (IHL). To date, the UN has not developed a comprehensive mechanism to investigate and punish such violations. In order to comply with IHL and to uphold the UN's mission of promoting international cooperation, the UN must establish a clear framework to enforce the law of war within its own peacekeeping and peace enforcement forces.

This article will begin with an introduction to UN peace operations, highlighting some cases of alleged abuse. The second section will examine the applicability of IHL to the UN. First, the section will examine the nuances of IHL by describing the differences between international, non-international, and internationalized armed conflict. It will then demonstrate that the UN is bound by IHL. The article will conclude by examining several potential mechanisms to enforce the UN's obligations under IHL: international state responsibility; domestic proceedings in the troop-contributing state; human rights mechanisms; claims commissions; the International Criminal Court (ICC); and ombudspersons. Finally, the article will offer brief recommendations for how the UN can ensure its compliance with IHL while adequately supporting victims' needs.

AN OVERVIEW OF UN PEACE OPERATIONS

Numerous terms have been used to describe "peacekeeping forces" including traditional peacekeeping, wider peacekeeping, peace enforcement, and peace support operations (PSOs). The UN itself uses terminology that differentiates between offensive and defensive peacekeeping forces. A UN panel, convened in 2000 by the Secretary-General to examine peace operations in the United Nations context, used the term "peace operations" as an umbrella term covering "conflict prevention and peacemaking; peacekeeping; and peace-building."² These forces, authorized under Chapter VI of the UN Charter, are characterized by impartiality in the conflict.³ This paper will use the term PSO popularized by the North Atlantic Treaty Organization (NATO) and scholars such as Marten Zwanenburg, legal counsel at the Ministry of Defense of the Netherlands, to describe those



By Scott Chacon.

UN peacekeepers in Kigali, Rwanda.

Chapter VI-authorized actions based on the consent of the belligerent parties.⁴

Alternatively, UN peace enforcement operations are those actions which constitute a "forcible military intervention[] by one or more states into a third country with the express objective of maintaining or restoring . . . peace and security by ending a violent conflict within that country."⁵ These forces, authorized under Chapter VII of the UN Charter, are characterized by their explicit authorization to use force in defense of the mandate — typically to establish peace and order.⁶ While academically these two different types of operations may seem separate and distinct, on the ground, UN operations rarely neatly fit into a single category.

The UN operation in Somalia demonstrates how easily operational mandates may shift. In early 1992, Somalia's civil war had caused a humanitarian crisis.⁷ The UN Security Council responded by first authorizing the United Nations Operation in Somalia (UNOSOM I) "to monitor the cease-fire in Mogadishu"⁸ and protect deliveries of humanitarian aid within Mogadishu. The Security Council later expanded the force's mandate to all of Somalia.⁹ In December of the same year, the Security Council issued a resolution, this time under Chapter VII, changing the force's mandate yet again and authorizing the UN "and Member States . . . to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia."¹⁰ Pursuant to Resolution 794, the UN created an offensive force named Unified Task Force (UNITAF), which delegated much of the authority for enforcing the peace to the U.S. Central Command as well as forces from other states.¹¹ In 1993, the Security Council further expanded the UNOSOM mandate by creating UNOSOM II, which authorized the force to (1) prevent the resumption of violence, (2) seize small arms from "all unauthorized armed elements,"

*Peter F. Chapman holds a J.D. cum laude from the Washington College of Law, and is a M.A. International Affairs candidate at American University's School of International Service. He is currently a fellow with The Carter Center in Monrovia, Liberia.

(3) “[protect] ‘as required’ of UN, [ICRC], and NGO personnel, installations and equipment,” and (4) “control of heavy weapons.”¹² Such modification of the mandates had a legal effect on the amount of force that could be authorized and, as such, modified the legal status of the parties to the conflict.

Both UN PSOs and enforcement operations have been subject to allegations of human rights and humanitarian law violations. For example, the UN forces in Somalia were alleged to have committed violations of IHL, including torture and the targeting of civilians.¹³ The current UN force in the Democratic Republic of the Congo (MONUC), established in 1999 under Chapter VII of the UN Charter,¹⁴ has been plagued by allegations of sexual misconduct.¹⁵ Many other UN operations, including those in “Haiti, Mozambique, East Timor, Bosnia, Kosovo and Cambodia,”¹⁶ also have been accused of abuses such as rape or trafficking in persons.¹⁷

In the 1990s, after recognizing deficiencies in the regulation of UN PSO and enforcement operations, the UN issued two major reports aimed at reforming UN peace operations: *The Secretary-General’s Bulletin on Observance by United Nations Forces of International Humanitarian Law* (the Secretary-General’s Bulletin);¹⁸ and *The Report of the Panel on UN Peace Operations* (the Brahimi Report).¹⁹ Notably, in outlining the need for reform, the Brahimi Report specifically acknowledged the “essential importance of the United Nations [in] promoting . . . [IHL] in all aspects of its peace and security activities.”²⁰ While the Brahimi Report suggests more than eighty ways for the UN to reform their PSO and enforcement operations,²¹ rather than focusing on violations of IHL, most recommendations focus on clarifying administrative deficiencies, including increased headquarters capacity, increased communication and cooperation across the mission, and more rapid troop deployments.²²

Neither the Secretary-General’s Bulletin nor the Brahimi Report effectively clarify the scope of IHL’s applicability to UN forces, how the UN can enforce its obligations under IHL, or how best to ensure accountability. Indeed, the Brahimi Report mentions accountability only twice — both times only in reference to procurement and spending.²³ The Secretary-General’s Bulletin argues that violations of IHL and “national law” are to be handled by the sending-state’s domestic courts.²⁴ However, as this paper will demonstrate, domestic jurisdictions do not adequately ensure compliance with the principles of IHL or guarantee victims the right to redress.

APPLICABILITY OF IHL TO PSO AND ENFORCEMENT OPERATIONS

The application of IHL, which regulates the conduct of hostilities, is triggered by armed conflict.²⁵ The International Criminal Tribunal for the Former Yugoslavia (ICTY) defined armed conflict as the “resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups in a State.”²⁶ No formal declaration is required.

Several different sources of law make up the corpus of modern IHL, including Hague law, Geneva law, and customary international law. While historically some have highlighted the different roles of each source of IHL, Yoram Dinstein, Professor of International Law and President of the Tel Aviv University, calls these distinctions “outdated.”²⁷ The International Court of

Justice (ICJ) has also confirmed that the multiple branches of IHL constitute a single body of law governing armed conflict.²⁸

BASIC APPLICATION OF INTERNATIONAL HUMANITARIAN LAW

The application of IHL is not contingent on the moral or ethical status of the parties to the conflict.²⁹ IHL distinguishes between the legality of the outbreak of conflict (*jus ad bellum*) and the conduct of the hostilities (*jus in bello*),³⁰ and binds all parties to the conflict equally. UN authorization does not affect the application of the law.³¹ Indeed, a party to a conflict cannot use its status as a member of a collective security force or PSO to justify breaches of IHL.³²

IHL does, however, distinguish between international and non-international armed conflict. IHL has traditionally regulated international armed conflict to a greater extent than non-international armed conflict. In international armed conflict, at a minimum, the Hague Conventions, the Geneva Conventions, and other customary sources of IHL regulate the conduct of hostilities. Professor Dinstein aptly notes the importance of applying customary international law to international armed conflict as “no single treaty – and no cluster of treaties – purports to cover the whole span of [international armed conflict].”³³ Additional Protocol I to the Geneva Convention also recalls the important role of customary law in regulating armed conflict, declaring “[i]n cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.”³⁴ Accordingly, in instances of international armed conflict, parties are bound by not only the text of relevant conventions, but also by customary international law.

IHL also covers non-international armed conflict. To be covered, non-international armed conflict must meet a certain “minimum level of intensity,”³⁵ and non-international disturbances, riots, and isolated or sporadic acts of violence are generally not regulated by IHL. Non-international armed conflict is, at a minimum, regulated by Common Article Three to the Geneva Conventions and customary international law. This corpus of law creates fundamental standards for all non-international armed conflict, which include the prohibition against torture and the principles of proportionality, necessity, and distinction. Additional Protocol II to the Geneva Conventions also governs the conflict if the state has ratified that instrument,³⁶ though the International Committee of the Red Cross (ICRC) Customary International Law Study alleges that much of Additional Protocol II has achieved the status of customary international law.³⁷

IHL also regulates the conduct of hostilities in so-called internationalized armed conflict. A conflict is internationalized when a foreign state intervenes in a non-international armed conflict. For example, the U.S. intervention in Afghanistan created “an international armed conflict as between the United States and Afghanistan,”³⁸ but the conflict between Taliban and the Northern Alliance fighters arguably remained regulated by relevant rules of non-international armed conflict. The ICJ in the *Nicaragua* case affirmatively recognized this hybrid application of IHL. The ICJ detailed that a single conflict may be governed by the regulations of both non-international armed conflict and international armed conflict, depending on the status of the parties.³⁹ Furthermore, the ICTY determined it had the authority to

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simultaneously adjudicate both interstate and intrastate conflict in Bosnia.⁴⁰

THE APPLICATION OF IHL TO UN-MANDATED FORCES

The ICJ has ruled that the UN is “an international person,” which can be subject to international law,⁴¹ such as IHL.⁴² A crucial factor in determining the applicability of IHL on UN-mandated forces is determining whether the UN is “the responsible entity for conduct of [the] operation.”⁴³ UN-mandated forces are subject to UN control, and for the purposes of the applicability of IHL, it can be said that the UN is in the position to exercise command and control over the UN PSO or enforcement force. Because the UN has control over the forces, the organization is bound to comply with IHL provisions “in all circumstances by United Nations forces which are engaged in hostilities.”⁴⁴ The UN itself has recognized the applicability of the humanitarian legal regime on UN forces, with the Secretary-General’s Bulletin arguing that IHL applies to UN “forces when in situations of armed conflict they are actively engaged therein as combatants,” even if the combat is in self defense.⁴⁵

IHL, however, regulates UN PSOs and enforcement operations to different extents. The UN agrees that when PSOs are “actively engaged” in combat, the provisions of IHL detailed in the Secretary-General’s Bulletin are applicable “to the extent and for the duration of their engagement.”⁴⁶ However, the UN has not clarified exactly what constitutes “actively engaged” in combat or what applicable “to the extent and for the duration of their engagement” means for the application of IHL.⁴⁷ In peace enforcement operations, IHL should apply “[f]rom the moment a state takes action using military force on the territory of another without the permission of the government of the latter, [and] armed conflict exists.”⁴⁸ In instances where a Chapter VI peacekeeping force regularly uses offensive military force, it should be viewed as a *de facto* Chapter VII peace enforcement operation.⁴⁹

Marten Zwanenburg notes that in the past actors have only found that a UN PSO is party to a conflict if high levels of violence exist. This scope of application comes from a desire to “consider an operation as impartial, and as a consequence not

a party to the conflict, as long as possible.”⁵⁰ However, IHL is based on an objective test of the level of violence, not the moral status of the parties;⁵¹ therefore, the deployment of a PSO force does not subject it to different regulations pertaining to the application of IHL. When a PSO engages in activity that reaches the level of armed conflict under IHL, the relevant provisions of IHL will regulate its conduct.

Another manner in which UN-sponsored PSOs may be bound by IHL is through the law of occupation. The Hague Conventions and Geneva Conventions explicitly state that IHL applies in cases of occupation,⁵² and some scholars suggest that if the PSO is the “sole authority capable of exercising control over the civilian population,” they will be an occupier under international law.⁵³ The law of occupation imposes numerous privileges and duties upon the occupying force — including adherence to IHL.

WHAT HUMANITARIAN LAW APPLIES TO THE UN?

The UN and other interested stakeholders must first determine what branch of IHL applies to UN forces — the law of international armed conflict, non-international armed conflict, or a hybrid application. Different instruments regulate each Member State of the UN, depending on the state’s accession to different IHL instruments. Indeed, because the UN has not ratified any IHL instrument, the organization cannot clearly dictate what law applies to its forces.⁵⁴ While some Member States may be subject to additional regulations, the UN itself likely is subject only to those provisions of IHL that are classified as customary law.

Determining what constitutes customary IHL is often difficult when applied to states,⁵⁵ and its applicability to the UN is even more perplexing. For example, while the ICRC alleges that almost all of the Additional Protocols are customary law,⁵⁶ the United States contends that some elements of the Protocol have not reached the status of customary law.⁵⁷ Furthermore, under international law, if a state persistently and constantly objects to the creation of a customary norm, it will not bind that state. Scholars have suggested that the United States, and potentially France and Great Britain, likely qualify as persistent objectors to some elements of Additional Protocol I.⁵⁸ These ambiguities in

the status of the law may create difficulties in application if, as in the case of Somalia, the United States was participating in a UN action with the military forces of other member states that might have accepted the customary nature of Additional Protocol I.

Second, the UN must determine if PSO and enforcement operations are classified as international or non-international armed conflicts for the purposes of IHL. As elucidated by the ICJ's *Nicaragua* and *Tadic* decisions, international and non-international armed conflicts may exist in the same battlefield at the same time, depending on the status of the belligerents. Accordingly, UN intervention in a non-international armed conflict could internationalize that conflict as to the UN forces while leaving the rules of non-international armed conflict to apply among domestic forces. Therefore, any conflict between the UN forces and domestic forces should be viewed as an international armed conflict as the UN constitutes an international force.

After determining *what* branch of IHL applies to UN forces, the organization must develop a mechanism to suppress such violations.

MECHANISMS TO SUPPRESS VIOLATIONS OF IHL

Entities regulated by IHL have an obligation to both educate their forces in IHL in order to reduce collateral casualties⁵⁹ and to “devise and implement appropriate mechanisms to ensure that the obligations imposed under [IHL] are respected.”⁶⁰ There are numerous ambiguities in the application and enforcement of IHL in regards to United Nations forces. Therefore, the UN should establish an effective and clear mechanism whereby victims of alleged violations of IHL can seek redress. Such a program is essential in establishing the rule of law and accountability in the post-conflict and conflict areas where PSO and enforcement forces operate.

As the following sections will establish, victims of IHL violations by a UN PSO or peace enforcement operation are forced to choose from several different mechanisms that are poorly suited to enforce their rights. Victims may claim the international responsibility of the sending state or the individual under international law; may issue claims against the individuals responsible for the alleged human rights violations; or may potentially seek to bring claims directly against the UN, as troop-sending states may lack the resources to compensate victims. However, these current mechanisms are inefficient and hard for victims to identify. This section will examine the limitations of existing mechanisms before suggesting alternatives in order to elucidate how the UN can more effectively implement its obligations under international law to ensure compliance with IHL obligations.

INTERNATIONAL STATE RESPONSIBILITY

Marten Zwanenburg recalls that “all international rights entail international responsibility.”⁶¹ The International Law Commission Draft Articles on State Responsibility, which examine the role of states in the international system,⁶² note that the “conduct of a state organ does not lose that quality because that conduct is, for example, coordinated by an international organization, or is even authorized by it.”⁶³ Ultimately, the Commission adopted the principle that an injured state, indi-



Courtesy of U.S. Department of Defense.

UN tanks in Kismayo, Somalia during Operation CONTINUE HOPE (1993).

vidually or in conjunction with a group of states, may raise the issue of international responsibility under international law.

Such a doctrine of state responsibility is not sufficient to implement the UN's obligations under IHL. Injured states are the only entities that may initiate claims. History shows that alleged violations of IHL by PSOs and enforcement operations typically occur in destabilized regions where the host government may not have the capacity to bring a claim for the violation on behalf of the state.⁶⁴ For example, in the case of Somalia, no central government existed that could pursue a claim under state responsibility for alleged violations of IHL. The inability of victims to directly claim a violation of the law of armed conflict by PSO or peace enforcement operations may cause significant harm to victims by denying them adequate redress while simultaneously ineffectively enforcing the IHL obligations of the force.⁶⁵

ACTION IN THE JURISDICTION OF THE SENDING STATE

The Secretary-General's Bulletin,⁶⁶ the International Law Association, and legal experts all recommend that violations of IHL be adjudicated in national courts.⁶⁷ While such a forum offers a familiar jurisdiction for adjudicating claims, it is insufficient for several reasons. First, such proceedings generally cannot include the UN as it is generally “immune from legal proceedings in local courts.”⁶⁸ Because the majority of UN forces come from countries still developing their economic and legal institutions,⁶⁹ it is unlikely that their domestic courts could effectively handle the complicated allegations of abuse occurring a great distance from their courts or have access to funds to compensate potential victims. Additionally, having such an obligation would serve as a disincentive for troop-contributing states to place their military under the jurisdiction of the UN.

Secondly, IHL has traditionally been seen as “governing relations between states,” not between individuals and a state.⁷⁰ While it is generally accepted that IHL may “confer[] rights on individuals[,]” there are significant procedural hurdles for an individual enforcing these rights in a state court of the alleged abuser.⁷¹ Applicants have attempted to use Article 3 of the 1907 Hague Convention (IV) relating to compensation⁷² to sue for alleged violations in domestic courts; however, most domestic courts have ruled that Article 3 grants a right to compensation only to a state, not to an individual.⁷³



UN training operation in Mongolia for multinational forces.

Thirdly, domestic tort actions are “only available in exceptional cases,” typically relying “on a domestic tort but implicat[ing] an international violation.”⁷⁴ These types of actions have been unsuccessful due to procedural hurdles, such as the requirement that victims initiate proceedings in person.⁷⁵ These obstacles “effectively discriminate[] against victims who cannot afford to travel to the state in question”⁷⁶ and create problems for victims seeking to enforce their rights under IHL.

Finally, by relying on each troop-contributing state to enforce the rights and obligations of IHL, the independence of the UN may be minimized; indeed the “legitimacy[,]” impartiality, “and effectiveness of the UN” may suffer.⁷⁷ IHL could be ambiguously applied if domestic jurisdictions of states that have ratified different instruments are responsible for adjudicating claimed violations of those instruments.⁷⁸

HUMAN RIGHTS MECHANISMS

In recent years, some scholars and practitioners have suggested that regional human rights bodies might be an acceptable jurisdiction to adjudicate alleged violations of IHL.⁷⁹ While human rights law allows victims to claim a breach of obligations by a state, most human rights bodies have been resistant in applying IHL.⁸⁰

The Inter-American Commission on Human Rights, in the *Las Palmeras* case before the Inter-American Court of Human Rights (IACtHR), argued that the Commission had the authority to apply “the norms embodied in . . . customary [IHL] applicable to internal armed conflicts and enshrined in Article 3, common to all the 1949 Geneva Conventions.”⁸¹ The Colombian government asserted that the Commission exceeded its mandate and that the IACtHR lacked the competency to apply IHL, because it was not specifically provided for in its mandate.⁸² In response to these conflicting arguments, the IACtHR overruled some of the Commission’s analysis, and “refus[ed] to examine norms falling outside the text of the [A]merican Convention” such as the customary nature of common Article 3.⁸³ However, the Court did not preclude the application of IHL norms in those instances where the norms were also contained in the American Convention.⁸⁴

The European Court of Human Rights, in the *Bankovic* case, limited the territorial applicability of the European Convention on Human Rights, ruling that the Convention “was not designed

to be applied throughout the world.”⁸⁵ This case demonstrates the ineffectiveness of the Court as a forum for the adjudication of claims of alleged IHL violations by PSO or enforcement forces because violations must occur within territory governed by the Convention to fall under the jurisdiction of the Court.⁸⁶

Case law from the regional human rights bodies elucidates that human rights courts likely do not serve as an effective forum “to improve the implementation of IHL” among PSO and enforcement operations.⁸⁷ The *Bankovic* and *Las Palmeras* cases, in particular, illustrate the difficulty of obtaining judgments against the perpetrators of violations of IHL in regional human rights systems. Accordingly, such mechanisms do not currently provide adequate enforcement mechanisms for violations of IHL by PSO or peace enforcement forces.

CLAIMS COMMISSIONS

Claims commissions may serve as a model for how the UN can compensate victims for damage arising from UN operations; however, they do not serve as an effective enforcement mechanism because they are not concerned with deterring violations of IHL. There are several examples of claims commissions attempting to offer monetary redress for violations of IHL including the Eritrea-Ethiopia Claims Commission⁸⁸ and the UN’s Civil Claims Unit.⁸⁹ In 1991, the UN also established a compensation commission for damages arising out of “Iraq’s unlawful invasion and occupation of Kuwait.”⁹⁰ This tribunal did not specifically adjudicate alleged violations of IHL, though it did serve as a forum whereby host governments could submit complaints on behalf of their citizens for alleged violations.⁹¹ Such commissions may play a role in awarding compensation to victims, but they do not address the UN’s obligations to ensure its forces comply with IHL. If such a commission is to be used to satisfy an alleged violation, it ought to be used in conjunction with a different body that can effectively ensure compliance with IHL.

THE INTERNATIONAL CRIMINAL COURT

The International Criminal Court (ICC) serves as another potential venue for the adjudication of alleged IHL violations. However, the crimes enumerated in the Rome Statute make it highly unlikely that PSO or enforcement operations could fall under the Court’s jurisdiction.⁹² Crimes against humanity require widespread attacks directed against the civilian population as an element of the crime.⁹³ Genocide requires that the intent to destroy “a national, ethnical, racial or religious group.”⁹⁴ Such definitions are beyond the scope of crimes alleged to have been committed by the UN to date, and it seems unlikely that a UN force could engage in such widespread violation of the law.

War crimes committed by PSO and enforcement operations, however, arguably could fall under the jurisdiction of the ICC should the attacks reach the gravity threshold and other requirements of the Rome Statute.⁹⁵ However, Professor Harrington of McGill University notes the difficulty of holding PSO or enforcement operations accountable under the Rome Statute, given that the Statute authorizes prosecution of individuals for war “crimes which are part of a concerted effort or plan, rather than those which are indiscriminately carried out for personal gratification or other non-concerted reasons.”⁹⁶ An examination of media reports of previous allegations of peacekeeper abuse

suggests that most alleged abuses involve unorganized and indiscriminate violence as opposed to coordinated attacks against the civilian population. Furthermore, while the Rome Statute criminalizes sexual violence and other crimes alleged to have been committed by peacekeepers, prosecutions under the Statute tend to focus on those individuals who order or plan such crimes, as opposed to the individual perpetrators.⁹⁷

Additionally, jurisdictional obstacles may prevent the ICC from exercising jurisdiction over alleged crimes committed by PSO or enforcement operations. First, the ICC operates under a system of complementarity with national jurisdictions. For the ICC to exercise jurisdiction, the Court must find that the state is unable or unwilling to prosecute crimes falling within the jurisdiction of the ICC. Accordingly, much like the international system in place today, the ICC gives primacy to national jurisdictions to enforce the laws of war on peacekeepers. The UN generally signs Status of Forces Agreements (SOFAs) with the national government of the territory where PSO or enforcement forces operate, and these generally govern UN operations. SOFAs typically preclude national governments from exercising jurisdiction over alleged crimes committed by the respective country's forces operating within their territory. However many states, such as the United States, have agreements under Article 98 of the Rome Statute whereby host states may not transfer U.S. soldiers to ICC jurisdiction.

OMBUDSPERSONS

The concept of ombudsperson originated in the domestic law of several European countries. An ombudsperson may "receive complaints, investigate and make recommendations to the relevant authority, but [ombudspersons typically] lack the authority to enforce the recommendations."⁹⁸ The Organization for Security and Co-operation in Europe (OSCE) suggested that international institutions use ombudspersons as a "way to promote and protect human rights" and IHL.⁹⁹ There are several examples of the effective use of an ombudsperson within international organizations. In 1994, the World Bank was the first organization to establish an ombudsperson within an international organization.¹⁰⁰ The United Nations Mission in Kosovo marked the UN's first attempt to incorporate an ombudsperson into a UN mission.

World Bank Ombudsperson

The World Bank incorporated the ombudsperson concept in the World Bank Inspection Panel.¹⁰¹ The panel provides "innovative access to international administrative remedies for non-governmental actors"¹⁰² and extends jurisdiction to those claims "from persons claiming to be affected by a World Bank project."¹⁰³ A party may apply for an inspection if the party can "demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank . . ."¹⁰⁴ The inspection panel then reports its finding on compliance to the Executive Directors;¹⁰⁵ however, such decisions are not binding.¹⁰⁶

United Nations Mission in Kosovo

The United Nations Mission in Kosovo (UNMIK) incorporated an ombudsperson into the international mission.¹⁰⁷ Marten Zwanenburg asserts that the unique status of the UNMIK forces

as both a PSO and transitional administration gave rise to the creation of the ombudsperson.¹⁰⁸ The ombudsperson in Kosovo was tasked with "promot[ing] and protect[ing] the rights and freedoms of individuals and legal entities and ensur[ing] that all persons in Kosovo are able to exercise effectively [their] human rights and fundamental freedoms . . ."¹⁰⁹ The "standard of review" for the ombudsperson was "whether there has been a violation of human rights and 'abuse of authority'" by UN or coalition forces.¹¹⁰

Marten Zwanenburg highlights that the ombudsperson in Kosovo actually used IHL "as a standard of reference" in making its recommendations.¹¹¹ For example, the ombudsperson issued a report on "[t]hird party claims for property loss or damage . . . arising from or directly attributable" to the United Nations forces.¹¹² The report noted that IHL may be required to interpret provisions of human rights law.¹¹³ The UNMIK ombudsperson also "deliberately [left] open the possibility that [IHL]" could be applicable to the United Nations forces in Kosovo.¹¹⁴

While the Kosovo ombudsperson marked a significant step in the ability of the United Nations to effectively enforce its obligations under IHL, "the [UN] Ombudsperson [in Kosovo] lacked any power to do more than publicize his [or her] findings."¹¹⁵ Publication of these findings, however, played a significant role in influencing UNMIK policy. For example, after the ombudsperson reported unlawful detention procedures in Kosovo, UNMIK responded by establishing a Commission to review the legality of the detentions.¹¹⁶ Nonetheless, without the authority to issue binding regulations, there is a possibility that the rights of victims could be superseded by political and public relations concerns.

CONCLUSIONS AND RECOMMENDATIONS

As UN forces have become increasingly active in areas traditionally reserved for states, allegations of misconduct have increased. Yet, a *lacuna* exists in the regulation of UN-sponsored PSO and peace enforcement forces. The UN must proactively confront this lack of regulation in order to maintain compliance with IHL, the spirit of the UN Charter, and the mission of promoting the rule of law.

International state responsibility, national jurisdiction, human rights mechanisms, the ICC, and claims commissions will not adequately enforce compliance of IHL by UN forces. Accordingly, a permanent PSO and peace enforcement ombudsperson should be created to ensure compliance with the law.¹¹⁷ The mandate of the UNMIK ombudsperson allowed wide discretion to investigate alleged abuse. A permanent ombudsperson must also be free from political influence and able to compel state and UN compliance with enforceable and binding decisions.¹¹⁸ This permanent ombudsperson should be given the authority to promote and protect the rights, freedoms, and protections provided by IHL of all individuals and legal entities operating in areas of United Nations peace support and peace enforcement operations without interference from member states.

In addition to the ombudsperson, the UN should establish a permanent claims commission to work with the ombudsperson to compensate victims. While this commission may be based on state referral or consent, it would be valuable in ensuring the rights of victims by establishing clear procedures for referral by victims if the state government does not have the capacity.

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The UN Peacekeeping commission should have “investigative capacities” like the World Bank Inspection Panel so that it does not have to rely on only one source of information in evaluating claims.¹¹⁹ Furthermore, whenever a mission is established, representatives of this commission should be deployed to the host state to ensure that victims are aware of their right of compensation. The decisions of this commission should be binding on both the UN and the troop-contributing states so that victims of abuse are guaranteed redress. This permanent position could be responsible for all claims against UN PSO and peace enforce-

ment forces and could serve to help increase the credibility of the UN force amongst the local population and promote the rule of law.

The UN plays an invaluable role around the world promoting peace; however, the organization must do more to ensure compliance of its forces with IHL. Such compliance with the laws of war will limit civilian casualties, help facilitate the transition to peace, and encourage representative government based on the rule of law. A permanent ombudsperson and claims commission could do much to promote this accountability. **HRB**

ENDNOTES: Ensuring Respect: United Nations Compliance with International Humanitarian Law

¹ MARTEN ZWANENBURG, ACCOUNTABILITY OF PEACE SUPPORT OPERATIONS 28 (Martinus Nijhoff 2004).

² The Panel on United Nations Peace Operations, *Report of the Panel on United Nations Peace Operations*, ¶ 10, delivered to the Security Council and the General Assembly, U.N. Doc. A/55/305, S/2000/809 (Aug. 21, 2000).

³ ALEX J. BELLAMY, PAUL WILLIAMS & STUART GRIFFIN, UNDERSTANDING PEACEKEEPING 95-96 (Blackwell Publ'g 2004).

⁴ ZWANENBURG, *supra* note 1, at 31.

⁵ KATHARINA P. COLMAN, INTERNATIONAL ORGANISATIONS AND PEACE ENFORCEMENT 4 (Cambridge Univ. Press 2007).

⁶ See Charter of the United Nations, art. 42, Jun. 26, 1945, 1 U.N.T.S. 16 (providing that the Security Council may take such actions “as may be necessary to maintain or restore international peace and security”).

⁷ JANE BOULDEN, PEACE ENFORCEMENT 51-59 (Greenwood Publ'g 2001).

⁸ S.C. Res. 751, U.N. Doc. S/RES/751 (Apr. 24, 1992).

⁹ United Nations, *Somalia*, available at http://www.un.org/Depts/dpko/dpko/co_mission/unosom1mandate.html (last visited Sept. 24, 2009).

¹⁰ S.C. Res. 794, ¶ 10, U.N. Doc. S/RES/794 (Dec. 3, 1992) (emphasis added).

¹¹ BOULDEN, *supra* note 7, at 58-59; *Human Rights Watch World Report 1994 – Somalia*, HUMAN RIGHTS WATCH, Jan. 1, 1994, <http://www.unhcr.org/refworld/docid/467fca7c2.html>.

¹² BOULDEN, *supra* note 7, at 61.

¹³ Brian D. Tittmore, *Belligerents in Blue Helmets*, 33 STAN. J. INT'L L. 61, 88-89 (1997).

¹⁴ United Nations, *Democratic Republic of the Congo*, Feb. 24, 2000, available at <http://www.un.org/Depts/dpko/missions/monuc/mandate.html> (last visited Oct. 28, 2009).

¹⁵ See, e.g., Kate Holt & Sarah Hughes, *Sex and the U.N.: When Peacekeepers Become Predators*, THE INDEP., Jan. 11, 2005, available at <http://www.independent.co.uk/news/world/africa/sex-and-the-un-when-peacemakers-become-predators-486170.html>.

¹⁶ Vanessa Kent, *Protecting Civilians From UN peacekeepers and Humanitarian Workers: Sexual Exploitation and Abuse*, in UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 44, 45 (Chiuyuki Aoi, Cedric de Coning, & Ramesh Thakur eds., 2007).

¹⁷ Elizabeth Rehn & Ellen Johnson Sirleaf, *Women, War, Peace: The Independent Expert's Assessment of the Impact of Armed Conflict on Women and Women's Role in Peace-building*, 1 PROGRESS OF THE WORLD'S WOMEN 2002, cited in Vanessa Kent, *Protecting Civilians From UN Peacekeepers and Humanitarian Workers: Sexual Exploitation and Abuse*, in UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 44, 45 (Chiuyuki Aoi, Cedric de Coning, & Ramesh Thakur eds., 2007).

¹⁸ Secretary-General's Bulletin, *Observance by United Nations Forces of International Humanitarian Law*, U.N. Doc. ST/SGB/1999/13 (Aug. 6, 1999).

¹⁹ The Panel on United Nations Peace Operations, *Report of the Panel on United Nations Peace Operations, delivered to the Security Council and the General Assembly*, U.N. Doc. A/55/305, S/2000/809 (Aug. 21, 2000).

²⁰ *Id.* at 1.

²¹ *UN Peacekeeping Reform: Seeking Greater Accountability and Integrity: Hearing before Sub. Comm. on Africa, Global Human Rights, and International Operations of the H. Comm. on International Relations*, 109th Cong. (2005) (Statement of Victoria Holt, Henry L. Stimson Center) [hereinafter Sub. Comm. Hearing].

²² *Id.*; see generally The Panel on United Nations Peace Operations, *supra* note 19.

²³ The Panel on United Nations Peace Operations, *supra* note 19, at 2.

²⁴ See Secretary-General's Bulletin, *supra* note 18, § 2 (stating that “[t]he present provisions do not constitute an exhaustive list of principles and rules of [IHL] binding upon military personnel, and do not prejudice the application thereof, nor do they replace the national laws by which military personnel remain bound throughout the operation”).

²⁵ *The Prosecutor v. Tadic*, Opinion and Judgment, IT-94-1, ¶ 561 (July 14, 1997).

²⁶ *The Prosecutor v. Tadic*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-T, ¶ 70 (Oct. 2, 1995).

²⁷ YORAM DINSTEIN, *THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT* 12 (Cambridge Univ. Press 2004).

²⁸ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, 256 (July 8) (noting that the “two branches of the law applicable in armed conflict have become so closely interrelated that they are considered to have . . . formed one complex system”).

²⁹ See, e.g., Françoise Bouchet-Saulnier, *Introduction to International Humanitarian Law*, *CRIMES OF WAR* (2007), available at <http://www.crimesofwar.org/thebook/intro-ihl.html> (last visited Oct. 14, 2009).

³⁰ MARCO SASSÒLI & ANTOINE BOUVIER, *HOW DOES LAW PROTECT IN WAR?: CASES, DOCUMENTS, AND TEACHING MATERIALS ON CONTEMPORARY PRACTICE IN INTERNATIONAL HUMANITARIAN LAW* 102 (Int'l Comm. for the Red Cross 2006).

³¹ DINSTEIN, *supra* note 27, at 4.

³² *Id.*

³³ *Id.* at 6.

³⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, art. 1(2), Jun. 8, 1977, 1125 U.N.T.S. 3.

³⁵ International Committee for the Red Cross, *How is Armed Conflict Defined in International Humanitarian Law*, Mar. 17, 2008, at 3, available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/armed-conflict-article-170308> (last visited Oct. 28, 2009).

³⁶ See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 609.

³⁷ See Jean-Marie Henckaerts, *Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict*, 87 INT'L REV. RED

CROSS 175, 188, available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-857-p175/\\$File/irrc_857_Henckaerts.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-857-p175/$File/irrc_857_Henckaerts.pdf) [hereinafter ICRC] (last visited Oct. 15, 2009) (proffering that much of Additional Protocol II is customary including: the prohibition of attacks on civilians; the obligation to respect and protect medical and religious personnel, medical units and transports; the obligation to protect medical duties; the prohibition of starvation; the prohibition of attacks on objects indispensable to the survival of the civilian population; the obligation to respect the fundamental guarantees of civilians and persons hors de combat; the obligation to search for and respect and protect the wounded, sick and shipwrecked; the obligation to search for and protect the dead; the obligation to protect persons deprived of their liberty; the prohibition of forced movement of civilians; and the specific protections afforded to women and children).

³⁸ Robert K. Goldman and Brian D. Tittmore, *Unprivileged Combatants and the Hostilities in Afghanistan*, AMERICAN SOCIETY OF INTERNATIONAL LAW, Dec. 2002, <http://www.asil.org/taskforce/goldman.pdf>.

³⁹ See Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States), 1986 I.C.J. 14, 114 (Feb. 20) (“The conflict between the *contras*’ forces and those of the Government of Nicaragua is an armed conflict which is ‘not of an international character’. The acts of the *contras* towards the Nicaraguan Government are therefore governed by the law applicable to conflicts of that character: whereas the actions of the United States in and against Nicaragua fall under the legal rules relating to international conflicts.”).

⁴⁰ *The Prosecutor v. Tadic*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-T, ¶ 94 (Oct. 2, 1995).

⁴¹ See Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, 1980 I.C.J. 73, 89-90 (Dec. 20) (holding that “[i]nternational organizations [such as the UN] are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law”).

⁴² E.g., ZWANENBURG, *supra* note 1, at 157, citing generally LIESBETH ZEGVELD, *ACCOUNTABILITY OF ARMED OPPOSITION GROUPS IN INTERNATIONAL LAW* (Cambridge Univ. Press 2002); see *Accountability of International Organizations*, 71 INT'L L. ASS'N REP. CONF. 164, 196 (Berlin 2004) (asserting that the United Nations is “subject to international humanitarian law insofar as it is engaging in activities of the kind regulated by international humanitarian law”).

⁴³ ZWANENBURG, *supra* note 1, at 34.

⁴⁴ Christopher Greenwood, *Protection of Peacekeepers: The Legal Regime*, 7 Duke J. Comp. & Int'l L. 185, 187 (1996).

⁴⁵ Secretary-General's Bulletin, *supra* note 18, § 1.1.

⁴⁶ *Id.*

⁴⁷ ZWANENBURG, *supra* note 1, at 189-90.

⁴⁸ Yves Sandoz, *International Humanitarian Law in the Twenty-First Century*, in 6 Y.B. OF INT'L HUMANITARIAN L. 3, 26 (2003).

⁴⁹ See Joseph P. Bialke, *United Nations Peace Operations: Applicable Norms and the Application of the Law of Armed Conflict*, 50 A.F. L. Rev. 1, 30 (2001) (noting “[i]f Chapter VI peacekeepers regularly use force, the mission becomes expanded to a de facto peace-enforcement mission for which the peacekeepers are not likely adequately prepared or equipped”).

- ⁵⁰ ZWANENBURG, *supra* note 1, at 190.
- ⁵¹ *See, e.g., id.* at 191.
- ⁵² *See*, The Hague Convention (IV) Respecting the Laws and Customs of War on Land, art. 42, Oct. 18, 1907, 2 A.J.I.L. Supp. 90 (“Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”); *see also* Geneva Convention Relative to the Treatment of Prisoners of War, art. 2, Aug. 12, 1949, 75 U.N.T.S. 135 (“Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”)
- ⁵³ Michael Kelly, *Legitimacy and the Public Security Function*, in POLICING THE NEW WORLD DISORDER 399, 407 (Robert B. Oakley, Michael J. Dziedzic & Eliot M. Goldberg eds., 1998).
- ⁵⁴ Brian D. Tittmore, *Belligerents in Blue Helmets*, 33 STAN. J. INT’L L. 61, 96-97 (1997).
- ⁵⁵ *See* ZWANENBURG *supra* note 1, at 78-83.
- ⁵⁶ *See* ICRC, *supra* note 37.
- ⁵⁷ *See* U.S. Dep’t. of State, *Initial Response of U.S. to ICRC Study on Customary International Law with Illustrative Comments*, Nov. 3, 2006, <http://www.state.gov/s/rls/82630.htm>.
- ⁵⁸ *See* Iain Scobbie, *The Approach to Customary International Law in the Study*, in PERSPECTIVES ON THE ICRC STUDY ON CUSTOMARY INTERNATIONAL HUMANITARIAN LAW 15, 34-35 (Elizabeth Wilmshurst & Susan Breau eds., 2007) (arguing that some provisions regarding the destruction of the environment, use of nuclear weapons, and some provisions relating to prisoners of war relating to irregular combatants).
- ⁵⁹ *E.g.*, Geneva Convention Relative to the Treatment of Prisoners of War, art. 127, Aug. 12, 1949, 75 U.N.T.S. 135 (“Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.”)
- ⁶⁰ Tittmore, *supra* note 54, at 108 (emphasis added).
- ⁶¹ ZWANENBURG, *supra* note 1, at 52.
- ⁶² International Law Commission, *Third Report on State Responsibility, delivered to the General Assembly*, UN Doc. A/CN.4/507/Add.2 (July 10, 2000).
- ⁶³ *Id.* §267.
- ⁶⁴ *See* ZWANENBURG, *supra* note 1, at 254 (noting that Somalia did not have a national government capable of bringing claims for UNOSOM violations).
- ⁶⁵ *Id.*
- ⁶⁶ Secretary-General’s Bulletin, *supra* note 18.
- ⁶⁷ *Accountability of International Organizations*, 71 INT’L L. ASS’N REP. CONF. 164, 196 (Berlin 2004); *see* SIMON CHESTERMAN, THOMAS M. FRANCK & DAVID M. MALONE, LAW AND PRACTICE OF THE UNITED NATIONS 557 (Oxford University Press 2007) (stating that in the context of sexual violations by UN peacekeeping staff, the troop-contributing countries should take the lead in punishing abuse).
- ⁶⁸ The Secretary-General, *Model Agreement Between the United Nations and Member States*, ¶ 28, delivered to the General Assembly, U.N. Doc. A/46/185 (May 1, 1991), cited in Françoise J. Hampson & Ai Kihara-Hunt, *The Accountability of Personnel Associated with Peacekeeping Operations*, in UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 195, 204 (Chiyuki Aoi, Cedric de Coning & Ramesh Thakur eds., 2007).
- ⁶⁹ Sub. Comm. Hearing, *supra* note 21.
- ⁷⁰ ZWANENBURG, *supra* note 1, at 255.
- ⁷¹ *Id.* at 255, 258.
- ⁷² The Hague Convention (IV) Respecting the Laws and Customs of War on Land, art. 3, Oct. 18, 1907, 2 A.J.I.L. Supp. 90 (“A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed force”).
- ⁷³ ZWANENBURG, *supra* note 1, at 260.
- ⁷⁴ *Id.* at 264-65.
- ⁷⁵ For example, the parents of Shidane Arone, a Somali national, brought a claim in Canadian court against the Canadian peace enforcement forces who allegedly killed him. The Canadian judge dismissed the case because the parents did not travel to Canada to initiate the proceedings. *Id.* at 265.
- ⁷⁶ *Id.*
- ⁷⁷ *Id.* at 92-93.
- ⁷⁸ ZWANENBURG, *supra* note 1, at 93.
- ⁷⁹ Christopher Greenwood suggests that while the human rights bodies “have no jurisdiction to apply the laws of war as such, it is possible that in cases involving allegations of human rights violations during an armed conflict (international or internal), a human rights tribunal will look to the laws of war for guidance in relation to such issues” Christopher Greenwood, *International Humanitarian Law*, in THE CENTENNIAL OF THE FIRST INTERNATIONAL PEACE CONFERENCE 161 (Frits Kalshoven ed., 2000), cited in ZWANENBURG, *supra* note 1, at 267-68.
- ⁸⁰ ZWANENBURG, *supra* note 1, at 282-83.
- ⁸¹ Las Palmeras Case, Judgment on Preliminary Objections of Feb. 4, 2000, 2000 Inter-Am. Ct. H.R. (Ser. C) No. 67, at 29 (Feb. 4, 2000) [hereinafter Las Palmeras Case].
- ⁸² *Id.* at 16.
- ⁸³ *International Humanitarian Law and Other Legal Regimes: Interplay in Situations of Violence*, INTERNATIONAL COMMITTEE FOR THE RED CROSS 16 n. 38, Nov. 2003, [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5UBCVX/\\$File/Interplay_other_regimes_Nov_2003.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5UBCVX/$File/Interplay_other_regimes_Nov_2003.pdf) [hereinafter *International Humanitarian Law and Other Legal Regimes*].
- ⁸⁴ Las Palmeras Case, *supra* note 81, at 34 (“Although the Inter-American Commission has broad faculties as an organ for the promotion and protection of human rights, it can clearly be inferred from the American Convention that the procedure initiated in contentious cases before the Commission, which culminates in an application before the Court, should refer specifically to rights protected by that Convention (cf. Articles 33, 44, 48.1 and 48)”).
- ⁸⁵ Erik Roxtrom, Mark Gibney & Terje Einarsen, *The NATO Bombing Case (Bankovic Et Al. v. Belgium Et Al.) and the Limits of Western Human Rights Protection*, 23 B.U. INT’L L. J. 55, 63 (2005) (citing *Bankovic et al. v. Belgium et al.*, App. No. 52207/99, Eur. Ct. H.R. ¶ 80 (2001)).
- ⁸⁶ *International Humanitarian Law and Other Legal Regimes*, *supra* note 83, at 16 n. 38.
- ⁸⁷ *Id.* at 16.
- ⁸⁸ ZWANENBURG, *supra* note 1, at 256.

- ⁸⁹ Françoise J. Hampson & Ai Kihara-Hunt, *The Accountability of Personnel Associated with Peacekeeping Operations*, in UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 195, 205 (Chiyuki Aoi, Cedric de Coning, & Ramesh Thakur eds., 2007).
- ⁹⁰ S.C. Res. 705, U.N. Doc. S/RES/0705 (Aug. 15, 1991), cited in PHILIPPE SANDS, PIERRE KLEIN & D.W. BOWETT, *BOWETT'S LAW OF INTERNATIONAL INSTITUTIONS* 13-193, 13-194 (5th ed. 2001).
- ⁹¹ PHILIPPE SANDS, PIERRE KLEIN & D.W. BOWETT, *BOWETT'S LAW OF INTERNATIONAL INSTITUTIONS* 13-199 (5th ed., 2001).
- ⁹² E.g., Max du Plessis & Stephen Pete, *Who Guards the Guards?: The International Criminal Court and Serious Crimes Committed by Peacekeepers in Africa*, INSTITUTE FOR SECURITY STUDIES 13-30, Feb. 2006.
- ⁹³ Rome Statute of the International Criminal Court, art. 7, Jul. 17, 1998, 2187 U.N.T.S. 90 (2002).
- ⁹⁴ *Id.* at art. 6.
- ⁹⁵ Max du Plessis & Stephen Pete, *supra* note 92, at 27.
- ⁹⁶ Alexandra R. Harrington, *Victims of Peace: Current Abuse Allegations Against U.N. Peacekeepers and the Role of Law in Preventing Them in the Future*, 12 ILSA J. INT'L L. & COMP. L. 125, 140-42 (2005).
- ⁹⁷ *Id.* at 141 (contending that “in order to be prosecuted peacekeepers would have to be found to have been part of a concerted and organized effort to rape or otherwise sexually abuse the local population with the goal of harming the population as a whole”).
- ⁹⁸ Hampson & Kihara-Hunt, *supra* note 89, at 212.
- ⁹⁹ ZWANENBURG, *supra* note 1, at 296.
- ¹⁰⁰ SANDS, KLEIN & BOWETT, *supra* note 91, at 13-185.
- ¹⁰¹ ZWANENBURG, *supra* note 1, at 300.
- ¹⁰² SANDS, KLEIN & BOWETT, *supra* note 91, at 13-185.
- ¹⁰³ *Id.*
- ¹⁰⁴ World Bank Resolution of the Executive Directors No. 93/10 (Sept. 22, 1993), cited in SANDS, KLEIN & BOWETT, *supra* note 91, at 13-185.
- ¹⁰⁵ SANDS, KLEIN & BOWETT, *supra* note 91, at 13-186.
- ¹⁰⁶ ZWANENBURG, *supra* note 1, at 302.
- ¹⁰⁷ *Id.* at 306.
- ¹⁰⁸ *Id.*
- ¹⁰⁹ Regulation No. 2000/38 on the Ombudsperson Institution in Kosovo, UNMIK, U.N. Doc. UNMIK/REG/2000/38 (June 30, 2000), cited in ZWANENBURG, *supra* note 1, at 306.
- ¹¹⁰ ZWANENBURG, *supra* note 1, at 307.
- ¹¹¹ *Id.* at 308.
- ¹¹² Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo, UNMIK, U.N. Doc. UNMIK/REG/2000/47, ¶ 7 (Aug. 18, 2000), cited in ZWANENBURG, *supra* note 1, at 308.
- ¹¹³ ZWANENBURG, *supra* note 1, at 309.
- ¹¹⁴ *Id.*
- ¹¹⁵ SIMON CHESTERMAN, THOMAS M. FRANCK & DAVID M. MALONE, *LAW AND PRACTICE OF THE UNITED NATIONS* 540 (Oxford Univ. Press 2007).
- ¹¹⁶ *Id.* at 551.
- ¹¹⁷ See ZWANENBURG, *supra* note 1, at 310-12 (arguing for the creation of a peacekeeping ombudsperson to oversee all UN operations). The ombudsperson should have the authority to issue formal findings, and the “respondent should be obliged to respond to the findings.” However, Zwanenburg also argues for a separate and distinct claims commission whereby victims could request compensation for alleged violations. *Id.* at 312.
- ¹¹⁸ ZWANENBURG, *supra* note 1, at 290.
- ¹¹⁹ *Id.*