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# Exposé zur DISSERTATION

Titel der Dissertation (vorläufig)

## „Protection of Civilians in Peacekeeping Missions – Why do military forces still hesitate to take action?“

### 1. Topic of the Thesis

After the failures of the United Nations (UN) in Somalia, Rwanda and Bosnia-Herzegovina in the mid 90s, and with the intention not to repeat such failures, the UN Security Council reacted by adopting the first thematic resolution on the Protection of Civilians (PoC) in 1999<sup>1</sup> as well as by including PoC in the mandate of a mission – the United Nations Mission in Sierra Leone (UNAMSIL)<sup>2</sup> – for the first time. Since then, protecting civilians has rapidly developed within the organization, both on the conceptual and on the implementation level. Today, 90% of UN-led peacekeepers are deployed with a PoC mandate and 10 out of the 16 current UN-led missions have PoC included in their mandates. PoC has by now become one of the key mandated tasks in peacekeeping missions of the United Nations (UN) and those authorized by the UN.<sup>3</sup>

Even though PoC is not a legally defined concept, it is generally understood that there are two approaches towards PoC. Firstly, PoC describes the sum of existing legal obligations of parties to an armed conflict to protect the civilian population from the effects of such armed conflict, namely the norms of International Human Rights Law, International Refugee Law and in particular International Humanitarian Law. These legal obligations refer to the responsibilities of all parties (both state and non-state actors) not to inflict harm upon the civilian population, in particular during the conduct of military operations. Secondly, PoC has developed into a task of peacekeepers embedded within the mandate issued by the UN Security Council to protect civil-

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<sup>1</sup> United Nations, *S/RES/1265 (1999)*.

<sup>2</sup> United Nations, *S/RES/1270 (1999)*.

<sup>3</sup> Lilly, *The Changing Nature of the Protection of Civilians in International Peace Operations*, *International Peacekeeping* vol. 19 5 2012.

ians from threats caused by third parties in a mission area. This understanding of active protection requires pro-active action by peacekeepers to mitigate those threats to civilians, and where necessary to neutralize them.

Despite of the fact that over the last 15 years, international efforts have been taken to clarify the concept of PoC in peacekeeping missions on the strategic, operational and tactical level and to issue guidance to peacekeepers on how to implement PoC<sup>4</sup>, a persistent hesitation to take pro-active action in the field has remained.<sup>5</sup>

This doctoral thesis therefore aims at analyzing possible reasons for such hesitation to take action, and in this respect will focus on PoC as a mandated task, with a particular attention to the legal framework governing the action of peacekeepers that have been mandated to protect civilians. The thesis intends to shed further light upon the question why military forces hesitate to take action to protect civilians in situations where they have been mandated by the UN Security Council to do so. The thesis will focus on the specific framework of an UN-led peacekeeping mission, such as a unified chain of command, capabilities and resources and interoperability in multinational forces.

The doctoral thesis will not elaborate on the concept and implementation of PoC in missions led by organizations other than the UN or led by states that have been authorized by the UN Security Council to take action, be it peacekeeping or peace enforcement.

## 2. Research Questions

The research of the doctoral thesis intends to address the following two guiding questions:

1. *What kind of guidance does the existing legal and military framework provide for individuals mandated to protect civilians in peacekeeping mission?*
2. *What key factors are impeding individuals to take action to protect civilians in the field?*

In answering these questions, the doctoral thesis will first examine PoC from a conceptual and legal point of view and analyze the existing legal and military framework for protecting civilians. In doing so, a brief comparison will be made between the aspects of PoC pertaining to International Human Rights Law, International Refugee Law and International Humanitarian Law, and PoC as a mandated and pro-active task in a peacekeeping mission. In this respect, the research will be specifically seeking indications for the existence and possible content of a legal obligation for individuals to take action when deployed in a mission with a PoC mandate. In assessing this aspect, the norms and doctrines governing the use of force in peacekeeping

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<sup>4</sup> Such as United Nations, *DPKO / DFS Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations* (2010).

<sup>5</sup> United Nations, *A/68/787, Report on the activities of the Office of Internal Oversight Services* (2014).

missions (mission mandates, Concepts of Operations, Operation Plans, Rules of Engagement and Standard Operating Procedures), will be given special attention.

Secondly, the doctoral thesis will elaborate on possible reasons why individuals deployed in the field hesitate to take action in order to protect civilians. To this end, existing shortcomings in missions to take action will be assessed, seeking for patterns and indications as to what factors are driving the motivation of commanders and peacekeepers. In addition, the necessity of striking a balance between force protection and the implementation of a PoC mandate will be considered. These questions will be addressed also taking into consideration the relevance of available resources and capacities as an impeding or encouraging factor to protect civilians. In addition to military aspects, the legal obligations of states to protect their armed forces deployed abroad and to ensure their human rights by providing adequate equipment (in particular the right to life) will be elaborated in this context.<sup>6</sup>

Thirdly, the legal framework will be analyzed from an *ex-post* point of view, considering if and how the inaction of peacekeepers can potentially have legal consequences for an individual from a perspective of criminal law and disciplinary law. Moreover, it will also be assessed if and how the inaction of peacekeepers as state organs can entail state responsibility and liability. Regarding these aspects, the question will also be addressed if states have an obligation to ensure active implementation of PoC mandates through their state organs and if there are any legal consequences for states of a failure to do so.

Finally, the doctoral thesis will examine what measures can be taken to strengthen the implementation of PoC mandates, closing existing gaps between the concept of PoC on the strategic level and the implementation in the field (operational and tactical level), with the aim of providing further clarity and additional guidance.

The doctoral thesis therefore aims at conducting the overall research questions (see above) complemented by the following sub-set of questions:

- a. *What is the concept of PoC in peacekeeping missions?*
- b. *What is the existing legal and military framework for PoC?*
- c. *What are possible reasons why individuals hesitate to take action in a peacekeeping mission with a PoC mandate?*
- d. *What are the legal consequences of inaction for individuals? Can inaction amount to a crime by omission committed under international law or national law or lead to disciplinary consequences?*

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<sup>6</sup> See for example UKSC, *Smith and Others (Appellants) v The Ministry of Defence (Respondent), Ellis and another (FC) (Respondents) v Ministry of Defence (Appellant), Allbutt and others (FC) (Respondents) v The Ministry of Defence (Appellant)*, 2013.

- e. *What are the legal consequences of inaction for states? Can inaction of individuals acting on behalf of the state lead to state responsibility or state liability? To what extent are states obliged to ensure the implementation of PoC mandates?*
- f. *What measures can be taken to improve the implementation of PoC mandates?*

### **3. Existing Research on the Topic**

There are several scholarly writings and multiple case studies dealing with a description of the concept of PoC as well as its current state of implementation in peacekeeping missions.<sup>7</sup> However, there is currently a controversy over the reasons why PoC is not being implemented effectively and as pro-actively as desired by the political and strategic level. Certain publications identify the remaining lack of guidance as a reason<sup>8</sup>, others focus on the need for adequate resources and capacities to protect civilians<sup>9</sup>, yet other publications come to the conclusion that a lack of cooperation between civilian actors, police forces and military forces is impeding effective implementation<sup>10</sup>.

While most of the existing research therefore deals with either doctrinal or factual aspects and obstacles related to the implementation of PoC, two questions have not been addressed in detail. Firstly it has not yet been examined in detail, if there are legal reasons for inaction of individuals and states, such as ambiguous or conflicting legal obligations. Secondly, the military framework and the roles and responsibilities of commanders and individual peacekeepers in relation to the existing legal framework have not been elaborated upon.

### **4. Methodology**

#### **a. Legal Aspects**

With respect to the legal questions addressed in this doctoral thesis, the methodology applied will focus on the interpretation of existing primary sources of public international law, aimed at determining the relevant substantive content of these sources. In this respect, international treaties, customary international law and decisions and official publications of international organizations, in particular the UN, will be examined. Due to the fact that an overwhelming majority of missions tasked with protecting civilians operate based upon a mandate from the UN Security Council, special attention will be paid to assessing the legal quality of such a mandate

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<sup>7</sup> Such as de Carvalho/Lie, *Challenges to Implementing the Protection of Civilians Agenda*, 2009; Durch/Giffen, *Challenges of Strengthening The Protection of Civilians In Multidimensional Peace Operations*, 2010.

<sup>8</sup> Holt/Berkman, *The Impossible Mandate?* (2006).

<sup>9</sup> Holt/Smith, *Halting Widespread or Systematic Attacks on Civilians: Military Strategies & Operational Concepts* (2008), Giffen, *Enhancing the Protection of Civilians: from Policy to Practice* (2011).

<sup>10</sup> Gordon, *The Protection of Civilians: An Evolving Paradigm? Stability: International Journal of Security and Development* vol. 2 2 2013.

and the documents of the UN further describing the concept of PoC.<sup>11</sup> Additionally, the implementing documents of operational law, such as the Mission Concept, the Concept of Operations and the Rules of Engagement will be analyzed based upon their generic templates (an analysis of mission-specific documents will most likely not be possible due to their nature as classified information).

The legal research will be complemented by an assessment of judicial decisions of international and national courts. Related to the question of state liability, special attention will be given to the existing judicial decisions of the Netherlands related to the actions of the Dutch Battalion during its deployment with the United Nations Protection Force (UNPROFOR) in Bosnia-Herzegovina.<sup>12</sup>

Finally, the legal research of the doctoral thesis will rely strongly upon academic publications as subsidiary sources of international law due to the anticipated lack of available primary resources.

### ***b. Military Aspects***

Aimed at taking a practical and interdisciplinary approach, this doctoral thesis will also bring together the legal aspects of PoC with the military aspects of its framework and implementation. To this end, military manuals, regulations and respective military publications will be used to examine how PoC mandates are implemented and what concepts and doctrines are used to educate, train and prepare soldiers for this task. Related to the relevance of force protection and of available resources and capacities, military operational and tactical considerations will also be included in the research.

To complement these sources, interviews will be conducted with high-level military experts having served as Force Commanders in UN-led peacekeeping missions, such as Lieutenant General Carlos Alberto dos Santos Cruz (who has confirmed availability and willingness as interview partner).

These resources will first be used to shed light upon the question if an individual is likely to perceive protecting civilians as a duty obligation. In this regard, the relevance of personal motivation to take action of peacekeepers will be assessed. Moreover, the role of commanders and their influence upon the performance of a mission for protecting civilians by taking leadership and initiative will be examined.

Secondly, the resources for the military aspects of PoC will also be used as indicating factors as to what measures states are currently taking for the successful implementation of PoC mandates.

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<sup>11</sup> Such as United Nations, *DPKO / DFS Operational Concept on the Protection of Civilians in United Nations Peacekeeping Operations* (2010).

<sup>12</sup> *The State of the Netherlands v. Hasan Nuhanovic* (2013); *The State of the Netherlands v. Mehida Mustafic-Mujic, Danimir Mustafic and Alma Mustafic* (2013).

### **c. Assessment**

All the above-mentioned sources will be analyzed initially through a qualitative assessment of their content. Subsequently, the results of this analysis will be brought in connection with each other and with the guiding overall research questions, ultimately contributing to the findings of the thesis as a whole.

## **5. Preliminary Structure of the Thesis**

### **1. Introduction**

- 1.1. Subject of the thesis
- 1.2. Methodology

### **2. The concept of Protection of Civilians in Peacekeeping Missions**

- 2.1. Emergence of the concept since the mid 90s
- 2.2. What is the Protection of Civilians?
  - 2.2.1. Protection of the civilian population under International Humanitarian Law
  - 2.2.2. Protection of Civilians as a mandated task in peacekeeping missions

### **3. Legal framework to protect civilians in Peacekeeping Missions**

- 3.1. The UN Security Council Mandate
  - 3.1.1. Mandate language
  - 3.1.2. Legal quality of a mandate
- 3.2. Implementing operational documents
- 3.3. Use of Force in peacekeeping missions
  - 3.3.1. General observations
  - 3.3.2. Use of Force in order to protect civilians

### **4. Possible legal consequences of inaction**

- 4.1. Legal Consequences for Individuals
  - 4.1.1. Criminal Law
  - 4.1.2. Disciplinary Law
- 4.2. Legal Consequences for States
  - 4.2.1. State Responsibility
  - 4.2.2. State Liability

### **5. Hesitation to take action**

- 5.1. Shortcomings in implementing Protection of Civilians mandates
- 5.2. Authorization vs. obligation and military orders
- 5.3. Force Protection
- 5.4. Available resources and capabilities as decisive factors
- 5.5. Human Rights Law obligations in relation to the protection of personnel

## 6. How to improve the willingness to take action

6.1. Providing clarity and guidance

6.2. Importance of pre-deployment training

## 7. Conclusions

### 6. Anticipated Timeline

For conducting the necessary research, analyzing the available sources and writing the doctoral thesis, the following timeline is anticipated:

by 10-2015	Composition and submission of the Exposé
by 12-2015	Presenting the topic of the doctoral thesis for discussion
by 01-2016	Registration of the topic of the doctoral thesis and the supervisor
02-2016 to 12-2016	Research and composition of the doctoral thesis as well as completion of the necessary courses in accordance with the respective doctoral agreement
01-2017 to 03-2017	Time dedicated for revision
by 04-2017	Submission of the doctoral thesis

### 7. Preliminary List of Sources

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