

Forum: Security Council

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## **TOPIC 2: The issue of the jurisdiction of the UN Peacekeeping Force**

### **Link to Libguide**

#### **I. Introduction to the Topic**

The UN Peacekeeping Force stands as the largest and most visible representation of the United Nations. As it is a collective investment in global peace, security, and stability continued and formed through the cooperation of all nations, the theme of the conference “How do we ensure sustainability through multilateral cooperation?” stays as a theme central to the security council. When stationed in a nation, the Peacekeeping force has an austere duty to protect civilians, actively prevent conflict, reduce violence, strengthen security and empower national authorities to assume these responsibilities. However, there arises cases in which the UN peacekeeping personnel deployed commit disciplinary or criminal offences. These offences, regardless of severity, tarnish the legitimacy of the UN as an international organisation. Hence the issue is of utmost importance, and is of concern to all members and observer states of the United Nation.

#### **International**

The issue of jurisdiction of the UN peacekeeping force is intricately woven into a international context. Operating under the umbrella of the United Nations Charter and authorised by the UN Security Council, these peacekeeping missions are entrusted with the monumental task of maintaining global peace and security. When addressing crimes committed by peacekeepers, a delicate balance between providing functional immunity to enable effective mission execution but also ensuring accountability for misconduct is a necessity. Moreover, the Status of Forces Agreements (SOFAs) complicates the issue, which determines whether the jurisdiction for crimes lies with the host country or the contributing country's courts. Fortunately, the emergence of international criminal tribunals, such as the International Criminal Court (ICC), offers a channel to address grave offences committed by peacekeepers. This complex issue prompts the United Nations to establish mechanisms for investigating and prosecuting crimes within its peacekeeping operations, while steadfastly upholding the pillars of justice, fairness, and the rule of law necessary in the international arena.

#### **Regional**

As UN peacekeeping missions are deployed in diverse regions around the world, each with its unique geopolitical dynamics, historical background, and cultural sensitivities, the approach to addressing crimes committed by peacekeepers can vary. Regional organisations, such as the African Union (AU) or the European Union (EU), often play a role in influencing how criminal jurisdiction is handled. Additionally, regional legal frameworks and agreements can impact the course of action when dealing with crimes across borders, whether it is for better or worse. The regional context underscores the need to create responses to crimes by considering the specific dynamics of the region and collaborating with relevant regional entities to ensure that justice is served effectively and in a manner that resonates with the local communities affected by the peacekeeping operations.

#### **National**

The national context involves the perspective of the host country and contributing countries in terms of criminal jurisdiction. Host countries often expect that crimes committed by peacekeepers on their soil should be subject to their domestic legal system. Contributing countries, on the other hand, may have

their own legal mechanisms to address crimes committed by their personnel during peacekeeping missions. Striking a balance between respecting national sovereignty and ensuring accountability can be a challenge in determining which legal jurisdiction takes precedence.

### **Local**

Crimes committed by peacekeepers can have significant impacts on local communities, affecting trust and cooperation. Local communities may demand that justice is served in cases where peacekeepers are involved in criminal activities. The effectiveness of UN Peacekeeping missions can be influenced by how well they address such local concerns and hold individuals accountable for their actions.

## **II. Definition of Key Terms & Concepts**

**Jurisdiction:** is the power of a state to affect persons, property, and circumstances within its territory or beyond it in certain cases. Jurisdiction may be exercised through legislative, executive, or judicial actions. International law particularly addresses questions of criminal law and essentially leaves civil jurisdiction to national control. For the UN peacekeeping force, jurisdiction refers to the authority and responsibility to investigate, prosecute, and punish any criminal or disciplinary offences committed by peacekeepers while deployed on a peacekeeping operation.

**Status-of-Force Agreement (SOFA):** is an agreement between the UN and host states which defines the legal status of the UN peacekeeping operations and personnels, including issues such as range of activity, privileges and immunities, criminal and disciplinary matters, and claim. This agreement is crucial to the issue of jurisdiction as it grants UN military peacekeepers expansive jurisdictional immunities for their conduct in host states. This means that troop-contributing countries (TCCs) have exclusive jurisdiction over their military contingents, and the host state cannot prosecute for any offence committed during an operation. This exclusive jurisdiction of TCCs cannot be denied by host-states unless they have not consented to the presence of the UN missions or have not signed the SOFA with the UN. However even in such cases, the UN's model SOFA may apply automatically and grant the expansive jurisdictional immunities to UN peacekeepers.

**Privileges and immunities:** are legal protections that are granted to the UN, its officials, and the representatives of its member states in order to enable them to carry out their functions effectively and independently. They are based on the UN Charter and the Convention on the Privileges and Immunities of the UN, as well as on status-of-forces agreements (SOFAs) that the UN concludes with the host states of its peacekeeping operations. These privileges and immunities vary in severity and extent from state to personnel. Overall these privileges and immunities include immunity from legal process, inviolability, immunity from local crime jurisdiction, and immunity from personal arrest or detention. These privileges and immunities are not absolute or unconditional. They can be waived by the UN for all such as the UN organisation itself, its officials, and personnel. Such a waiver of privileges and immunities will allow actions such as investigations, arrests, and searches be conducted by non-UN authority.

**Waiver of jurisdiction:** refers to a situation when the UN or a TCC agrees to give up its jurisdiction of the courts of another State in relation to matters involving the UN peacekeeping force. This means that the state waives its privileges, immunity, and right to claim that it cannot be sued or prosecuted by the courts of another state for any actions or omissions of the UN peacekeeping force.

### III. Key Stakeholders

**United Nations Security Council (UNSC):** is the primary decision-making body responsible for authorising and overseeing UN peacekeeping operations. Its five permanent members (P5) hold significant power, including the ability to veto resolutions. The UNSC's decisions directly affect the jurisdiction and mandate of peacekeeping forces. The conflicts and tensions between the UNSC and TCCs alongside Host states may be present when concerning the issue of jurisdiction of the UN peacekeeping force. Host states may have conflict with the UNSC as the privileges and immunities prevent Host states from investigating and prosecuting UN peacekeeping personnel who they accused of violating the human rights of their population. As for TCCs, conflicts may rise when the UNSC recommends the TCC to waive their jurisdiction of its personnel.

**Host States:** are the states which host a peacekeeping operation within their borders. They are expected by the UN and sending states to give their consent to the deployment and operation, as well as cooperate with the stationed UN force to implement the peacekeeping mandates. As the one of two parties of the SOFA agreement, an agreement which decides the authority and jurisdiction of the UN peacekeeping force, they are key stakeholders in the issue of the jurisdiction of the UN peacekeeping force. Host states may have tensions with TCCs and the UNSC. Incidents in which such tension may arise could be: when a UN peacekeeping personnel commits a criminal act that directly violates the human rights of the civilians of the Host state, the Host State may demand an explanation and investigation. However should the UNSC or TCCs decline to waive their jurisdiction of personnel, and allow the accused to retain their immunities and privileges, then tensions and conflicts may ignite between UNSC, TCCs, and Host states. The consequences of such conflicts may have far reaching implications.

**Troop-contributing countries (TCCs):** are the countries and nations that provide military, law enforcement, civilian personnel to serve as peacekeepers. TCCs retain exclusive jurisdiction over their personnel for criminal or disciplinary matters that may arise during their deployment. They also have the authority to waive or retain their jurisdiction over their personnel, which can affect the ability of host states or the UN to investigate and prosecute any allegations of misconduct or abuse by peacekeepers. They are a key stakeholder in the issue of jurisdiction of the UN peacekeeping force as the countries want to ensure that their personnel are not harmed and have sufficient authority and jurisdiction to accomplish their objectives and return home. Tension/conflicts may arise between Host states and TCCs as Should Host states undermine and lessen the jurisdiction of the UN peacekeeping force deployed in their nation, TCCs's deployed personnel have less authority and face more dangers. TCCs may also have tension with the UN due to their authority to waive their jurisdiction over their personnel, which obstructs the UN's ability to investigate and prosecute such allegations of misconduct.

### IV. Key Issues including Background Information

**Rules of Engagement:** Defining the rules of engagement for UN peacekeepers is a complex issue. Peacekeepers need to strike a balance between protecting civilians, maintaining their own security, and avoiding escalation of conflicts. Determining when and how peacekeepers can use force while adhering to the principles of self-defence and protection of civilians is a recurring challenge.

**Criminal Jurisdiction and Immunities:** The legal status of peacekeepers and their criminal jurisdiction is a significant issue. Should peacekeepers be subject to the jurisdiction of the host country's legal system, the home country's laws, or an international tribunal? Balancing accountability for misconduct or crimes committed by peacekeepers with their operational effectiveness is a concern.

**Interaction with Host Government and Local Authorities:** Coordinating with the host government and local authorities is essential for peacekeeping success. However, in cases where the host government is weak, corrupt, or part of the conflict, this interaction can become complicated.

**Local Perceptions and Public Opinion:** The perception of local populations and global public opinion can impact the legitimacy and effectiveness of UN peacekeeping missions. Striking a balance between meeting local expectations and adhering to international standards can be difficult.

## V. Timeline of Resolutions, Treaties, and Events

Date	Description of event
1948	The first UN peacekeeping mission, the United Nations Truce Supervision Organization (UNTSO), is established to monitor the armistice between Israel and its Arab neighbours.
1950	During the Korean War, the UN established the United Nations Command (UNC) to support South Korea against North Korean aggression.
1960	The UN deploys its first large-scale peacekeeping mission, the United Nations Operation in the Congo (ONUC), to address conflicts following the decolonization of Congo.
1989	The end of the Cold War led to a decrease in superpower rivalry, allowing for more UN involvement in conflicts.
1994	The Rwandan Genocide prompts international criticism of the UN's limited response.
1999	NATO intervenes in Kosovo, bypassing the UN Security Council, sparking debates about the legitimacy of humanitarian interventions without UN authorization
2011	NATO intervenes in Libya, again bypassing the Security Council, raising concerns about the use of force without UN approval.
2014	Russia's annexation of Crimea and intervention in Ukraine strain UN efforts to address the conflict.
2020s	The UN continues to grapple with conflicts and crises in places like Syria, Yemen, and Myanmar, while debates over the use of force, sovereignty, and humanitarian intervention persist.

## VI. Possible Challenges & Solutions

**Consistent SOFA(s):** The lack of a uniform and consistent legal framework for the status of forces agreements (SOFAs) between the UN and the host States is a possible challenge. Whilst SOFAs are bilateral agreements that regulate the legal status, privileges, and immunities of the UN peacekeeping force in the host State, there is no standard template or model for SOFAs, and each agreement is negotiated on a case-by-case basis. This can lead to variations and inconsistencies in the terms and conditions of SOFAs, such as the extent of jurisdictional immunities granted to the UN peacekeepers. One possible solution is to develop a more comprehensive, coherent, and consistent set of principles and guidelines for SOFAs, based on existing practice and international law. This could help to harmonise the legal framework for UN peacekeeping operations and ensure that SOFAs are fair, transparent, and respectful of both parties' interests and obligations. However the creation of such a rigid legal framework may be opposed by Host States who have conditions and interest that differ from previous peacekeeping operations, who should these legal frameworks be implemented, may restrict their jurisdiction and authority over an operation.

**Legitimacy of Trial and Punishment:** Due to the UNSC standard of conduct stating that member of military contingents deployed in UN peacekeeping operations remain under exclusive jurisdiction of their national government, only sending states/TCCs can investigate, prosecute, and punish its peacekeepers for any violations of international humanitarian or criminal law. This may raise concerns about the effectiveness, legitimacy and impartiality of such investigation and prosecutions, especially in cases involving serious crimes such as sexual exploitation and abuse.

**Transparency:** During the prosecution of a peacekeeper within a TCC, Host states and the UNSC may have limited insight and information on the process and current status of the prosecution due to the TCC refraining from sharing specific information about the state of prosecution. TCCs may justify such actions by stating it is due to legal and privacy concerns, national jurisdiction, national security, and diplomatic consideration. However the Host states in response, may accuse TCCs of violations such as breach of SOFA, violation of the UN mandate, and the TCCs failure to share information can be seen as an attempt to unjustly shield their peacekeepers from accountability and misconduct.

## VII. Recommendations for Resolution Writing including Research

Delegates must keep in mind that as the topic that is directly addressing a vital organ and operation of the UN, it is a topic that addresses all member and observer states of the UN. Therefore, all resolutions for this topic should be made with consideration for the interests and values of all nations. This means that resolutions are highly discouraged from being solely based on the values, interests, and history of a handful of nations, and instead should significantly consider and implement causes for all parties of the UN.

Delegates representing TCCs are recommended to research their countries legislative and judicial systems to better understand how a possible investigation and prosecution of a peacekeeper of their representing country will be carried out. Delegates should also entertain questions such as “how does this country integrate its national laws with international policies and laws of the host states where their citizen was accused?” and “under what circumstance would the country of my delegation waive its jurisdiction of a peacekeeper?” These questions will help elevate a delegate's understanding of their representing country and help them create resolutions that stay true to their countries stance and interests. On the other hand, delegates representing host states are recommended to research and read through the SOFA(s) of the peacekeeping operation that occurred or is currently occurring in their country. While researching delegates of host states are to look for any flawed or biased policies relative to their country's stance.

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## IX: Additional Resources

The steps of a UN peacekeeping mission deployment and their corresponding political process lengths

