



Criminal Accountability for Crimes by Peacekeepers



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Dublin, November 2018*

OIOS Investigation Division 2017

Total 125 reports (2016: 159)

- 43 investigation reports (substantiated)
- 59 contingent reports (presenting evidence to TCC's)
- 23 closure reports (unsubstantiated)
- Referred 166 matters to more appropriate offices or entities for possible action.
- As at 31 December 2017 89 cases under investigation

OIOS-Investigations and referrals on non-peacekeeping activities

Category	Investigations		Referrals	
	Number	Percentage	Number	Percentage
Criminal activity	7	9	10	6
Financial	6	8	20	12
Fraud/presumptive fraud	15	19	15	9
Misuse of office/position	6	8	10	6
Personnel	12	15	32	19
Procurement	6	8	3	2
Prohibited conduct	18	23	40	24
Recruitment	2	3	18	11
Retaliation	4	5	6	4
Sexual exploitation and abuse	4	5	11	7
Total	80	100	165	100

OIOS activities 2017

- Prioritize investigation of allegations of sexual exploitation and abuse
- Training course on forensic interviewing of children
- Training of immediate response teams based in peacekeeping missions to ensure that critical and time-sensitive evidence is preserved
- Training for national investigation officers tasked with investigating misconduct by uniformed peacekeepers on behalf of Member States
- Development (with OSC) of an Incident Reporting Form

Allegations of sexual exploitation and abuse PKO and SPM

2016	2017	
73	41	Mil contingent members/military observers
23	11	UN staff/UNV/contractors
7	10	Individually deployed police officers/members of Formed Police Units

103	62	Total
280	130	Victims

2016 Paternity claims associated with 22 allegations

2017 Paternity claims associated with 23 allegations

UN system-wide allegations 2017

Entity	Number of allegations
IOM	9
MICT	1
OCHA	1
UNHCR	39
UNICEF	8
UNPOS	2
UNPF	3
UNRWA	8
UNEGEEW	1
WFP	3
PKO/SPM	62
Non-UN forces w. SC mandate	1
TOTAL	138

Convention on Privileges and Immunities of the UN (1945, ref. Charter Art. 104 and 105)

...**Organization** shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions

...**Representatives of the Members and Officials** shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions

Immunity/Accountability framework

	Types of personnel	Immunity from HS jurisdiction	Disciplinary authority	Criminal jurisdiction
A	National contingents	AI	SS	SS (TS)
B	Mil Observers	FI	UN/SS	HS/SS (TS)
C	Civilian Police	FI	UN/SS	HS/SS (TS)
D	Very senior UN official	AI	UN	x /(TS)
E	UN official	FI	UN	HS/SS (TS)
F	Non-UN mission staff	FI	UN	HS/SS (TS)
G	Int NGO staff	FI/x	IGO	HS/SS (TS)
H	Other foreign personnel	x	employer	HS/SS (TS)
I	Local pers. working for A-G	FI/x	UN/employer	HS/(TS)
J	Local pers. working for H	x	employer	HS/(TS)

AI: Absolute Immunity
FI: Functional Immunity

SS: Sending State
HS: Host State
TS: Third State

Criminal accountability of UN officials and experts on mission (GA Res 72/112 , 7 December 2017)

- [...] significant number of instances where States to which allegations have been referred have failed to advise the UN of any steps taken in response to such referrals, including the failure to acknowledge such referrals;
- Urges States to take all appropriate measures to ensure that crimes by UN officials and experts on mission do not go unpunished and that the perpetrators of such crimes are brought to justice

Criminal accountability of UN officials and experts on mission (GA Res 72/112 , 7 December 2017)

- Strongly urges all States to consider establishing [...] jurisdiction over crimes, particularly those of a serious nature [...] committed by their nationals while serving as UN officials or experts on mission,
- Urges States and appropriate international organizations to provide technical and other appropriate assistance in developing such legal measures to States requesting such support;

Criminal accountability of UN officials and experts on mission (GA Res 72/112 , 7 December 2017)

- Encourages all States and UN to cooperate in the exchange of information and in facilitating the conduct of investigations and prosecutions [..]
- Ensure greater quality and consistency in investigations by investigative entities of the Organization through the development of harmonized standards of investigation, including verification of allegations and information received;

Criminal accountability of UN officials and experts on mission (GA Res 72/112 , 7 December 2017)

- When allegations unfounded, to take appropriate measures, to restore the credibility and the reputation of UN officials and experts on mission;
- Recalls its request for Governments to provides specific details on the measures taken, as necessary, for the implementation of its resolutions [.. 9!] and notes that, in response to those resolutions, 121 submissions were received from 57 Member States between 6 December 2007 and 1 June 2017;

UN system-wide strategy to prevent and respond to SEA

- Putting the rights and dignity of victims first
- Ending impunity
- Engaging civil society and external partners
- Strategic communications for education and transparency

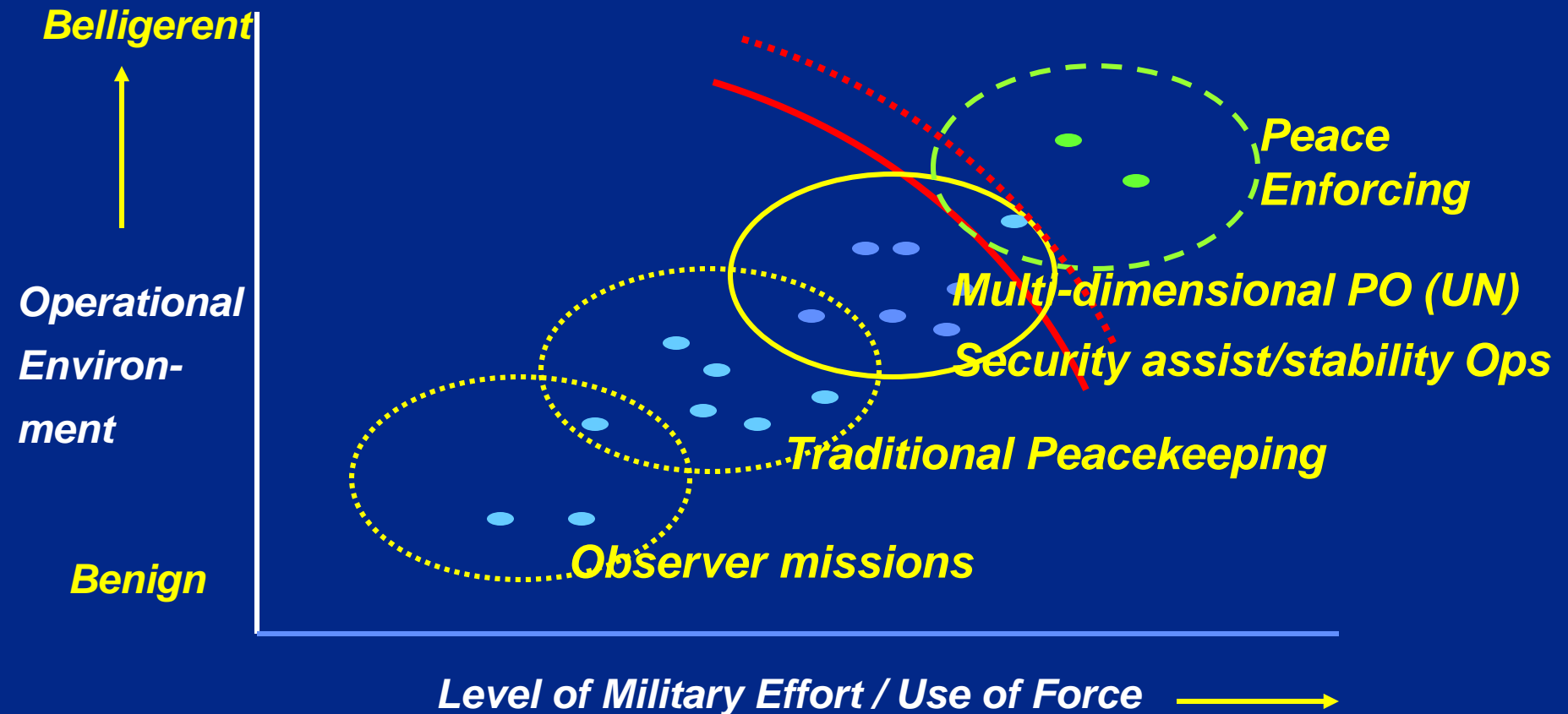
Improve/reconsider

- Pre-deployment training/risk-assessments
- Preventive policing capacity
- Capacity and quality of UN admin investigations, incl. National Investigating Officers
- Consequential actions by UN in case of lack of responsiveness by TCC's



*International Humanitarian
Law and Peace Operations*

Characterization of UN Peace Operations







SCR 2409 (27 March 2018)
MONUSCO Intervention Brigade (paragraph 36 (i)(d))

- Neutralize armed groups in support of the authorities of the DRC, on the basis of information collection and analysis, and taking full account of the need to protect civilians and mitigate risk before, during and after any military operation
- Carry out targeted offensive operations, either unilaterally or jointly with the FARDC, in a robust, highly mobile and versatile manner and in strict compliance with international law, including international humanitarian law, and in accordance with the standing operating procedures applicable to persons who are captured or who surrender

SCR 2364 (29 June 2017) MINUSMA

- To protect, without prejudice to the primary responsibility of the Malian authorities, civilians under threat of physical violence' (para 20 c. i)
- to take robust and active steps to protect civilians, including through active and effective patrolling in areas where civilians are at risk, and to prevent the return of armed elements to those areas, engaging in direct operations pursuant only to serious and credible threats' (para 20 c. ii)

SG Bulletin: Observance by UN Forces of international humanitarian law - August 1999

Applicability

The fundamental principles and rules of IHL set out in the bulletin are applicable to UN forces **when in situations of armed conflict** they are actively engaged therein as combatants, to the extent and for the duration of their engagement

SG Bulletin: Observance by UN Forces of international humanitarian law - August 1999

- Protection of civilian population
- Means and methods of combat
- Treatment of civilians and persons 'hors de combat'
- Treatment of detained persons
- Protection of the wounded, the sick and medical and relief personnel

Protection of civilian population

- UN force shall make a clear **distinction** at all times between civilians and combatants and between civilian objects and military objectives (AP I, art 48).
- Attacks on civilians or civilian objects are prohibited.
- UN Force shall take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians or damage to civilian property.

Protection of civilian population

- prohibition to launch operations of a nature likely to strike military objectives and civilians in an indiscriminate manner,
- as well as operations that may be expected to cause incidental loss of life among the civilian population or damage to civilian objects that **would be excessive** in relation to the concrete and direct military advantage anticipated. AP I art. 51

Audit of military operations for the protection of civilians OIOS report 2017, para 57.

- MONUSCO was engaged in nine major military operations that involved the use of lethal force, but there was no evidence that collateral damage estimates, battle damage assessments and after-action reviews were conducted.
- This precluded MONUSCO from identifying and implementing appropriate mitigating measures to minimize damage and improve the effectiveness of future military operations

