AN ASIA-PACIFIC PERSPECTIVE ON THE IMPLICATIONS OF INTERNATIONAL HUMAN RIGHTS LAW FOR UN PEACEKEEPING OPERATIONS

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Introduction

In 2013, UN peacekeepers continue to do a difficult and dangerous job in many parts of the world which have been torn apart by conflict. There are currently 15 peacekeeping missions operating in as many countries and one "special political mission", the UN Assistance Mission in Afghanistan.[2] In August 2013, those missions accounted for just over 82,000 troops supplemented by about 13,000 police and 2,000 civilian observers.[3] In the most recent figures available, the top three contributors out of the 115 states which were contributing troops and police to UN peacekeeping missions were Asia-Pacific countries.[4] New Zealand was ranked at number 90, with 13 personnel deployed on such missions.

The work done by UN peacekeeping operations is very important. Indeed, it is fundamental to the purposes for which the Organisation was established. In the context of the recent conflict in Syria and the humanitarian catastrophe that it has wrought, it is timely to remind ourselves that the UN was founded in 1945 as an initiative by an international community determined:

> … to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.

Unfortunately, UN peacekeeping operations have not always lived up to these high ideals. In March 2005, Secretary-General Kofi Annan reported to the President of the General Assembly that:[5]

> ... this exemplary record has been clouded by the unconscionable conduct of a few individuals. In particular, the revelations in 2004 of sexual exploitation and abuse by a significant number of United Nations peacekeeping personnel in the Democratic Republic of the Congo have done great harm to the name of peacekeeping. Such abhorrent acts are a violation of the fundamental duty of care that all United Nations peacekeeping personnel owe to the local population that they are sent to serve.

The purpose of this article is to examine the intersection between the UN's principal purpose to maintain international peace and security[6] and its commitment to "promoting and

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[2] For more information see http://www.un.org/en/peacekeeping/operations/current.shtml (last accessed 18 September 2013).

[3] Exact figures available at http://www.un.org/en/peacekeeping/contributors/documents/yearly13.pdf (last accessed 18 September 2013).

[4] Available at http://www.un.org/en/peacekeeping/resources/statistics/contributors_archive.shtml (last accessed 18 September 2013).

[5] UN Doc A/59/710 dated 24 March 2005. This letter forwarded a ground-breaking report proposing "a comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations", authored by the Permanent Representative of Jordan, HRH Prince Zeid Ra'ad Zeid Al-Hussein.

encouraging respect for human rights and for fundamental freedoms for all".[7] The lens through which it will examine this is the relationship between UN peacekeeping operations and international human rights law, drawing on examples and perspectives from the Asia-Pacific region and elsewhere. The examination will necessarily be confined to certain aspects of that relationship worthy of scholarly consideration. If the article raises questions and stimulates debate, it will have achieved its modest purpose.

What is peacekeeping?

In 2008, the Under-Secretary-General for Peacekeeping Operations authorised a new capstone doctrine for UN peacekeeping operations, *United Nations Peacekeeping Operations – Principles and Guidelines.*[8] The UN peacekeeping doctrine recognises that "[p]eacekeeping is one among a range of activities undertaken by the United Nations and other international actors to maintain international peace and security throughout the world"[9] and defines peacekeeping as:[10]

> ... a technique designed to preserve the peace, however fragile, where fighting has been halted, and to assist in implementing agreements achieved by the peacemakers. Over the years, peacekeeping has evolved from a primarily military model of observing cease-fires and the separation of forces after inter-state wars, to incorporate a complex model of many elements – military, police and civilian – working together to help lay the foundations for sustainable peace.

Much has been written on the nature of and international legal authority for UN peacekeeping operations.[11] For the purposes of this short article, it suffices to say that in modern times they are generally authorised by a resolution of the UN Security Council and operate under UN command and control. There are however large questions over the degree to which the UN is actually able to exercise such command and control. The significance of this for the application of international human rights law will be examined in the last part of this article.

What is international human rights law?

The UN peacekeeping doctrine states that:[12]

> International human rights law is an integral part of the normative framework for United Nations peacekeeping operations... United Nations peacekeeping operations should be conducted in full respect of human rights and should seek to advance human rights through the implementation of their mandates ... United Nations peacekeeping personnel should respect human rights in their dealings with colleagues and with local people, both in their public and in their private lives. Where they commit abuses, they should be held accountable.

These are laudable goals. However they leave open the key question as to what we mean when we say "international human rights law" in the context of a UN peacekeeping operation. This is important in the multinational context of such operations because the answer actually

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[6] Article 1(1), *Charter of the United Nations*.
[7] Article 1(3), *Charter of the United Nations*.
[8] United Nations, 2008 (hereinafter "UN peacekeeping doctrine").
[9] Ibid, 17.
[10] Ibid, 8.
[11] On the nature of peacekeeping operations, see for example P. Diehl, D. Druckman and J. Wall, "International Peacekeeping and Conflict Resolution – A Taxonomic Analysis with Implications" (1998) 42 *Journal of Conflict Resolution* 33. For the legal authority for peacekeeping operations, see B. Simma (ed), *The Charter of the United Nations: A Commentary* (Oxford University Press, New York 2002) and, more controversially, D. Sarooshi, *The United Nations and the Development of Collective Security* (Clarendon Press, Oxford 1999).
[12] UN peacekeeping doctrine, 14-15.

differs depending on which troop-contributing nations (TCN) are participating. This can have real-world implications for the interoperability of the forces contributed to a peacekeeping operation. In the next part of this article I examine this division of views from two perspectives – the substantive content of international human rights law and the extraterritorial application of such law.

The cornerstone: Universal Declaration of Human Rights

The UN peacekeeping doctrine acknowledges that the 1948 Universal Declaration of Human Rights (UDHR) "sets the cornerstone of international human rights standards".[13] While it is a soft-law instrument, it can certainly be regarded as an authoritative interpretation of the references to human rights in the UN Charter.[14] That having been said, the UDHR represents only a relatively small piece of the substantive content of international human rights law. There has been a proliferation of treaties within this field since the end of World War II. The online UN Treaty Collection lists 26 treaties in its human rights chapter, most of which have entered into force over the past three decades. Even that does not represent the full gamut of conventional international human rights law.

Treaty obligations and customary international law

It is axiomatic to state as a fundamental principle that states enjoy the freedom to enter into whatever treaty obligations they wish and also the freedom to decline to do so. For example, six of the ASEAN member states are parties to the International Covenant on Civil and Political Rights (ICCPR)[15] and four are not. All nine of the states which are ASEAN dialogue partners are parties,[16] but one has declared that the ICCPR only applies on part of its territory.[17] When we look at the Second Optional Protocol to the ICCPR, which aims at the abolition of the death penalty, only four of the states referred to above are parties.[18]

The relative freedom of states to choose which human rights obligations they will accept is however subject to some important limitations. For example, while not all the rights contained in the UDHR can be said to have passed into customary international law, a number have. This means the relevant obligations bind a state without the need for that state to explicitly consent, although a state may avoid the application of such norms by treaty or persistent objection.[19] Among these are the right to life, freedom from slavery, freedom from torture, inhuman and degrading treatment and the right to a fair trial.[20]

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[13] Ibid.

[14] M. Baderin and M. Ssenyonjo, "Development of International Human Rights Law Before and After the UDHR" in M. Baderin and M. Ssenyonjo (eds), *International Human Rights Law – Six Decades After the UDHR and Beyond* (Ashgate Press, 2010) 9; *New Zealand Handbook on International Human Rights* (New Zealand Ministry of Foreign Affairs and Trade, 1998) 58.

[15] Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

[16] The European Union is also an ASEAN dialogue partner.

[17] See declarations of the People's Republic of China that the ICCPR applies on the territories of the Macao Special Administrative Region and the Hong Kong Special Administrative Region available at treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#4 (last accessed 13 September 2013).

[18] Australia, Canada, Japan, New Zealand and the Philippines.

[19] With the exception of those norms which form part of the *jus cogens*: see fn 22 and accompanying text.

[20] *New Zealand Handbook on International Human Rights*, above fn 11; I. Brownlie, *Principles of Public International Law* (7th ed, Oxford University Press, Oxford, 2008) 559.

In a similar vein, a number of international human rights treaty obligations are now recognised as forming part of the corpus of customary international law. The clearest example is the prohibition against torture as defined in Article 1 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This was held to be customary in nature by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia in *Prosecutor v Furundžija*.[21]

The Trial Chamber went further, holding that the prohibition against torture is *jus cogens* or a peremptory norm and that it is an obligation *erga omnes* – in English meaning that it cannot be derogated from by treaty or persistent objection and is an obligation owed to the entire international community.[22] It follows that whatever divergence there might be in the application and content of conventional human rights law by UN peacekeepers drawn from different TCNs, there is a body of human rights law which is fundamental and cannot be derogated from. The prohibition against torture is part of that body of law.

Extraterritorial application of human rights obligations?

A potentially more troubling issue in the application of international human rights law to the conduct of UN peacekeepers is the continuing controversy over whether such rights have extraterritorial effect. For example, by virtue of its ratification of the ICCPR, the Government of the Philippines may be taken to recognise the application of the obligations contained in that treaty to the treatment of persons on Philippines sovereign territory. But does it consider that the ICCPR applies to the acts of the Filipino peacekeepers who make up part of UNDOF on the Golan?

There is no clear answer to that in the public domain, but some states have taken a very public position on the question. The United States' view is very clearly set out in a number of official communications with the UN Human Rights Committee.[23] That view is based on the wording of Article 2(1) of the ICCPR, which states that each state party "undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant". The key question is whether that means the obligations only apply on the territory of the state party or whether in this context "and" means "or". By way of analogy, an employment advertisement may legitimately state that "men and women are welcome to apply". In the context, the advertisement is clearly looking for men or women, rather than being limited to hermaphrodites. So which is the correct interpretation at international law?

The words "territory and subjects to its" were inserted in the text of the ICCPR at the request of the United States when the ICCPR was being negotiated in 1950.[24] At that time Eleanor Roosevelt made it abundantly clear, as is recorded in the *travaux préparatoires*, that the express purpose of doing that was to ensure that the United States would not be bound to respect and ensure the rights in the ICCPR of certain persons subject to US jurisdiction outside the continental United States – namely citizens of countries under allied occupation. There was some disquiet on this and a debate. When the vote was taken, the American

[21] IT-95-17/1-A, 21 July 2000, paragraph 111.
[22] IT-95-17/1-T, 10 December 1998, paragraphs 151 to 157.
[23] Most recently submitted to a meeting of the Committee in July 2006: UN Doc CCPR/C/USA/3 dated 28 November 2005, Annex 1.
[24] UN Doc E/CN.4/SR.194 dated 25 May 1950.

proposal was agreed to.[25] There were some subsequent attempts in the General Assembly to revert to the previous wording, but they were unsuccessful.[26] However in 2004, adopting its General Comment No 31 on the interpretation of the ICCPR, the UN Human Rights Committee stated that:[27]

> States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction ... This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation.

In a tacit acknowledgement of the drafting history of the ICCPR reflected in the *travaux préparatoires*, the UN Human Rights Committee has since urged the United States to review its interpretation in the light of "subsequent practice". This is a reference to the inter-temporal rule of treaty interpretation, which first found acceptance by the International Court of Justice in 1971 in the *Namibia* case[28] and, subsequently in the human rights sphere, in the case of *Gabčikovo-Nagymaros* decided in 1997.[29] However the "subsequent practice" in question appears to consist mainly of the Human Rights Committee's own statements and its view in the case of *López Burgos v Uruguay*.[30] Despite that, the Committee's view on the extraterritorial application of the ICCPR was adopted by the International Court of Justice in the Advisory Opinion it delivered in 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[31] and then subsequently in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*.[32]

When one examines the records of states parties' responses to the Human Rights Committee, it is apparent that – to the extent that states have made their positions known – a division has opened up between those states who accept that the ICCPR has extraterritorial application (including to their forces serving in UN peacekeeping operations) and those who do not. In its responses to the UN Human Rights Committee on this issue the Government of Australia has described the scope of jurisdiction under the ICCPR as "unsettled".[33] That appears to be a fair reflection of the position.

Even if one strips the analysis back to the application of the UDHR, one needs to consider whether in the context of a UN peacekeeping operation that the TCN has an obligation to accord those rights to civilians who are within the area of operations of its national

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[25] The US amendment to draft article 2(1) was adopted by eight votes to two, with five abstentions: ibid, paragraph 46.

[26] The first attempt by France was defeated in 1952: UN Doc E/CN.4/SR.329, page 14. A second joint Sino-French attempt in 1963 was also "ultimately defeated by a clear majority": UN Doc A/C.3/SR.1257 – SR.1259. See also M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd edition, N.P. Engel Publisher, Kehl 2005) 41.

[27] UN Doc CCPR/C/21/Rev.1/Add.13 dated 26 May 2004, paragraph 10.

[28] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)* [1971] ICJ Reports 31, paragraph 53.

[29] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* [1997] ICJ Reports 88, 114.

[30] (1981) 68 ILR 29. See also the Committee's view in *Celiberti de Casariego v Uruguay* (1981) 68 ILR 41, 46, which is to the same effect.

[31] [2004] ICJ Reports 194, paragraph 109 [hereinafter referred to as the *Wall*].

[32] (2006) 45 ILM 271, 317.

[33] UN Doc CCPR/C/AUS/Q/5/Add.1 dated 5 February 2009, paragraph 16. Australia stated that it "believes that the obligations in the Covenant are essentially territorial in nature, ... [but] has taken into account the Committee's views in general comment No. 31".

contingent. In addition to its application to the "peoples of the member states", the obligations of states under the UDHR apply to peoples "under their jurisdiction". Setting aside the question of attribution for the moment, as a threshold issue it is necessary to determine whether participation in a UN peacekeeping operation is capable of constituting an exercise of jurisdiction by a TCN.

In July 2011 the Grand Chamber of the European Court of Human Rights gave an influential judgment on the question of jurisdiction in the context of a very similar provision in its governing treaty. *Al-Skeini v United Kingdom* is a case about the treatment of Iraqi citizens by British forces during the occupation of Iraq by the United Kingdom and its coalition partners.[34]The court held that jurisdiction is primarily territorial, but that there are exceptions.[35] The following exceptional cases of jurisdiction are relevant to peacekeeping forces:

- First, if the national contingent exercises all or some of the public powers normally to be exercised by the local government, through the consent, invitation or acquiescence of that government, then the local people subject to those powers will be under the jurisdiction of the contingent for the purposes of human rights compliance.[36] However if those sorts of powers are taken over in the context of a UN peacekeeping operation, that is usually done unequivocally by the UN entity rather than national contingents themselves. A useful historical example in the Asia-Pacific region is the UN Transitional Administration in East Timor.

- Second, it would seem that a TCN's human rights obligations will in principle be triggered if its forces take a person into custody. The court held that "what is decisive in such cases is the exercise of physical power and control over the person in question".[37]

- Finally, the obligations will apply in respect of the local people if the national contingent is in "effective control" of the relevant area.[38] That is a question of fact. The court said however that it would primarily have reference to the strength of the state's military presence in the area. It would also look at other indicators of the extent of its influence and control over the region.

Interface with the law of armed conflict

The preceding part of this article has served to demonstrate that the application of international human rights law to UN peacekeeping operations is in itself a fairly complex legal patchwork. However this is likely to be complicated even further in many cases by the fact that the law of armed conflict,[39] whether that body of law governing an international armed conflict – or a non-international armed conflict – will also apply in many, if not all, cases. In the case of UN peacekeeping forces, the Secretary-General's 1999 Bulletin, *Observance by United Nations forces of international humanitarian law*, requires that those

[34] (2011) 50 ILM 995. This decision has subsequently been followed by the Grand Chamber in *Catan v Moldova and Russia* (2013) 52 ILM 221.
[35] Ibid, 1033.
[36] Ibid, 1034.
[37] Ibid.
[38] Ibid, 1034-1035.
[39] Also referred to as international humanitarian law.

forces comply with the "fundamental principles and rules of international humanitarian law ... in peacekeeping operations when the use of force is permitted in self-defence".[40]

It has been suggested by various commentators,[41] and even some senior government officials,[42] that the law of armed conflict actually displaces international human rights law in an armed conflict situation. That would certainly be convenient from a military planning perspective, but it is simply not sustainable as a proposition of international law. For those states which are parties to Additional Protocol I to the Geneva Conventions, Article 72 of that Protocol explicitly acknowledges the application of "other applicable rules of international law relating to the protection of fundamental human rights during international armed conflict".

In its 1996 *Nuclear Weapons* advisory opinion, the International Court of Justice expressly held that the ICCPR does not cease to operate in times of war.[43] What it also said is that certain rights, for example the right to life, will be governed by the *lex specialis* applicable to that war. So international human rights law does not cease to operate, but its content may change as a consequence of the application of the law of armed conflict. In its later advisory opinion in respect of the *Wall*, the International Court of Justice ruled:[44]

> As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as *lex specialis*, international humanitarian law.

That opens up a potential minefield for legal advisors to armed forces, given that international human rights law and the law of armed conflict are not concordant in every circumstance. One example, not strictly applicable to UN peacekeeping operations, is the potential clash between the obligation to preserve existing legal systems under the law of occupation[45] and human rights obligations such as those which apply to New Zealand to abolish the death penalty.

Attribution of the conduct of UN peacekeepers

The final part of this article briefly addresses the question of attribution. Are the actions of a UN peacekeeper attributable solely to the UN, solely to the TCN, or to both? This is significant to the analysis because, in contrast to the already mentioned freedom of states to contract treaties the UN has limited treaty-making capacity.[46] The UN is not a state – it cannot and has not become a party to any international human rights treaty. For example, Article 48(1) of the ICCPR states that the Covenant is only open for signature by states which have

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[40] UN Doc ST/SGB/1999/13, 6 August 1999.
[41] For example, M.J. Dennis, "Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation" (2005) 99 AJIL 119.
[42] "International Human Rights Law, International Humanitarian Law, and Implications for Coalition Warfare – Summary of Remarks by William Lietzau" (2012) 106 *Proceedings of the Annual Meeting (American Society for International Law)* 451. Mr Lietzau is the Deputy Assistant Secretary of Defense (Rule of Law and Detainee Policy) in the Government of the United States of America.
[43] [1996] ICJ Reports 226, paragraph 25.
[44] [2004] ICJ Reports 194, paragraph 106.
[45] Article 43 of the Regulations annexed to the 1907 *Hague Convention IV Respecting the Laws and Customs of War on Land*.
[46] See, for example, Article 104 of the UN Charter.

fulfilled certain criteria. Does this mean that there is a *lacuna* in the application of conventional human rights law to UN peacekeepers?

In its 2004 response to questions posed by the International Law Commission (ILC) in this regard, the UN Secretariat insisted that the conduct of peacekeeping forces is, in principle, attributable to it as such forces are subsidiary organs under UN command.[47] If that were entirely correct, then TCNs would not incur state responsibility for the actions of their forces committed to UN peacekeeping operations. It would also mean that none of the rich body of treaty law in the human rights field would apply to such forces because the UN is not a party to such treaties. The applicable international human rights law would be confined to the UDHR and customary norms.

But of course life is not that simple. Certain elements of any UN peacekeeping force must certainly be viewed as sufficiently connected to the Organisation that their acts are attributable solely to the UN. Examples would be mission headquarters elements and institutions which consist largely of permanent UN staff. But what is the position in respect of large national force elements which are placed at the disposal of the UN peacekeeping force, but retain either all or some of their national command and control arrangements? The default position, as set out in the judgment of the International Court of Justice in *Armed Activities on the Territory of the Congo*, is that the acts and omissions of the members of a state's armed forces in the conduct of operations under national command are attributable to that state, even if those personnel act contrary to orders or otherwise exceed their authority.[48]

In 2011 the ILC adopted Articles on the Responsibility of International Organizations.[49] Article 7 states that:

> The conduct of an organ of a State … that is placed at the disposal of [an] international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct.

This test is derived in large part from the 1986 judgment of the International Court of Justice in *Nicaragua*,[50] which the court confirmed in the *Genocide* case in 2007.[51] Even the European Court of Human Rights, which made some fairly questionable pronouncements on this topic in 2007 when dealing with a case arising from the UN Mission in Kosovo,[52] adopted the ILC test in 2011 in a nice piece of legal sophistry whereby its earlier decision was made to appear entirely consistent with the ILC test – when patently it was not.[53] The question in 2013 therefore is whether, in any particular case, the UN is exercising effective control over the conduct of a national contingent when it or its members do something which is said to be in breach of international human rights law. If it is, then the conduct is in principle attributable solely to the UN, with the attendant consequences for the inapplicability of much conventional human rights law. If, on the other hand, the UN is not exercising effective control of that conduct, it will in principle be solely attributable to the TCN. The answer to

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[47] UN Doc A/CN.4/545 dated 25 June 2004, 18. See also B. Simma (ed), *The Charter of the United Nations – A Commentary* (Oxford University Press, Oxford 2002) 542.
[48] Above fn 32, 317.
[49] UN Doc A/CN.4/L.778 dated 30 May 2011.
[50] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA)* (1986) 25 ILM 1023, 1047.
[51] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (2007) 46 ILM 188, 285.
[52] *Behrami v France*; *Saramati v France, Germany and Norway* (2007) 45 EHRR SE10.
[53] *Al-Jedda v United Kingdom* (2011) 50 ILM 950, 985.

this conundrum will depend on the facts of each case, but at least one UN commission of inquiry conducted in 1994 found that:[54]

> The Force Commander of UNOSOM II was not in effective control of several national contingents which, in varying degrees, persisted in seeking orders from their home authorities before executing orders of the Forces Command. Many major operations undertaken under the United Nations flag and in the context of UNOSOM's mandate were totally outside the command and control of the United Nations, even though the repercussions impacted crucially on the mission of UNOSOM and the safety of its personnel.

Perhaps it is time to consider whether dual attribution of the conduct of UN peacekeepers to both the Organisation and the relevant TCN as a matter of course represents a more satisfactory model. Two very recent decisions of the Netherlands Supreme Court in *The State of the Netherlands v Nuhanović*[55] and *The State of the Netherlands v Mustafić-Mujić*,[56] although relating to the specific circumstances of the evacuation of Srebrenica by the Dutch Battalion of a UN peacekeeping force in July 1995, suggest that such an approach may attract judicial support.

Conclusion

Like many aspects of the UN system, peacekeeping has high ideals and the world would undoubtedly be the poorer were it not to exist. However the international community must guard against the potential for peacekeepers to become part of the problem in already traumatised post-conflict societies. International human rights law has an important part to play in this space and yet, as this article has attempted to highlight, there are some vexing questions regarding the extent to which that body of law will apply to any particular case of serious misconduct by a UN peacekeeper. There seems little doubt that further work to close the gaps in this area is warranted. However we must not overlook the significance of the fact that the vast majority of peacekeepers are drawn from the national armed forces of UN member states. In the final analysis, it for those states to demonstrate their commitment to the purposes and principles of the UN by demanding high standards of conduct from the troops they deploy and rigorously enforcing their national law – in most cases military law – against those peacekeepers who betray the trust reposed in them.

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[54] UN Security Council, *Report of the Commission of Inquiry Established Pursuant to Security Council Resolution 885 (1993) to Investigate Armed Attacks on UNOSOM II Personnel Which Led to Casualties Among Them*, UN Doc S/1994/653 dated 1 June 1994, 45.

[55] Case no 12/03324, 6 September 2013 available at http://www.rechtspraak.nl/Organisatie/Hoge-Raad/OverDeHogeRaad/publicaties/Documents/12%2003324.pdf (last accessed 7 October 2013).

[56] Case no 12/03329, 6 September 2013 available at http://www.rechtspraak.nl/Organisatie/Hoge-Raad/OverDeHogeRaad/publicaties/Documents/12%2003329.pdf (last accessed 7 October 2013).