

ANALYSIS OF THE APPLICATION OF INTERNATIONAL HUMANITARIAN LAW IN UNITED NATIONS MISSION IN MALI

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ABSTRACT: *The whole essence of International Humanitarian Law (IHL) is to reduce the impact of armed conflicts on humanity. The application of IHL in UN is mainly hinged on the observance by United Nations forces of international humanitarian law. This paper analysed the application of IHL by the United Nations Mission in Mali (MINUSMA). The research problem is that the application of IHL by MINUSMA troops instead of assisting the peace process has been used by some of the non-state armed groups in the armed conflict as a weak point to attack more civilians being protected by the troops and even the peacekeepers themselves, inflicting more casualties on them. The objective of the research is to highlight those areas that make the UN troops more vulnerable to the non-state armed groups' attacks by the application of IHL with a view to suggesting solutions. Doctrinal and teleological research methods were used in the work. Doctrinal through consulting primary and secondary legal authorities and teleological from the experience of the author as a former Force Legal Adviser of the mission. The paper found among others that the application of IHL in the mission is lopsided in the sense that no one checks the non-state armed groups who do not respect the law. There are also different legal jurisdictions of the troops which contribute to unequal application of the law by all troops. The paper recommended among others, full implementation of peace enforcement by the mission and enhancement of pre-deployment training on IHL for peacekeepers.*

KEY WORDS: international humanitarian law, MINUSMA, armed groups, peacekeeping, Mali, United Nations

INTRODUCTION

Conflict has been a part of man from the beginning and the crafting of International Humanitarian Law (IHL) is made in order to assist humanity to ameliorate the negative impact of armed conflicts on human beings. The formation of the League of Nations on 10th January, 1920 and the United Nations Organisation (UN) on 24th October 1945, helped in reducing wars among nations but there remains the monster of internal conflicts in nations which from all indications, was not well anticipated by the founders of those organisations.

The UN used to embark on traditional peacekeeping where the conflict was usually between states but after the cold war, the nature of peacekeeping changed. The conflicts changed more to intra-state and the nature of the warfare equally changed to asymmetric style with more

civilian and peacekeepers deaths. The UN began to face armed groups in non-international armed conflicts within a state. The intra-state wars are also so numerous especially in Africa, mainly based on religious or ethnic issues or struggle for natural resources, sometimes aided by foreign powers.

The UN began its first peace support operation in the Middle East in 1948 and since then, it has embarked on 68 peacekeeping missions in the world. The United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) is one of the youngest UN missions, established under Chapter VII of the UN Charter to support political processes in that country and carry out a number of security related tasks.¹

The applicability of IHL in Peace Support Operations (PSO), began with the UN operation in 1950 when the International Committee of the Red Cross (ICRC) required that parties to the conflict apply the humanitarian principles of the Geneva Convention particularly Common Article III. Since that period, the ICRC continued to draw the attention of the UN Secretary General to the need for troop contributing countries (TCC) to have adequate instruction on IHL for troops earmarked for PSO. With the coming into force of the Secretary General's Bulletin on the Observance by UN Forces of IHL on 6th August 1999, it became obvious that UN troops are under obligation to strictly observe the provisions of IHL. It is only with a yard stick of what is the ideal with regard to IHL that one can measure the application of the same law in Mali.

This research discovered that in Mali, the peacekeepers observe IHL and get attacked the more by non-state armed groups as the non-state armed groups see the observance of IHL by the peacekeepers as a weak point as they hardly observe same. Consequently, the objective of this paper is to analyse how MINUSMA has applied IHL in Mali, in order to determine where the mission has sufficiently complied with IHL in its role in Mali. This is to ensure that the mission adequately complies with IHL and still achieves peace in the country without suffering undue casualties in the hands of non-state armed groups. This paper therefore analyses the broad conditions under which IHL applies to UN operations, the principles of distinction between civilians and combatants and between civilian objects and military objectives. It equally analyses means and methods of warfare, treatment of civilians and persons *hors de combat* (outside combat), treatment of detainees, protection of the wounded, the sick and medical and relief personnel. On the aspect of the role of MINUSMA *vis-à-vis* the application of IHL in Mali, this paper analyses the Mandate, Rules of Engagement (ROE) and Standard Operating Procedures (SOP) of MINUSMA on detentions which are linked with the enforcement of IHL. This paper also analyses the difference between what is happening in MINUSMA with regard to the application of IHL compared with the provisions of IHL. It points out the challenges which are equally the findings and makes recommendations on how to overcome the observed lapses.

¹ United Nations Security Council Resolution 2100 of 25 April 2013.

Condition under which IHL Applies to UN Operations

The ICRC has consistently underlined that IHL applicability depends upon circumstances as well as on fulfillment of certain conditions.² Furthermore, Ferraro³ states that IHL would govern the activities of a UN peace operation only if the UN forces participate in military action that reach the threshold of an armed conflict, be it international or non-international. Most of the PSOs now are in non-international armed conflict (NIAC) situations involving state and non-state armed groups that are very violent. It is therefore obvious that the threshold being referred to, by Ferraro is almost always attained in many current PSOs. The ICRC has even declared MINUSMA to be a party to the conflict in Mali.

In the last 10 years for instance, peace support operations embarked upon by the UN have reached the threshold of armed conflict where the lives of civilians and those *hors de combat* have been constantly endangered. Some examples are the United Nations Mission in Central African Republic and Chad (MINURCAT), United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo (MONUSCO). Others are United Nations Organisation Interim Security Force for Abyei (UNISFA), United Nations Mission in the Republic of South Sudan (UNMISS) and United Nations Supervision Mission in Syria (UNSMIS). There are also the two youngest missions of United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) which is discussed in this paper and United Nations Multidimensional Integrated Stabilization Mission in Central African Republic (MINUSCA).⁴ These missions began between 2007 and 2017. In view of the above, it is safe to hold the view that due to the level of violence in the armed conflicts within these current missions in addition to the directive in the Secretary General's Bulletin on the observance of IHL, the law applies hence the need to look at the specifications.

Principles of Distinction Between Civilians and Combatants

IHL in PSO like in all other operations where it applies makes provision for distinction between civilians and combatants. The principle of distinction connotes that during armed conflict, there should be a clear demarcation between armed groups and other combatants who conduct hostilities on one hand and civilians who are not directly participating in hostilities on the other hand and the latter must be spared from the dangers arising from military operations.⁵ The principles therefore enjoins parties to a conflict to always be conscious of the fact that during the conduct of hostilities, the population is made up of both combatants and civilians and only the combatants constitute legitimate military target. The Secretary General's Bulletin makes it compulsory that the UN shall make a clear distinction at all times between civilian objects and military objectives. It specifies that military operations shall be directed only against

² Ferraro, T. "International Peace Operations and International Humanitarian Law" *Institute of International Humanitarian Law Journal*, Rome, 27 March 2008, p.54.

³ Ibid.

⁴ www.un.org fact sheet accessed on 16th December 2017.

⁵ Melzer, N. (2009) *Interpretative Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law*. Geneva, ICRC, p.11.

combatants and military objectives. It strictly prohibits attacks on civilians or civilian objects.⁶ The Bulletin makes it obvious that civilians shall continue to enjoy the protection afforded by IHL unless and for such time as they take direct part in hostilities. The Bulletin also points out that “military installations and equipment of peacekeeping operations as such shall not be considered military objectives”⁷

In modern times, there is an aspect that constitutes a serious repercussion on the principle of distinction wherein civilians take part in certain ways in the armed conflict than bearing arms directly which would make them to be classified as taking direct part in hostilities. Melzer explains that “the notion of direct participation in hostilities refers to specific hostile acts carried out by individuals as part of the conduct of hostilities between parties to an armed conflict.”⁸ These conditions include persons collecting intelligence on the armed forces; persons transporting unlawful combatants to or from the place where hostilities are occurring; persons who operate weapons that unlawful combatants use or supervise their operation or provide service to them and persons involved in transporting ammunition to places for use in hostilities. Civilians have been known to be used to perform the foregoing activities which consequently put them at the risk of belligerent attacks.⁹ This is equally referred to as civilianization of conflict.

In Mali, even when they observe these rules, they still get attacked some times. For the combatants, they have a duty to distinguish between civilians and combatants; to presume persons and objects as civilians when in doubt; refrain from attacking civilians and civilian populations; refrain from attacking combatants that fall under the protection of the principle of distinction; refrain from attacking civilian objects and infrastructure and to bear arms openly. Their other duties include to refrain from employing weapons of indiscriminate impact in warfare; to distinguish themselves from civilians and civilian population through the use of recognizable emblems and combat attires;¹⁰ issue advance warning in operations that are likely to affect the civilian population; to cancel attacks when it becomes apparent that the target is not a military objective and to avoid erecting military objectives close to the vicinity of a civilian population or object. It is therefore clear that distinction between civilians and combatants and between civilian objects and military objects remain a cardinal point of the observance of IHL by peacekeepers. In Mali, like in all other peace operations, the UN maintains such stance as what all peacekeepers should strive to achieve. Ensuring that all armed groups keep to these rules is a major problem that is yet to be solved in Malian conflict.

⁶ Observance by United Nations Forces of International Humanitarian Law. ST/SGB 1999/13.

⁷ Ibid.

⁸ Melzer, N. (2009) Interpretive Guidance on the Notion of Direct Participation in Hostilities Under IHL. ICRC, Geneva.p.45.

⁹ Guillory, M.E. (2001) Civilianising the Force: Is the United States Crossing the Rubicon? *51 Air Force Law Review*.p.11.

¹⁰ Article 57 and 58 of Additional Protocol 1 of the Geneva Convention.

Means and Methods of Warfare

The means and methods of warfare used in PSOs are not unlimited. The application of IHL makes it impossible for the UN force to use all kinds of weapons. The use of certain types of weapons and means of combat as restricted under relevant instruments of IHL is meant to be strictly observed. The use of the following weapons is prohibited: “asphyxiating, poisonous or other gases and biological methods of warfare; bullets which explode expand or flatten easily in the human body; and certain explosive projectiles.”¹¹ The use of certain conventional weapons, such as non-detectable fragments, anti-personnel mines, booby traps and incendiary weapons is prohibited.¹² Any method of warfare that is capable of causing superfluous injury or unnecessary suffering or which are intended or may be expected to cause, widespread, long-term and severe damage to natural environment is equally prohibited.¹³

Some other things that the peacekeepers are prohibited from attacking in line with respect to IHL include monuments of art, places of worship, museums and libraries which constitute cultural and spiritual heritage of peoples. The peacekeepers are also “prohibited from using such cultural property or their immediate surroundings for purposes which may expose them to destruction or damage.”¹⁴ They are equally not allowed to render objects that are indispensable for the survival of a civilian population useless, these include foodstuff, crops, livestock and drinking water installations and supplies. The UN force is not also allowed make dams and electrical generating stations as objects of military operations to avoid the release of dangerous and consequent severe losses among the civilian population. All these rules are made in line with the provisions of IHL to ensure that troops of the UN engage in PSO with full respect for IHL. This, when strictly adhered to gives an armed conflict a human face. It is however expected that all who participate in an armed conflict should adhere to the rules. In Mali, the UN Mission adheres to these rules as none of the prohibited weapons is used by the Mission and the UN force does not destroy cultural heritage or other items vital to the people. The non-compliant armed groups however destroy cultural heritage edifice like the Mosque in Timbuktu which was attacked in 2013.

Treatment of Civilians and Persons *Hors de Combat*.

The treatment of civilians and persons not engaged in combat as provided in IHL is incorporated in the Secretary General’s Bulletin.¹⁵ Civilians and members of the armed forces who have laid down their weapons and those who no longer participate in combat due to sickness, wounds or detention shall be treated humanely. There should be no adverse distinction based on race, sex, religious convictions or any other ground. The civilians and persons not in combat are to be accorded full respect for their persons, honour, religious and other convictions.¹⁶ Violence to life or physical integrity, murder and cruel treatment such as torture, mutilation or any form of corporal punishment, collective punishment, taking of

¹¹ Observance by United Nations Forces of International Humanitarian Law. ST/SGB 1999/13. p.2.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Section 7 Observance by United Nations Forces of International Humanitarian Law. ST/SGB/1999/13.p.2

¹⁶ Ibid.

hostages, rape and enforced prostitution are strictly prohibited. Other prohibited acts include any form of sexual assault, humiliation, degrading treatment, enslavement and pillage.

Women are given special protection by IHL in peace operations. They are specially protected against any attack especially against rape, forced prostitution and any other form of indecent assault. Children are also accorded special respect and are protected against any form of indecent assault.¹⁷ In Mali, the armed groups attack innocent civilians. For instance, on 1 January 2019, 37 civilians in the village of Koulogon in the central Mopti region were killed by armed groups.¹⁸

Treatment of Detained Persons

The way detained persons are treated in an armed conflict is one of the direct ways to confirm if the parties engaged in such an armed conflict adhere to the provisions of IHL or not. The UN makes it mandatory that its force shall treat detained members of the armed forces and other persons who no longer take part in military operation with humanity and respect for their dignity. Without prejudice to their legal status, they are to be treated in accordance with the relevant provisions of the Third Geneva Convention of 1949 as may be applicable to them *mutatis mutandis*.¹⁹ Detained persons are to be held in secure and safe premises and shall be entitled to food, clothing and medical attention among others. Their capture and detention shall be reported to the party on which they depend and to ICRC tracing agency. The UN made these provisions to ensure that it leads the way with regard to deep respect for IHL, being the biggest body that fights for world peace. It tries to provide the standard so that others will follow. These rules guide all UN organized peace operations all over the world. In Mali, detained persons are handed over to the local authorities within a maximum of 72 hours.

Protection of the Wounded, the Sick, Medical and Relief Personnel

The UN forces are enjoined to ensure that the wounded, the sick, medical and relief Personnel shall be respected and protected in all circumstances. They shall be treated humanely and shall receive the required medical attention without adverse distinction. A suspension of fire shall be arranged or other local arrangements to permit the search for and identification of the wounded, the sick and the dead left on the battlefield and allow for their collection, removal, exchange and transport.²⁰ It is also prohibited for UN force to attack medical establishments or mobile medical units. They shall at all times be respected and protected unless they are used outside their humanitarian functions to attack or otherwise commit harmful acts against the UN force. In addition, the UN force shall in all circumstances respect and protect medical personnel exclusively engaged in the search for, transport or treatment of the wounded or sick as well as religious personnel.

The UN force is also prohibited from engaging in reprisal against the wounded, sick or medical personnel or equipment. The Red Cross and Red Crescent emblems are to be respected at all

¹⁷ Ibid.p.3.

¹⁸ www.bbc.co.uk.cdn.ampproject.org accessed on 24 August 2021.

¹⁹ Section 8, *ibid*.

²⁰ Section 9, *ibid*.

times by UN force and the misuse of such emblems are prohibited.²¹In Mali, these rules are observed by MINUSMA but the same cannot be said of armed groups, for instance, on 18 May 2017, an indirect mortar attack by armed groups hit the Nigerian Level 2 Hospital in Timbuktu, Mali injuring two soldiers. Having looked at the ideal application of IHL in PSO generally, it is important to analyse how MINUSMA applies IHL in Mali with the instruments discussed hereunder. These instruments are used to apply the requirements of IHL with regard to principles of distinction between civilians and combatants, means and methods of warfare, treatment of civilians and persons *hors de combat*, treatment of detained persons, protection of the wounded, sick, medical and relief personnel whenever those situations arose.

Application of MINUSMA's Mandate

The latest mandate of MINUSMA at the time this paper is being written in 2021, is Security Council Resolution 2584²². Still established under Chapter VII of the UN Charter, it authorizes MINUSMA to use all necessary means to carry out its mandate, within its capabilities and its areas of deployment. The mandate strongly condemned all violations and abuses of international human rights law and violations of international humanitarian law including those involving extra judicial and summary executions, arbitrary arrests and detentions and ill treatment of prisoners, sexual and gender-based violence...²³

It further provides for “protection of civilians under threat of physical violence, by taking active steps to anticipate, deter, and effectively respond to threats to civilian population”²⁴ The mission is further tasked to promote and protect human rights and one of the ways it is to achieve this is by bringing to justice without undue delay, those responsible for various violations or abuses of human rights or violations of international humanitarian law, in particular, war crimes and crimes against humanity.²⁵

MINUSMA's Rules of Engagement

The MINUSMA's Rules of Engagement (ROE) provide authority for use of force and explain policy, principles, procedures and responsibilities relating to the use of force.²⁶ The ROE equally provide severally for the observance of IHL among the troops from different countries of the world who are participating in the Malian peacekeeping process. The execution of the ROE began by stating that “the conduct of military operations is controlled by the provisions of international law.”²⁷The document specifically states that “MINUSMA military personnel must comply with the international legal principles of proportionality, the minimum use of force and the requirement to avoid, and in any event to minimize collateral damage.”²⁸ These rules are taught to troops and the implementation is regularly monitored. Any breach is usually

²¹ Ibid.

²²(2021) of 30 June 2021.

²³ Ibid.p.3.

²⁴ Ibid.p.11.

²⁵Ibid.

²⁶ Rules of Engagement for the Military Component of the United Nations Multidimensional Stabilization Mission in Mali, March 2017.p.2.

²⁷Ibid. Paragraph 7(a) (1) p.3

²⁸ Ibid. Paragraph 7 (a) (4).

investigated by the mission and sanctions applied if a unit or particular troops are found culpable. In order to ensure that troops understand these provisions the ROE made it mandatory for the rules to be translated in a clear and concise way into the language(s) of each participating nationality.²⁹ The ROE provide for specific principles aside from the general rules, to facilitate the execution of the rules. MINUSMA troops in Mali are strictly guided by them and they practically follow these principles but not without challenges in some areas.

Standard Operating Procedure for MINUSMA Detention

Detention is a major aspect of IHL as the observance of the correct procedure or otherwise, in an armed conflict is a pointer to whether the tenets of the law are adhered to or not. MINUSMA, like other UN missions being conscious of this fact has a standard operating procedure (SOP) relating to detention which is regularly reviewed.³⁰ It is culled from the overall UN SOP on detention.³¹ The SOP makes elaborate provisions to ensure that detentions in the Mission are done in line with the best international practice and in line with IHL. It has its guiding principles which to ensure that the provisions are well understood. The SOP defines detention thus: “Any person unilaterally restricted by MINUSMA, against their will, in their freedom of movement, shall be deemed ‘detained’, regardless of the duration of the said detention.”³² This principle could look strange to some observers because even five minutes of restraining an individual from his freedom of movement by MINUSMA is termed detention. Detention is also described as a form of use of force, which is only permitted in circumstances where the use of force is authorized by MINUSMA’s mandate, Rules of engagement or UN Police’ Directives on the Use of Force.³³

The principles for detention and the rules are not applicable to the military peacekeepers alone but equally regulate the UN Police. This is made to ensure that all the branches of the mission that have a duty to detain, do it in line with the rules. The release of such a detainee or their hand over to the relevant Malian authorities must be undertaken as soon as possible, within 48 hours and not more than 72 hours³⁴, now increased to 96 hours by the new SOP released by UN HQ. MINUSMA however ensures that it complies with the rules and regulations in order not to be faulted as not complying with IHL. The SOP prohibits discrimination of any and all forms (including based on sex, race, religion, political views, origin etc)³⁵ The hand over is also clearly regulated to ensure that suspects are not handed over to wrong persons. To this extent, MINUSMA may only hand over detainees (including foreigners and refugees) to relevant Malian authorities, ie Police Nationale and Gendarmerie.³⁶ There have been occasions in Mali where detainees were handed over using this method, like the handing over of some suspects to the Gendarmerie National on 18 January 2018 at Bamako by MINUSMA. The

²⁹ Ibid.

³⁰ The MINUSMA Standard Operating Procedure on detention Ref 2015/4 dated 3 May 2015.

³¹ Standard Operating Procedure. The Handling of Detention in United Nations Peacekeeping Operations and Special Political Missions effective from 1 January 2021.

³² The current MINUSMA Standard Operating Procedure on detention, Ibid.p.2.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.3.

³⁶ Ibid.

detention of minors is viewed with all seriousness in MINUSMA. Sometimes, an aircraft is detailed from Bamako to the region just to carry suspects especially when minors are involved, in order to meet up the 48 hours deadline. This researcher experienced where three suspects were arrested in Aguelhok, inclusive of one minor and they were brought to Bamako within 48 hours. They were all eventually released after series of interviews and it was discovered that they were not involved in the planting of the improvised explosive device that killed five peacekeepers in Aguelhok on 19 May 2016. Some staff of National Child and Family Protection Directorate were at hand to receive the minor at Bamako Airport on 21 May 2016. There are series of forms to be filled by the troops handing over, the local authorities taking over and also the detainee at every stage. This is to ensure that the arrest, detention and health of the detainee are well tracked until hand over or release. This is to ensure that someone is responsible for the process at any particular time. The entire application of IHL in MINUSMA is not perfect and therefore has challenges.

Challenges of the Application of International Humanitarian Law by MINUSMA

The application of IHL by MINUSMA just like every other human endeavour is not perfect. It has challenges that militate against the realization of the full objectives. Some of the challenges which are also the findings of the paper include the following: there is no reciprocal application of IHL in the mission area by some non-state armed groups, no resources provided for detention of arrested persons, and weak judicial system on the part of the host state. Others are that of different legal jurisdictions of MINUSMA troops and the delay in the investigation of breach of IHL by MINUSMA troops.

No Reciprocal Application of IHL by Some Non-State Armed Groups

The UN troops are regularly monitored to ensure that they strictly comply with the tenets of IHL but some non-state armed groups like the Ansar Eddine and Al-Mourabitoun do not bother about IHL. The UN troops are usually discouraged when they do everything possible to ensure that civilians are protected and that no non-military targets are attacked while some of these armed groups attack and kill civilians without hesitation. They also use indirect unobserved fire as their regular means of attack. The troops frequently asked the Force Legal Adviser why they should continue to comply with the tenets of IHL while some armed groups do not and even end up attacking UN personnel and facilities, an action which should be a war crime and nothing seemed to be happening to them. It was not easy to convince them that the standards are not the same and that UN troops can never degenerate to the level of the non-armed groups that attack civilians and persons *hors de combat* indiscriminately.

Lack of Resources to Cater for Detention of Suspects

The UN does not have detention facilities in its missions, MINUSMA inclusive. There is legal provisions on how to treat detainees after arrest and how to transfer them to local authorities or release them after a maximum of 96 hours but there is no detention facility provided except the detention facilities that may be integral to contingents and not meant to keep arrested criminals who are not members of the particular contingents. There is also no money provided for the feeding of any detainee arrested in a UN mission. The time provided for hand over or release of arrested suspects is also short considering the terrain of Mali. Without a detention facility,

the security of the detainee becomes a problem even for the troops that arrested such a suspect. Sometimes, the arrested suspects may have genuinely been involved in planting an improvised explosive device that killed civilians or UN troops but the rule on hand over or release must be strictly followed. During the hand over of some suspects to the Malian local authorities on 21 May 2016, the issue of lack of resources was raised by the arresting unit.

Weak Judicial System on the Part of the Host State

The judicial system of Mali is weak due to coups, counter coups and endemic armed conflict which have persisted for quite some time in the country. There have been situations where suspects of killing of civilians were arrested by UN troops and handed over to the local authorities in line with the provisions of the SOP on detention and they got released almost immediately after hand over. This situation was reported twice by Senegalese Contingent stationed in Gao Mali in January and April 2017. They eventually return to such armed attacks against civilians in contravention of the tenets of IHL. It discourages the UN troops who are equally exposed to the danger of being attacked by the same released suspects. The UN and Malian Government can also do more to strengthen the judicial system of Mali to make it able to perform its duties creditably well, in order to boost the observance of the tenets of IHL by all parties to the Malian conflict noting that UN will leave the country one day for them to take charge of their destiny.

Different Legal Jurisdictions of MINUSMA Troops

MINUSMA troops are over 10,000 from 50 countries.³⁷ They are from different legal jurisdictions and this has an effect on their interpretation of UN rules and regulations, including IHL. The compliance level with the tenets of IHL by the contingents are not the same. While some of the countries are very well trained on IHL even before coming to the mission and apply same, some other contingents find it difficult to subject themselves to IHL and other human rights provisions.³⁸ This gives the Force Legal Adviser of the Mission a lot of problems to get such troops to apply IHL in their operations. This researcher's interaction with some of the troops in the field indicated that some of them believe that they are in Mali for combat and nothing else.

Delay in the Investigation of Breach of IHL by MINUSMA Troops

Investigation in UN system is usually slow. Breach of the tenets of IHL by a peacekeeper is a misconduct that is usually investigated at different levels. Depending on the exact misconduct and the contract of employment of the peacekeeper who breached the rules, such a breach is investigated. If the breach was by a member of a national contingent, the troop contributing country investigates and sanctions such a peacekeeper. The UN also investigates and sanctions in some instances. The challenge is that most times, the investigation takes so long that the expected impact the sanction is expected to make is not achieved. In some instances, such a peacekeeper may have even left the mission before the conclusion of the investigation which does not achieve the required objective.

³⁷www.unmission.minusma.org accessed on 2 June 2018.

³⁸ On 26 May 2016, troops of a contingent killed a civilian and arrested three others in what appeared to be a retaliatory act against the killing of five of their colleagues at Aguelhok, in northern Mali.

CONCLUSION

This paper analysed the way MINUSMA applies IHL. In doing this, the paper first elaborated on the standard set by IHL itself and the Secretary General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law. These standards which include humane treatment of civilians and persons *hors de combat* (out of combat) and ensuring that detained persons are accorded their rights are made compulsory for peacekeepers. The paper equally identified the means through which the mission applied IHL. These include elaborate provisions in the mandate of the mission, rules of engagement and the standard operating procedure on detention. These means by which the mission applies IHL were placed side by side with the standard set by IHL itself and the Secretary General's Bulletin on its observance to evaluate what the mission is doing with a view to finding out if it is doing it right. Though the mission is rated high in the observance of IHL, it not without challenges.

Recommendations

Based on the findings, the paper makes the following recommendations:

Full Implementation of Peace Enforcement by MINUSMA

Considering the leverage the non-state armed groups are having to commit all sorts of atrocities against civilians and peacekeepers especially because they know that the peacekeepers are constrained by mainly attacking in self defence, it is recommended that UN HQ authorizes the mission to go for all out peace enforcement, to find, fix and strike the belligerents. This will save lives of civilians and improve the application of IHL in the mission.

Enhancement of Pre-deployment and In-Mission Training of Peacekeepers on IHL

The actions of some troops in MINUSMA with regard to the compliance with the tenets of IHL indicate that there is need for more training on the subject. The peacekeepers must be made to understand that there is no lowering of the standard of the implementation of IHL for any one and that adequate sanctions will be visited on defaulters. Such enhanced training would help to curb the noticed breaches of the law.

Speedy Investigation of IHL Breaches by Peacekeepers

The UN Headquarters needs to devise other means to conclude investigations of breaches of IHL speedily. Such investigations should be made to be completed within three months at the maximum and the sanctions should be immediately applied after conclusion of investigation where a peacekeeper is indicted. Repatriation of a peacekeeper when those who experienced the breach are still in the mission makes more impact to deter would be offenders than the one done when those in the mission did not experience such breach of the rules.

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