

United Nation's peacekeeping operations as a tool for the application of the right to self-determination

Arenca Trashani

University of Shkodra "Luigj Gurakuqi, Law Faculty

Abstract

The Peacekeeping Operations of the United Nations are an important tool for people in their fight to apply for the right to self-determination. The PKO, even though not mentioned in the UN Charter is the main instrument in the hands of the Security Council and General Assembly of the UN to maintain peace and security all over the world. The PKOs have had their evolution during the decades and at the same time improved their performance. On the other side, the right to self-determination is seen as a process that is assisted in most of the cases by the PKOs, through difficulties of member states political inflations and their impartiality in the process of decision taking.

Keywords: Peacekeeping operations, right to self-determination, United Nations, Security Council, human rights.

1 Introduction

The United Nations (UN) was and continues to be the most prominent international organization created to protect security and peace all over the world. For the first time in the history of international law, the general prohibition of the use of force is foreseen in the UN Charter¹.

The use of force stated in Article 2(4) of the Charter comes with two exceptions: the right to self-defense as stated in Article 51 and Security Council (SC) authorization. The latter could be the authorization of states to use force under Chapter VII, or of regional organizations under Chapter VIII. The focus of this article will be on the use of force in organs established by the SC, namely the Peacekeeping Operations (PKO). The UN Charter does not mention the PKO in it, even though the former Secretary General of the UN, Boutros Ghali, stated that PKOs can rightly be called an invention of the UN². They arose in the absence of the contribution of armed forces and facilities to the UN as detailed in article 43³. It is never easy to intervene even in case of humanitarian issues, but in front of human rights violations, humanitarian crises, and violations of the right of people to self-determination this becomes a duty for the international community to act. But at the same time we must take into view that in the absence of any formal hierarchy in this system, the doctrine of equality of states has been formed – states that are capable of forming rights and obligations in international law through their practice⁴.

¹ Article 2/4 of the UN Charter states: " All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations" Available at: <https://www.un.org/en/about-us/un-charter/full-text>.

² Secretary General, "An Agenda for Peace", UN DOC A/47/277, para 46.

³ Shaw M., "International Law", 6th ed, Cambridge University Press, 2008, pg 1224.

⁴ Brownlie I & Crawford J, "Brownlie's Principles of International Law", 8th ed, OUP, 2012, page 15.

The UN PKOs are different from one another. Facilitating cease-fire agreements, mediating conflict situations to find solutions, monitoring emergency rules, and non-military aspects including provisions of emergency relief and political reconstruction such as facilitating to restore representative democracy, protect and promote human rights and rule of law are some of the major activities associated with the UN peacekeeping⁵.

The legitimacy of such actions depends not only on what happens during and immediately after the intervention but also on the longer-term follow-up. Those who undertake PKOs have the important obligation to ensure that their actions contribute to a stable and productive outcome. In the other words, PKOs are seen as the early stage of peacebuilding missions. Mostly PKOs are seen as a contribution to the application of the right to self-determination.

In this article, we will analyze how can a PKO help people to apply their right to self-determination. This will be through a general overview of the UN PKO from 1945 stopping only on those examples which have to do with the right of self-determination and trying to find a link between the PKOs and the right of the people to self-determination.

The UN PKOs hold an extremely important role in the development of the right to self-determination because their main task is to help the people of certain territory to apply their legitimate rights individual and collective ones which were the main objective of protection and promotion of these PKOs.

2. First generation of the PKO of the UN with regard to the right to self-determination

The idea of PKOs, for sure, is not a new one, it has emerged since the adoption of the UN Charter. During the drafting process of the Charter, the alien states try to make use of their powers to apply their control over whole states of the third world or their colonies.

PKO was a well-known experience, especially after the Second World War and also before under the system of the League of Nations⁶. Not in all cases do these PKOs have to do with the right of the people to self-determination, but anyway in most of the cases, our right was included as one of the main objectives of a certain PKO.

By definition, an international protectorate is a legal relationship between a "protector" state and a "protected" state or group of states, whereby the latter gives up all or part of its control over foreign affairs while retaining a large measure of independence in internal matters⁷. This new practice of the UN to administrate the territory, created the phenomenon of "internationalized territory", which is the territory "placed under the supervision of international organization or of a group of states"⁸

⁵ Sarjoon a., Yusoff M., "The UNPKOs and Challengines", Academic Journal of Interdisciplinary Studies, Vol 8, No 3, November 2019, pg 203.avaiable: <https://www.richtmann.org/journal/index.php/ajis/article/view/10575/10200>.

⁶ Under the LN system, there are well-known cases of the Saar Territory and that of the Free City of Danzig.

⁷ Stahn C., "International territorial administration in the former Yugoslavia: Origins, developments, and challenges ahead", in *Heidelberg Journal of International Law*, Vol 61, No. 1, 2001, pg 115.

⁸ Hannum H., "Autonomy, sovereignty, and self-determination: The accommodation of conflicting rights",

The Trusteeship System acting under the Chapters XII and XIII of the Charter has created the Trusteeship Council which is suggested to be used as a means of resolving self-determination disputes or dealing with “failed states”. After intervening in these territories the main challenge was how to make the society in conflict a functioning society. The international organization is seen as neutral when compared with the local actors to whom the sovereignty problem relates⁹.

Originally the idea of PKO has its roots in the decolonization period and is introduced in the Charter with the main aim to manage inter-state conflicts. In comparison to the Covenant of the League of Nations, the UN Charter provides for direct territorial administration by the organization¹⁰. The idea of peacekeeping at the beginning was just that of a kind of mediator, where the UN was called just a mediator in a conflict. but after some period the UN began to be faced with the problems of peace-building. “Territorial administration” refers to a formally constituted, locally based structure operating for a particular territorial unit¹¹. UN forces have been using force since the late 1950s in different contexts and constellations and there has been a general acceptance of the institute of peacekeeping in state practice¹². The first two peacekeeping operations deployed by the UN were the UN Truce Supervision Organization (UNTSO) and the UN Military Observer Group in India and Pakistan (UNMOGIP). But the first armed UN force was UNEF, deployed in Suez as a response to the crisis in 1956. Classical PKOs, created based on the UNEF model, have the main function of separating the contending parties, forestalling armed hostilities between them, and maintaining order in a given area¹³. Apart from the case of ONUC which was the PKO in Congo, most of the PKOs followed the traditional model based on: small observer forces, that were sent just to monitor ceasefires and act as negotiators between the conflicting parties. The small number of PKOs was also due to the idea of UNSC members that need to show that these PKOs did not impact their sphere of influence. The definition of the PKO is hardly to be found in the UN instruments but also doctrine. A more general definition can be found in the so-called Capstone Doctrine:

“Peacekeeping is a technique designed to preserve the peace, however fragile, where fighting has been halted, and to assist in a new 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 interstate wars, to incorporate a complex model of many elements – military, police, and civilian – working together to help lay the foundations for sustainable peace¹⁴.”

1996, pg. 17.

⁹ Wilde R., *“From Danzig to East Timor and beyond: The role of international territorial administration”*, in *AJIL*, Vol. 95, 2001, pg. 587.

¹⁰ Article 81 of the UN Charter states: *“The Trusteeship Agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority is hereinafter called the administering authority, maybe one or more states or the Organization itself”*.

¹¹ Wilde R., *“From Danzig to East Timor and beyond: The role of international territorial administration”*, in *AJIL*, Vol. 95, 2001, pg. 585.

¹² Gray Christine, *“International Law and the Use of Force”*, 3rd ed, OUP 2008.

¹³ Cassese A. *“International Law”*, 2nd ed, OUP, 2005, pg. 344.

¹⁴ DKPO, *“United Nations PKOs – Principles, and Guidelines”*, (Capstone Doctrine), 2008, pg 18.

The territorial unit which is being internationally administered, for sure, its territory's international status is in question. The UN's efforts in nation-building provide evidence that the administration of territories has become an important and complex peacekeeping and peace-enforcement operations¹⁵. From the point of view of the right to self-determination in these cases of international territorial administration in some cases international community was for an application of "internal" self-determination and in some other cases, it was for the application of the "external" self-determination. For sure, the application of internal self-determination is much easier for the UN and especially for the member states. International Territorial Administration is used to facilitate the future adoption of a certain territorial agenda; to bring a territorial settlement into being, or to support the continuance of a territorial settlement once adopted¹⁶.

3. Second generation of PKOs of the UN with regard to the right to self-determination

After the use of the PKOs in the period of decolonization, the trust form is placed in a new form taking new settings namely the maintenance of peace and security. Every action taken by the trusteeship should be for the benefit of the local population and the powers taken by the trusteeship are always limited only to what is necessary for the benefit of the administered population. This goes beyond a humanitarian intervention, which is just the beginning of the process of peacemaking and peacebuilding. The administering authority possesses therefore sufficient personality to exercise jurisdiction and control over the administering territory but it is not a sovereign who may dispose freely over the territory. Independently from the fact of how long it may take place in a territory, the international administration is always temporarily limited. The holders of the right to internal self-determination are 'groups of any distinction'¹⁷. Since internal self-determination is a collective right, it aims to protect groups that have any distinction in society.

After the period of decolonization, the PKOs wanted to have more space to decide among the new mandates. This is the second generation of PKOs where we have a dissolution of states beyond the decolonization context and where, again, the right to self-determination was called into duty. Many of these PKOs were deployed as the mere fact of being politically negotiated. Electoral assistance, human rights monitoring, resettlement of refugees, police training, protection of humanitarian relief efforts, and disarmament and demobilization of armed forces were the major activities of the PKOs of the second generation. Examples are United Nations Observer Mission in El Salvador (UNOSAL)¹⁸ and United Nations Mission in Timor-Leste (UNMIT)¹⁹.

¹⁵ Stahn C., "International territorial administration in the former Yugoslavia: Origins, developments and challenges ahead", in *Heidelberg Journal of International Law*, Vol 61, No. 1, 2001, pg. 109.

¹⁶ Wilde R., "From Danzig to East Timor and beyond: The role of international territorial administration", in *AJIL*, Vol. 95, 2001, pg. 593.

¹⁷ Demir, E., The Right to Internal Self-Determination in Peacebuilding Processes: A Reinterpretation of the Concept of Local Ownership from a Legal Perspective. *The Age of Human Rights Journal*, (8), 2017, pg 41. <https://doi.org/10.17561/tahrj.n8.2>.

¹⁸ UNSC Resolution 693/1991.

¹⁹ UNSC Resolution 1704/2006. Available at: [file:///Users/crs/Downloads/S_RES_1704\(2006\)-EN](file:///Users/crs/Downloads/S_RES_1704(2006)-EN).

Since the 1990s, the UN has been faced with some new phenomena situation as a “failed state”, the situation of a “dissolute state”, or the situation of “stateless”. The international territorial administrations especially in the process of the dissolution of Yugoslavia and after are used to promote a multiethnic social and political culture. This is used also because the local institutions are not able or are not willing or just simply insufficiently rooted in a “democratic” tradition to face a certain political agenda, which will promote and protect individual and collective human rights. The UN has been called upon to deal intrinsically complex and difficult tasks, involving the exercise of governmental authority and police power in states where years of war have destroyed large parts of the country, of civil society, and the political institutions of the country²⁰.

With the end of the Cold War, the SC begin to work more actively to promote the peaceful resolution of regional conflicts, which took place and were the vast majority of wars, which leads to the so-called “multi-dimensional “ PKOs. In contrast to the traditional UN PKOs, multi-dimensional UN PKOs usually plays a direct role in political efforts to resolve the conflict and are often mandated by the SC to provide good offices or promote national political dialogue and reconciliation²¹

The PKOs have not been seen any longer just as an intervention in ending the conflict but as an area of intervening under Chapter VII of the UN Charter, which combines the elements of peacemaking and peacebuilding trying to transform all these societies in the conflict into a functioning society. A PKO is appointed by the UN Security Council with the main aim to make functioning the society in a certain territory and this international administration is working in this country up to the moment when the local population is ready to handle these tasks by itself. The UN PKO has helped to increase the duration of post-conflict peace. The impact of a PKO is likely to last for a long time, reduce the lethality of ongoing conflict, increase the channels of conflict ending, and prevent contagion to neighboring countries²²

In international law, there are a lot of classifications for the PKOs, but the most well-known were those who have dealt with the right to self-determination. Together with the other characteristics of PKOs such as consent of the territorial state and impartiality, PKOs are seen also as an important tool in the application of the right to self-determination.

The practice of administering territories by organs of the international community seems to have reached a new dimension²³. This is because the power of the authorized international administration body to adopt legal acts is directed and has an immediate effect on the local population. We have examples of PKOs that have been able to adopt legal acts to take legislative power which goes far beyond the traditional PKOs.

pdf.

²⁰ Stahn C., “*International territorial administration in the former Yugoslavia: Origins, developments and challenges ahead*”, in *Heidelberg Journal of International Law*, Vol 61, No. 1, 2001, pg. 120.

²¹ DKPO, “*United Nations PKOs – Principles, and Guidelines*”, (Capstone Doctrine), 2008, pg 24.

²² Hegre H. Hultman, L & Nygard, H.M, “*Evaluating the Conflict-Reducing Effect of UN PKOs*”, *The Journal of Politics*, volume 81, number 1, 2018, pg 223.

Published online on November 28, 2018. <http://dx.doi.org/10.1086/700203>.

²³ Stahn C., “*International territorial administration in the former Yugoslavia: Origins, developments and challenges ahead*”, in *Heidelberg Journal of International Law*, Vol 61, No. 1, 2001, pg. 109.

For sure, the first administrative policy enabled by international territorial administration is the promotion of a certain territorial status, whether free city/territory status (Danzig and Trieste), unified city/district status (Mostar and Brcko), statehood (Namibia and Bosnia & Herzegovina), substate autonomy (Kosova)²⁴. In this contexts international territorial administration is concerned, during all its mandate to administer a territory, about its future status. In this list of different approaches to the future status, the Kosova case presented the most difficult one, seeing that UNMIK²⁵ performed state powers (legislative, executive, and administration of the judicial system), and at the same time it had to prepare both the parties, or at least have tried to do so, to enter into negotiations with each other, and this led to the Declaration of Independence of the Republic of Kosova in 2008.

The international administration acting in a certain territory for sure hold on consultation with the local population this usually takes the form of elections or referendums. Local participation is one of the main objectives of every international administration. With this, we understand that societies in a post-conflict period can always depend on an international administration which by its side account for the local participation in the decision-making. Where the consultation in question is an “act of self-determination”, it reflects an international commitment to the realization of some form of self-determination for the population involved²⁶.

There are many actors and interests to consider before the UN can decide whether it will engage in a self-determination claim. Normally the idea of helping a group of ‘people’ to apply their right to self-determination, sometimes, is difficult due to the large consent from the member states and especially those permanent and non-permanent members of the SC. That’s why we see the application of the right to self-determination as a process that evaluates, sometimes thanks to the PKOs.

UN has always supported internal self-determination. It has never challenged the view that those groups in a society that have a distinction of any kind are entitled to the right to internal self-determination²⁷. Autonomy as the extreme form of internal self-determination is supported by the UN, but when it comes to external self-determination the denial is obvious even with resolutions²⁸.

The UN SC resolution can not deny the protection of the right to self-determination since this right is protected by the UN Charter. This is because even the SC power is limited by the international law of human rights or by humanitarian international law²⁹. But in practice is very difficult to decide if an intervention is done in the name of the right to self-determination because humanitarian assistance sometimes is much more important at the moment of deciding on a PKO than the application of the right to self-determination.

²⁴ Wilde R., “From Danzig to East Timor and beyond: The role of international territorial administration”, in *AJIL*, Vol. 95, 2001, pg. 597.

²⁵ UNSC Resolution 1244/1999.

²⁶ Wilde R., “From Danzig to East Timor and beyond: The role of international territorial administration”, in *AJIL*, Vol. 95, 2001, pg. 598.

²⁷ Cassese A., “Self-Determination of Peoples: A Legal Reappraisal”, Cambridge University Press, 1995, pg107.

²⁸ See UN SCR 169 denies the right to external self-determination of the Congo and instead promotes territorial integrity and the political independence of the Republic of the Congo.

²⁹ See UN SCR 1456.

Since external self-determination implies changes in state borders, states do not want to complicate matters by favoring external self-determination. That's why internal self-determination has gained support from states. Instead, whilst the right to internal self-determination is the first resort, a gross violation of it might pave the way for external self-determination.

Conclusions

According to the UN Department of Peace Keeping Operations, since 1948 there were 71 PKOs initiated by the UN and 12 of them are underway.³⁰

Political interests among the Member States involved in the PKOs influenced the evolution of the whole process of maintaining peace and security, as the main goal of the UN. An interesting aspect of these debates is the extent to which emerging countries challenge the existing principles and practices and what impact this has on the structure of the system-multipolarity, interdependence, etc, - as well as on the primacy or positions of the US and the EU³¹.

During the second generation or phase, the UN PKOs wanted a great expansion among the new mandates. During these mandates, there was lacking the explicit consent from the previous mandates and most of them have a new level of involvement in the countries where they were serving.

PKO has become a kind of UN tool to manage crises all over the world, with the main goal of achieving peace and security. Peacekeeping can therefore be said to represent the conceptual modification of the UN collective security system³²

Application of the right to self-determination is a process that does not end with just a recognition of a new state or the internal application of the right to self-determination. This process includes the improvement of all the necessary tools or being capable of implementing proper rights. and at this point, PKOs can assist properly even though the UN tries always stays apart as much as it can from the rights to self-determination claims. This is also due to political issues.

References

- 1) UN Charter. Available at: <https://www.un.org/en/about-us/un-charter/full-text>
- 2) UN SCR 169.
- 3) UNSC Resolution 693/1991.
- 4) UNSC Resolution 1244/1999.
- 5) UNSC Resolution 1704/2006.
available at: [file:///Users/crs/Downloads/S_RES_1704\(2006\)-EN.pdf](file:///Users/crs/Downloads/S_RES_1704(2006)-EN.pdf).
- 6) UN SCR 1456.
- 7) Secretary General, "An Agenda for Peace", UN DOC A/47/277. Available at: <http://www.un-documents.net/a47-277.htm>.
- 8) DKPO, "United Nations PKOs – Principles, and Guidelines", (Capstone Doctrine), 2008. Available at: https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf.

³⁰ see: <https://peacekeeping.un.org/en/where-we-operate>.

³¹ Tardy Thierry, "UN Peacekeeping: The 21st Century Challenges", The 17th Symposium (FY 2014), November 5, 2014, "New Trends in Peacekeeping: In Search for a New Direction", pg 63. Available at: <http://www.nids.mod.go.jp/english/event/symposium/pdf/2014/E-02.pdf>.

³² Sima Bruno (eds), "The Charter of the United Nations: A Commentary", 3rd eds, OUP, 2012, pg 648

- 9) Brownlie I & Crawford J, "*Brownlie's Principles of International Law*", 8th ed, OUP, 2012.
- 10) Cassese A. "*International Law*", 2nd ed, OUP, 2005.
- 11) Cassese A., "*Self-Determination of Peoples: A Legal Reappraisal*", Cambridge University Press, 1995.
- 12) Demir, E., The Right to Internal Self-Determination in Peacebuilding Processes: A Reinterpretation of the Concept of Local Ownership from a Legal Perspective. *The Age of Human Rights Journal*, (8), 2017. <https://doi.org/10.17561/tahrj.n8.2>.
- 13) Gray Christine, "*International Law and the Use of Force*", 3rd ed, OUP 2008
- 14) Hannum H., "*Autonomy, sovereignty, and self-determination: The accommodation of conflicting rights*", 1996.
- 15) Hegre H. Hultman, L & Nygard, H.M, "*Evaluating the Conflict-Reducing Effect of UN PKOs*", *The Journal of Politics*, volume 81, number 1, 2018. Published online on November 28, 2018. <http://dx.doi.org/10.1086/700203>
- 16) Sarjoon a., Yusoff M., "*The UNPKOs and Challenges*", *Academic Journal of Interdisciplinary Studies*, Vol 8, No 3, November 2019
- 17) Sima Bruno (eds), "*The Charter of the United Nations: A Commentary*", 3rd eds, OUP, 2012.
- 18) Shaw M., "*International Law*", 6th ed, Cambridge University Press, 2008.
- 19) Stahn C., "*International territorial administration in the former Yugoslavia: Origins, developments and challenges ahead*", in *Heidelberg Journal of International Law*, Vol 61, No. 1, 2001.
- 20) Wilde R., "*From Danzig to East Timor and beyond: The role of international territorial administration*", in *AJIL*, Vol. 95, 2001.
- 21) Tardy Thierry, "*UN Peacekeeping: The 21st Century Challenges*", The 17th Symposium (FY 2014), November 5, 2014, "New Trends in Peacekeeping: In Search for a New Direction". available at: <http://www.nids.mod.go.jp/english/event/symposium/pdf/2014/E-02.pdf>.