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Accountability for Crimes against Peacekeepers

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Cover Photo: UN vehicle damaged by an attack in Aguelhok, Mali, that claimed the lives of ten Chadian peacekeepers and injured at least twenty-six, January 22, 2019. UN Photo/Marco Dormino.

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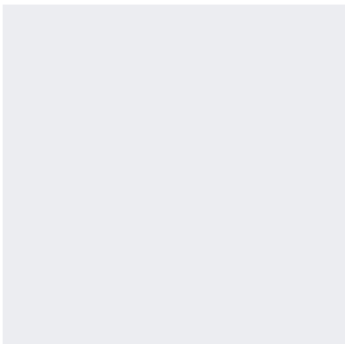
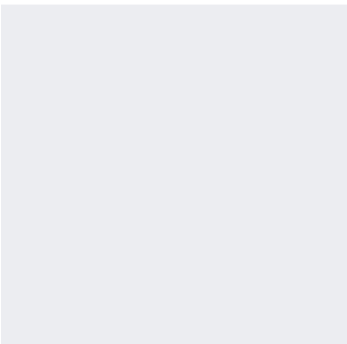
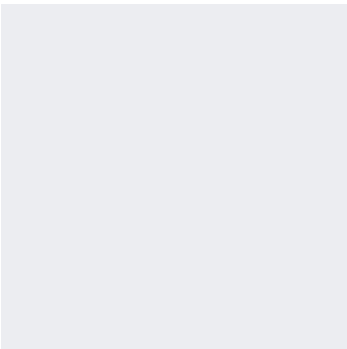
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ABBREVIATIONS

A4P+	Action for Peacekeeping Plus
C-34	Special Committee on Peacekeeping Operations
CAR	Central African Republic
DPO	Department of Peace Operations
DRC	Democratic Republic of the Congo
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IED	Improvised explosive device
IHL	International humanitarian law
MINUSCA	UN Multidimensional Integrated Stabilization Mission in the Central African Republic
MINUSMA	UN Multidimensional Integrated Stabilization Mission in Mali
MONUSCO	UN Organization Stabilization Mission in the Democratic Republic of the Congo
OROLSI	Office of Rule of Law and Security Institutions
POC	Protection of civilians
SOFA	Status of forces agreement
SOMA	Status of mission agreement
SOP	Standard operating procedure
SRSG	Special representative of the secretary-general
T/PCC	Troop- and police-contributing country

Executive Summary

Since 1948, more than 1,000 UN personnel have been killed by malicious acts while serving in UN peacekeeping operations. Since 2013, the vast majority of these fatalities have taken place in the Central African Republic (CAR), Mali, and the Democratic Republic of the Congo (DRC). To address this trend, the UN Secretariat and member states have increasingly focused on strengthening the policy framework on accountability to peacekeepers, as reflected in the inclusion of this issue under the Action for Peacekeeping Plus priorities. They have also increasingly focused specifically on how to pursue justice for peacekeepers who have been victims of attacks. In 2021, the Security Council passed its first stand-alone resolution on ending impunity for attacks against peacekeepers, and in 2022, member states formed the Group of Friends to Promote Accountability for Crimes against Peacekeepers. The UN Secretariat is expected to adopt a two-year strategic plan to address crimes against peacekeepers in 2023.

The growing prioritization of accountability for crimes against peacekeepers is reflected in several recent institutional changes. The adoption of the 2020 standard operating procedures (SOPs) on the prevention, investigation, and prosecution of serious crimes against peacekeepers has triggered the creation of a workstream on this topic. Further, the Working Group on Accountability for Serious Crimes against Peacekeepers was established to gather all relevant UN entities and some missions to share good practices and exchange information on prosecution of crimes against peacekeepers. Some peacekeeping missions have also established internal working groups with relevant mission components, and mission leadership has increasingly engaged with host-state governments to promote accountability for crimes against peacekeepers.

Altogether, these efforts have yielded some results, as the number of prosecutions and convictions are incrementally growing. Despite this progress, challenges remain. At the strategic level, these include the lack of consistency in the definition of “crimes against peacekeepers,” the risk of UN missions supporting host-state institutions that violate the rights of the accused, and the difficulty of advancing accountability when consent for the UN’s presence is weak. In addition, it is challenging for

missions to pursue a holistic approach that includes a focus on preventing attacks and on pursuing accountability not only *to* but also *of* peacekeepers.

At the operational level, challenges include the lack of capacity in many host states’ police, judiciary, and corrections system and the difficulty of accessing crime scenes. Finally, at the institutional level, challenges include the lack of mission-specific SOPs in most missions, the lack of full-time focal points on this issue, and the political complications of engagement between the countries whose peacekeepers have been victims of attacks and the host state. The progress that has been made has also largely been limited to the three priority missions (in CAR, Mali, and the DRC).

In light of these challenges, the following recommendations are offered to help the UN Secretariat, peacekeeping operations, the Security Council, and other member states accelerate the investigation and prosecution of crimes against peacekeepers in a consistent and balanced manner.

- **The UN Secretariat** should maintain a comprehensive approach to accountability, develop a common definition of crimes against peacekeepers, ensure that host states adhere to human rights standards when engaging with those accused of crimes against peacekeepers, and improve internal and external coordination in this area.
- **UN missions** should pursue a comprehensive approach to accountability, continue to support host-state investigations and prosecutions of those accused of crimes against peacekeepers, advocate for host-state authorities to pursue accountability, and ensure sustained documentation of and follow-up on cases.
- **The Security Council** should prioritize peacekeeping mandates to build the host state’s capacity to pursue accountability and encourage legal clarity on the nature of crimes against peacekeepers.
- **UN member states** should use the group of friends to offer new ideas on ways to promote accountability and use the Special Committee on Peacekeeping Operations to discuss ways to improve coordination in this area.

Introduction

Since 1948, 1,115 UN personnel, including 100 civilians, have been killed by malicious acts while serving in UN peacekeeping operations, and more than 3,000 have been injured.¹ These men and women came from many different countries, including the largest troop-contributing countries (TCCs) such as India, Pakistan, Ethiopia, and Bangladesh. Due to spikes in the number of hostile acts against peacekeepers since 2013, the UN Secretariat and some member states have taken steps to address this concern. Since 2013, the vast majority of attacks and fatalities resulting from malicious acts have taken place in the contexts of the UN peacekeeping missions in the Central African Republic (MINUSCA), Mali (MINUSMA), and the Democratic Republic of the Congo (MONUSCO). MINUSMA is by far the most dangerous mission for peacekeepers, with 169 fatalities since 2013.²

To address this trend, the UN has focused on strengthening the policy framework on accountability to peacekeepers, including by fighting impunity for crimes against peacekeepers, enhancing their safety and security, and addressing the physical and mental well-being of UN personnel.³ In the past five years, the UN Secretariat and some states involved in peacekeeping operations (host states, contributing countries, and some UN Security Council members) have undertaken concerted efforts to increase accountability for crimes against peacekeepers. As a result, there have been more than seventy convictions for crimes against peacekeepers at the host-state level. Still, prosecution of crimes against peacekeepers

remains low, and this issue has not received sufficient political attention to date.⁴

Focusing on crimes against peacekeepers must not distract from efforts to increase accountability for crimes by peacekeepers, including misconduct such as sexual exploitation and abuse. Such accountability is particularly important for upholding UN principles and values and maintaining credibility at a time when UN peacekeeping operations face a crisis of consent in some contexts, including in the Democratic Republic of the Congo (DRC) and Mali.⁵ Accountability to and accountability of peacekeepers ought to be seen as two sides of the same coin and are treated as such under the Action for Peacekeeping Plus (A4P+) priorities.⁶

This paper focuses on advancing justice for crimes against peacekeepers as one aspect of the overall effort to enhance accountability to peacekeepers.⁷ It takes stock of ongoing progress and challenges related to the investigation and prosecution of crimes against peacekeepers by national authorities with support from the UN Secretariat.⁸ The paper focuses on the three priority missions identified by the UN Secretariat (MINUSCA, MINUSMA, and MONUSCO), which were chosen as priority missions because they have faced the highest number of attacks. The time frame covered in the paper also reflects that of the Secretariat, which has chosen to focus on crimes committed in or after 2013.

The paper starts by providing an overview of the role of UN peacekeeping operations in supporting host states in investigating and prosecuting crimes against peacekeepers and the UN's growing focus

1 This comes to an average of thirty-three fatalities resulting from malicious acts per year between 2013 and 2022. UN statistics categorize the number of fatalities according to four incident types: accident, illness, malicious acts, and self-inflicted. See: UN Operations and Crisis Centre (UNOCC), "NOTICAS Peacekeeper Fatality Dashboard," available at <https://app.powerbi.com/view?r=eyJrIjoiMjc3NmU3NTNTQyZC00ZTI0LTlmNzMtNDFiNmM3NzliZmRlIiwidCI6IjBmOWUzNWRLTU0NGYtNGY2MC1iZGJlIiwiaWYtQxNmU2ZGM3MCIslmMiOiJh9&pageName=ReportSection>; UN Peacekeeping, "Fatalities," available at <https://peacekeeping.un.org/en/fatalities>. On the number of peacekeepers injured, see: Stéphane Jean, "Accountability for Crimes against United Nations Peacekeepers," *Journal of the United Service Institution of India* (forthcoming).

2 Since 2013, there have been 172 fatalities resulting from malicious acts in MINUSMA, 51 in MINUSCA, and 51 in MONUSCO (as of February 2023). See: UNOCC, "NOTICAS Peacekeeper Fatality Dashboard."

3 United Nations, "A4P+ Priorities for 2021-2023," March 2021, available at https://peacekeeping.un.org/sites/default/files/a4p_background_paper.pdf.

4 Interview with Stéphane Jean, UN Department of Peace Operations (DPO), New York, May 18, 2022, available at <https://www.youtube.com/watch?v=QRMq60-lPgE>.

5 Anjali Dayal, "A Crisis of Consent in UN Peace Operations," *IPI Global Observatory*, August 2, 2022.

6 A4P+ focuses both on accountability to peacekeepers and accountability of peacekeepers as priority areas.

7 Jean, "Accountability for Crimes against United Nations Peacekeepers."

8 In some cases, international, hybrid, and other national courts could have jurisdiction over these crimes. However, few such cases have emerged, and the UN Secretariat has called for the prioritization of rendering justice at the host-state level. This is discussed later in the report.

on advancing and prioritizing accountability for these crimes. It then examines case studies of criminal cases supported by MINUSCA, MINUSMA, and MONUSCO in their respective host states. Next, it provides a cross-cutting analysis of challenges to advancing accountability for crimes against peacekeepers at the strategic, operational, and institutional levels. The paper concludes with concrete policy recommendations for accelerating the investigation and prosecution of crimes against peacekeepers in a consistent and balanced manner.

The Role of UN Peacekeeping Operations in Supporting Investigation and Prosecution

The national authorities of the host state bear the primary responsibility for investigating and prosecuting crimes against UN peacekeeping operations and personnel in their country. This principle is established in the status of forces agreements (SOFA) or status of mission agreements (SOMA) concluded between host-state governments and the UN Secretariat.⁹ Based on those agreements, host states have an obligation to “ensure the prosecution of persons subject to [their] criminal jurisdiction who are accused of acts in relation to the United Nations peacekeeping operation or its members,” which is

a provision of the Convention on the Safety of United Nations and Associated Personnel.¹⁰ In some cases, other international, hybrid, and national courts could have jurisdiction over attacks on peacekeepers.¹¹ However, few such cases have emerged, and the UN Secretariat has called for prioritizing the rendering of justice at the host-state level.¹²

UN missions cannot act as a substitute for national criminal justice processes and do not have the authority to punish crimes committed against their peacekeepers. However, UN missions can support national authorities in doing so.¹³ According to the Standard Operating Procedures (SOPs) on Prevention, Investigation and Prosecution of Serious Crimes Committed against United Nations Personnel in Peacekeeping Operations and Special Political Missions, adopted in 2020, once a crime against UN personnel has been reported, the mission should refer it to the national authorities. It is then the responsibility of the host state to collect, handle, and secure evidence related to the crime. According to the SOPs, the mission may collect evidence in close cooperation with the host state only when the host state is unable or unwilling to do so on its own or upon the request of the host state. For MINUSCA, this cooperation is authorized through “urgent temporary measures,” which endow the mission with the tools to protect civilians, including by pursuing the perpetrators of attacks against civilians, and for MINUSMA and MONUSCO, it is authorized by the SOFA between

9 See: UN General Assembly, *Model Status-of-Forces Agreement for Peace-keeping Operations: Report of the Secretary General*, UN Doc. A/45/594, October 9, 1990, para. 45.

10 UN Department of Operational Support, Department of Peace Operations, Department of Political and Peacebuilding Affairs, and Office of the High Commissioner for Human Rights, *Standard Operating Procedures: Prevention, Investigation and Prosecution of Serious Crimes Committed against UN Personnel in Peacekeeping Operations and Special Political Missions*, UN Doc. Ref. DPO 2020.18, December 2020. See also: UN General Assembly, *Prosecution of Crimes against Deployed Peacekeepers: Report of the Secretary-General*, UN Doc. A/65/700, January 28, 2011, para. 3; and UN General Assembly, *Comprehensive Report on All Processes Involved in the Investigation and Prosecution of Crimes Committed against Deployed United Nations Peacekeepers: Report of the Secretary-General*, UN Doc. A/66/598, December 9, 2011.

11 States whose nationals are peacekeepers who have been victims of crimes could have jurisdiction over those crimes in case of extraterritorial jurisdiction pursuant to their national laws over certain crimes committed against their peacekeeping personnel, bilateral arrangements to facilitate cooperation with the host state in the investigation and prosecution of crimes, or an extradition treaty with the host country pursuant to which a person committing a crime against a peacekeeper may be extradited to the peacekeeper's state of nationality for prosecution. At the international level, while state parties to the Rome Statute of the ICC have primary jurisdiction to investigate and prosecute attacks on peacekeepers that constitute war crimes, the ICC may investigate or prosecute such crimes where the state concerned is unwilling or unable to do so, provided that the conditions for the exercise of its jurisdiction are met. Finally, hybrid tribunals may be given the jurisdiction to investigate and prosecute crimes against peacekeepers, which was the case with the Special Court for Sierra Leone. For more on other jurisdictions, see: UN Doc. A/65/700; UN Doc. A/66/598; and “Agreement for and Statute of the Special Court for Sierra Leone,” January 16, 2002, available at <https://ihl-databases.icrc.org/assets/treaties/605-IHL-98-EN.pdf>.

12 See, for example: *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, Special Court for Sierra Leone, Case No. SCSL-04-15-T, March 2, 2009; *Prosecutor v. Théoneste Bagosora, Gratien Kabilig, Aloys Ntabakuze and Anatole Nsengiyumva*, International Criminal Tribunal for Rwanda, Case No. ICTR-98-41-T, December 18, 2008; *Prosecutor v. Théoneste Bagosora and Anatole Nsengiyumva*, International Criminal Tribunal for Rwanda Appeals Chamber, Case No. ICTR-98-41-A, December 14, 2011; *Prosecutor v. Abdallah Banda Abakaer Nourain*, International Criminal Court, Case No. ICC-02/05-03/09, decision on the confirmation of charges, March 7, 2011; *Prosecutor v. Bahr Idriss Abu Garda*, International Criminal Court, Case No. ICC-02/05-02/09, decision on the confirmation of charges, February 8, 2010.

13 See: Stéphane Jean, “Supporting National Justice and Security Institutions: The Role of UN Peace Operations,” *UN Chronicle*, February 23, 2023.

the mission and the host state.¹⁴

Additionally, some UN missions are mandated to provide support to criminal justice institutions, at the request of the host state. Such support may include “a) capacity building of judges, prosecutors and police; b) court security; c) the collection and preservation of evidence; d) victims and witness protection; e) legal aid; forensics; and f) safety and security arrangements for detention facilities,” as well as advisory support, training, financial and material support, or logistical support.¹⁵

The UN Security Council has emphasized the role of host states in ensuring accountability for malicious acts against peacekeepers. In Resolution 2589 (2021), the council urged

Member States hosting or having hosted United Nations peacekeeping operations, to take all appropriate measures, in accordance with their national law, and international law, as applicable, to bring to justice perpetrators of the killing of, and all acts of violence against, United Nations personnel, including, but not limited to, their detention and abduction.

The council has also promoted accountability to peacekeepers in its resolutions mandating missions, both in preambular and in operational paragraphs (see Annex). First, the council has condemned attacks against peacekeepers and called for accountability. Second, it has called for enhancing the safety and security of mission personnel to prevent casualties. Third, it has mandated missions to cooperate with national and international efforts to bring perpetrators to justice, including through the International Criminal Court (ICC). Finally, it has mandated missions to reform and reinforce the capacity of the host state to hold perpetrators accountable, including through support to security sector reform, training for national military and police personnel, and capacity building and technical assistance for the judiciary and corrections system. This mandate is

generally part of a mission’s broader “extension of state authority” mandate and does not always specifically mention crimes against peacekeepers.

The UN’s Focus on Crimes against Peacekeepers: From an Aside to a Priority

The issue of accountability for crimes against peacekeepers has, from the outset, been related to the issue of the safety and security of peacekeepers. It is only recently that it has started to receive attention on its own and become a separate priority.

Evolution of the UN’s Approach to Accountability for Peacekeepers

In 1994, the UN General Assembly adopted the Convention on the Safety of United Nations and Associated Personnel. The convention was aimed at bridging a gap in international law by establishing a legal instrument that prohibits and provides legal remedies for “attacks against forces performing traditional noncombat peacekeeping functions” outside of situations of armed conflict.¹⁶ The convention requires its ninety-five state parties to take all measures to ensure the safety and security of UN and associated personnel, to establish their jurisdiction over a number of criminal offenses related to attacks on these personnel with appropriate penalties, and to establish cooperation and mutual assistance mechanisms for preventing such crimes as well as measures for prosecuting and extraditing alleged offenders with due process and fair treatment.¹⁷ This treaty was the first step to enhancing accountability to UN and associated personnel deployed to UN peacekeeping operations. A decade later, in 2005, the UN General Assembly adopted an optional protocol to the convention that expanded

¹⁴ The urgent temporary measures were first authorized by the UN Security Council in Resolution 2149 (2014) and provide the possibility for MINUSCA to “arrest and detain individuals.” Urgent temporary measures more broadly support MINUSCA’s authority to protect civilians and to pursue the perpetrators of attacks against civilians. See the reference to urgent temporary measures in the latest renewal of MINUSCA’s mandate: UN Security Council Resolution 2659 (November 14, 2022), UN Doc. S/RES/2659, para. 35(d)(f)(iii).

¹⁵ UN Doc. Ref. DPO 2020.18.

¹⁶ See: Evan T. Bloom, “Protecting Peacekeepers: The Convention on the Safety of United Nations and Associated Personnel,” *American Journal of International Law* 89, no. 3 (July 1995).

¹⁷ Convention on the Safety of United Nations and Associated Personnel, Chapter XVIII, December 9, 1994.

its scope beyond UN peacekeeping missions to all operations conducted under UN authority and control, including for the purposes of humanitarian, political, or development assistance and peacebuilding.¹⁸ Since then, the UN General Assembly has focused on accountability for crimes against peacekeepers with annual resolutions on “Safety and Security of Humanitarian Personnel and Protection of United Nations Personnel,” as well as through the Special Committee on Peacekeeping Operations (C-34).¹⁹

However, it was not until the mid-2010s that the Secretariat and the UN Security Council took action to strengthen the policy framework on the safety and security of UN personnel. A turning point was the publication of a 2017 report written by Carlos Alberto dos Santos Cruz on “Improving Security of United Nations Peacekeepers” (the “Cruz report”).²⁰ The report analyzed the causes of fatalities of peacekeepers and provided practical recommendations to address this issue. The report posits that the operational environments in which peacekeepers operate have dramatically changed and that, unless there is a change of mindset, posture, and operational behavior from the UN Secretariat and troop- and police-contributing countries (T/PCCs), peacekeepers will be doomed to face heightened risks and fatalities. The report has been widely commented on—and criticized—as it called for revising the peacekeeping doctrine on the limited use of force.²¹ The report informed the debate on peacekeeping reforms, which eventually led to a number of initiatives from the Secretariat, including the Action for Peacekeeping (A4P)

initiative, launched in March 2018, and the Action Plan to Improve the Security of UN Peacekeepers, launched in January 2019.²²

Both A4P and the Action Plan to Improve the Security of UN Peacekeepers include “ending impunity for crimes against peacekeepers” as part of the goal of enhancing the safety and security of peacekeepers. The action plan influenced negotiations on A4P’s sections on performance and accountability and on safety and security, which were among the eight main areas for improvement and the shared commitments for member states.²³ Safety and security also became one of the seven systemic priorities of A4P+ for 2021–2023 under “accountability to peacekeepers.” Accountability to peacekeepers is thus perceived as necessary to peacekeepers’ safety and security, and vice versa.

Despite the increased visibility of accountability to peacekeepers, there was a sentiment in the UN Department of Peace Operations (DPO) that the question of justice for peacekeepers deserved attention as a separate issue.²⁴ Further, there was a sense among certain T/PCCs that without more accountability for attacks against their uniformed personnel, T/PCCs might withdraw from or be deterred from joining missions operating in non-permissive environments.²⁵ In response, the UN Office of Rule of Law and Security Institutions (OROLSI) successfully advocated for a dedicated UN Security Council resolution on crimes against peacekeepers and promoted the release of dedicated SOPs, a soon-to-be-adopted strategy, and other internal tools to advance accountability for these crimes.²⁶

18 See: Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, December 8, 2005. See also: UN General Assembly, *Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel: Report of the Secretary-General*, UN Doc. A/55/637, November 21, 2000.

19 More recently, the C-34 has focused on accountability for crimes against peacekeepers through the lens of the “safety and security” priority of A4P and has made annual recommendations to prevent, investigate, and prosecute crimes against peacekeepers since the reforms of the C-34 in 2020. On this, see: Lisa Sharland, “Bouncing Back from Rock Bottom: A New Era for the UN Special Committee on Peacekeeping Operations?” *International Peace Institute*, October 2020. See also: UN General Assembly, *Report of the Special Committee on Peacekeeping Operations*, UN Doc. A/74/19, 2020; and UN General Assembly, *Report of the Special Committee on Peacekeeping Operations*, UN Doc. A/75/19, 2021. In 2022, the committee failed to adopt a substantive text. For more on this, see: UN Meetings Coverage and Press Releases, “Special Committee on Peacekeeping Operations Approves Procedural Report on 2022 Session, Lacks Consensus to Pass Substantive Updates,” press release, March 11 2022.

20 UN Peacekeeping, “Improving Security of United Nations Peacekeepers,” December 19, 2017.

21 See: Series on peacekeeping and the Cruz Report, *IPI Global Observatory*, available at <https://theglobalobservatory.org/tag/cruz-report/>; Mona Ali Khalil, “The World Needs Robust Peacekeeping Not Aggressive Peacekeeping,” *ICRC Humanitarian Law & Policy Blog*, May 15, 2018.

22 UN Peacekeeping, “Action Plan to Improve the Security of UN Peacekeepers,” January 15, 2019.

23 Jake Sherman, “Action for Peacekeeping: One Year into the Implementation of the Declaration of Shared Commitments,” *International Peace Institute*, September 2019, p. 7; UN Peacekeeping, “Action for Peacekeeping: Declaration of Shared Commitments on UN Peacekeeping Operations,” March 2018.

24 Interview with UN Secretariat representative, June 2022.

25 For example, Egypt suspended its contingent’s activities in MINUSMA in August 2022, as have other countries such as the United Kingdom and Côte d’Ivoire. See: “Egypt to Withdraw Troops from Mali Peacekeeping Mission: UN,” *Al Jazeera*, July 15, 2022; “UK Withdraws Troops from Mali Early Blaming Political Instability,” *BBC*, November 14, 2022; “Ivory Coast to Withdraw from Mali Peacekeeping Force,” *Reuters*, November 15, 2022; and Jared Oestman, “A Price for Peace: Troop Contributing Countries’ Responses to Peacekeeper Fatalities,” *International Interactions* 47, no. 6 (September 2021).

26 UN Doc. Ref. 2020.18.

The Security Council started integrating explicit calls for ending impunity for attacks against peacekeepers into its peacekeeping mandate resolutions in 2018, but it was not until 2021 that it adopted a stand-alone resolution on accountability for crimes against peacekeepers.²⁷ Resolution 2589 (2021) was proposed by India during its presidency of the council and was adopted unanimously with eighty-four co-sponsors. In this resolution, the Security Council embraced a comprehensive approach to addressing crimes against peacekeepers, focusing both on bringing perpetrators to justice and on preventing attacks on peacekeepers. The resolution calls on host states to investigate, arrest, and prosecute perpetrators, as well as to enhance the safety and security of mission personnel. It also calls on the secretary-general to promote efforts to increase accountability, support capacity building and technical assistance to host states, and report on crimes against peacekeepers in his regular reports on mission contexts. Finally, it requests the Secretariat to establish a comprehensive online database, accessible to key UN and member-state stakeholders, to track all malicious acts against peacekeepers and progress made in the judiciary's response.

More recently, a new member-state initiative came to fruition with the establishment of the Group of Friends to Promote Accountability for Crimes against Peacekeepers. The group of friends was launched in New York in December 2022 with six member states as co-chairs (Bangladesh, Egypt, France, India, Morocco, and Nepal) and over forty participating states. Its objective is to maintain momentum behind Resolution 2589 within the Security Council. The co-chairs also aim to voice member states' concerns to the Security Council and the secretary-general; to advocate for the implementation of the resolution's recommendations, including on building the capacity of host states to investigate and prosecute such crimes; to share good practices, exchange information, and mobilize resources; and to monitor progress on accountability.²⁸

Institutional Changes within the UN Secretariat and Peacekeeping Missions

This evolving approach to accountability for crimes against peacekeepers resulted in several institutional changes within the UN Secretariat and in peacekeeping missions. In December 2020, the Secretariat released the first SOPs on the prevention, investigation, and prosecution of serious crimes against peacekeepers, which are expected to be revised by the end of 2023. The SOPs lay out the role of the UN in supporting competent national authorities in the investigation, prosecution, adjudication, and detention of perpetrators of crimes against peacekeepers. They identify four types of supporting measures: "political advocacy; support to national law enforcement and justice institutions; cooperation with national and international courts, including the International Criminal Court, and relevant accountability mechanisms; and information-sharing, evidence management and monitoring by the field mission concerned."²⁹ These four areas are often reflected in the mandates of missions (see Annex).

In parallel, DPO established a Working Group on Accountability for Serious Crimes against Peacekeepers, composed of focal points from the Department of Operational Support, the Office of the UN High Commissioner for Human Rights (OHCHR), the UN Office of Legal Affairs (OLA), the UN Department of Safety and Security (UNDSS), and the justice and corrections and police sections of three peacekeeping missions (MINUSCA, MINUSMA, and MONUSCO). These focal points meet every two months, which has enabled them to share information and good practices. However, these staff were appointed as focal points on top of their existing responsibilities and roles. Further, while Security Council Resolution 2589 requests that all UN missions designate a focal point, these focal points have only been designated for the three priority missions, which may limit efforts to promote accountability

27 See: UN Security Council, *Statement by the President of the Security Council*, UN Doc. S/PRST/2018/10, May 14, 2018, p. 5; UN Security Council Resolution 2518 (March 30, 2020), UN Doc. S/RES/2518, p. 3; UN Security Council Resolution 2589 (August 18, 2021), UN Doc. S/RES/2589.

28 "UN Launches 'Key' Initiative to Support Accountability for Crimes against Peacekeepers," UN News, December 15, 2022.

29 UN Doc. Ref. DPO 2020.18, p. 3.

on a system-wide basis.³⁰

Finally, DPO Undersecretary-General Jean-Pierre Lacroix is expected to adopt a two-year strategic action plan to address crimes against peacekeepers. This strategy, which is informed by UN Security Council Resolution 2589, A4P and A4P+, and international norms and applicable treaties and conventions, will present the UN Secretariat's priorities and roadmap for addressing crimes against peacekeepers. The strategy is expected to feature six priorities, which are already in the process of being advanced: (1) engaging in political advocacy and sharing information; (2) reinforcing support to host states and understanding the needs of each mission; (3) developing a comprehensive online database; (4) establishing a group of friends; (5) strengthening public information; and (6) reinforcing capacity at headquarters. Almost three decades after the adoption of the Convention on the Safety of United Nations and Associated Personnel, this will mark the first time the UN Secretariat has adopted a dedicated roadmap for addressing crimes against peacekeepers.

At the mission level, some peacekeeping missions have also issued their own SOPs and established

internal working groups with relevant mission components, including the justice and corrections section, UN police, and the force legal adviser.³¹ These working groups are structured differently in each mission. For instance, MINUSMA's working group meets after an incident and when one of the members calls for a meeting, depending on their needs, while MINUSCA's working group meets monthly to discuss issues at the strategic level and prioritize what crimes to investigate. In MINUSCA, there is also a task force to follow up at the technical level on ongoing judicial proceedings and provide support to the national authorities. In MONUSCO, however, these processes seem more decentralized.³²

Mission leadership has also increasingly engaged with host-state governments to promote accountability for crimes against peacekeepers, at least in the three priority missions, including at the ministerial and presidential level. This political engagement supports the missions' technical engagement with the host state's judicial system. For many SRSGs, accountability to peacekeepers is high on the list of priorities, and their engagement has reportedly helped provide visibility to some of the cases and triggered the opening of investigations.

Box 1. What are crimes against peacekeepers?

There is no commonly agreed-upon definition of "crimes against peacekeepers" among member states or within the UN system. However, there are legal definitions in the Convention on the Safety of UN and Associated Personnel and the Rome Statute. Some policy frameworks and Resolution 2589 provide additional definitions. All of these definitions refer to certain sets of acts, including the murder or killing of UN personnel or acts resulting in fatalities of peacekeepers, as well as other forms of violence or attacks against UN personnel, including their kidnapping or abduction.

Convention on the Safety of United Nations and Associated Personnel: Article 9 of the 1994 Convention on the Safety of United Nations and Associated Personnel defines crimes against peacekeepers as

the intentional commission of: (a) murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel; (b) a violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty; (c) a threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act; (d) an attempt to commit any such attack; and (e) an act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack.

³⁰ See: UN Doc. S/RES/2589, op. para. 9.

³¹ Only MINUSMA and MINUSCA have their own SOPs.

³² Interview with MINUSMA, MINUSCA, and MONUSCO personnel, November 2022.

Rome Statute: Prosecutors of the International Criminal Court (ICC) have made it clear that “attacks against peacekeepers may constitute war crimes.”³³ In the context of attacks against peacekeepers, the Rome Statute of the ICC includes identical provisions on armed conflicts of an international and non-international character in Articles 8(2)(b)(iii) and 8(2)(e)(iii), which define war crimes against UN personnel as

intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.³⁴

Resolution 2589: UN Security Council Resolution 2589 (2021) refers to “the killing of, and all acts of violence against United Nations personnel serving in peacekeeping operations, including, but not limited to, their detention and abduction.” It is worth noting that the resolution makes no mention of the provisions in the Rome Statute or of the Convention on the Safety and Security of United Nations and Associated Personnel. Instead, it refers to international law and applicable international obligations, as well as the SOFAs and SOMAs between UN missions and host states.

NOTICAS: The Notification of Casualties (NOTICAS) system, which enables the electronic communication of casualty data on UN personnel serving in all UN peace operations, defines “malicious acts” as “fatalities that occur as a result of war; invasion; hostilities; acts of foreign enemies, whether war be declared or not; civil war; revolution; rebellion; insurrection; military or usurped power; riots or civil commotion; sabotage; explosion of war weapons; or terrorist activities.”³⁵

Standard operating procedures: The 2020 SOPs provide their own interpretation of crimes against peacekeepers in saying that they “are applicable in all cases of fatalities of United Nations personnel as a result of malicious acts... [and] may also be applicable to other serious crimes against United Nations personnel.” The SOPs clarify that serious crime includes any of the following:

i) homicide (murder and manslaughter); ii) kidnapping and enforced disappearance; iii) attacks upon the person, causing or intended to cause physical harm; iv) rape and other forms of sexual violence; and v) attacks against property involving violence or threat of violence against a person or a grave threat to life or of serious bodily injury. It also includes attempts and threats to commit such acts.³⁶

Box 2. IHL and crimes against peacekeepers

Can a UN peacekeeping operation be a party to an armed conflict?

In paragraph 1.1 of the August 1999 Secretary-General’s Bulletin, the UN accepted that

the fundamental principles and rules of international humanitarian law set out in the present bulletin are applicable to United Nations forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defence.

33 See, for instance: ICC, “ICC Prosecutor: Attacks against Peacekeepers May Constitute War Crimes,” July 19, 2013.

34 Rome Statute of the International Court, Articles 8(2)(b)(iii) and 8(2)(e)(iii), pp. 5–6. See also: Statute of the Special Court for Sierra Leone, 2002, Article 4 (b).

35 “The NOTICAS is a secure web-based programme which enables electronic submission of casualty data for UN personnel serving in all peacekeeping and special political missions to the UN headquarters in New York.” See: MINDEF Singapore, “United Nations Notification of Casualties Software Application,” May 24, 2017; UN Development Programme, “Malicious Acts Insurance Policy,” UN Doc. UNDP/ADM/2003/14, February 2003, p. 4, quoted in Marina E. Henke, “Has UN Peacekeeping Become More Deadly? Analyzing Trends in UN Fatalities,” International Peace Institute, December 2016.

36 UN Doc. Ref. 2020.18, pp. 3, 12.

In paragraph 1.2, the UN noted that “the promulgation of this bulletin does not affect the protected status of members of peacekeeping operations under the 1994 Convention on the Safety of United Nations and Associated Personnel or their status as non-combatants, *as long as* they are entitled to the protection given to civilians under the international law of armed conflict.” The UN thereby recognized that under the circumstances described in paragraph 1.1, peacekeeping operations may become party to an armed conflict and lose that protected status.³⁷ The UN Office of Legal Affairs has also acknowledged the possibility of a UN operation becoming a party to an armed conflict and the serious practical consequences this would have.³⁸ However, the UN has been reluctant to make any clear public statements on the participation of its missions in armed conflict, including because of potential political repercussions and disengagement by T/PCCs.

From the strict perspective of international humanitarian law (IHL), when certain factual conditions are met, a UN mission’s military component can become a party to an armed conflict. Legal classification as a situation of armed conflict of an international or non-international character depends on the fulfillment of criteria laid out in Common Articles 2 and 3 of the 1949 Geneva Conventions.³⁹ The updated 2016 commentary of Common Article 2 is explicit about the fact that “no provision of international humanitarian law precludes States or an international organization sending multinational forces from becoming Parties to an armed conflict if the classic conditions for applicability of humanitarian law are met.”⁴⁰ Further, the 1994 Convention on the Safety of United Nations and Associated Personnel stipulates that “nothing in this Convention shall affect... the applicability of international humanitarian law... in relation to the protection of United Nations operations and United Nations and associated personnel or the responsibility of such personnel to respect such law and standards.”⁴¹

In situations of armed conflict, where IHL always applies, peacekeepers “are entitled to the status of a ‘protected group,’” as long as they do not take active part in hostilities or are not engaged as a combatant in an armed conflict.⁴² As such, when a UN peacekeeping mission becomes party to a conflict, it is no longer regarded as a protected group under IHL.

There are debates regarding the scope of applicability of IHL, including its personal, geographic, and temporal scope. The UN secretary-general and the ICC have taken a narrow perspective, asserting that peacekeepers would only lose their protection for the duration of their engagement in hostilities.⁴³ In the *Abu Garda* decision, the ICC Pre-Trial Chamber determined that “personnel involved in peacekeeping missions enjoy protection from attack unless and for such time as they take a direct part in hostilities or in combat-related activities.”⁴⁴ As noted above, the 1999 Secretary-General Bulletin on IHL embraces a similar view, stating that IHL applies to peacekeepers “when in situations of armed conflict, they are actively engaged therein as combatants, to the extent and for the duration of their engagement.”⁴⁵

37 UN Secretariat, “Secretary-General’s Bulletin: Observance by United Nations Forces of International Humanitarian Law,” UN Doc. ST/SGB/1999/13, August 6, 1999.

38 See, for example: Miguel de Serpa Soares, “Reflections of the United Nations Legal Counsel on the Work of the Office of Legal Affairs,” *George Washington International Law Review* 50, no. 4 (March 14, 2018), p. 719.

39 Rule of Law in Armed Conflicts Geneva Academy, “Classification of Armed Conflicts,” April 21, 2017; ICRC Casebook, “Classification of Conflict.”

40 ICRC International Humanitarian Law Database, “Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Article 2: Application of the Convention,” 2016, available at https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-2/commentary/2016?activeTab=undefined#_Toc452041597. See also: Tristan Ferraro, “The Applicability and Application of International Humanitarian Law to Multinational Forces,” *International Review of the Red Cross* 95, no. 891/892 (2013), p. 582.

41 Convention on the Safety of United Nations and Associated Personnel, Article 20(a).

42 UN, *United Nations Juridical Yearbook* (New York, 2006), UN Doc. ST/LEG/SER.C/44, Chapter VI(A)(6) “Note on the Protection of Peacekeeping Personnel under IHL,” p. 521; Bruce Oswald, Helen Durham, and Adrian Bates, *Documents on the Law of UN Peace Operations* (Oxford: Oxford University Press 2019), p. 236.

43 There is some debate on this view, which invokes the notion both of combatants and of direct participation in hostilities. On this point, see: Ferraro, “The Applicability and Application of International Humanitarian Law,” p. 604.

44 *Prosecutor v. Bahar Idriss Abu Garda*, International Criminal Court, Case No. ICC-02/05-02/09, decision on the confirmation of charges, ICC Doc. ICC-02/05-02/09-243-Red, February 8, 2010, para. 83.

45 UN Doc. ST/SGB/1999/13.

This narrow approach is not supported by the ICRC, however, which considers that “IHL... applies to multinational forces and uninterruptedly governs their action as long as they are party to an international or non-international armed conflict.”⁴⁶ According to this view, “IHL will cease to apply to multinational forces only once they can no longer be deemed a party to the armed conflict in which they were previously engaged,” that is, when the UN has disengaged from the country or when the armed confrontation has come to an end.⁴⁷

What does this mean for the prosecution of crimes against peacekeepers?

When certain objective criteria are met, a UN peacekeeping operation’s military component may be regarded as a party to a conflict and therefore be subject to IHL. This has legal and operational consequences for missions’ status, including their protected status. Concretely, when a UN mission is deemed to be a party to a conflict, targeting UN military personnel may be regarded as lawful under IHL. This is because if the military component of the mission loses its protected status, targeting it may become a legitimate military objective.⁴⁸ In this context, and as recognized by the Rome Statute, an attack that respects the principles of proportionality, precaution, and distinction against a military component of a UN mission that is party to an armed conflict should not be considered a war crime and could not be prosecuted as such.⁴⁹

That said, this does not mean that prosecution is not possible in certain contexts. Some current UN peacekeeping operations could be party to non-international armed conflicts where there are no prisoners of war or combatants’ privileges.⁵⁰ In such contexts, host states can prosecute non-state armed groups under domestic law for their engagement in hostilities against peacekeepers. This approach is not favored by the ICRC due to the principle of equality of belligerents before humanitarian law and the possibility of amnesty for individuals who have participated in hostilities without committing war crimes.⁵¹ Nonetheless, the prosecutorial decision remains at the discretion of the host state, as well as the UN Security Council, which can criminalize and penalize attacks on UN peacekeepers in situations of non-international armed conflict even if they are deemed lawful under IHL.

Finally, it should be noted that the 1994 Convention on the Safety of United Nations and Associated Personnel is not as clear as the Rome Statute. Article 2.2 provides that the convention would not apply in situations of international armed conflict, but it is silent on whether it applies in situation of non-international armed conflict.⁵² The provision reads, “This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.”⁵³ As such, the provision seems to recognize the possibility that the convention would apply in situations of non-international armed conflict.

46 Ferraro, “The Applicability and Application of International Humanitarian Law,” p. 607.

47 Ibid., p. 608.

48 Mona Ali Khalil, “When Is an Attack on UN Peacekeepers a War Crime and When Is It Not?” *PassBlue*, November 30, 2018.

49 De Serpa Soares, “Reflections of the United Nations Legal Counsel,” p. 719.

50 Médecins Sans Frontières, “The Practical Guide to Humanitarian Law: Combatants,” February 2016, available at <https://guide-humanitarian-law.org/content/article/3/combattants/>.

51 See: “Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II),” June 8, 1977, Art. 6(5): “At the end of hostilities, the authorities shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict”; and ICRC International Humanitarian Law Databases, “Rule 159: Amnesty,” available at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule159>.

52 Ferraro, “The Applicability and Application of International Humanitarian Law,” p. 570; Antoine Bouvier, “Convention on the Safety of United Nations and Associated Personnel: Presentation and Analysis,” *International Review of the Red Cross*, no. 309 (1995).

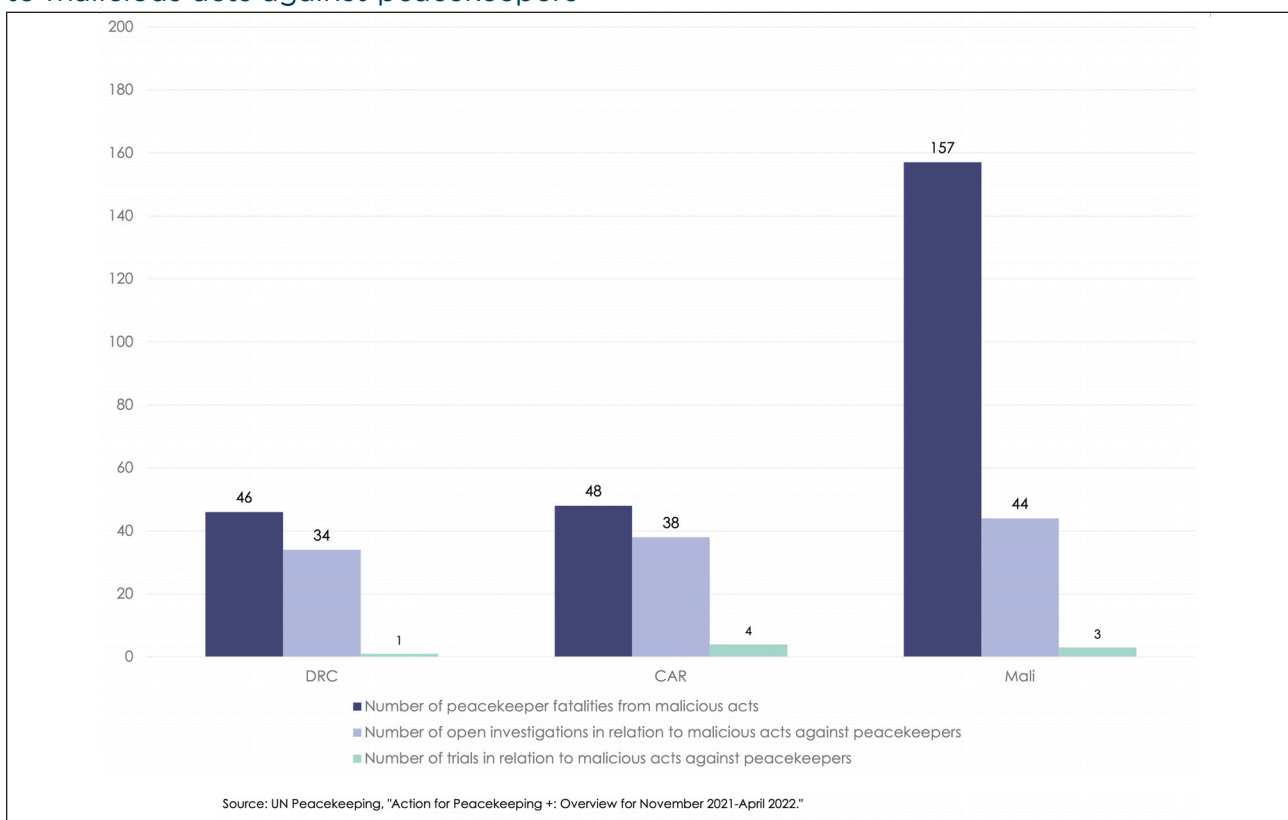
53 Convention on the Safety of United Nations and Associated Personnel, Article 2.2.

Reality Check: The Situation in the Central African Republic, Mali, and the DRC

The number of investigations into and prosecutions of crimes against UN personnel has been slowly rising since 2018. However, UN figures since 2013 reveal a significant gap between the number of incidents resulting in fatalities and the number of incidents leading to prosecution in the national courts of the Central African Republic (CAR), the DRC, and Mali (see Figures 1 and 2). This points to a low level of accountability for crimes against peacekeepers in these countries.⁵⁴ Further, even when accountability is pursued, there are often questions around whether national and international criminal justice and human rights standards are being respected and applied during both the trial and pretrial detention.

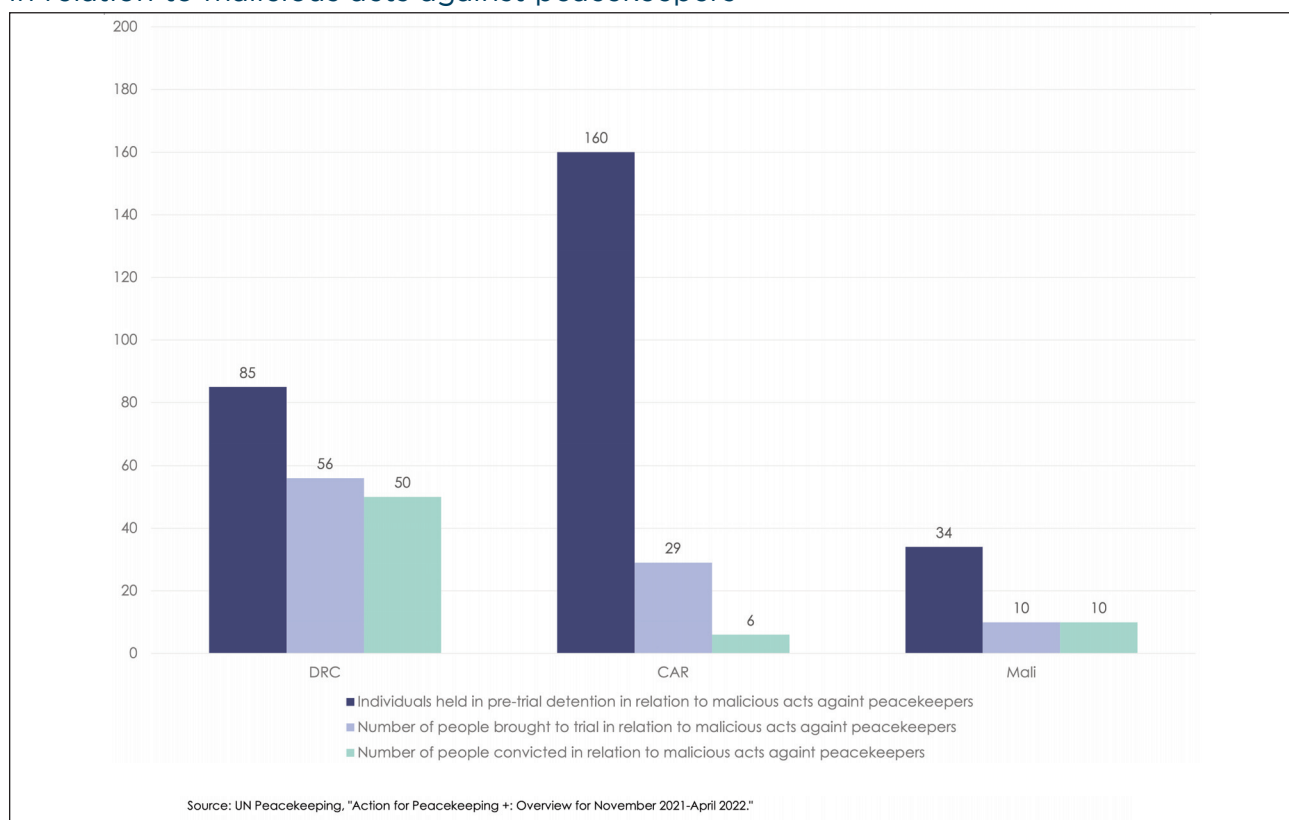
In Mali, most fatalities have not been investigated by national authorities, and in the past two years there have been only three convictions related to the death of peacekeepers. In the DRC and CAR, most fatalities have been investigated by national authorities, but very few of these investigations have led to suspects being brought before courts, and even fewer have led to convictions. In the DRC, for example, the sole convictions for the killing of UN personnel were for the assassination of two international UN experts (not peacekeepers) and four Congolese nationals in 2017. This trial led to the conviction of fifty people, which constitutes all the convictions related to fatalities of UN personnel in the DRC. No other trials related to fatalities of UN personnel have been opened in the DRC since 2013. In CAR, while the number of investigations and detentions related to crimes against peacekeepers are the highest among the three missions, the number of convictions is the lowest.

Figure 1. Number of peacekeeper fatalities and open investigations and trials in relation to malicious acts against peacekeepers



⁵⁴ The UN has started to compile figures for incidents and criminal justice proceedings related to crimes against peacekeepers more systematically. It has prioritized statistics from the three priority missions since 2013. However, with the development of the online database foreseen by UN Security Council Resolution 2589, the aim is to expand the scope of data compilation to other missions and to incrementally go back before 2013.

Figure 2. Number of individuals held in pretrial detention, brought to trial, and convicted in relation to malicious acts against peacekeepers



Because most attacks against peacekeepers have not led to investigation, prosecution, judgment, and conviction, the short case studies presented below are exceptional cases. Still, they provide a glimpse into challenges encountered at the different phases of the criminal proceedings once these processes are initiated by the host state. These cases do not aim to be fully representative of each UN mission's situation but rather to provide an overview and a sense of the intricacies of the issues at hand.

Prosecuting Crimes against Peacekeepers Related to IEDs

Improvised explosive devices (IEDs) are emblematic of recent attacks against peacekeepers in the largest contemporary UN peacekeeping operations and represent one of the biggest threats to the safety of peacekeepers. Since 2014, 643 peacekeepers and

UN staff have been injured or killed by IEDs.⁵⁵ In 2022, 50 percent of uniformed peacekeeping fatalities from malicious acts were due to explosive ordnance incidents.⁵⁶ In Mali alone, more than ninety-three peacekeepers have died because of IEDs since 2013, constituting the majority of MINUSMA's fatalities.⁵⁷ These explosives are often planted along the routes used by MINUSMA convoys for patrols, including as part of the mission's protection of civilians (POC) mandate.

IED attacks are some of the most challenging to investigate and prosecute. Even when the host state opens an investigation, the case rarely heads to trial due to challenges tracing the attack back to specific perpetrators.⁵⁸ Investigation requires a dedicated workforce that is specialized enough to analyze the evidence, cross-reference it, and trace it back to specific armed groups based on their modus operandi, zone of influence, and other criteria.

⁵⁵ UN Security Council, *The United Nations Response to Explosive Ordnance Threats: A More Coherent Approach Is Needed*, UN Doc. S/2021/1042, December 15, 2021, p. 12.

⁵⁶ UN Peacekeeping, "Action for Peacekeeping +: Member States Report 2023 (Reporting Period: 1 May–31 October 2022)," on file with author.

⁵⁷ UN Peacekeeping, "MINUSMA Tackles the Threat of Improvised Explosive Devices," June 14, 2022.

⁵⁸ See: UN Doc. S/2021/1042, p. 7.

Host states usually lack specialized agents outside of their capitals to collect and analyze evidence, including related to fingerprints and components of the explosive. They also usually lack the capacity to archive and process data to follow up on investigations and trace the evidence back to the perpetrators. A lack of state presence in parts of the country and ongoing fighting add layers of complexity to the conduct of investigations, particularly complex investigations related to IEDs.⁵⁹

A recent IED attack in CAR demonstrates the challenges not only of investigating IED attacks but also of ensuring the safety and security of peacekeepers. On October 3, 2022, the explosion of an IED hit a MINUSCA vehicle occupied by three soldiers dispatched on a POC patrol. The soldiers were seriously injured and succumbed to their wounds after being evacuated by road and admitted to the hospital following a long wait due to the government's ban on MINUSCA conducting night flights.⁶⁰ Following the death of the three peacekeepers, the national judicial authorities in CAR requested MINUSCA's support to start the judicial process under the mission's urgent temporary measures. The mission was thus able to start collecting evidence at the crime scene, with the support of the UN Mine Action Service (UNMAS) and MINUSCA's forensic police (MINUSCA is planning to establish an IED forensic lab to facilitate such investigations in the future).⁶¹ MINUSCA police then finalized the judicial minutes and submitted them to the mission's justice and corrections section, which handed them over to the competent national prosecutor.⁶² While the outcome of this case is pending, investigators have faced challenges

gathering evidence in locations controlled by armed groups, which can make local populations afraid to talk to them due to fear of retaliation.

Despite the increasing technical and forensic capacity of missions, the hope for accountability and justice is low once an attack has been committed. One MINUSMA official noted that "those who plant IEDs are living in complete impunity, unless we find the mines in their house or where they fabricate the mines, or they confess."⁶³ In fact, the only conviction related to an IED attack in Mali followed an individual's confession to laying mines during the preliminary investigation. He was sentenced in absentia to life in prison by the Court of Assizes of Bamako in 2020.⁶⁴ So far, there has not been any other conviction following the investigation of an IED attack against peacekeepers in Mali, CAR, or the DRC.

There is therefore a sense that the UN has no choice but to focus on reinforcing the safety and security of peacekeepers to prevent attacks and casualties in the first place. To this end, the UN Secretariat and missions are working to implement the recommendations of the independent strategic review on the threat posed by IEDs.⁶⁵ These include reinforcing missions' situational awareness and peacekeeping-intelligence, bolstering peacekeepers' equipment and gear to detect and mitigate threats such as IEDs, and improving medical support and evacuation protocols.⁶⁶ The threat of IEDs is a striking reminder that the promise of accountability to peacekeepers can only be fulfilled if the UN has a comprehensive approach and focuses on enhancing the safety and security of peacekeepers in the first place.⁶⁷

59 Interview with MINUSMA official, November 2022.

60 See: Lesley Connolly and Håvard Johansen, "Medical Support for UN Peace Operations in High-Risk Environments," International Peace Institute, April 2017.

61 See recommendations for MINUSCA in UN Doc. S/2021/1042, p. 8.

62 Written exchange with MINUSCA personnel, November 2022.

63 Interview with MINUSMA official, August 2022.

64 The accused was sentenced for "terrorist acts" because he admitted to being a member of Al-Mourabitoun and the Katiba Tariq ibn Ziyad groups. See: UN Security Council, *Situation in Mali: Report of the Secretary-General*, UN Doc. S/2020/1281, December 28, 2020, p. 79.

65 UN Doc. S/2021/1042, p. 8.

66 Ibid. See also: Sarah-Myriam Martin-Brûlé, "Finding the UN Way on Peacekeeping-Intelligence," International Peace Institute, April 9, 2020; Connolly and Johansen, "Medical Support for UN Peace Operations"; UN Peacekeeping, "Action for Peacekeeping +: Member States Report 2023."

67 A Group of Friends on the Safety and Security of Peacekeepers was created by China, Brazil, Indonesia, and Rwanda in 2021. The group is chaired by China and currently includes forty-nine states plus the League of Arab States. See: Ministry of Foreign Affairs of the People's Republic of China, "China and Over 40 Countries Jointly Establish the Group of Friends on the Safety and Security of UN Peacekeepers," press release, April 27, 2021. Further, the UN Security Council focused on the safety and security of peacekeepers through an open debate on the issue in May 2021. See: Security Council Report, "Open Debate via VTC on Improving the Safety and Security of Peacekeepers," May 21, 2021.

Mali: Conviction for Attacks against Peacekeepers in Bamako

In addition to the conviction mentioned above for the IED attack, there have been two other convictions for crimes against peacekeepers in Mali. The first was in 2021, for two shootings targeting peacekeepers near Bamako in May 2015. The second occurred in January 2023, when the Bamako Court of Assizes convicted an individual for an attack against five peacekeepers near Bamako in February 2019.⁶⁸ This case study focuses on the 2021 trial for the two attacks near Bamako.

In the first attack, on May 20, 2015, a shooting took place at the residence of peacekeepers in Faso Kanu, Bamako, injuring a guard. In the second attack, five days later, a MINUSMA vehicle was shot at in Sénou, Bamako, killing one peacekeeper and injuring another.⁶⁹ The competent national authority investigated the incidents and arrested all the accused between 2016 and 2017. Mali's Specialized Judicial Unit Against Terrorism (*Pôle judiciaire spécialisé*) then took charge of the judicial investigation and prosecution. In March 2021, the Bamako Court of Assizes convicted nine individuals to life in prison for terrorism-related crimes, primarily due to their affiliation with Ansar Dine, which is regarded as a terrorist group by the Malian government and is sanctioned by the UN Security Council under its Islamic State and al-Qaida sanctions regime. Eight of the convicted were judged in absentia, and one person was present in court.⁷⁰

Certain factors may have facilitated the investigation and prosecution of these attacks. Contrary to most IED attacks, this attack took place near the capital. Moreover, as opposed to IED attacks, which are anonymous, shootings may be easier to attribute and therefore to investigate and prosecute. However, the fact that most of the

accused were tried in absentia raises questions about the effectiveness of the process in preventing those individuals from perpetrating additional attacks in the future.

Another consideration is that all recent crimes against peacekeepers in Mali have been prosecuted as terrorism-related crimes because of the individuals' association with or membership in a designated terrorist group. While this may prove to be an effective and pragmatic prosecutorial strategy, it raises questions about the qualification of the crime. On the one hand, assuming MINUSMA still enjoys protected status under international humanitarian law (IHL), the killing of the peacekeepers should fall under the definition of war crimes or crimes against protected UN personnel (see Box 2). This is a special category of crime recognized under international law, which should eventually be recognized and defined under national law and investigated and prosecuted as such. On the other hand, if MINUSMA has become a party to the conflict and has lost its protected status, there is a question over whether and how such attacks ought to be qualified.⁷¹ This decision remains at the discretion of the state, which can prosecute individuals taking part in hostilities in a non-international armed conflict. Yet states tend to define situations of armed conflict through a counterterrorism lens, which can weaken respect for IHL, human rights, and support for conflict resolution processes.⁷² This is a sensitive question that requires balancing legal principles with policy and practical considerations.

CAR: Conviction for Attacks against Peacekeepers near Yogofongo

Currently, there are thirty-eight investigations into crimes against UN peacekeepers open at the national level in CAR. Progress has varied across

68 MINUSMA, "Note/Bamako Assize Court Convicts Perpetrator of Attack on Five Peacekeepers," January 26, 2023.

69 UN Security Council, *Report of the Secretary-General on the Situation in Mali*, UN Doc. S/2015/426, June 11, 2015.

70 Written exchange with MINUSMA official, November 2022; UN Security Council, *Situation in Mali: Report of the Secretary-General*, UN Doc. S/2021/519, June 1, 2021, p. 37.

71 For more on this issue, see: Agathe Sarfati, "International Humanitarian Law and the Criminal Justice Response to Terrorism: From the UN Security Council to the National Courts," *International Review of the Red Cross* 103, no. 916-917 (February 2022).

72 UN General Assembly, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, *Fiannuala Ní Aoláin: Impact of Counter-Terrorism on Peacemaking, Peacebuilding, Sustaining Peace, Conflict Prevention and Resolution*, UN Doc. A/77/345, September 16, 2022; Agathe Sarfati, Eimer Curtin, and William Lighthart, "Reflecting the UN's Core Mission in its Counterterrorism Efforts: Interview with Fionnuala Ní Aoláin," *IPI Global Observatory*, November 30, 2022.

each of these investigations, four of which have gone to trial so far. One of these cases led to convictions before the Criminal Court of Appeal of Bangui in 2020.⁷³

On May 8, 2017, five MINUSCA peacekeepers (four Cambodian and one Moroccan) were killed when hundreds of anti-Balaka fighters attacked their convoy near Yogofongo village, 474 kilometers east of Bangui, while they were traveling between Rafaï and Bangassou. An additional ten peacekeepers were injured (nine Moroccan and one Cambodian), and a Moroccan peacekeeper was reported missing in action. There had previously been attacks against the Moroccan contingent, which the attackers suspected of colluding with and providing war matériel to ex-Séléka rebels.

In a statement released on May 10th, the Security Council called on the government to investigate the attack and serve justice to those responsible. From 2017 to 2019, MINUSCA supported the Central African authorities in investigating the attack, arrested more than fifty suspects and transferred them to government authorities, and supported the government's prosecution.⁷⁴ On February 7, 2020, twenty-eight of the thirty-two militia members put on trial were sentenced for a variety of charges, including war crimes, crimes against humanity, and crimes against people under international protection.⁷⁵ The sentences ranged from ten years to life in prison, including forced labor, with the most serious sentences given to two commanders and three other high-ranking members of the group.

This trial and these convictions were lauded by the UN as progress toward ending impunity in CAR. It is one of the rare cases in CAR where investigation and prosecution have led to conviction. Some of

the factors that might have enabled this outcome include the *modus operandi* of the crime and the strong involvement of MINUSCA under its urgent temporary measures. The urgent temporary measures enable MINUSCA to perform law-enforcement functions, including the investigation and arrest of suspects at the formal request of government authorities and in areas where national security forces are not present or operational. While the authority to take urgent temporary measures is unique to MINUSCA—and should not necessarily be replicated in other contexts, as it raises numerous questions about the legal responsibilities of the UN mission—these measures have helped the mission pursue accountability for crimes against peacekeepers in CAR.⁷⁶

DRC: Investigation into Anti-MONUSCO Demonstrations

Throughout 2022, anti-UN protests took place across the DRC. This anti-UN sentiment has been fueled by the waning consent of the host-state government for the mission's presence, overall frustration with decades of international presence, and disinformation against MONUSCO.⁷⁷ On July 26, 2022, multiple MONUSCO bases across North Kivu were attacked by groups of protesters, leading to looting and destruction of UN properties and resulting in the death of three peacekeepers in Butembo.⁷⁸ Following the attack, the secretary-general recalled the SOFA, which “guarantees the inviolability of United Nations premises,” and called upon the Congolese authorities to “investigate these incidents and swiftly bring those responsible to justice.”⁷⁹ There has been a sentiment among UN personnel “that if nothing is done to prosecute and arrest these people, this is an open avenue for more harm.”⁸⁰ Since then, national

73 Cour Criminelle de Bangui, Arrêt Criminel No. 003, July 2, 2020, on file with the author.

74 UN Security Council, *Report of the Secretary-General on the Central African Republic*, 15 June–15 October 2018, UN Doc. S/2018/922, October 15, 2018, p. 32; UN Security Council, *Central African Republic: Report of the Secretary-General*, UN Doc. S/2019/822, October 15, 2019, p. 75.

75 UN Doc. S/2019/822, p. 75; UN News, “28 Militiamen Sentenced in Central African Republic for Murder of Civilians, UN Peacekeepers,” February 7, 2020.

76 In addition to the urgent temporary measures MINUSCA can take, the UN mission has supported the creation and functioning of the Special Criminal Court in CAR since 2014. These two initiatives should be seen as parallel and complementary to one another. However, the urgent temporary measures raise numerous legal questions for MINUSCA, including related to detention. See: UN DPO, DPPA, and DSS, “Standard Operating Procedure: The Handling of Detention in UN Peacekeeping Operations and Special Political Missions,” UN Doc. Ref. 2020.13, January 2021.

77 On disinformation against peacekeeping operations, see: Albert Trithart, “Disinformation against UN Peacekeeping Operations,” International Peace Institute, November 2022. See also: Dayal, “A Crisis of Consent.”

78 UN Secretary-General, “Statement Attributable to the Spokesperson for the Secretary-General on the Democratic Republic of the Congo,” July 26, 2022.

79 Ibid.

80 Interview with MONUSCO official, November 2022.

authorities have opened an investigation into the attacks.⁸¹ However, since the incident, MONUSCO has temporarily left Butembo, and the mobility of all UN personnel has been restricted, which has curtailed the mission's ability to directly assist national authorities with the investigation.

In addition to the deaths of UN personnel, the demonstrations led to civilian deaths, and there is controversy over whether these could be attributed to the armed response by peacekeepers.⁸² A few days later, in a separate incident, MONUSCO troops opened fire at a border post, killing two people and injuring fifteen others.⁸³ Under the SOFA, these military personnel are under the exclusive criminal jurisdiction of the troop-contributing country, meaning they cannot be prosecuted by Congolese authorities. The special representative of the secretary-general (SRSG) for MONUSCO and the secretary-general immediately condemned the act, and those responsible have been arrested and suspended until the finalization of the investigation.⁸⁴

These two cases highlight the crisis of legitimacy the UN is facing in some of the countries in which it operates. It underscores the need to advance accountability of peacekeepers and accountability to peacekeepers simultaneously, as two sides of the same coin. Further, it raises questions about the possibility of advancing accountability to peacekeepers in a context where the host state's consent to the UN presence is diminishing and it might be reluctant to investigate certain crimes for political reasons. This raises more fundamental political and strategic questions about the UN's presence in such contexts.

DRC: Conviction for the Murder of Two UN International Experts and Four Congolese Nationals

As mentioned above, the murder of two UN international experts and four Congolese nationals in 2017 resulted in the conviction of fifty people by the DRC's High Military Court in 2022. These remain the only convictions for attacks against UN peacekeepers in the DRC. As of the time of writing, no other trials for attacks on UN personnel have even been opened in the DRC since 2013.

This case differs from those discussed above because it does not concern UN peacekeepers. On March 12, 2017, a Swedish national and a US national were killed in Kasai-Central province, along with four Congolese nationals who were accompanying them. The two international personnel were part of a UN group of experts monitoring the DRC's Security Council sanctions regime.⁸⁵ Specifically, they were investigating allegations of the excessive use of force by the Congolese military against militias and civilians, mass graves, and the recruitment of child soldiers. In the days immediately following the group's disappearance, MONUSCO created a task force to locate them. The six bodies were found in a shallow grave on March 27, 2017.

The secretary-general formed a board of inquiry into the events surrounding the killings in April 2017.⁸⁶ Eventually, the secretary-general appointed a team of four technical experts, who remained in the country for three years to support the national investigation and criminal proceedings.⁸⁷ In

81 Steve Wembi and Abdi Latif Dahir, "Anti-UN Protests in Congo Leave 15 Dead, Including 3 Peacekeepers," *New York Times*, July 27, 2022.

82 "At Least 15 Killed in Second Day of Anti-UN Violence in DRC," *The Guardian*, July 26, 2022; Wembi and Dahir, "Anti-UN Protests."

83 UN, "Secretary-General Outraged over Deadly Incident by Mission Military Personnel on Democratic Republic of Congo, Uganda Border," press release, UN Doc. SG/SM/21392, July 31, 2022.

84 See: Kelly Askin, "Ending Impunity for Crimes Committed by UN Peacekeepers," 2016, International Bar Association.

85 Irwin Arief and Deborah Baldwin, "A Fresh Look Back at Two UN Deaths in the Congo," *PassBlue*, January 15, 2022.

86 Colum Lynch, "Congolese Cover-Up," *Foreign Policy*, November 27, 2018.

87 UN Security Council, *Letter Dated 31 October 2017 from the Secretary-General Addressed to the President of the Security Council*, UN Doc. S/2017/917, November 1, 2017.

parallel, both the US and Sweden, of which the two international victims were nationals, put diplomatic pressure on the Congolese government to investigate and render justice for this crime.⁸⁸

The trial before a military court in Kananga began in October 2020 after many delays due to the COVID-19 pandemic.⁸⁹ The case concluded on January 29, 2022, resulting in the sentencing of forty-nine people to death—several in absentia—while one officer received ten years in prison for violating orders, and two others were acquitted.⁹⁰ Those sentenced to death included alleged members of the Kamuina Nsapu militia, which was involved in the killings. They were convicted of “criminal conspiracy,... participation in an insurrectionary movement,... terrorism, and... the war crime of murder.”⁹¹ Due to a 2003 moratorium on the death penalty in the DRC, the forty-nine people sentenced to death are likely to serve life in prison.⁹²

While many regarded the investigation and the trial as important steps for accountability, some human rights groups have questioned whether full responsibility for the killing has been established, pointing to the possible involvement of senior Congolese officials. Further, they have raised concerns over the rights of some of the defendants throughout the proceedings, including their lack of legal representation as well as torture and cruel treatment.⁹³

This case is different from the others in that it involves the murder of UN civilian staff who were not part of the UN peacekeeping operation. Further, Sweden and the US—two influential states with leverage over the UN system and the host state—became active in the case, and the secretary-general appointed a special team to support the investigation, which was instrumental in moving

the criminal proceedings forward. Even so, the case has raised sensitive questions around Congolese authorities’ level of consent to the UN presence and willingness to genuinely support the criminal proceedings and ensure due process. The lack of similar trials for other attacks on UN personnel in the DRC also demonstrates the strategic and operational challenges of pursuing accountability.

Ongoing Challenges

Despite some progress, important strategic, operational, and institutional challenges to advancing accountability for crimes against peacekeepers remain.

Strategic Challenges

A first challenge is the lack of consistency in the definition of “crimes against peacekeepers” and the perception that they are always “war crimes.” While the UN position is that targeting peacekeepers is always a crime, a strict interpretation of IHL could lead to the conclusion that peacekeepers may become party to the conflict and therefore lose their protected status. In situations of non-international armed conflict, even if peacekeepers lose their protected status, states can still prosecute the attackers for ordinary crimes under national legislation, but not for “war crimes” (see Box 2). However, there is a lack of consistency in the way the UN Secretariat, UN Security Council, and missions communicate about this issue.⁹⁴ The lack of a consistent approach may impede the development of appropriate prosecutorial strategies at the national level, including in relation to the qualification of the attacks.

Relatedly, member states and officials within the UN Secretariat lack a common perspective on the

88 Ben Gittleston, “5 Months after an American was Killed in the Congo, It’s Still Unclear Who’s Responsible,” ABC News, August 30, 2017; Olof Skoog, statement delivered on behalf of Sweden at the UN Security Council briefing on the DRC, New York, October 11, 2018, available at <https://www.government.se/statements/2018/10/swedish-statement-at-the-un-security-council-briefing-on-the-drc/>; Irina Schoulgin-Nyoni, statement delivered on behalf of Sweden at the UN Security Council briefing on the DRC, New York, August 17, 2017, available at <https://www.government.se/statements/2017/08/ny-sida5/>; Nikki Haley, statement on the board of inquiry report on the deaths of Michael Sharp and Zaida Catalan, press release, August 17, 2017, available at <https://twitter.com/USUN/status/898185538016079872>.

89 UN Security Council, *United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, UN Doc. S/2020/1150, November 30, 2020, p. 69.

90 “DRC: 51 People Sentenced to Death over 2017 Murder of Two UN Experts,” *The Guardian*, January 29, 2022.

91 “51 Sentenced to Death in Murder of UN Experts by a DRC Military Court,” *Africa News*, January 30, 2022.

92 “DRC: 51 People Sentenced to Death,” *The Guardian*.

93 Human Rights Watch, “DR Congo: Sham Trial for Murders of UN Experts,” February 7, 2022.

94 See: Khalil, “When Is an Attack on UN Peacekeepers a War Crime and When Is It Not?”

Box 3. Due process and fair trial of alleged perpetrators

More than 200 people have been arrested and held in pretrial detention in Mali, CAR, and the DRC for alleged malicious acts against peacekeepers since 2013. While the arrest of these suspects could be regarded as a measure of success, it also raises concerns over the treatment and rights of detainees, particularly those held in pretrial detention. In the DRC, for example, prison overcrowding and poor conditions of detention have been recurring issues mentioned in recent reports by the Office of the UN High Commissioner for Human Rights (OHCHR) and the secretary-general.⁹⁵ Pretrial detentions are often long and lack judicial oversight due to lack of capacity and trained personnel, in potential violation of the defendants' basic rights. Once criminal proceedings start, there have also been questions about the ability of defendants to obtain adequate legal representation and be granted appropriate legal safeguards.⁹⁶ In addition, the death sentences handed down in the DRC and Mali have raised concerns from civil society regarding the UN's support of these cases, although there is a moratorium on the death penalty in both countries, which suggests the sentencing will not be applied.⁹⁷

acceptability of fatalities among peacekeepers. Some TCCs may accept casualties among the troops they deploy to UN peacekeeping missions because they view peacekeeping operations as military operations that inherently involve risks. For others, however, it is unacceptable that peacekeepers fall victim to attack given their international mandate and the principle of impartiality that ought to protect them.⁹⁸ The lack of a common approach to this sensitive issue may limit progress toward a uniform policy on pursuing accountability for crimes against peacekeepers.

Second, there is a risk that UN efforts to promote accountability for crimes against peacekeepers could support host-state institutions that violate the rights of the accused. Officials at UN headquarters recognize that they should not advocate for accountability at any cost. Instead, a balance must be found between promoting accountability and making sure that host states uphold the human rights of the accused at all phases of the criminal proceedings.⁹⁹

Third, the UN faces the challenge of pursuing a

holistic approach to promoting accountability for crimes against peacekeepers. This requires adopting preventive measures, including improvements to the safety, security, and well-being of peacekeepers. It also requires advancing accountability to peacekeepers while simultaneously ensuring accountability of peacekeepers, particularly at a time when peacekeeping faces a crisis of legitimacy.

Fourth, strategic challenges stem from the underlying difficulty of advancing accountability in an environment where the consent of the host state and of the host population is often weak. This can make the host state less willing to seriously advance accountability for crimes against peacekeepers. In addition, tensions can arise if the UN pushes the host state to prioritize the prosecution of crimes against peacekeepers when the host state has other priorities, a different prosecutorial strategy, or limited capacity to address serious international crimes in general. As mentioned by a MINUSCA official, "The difficulty is that there is no accountability for crimes *at all*, so unfortunately there is no

⁹⁵ UN General Assembly, *Human Rights Situation and the Activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo: Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/48/47, July 15, 2021; UN General Assembly, *Human Rights Situation and the Activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo: Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/42/32, August 14, 2021; UN General Assembly, *Human Rights Situation and the Activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo: Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/39/42, August 13, 2018; UN General Assembly, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Democratic Republic of the Congo*, UN Doc. A/HRC/WG.6/33/COD/1, February 27, 2019; UN Security Council, *United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, UN Doc. S/2021/987, December 1, 2021.

⁹⁶ Interview with OHCHR representative, January 2023.

⁹⁷ "Mali Court Sentences Man to Death over UN Peacekeeper Deaths," Reuters, January 25, 2023.

⁹⁸ Interview with representatives of TCCs, November 2022.

⁹⁹ Interview with DPO and OROLSI officials, June 2022.

accountability for crimes against peacekeepers either. This is only one of the many priorities for the host states.”¹⁰⁰

Operational Challenges

In many of the countries in which the largest UN peacekeeping missions operate, the police, judiciary, and corrections system are relatively weak. Often, host states’ lack of specialized police units (such as scientific and technical or forensic police) impedes the prompt beginning of an investigation. Unfortunately, “the strength of the case depends on how it is handled from the beginning.”¹⁰¹ Indeed, failure to arrive on a crime scene within the first twenty-four hours may lead to the loss of pieces of evidence such as fingerprints and undermine the chain of custody of evidence, thus reducing the likelihood of ultimately resolving the case. This is why there is a backlog of cases of peacekeepers who were killed years ago that do not seem to show any progress or result.¹⁰² At a later stage of the investigation, there is also a need for specialized analytical capacity, which may not be available if there are no national and centralized databases that would allow for cross-referencing incidents and suspects.

While some peacekeeping missions can support, and in some cases temporarily take over responsibility for, investigations conducted by the national police, the lack of capacity of the host state to fulfill its core investigatory function remains a challenge. To address this challenge, UN police have provided some specialized training to national police. However, due to the lack of overall capacity, newly trained police units may not be deployed where they are most needed or assigned tasks in their field of newly acquired expertise.¹⁰³

On top of this, there is a deficit of qualified judges and magistrates to deal with serious international crimes. For instance, in the DRC, there are only

about 200 magistrates covering fifty-seven jurisdictions across the whole country.¹⁰⁴ Therefore, there is a need not only to train magistrates on handling serious international crimes but also to invest in the judiciary in the long term and beyond the life span of a UN mission. In the DRC and other contexts, judges and magistrates also lack basic equipment and supplies, including papers, computers, fuel, and cars, that are needed to ensure the completion and continuity of cases as well as the archival of key documents, including the minutes of proceedings.¹⁰⁵

Beyond the capacity of the host state, it is often difficult to access crime scenes and conduct adequate investigations. In some contexts, state security forces may prevent access to certain localities. In other contexts, the presence or control of territory by non-state armed groups may impede the conduct of an investigation. When armed groups are operating in a region, residents may also be reluctant to testify and take part in investigations due to fear of retaliation. Courts, judges, and magistrates may also be subject to threats of violence and attack. The terrain—including the lack of infrastructure and roads and meteorological conditions—often compounds these difficulties.¹⁰⁶

Institutional Challenges

Finally, despite some of the institutional progress mentioned previously, several ongoing institutional challenges can hinder accountability for crimes against peacekeepers. First, despite the existence of general SOPs, only MINUSMA and MINUSCA have mission-specific SOPs. For the other missions, there is no standardized process that is triggered when a crime against peacekeepers occurs. Instead, the process is ad hoc, depending on the circumstances and the mission. While this gives each mission leeway to respond within its mandate and capacity, it can also lead to gaps and delays.

100 Interview with MINUSCA official, August 2022.

101 Interview with MONUSCO official, November 2022.

102 There are some exceptions, such as the prosecution of the 1980 attack against the Irish contingent in the UN Interim Force in Lebanon (UNIFIL), which was prosecuted by the Permanent Military Tribunal of Lebanon in December 2022. See: Rim Zrein, “Lebanese Man Is Jailed For Murdering Irish Soldiers 40 Years Ago,” *The 961*, December 23, 2020.

103 Interview with MINUSMA official, November 2022.

104 Interviews with MONUSCO personnel, June and November 2022.

105 Interview with MONUSCO official, June 2022.

106 Interview with MINUSCA official, November 2022.

Second, while the Office for Peacekeeping Strategic Partnership (OPSP), OROLSI, and the Executive Office of the Undersecretary-General for DPO have been coordinating this work within the UN, there are no full-time UN focal points in missions or at headquarters to coordinate and respond to external stakeholders, in particular national authorities and T/PCCs. Some T/PCCs regret that there is no one office they can turn to for sustained engagement and follow-up on crimes against peacekeepers.¹⁰⁷ In contrast, there are dedicated structures to address crimes committed by peacekeepers themselves, including the Office of the Victims' Rights Advocate (OVRA), which serves as a focal point for victims of sexual exploitation and abuse committed by UN peacekeepers.¹⁰⁸ This lack of a centralized unit or focal point is exacerbated by the structure of peacekeeping, whereby troop contingents and police units are rotating and leadership is changing, which makes it harder to follow up with national authorities on investigations and prosecutions.

Third, the discussion on accountability for crimes against peacekeepers has largely been limited to the three priority missions of MINUSCA, MINUSMA, and MONUSCO. Pursuant to Resolution 2589, efforts are underway to design and populate an online database, which would eventually comprise all crimes against peacekeepers. In the meantime, however, the UN does not have a comprehensive approach to the issue, which may limit its ability to support host states in investigating and prosecuting these crimes in other missions.

Finally, there are disagreements over the role of T/PCCs in putting pressure on the host state to make tangible progress on investigating and prosecuting crimes against peacekeepers. In certain cases, the T/PCCs whose peacekeepers have fallen victim to malicious acts have used diplomatic channels to call on the host state to punish the perpetrators. This was the case with Sweden and the US after the assassination of their nationals in 2017 (although these were sanctions experts, not peacekeepers). Other member states, including India and Senegal, have used diplomatic channels

to advance accountability for crimes against their military personnel deployed to peacekeeping operations. However, many of the largest T/PCCs do not believe they should be engaging with the host state because they lack a bilateral agreement, prefer to respect the host state's sovereignty, or lack tools to put pressure on the host state. Instead, these T/PCCs consider their deployments to be based on an agreement with the United Nations, which is accountable to them and therefore should take the lead in engaging with the host state. Some countries may, for instance, conduct an inquiry when a crime is committed against one of their peacekeepers and share its recommendations with the United Nations but not with the host state.¹⁰⁹ For many T/PCCs, and most of the time, the UN remains the middleman.

Conclusion and Recommendations

With the rise in attacks against peacekeepers, the UN Secretariat, along with some member states and the Security Council, have increasingly prioritized the advancement of accountability to peacekeepers. One way they have done so has been to push host states to render justice for attacks that amount to crimes. Despite several policy and institutional changes to prioritize the issue, challenges remain. The following recommendations are offered to help the UN Secretariat, peacekeeping operations, the Security Council, and other member states address these challenges and accelerate the investigation and prosecution of crimes against peacekeepers in a consistent and balanced manner.

Recommendations for the UN Secretariat:

- **Maintain a comprehensive approach to accountability:** The UN Secretariat should adopt the strategic action plan that lays out priorities and a roadmap for addressing crimes against peacekeepers at the institutional level. Further, the Secretariat should continue not only to advance justice for crimes against

¹⁰⁷ Currently, when an attack happens, the permanent missions of the states the victims were nationals of send a note verbale to the office of the under-secretary-general of DPO, but there is no direct or systematic line of communication. Interviews with representatives of T/PCCs, November 2022.

¹⁰⁸ See: Phoebe Donnelly, Dyan Mazurana, and Evyn Papworth, "Blue on Blue: Investigating Sexual Abuse of Peacekeepers," International Peace Institute, April 2022.

¹⁰⁹ Interviews with representatives of TCCs, November 2022.

peacekeepers but also to invest in the prevention of attacks by ensuring the safety, security, and well-being of peacekeepers. It should also continue to advance accountability to peacekeepers hand in hand with accountability of peacekeepers, including for sexual exploitation and abuse and other crimes and misconduct.

- **Develop a common definition of crimes against peacekeepers:** The UN Secretariat should develop a common definition of crimes against peacekeepers and communicate clear and consistent standards for the criminalization, investigation, and prosecution of such crimes at the national level in accordance with international humanitarian and human rights law. Further, the UN Secretariat should better communicate to TCCs the risks and legal implications of a UN peacekeeping operation becoming a party to the conflict and losing its protected status under IHL. Relatedly, the 1999 Secretary General's Bulletin on IHL should be updated to reflect a more consistent understanding of what constitute crimes against peacekeepers, as well as recent developments in IHL.
- **Ensure adherence to human rights standards:** Through the UN Working Group on Crimes against Peacekeepers, relevant DPO entities, together with OHCHR and the Office of Legal Affairs, should strengthen their cooperation on ensuring that host-state authorities adhere to human rights standards. They should all ensure that any arrest, pretrial detention, and incarceration by host-state police and corrections personnel respect individuals' basic rights and integrity, can be lawfully justified, and are subject to judicial oversight. Toward this end, UN peacekeeping operations should always adhere to the Human Rights Due Diligence Policy (HRDDP) on support to non-UN security forces, as well as other guidelines related to human rights standards and fair treatment.
- **Improve internal and external coordination:** DPO should designate a full-time, dedicated focal point at headquarters to directly communicate and follow up with external stakeholders, including permanent missions of T/PCCs in New York. DPO should also

provide regular updates on the development of the online database on crimes against peacekeepers to increase transparency on the issue and ensure that it is useful for stakeholders, including national judicial authorities and UN missions. In addition, the working groups between OROLSI and the justice and corrections sections of peacekeeping missions should be staffed with dedicated focal points and expanded to all UN missions.

Recommendations for UN missions:

- **Pursue a comprehensive approach to accountability:** UN missions should continue to pursue the goal of advancing accountability for crimes against peacekeepers as part of the overarching goal of promoting justice and accountability for all serious crimes committed in the host state.
- **Support host-state investigations and prosecutions:** UN missions should continue supporting the host state in investigating and prosecuting crimes against peacekeepers, as well as other serious crimes. To that end, they should continue sharpening their forensic capacity and expertise, maintain high standards to ensure the recruitment of qualified police personnel, and invest in witness-protection programs, in cooperation with the host state.
- **Advocate for host-state authorities to pursue accountability:** UN mission leadership should continue engaging with host-state national authorities at a high level to advocate for the investigation and prosecution of cases. This high-level engagement is critical to pressure host states to tackle the problem.
- **Ensure sustained documentation of and follow-up on cases:** Each UN peacekeeping operation should designate a dedicated focal point with technical expertise to allow for continuous and direct follow-up between the host state and the mission on existing cases, following the model of MINUSCA, MINUSMA, and MONUSCO. This focal point should be a UN staff member to ensure they are not rotating out of the mission, and they should be in close contact with the mission's executive office. All missions should also

develop mission-specific strategies to address crimes against peacekeepers, in compliance with the SOPs, and to enhance coordination between all relevant stakeholders within the mission and between the mission and its host-state counterparts. All UN peacekeeping operations should create internal, centralized follow-up mechanisms to ensure the continuity and archiving of documentation linked to cases.

Recommendations for the Security Council:

- **Prioritize peacekeeping mandates to build the host state's capacity to pursue accountability:** The UN Security Council should prioritize the mandates of UN peacekeeping operations to build the capacity of the host state's police, judiciary, and correction system, as well as to support good governance more generally. Achieving these long-term goals will ultimately help in fighting impunity for crimes against peacekeepers. The council should also emphasize that such support and capacity building should be maintained during the transition phase of missions and through the work of UN country teams after a mission is no longer present.
- **Encourage legal clarity on the nature of crimes against peacekeepers:** The UN Security

Council should avoid calling for host states to legally codify crimes against peacekeepers as "war crimes" when they do not meet these criteria. In future statements and resolutions, the council could clarify the scope of the definition of "crimes against peacekeepers" while taking into account IHL.

Recommendations for other UN member states:

- **Use the group of friends to offer new ideas:** The Group of Friends on Crimes against Peacekeepers should proactively offer ideas to the UN Security Council and the UN Secretariat on ways to promote accountability for crimes against peacekeepers. In particular, it is well placed to hold discussions to better define the role of T/PCCs vis-à-vis the host state when an attack on peacekeepers occurs.
- **Use the C-34 to discuss ways to improve coordination:** The General Assembly's Special Committee on Peacekeeping Operations (C-34) should continue tackling the issue of accountability for crimes against peacekeepers. In particular, it should have more in-depth discussions on ways to enhance coordination between UN headquarters, UN missions, the host state, and T/PCCs to advance accountability for crimes against peacekeepers.

Annex: Language Related to Crimes against Peacekeepers and Support to National Authorities in Peacekeeping Mandates¹¹⁰

	MONUSCO UN Security Council Resolution 2666 (2022)	MINUSCA UN Security Council Resolution 2659 (2022)	MINUSMA UN Security Council Resolution 2640 (2022)
Condemnation of crimes against peacekeepers and calls for accountability	“Reiterates its condemnation of attacks on... United Nations and associated personnel... and further reiterates that those responsible must be held accountable.” ¹¹¹	“Condemning in the strongest terms all attacks, provocations and incitement to hatred and violence against MINUSCA and other international forces by armed groups and other perpetrators, in particular violations of the Status of Forces Agreement, including the ban on night flights, which must be strictly respected by the CAR authorities, as well as disinformation campaigns including through social media, paying tribute to the personnel of MINUSCA who sacrificed their lives in the service of peace, underlining that attacks targeting peacekeepers may constitute war crimes.” ¹¹²	“Condemns in the strongest terms all attacks, provocations and incitement to violence against MINUSMA peacekeepers and other United Nations and associated personnel, underlines that these attacks may constitute war crimes under international law, calls on all parties to fully respect their obligations under international law, stresses that those responsible for these acts should be held accountable.” ¹¹³
Safety and security of peacekeepers	“Notes with concern the grave risks violations of the Status of Forces Agreement can present to the safety and security of United Nations personnel serving in	“reminding all parties of their obligations under international humanitarian law and urging the CAR authorities to work with MINUSCA to enhance the safety and	“Requests the Secretary-General to implement the following capacities and existing obligations in the planning and conduct of MINUSMA’s operations... to

¹¹⁰ This table is meant to illustrate mandate language related to accountability for crimes against peacekeepers but is not meant to be comprehensive.

¹¹¹ UN Security Council Resolution 2666 (December 20, 2022), UN Doc. S/RES/2666, para. 9.

¹¹² UN Security Council Resolution 2659 (November 14, 2022), UN Doc. S/RES/2659, preamble.

¹¹³ UN Security Council Resolution 2640 (June 29, 2022), UN Doc. S/RES/2640, para. 42.

	MONUSCO UN Security Council Resolution 2666 (2022)	MINUSCA UN Security Council Resolution 2659 (2022)	MINUSMA UN Security Council Resolution 2640 (2022)
	peacekeeping operations, underscores that the primary responsibility for the safety and security of United Nations personnel and assets rests with host State, highlights the importance of effective communications between United Nations peacekeeping operations and host governments to build trust and mutual understanding and requests the Secretary-General to implement the provisions of resolution 2589 (2021). ¹¹⁴	security of MINUSCA's personnel and to take all possible measures to ensure the arrest and prosecution of perpetrators, including in line with resolution 2518 (2020) and 2589 (2021). ¹¹⁵	strengthen its capacities to monitor and to counter disinformation and misinformation that might hinder the mission's ability to implement its mandate or threaten the safety and security of peacekeepers. ¹¹⁶ "Stresses the importance... to take all appropriate measures... prior to deployment in line with UN guidelines and best practices to improve safety of peacekeepers, recalling as well the Action Plan on improving safety and security related to the report on 'Improving Security of United Nations Peacekeepers.' ¹¹⁷ (para 39).
Support for and cooperation with national and international judicial efforts	"Work with the authorities of the DRC, leveraging the capacities and expertise of the UN System, to strengthen and support the DRC judicial system in order to investigate and prosecute all those allegedly responsible for genocide, war crimes and crimes against humanity and	"Calls on the CAR authorities to pursue their efforts, as a matter of priority, to strengthen justice institutions at national and local levels as part of the extension of State authority in order to fight impunity and to contribute to stabilisation and reconciliation, including through the restoration	"To support, as feasible and appropriate, the efforts of the Malian authorities, without prejudice to their responsibilities, to bring to justice without undue delay those responsible for serious violations or abuses of human rights or violations of international humanitarian law, in particular war

114 UN Doc. S/RES/2666, para. 35.

115 UN Doc. S/RES/2659, preamble.

116 UN Doc. S/RES/2640, para. 41.

117 UN Doc. S/RES/2640, para. 39.

	MONUSCO UN Security Council Resolution 2666 (2022)	MINUSCA UN Security Council Resolution 2659 (2022)	MINUSMA UN Security Council Resolution 2640 (2022)
	violations of international humanitarian law and violations or abuses of human rights in the country, including through cooperation with States of the region and the ICC.” ¹¹⁸	<p>of the administration of the judiciary, criminal justice and penitentiary systems throughout the country.”¹¹⁹</p> <p>See all para. 36(f) on “support for national and international justice, the fight against impunity and the rule of law.”</p> <p>“Without prejudice to the primary responsibility of the CAR authorities, to support the restoration and maintenance of public safety and the rule of law, including through apprehending and handing over to the CAR authorities, consistent with international law, those in the country responsible for crimes involving serious human rights violations and abuses and serious violations of international humanitarian law, including sexual violence in conflict, so that they can be brought to justice, and through cooperation with states of the region as well as the ICC in cases of crimes falling within its jurisdiction following</p>	<p>crimes and crimes against humanity in Mali, taking into account the referral by the transitional authorities of Mali of the situation in their country since January 2012 to the ICC.”¹²⁰</p> <p>“Calls on the Transition Government of Mali to take all possible measures to swiftly investigate, arrest, prosecute and bring to justice the perpetrators of such acts, with a view to prevent impunity from encouraging future violence against peacekeepers, including in line with resolutions 2518 (2020) and 2589 (2021)), calls upon MINUSMA to provide support to the Transition Government of Mali to this end, and further requests the Secretary-General to ensure troop contributing countries receive sufficient information relevant to up-to-date tactics, techniques, and procedures in reducing troop casualties in an asymmetric environment before deploying to Mali.”¹²¹</p>

¹¹⁸ UN Doc. S/RES/2666, para. 26(b).

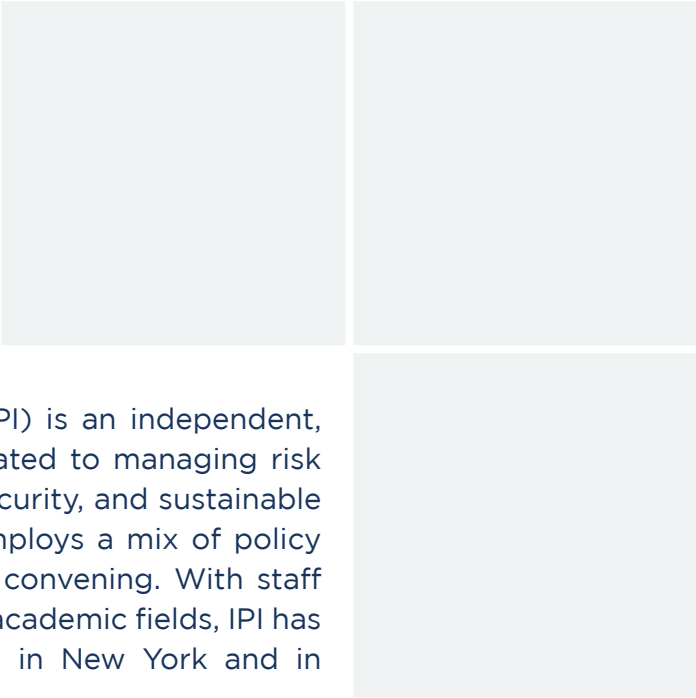
¹¹⁹ UN Doc. S/RES/2659, para. 16.

¹²⁰ UN Doc. S/RES/2640, para. 26(d).

¹²¹ UN Doc. S/RES/2640, para. 42.

	MONUSCO UN Security Council Resolution 2666 (2022)	MINUSCA UN Security Council Resolution 2659 (2022)	MINUSMA UN Security Council Resolution 2640 (2022)
		the decision made by the Prosecutor of the ICC on 24 September 2014 to open, following the request of national authorities, an investigation into alleged crimes committed since 2012.” ¹²²	
Capacity building and security sector reform	“Promote and facilitate military, police, justice and prison sector reforms to enhance the justice and security sector’s accountability, fighting against impunity and operational effectiveness and effectiveness; in that regard, provide expertise, advice and training to the Congolese security forces to strengthen their capacity, in particular through human rights training and through continued implementation of the Integrated Operational Strategy for the Fight Against Insecurity, developed by MONUSCO police, in strict compliance with the United Nations HRDDP” (OP 24(iii))	“To help reinforce the independence of the judiciary, build the capacities and enhance the effectiveness of the national judicial system as well as the accountability of the penitentiary system including through the provision of technical assistance to the CAR authorities to identify, investigate and prosecute those responsible for crimes involving violations of IHL and violations and abuses of human rights committed throughout the CAR” (OP.36 (f)(i)). See also OP.36 (d) Security Sector Reform.	

122 UN Doc. S/RES/2605, para. 36(f)(vii).



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