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THE LEGAL ARCHITECTURE OF UNITED NATIONS PEACEKEEPING: A CASE STUDY OF UNIFIL

*Layan Charara**

Over the course of the United Nations' (the "UN" or the "Organization") history, the Organization's arsenal for the maintenance of international peace and security has evolved substantially. The UN employs a number of tactics in pursuit of international cooperation, including diplomacy, blockades, economic sanctions, and disruptions in means of communication. One operation engaged by the UN since its inception is particularly controversial: peacekeeping. The first UN peacekeeping contingent, the United Nations Emergency Force, was deployed during the 1956 Arab-Israeli conflict. Since then, 71 peacekeeping operations have been deployed, 14 are ongoing, and 3,826 peacekeeper fatalities have been reported, more than half of which were due to accident or malicious act.¹

Using the United Nations Interim Force in Lebanon ("UNIFIL" or "the Force") as a case study, this Note provides a treatment of the legal recourse available to peacekeepers injured or killed in the service of the UN. This Note focuses on the incident of July 25, 2006—when four UN peacekeepers were killed in Khiam, South Lebanon—to demonstrate that the existing legal architecture insufficiently protects the rights of the UN and its peacekeepers. UNIFIL illustrates this problem in three principal ways: (1) the status of peacekeepers is unresolved in international law, and existing instruments such as the Safety Convention are not comprehensive enough; (2) not all parties to a conflict come within the ambit of the existing legal regime; and (3) UNIFIL is deeply entangled in the Arab-Israeli conflict, which affects its ability to discharge its mandate and the international community's ability to ensure the safety and security of UNIFIL personnel.

While UNIFIL is distinctive with respect to item (3), items (1) and (2) are shared by other peacekeeping missions, making all UN Member States' obligation to ensure the safety and security of UN peacekeepers substantively inadequate. Accordingly, this Note explores the ways UNIFIL is a unique peacekeeping force that can still teach broader lessons about UN peacekeep-

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1. *Data*, UNITED NATIONS PEACEKEEPING, <https://peacekeeping.un.org/en/data>; *Fatalities*, UNITED NATIONS PEACEKEEPING, <https://peacekeeping.un.org/en/fatalities> (last updated Feb. 28, 2019).

ing. It is organized into four parts: Part I provides a contour of UN peacekeeping operations; Part II chronicles the history of UNIFIL; Part III analyzes the current legal regime with respect to UN peacekeeping; and Part IV surveys solutions offered in the past and recommends more apposite courses of action to strengthen the legal recourse available to peacekeepers and their families.

I. UNITED NATIONS PEACEKEEPING AT A GLANCE

Peacekeeping operations are not explicitly mentioned anywhere in the UN Charter (the “Charter”).² As such, scholars and practitioners struggle to reach consensus on the definition of such operations. Former Secretary-General Boutros Boutros-Ghali defined peacekeeping as

the deployment of a United Nations presence in the field, hitherto the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peacekeeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace.³

The deployment of peacekeeping operations is widely understood as an exercise of the Security Council’s primary responsibility for the maintenance of international peace and security.⁴ The Security Council fulfils this responsibility by enacting measures pursuant to Charter Chapters VI and VII, which provide for the pacific settlement of disputes and enforcement actions respectively. Although Security Council resolutions on peacekeeping operations typically cite Chapter VI or VII as the legal basis for their establishment, it is often contended that peacekeeping developed in the gray zone between these two chapters, making its precise place in the Charter difficult to locate.⁵ In recent years, however, peacekeeping missions have been expressly deployed as Chapter VII operations.⁶ The UN maintains that

2. ROBERT C.R. SIEKMANN, NATIONAL CONTINGENTS IN UNITED NATIONS PEACEKEEPING FORCES 4–5 (1991).

3. Michael Bothe & Thomas Dörschel, *The UN Peacekeeping Experience*, in THE HANDBOOK OF THE LAW OF VISITING FORCES 487, 487 (Dieter Fleck ed., 2001).

4. U.N. Charter art. 24.

5. Members of the Special Committee on Peacekeeping called for the addition of a chapter between VI and VII on peacekeeping. The proposal has yet to gain serious traction. RAMESH THAKUR, INTERNATIONAL PEACEKEEPING IN LEBANON: UNITED NATIONS AUTHORITY AND MULTINATIONAL FORCE 21, 29 (1987). Peacekeeping has instead been referred to as a “Chapter VI and a half” operation, a term first coined by former Secretary-General Dag Hammarskjöld. *60 Years of United Nations Peacekeeping*, UNITED NATIONS PEACEKEEPING, <http://www.un.org/en/events/peacekeepersday/2008/60years.shtml> (last visited Mar. 28, 2019).

6. *Mandates and the Legal Basis for Peacekeeping*, UNITED NATIONS PEACEKEEPING, <https://peacekeeping.un.org/en/mandates-and-legal-basis-peacekeeping> (last visited Mar. 28, 2019).

invocation of Chapter VII serves as a “means of reminding the parties to a conflict and the wider UN membership of their obligation to give effect to Security Council decisions.”⁷ The UN also attributes peacekeeping operations to Article 29 of the Charter, which grants the Security Council the power to establish subsidiary organs it deems necessary for the performance of its functions.⁸

UN peacekeeping comprises two distinct types of operations known as “first generation” traditional peacekeeping, intended to end interstate conflict, and “second generation” peacekeeping, which entails expanded mandates that seek to maintain intrastate peace.⁹ In the absence of clear guidance from the Charter, the rules of peacekeeping developed *ad hoc* over the years and culminated in three basic principles: consent of the parties, impartiality, and non-use of force except in self-defense and defense of the force’s mandate.¹⁰

Consent. Consent of the parties to the conflict is necessary to provide peacekeeping forces with freedom of action to fulfil their mandates. Absence of consent risks entangling forces as parties to conflicts.¹¹ Furthermore, should any complications arise, “the [consent] of the host state constitutes an element of a contractual relationship between the United Nations and the host state. Thus, rights and duties of the United Nations may be derived from that consent.”¹²

Consent is typically manifested in the form of a status of forces agreement (“SOFA”).¹³ SOFAs are critical legal instruments that define the relationship between a UN peacekeeping force and its host state and guarantee the legality of a peacekeeping force’s presence in a country’s territory.¹⁴ Their importance for peacekeeping operations is evinced by the UN’s promulgation of a model SOFA that is intended to be used provisionally until a more tailored one is negotiated.¹⁵

In the interstate context, when a peacekeeping force acts as a buffer, “not only the host state but also its adversary, a neighbouring country, must have given its consent to this before there can be any question of peace-

7. *Id.*

8. The General Assembly may also establish peacekeeping missions. SIEKMANN, *supra* note 2, at 126.

9. CHEN KERTCHER, THE UNITED NATIONS AND PEACEKEEPING, 1988–95, at 1–5 (2016).

10. *Principles of Peacekeeping*, UNITED NATIONS PEACEKEEPING, <http://peacekeeping.un.org/en/principles-of-peacekeeping> (last visited Mar. 28, 2019).

11. *Id.*

12. Bothe & Dörschel, *supra* note 3, at 492.

13. Discussed further *infra* Part III.

14. *Id.* at 491; RAY MURPHY, UN PEACEKEEPING IN LEBANON, SOMALIA AND KOSOVO: OPERATIONAL AND LEGAL ISSUES IN PRACTICE 7 (2007).

15. *Annex F: Model Status-of-Forces Agreement for Peacekeeping Operations (UN Model SOFA)*, in THE HANDBOOK OF THE LAW OF VISITING FORCES, *supra* note 3, at 603.

keeping.”¹⁶ This consent does not, however, guarantee cooperation with or the safety of peacekeeping forces.¹⁷ Often, adversarial or neighboring countries’ interference in a peacekeeping force’s ability to fulfil its mandate undermines any tacit consent they may provide for its deployment.¹⁸

Impartiality. The UN understands impartiality in peacekeeping as

an objective and consistent execution of the mandate, regardless of provocation or challenge. Impartiality does not mean inaction or overlooking violations. UN peacekeepers should be impartial in their dealings with the parties to the conflict, but not neutral in the execution of their mandate, i.e., they must actively pursue the implementation of their mandate even if doing so goes against the interests of one or more of the parties.¹⁹

Impartiality is demanded by the fact that peacekeeping forces must stand between warring parties and remain credible in order to achieve their mandate.²⁰ One party’s distrust of a peacekeeping force can frustrate its entire mission.²¹

Self-Defense and Defense of the Mandate. UN peacekeeping operations are usually not enforcement tools. However, the Security Council occasionally confers “robust” mandates, which authorize the use of force in self-defense and in defense of the mandate should certain parties attempt to thwart its execution.²² The UN asserts that robust peacekeeping should not be confused with Chapter VII peace enforcement; “[r]obust peacekeeping involves the use of force at the tactical level with the authorization of the Security Council and consent of the host nation and/or the main parties to the conflict,” whereas peace enforcement does not require consent and may involve greater military force.²³

II. THE UNITED NATIONS INTERIM FORCE IN LEBANON

In the context of Arab-Israeli peacekeeping operations, agreement on a mandate does not translate into agreement on perceptions and expectations vis-à-vis peacekeeping forces.²⁴ This issue came to the fore when UNIFIL

16. SIEKMANN, *supra* note 2, at 6.

17. *See infra* Part II.

18. *See infra* Section III(B).

19. UNITED NATIONS, HANDBOOK ON UNITED NATIONS MULTIDIMENSIONAL PEACEKEEPING OPERATIONS 56 (2003).

20. *Mandates and the Legal Basis for Peacekeeping*, *supra* note 6.

21. *See infra* Part II.

22. UNITED NATIONS, UNITED NATIONS PEACEKEEPING OPERATIONS: PRINCIPLES AND GUIDELINES 19 (2008). The United Nations Interim Force in Lebanon (“UNIFIL”) is an example of a force with this kind of mandate.

23. *Id.* at 34.

24. NATHAN A. PELCOVITS, PEACEKEEPING ON ARAB-ISRAELI FRONTS 17 (1984).

was established in 1978, following Israel's invasion of South Lebanon. UNIFIL's original mandate in March 1978, codified in Security Council Resolution 425, was to "confirm withdrawal of Israeli forces from southern Lebanon, restore international peace and security, [and] assist the Government of Lebanon in ensuring the return of its effective authority in the area."²⁵ Its mandate was expanded by the Security Council following the 2006 Lebanon War to monitor the cessation of hostilities, ensure the withdrawal of Israeli forces from Lebanon, assist in securing the Lebanese border, and ensure the provision of humanitarian assistance.²⁶

UNIFIL was deployed in the midst of two diverging conflicts whose parties often converged—the Arab-Israeli conflict, in which South Lebanon has long been an active front, and the Lebanese Civil War, raging intermittently from 1975 until its conclusion in 1990. The two conflicts intersected at the question of Palestine due to the presence of hundreds of thousands of Palestinian refugees in Lebanon, many of whom took up arms on behalf of the Palestine Liberation Organization (the "PLO") and turned South Lebanon into a base from which to launch attacks at Israel.²⁷ Consequently, Lebanon became a target of violent Israeli retaliation, which culminated in Israel's invasion of South Lebanon in 1978 and 1982.²⁸

Lebanese and Israeli opinions of UNIFIL diverged. The Lebanese government—to the extent it existed in the midst of the civil war—welcomed the establishment of UNIFIL as it sought to distance itself from Palestinian attacks on Israel and wanted Israeli forces out of its territory.²⁹ The Israelis, on the other hand, sought to thwart and humiliate UNIFIL from the outset, for they felt the Force was imposed on them without their case being heard.³⁰ They considered Resolution 425 "inadequate and sorely lacking" because it did not explicitly ban "terrorists"—that is, the PLO—from returning to Lebanon.³¹ As such, the Israeli government maintained that its invasion of Lebanon was in self-defense due to PLO attacks and consistently frustrated UNIFIL's goals.³²

Throughout the Lebanese Civil War, UNIFIL was the greatest threat to Israel's goals of crushing Palestinian resistance and installing a friendlier Lebanese government.³³ The Security Council recognized that Israel was the foremost obstacle to achieving UNIFIL's mandate, "deplor[ing]," in Resolu-

25. *UNIFIL Mandate*, UNIFIL, <https://unifil.unmissions.org/unifil-mandate> (last visited Mar. 28, 2019).

26. *Id.*

27. Karim Makdisi, *Reconsidering the Struggle over UNIFIL in Southern Lebanon*, 43 J. PALESTINE STUD. 24, 24–25 (2014).

28. ANTHONY VERRIER, INTERNATIONAL PEACEKEEPING 126 (1981).

29. Makdisi, *supra* note 27, at 27–28.

30. VERRIER, *supra* note 28, at 118; PELCOVITS, *supra* note 24, at 18.

31. Makdisi, *supra* note 27, at 29–30.

32. *Id.* at 29.

33. *Id.* at 32.

tion 444, Israel's lack of cooperation with UNIFIL and its assistance to armed groups in the South.³⁴ Trust and confidence in UN peacekeeping forces by local parties are crucial for their success; persistent Israeli suspicions and bombardment were—and continue to be—a significant threat to UNIFIL's mandate.³⁵

Although Israel formally withdrew from South Lebanon in 2000, tensions continue to simmer at the Lebanese-Israeli border and threaten to materialize into conflict. Between 1978, the year of UNIFIL's establishment, and the time of writing, 313 UNIFIL fatalities were reported—the most of any UN peacekeeping mission.³⁶ A number of these fatalities are attributable to Israel, in addition to the armed groups previously present in South Lebanon.³⁷ Should another conflict between Lebanon and Israel take place, peacekeepers will once again be in the line of fire.³⁸

The remainder of this Note focuses on one particular incident during the 2006 Lebanon War—that of July 25, when four unarmed UN peacekeepers were killed during an Israeli airstrike on a UN observation post in Khiam, South Lebanon.³⁹ According to accounts of the incident, an Israeli F-16 fighter jet dropped a 1,000-pound bomb directly onto the UN compound in Khiam.⁴⁰ Journalistic reports describe the UN position as displaying clear UN markings, including waving the UN flag outside the compound.⁴¹ According to the UNIFIL press release following the incident, there were 14 prior incidents of firing by Israeli forces close to this position.⁴² The

34. *Id.*

35. THAKUR, *supra* note 5, at 59.

36. *Fatalities*, *supra* note 1.

37. *See* MURPHY, *supra* note 14, at 309.

38. Even during times of relative peace between Lebanon and Israel, peacekeepers are still in danger. For example, a Spanish peacekeeper was killed by Israeli fire in 2015, although Israel asserts it was not intentional. *Israel Admits Its Fire Killed Spanish UN Peacekeeper*, BBC (Apr. 7, 2015), <https://www.bbc.com/news/world-middle-east-32206393>.

39. The four observers killed in the airstrike were UN Military Observers, part of the UN Observer Group Lebanon (the "OGL"). The OGL supports UNIFIL, operates out of UNIFIL bases, and patrols along the "Blue Line" with UNIFIL. They are tasked with observing and reporting violations of agreements of ceasefire and disengagement. In its discussions of this incident, the Security Council refers to the military observers killed as UNIFIL peacekeepers. For the purposes of consistency, and given the nature of the OGL's activities, this Note adopts this terminology. *UNTSO Operations*, UNITED NATIONS TRUCE SUPERVISION ORG., <https://untso.unmissions.org/untso-operations> (last visited Mar. 28, 2019).

40. Robert Fisk, *It Is 10 Years Since UN Peacekeepers Were killed in Southern Lebanon – and it Could Happen Again Now*, INDEPENDENT, <https://www.independent.co.uk/voices/it-is-10-years-since-un-peacekeepers-were-killed-in-southern-lebanon-and-it-could-happen-again-now-a7154571.html> (last visited Mar. 28, 2019); Rory McCarthy, Suzanne Goldberg, & Oliver Burkeman, *Israelis Ignored Repeated Warnings Before Killing UN Observers*, GUARDIAN (July 26, 2006, 9:11 PM EDT), <https://www.theguardian.com/world/2006/jul/27/syria.israel4>.

41. *E.g.*, Fisk, *supra* note 40; McCarthy, Goldberg, & Burkeman, *supra* note 40.

42. Press Release, UNIFIL

UNIFIL Force Commander “was in repeated contact with Israeli Army officers throughout the afternoon, pressing the need to protect that particular UN position from firing.”⁴³ Journalists and Commandant Kevin McDonald, an Irish officer serving in UNIFIL at the time, similarly reported that UN officers repeatedly pleaded with Israel to cease fire, and Israel offered false assurances.⁴⁴ A UN officer speculated—anonously—that Israel may have sought to prevent the UN observers from reporting on its activities in that area as Khiam was a strategic location from which to maneuver armor into Lebanon.⁴⁵

Secretary-General Kofi Annan described the incident as an “apparently deliberate targeting” of a clearly marked UN observer post by Israel.⁴⁶ Israel refused UN participation in the investigation into the incident, asserting it was an error and that it would “never intentionally target any UN facility or personnel.”⁴⁷ Israeli authorities accepted full responsibility for what they determined was an “operational level” mistake.⁴⁸ Secretary-General Annan lamented that the UN Board of Inquiry “did not have access to operational or tactical level IDF commanders involved in the incident,” resulting in the Board’s failure to determine what exactly happened and “why the attacks on the UN position were not halted, despite repeated demarches to the Israeli authorities”⁴⁹

The Commission of Inquiry on Lebanon, tasked with investigating the 2006 Lebanon War, ultimately concluded that there was no justification for

(July 26, 2006), https://unifil.unmissions.org/sites/default/files/old_dnn/pr010.377fa8e7-80e2-4249-b26f-95b578aa6d3a.pdf; see also Kevin Mc Donald, *Peacekeeping on the Edge: Observer Group Lebanon and the 2006 Israel – Lebanon War*, https://www.academia.edu/27311015/PEACEKEEPING_ON_THE_EDGE (last visited Mar. 28, 2019).

43. Press Release, UNIFIL (July 26, 2006), *supra* note 42; see also Warren Hoge, *U.N. Says It Protested to Israel for 6 Hours During Attack That Killed 4 Observers in Lebanon*, N.Y. TIMES (July 27, 2006), <https://www.nytimes.com/2006/07/27/world/middleeast/27nations.html>.

44. Fisk, *supra* note 40; Mc Donald, *supra* note 42.

45. Fisk, *supra* note 40.

46. Annan “Shocked:” by Israeli Attack on UN Lebanon Post that Killed at least 2, UN NEWS (July 25, 2006), <https://news.un.org/en/story/2006/07/186862-annan-shocked-israeli-attack-un-lebanon-post-killed-least-2>.

47. *Israeli Responses to Accidental Killing of Four UNIFIL soldiers*, ISR. MINISTRY FOREIGN AFF. (July 26, 2006), <http://www.mfa.gov.il/mfa/pressroom/2006/pages/israeli%20responses%20to%20accidental%20killing%20of%20four%20unifil%20soldiers%2026-jul-2006.aspx>.

48. Human Rights Council, Rep. of the Comm’n of Inquiry on Lebanon Pursuant to Human Rights Council Resolution S-2/1*, ¶¶ 233–43, U.N. Doc. A/HRC/3/2 (Nov. 23, 2006).

49. HUMAN RIGHTS WATCH, WHY THEY DIED: CIVILIAN CASUALTIES IN LEBANON DURING THE 2006 WAR 115 (2007), <https://www.hrw.org/sites/default/files/reports/lebanon0907.pdf>; Press Release, Secretary-General, Secretary-General Receives Report on Attack that Killed Observers at Khiam, Lebanon, U.N. Press Release SG/SM/10666 (Sept. 29, 2006).

this direct attack—or any other attack—on UN personnel during the war.⁵⁰ Due to these events, the UN was compelled to relocate peacekeeping personnel in South Lebanon “as potential threats to the unarmed military observers [could] no longer be mitigated by other means.”⁵¹ This incident sheds light on the three principal shortcomings of the UN peacekeeping regime and demonstrates the nature of the attacks UNIFIL personnel endure and what recourse is available.⁵²

III. LEGAL RECOURSE AVAILABLE TO PEACEKEEPERS

The legal framework of UN peacekeeping is usually comprised of a Security Council or General Assembly resolution establishing the force, a SOFA or Status of Mission Agreement, agreements between the troop-contributing states and the UN, and regulations for the force issued by the Secretary-General.⁵³ However, peacekeeping operations do not exist in a vacuum. On the contrary, they implicate the broader framework of international law by virtue of being stationed in conflict zones and products of international relations and diplomacy.

The following sections analyze the international legal regimes that offer recourse to peacekeepers, paying special attention to Israel’s status as a state party to the conflict. As discussed in Part II, a number of parties complicated UNIFIL’s mission, including non-state actors like the PLO and Hizballah. Their involvement notwithstanding, the legal issues considered below will primarily account for the states that are recognized subjects of international law and not the non-state actors whose status in the international legal framework is currently unsettled. While the current architecture offers a number of hypothetical avenues for relief, the circumstances of this particular case make provision of reparations particularly challenging, as will be demonstrated in the following sections.

A. *The UN Charter*

1. Member States’ Obligations

The Charter of the UN sets out the purposes of the establishment of the Organization in Chapter I. These purposes include maintaining international peace and security, developing friendly relations among nations, achieving international cooperation to solve international problems, encouraging respect for human rights, and harmonizing the fulfilment of these purposes.⁵⁴

50. Human Rights Council, *supra* note 48, ¶ 19.

51. U.N. Secretary-General, Letter dated 29 July 2006 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2006/595 (July 29, 2006).

52. *See supra* pp. 1–2.

53. MURPHY, *supra* note 14, at 309.

54. U.N. Charter art. 1.

The Charter stipulates that Member States must fulfil the obligations enshrined in the Charter in good faith and that they must refrain from endangering international peace and security.⁵⁵

The Security Council discharges its duty to maintain international peace and security in accordance with Charter Chapters VI, VII, VIII, and XII.⁵⁶ Peacekeeping operations are established pursuant to the Security Council's responsibility to maintain international peace and security. As such, peacekeeping operations are carried out in accordance with the Purposes and Principles of the UN.⁵⁷

Member States are obligated to accept and carry out the decisions of the Security Council, in addition to providing the UN with assistance for any action it takes in accordance with the Charter.⁵⁸ In other words, Member States have a legal obligation to ensure that they do not impede the Security Council's actions or endanger the peace and security the Council endeavors to maintain.⁵⁹ Although the Charter does not expressly obligate Member States not to thwart the Security Council, the obligations to act in accordance with the Principles of the Organization and to accept and carry out the decisions of the Security Council arguably entail an obligation not to act in contravention of these said Principles and decisions.⁶⁰ In the peacekeeping context, this means that attacks on peacekeepers may be construed as a breach of an obligation under the UN Charter—an act that is a violation of international law with legal consequences. Who may bring a claim for such a violation is a more difficult question.

2. The UN as Applicant

In theory, the UN may raise a claim against a state that inflicts harm or damage on its property or agents, including peacekeepers. In the *Reparation for Injuries Suffered in the Service of the United Nations* case, the International Court of Justice (the "ICJ") held that the UN is an international person that is "a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims."⁶¹ The court went on to say,

in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a Member State, the United Nations as an Organization has the capacity to bring an international claim against the responsible

55. U.N. Charter art. 2.

56. U.N. Charter art. 24.

57. See U.N. Charter arts. 1, 24, ¶ 2.

58. U.N. Charter arts. 2, ¶ 5, 25.

59. See U.N. Charter arts. 2, ¶ 3, 25.

60. See U.N. Charter arts. 2, ¶ 3, 25.

61. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. Rep. 174, 179 (Apr. 11).

de jure or de facto government with a view to obtaining the reparation due in respect of the damage caused to the United Nations. . . . [And,] the reparation due in respect of the damage caused to the victim or to persons entitled through him.⁶²

The court further held that, when the UN is bringing such a claim for damages caused to its agent, “it can only do so by basing its claim upon a breach of obligations due to itself”⁶³

The Court assumed that the breached obligation due to the UN in this case is the obligation to “protect the agents of the Organization in the performance of their duties.”⁶⁴ In its discussion, the Court stresses that the particular damage at issue is “damage caused to the interests of the Organization itself, to its administrative machine, to its property and assets, and to the interests of which it is the guardian.”⁶⁵ Causing such damage, according to the Court, constitutes a breach of an international obligation “designed to help an agent of the Organization in the performance of his duties.”⁶⁶ The Court links this obligation to Article 2(5) of the UN Charter, which requires Member States to “give the United Nations every assistance in any action it takes in accordance with the present Charter”⁶⁷ This obligation arguably encompasses a duty not to endanger agents of the Organization in the performance of their duties—discharged pursuant to the UN Charter—or to thwart their ability to effectively perform their duties, in addition to affirmatively protecting them in the performance of their duties.⁶⁸

The UN may invoke a right due to it and ask for reparation on the basis that “it is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form”⁶⁹ Following the ICJ’s *Reparations* opinion, General Assembly Resolution 365 (IV) authorized the Secretary-General to bring an international claim against the government of a state that is alleged to have caused damage to the UN and in respect of the injury caused to the victim.⁷⁰ Thus, if peacekeepers are classified as UN agents—acting in the interest of the Organization and pursuant to its Charter—then the UN can bring claims on their behalf as described in the *Reparations* case and pursuant to Resolution 365. That is, the UN has the legal capacity to bring a claim against Israel for the injury and

62. *Id.* at 187.

63. *Id.* at 188.

64. *Id.* at 177.

65. *Id.* at 180.

66. *Id.* at 180, 182.

67. U.N. Charter art. 2, ¶ 5.

68. *See* *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. Rep. at 183.

69. *Id.* at 184.

70. G.A. Res. 365 (IV) (Dec. 1, 1949).

death of its peacekeepers because they are agents of the Organization that Israel is obligated to protect.

Peacekeeping missions are deployed pursuant to the provisions of the UN Charter. The UN deploys these missions as a guardian of the interests of international peace and security. As a Member State of the UN, Israel is obligated to carry out the Security Council's decisions and refrain from endangering international peace and security.⁷¹ If the July 25 attack on UNIFIL was deliberate, then Israel violated its international obligations under the UN Charter by targeting peacekeepers whose very objective is to restore peace and security. Raising a claim under Israel's account of the events—namely, that it was an accident—is also plausible given Israel's obligation to protect agents of the UN in the performance of their duties.⁷²

The UN has in fact brought claims against Member States in instances where a government is accused of injuring UN staff in the course of peacekeeping missions.⁷³ Unfortunately, “[t]he great majority of these claims were not settled and the States did not agree to arbitration.”⁷⁴ Additionally, there are political considerations the UN must account for when Israel is concerned—most significantly, the United States' unwavering support for its ally. While the Security Council may request an advisory opinion from the ICJ on the legality of Israel's actions with respect to UNIFIL, the United States would likely use its veto power in the Security Council to prevent such an action.⁷⁵ The General Assembly may find more support for such a request, but the ICJ's advisory opinions carry no binding force and cannot compel Israel to take any action.⁷⁶

In the *Reparations* case, the ICJ also reaffirmed that a state has the capacity to bring an international claim against another state for damages suffered by its nationals.⁷⁷ The opinion does not preclude the possibility of concurrent claims by the agent's national state and the UN. In fact, the Court acknowledges that the interests of both the national state and the Organization may be engaged, although their claims may arise under different bases.⁷⁸ Neither the national state nor the Organization has priority over the claim, but the ICJ maintains that the parties should cooperate to find a prac-

71. U.N. Charter arts. 24–25.

72. See *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. Rep. at 177.

73. Mahnouch H. Arsanjani, *Claims Against International Organizations: Quis custodiet ipsos custodes*, 7 YALE J. WORLD PUB. ORD. 131, 148 (1981).

74. *Id.*

75. The UN itself cannot be party to a contentious case before the ICJ. Statute of the International Court of Justice arts. 34, ¶ 1, 65, June 26, 1945, 3 U.S.T. 1153.

76. *Advisory Jurisdiction*, INT'L CT. JUST., <https://www.icj-cij.org/en/advisory-jurisdiction> (last visited Mar. 28, 2019).

77. *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. Rep. at 177.

78. *Id.* at 185.

tical solution.⁷⁹ Accordingly, the national states of injured or killed UN peacekeepers may coordinate with the UN to bring an international claim against another state, or they may pursue international claims on their own if the UN's political concerns cannot tolerate raising such a claim. However, in the context of performing duties as an agent of the UN, it is preferable for the UN itself to guarantee its agent protection rather than his/her own state in order to ensure the agent's independent action.⁸⁰ Furthermore, as illustrated later in this Note, a peacekeeper's national state raising a claim against Israel proved nearly impossible given Israel's lack of cooperation in the case of the four UN observers.⁸¹

B. *Status of Forces Agreements*

SOFAs are typically concluded as bilateral agreements between the UN and the country hosting UN peacekeeping forces. They are a staple in UN peacekeeping operations as they secure the legality of a peacekeeping force's presence in its host country's territory.⁸² SOFAs outline the rights and duties of peacekeeping forces, and their substance is negotiated with the host state in order to ensure forces can carry out their mandates in their area of operation without undue influence.⁸³ These agreements define the privileges and immunities of UN forces, ensure freedom of movement for peacekeepers, guarantee facilities for forces, and provide dispute settlement mechanisms among other arrangements.⁸⁴

Ideally, SOFAs should be signed prior to the deployment of a peacekeeping force, but, given that peacekeeping operations are often assembled in haste, this is not always possible.⁸⁵ In fact, UNIFIL operated without a SOFA for 20 years. Consequently, the Force was left to rely on precarious assurances that a Lebanese government at war—without effective control of UNIFIL's area of operation and within the greater context of the question of Palestine—would uphold a gentlemen's agreement, respect the UN's privileges and immunities, and ensure the safety of its peacekeepers. Allegiance to a gentlemen's agreement is contingent upon whether a party derives any benefit from compliance with it, so respect for UNIFIL's authority and rights was not always guaranteed prior to the SOFA's conclusion.⁸⁶ Moreo-

79. *Id.* at 185–86.

80. *Id.* at 183–84.

81. *See infra* Section IV(B).

82. Bothe & Dörschel, *supra* note 3, at 491.

83. MURPHY, *supra* note 14, at 108.

84. *E.g.*, *Annex F: Model Status-of-Forces Agreement for Peacekeeping Operations (UN Model SOFA)*, *supra* note 15, at 603.

85. MURPHY, *supra* note 14, at 108.

86. *Id.* at 111; There are, of course, other protections within the frameworks of international human rights law and international humanitarian law that provide peacekeepers with protections, whether a SOFA is in place or not, and they are discussed *infra* Sections III(C)–(E).

ver, because SOFAs are usually bilateral agreements, Israel is outside the scope of the obligations enshrined in the Lebanon-UN agreement, leaving peacekeepers without similar recourse against one of the parties to the conflict.

Prior to the adoption of the 1994 Convention on the Safety of United Nations and Associated Personnel (the “Safety Convention”),⁸⁷ the absence of a SOFA left peacekeepers in a vulnerable position insofar as their legal status was concerned. The nature SOFAs take on in conflict situations is peculiar, as is demonstrated by the case of UNIFIL. Traditional peacekeeping forces are deployed to temper hostilities between distinct parties, and such deployment necessitates the involvement of more than one party. And yet, a SOFA is only signed by the UN and the host government. This certainly makes sense with respect to the fact that the forces are only present in the host country, but SOFAs include additional obligations that should be enforced against other parties to the conflict as well.

The SOFA between Lebanon and the UN establishes a reciprocal obligation to treat one another and undertake operations “with full respect for the principles and spirit of the general international conventions applicable to the treatment of military and civilian personnel[,]” including the Four Geneva Conventions and their Additional Protocols.⁸⁸ Additionally, Chapter VII of the UNIFIL SOFA provides mechanisms to settle disputes and claims of a private law character.⁸⁹ Due to Israel’s 1978 and 1982 invasions of Lebanon, UNIFIL was compelled to monitor the behavior of this “third party” as part of its *de facto* mission.⁹⁰ Given the reality of the situation confronted by UNIFIL and the Secretariat’s knowledge of the facts on the ground, the UN should have made more concerted efforts to insure its forces in South Lebanon vis-à-vis Israeli hostility by means of a similar agreement with Israel.⁹¹

Political circumstances, however, dictated otherwise. Israeli hostility to UNIFIL was evident prior to its deployment,⁹² so the suggestion of a multilateral SOFA between the UN, Lebanon, and Israel or a bilateral agreement between the UN and Israel was likely out of the question. Furthermore, Israel is generally skeptical of the UN and often uncooperative, as was the case when the four observers were killed. Ultimately, it may not be viable to conclude multilateral SOFAs for all peacekeeping missions, but it is an option worth pursuing as it will bolster the legal protections for peacekeepers caught between enemy lines and expressly obligate states parties to comply with such legal obligations.

87. See *infra* Section III(D) for further discussion of this treaty.

88. Agreement on the Status of the United Nations Interim Force in Lebanon, Leb.-U.N., art. 7(a)–(b), Dec. 15, 1995, 1901 U.N.T.S. 397.

89. *Id.* ch. VII.

90. MURPHY, *supra* note 14, at 249–50.

91. Makdisi, *supra* note 27, at 31.

92. See *infra* Part II.

C. *The Law of Armed Conflict*

International humanitarian law (“IHL”), also known as the law of armed conflict, regulates the conduct of hostilities in armed conflicts.⁹³ It is codified in the Geneva Conventions and their Additional Protocols. The Conventions and Protocols endeavor to protect those who are not participating in hostilities—namely, civilians, health and aid workers, and those who have ceased participation in hostilities.⁹⁴ The Geneva Conventions enjoy widespread ratification. Lebanon is party to Conventions I–IV and Protocols I and II, and Israel is party to Conventions I–IV and Protocol III.⁹⁵ A number of principles of IHL are enshrined in customary international law as well.

It is clear that when UN forces become engaged in hostilities, they come within the purview of the law of armed conflict as combatants, and the Geneva Conventions apply to them with equal force as is applied to national troop contingents.⁹⁶ However, the rights owed to UN forces not participating in hostilities under IHL are not entirely settled because the framework’s subject is the combatant/participant, not the peacekeeper.⁹⁷

Protocol I provides that attacks on peacekeeping units, civilian personnel, and their property do not constitute military objectives and would thus be unlawful if conducted by a party to an international armed conflict.⁹⁸ Article 37(1)(d) of Protocol I prohibits “[t]he feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.”⁹⁹ One interpretation of this provision is that it “clearly envisages that the United Nations, and, by extension, U.N. personnel, have some kind of ‘protected status,’ but the nature of that status and the rights and obligations which flow from it are not set out in the Protocol.”¹⁰⁰ Although Lebanon is party to Protocol I, Israel is not. Thus, these provisions are of no avail to UNIFIL unless they are crystallized in customary international law.

93. *The Geneva Conventions of 1949 and Their Additional Protocols*, INT’L COMMITTEE RED CROSS (Jan. 1, 2014), <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>.

94. *Id.*

95. *Treaties, States Parties and Commentaries*, INT’L COMMITTEE RED CROSS, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp> (last visited Mar. 28, 2019).

96. Christopher Greenwood, *Protection of Peacekeepers: The Legal Regime*, 7 DUKE J. COMP. & INT’L L. 185, 188–89 (1996).

97. *See generally id.* (describing the Geneva Conventions’ inapplicability to certain situations UN peacekeepers operate in).

98. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) arts. 48, 50–52, June 8, 1977, 1125 U.N.T.S. 3.

99. *Id.* art. 37, ¶ 1(d).

100. Greenwood, *supra* note 96, at 190.

There is a debate as to whether peacekeepers are “protected persons” under Geneva Convention IV, defined as “those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”¹⁰¹ The subsequent provision of the Convention excludes nationals of a State which is not bound by the Convention and nationals of a neutral State that has diplomatic relations with the State into whose hands the nationals of the neutral state have fallen.¹⁰² It is argued that, because UN contingents are typically drawn from countries that have diplomatic relations with the parties to the conflict, they do not constitute protected persons.¹⁰³

Given that the Rome Statute of the International Criminal Court (the “ICC”) declares intentionally targeting UN peacekeepers a war crime—and thus, there is theoretically a venue for bringing such claims under IHL—there may not be a great deal of utility to a debate on whether peacekeepers should or do have protected status under the Geneva Conventions.¹⁰⁴ However, because neither Lebanon nor Israel is party to the Rome Statute, this is not a viable avenue for recourse.¹⁰⁵ It is also worth noting that IHL’s obligation not to target peacekeepers is ineffective considering the rise in attacks on UN peacekeeping missions.¹⁰⁶ Rather than impose negative obligations in this context, the international legal regime should obligate states to affirmatively protect and ensure the safety of UN peacekeepers, which the Safety Convention purports to do.¹⁰⁷

D. THE 1994 CONVENTION ON THE SAFETY OF UNITED NATIONS AND ASSOCIATED PERSONNEL

The 1994 Convention on the Safety of United Nations and Associated Personnel was adopted in haste after statistics collected by the UN Secretariat indicated peacekeepers and other UN personnel were being targeted and

101. Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 4, Aug. 12, 1949, 75 U.N.T.S. 287.

102. *Id.*

103. Greenwood, *supra* note 96, at 193.

104. Rome Statute of the International Criminal Court art. 8, ¶ 2(b)(iii), July 17, 1998, 2187 U.N.T.S. 90.

105. *The States Parties to the Rome Statute*, INT’L CRIM. CT., https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (last visited Mar. 28, 2019).

106. See CARLOS ALBERTO DOS SANTOS CRUZ, IMPROVING SECURITY OF UNITED NATIONS PEACEKEEPERS: WE NEED TO CHANGE THE WAY WE ARE DOING BUSINESS (2017), https://peacekeeping.un.org/sites/default/files/improving_security_of_united_nations_peacekeepers_report.pdf.

107. Convention on the Safety of United Nations and Associated Personnel arts. 7, 11, *opened for signature* Dec. 15, 1994, 2051 U.N.T.S. 363.

killed at alarming rates.¹⁰⁸ The Safety Convention purports to criminalize attacks on peacekeeping troops under two circumstances. The first is when they participate in operations established for the purpose of maintaining or restoring international peace and security, and the second is when the Security Council or General Assembly declares there exists an “exceptional risk to the safety of the personnel participating in the operation”¹⁰⁹ The Convention protects “United Nations personnel,” meaning “[p]ersons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation,” and “[a]ssociated personnel,” who are not under UN control.¹¹⁰

A treaty distinct from the Geneva Conventions was needed because the laws of war do not encompass protections for non-combatants undertaking traditional peacekeeping operations.¹¹¹ Forces deployed by the UN for enforcement actions under Chapter VII are, however, covered by the laws of war.¹¹² This distinction resulted in Article 2(2) of the Safety Convention, which provides that

[t]his 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.¹¹³

The use of force by peacekeepers not engaged in enforcement actions in isolated cases, without sustained fighting, does not preclude application of the Safety Convention, for they are still not engaged as combatants in such an instance.¹¹⁴

Article 4 of the Safety Convention requires host states and the UN to conclude SOFAs.¹¹⁵ Acts criminalized by the Convention are set out in Article 9 with the caveat that they must be intentionally commissioned.¹¹⁶ Article 10 requires States Parties to the Convention to establish their jurisdiction

108. Evan T. Bloom, *Protecting Peacekeepers: The Convention on the Safety of United Nations and Associated Personnel*, 89 AMERICAN J. INT'L L. 621, 621–22 (1995).

109. Convention on the Safety of United Nations and Associated Personnel, *supra* note 107, art. 1(c).

110. *Id.* art. 1(a)–(b).

111. Bloom, *supra* note 108, at 624.

112. See *supra* p. 5 for a brief discussion of Chapter VII enforcement actions.

113. Convention on the Safety of United Nations and Associated Personnel, *supra* note 107, art. 2, ¶ 2.

114. Bloom, *supra* note 108, at 625.

115. Convention on the Safety of United Nations and Associated Personnel, *supra* note 107, art. 4.

116. *Id.* art. 9. The criminal acts include murder, kidnapping, violent attack, threat to commit such attacks, and attempts to commit such attacks.

over the crimes outlined in Article 9 when the crime is committed in their territory or when the alleged offender is a national of that State.¹¹⁷ Article 13 provides measures to ensure extradition or prosecution of the offender.¹¹⁸

The Safety Convention entered into force in 1999. Lebanon ratified the Convention in 2003, 25 years after the establishment of UNIFIL. Israel is neither a signatory nor a party to the Convention. Hardly any host states are currently parties to the Convention; in fact, only three of fourteen host states are parties.¹¹⁹ Given that the UN is unlikely to abandon peacekeeping anytime soon, and 14 peacekeeping operations are ongoing, the Organization must deploy greater efforts to ensure widespread ratification of such an important treaty.

If Israel was party to the Safety Convention, the peacekeepers killed during the 2006 conflict would hypothetically have an avenue of legal recourse. As persons engaged in one of the enumerated capacities in Article 1 of the Convention, they fall under the “UN personnel” category. A claim could have been brought by the states that may establish jurisdiction over the crime pursuant to Article 10 of the Convention—that is, Lebanon or Israel. One way that Lebanon could have proceeded in such an instance is by grounding its complaint in Articles 7 and 11 of the Convention, which impose a duty on States Parties to ensure the safety and security of UN personnel and to prevent crimes against UN personnel.¹²⁰ A direct attack on a peacekeeping operation is a violation of these articles. Israel would then be obligated to extradite the culprit to Lebanon for prosecution pursuant to Articles 13 and 15 or to prosecute the culprit itself pursuant to Article 14.¹²¹

This sequence of events, however, is impossible to imagine in reality. Israel and Lebanon are technically still at war. They have been adversaries since the establishment of the State of Israel. There can be no mutual assistance as envisioned by Article 16 of the Convention or any kind of cooperation conceived by the Convention in its entirety. It is unimaginable that Israel would extradite the culprit of the 2006 attacks to Lebanon given that the IDF were engaged in a war against Lebanon. Israel’s assertion that the incident was a mistake can also be read as an indication that it would not prosecute the individual(s) in its own courts. In other words, actions taken by the

117. *Id.* art. 10.

118. *Id.* art. 13.

119. Dieter Fleck, *The Legal Status of Personnel Involved in United Nations Peace Operations*, 95 INT’L REV. RED CROSS 613, 627 (2013); 8. *Convention on the Safety of United Nations and Associated Personnel*, UN TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-8&chapter=18&clang=_en, (last visited Mar. 28, 2019).

120. *Convention on the Safety of United Nations and Associated Personnel*, *supra* note 107, arts. 7, 11.

121. Israel arguably could accomplish this absent the need for the Safety Convention based on its own regulations for its troops’ conduct if it so desired. However, this space for state discretion may explain why a treaty or more expansive obligations for the international community as a whole are needed.

IDF in Lebanon in 2006—deliberate or not—are unlikely to be punished.¹²² This illustrates perhaps the greatest shortcoming of the Safety Convention and the international legal architecture of peacekeeping in general—it does not contemplate the obstacles posed by states hostile to one another.

While universal ratification of the Safety Convention is of the utmost importance, it is still a flawed instrument. It is a product of rushed negotiations, and even its Optional Protocol fails to account for the legal and logistical issues that may thwart its effectiveness.¹²³ One solution may be to negotiate an additional protocol that provides for third-party facilitation of dispute settlement, which would narrow states' discretionary space.¹²⁴ In contentious cases like this, it may be more appropriate for the UN to bring a claim on behalf of its personnel, as defined in Article 1 of the Safety Convention and Article 26 of the UNIFIL SOFA.¹²⁵ However, this raises similar concerns that were discussed in Section III(A). Israel may not be party to the Safety Convention because of its animosity toward UNIFIL. This further illustrates the need for imposing obligations on the international community as a whole with respect to the protection of peacekeepers.¹²⁶

E. *The Security Council*

In a statement following the July 25 incident, the President of the Security Council communicated the Council's shock at the death of the four UN observers and concerns about the safety of UN personnel.¹²⁷ The President stressed "that Israel and all concerned parties must comply fully with their obligations under international humanitarian law related to the protection of United Nations and its associated personnel and underline[d] the importance of ensuring that United Nations personnel are not the object of attack."¹²⁸ Yet, the Security Council did little to actually protect UN peacekeeping forces in South Lebanon.

Pursuant to the UN Charter, Member States are legally obligated to comply with Security Council decisions—that is, when the Security Council "decides" to take a certain course of action in a resolution, Member States must accept and carry out that decision.¹²⁹ In contrast, when the Security

122. This is not to say that Israel has no regard for maintaining a culture of accountability in the IDF. Rather, it reflects the nature of Israel's conflict with Lebanon.

123. Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, *adopted* Dec. 8, 2005, 2689 U.N.T.S. 59.

124. *See supra* note 121.

125. "Military observers and civilian personnel other than United Nations officials . . . shall be considered as experts on mission within the meaning of article VI of the [Privileges and Immunities] Convention." Agreement on the Status of the United Nations Interim Force in Lebanon, *supra* note 88, art. 26.

126. *See infra* Section IV(C).

127. S.C. Pres. Statement 2006/34 (July 27, 2006).

128. *Id.*

129. U.N. Charter art. 25.

Council uses language such as “calls upon” or “urges,” Member States are under no concrete obligation to comply. The Security Council’s resolutions on the situation in Lebanon demonstrate its lack of decisive action on the matter. For example, in Resolution 1697, following the deaths of the UN observers, the Council did not “decide” that Israel violated its obligation to ensure the safety of UNIFIL personnel or that Israel must abide by its international obligations and refrain from targeting peacekeepers. Instead, the Council

[u]rge[d] all concerned parties to abide scrupulously by their obligation to respect the safety of UNIFIL and other United Nations personnel, and avoid any course of action which might endanger United Nations personnel, and calls on them to allow the Force to resupply its positions, conduct search and rescue operations on behalf of its personnel and undertake any other measures the Force deems necessary to ensure the safety of its personnel¹³⁰

The Security Council decided to extend the mandate of UNIFIL and remain actively seized of the matter but did little to hold any party accountable for endangering and killing UNIFIL troops.¹³¹

The Security Council was apprised of the situation in Lebanon in 2006 on a number of occasions throughout the conflict.¹³² UN documents demonstrate that Member States raised concerns about the conflict frequently—before and after the incident of July 25—and Secretary-General Kofi Annan himself addressed the Council about the death of the UN observers in Khiam and the ongoing risks UN peacekeepers were exposed to.¹³³ Ghana, for example, raised concerns about the conditions imposed by Israel on UNIFIL and emphasized that Israel should ensure the safety and security of all UN personnel.¹³⁴ Argentina emphasized the need to guarantee the safety and security of UNIFIL.¹³⁵ India, a major troop contributor to UNIFIL and the United Nations Disengagement Observer Force, expressed concerns about UNIFIL’s exposure to considerable risk and troops’ restricted movement and stressed the sanctity of UN personnel.¹³⁶ Tanzania noted that UNIFIL cannot carry out its mandate in the current operative circumstanc-

130. S.C. Res. 1697, ¶ 1 (July 31, 2006).

131. *Id.* ¶¶ 2–3.

132. *See, e.g.*, U.N. SCOR, 61st Sess., 5493d mtg. at 4, U.N. Doc. S/PV.5493 (July 21, 2006); U.N. Secretary-General, *Report of the Secretary-General on the United Nations Interim Force in Lebanon*, U.N. Doc. S/2006/560 (July 21, 2006); U.N. Secretary-General, *Report of the Secretary-General on the Implementation of Resolution 1701 (2006)*, U.N. Doc. S/2006/670 (Aug. 18, 2006).

133. U.N. Secretary-General, Letter dated 29 July 2006 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2006/595 (July 29, 2006).

134. U.N. SCOR, 5493d mtg., *supra* note 132, at 8.

135. *Id.* at 10.

136. *Id.* at 34.

es.¹³⁷ The United States was present at these meetings but refrained from making a statement.¹³⁸

Secretary-General Annan, in a letter to the President of the Security Council following the incident in Khiam, reported that he was “disturbed to learn that the patrol base and its surroundings have come under renewed firing by IDF in the days following the incident of 25 July, which will undoubtedly have an effect on the investigation of the site that the United Nations will need to undertake shortly.”¹³⁹ Annan emphasized that UN peacekeepers not participating in an armed conflict are entitled to the same protections as civilians under IHL.¹⁴⁰ In his 2006 report to the Security Council on UNIFIL, Annan indicated that several UNIFIL positions were hit by IDF fire and, in more than 48 instances, UNIFIL reported IDF fire close to its positions.¹⁴¹ The IDF also issued a warning that any person, including UNIFIL personnel, approaching the Blue Line¹⁴² would be shot at.¹⁴³ In the final hours of the 2006 war, UNIFIL reported that its personnel endured 85 IDF-fired artillery shells and indicated that it strongly protested these attacks to the IDF at the time they occurred.¹⁴⁴

There is certainly an argument to be made that the Security Council’s inaction in Lebanon may be a byproduct of the United States’ veto power. However, as demonstrated in the preceding sections,¹⁴⁵ legal obligations toward peacekeeping forces are unsettled. While political considerations animate the Security Council’s decisionmaking process, the unresolved status of peacekeepers in the international legal regime may inform the Council’s approach here as well. In the previously quoted passage from Resolution 1697,¹⁴⁶ the Security Council does not cite where the obligation to respect the safety of UN personnel stems from. Israel remains outside the scope of the Safety Convention, so perhaps the Council is alluding to IHL as the Secretary-General did.

137. *Id.* at 5.

138. *Id.* at 1.

139. Letter dated 29 July 2006 from the Secretary-General addressed to the President of the Security Council, *supra* note 133.

140. *Id.*

141. *Report of the Secretary-General on the United Nations Interim Force in Lebanon*, *supra* note 132, at ¶ 15.

142. The Blue Line is the de facto border demarcation between Lebanon and Israel. It was drawn following Israel’s withdrawal from South Lebanon in 2000. See *UNIFIL Background*, UNIFIL <https://unifil.unmissions.org/unifil-background> (last visited Mar. 28, 2019), for more information.

143. *Report of the Secretary-General on the United Nations Interim Force in Lebanon*, *supra* note 132, ¶ 3.

144. *Report of the Secretary-General on the Implementation of Resolution 1701 (2006)*, *supra* note 132, ¶ 9.

145. See, e.g., *supra* Section III(C).

146. See *supra* p. 25.

The Council may avoid citing a certain body of law due to the unsettled nature of peacekeeper protections, or it may be that citing a body of law is not a common practice of the Council. Nevertheless, it would be helpful for the Council to state in no uncertain terms what exactly binds the parties to ensure the safety of UNIFIL troops. “Deciding” that a certain party is in violation of that obligation would also aid in holding responsible parties accountable for violations of international law and establishing norms that respect the sanctity of UN personnel. It may not be possible in this instance given the political context of UNIFIL, but the Security Council should be amenable to such an approach in other peacekeeping contexts.

IV. REMNANTS OF SOLUTIONS PAST

Non-state actors, states parties to a conflict other than the host state, and inadequate or confused legal mechanisms often precipitate miscarriages of justice in peacekeeping missions and thwart the accomplishment of important mandates. The difficulty of bringing non-state actors into the ambit of legal instruments is certainly a shortcoming of the international legal framework, but it is difficult to bring states into the ambit of certain instruments as well. Furthermore, the unresolved status of UN peacekeepers in some legal regimes compounds the problem of neighboring and/or belligerent states outside the scope of important treaties and SOFAs. Worthy attempts have been made to address some of these challenges, but the rise in peacekeeper fatalities suggests they are not enough. This Part analyzes the solutions offered by the report presented to the Secretary-General on improving the security of peacekeepers and their applicability to UNIFIL. It also examines what remedies, if any, have been made available to peacekeepers injured or killed in the line of service and their families.

A. *Changing the Way the UN Does Business*

A 2017 report commissioned by the Secretary-General on improving the security of UN peacekeepers describes the recent trend in peacekeeper fatalities as “beyond a normal or acceptable level of risk, and . . . likely to rise even higher.”¹⁴⁷ The report attributes the increase in the deliberate targeting of UN peacekeepers to the failure of the UN and Member States to adapt to the changing nature of peacekeeping and to take measures to operate more securely in these dangerous environments.¹⁴⁸ The authors make a number of operational recommendations, including taking timely action in order to detect and mitigate threats.¹⁴⁹ They also emphasize the importance of preserving the reputation of the UN and the need to pursue those who attack UN personnel and bring them to justice; the UN must appear strong or

147. CARLOS ALBERTO DOS SANTOS CRUZ, *supra* note 106.

148. *Id.* at 9.

149. *Id.* at 9–14.

it will continue to be the target of attack.¹⁵⁰ The report calls for greater use of force by UN peacekeepers in the face of attack as well.¹⁵¹

The report recommends the long-term solution of ensuring that attacks on peacekeepers are brought to the attention of the ICC.¹⁵² The Rome Statute of the ICC in fact classifies attacks against UN peacekeepers as a war crime in Article 8(2)(e)(iii):

For the purpose of this Statute, ‘war crimes’ means: [O]ther serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: 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 conflict¹⁵³

However, not all countries—and, particularly, not all host states—are signatories to the Rome Statute, including Lebanon and Israel.¹⁵⁴ Accordingly, this solution does not provide much utility in the context of UNIFIL. This raises a question that remains unresolved: what is the appropriate venue for prosecuting those who target UNIFIL troops if the ICC is not available and Lebanon and Israel have maintained a state of war?

The report falls short with respect to the legal regimes applicable to UN peacekeepers as well. Discussion of the Rome Statute is insufficient. The significance of establishing legal norms cannot be discounted. The report does not call for universal ratification of the Safety Convention, which is arguably the most important regime applicable to peacekeepers, ensuring their protection and accountability for harm done to them.¹⁵⁵ The report also does not account for the remaining legal regimes that apply to UN peacekeepers and that may provide alternative remedies. While leadership, operability, training, and administration are critical components of a peacekeeping force, the report should have paid greater attention to actors external to peacekeeping forces—for example, states—and their obligations to ensure the safety and security of UN personnel.

150. *Id.* at 12.

151. *Id.* at 10, 18.

152. *Id.* at 22.

153. Rome Statute of the International Criminal Court, *supra* note 104.

154. *See supra* Section III(C).

155. As noted in Part III, this is not a perfect instrument, but its importance cannot be discounted.

B. Compensation and Deterrence

According to the UN Regulations for Field Manual Operations, a Member State guilty of targeting peacekeepers will not be held liable.¹⁵⁶ Indeed, the Regulations indicate that the UN itself is liable for injuries to its agents participating in peacekeeping missions.¹⁵⁷ The UN has not accepted such liability in the past, instead paying compensation to the injured agents or their families and simultaneously bringing a claim against the responsible Member State as the *Reparations* case justifies.¹⁵⁸ As discussed, however, the UN “has had almost no success in collecting damages for its injured agents from responsible States.”¹⁵⁹ As such, pragmatism with respect to the viability of peacekeeping operations and a sense of justice have compelled the UN alone to pay compensation.¹⁶⁰

The UN pays the families of soldiers killed while serving as UN peacekeepers \$70,000.¹⁶¹ This compensation comes from the UN peacekeeping budget.¹⁶² While compensating the families of victims is important, this approach does not realize the goal of criminal liability. Moreover, compensation by the UN does not achieve deterrence because the responsible party is not made to pay.¹⁶³ The prospect of criminal liability as deterrence, however, is particularly implausible in the context of UNIFIL. It is unlikely that the UN will raise a claim against Israel on behalf of troops killed in its service. Furthermore, the families of UN peacekeepers have unsuccessfully attempted to hold Israel accountable for the deaths of their loved ones.¹⁶⁴ At present, it does not appear feasible to accomplish compensation by means other than the current remedy in the context of UNIFIL, but the UN may take steps to alter this landscape over time.

156. Arsanjani, *supra* note 73, at 148.

157. *Id.*

158. *Id.*

159. *Id.* at 148–49.

160. *Id.* at 149.

161. G.A. Res. 64/820 (June 18, 2010).

162. *Id.*

163. Whether this sum is substantial enough to deter a sovereign government is also questionable. In the case of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), the Security Council directed states to freeze the financial assets of individuals or entities who “plan, direct, sponsor or participate in attacks against MONUSCO peacekeepers.” S.C. Res. 2136, ¶ 4(i) (Jan. 30, 2014). The Council is unlikely to take similar action against a Member State, but doing so would be a step toward the deterrence and accountability this Note advocates for.

164. *No Apology 31 Years After Death of Sligo Soldier in Lebanon*, SLIGO CHAMPION (Jan. 6, 2018 12:00 AM), <https://www.independent.ie/regionals/sligochamp/news/no-apology-31-years-after-death-of-sligo-soldier-in-lebanon-36452266.html>; Fisk, *supra* note 40.

C. *Moving Forward*

Moving forward, a few avenues for arriving at greater compliance and deterrence are available to the UN. One viable way to pursue compliance and deterrence is for the Security Council to include language from the Safety Convention in resolutions establishing peacekeeping forces and providing for third-party facilitation of dispute resolution (where the Safety Convention falls short). This language should be included as a decision in order to vest it with the force of law. For extant peacekeeping missions, the Security Council should endeavor to impose similar obligations on the international community as a whole. The Security Council has not shied away from legislating in this manner in the past. For example, Resolution 1373, issued in the aftermath of 9/11, and Resolution 1540, concerning disarmament, establish “new rules of international law rather than issuing commands to deal with a discrete conflict[.] [T]hey create obligations of a sort usually found only in treaties.”¹⁶⁵ The Security Council should consider doing the same to enhance peacekeeper protections.

The General Assembly should also be encouraged to include language from the Safety Convention in its resolutions for the purpose of creating soft law. Key provisions from the Safety Convention should be included in SOFAs, host country agreements, and the Secretary-General’s regulations for peacekeeping missions as well. While this approach may take longer to achieve a deterrent effect, its potential for establishing firm legal norms—and perhaps even becoming custom—is hopeful. Moreover, it may pave the way for the Security Council and the international community to hold states responsible for violations of these provisions.

V. CONCLUSION

The UN peacekeeping regime does not exist in a vacuum, insulated from legal frameworks and political considerations. Consequently, peacekeeping forces established by the UN are confronted by a myriad of challenges. The case of UNIFIL illustrates the many complications that may characterize a peacekeeping operation and frustrate its mandate. This Note establishes that the UN must exert more effort to ensure that its peacekeepers are protected in the dangerous corners of the globe to which they are deployed. Although this Note does not endeavor to describe what an adequate legal architecture should look like, its illustration of the current architecture’s shortcomings provides guidance for moving forward.

The UN may engage a number of means to enhance peacekeeper protections. Bolstering the Safety Convention and pursuing its widespread ratification is one step. Concluding SOFAs with all parties to a conflict, not just the host state, is another. The regulations promulgated by the Secretary-

165. IAN JOHNSTONE, *THE POWER OF DELIBERATION: INTERNATIONAL LAW, POLITICS AND ORGANIZATIONS* 94 (2011).

General for each peacekeeping mission should also incorporate the principles of the Safety Convention and include obligations for all parties to the conflict. Such regulations are likely to be considered mere soft law, but, in an ideal situation, they may eventually become customary international law.

The principles enshrined in the Safety Convention should be codified in the Security Council resolutions establishing peacekeeping forces so as to ensure the protection of these forces in the event that parties to a conflict are not parties to the Convention. The Security Council should also consider undertaking broader legislation efforts in this realm in order to enhance the international community's obligations toward peacekeepers. Security Council resolutions "deploring" and "condemning" attacks on peacekeepers must wield more legal substance and weight. The Security Council's role in maintaining international peace and security—and the peacekeeping missions that are corollaries of this responsibility—inevitably implicates politics and the controversy surrounding the Permanent Five's power. The configuration of the Security Council is unlikely to be reformed in the near future, but the UN may pursue other avenues to encourage the Council to ensure the safety and security of peacekeepers. Ultimately, the UN must do more to enforce its rights and to provide its personnel with the tools necessary to secure their own rights.