

вантажу, намагаються захистити себе від втрат різними засобами. Наприклад, разом з вантажем відправляють свого представника, який слідкує за збереженням вантажу, укладають договори страхування вантажу, майбутнього прибутку та інше. Такі дії, з одного боку, захищають вантажовласника, а з іншого - призводять до додаткових витрат (оплата відрядження працівнику, виплата страхових премій страховій компанії та інше.) Зміна транспортного законодавства в питаннях відповідальності сторін за договором перевезення надасть змогу учасникам перевізного процесу обирати такий засіб захисту свого матеріального становища, який буде для них найбільш зручний та прийнятний.

ЛИТВИНОВА О.В. ОТВЕТСТВЕННОСТЬ ЖЕЛЕЗНОЙ ДОРОГИ ЗА ПОТЕРЮ ИЛИ ПОВРЕЖДЕНИЕ ГРУЗА, ПРИНЯТОГО К ПЕРЕВОЗКЕ

Рассмотрены особенности гражданско-правовой ответственности железной дороги как перевозчика за потерю или повреждение груза во время транспортирования

LITVINOVA O.V. THE RESPONSIBILITY OF THE RAILWAY FOR LOSS OR DAMAGE OF THE CARGO ACCEPTED TO TRANSPORTATION

Features of the civil-law responsibility of the railway as carrier for loss or damage of a cargo are considered during transportation.

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NON-INSTITUTIONAL PEACE MISSIONS: THE MAIN PRINCIPLES OF FUNCTIONING. THE CASE OF THE TEMPORARY INTERNATIONAL PRESENCE IN HEBRON

The article concerns the history, mandate, structure, legal basis, command and control system of the international monitoring mission in the West Bank of Jordan. Institutional and non-institutional peace support missions principles of functioning are compared

One of the trends in the peace operations of the last decade is the increase in a number of non-institutional missions. Being a rather new phenomenon that kind of missions is the subject of a limited number of researches, e.g. by Erwin. A. Schmidl [1] and Brynjar Lia [2]. The aim of the article is an attempt to define the most typical features of the non-institutional mission police components concerning their structure, legal basis, command and control system, etc., using the example of an insufficiently explored operation in the Middle East.

The Temporary International Presence in Hebron (TIPH) is a non-institutional international civil observer mission with a strong police component, deployed in this second largest West Bank city. The history of the TIPH can be divided into two periods [3]:

1. March 1994 - August 1994. On March 31, 1994 an Agreement between the Palestine Liberation Organization (PLO) and Israel, asking Italy, Denmark and Norway to provide support staff and observers for a Temporary International Presence in the city of Hebron was signed. An advance team representing all three nations arrived in the West Bank in early April of the same year. The TIPH mission was set up on May 8, 1994. But the Palestine Liberation Organization and Israeli government couldn't reach an agreement on an extension of the TIPH mandate, and the mission withdrew from Hebron on August 8, 1994.
2. 1995 - until now. The Interim Agreement on the West Bank and the Gaza Strip, dated September 28, 1995 called for another mission, this time during the redeploy-

ment of the Israeli Defense Forces (IDF) from the city [4] On April 29, 1996 the TIPH Advance Party, with twelve mission members and the Head of Mission from the Norwegian Ministry of Foreign Affairs responsible for the planning and deployment of the new TIPH was established in Jerusalem. The second mission was set up on May 12, 1996. The new Agreement on the International Presence was signed on January 21, 1997 to provide personnel from six European countries to monitor the situation in Hebron [5].

The legal basis of the mission includes:

- The UN Security Council's Resolution No 904 (1994), which called for measures to be taken to guarantee the safety and protection of the Palestinians throughout the occupied territory, including, inter alia, a temporary international or foreign presence [6],

- The above mentioned agreement between the PLO and Israel, dated March 31, 1994, according to which a mission of the Temporary International Presence in the City of Hebron in order to promote stability and restoring normal life in the city of Hebron was set up;

- The Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (Oslo II), dated September 28, 1995, which provided for a partial withdrawal of the Israel Defense Forces from Hebron under the supervision by an international observer mission;

- Chapter 10, Article VII "Guidelines for Hebron", of Annex I "Protocol Concerning Redeployment and Security Arrangement" to the Interim Agreement of September 28, 1995, which set up another Temporary International Presence in the City of Hebron with the aim to monitor a partial redeployment of Israeli Defense Forces from Hebron [4];

- The Agreement upon the Israeli Defense Forces' redeployment in the city of Hebron ("Protocol Concerning the Redeployment in Hebron") of May 9, 1996;

- Agreement between Israel and the Palestine Liberation Organization on the Temporary International Presence in the city of Hebron, dated January 21, 1997, which superseded the previous Agreement of May 9, 1996. [4] The new Agreement called for Norway, Italy, Denmark, Sweden, Switzerland and Turkey to provide personnel for TIPH, with Norway in the role as co-ordinator. The Agreement also delineated the tasks of the mission;

- Memorandum of Understanding on the Establishment of a Temporary International Presence in Hebron, signed January 30, 1997 in Oslo by the six participating countries.

The TIPH Mandate is a result of negotiations conducted by PLO and the State of Israel between 1995 and 1997 (The Israeli-Palestinian interim agreement and Memorandum of Understanding on the Establishment of a Temporary International Presence in Hebron). The main purpose was to create some sort of secure for the Palestinian population of Hebron and contribute in restoring normal life. As outlined in article 5 in the Agreement on

TIPH, its tasks are as follows: to provide by their presence a feeling of security to the Palestinians of Hebron; to help promote stability and an appropriate environment conducive to the enhancement of the well-being of the Palestinians of Hebron and their economic development, to observe the enhancement of peace and prosperity among Palestinians; to assist in the promotion and execution of projects initiated by the donor countries; to encourage economic development and growth in Hebron; to provide reports as set out in paragraph 7 of the Agreement on TIPH, and to co-ordinate its activities with the Israeli and Palestinian authorities in accordance with paragraph 7 of the Agreement on TIPH [5]. The Agreement on the TIPH sets the mandate period to three months, renewable for an additional period of three months, unless otherwise agreed between the two sides. The Mission Area of Responsibility is limited by the boundaries of Hebron. The TIPH makes no distinction between the so-called H1 (area controlled by the PPF - Palestinian Police Forces) and H2 (Israel Defense Forces controlled area) zones. The international personnel do not interfere in disputes or incidents, but only report what happens as clearly as possible. The monitors have no military or police functions. They do not conduct investigation, but may collect extra information to get a full picture of the incident. This may include the observers seeking additional data from sources not present at the incident. As outlined in Article B in the Memorandum of Understanding the TIPH produces several kinds of reports. They are: Incidents Reports, Daily Situation Reports, General Weekly Reports, etc. The reports can be also classified into internal and external ones. "Internal" reports are used by TIPH personnel only, while "external" ones are submitted to the joint Palestinian/Israeli/TIPH bodies (The District Co-ordination Office, The Joint Hebron Committee, The Hebron District Civil Liaison Office, The Monitoring and Steering Committee, etc.) and to the governments of the participating countries. None of these reports are made public, nor does the mission comment publicly on specific incidents mentioned in the reports. The incident reports are at times supplemented with photographs or videotape. The working language of the mission is English. The TIPH takes internal safety measures to protect its personnel in their functions and off duty. However, though there is an opening for the mission personnel to carry pistols for self-protection in the Agreement (Article 8), the partnership countries have agreed that no TIPH member will carry arms of any sort.

Since February 1 2000, the TIPH is composed of the Head of Mission, Deputy Head of Mission, Senior Management Group, and three Divisions: Operation, Staff and Support ones (fig.).

The Senior Management Group is composed of the Head of Mission, the Deputy Head of Mission, the Heads of Divisions and Senior National Representatives, who

are not in position as heads of divisions. The Group meets three times a week in order to assist the Head of Mission in running TIPH organization, to advice him on important decisions that concern operational, administrative and security matters and review the performance of the Mission. The Operations Division is the largest of the three divisions within TIPH. It has the responsibility for the observation patrols and reporting activity. The Operations Division co-ordinates the patrols in the field and from the Headquarters. It also carries some responsibility related to the Mission's security. The Staff Division has various tasks, among them production of the Weekly and Periodic Reports, Weekly Threat Assessment and brief journalists or other visitors on TIPH's role in Hebron, maintaining contacts with IDF, PPF, Hebron municipality. Members of the Staff division engage in small-scale community projects in order to support charitable work, sports and culture. Support Division deals mainly with administrative matters and logistics. It incorporates several offices such as personnel, finance, transport, communication, procurement, and building management, information technology. It also includes a medical officer [7]

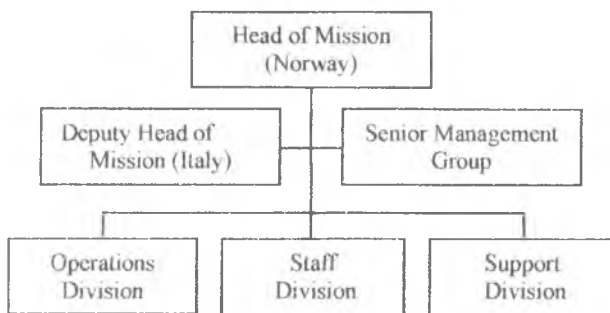


Figure - Temporary International Presence in Hebron Mission Organizational Chart (as of February 1 2000)

At the start of the multinational mission TIPH had 142 members. Since February 2000 there are 85-90 international monitors in Hebron shared between six countries. The decision-making authority lies with the governments of particular countries. Consultations on intra-mission problems take place through Local Contact Group Meetings held between TIPH's Senior Management Group and representatives from the six countries' Embassies and Consulate Generals. Decisions concerning the Mission finance, organization and manning are taken in meeting held every three months and attended by delegates from the six countries. The Norwegian Ministry of Foreign Affairs has the task of coordinating TIPH activities between the six countries. Each country covers all personal costs related to the mission members. salaries, allowances, insurance, personal equipment and travel costs. Other costs are divided pro rata, except for office, transport, mobile radios and phone/fax related expenses,

which are divided equally between the participating countries. The TIPH personnel have a gray uniform with blue armbands marked with "OBSERVER" in English, Arabic and Hebrew written in white on red. The uniform is supplemented with a blue cap with the Mission logo, as well as blue vests or blue padded jackets. The vehicles are white with white diplomatic license plates and marked with TIPH logo on both sides and on the hood.

Being a non-institutional peace-building mission the Temporary International Presence in Hebron has both similarities and differences in comparison with traditional institutional, first of all United Nations, missions.

Consent and cooperation with the parties involved in the conflict. In contrast to nearly all both past and current peace missions in the Middle East the TIPH itself is the result of negotiations between the parties of the conflict: its mandate, structure, operational guidelines, etc. are determined not by the contributing countries, but by the host side, and are verbalized in the "Agreement on Temporary International Presence in the City of Hebron" of January 21, 1997, signed by the PLO and Israel.

Impartiality and neutrality Similar to "classical" observer missions the TIPH personnel have no police functions, nor they interfere in disputes, incidents or activities of the host security forces. Unlike the most UN missions the international monitors' reports are submitted first to the joint coordinative bodies to solve arising problems at a local level, in order to prevent their "internationalization".

Minimum use of force Being allowed to carry side arms (pistols) for self-defense purposes, the TIPH members prefer operating armless. Actually no official Rules of Engagement are elaborated for the mission personnel, nor there is any mentioning in the official documents of adherence to the international standards on use of force.

Legal basis If traditional UN missions derive their legitimacy mainly from the corresponding UN Security Council resolutions, the TIPH is based on a number of conflict resolution by/multilateral agreements. At the same time, despite any direct reference, some of these agreements have international law as their origin. For example, paragraph 10 of the Agreement on TIPH, which concerns privileges and immunities of the TIPH personnel, is based on the Convention on the Privileges and Immunities of the United Nations. As to their legal status the TIPH monitors may be compared with "experts on Mission for the United Nations" or UN Civilian Police monitors [8, pp.415-421].

Financial support. Unlike the most of the UN operations the TIPH mission is funded only by the contributing/donor countries, mainly on a proportional principle.

Administrative support. In contrast to UN missions the TIPH recruitment policy is carried out purely by national governments. Unlike UN practice all TIPH contingent leaders are obligatorily reserved for so-called "commanding positions".

Transparency Unlike UN traditions all TIPH reports, which are submitted either to the colleagues, or to the national governments, or to joint coordinating bodies, are actually closed for both public and international agencies.

NOTES

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ЛЯХОВА О.М., ТЕЛИЧКИН О.О. ОСНОВНІ ПРИНЦИПИ ДІЯЛЬНОСТІ МІСІЙ НА КОРИСТЬ МИРУ НЕІНСТИТУЦІЙНОГО ХАРАКТЕРУ НА ПРИКЛАДІ "ТИМЧАСОВОЇ МІЖНАРОДНОЇ ПРИСУТНОСТІ У МІСТІ ХЕВРОН"

Розглядається історія, основні завдання, структура, правова база та система управління міжнародною моніторинговою місією на Західному березі річки Йордан. Проводиться порівняння принципів функціонування інституційних та неінституційних місій у підтримку миру.

ЛЯХОВА Е.Н., ТЕЛИЧКИН А.А. ОСНОВНЫЕ ПРИНЦИПЫ ДЕЯТЕЛЬНОСТИ МИССИЙ В ПОЛЬЗУ МИРА НЕИНСТИТУЦИОННОГО ХАРАКТЕРА НА ПРИМЕРЕ «ВРЕМЕННОГО МЕЖДУНАРОДНОГО ПРИСУТСТВИЯ В ГОРОДЕ ХЕВРОН»

Рассматривается история, основные задачи, структура, правовые основы, система управления международной мониторинговой миссией на Западном берегу реки Йордан. Сравняются принципы деятельности институционных и неинституционных миссий по обеспечению мира.



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ПРАВОВІ І МЕТОДОЛОГІЧНІ ПРОБЛЕМИ АКТУАЛІЗАЦІЇ ІДЕАЛЬНИХ СЛІДІВ ЗЛОЧИНУ

Як тактичний прийом актуалізації пам'яті допитуваних осіб проаналізований метод гіпнорепродукції. Вказані ситуації можливого використання гіпнозу при розслідуванні злочинів, запропоновані правові гарантії одержання достовірних показань і дотримання законних прав і інтересів допитуваної особи.

У практиці розкриття і розслідування злочинів досить часто зустрічаються ситуації, коли людина в минулому сприймала інформацію великої значимості, але при допиті не може її відтворити внаслідок природного забуття або ж через розвиток амнезій стресового чи

травматичного характеру. Внаслідок цього актуальну проблему, якій приділяється значна увага в спеціальній психологічній і юридичній літературі, складає розробка методів забезпечення повноти і достовірності інформації, одержуваної при допиті, тобто методів роботи з