

EXTERNAL STUDY

THE USE OF FORCE IN UN PEACE OPERATIONS

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The Use of Force in UN Peace Operations

Executive Summary

This paper reviews the changing approach to the use of force in UN peace operations.

Generally, the UN has been reluctant to use force, ...

... which is consistent with the traditional concept of peacekeeping. Consent, impartiality and minimum use of force, however, are being questioned...

... resulting in doctrinal advances and a division of labour between enforcement operations and peacekeeping.

Two sets of problems have been caused by this division.

The absence of sufficient civilian police capacity led to a reliance on the military to undertake responsibility for emergency law and order...

... but the UN has been reluctant to accept this in law and order role and to plan accordingly.

This paper reviews the changing approach to the use of force in UN peace operations, with particular emphasis on responses to the security vacuum that typically arises in a post-conflict environment.

The United Nations has generally been reluctant to allow military units under its command to use force. The three peace operations in which troops under UN command engaged in the use of force on a significant scale — Congo from 1960–1963, Somalia in 1993, and Bosnia and Herzegovina from 1994–1995 — were traumatic experiences for the organization. The controversies to which these operations gave rise were surpassed only by two occasions on which force was not used at all: in Rwanda and Srebrenica.

Such reluctance to use force is consistent with the traditional conception of peacekeeping as an impartial activity undertaken with the consent of all parties, in which force is used only in self-defence. Over the years, however, all three characteristics of traditional peacekeeping — consent, impartiality, minimum use of force — have been brought into question.

The main doctrinal advance in peacekeeping during the Cold War was from a doctrine of self-defence to ‘defence of the mission’. After the Cold War, the context within which force was used under UN auspices changed radically. Continued reliance on delegated authority soon led to a division of labour in peace operations, with enforcement operations distinct from ‘traditional’ peacekeeping.

This division caused two sets of problems. First, enforcement operations now tend to be conducted by countries of the North, while peacekeeping operations are staffed overwhelmingly by those of the South. Secondly, the division has proven artificial when applied to situations where there is in reality no peace to keep.

Through the 1990s, UN peace operations were increasingly confronted with situations of internal armed conflict that were in significant part policing rather than military problems. The absence of a deployable civilian police capacity led to a reliance on the military to undertake responsibility for emergency law and order, but this reliance has often been implicit rather than explicit.

There has been a great deal of reluctance to accept this as an established class of UN peace operations and plan accordingly. As a result, the dominant variable in the different responses to internal security vacuums has been the preparedness of particular contingents and individuals to act. Clearer doctrine on when and how force is to be used in peace operations would remove some of the latitude that has commonly been given to field commanders in the interpretation of their mandate, though it may not be enough to generate the will to do so.

This paper identifies three main recommendations.

1. The division between peacekeeping and enforcement operations should be re-evaluated; ...

2. The mandate of a peace operation should be clear and determine its resources; rules of engagement should be consistent and robust; ...

3. When deployed in the aftermath of conflict, peace operations should have a robust mandate, and civilian police should be deployed as quickly as possible. If not, filling the security vacuum will fall upon the military.

Recommendations

1. The strict division between peacekeeping and enforcement operations is increasingly untenable. Keeping the artifice may be necessary to ensure that consent for certain peacekeeping operations is granted, but in those situations it should be understood that: (i) ‘consent’ takes place at the strategic rather than the tactical level; (ii) ‘impartiality’ is not the same as neutrality; and (iii) whether or not an obligation to protect civilians is explicit in the mandate of such a force, the UN must be prepared to respond to expectations created by its very presence.

2. Studied ambiguity in Security Council mandates and inconsistent rules of engagement between different troop contributors severely undermine UN peace operations. The Brahimi Report recommends that the mandate of a peace operation should determine the resources — rather than the other way around — would remedy part of this problem. In addition, rules of engagement should be robust, but more importantly should be explicitly agreed as between different troop contributors. The more willing and able an operation is to use force, the less likely it is to have to do so.

3. When a peace operation is deployed in the aftermath of conflict, especially when that conflict has seen the partial or total collapse of national security institutions, it should have a robust mandate to protect civilians and restore order. If needed, civilian police should be deployed as quickly as possible. But in the interim, responsibility for law and order falls upon the military or no one. Without security, none of the more complex political tasks that are intended to justify the use of force in the first place can be achieved.

The Use of Force in UN Peace Operations

Simon Chesterman*

Peacekeeping is not a job for soldiers, but only a soldier can do it.

Dag Hammarskjöld, as quoted in US Army Field Manual on Peace Operations¹

Carrying out civil administration and police functions is simply going to degrade the American capability to do the things America has to do. We don't need to have the 82nd Airborne escorting kids to kindergarten.

Condoleezza Rice²

The essential quality of a modern state, monopoly of legitimate use of force, is held by the military (external threats) and civilian police (general law and order). Where there is no civilian police, responsibility for law and order falls on the military or on no one at all.

German sociologist Max Weber held that an essential quality of a modern state was its claim to the monopoly of the legitimate use of force within its borders.³ In situations where the United Nations or another international actor has assumed some or all governmental authority in a post-conflict environment, this has commonly included a monopoly of the use of force. When properly deployed, such a monopoly should include a division between a military presence, to deal with external threats and armed groups within the territory, and a civilian police presence, to provide for general law and order. Until police arrive or are established locally, however, responsibility for law and order falls either on the military or on no one at all.

This paper reviews the changing approach to use of force in UN peace operations. It suggests the need to plan for -temporary- assumption of law and order responsibilities ...

This paper reviews the changing approach to the use of force in UN peace operations generally,⁴ before considering responses to the security vacuum that typically arises in a post-conflict environment. How should an international presence address the lawlessness that follows a breakdown in state security institutions? The diverse experience of how the military has responded to such situations — demonstrated by the contrasting approaches in Kosovo and East Timor — suggests the need to plan for at least a temporary assumption of this burden. It should include preparation for the transfer of law and order responsibilities to local or international civilian police at the earliest possible moment. Nevertheless, the impressions formed during the first months of an operation affect both the character of the mission and the internal security of the territory for the immediate future. Since it is unlikely that civilian police will ever be in a position to deploy within that time frame, military personnel will be dealing with these situations in practice whether they plan for it or not.

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¹ US Army, Field Manual 100–23 Peace Operations (Headquarters, Department of the Army, December 1994), available at <http://www.dtic.mil/doctrine/jel/service_pubs/fm100_23.pdf>, 1.

² Quoted in William Drozdiak, 'Bush Plan Worries Europeans; Removing US Troops from Balkans Is Seen as Divisive', *Washington Post*, 24 October 2000.

³ See, eg, Max Weber, *The Theory of Social and Economic Organization* [1922], translated by A.M. Henderson and Talcott Parsons (Oxford: Oxford University Press, 1947), 156.

⁴ The term 'peace operations' is understood to include both peacekeeping operations and enforcement actions, as well as the contested category of 'peace enforcement'. See section 1 in this paper.

... and focuses on the initial military phase of a complex mission, responses to security vacuums and the conditions for civilian rule under international administration.

As the case of Iraq shows, preparing for a security vacuum is essential to achieving the complex political tasks intended to justify the use of force in the first place.

Consent, impartiality and minimum use of force, characteristics of traditional peacekeeping on which the UN bases its reluctance to use force, are being questioned.

Hammarškjöld's 'Chapter VI½' placed peacekeeping at the crossroads of peaceful and coercive measures.

It will not be possible to encompass the entirety of this topic in the present work. The focus here is on the initial military phase of a complex peace operation, responses to a security vacuum, and — in extreme circumstances — the establishment of the conditions for civilian rule under international administration. The deployment of troops and their command structures, for example, raise more general issues about UN peace operations that will not be discussed here.⁵ Similarly, disarmament, demobilization, and reintegration (DDR) programmes are an integral part of the medium-term success of a return to civilian rule, but apply to a far wider range of peace operations than those considered in this paper;⁶ the activities of civilian police will also be addressed only briefly.⁷

The failure to prepare for a security vacuum remains a very real problem. After the defeat of Iraqi forces in 2003, widespread looting and civil unrest ensued as the state security apparatus collapsed. The most surprising element of these events was the suggestion that they were unexpected: the Washington Post reported that military officers, administration officials, and defence experts with peacekeeping experience from the 1990s were mystified by the failure of senior military and civilian leaders at the Pentagon to plan for a quick transition from war-fighting to stability operations.⁸ Without security, none of the more complex political tasks that are intended to justify the use of force in the first place can be achieved.

1 The Use of Force in Peace Operations

The United Nations has generally been reluctant to allow military units under its command to use force. The three peace operations in which troops under UN command engaged in the use of force on a significant scale — Congo from 1960–1963, Somalia in 1993, and Bosnia and Herzegovina from 1994–1995 — were traumatic experiences for the organization; the controversies to which they gave rise were surpassed only by two occasions on which force was not used at all, in Rwanda and Srebrenica. Such reluctance is consistent with the traditional conception of peacekeeping as an impartial activity undertaken with the consent of all parties, in which force is used only in self-defence. Over the years, however, all three characteristics of traditional peacekeeping (consent, impartiality, minimum use of force) have been brought into question.

Peacekeeping was a creative effort to marry the limited means at the disposal of the United Nations to the lofty ends of maintaining international peace and security. Secretary-General Dag Hammarskjöld located peacekeeping in the interstices between the peaceful and coercive measures available to the Security Council — ‘Chapter VI½’ as he famously called it — a blurring of the distinction between the two that suggests the early origins of a doctrinal problem now believed to have arisen on the streets of

⁵ See Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1963); John Hillen, *Blue Helmets: The Strategy of UN Military Operations*, 2nd edn (Washington, DC: Brassey's, 2000); Trevor Findlay, *The Use of Force in UN Peace Operations* (Oxford: SIPRI & Oxford University Press, 2002).

⁶ See UN Department of Peacekeeping Operations, Disarmament, Demobilization and Reintegration of Ex-Combatants in a Peacekeeping Environment: Principles and Guidelines (New York: Lessons Learned Unit, December 1999), available at <<http://www.un.org/Depts/dpko/lessons>>; Natalie Pauwels (ed), *War Force to Work Force: Global Perspectives on Demobilization and Reintegration* (Baden-Baden: Nomos, 2000).

⁷ See William Hubert Lewis and Edward Marks, *Strengthening International Civilian Police Operations* (Washington, DC: Center for Strategic and International Studies, 2000); Annika S. Hansen, *From Congo to Kosovo: Civilian Police in Peace Operations* (Oxford: Oxford University Press for the International Institute for Strategic Studies, 2002).

⁸ Peter Slevin and Vernon Loeb, ‘Plan to Secure Postwar Iraq Faulted; Pentagon Ignored Lessons from Decade of Peacekeeping, Critics Say’, *Washington Post*, 19 May 2003.

Mogadishu.⁹

In the 1990s, peace operations were either Blue Helmets or war-fighting 'coalitions of the willing' ...

... the latter based on the template provided by Resolution 678 (1990), which authorized enforcement action in Kuwait.

Currently, peace operations are given more robust Chapter VII authorization under three sets of circumstances ...

... based on the realization that political assumptions of 'traditional' peacekeeping have become largely artificial as peacekeepers have to respond to an increasing number of complex, internal armed conflicts.

By the 1990s, peace operations had come to be seen as falling into two discrete camps: peacekeeping and enforcement actions. The former were the 'Blue Helmet' operations that took place under the formal command of the UN Secretary-General; the latter were war-fighting operations typically conducted by multinational forces or 'coalitions of the willing' under the aegis, but not the command, of the Security Council. The first enforcement action was undertaken in Korea in 1950, when the Council 'recommended' action under the unified command of the United States. The next major enforcement action was Operation Desert Storm in 1991, when the Council authorized 'Member States co-operating with the Government of Kuwait' (sc states other than Israel) to drive Iraq from occupied Kuwait.¹⁰ Resolution 678 (1990) provided the template for enforcement actions that took place through the 1990s: it depended on the willingness of certain states to undertake (and fund) a military operation; it conferred broad discretion on those states to determine when and how the goals of that operation might be achieved; it limited Council involvement to a vague request to keep its members 'regularly informed'; and it failed to provide an endpoint for the mandate.

Despite ongoing deference to this dichotomy, peacekeeping operations are now routinely given the more robust Chapter VII authorization denied to their Cold War predecessors. This has happened in three sets of circumstances. First, Chapter VII has been invoked out of an apparent desire to emphasize that peacekeepers retain the right to use force in self-defence. Secondly, when peacekeeping missions have experienced difficulties (notably the UN Protection Force (UNPROFOR) in the former Yugoslavia) mandates have been revised to include Chapter VII authorization — again, in theory, merely to emphasize the right of self-defence. In both cases, recourse to Chapter VII has tended to represent a rhetorical escalation in lieu of greater material or political support. Thirdly, peacekeeping operations have received Chapter VII mandates to conduct what are effectively enforcement actions (most infamously UNOSOM II in Somalia).¹¹

This conflation of categories is of more than academic importance. As the United Nations has been drawn into an increasing number of internal armed conflicts, the political assumptions that go with 'traditional' peacekeeping have become largely artificial. Peacekeepers have had to respond to complex situations that bear little resemblance to a ceasefire between standing armies of states. These problems have been exacerbated when the United Nations itself has assumed some or all governmental control over territory, either by design or default. In the security gap left by departing Indonesian forces in East Timor in 1999, the peacekeeping force that followed the Australian-led International Force in East Timor (INTERFET) operation became, in essence, the army of East Timor while the territory was under UN control.¹² Similar roles were played by the peacekeeping force in Eastern Slavonia, by the multinational Implementation and Stabilization Forces (IFOR and SFOR) in Bosnia after 1995, and by KFOR in Kosovo. Where the United Nations has exercised less than complete control over territory, international military contingents have still played an extremely

⁹ For a discussion of the role of the Council in authorizing the use of force, see Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), 163–218.

¹⁰ In 1966, the Security Council also 'called upon' the United Kingdom to use force to prevent the violation of sanctions against Southern Rhodesia: SC Res 221 (1966).

¹¹ Findlay, *Use of Force*, 9.

¹² SC Res 1272 (1999).

However, planning for military involvement in providing internal security, and acceptance of such a role as an integral part of UN peace operations, has been met by much reluctance.

In the first armed peacekeeping operation (UNEF), tensions existed between the use of force in self-defence and defence of the broader purpose of the mission.

Such tensions became even clearer in ONUC, where self-defence was interpreted more broadly as new requirements arose, making it indistinguishable from a standard military campaign.

important role in providing internal security, as in Sierra Leone, Afghanistan, and Iraq. Within the United Nations, however, there has been a great deal of reluctance to accept this as an established class of UN peace operations and plan accordingly.

1.1 From Self-Defence to Defence of the Mission

The first peacekeeping operation that used armed military personnel was the UN Emergency Force (UNEF), established by the General Assembly in 1956 to supervise the ceasefire in the Middle East after the Suez invasion.¹³ Soon after the crisis broke out, Canadian Foreign Minister Lester B. Pearson suggested the need for ‘a truly international peace and police force ... large enough to keep these borders at peace while a political settlement is being worked out.’¹⁴ The proposal that Hammarskjöld later submitted to the General Assembly did not specifically mention the use of force, but did state that ‘there was no intent in the establishment of the Force to influence the military balance in the current conflict, and thereby the political balance affecting efforts to settle the conflict.’¹⁵ UNEF was later described as a ‘plate-glass window’ — not capable of withstanding assault, but nonetheless ‘a lightly armed barrier that all see and tend to respect’.¹⁶ Tensions between the use of force in self-defence and in defence of the broader purposes of the mission were present even in this first armed peacekeeping operation. At various points after its deployment, the Force Commander, Canadian Major-General E.L. Burns, attempted to reinterpret UNEF’s mandate in order to deter violations of the ceasefire. He appears to have been genuinely surprised when his requests for a force robust enough to pose a deterrent threat to the parties were refused by New York.¹⁷

Contradictions between the political basis for peacekeeping and military imperatives on the ground were laid bare in the UN Operation in the Congo (ONUC) in 1960. ONUC began as a conventional peacekeeping mission modelled on UNEF; like UNEF, it was mandated to use force only in self-defence and only as a last resort. Such a model was of little use in the reality of civil war and collapsed state institutions, however. Self-defence was therefore interpreted more broadly as new requirements arose, including preventing peacekeepers from being disarmed and attacked, their posts and installations from being besieged, and their mandated activities disrupted. The mandate was later extended in practice to allow peacekeepers to protect civilians at risk of death, injury, or gross violations of human rights. ONUC was ultimately authorized to use force beyond self-defence, if necessary, to prevent civil war and to expel foreign mercenaries. Though UN staff maintained throughout the operation that force was being used only in self-defence, this became, in strategy and tactics, indistinguishable from a standard military campaign.¹⁸

Compounded by controversies about ONUC’s mandate and the interference this

¹³ UNEF was preceded by the unarmed military observers of the UN Truce Supervisory Organization (UNTSO) (1948—) and the UN Military Observer Group in India and Pakistan (UNMOGIP) (1949—).

¹⁴ Brian Urquhart, *Ralph Bunche: An American Life* (New York: W.W. Norton, 1993), 265.

¹⁵ Report of the Secretary-General on Basic Points for the Presence and Functioning in Egypt of the United Nations Emergency Force, UN Doc A/3302 (6 November 1956).

¹⁶ Finn Seyersted, *United Nations Forces in the Law of Peace and War* (Leyden: A.W. Sijthoff, 1966), 48.

¹⁷ Findlay, *Use of Force*, 50.

¹⁸ For a discussion of ONUC’s civilian responsibilities, see section 2.1 in this chapter.

In stead of being regarded as a new type of operation, ONUC was seen as an aberration; the controversies surrounding its mandate ensured that force was not used on a comparable scale for decades.

New guidelines for the use of force issued for UNEF II, stating that self-defence includes resistance to attempts to prevent the mission from discharging its mandated duties, became the basis for subsequent missions.

Although a sea-change in UN doctrine, these strong words were not backed-up with additional hardware, nor with the expectations that force was likely to be used.

posed in the internal affairs of a sovereign state, the operation split the Security Council, almost bankrupted the United Nations, and ensured that force was not used on a comparable scale for decades.¹⁹ For the next quarter of a century, peacekeeping was limited to small observation or goodwill missions, most of them monitoring post-conflict situations.²⁰ Only two missions were deployed in civil wars — Cyprus in 1964 and Lebanon in 1978 — and in both cases the mandates were crafted to avoid any escalation of the use of force. Far from being regarded as a new type of operation, Congo was regarded as an aberration: the UN Secretariat and the member states were ‘more interested in forgetting than in learning, more interested in avoiding future onucs than in doing them better.’²¹

The main doctrinal advance on the question of the use of force occurred with the creation of the second UN Emergency Force in the Middle East (UNEF II), though in practice this was a ‘traditional’ peacekeeping operation. Established after the October 1973 war between Israel and Egypt, UNEF II was tasked with supervising the ceasefire and the staged disengagement of Israeli forces from the Sinai. Although it could have drawn solely upon existing precedents, Secretary-General Kurt Waldheim issued new guidelines for the use of force that formed the basis for all subsequent UN peacekeeping operations. The guidelines stated that ‘[s]elf-defence would include resistance to attempts by forceful means to prevent [UNEF II] from discharging its duties under the mandate of the Security Council’.²²

It is not immediately clear why this expansive definition of self-defence was used in respect of what was otherwise a fairly standard peacekeeping operation. The stronger words were certainly not backed up with additional hardware; nor were there expectations that force was likely to be used in theatre. In fact, it appears that *unef ii* forces never actually fired more than warning shots.²³ Nevertheless, with hindsight this came to be regarded as a sea-change in UN doctrine on the use of force. The 1995 General Guidelines for Peacekeeping Operations noted that such a conception of self-defence ‘might be interpreted as entitling United Nations personnel to open fire in a wide variety of situations’.²⁴ Or, as one commentator put it more bluntly: ‘Allowing a force to take positive action in defence of its purpose is no different from allowing them to enforce it.’²⁵ Until the missions in Somalia and Bosnia, these possibilities remained hypothetical.

¹⁹ Findlay, *Use of Force*, 51–86.

²⁰ These were UNSF (1962–1963); UNYOM (1963–1964); UNFICYP (1964—); DOMREP (1965–1966); UNIPOM (1965–1966); UNEF II (1973–1979); UNDOF (1974—); UNIFIL (1978—); UNGOMAP (1988–1990); UNHMOG (1988–1991).

²¹ William J. Durch, ‘The UN Operation in the Congo: 1960–1964’, in William J. Durch (ed), *The Evolution of UN Peacekeeping: Case Studies and Comparative Analysis* (New York: St Martin’s Press, 1993), 315, 349. Cf International Peace Academy, *Peacekeeper’s Handbook* (New York: Pergamon Press, 1984), 38.

²² Report of the Secretary General on the Implementation of Security Council Resolution 340 (1973), UN Doc S/11052/Rev.1 (27 October 1973). See Marrack Goulding, ‘The Evolution of United Nations Peacekeeping’ (1993) 69 *International Affairs* 451, 455.

²³ Findlay, *Use of Force*, 100–103.

²⁴ UN Department of Peacekeeping Operations, General Guidelines for Peacekeeping Operations, UN Doc UN/210/TC/GG95 (October 1995), available at <<http://www.un.org/Depts/dpko/training>>, 20.

²⁵ N.D. White, *The United Nations and the Maintenance of International Peace and Security* (Manchester: Manchester University Press, 1990), 201.

1.2 Peacekeeping After the End of the Cold War

The end of the cold war changed the context within which force was used, increasing the range of circumstances the Security Council considered to constitute threats.

Non-implementation of the collective security system envisaged in the Charter however, led to delegation of Security Council's powers, limiting enforcement actions to 'coalitions of the willing', ...

... which in many cases either followed or were followed by a UN-led peace operation.

The view that forces under UN command are unsuited for fighting was confirmed by the operations in Somalia and Bosnia.

The end of the Cold War and Operation Desert Storm (1991) radically changed the context within which force was used under the auspices of the United Nations. Amid euphoric talk of a 'New World Order', the Security Council asserted that an increasingly broad range of circumstances could constitute threats falling within its purview.²⁶ Importantly, this was seen as including internal armed conflicts. With a small measure of revisionist historiography, the 1960s operation in the Congo was seen to be a precedent for operations in Liberia and Somalia.

The failure to implement the collective security system envisaged in the Charter, however, (which presumed that troops would be made available to the Council 'on its call'²⁷) led to a reliance on delegation of the Council's powers. Enforcement actions were thus limited to situations where acting states had the political will to bear the financial and human costs. The Unified Task Force (UNITAF) operation in Somalia illustrated this in graphic terms: Security Council resolution 794 (1992) was not merely contingent on a US offer of troops — the first draft was written in the Pentagon. A similar approach was adopted in Rwanda (led by France), Haiti (led by the United States), Albania (led by Italy), and East Timor (led by Australia). Regional arrangements have also been authorized to intervene or keep the peace in the former Yugoslavia (NATO), Liberia and Sierra Leone (ECOMOG), Democratic Republic of the Congo (European Union), and Afghanistan (NATO).²⁸ In many cases, different classes of operations have been closely related to one another and sometimes overlapped. Peacekeeping operations authorized in Somalia, Haiti, Rwanda, Bosnia, and Sierra Leone were followed by enforcement actions when they proved incapable of discharging their mandates; enforcement actions were, in turn, followed by peacekeepers in Somalia, Haiti, Sierra Leone, Kosovo, and East Timor.²⁹

Somalia (1993) and Bosnia (1994–1995) confirmed the emerging view that forces under UN command were unsuited to war-fighting. The inability of the UN Operation in Somalia (UNOSOM) to protect the delivery and distribution of humanitarian aid in Somalia led to the creation of UNITAF, a US-led operation that massively reinforced the peacekeeping presence and was briefly regarded as a success. Unfortunately, early signals that one of UNITAF's primary goals was to leave Somalia as quickly as possible were interpreted by the Somali factions as meaning that any temporary inconvenience caused by the US presence could probably be waited out.³⁰ The peacekeeping operation that followed, UMOSOM II, was remarkable for being the first mission organized and commanded by the United Nations to be explicitly mandated under Chapter VII of the Charter, and the first since the Congo to receive a specific mandate to use force beyond self-defence.³¹ As with UNOSOM and UNITAF, the lack of a Somali government had removed the question of its consent to the operation. But it was the departure from the

²⁶ Security Council Summit Statement Concerning the Council's Responsibility in the Maintenance of International Peace and Security, UN Doc S/23500 (31 January 1992).

²⁷ UN Charter, art 43(1).

²⁸ ECOMOG is the Economic Community of West African States (ECOWAS) Military Observer Group. Operation Artemis (2003) in the Democratic Republic of the Congo, was technically an EU operation though it was dominated by France. NATO assumed control of ISAF in Afghanistan in August 2003.

²⁹ The enforcement actions in Kosovo and Sierra Leone were not authorized by the UN Security Council.

³⁰ William J. Durch, 'Introduction to Anarchy: Humanitarian Intervention and "State-Building" in Somalia', in William J. Durch (ed), *UN Peacekeeping, American Policy, and the Uncivil Wars of the 1990s* (New York: St Martin's Press, 1996), 311, 321.

³¹ Findlay, *Use of Force*, 184.

In Somalia, government consent was not applicable, but it was the departure from impartiality and minimum use of force that made the mission a “bête noire”.

Meanwhile, Srebrenica, where lightly armed UN forces were given an impartial role while there was, in fact, no peace to keep, became synonymous with disjunction between Security Council rhetoric and resolve.

Conventional wisdom became that absolute impartiality is essential to a peacekeeping operation and that UN command is unsuitable for enforcement action.

other two characteristics of traditional peacekeeping (impartiality and the minimum use of force) that became the *bête noire* of the mission. After an ambush in June 1993 resulted in the deaths of 24 Pakistani peacekeepers and another 57 wounded — the highest number of casualties in a single day in UN peacekeeping history — the Security Council authorized the Secretary-General as Commander-in-Chief of UNOSOM II to take ‘all necessary measures against all those responsible’, including ‘their arrest and detention for prosecution, trial and punishment’.³² There appears to have been little understanding at the time of how significant a departure this was from UNOSOM’s original mission, as it amounted to a declaration of war against General Mohamed Aideed’s militia.³³ This culminated in the 3 October 1993 raid on the Olympia Hotel in Mogadishu — undertaken independently by the United States — in which three US helicopters were shot down and 18 US Rangers and one Malaysian soldier were killed.³⁴ Four days later, President Bill Clinton announced that US troops would withdraw by 31 March 1994, regardless of the situation on the ground.³⁵ Troop contributors to UNOSOM II soon announced their withdrawal also. By February 1994, it was clear that a sustained presence was impossible and the Council adopted a scaled-down mandate prior to a gun-cocked retreat in March 1995.³⁶

Meanwhile, in Bosnia, lightly armed UN forces were given a nominally impartial role when there was, in reality, no peace to keep. As the situation deteriorated, the Security Council proclaimed the existence of ‘safe areas’ around five Bosnian towns and the city of Sarajevo, while UNPROFOR was given an ambiguous mandate to protect them while ‘acting in self-defence’.³⁷ At the same time, an apparently general authorization was given to member states (meaning NATO) to take ‘all necessary measures, through the use of air power’ to support UNPROFOR in and around the safe areas.³⁸ This served to deter attacks in the short-term, but when it was overrun by the Bosnian Serbs in 1995, the name of one of the safe areas — Srebrenica — became synonymous with the disjunction between Council rhetoric and resolve.³⁹

Conventional wisdom concerning the fall of the Bosnian safe areas was that the United Nations had failed to learn the two lessons of Somalia: that absolute impartiality was the keystone to a peacekeeping operation — in other words, the ‘Mogadishu line’ had been crossed — and that UN command provided an unworkable structure for the alternative to peacekeeping: an enforcement action.⁴⁰ The success of NATO air strikes later that year in coercing the parties to the negotiating table in Dayton, Ohio,

³² SC Res 837 (1993), para 5.

³³ John L. Hirsch and Robert Oakley, *Somalia and Operation Restore Hope: Reflections on Peacemaking and Peacekeeping* (Washington, DC: United States Institute of Peace Press, 1995), 118 n118; Findlay, *Use of Force*, 196.

³⁴ See Mark Bowden, *Black Hawk Down: A Story of Modern War* (New York: Atlantic Monthly Press, 1999).

³⁵ Paul F. Horvitz, ‘Fending Off Congress, Clinton Links Pullout To Safety for Somalis’, *International Herald Tribune*, 7 October 1993.

³⁶ SC Res 897 (1994).

³⁷ SC Res 819 (1993); SC Res 824 (1993); SC Res 836 (1993).

³⁸ SC Res 836 (1993), para 10. Though unclear in the resolution, the decision to initiate the use of air power was to be taken by the Secretary-General in consultation with the members of the Security Council: Report of the Secretary-General Pursuant to Security Council Resolution 836 (1993), UN Doc S/25939 (14 June 1993).

³⁹ Jan Willem Honig and Norbert Both, *Srebrenica: Record of a War Crime* (London: Penguin, 1996).

⁴⁰ See, eg, Mats R. Berdal, *Whither UN Peacekeeping?* (London: International Institute for Strategic Studies, 1993), 39–41; Dick A. Leurdijk, *The United Nations and NATO in Former Yugoslavia: Partners in International Cooperation* (The Hague: Netherlands Atlantic Commission, 1994), 81.

This gave rise to three policy changes:

- *Strict separation between peace-keeping and enforcement reasserted;*
- *Enforcement actions were kept under national command; and*
- *Focus on air power.*

A three-tier class structure developed from the Kosovo experience between developing countries, industrialized countries and the USA, ...

... as was further illustrated in Sierra Leone.

reinforced this view, and the Dayton Peace Agreement was implemented and maintained by IFOR and SFOR — NATO-run operations authorized by but independent of the Security Council. Such wisdom gave rise to three policy changes. First, the strict dichotomy between peacekeeping and enforcement actions was reasserted, most notably by the Secretary-General in his Supplement to An Agenda for Peace.⁴¹ Secondly, subsequent enforcement actions (when they were actually undertaken) were kept under national command, with the obligation only to report to the Council on the action taken in its name. Thirdly, Bosnia was taken as proof that superior air power could provide a ‘clean’ resolution to a messy conflict on the ground by coercing belligerents to negotiate. (This view overlooked the importance of Croatia’s ground offensive in reversing Bosnian Serb gains and the effect that the prolonged ground war had had on the parties.⁴²)

The effects of this last point concerning air power were seen most clearly in Kosovo, when NATO commenced a 78-day air campaign without Council authorization in 1999. While some NATO governments interpreted Kosovo at the time as heralding a new era of NATO activism without the constraints of Council politics, the United States appears to have drawn different conclusions: specifically, that the operational constraints of acting in concert with its NATO allies were even more frustrating than the political constraints of seeking Council authorization. The result has been that the apartheid sometimes identified in UN peace operations — where industrialized countries fight the wars they choose and developing countries provide peacekeepers to do dangerous peacekeeping in less strategic areas⁴³ — is now more properly understood as a three-tier class structure. Developing countries continue to make up over three-quarters of the troop contributors for peacekeeping operations under the command of the United Nations, notably in Africa. A number of industrialized countries (especially those in NATO) provide troops that operate under national command but with UN authorization, in operations such as SFOR, KFOR, and ISAF. And the United States, in addition to participating selectively in NATO activities, effectively operates as a free agent.⁴⁴

Sierra Leone provides an example of how this works in practice. The disastrously planned, trained, and commanded UNAMSIL operation nearly collapsed in early 2000, while 500 peacekeepers were taken hostage by Foday Sankoh’s Revolutionary United Front (RUF). Britain soon dispatched six warships to its former colony. The ostensible purpose of Operation Palliser was the safe evacuation of British and other foreign nationals, action undertaken with the consent of the government in Freetown. In reality, however, the force was soon organizing and training UN troops, establishing fortified positions, manning roadblocks, securing Freetown and its airports, conducting joint patrols with UNAMSIL, and coming under fire — which it returned in ‘robust’ self-

⁴¹ Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, UN Doc A/50/60-S/1995/1 (3 January 1995). This was disseminated in January 1995. See also Shashi Tharoor, ‘The Changing Face of Peace-Keeping and Peace-Enforcement’ (1995) 19 *Fordham International Law Journal* 408.

⁴² See, eg, Richard Holbrooke, *To End a War* (New York: Random House, 1998), 72–73.

⁴³ David M. Malone and Ramesh Thakur, ‘Racism in Peacekeeping’, *Globe and Mail* (Toronto), 30 October 2000.

⁴⁴ Cf Report of the Panel on United Nations Peace Operations (Brahimi Report), UN Doc A/55/305-S/2000/809 (21 August 2000), available at <http://www.un.org/peace/reports/peace_operations>, para 103. Over three-quarters of the troops participating in peacekeeping operations are now typically from developing countries. The five permanent members of the Security Council in total contribute less than four percent of all peacekeepers: DPKO, Monthly Summary of Contributions (June 2004), available at <<http://www.un.org/Depts/dpko/dpko/contributors>>.

defence.⁴⁵ After securing the airport and the release of most of the UN forces, Operation Palliser was scaled down in mid-June 2000 to leave only British military advisers to work with UNAMSIL forces and the Sierra Leonean Army.⁴⁶ British forces operated at all times outside the UN command and control, though they attended UN planning meetings. The Secretary-General later observed that the presence was ‘a pivotal factor in restoring stability’.⁴⁷ This is widely regarded as the turning point in UNAMSIL’s operations, after which it became more aggressive in addressing — and, on occasion, pre-empting — the ongoing challenges posed by the RUF. By January 2002, some 45,000 rebels had been disarmed and demobilized; two months later President Ahmad Tejan Kabbah announced the end of a four-year state of emergency.⁴⁸

The aftermath of military success in Iraq — widespread looting, sporadic revenge killings, and resistance to military occupation — demonstrated the importance of linking military and political strategies to rebuild the institutions of a defeated state, comparable to the imperatives in rebuilding an internally riven or collapsed state. The swift creation and replacement of the Pentagon’s Office of Reconstruction and Humanitarian Assistance (ORHA), which was operational in Iraq for less than a month under retired General Jay Garner, together with the withdrawal and then reinforcement of US troops in the weeks following the defeat of Iraq’s military, suggested that the United States and its coalition partners had spent far more time planning to win the war than they had to win the peace.⁴⁹ This repeated a failure of many peace operations, combined with a general unwillingness to task the military with ‘policing’ functions. As the next section argues, however, allowing a security vacuum to develop may irreparably undermine the larger project of consolidating a lasting peace.

The current situation in Iraq shows the importance of linking military and political strategies, including tasking the military with policing functions, to rebuild a state after armed conflict.

Most importantly, a peace operation is to establish conditions for sustainable security.

Where state institutions are dysfunctional, the UN may have to use the military to provide security and to address the challenges posed by ‘spoilers’.

First impressions are of great importance to the stability of a peace accord, political momentum and the credibility of peacekeepers; ...

2 Emergency Law and Order

The single most important aim of any peace operation is to establish the conditions for sustainable security for the civilian population. Traditional peacekeeping seeks to achieve this through monitoring a ceasefire between states that have been at war; this normalization of relations is intended to allow state institutions to maintain order within their respective territories. When a peace operation attempts to bring order to territory in which the institutions of the state have ceased to function, however, the United Nations and other international actors confront the dilemma of whether and how to use the military to provide for internal security. A related dilemma frequently arises: whether to regard ‘spoilers’ that challenge the new regime as political opponents, criminal elements, or military enemies.⁵⁰

The stability of a peace accord and the credibility of peacekeepers depend greatly on first impressions. The first six- to twelve-week period is critical for establishing the basis for an effective international presence; credibility and political momentum lost

⁴⁵ Findlay, *Use of Force*, 301.

⁴⁶ See generally John L. Hirsch, *Sierra Leone: Diamonds and the Struggle for Democracy* (Boulder, CO: Lynne Rienner, 2001).

⁴⁷ Fourth Report of the Secretary-General Pursuant to Security Council Resolution 1270 (1999) on the United Nations Mission in Sierra Leone, UN Doc S/2000/455 (19 May 2000), para 14.

⁴⁸ ‘Sierra Leone Lifts Emergency Ahead of Polls’, *Agence France Presse*, 2 March 2002.

⁴⁹ For a discussion of early indicators of the lack of planning, see Simon Chesterman and David M. Malone, ‘Postwar Challenge: Who Plans for Rebuilding Iraq?’ *International Herald Tribune*, 5 December 2002.

⁵⁰ See Stephen John Stedman, ‘Spoiler Problems in Peace Processes’ (1997) 22(2) *International Security* 5.

... loss of credibility and momentum in the first 6-12 weeks of a peace operation can be hard to regain.

during this period can be difficult to regain.⁵¹ The missions in Bosnia and Kosovo continue to suffer from the failure to assert military and policing authority in the early stages of the operations. In Bosnia, slow deployment of civilian police gave Bosnian Serb authorities time to prepare a forced evacuation of Sarajevo's Serb suburbs, ransacking and burning homes as they left.⁵² In Kosovo, reluctance to exert authority in the remaining Serb-controlled areas led to the entrenchment of informal systems of law enforcement, such as the 'bridge-watchers' in northern Mitrovica.⁵³ East Timor presents a more promising example: the Australian-led force that first entered East Timor arguably had a narrower mandate to restore law and order than KFOR in Kosovo. Nevertheless, it interpreted its mandate to restore peace and security as encompassing arrests of individuals accused of committing serious offences.

This section surveys the emergency phase of a series of operations and the various strategies that have been adopted to deal with short-term law and order problems. It then considers attempts to systematize the lessons learned in this period at the level of doctrine.

2.1 Law and Order in UN Peace Operations

ONUC's military regiments carried out civilian police law and order functions, for which it became increasingly clear that riot police would have been more suited.

Congo was the first occasion on which basic responsibility for law and order fell ultimately to personnel under UN command. In the absence of an effective government, ONUC assumed many of the law and order functions of a civilian police force, including the apprehension and detention of criminals, as well as establishing and enforcing curfews, and conducting short- and long-range patrols.⁵⁴ These functions were carried out despite the absence of a clear power of arrest, jails, or functioning courts — it was also unclear what law ONUC was to uphold, as the newly independent state had not had time to codify a Congolese version of the old Belgian law. Such problems were compounded by the inadequacy of troops for such tasks: it became increasingly clear that highly trained riot police would have been more suited to such tasks than military regiments; where civilian police from Ghana and Nigeria operated, they were regarded as worth 'twenty times their number of the best fighting infantry'.⁵⁵

The next mission with a comparable mandate was UNTAC, where the Force Commander and the SRSG differed on the extent to which force could be used.

As indicated earlier, Congo was generally regarded as an aberration rather than as a precursor of the missions that would occupy the United Nations in later years. The next operation with a comparable mandate was the UN Transitional Authority in Cambodia (UNTAC) (1992–1993), whose rules of engagement for the first time specifically identified the prevention of crimes against humanity as warranting the use of 'all available means', including armed force. The Force Commander, Lieutenant General John Sanderson of Australia, assumed that these rules permitted defence of 'anyone going about their legitimate business under the Paris Agreement', including non-

⁵¹ Brahimi Report, para 87.

⁵² Richard Caplan, *A New Trusteeship? The International Administration of War-Torn Territories* (Oxford: Oxford University Press, 2002), 31.

⁵³ The bridge-watchers are Serbs in northern Mitrovica who seek to prevent ethnic Albanians from crossing the river from the south of the divided city. See, eg, Nicholas Wood, 'Division and Disorder Still Tearing at Kosovo', *Washington Post*, 22 June 2002.

⁵⁴ Second Progress Report to the Secretary General from his Special Representative in the Congo, Mr Rajeshwar Dayal, UN Doc S/4557 (2 November 1960).

⁵⁵ Athur Lee Burns and Nina Heathcote, *Peacekeeping by UN Forces: From Suez to the Congo* (New York: Praeger for the Center for International Studies, Princeton, 1963), 185; Catherine Hoskyns, *The Congo Since Independence: January 1960 to December 1961* (Oxford: Oxford University Press, 1965), 295.

uniformed UN personnel and Cambodians.⁵⁶ Yet this approach was applied inconsistently. Special Representative of the Secretary-General Yasushi Akashi interpreted self-defence strictly, with the result that UNTAC failed to resist harassment from Khmer Rouge elements. In May 1992, a confrontation took place between the Khmer Rouge and the Special Representative and Force Commander at a Khmer Rouge roadblock in north-west Cambodia. In what was seen as a humiliation for UNTAC, they were turned away at a bamboo pole across the road. Criticism for failing to challenge the Khmer Rouge did not only come from outside the mission. The Deputy Force Commander, French Brigadier-General Jean-Michel Loridon, was dismissed after advocating the use of force against the Khmer Rouge.⁵⁷

This position changed somewhat after the Khmer Rouge decided to boycott the electoral process. Concerned that a military attack might be launched to disrupt the elections scheduled for May 1993, General Sanderson redeployed UNTAC's military component to 'defend' the elections. More controversially, UNTAC also allowed the other parties that had agreed to take part in the elections to use their own forces to repulse the Khmer Rouge and secure the safety of polling stations.⁵⁸ In a revolutionary step in January 1993, UNTAC appointed its own special prosecutor to issue warrants against suspected violators of human rights. Problems arose almost immediately: UNTAC had no jail, requiring the establishment of the first UN 'detention facility'. In addition, civilian police were not armed, and UNTAC's interpretation of its mandate was that it had no authority to exercise force for such a purpose. More importantly, Hun Sen's party was not prepared to prosecute its own members and could not guarantee the fair treatment of those from the other factions. The first two prisoners of the United Nations were thus held without habeas corpus and without trial.⁵⁹

UNTAC eventually deployed the military to defend the elections.

In Somalia, engagement in law and order activities depended on whether the troop contributor regarded UNITAF as an occupation force.

In Somalia, different interpretations of the law and order responsibilities of foreign troops turned on whether UNITAF was regarded as an occupation force. This varied between the different troop contributors. Australia, for example, argued that the presence of foreign troops was governed by the Fourth Geneva Convention, giving rise to an obligation to restore and maintain public order. As part of a civil affairs programme, the Australian UNITAF contingent in Baidoa re-established the local police force and legal system, including jails and courts.⁶⁰ UNITAF command rejected this interpretation: since this was a humanitarian rather than military operation, it argued that the military presence could not be regarded as an army of occupation; virtually no action was taken at the national level to re-establish a Somali police force or judiciary.⁶¹ UNOSOM II later sought to address the lack of a legal regime by promulgating the former Somali Penal Code of 1962, an act that went beyond its mandate but was

UNOSOM II later sought to address the lack of legal regime, justified by the absence of functioning government authority.

⁵⁶ John M. Sanderson, 'A Review of Recent Peacekeeping Operations' (Dacca: paper presented at Pacific Armies Management Seminar, January 1994), quoted in Findlay, *Use of Force*, 125–126; James A. Schear, 'Riding the Tiger: The UN and Cambodia', in Durch (ed), *UN Peacekeeping, American Policy*, 135, 143.

⁵⁷ Trevor Findlay, *Cambodia: The Legacy and Lessons of UNTAC* (Oxford: Oxford University Press, 1995), 37; Second Progress Report of the Secretary-General on the United Nations Transitional Authority in Cambodia, UN Doc S/24578 (21 September 1992).

⁵⁸ This was comparable to the situation in Namibia in April 1989, when restrictions on the South African Defence Forces were lifted in response to violations of the peace agreement by the South West Africa People's Organization (SWAPO): Marrack Goulding, *Peacemonger* (London: John Murray, 2002), 153–154.

⁵⁹ Michael W. Doyle, *UN Peacekeeping in Cambodia: UNTAC's Civil Mandate* (Boulder, CO: Lynne Rienner, 1995), 47.

⁶⁰ Findlay, *Use of Force*, 177. International humanitarian law and occupation is discussed in the Introduction.

⁶¹ F.M. Lorenz, 'Law and Anarchy in Somalia' (1993) 23(4) *Parameters: US Army War College Quarterly* 27, 35. The United States directed some funds to rebuilding the Somali police after the 'Black Hawk Down' incident in October 1993, but by then it was too late: Walter Clarke and Jeffrey Herbst, 'Somalia and the Future of Humanitarian Intervention' (1996) 75(2) *Foreign Affairs* 70, 77.

justified at the time by the absence of any functioning government authority whatsoever.

In Haiti, interpretation of the mission's rules of engagement changed from leaving law enforcement to the Haitian Armed Forces to permitting mission troops to prevent loss of human life.

In Haiti, rules of engagement for the 21,000 strong multinational force that peacefully occupied the country in September 1994 were interpreted as leaving law enforcement to the Haitian Armed Forces. This was the same force that had terrorized the population for decades, however, and a public outcry followed television pictures of US troops standing by while Haitian soldiers beat pro-Aristide protesters, one of whom died. The interpretation of the rules of engagement (but not the rules themselves) was quickly changed to permit troops to use force to prevent the loss of human life and 1,000 additional US military police were dispatched to assist in maintaining public order.⁶²

Bosnia showed that the availability of law and order institutions (e.g. the ICTY) is secondary to the willingness to act.

Bosnia after 1995 suffered from fewer procedural difficulties concerning law and order, many of which could be deferred to the International Criminal Tribunal for the Former Yugoslavia (ICTY). But the availability of institutions is always secondary to the willingness to act. While negotiating the Dayton Agreement, US Assistant Secretary of State Richard Holbrooke was under strict instructions to ensure that the NATO-supported IFOR was given only a narrow role that excluded any police functions.⁶³ IFOR subsequently resisted pressure from the High Representative and from the ICTY to arrest indicted war criminals. Given the dissatisfaction expressed concerning the United Nations in the Balkans, it is noteworthy that the first war criminals were actually captured not by NATO troops in Bosnia, but by UN peacekeepers in Eastern Slavonia. The two most wanted men in Bosnia, Radovan Karadzic and Ratko Mladic, remain at large despite the continuing presence of 13,000 SFOR troops.

UNMIK's difficulties in establishing itself as a credible force for law and order were attributed to failures to respond to rule of law problems in the first weeks and months of the operation.

The most immediate rule of law problem confronting the international presence in Kosovo in 1999 was the anarchy that followed the withdrawal of Serb authorities. Most had fled before NATO troops arrived, frequently taking whatever they could carry and destroying that which remained. 'Court buildings looked like a plague of heavily armed locusts had swept through,' one commentator writes, 'scouring the grounds for anything valuable and leaving broken windows and ripped out electric sockets in their wake.'⁶⁴ Many international staff later attributed the ongoing difficulties in establishing the UN Interim Administration Mission in Kosovo (UNMIK) as a credible force for law and order to failures in the first weeks and months of the operation. Two days before KFOR entered Kosovo, one of the 'measures of merit' General Wesley Clark established for the ground intervention was to avoid anarchy: 'get all Serb forces out, stop any crimes of revenge or Serb ethnic cleansing'.⁶⁵ Such orders, if made, were ineffective. Reporters came across Albanians, including members of the Kosovo Liberation Army (KLA), looting and driving Serbs and Roma from their homes. When one approached KFOR soldiers who were watching this take place he was informed that '[t]he orders are to let them plunder.'⁶⁶

In the wake of the post-referendum violence in East Timor in September 1999,

⁶² David M. Malone, *Decision-Making in the UN Security Council: The Case of Haiti, 1990–1997* (Oxford: Clarendon Press, 1998), 113; Findlay, *Use of Force*, 274.

⁶³ Holbrooke, *To End a War*, 218–223.

⁶⁴ William G. O'Neill, *Kosovo: An Unfinished Peace* (Boulder, CO: Lynne Rienner, 2002), 75. See also Matthew Kaminski, 'UN Struggles with a Legal Vacuum in Kosovo; Team Improvises in Effort to Build a Civil Structure', *Wall Street Journal*, 4 August 1999; Hansjoerg Strohmeyer, 'Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor' (2001) 95 *American Journal of International Law* 46, 48.

⁶⁵ Wesley K. Clark, *Waging Modern War: Bosnia, Kosovo, and the Future of Combat* (New York: Public Affairs, 2001), 371.

⁶⁶ Tim Judah, *Kosovo: War and Revenge* (New Haven, CT: Yale University Press, 2000), x.

INTERFET on the other hand interpreted its mandate to encompass arrests of individuals accused of serious offences.

the Australian-led INTERFET had to decide how to respond to denunciations of alleged former militia. Such matters formally remained in the hands of the Indonesian police and judiciary, though this was on paper only. It was clear that this would soon become the responsibility of the UN Transitional Administration in East Timor (UNTAET) and an East Timorese judiciary, but these had yet to be established on the ground. INTERFET's Security Council mandate was silent on its responsibility or authority to carry out arrests. The Council resolution did, however, stress the responsibility of individuals committing violations of international humanitarian law and demand that they be brought to justice.⁶⁷ INTERFET ultimately decided that its broad mandate to restore peace and security could encompass arrests of individuals accused of committing serious offences — failure to do so might encourage Timorese people to take the law into their own hands.⁶⁸ INTERFET's commander therefore issued a Detainee Ordinance, creating various categories of prisoners. INTERFET troops were authorized to detain persons suspected of committing a serious offence prior to 20 September, and were required to deliver them to the Force Detention Centre in Dili within 24 hours. If a detainee was held for more than 96 hours, he or she was provided the grounds for being held, together with material considered by the commander of INTERFET as the basis for continuing detention. Defending Officers were available to assist the detainee to show why he or she should not be so held, and a number of detainees were released because of insufficiency of evidence. The INTERFET Detention Centre handed over 25 detainees to UNTAET Civilian Police and the East Timorese judiciary on 14 January 2000.⁶⁹

How a peace operation responds to security vacuums has been dependent on the preparedness of contingents and individuals to act. Clearer doctrine should remove some of this latitude.

As the preceding review makes clear, the dominant variable in the different responses to internal security vacuums has been the preparedness of particular contingents and individuals to act. Comparable mandates were interpreted very differently in Kosovo and East Timor — as they were in different parts of Somalia. One reason for this inconsistency was the lack of clear direction from the Security Council. Clearer doctrine on when and how force is to be used in peace operations would remove some of the latitude that has commonly been given to field commanders in the interpretation of their mandate, though it may not be enough to generate the will to do so.

2.2 The Need for Doctrine

Standard rules of engagement, standard operating procedures and standard form mandates are the obvious solution to the current level of latitude in use of force. Member states, however, have been reluctant to allow doctrine development.

As Brigadier-General Anthony Zinni, Deputy for Operations of UNITAF in Somalia, once dryly observed, UNISOM II's various contingents came to the battlefield with many different rules of engagement, 'which makes life interesting when the shooting begins'.⁷⁰ The obvious solution would be for the United Nations to develop standard rules of engagement, which might follow the production of standard operating procedures and standard form mandates from the Security Council. Member states of

⁶⁷ SC Res 1264 (1999), para 1.

⁶⁸ See, eg, First Periodic Report on the Operations of the Multinational Force in East Timor, UN Doc S/1999/1025, Annex (4 October 1999), para 23; Michael Ware, 'Murder Charge Bolsters Interfet Get-Tough Policy', *The Australian* (Sydney), 17 December 1999.

⁶⁹ Report of the Secretary-General on the United Nations Transitional Administration in East Timor, UN Doc S/2000/53 (26 January 2000), para 45.

⁷⁰ Anthony Zinni, 'It's Not Nice and Neat' (1995) 121(8) *Proceedings, US Naval Institute* 26, 30. Mogadishu airport in Somalia was defended by the forces of no less than eight nations: 'Was that because the airfield was so big or so threatened? No. It was because the forces of those eight nations could go no farther than the airfield when they got off the airplane': *ibid*.

the United Nations have, however, been reluctant to allow it to develop doctrine in the area of peace operations.

This resistance is bolstered by the strict divide between peacekeeping and enforcement action, which was reflected in the “General Guidelines for Peacekeeping”.

Resistance on the part of certain member states is bolstered by those who adhere to the strict divide between peacekeeping and enforcement actions. UN Under-Secretary-General Shashi Tharoor is representative when he argues that ‘it is extremely difficult to make war and peace with the same people on the same territory at the same time.’⁷¹ This position was reflected in the *General Guidelines for Peacekeeping*, which stated: ‘Peacekeeping and the use of force (other than in self-defence) should be seen as alternative techniques and not adjacent points on a continuum. There is no easy transition from one to the other.’⁷² Brian Urquhart, who joined the United Nations at its founding, put it best when he stressed that a true peacekeeper has no enemies — just a series of difficult and sometimes homicidal clients.⁷³

Peace operations have at times used too much or too little force for the situation at hand.

Trevor Findlay is blunt about the reasons why a new doctrine is needed, though he tends to conflate the problem of use of force in peacekeeping operations with enforcement actions more generally: ‘No one should have expected that the Bosnian Serbs, determined to seize as much of Bosnia and expel as many Muslims as they could in the cause of a Greater Serbia, would have been deterred by the sweet reason of the “Blue Helmets”.’⁷⁴ He suggests that in Somalia the United Nations used too little force in the early days, when a show of force might have persuaded the factions to respect UN authority on issues such as disarmament, and too much indiscriminate force later on when pursuing General Aideed. In Bosnia, a broader interpretation of the rules of engagement might have enabled UNPROFOR to push through some of the low-level harassment directed at them without actually drawing fire. Nevertheless, the resources on hand and the vulnerability of forces on the ground tended to ensure that ‘threats by commanders, usually soon after their arrival, to act more aggressively fell away as the realization of the implications of doing so for vulnerable humanitarian convoys and peacekeepers sank in.’⁷⁵

To avoid such confusion, it is suggested to draw a clear line between Chapter VI and Chapter VII operations, the latter covering all missions involving armed military personnel. Such ‘peace enforcement’ missions should be obliged to protect civilians.

Findlay’s suggestion for avoiding such confusion in the future is to replace the line between peacekeeping and enforcement with a clearer line between Chapter VI and Chapter VII operations: all missions involving armed military personnel would receive a Chapter VII mandate, with Chapter VI restricted to unarmed observer missions and peacebuilding missions with no uniformed personnel. Moreover, all Chapter VII mandates should ‘make it explicit that the United Nations is obliged to protect civilians at risk of human rights abuses or other forms of attack’. These new Chapter VII operations would be termed peace enforcement.⁷⁶ This would clarify the questions of impartiality and use of force. But clarity would come with the loss of those operations where parties would be unwilling to allow well-armed troops with such a mandate into

⁷¹ See *ibid*, 263.

⁷² UN Department of Peacekeeping Operations, 1995 Guidelines, 21–22.

⁷³ Brian Urquhart, *A Life in Peace and War* (New York: W.W. Norton, 1987), 293.

⁷⁴ Findlay, *Use of Force*, 271.

⁷⁵ *Ibid*, 223–224.

⁷⁶ *Ibid*, 360–361. Peace enforcement is defined as an operation that aims to ‘ensure the implementation of a peace agreement or arrangement (such as a ceasefire), including compliance by all parties with their undertakings, through the judicious application of incentives and disincentives, among them the robust use of force.’ While this is partly a military strategy, it must ultimately be political, with the military playing ‘a supporting role involving deterrence and compellence as necessary’: Findlay, *Use of Force*, 376.

theatre.⁷⁷

Marrack Goulding, who directed UN peacekeeping during what may come to be regarded as its heyday — the period 1986–1993 — is less revolutionary in his views, but these have undergone a notable shift in the period since he left the United Nations. In 1996, while head of the Department of Political Affairs, he argued that the United Nations needed to be strictly clear about whether it intervened as ‘an impartial peacekeeper or as an avenging angel to punish the wicked and protect the righteous’. If a mission changed from peacekeeping to enforcement, ‘the change must be clearly signalled to all parties concerned, there must be convincing evidence of a real political will to use force to achieve a strategic objective’.⁷⁸ The possibility of an intermediate type of operation was treated with great scepticism. By the publication of his 2002 memoir, *Peacemonger*, Goulding’s position had changed somewhat: ‘I now realize that we in the Secretariat adjusted too slowly to the demands of the new type of conflict which proliferated after the end of the Cold War’, he writes.

Marrack Goulding, former USG for Peacekeeping, echoed the Brahimi report when he stated that the Secretariat has been too slow adjust to the demands of the intra-state conflicts that proliferated after the end of the Cold War.

By the second half of the 1990s it had become clear that there was a need to revise peacekeeping doctrine. It had to provide for situations in which a party’s consent had been given in general terms but the peacekeepers could nevertheless expect to encounter armed resistance from some of that party’s adherents or, in states without effective government, from armed bandits with no political agenda. ... The essence of the new doctrine is that force is, if necessary, used against armed persons because of what they do, not because of the side they belong to.⁷⁹

This echoes key passages in the Brahimi Report on UN Peace Operations, which noted that the peacekeeping shibboleth of consent is often manipulated in intra-state conflicts. If a party to a peace agreement is clearly violating its terms, continued equal treatment of all parties by the United Nations leads to ineffectiveness at best and complicity with evil at worst: ‘No failure did more to damage the standing and credibility of United Nations peacekeeping in the 1990s than its reluctance to distinguish victim from aggressor.’⁸⁰

Findlay sees in Brahimi’s advocacy of more robust, rapidly deployable forces with deterrent capabilities a call for a UN peace enforcement capability by stealth.⁸¹ This does not appear to have been the Secretary-General’s view, however. In his first report on implementation of the Report’s recommendations, the Secretary-General noted that he did not interpret the Report as a recommendation to turn the United Nations into a war-fighting machine or to ‘fundamentally change the principles according to which peacekeepers use force.’⁸² Given ongoing wariness among certain member states, such caveats about the development of new doctrine are likely to continue — even as history forces the United Nations to violate them in practice.

Opinions differ on whether Brahimi’s advocacy for more robust, rapidly deployable forces implies a call for a UN peace enforcement capability by stealth.

⁷⁷ The 1999 vote on East Timor’s independence from Indonesia, for example, would not have happened if international negotiators had insisted on an international security presence.

⁷⁸ Marrack Goulding, ‘The Use of Force by the United Nations’ (1996) 3(1) *International Peacekeeping* 1, 15–16.

⁷⁹ Goulding, *Peacemonger*, 17.

⁸⁰ Brahimi Report, ix.

⁸¹ Findlay, *Use of Force*, 337.

⁸² Report of the Secretary-General on the Implementation of the Report of the Panel on United Nations Peace Operations, UN Doc A/55/502 (20 October 2000), para 7(e).

2.3 Model Rules of Engagement

The 'Guidelines for the Development of Rules of Engagement (ROE) for UN Peacekeeping', are a work in progress, ...

... but are being used to prepare actual ROE and for training purposes.

Rule 5, concerning 'Reaction to civil action/unrest', and rule 1.8 on use of force to protect civilians, are of particular interest and suggest a significant change in the use of force in peace operations.

Debates over the use of force often serve as a proxy for other issues.

A working group was established in 1998 to produce a draft of model rules of engagement for future missions and for training purposes. Due in part to the concerns of developing states, the first draft considered only the use of force in self-defence and defence of the mission.⁸³ Further consultation in 2001 — after the Rwanda and Srebrenica reports, and the Brahimi Report had been published — saw an evolution in thinking, but little consensus. In December 2001, the Secretary-General simply announced that the document, now known as the Guidelines for the Development of Rules of Engagement (ROE) for United Nations Peacekeeping Operations,⁸⁴ would remain a 'work in progress', but in the meantime was being used by military planning staff to prepare mission-specific rules of engagement and would soon be used for training purposes in troop contributing countries.⁸⁵

Of particular interest here is rule 5, concerning 'Reaction to civil action/unrest'. In two parts, the rule states the general principle that '[a]ction to counter civil unrest is not authorized.' This is then qualified by the following important provision that appears to reflect the experience of INTERFET in East Timor: 'When competent local authorities are not in a position to render immediate assistance, detention of any person who creates or threatens to create civil unrest with likely serious consequences for life and property is authorized.' This should be read together with rule 1.8, which authorizes the use of force 'up to, and including deadly force, to defend any civilian person who is in need of protection against a hostile act or hostile intent, when competent local authorities are not in a position to render immediate assistance'.⁸⁶ Despite the Secretary-General's caveats, this suggests a significant change in the use of force in peace operations. In 1999 and 2000, both UNAMSIL and the UN Organization Mission in the Democratic Republic of the Congo (MONUC) were given Chapter VII mandates to protect 'civilians under imminent threat of physical violence', though no actual use of force appears to have been taken on this basis.⁸⁷ When violence escalated in Ituri in May 2003, Uruguayan soldiers in MONUC claimed that they were unable or unwilling to intervene.⁸⁸

3 Conclusion

Debates over the use of force within the United Nations frequently serve as a proxy for other issues. In Bosnia, for example, the reluctance to use military force was a cover for disagreements among the major powers about their objectives and the continuing absence of a coherent policy towards the conflict itself.⁸⁹

⁸³ Findlay, *Use of Force*, 347.

⁸⁴ UN Department of Peacekeeping Operations, Guidelines for the Development of Rules of Engagement for UN Peacekeeping Operations (Provisional), UN Doc MD/FHS/0220.0001 (May 2002).

⁸⁵ Implementation of the Recommendations of the Special Committee on Peacekeeping Operations and the Panel on United Nations Peace Operations (Report of the Secretary-General), UN Doc A/56/732 (21 December 2001), available at <http://www.un.org/peace/reports/peace_operations>, para 70.

⁸⁶ UN Department of Peacekeeping Operations, ROE Guidelines, extracted in Findlay, *Use of Force*, 425–427.

⁸⁷ SC Res 1270 (1999), para 14 (UNAMSIL); SC Res 1291 (2000), para 8 (MONUC).

⁸⁸ International Crisis Group, *Congo Crisis: Military Intervention in Ituri* (ICG Africa Report N° 64, Nairobi/New York/Brussels, 13 June 2003), available at <<http://www.crisisweb.org>>.

⁸⁹ Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War* (Washington, DC: Brookings Institution, 1995), 378.

As a result, the use of force by UN peacekeepers has been marked by “political controversy, lack of clear doctrine, conceptual confusion and failure in the field.”

SGs, the Security Council, the Secretariat, Force Commanders, SRSGs and individual peacekeepers all bear some responsibility for this situation.

Law and order ‘packages’ with police, courts and civilian staff would be desirable but are unlikely to be deployed. Meanwhile, new situations will present a choice between increasing responsibilities of the military or accepting a temporary gap in law and order.

Differences between troop contributors suggest the possibilities for change, ...

As a result, Findlay concludes, ‘the use of force by UN peacekeepers has been marked by political controversy, doctrinal vacuousness, conceptual confusion and failure in the field’. Few come out of his conclusions untainted. The Security Council has ‘abdicated its responsibility, with mandates from the plainly undeliverable — in the Congo and Bosnia — to the outright irresponsible’ — in the case of Somalia. The various Secretaries-General, ‘with the notable exceptions of Dag Hammarskjöld and possibly Kofi Annan, have been essentially militarily illiterate.’ The Secretariat, which survived the Cold War with ‘gifted amateurism’, is regularly stretched beyond its capacity. Force commanders, on whom much has depended (if only out of a desire for deniability on the part of those higher in the chain of command), have sometimes been chosen with higher regard for nationality than for military competence, a criticism that may equally be levelled at special representatives of the Secretary-General. Peacekeepers themselves have been inconsistent in their actual use of force, though by and large they have been extremely reticent about using any force at all.⁹⁰

The military is rightly reluctant to embrace law and order duties that are outside its expertise, but in many situations only the military is in a position to exercise comparable functions in the first weeks and months of an operation. Though desirable, it is unlikely that the United Nations will soon be able to deploy law and order ‘packages’ comprising civilian police and mobile courts with a skeleton staff of lawyers and judges. In the meantime, future situations like Kosovo and East Timor will present a choice between increasing the initial responsibilities of the military or accepting a temporary gap in law and order.⁹¹ As Kosovo showed, such a gap will quickly be filled by informal local arrangements that may undermine the credibility of the international presence when eventually deployed.⁹² By contrast, where KFOR adopted an aggressive but measured posture, violence tended to diminish.⁹³ This lesson appeared to have been forgotten in March 2004, when KFOR troops were slow to intervene in riots that broke out in the ethnically divided town of Mitrovica.⁹⁴

Differences between troop contributors suggest the possibilities for change even without radical reform of UN peace operations doctrine. The manner in which soldiers present themselves, for example, clearly has an impact on their effectiveness. The perceived obsession of US troops with force protection is frequently criticized as unhelpful. In Somalia, US troops always appeared in flak jackets and helmets, heavily armed and guarded by helicopters or other protection forces. This prompted Somalis to refer to them as ‘human tanks’ and is believed to have been a factor in promoting Somali aggression towards them in the summer of 1993.⁹⁵ Similar stories are told of the US presence in Kosovo: reports of ethnic bullying in a school in the US sector would receive no response for a month — until a platoon in full body-armour would arrive, parade through the school grounds, and return to base. This may be contrasted with the British approach to urban peacekeeping, learned on the streets of Northern Ireland and

⁹⁰ Findlay, *Use of Force*, 351–355.

⁹¹ Aspen Institute, *Honoring Human Rights Under International Mandates: Lessons from Bosnia, Kosovo, and East Timor* (Washington, DC: The Aspen Institute, 2003), 18.

⁹² Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc S/1999/779 (12 July 1999), para 6.

⁹³ O’Neill, *Kosovo*, 76.

⁹⁴ Cf Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc S/2004/348 (30 April 2004).

⁹⁵ Gérard Prunier, ‘The Experience of European Armies in Operation Restore Hope’, in Walter Clarke and Jeffrey Herbst (eds), *Learning from Somalia: The Lessons of Armed Humanitarian Intervention* (Boulder, CO: Westview, 1997), 135, 146–147 n118.

characterized by soft berets and foot patrols. These considerations need to be balanced against necessary measures in self-defence, but gaining the respect and confidence of the local population tends to reduce the threats posed by local insurgents.⁹⁶

... although advances are likely to be in the form of evolution rather than revolution and respond to internal political dynamics..

Independent of a mission's mandate, the UN must be prepared to respond to the expectation of protection created by its very presence. The past shows that the more able and willing an operation to use force, the less likely it is to have to do so.

The protection of civilians against war is not just an end in itself, it is the starting point for providing populations with anything else.

Further advances, if any, are likely to be in the form of evolution rather than revolution, as forces on the ground respond to the competing military and political exigencies of their mission. The speed with which the United States came to be criticized for the civil disorder in Iraq in 2003 suggests some recognition of the responsibilities of an occupying force, but this criticism was probably enhanced by the controversial grounds on which the decision to go to war had been made. The refusal even to begin this task in Afghanistan undermined — perhaps fatally — efforts at reconstruction there, but has been the subject of minimal international interest.⁹⁷ These political dynamics primarily concern the troop contributing countries themselves, but of course the most important dynamic is that which develops on the ground as informal political structures are swept away and new ones begin to emerge. As the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda concluded, whether or not an obligation to protect civilians is explicit in the mandate of such a force, the United Nations and other actors must be prepared to respond to the expectation of protection created by their very presence.⁹⁸ A key finding from surveying past operations is that, very often, the more willing and able an operation is to use force, the less likely it is to have to do so.⁹⁹

Weber's conception of the state as defined through violence is, of course, an incomplete one. Though the destruction or collapse of state institutions may lead to anarchy, the restoration of order in the person of the Leviathan is a necessary but insufficient end of intervention. It is necessary because consolidated state power is the condition for any regime with the capacity to protect the rights of its population.¹⁰⁰ But it is insufficient because contemporary understandings of state sovereignty go far beyond the assertion of a monopoly of the use of force. States are not merely expected to protect their populations from 'a war of every man against every man',¹⁰¹ but that is the starting point for providing their populations with anything else.

⁹⁶ Danna Harman, 'As Occupiers, Brits Bring Experience', *Christian Science Monitor*, 20 May 2003.

⁹⁷ Security remains the major concern in Afghanistan, with many analysts pointing to a 'security gap' between what is currently provided by the ISAF presence in Kabul, the coalition forces in pockets of the country — from early 2003 including mixed civil-military 'Provincial Reconstruction Teams' (PRTs) — and the embryonic Afghan national army. Many senior UN staff continue to see expansion of ISAF beyond Kabul as vital to the success of the larger mission, but significant expansion is now highly unlikely. Force command was transferred from Britain to Turkey on 20 June 2002, to Germany and The Netherlands on 10 February 2003, and to NATO on 11 August 2003. The number of troops remained at approximately 5,500, centred in and around Kabul. Examples of insecurity have been conspicuous: two ministers in the Afghan government have been assassinated and President Karzai himself narrowly escaped an assassination attempt on 5 September 2002, his life saved by US Special Forces acting as his bodyguards.

⁹⁸ Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda, UN Doc S/1999/1257 (15 December 1999), 51; Brahimi Report, para 62.

⁹⁹ Findlay, *Use of Force*, 3.

¹⁰⁰ Michael Ignatieff, 'Intervention and State Failure', *Dissent*, Winter 2002, 114, 119.

¹⁰¹ Thomas Hobbes, *Leviathan* [1651] (London: Dent, 1914), part 1, chapter XIII.