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"AGGRESSIVE" PEACEKEEPING IN THE TWENTY-FIRST CENTURY

This panel was convened at 1:00 p.m., Thursday, April 15, 2018, by its moderator Scott Lyons of the U.S. Naval Postgraduate School, who introduced the panelists: Linda Etim formerly of the U.S. Agency for International Development and the National Security Council; Mona Khalil of MAK LAW; Bruce Oswald of the University of Melbourne; and Siobhán Wills of the University of Ulster.

New Robust Peacekeeping

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*By Scott W. Lyons**

Peacekeeping, conceptually, was designed to be traditionally defensive in nature with a neutral, unarmed, multinational force maintaining or monitoring peace. The first major example of a United Nations peacekeeping force dates to the initial Arab-Israeli conflict with the UN Truce Supervision Organization (UNSTO), established in May 1948. The peacekeepers were there to observe and maintain the ceasefire and assist in any terms of the armistice agreements following the initial fighting with the partition of the British Mandate in Palestine and the later declaration of the State of Israel. The Security Council Resolution "*Instruct*[*ed*] the United Nations Mediator in Palestine, in concert with the Truce Commission, to supervise the observance of the above provisions, and decide[d] that they shall be provided with a sufficient number of military observers."[1] UNTSO was followed by a variation, the United Nations Military Observer Group in India and Pakistan, which was to observe and report violations of the ceasefire along the contested border. Both of these original UN peacekeeping operations are still in existence after seventy years. This original concept of peacekeeping was based upon the United Nation's principle that the organization would act to prevent conflict between states following the atrocities committed during World War II through its neutrality. However, the term "peacekeeping" is not found anywhere within the United Nations Charter. It is instead inferred under both Chapter VI and Chapter VII powers to resolve disputes.

The Cold War between the Soviet Union and the United States made authorization of United Nations peacekeeping arrangements very difficult for the next four decades. The UN's deployment of peacekeeping forces only began to regularly occur after the end of the Cold War. The new regular deployment of peacekeeping forces also led to dramatic changes to the formulation of what peacekeeping entailed, especially after the failures of forces to stem genocide and ethnic cleaning in Rwanda and the former Yugoslavia during the early 1990s. The peacekeeping principles of

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[1] SC Res. 50, para. 6 (1948), *available at* https://unispal.un.org/DPA/DPR/unispal.nsf/0/6B76F035CD9C4A36852560C200599BB7.

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impartiality and the use of force only in self-defense hindered the appropriate actions needed to prevent massacre. Acting as observers and neutral bystanders was not enough. The resulting advancement in peacekeeping included a move towards the emphasis on civilian protection, as shown in 1999, with Resolution 1270, which provided the United Nations Mission in Sierra Leone (UNAMSIL) with the explicit mandate to protect civilians.[2] However, a mandate is only as effective if the peacekeepers are willing to use their mandate. Embarrassingly for the UN, five hundred of the UNAMSIL peacekeepers were captured and held hostage without even firing a single bullet. The continuous inability to keep peace and prevent atrocity during civil wars led to significant self-examination, resulting in the 2000 Report of the Panel on United Nations Peace Operations,[3] also known as the Brahimi Report. This report detailed fundamental changes needed in the UN's peacekeeping approach.

Post-Sierra Leone, we have seen the creation of more "robust" or aggressive peacekeeping mission mandates in several locations, including those that exemplify the new dynamics and challenges occurring today. These new UN peacekeeping missions are increasingly engaged under broader and more complex mandates that go far beyond original concepts of neutrality or even defensive protection of civilians. This is seen in the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, the United Nations Stabilization Mission in Haiti, and the United Nations Mission in South Sudan, among others. This new type of robust or aggressive peacekeeping raises serious questions under the law of war, use of force strictures, and the role of peacekeepers in the protection of civilian populations as the neutral non-combatant forces increasingly become combatants.

Even the new increased mandate to go after rebel forces is not enough to resolve the challenges by itself. A recent December 2017 UN Report on Improving Security of UN Peacekeepers[4] authored by Lt. Gen. Carlos Alberto dos Santos Cruz, former commander of the United Nations peacekeeping mission in the Democratic Republic of Congo (MONUSCO), recommends a far more robust military response to armed threats, including a willingness to strike first and to fight attackers where they are located instead of waiting for them, and urges use of sophisticated equipment to fight at night. Notably, this is just to improve protection of UN Peacekeepers. The report blames UN fatalities on deficiencies in training, equipment and performance. However, peacekeepers are often relatively well-trained as they are frequently the elite of the providing state, which also reaps financial benefits from providing some of their soldiers and may reduce the possibility of a military coup at home. This training does not ensure effectiveness, as the incentives and motivations to engage in active combat against a third party or protect civilians in a foreign country do not exist. In South Sudan, UN commanders desperately implored their soldiers to fight to prevent the UN compound from being overrun and civilians massacred, but on multiple occasions, the peacekeepers failed to engage to protect civilians. Further, peacekeepers are increasingly asked to conduct complex operations during active hostilities, increasing the opportunities for fatalities.

At the same time, it is impossible to dismiss the concerns related to past incidents of abuse and atrocities committed by UN peacekeepers themselves, especially when not given adequate oversight in remote locations in war-torn countries. The key is to find a balance between responsibility to prevent illegal or unnecessary actions by the peacekeepers, and proper empowerment and

[2] SC Res. 1270 (1999), *available at* https://www.securitycouncilreport.org/atf/cf/%7b65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/SL%20SRES1270.pdf.

[3] *Available at* https://www.unv.org/sites/default/files/Report%20of%20the%20Panel%20on%20United%20Nations%20Peace%20Operations%20%28BRAHIMI%20Report%29%20-%20A-55-305.pdf.

[4] *Available at* https://peacekeeping.un.org/sites/default/files/improving_security_of_united_nations_peacekeepers_report.pdf.

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incentives to enforce the peace. As the UN increasingly finds itself trying to enforce peace instead of keeping the peace, and having its soldiers as active combatants, either effectively on behalf of the host country against rebel groups or against the host country, as opposed to a neutral observation force, careful consideration of the relevant laws and policies must be examined. Only through reconsideration of the existing frameworks can the UN and its peacekeepers be better situated to succeed and truly fulfill its mandate.

Use of Deadly Force by Peacekeepers When Carrying out Law Enforcement Operations

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*By Siobhán Wills**

Introduction

In this Article, I argue that there is inconsistency and confusion at the heart of UN policy on use of deadly force by peacekeepers and that this lack of clarity has resulted in deaths and injuries to people that pose no threat to UN forces or anybody else and have not engaged in any violent activities or indeed in any type of crime. Such deaths and injuries are likely to recur if the United Nations continues to use the same rules of engagement for law enforcement operations as it does for operations aimed at curtailing violence by parties to an armed conflict. The problem would be greatly mitigated if the United Nations were to formally commit to applying customary international human rights law standards on use of force in all circumstances except those to which international humanitarian law applies.

This Article draws on research that I undertook in Haiti on use of deadly force by the UN Stabilisation Mission in Haiti, funded by the British Academy (UK) and the Arts and Humanities Research Council (UK). As part of my research in Haiti I coproduced and codirected a film *It Stays with You: Use of Force by UN Peacekeepers in Haiti* (50 minutes, 2017) which presents testimonies of survivors and is available for streaming from the project's website.[1]

Authorization to Use Force Under the UN Charter, International Humanitarian Law, and International Human Rights Law

Peacekeepers today are routinely expected to conduct law enforcement operations and assist host state governments maintain law and order for example through providing security so that elections can take place—arresting spoilers and controlling riots.[2] However, UN rules of engagement and policy documents have not kept pace with the expansion of UN peacekeeping to encompass its extensive role in law enforcement and security.

Most peacekeeping missions today have a Chapter VII mandate. This means that the mission may use force to carry out its mandate without risking violating the prohibition on use of force set out in the UN Charter. However, the UN Charter deals with use of force in the inter-relations between states, sometimes referred to as the *jus ad bellum*: it does not deal with use of force against human beings. The *jus in bello*, more commonly referred to today as international humanitarian

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[1] *Available at* https://itstayswithyou.com/film.

[2] UN Repertoire of the Practice of the Security Council, Field Missions Mandate Table (Feb. 1, 2016), *available at* http://www.un.org/en/sc/inc/pages/pdf/mandate.xls.

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