

# CHALLENGES OF CHANGE: HOW CAN THE MILITARY CONTRIBUTE TO A “CULTURE OF PROTECTION” IN PEACE OPERATIONS?

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*"The humanitarian impact of the armed conflict for the 4.6 million inhabitants of Ituri has been catastrophic. According to the Office for the Coordination of Humanitarian Affairs, between 500,000 and 600,000 internally displaced persons - many of who remain in hiding and cannot be accounted for - in addition to nearly 100,000 refugees from Uganda and the Sudan, are dispersed throughout the area. Since the first major onslaught of violence in June 1999, the death toll has been estimated at more than 60,000, and countless others have been left maimed or severely mutilated." (United Nations, Second Special Report of the Secretary-General on the UN Organization Mission in the Democratic Republic of the Congo, 27 May 2003.)*

## Introduction

Along with that of the United Nations, the Hague and Geneva bodies of law make up a complex and very complete system for the protection of civilians during conflict. In Africa, however, military and militia groups routinely massacre and torture civilians as part of their normal operational technique. Globally, civilians are believed to constitute some 75% of war casualties, an alarming trend that has moved the UN Secretary-General to call for the creation of a “culture of protection” in dealing with situations of armed conflict.<sup>1</sup>

Following up on his September 1999 report to the Security Council on the protection of civilians in armed conflict<sup>2</sup>, Annan announced on 7 March 2000 that he was appointing an international panel to look at every aspect of United Nations peacekeeping, and to make recommendations on how missions can be more effective. At the news conference where the appointment of the panel was announced, the Secretary-General outlined its brief as follows:

*"Partly it is a question of being clearer about what we are trying to do, and partly it is a question of getting the nuts and bolts right. ... I hope that in the next six months or a year we would have enough ideas on when and how we intervene. Under our charter, we are allowed to use force in the common interest. But there are questions that we will have to answer. What is the common interest? Who defines it? Who defends it? And under what authority and under what circumstances?"<sup>3</sup>*

The Report of the UN Panel on Peace Operations, or the ‘Brahimi Report’, released on 23 August 2000, contained a comprehensive set of recommendations based on a blend of principle and pragmatism, which deserved the widespread support received at the UN Millennium Summit. However, they are aimed mainly at the organisation and mechanics of UN peacekeeping, and do little to address some of the more fundamental questions posed by Annan. The single recommendation on “Peacekeeping doctrine and strategy” states simply that:

*“Once deployed, United Nations peacekeepers must be able to carry out their mandates professionally and successfully and be capable of defending themselves, other mission components and the mission’s mandate, with robust rules of engagement, against those who renege on their commitments to a peace accord or otherwise seek to undermine it by violence”.*<sup>4</sup>

Canada was quick to respond to the higher-order deficit. During his address to the United Nations General Assembly on 7 September 2000, Prime Minister Chrétien announced that he would establish an independent International Commission on Intervention and State Sovereignty (ICISS). The mandate of the ICISS was to promote a comprehensive debate and forge consensus around the vexing issues surrounding intervention and state sovereignty.

The ICISS was challenged to address the concerns of developing countries, which had strong reservations (along with countries such as China and Russia) about the legitimacy of the concept of humanitarian intervention. Ultimately, the Commission concluded that exceptions to the principle of non-intervention should be limited, and that: “Military Intervention for humanitarian protection purposes must be regarded as an exceptional and extraordinary measure, and for it to be warranted, there must be serious and irreparable harm occurring to human beings, or immediately likely to occur”.<sup>5</sup>

The aim of this paper is not to dwell on the need for reform of multifunctional peace operations “in all their aspects”. The Brahimi Report has already done justice to this enterprise. The idea is rather to look at what has not been adequately addressed by Brahimi or the ICISS: What to do when peace operations are already deployed, or about to be deployed, and there is “serious and irreparable harm occurring to human beings, or immediately likely to occur”? This is an aspect of peace operations that requires not only continuing reform, but a substantive and urgent (r)evolution in doctrinal thinking, if 21<sup>st</sup> Century peace operations are to enjoy legitimacy and credibility.

While the challenge is a global one, it is addressed from an African perspective, with particular reference to some pertinent lessons that are emerging from the complex UN operations in the Democratic Republic of the Congo.

### **Political and humanitarian motives for peace operations**

The hosts of any of any peace operation are likely to shape, if not articulate, the vision and objectives of the intervening authority – either before or during the intervention itself. Most of the UN’s post-Cold War peace operations have been in response to requests to verify and monitor the political vision of previously belligerent parties – as expressed in a mutual cease-fire or more comprehensive peace agreement, and/or adapted in a succession of subsequent negotiated agreements. However, parties involved have rarely arrived at such agreements without external interlocutors, and the UN Secretary-General has warned that *“the failure of the major external actors to maintain a common political approach to an erupting or ongoing crisis is one of the principal impediments to progress towards a solution ... it is critically important that international actors avoid the temptation to undertake rival or competing efforts.”*<sup>6</sup>

In most peacemaking processes, there has been a general tendency of political negotiators to introduce a self-defeating dynamic by ignoring the finer details of peace implementation. In negotiations aimed at terminating complex emergencies, the major concern has been to address and contain a proliferation of interests. This, it is believed, can only be achieved when regional consensus is high and belligerent parties put under pressure. The opportunity for action is therefore perceived as short and the need for impetus as all-important. Under such circumstances, negotiators do not wish to wrangle over details, but prefer an approach that minimizes problems.<sup>7</sup> Ultimately, justice loses and the war-affected civilian population suffer most from such oversight.

Ideally, the decision to intervene should be based on a set of realistic objectives to be achieved in pursuit of an envisaged end-state – however well or poorly the latter is defined. In reality, however, such decisions have often been precipitated more by the willingness or imperative to “*do something*” than by a clear notion of the objectives and expected long-term outcomes of an operation. This imperative is, in turn, more the result of public opinion generated by the media among the political constituencies of the intervening authority/agents, than it is of an objective appraisal of the needs of the hosts or presumed direct beneficiaries of the intervention. Public opinion in support of peace operations has been based on abhorrence for human suffering – hence the strong humanitarian component of many mission mandates.

On the other hand, the Western media do not like to depict misery without also showing that someone is *doing something* about it. The presence of aid workers in conflict zones mitigates the horror by suggesting that help is at hand and allows Western powers the illusion that they are doing something. In this way, television coverage can also become an alternative to more serious political and military engagement, and is thus a great contributor to the humanitarian “fig leaf” response.<sup>8</sup>

Nevertheless, the notion of humanitarianism has underpinned, either explicitly or implicitly, the perceived *right* of forceful intervention into essentially domestic conflict situations. By the end of 2001, the ICISS had shifted the debate from the “right to intervene” towards the “*responsibility to protect*”.<sup>9</sup> According to the Commission, the decision to intervene need not be based on any grand vision, but should be taken according to six broad criteria that qualify the notion of a responsibility to protect. These are listed as *right authority, just cause, right intention, last resort, proportional means* and *reasonable prospects*. It is the last of these that is most relevant to the civilian protection challenges within ongoing and future peace operations. The ICISS found that: “Military action can only be justified if it stands a reasonable chance of success, that is, halting or averting the atrocities and suffering that triggered the intervention in the first place”.<sup>10</sup>

While the work of the Commission focused on *military intervention*, rather than what we know as peace operations, both are predicated on impartiality, and the practice of separating the two modes of action needs to be questioned, as the distinction is becoming increasingly blurred at the strategic and operational levels. Recent events in eastern Democratic Republic of the Congo (DRC) illustrate that military intervention can be triggered amidst an ongoing consensual peace operation, and indeed, that UN peacekeepers can be expected to continue the protection tasks of the intervention force.

### **Case study: Ituri**

Despite the establishment of the United Nations Mission in the DRC (MONUC) in late 1999, the north-eastern district of Ituri continued to suffer from scores of village massacres, most prominently in and around the provincial capital of Bunia. Although Bunia is only a small town in a very large and unstable province, it was at the epicentre of intensified violence involving rival Hema and Lendu militia when Ugandan forces began their withdrawal from Ituri on 7 May 2003.<sup>11</sup> By the end of the month, the local Red Cross had recovered 429 bodies, and 74,000 people had been displaced from Bunia. MONUC continued to receive reports of rape, kidnapping and extortion in and around Bunia, and of massacres at villages a little farther away.

On 30 May 2003, the UN Security Council made a unanimous decision to authorise the deployment of an Interim Emergency Multinational Force (IEMF) to help stabilise the situation. The relevant parts of Resolution 1484 (2003) read as follows:

*“[The Security Council] Acting under Chapter VII of the Charter of the United Nations, authorises the deployment until 1 September 2003 of an Interim Emergency Multinational Force in Bunia ... to ensure protection of the airport, the internally displaced persons in the camps in Bunia and, if the situation requires it, to contribute to the safety of the civilian population, United Nations personnel and the humanitarian presence in the town. ... [The Security Council] authorises the Member States participating in the Interim Emergency Multinational Force in Bunia to take all necessary means to fulfill its mandate.”*<sup>12</sup>

The 1,400-strong IEMF, deployed under the auspices of the European Union (but composed mainly of French combat soldiers) was a remarkably positive experiment in co-operation between the UN and a regional organization. The IEMF provided a stopgap for the UN, limited in time and space, which allowed it to better prepare to transit from passive to active operations. The IEMF re-established security in Bunia, effectively responded to UPC<sup>13</sup> provocations, and weakened the militia’s military capabilities. It managed to cut off military supplies from abroad, through air monitoring of secondary and field airstrips.

Thanks to the IEMF’s stabilization action, the leadership of rival armed groups were allowed to relocate in Bunia, and to open up political offices there. IEMF actions also facilitated the return to Bunia of thousands of IDPs, as well as the resumption of economic and social activities (albeit at a modest scale).

Many commentators erroneously ascribed this success to the Chapter VII ‘shoot to kill’ mandate of the IEMF. In reality, MONUC had a similar mandate. What was different was the force posture and credibility of the IEMF. As EU special envoy Aldo Ajello and the force commander noted in a joint media statement: *“The determined attitude of the multinational force enabled a rapid elimination of the threat posed by aggressive armed groups in Bunia, as well as in the surrounding area”*.<sup>14</sup>

Although the Force was not able to extend its action beyond Bunia (apart from *ad hoc* pre-emptive raids aimed at preventing attacks on the town), it allowed the UN Security Council, troop contributing countries, and MONUC to prepare for the deployment of a significant UN force to the district.<sup>15</sup> The MONUC Ituri Brigade is composed of almost 4,800 troops, and endowed with some heavy armament and combat helicopters, which makes it a formidable force, by UN standards. By mid-September 2003, it had completed its deployment in Bunia and was carrying out *ad hoc* multi-purpose assessment missions, to stop or prevent killings and other major violations of the law. The Brigade has been entrusted by

the Security Council with a similar mandate to the IEMF.<sup>16</sup> This considerably extends the action range of MONUC troops, and empowers them to suppress and prevent any violation of the cessation of hostilities agreements. According to the Ituri Brigade commander:

*“We are now acting under a Chapter VII mandate authorised by the UN Security Council. This means the brigade is now enforcing peace, as opposed to keeping peace. Since the brigade's deployment began in mid-August, we haven't had reports where the troops have killed any combatant but we have used force a couple of times ... the brigade's capacity is enormous. We have all the necessary means - we have helicopters, APCs and the weapons each soldier has. We are capable of countering any attack. ... we must act according to our new mandate of Chapter VII immediately and without hesitation, to be ready to use force when the situation dictates ... .”*<sup>17</sup>

With a death toll estimated at over 60,000 since mid-1999, and ten times that number of people displaced, there can be no doubt that, whatever forceful actions may be taken by MONUC, the ICISS' threshold criterion of *just cause* will be met. It is the Commission's view that military intervention for humanitarian protection purposes is justified in order to halt or avert:

- *Large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product of deliberate state action, or state neglect or inability to act, or a failed state situation; or*
- *Large scale “ethnic cleansing”, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.*<sup>18</sup>

Time will tell if the Ituri brigade lives up to its commander's robust statement of intent. But according to what doctrine and training will it use force to protect civilians? The stakes are very high, as are the expectations of the civilians themselves – a factor confirmed by the MONUC Sector 5 commander: *“MONUC received its Chapter VII mandate a month and a half ago. The immediate effect was a range of expectations from a variety of role players. In essence the population, that has been on the receiving end of human rights violations and numerous abuses, now has the expectation that MONUC will use its military force to protect them.”*<sup>19</sup>

### **Civilian protection mandates**

During the peace operations of the 1990s, the security and the protection of civilians was dealt with implicitly in mandate provisions for the disarmament and demobilization of combatants. In the ritual calendar of events, as reflected in Council resolutions and mission mandates, the key to stabilization has always been seen as the disarmament, demobilization and reintegration of former combatants. The unstated purpose of stabilization measures has been to wrest power and the means of violence from local militias and warlords and to recentralize it at a much higher level. In other words, security and therefore the success of the whole operation has hinged on the degree to which warring factions can be effectively disarmed.

All disarmament commitments in peace processes have tended, at least at the outset, to be based on consent – regardless of whether the external forces deploy under a Chapter VI or VII mandate. However, the idea of voluntary disarmament has soon been challenged by issues such as the security concerns of disarming combatants and the deficient troops-to-task structure of peace support forces. Faced with non-compliance with the disarmament provisions of the mandate, peacekeeping forces have exhibited two basic reactions. The first is acquiescence in the face of recalcitrance, combined with a shift in the mandate that allows the “peace process” to proceed regardless. The second approach has been to apply limited coercion to recalcitrant parties, while attempting to preserve the consensual nature of the intervention at the strategic level. Both approaches have been problematic, in terms creating a truly secure environment.

Beyond disarmament, mandates also began to include the safety and security dimensions of the peace-building enterprise. This was manifested in efforts to assist in the (re)construction of the coercive functions of states in transition. The focus of such tasks has been to *assist* local power-holders in their own process of security sector transformation. Bilateral and multilateral donors alike have sought to influence the direction of change, to establish good practices, and to transfer knowledge and insights to the new authorities. Until recently, however, the “international community” has not seen fit to take upon itself the responsibilities of providing law enforcement as such.

A departure from this trend emerged at the end of the 90s, with the interventions in Kosovo and East Timor. In both cases, the UN assumed responsibility for executive authority policing as an integral part of its peace-building efforts. In both cases, the previous governments (Yugoslavia and Indonesia) had withdrawn their security forces and no longer exercised sovereign authority over the provinces in question, and new local governments had yet to be established.

This was a new experiment, where international transitional administrations were set up to run the provinces for an interim period.<sup>20</sup> The UN missions were not only tasked with reconstructing law and order, but also with a whole range of issues from day-to-day policing tasks to the long-term establishment of the criminal justice triad of police, judiciaries and penal systems, as well as the development of new legal codes. However, engagement in such a comprehensive peace-building agenda was predicated on the assumption that military enforcement action had created a sufficiently secure macro-security environment for such projects to succeed.

In other peace operations, where military (rather than criminal) threats to personal security have remained prevalent, some attention has also been paid to the military protection of civilians caught in the midst of ongoing conflict – most notably through resolutions mandating the creation of “security zones”, or “protected areas”. The latter concepts emerged during the 18-month period following the initiation of full-scale hostilities in Bosnia and Herzegovina on 6 April 1992. The safe haven idea soon proved to be “flawed in concept”, with tragic results in Srebrenica and other “safe areas”.<sup>21</sup>

It was not until the end of the century that explicit reference to the protection of civilians again emerged in Security Council resolutions – in security environments that were arguably more challenging than those confronted by the UN protection Force in Bosnia and Herzegovina. The first such resolution was adopted with reference to Sierra Leone, when the

Council voted unanimously, on 7 February 2000, to approve the Secretary-General's plans for strengthening UNAMSIL. This not only raised the maximum authorized strength from 6,000 to 11,000, but also granted the mission an expanded mandate under Chapter VII of the Charter. In particular, resolution 1289 (2000):

*“ ... authorizes UNAMSIL to take the necessary action to fulfill ...[its] tasks ... and affirms that, in the discharge of its mandate, UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and ... to afford protection to civilians under imminent threat of physical violence ...”*<sup>22</sup>

Similarly, in the midst of a shaky cease-fire and highly volatile security environment in the DRC, the Council tasked (what was then) an observer mission to protect civilians. On 25 February, the Security Council adopted resolution 1291 (2000), which states, among other matters, that:

*“Acting under Chapter VII of the Charter of the United Nations, [the Security Council] decides that MONUC may take the necessary action, in the areas of deployment of its infantry battalions and as it deems fit within its capabilities, to protect United Nations ... personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence.”*<sup>23</sup>

The Security Council has thus arrived at a point where it is prepared to invoke Chapter VII powers in authorizing forces to protect civilians at risk in armed conflict. However, the phrase *“may take the necessary action”* (used in both resolutions 1289 and 1291) implies that intervening forces have the *right* to use force to protect civilians, but also that they are under *no obligation* or duty to do so. Indeed, the record of implementation reveals that force and contingent commanders have felt duty bound mainly to protect their own forces, often at the expense of the broader mission mandate and to the detriment of the safety of the civilian populace.

The ability of past missions to provide a secure environment has been less dependent on military prowess than it has upon the degree of legitimacy that the warring parties and the population award to the force through the peace agreement, the mandate, and trust on the part of the population. The latter is, however, directly related to the degree to which the intervening force can provide protection and dramatically improve the pre-intervention security situation. Moreover, subsequent to the providing an initial protection mandate, UN Security Council resolutions have been strong on condemnation of belligerent actions, but weak in terms of positive guidelines and resources for intervening forces to deal with non-compliance.

### **Protection and the use of force**

Through its unanimous adoption of resolution 1296 on 19 April 2000, the UN Security Council placed the protection of civilians in armed conflict at the heart of the UN's future peacekeeping agenda. In paragraph 13 of the resolution, the Council states its intention to ensure that:

*"... peacekeeping missions are given suitable mandates and adequate resources to protect civilians under imminent threat of physical danger, including by strengthening the ability of the United Nations to plan and rapidly deploy peacekeeping personnel, civilian police, civilian administrators and humanitarian personnel."*<sup>24</sup>

While reiterating the importance of compliance with international humanitarian and human rights law, resolution 1296 is predictably silent on the issue of enforcement action in the face of non-compliance.

In his 29 March 2001 report to the Security Council, the UN Secretary-General reiterated a range of measures to enhance the protection of civilians in armed conflict. These ranged from the prosecution of violators of international criminal law, to separating armed elements from concentrations of refugees and displaced people, and countering hate media.<sup>25</sup> He also dealt with "entities providing protection", in terms of governments and armed groups involved in armed conflict bearing primary responsibility, and referred to the positive role to be played by such amorphous entities as "civil society" and regional organizations. Notably absent from Annan's report was any clear reference to a decisive role for military forces in the protection of civilians. In the annex to his report, however, the Secretary-General did highlight progress made in implementing nine key recommendations of his September 1999 report on protecting civilians (S/1999/957). Among these were the UN's capacity to plan and deploy rapidly (addressed primarily through the Brahimi Report), and the imposition of appropriate enforcement action in the face of massive and ongoing abuses.

In reality, what constitutes "appropriate enforcement action" has been determined more by military expediency than by any sense of moral obligation to protect. In Bosnia, for example, those advocating the use of force typically used its feasibility - meaning air strikes without casualties - as their prime argument, not moral or legal obligation. They were usually not honest enough to admit that there were considerable risks associated with effective and effectual intervention, and they were not arguing that these risks may be worthwhile. The real question, ultimately, was whether the West was willing to risk the lives of probably many of its soldiers in order to stop genocide.<sup>26</sup>

Where the answer to the above is negative, the revered peacekeeping principles of impartiality (narrowly interpreted as neutrality), consent and the non-use of force have provided a ready excuse for military inaction. However, these principles were robustly challenged in the report of the independent inquiry into the actions of the UN during the genocide in Rwanda, and in the UN Secretary-General's report on the fall of Srebrenica<sup>27</sup>. Introducing the latter report, a senior UN official admitted that the UN's failure was "*in part rooted in a philosophy of neutrality and nonviolence wholly unsuited to the conflict in Bosnia.*"<sup>28</sup> While blame for the massacres is obviously more widely distributed, the report "*breaks new ground by effectively damning the diplomatic nicety of trying to remain neutral and above the fray in civil conflict.*"<sup>29</sup>

The Brahimi Report also challenges narrow conceptions of impartiality, confirming that "*impartiality is not the same as neutrality or equal treatment of all parties in all cases for all time, which can amount to a policy of appeasement. In some cases, local parties consist not of moral equals but of obvious aggressors and victims, and peacekeepers may not only be operationally justified in using force but morally compelled to do so.*"<sup>30</sup>

However, the Brahimi panel does not suggest any new doctrine or concept of operations, and the validity of ‘classic’ peacekeeping principles was subsequently confirmed by Kofi Annan, as follows:

*“The Panel’s recommendations regarding the use of force apply only to those operations in which armed United Nations peacekeepers have deployed with the consent of the parties concerned. I therefore do not interpret any portions of the Panel’s 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.”*<sup>31</sup>

With such lack of innovation at the higher strategic level, it is hardly surprising that doctrinal thinkers within the military have failed to create a conceptual framework for peace operations that offers more potential for the protection of civilian populations than the existing paradigm of incrementalism. There is still no clear concept for legitimate multinational operations aimed at preventing or ending gross abuses of human rights by governments and non-governmental actors that cannot be controlled by governments.

In particular, there has been no move to change the focus of peace operations from reducing the level of violence between armed factions, to reducing the level (and threat) of factional violence against one another’s and own civilian populations. Such a shift would have significant implications for the tasks of intervening forces, as it would require a move away from the principle of consent, towards a form of policing that has hitherto been strongly resisted in military doctrine for peace operations.

### **From consent to legitimacy**

Legitimacy has always been considered a key prerequisite for the success of peace operations. As Deutch notes: “When legitimacy is lost, agreements break down or are reduced to matters of expediency and can be disregarded when convenient”.<sup>32</sup> However, the concept of legitimacy has been obscured in the peacekeeping debate by what was considered its constituent elements – impartiality, non-use of force, and, above all consent. Legitimacy can also be obtained through *results*, which is a far more substantive than legitimacy that is acquired through procedure or representation, because it deals with the substance of what exists and what is done by an actor.<sup>33</sup> But few have had the courage to contest the primacy of consent as the fundamental principle of peace operations.

Ironically, Kofi Annan did so seven years ago, in an unpublished paper. With reference to intervention in internal conflicts in a “failed state” environment, Annan concluded that “*the old dictum of ‘consent of the parties’ will be neither right [nor] wrong; it will be, quite simply, irrelevant.*”<sup>34</sup> In 1995, Gow and Dandeker had similarly rejected the concept of consent as the foundation of peace operations, and replaced it with the broader concept of legitimization which, in their view, provides a viable doctrinal basis for interventions where neither the conditions for enforcement nor for peacekeeping have been met - a situation which can best be addressed through “strategic peacekeeping”.<sup>35</sup>

Strategic peacekeeping allows for the use of enforcement measures to ensure compliance with terms initially derived from a broadly consensual environment. However, since force will be used against one of the originally consenting parties, it cannot be

legitimized through the principle of consent, but rather by maintaining a complex civil-military equilibrium, in which the various civilian and military groupings with a stake in the resolution of the conflict accept enforcement measures as necessary and appropriate. The failure of those in authority to enforce compliance will lead to a decline in support due to poor performance (results) in upholding the values and principles of the initial social contract.

Also Berdal recognizes that consent can no longer be postulated and adhered to in practice as an absolute requirement for peace operations, he has suggested that the issue of consent should be resolved on a situation-specific basis.<sup>36</sup> For example, if the military threat posed by the non-cooperation of parties is limited to small-scale resistance, banditry and looting, and the principal parties to a conflict remain committed to an agreement, a peacekeeping force may be empowered to confront it. This, he notes, implies a type of “policing function”, and should be clearly distinguished from an enforcement action that does not rest on the strategic level consent of key parties, and which involves military operations aimed at forcibly imposing a solution.

If consent is indeed no longer viable or valid as an absolute and definitive feature of peace operations, then the present doctrinal approach is clearly flawed and in need of urgent revision. Berdal’s notion of a “policing function” is clearer than the concept of “strategic peacekeeping”, and it suggests a new point of departure for conceptualizing and legitimizing peace operations – a “law”-based approach that is appropriate to both the security and safety challenges presented by 21<sup>st</sup> Century peace operations.

While civil wars are devastating for the majority, they also create a breeding ground for certain types of criminal economic activity that prove particularly effective in the absence of order. The people who benefit from such activities see few reasons to support the re-establishment of effective public control. Past warlords, therefore, frequently become the *spoilers* of peace processes.<sup>37</sup>

Past experience demonstrates that, if the internal security challenge is not handled robustly at an early stage of intervention, these “old” habits and structures will prevail for a long time, undermining other efforts aimed at enhancing post-conflict settlement and promoting justice and the rule of law. The immediate aftermath of any civil war spawns organized crime, revenge attacks, arms proliferation, looting and theft. UN civilian police officers deployed alongside peacekeepers, in order to assist in the resuscitation of national law enforcement agencies, have not been equipped to address the issue of law enforcement in a “not crime-not war” environment, and the military has remained the only viable, but grossly neglected, enforcement agency.

The fact is that military organizations remain extremely reluctant to engage in anything akin to policing functions, and crime remains a virtually overlooked issue in military doctrinal thinking – despite the continuing criminal challenges confronted by peacekeepers in the field.<sup>38</sup>

### **Case study: Ituri**

Recent UN operations in Ituri again provide a ready example of the doctrinal lacunae. According to the head of the UN office in Bunia, the insecurity caused by the Ituri civil war

is progressively transforming into insecurity caused by widespread criminality. He comments further that:

*“The militaries will soon be expected to hand over more and more of their powers of control to judicial and police institutions. MONUC’s Ituri Brigade, a military body, has no specific mandate to carry out policing activities. On the other hand, national judicial, correctional, and police structures have been very seriously damaged by the war.”*<sup>39</sup>

During an interview with IRIN<sup>40</sup>, on 3 September 2003, the Ituri Brigade commander was asked: *“How will the brigade tackle roving bands of armed men that are responsible for continued insecurity around Bunia”*? Brigadier General Jern Isberg replied as follows:

*“First of all, we must identify and define what a band is and what a militia group is. Militias are the armed groups controlled by political parties or groups, and then we have the bands that are not under the control of any political umbrella, these we consider to be criminal gangs. ... Those not controlled will be considered as criminal gangs and we will deal with them appropriately ...”*<sup>41</sup>

Here it is evident that the military is aware of the challenge posed by criminal gangs, and that there is a desire to “deal with them appropriately”, but according to which doctrine and training, and with what criminal justice infrastructure? During the month of September, for example, over 100 militia members were arrested by MONUC forces for being in illegal possession of firearms and ammunition – only to be released within a few days. This is not surprising, given the lack of any functioning prosecution system or adequate incarceration facilities.

It is also clear that the UN civilian police component of MONUC cannot provide a ready answer to the pervasive lawlessness in Bunia and Ituri. When asked by IRIN whether the Ituri Brigade has a civil police element to take care of police duties, General Isberg answered:

*“There is a civilian police component in Bunia, which will be deployed soon. This will be a great asset to the brigade. But may I hasten to add that it is the responsibility of the government of the Democratic Republic of the Congo to provide the men who will be posted to various parts of the town. MONUC’s civilian police unit will only advise and facilitate this deployment in conjunction with the Congolese government.”*

While UN police, with no executive authority, cannot be expected to deal with armed militia and criminal gangs, it should also be clear that the Congolese police are not exactly an effective law enforcement agency. The Kinshasa government had sent 700 special police to Bunia when the Ugandan army started its pullout in early May, but less than half were armed, and they were totally ineffective.<sup>42</sup> By 13 May 2003, only 100 government police remained in the town - the rest had all fled, or been killed.

In the DRC, the police officer is still regarded as the *l’enfant pauvre*<sup>43</sup>, forced to make a living by partaking in corruption, instead of being paid a decent salary in order to serve the citizenry. The population has little trust in the police after 40 years of neglect under Mobutu’s rule, and there is virtually no infrastructure or equipment for police officers to do

their job. The head of the UN office in Bunia, Alpha Sow, summarises the situation and suggests the way forward as follows:

*“In cooperation with the transitional authorities of the DRC, MONUC has a daunting task of peace enforcement, peace-building, and also longer-term conflict resolution in Ituri. The approach to be adopted must be multi-layered - the best strategy should include coherent political, military, judicial, information, humanitarian and development interventions. In brief, MONUC has to use both the stick and the carrot to induce compliance. The carrot, in fact, isolates the extremists, while the stick weakens them. Once the extremists are “neutralized”, the more moderate citizens will be able to occupy the public space and start again dreaming about a prosperous and peaceful Ituri.*

*The best strategy is an integrated one. MONUC’s intervention should be multi-layered and homogeneous, in the sense that all components are targeting the same objectives.”<sup>44</sup>*

### **To “serve and protect”**

The singular strand that would pull together various mission components dealing with protection, human rights, justice and security issues - and lend some credence to the notion of “unity of effort” - is a conception of Chapter VII peace operations in “failed states” as international law enforcement operations. Where a national legal order has lost its efficacy, to the extent that it no longer protects the citizenry from the grossest of human rights abuses, a higher body of law must be invoked - at least until a new legitimacy has been established at the national level.

However, it is evident that international humanitarian and human rights law, as an effective regulator of behaviour, requires not merely the existence of legal instruments, but also the willingness of governments and non-state actors to implement them. As Olara Otunnu has noted:

*“Over the past 50 years, the countries of the world have developed an impressive body of international human rights and humanitarian instruments ... The impact of these instruments remains woefully thin on the ground, however. Words on paper cannot save children and women in peril. The Special Representative believes that the time has come for the international community to redirect its energies from the juridical task of the elaboration of norms to the political project of ensuring their application and respect on the ground.”<sup>45</sup>*

Non-compliance with international law is a function of several factors, but the most pertinent is the ability of actors to violate the law without serious threat of sanctions.<sup>46</sup> The primary objective of the military in Chapter VII peace operations, therefore, should simply be to enforce international humanitarian and human rights law as a precursor, or an adjunct to broader peace-building processes that include the [re-]establishment of the rule of law at the national level.

If interventions are viewed primarily as an exercise in international law enforcement, then the principles and practices for the conduct of military operations become much clearer and logically more consistent. While it has been extremely difficult to bend the principles of war to fit in with the conduct of peace operations, this is not the case with the principles of

law enforcement. According to this conception, the “grey area” between peacekeeping and war fighting becomes more focused - not on the issue of consent, but on the key issue of *compliance*.

Reduced to its simplest terms, the law to be enforced during a Chapter VII operation is that which is circumscribed in the mandate and framed in a resolution of the UN Security Council. If this is the elementary law that peacekeepers are tasked to uphold, then it should be codified in terms that are as clear and unambiguous as possible, and clearly reflected in the force’s concept of operations. This demands more than an elaboration of appropriate rules of engagement, for the appropriate and legitimate use of force and firearms is an important but limited aspect of the international criminal justice standards that are taught to UN civilian police. Of course, there are training implications for the military, but a standard UN Civilian Police Officers’ Course can be presented in two weeks.

The notion of a law enforcement role for military peacekeepers also needs to be linked to the efforts of contemporary UN operations to contribute to the restoration of the rule of law through the efforts of other mission components. In this context, the Under-Secretary-General for Peacekeeping Operations recently observed that:

*“Our peacekeeping operations continue to expend effort and resources on restoration of the rule of law, but these activities are not yet a central part of peacekeeping mandates ... rather than taking a backseat to our political, humanitarian and reconstruction objectives, restoration of the rule of law must be seen as an essential activity that can determine the success or failure of our peacekeeping operations.”<sup>47</sup>*

While a doctrinal shift from peace enforcement to international law enforcement may be strongly opposed by the military, it is perhaps the only way to break the mold of passive and cosmetic operations being conducted in highly criminalized environments. The ultimate responsibility for military failure to accomplish a protection mandate rests with the military. If the concept of international law enforcement were accepted at the political level, the military would be stripped of its most often invoked excuse for failure – the lack of a clear mandate at the strategic level.

## **Conclusion**

The security challenges that emerged at the end of the 20<sup>th</sup> Century, created by over-population, competition for scarce and over-exploited resources, and “globalization”, required collective responses that needed to be so multifaceted in composition that they were inherently unmanageable and incapable of succeeding. While the roots of today’s conflicts remain similarly complex, emergencies continue to result from fairly simple human motives, such as greed, corruption, ethnocentrism, or desperation, that ultimately result in a resort to armed force and a total breakdown of law and order. It is the latter behavioural manifestation that needs to be addressed by military contingents in peace operations.

The number and range of peace-building tasks that the international community has defined for itself should not eclipse the primary task of the military in peace operations – ending civil wars and establishing a secure and safe environment. This is not to say that reform and enhancement of the wider peacekeeping/peace-building project are not important, but that it is time to merge the align the two seminal reports produced at the turn of the

century (*Brahimi* and *The Responsibility to Protect*), and to produce a credible doctrine for 21<sup>st</sup> Century peace operations.

The UN Department of Peacekeeping Operations is making progress on Brahimi's "rule of law" recommendations, but the time is ripe for this project to extend beyond the Police Division, and to be taken up also by the Military Division, the Best Practices Unit, and the major troop contributing countries. The old saying "military justice is to justice as military music is to music" may be true, but any form of justice that ends the rape and massacre of innocent civilians should be welcomed.

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## ENDNOTES

<sup>1</sup> United Nations, Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed conflict (S/2001/331), 30 March 2001, par. 5.

<sup>2</sup> United Nations, Report of the Secretary-General on the Protection of Civilians in Armed Conflict, (S/1999/957), 8 September 1999.

<sup>3</sup> Barbara Crossette, Annan Sets Up Panel to Study U.N.'s Peacekeeping Predicament, New York Times, 8 March 2000.

<sup>4</sup> United Nations, Report of the Panel on United Nations Peace Operations, A/55/305, S/2000/809, 21 August 2000 (hereafter referred to as the Brahimi Report).

<sup>5</sup> Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, IDRC, Ottawa, December 2001, p.32, par. 4.18 (hereafter referred to as *The Responsibility to Protect*).

<sup>6</sup> United Nations, Report of the Secretary-General on the Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa, A/52/871-S/1998/318, par.20.

<sup>7</sup> John MacKinlay, *Beyond the Logjam: A Doctrine for Complex Emergencies*, in Max Manwaring and John Fishel (eds.) *Toward Responsibility in the New World Disorder: Challenges and Lessons of Peace Operations*, London, Frank Cass, 1998, pp. 118-119.

<sup>8</sup> *Ibid*, p. 298.

<sup>9</sup> *The Responsibility to Protect*, op cit.

<sup>10</sup> *Ibid*, p.37, par. 4.41.

<sup>11</sup> Jean-Marie Guéhenno, *The Danger of Ignoring Congo*, Los Angeles Times, 11 June 2003.

<sup>12</sup> UN Security Council Resolution 1484, S/RES/1484 (2003), 30 May 2003, par. 1, 4.

<sup>13</sup> Congolese Patriotic Union (*Union des Patriotes Congolais*).

<sup>14</sup> IRIN, DRC: EU calls Artemis operation "a big success", Brussels, 17 September 2003.

<sup>15</sup> Alpha Sow, *Achievements of the Interim Emergency Multinational Force and future scenarios*, paper presented at an ISS workshop on MONUC and peace implementation in the DRC, Pretoria, 17-19 September 2003.

<sup>16</sup> On 28 July 2003, the Security Council adopted resolution 1493 which, inter alia, extended the mandate of MONUC until 30 July 2004, increased the military strength to 10,800 and (acting under Chapter VII) authorized MONUC to use all necessary means to fulfil its mandate in Ituri and North and South Kivu. It may be argued that MONUC already had a Chapter VII mandate (see reference to Resolution 1291 (2000) below). Although the previous Rules of Engagement did not need a major change with the new mandate, their interpretation and application on the ground needed to be adjusted very quickly.

<sup>17</sup> IRIN, DRC: Interview with Brig-Gen Jern Isberg, acting Ituri Brigade commander, Bunia, 3 September 2003.

<sup>18</sup> Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, IDRC, Ottawa, December 2001, p.37, para 4.19.

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<sup>19</sup> Colonel Lawrence Smith, MONUC Sector 5 Commander, speaking at an ISS workshop on *MONUC and peace implementation in the DRC*, Pretoria, 17-19 September 2003..

<sup>20</sup> There is a substantial difference, however, between the two cases: In the case of East Timor, a final status is envisaged (full independence). In the case of Kosovo, no such final status had yet been agreed upon, and in principle, the suspension of Yugoslav sovereignty over the province as specified in Resolution 1244 (1999) was a temporal measure.

<sup>21</sup> The idea, as introduced by the president of the International Committee of the Red Cross (ICRC) in August 1992, was to protect threatened communities in their place of residence in order to prevent armed attacks, forced population movements, harassment, arbitrary arrests and killings. See United Nations, Report of the Secretary-General pursuant to General Assembly resolution 53/35: The Fall of Srebrenica, A/54/549, 15 November 1999, pp. 17-18.

<sup>22</sup> United Nations Security Council, Resolution 1289, S/RES/1289 (2000), 7 February 2000, par.10.

<sup>23</sup> United Nations Security Council, Resolution 1291, S/RES/1291 (2000) 25 February 2000, par. 8. The fact that this mandate was never implemented was vividly demonstrated to the world via the brutal massacres of civilians in and around the town of Bunia during May 2003. The 400-strong Uruguayan contingent of UN soldiers could do nothing but protect their compound. The militiamen showed complete contempt for the UN soldiers, and what remained of the civilian population also had little regard for the peacekeepers.

<sup>24</sup> United Nations Security Council, Resolution 1296, S/RES/1296 (2000), 19 April 2000, par. 13.

<sup>25</sup> S/2001/331, 30 March 2001, op cit, pp. 2 - 8.

<sup>26</sup> Tobias Vogel, The Politics of Humanitarian Intervention, Journal of Humanitarian Assistance, <<http://www-jha.sps.cam.ac.uk/a/a018.htm>> posted on 3 September 1996, p. 4.

<sup>27</sup> A/54/549, 15 November 1999, op cit.

<sup>28</sup> Barbara Crossette, U.N. Details Its Failure to Stop '95 Bosnia Massacre, New York Times, 16 November 1999.

<sup>29</sup> Ibid.

<sup>30</sup> Brahimi Report, par. 50.

<sup>31</sup> United Nations General Assembly, Report of the Secretary-General on the implementation of the report of the Panel on United Nations peace operations, A/55/502, 20 October 2000, par. 7. (e).

<sup>32</sup> Karl Deutch, Politics and Government: How people decide their fate, 3rd Edition, Boston, Houghton Mifflin, 1980, p.13.

<sup>33</sup> Ibid, p. 15.

<sup>34</sup> Kofi Annan, Peace Operations and the United Nations: Preparing for the Next Century, unpublished paper, February 1996.

<sup>35</sup> James Gow and Christopher Dandeker, Peace-Support Operations: The Problem of Legitimation, The World Today, August-September 1995, pp. 171-174.

<sup>36</sup> Mats Berdal, Armies in International Peacekeeping, Paper presented at a conference on Taking the South African Army into the Future, ISS/S.A. Army, Pretoria, 15 November 1993.

<sup>37</sup> On the phenomenon of *spoilers* in peace processes, see Stephen Stedman, Spoiler Problems in Peace Processes, International Security, Vol. 22, No. 1, Fall 1997. Again, the DRC provides an excellent example of the nexus between prolonged conflict, human insecurity, and the illegal exploitation of natural resources.

<sup>38</sup> Robert Bunker, Failed State Operational Environment Concepts, Military Review, Vol. 77, No. 5, 1997, p. 90.

<sup>39</sup> Alpha Sow, op cit.

<sup>40</sup> (UN Office for the Co-ordination of Humanitarian Affairs) Integrated Regional Information Network.

<sup>41</sup> IRIN, DRC: Interview with Brig-Gen Jern Isberg, op cit.

<sup>42</sup> IRIN, DRC: Protection, water and food are priorities in Bunia, Goma, 13 May 2003.

<sup>43</sup> "Poor child".

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<sup>44</sup> Alpha Sow, *op cit.*

<sup>45</sup> United Nations General Assembly, Protection of children affected by armed conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict, A/54/30, New York, 1 October 1999, par. 29-30.

<sup>46</sup> Walter Jones and Steven Rosen, *The Logic of International Relations*, 4th Edition, Little, Brown and Company, Boston, 1982, p. 455

<sup>47</sup> Jean-Marie Guéhenno, Remarks to the Fourth Committee, 15 October 2003.