

United Nations Peacekeeping Operations and the Use of Force

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The question of United Nations peacekeeping and the use of force might seem to be a specialized topic. However, it is at the root of much of the dissatisfaction with the performance of the United Nations (UN)—both inside and outside the organization. When one views the UN up close, in the field and in New York, much of the unsteadiness in discharging its missions stems from the organization's deep ambivalence about the proper use of force in international conflict resolution and its hobbled ability to muster efficacious force.

Originally, in the midst of World War II, the UN was not a building on First Avenue, but the anti-fascist alliance itself. The UN included America's major allies in the war, namely Great Britain, the Soviet Union, China, and France. The major enemy states were Nazi Germany, fascist Italy, and—though later for the Soviet Union—an imperial Japan.¹ So if provenance is any guide, the UN anticipated a future as a robust organization. Indeed, if you look at the UN Charter of 1945 in its closing paragraphs, Article 106 posits what the alliance should do in the interim period before a UN security council was established. It supposes that the world war allies would continue to consult and take such action as they thought necessary for international peace and security, including action against any

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1. See The United Nations Declaration, Jan. 1, 1942, E.A.S. No. 236, DEP'T. ST. PUB. 1732 ("Each Government pledges itself to employ its full resources, military or economic, against those members of the Tripartite Pact and its adherents with which such government is at war."); The Moscow Declarations, DEP'T. ST. BULL., Oct. 30, 1943, at 307ff.

resurgence of fascism.

The original scheme was to endow the security council with designated military forces under agreements with member states pursuant to Article 43 of the Charter. There was even supposed to be a UN air force, as stated in Article 45 of the Charter, with committed air assets from member states. However, the only air power now used by the UN is commercially leased surplus planes and helicopters from the former Soviet bloc and the occasional U-2 deployed by the Special Commission on Iraq to look for weapons of mass destruction hidden by Baghdad. So any association between the UN and a tepid response to aggression was not part of the original conception. However, after World War II, the confrontation with Communist countries began. With the Cold War underway, things fell apart and the UN's political machinery no longer operated as smoothly as intended. The Security Council froze-up in the ideological schism of the Cold War. With veto power guaranteed by the Charter to the permanent members, including the Soviet Union, very little could be accomplished through the Chapter 7 mechanism to muster armed forces in collective military action. The Security Council was given no committed forces under Article 43, and even now, a half century later, no country is willing to precommit its forces to UN deployment.

Peacekeeping was born in the interstices of the UN Charter. The famous joke is that peacekeeping is authorized under chapter "6½" of the Charter—halfway between the Security Council's procedures for conciliation and its procedures for deploying force. Peacekeeping was supposed to be limited and was intended as an interpositional buffer, an armed observation force designed to discourage adversaries from violating a ceasefire or peace agreement. Yet in reality it was a minimal show of force, almost a form of bird watching, by men who happened to wear uniforms. Peacekeepers kept apart parties to a truce and discouraged nighttime forays and border encounters. Having neutral observers on the border gave a bit of dignity to the fact of separation. It gave the parties a reason why they were not obliged to "have at" each other every foggy night.

Prime Minister Lester Pearson of Canada, Under-Secretary-General Ralph Bunche, and Secretary-General Dag Hammarskjöld invented the institution of peacekeeping for situations such as Sinai

and Cyprus, and, with less success, for the Congo. Initially, its funding was quite problematic. France and Russia were unhappy with the operations in Sinai and the Congo and refused to pay their dues. This led to the famous advisory opinion of the International Court of Justice (ICJ), holding that peacekeeping was not an *ultra vires* occupation for the UN.² In the course of the decision, however, at least one judge on the ICJ cautioned that the UN should not become so expensive that its members could not afford membership.³ Perhaps in response to that problem, the United States and the other permanent members of the Security Council have traditionally paid an extra amount for the expenses of peacekeeping, which rose to almost four times the UN regular budget in the mid 1990s.

The classical account of peacekeeping states that at least three conditions must be met for peacekeeping to work: first, consent of parties to the peacekeepers' presence, upon entry and throughout the mission; second, the minimal use of force, mustering arms only in self-defense; and third, neutrality between the parties principally because peacekeeping was not an attempt to change the outcome of a war or conflict. This is the view of older UN hands such as Sir Marrack Goulding and Sir Brian Urquhart, and the reason why some people in the UN firmly believed that the organization should not go into Bosnia. The moral adequacy of "neutrality" has been contested when the UN deploys in circumstances where one side is the aggressor or abuses the laws of war.

Peacekeeping was also shaped by the Cold War. It was assumed that superpowers should not take part in peacekeeping because they were not neutral. Smaller countries, often the neutrals of Scandinavia or developing nations, were the stalwart troop contributors for peacekeeping. The deployment of peacekeepers was a method of preventing small conflicts from becoming occasions for major confrontation.⁴

2. Certain Expenses of the United Nations, 1962 I.C.J. 151 (July 20).

3. *Id.* at 302 (Bustamante, J., dissenting) ("at the time of the signature of the Charter, ... [n]obody foresaw that the increase in expenditure of the United Nations could one day endanger the solvency of national budgets").

4. In the 1990s, with the end of the Cold War, surrogate conflicts fueled by the conflicting sympathies of major powers were newly capable of solution, and peacekeepers deployed to places such as Cambodia and Central America.

Peacekeeping had its disappointments even in the early, classical phase. It worked reasonably well in Cyprus during the 1960s, but the UN was powerless to prevent *enosis*, the attempt of Athens to integrate the island into Greece, or to resist the Turkish military intervention in 1974. There were also complaints that the blue line of peacekeepers permanently divided the island, thus freezing the conflict and giving each side an excuse not to negotiate.

The Congo intervention was a bloody mess, as shown by Sir Brian Urquhart's wonderful memoir. Sir Brian's recollections, entitled *A Life in Peace and War*, limn the larger-than-life quality of some of the early UN figures. He notes drolly that on one troop transport, a blue UN flag was draped across the train engine. The entourage was greeted by the question of a Congolese official: "L'ONU? C'est quel tribu?" or "what tribe is the UN?"⁵ Even in the 1960s the UN lacked credibility on the ground.

Yet after the end of the Cold War, the Security Council returned to work, and there was great anticipation of its potential in the 1990s. Many supposed that the UN would be able to act vigorously and with unity. This optimism was fueled by the unity of response in 1991 against Iraq's invasion of Kuwait and also by the rather unique period when a series of local conflicts diminished because there were no longer major patrons from the east-west struggle. Further, a peace agreement was reached in Cambodia, with cooperation from China and the ASEAN countries. The civil conflicts in Nicaragua, El Salvador, Guatemala, Mozambique, and Angola were no longer freighted with east-west rivalry, although the world soon learned that ethnic rivalry could be equally contentious. There was astronomical growth in the number of peacekeepers deployed on the ground—up to 70,000 in the mid 1990s. The UN's peacekeeping operations department was not equipped to handle the logistics of so many operations, and was often unable to find properly trained or disciplined troops, or to marry-up third-world brigades with modern equipment. Of course, as the numbers increased, the cost increased as well. It was largely the soaring cost of peacekeeping that provoked the United State's refusal to pay its assessments.

5. BRIAN URQUHART, *A LIFE IN PEACE AND WAR* 149 (1987).

The peacekeeping of the 1990s was a new kind of operation. It was not just interpositional observation, or monitoring a peace accord. It often involved attempts to scale back a conflict and demobilize opposing forces even before there was any assurance of a binding ceasefire. Peacekeeping was attempted where there was no peace to keep—so the saying went. UN forces were asked to provide security for a host of new tasks in civil reconstruction such as the demobilization of guerrilla and government forces, the collection and caching of arms, emergency assistance to refugees and internally displaced persons, and organizing democratic elections for post-conflict governments. The UN attempted to become a full service provider for broken societies, in awkward coordination with regional agencies and frameworks such as the Organization for Security and Cooperation in Europe and the Organization of American States. Multifunctional peacekeeping was not just the work of soldiers but of many other UN agencies, including many that depend on voluntary contributions rather than mandatory dues. The High Commissioner for Refugees, for example, proved to be a key figure in this period.

UN Secretary-General Boutros Boutros-Ghali had high expectations for peacekeeping in the 1990s, as outlined in *An Agenda for Peace*.⁶ He even supposed that the UN might finally obtain assigned troops, deployable at will, under Article 43 agreements. That did not come to pass. Even the hope for standby troops earmarked for UN operations by member states fell prey to the realities of local politics and reluctant publics. Willingness to intervene with national contingents depended on the sympathies of a particular conflict, as well as the likelihood of success. The standby list was often a dance card for countries' right to say "no." Eighty or more countries would happily field telephone calls from the thirty-eighth floor of the UN Secretariat building, and then say it was not the right struggle for them. Yet there was a mood of anticipation in the early 1990s about what the UN and the accepted warrant of its authority for intervention might mean.

6. *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992*, U.N. GAOR, 47th Sess., U.N. Doc. A/47/277-S/24111 (1992).

Disillusionment followed shortly thereafter. First, these conflicts involved a different kind of warfare. Ethnic wars engaged nonstate actors—singled minded groups lacking the full panoply of interests and linkages that often moderate the behavior of governments. Conflicts were fueled by opportunistic mercantile warlords such as those currently in Sierra Leone, Liberia, and the Congo, where diamonds and timber keep insurgencies going. These all-terrain conflicts do not lend themselves to interpositional peacekeeping. Indeed, there often are no organized command structures with which to negotiate. Intermingled populations, unconventional warfare, the deliberate targeting of civilians, the strategy of threatening peacekeepers and even taking them hostage, make this unconventional warfare; often the UN has not known how to cope. Blue berets were exchanged for blue helmets. The sense of vulnerability reached an apex in missions such as Rwanda, where the Hutu Interehamwe deliberately killed Belgian peacekeepers and propelled their withdrawal, and Somalia, where the urban forces of Mohammed Aidid—later shown to have been trained by Osama bin Laden—killed eighteen United States Rangers. This was not the tactically simpler task of interpositional peacekeeping, but rather an attempt to counter forces that know how to exploit the concerns of western democracies regarding the safety of their citizen-soldiers.

The apparent incapacity of UN troops to provide protection to the civilian populations they were sent to aid was equally troublesome. The deadly attrition of the Bosnian war killed 200,000 civilians out of a population of four million, and also displaced 800,000 people as refugees or internally displaced persons. The siege of Sarajevo saw Serb forces on the surrounding hills, heartlessly sniping at civilians and bombarding the town. The Sarajevo government was suspected by some, even inside the UN, of enhancing the visuals for a CNN war by setting up their own civilians as targets. Ultimately, observers witnessed the tragedy of Srebrenica in the Drina Valley where lightly armed Dutch peacekeeping forces did not, and perhaps could not, protect the civilian population, and 7,000 combat-age Muslim men and boys were summarily executed by the Bosnian Serbs.⁷

7. See *Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica*, U.N. GAOR, 54th Sess., U.N. Doc. A/54/549 (1999).

Similarly, in Rwanda the UN and its member states disappointed many observers by failing to act in the face of the Hutu genocide against the Tutsi. The Secretariat disregarded warnings early in 1994 that genocidal plans might be in preparation. When the killing began, the UN forces of the “UNAMIR” mission were pulled out by their national commands, including the Belgians, Ghanaians, and Bangladeshi, and no other intervention force was mounted by the Security Council.⁸

The heart of the failure was minimalism in the use of force. Whether a matter of philosophy or political skittishness, the UN and its members have often proved unwilling to use armed force in circumstances where a robust deployment might be effective. Observers often ascribed this to member states’ reluctance to jeopardize their forces. Failure to deploy robustly may also signal an implicit sympathy with one of the sides in the conflict. However, it is also engendered by an ethos of nonviolence within the United Nations itself—a lingering doubt about the necessary use of defensive force in the international community, and perhaps a belief that the thin personality of a multilateral organization cannot sustain the morally contentious choices that are made by nation states in defense of their own existence.⁹ As a result, UN forces were put on the ground in Bosnia with the very limited mandate of delivering food and humanitarian assistance. To some, this seemed to be a replay of the moral indifference that characterized Europe during the rise of fascism; peacekeepers standing by as terrible things were done because it was not their department to stop it. Ultimately, when Boutros-Ghali went to the Security Council and asked for the creation of internal safe areas within Bosnia for the protection of civilians, he was not given the troops he wanted. Seven thousand troops were allocated, instead of the 34,000 recommended by his military

8. *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda, annexed to Letter dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council*, UN Doc. S/1999/1257 (1999).

9. When military force is not used in an intelligent and morally responsible way, it sometimes leads the international community to use other forms of coercion, such as economic sanctions, which can be much harder on a civilian population, as we have seen in Haiti and Iraq. Attitudes towards the discrete use of military force must take account of the often greater cost of alternatives.

advisors. At that point, many thought that the Secretary-General should have resigned, or at least have said that he could not be party to a deception and refused to implement the safe area mandate.

With great melancholy, I recall my visit to the Hague in July, 1995. The International Criminal Tribunal for the former Yugoslavia was in its early months of operation. We had a pleasant dinner with prosecutor Richard Goldstone and then listened with horror to the television on the fall of Srebrenica. The Dutch contingent was placed inside the safe zone with deliberately scaled down equipment. The armored personnel carriers were stripped of the twenty millimeter cannons that are standard NATO equipment. This, after all, was peacekeeping. As with the Canadian troops who preceded them, the Dutch had also been helpless to prevent the Muslim forces in Srebrenica from taking up positions behind UN observation posts and firing out to draw incoming Serb fire. This was a debacle of peacekeeping in its classical mode with minimal use of force, the pretense of consent, neutrality between the parties, and above all, the attempt to avoid antagonizing the local combatants in a way that might endanger UN personnel. After Srebrenica, “neutrality” was understandably seen as a hollow word, and some began to entertain the idea of peacekeepers’ right—or even duty—to use force for mission accomplishment, including the mission of protecting civilians.

The experience in Somalia was, of course, a major source of American anxiety over peacekeeping. The peacekeeping mission began with famine relief, but devolved into an attempt to restore a democratic structure to Somalia, without understanding the great depth of the clan structure. Secretary-General Boutros-Ghali’s past career in the Egyptian foreign ministry, with responsibility for Egypt’s policy towards Africa, ultimately thwarted the UN’s acceptance of him as a local mediator, because Egypt had had distinct sympathies for Siad Barre, a prominent rival of Aidid. Somalia became a cataclysmic event for American involvement with peacekeeping. Pakistani peacekeepers were ambushed while on a food delivery mission in Mogadushi in June, 1993, and twenty-four peacekeepers were killed. Then in October, 1993, American Rangers attempted to raid an arms cache and were ambushed in a shootout in downtown Mogadishu. Eighteen Americans were killed and seventy-

five wounded. The news was punctuated by a terrible photograph of a slain American GI whose body was degraded in the streets. As a result, Somalia became a watershed event, diminishing American support of UN peacekeeping.

The trauma of Somalia was largely responsible for the subsequent hesitation of support for intervention to stop the Hutu genocide in Rwanda. The United States declined to support any follow-on force to UNAMIR, and the genocide rolled on unabated until the Tutsi military advance succeeded. When the Hutu fled to the southwest, the French mounted a unilateral mission that gave them shelter as they crossed the border into Zaire. Yet, even as the Hutu fled from refugee camps besieged by the Tutsi, there were scenes of needless violence, marked with the same UN passivity. A memoir by an Australian aid worker¹⁰ recounts how Australian peacekeepers were instructed to hold their fire when Tutsi forces began to shoot into an encampment of Hutu civilians at Kibeho. Witnesses reported that 2,000 to 4,000 civilians were killed, though the official UN figure is much lower.

The UN is sometimes inclined to airbrush its disasters, thus avoiding the repercussions and lessons of traumatic or embarrassing events. In doing so, the organization does itself a disservice. In *An Agenda for Peace*, Boutros-Ghali had hoped that regional organizations might take on much of the burden of peacekeeping. There was a period in the mid-1990s when many thought that existing regional organizations were up to the task. Nigeria and Ghana intervened in the civil conflict in Liberia under the aegis of a subregional organization called the Economic Organization of West African States (ECOWAS), and its military arm called ECOMOG.¹¹ The Security Council ultimately commended the intervention, despite the creditable argument that the exercise prolonged the conflict. However, it was not immediately recognized that the peacekeepers themselves could be a source of disorder. The ECOMOG forces were poorly disciplined and, too often, abused local civilians.

The real peacekeeping lesson of the last ten years is that the idea of separating Chapter 6½ from Chapter 7 is not realistic. Peacekeeping is not segregable from robust peace enforcement. Too

10. STEVE PRATT, *DUTY OF CARE 74-76* (2000).

11. See generally FUNMI OLONISAKIN, *REINVENTING PEACEKEEPING IN AFRICA* (2000).

many situations quickly turn sour, and one cannot always predict the course of events in advance. One almost needs a “Powell-Weinberger” doctrine for the UN itself, a willingness to go in with overwhelming force with the confidence that the capacity to respond is the best guarantee of cooperation. It is an illusion that the international personality of the UN will suffice to deter combatants in civil conflicts, and this illusion has repeatedly led to disaster. There is now quite a change of view in New York, a chaste feeling that the capacity to do peacekeeping in challenging environments is limited. The recent events of Sierra Leone have certainly justified that modesty.

At the same time, other problems have developed. There has been resentment among developing countries because the staffing of the UN peacekeeping operations department was enlarged through loaned and donated personnel from the first world. The General Assembly’s concern for fair representation of poor as well as prosperous countries was not unjustified. Yet, at a time of budgetary strictures and burgeoning peacekeeping operations, the General Assembly imposed a flat rule that seconded personnel could no longer assist in peacekeeping support and coordination. Thus, the peacekeeping operations department was stripped of key operators with institutional knowledge. The presence of seconded personnel had also been important in building effective ties with key militaries active in peacekeeping. The General Assembly’s precipitous action diminished the ability to provide effective support to field operations.

There are several hard questions for the UN. First, there needs to be a philosophical discussion on the use of force. Inadequate force structures are often ascribed to the reluctance of member countries to contribute troops. However, the problem is deeper than that. It amounts to an unwillingness to admit that collective security requires robust action, that the United Nations cannot substitute itself for nation states and hope to eschew the modalities found necessary by nation states. The tradition of nonviolence and neutrality in peacekeeping might, in honor of some of its founders, be called a “Nordic minimalism.” It is a Kantian ideal that words should be sufficient, but they are often not. It also betrays an ambivalence about the moral personality of multilateral organizations and a doubt as to whether they are competent to use the tools of military force because

violence is an instrumental evil. It means that peacekeeping has become a temporizing tactic, in lieu of more effective action.

Second, there is a question of competence. In practice, the national contingents that take part in peacekeeping do not answer to the UN force commander. If the UN commander wants to move a battalion ten miles down the road in a disputed area, he must wait for the head of the national contingent to get permission. There really is no such thing as an integrated UN military force. The absence of effective logistics, transport, and on-the-ground intelligence means that peacekeepers are often vulnerable targets justifiably worried about unit safety and hardly able to focus on mission accomplishment. If peacekeeping cannot be done well, perhaps it should not be done at all. Certainly when the UN thrusts itself into situations and promises people protection, there needs to be a realistic assessment of the capacity to muster defensive force.

In the mid-1990s, there was a passing discussion about having a standing army for the UN, a multinational rapid reaction force of perhaps 5,000 soldiers. The idea was tabled on grounds of budget and difficulty, as well as concern about political control. It would not be easy to take volunteer soldiers from different military backgrounds and form a coherent unit, even after joint training. A unit's coercive force also depends on the composition of its backup, and that again leaves the UN in the position of "dialing for doughboys." Even the numbers were not persuasive; 5,000 slots do not go as far as one might suppose. There is a rotational system, usually with a three-to-one ratio, in military deployments. This means one soldier is on the ground in the mission, one is training to replace him, and one is returning from service. The operational limits of a 5,000 man force are also shown by another divisor, the so-called "tooth to tail" ratio. To field a soldier at the sharp end of the stick requires numerous support and logistical personnel. The accepted ratio is between 3-1 and 6-1, depending on whether the European view or the American view is used. Thus, a stand-alone base force of 5,000 would yield a quite modest number of infantry peacekeepers on the ground—no more than 600. Further, military deployments cannot safely be mounted in an ad hoc fashion, like a "pick-up" basketball team. Participants must be trained together over a long period of time. A standing force would have to be some sort of foreign legion, not just

an occasional gathering of retired military personnel. With these daunting problems, it is not surprising the idea was tabled.

Since that time, no one has known quite what to do. The UN has relied on “coalitions of the willing” made up of national military units, but even here there are real problems of competence because there is no occasion to have practice deployments. The UN recently inquired into what went wrong in Sierra Leone. In particular, it questioned how the Zambian contingent was taken hostage by an insurgent group known as the West Side Boys, stripped of their uniforms and weapons, and threatened with the death of their unit commander. As a result, the UN uncovered the following information. The Zambians deployed into Sierra Leone and were directed to enter an area where their Nigerian predecessors had not dared to tread. They were inadequately briefed about the nature of the threat. They had one radio and an out-of-date map. The force commander, along with a small contingent, was proceeding in advance of the rest of the Zambian column. The West Side Boys, comprised of child soldiers, confronted the Zambian commander at a roadblock, took him to see their own commander, and informed him that his soldiers must surrender to avoid a Salomé-like decapitation. Because the commander had the only radio, he could not warn the rest of his troops. Consequently, several hundred Zambian soldiers were forced to lay down their arms and surrender their uniforms. The West Side Boys used the Zambian uniforms as camouflage in later attacks against Nigerian peacekeepers elsewhere in the back country.¹²

The UN hoped that fielding a large force in Sierra Leone would be sufficient to restore order, but the Indian force commander did not get along with the Nigerian contingent. The Jordanian and Indian contingents ultimately were withdrawn, and the British chose to remain entirely outside the UN command structure. These examples indicate that the problem of multinational cacophony is hard to solve by means other than the use of prior existing military organizations such as NATO or Partnership for Peace brigades that have practiced together and developed a common ethos.

12. To distinguish themselves from the masquerading “peacekeepers,” the Nigerians then removed all UN insignia from their own uniforms.

Why did UN forces not go into Rwanda? In part it was due to American objections following the events of Somalia. These objectors were wary of an adversary that had already murdered Belgian peacekeepers for political effect. In addition, there was still no viable combination of troops and equipment. Some African countries were willing to supply troops, but had no vehicles or armored personnel carriers. Even if equipment had been immediately supplied, unfamiliar troops still needed to be trained in its operation. One practical longterm response is to train regional forces, and the United States is now doing that in Senegal and elsewhere.

The third problem is a version of the Hippocratic oath, "first do no harm." There must be a moral self-consciousness about the UN's duty to avoid damaging the areas in which it intervenes. The troubling reports of peacekeeper misconduct are anecdotal, they are not written down. How were troops recruited for Cambodia? At least one UN member state took men out of jail, gave them blue berets, and sent them off. Some contingents were eventually sent home because they were not helping anyone and were looting the countryside. The problems of corruption among UNPROFOR contingents in Bosnia were well-known; some Eastern European troops used their armored personnel carriers to smuggle consumer appliances into the city for resale. Equally disturbing is the politically difficult issue of HIV-positive troops. Some years ago, even before the AIDS crisis was so acute, the UN inadvertently obtained the full medical files of a national peacekeeping contingent and discovered that 65% of the blue berets were HIV-positive. The Secretariat sent the contingent home quietly by redesigning the areas of operation. However, the UN declined to institute any policy of testing, or even asking, for the voluntary disclosure of medical information from troop-donating countries. There are some good reasons for this decision. What if the consequence of testing is to force a military man into unemployment, with no treatment for him or his wife? Why HIV testing and not liver function testing? Yet, there is still the real problem of men with guns, far from home. Certainly in the choice among national contingents, the epidemiological hazard is a reasonable consideration.

Another part of the Hippocratic oath is the duty not to abandon people who have relied on a promise of protection. Michael

Hourigan, an Atlanta lawyer, has been arguing this point. He brought a claim against the UN stemming from the Rwanda massacres, on behalf of two families. One was the family of the former Chief Justice of Rwanda and the other was the family of the former minister of labor and social affairs. UNAMIR troops had been assigned to guard the homes and safety of these two families, but when the Hutu militia came up, the troops allegedly left and the families were killed.¹³ Hourigan's claim is that if an organization promises protection, it has a moral and perhaps a legal duty to make good on the promise. The UN initially answered that such a claim was grounded in public law, not in private law, and therefore lacked an available claims procedure. Hourigan quickly recast the claim within the private law language of wrongful death. Regardless of the resolution of this particular claim, the larger point is that the UN too often has been satisfied with the appearance of peacekeeping, a charade of protection, instead of effective protection of civilian populations. The lack of credibility in UN deployments undermines its every other function, including post-conflict reconstruction. Refugees will not return to the areas from which minorities are "cleansed" when there is no real assurance of safety. The arrest of war criminals in Bosnia and the control of organized crime in East Timor and Kosovo depend on a willingness to use force in policing. Even thwarting corruption, which has throttled the economy of Bosnia, requires a force strong enough to suppress possible retaliation. Several international corporations have tried to go into Bosnia to revive industrial work and provide employment but they have been frustrated by the tangle of political control of the economy by the nationalist political parties and the rank and repetitive corruption.¹⁴ Why can't the international community confront this more directly or even arrest people for corruption? Part of the reason is diffidence, but part of it is danger. One does not dare step-up confrontations or make arrests because security on the ground is

13. See *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda*, *supra* note 8, at 44; Minutes of Meeting Between Survivors of the Rwandan Genocide and the Independent Inquiry into the United Nation's Role in the Rwandan Genocide, Rayburn House Office Building, Dec. 8, 1999 (on file with author).

14. International Crisis Group, *Why Will No One Invest in Bosnia and Herzegovina?*, available at <http://www.crisisweb.org> (last visited Apr. 3, 2001).

ineffective.

There is now a serious conversation about international policing, and how to restore a minimum degree of law and order in post-conflict arenas.¹⁵ President Bush's foreign affairs adviser, Condoleezza Rice, has noted her concern about the mid-level security gap in post-conflict areas.¹⁶ If peacekeepers eschew the tasks of policing and CIVPOL personnel assigned to the UN's volunteer international police force limit their functions to giving advice on "principles of democratic policing" and lack unit-wide training, then we will continue to have situations of tenuous stability such as in Bosnia today. We must address how to develop a more robust police capability. We need international personnel who are trained in the use of fire power and in the special competencies needed for policing, including investigative experience and language capability. One may wish to have specialized constabulary forces within NATO. Yet, it is time to get beyond the fiction that a thrown-together CIVPOL force is sufficient for all challenging situations.

On the American role in peacekeeping, I tell my students that one amongst them should found a new political party to be called the Liberal Hawks. Washington's dissatisfaction with peacekeeping stems in part from the challenges of our military demobilization since the end of the Cold War. Tempted by the crumbling of the Soviet Union, both the United States and its NATO allies have scaled back their forces, responding to domestic constituencies that prefer to cut budgets. Yet in facing a belligerent North Korea and Iraq, there is still a need for an army that can effectively fight land battles. There is rightful concern about wasting training and overtaxing American military personnel. If we take combat recruits and train them to operate Bradley fighting vehicles and Abrams tanks in an integrated land-air campaign, and then take them off their equipment and turn them into peacekeepers, and then after their Bosnia rotation, try to recoup their combat skills, we will waste a lot of time and manpower.

15. POLICING THE NEW WORLD DISORDER: PEACE OPERATIONS AND PUBLIC SECURITY (Robert B. Oakley, et al. eds., 1998); UNITED NATIONS INSTITUTE FOR TRAINING AND RESEARCH, ROLE AND FUNCTIONS OF CIVILIAN POLICE IN UNITED NATIONS PEACEKEEPING OPERATIONS: DEBRIEFING AND LESSONS (1996).

16. Elaine Sciolino, *Bush Aide Hints Police Are Better Peacekeepers Than Military*, N.Y. TIMES, Nov. 17, 2000, at A7.

In addition, the Executive Branch has generally not been willing to ask Congress for money up-front for peacekeeping missions. Instead the White House has often found it more convenient to raid readiness and training money, and then ask Congress to restore these essential funds. Admittedly the White House may have feared that Congress would just say no if asked to appropriate peacekeeping money as such. However, the consequence has been an unhappy cycle of robbing Peter and underpaying Paul, thus putting pressure on United States's military readiness. We need to recognize that these missions are expensive, that they do take manpower, that they do have an operations tempo which wearies military personnel, burdens their family life, and causes them to leave the armed forces to join the private economy. To sustain these missions, in the configuration of our democracy, one needs to muster public support so that Congress can be persuaded to fund peacekeeping in a planned way that does not deride our other military needs. We cannot keep doing it through the backdoor. Though Congress is appropriately concerned about the safety of American personnel, the sensible provision of funds is necessary even where the United States is involved in supportive functions such as logistics, airlift, and intelligence.

We also need to consider what local political solutions are viable, given the constraints of UN peacekeeping capacity. Should we accept solutions such as the soft partition of Bosnia, where the so-called "inter entity boundary line" separates the Bosnian Serbs from the Muslims and Croats, because that allows a military mission much closer to the low-impact interpositional peacekeeping of yore? Can the political culture of a post-conflict society change through a top-down Fabian solution, as we are attempting in Bosnia, where the new state structure and constitution were implemented as part of the Dayton Plan but never endorsed in any popular ballot? There is a real challenge for political scientists and sociologists to assess how you can craft a solution that allows civic reeducation to take root.

Finally, there is concern that the international community may have been naïve in supposing that elections are the answer to everything. Premature parliamentary and municipal elections may in fact reify the power of the nationalist political parties, such as the SDS and HDZ in Bosnia. Indeed, a popular mandate allows these parties to wrap their obstruction in the flag of sovereignty. If we had

been a bit more bloody-minded in Bosnia and entertained a transitional structure more akin to a protectorate, we may have begun to displace the role of organized crime and organized ethnic thuggery.

The people who work inside the United Nations are often extremely talented. They work for very little money in dangerous places. Yet the most gallant of UN officials are among the most frustrated critics of the obstinacy of the institution and its failure to come to grips with its deficiencies. There is little close newspaper coverage of the UN as an institution, and thus no feedback loop to improve agency performance. Too few people know enough about the organization to point fingers and name names, or even make workable suggestions. There is no room for romantic multilateralism if we want the UN to be able to do its job.

