

## Issues of Doctrine and Strategy

At most one quarter of the internal conflicts that ended in the 1990s incorporated international peace operations as part of the solution,<sup>1</sup> yet states were strapped to support even that many operations, most of which were in fairly small places. Only major increases in national and regional resources devoted to peace operations would permit that proportion to grow any larger. The Brahimi Report argued that it is therefore crucial that the UN Secretariat provide capable and forthright advice to the Security Council about potential operations; that the Council be selective about the operations that it authorizes; and that the mandates for authorized operations be clear, credible, and achievable with the resources available.

Because peacekeeping and post-conflict peacebuilding address only the aftermath of war, not its outbreak, they represent only part of what is needed to reduce both the incidence of conflict and the damage that it does over the long term. The other element is conflict prevention.

### 2.1 THE NEED FOR PREVENTIVE ACTION

The Brahimi Report highlighted the need for effective measures to prevent the outbreak of conflict, noting the clear gap between verbal support and real financial and political support for conflict prevention.<sup>2</sup> It endorsed the conflict prevention elements of the Secretary-General's (S-G's) April 2000 Millennium Report and noted that a separate Secretariat report on conflict prevention was then under construction.<sup>3</sup> With this parallel effort underway, the Brahimi Report addressed prevention only briefly, focusing on an operational element of the Secretary-General's good offices function, namely, fact-finding missions to areas of tension.

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<sup>1</sup> Proportion of conflict resolution assisted by peace operations based on Stimson Center analysis of Uppsala Conflict Data Project data for internal conflicts rated as ending 1990-99. Nils Peter Gleditsch, Peter Wallensteen, Mikael Eriksson, Margareta Sollenberg, and Håvard Strand, "Armed Conflict 1946-2001, version 1.2" (International Peace Research Institute, Oslo, and Department of Peace and Conflict Research, Uppsala University). Available online at: [www.prio.no/cwp/armedconflict/](http://www.prio.no/cwp/armedconflict/) (downloaded 5 May 2003).

<sup>2</sup> A/55/305, para. 29.

<sup>3</sup> Kofi Annan, *We the Peoples: The Role of the United Nations in the 21st Century*, A/54/2000, April 2000.

The Report urged more frequent use of such missions. The SG and the Security Council both welcomed the recommendation and the “Prevention of Armed Conflict” report, issued in June 2001, noted the S-G’s intent to use fact-finding missions and other good offices, confidence-building missions and prevention measures to promote conflict resolution.<sup>4</sup> The Council also increased the tempo of its own fact-finding missions to areas of tension, as advocated by the Panel.<sup>5</sup> In August 2001, the Security Council endorsed the use of UN fact-finding and confidence-building missions, and the development of strategies with regional partners.<sup>6</sup>

Fact-finding missions can, however, fall into a gray zone in terms of administration and financing. Such missions, dispatched by the S-G or Security Council, rely primarily on voluntary contributions. The *Trust Fund for Preventive Action*, created in 1997 and managed by the UN Department of Political Affairs (DPA) to enable the Secretary-General to take early action (such as fact-finding missions) to defuse potential conflicts and to prevent escalation of existing disputes, is chronically under-funded. Three years after its founding, seven governments had contributed less than \$8 million to the Fund; it had \$1 million in October 2003.<sup>7</sup> As the SG reported in *Prevention of Armed Conflict*:

The United Nations Secretariat has regularly encountered difficulties in securing financial and human resources in a timely fashion to support such missions. While most of the recommendations...will not require any new resources, there is a need for United Nations conflict prevention activities to be placed on a more stable and predictable financial basis.... I therefore intend to engage member states in a dialogue on how conflict prevention could be made a regular component of the United Nations budget.<sup>8</sup>

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<sup>4</sup> S/RES/1327 (2000), para. V; and UN General Assembly and Security Council, *Prevention of Armed Conflict, Report of the Secretary-General*, A/55/985–S/2001/574, 7 June 2001, paras. 54-55.

<sup>5</sup> A/55/305, para. 276. Having undertaken one mission in 1999, to East Timor and Indonesia (the first such mission since mid-1995), Council members undertook five missions in 2000 (to Eritrea/Ethiopia, DR Congo, Sierra Leone, East Timor and Indonesia, and Kosovo); three missions in 2001 (to Africa’s Great Lakes region, the DR Congo, and Kosovo); three in 2002 (the Great Lakes, Ethiopia and Eritrea, Kosovo and Belgrade); and three missions in 2003 through July (West Africa, Central Africa, and Kosovo/Belgrade). Mission reports are available online at: [www.un.org/Docs/sc/missionreports/html](http://www.un.org/Docs/sc/missionreports/html).

<sup>6</sup> UN Security Council Resolution 1366, 30 August 2001, paras. 18-20.

<sup>7</sup> Interview, UN official, 23 October 2003.

<sup>8</sup> A/55/985, paras. 158-159.

DPA also backstops “special political missions” authorized by the Security Council or the General Assembly, which include various political offices and peacebuilding missions, panels of experts, special advisors, sanctions monitoring groups, and some envoys and representatives of the Secretary-General (see table 2; some special representatives are engaged only as needed and serve without reimbursement or staff.)<sup>9</sup> These DPA-managed missions and offices are funded primarily through the UN regular budget at about \$193 million in the 2002-2003 biennium, plus some additional voluntary contributions from member states. The S-G initially proposed roughly a 10 percent increase in funding for such missions in 2004-2005 but the General Assembly set a ceiling of \$170 million. With nearly \$7 million to carry over into the new biennium, the S-G’s final request was for \$163 million in new funding, a 15 percent cut from the earlier biennium budget.<sup>10</sup>

So while the Panel’s recommendation to increase the use of fact-finding and good office missions has been embraced, the lack of a sustained source of funding and support for either these increased missions or for management of the Council- or Assembly-mandated special political missions undermines their effectiveness and the UN’s longer term capacity to succeed in preventive action.

## 2.2 THE NEED FOR A UN PEACEBUILDING STRATEGY

The Panel noted a “fundamental deficiency in the way [the UN] has conceived of, funded and implemented peacebuilding strategies and activities.” It recommended that the Executive Committee on Peace and Security (ECPS) discuss and recommend to the Secretary-General a plan to strengthen the permanent capacity of the United Nations to support peacebuilding.<sup>11</sup>

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<sup>9</sup> For a full list of UN Special and Personal Representatives and Envoys of the Secretary-General, see: [www.un.org/News/ossg/srsg](http://www.un.org/News/ossg/srsg).

<sup>10</sup> UN General Assembly, *Estimates in respect of matters of which the Security Council is seized, 18th report of the Advisory Committee on Administrative and Budgetary Questions, A/57/7/Add/17*, 27 November 2002, annex I; and UN General Assembly, *Proposed programme budget for the biennium 2004-2005, Part II, Section 3: Political Affairs, A/58/6* (Sect. 3), 17 March 2003, 28.

<sup>11</sup> ECPS is one of several “cabinet-level” bodies created by reforms introduced by Kofi Annan in 1997. It meets at the level of Under-Secretary-General and is chaired by the Department of Political Affairs (DPA). Other members include the Department of Peacekeeping Operations (DPKO), Department of Disarmament Affairs (DDA), Office for the Coordination of Humanitarian Affairs (OCHA), UN Development Program (UNDP), UN Children’s Fund (UNICEF), the Offices of the UN High Commissioner for Refugees (UNHCR) and High Commissioner for Human Rights (OHCHR), the Office of Legal Affairs (OLA), the UN Security Coordinator (UNSECOORD), and the Special Representative of the Secretary-General for Children and Armed Conflicts.

**Table 2: UN Special Political Missions**

<b>General Assembly-mandated Missions</b>	
Central American Peace Process United Nations Verification Mission in Guatemala Special Envoy to Myanmar	
<b>Security Council-mandated Missions</b>	
United Nations Office in Somalia	Panel of Experts on Liberia
Panel of Experts on Somalia	United Nations Office in Burundi
Counter-Terrorism Committee established pursuant to Security Council resolution 1373	Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Dem. Rep. of Congo
Special Envoy of the Secretary-General in Africa	United Nations Peacebuilding Support Office in the Central African Republic
United Nations Office in West Africa	United Nations Political Office in Bougainville
United Nations Peacebuilding Support Office in Guinea-Bissau	United Nations Peacebuilding Support Office in Liberia
Special Adviser of the Secretary-General on Cyprus	Personal Representative of the Secretary-General for Southern Lebanon
Office of the Special Representative for the Great Lakes Region	United Nations Tajikistan Office of Peacebuilding
Monitoring Mechanism on Sanctions against UNITA	Special Adviser to the Secretary-General for Special Assignments in Africa
Monitoring Group on Afghanistan	

Source: UN GA, *Estimates in respect of matters of which the Security Council is seized, 18<sup>th</sup> report of the ACABQ, A/57/7/Add.17, 27 November 2002, annex I.*

The Secretary-General agreed that a better-integrated peacebuilding strategy was needed and instructed ECPS to formulate one by the end of March 2001. The Security Council welcomed the effort.<sup>12</sup> The S-G's second implementation report in June 2001 noted that the effort was still underway and promised a "more conceptual paper" on peacebuilding before the end of 2001.<sup>13</sup> The ECPS, the UN Development Group and the Executive Committee on Humanitarian Affairs produced a "United Nations Plan of Action on Peacebuilding," which was submitted to the S-G in October 2001 and endorsed in November.<sup>14</sup>

<sup>12</sup> S/RES/1327 (2000), para. V.

<sup>13</sup> UN General Assembly, *Implementation of the recommendations of the Special Committee on Peacekeeping Operations and the Panel on United Nations Peace Operations, Report of the Secretary-General, A/55/977, 1 June 2001, para. 2.* The Department of Political Affairs was the designated focal point for this effort (Ibid., para. 23).

<sup>14</sup> UN General Assembly, *Implementation of the recommendations of the Special Committee on Peacekeeping Operations and the Panel on United Nations Peace Operations, Report of the Secretary-General, A/56/732, 21 December 2001, para. 81.*

Aimed at providing “general guidelines on ways to work more effectively,” this white paper built on earlier efforts that year to conduct field reviews of peacebuilding offices and restated recommendations from earlier reports, including the Brahimi Panel’s support for a peacebuilding unit (see section 3.3.2.1). It also identified funding as a problem for UN peacebuilding activities in the current structure. The strategy to accomplish its list of action items, however, was not clear.<sup>15</sup> Follow-up has suffered without a clear internal driver to implement the Plan’s action items, further reflecting the basic problem that drew attention to the need for a strategy in the first place.

### **2.3 THE NEED FOR CLEAR, CREDIBLE, AND ACHIEVABLE MANDATES**

In the 1990s, the Security Council sent peacekeepers into countries with active civil wars (for example, Bosnia-Herzegovina) and to implement peace accords crafted either with insufficient input from experienced peacekeepers or with insufficient knowledge of signatories’ motives (for example, Rwanda and Sierra Leone).<sup>16</sup> So, in addressing the question of mandates, the Panel went beyond the usual exhortations for clarity and consistency to recommend specific criteria for UN peace operations: that peace agreements to be implemented by the UN comply at least minimally with international humanitarian law; that UN advisors with peacekeeping experience be available to negotiators who are considering such operations; and that Security Council resolutions promote clear command and control and unity of effort by troop contributors.

The Brahimi Report also urged the Secretariat not to pull its punches when laying out requirements for an operation in a potentially dangerous environment

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<sup>15</sup> White paper, *United Nations Plan of Action on Peacebuilding*, 31 October 2001, para. 3 and annex V. Also refers to work by the Center on International Cooperation at New York University and the FAFO Programme for International Cooperation and Conflict Resolution on financing of Peacebuilding Missions.

<sup>16</sup> Dozens of resolutions gave peacekeepers a long list of jobs in Bosnia-Herzegovina, none of which directly addressed the central problem of ongoing warfare and some of which created false hopes among vulnerable populations. Chief among the latter were the “safe areas” for which the Council failed to authorize adequate protection forces. The 1993 Arusha Accords for Rwanda called for full deployment of a peacekeeping force within six weeks of signature, by which point the operation had not even been authorized by the Council. UN officials objected to the amnesties contained in the 1999 Lomé Accord for Sierra Leone, which pardoned the butchers of the Revolutionary United Front, but the UN was asked to implement it anyway. See William J. Durch and James A. Schear, “Faultlines: UN Operations in the Former Yugoslavia,” in *UN Peacekeeping, American Policy, and the Uncivil Wars of the 1990s*, edited by W. J. Durch (New York: St. Martin’s Press, 1996): 230-31, 245; Christopher Clapham, “Rwanda: The Perils of Peacemaking,” *Journal of Peace Research*, v. 35, no. 2 (1998): 193–210; and John L. Hirsch, *Sierra Leone: Diamonds and the Struggle for Democracy* (Boulder: Lynne Rienner Publishers, 2001): 16.

(“The Secretariat must tell the Security Council what it needs to know, not what it wants to hear....”<sup>17</sup>), and to acknowledge the UN’s limits in such environments. In planning for the UN Assistance Mission in Afghanistan (UNAMA), the Secretary-General and his Special Representative for Afghanistan—Lakhdar Brahimi—used the opportunity to do just that. They stressed that Afghanistan in late 2001 was too dangerous and unstable a place for a “blue helmet” operation (that is, a peacekeeping operation run by the UN) and that the UN’s role should emphasize the political and economic reconstruction of the country. The Council agreed.<sup>18</sup>

Nearly two years later, the Secretary-General determined that both the need and the capacity existed for a stronger UN response, first in the DR Congo and then in Liberia. Responding to ethnic massacres in northeastern Congo, he urged the Security Council to authorize first an emergency multinational coalition force and then an expanded and more robust mandate for MONUC, the UN peacekeeping mission in the country. The larger UN force began to deploy in August 2003, replacing French-led Operation Artemis at the end of that month.

In early October 2003, the UN assumed command of peacekeeping in Liberia. A shaky ceasefire and peace accord reached in Accra, Ghana, by Liberia’s several political/military factions the previous June soon broke down, necessitating the rapid deployment of West African peacekeepers with UN blessing. This force was given logistical support by the well-established UN operation in neighboring Sierra Leone and temporary air support by an American amphibious ready group offshore. West African troops were mostly re-hatted as blue helmets when the UN Mission in Liberia (UNMIL) got underway.

In both cases, the United Nations responded faster and more effectively to challenging operational environments than would have been the case three years prior, and the Security Council adopted strong mandates matched to the needs of both situations.

The Council also promised, in a sequence of statements, reports, and resolutions over an 18-month period, to greatly increase its consultations with troop contributors in the drafting of mandates and when considering changes in mandate that could pose increased risks to troops.<sup>19</sup> Indeed, relations between troop-contributing countries, the Secretariat, and the Security Council have been

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<sup>17</sup> A/55/305, para. 64d.

<sup>18</sup> UN News Center, “Brahimi Lays Out Plan for Afghanistan,” 13 November 2001; and UN Security Council Resolution 1378, 14 November 2001. Available online at: [www.un.org/Docs/scres/2001/sc2001.htm](http://www.un.org/Docs/scres/2001/sc2001.htm)

<sup>19</sup> S/RES/1378 (2001), 11-13, para. 1g.

a central feature of Brahimi implementation. The Security Council formed a working group to address this issue and a series of resolutions and presidential statements have set in motion a process of formal consultations that have given troop contributors greater input to the Council's deliberations and decision making.<sup>20</sup> Troop contributors are, in essence, making the point that they no longer wish to be treated as hired help by the Council. Rather, they desire clear consultation and a role as co-managers, with the Council, of the UN's responses to post-conflict situations—at least insofar as those responses relate to the provision of security and the management of risk.

The Brahimi Report asked the Security Council to leave its mandates for new operations in draft form until the Secretary-General had secured sufficient commitments of troops from member states to carry out those mandates.<sup>21</sup> The Council demurred, with some members concerned that political support for a decision might dissipate while waiting for the S-G to certify troop commitments. Instead, the Council offered “planning mandates” that would allow the Secretariat to canvass states for troops, with full mandate and deployment following receipt of commitments and the evolution of conditions in the field. A mandate sequence of this type already had been used in establishing MONUC.<sup>22</sup>

## 2.4 REQUIREMENTS FOR EFFECTIVE PEACEKEEPING IN COMPLEX OPERATIONS

Three principles underpinned traditional UN peacekeeping: Local consent to the UN's presence, impartial implementation of mandates, and resort to force only in self-defense. The first and third principles derive from the UN's original, border-monitoring missions where UN forces possessed a fraction of the strength of the national forces that they monitored and were not involved in implementing a peace settlement. The second principle—needed for mission safety and credibility under conditions of relative vulnerability—was usually operationalized as strictly evenhanded relations with local forces.

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<sup>20</sup> UN Security Council, *Letter from the Chairman of the SC Working Group on Peacekeeping Operations*, S/2001/546, 31 May 2001; S/RES/1353, 13 June 2001; and *Note by the President of the Security Council*, S/2002/56, 14 January 2002.

<sup>21</sup> A/55/305, para. 60.

<sup>22</sup> S/RES/1327 (2000), paras. Ia, Ic, Ig, and Ij; and S/RES/1279 (1999), 30 November, paras. 6-9.

**Table 3: UN Peacekeeping Operations, 30 September 2003**

Acronym	Location	Date Begun	Chapter VII	Troops	Military Observers or Liaison Officers	Civilian Police	International Civilian Staff * (with Field Service)
UNTSO	Middle East	5/48		---	154	---	112
UNMOGIP	India & Pakistan	1/49		---	45	---	22
UNFICYP	Cyprus	3/64		1,351	---	35	44
UNDOF	Golan Heights	6/74		1,043	---	---	37
UNIFIL	Lebanon	3/78		1,983	---	---	118
MINURSO	Western Sahara	4/91		27	195	16	159
UNIKOM**	Iraq & Kuwait	4/91	✓	1	4	---	38
UNOMIG	Georgia	8/93		1	121	---	101
UNMIK	Kosovo (Serbia)	6/99	✓	---	37	3,657	1005
UNMEE	Ethiopia & Eritrea	7/99		3,855	213	---	238
UNMISSET	Timor Leste	10/99	✓	3,359	96	496	438
UNAMSIL	Sierra Leone	10/99	✓	12,075	256	126	326
MONUC	DR Congo	11/99	✓	8,445	551	102	606
MINUCI	Cote d'Ivoire	5/03		---	32	---	38
<i>Total</i>				<b>32,140</b>	<b>1,704</b>	<b>4,432</b>	<b>3,282</b>
<b>Complex Political Missions Managed by DPKO</b>							
UNAMA	Afghanistan	3/02			8	1	337
UNAMI	Iraq	8/03					<150

Sources: UN DPKO website, [www.un.org/Depts/dpko/](http://www.un.org/Depts/dpko/) (for UNMIK: [www.un.org/peace/bnote010101.pdf](http://www.un.org/peace/bnote010101.pdf)); A/57/7/Add.17, 27 November 2002, paras. 29-30; and S/2003/715, 17 July 2003. \*Civilian staff numbers as of 31 August 2003. \*\*Mission ended 6 October 2003; Chapter VII authorization from 9/93.

The Panel argued that these principles, while generally valid, required adaptation to the more complex conditions of internal conflicts where the UN is called upon to implement the peace. In such situations, consent may partially decay with time and circumstance or be uncertain from the outset. Impartiality needs to be anchored in evenhanded implementation of the peace and relations with local parties must depend on their compliance with the peace accords they have signed. And military rules of engagement may need to allow for response to the threat as well as the use of force against the operation. The Panel also argued that UN peacekeepers have an implicit duty, under the Charter, to protect civilian victims of violence to the extent they have the ability to do so.<sup>23</sup>

### 2.4.1 Robust Forces and Rules of Engagement

Effective peacekeeping in complex operations requires competent, well-trained and well-equipped troops in sufficient numbers to maintain a secure environment in which peacebuilding efforts can go forward. It also requires the will to use force if necessary to maintain that environment when challenged. The Brahimi Report was drafted during the May-June 2000 peacekeeper hostage crisis in Sierra Leone, with that crisis very much in mind. Experience in the 1990s had also amply demonstrated that undersized and under-equipped forces with weak or muddled mandates could neither deter rogue political factions nor contain the well-armed gangs that readily arise in the power and legitimacy vacuums that follow the nominal endings of civil wars.<sup>24</sup> In general, the Report argued, if UN forces sent to maintain security in a post-conflict situation cannot effectively contain what it called “the lingering forces of war and violence” then their deployment is a waste of money and effort and an affront to those local people and leaders who do wish to work for peace. Moreover, the sort of equidistant neutrality essential to traditional operations could fatally *undermine* the credibility of complex operations. Instead, operations committed to implementing a peace accord should resist behavior inimical to that accord and should do so consistently, regardless of the perpetrator.

Professional, well-supported troops will constitute an effective force, however, only if their governments agree that national interests and mission objectives coincide sufficiently to offset the risk of casualties, and if all governments contributing troops agree on common strategic objectives for the

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<sup>23</sup> A/55/305, paras. 48-50.

<sup>24</sup> Such was the case, for example, in Angola, Somalia, Bosnia and Rwanda between 1991 and 1994. Such would likely be the case in Bosnia and Kosovo today without ongoing NATO military presence, although that presence has been drawn down steadily over time.

operation. Only such unity of effort can reduce later second-guessing from capitals should the operation need to take timely, coordinated military action.

In weighing the Panel's recommendations for more robust UN operations, UN member states recalled both NATO's 1999 bombing campaign against Serbia and the Secretary-General's speeches arguing that sovereignty could no longer be considered a shield behind which a country's citizens might be abused or killed with impunity.<sup>25</sup> After publication of the Report, the Secretary-General affirmed the need for robust forces and mandates but sought to reassure member states that:

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. The Panel's recommendations for clear mandates, "robust" rules of engagement, and bigger and better equipped forces must be seen in that light. They are practical measures to achieve deterrence through strength, with the ultimate purpose of diminishing, not increasing, the likelihood for the need to use force, which should always be seen as a measure of last resort.<sup>26</sup>

The Special Committee responded that "UN peacekeepers...once deployed, must be capable of accomplishing the mission's mandate and of defending themselves and, where mandated, other mission components."<sup>27</sup> However, the Committee avoided endorsing the Report's call for "robust" forces and rules of engagement (ROE) and bridled at revising UN peacekeeping "doctrine."<sup>28</sup> The Security Council, on the other hand, urged DPKO to come up with new doctrine as quickly as possible and recognized the "critical importance of a credible deterrent capability" and "the possibility that some parties may seek to undermine peace through violence."<sup>29</sup> As TCCs, then, states appear worried that

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<sup>25</sup> Kofi A. Annan, *The Question of Intervention: Statements by the Secretary-General* (New York: United Nations Publications, 1999); and "Two Concepts of Sovereignty," *The Economist*, 18 September 1999.

<sup>26</sup> A/55/502, para. 7f.

<sup>27</sup> A/C.4/55/6, 4 December 2000, para. 8.

<sup>28</sup> *Ibid.*, para. 45.

<sup>29</sup> UN General Assembly, *Comprehensive review of the whole questions of peacekeeping operations in all their aspects, Report of the Special Political and Decolonisation Committee (Fourth Committee)*, A/55/572, 6 December 2000, paras. 1b and 2a.

they could be asked to undertake robust operations; as decision makers (Council members) they appear worried that no one would answer the call.

The first operational test of these new principles and force requirements awaited the Security Council's July 2003 expansion of MONUC's mandate to "use all necessary means" in the DR Congo's northeastern district of Ituri, where extreme inter-ethnic violence had erupted in the wake of Ugandan Army withdrawal in compliance with peace agreements and international pressure. A temporary EU-sponsored, French-led multinational force maintained order through the summer, as the UN prepared its replacement by a brigade-sized task force composed largely of South Asian units (mechanized battalions from Bangladesh, Pakistan, and Nepal; engineering units from Nepal, Indonesia, and Uruguay; and a detachment of attack helicopters from India).<sup>30</sup>

The Report also called for better intelligence capabilities in complex operations<sup>31</sup> but this proposal was not highlighted in the summary list of recommendations and received little explicit attention from member states. It is difficult for many states to argue publicly either against field intelligence (since a lack of it could endanger their troops) or for it (since intelligence is generally a sore point in UN circles). Silence in this case may be interpreted to leave military planners and field commanders flexibility to build the intelligence capacity that they need to accomplish their missions. The bombing of UN offices in Baghdad in September 2003 may have made member states more open to risk assessments and intelligence for field missions.

#### **2.4.2 Implied Authority to Halt Violence against Civilians**

The Report singled out violence against civilians in post-conflict settings as something that peacekeepers could ignore only at some peril to their relationship with the local population:

[P]eacekeepers—troops or police—who witness violence against civilians should be presumed to be authorized to stop it, within their means, in support of basic United Nations principles and, as stated in the report of the Independent Inquiry on Rwanda, with 'the perception and the expectation of protection created by [an operation's] very presence.'<sup>32</sup>

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<sup>30</sup> UN Security Council, S/RES/1493, 28 July 2003; and Interviews, MONUC Sector 6 headquarters, Bunia, DRC, 29-30 July 2003.

<sup>31</sup> A/55/305, para. 51.

<sup>32</sup> A/55/305, para. 62. Two Dutch analysts took the Panel to task for the "presumed to be authorized"

The Panel recognized that the demand for protection could greatly exceed the capacity of an operation to provide it. It had in mind MONUC, where civilian protection is part of the mandate. Security Council Resolution 1291, passed in late February 2000, included the following paragraph:

8. Acting under Chapter VII of the Charter of the United Nations, decides that MONUC may take the necessary action, in the areas of deployment of its infantry battalions and as it deems it within its capabilities, to protect United Nations and co-located JMC 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>33</sup>

Only this paragraph was linked explicitly at that time to the enforcement chapter of the UN Charter. It allowed discretionary use of force to protect the operation, its facilities, its freedom of movement, and directly threatened Congolese civilians. Forty years ago, another UN operation in the Congo used a similar mandate to act forcefully against secessionist elements in Katanga (Shaba) province and to run protective camps for persons displaced by the fighting. As of mid-August 2003, MONUC troops were protecting roughly 20,000 displaced persons adjacent to their camp at the Bunia, Ituri, airport and a brigade-sized force was deploying to the area, as noted. The forces that MONUC faced in Ituri were informal, splinter-prone rebel groups and tribal forces neither familiar with nor constrained by the international laws of war. Only this brigade-sized force, focused on a select area, allowed MONUC to intervene on behalf of civilians with some confidence in its ability to fend off retaliation against itself and them. Ultimately, however, pacification of Ituri (and of the equally violent Kivu provinces) would depend on a complex arrangement of local political deals, national power-sharing, international pressure on neighboring states, competent government security institutions—including a national army—and a mix of local and international processes to couple peace with justice. Civilian protection will remain a dilemma for any future operation

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language, arguing that, if protecting civilians is not part of an operation's mandate, then the Panel has potentially invited soldiers who witness atrocities to violate lawful national orders not to intervene. But they also note that *force majeure* "in the sense of a collision of duties," where "the necessity of choice is inevitable," may offer a path by which peacekeepers, in specific emergency circumstances, may act outside their mandate, drawing on the ethical imperative to protect civilians that is implied or imposed by international humanitarian law. The distinction they draw is between an implicit, blanket authority to act and an emergency imperative that is justified case by case. Ted Van Baarda and Fred Van Iersel, "The Uneasy Relationship between Conscience and Military Law: The Brahimi Report's Unresolved Dilemma," *International Peacekeeping*, 9:3 (Autumn 2002): 25-50.

<sup>33</sup> UN Security Council Resolution 1291, 24 February 2000.

that faces outbreaks of conflict with too little force to protect itself *and* the rest of the international community *and* the population at large.<sup>34</sup> TCCs, moreover, may insist on rules of engagement that exclude such responsibility.

## 2.5 REQUIREMENTS FOR EFFECTIVE PEACEBUILDING IN COMPLEX OPERATIONS

The Brahimi Report urged the United Nations to update its doctrine and strategy for peacekeeping, which were rooted in the traditional operations of the Cold War and, as just noted, to develop a better strategy for peacebuilding. These revised strategies for peacekeeping and peacebuilding need to combine in the field to produce more effective complex peace operations.

The Panel recognized the role that UN peacebuilding efforts could play in helping to consolidate peace in post-conflict environments, and recommended specific ways to work in this area with both governmental and non-governmental parties, complementary to development work.<sup>35</sup> The Panel highlighted structural changes needed in offices outside the Department of Peacekeeping Operations, such as DPA (see section 3.3.2), and recommended building some funding for peacebuilding work into the assessed budgets and design of complex peacekeeping operations.

Specifically, the Panel recommended adding budget support into peacekeeping missions for quick impact projects (QIPs) and for initial work in disarmament, demobilization and reintegration (DDR) to strengthen the UN capacity for peacebuilding in the field. The Panel also stressed that electoral support needed integration into broader democratic institution-building; that support for rule of law required more than a Civilian Police (CivPol) component; and that human rights personnel and objectives should be more effectively integrated into mission implementation and the training of mission staff.<sup>36</sup>

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<sup>34</sup> Civilian protection is considered extensively in the “The Responsibility to Protect,” *Report of the International Commission on Intervention and State Sovereignty*, (Ottawa, Ontario: December 2001). The Commission was established by Canada as an independent body to advance debate in this area after a call by S-G Kofi Annan in his Millennium report to the General Assembly to address the issues of sovereignty and international responsibility in humanitarian crises.

<sup>35</sup> A/55/305, para. 36.

<sup>36</sup> A/55/305, paras. 37-43.

### 2.5.1 Quick Impact Projects

The Panel recommended use of QIPs, funded as a small percentage of a new UN peacekeeping mission's first year budget, to help improve the local quality of life, establish the credibility of a new mission and demonstrate immediate results.<sup>37</sup> Projects were to be established by the head of mission in coordination with the UN country team to assure effectiveness. The S-G, Security Council, and Special Committee on Peacekeeping Operations all endorsed QIPs, with the Special Committee stressing local consultations in project selection as well as "impartial and transparent" project implementation. In June 2001, the Secretary-General reported that, with legislative approval, he would budget for QIPs wherever operationally useful. By December 2001, missions had begun implementing QIPs.<sup>38</sup> Allocations were included in the peacekeeping budgets of the UN missions in Ethiopia and Eritrea (for \$700,000) and the Democratic Republic of Congo (\$1 million over two years, 2000-2002, with a further \$1 million requested for 2003-2004).

QIPs money was intended only for first-year mission budgets as a pump-priming mechanism to attract future voluntary support, recognizing donors' reluctance to fund humanitarian or development work with assessed contributions. QIPs have worked well, especially in UNMEE (see *sidebar 4*). Without follow-on funding, however, the goodwill that such projects build in the first year might dissipate. Therefore, careful thought must be given to how QIP programs can make the transition either to follow-on donors or to other organizations' development programs after a mission plans their initial use. Already this question has been raised: an internal budget request for \$300,000 in QIPs funds for year two of UNAMA was denied by the ACABQ in November 2002, with the committee arguing that such funds were intended by the Brahimi Report only for the first year of a mission and were redundant to other development efforts.<sup>39</sup>

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<sup>37</sup> A/55/305, para. 37.

<sup>38</sup> UN 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, para. 25; UN General Assembly, *Report of the Special Committee on Peacekeeping Operations*, A/C.4/55/6, 4 December 2000, para. 6; A/55/977, annex A (Chart on Status of Implementation); and A/56/732, 4-5.

<sup>39</sup> UN, *Estimates in respect of matters of which the Security Council is seized, 18<sup>th</sup> report of the ACABQ*, A/57/7/Add.17, 27 November 2002, para. 36.

*Sidebar 4:*

#### **Quick Impact Projects: Success in UNMEE**

A year after the Panel's report, implementation of multiple QIPs as part of the UN Mission in Ethiopia-Eritrea (UNMEE) was underway. With costs ranging from \$100 to \$15,000 each, potential QIPs were submitted by UN agencies, NGOs, government and local officials for activities ranging from water and sanitation to education, health and social services. Fifteen projects in Ethiopia and 28 in Eritrea were approved and have helped to establish a closer relationship between UNMEE field units, local administrations, and communities.

To supplement the initial budget of \$700,000, a *Trust Fund to Support the Peace Process in Ethiopia and Eritrea* was approved in July 2001; both the Security Council and the S-G urged member states to contribute. Funding from Norway supported another 13 projects, and more contributions were received from Denmark and Ireland, for a total addition of \$200,000. By December 2002, 32 projects had been completed, 28 were nearing completion and 10 were still being implemented, while 70 new proposals awaited funding. Having completed nearly 81 UNMEE projects by March 2003, the Secretary-General praised QIPs as having "gone a long way toward re-establishing war-torn communities in the border region," with funds from both the assessed contributions and the Trust Fund. He argued, however, that new projects needed additional funding, especially as humanitarian and drought conditions in the area of UNMEE needed great support.

Sources: UN Security Council, *Report of the Secretary-General on Ethiopia and Eritrea*, S/2001/843, 5 September 2001, para. 31-33; S/RES/1369 (2001), 14 September, *Progress Report of the Secretary-General on Ethiopia and Eritrea*; S/2001/1194, 13 December 2001, page 7; S/2002/245, 8 March 2002, para. 35; S/2002/393, 20 December 2002, para. 22; *Progress Report of the Secretary-General on Ethiopia and Eritrea*, S/2003/257, 6 March 2003, para. 28.

### **2.5.2 Disarmament, Demobilization, and Reintegration of Ex-combatants**

DDR programs are essential elements of post-conflict stability that reduce the likelihood of resumed conflict. UN operations' DDR mandates, however, have typically covered disarmament and initial demobilization activities (e.g., setup of reception centers and identification of combatants), while partners such as the UN Development Program (UNDP) or World Bank address reintegration. Relying on voluntary funding to complete demobilization and begin reintegration runs the risk that such programs will start late and not finish. The Panel's

recommendation was to add demobilization and reintegration start-up funding to the assessed peacekeeping mission budget during a mission's "first phase."<sup>40</sup> Like the recommendation for QIPs, it was intended to create early results that might attract the attention of development and reconstruction donors.

The Secretary-General pledged to seek funds in assessed mission budgets for DDR on a case-by-case basis, as appropriate. The Special Committee supported the concept, if part of a "strategy for the combined use of voluntary and assessed funds" and properly coordinated within the UN system and with potential donors. Coordination with DDR implementation partners is particularly important since assessed funds can only be applied to tasks specifically listed in the peacekeeping mandate, and were envisaged by the Panel to be replaced after a year or so by voluntary funds in any case.

To increase DPKO's capacity to support DDR in peace operations and to coordinate with its partners, the Special Committee endorsed the addition of a DDR-related post in DPKO's Peacekeeping Best Practices Unit (PBPU), and the post was authorized in July 2002. The position was filled in mid-2003 and will take the lead in planning and implementing DDR when needed in future peace operations.<sup>41</sup>

In the field, however, the funding picture did not change much until the fall of 2003: mission budget funding for DDR remained voluntary. Thus, when MONUC received a new mandate for disarmament, demobilization, repatriation, resettlement, and reintegration of foreign-armed groups in the DR Congo in late 2002, its role and funding were still limited to disarmament and initial demobilization. The "three R's" were to be voluntarily funded. This discrepancy can pose security risks, as the Brahimi Report warned and as the sidebar on DDR in Sierra Leone illustrates (*sidebar 5*). As this study went to press, the new UN mission in Liberia (UNMIL) received the first ACABQ endorsement of assessed funding for reintegration, in what hopefully marks significant improvement in DDR support.

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<sup>40</sup> A/55/305, para. 42.

<sup>41</sup> UN General Assembly, *Report of the Special Committee on Peacekeeping Operations*, A/55/1024, 31 July 2001, para. 129; UN General Assembly, *Budget for the support account for peacekeeping operations for the period from 1 July 2002 to 30 June 2003*, *Report of the Secretary-General*, A/56/885, 22 March 2002, para. 17; UN General Assembly, *Financial performance report for the period from 1 July 2000 to 30 June 2001 and proposed budget for the period from 1 July 2002 to 30 June 2003 for the support account for peacekeeping operations*, *Report of the Advisory Committee on Administrative and Budgetary Questions*, A/56/941, 9 May 2002, para. 23; UN General Assembly Resolution 293, A/RES/56/293 (2002), 30 July 2002, para. 4; and Interview, DPKO Official, October 2003.

### 2.5.3 A Team-based Approach to the Rule of Law

No town, province, or country would think of creating a police force without also establishing the laws they would enforce, the courts to adjudicate crimes, at least one jail, and the judges, prosecutors, defense lawyers, and jailers needed to run the system. Yet for much of the 1990s, the UN was asked to deploy CivPol in this way, as a kind of freestanding source of public order that could function without these other elements of the “rule of law.” Thus, UN police monitors were sent into Bosnia with no writ to reform its corrupt judiciary (or its police, until recent years). Armed UN police were sent into Kosovo to enforce the law without much thought as to *what* law and without international jurists who could render fair judgments in tense inter-ethnic cases. The Brahimi Report spoke to this reluctance to commit to the complete rule of law package in its call for the concerted teaming of police, judicial, legal, and human rights experts in future complex peace operations, which would amount to a “doctrinal shift” in the way in which the rule of law was pursued in such operations.<sup>42</sup>

In his first Brahimi implementation report, the S-G argued that, since heads of state at the Millennium Summit had declared their support for democracy and human rights, “there is no ‘doctrinal shift’ required, but rather, a need to review how CivPol, human rights experts and related specialists can work more closely together in peace operations.”<sup>43</sup>

In the second implementation report (June 2001), there is no reference to any doctrinal shift. Rule of law arises explicitly only in the context of training arrangements with Office of the UN High Commissioner for Human Rights (OHCHR).<sup>44</sup> In February 2002, however, the General Assembly approved a small Criminal Law and Judicial Advisory Unit in DPKO to help develop comprehensive rule of law strategies. That spring, the ECPS commissioned an in-house Rule of Law Task Force to survey UN-wide programs and capabilities

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<sup>42</sup> A/55/305, para. 40.

<sup>43</sup> A/55/503, para. 27.

<sup>44</sup> A/55/977, para. 247.

in this area. Its report made a number of operational recommendations to improve support for rule of law-related activities in peace operations.<sup>45</sup>

*Sidebar 5:*

#### **DDR in Sierra Leone: A Qualified Success**

Between mid-May 2001 and mid-January 2002, the DDR program administered by the National Committee for Disarmament, Demobilization and Reintegration (NCDDR) and supported by United Nations Mission in Sierra Leone (UNAMSIL) voluntarily demobilized 47,000 ex-combatants, nationwide. The program rolled out in stages, focusing on a few districts at a time, which enabled UNAMSIL to shift limited support and security resources from place to place. The phased demobilization required an equally nimble reintegration program but shortages in voluntary funding and administrative problems within the NCDDR caused delays. Germany, Switzerland, Canada, and the European Union committed the equivalent of \$13.9 million to the World Bank's Multi-Donor Trust Fund for DDR in Sierra Leone in June 2001, but this was less than half of the funds estimated to be needed for reintegration programs. Two-thirds of the 16,000 ex-combatants demobilized by September 2001 had received some form of reintegration assistance, but little more than a third (about 18,000) had received any assistance by the official end of demobilization in January 2002. Ex-combatants not reached by the reintegration program began to pose security problems, mobilizing for protests, migrating toward the diamond-producing areas (where they challenged the turf of resident "youth groups"), and being recruited from there to fight in Liberia. UNDP, UK/DFID, and UNAMSIL (using its voluntary Human Security Fund) created "stop-gap" quick impact projects in the spring of 2002 to employ ex-combatants (UNAMSIL implemented 33 such projects employing 2,000). The improved security resulting from these programs contributed to the success of national elections held in May 2002. By March 2003, continuing reintegration efforts had reached over 40,000 ex-combatants with some form of assistance and nearly 46,000 by June 2003 (as against 55,000 who had registered for reintegration, including those demobilized prior to the May 2000 hostage crisis, which disrupted earlier DDR efforts).

Sources: "Presentation by the Executive Secretary, NCDDR, To the Donor Mission to Sierra Leone," February 8, 2002. Mark Malan, Phenyio Rakate, Angel McIntyre, *Peacekeeping in Sierra Leone, UNAMSIL Hits the Home Straight, Institute for Security Studies*, Monograph No. 68, January 2002. UN Security Council, *Reports of the Secretary-General on the United Nations Mission in Sierra Leone*, S/2001/627, 25 June 2001; S/2001/857, 7 September 2001; S/2002/679, 19 June 2002; S/2002/987, 5 September 2002; S/2002/1417, 24 December 2002; S/2003/321, 17 March 2003; S/2003/663, 23 June 2003. UN Security Council, S/RES/1470 (2003) 28 March.

<sup>45</sup> UN General Assembly, *Programme budget implications of draft resolution A/C.4/55/L.23, A/C.5/55/46/Add.1*, 8 August 2001, para. 5.125; UN General Assembly, *Implementation of the report of the Panel on United Nations Peace Operations, Report of the Advisory Committee on Administrative and Budgetary Questions*, A/56/478, 16 October 2001, para. 58; UN General Assembly, A/RES/56/241 (2002); and United Nations, *Executive Committee on Peace and Security, Final Report of the ECPS Task Force for Development of Comprehensive Rule of Law Strategies for Peace Operations*, 15 August 2002.

Implementing those recommendations is the responsibility primarily of the new, two-person Criminal Law and Judicial Advisory Unit (CLJAU) in DPKO's Civilian Police Division. The Unit also provides operational and technical support for criminal law and judicial needs in peacekeeping operations that have civilian policing components (see also discussion of rule of law measures in section 4.5).

The Task Force report recommended that the Unit leverage expertise within and outside the UN, creating *ad hoc* working groups to help support mission planning. By late spring 2003, interagency memoranda of understanding (MOUs) were drawn up and the staff ("rule of law focal points") were selected for these working groups; meetings were held later in 2003, helping plan UN operations in Liberia and DR Congo. Member states were approached regarding possible contributions to support this work and the unit began to create a rule of law framework for peace operations. The Task Force recommended that, since the DPKO "Multidimensional Handbook for Peace Operations" was already in train, the rule of law focal points should work with the Handbook designers to ensure that any guidelines they put forward be integrated into the larger work. The Task Force also suggested that the focal points conduct a review, two to three years after publication of the Handbook, to ensure that rule of law guidelines are well-represented in peace operations mission plans. The Handbook was expected to be released in late 2003 and reportedly includes civilian policing and rule of law guidelines.<sup>46</sup> Other Task Force recommendations, such as creation of a DPKO/DPA trust fund to support development of rule of law institutions in the field, have seen less progress.

#### **2.5.4 Human Rights in Peace Operations**

OHCHR and DPKO signed a memorandum of understanding in 1999 that allows OHCHR to provide backstopping and training for UN human rights workers in field missions. It was updated in 2002 to regulate recruitment for the human rights components of peace operations and human rights training for mission personnel. The Brahimi Report recommended that OHCHR's capacity to support peace operations be significantly increased and the S-G's first implementation report agreed, arguing that human rights needed to be more effectively integrated into prevention, peacekeeping, and peacebuilding strategies, and proposed \$1.7 million in additional funding.<sup>47</sup> OHCHR needed to

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<sup>46</sup> Phone interviews with Civilian Police Division, DPKO, May 2003 and October 2003; and *Final Report of the ECPS Task Force*, paras. 12 and 24-26. The Handbook was originally due for release in mid-2003.

<sup>47</sup> A/55/507, para. 25.

be able to contribute to mission planning task forces and mission needs assessments; to coordinate the human rights fieldwork undertaken in peace operations; to organize and conduct human rights training for all personnel in those operations; and to better analyze its own field experience, draw lessons from it, and generate best practices. It needed standard personnel profiles and standby arrangements for rapid deployment to field operations, as well as a standardized data management system for information gathered by human rights workers in peace operations that protected the confidentiality of that information.<sup>48</sup> The ACABQ deferred these requests until 2001, following the comprehensive review.

The S-G returned in 2001 with a larger request to strengthen OHCHR, proposing a mix of six regular budget and nine peacekeeping support account posts.<sup>49</sup> Human rights backstopping of peace operations previously had been funded through the regular budget or voluntary contributions rather than from the support account. ACABQ denied all of the support account posts and approved just four regular posts—not for database construction, deriving best practices, contributing to mission planning, or enhancing rapid deployment, but for training. OHCHR needs to be able to train others in human rights law but it also needs to do all these other things if it is to effectively shape, support, and implement the human rights components of peace operations. Without the necessary people, it cannot.

### **2.5.5 Elections and the Institutions of Democracy**

Elections became a focus of strategy for complex peace operations in the early 1990s in part because they are visible, public, symbolic events with a clear start and finish, around which a time-limited and schedule-driven peace operation might be built. Voter education campaigns and orderly balloting judged free and fair by international monitors imply a return to normal life and an end to the politics of the gun. But elections alone are Potemkin democracy, determining who governs, not how they govern, and not even the “who” if key players are unwilling to accept a loss peacefully, as post-election events in Angola and Cambodia attested. As the Brahimi Report observed:

Elections need the support of a broader process of democratization and civil society building that includes effective civilian governance and a culture of respect for basic human rights, lest elections merely ratify a

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<sup>48</sup> A/55/502, paras. 145, 247-248, and 250-251.

<sup>49</sup> A/C.5/55/46/Add.1, paras. 22.1, 22.15, and 22.25-22.28.

tyranny of the majority or be overturned by force after a peace operation leaves.<sup>50</sup>

Elections can still be an exit strategy for peace operations if the country in question already has the basic institutions in place to support democratic governance and the rule of law, or if its former belligerents are determined to leave war behind and rebuild governing institutions from scratch. Yet it is rarely the case that some continuing international support is not needed once initial peace implementation ends, whether in the form of a UN political mission, UN or other development assistance, or just NGO training for political parties.

More recent peace operations—from East Timor and Kosovo to Afghanistan and Iraq—have become much more milestone-driven and focused on institution-building, laying foundations upon which elections can build, first at the local, then the provincial, and lastly the national level. This is a potentially more costly and certainly more time-consuming strategy than “vote and scoot,” but also less prone to catastrophic failure if donors and their implementing partners keep the needed resources flowing and take the damage-limiting actions necessary to give a post-conflict transition a chance of success. These actions include maintaining a security presence sufficient to deter would-be “spoilers” of the peace; containing black markets in “spoils” (portable high-value commodities like diamonds or drugs); enlisting the support of neighboring states in both of these efforts, while reducing their opportunities to undermine the peace process; and effectively disarming and demobilizing the country’s fighting factions while finding them productive new roles in society.

Beyond the realm of formal peace operations, UN resources for electoral assistance are oversubscribed. We discuss funding for the UN’s Electoral Assistance Division in section 3.3.2.2.

## **2.6 THE CHALLENGE OF TRANSITIONAL CIVIL ADMINISTRATION**

When the United Nations was founded, one of its principal organs was the Trusteeship Council, created to manage leftover League of Nations mandates for “non-self-governing territories” managed “in trust” temporarily by UN member states. The right to self-determination was for years applied only to such territories and to former European colonies, within their existing borders. From the UN’s founding until the end of the Cold War, only one breakaway state—Bangladesh—was admitted to UN membership. The barriers to the admission of

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<sup>50</sup> A/55/305, paras. 42 and 47c.

breakaway states fell with the breakup, first, of Yugoslavia and then of the Soviet Union.

Meanwhile, the longstanding refusal of trustees like South Africa to relinquish control of places like Namibia made trusteeship look like rebranded colonialism to the UN's majority of recently independent states.<sup>51</sup> As the Cold War thawed, however, many trusteeships, including South Africa's, came to an end with the assistance of UN peacekeepers.

By late 1999, the UN Secretariat had itself become a trustee in all but name, assigned by the Security Council to temporarily govern one would-be breakaway state (Serbia's province of Kosovo) that was a victim of attempted ethnic cleansing by its parent state, and one post-colonial territory (Timor Leste) whose transition to independence had been interrupted by a quarter-century of brutal Indonesian occupation.<sup>52</sup> Although these were prominent operations with unique mandates, the Secretariat and its leadership were reluctant to address the needs of such missions in the Brahimi Report, viewing "transitional administration" as *ultra vires*, that is, beyond the scope of peace operations. This reluctance within the Secretariat to take on a role so close to trusteeship and so redolent, therefore, of colonialism, North-South politics, and "humanitarian intervention" is difficult to overestimate.<sup>53</sup>

As a result, the Report discussed transitional administration not as part of rapid and effective deployment—how to perform key tasks better—but as an element of the section on doctrine, strategy and decision-making, and focused on an issue that UN field people view as crucial but that the UN at large would just as soon avoid, namely, the issue of "applicable law."

As the Report noted, in Kosovo and East Timor "local judicial and legal capacity was found to be non-existent, out of practice or subject to intimidation by armed elements ...the law and legal systems prevailing prior to the conflict were questioned or rejected by key groups considered to be the victims of the conflicts."<sup>54</sup> In other words, there was no agreed legal code and no one to reliably enforce it. Moreover, even if the choice of local legal code was clear, a

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<sup>51</sup> UN General Assembly, *Declaration on the granting of independence to colonial countries and peoples*, Resolution 1514 (XV), 14 December 1960.

<sup>52</sup> William G. O'Neill, *Kosovo: An Unfinished Peace* (Boulder, Colorado: Lynne Rienner for the International Peace Academy, 2002); and Michael G. Smith, *East Timor* (Boulder, Colorado: Lynne Rienner for the International Peace Academy, 2003).

<sup>53</sup> For an assessment of UN performance in civil administration, see Richard Caplan, "A New Trusteeship? The International Administration of War-Torn Territories," *Adelphi Paper* no. 341 (London: IISS, 2002).

<sup>54</sup> A/55/305, para. 79.

transitional mission's criminal justice or rule of law team would face the prospect of learning that code and its associated procedures—in translation—well enough to prosecute and adjudicate cases in court. Differences in language, culture, custom and experience mean that the learning process could easily take six months or longer. The United Nations currently has no answer to the question of what such an operation should do while its rule of law team inches up such a learning curve.<sup>55</sup>

The Report noted the potential utility to such UN missions of a temporary criminal code, carried as part of a standard mission “kit,” together with personnel pre-trained to enforce it, and compared this approach to the present grab-bag of law enforcement personnel schooled in 40 or 50 different legal standards who serve in missions with large police contingents. The Report recommended that the Secretary-General appoint an expert panel to investigate the feasibility of creating “an interim criminal code” for use by such missions “pending the re-establishment of local rule of law and local law enforcement capacity.”<sup>56</sup>

The SG appointed a working group that declared an interim legal code to be infeasible in practice but also suggested that common rules of criminal *procedure* might be valuable. Work on those rules was delegated to the Office of the High Commissioner for Human Rights (OHCHR) in 2001, and one post was sought to support the work but not approved by the Fifth Committee.<sup>57</sup>

The Rule of Law Program at the U.S. Institute of Peace (USIP) took up the issue, however, drafting an interim legal code and code of procedures that were vetted at a June 2003 workshop in Geneva, hosted by OHCHR, with review sessions including 80 experts from 24 countries, including judges, legal affairs officers, police, prosecutors, and corrections officers. The USIP program plans to work with partner organizations to conduct regional review meetings and expert consultations after further revision and drafting of commentaries.<sup>58</sup>

The Secretary-General's first implementation report further highlighted “work that could be done to better prepare for potential future transitional administration missions,” but deferred doing it unless the General Assembly indicated “its interest in pursuing the matter further.”<sup>59</sup> The Special Committee

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<sup>55</sup> Ibid., para. 80.

<sup>56</sup> Ibid., para. 83.

<sup>57</sup> A/C.5/55/46/add.1, paras. 22.14-22.16; and A/56/478, para. 70.

<sup>58</sup> Interviews, U.S. Institute of Peace, Washington, DC, October 2002, May 2003, and September 2003.

<sup>59</sup> A/55/502, para. 35.

further counseled against extracting lessons from these missions unless "the GA has indicated its interest," which it did not.<sup>60</sup> So the Secretariat left the lessons to be gathered by others and is little better prepared, legally or psychologically, to meet the needs of transitional administration in 2003 than it was in 1999.<sup>61</sup>

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<sup>60</sup> A/C.4/55/6, para. 14.

<sup>61</sup> The International Peace Academy sponsored a conference on lessons learned in Kosovo and Timor in mid-October 2002, with several former SRSGs and many former mission staff in attendance. One of the continuing needs in such missions, participants stressed, was the need to get a handle on the applicable law issue. See the conference summary, *You the People: Transitional Administration, State-Building and the United Nations* (New York: International Peace Academy, 2003). The stress on applicable law matched responses from both missions to queries sent to them by the Executive Office of the Secretary-General in the spring of 2000 on behalf of the Brahimi Panel.