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WAR AND PEACE: OF LAW, LAWLESSNESS, AND SOVEREIGNTY

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Abstract

Laws of war have been carefully defined by individual nations' own codes of law as well as by supranational bodies. Yet the international scene has seen an increasing movement away from traditionally declared war toward multinational peacekeeping missions geared at containing local conflicts when perceived as potential threats to their respective regions' political stability. While individual nations' laws governing warfare presuppose national sovereignty, the multinational nature of peacekeeping scenarios can blur the lines of command structures, soldiers' national loyalties, occupational jurisdiction, and raise profound questions as to which countries' moral sense/governmental system is to be the one upheld. Historically increasingly complex international relations have driven increasingly detailed internationally drafted guidelines for countries' interactions while at war, yet there are operational, legislative, and moral issues arising in multinational peacekeeping situations which these laws do not address at all. The author analyzes three unique peacekeeping operations in light of these legislative voids and suggests systematic points to consider to the end of protecting the peacekeepers, the national interests of the countries involved, operational matters, and clearly delineating both the objective and logical boundaries of a given multinational peacekeeping mission.

Introduction

War and peace -- at opposite ends of the relational continuum and yet inextricably linked: Historically, military presence has been utilised for the express purpose of keeping the peace (or at least the status quo of cease-fire) since the Versailles armistice of 1918. Do the laws of war apply to multinational peacekeeping operations? Can they?

Should they? What special points of legislation are needed to accommodate the unique factors of peacekeeping operations? The purpose of this paper is to show the completeness of the codified laws of war in addressing many possible situations as well as to reveal areas which are still today completely unaddressed. It traces the development of thought on international law and rules of warfare from Classical and mediaeval times. It follows these thoughts' ultimate incorporation in modern-day laws and shows how their basic tenets still set the tone of today's international relations. Then it summarises Korea, Liberia, and the breakup of Yugoslavia – with analysis of the facets of international law, rules of warfare, and legal quirks encountered in each scenario. It concludes that we very much need legislation especially tailored to peacekeeping, and it explores the operational/technical and legal differences between war and peacekeeping and recommends specific points which such legislation should accommodate. To work, any laws governing war and peacekeeping must absolutely ensure a universal standard of conduct (among the peacekeepers; toward civilians, neutral realms, prisoners and wounded from either side of the conflict, toward bordering nations' rights, toward violators of any of the established international rules of civility), establish predictable lines of command, allow for operational flexibility as demanded by developments, enforce the peacekeepers' neutrality, ensure the recognition of the contingent-contributing nations' sovereignty, and protect the human rights of the peacekeepers themselves.

Historic Overview

Since recorded history, warfare has permeated the development of civilisations. While war was viewed as an instrument for self-protection and/or advancement of one's culture and boundaries, schools of thought actually devoted to war in any formal sense grew gradually. Although the Romans were known for their cruelty in enslaving captured soldiers (or enemy princes) for labor (if they did not execute them), they generally practiced civility toward the vanquished civilian populations and facilitated mechanisms of bringing these new areas into the citizenry of Rome. And indeed it is the Western tradition of thought which has been carried forward to this day, and lines of thought on international law can be traced back to Classical times. During the Migrations of the Peoples, military advances were typically accompanied by pillaging the civilian populations, properties, and countryside. Particularly Ghengis Khan was notorious for his ravages;

in the more westerly parts of un-Romanised Northern Europe, the Vikings practiced the same indiscriminate killings and pillaging toward the civilian populations of their vanquished. Philosophically one can argue that the concepts of international law can be traced back to the Classical cradle of Western civilisation.

Since the days of Greece and Rome, warfare has been (aside from conquest tool) considered a subset of the state's right to self-preservation. Then the timeframe between the fall of Rome and Italy's Renaissance was bridged by the Roman Catholic Church fathers who wrote on the human condition and on the chivalric duties of the Christian soldier. This period also gave birth to the concept of "just war". Subsequently, with the Renaissance's gradual secularisation of the concepts of statehood and crossnational relations along with views on human rights and statehood, three fundamental schools of thought arose -- today they still form the philosophical basis of international law. Machiavelli believed that the state had an inherent right and need to protect itself from the surrounding chaos of other, disorderly, civilizations. He saw war as a function of self-preservation. According to Hugo Grotius, on the other hand, war is a function of international law -- to regulate international behavior and the standards by which the international society exists. A universal honor code unspokenly defines crossnational codes of conduct. In the thinking of Hobbes, Rousseau, and Kant, man is naturally self-seeking and subjects himself to government to avoid the cycle of mutual destruction. These three schools of thought disagree on the level to which an international society exists or whether its existence should be acknowledged as a conduct-defining code. However, they do share the natural law concept of certain human rights such as individual liberty and safety, the concern for the greater good, and a desire for the injection and maintenance of civility in relations among states and in instances of war -- a trait still seen in all recent multinational peacekeeping missions and international diplomacy in general.

Today's Laws of War – Their Meaning and Realm of Jurisdiction

National Level: Laws of war, in the purest sense, address national defense and govern the nations' conduct while at war. Our Title 50 (War and national defense) endeavors to accommodate every possible nuance of encounter in which our armed forces might find themselves. Yet the law confines itself to justice within the military (at war as well as peace), proper conduct toward nations with which the US are at war, and to emergency legislation -- it is clearly tailored to the United States at war.

International level: The Hague and Geneva Conventions take great care to emphasise human rights and civility in the event of conflict. They aim to balance each nation's right to self-defense with the need to regulate behavior among nations. These Conventions, enforceable under UN auspices, mandate:

- Protection of immunity from attack for neutral territories
- Full protection of neutrality for war hospitals, humanitarian aid stations, and their personnel
- Protection of civilians, cultural and private property, and merchant vessels
- Humane treatment of war prisoners
- Respect for fundamental human rights
- Fair trials for war crimes
- Distinctions between belligerents and spies

Origins Of International Law And Laws Of War

Greece and Rome (900 BC - 476 AD): Empires were built on and maintained through use of military force. Both Classical Athens and Rome originated as city states with the romantic ideal of purity on the part their respective citizens. Within a century however, each had progressed to a sense that virtue had to be exported to surrounding "barbarians" and that its own population needed to be protected from the uncivilised influences of the neighboring peoples of lesser intellect, refinement, and social/cultural development.

Middle Ages (476 - 1400 AD): In the chaos which ensued all over Europe following the official fall of the Roman Empire in 476 AD, the virtues of literacy, scholarship, and higher thought were upheld by the Church fathers who wrote extensively on the condition of man. St. Augustine wrote on the duties of the Christian soldier -- rules which spelt out moral conduct and humane treatment of prisoners and vanquished. The character of the Holy Roman Empire was marked by the notion that war was a necessary means of protecting the Christian lands from the surrounding heathen nations and their corrupting influences. War was also viewed as the papal instrument of spreading the Gospel -- the distortion of moral and spiritual conviction and crossing into senseless cruelty and plundering found ample manifestation during the Crusades. A double standard governed the "rules of warfare" in that Christian nations at war endeavored to abide by basic chivalric codes while no concern for any human rights was shown toward populations of the non-Christian countries. In many respects this was a period of many extremes, one in which profound exploration of human nature, rights, and spirituality existed side by side with unchecked cruelty of war that was unrestrained by any rules of morality or regard for human rights. And yet this period also yielded three important traditions still found today: The Pax ecclesiae (Peace of God) of 990 outlawed attack on monastic buildings, civilian persons and women. The Treva dei (Truce of God) of 1027 decreed the suspension of fighting during holidays and Lent. And this period gave rise to the concept of bello jus (just war): By definition of bello jus a country had the moral right and obligation to enforce human rights and punish crimes against such beyond its own territorial boundaries. Grotius later referred to this idea as the duties of the international society to defend rights and regulate crossnational conduct. And today bello jus still forms the basic motivation for every peacekeeping operation mounted in our present time.

Machiavelli (1469-1527): Niccolo Machiavelli was the product of the corrupt fledgling secularisation of government and society during the Italian Renaissance. Having suffered through political intrigues between the Papacy and the Holy Roman Empire, the brutal end of the Florentine Republic, subsequent imprisonment and torture, he viewed war as a means of upholding the rights of one's citizens and as the protection of the republican ideal from the surrounding forces of lawlessness, chaos, and corruption.

Erasmus (1469-1536): Desiderius Erasmus, foremost scholar of Classics and Church texts, observed the warfare of his day as an hypocritical tool by which the papacy sought to expand its boundaries. In Erasmus' day wars were waged largely under religious pretext -- he thus saw war as contemptible, lawless, senseless, and devoid of all civility. As Machiavelli's Dutch contemporary, Erasmus witnessed the same papal corruption and thereto-connected fledgling secular regimes, albeit from more of an observer's stance. However, his observations of contemporaneous politics and his loss of personal acquaintances to battles prompted him to be against war at all cost, even if its avoidance meant an unjust peace -- he could not bring himself to think of any war as "just war", regardless of its cause.

Grotius (1583-1645): Although the idea of human rights of safety and liberty were not new, Grotius was a key thinker in putting together the notion of individual human rights and safety with the moral obligation to uphold and defend them across national boundaries. According to Grotius, an international society exists in which there is an overriding moral obligation to regulate behavior. Grotius saw the normative, communicative, and procedural roles of law in arranging and ordering society. War was seen as an international outgrowth of moral obligation to uphold certain natural rights -- it was viewed as a procedural means to the end of preserving liberty. Today many international lawyers and diplomats still subscribe to this Grotian view of law and process -- which is seen in the general climate of the moral obligation to uphold and protect human rights whenever a peacekeeping operation is mandated or at least when sanctions are imposed on a "bully" country.

Hobbes (1588-1679), Rousseau (1712-1778), Kant (1724-1804): The Kantian philosophy is generally labelled as a mix of Freethinking, liberal, paired with the Hobbesian survivalist/utilitarian element of self-preservation through individual submission to government. Kant was very aware of the need to balance the moral obligation of the individual to contribute to the society with allowing a government to order the society. Kant shared the Grotian mindset of individual natural rights but was primarily a social philosopher rather than legal scholar per se. He believed that rights could only be upheld within the framework of necessary laws ("social contract") -- he favored Rousseau's notion that the intrinsically self-seeking humans voluntarily subordinate themselves to a government to avoid the mutual

destruction so that a moral order could be upheld. Kant disapproved of war personally but viewed it as an at times inevitable means of upholding one's citizens' rights and maintaining social order across borders. As the result of his subscription to Rousseau's "social contract" notion, Kant had been labelled as an utopianist/revolutionist in whose views are the roots of socialism and despotism as practiced by Hitler and Stalin. Thus the name of Kant fell into disfavor after WWII and during the onset of the Cold War.

Declaration of Paris (1856): This treaty established maritime law among the major powers of Europe. It declared neutrality of neutral countries' vessels and seaborne goods. The treaty also prescribed sufficient force to enforce a maritime blockade.

Unspoken Progress...: Though largely unspoken, the concepts of individual rights and responsibilities, as well as an undergirding (albeit unspoken) code of civility were widely recognised as established rules of warfare.

The War Between the States (1861-1865): The American Civil War has largely been criticised for its large-scale atrocities and excessive loss of life. This war yielded the first official war-crimes trial. In the latter part of the war, the Confederate-administered war-prison camp lacked basic life support systems such as sanitation, medicine, and food as the result of the financial state of the impoverished Confederate government. The Swiss-German physician in charge of the camp, Major Henry Wirz, was entrusted with upholding the unspoken rules of civility toward prisoners. However, in his care, thousands of Union prisoners died of malnutrition, diseases, and exposure to the elements. He was tried before a military tribunal; his argument of having carried out the orders of the prison camp commander was dismissed, as Dr. Wirz did have at his disposal the operational autonomy and basic supplies to act within the moral boundaries of humane treatment of war prisoners. In the end, he was sentenced to death by hanging -- this marked the first official outrage with war atrocities and the first official recognition of war crimes as a legal concept of breach with the codes of civility and humane treatment of war prisoners. In many respects this was the first trial for "crimes against humanity" and "crimes against the laws of war".

Lieber Code (1863): Francis Lieber, a German-born legal scholar, drew up sets of rules of military conduct and they were formally integrated as General Order 100 for the United States Army. The Prussian Army code of 1870 was based on Lieber's ideas and proved thorough and comprehensive in the Franco-Prussian War. The code endeavored to anticipate all possible scenarios of the battlefield, marshal law, espionage, desertion, encounters with civilians, merchants, prisoners of war, wounded, armistice, capitulation, and humanitarian issues. It condemned use of poison, enslavement as retaliation, and violation of personal dignity. In many respects it was the catalyst of European interest in internationally binding agreements governing war and wartime conduct.

Geneva Convention of 1864: As the result of the Crimean War and the Franco-Austrian War in which wounded were not properly cared for, the international community agreed to convene in Geneva to establish protection for Red Cross personnel and neutrality for war hospitals.

St. Petersburg Agreement (1868): As the result of having observed often haphazard shooting of strategic insignificance, military leaders agreed to ban bullet use -- this marked the first international treaty geared to banning weapons use.

Hague Conventions (1899, 1907, 1954):

Pacific Settlement of International Disputes (Hague I,
1899 – updated 1907)

Convention with respect to the laws and customs of war
on land (Hague II, 1899)

Convention relative to the opening of hostilities (Hague
III, 1907)

Convention respecting the laws and customs of war on
land (Hague IV, 1907) Convention respecting the rights
and duties of neutral powers and persons in case of
war on land (Hague V, 1907)

Convention respecting the protection of cultural property
(Hague, 1954)

The rights of belligerents were declared not to be unlimited. Inhumane treatments such as arbitrary arrests and detention, harassment of civilians, seizing or destruction of private property, maltreatment of war prisoners, encroachments on personal dignity, genocide were outlawed, and the Convention for Pacific Settlement of International Disputes was drawn up along with the creation of the Permanent Court of Arbitration which still fulfills its function at The Hague. Neutral territories cannot aid or hinder either side of the conflict and must keep the conflict from entering their neutral territory. On the other side, neutral territories have the right to be left out of the conflict and their territory to be respected by surrounding belligerents. These conventions also provided for the protection of cultural property (1954) by codifying their safety from attack whenever these culturally significant buildings are not used for military purposes.

The Hague Conventions drew many of its undergirding principles from the Lieber Code and, in turn, influenced the philosophical framework and organisation of the League of Nations which followed the end of the First World War.

Geneva Conventions (1864, 1949, 1977 Protocols): The 1864 Convention for the Amelioration of the Wounded in Time of War established clear guidelines governing the safety of hospital and humanitarian facilities:

- Immunity of war hospitals and personnel (thus protecting them from capture or attack while treating sick soldiers);
- Impartial acceptance and treatment of soldiers from either side of the conflict;
- Protection of civilians aiding the war wounded;
- International recognition of the Red Cross as a symbol bindingly identifying war hospitals and aid stations covered by this agreement.

This was the first convention spelling out the duties of neutrality in war. 1928: Protocol for the Prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods

of warfare. 1949: Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.

(Geneva I)

Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea

(Geneva II)

Convention relative to the treatment of prisoners of war

(Geneva III)

Convention relative to Crimes Against Humanity
Convention relative to the protection of civilian persons in time of war

(Geneva IV)

This convention reiterated principles previously codified by Lieber and in the Hague Conventions. These actions were outlawed :

- Deportation of groups or persons
- Genocide (specially adopted by UN General Assembly 1948: Convention on the prevention and punishment of the crime of genocide)
- Taking hostages
- Encroachments on personal dignity
- Torture
- Collective punishments when only one specific person should be punished for a given crime
- Unwarranted destruction of property, especially civilian property
- Discrimination on account of race, political persuasion, nationality, religion.

The 1977 Protocol to the Geneva Conventions of 12 August 1949, relating to the protection of victims of non-international armed conflicts (Protocol II), extended the Conventions' protection to the parties of an internal conflict such as in civil war and guerrilla soldiers. This measure was the response to insurrections and colonial independence wars -- atrocities particularly in Vietnam had caused worldwide concern

over the question of jurisdiction or applicability of any laws in dealing with such atrocities. This aspect of applicability to guerrilla warfare raises internationally examined issues at every occurrence of any (especially internal) conflict: Do these protocols apply to conflict-ridden nations who are not signatories to them? At which point should the international community step in?

Treaty of Versailles (1919): Following the 1918 armistice, this treaty was designed to hold the vanquished Germans to reparations to the Allies. More importantly, the treaty stipulated German disarmament and the Allied Occupation forces' initial presence was designed to quell the potential revival of German military aggression. Both of these elements of disarmament and military presence to keep an aggressor in check were later adopted by the UN Charter.

League of Nations (1920 -1939): Following the atrocities of World War I, US President Woodrow Wilson spearheaded the League of Nations -- a supranational organisation formed by the Allied nations and headquartered in Geneva. Its purpose was the maintenance of peace and prevention of war by means of collective condemnation of would-be-belligerents. The League's Covenant stipulated the immunity of its officials and buildings, called for arms reduction, and peaceful means of resolving conflicts among the League's member nations. The basic tenets followed the principles of the Hague Conventions and were incorporated in the Charter of the United Nations which followed in 1945. The League was however discredited after failing to prevent Germany's (and the rising Hitler's) disregard of the Versailles Treaty and forcible reclamation of the Rhineland, Japanese invasion of China's Manchuria, and Italy's overrunning of Ethiopia. In addition, the US had, during the interwar years, reverted to its tradition of choosing isolation from world affairs, leaving no one to effectively enforce the League's cause. In the end it was disbanded in 1939.

United Nations (1945-): The United Nations, headquartered in New York City, was founded 1945 in response to the atrocities and war crimes of World War II, and as an endeavor to carry forward the initial mission of its predecessor. After two wars, the United States decided that their involvement was necessary to maintain an impartial involvement in world affairs and did not again withdraw from such supranational endeavors of preserving peace. The Charter of the United Nations declares the UN's primary mission as the preservation

of peace and the deterrence against use or threat of use of force upon any other territory. Its approach to conflict contains three stages:

1. Pacific settlement of disputes (thus eliminating any perceived need for hostilities and legitimate reasons for conflict)
2. Collective security (thereby deterring conflict-ridden regions from escalating: the "collective show of strength" is designed to tell the belligerents that the international military strength is too much for them to withstand)
3. Disarmament (banning weapons shipments, depriving the belligerent of military supplies, thereby "starving" the arsenals and ultimately the conflict).

Resolutions Adopted by the United Nations General Assembly

1. Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction (1972)
2. Convention on the prohibition of military or any other hostile use of environmental modification techniques (1977)

Nuremberg War Crime Trials: The Allied tribunal established in Nuremberg was chartered to try key individuals for crimes against these three major areas of international law:

1. Crimes against peace (by waging a war of aggression)
2. War crimes (i.e. violations of laws and customs of war as set forth in the Hague Conventions)
3. Crimes against humanity (such as genocide, murder, humiliation, encroachment on the dignity of civilians).

The precedent set by the Nuremberg War Crime Trials is that the practice emphasised the punishment and sentencing of individual perpetrators, the treatment of specific persons as criminals rather than transferring this "criminal" status to the entire nation.

NATO: The North American Treaty Organisation was founded 1949 as a safety measure to balance power with the Soviet Union and its satellite East European countries which it absorbed in all senses but formal government. Its members included the Western Allies and later West Germany. NATO's basic premise of deterrence against Soviet expansion further west into devastated Europe was that any attack against one constituted attack against all. The end result was the threat of US retaliation against any Soviet attacks on a NATO member country – this strategy served effectively against further expansion. With the end of the Cold War ushered in by the 1989 fall of the Berlin Wall and the subsequent collapse of communism across Eastern Europe, the role NATO has been changing from Cold War watchdog to a European alliance styled more after supranational political (rather than military) organisations. It was NATO which decided to stage the peacekeeping operation in Yugoslavia after its beginning civil war in 1991, as the unrest was viewed as a security threat for the greater part of Central Europe.

Vienna Conventions and Subsequent Protocols:

- Vienna Convention on diplomatic relations (1961)
- Vienna Convention on consular relations (1963)
- Vienna Convention on the law of treaties (1969)

Currently Existing Laws of War – Their Scope: At the national level laws of war address national defense and govern the nation's conduct while at war. Their scope also includes civilian rights and duties under martial law and define the soldier's duty of service and loyalty to his country. At the international level war-related legislation follows the Grotian spirit of international law: Regulation of behavior across lines of state, respect for the natural human rights of the individual, insistence upon humanity in instances of armed conflict, enforceable mandates prescribing the treatment of various groups who are caught up in the effects of war.

Legal Issues Motivating Peacekeeping Missions

1. Crimes against peace
2. Crimes against humanity
3. Crimes against laws of war as set forth in the Conventions.

Peacekeeping Examples – In The Name Of Conflict Containment

Korea

Synopsis/chronology: Although this was technically not a peacekeeping operation, its use of collective strength did prove an example of deterring crimes against peace and against a nation's right to self-determination: Following World War II, the United States and Soviet Union convened in Moscow in 1945 to settle the matter of establishing a unified postwar Korean government. The North had come under Soviet military jurisdiction, was not permitted to participate in the negotiations with the UN and US-spearheaded initiative, and established a Soviet-style government. Meanwhile the South held elections and established a Western-style government under the supervision of the UN Temporary Commission on Korea. In 1950 the Russians staged an invasion south of the 38th parallel dividing these two states, and China soon joined the Russian cause. The UN Security Council quickly resolved that UN members should resist the communist invasion. Heavy casualties, especially for US troops, did not result in wresting a unified Korean republic from communist control. Instead, the dividing line settled in its original place at the 38th parallel, and US troops are stationed in South Korea (with "UN blessing") to this day – to discourage the Soviet Union or Communist China from repeated invasion.

Legal Issues and Technicalities:

1. A nation's right to self-determination and self-defense. Invasion was a direct violation of this right.
2. Crimes against peace. Invasion also violated peaceful coexistence.
3. Collective security: Show of collective strength on the part of the UN members (as a token of the international community's commitment to the rights of nations to self-determination) led to negotiations ending the Korean War and formal recognition of each Korean area's autonomy.
4. Deterrence: In conjunction with collective security, the continued presence of US troops under UN

auspices keeps potential aggressors at bay and has so far successfully prevented a repeated invasion from the North.

5. Quirks in jurisdiction: China protested against the UN resolution, arguing on the premise that it had no representation on the United Nations; the Soviets' boycott of the meetings rendered them unable to veto the resolution. The question of whether a nation can be held to standards to which it chose not subordinate itself later resurfaced in form of countries seeking exemption on the premise that they were not signatories to a given set of Conventions.

Although this operation was not officially labelled as a peacekeeping operation per se (and even though the UN members did enter in decidedly on the side of South Korea), its beginnings did have all the trappings of a call to *bello jus*, supranational commitment to upholding nations' and people's rights to safety and liberty, desire to effect and maintain peace, and the question of the international laws' jurisdiction over the nations involved in a given conflict.

Liberia

Synopsis/chronology: Liberia enjoyed a tradition of relative prosperity, republican ideals and affinity to the United States since World War II, UN participation and active involvement in international affairs and African regional issues. However, economic declines and financial hardships brought on by declining export prices of its rubber and iron ore bred the conditions for a coup d'etat in 1980. General Samuel Doe took control of Liberia under marshal law following the president's murder. A new constitution was instituted in 1986; promise of return to civilian government was followed by elections after which the coup leader Samuel Doe was elected as president. He was put down by the rebellious Krahn, Gio, and Mano tribes whose fighting ushered in a brutal civil war which raged from 1989 until an official cease-fire of August 1996. Present-day endeavors to quell sprouts pocket fighting is finding unique expression in ECOWAS' confiscation of weapons from the various factions.

Rivals' contention for power prolonged the struggle – over the course of six years, Liberia's society, economy, and infrastructure

disintegrated completely. West Africa's ECOWAS Monitoring Group was augmented by UN observers. The governmental and societal structures, however, were dissolving so rapidly that all order completely collapsed and along with it any regard for human rights.

Peacekeepers' and observers' lives were gravely endangered, and Tanzania withdrew its contingent – both for frustration with the stalemate and out of concern for the safety of its troops. Rebuilding is slowed by the massive population displacement. Many children were abused, traumatised, abandoned, have become orphaned, and have become addicted to drugs. Medical facilities are substandard and inaccessible, slowing the process of proper care for the vast needy population.

Legal and Technical Complications

Chaos: The civil war was so bloody and the hostilities so uncontrollable that:

1. peacekeepers' lives were endangered and their neutrality was not respected
2. the entire social structure and civilised infrastructure collapsed
3. ultimately, peacekeepers were withdrawn due to the excessive dangers and the lack of progress toward peace achievement

Crimes against humanity: Aside from the indigenous traditional practice of female mutilation, the civil war has catalysed numerous instances of mutilation of babies, massacres, taking hostages, beating, rape, torture, killing, maiming, dismemberment, beheading, cannibalising of civilians by faction leaders.

4. Crimes against individual liberty in form of arbitrary arrest and detention.
5. Crimes against protection of private property not involved in the conflict: Arbitrary intrusions into homes, capricious arrests, pillaging, looting, theft, confiscation and destruction of property.
6. Denial of fair public trial: The civil war has also resulted in the collapse of the judicial system. Capricious justice is carried out by faction leaders –

- “confessions” to guilt and/or innocence are solicited by means of torturing the defendants.
7. Crimes against the established rules of warfare: Prison conditions are unsanitary and life-threatening. People are captured and held prisoner without actual charges. Prisoners are mistreated – mentally abused in form of threatened executions, physically abused in form of rape, beatings, torture, and starvation.
 8. Violation of neutral rights paired with crimes against humanity: UN convoys for medical and humanitarian relief are repeatedly attacked by fighters from all sides of the conflict. This hinders aid to the wounded soldiers and displaced civilians, and this situation violates the neutral rights of the humanitarian and medical relief workers.
 9. Violation of established rules of warfare and crimes against humanity on peacekeepers' part! ECOMOG soldiers detained groups of people, including civilians, in arbitrary capriciousness.

The Break-Up Of Yugoslavia

Synopsis: In many respects, this conflict has its roots in the region's mediaeval conquest and oppression by the Ottoman Turks. Historically, at times of autonomy, Serbia and Bosnia-Herzegovina had been separate kingdoms respectively – until their administrative combination under Yugoslavia following the end of World War I. Following World War II and the Soviet expansion of its political influence of communist/military rule, Yugoslavia became a Soviet satellite. Under Communism's Tito and subsequent strong centralised government, the various ethnic groups had lived together as neighbors peacefully. The fall of the Berlin Wall in 1989 and subsequently of the Iron Curtain in 1990, so hailed by romanticists around the world as the beginning of a new era of peace, also led to the demise of the Communist regime in Yugoslavia. With that, a power vacuum ensued and the power struggle began.

Ethnic propaganda fueled Bosnian resentment over the Serbian "cultural code" which defined the leadership of Yugoslavia at large. Isolated animosities gradually escalated into a full-blown civil war from 1991. This conflict, mainly between Bosnians and Serbs, raged on until

1996. With it, the world saw indiscriminate imprisonment, torture, rape, and mass murder of civilians, the destruction of beautiful architectural jewels and cultural and historical treasures. And the international community wondered with concern whether the ethnic conflict would spread into neighboring Hungary, Albania, and/or Macedonia – especially after Macedonia's 1991 secession from Yugoslavia.

Legal Complications and Issues: Tragedy, crimes against peace, war atrocities, war crimes, crimes against humanity, genocide, crimes against the protection of cultural and historic properties, the potential to draw neighboring nations into the conflict -- they all formed a grisly backdrop for the legal scenario against which the international community must sift through the events. As in the Nuremberg tradition, individuals are being tried for their alleged crimes; however, blurred evidence is making actual convictions less likely than originally hoped and anticipated.

1. UN sanctions were declared as well as arms blockades -- this posed the question as to whether the international community's UN-Charter-mandated right to "disarm via cutting off weapons supply" outweighed the Hague-mandated individual nations' right to self-defense under international law.
2. Collective security: NATO planes enforced the no-fly zone and bombed Serbian forces who were attacking a Bosnian enclave. Dayton Agreements -- based on the UN-suggested "collective force". The US fighter arsenal in Dayton, OH was shown to the chief leaders of the Yugoslav conflict as an unspoken warning of force to be unleashed on the conflict if no agreement were reached. Soon after, the Dayton Accords were signed in March 1996. Whether the cease-fire lasts remains to be seen. Aside from murky legal complications of international jurisdiction or the applicability of laws of war by custom, the former Yugoslavia has tragically lost many of its historic treasures, social structure, and civil infrastructure. Moreover, massive antigovernment demonstrations in Bosnia and Croatia (in reaction to both new countries' leaders' autocratic measures) show the fragility of the

- fledgling rebuilding efforts in their newness – while a concerned international community looks on uneasily.
3. The absolute neutrality of the peacekeepers was questioned when the Western world emphasised Serbian atrocities against Bosnian Muslims -- The Serbs felt that the peacekeepers were ignoring Bosnian Muslim atrocities against the Serbs. It did seem that the peacekeepers' sympathies (and those of world opinion) tilted toward the Bosnian Muslims, even if that was unintentional. If this is true, this would be an incident of taking sides, which cannot be allowed if peacekeeping is to remain a neutral conflict containment tool as we know it.
 4. The entire definition of neutrality of the peacekeepers. By definition, their neutrality extends to their duty to keep the conflict from spreading beyond its existing boundaries. By definition, they are compelled to an absolute, obligatory impartiality. Is this the Geneva-mandated definition of neutrality? Is it implicitly transferred to the peacekeepers without being expressly stated verbatim? Is this an as-of-yet unspoken code? If yes, then neutrality for peacekeepers must be defined and codified.
 5. Confusing command jurisdiction – individual nations under UN command? Respect for peacekeepers' sovereignty? A UN-mandated peacekeeping mission was deployed in Macedonia – partially in response to an assassination attempt on its president (and maintain internal stability), partially also to keep the Yugoslavian civil war and its ethnic passions from spreading into Macedonia.. In its course, US Army medic Michael New, in his patriotism of serving in the US forces, refused in 1993 to cast off the US insignia to wear the UN emblem and blue helmet. In January 1994 he was court-martialed in Germany, discharged dishonorably on bad-conduct charges, and disqualified from receiving veterans' benefits. This incident over command loyalties sent shockwaves of scandal around the world. Previously, US Congress had introduced a bill which would render US soldiers wearing of UN insignia illegal, and Michael New gained support and

- sympathy among conservative legislators and military/international law scholars. Loyalty disputes between the US and UN were not new to Macedonia: The placement of American troops under often incompetent UN command had endangered US soldiers' lives, procedurally tied their hands, made them appear incompetent themselves, and rendered the US the laughingstock of the world. Images of US soldiers being dragged through the streets of Somalia and their fear of Haitian thugs (due to absence of any UN-approved rights to self defense!!) set a detrimental precedent for the safety of peacekeepers.
6. Sovereignty or World Government? More importantly, the legislative implications of this measure are of historic proportions: Presidential decision directive 13 (PDD-13) (drafted by the Council on Foreign Relations in 1993) aims to place US troops under UN command. This would turn the UN Secretary General into the technical commander-in-chief of worldwide armed forces (which would, of course, be deployed under peacekeeping tenets) and relinquish the United States' control over its own soldiers to a multinational administrative body. Where would be the end of possibilities encouraged by such a precedent? Would this set the stage for the end of individual nations' right to self-determination and sovereignty as we know it?
 7. Of morality, principle, and constitution... We must never forget a nation's moral obligation to protect its own citizens (civilian and military alike) from betrayal to foreign governments and crimes against their freedom and personal dignity. And a government has the absolute constitutional responsibility to uphold its nation's right to self-determination and self-defense.
 8. Lesson learnt from the Michael New incident? Interestingly, the US troops now being sent to Zaire for humanitarian assistance with the refugees' return to Rwanda are being expressly placed specifically under US command.

War and Peacekeeping – Differences and Similarities

Technically, the state of war, the state of militarily expressed antagonism between two or more nations, forms the backdrop of war laws' applicability. War begins and a nation enters in on a very clearly decided "side" of the conflict. Peacekeeping, by contrast, is typically initiated by entities neutral to an existing conflict -- forces are deployed by NATO, UN, or other regional organizations such as OAU, ECOWAS, or OAS -- for the purpose of intervening in a civil war and/or safeguarding a delicately obtained cease-fire. None of the peacekeeper countries are themselves at war (neither with each other nor with the region to which they were deployed), a scenario beginning to hint at the need for laws beyond the traditional laws of war. Moreover, the contingents forming the peacekeeping group become an entity which poses proven temptation to transcend national command lines and raises the question of continued recognition for the sovereignty of the individual nations whose troops serve on these multinational peacekeeping missions.

Despite these major differences, peacekeeping scenarios also share many of the physical elements of war:

1. prisoners
2. casualties
3. movement of troops
4. aspects of objectives and strategies
5. equipment
6. humanitarian relief efforts.

Applicability Of War-Related Laws To Peacekeeping Scenarios

Context: Typically, peacekeeping operations are called to action in events of an internal conflict. Philosophically this step is a last-resort attempt by a concerned international community to prevent a simmering conflict from escalating into a full-blown war of international proportions. This step is taken upon recognition of having missed the opportunity to resolve the dispute peacefully: either in hopes of keeping a conflict from flaming out of control or in a more

pragmatic pursuit of desiring to impose an internationally mandated calming-down. This was the case following the cease-fire ending the Korean War, Rwanda, Liberia, and the civil war which ultimately caused the breakup of the former Yugoslavia.

Applicability: In light of the fact that peacekeepers are deployed to zones of armed conflict, it is logical then that the rules of warfare under customary international law still apply to all operational aspects the conflict.

Jurisdiction: All persons on the scene must absolutely be held to the moral precepts outlined in the Hague and Geneva Conventions. This includes all combatants on each side of the conflict, and the peacekeepers themselves must be held to the standards of peace, humanity and rules of warfare.

Distinctions: While the combatants are also subject to the rules of warfare in terms of war prisoners, treatment of civilians, and neutral zones and persons, and cultural and historic properties, peacekeepers have a multifaceted additional burden: Though endowed with the privilege of immunity from attack by combatants from either side of the conflict, they must reciprocate unconditionally this gesture of neutrality by refraining from taking sides. They may defend themselves against either side's belligerents, within parameters which have yet to be clearly defined.

Peacekeeping Scenarios – Typical Pitfalls

Quagmires of jurisdiction and legality for the conflicted regions: While the 1949 Geneva Conventions state rather clearly the rights and duties of nations at war, they are after all written for relations between nations at war. Out of concern over internal anti-colonial movements and insurrections (for which the 1949 Conventions offered no legally binding jurisdiction), the 1977 Protocol to the Geneva Conventions extended these obligations and boundaries of civility as codified in the war-pertinent laws and treaties to insurgents internal to a given country. This was done in the hopes of affording some sort of protection to those who are not part of the conflict: Civilians, nations of neutral territories, merchants, humanitarian and hospital workers.

Quirks and Ambiguities: Those wishing to be exempt from the rules of civility, especially wagers of an warfare internal to territorially defined country, might point to the Geneva Conventions describing at length the obligations in the event of an international (rather than internal) conflict. But no, they say, this is not an international dispute, therefore the Geneva rules do not apply... Insurgent-types such as German terrorists, Basques, IRA fighters are not governed by any international laws of war, whereas territorial gains on the part of insurgents in Nicaragua, El Salvador, and the former Yugoslavia brought about war-like scenarios of territorial advances, prisoners, casualties, civilians caught up in the conflict, wounded, and the needs of these wounded. Precedent seems to indicate that the decision on whether any of the Hague and Geneva Conventions (and 1977 Protocols) can apply is governed by the question of whether any of the internal combatants have seized and gained control of territory formerly belonging to other parts of the country (as the territorial advances in Bosnia and Serbia illustrated most vividly).

Jurisdiction over signatories only? For invaders: The question remains whether the belligerents themselves are nationals of signatory nation -- under which premise they could technically argue exemption from the Geneva Conventions' jurisdiction. This problem was encountered in Iraq when the torturous and inhumane treatment of prisoners of war, in terms of ethics and technicality, violated the Geneva Conventions governing the treatment of war prisoners. Iraq argued on the premise of not being a signatory of the Geneva Conventions. For guerrillas: This aspect of applicability to guerrilla warfare and insurrection with resulting warlike scenarios and territorial gains raises questions of legal applicability: If the conflict-ridden country is not a signatory to the 1977 Protocols, a region home to an internal conflict may argue that these laws set forth in these protocols do not apply at all – despite evidence of all the trappings of insurrection against an existing central government, territorial advances and conquest, and needs of wounded and civilian populations.

For the Peacekeepers Themselves:

1. What if any peacekeepers' home nations are not signatory to any of the Conventions? Can they be permitted to enforce principles to which their own home countries chose not to subordinate themselves?

2. Fuzzy command structures, lack of clarity as to which nation's soldiers are under which nation's command. (Command loyalty issues (attempted legislation to subordinate US troops to UN command (implications for the future sovereignty of nations?
3. Temptation to enter the conflict on either side – this could divide the peacekeepers.
4. Violation of the peacekeepers' neutrality rights by either side's belligerents.
5. Safety concerns for peacekeepers and humanitarian relief workers.
6. For the international community: Where does the international community's "just war" -mandated right to interfere with a conflict-ridden region end and become a one-world police state of capricious arbitration?

How Well Do The Current Laws Of War Address Peacekeeping Needs?

Regarding the utilitarian elements of warfare, the laws of war provide excellent scope and umbrella legislation. They leave nothing to the imagination in the context of propriety in declaration of war and conduct of hostilities, respect for human rights, neutrality (of neutral countries, of war hospitals, immunity of humanitarian relief stations), special status for civilians, diplomats, citizens of countries /regions not involved in the conflict, treatment of war prisoners. Above all, we must remember that these laws "by the international community for the international community" are conventions which govern the conduct of the individual countries which are themselves at war. The peacekeepers are "guests" to the conflict, despite their role as "neutrally appointed benevolent mediator-at-arms".

Peacekeeping Laws – Points Which They Should Address

Pitfalls unique to peacekeeping need special laws to allow the peacekeepers to avoid having their hands tied by the very laws of war on which basis they are deployed in the first place: Special laws for

peacekeeping operations should accommodate the two components of moral issues and legal technicalities and operations:

Moral Issues and Legal Technicalities: In the spirit of natural law and international law, laws of war are not isolated from universal codes of morality or humanity. Peacekeeping missions are fielded from the heart of this very sense of moral obligation to humanity. Multinational peacekeeping is beleaguered with the issues of participants' sovereignty, jurisdiction, command structures, service on foreign soil, international conduct. The laws of war have been expanded for setting the tone of peacekeeping operations. At best these laws (codified in form of The Hague and Geneva Conventions, the UN Charter, specific status-of-forces agreements, case-specific resolutions) implicitly address the wartime scenarios encountered by peacekeepers. Yet while the "mechanics" of warfare have been afforded ample consideration, there are several completely unaddressed major areas that are routinely encountered by peacekeepers:

1. National loyalties: In the situation of joint forces formed by several countries' peacekeeping contingents, the question of which countries' soldiers serve under which country's command.
2. Respect for the sovereignty of the nations whose troops are participating in a given peacekeeping effort. From a moral and ethical perspective, there is great need for delineating the distinction between serving one's own country and serving a multinational "ad hoc committee-at-arms". We are reminded by Michael New's symbolic refusal to wear the United Nations' blue beret that, especially in the United States, our troops end up in peacekeeping operations when they are "drafted" into them by means of their units' assignment to interventions -- after our soldiers voluntarily and trustingly signed up to serve in our military. Where does the obligation to one's country end and fall under the shadow of something else? (Certainly the morality of the presidential motion to subject US troops to UN command and the therefrom-resulting betrayal of the soldiers by their own country must be seriously called into question) In this spirit, any international laws specifically designed to

address multinational peacekeeping operations must never undermine the sovereignty of the nations whose soldiers serve as peacekeepers, accommodate the fact that the intervening nations are not themselves at war, and allow for sufficient authority to ensure the peacekeepers' safety.

3. Ensuring a universal standard of conduct; among the contingents themselves, toward wounded from the region to which the peacekeepers were deployed, toward prisoners from either side of the conflict, violators of the peacekeeper-established neutral zones from either side, toward spies who would thwart the peacekeeping efforts.
4. Strict neutrality: Although this is generally understood as an underlying unspoken premise: peacekeepers absolutely must never take sides in the conflict. The peacekeepers' neutrality must be enforced, if necessary. Taking up sympathy with either side of the conflict would: skew the "natural balance of power" within the conflict itself by thereby artificially adding more troops and materiel to either side of the conflict, internally divide the peacekeepers and destroy the impact of their team effort, give international license to the conflict's escalation beyond its established boundaries (which is a most dangerous proposition, as it could breed the seeds of a world war).
5. Issue: Peacekeepers' conduct and "diplomatic immunity" as neutral entities. Peacekeepers are deployed as neutral to the conflict. Thus they enjoy the rights and privileges of neutrality: protection from attack by either side of the conflict and the right to self-defense against attack from either side. They are also held to the duties of neutrality: Refraining from involvement with either side, impartiality in involvement with all sides of the conflict. The standards of behavior as set forth in the laws of war must also have jurisdiction over the peacekeepers. As they are likely to be called into at least some measure of military engagement, it must be clear that peacekeepers are also not allowed to commit crimes

against peace, against humanity, the civility-prescribing rules of warfare.

6. Peacekeepers' right to self-defense: Peacekeepers must be allowed to defend themselves from attacks from either side of the conflict to which they were sent as mediators-at-arms.
7. Conflicted region's right to self-defense: There must be universal legislation to address the matter of the conflict-ridden area's right to obtain weapons and supplies from outside sources who are its normal allies. This aspect must carefully weigh the conflict suffering region's right to self-defense and self-preservation against the regional and international needs of conflict containment.
8. Conscientious objection: There must be a clause allowing for conscientious objection for those whose deployment to a given conflict-ridden region would compromise their national loyalties.
9. The question of signatories: Should peacekeepers be chosen only from countries that are actually signatory to the Conventions and/or Protocols that a given peacekeeping mission is meant to uphold? Or should the peacekeeping contingents be chosen based upon military competence and the home countries' moral values? If the conflict-ridden region is not signatory to the Conventions and/or Protocols, can they be held to them? The line between international obligation to a universal code of humanitarian morality and outright "one-world police" is very thin indeed.

Operations: Peacekeeping legislation should define peacekeeping missions and provide safeguards against the indefinite prolonging of a peacekeeping group's involvement in a given conflict beyond reason.

- Assessment of the conflict (regional or internal)
- Its moral implications
- Its likelihood to be resolved without intervention
- Its impact on greater/ surrounding region and its security
- Its impact on global security and international balance of power

- Define the need:
- What are the needs of the region? Economic stability? Internal stability?
- An internal agreement? Ethnic mediation? A regional agreement?
- Define a checklist of criteria/ points on which to decide whether or not to intervene.
- Borrow from business practices and treat administration of peacekeeping in the manner of a businesslike strategic plan with thereto-attached action plan and timeline.
 - ⇒ this requires anticipation of “things going wrong”.
 - ⇒ this requires command-level flexibility in planning and operations to respond appropriately to the realities encountered in the course of the peacekeeping mission.
 - ⇒ this also requires some measure of autonomy at the local level to allow the peacekeepers sufficient “on-site” procedural flexibility to allow the multinational participants to respond to unanticipated command situations and as necessitated by the course of events.
- Define the method.
- Define the objective.
- What should the peacekeeping contingent accomplish to meet identified needs?
- Honestly assess whether the objective is feasible?
- What are the criteria for determining feasibility of a potential objective?
- What are the maximum limits of conflict-resulting danger and escalation to which troops should be exposed before an intervention is declared futile? (Otherwise, neutrality, immunity, credibility, and effectiveness would break down.
- Define systematically measurable success criteria.
- As an umbrella goal to all of these above-mentioned points: Define the parameters of the United Nations, as it is the legal enforcer of international law Carefully thought-out precautions must be taken to define the relationship between autonomous and

sovereign nations and the supranational body – after all the UN is at once legislative (Conventions), executive (peacekeepers), and judicial (World Court). Nevertheless it is not a mega-nation with the right to overstep the national command structures of any multinational intervention forces under its umbrella.

Conclusion

What is needed is nothing short of Vienna Congress of sorts: We need to delineate the role of the UN and similar regional supranational leagues, define the peacekeepers' rights and duties, identify the legal as well as operational distinctions between war and peacekeeping, compile a systematic checklist of typical scenarios and special issues likely to confront the peacekeepers, draw up international agreements forcing participants to define their peacekeeping missions' objectives and limitations beforehand, and facilitate appropriate measures for the international community to take in the event of a failed peacekeeping endeavor. Only then can an international consensus on morality be consistently enforced, the peacekeepers' lives protected, and sovereignty of nations preserved.

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