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## *Introduction*

This book deals with the civilian protection obligations of peacekeepers and other multi-national forces. These obligations are based on the mandates of such forces, and also on international humanitarian law (IHL) and human rights. The book assesses the extent to which troops' have obligations, under these laws, to intervene to stop the commission of serious abuses of human rights. It examines the meaning and practical consequences for peacekeepers and other multi-national forces, in terms of civilian protection, of the Article 1 duty to respect and ensure respect for the Geneva Conventions; of the duty to secure human rights (found in most international human rights treaties); and of the duty to restore law and order in an occupation. The book offers some guidelines for troops faced with egregious violations of human rights and humanitarian law, but the analysis is focused primarily on legal issues and is therefore only part of a much wider debate about the practical problems for peacekeeping forces in providing protection.

The analysis includes, but is not limited to, operations undertaken specifically to protect people from serious violations of human rights. The operations involved are of differing types and encompass peace operations and enforcement operations. Many, but not all, constitute 'peace support operations' a relatively new term which encompasses 'conflict prevention, peacemaking, peace enforcement, peacekeeping, peacebuilding and/or humanitarian operations.'<sup>1</sup> Although these operations do not all share the same legal basis they share some similar problems. Because the operations are often multi-national, they comprise contingents from different countries, each with their own different treaty commitments. In most cases the operations have been authorized by some international body whether the UN, NATO, or a regional organization. Where there has been no explicit UN authorization the States involved have usually argued that the action taken supports, or is supported by, Security Council resolutions concerning the conflict or security issues in question.

The need for clarification on the extent of the obligations of military forces to provide civilian protection has been a matter of concern since the 1960s when peacekeepers deployed to the Congo, under rules of engagement [ROE] that prohibited the initiation of the use of force, found themselves faced with massacres and other serious abuses of human rights. Hammarskjöld was torn between the need to act to support the norms of the Genocide Convention and the Universal Declaration of Human Rights,<sup>2</sup> and the need to remain impartial; recognizing

<sup>1</sup> UK Ministry of Defence, Joint Warfare Publication (JWP) 3.50 *The Military Contribution to Peace Support Operation* (n 5), Glossary 7.

<sup>2</sup> Annual Report of the Secretary-General on the Work of the Organization, June 16, 1960–June 16, 1961, 16th Session, UN Doc A/4800, 11.

that any action at all would be interpreted as aiding one side or another. At one point he even considered withdrawing the UN Mission to the Congo (ONUC) altogether on the grounds that 'complete passivity would have to be ruled out' but '[p]ractically every act of interposition in such a situation might lend itself to the interpretation that it was taken in order to help one side or the other.'<sup>3</sup> The peacekeeping problems in the Congo in the 1960s were long regarded as unique and sui generis; but after the Cold War when peacekeeping operations became more complex commentators began to note a recurrence of the same critical issues.

The mass killings in Rwanda and Srebrenica in 1994 and 1995, followed a few years later by the highly controversial bombing campaign of 1999 in Kosovo, prompted by fear of similar killings, resulted in sustained efforts by the then Secretary-General Kofi Annan to find some way of resolving the conflict between respect for State sovereignty and the protection of human security. What emerged was a new principle, the collective international 'responsibility to protect', which was first articulated by the International Commission on Intervention and State Sovereignty (ICISS) in 2001,<sup>4</sup> but has since rapidly acquired the status of a new norm against which the acts and omissions of the international community, through its representative organizations, are judged. Although it is primarily concerned with the responsibilities of States the 'responsibility to protect' has major implications for the responsibilities of peacekeepers and other multi-national forces deployed on behalf of the international community. The commitments by the General Assembly and the Security Council in 2005 and 2006, endorsing key aspects of the 'responsibility to protect' norm, has added to the already considerable pressure for improved clarity on peacekeepers' protection obligations.<sup>5</sup> Since 1999 (thus predating the ICISS report of 2001 but galvanized by the same humanitarian crises that prompted the setting up of the Commission), it has become the norm for the UN to include explicit authorization to provide civilian protection in peacekeeping mandates for UN missions and also in operations led by regional organizations such as the African Union, the Economic Community of West African States, and the European Union; but the carefully qualified language normally used to authorize protection leaves it unclear what peacekeepers are permitted to do and should do in response to attacks on civilians and other atrocities. There may be serious practical difficulties for troops in providing protection, particularly if the force is configured and deployed for another purpose, but a failure to provide protection may undermine the legitimacy of the mission

<sup>3</sup> Address to the General Assembly, GAOR, 15th Session, 975 plenary meeting, cited in Rosalyn Higgins, *United Nations Peacekeeping 1946–1967, Documents and Commentary, III, Africa* (Oxford University Press Oxford 1980), 50.

<sup>4</sup> International Commission on Intervention and State Sovereignty (ICISS) *The Responsibility to Protect* (Ottawa International Development Research Centre 2001).

<sup>5</sup> UK Ministry of Defence, Joint Warfare Publication (JWP) 3.50 *The Military Contribution to Peace Support Operation* (2nd edn, The Joint Doctrine and Concepts Centre Shrivenham 2004), [113]; S Breau, 'The Impact of the Responsibility to Protect on Peacekeeping' (2006) 11 *Journal of Conflict and Security Law* 3, 429.

in the eyes of the local community. In addition there is also widespread concern that peacekeeping may in itself be a source of human rights violations. Although only a minority of peacekeepers are involved, the problem of exploitation and abuse by peacekeepers is prevalent to some degree in almost all missions.

It is in the nature of peacekeeping that forces are generally deployed outside their own country. A State's jurisdiction is normally confined to that State's territory but there are exceptions. Where a peacekeeping force is in occupation of territory an extensive body of law governs the relationship with the local population. However, the applicability of occupation law to peace operations is controversial. Some commentators argue that it is only intended to apply in belligerent occupation and not to operations conducted on behalf of the local population or of the international community. Except where a peacekeeping force is in occupation of the territory, international law recognizes no general relationship between the inhabitants and a State that is contributing troops to a peacekeeping operation. Nevertheless peacekeepers (and other forces) may, in certain circumstances, have obligations towards the local population, under the domestic law of the contributing State, or under IHL or international human rights law. The draft replacement for the UK's current peace support operations doctrine notes that in assessing the force's obligations towards the local community commanders must take into account 'humanitarian & human rights law treaty obligations, customary international law, domestic law of the Troop Contributing Nations (TCN) and host-nation law, and meeting the principles of the UN Charter.' However, the doctrine does not discuss what these obligations are or the framework in which they arise. This book sets out to address this gap.

## The Structure of the Book

Chapter 1 of this book analyzes the evolution of peacekeeping focusing in particular on the extent to which past peacekeeping operations have attempted to provide protection to civilians and the issues that this has raised.

Chapters 2 and 3 explore the extent to which international humanitarian law and international human rights law require peacekeepers to protect civilians from serious violations of the rights they protect.

Chapter 4 explores the issues regarding the potential applicability of occupation law to forces engaged in humanitarian or peacekeeping operations.

Chapter 5 draws on the analysis of the preceding chapters, and assesses the extent to which peacekeepers and other forces engaged in multi-national operations have an obligation to protect the local population from serious violations of human rights, focusing on three areas of protection responsibility: preventing attacks and abuse by peacekeepers; protecting people in peacekeepers' care from attacks and abuses by third-parties; and protecting the local population from attacks and abuses by third parties.