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## Essay: On Peacekeeping

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## INTERVENTION

by

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First, I would like to congratulate Major General Dörenberg, his assistants, and the national rapporteurs on the final Report. It is a major contribution to the legal literature concerning peacekeeping.

Second, I must disclaim any particular academic qualifications to comment on the Report and to emphasize that my observations are based on the fact that I have the opportunity to discuss the legal problems of peacekeeping with a number of non-lawyers - primarily commanders (1). The comments that follow are my own, not theirs, but based on impressions I gained from talking with these men, who cooperated with me because they applauded the Society's efforts to gather information on this topic.

Third — and most important — I must emphasize the fact that my intervention focuses — perhaps unfairly — on what I see as shortcomings in the Report. I do so in a spirit of scholarly admiration for what has been accomplished and in the hope that my comments will aid those who will use the Report in future years.

The first of my criticisms relates to Chapter 3, and the attempt to define and distinguish « peacekeeping operations » and « peacekeeping force ». Although the distinction may have some legal value, there is no apparent reason to distinguish between peacekeeping forces — military or civilian — and observer missions. I wish more had been said, either in Chapter 3 or in Chapter 5, about civilian peacekeepers and the peculiar legal problems they raise: the civilian police contingent in UNFICYP; and the difficulty that component of force commanders may have in exercising disciplinary control over civilian technicians

accompanying or supporting the force. The military/civilian distinction is, it seems to me, more important than the difference between « operations » and « force ». The second distinction that deserves more emphasis, I believe, is that between peacekeeping operations carried on by the United Nations and those carried on at the intragovernmental level or by an international body possessing legal personality recognized by regional agencies. In non United Nations contexts, the term « peacekeeping » may be abused and I suggest that we lawyers should focus on the definition used by the International Peace Academy (2). However, I must agree that, from a legal standpoint, « the practical importance of a generally accepted definition of [these] terms is relatively minor (3).

I have two criticisms of Chapter 5, « The Legal Framework of Peacekeeping Operations ». The Report may have overemphasized the need for a SOFA. My own country has stationed troops in some friendly countries for years without a SOFA and we know that both the UN and other bodies have undertaken peacekeeping operations without suffering noticeably from the lack of a SOFA. We lawyers prefer a written document. But experience has shown that a SOFA is not a necessity. Because the Report fails to comment on the important role played by UN legal officers in the field (as they are with UNFIL) or at headquarters the discussion of the legal framework is, in my judgement, misleadingly static.

Chapter 6, « Provision of Personnel » suffers from the fact that national reporters may have been unaware of the fact that the UN has established a policy that it would be inappropriate for a peacekeeping force or the UN itself to engage in intelligence gathering. General Egge's experiences in ONUC suggest that numerous legal problems may arise because the « policemen » have very little knowledge of the populace they are called upon to police. The problem is compounded, of course, by the rotation of contingents.

Chapter 7, « Command Authority » could, I think, have emphasized the dilemma of the force commander who has no disciplinary authority over his contingents. Some examples: In UNEF I, three men — each from a different contingent — conspired to smuggle gold but were caught by the force military police. The man from country A was court-martialed by his component commander and received a sentence of two years' imprisonment. The man from country B received summary punishment from his component commander and was imprisoned for six months. The man from country C was merely sent home by his component commander. Similarly gun smugglers in Cyprus and

Lebanon were simply sent home by their commanders without receiving punishment. Fortunately, the disciplinary offense rate among UN troops is extremely low but disparity of treatment can create morale problems.

Chapter 8, « Criminal Law Aspects » is very comprehensive and, as noted above, there have been few actual problems. There are three problems that are not covered in the chapter. The first is that posed by family members accompanying the force : what protections should be afforded them ? I am not aware of any problems to date but the fact that the UNFIL headquarters has enough children to warrant the establishment of an (unaffiliated) school suggests that there is a potential problem regarding the status of the mothers and children. The second problem is caused by domestic legislation which doesn't provide for the punishment of component members : I understand that Finnish and Swedish commanders cannot court-martial offenders in their « civilian units », but can only send them back home to be tried, which may mean no trial at all, if witnesses are not available. The third problem also relates to domestic legislation and is based on the fact that many sending states' military criminal codes do not envision the possibility that a battalion, or smaller, size unit may operate on its own half way around the world from the normal command structure. Special arrangements have to be made to ensure that component commanders are given the necessary authority to convene courts-martial and that judges and lawyers are available.

With regard to Chapter 9, « Civil Law Aspects », the discussion of casualty claims does not acknowledge the role of commercial insurers who, I understand routinely settle motor vehicle claims, even in countries as war torn as Lebanon, without recourse to a claims commission. Contract claims are not discussed. Surely problems must arise with regard to the provisioning and accommodation of the forces. Finally, the problem of asserting claims on behalf of the force is not mentioned. Some of you may be aware of the fact that the MFO is asserting claims arriving from the tragic crash of the Arrow Air transport plane in Gander, Newfoundland.

Chapter 11's discussion, at § 11.5, on the use of deadly force does not emphasize the need for clearly defined and well articulated rules of engagement. I gather that UNFIL forces have not been given the sort of explicit guidance given, for example, British forces in Northern Ireland and that commanders regret that fact. Finally, I wish that something had been said about the peacekeeping forces' exercise of municipal authority. When there is a legal vacuum the peacekeepers

may be the only « government ». What particular problems arise when peacekeepers implicitly treat the situation as one which requires the imposition of martial law or a state of siege ?

Having emphasized all the topics that were not covered I conclude with my congratulations to the presenters of the Report and the hope that my comments will encourage others to enlarge on the trail they have blazed.

Thank you.

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