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CANADIAN FORCES COLLEGE / COLLÈGE DES FORCES CANADIENNES

AMSC 3 / CSEM 3

RULES OF ENGAGEMENT

RULES OF ENGAGEMENT AND THE PEACEKEEPER'S DILEMMA

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ABSTRACT

The use of force by soldiers deployed on United Nations peacekeeping missions is controlled by Rules of Engagement (ROE). Depending on the mandate, some peacekeeping missions have allowed peacekeepers to use force only in self-defence. In areas torn by civil war or ethnic strife, soldiers have sometimes witnessed crimes and violent acts perpetrated against defenceless non-combatants. Depending on the mandate of the peacekeeping force and on the ROE that have been prepared for the mission, soldiers may be precluded from intervening due to their ROE. This paper argues that the restrictive nature of peacekeeping ROE may create a situation where soldiers deployed on peacekeeping operations must deal with ethical and moral dilemmas. The potential for such situations is so widespread that this phenomena is not just isolated, but instead should be considered a real concern for all soldiers deployed on peacekeeping operations

RULES OF ENGAGEMENT AND THE PEACEKEEPER'S DILEMMA

HYPOTHETICAL SITUATION

You are a soldier deployed as part of a United Nations peacekeeping mission. You are out on a foot patrol, part of a routine five-person task to keep watch in a small city. While passing through the centre of the city, you hear a commotion, and move to investigate. There is an obvious disturbance down an alleyway. While the patrol covers the entrance to the alley, you and a partner move closer to see a group of four men beating someone, while a fifth man keeps watch. None of the people involved appear to be armed, but they ignore your shouts and warnings for them to stop. The ROE in effect for this mission specify that soldiers may only use their weapons in self-defence. As there is no apparent direct risk to you in this situation, you cannot use force to stop the beating.

While the Patrol Commander uses the radio to seek advice from headquarters, the victim is severely beaten, then dropped to the ground. The assailants, realizing that you will not use your weapons to stop them, skirt around you and the other members in the patrol and depart. The victim later dies from the injuries sustained during the assault.

INTRODUCTION

Canadian Forces personnel have deployed on peacekeeping missions since the concept of United Nations peacekeeping was first introduced during the Suez crisis in 1956. The first missions were an experimental use of a neutral military force to help the opposing nations or factions to come to a lasting resolution of their problem. The central idea was that by helping to maintain international peace, small conflicts could be kept from escalating into larger wars, thereby averting the danger of other countries, particularly the two superpowers, from becoming involved as combatants.

Major-General (retired) Indarjit Rikhye, the military advisor to Secretary-Generals Hammarskjöld and U Thant in the 1960s, defined peacekeeping as “the prevention,

containment, moderation and termination of hostilities between or within states through the medium of third-party intervention, organized and directed internationally, using multinational military, police, and civilian personnel to restore and maintain peace.”¹ A.R. Norton and T.G. Weiss have added that “international peacekeeping is intended as an interim step to buy time for conflict resolution and diplomacy.”²

Since the initial deployments, the practise of using United Nations forces to help resolve conflicts has become more commonplace. Today, employment of military personnel on peacekeeping missions is considered simply a part of a normal career by most Canadian military personnel. The world has grown accustomed to the deployment of military forces whose purpose is to bring peace to a region and “stimulate local confidence in the durability of cease-fires, lowering the probability of renewed warfare.”³

Although peacekeeping missions involve deployment of military forces, options for use of force by soldiers deployed on United Nations peacekeeping duties always remain constrained, and in many cases peacekeepers have been permitted to use force only in self-defence. The limits placed on the use of force are promulgated in legal instruments known as Rules of Engagement (ROE). Canadian Forces doctrine defines ROE as “directions issued by competent military authority which delineate the circumstances and limitations within which force may be applied to achieve military objectives in furtherance of national policy.”⁴ ROE

¹ Indar Jit Rikhye, *The Theory and Practice of Peacekeeping* (London: C. Hurst and Company, 1984) 1.

² A.R. Norton and T.G. Weiss, “Rethinking Peacekeeping” in Indar Jit Rikhye and Kjell Skjelsbaek’s *The United Nations and Peacekeeping* (London: The MacMillan Press Limited, 1990) 25.

³ William J. Durch and Barry M. Blechman *Keeping the Peace: The United Nations in the Emerging World Order* (Washington DC: The Henry Stimson Center, 1992) ix.

⁴ *Use of Force in CF Operations* (Ottawa, ON: Minister of Public Works and Governmeof Fi

are specific and distinct for each mission and tailored to fit the situation and aims of all operations, including peacekeeping missions. Generally speaking, ROE designed for peace support operations tend to be restrictive, whereas warfighting ROE are more permissive.

During the course of peacekeeping operations, and especially in missions involving civil war or counter-insurgency, soldiers have witnessed crimes and violent acts. Widespread atrocities have been reported in Rwanda and in Bosnia, while peacekeeping missions were deployed to those countries. Historically, depending on the mandate of the peacekeeping force, and on the ROE that have been prepared for the mission, soldiers deployed on peacekeeping missions have been precluded by the ROE from intervening to stop violent or criminal acts. The strict limitations imposed by ROE on the use of force may at times create a powerful source of friction and potentially an ethical and moral dilemma for these soldiers. If ROE specifically preclude use of force to protect non-combatants, peacekeepers will be forced by their restrictive ROE to stand idly by while crimes are perpetrated. A clear conflict has been created between the individual soldier's conscience and the policy, direction and orders the soldier has received.

The restrictive nature of ROE in peacekeeping today have the potential to create ethical and moral dilemmas for soldiers and their leaders deployed on peacekeeping operations. Faced by a choice between conscience and duty, and knowing that one of the underlying intents of the mission is to save lives, Canadian peacekeepers might choose to ignore ROE, in effect disobeying an order, in order to save the lives of non-combatants.

PEACEKEEPING OPERATIONS

A.R. Norton and T.G. Weiss have suggested that a peacekeeping operation is “the symbolic, seemingly even the theatrical, deployment of impeccably neutral military units which are interposed between belligerents and use force as an absolutely last resort in self-defence.”⁵ Stephen Hill and Shahin Malik have noted that peacekeeping was initially conceived as “a tool of conflict management, a means of preventing war in one part of the world drawing in the superpowers.”⁶ Thus the reasons for deploying military force to some far away corners of the world were pragmatic, to help contain and resolve the conflict before it could spread to neighbouring states, coupled with an underlying humanitarian desire to save lives. This is important to note, as it demonstrates that the root causes for deploying a peace support force were to stop conflict and to save lives.

Although peacekeeping missions generally have similar mandates, the mandates for other types of United Nations peace support operations (such as peace enforcement or peacemaking operations) vary widely from mission to mission. Some are non-violent in nature, and are intended to help opposing forces mediate the cessation of the conflict. Some require the deployment of well-equipped military forces whose purpose is to become more actively involved in the conflict, enforcing a peace settlement. The mandate for each mission is derived from the particular United Nations Resolution that provided the impetus for its creation. The type of mission is stated in the resolution, based on whether the mission has been approved under Chapter VI or Chapter VII of the United Nations Charter. Chapter VI

⁵ Norton and Weiss 26.

provides for the peaceful settlement of disputes, and provides the basis for classical peacekeeping missions.⁷ Chapter VII, especially under Article 42, provides for the more deliberate use of force “to maintain or restore international peace and security.”⁸ Therefore the mandate, and in particular which chapter of the UN Charter the mandate is based on, determine the character of each peace support mission.

It is necessary to differentiate clearly between the types of peace support operations for which the United Nations may wish to deploy military forces. Peacekeeping is “the deployment of interventionary forces to prevent an existing dispute from re-igniting”, and would be authorized under a United Nations Resolution based upon Chapter VI.⁹ Peacemaking is “proactive intervention to assist disputing parties to come to agreement”, and would most likely be authorized under a resolution based upon Chapter VII.¹⁰ Peacebuilding includes actions intended to assist “redevelopment after conflicts [are] resolved in order to deter their resurgence”, and might be authorized based upon either Chapter VI or Chapter VII, depending on the situation.¹¹ On one extreme, Chapter VI peacekeeping is pacific in nature, depending on the consent and good will of the warring parties for success. At the other extreme, Chapter VII peacemaking is more warlike in nature, where well-armed military forces operating under the aegis of a United Nations Resolution are prepared to fight to enforce a peace settlement. Peacebuilding is in the middle of this spectrum.

⁶ Stephen M. Hill and Shahin P. Malik, *Peacekeeping and the United Nations* (Aldershot, Hants: Dartmouth Publishing Company, 1996) xi.

⁷ Peter I. Hajnal, “Charter of the United Nations” in *Guide to United Nations Organization, Documentation and Publishing* (Dobbs Ferry, NY: Oceana Publications, Inc, 1978) 337.

⁸ Hajnal, 338.

⁹ Charles W. Kegley Jr., “Thinking Ethically About Peacemaking and Peacekeeping” in *Peacekeeping and Peacemaking* (New York, NY: MacMillan Press Ltd, 1998) 18.

¹⁰ Kegley 18.

¹¹ Kegley 18.

The established basic principles of Chapter VI peacekeeping have come to be accepted as “the need for consent, the neutrality of the force and the restriction on the use of force by peacekeepers.”¹² Peacekeeping forces are deployed on missions whose mandate is drawn from Chapter VI of the United Nations Charter and “are only authorized to use force in self-defence.”¹³ A.R. Norton and T.G. Weiss have stated that peacekeepers “must use force only as an absolutely last resort and in self-defence. Soldiers deployed as peacekeepers must walk a very fine line. Not only must they operate with impeccable neutrality, and exemplify military professionalism, but they must demonstrate restraint and self-control.”¹⁴ Therefore peacekeeping missions must have strict control over the use of force, as each use of force will have an effect on the situation. Each time force is used, the side which has had force used against it will accuse the UN force of actively intervening on behalf of the other side.

The advent of mass media emphasized the humanitarian dynamic mentioned earlier, as although the desire to save lives always existed within the United Nations, now public opinion could be mobilized by a media campaign designed to create support for a humanitarian effort. With backing from public opinion, the international community and individual countries could more frequently act upon their ideals to save lives. However, the pragmatic and humanitarian aspects of peacekeeping missions do not use the same instruments or methods, and their proponents often come into conflict.¹⁵ This conflict can arise when humanitarian aid is provided to one side in a conflict, and this is perceived by the other side to be overt support

¹² Kegley 208.

¹³ Kegley 240.

¹⁴ Norton and Weiss 26.

¹⁵ Hill and. Malik xi.

for their enemies by UN personnel (by extension including the peacekeepers). This will in turn create tension between the UN peacekeepers and one of the two belligerent forces. Military organizations, whose success and safety is absolutely dependent on their being perceived as a completely impartial force, fear that “the delivery of humanitarian aid in situations of political fluidity can jeopardize one of the fundamental precepts of UN Chapter VI operations: impartiality.”¹⁶ It has become accepted that impartiality is “essential for successful peacekeeping operations”¹⁷, because peacekeeping missions are not established or equipped to conduct military operations to force the compliance of either party in the dispute. Therefore one of the characteristics of peacekeeping forces deployed under a Chapter VI mandate is that they are very lightly equipped and armed only for self-defence.

Although each Chapter VI peacekeeping mission is distinct and separate, similarities occur from mission to mission. First, although numerous humanitarian and non-governmental organizations send people to work in conjunction with a particular peacekeeping mission, the majority of personnel deployed will be military. Secondly, the mission will espouse peaceful values, non-threatening in nature, and will restrict the amount of force it can apply in any given situation. History demonstrates that classical Chapter VI peacekeeping missions usually have restricted the use of force to self-defence.¹⁸ Thirdly, although each mission will have a specific purpose, the content of the mandate for a peacekeeping mission will be very similar from mission to mission. Finally, the context in which the Chapter VI peacekeeping operation takes place will be similar, as the parties to the conflict and the host-state must have

¹⁶ Hill and Malik 105.

¹⁷ Brian E. Urquhart “Reflections by the Chairman” in Indarjit Rikhye and Kjell Skjelsbaek’s *The United Nations and Peacekeeping* (London: The MacMillan Press Limited, 1990) 18.

¹⁸ Hill and Malik 15.

agreed to the deployment.¹⁹ This is important because it shows how a Chapter VI peacekeeping mission is dependent upon the cooperation and consent of the parties to the conflict for some of the conditions necessary for mission success.

As long as all warring parties have consented to the ending of the conflict and the insertion of a peacekeeping mission, a “self-defence only” limitation on the use of force by peacekeepers should not create major difficulties. However in some circumstances such as an intra-state conflict, where only the established government has consented to the peacekeeping force, or a conflict where the leaders of the warring factions agree to the force but are unable or unwilling to exert control over their forces, a “self-defence only” limitation on the use of force may create problems.²⁰ There is a conflict between the need to limit the use of force (required to ensure that the force is viewed as impartial) and the desire to stop acts of violence against non-combatants.

THE USE OF FORCE AND ROE

Dennis Jett suggests that “the use of force will vary from one multidimensional PKO [Peace Keeping Operation] to another because each requires its own rules of engagement depending on how it combines elements of the ... different types of operations”²¹. He also emphasizes that Chapter VI Peacekeeping depends on the strict impartiality of the peacekeepers and the non-use of force.²² It is accepted that peacekeeping forces must be

¹⁹ Hill and Malik 15 – 16.

²⁰ White 241.

²¹ Dennis C Jett, *Why Peacekeeping Fails* (New York: St. Martin’s Press, 1999) 18.

²² Jett 18.

viewed as impartial to be effective, and that one of the essential elements to being viewed as impartial is control of the use of force. A.R. Norton and T.G. Weiss, in their studies of past peacekeeping operations based on a pragmatic evaluation of what worked and what didn't, have stressed "the wisdom of strictly constrained rules of engagement for peacekeepers to avoid the liabilities inherent in the over-zealous use of force."²³ These liabilities stem primarily from the perception that the UN mission favours one side in the conflict and is actively intervening on their behalf. In a Chapter VI peacekeeping operation, which is dependent on the good will of both sides, this situation would be disastrous.

Nations that send soldiers to participate in peacekeeping missions limit their soldiers' use of force according to national policy, international diplomacy, and operational and legal concerns.²⁴ The legal considerations are primarily based on a number of guiding principles found in international law. Canada's doctrine governing the use of force during peace support operations is very similar to our major allies' doctrine. Canadian doctrine stipulates that force can only be applied when there is a reasonable belief that a threat exists that warrants the use of force. Although the situation plays a large part in how force is used, every effort to use negotiations, warnings, or other options should have been exhausted before force is used. No more than the minimum force required is authorized, and the amount of force applied must be proportional to the threat. Moreover, the use of force is to cease as soon as possible. All efforts must be taken to minimize escalation. Deadly force must be used only as a last resort. Collateral damage is to be minimized. The use of force in retaliation or reprisal is

²³ Norton and Weiss 28.

²⁴ Lieutenant-Commander Guy R. Phillips, "Rules of Engagement: A Primer" in *The Army Lawyer* (July 1993) 12.

prohibited.²⁵ The use of force is always subject to rule of law, and must be based on a reasonable belief that a threat exists that warrants the use of force. Each use of force is considered an individual event, where force is authorized, necessary, and based upon a tangible threat.²⁶ Regulations governing the use of force are clearly based on law, and intended to minimize the use of force.

How does a government ensure that the application of force is in accordance with these principles? The method currently used is through the issue of ROE. ROE are measures put in place by a national authority to control the military's use of force. Although ROE are based on legal principles, they are neither the law nor a subset of the law. Military lawyers provide expert advice concerning the legality of ROE, but ROE are developed and issued by the chain of command. In Canada's case the approval authority is the Chief of the Defence Staff, "whose authority is drawn from the Canadian government through the NDA, [and] controls the use of force by the CF by issuing specific use of force directives or orders. This written direction is based on the following two mechanisms: self-defence and ROE."²⁷ Therefore ROE provide peacekeepers with clear direction detailing when they may use force and when they may not. They highlight the limits soldiers should stay within, and have proven to be an effective control mechanism.

²⁵ *Canadian Forces Operations* (Ottawa, ON: Minister of Public Works and Government Services Canada, 2000) 5-2.

²⁶ *Use of Force in CF Operations* 1.

²⁷ *CF Operations* 5-7.

Therefore ROE provide direction for military personnel deployed on peacekeeping operations. ROE are legal orders, which must be obeyed unless manifestly unlawful.²⁸ If soldiers exceed the ROE, they are guilty of the military offence of contravening a military order.²⁹ At the more peaceful end of the spectrum of conflict, ROE are largely prescriptive in nature, forbidding the use of force in most situations other than in self-defence, and therefore force is rarely used. At the more warlike end of the spectrum of conflict, ROE are much more permissive, and the use of force is much more prevalent. Throughout the spectrum of conflict, ROE lay down the circumstances in which soldiers and commanders may use their weapons, in each case tailored specifically to meet the requirements of the particular mission.

In missions with a mandate based on Chapter VI of the UN Charter, the success of the mission is based upon appearing absolutely fair and impartial, and therefore the commander will not want to intervene in local events. The ROE will likely limit soldiers' use of their weapons to self-defence to avoid appearing to favour one side or the other. Missions with a mandate based on Chapter VII will take a much more active part in the conflict, proactively seeking to bring the conflict to an end, and will have fewer limitations placed on their use of force by their ROE. As ROE are developed based on the approved mandate for each mission (which is in turn based on a United Nations Security Council Resolution) it is absolutely essential that the mandate be correct. Good ROE will not make up for a flawed mandate. If the mandate is wrong, the ROE will be wrong, and the mission is very unlikely to succeed. Examples of missions with flawed mandates abound, and the cause of most UN mission failures can usually be traced back to an incorrect mandate.

²⁸ *Queen's Regulations and Orders Volume 1* (Ottawa, ON: Minister of Public Works and Government Services Canada) art 19.015.

ROE AND SELF-DEFENCE

ROE are designed to ensure the proper use of force in keeping with national policy. However, all nations are very clear in stating that their soldiers always retain the inherent right to use any necessary force in self-defence, which is in no way negated by the ROE in effect. It is important to be clear on this issue: self-defence is separate from, and not changed by, the authorized ROE. Use of force in accomplishment of the mission or any other situation other than self-defence is governed by the ROE, but peacekeepers always retain the right to defend themselves.

For example, the following Canadian Forces ROE that had been authorized for use in Bosnia in the late 1990s declared: “Self Defence. Nothing in the Op Palladium ROE limits your right to use force, up to and including deadly force, to defend yourself, others in your unit and friendly forces from an immediate threat of death or grave injury, leaving no other choice or time for deliberation.”³⁰ The concept of self-defence has also been given a wider interpretation by some nations, as shown by the American Joint Standing ROE, which cater for the use of force in the area of “National self-defence” (defence of America’s national interests), as well as the more familiar “Unit self-defence” and “Collective self-defence” (defence of friendly forces).³¹ Therefore, military personnel are entitled to use force in their own self-defence or in defence of other military personnel from the same nation. However,

²⁹ QR&O arts 1.21, 4.26, 19.01, 19.02.

³⁰ “The Law of Armed Conflict, Peace Support Operations and You” in *Dispatches* Volume 4, No.2, (Kingston, ON: Canadian Land Forces Command, 1997) 33.

³¹ Joint Chiefs of Staff Standing Rules of Engagement (CFC document, 1994) 3.

Canadian peacekeepers require a clear statement (such as the one presented above for the Canadians in Bosnia) before they could use force to defend non-Canadian military members of the peacekeeping mission or others.³² The authority to use force to protect friendly forces could also be placed as a separate ROE.

Canadian doctrine stipulates that “the principles of unit and national self-defence do not automatically apply to the defence of allied forces or foreign non-combatants.”³³ If other non-hostile forces or non-combatants should come under attack, Canadian military personnel may only use force to defend them if the appropriate ROE measures have been authorized, even if such a defence is an integral part of the mission.³⁴ This has obvious ramifications, especially in coalition operations, where our allies would certainly be concerned about a Canadian ROE which precluded using force in their defence. The doctrine is especially specific and clear concerning the defence of civilians, stating that “specific ROE must be authorized before Canadian forces may use all means up to and including deadly force to defend non-combatant civilians from attack.”³⁵ It is important to note that Canadian doctrine therefore implies that a situation might exist where soldiers deploy on a peacekeeping mission without the right to use force to intervene to protect non-combatants. This policy has been introduced to ensure that Canadian use of force is strictly controlled, to ensure that the success of the entire mission is not endangered by one impetuous act. However, A.R. Norton and T.G. Weiss argue that in certain circumstances, the ability to use force to protect non-combatants will be required, especially “in locales where savage violence reigns ... less

³² *Use of Force in CF Operations* art 201.3.

³³ *Use of Force in CF Operations* art 402.

³⁴ *Use of Force in CF Operations* art 402.

³⁵ *Use of Force in CF Operations* art 402.

restrictive guidelines would be required if peacekeeping forces were to be deployed.”³⁶ If ROE were not drafted to cater for the potential of violence against non-combatants, the soldier would be forced to weigh his obedience to ROE against the obvious and immediate use of force to stop violence. This crisis of conscience versus duty will be further discussed later.

A ROE’s limitation of the use of force solely to that of self-defence does not necessarily mean that the mission is destined to be bullied by the former belligerent forces that the peacekeeping mission is supposed to monitor. Canadian doctrine provides that peacekeeping forces have the right to hold and position defence, and states that “there is no requirement to retreat in order to avoid situations that justify the use of force in self-defence.”³⁷ Therefore, a peacekeeping force in a position which blocks a belligerent from attacking a non-combatant population is not forced by the pacific nature of its ROE to retreat, and may use force to defend itself if attacked. This is significant because it demonstrates how self-defence might be used to cover the gap left by inadequate ROE.

CHAPTER VI ROE

The nature of the problem concerning ROE revolves around a peacekeeping mission’s mandate. When deployed because of a United Nations Resolution based on Chapter VI, the mission will be lightly established and equipped, dependent on the respect and cooperation of both sides for its success, and in some cases for its survival. As has historically been the case for most Chapter VI missions, ROE will probably authorize the use of force solely in self-

³⁶ Norton and Weiss 28.

³⁷ *Use of Force in CF Operations* art 404.

defence.³⁸ There would undoubtedly be situations, like the hypothetical situation presented at the start of this paper, where the use of force to defend others or to stop criminal acts would be morally or ethically justifiable, but contrary to the issued ROE. In these cases, lives could be immediately saved by aggressive intervention, but the ROE preclude the use of force that may be essential to back up this action.

But as N.D. White indicated, the use of force can be like opening Pandora's Box, noting that "there is the danger that once a peacekeeping force is allowed to use force in defence of its purpose instead of simply in defence of its personnel, the action becomes an enforcement action."³⁹ After a Chapter VI mission has used force against one side in the conflict, that side will feel that the United Nations force has actively taken sides in the conflict, and is no longer impartial. The mission will have lost the respect, and probably the cooperation, that it must have to be effective, and its effort is doomed to failure.

Situations like those which arose during the United Nations Mission in Rwanda (UNAMIR) illustrate the need to be ready to "expand" the mandate should the need arise. When UNAMIR first deployed, it was to be a peacekeeping force, and was established and equipped as such. The mission soon found itself surrounded by genocide, and it was equipped to deal given its ROE and mandate. Actions taken by a peacekeeping force which are not authorized by the mandate lack legal support (they have not been agreed to by the United Nations, or promulgated in a United Nations Resolution). Sometimes, such as the genocide in

³⁸ Cdr Holly MacDougall, *Brief for the Commission of Inquiry into the Canadian Forces Deployment to Somalia on the Legal basis for Chapter VI and Chapter VII UN Sanctioned Operations* (Ottawa, ON: Department of National Defence/Canadian Forces, 1995) 2/5.

³⁹ White 242.

Rwanda, ethical and moral concerns may dictate that the original purpose of the mission is no longer possible, and the only workable options available to the UN are to revisit the mandate or withdraw the mission.

A different approach to drafting ROE could have diminished the need to either withdraw the force or revisit its mandate. The original ROE could have been designed so that some flexibility was included, with the possibility in mind that the force might have to deal with crimes against humanity. The ROE required to use force to prevent crimes against humanity (such as genocide), or to protect non-combatants (where the violence cannot be classed as genocide), or for mission accomplishment can be drafted but the approval of certain ROE not released to the operational headquarters. The onus would then be on the United Nations Headquarters to make changes to the mission mandate and ROE in a timely fashion, or withdraw the mission. As shown by the ill-fated mission in Rwanda, the United Nations have not always been effective in reacting to reports from the field, or requests that a force or mandate be revisited, due to misunderstanding or not believing the messages from the military commander.

A mission must have a set of ROE that would allow it to deal with violent acts against non-combatants, such as the Stabilization Force's (SFOR) mission in Bosnia in the late 1990s. By definition, SFOR was not a Chapter VI peacekeeping mission, and its ROE stipulated that "the use of force, up to and including deadly force, is authorized to prevent the commission of serious crimes by any individual who threatens to commit or is committing an act which could

cause death or grave injury.”⁴⁰ When this ROE came into effect, the United Nations mission went beyond peacekeeping, and entered the field of peace enforcement. Peace enforcement missions like SFOR have effectively acted to stop acts of violence such as the Bosnian ethnic cleansing.

THE ETHICAL DILEMMA

There will be some situations, such as civil wars, or guerrilla wars, where the nature of the conflict includes atrocities and other acts which could be characterized as war crimes, or possibly even genocide. William Durch and Barry Blechman have suggested that “it is not difficult to foresee many situations around the globe in which ethnic minorities, or indeed whole populations, might face severe repression, if not genocide, if not protected by outside powers.”⁴¹ Chapter VI peacekeeping missions deployed into a conflict such as this will likely witness atrocities that they are powerless to stop, shackled as they are by their ROE. They will be faced with an ethical dilemma similar to that encountered by UNAMIR.

In Rwanda, the military commander, Major-General Romeo Dallaire, foresaw the potential for war crimes occurring and asked that the Rwanda mission’s ROE include the authority to use force to prevent crimes against humanity. He had included “a rule specifically allowing the mission to act, and even to use force, in response to crimes against

⁴⁰ *Dispatches* 33.

⁴¹ Durch and Blechman 18.

humanity and other abuses.”⁴² He noted that there may “be ethnically or politically motivated criminal acts committed during this mandate which will morally and legally require UNAMIR to use all available means to halt them”⁴³, citing examples such as “executions, attacks on displaced persons or refugees.”⁴⁴ General Dallaire saw that if he was to be able to legally stop an impending massacre, he would need an ROE specifically authorizing his soldiers to use force to protect non-combatants.

The United Nations Headquarters either did not see the requirement for such ROE, or failed to respond to this request. When the mandate for UNAMIR was being approved, they did not have a procedure in place for the formal approval of draft Rules of Engagement. They did not respond officially to the mission’s requested ROE, which they considered guidelines, and when the mission deployed it “was under rules of engagement not to use force except in self-defence.”⁴⁵ Although it is uncertain exactly why the United Nations Headquarters did not subsequently respond, it is surmised that they did not believe the reports that they were receiving from General Dallaire, and wished to restrict his use of force.

The mission that deployed to Rwanda was doomed to failure because of a faulty appreciation of the task which led to deficient force structure and ROE, and a United Nations Headquarters which did not respond to information and requests from its mission commander. When violence began, Rwandan Tutsis and moderate Hutus flocked to UN encampments for protection. When UN forces later considered themselves incapable of protecting these

⁴² Ingvar Carlsson, Han Sung-Joo and Rufus M. Kupolati, *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda* (New York, NY: United Nations, 1999) n.pag.

⁴³ Carlsson et al n.pag.

refugees and withdrew, the refugees were left behind to be slaughtered by the waiting Hutu militia known as the Interahamwe.⁴⁶ Disturbingly, a later United Nations inquiry into the situation seemed to be more concerned about “the perception that the UN knowingly abandoned a group of civilians [that] has damaged trust in the United Nations severely” than the needless death of civilians whom the UN forces had abandoned.⁴⁷ This knowledge betrays a mentality more worried about the United Nations organization itself than about actually fulfilling the UN Charter and acting to save lives.

Kofi Annan quoted the philosopher Edmund Burke: “The only thing necessary for the triumph of evil is for good men to do nothing.”⁴⁸ When ROE prohibit soldiers from acting to stop crimes and violent acts, they force the inactivity described by Kofi Annan. The fact that a peacekeeping force will not intervene is rarely lost on a belligerent either, who rapidly will take advantage to settle old scores. The result will be as reported by Major-General Dallaire, who later wrote that “my force was standing knee-deep in mutilated bodies, surrounded by the guttural moans of dying people, looking into the eyes of children bleeding to death with their wounds burning in the sun and being invaded by maggots and flies.”⁴⁹ Thus, adherence to the ROE will have rendered the mission incapable of intervening, and ultimately ineffective.

The situation where ROE held soldiers inactive was not unique to Rwanda. In Haiti, restrictive American ROE created the situation where “the Haitian military and their civilian

⁴⁴ Carlsson et al n.pag.

⁴⁵ Carlsson et al n.pag.

⁴⁶ Carlsson et al n.pag.

⁴⁷ Carlsson et al n.pag.

⁴⁸ Kofi A. Annan, “Peacekeeping and National Sovereignty” in Jonathan Moore’s *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (Oxford: Rowman and Littlefield Publishers, 1998) 69.

thugs continued to ill treat and abuse Haitian citizens in full view of U.S. troops.”⁵⁰ In the early years of the Bosnia missions, ROE were very restrictive and confused. The belligerent forces repeatedly took advantage of this situation, such as when “the Bosnian Serbs swept a contingent of UNPROFOR aside in July 1995 when taking the safe area of Srebrenica.”⁵¹ Some of the most infamous atrocities committed in Bosnia followed the fall of Srebrenica. In all of these cases, over-restrictive ROE that were not suitable for the situation on the ground put the whole legitimacy and effectiveness of the UN mission in doubt.

In Haiti, a prompt decision was required to determine if the mission would continue to simply observe, document, and report what was taking place, or would the peacekeeping force actively intervene to alleviate the plight of victims: “The mission adopted the latter course, embarking on a strategy it called ‘active observation.’”⁵² A change to the mission’s ROE was required so that the peacekeeping force could intervene, and the mission continued.

When soldiers are forbidden by overly restrictive ROE to intervene to stop violence against non-combatants, they face an ethical dilemma. The mission that they are serving on has deployed to a area to stop conflict and ultimately save lives. Yet before their eyes they see violence that their orders forbid them to use force to stop, and they see innocent people being killed while their ROE keeps them from intervening. The soldiers are faced with an ethical dilemma where they must choose between obeying orders or the dictates of their conscience. There is no automatic easy decision to be made here. Every person considers the

⁴⁹ Romeo A. Dallaire, “End of Innocence: Rwanda 1994” in Jonathan Moore’s *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (Oxford: Rowman and Littlefield Publishers, 1998) 81.

⁵⁰ Colin Granderson, “Military-Humanitarian Ambiguities in Haiti” in Jonathan Moore’s *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (Oxford: Rowman and Littlefield Publishers, 1998) 109.

orders he or she receives before the orders are carried out, although in some cases the answer is so obvious that the carrying out of the orders seems automatic. Military training does not turn individuals into mindless automatons, and when the life of a person is involved, there will always be a quick consideration of what to do. When the obviously correct answer, to take immediate action to save lives, is not permitted by ROE, the dilemma is created. In many cases, peacekeepers obey their ROE and must deal with the consequential guilt for the rest of their lives. In some cases, peacekeepers have acted aggressively despite their ROE, sometimes to good effect and sometimes not. The fact that someone contravened an order would sometimes (but not always) lead to disciplinary action, depending on the circumstances surrounding the act, and the outcome of the intervention.

ROE should be written so that this dilemma can not occur. This can be accomplished by ensuring that the ROE and mandate have been accurately conceived and accurately matched to the situation on the ground (a good example of this would be the Stabilization Force mission in Bosnia). The implication included in Canadian doctrine (that peacekeeping missions can deploy without the ROE required to protect non-combatants) must be clarified. Recent peacekeeping missions have all included ROE allowing soldiers to intervene to protect non-combatants. This ROE is an absolute requirement, as if the ROE and mandate mismatch does occur, the individual soldier may resort to the use of his inherent right to self-defence to solve the dilemma.

⁵¹ White 243.

⁵² Granderson, 105.

THE PEACEKEEPER'S RIGHT TO SELF-DEFENCE

Military personnel deployed on United Nations operations retain the right to defend themselves. However, under certain circumstances, where these same personnel are forbidden by their ROE to use their weapons to stop violent crimes being perpetrated against non-combatants, they face an ethical dilemma: do they obey the orders restricting their use of force (the ROE) or do they obey the knowledge that it is a human imperative to intervene and stop violence when they have the means to do so?

The right to self-defence introduces another factor into this equation; modern soldiers are clearly aware that they may use force to protect themselves. If a group of soldiers see a crime being committed or about to be committed in front of them, all they need to do is intervene by use of a simple protest or their own physical positioning, both of which may legally be done, without the use of force. Should the soldiers feel that there is a real threat to their safety, they may then use force to defend themselves. Although the chain of command may feel that this use of “pseudo-self-defence” may be escalating the overall situation, there is little that can be done to stop the above type of occurrence before the fact. However, soldiers should not have to resort to the use of pseudo-self-defence to solve the ethical dilemma. As mentioned previously, recent peacekeeping missions have included ROE allowing soldiers to use their weapons to prevent crimes against humanity, and these should be standard ROE for all peace support missions. As long as the mandate is correctly matched to the situation on the ground, and the ROE properly derived to support the mandate, soldiers should not be faced with the proposed dilemma. Indeed, reports of peacekeepers having to use their

weapons in self-defence may prove to be strong indicators that the mandate or ROE are not appropriate and should be revisited.

It is essential that the use of pseudo-self-defence not be permitted to occur. The mandate must be appropriate for the situation on the ground, and the ROE must support the mandate and cater for the possibility that soldiers may need to use their weapons in situations that are not self-defence. If the mandate, situation on the ground, and ROE do not match, the ethical dilemma described in this paper may occur, and the mission will be on the road to failure.

CONCLUSION

The need for a peacekeeping force to be viewed as impartial has led to severe restraints being placed on the use of force. These restraints have been formalized as ROE, which are approved nationally. The relationship between a United Nations peacekeeping mission's mandate, the ROE which are developed to support that mission, and the actual environment in which a soldier might be called upon to use force must be very close. The mandate must be based on a realistic appraisal of the actual situation, and the ROE must be crafted based on the mandate and clear knowledge of the challenges the peacekeeping force will face. A combination of rigid restraints on the use of force and the high potential of violence against non-combatants inherent in some missions will create an ethical dilemma for peacekeepers. The nature of the dilemma will boil down to a decision to follow the orders concerning the use of force (ROE) or intervene to stop obviously violent and criminal activity.

Soldiers always retain an inherent right to use force to defend themselves, which can be extended and manipulated to justify intervention in situations where the ROE actually forbid the use of force. Amendment of Canadian doctrine to remove the possibility that missions may deploy without the ability to intervene to stop violence against non-combatants, combined with the crafting of ROE appropriate for the situation, will remove the potential ethical dilemma that soldiers may face. This will greatly decrease the probability of soldiers making use of “pseudo-self-defence”, and will greatly simplify the already too complex situation found in all peace support missions.

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