LAWYERING PEACE

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CHAPTER 1: SECURITY ARRANGEMENTS

CHAPTER ONE: SECURITY

INTRODUCTION

The need to restore security and rebuild the security infrastructure in a post-conflict state is of paramount importance for ensuring a durable peace. Nearly all recent conflicts (30 of 33) were intra-state conflicts with non-state armed actors eroding the monopoly of force held by the state.[1] As such, over 75 percent the post-1989 peace agreements contain detailed provisions relating to the restoration of security, and in particular the re-establishment of a state's monopoly of force. In those agreements which did not contain security provisions, the issue of security was usually addressed in supplementary agreements.[2]

During the peace process, including during peace negotiations, a variety of security related topics are confronted, including, peace enforcement; ceasefires; peacekeeping; disarmament, demobilizations and reintegration (DDR); security sector reform (SSR); peace building; and the restoration of a state's monopoly of force.[3]

As noted in the Introduction, each chapter undertakes a detailed exploration of one dimension of a broader set of issues needing resolution to achieve a durable peace. Under the umbrella of restoring post-conflict security, this chapter focuses on the conundrums related to re-establishing a monopoly of force. The lessons learned from the negotiation and design of provisions formulated to facilitate the re-establishment of a state's monopoly of force, are broadly applicable to the other security related topics addressed during peace negotiations.

In brief, the monopoly of force relates to the state's exclusive right and ability to control and oversee the legitimate use of violence within its borders. Prior to the negotiation of a peace agreement, a state often shares its monopoly of force with international actors, such as United Nations peacekeepers, to facilitate bringing about an end to the conflict. A state may then continue to share this monopoly of force with the same or different international actors during the initial stages of peace agreement implementation. This sharing of a monopoly of force by the state may be initiated by the state, or may be to a degree forced upon the state. The sharing of a monopoly of force will be addressed first in this chapter, followed then by a discussion of peace agreement provisions designed to facilitate the re-establishment of a state's monopoly of force.

When properly negotiated and implemented, monopoly of force provisions can be key to ensuring a durable peace. A recent study examining peace agreements at the end of the 20th

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[1] *See* Stockholm International Peace Research Institute, *SIPRI Yearbook 2008: Armament, Disarmament and International Security* (OUP, 2008) 72

[2] Lotta Harbom, Stina Högbladh, and Peter Wallensteen, 'Armed Conflict and Peace Agreements' (2006) 43(5) Journal of Peace Research 617, 623-624 (144 total agreements (1989-2005) recorded in the Uppsala Conflict Data Set. 44 had disarmament provisions. 23 included the deployment of peacekeepers. 38 called for the integration of armed forces.)

[3] For more information on security arrangements in post-conflict contexts and peace processes, *see generally* Craig Valters et al., 'Security in Post-Conflict Contexts: What Counts as Progress and What Drives It?' (Overseas Development Institute, Apr. 2014); Alan Bryden et al., 'Shaping a Security Governance Agenda in Post-Conflict Peacebuilding' (Geneva Centre for the Democratic Control of Armed Forces, Nov. 2005); 'Security Arrangements Before, During, and After Negotiations' (Berghof Foundation, Oct. 2012); Rolf Schwarz, 'Post-Conflict Peacebuilding: The Challenges of Security, Welfare, and Representation (2005) 36(4) Security Dialogue 429-446

century found that states were able to avoid a break down in the agreement and return to conflict in 87 percent of the cases where they had fully implemented the provisions relating to the re-establishment of a state's monopoly of force.[4]

This chapter addresses a number of conundrums related to re-establishing the monopoly of force that parties face during peace negotiations and the broader peace process. First, this chapter discusses the puzzle of whether and how to create a state-held monopoly of force in a manner that ensures a durable peace. Next, the chapter provides a conceptual and legal primer for understanding the principle of sovereignty, as well as the international framework for the authorization of the use of force centered around the UN Charter. Then, the chapter explores a number of instances of key state practice to analyze and highlight how parties involved in peace negotiations have sought to manage the conundrums they faced when seeking to solve the puzzle of re-establishing the monopoly of force.

The Puzzle: Whether and how to create a state-held monopoly of force in a way that ensures a durable peace.

Prominent political theorists have espoused the idea of a "monopoly of force" as a key determinant of statehood. Max Weber famously defined states as "the form of human community that (successfully) lays claim to the monopoly of legitimate physical violence within a particular territory."[5] In doing so, Weber drew on a rich tradition of social contract theorists. In the *Leviathan*, Hobbes theorizes that a commonwealth must join together under the authority of a sovereign who is empowered "to do whatsoever he shall think necessary to be done, both beforehand, for the preserving of Peace and Security, by prevention of discord at home and Hostility from abroad."[6] For these political theorists, it is the common power of the sovereign that allows individuals to exist securely in a shared social condition, which in turn grants the sovereign a monopoly on the legitimate use of force.

This theoretical basis has informed much of the modern literature on the practice of peacebuilding, which generally views a monopoly of force by the state as the ideal to be pursued during peace negotiations.[7] With a monopoly of force by the central government, the state exercises control over its armed forces, police forces, and other security institutions without rival groups competing for control of such institutions. Even though a federal state may set up a system in which certain provinces maintain their own police forces or state units of a national guard, it is government entities rather than rival factions that control these forces.

Creating a monopoly of force for the state can be quite difficult, particularly in the aftermath of intrastate conflict. While the government or mediators may envision the creation or

[4] David A. Backer, Rai Bhavnani, and Paul K. Huth, 'Peace and Conflict 2016' (Routledge, 2016) 94 (There were 16 total agreements in this period with civil war recurrence avoided in seven out of the eight in which the provisions were fully implemented.)
[5] Max Weber, *The Vocation Lectures* (Rodney Livingstone, David Owen and Tracy B. Strong (eds), Hackett Publishing Company, 2004) 33
[6] Thomas Hobbes, *Leviathan* (Edward White and David Widger (eds), Project Gutenberg EBook, last updated 25 January 2013) Chapter X7, Part II
[7] Benjamin Brast, 'Liberal Statebuilding Interventions and the Monopoly on Violence' (PhD in Political Science thesis, Bremen International Graduate School of Social Sciences, 2015) 25

restoration of a state's monopoly of force, the non-state armed actors are unlikely to readily or immediately agree.

For instance, in 2015, UN Envoy Jamal Benomar sought a negotiated solution to the crisis in Yemen. The negotiations failed for a number of reasons, not the least of which was that none of the half a dozen heavily armed non-state actors engaged in combat and competing for political power could conceive of granting any other party, especially not the government, a monopoly of force.[8] The UN security experts presented the UN Envoy with a textbook draft security annex which set forth a traditional state-centric monopoly of force plan. Among other things, it required that the members of the Houthi militia would either disarm or integrate into the national army.

The Envoy responded by politely suggesting that they walk out to the front gates of the Movenpick hotel, where the Envoy's team was housed, and present their plan to the Houthi militia forces, which only days before had routed the Government forces, occupied the capital city, Sana'a, and were now manning security checkpoints throughout the capital, including the one in front of the Movenpick, to protect against attacks by Al Qaeda and other forces.

With the increasingly multidimensional nature of conflicts, a proliferation of non-state armed actors is often involved in the negotiation process. Frequently, there are no clear "winners" when a conflict "ends," which makes it difficult for negotiators to identify a single party that all can agree should acquire a monopoly of force. In cases of extremely devastating civil wars, there may not even be a viable state remaining. In 2014, the Bertelsmann Transformation Index reported that only about half of countries in the midst of a post-conflict transition had re-established a full monopoly of force, with approximately 40 percent having succeeded in only establishing a partial monopoly of force, and the remaining ten percent having no monopoly of force at all.[9]

To restore the conditions under which a state-held monopoly of force might be possible, states may decide to share force with international or regional actors. The most common source of support comes in the form of peacekeeping forces. These forces may arrive before and/or after a comprehensive peace agreement, but in each case the state will need to navigate whether and how to consent to their presence, agree upon a mandate for those forces, and share its claim to legitimate force until a durable peace is secured.

After sufficient conditions of peace are restored (often with international and/or regional support) and ongoing violence no longer poses an overt challenge to the state's monopoly of force, the state and non-state actors can viably explore what form a future monopoly of force should take. Even if there is an evident choice for which group will claim the monopoly, there is frequently deep mistrust among the parties. This animosity makes "losing" parties less willing to relinquish their ability to use force. This is especially true of cases where the state's forces have committed atrocity crimes, decreasing the willingness of the non-state armed actors to recognize the state's claim to legitimate violence. In general, given that non-state armed actors come into

[8] *See generally,* Laura Kasinof, 'Why the World Missed Yemen's Downward Spiral' (Foreign Policy, 20 Apr. 2015)
[9] Benjamin Brast, *supra* note 7, at 25

being specifically to challenge the state's monopoly of force, they are unlikely to readily concede a full return to a state monopoly of force.

Given the reluctance of the parties to agree to a rapid re-establishment of a state's monopoly force, parties have often developed hybrid approaches that balance the interest of parties in maintaining some level of armed forces in the interim with the state's interest in building integrated national level forces for the long term. The conundrums discussed later in this chapter explore how the parties navigate these conflicting security interests revolving around the re-establishment of a state's monopoly of force.

Conceptual and Legal Primer

The conceptual and legal primer for understanding negotiations relating to the sharing and/or re-establishing a monopoly of force draws heavily from the principle of sovereignty, as well as the international framework for the authorization of the use of force centered around the UN Charter.

Sovereignty

From the perspective of a state, every peace negotiation is grounded in the precept that the state has absolute sovereign control over its territory and is entitled to operate independently of the influence of other states.[10] These foundational principles of sovereignty, political independence and territorial integrity were recognized as early as the seventeenth century in the peace treaties of Westphalia,[11] and codified in the UN Charter.[12] These three principles are appropriately and jealously guarded by states, as is explored in greater depth in the subsequent chapter on external self-determination.

States consider that the principle of sovereignty grants them the exclusive right to use force within the territory of their state. As such, in all but the rarest cases, a state must consent to the deployment of peacekeepers and international monitoring or assistance missions that operate on its territory. The requirement of consent permits a state to negotiate the timeline, rules of engagement and/or standard operating procedures of a peacekeeping or observer mission. These provisions are often included within a Status of Forces Agreement, or within a negotiated annex to a Security Council resolution, or a similar resolution by a regional body, authorizing the deployment of a force.[13] The host-state's consent is revocable, however, thus states may, and occasionally do, terminate the sharing of its monopoly of force early.

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[10] Sovereignty is defined in public international law as "the basic international legal status of a state that is not subject, within its territorial jurisdiction, to the governmental, executive, legislative, or judicial jurisdiction of a foreign state or to foreign law other than public international law." *See* Helmut Steinberger, 'Sovereignty,' *Max Planck Institute for Comparative Public Law and International Law, Encyclopedia for Public International Law* (1987) vol 10, 414

[11] 'Providing Security in Times of Uncertainty: Opting for a Mosaic Security System' (Monopoly on the Use of Force 2.0?, Report of the Global Reflection Group, Friedrich Ebert Stiftung, 2017) 2

[12] Charter of the United Nations Nations ["U.N. CHARTER"] (San Francisco, 26 June 1945), 3 Bevans 1153, 59 Stat. 1031, T.S. No. 993, entered into force 24 Oct. 1945, Ch. I, art. 2(1, 4, 7)

[13] Sofía Sebastián and Aditi Gorur, 'U.N. Peacekeeping & Host-State Consent: How Missions Navigate Relationships with Governments' (Stimson Center 2018) 13, 15

From the perspective of a state, under the principle of sovereignty, non-state armed actors operating in a state's territory do not have the right to maintain armed forces absent the consent of the state. During negotiations to end an intrastate conflict, states without exception refer to the principle of sovereignty to justify the restoration of a monopoly of force. In contrast, for a non-state armed actor, the negotiation begins from the starting point that the state has abused its sovereign rights and it is now necessary to affect regime or territorial change, or to subject the state to the political supervision of an international actor prior to re-establishing any monopoly of force for the state.

United Nations Charter

The Charter of the United Nations sets forth the purposes and authorities of the organs of the United Nations.[14] The various powers and authorities of the UN and its subsidiary bodies are often invoked and relied upon to authorize the sharing of the monopoly of force with international actors during the peace process, which may occur before and/or after the negotiation of a peace agreement.

In Chapters VI, VII, and VIII, the UN Charter grants broad authority for both the peaceful and the forceful resolution conflicts that threaten international peace and security.[15] This authority includes preventing conflict recurrence, preventing cross-border spill over, post-ceasefire stabilization and monitoring, assistance implementing peace agreements, as well as governance support to post-conflict administrations.[16]

While most United Nations missions are often referred to in a catch-all way as "peacekeeping" missions, it is worth distinguishing between four different types of UN missions: peacemaking, peacekeeping, peace enforcement, and peace building. The UN's 2008 Capstone Doctrine defined peacemaking as the "measures to address conflicts in progress," typically involving diplomacy and negotiations to bring armed parties to the table.[17] Whereas peacekeeping is "a technique designed to preserve the peace, however fragile, where fighting has been halted, and to assist in implementing agreements achieved by the peacemakers."[18]

Peacekeeping can be preceded or supplemented by peace enforcement, which features "the application, with the authorization of the Security Council, of a range of coercive measures, including the use of military force […] to restore international peace and security in situations where the Security Council has determined the existence of a threat to the peace, breach of the peace or act of aggression."[19] While peacekeeping missions can be authorized both under Chapter VI and Chapter VII, peace enforcement missions are typically authorized under the UN Security Council's Chapter VII authority. While peacekeeping missions are universally bound

[14] U.N. CHARTER
[15] Paul Williams and Michael Scharf, 'The Letter of the Law' in Ben Cohen and George Stamkoski (eds), *With no Peace to Keep…United Nations Peacekeeping and the War in the Former Yugoslavia* (Grainpress, 1995) 34, 35
[16] United Nations Peacekeeping, 'Mandates and the Legal Basis for Peacekeeping'
[17] UN Department of Peacekeeping Operations, 'United Nations Peacekeeping Operations: Principles and Guidelines' ("Capstone Doctrine") (18 Jan. 2008) Part I, Ch. 2, pp. 17
[18] Capstone Doctrine Part I, Ch. 2, pp. 18
[19] *Id.*

by host state consent, peace enforcement operations may occasionally occur in the absence of consent.[20]

Each of these three variants of "peacekeeping" are complemented by peace building, which "involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundation for sustainable peace and development."[21] Peacebuilding efforts underlie or are woven into almost every conundrum addressed in this book. The conundrums addressed in this chapter, however, will focus primarily on peacekeeping and peace enforcement to hone in on how states and the UN rely upon its legal authority to use force to share and/or re-establish a state's monopoly of force.

Chapter VI

Chapter VI of the UN Charter addresses the peaceful resolution of disputes and provides the legal authority for the UN to assemble, fund, and deploy military forces of its member states under the command of the United Nations.[22]

UN peacekeepers authorized under Chapter VI mandates are not authorized to use force to resolve the dispute, but they can undertake a number of missions related to the peace process. These include: implementing a ceasefire in order to create the conditions necessary for the parties to negotiate a peace agreement; assisting with the implementation of a peace agreement; protecting civilians; monitoring disarmament, demobilization, and reintegration; supporting security sector reform; creating conditions for a safe, free and fair elections; and otherwise aiding with the restoration of the full monopoly of force to the state.[23]

There is some legal debate over the binding nature of Chapter VI resolutions. Article 25 within Chapter V of the UN Charter provides the Security Council the power to pass legally binding resolutions, denoting that "[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."[24] Legal scholars disagree however, as to whether or not Article 25 is sufficient to render a UN Security Council resolution, such as those implicitly taken under Chapter VI, binding without also invoking the further enforcement authority that comes in Chapter VII.[25] The predominant consensus is that Article 25 does apply to more than just Chapter VII resolutions.[26] Interestingly,

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[20] *Id.* at 34-35
[21] *Id.* at 18
[22] U.N. CHARTER, Ch. VI, arts. 33-38.
[23] 'United Nations Peacekeeping Operations: Principles and Guidelines' (UN Department of Peacekeeping Operations, 2008) 1.4, 2.3, 2.4
[24] U.N. CHARTER, art. 25.
[25] Marko Divac Öberg, 'The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ' (2005) 16 European Journal of International Law 879, 885; Kwadwo Appiagyei-Atua, 'United Nations Security Council Resolution 1325 on Women, Peace, and Security—Is it Binding?' (2011) 18(3) Human Rights Brief 1, 2-6
[26] This reading was codified in the International Court of Justice's 1971 opinion on South Africa's presence in Namibia. The International Court of Justice found that: "Article 25 is not confined to decisions in regard to enforcement action but applies to 'the decisions of the Security Council' adopted in accordance with the Charter. Moreover, that Article is placed, not in Chapter VII, but immediately after Article 24 in that part of the Charter

when the Security Council acts under Chapter VI, it does not cite Chapter VI in the language of the resolution.[27]

Chapter VII

Chapter VII addresses the United Nation's ability to respond to threats to international peace and security.[28] In the case that peaceful measures fail to pacify the threat, Article 42 grants the Security Council the power to "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."[29]

The UN Charter recognizes that there are limits to a state's claim to sovereignty. In Article 2, the Charter specifies, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state […] but this principle shall not prejudice the application of enforcement measures under Chapter VII."[30] In this way, Chapter VII provides legal authority to interfere with a state's sovereignty in order to restore peace and security.

In earlier years, the Security Council did not explicitly invoke Chapter VII in its resolutions—mirroring its omission of references to Chapter VI. The authority to intervene was taken to be understood from the context of the conflict and substance of the clauses in the resolution. As member states sought to add greater clarity and emphasis to Security Council resolutions that called upon the heightened authority present in Chapter VII, they increasingly added the phrase, "acting under Chapter VII," to these resolutions—particularly those that authorized peace enforcement.[31]

In July of 1950, the UN authorized the use of force by member states to repel the armed attack by North Korea against South Korea, and to "restore international peace and security in the area."[32] The UN did so in response to a request by South Korea to share its monopoly of force in order to defend itself from the attack by North Korea. In a subsequent resolution, the UN Security Council recommended that all states providing military assistance to South Korea do so under the unified command of the United States. The United States was authorized to use

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which deals with the functions and powers of the Security Council. If Article 25 had reference solely to decisions of the Security Council concerning enforcement action under Articles 41 and 42 of the Charter, that is to say, if it were only such decisions which had binding effect, then Article 25 would be superfluous, since this effect is secured by Articles 48 and 49 of the Charter." *Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia*, Advisory Opinion, I.C.J. Rep. 1971 (June 21) art. 113

[27] Capstone Doctrine Part I, Ch.1, pp. 13-14 ("United Nations peacekeeping operations have traditionally been associated with Chapter VI of the Charter. However, the Security Council need not refer to a specific Chapter of the Charter when passing a resolution authorizing the deployment of a United Nations peacekeeping operation and has never invoked Chapter VI.")

[28] *See generally,* Giandomenico Picco 'The U.N. and the Use of Force' (Foreign Affairs, Sept./Oct. 1994)

[29] U.N. CHARTER, art. 42

[30] *Id.* at art. 2(7)

[31] 'Security Council Action Under Chapter VII: Myths and Realities' (Security Council Report, 23 Jun. 2008)

[32] S.C. Res. 83, U.N. SCOR, 5th Year, Resolutions and Decisions of the Security Council, 1950, U.N. Doc S/1511 (1950)

the UN flag at its discretion in the course of the operations.[33] Under this arrangement, the UN maintained close contact with the American command, but did not exercise any control over the action of those forces.

In 1960, the Security Council underwent a significant expansion in the authorization it granted its own peacekeepers to use force, beginning with the United Nations Operation in the Congo that authorized the "use of force, if necessary, in the last resort."[34] The Security Council expanded this power further when granting missions in Cyprus and Lebanon the authority not only to use force in self-defense, but also in "defense of the mission." Eventually, the legal permission for the use of force was expansive enough that missions could use all necessary powers to defend their force, and to implement their mandate.[35]

As illustrated below, in the case of Kosovo, the Security Council invoked Chapter VII to provide the legal authority to entirely exclude a state's claim to monopolize force. UN Security Council Resolution 1244 placed Kosovo (at the time a province of Serbia) under UN interim administration and authorized NATO forces to maintain the peace and security. The resolution excluded all Serbian forces from the territory of Kosovo and called for the immediate withdrawal of all forces extant in the region.[36]

Chapter VIII

Chapter VIII addresses the relationship between UN forces and those of regional bodies in peace operations. Article 52 first clarifies that action by the Security Council does not prohibit the pacific settlement of disputes by regional entities.[37] Such action is in fact encouraged, provided that it is done in a manner that is consistent with the principles of the UN Charter.

In cases in which the Security Council is authorizing a peace operation, Article 53 also permits the Security Council to "where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority."[38] The UN may thus use Chapter VIII to call upon regional bodies to support peace keeping or peace enforcement measures. As we will see below, the UN is increasingly authorizing peacekeeping and peace enforcing missions by regional bodies such as NATO, OSCE, the Economic Community of West African States, and the African Union.

KEY STATE PRACTICE

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[33] *Id.*
[34] S.C. Res. 161, U.N. SCOR, 16th Year, Resolutions and Decisions of the Security Council, 1961, U.N. Doc S/RES/161 (1961)
[35] Trevor Findlay, *The Use of Force in UN Peace Operations* (Stockholm International Peace Research Institute, Oxford University Press 2002) 87, 125 (To track the evolution of the scope of the mandate of peacekeeping forces from one of the non-use of force except in self-defense, to a scope that allowed for the use force in the defense of the mandate, including civilian populations, in an effort to create the conditions necessary for a peace process *see* 'Report of the Panel on United Nations Peace Operations,' GAOR, 55th Session, at viii-ix, U.N. Doc. A/55/305 (2000))
[36] S.C. Res 1244, U.N. SCOR, U.N. Doc S/RES/1244 (1999) para. 3
[37] U.N. CHARTER, art. 52
[38] *Id.* at art. 53

This chapter draws on the following key state practice cases for a discussion of the various conundrums the parties to a peace negotiation face when confronting the puzzle of post-conflict security. The paragraphs that follow highlight the relationship between each peace process and the sharing or re-establishment of a monopoly of force. For more on these conflicts, negotiations, and agreements, consult the Appendix.

Angola achieved independence via the 1975 Alvor Agreement between Portugal and the Angolan Liberation Movements.[39] The failure of the power-sharing arrangement included in the Alvor Agreement plunged Angola into a decades long civil war.[40] In 1991, the opposing forces signed a ceasefire agreement, the Bicesse Accord. The Accord provided for the creation of a monopoly of force through the immediate integration of the state security forces and non-state armed actors.[41] This effort failed, in part due to the compressed timeline for creating the monopoly of force through a merger of the forces.[42] In 1994, the parties signed the Lusaka Protocol, which called for a ceasefire, the sharing of the monopoly of force with a UN peacekeeping mission, and the consolidation of forces into a single national army.[43] After three iterations of a UN presence, which evolved from observing and monitoring to peacekeeping, Angola requested in January 1999 that the peacekeeping forces withdraw.[44] In 2002, the Angolan forces defeated the non-state armed actors, and the parties signed the Luena Memorandum of Understanding, bringing an end to the armed conflict.[45]

In 1992, in the midst of the violent dissolution of the former Yugoslavia, the UN Security Council established the UN Protection Force (UNPROFOR) with the consent of the parties to the conflict. The force was initially intended for **Croatia** but soon after expanded to include **Bosnia and Herzegovina** as well as **Macedonia.**[46] The UN force's confusing and ever-changing mandate, frequently characterized as a "Chapter VI and a half" repeatedly failed to adequately protect civilians. As violence peaked in 1995, the international community, acting under Chapter VII, decided to intervene and essentially assume near total control over Bosnia's monopoly of force, with NATO authorizing airstrikes designed to bring about an end to the conflict by forcing the Serbian forces into a genuine negotiation process.[47] In November 1995, the parties signed the Dayton Peace Accords.[48] The accords provided for the deployment of a NATO led Implementation Force (IFOR), and a UN Civilian Police Force to enforce the peace agreement. The agreement granted NATO forces near total control over Bosnia's monopoly of force. The Dayton Accords also created a domestic military structure in which each of the Entities (the

[39] The Alvor Agreement Between Portugal and the Angolan Liberation Movements ["Alvor Agreement"] (Alvor, 15 Jan. 1975) *in* 'Decolonization' (United Nation Department of Political Affairs, Trusteeship and Decolonization, Mar. 1975) Vol. II, No. 4, 17-28
[40] 'Angola: Civil War' (The World Peace Foundation at the Fletcher School, 7 Aug. 2015)
[41] Peace Accords for Angola (Lisbon, 1 May 1991), People's Republic of Angola and UNITA, U.N. SCOR S/22609, Attachment IV, §III, art. 3.1-3.2, §VI.A., art. 1
[42] 'Angola: Civil War' (The World Peace Foundation at the Fletcher School, 7 Aug. 2015); Peace Accords for Angola (Lisbon, 1 May 1991), People's Republic of Angola and UNITA, U.N. SCOR S/22609
[43] Lusaka Protocol, Government of the Republic of Angola and UNITA (Lusaka, 23 Jul. 1999)
[44] S.C. Res. 1229, U.N. SCOR, U.N Doc. S/RES/1229 (1999)
[45] Luena Agreement, Government of the Republic of Angola and UNITA (26 Apr. 2002)
[46] 'Former Yugoslavia: UNPROFOR' (United Nations Department of Public Information, Sept. 1996)
[47] Ivo H. Daalder, 'Decision to Intervene: How the War in Bosnia Ended' (The Brookings Institution, 1 Dec. 1998)
[48] The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton, 21 Nov. 1995)

Federation of Bosnia and Herzegovina, and the Republika Srpska) would in the interim maintain a separate army.[49] In 2005, a decade after the signing of the Dayton Accords, the three armies established a joint command at the national level and a national Ministry of Defense.[50]

Burundi experienced severe ethnic violence, including massacres of Hutus in 1972 and 1988, and of Tutsis following the 1993 murder of then President Ndadaye.[51] Years of negotiations eventually produced the Arusha Peace and Reconciliation Agreement in August of 2000, which outlined a power-sharing agreement but did not include a ceasefire. Hutu rebel groups, declined to sign the Arusha Agreement. Nevertheless, the security and defense forces integration agreements outlined in the Arusha Agreement became the foundational basis for subsequent efforts to re-establish a monopoly of force. The Transitional Government of Burundi was established in November 2001, which subsequently negotiated a joint ceasefire in 2002, as well as separate ceasefires with the non-state armed actors. Beginning in October 2003, the African Union Mission in Burundi supported the implementation of the Arusha Agreement and agreed to share Burundi's monopoly of force via monitoring of these ceasefires. In June 2004, this shared monopoly of force was transferred to a UN peacekeeping mission.[52]

Shortly after declaring independence from Portugal, **Mozambique** descended into civil war.[53] Domestic devastation plus declining international support eventually motivated the parties to sign the 1992 General Peace Agreement. The agreement established a permanent ceasefire, and provided for the re-establishment of the monopoly of force through the joint-creation of a new national Mozambican Defense Force, and the disarmament and demobilization of all other units.[54] The agreement also provided for a sharing of force with UN forces that would monitor the implementation of the General Peace Agreement. Peace held for two decades, until violence erupted again in 2013 and the non-state armed actors declared the 1992 agreement invalid.[55] New agreements between the parties in 2014 and 2019 promised a permanent ceasefire and new governance structures.[56]

From 1988 to 1998, the **Bougainville** Revolutionary Army fought an armed conflict for their right to secede, both against the **Papua New Guinea** Defense Force and against Papua New Guinea's proxy force, the Bougainville Resistance Forces. In 2001, the parties signed the Bougainville Peace Agreement, which granted Bougainville autonomous status under the newly established Autonomous Bougainville Government. The agreement provided for a referendum to be held on Bougainville's political status in 10 to 15 years. Until then, the parties agreed to cease the use of force, and restore the national government's monopoly of force. The parties also

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[49] *Id.* at Annex 4, art. V.10.a
[50] 'Ministry of Defense and the Armed Forces of Bosnia and Herzegovina: Brochure 2015' (Public Relation Office of the BiH Ministry of Defense, Jul. 2015) 4-5
[51] 'Burundi profile – Timeline' (BBC News, 3 Dec. 2018); Henri Boshof and Waldemar Vrey, 'A Technical Analysis of Disarmament, Demobilisation, and Reintegration: A Case Study from Burundi' (ISS Monograph Series, Aug. 2006) 3
[52] 'Country Overview: Burundi' (United Nations Disarmament, Demobilization and Reintegration Resource Center)
[53] 'Mozambique: Civil War' (World Peace Foundation, Mass Atrocity Endings, 7 Aug. 2015)
[54] General Peace Agreement for Mozambique (Rome, 4 Oct. 1992) Republic of Mozambique and RENAMO, U.N. SCOR S/24635, Protocol IV, art. VI.i.1
[55] 'Mozambique political leaders sign peace pact' (Deutsche Welle, 1 Aug. 2019)
[56] Alex Vines, 'Prospects for a Sustainable Elite Bargain in Mozambique: Third Time Lucky?' (Chatham House, 2019)

approved and annexed a weapons disposal plan.[57] In the independence referendum, held between November and December of 2019, 98 percent of voters cast ballots for independence.[58]

In 1994, the **Rwandan** Armed Forces incited a genocide that killed an estimated 800,000 Tutsis and moderate Hutus over the course of a hundred days.[59] With the Rwandan Patriotic Front's definitive defeat of the Rwandan Army, and the end of the genocide, the new government under Paul Kagame secured a monopoly of force for the new government. In an effort to retain the monopoly of force and guard against a counter-revolution, the government adhered to the security provisions agreed to in the earlier 1993 Arusha Peace Agreement and created an ethnically integrated national army.[60]

Between 1991 and 2002, the Revolutionary United Front (RUF), with the support of Liberian President Charles Taylor, fought a brutal civil war against **Sierra Leone**.[61] During this time Sierra Leone shared its monopoly of force with a wide range of actors, including the Kamajors militia, Executive Outcomes (a South African mercenary force), ECOMOG[62] forces from the Economic Community of West African States, the United Nations, Guinea, and the United Kingdom. The parties signed the Lomé Peace Accord in July of 1999, which granted the founder of the RUF, Foday Sankoh amnesty and the position of Vice President in return for demobilizing and disarming the RUF. The Accord also provided for the disarmament of the Sierra Leone Army.[63] The agreement collapsed, and Sierra Leone, in concert with its international allies defeated the RUF and re-established its monopoly of force.

The 2005 Comprehensive Peace Agreement between **Sudan** and **South Sudan**,[64] sought to bring an end to the decades long conflict by granting the South the possibility of independence after an interim period of national unity where the North and the South would seek political integration and limited democratic transformation. During the interim period the North and South shared the monopoly of force, with the South maintaining its separate armed forces, along with the creation of a limited number of Joint Integrated Units. There were limited provisions for DDR, and an even more limited effort to implement those provisions. The Southern population voted overwhelmingly for independence, with South Sudan becoming a new state, and rather promptly descending into civil war.

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[57] Bougainville Peace Agreement (Arawa, 30 Aug. 2001) arts. 4, 60, 329
[58] *Id.* at art. 312; 'Referendum Results' (Bougainville Referendum Commission, 11 Dec. 2019)
[59] 'Rwanda Assessment' (Country Information and Policy Unit, Immigration and Nationality Directorate of the Home Office of the United Kingdom, Oct. 2000); '1994 Rwandan genocide, aftermath: Facts, FAQs, and how to help' (World Vision)
[60] Nina Wilén, 'From Foe to Friend? Army Integration After War in Burundi, Rwanda and the Congo' (2016) 23(1) International Peacekeeping 79, 81-82
[61] *See generally,* 'Getting Away with Murder, Mutilation, Rape: New Testimony from Sierra Leone' (Human Rights Watch, Jul. 1999)
[62] The Economic Community of West African States Monitoring Group
[63] Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone ["Lomé Agreement"] (Lomé, 7 Jul. 1999) art. IX, annexed in S.C. Res. S/1999/77; Ibrahim Abdullah, 'Between Democracy and Terror: The Sierra Leone Civil War' (Dakar: Council for the Development of Social Science Research in Africa, 2004) 213
[64] The Comprehensive Peace Agreement Between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (2005) Ch. VI, art. 1

In addition to the conflict with South Sudan, **Sudan** was also engaged in conflict in **Darfur** from 2003 to 2020, and with **Southern Kordofan** and **Blue Nile** from 2011 to 2020. The Abuja and the Doha agreements relating to Darfur established innovative, yet ultimately unsuccessful, mechanisms for re-establishing Sudan's monopoly of force. Throughout much of the conflict Sudan begrudgingly shared its monopoly of force with a hybrid African Union/United Nations peacekeeping force, whose mandate substantially evolved over the course of the conflict. In 2020 Sudan reached a multi-track peace agreement with the non-state actors in Darfur, as well as some of the non-state actors in Southern Kordofan and Blue Nile, in addition to other intra-Sudan regional parties. These agreements provided for an eclectic, and separate, array of means to both share the monopoly of force in the interim, and to over time re-establish the monopoly of force for Sudan.

CONUNDRUMS

Parties to a conflict face two buckets of conundrums when they seek to sort the question of the monopoly of force. The first bucket relates to sharing the monopoly of force with the international community. The second relates to sharing the monopoly of force with each other.

Negotiations relating to the sharing of force with the international community are multi-dimensional and occur several times throughout the peace process. They often, but not always, involve all the parties to the conflict, and they often also include various representatives of the international community, including the mediators, UN Security Council, and states providing peacekeeping or peace enforcing forces. In some circumstances, the international community may act unilaterally to erode a state's monopoly of force.

Negotiations oftentimes initially occur when the parties are negotiating a cessation of hostilities or a ceasefire and are seeking the assistance of the international community in observing, monitoring or enforcing the agreement. Subsequent rounds of negotiations may occur as the parties seek to evolve the depth and breadth of these initial cessation and ceasefire agreements. Negotiations also resume when the parties begin to discuss a comprehensive agreement, which nearly always includes security provisions. Frequently, one or more of the parties may require the sharing of the monopoly of force with international forces to ensure the implementation of those and other provisions of the agreement.

When negotiating the sharing of force with the international community the parties nearly always address questions of: the consent of the state, and often the consent of the non-state actors; the nature and configuration of the international forces, including the command structure of the international forces; and the mandate of those forces.

Negotiations relating to the sharing of force between the state and non-state actors can be grouped into three main approaches. In the first approach, the state seeks to restore full control over the monopoly of force.

In the second approach, the state restores full yet modified control over the monopoly of force via the integration of non-state armed actors into the national forces. In these instances, the parties often develop elaborate provisions relating to the disarmament, demobilization and

reintegration of non-state forces, coupled with security sector reform for the national forces. The parties and the international community also often establish processes for either amnesty or accountability as a condition for, and as an effort to underpin the durability of the integration of the forces. The sequencing and timing of DDR, SSR, and amnesty or accountability often proves crucial to the success of efforts to integrate forces.

In the third approach, the state restores limited control over the monopoly of force by permitting non-state actors to maintain their forces and command structure under the umbrella command of the national forces. This approach is most frequently adopted when the peace agreement envisions a future determination of final status for a party seeking external self-determination, or where one or more of the non-state actors is not firmly convinced the agreement will be durable. This approach is often coupled with efforts to promote some degree of integration among special units of the state and non-state forces, as well as a timeline for the eventual integration of forces.

Negotiating the Sharing of Force with the International Community

During an intra-state conflict, a state's monopoly of force is eroded by non-state armed actors. As such, it is often impossible for a state to maintain peace and security within its borders. Notably, in many instances it is both the state and the non-state armed actors that threaten the peace and security of the state.

In order to restore peace and security, the state, often in partnership with the non-state armed actors, will seek the assistance of the international community, in the form of the United Nations, or a regional political or military body, such as the African Union or NATO. In some limited instances, the international community will unilaterally impose itself on a state to restore peace and security as with the case of the humanitarian intervention by NATO in Serbia/Kosovo.

A recent scholarly survey observed that in over 60 percent of intra-state conflicts, international peacekeepers had been deployed to assist with the restoration of peace and security and the re-establishment of the state's monopoly of force.[65] The survey also noted the engagement of the international community to restore a monopoly of force is a relatively new development, and that between the end of World War II and the end of the Cold War states only sought the assistance of international peacekeepers in less than 14 percent of the cases.[66]

When a state and non-state actors seek to engage the international community, they do so in a variety of negotiation settings. Initially, the parties will most likely consent to and seek involvement through a negotiated ceasefire. Nearly all ceasefires contain a provision for some degree of international involvement, be it observing, monitoring, or enforcing. When seeking to commit the international community to such action, the parties invariably must include representatives of the international community. In these cases, the international community often

[65] Virginia Page Fortna, 'Where Have All the Victories Gone? Peacekeeping and War Outcomes' (Working Paper Prepared for Presentation at the Annual Meeting of the American Political Science Association, Aug. 2009), 1, 24
[66] *Id.*

times double-hats as both a mediator and a party, at least with respect to the provisions relating to international engagement.

Next, the parties frequently work with the international community to craft some sort of letter or formal request for assistance. The drafting of the formal request often entails the engagement of the international community. As with the letter, the response also frequently includes the engagement of the state, and likely to a lesser degree, the non-state actors. The response of the United Nations nearly always takes the form of a UN Security Council Resolution, with the state having a right to participate in the debate concerning the resolution.[67] These resolutions often focus heavily on the mandate of the mission.

The intervening forces and the state then negotiate a Status of Forces Agreement,[68] which sets forth the nature of the mission, the privileges and immunities of the international forces, and the rights and obligations of the state and the international forces.[69] The deploying force then drafts the Rules of Engagement for its military personnel, often with some degree of cooperation with the state.[70]

When negotiating the sharing of force with the international community, the parties nearly always address questions of: the consent of the state, and often the consent of the non-state actors; the nature and configuration of the international forces, including the command structure of the international forces; and the mandate of those forces.

Consent of the State and Non-State Parties

The first conundrum faced by a state in conflict is whether and how to consent to the sharing of its monopoly of force with external actors. Given that sovereignty, and the monopoly of force, are cornerstones of statehood, states are exceedingly cautious about granting consent to have international forces deploy to their territory. The decision to share this monopoly of force often times occurs only after the state has fully exhausted its efforts to resolve the conflict through the use of force, and/or where it is forced into ceasefire negotiations either by the success of the non-state actors, or via pressure from the international community.

The state must then contend with whether it not only shares its monopoly of force with the international community, but also whether it shares its sovereign right of consent with the non-state armed actors. Without the consent of the non-state armed actors, the international community may be unwilling to deploy forces. Yet, by granting the non-state armed actors the right to consent, the state begins the slippery slope of diluting its sovereign authority as the price of peace.

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[67] *See* Friedrich Soltau, 'The Right to Participate in the Debates of the Security Council' (2000) 5(13) ASIL Insights ("Under Article 31 of the Charter any member of the UN may participate, without the right to vote, in the discussion before the Council, if the Council 'considers that the interests of that member are specially affected.'")
[68] *See generally,* 'Status of Forces Agreement' (U.S. Department of State)
[69] Sebastián and Gorur, *supra* note 13, at 16
[70] 'Summary of AG-050 Department of Peacekeeping Operation (DPKO) Office of the Under-Secretary-General (OUSG) (1992-present)' (United Nations Archives and Records Management Section) 420

The state must also determine if it will specify whether it is requesting Chapter VI or VII authority, though it can choose to remain silent on this question. Chapter VI is a lighter infringement on the sovereignty of a state, but may result in the state undertaking a sharing of its monopoly of force, but without sufficient authority by the international community to actually bring an end to the conflict. If the state requests Chapter VII, however, the international forces may possess all the necessary authority, and may use that authority against the state. In this case, the state has not only shared its monopoly of force, but the international forces may then use that force to further restrict the sovereign actions of the state.

The state must also consider how to share its monopoly of force in such a way that the international community does not use that initial consent to embark on an evolution of the mandate of the international forces. The state may find itself in a position where it consents to an initial deployment of lightly armed forces with a limited mandate, but the deployed forces and their political overseers interpret the mandate in expansive terms, and enhance the military capabilities of the forces. The state also runs the risk that the international community, absent the consent of the state, will formally modify the mandate and the nature of the deployed military forces.

Finally, the state must consider how it might withdraw consent for the sharing of its monopoly of force, in whole or in part. To do so could tip the state back into widespread violence, or the international community may decide that the initial consent is irrevocable and refuse to leave until the conflict is resolved, thus further eroding the state's sovereignty.

Approaches to resolving the consent conundrum

In the case of Mozambique, the government initially agreed with RENAMO[71] that they would jointly express its consent for sharing the Mozambique's monopoly of force. The government did so in a Joint Declaration in August 1992 wherein it expressed its commitment to consent to "the role of the international community, particularly the United Nations, in monitoring and guaranteeing the implementation of the General Peace Agreement, particularly the cease-fire and the electoral process."[72] Subsequently, in October 1992, the parties agreed upon a General Peace Agreement, which provided for additional and quite extensive engagement of the United Nations, both in terms of monitoring the implementation of the Agreement and carrying out specific functions in relation to the ceasefire, the elections, and humanitarian assistance. The United Nations was also charged with chairing the Supervisory and Monitoring Commission designed to oversee the implementation of the agreement.[73]

The United Nations participated in the negotiations as observers and helped to shape the specific nature of the request of the United Nations. To formally express consent, the President of Mozambique submitted a letter to the UN Secretary-General requesting the United Nations to

[71] The Mozambican National Resistance (in Portuguese, Resistência Nacional Moçambicana)
[72] General Peace Agreement for Mozambique (Rome, 7 Aug. 1992), U.N. Doc. S/2463 (1992)
[73] 'General Peace Agreement' (Mozambique – ONUMOZ Background, UN)

immediately deploy UN personnel to assist with monitoring the implementation of the agreement, and supervising the ceasefire and re-integration process. The President set an expiration time frame for the deployment as "until the holding of the General Elections," which was to take place a year later.[74] The UN Secretary-General then acted upon this request and secured the authorization of the Security Council to deploy a UN mission.

Mozambique sought to navigate the conundrum of consent by involving the non-state actor of RENAMO in a general Joint Declaration, but reserved for itself the sovereign right to communicate this request to the United Nations, and to frame its consent in a Presidential letter. Mozambique also set clear expectations as to the nature of the mandate, and specified a time limit for the sharing of its monopoly of force. The peace agreement also carefully framed the role of the UN in various places as observers, with a role to monitor and verify the implementation of the agreement and when called upon to provide material and technical assistance. In only one provision did it call upon the UN to guarantee the implementation of the agreement. To carry out is mission, the UN deployed over 6,500 military personnel, along with nearly 400 civilian staff. During the course of the mission, Mozambique and RENAMO consented to and sought an expansion of the mandate to include the oversight and reform of the police force, which resulted in the deployment of over 1,000 international police officers.[75]

Notably, Mozambique and the United Nations did not negotiate a Status of Forces Agreement, which caused a number of both logistical and legal issues that delayed the full deployment of the UN forces. This lack of a Status of Forces Agreement, together with other issues, ultimately set back the implementation of the DDR process and the elections by a year.[76] On the whole, Mozambique effectively managed its consent to the sharing of its monopoly of force and kept the UN largely within its original mandate, and a reasonable extension of the time frame, with monopoly of force restored at the end of the deployment.

In the case of Sudan, sharing monopoly of force with the UN and African Union in Darfur proved to be a complicated story of evolved and forced consent. As part of the Comprehensive Peace Agreement between Sudan and South Sudan, the state of Sudan consented in 2005 to the creation of a UN mission in Sudan, which resulted in the deployment of up to 10,000 UN forces in Sudan and South Sudan to help implement the peace agreement.[77] Previously, Sudan consented to the deployment of a limited number of African Union forces into Darfur with the mandate to monitor and support the Humanitarian Ceasefire signed in N'Djamena in April 2004.[78]

In addition to the ceasefire negotiations, the African Union also led the effort to reach a Darfur peace agreement in Abuja. In response to growing conflict in Darfur, and with the consent of Sudan, the African Union, in October 2004 increased its military contingent to over 2,300 and nearly a thousand civilian police, and then again in April 2005 to over 6,000 military personnel. The mandate was extended to not only include monitoring the ceasefire, but also to

[74] Letter dated 4 October 1992 from the President of the Republic of Mozambique addressed to the Secretary-General (Enclosure), at 2, U.N. Doc. S/24635 (8 Oct. 1992)
[75] 'Mozambique – UNUMOZ: Facts and Figures' (UN Peacekeeping)
[76] 'General Peace Agreement' (Mozambique – ONUMOZ Background, UN)
[77] S.C. Res. 1590, U.N. SCOR, U.N. Doc. S/RES/1590 (2005)
[78] Humanitarian Ceasefire Agreement on the Conflict in Darfur (N'djamena, 2004)

help establish a secure environment conducive to the delivery of humanitarian assistance and the return of refugees and internally displaced persons.[79]

In May 2006, Sudan and the Darfur non-state armed actors reached agreement in Abuja on the Darfur Peace Agreement. While the agreement provided for an extensive role for the African Union forces in providing security for the civilian population, it provided for only the most minimal role for the United Nations in the areas of observing the ceasefire, providing humanitarian assistance, and aiding internally displaced persons and returning refugees.[80] Despite the lack of consent in the peace agreement for a UN military force, the UN Secretary-General notified the Security Council of his recommendation that the UN deploy over 18,000 UN Peacekeepers to assist with the implementation of the agreement. The Secretary-General advocated for Sudan to accept such a mission on the basis that it would preserve the peace recently concluded with South Sudan.[81]

The UN Security Council acted in August 2006, and adopted Resolution 1706, which authorized, under Chapter VII, the expansion of the UN Mission's mandate to include a deployment of thousands of additional forces to Darfur to aid in the protection of the civilian population. The Security Council also requested the Secretary-General to work with the African Union to transition its force into the UN force. The Security Council in its first operative paragraph of the resolution invited the consent of Sudan to the deployment and this sharing of its monopoly of force.[82] Sudan did not provide the requested consent, and the UN was unable to deployed armed peacekeepers to Darfur.

In response, the UN worked to increase the troop strength of the African Union forces, and the creation of a joint African Union/United Nations peacekeeping mission. After a year of negotiations, during which time Sudan came under intense international pressure, Sudan agreed to the creation of the United Nations-African Union Hybrid Operation in Darfur, called UNAMID,[83] which consisted of over 20,000 troops.[84]

As will be discussed below, Indonesia similarly consented to the sharing of its monopoly of force with an Australian-led Chapter VII UN force after significant political and economic pressure to do so.

Burundi, however, faced the opposite scenario. In Burundi, the state explicitly requested that the Security Council invoke a Chapter VII mandate in order to ensure a robust peacekeeping force that was to take over the peacekeeping responsibilities previously held by an African Union force (most of which was rolled into the new UN force). In a March 2004 letter from the Permanent Representative of Burundi to the President of the Security Council requesting a UN peacekeeping mission to support the implementation of the Arusha Accords: "In view of the work to be done, the Government of Burundi believes that such a mission should be provided

[79] 'UNMIS Facts and Figures' (UN Peacekeeping)
[80] Darfur Peace Agreement (Abuja, 2006) arts. 184, 241, 270
[81] U.N. Doc. S/2006/591 (2005)
[82] S.C. Res. 1706, U.N. SCOR, U.N. Doc. S/RES/1706 (2006)
[83] Sebastián and Gorur, *supra* note 13, at 15
[84] 'About UNAMID' (United Nation-African Union Hybrid Operation in Darfur); S.C. Res. 1769, U.N. SCOR, U.N. Doc. S/RES/1769 (2007)

with substantial means and, above all, with an adequate mandate under chapter VII of the Charter of the United Nations."[85] The letter then laid out a number of objectives for the peacekeeping mission. Many of these were granted in the Security Council's subsequent resolution, which acted under Chapter VII to deploy a United Nations Operation in Burundi with the authority to "use all necessary means" including force to carry out its mandate.[86]

In the fall of 1991, Yugoslavia consented, via letter to the President of the Security Council, to the deployment of a peacekeeping mission on its territory.[87] Bosnia, which was a part of Yugoslavia at the time, but in the process, along with Croatia and Slovenia, of seeking external self-determination also consented to the deployment of peacekeepers. The UN coupled the deployment of peacekeepers with an arms embargo on the territory of Yugoslavia.[88] Over time, as the people of Bosnia were subjected to attempted genocide,[89] Bosnia argued that the arms embargo prevented it from exercising its right of self-defense and therefore was illegal,[90] and that it no longer consented to its application or enforcement. The UN, however, refused to withdraw the embargo, and noted that it if the US proceeded with threats to unilaterally lift the embargo then the UN forces would be withdrawn.[91]

Angola was, however, able to withdraw consent for the deployment of peacekeepers on its territory in order to regain its monopoly of force and seek to resolve the conflict through a return to violence.[92] After three iterations of a UN presence, which evolved from observing and monitoring to peacekeeping, Angola requested in January 1999 that the peacekeeping forces withdraw. In light of the unwillingness or inability of Angola and the non-state armed actor UNITA[93] to maintain a genuine peace process, the Secretary-General supported the end of the mission, and the Security Council terminated the mission in February 1999.[94] In 2002, the Angolan forces defeated UNITA, bringing an end to the armed conflict.

In some limited circumstances, the state is forced to share, or surrender its monopoly of force. In August 1990, at the height of the Liberian conflict, the Economic Community of West African States authorized its ECOMOG forces to essentially fight their way into Liberia in order to force a cessation of hostilities among the parties, and to occupy Monrovia, the capital.[95] They were authorized to do so by the Economic Community of West African States, and for an initial two-year period, maintained a relatively successful ceasefire.

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[85] Letter dated 15 March 2004 from the Permanent Representative of Burundi to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2004/208 (15 Mar. 2004)
[86] S.C. Res. 1545, U.N. SCOR, U.N. Doc. S/RES/1545 (21 May 2004)
[87] Letter dated 26 November 1991 from the Permanent Representative of Yugoslavia to the United Nations addressed to the President of the Security Council, U.N. Doc. S/23240 (26 Nov. 1991)
[88] S.C. Res. 713, U.N. SCOR, U.N. Doc. S/RES/713 (25 Sept. 1991)
[89] Paul R. Williams, 'UN Members Share Guilt for Genocide in Bosnia' (Christian Science Monitor, 8 Aug. 1995)
[90] Paul R. Williams, 'Why the Bosnian Arms Embargo Is Illegal' (The Wall Street Journal Europe, 15 Jun. 1995)
[91] Carol J. Williams, 'News Analysis: Conflicting Approaches to Ending Balkans War Forge Odd Alliances' (Los Angeles Times, 13 Aug. 1994)
[92] 'Angola – MONUA Background' (UN Peacekeeping)
[93] National Union for the Total Independence of Angola (Portuguese: União Nacional para a Independência Total de Angola)
[94] S.C. Res. 1229, U.N. SCOR, U.N Doc. S/RES/1229 (1999)
[95] 'Waging War to Keep the Peace: The ECOMOG Intervention and Human Rights' (June 1993) 5(6) Human Rights Watch

In the case of Kosovo, NATO forces, launched an intensive 78-day air campaign against the Serbian government forces, both in Kosovo and Serbia, which were conducting a campaign of atrocity crimes against the Kosovo-Albanian population. NATO successfully defeated the Serbian forces, and through a subsequent process of negotiation and Security Council Resolution 1244, excluded Serbia's ability to exercise a monopoly of force over Kosovo territory.

In the case of Libya, the UN Security Council, under Resolution 1973, invoked the doctrine of humanitarian intervention to authorize member states to take all necessary measures, except foreign occupation, to protect civilians in Libya including the establishment and enforcement of a no-fly zone.[96] The NATO-led intervention resulted in the interim security for the population of Libya, and the subsequent overthrow and execution of Muammar Gaddafi by Libya opposition forces.

Nature and Configuration of the International Forces

When in a position where it is necessary to share the monopoly of force, states must address of the conundrum of with which forces the state shall share its monopoly. While the United Nations is the most commonly thought of, there are actually a plethora of *ad hoc* and standing forces with which a state can share its monopoly of force. Similarly, there are degrees of "force" that can be shared, whether it is the monitoring of the actions of the state and non-state actors, the use of force, or the ultimate Chapter VII use of overwhelming force to initiate or secure a peace. The latter will be addressed in the next section where mandate is discussed. Having the nature of the mandate in mind is important when deciding upon the nature of the international forces.

One question associated with this conundrum is the "too much or too little" in terms of the ability of the force to match the challenge it is called upon to address. An unarmed lightly resourced *ad hoc* monitoring mission grafted onto an existing international institution may be just the right "light" touch to share a fragment of a state's monopoly of force in an effort to appease the international community and be relieved of political and economic sanctions. Such a force is also more palatable in terms of any potential affront to sovereignty, and it may avoid the unnecessary militarization of a force mandated to simply observe or monitor.

Such an unarmed light presence could, however, become just the beginning of the ever-evolving nature of the force and eventually lead to a heavily armed Chapter VII force. Once the door is opened to the sharing of the monopoly of force the legal and political precedent is set for such a "sharing." Moreover, a light force may not possess the strength to carry out its mandate, and as time evolves the state, and or the non-state armed actors, may come to desire an effective monitoring force.

Another question parties face is whether the force should be from an *ad hoc* collection of states, or a regional force, or a truly global force—meaning the United Nations. *Ad hoc* collections of states, which are often neighboring states, or the Nordic states, are more likely to be responsive and sensitive to the sovereign interests of the state. They may also be less

[96] S.C. Res. 1973, U.N. SCOR, U.N. Doc. S/RES/1973 (17 Mar. 2011) arts. 4, 6, 8

effective at preventing breaches by the state and non-state armed actors. Regional bodies of which the state is a member too are likely to be more responsive to prerogatives of sovereignty, and may or may not possess the necessary assertiveness and competence to accomplish the mandate, but certainly do provide the necessary political cover to ease political and economic sanctions. Recently, a handful of regional entities have sought to enhance their peace-monitoring and peacekeeping capabilities.

The state, and the non-state armed actors, must also decide whether they seek the involvement of a purely regional political organization, a regional political organization with ability to authorize and organize an *ad hoc* military operation comprised from its member states, or a regional military organization like NATO. The answer again depends on the appetite of the state to share its sovereignty, and the sincerity of the parties for an effective force.

Relatedly, the parties must consider who or whom should command the force. In some instances, the organization exercises overall command consistent with its decision-making structure, while in others it may delegate the command to a member state. When there is more than one entity engaged in the sharing of the monopoly of force, those entities may establish a dual key approach to authorizing activities such as the use of force. Streamlined command structures tend to be more effective, yet more of a threat to the forces of the state and non-state armed actors when it comes to decisions to use force.

Finally, parties must determine whether to seek the overlay of a UN Security Council resolution when they decide to engage a non-UN force. In the event the Security Council adopts a resolution under Chapter VIII, that resolution can modify through expansion or limitation the mandate of the force. If it chooses to declare that it is taking this action under Chapter VII, it may provide definitive authority to use military force. Having a Security Council overlay has the benefit of providing the non-state armed actors additional assurance that the *ad hoc* collection of states, or a regional force will be subject to some degree of oversight by the UN, to offset any tilt toward the sovereign interests of the state. The engagement of the Security Council, though, will remove the control over the mandate and actions of the force even further from the state and non-state actors.

Approaches to resolving the nature and configuration conundrum

In some instances, the state and the non-state actors have a shared interest in creating an *ad hoc* monitoring mission with which to share a sliver of the state's monopoly of force in order to secure the implementation of a ceasefire. In the case of Sri Lanka, the state had a previous negative experience with the Indian Peace Keeping Force that operated on Sri Lankan territory from 1987 to 1990 with the mission to guarantee the implementation of the Indo-Sri Lanka Accord. Sri Lanka was also generally sensitive to infringements on its sovereignty. The Tamil Tigers, on the other hand, objected to the involvement of any state that listed the militant group as a terrorist organization, which included a vast number of states in the international community. Thus, when Sri Lanka and the Tamil Tigers reached a ceasefire in 2002, they invited Norway, Sweden, Finland, Denmark, and Iceland to form an unarmed, 60-person Sri Lanka

Monitoring Mission to monitor its implementation. Remarkably, the agreement provided that the head of the mission would possess final authority regarding interpretation of the Agreement.[97]

The mission failed for a number of reasons. First and foremost, both Sri Lanka and the Tamil Tigers ultimately determined it was in their interests to seek a final resolution of the conflict through the use of force. Notable pressures on the monitoring mission included the demand by the Tamil Tigers in June of 2006 to exclude Swedish, Finnish, and Danish monitors on the basis that their countries had imposed anti-terrorism sanctions on the militant group,[98] leaving just 20 monitors from Norway and Iceland. Sri Lanka also grew increasingly anxious with the monitoring mission as it deemed the mission to be infringing on its sovereignty outside the scope of "monitoring." For instance, in 2003, the Sri Lankan Navy notified the monitoring mission as per the ceasefire that it was intending to interdict a Tamil Tigers arms supply naval vessel. The monitors notified the militant group, which then diverted the ship and avoided capture.[99] Sri Lanka also took sovereign offense when the monitors facilitated a "diplomatic" visit from an Icelandic Foreign Ministry official with the head of the militant group.[100]

In January 2008, Sri Lanka formally withdrew from the ceasefire and terminated the monitoring mission.[101] In May of 2009, Sri Lanka defeated the Tamil Tigers, amid credible allegations of atrocity crimes committed by Sri Lankan forces.[102]

In El Salvador, on the other hand, the state and the Farabundo Martí National Liberation Front agreed to a UN observer mission during the initial stages of their peace process to monitor the protection of human rights and investigating any violations. The parties signed a human rights accord in July 1990,[103] and requested the UN to prepare to deploy a light mission to observe the forthcoming ceasefire. The parties then requested that the UN preemptively deploy a peacekeeping force to monitor the implementation of human rights accord, which it did in 1991.[104]

The parties then agreed twice more to expand the mission to first support the Chapultepec peace agreement signed in Mexico City to monitor the ceasefire, and second to monitor and assist with the transformation of the National Police Force.[105] The UN, acting under Chapter VI,[106] deployed approximately 350 military observers, and 315 civilian police to accomplish this task. As the peace process moved forward with implementation, the UN correspondingly drew down its forces. Second, in response to a request by El Salvador to the

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[97] Agreement on a Ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam (Sri Lanka, 22. Feb. 2002) art. 3.2
[98] 'NORWAY: Sri Lankan rebel Tamil Tigers demand that European Union members be withdrawn from a five-nation truce monitoring mission at talks in Oslo' (Screen Ocean Reuters, 24 Jun. 2006)
[99] 'SLMM tipped-off LTTE' (Daily Mirror, 1 Oct. 2014)
[100] 'Iceland "apologises" to Sri Lanka' (BBC Sinhala, 4 Oct. 2007)
[101] 'TIMELINE: Collapse of Sri Lanka's troubled ceasefire' (Reuters, 8 Jan. 2008)
[102] 'War Crimes in Sri Lanka' (International Crisis Group Report, 17 May 2010)
[103] San José Agreement on Human Rights signed between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (San José, 1990)
[104] S.C. Res. 693, U.N. SCOR, U.N. Doc. S/RES/693, ¶ 2-4 (May 20, 1991)
[105] Peace Agreement ["Chapultepec Agreement"] (Mexico City, 16 Jan. 1992) Government of El Salvador and Frente Farabundo Martí para la Liberación Nacional, U.N. GAOR A/46/864, ch. VII, 26-29
[106] S.C. Res. 729, U.N. SCOR, U.N. Doc. S/RES/729 (1992)

UN Secretary-General to monitor elections,[107] the UN then deployed about 900 electoral observers.[108]

By April 1995, the UN mission ended with the withdrawal of the remaining monitors. Both the UN mission and the peace agreement were generally considered to be successful,[109] with nearly all the provisions being deemed fully implemented, with an overall implementation score of 95.83 out of 100 by the University of Notre Dame's Kroc Institute for International Peace Studies.[110]

In the case of the dissolution of the former Yugoslavia, the parties consented, via the Brioni Declaration in July 1991,[111] to the creation of an *ad hoc* European Community Monitoring Mission. The Declaration was followed a few days later with a Memorandum of Understanding, which was essentially a Status of Forces agreement, signed in Belgrade.[112] The Brioni Declaration launched what was to become a long and tortious series of negotiations to first forestall, and then to end the war in Yugoslavia, culminating in the Dayton Accords.

The monitoring mission agreed to by Yugoslavia, and authorized by the declaration, was initially intended to monitor the ceasefire agreement and the withdrawal of Yugoslav National Army forces from Slovenia. The mission was comprised of a small number of military and civilian personnel from the European Community, and the Conference on Security and Cooperation in Europe. Each observer team was to be escorted at all times by a liaison officer of each of the opposing parties. Interestingly, the first monitors deployed were from the Dutch Navy and were dressed completely in white. White became the color of the mission, and all subsequent monitors were dressed in white and drove unmarked white vehicles, earning them the Yugoslav nickname of "ice cream men."

Over the course of its operation from July 1991 to December 2007, the scope of the mission expanded to include Bosnia, Croatia, Macedonia, Montenegro, and Serbia, with the mandate to collect and report to the EU on the military situation, engage in negotiations to resolve local conflicts, assist humanitarian organizations, monitor the human rights situation, and eventually report on violations of the Bosnian no-fly zone.[113] Building from the establishment of this extremely light monitoring mission, the nature and configuration of the international community's sharing of the monopoly of force, first with Yugoslavia, and then with its successor states, haltingly evolved to become ever increasingly militarized.

During this time, the international community moved from a deployment of 50 military liaison officers, to the deployment of 39,000 peacekeepers as part of UN Protection Force I, to an additional deployment of peacekeepers and an expanded mandate of UN Protection Force II. The international community then augmented the peacekeepers with an *ad hoc*, heavily armed Rapid Reaction Force with troops from France, UK, and the Netherlands. And then further

[107] S.C. Res. 832, U.N. SCOR, U.N. Doc. S/RES/832 (1993)
[108] 'El Salvador – ONUSAL: Facts and Figures' (UN Peacekeeping, 2003)
[109] S.C. Res. 991, U.N. SCOR, U.N. Doc. S/RES/991 (1995)
[110] University of Notre Dame Peace Accords Matrix, 'Chapultepec Peace Agreement' (2015)
[111] Brioni Declaration (Ljubljana, 1991)
[112] Memorandum of Understanding on the Monitor Mission to Yugoslavia (Ljubljana, 1991)
[113] 'European Community Monitoring Mission in the Former Yugoslavia' (Government of Canada, 2018)

augmented the force to include the use of NATO air power: first to enforce a no fly zone, and then to provide air support for UN peacekeepers. Finally, as authorized by the Dayton peace negotiations, NATO deployed 50,000 troops, anchored by the American First Armored Division, to secure the implementation of the agreement.

The mandate correspondingly evolved from Chapter VI to so-called "Chapter VI and a half," to Chapter VII. Significantly, in August 1992, the Security Council passed Resolution 770, which acting under Chapter VII, called on "states to take nationally or through regional agencies all measures necessary to facilitate in coordinate with the United Nations" the delivery of humanitarian assistance in Bosnia.[114] Yet, in September 1992, the Security Council authorized UNPROFOR to carry out this task with the assistance of member states, downgrading the resolution to a Chapter VI.[115]

The situation in Kosovo saw a similar dramatic evolution of the nature and configuration of international forces sharing the monopoly of force with Serbia. The basis for the initial sharing of the monopoly of force is somewhat murky. With the increasing violence in Kosovo in the summer of 1998, and with the memory of the wars in Croatia and Bosnia as a backdrop, the international community feared another Balkan war with the accompanying humanitarian crisis and atrocity crimes.

In June 1998, five member states of the international community created the *ad hoc* mission known as the Kosovo Diplomatic Observer Mission to monitor levels of violence in Kosovo. The mission was created by the European Union, and five other states (with Canada, the United States, Russia, France, and the UK operating as their own missions) increasing their military and civilian presence in their embassies in Belgrade, Serbia, and sending out staff to travel throughout Kosovo, and in some cases stationing staff permanently. The five missions did not have an overall coordinating structure, but did share information widely among interested states. Rather than seeking the consent of Serbia, the missions used their diplomatic status as the legal authority for the missions.

In September 1998, the United States negotiated a ceasefire agreement with Serbia. The agreement provided that Serbia would permit the creation of the unarmed Kosovo Verification Mission.[116] The agreement also provided for the creation of operation Eagle Eye which would permit NATO to fly oversight missions throughout the territory of Kosovo. The Security Council, acting under Chapter VII, endorsed both of these missions and mandated the Commission on Security and Cooperation in Europe to staff the Kosovo Verification Mission, and NATO to conduct the overflight operation.[117] The Kosovo Verification Mission selected orange as the color for its vehicles to distinguish itself from previous monitoring and peacekeeping missions.[118]

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[114] S.C. Res. 770, U.N. SCOR, U.N. Doc. S/RES/770 (1992)
[115] S.C. Res. 776, U.N. SCOR, U.N. Doc. S/RES/776 (1992)
[116] Agreement on the OSCE Kosovo Verification Mission (Belgrade, 16 Oct. 1998), as published in 73(4) Die Friedens-Warte 503-533
[117] S.C. Res. 1203, U.N. SCOR, U.N. Doc. S/RES/1203 (1998)
[118] 'OSCE Kosovo Verification Mission/OSCE Task Force for Kosovo (closed)' (OSCE)

To support the exchange of information between the Kosovo Verification Mission and operation Eagle Eye, NATO established the Kosovo Verification Coordination Centre in Macedonia. The center was essential for collecting data that would be used for future political and military planning. NATO, learning the lessons of the sometimes-hapless UNPROFOR efforts where peacekeepers were routinely taken hostage, also created a 1,500 strong Extraction Force to rescue any monitors under threat.[119]

The Kosovo Verification Mission was led by retired US Ambassador William Walker, creating opportunity for a turning point for NATO engagement in Kosovo in terms of piercing Serbia's monopoly of force. In January 1999, Serbian forces killed 45 Albanian Kosovar men and boys aged 14 to 99 in the town of Racak.[120] Ambassador Walker led a team of monitors to the site, accompanied by journalists. After examining the site, he announced that it was clearly a crime against humanity, and that it was committed by Serbian forces. During the course of the Croatian and Bosnia wars, the UN peacekeeping force had contorted itself in any way possible to avoid tagging something an atrocity crime, or to assigning responsibility to Serb forces.

Ambassador Walker's unequivocal identification of the crime and the forces responsible, and the failure of Serbia to participate in good faith in the Rambouillet peace talks, galvanized NATO support for a humanitarian intervention to end the conflict. The massacre also formed part of the basis for the subsequent indictment of President Slobodan Milošević by the International Criminal Tribunal for the Former Yugoslavia for crimes against humanity in Kosovo.[121] Eventually the Security Council adopted Resolution 1244 which effectively replaced Serbian sovereignty over Kosovo with that of the UN mission, and fully replaced Serbia's monopoly of force with a monopoly held by NATO peacekeeping forces. The resolution was based upon, and contained annexed to it, a statement of principles proposed by the former President of Finland Martti Ahtisaari and former Prime Minister of Russia Viktor Chernomyrdin and accepted by Slobodan Milošević.[122]

The conflict in Sierra Leone illustrates the sharing of a monopoly of force with international forces to aid in the neutralization or defeat of the non-state armed actors. In Sierra Leone, there were a plethora of actors with which the state shared its monopoly of force for this purpose. This case also illustrates that sometimes the "state" is a less stable entity than often hoped for and it may itself change sides in a conflict.

The war in Sierra Leone began in March 1991 when the Revolutionary United Front, with the support of Liberian revolutionary forces under the command of Charles Taylor, sought to take control of Sierra Leone. In light of the successes of the RUF, the Sierra Leone Army staged a coup in April of 1992, and undertook a relatively effective campaign against the RUF. During this time, Sierra Leone also shared its monopoly of force with the Kamajors militia, which sought to defend villages against both RUF and Sierra Leone Army attacks and looting.

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[119] 'Kosovo Verification Mission' (Government of Canada, 2018)
[120] Carlotta Gall, 'Serbs' Killing of 40 Albanians Ruled a Crime Against Humanity' (The New York Times, 18 Mar. 1999)
[121] Second Amended Indictment, Prosecutor v. Milosevic, Milutinovic, Sainovic, Ojdanic, and Stojiljkovic (IT-99-37-PT), 16 Oct. 2001
[122] S.C. Res. 1244, U.N. SCOR, U.N. Doc. S/RES/1244 (1999)

The RUF, however, regrouped and re-occupied much of Sierra Leone. The president of Sierra Leone, in March of 1995 hired the South African Executive Outcomes mercenary force to share in the exercise of its monopoly of force to repel the RUF. Executive Outcomes was highly successful in pushing back the territorial gains of the RUF and forcing them into peace negotiations in Abidjan. During this time, Sierra Leone also returned to democratic governance with the holding of parliamentary and presidential elections in the spring of 1996.

In November 1996, Sierra Leone and the RUF signed the Abidjan Peace Accord. The Accord provided for the creation of a Neutral Monitoring Group,[123] but its composition could never be fully agreed upon and it did not come into existence.[124] The Accord also provided that the forces of Executive Outcomes would be withdrawn five weeks after the deployment of the Neutral Monitoring Group.[125] Despite the fact that the monitoring group never deployed, the UN and the IMF pressured Sierra Leone to terminate its relationship with Executive Outcomes. The IMF went as far as to withdraw funds from Sierra Leone due to the presence of Executive Outcomes forces, which some say, contributed to the later destabilization of the state.[126]

In May 1997, with the failure to implement the peace agreement and the resurgence of the RUF, the Sierra Leone Army again staged a coup, but this time joined forces with the RUF to occupy nearly all the territory of Sierra Leone, including the capital of Freetown. The army and the RUF then launched a wave of atrocity crimes against the people of Sierra Leone.

In response, the government in exile, claiming to continue to hold the right to a monopoly of force, asked the Economic Community of West African States to send in its military force, the Economic Community Ceasefire Monitoring Group to retake the capital. ECOMOG had previously intervened in a similar situation in Liberia.[127] The ECOMOG force successfully secured Freetown, enabling the government to return. The force was unable, however, to extend its reach much beyond the capital. The returned government of Sierra Leone, and the RUF entered into negotiations leading to the Lomé Peace Accord in March of 1999.[128] The Accord created a power sharing arrangement granting the leader of the RUF, Foday Sankoh, the vice presidency and the chairmanship of the wealth sharing committee, with control over the revenue

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[123] Letter Dated 11 December 1996 from the Permanent Representative of Sierra Leone to the United Nations Addressed to the Secretary-General, U.N. Doc. S/1996/1034 Annex – Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone, signed at Abidjan on 30 November 1996, art. 11 (11 Dec. 1996)

[124] *See generally*, Lansana Gberie, 'First Stages on the Road to Peace: The Abidjan Process (1995-96)' (Conciliation Resources, Sept. 2000)

[125] Letter Dated 11 December 1996 from the Permanent Representative of Sierra Leone to the United Nations Addressed to the Secretary-General, U.N. Doc. S/1996/1034 Annex – Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone, signed at Abidjan on 30 November 1996, art. 12 (11 Dec. 1996)

[126] *See* Sean Creehan, 'Soldiers of Fortune 500' (2002) 23(4) Harvard International Review 6-7; Elizabeth Rubin, 'Saving Sierra Leone, At a Price' (The New York Times, 4 Feb. 1999)

[127] To authorize this expansion, the Economic Community adopted a Protocol that provided the legal basis for the body to serve in peacekeeping, peacebuilding, disarmament, and demobilization capacities through their Ceasefire Monitoring Group. ECOWAS, Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (Lomé, 10 Dec. 1999) A/P.1/12/99, arts. 17, 22

[128] Lomé Agreement

generated by the mining industry. He was also granted immunity for atrocity crimes.[129] The Lomé Accords also provided for the disarmament of both the RUF and the Sierra Leone Army.[130]

The Accords further provided for the deployment of a joint ECOMOG-UN peacekeeping force to monitor the implementation of the agreement, and to oversee the disarmament process.[131] The Security Council, acting under Chapter VII, created the UN Mission in Sierra Leone.[132] The peacekeeping force was initially authorized at 6,000. The force was heavily militarized, yet subject to intra-command power struggles and was largely ineffective in its early deployment. At one point, over 500 peacekeepers were taken hostage by the RUF.

The RUF largely ignored the Lomé Agreement and launched an offensive to retake Freetown in May 2000. In August 2000, the Security Council adopted Resolution 1313, which shifted the mandate of the UN forces from one of neutrality to one of supporting the government forces in their fight against the RUF, specifically authorizing the force to: "deter and, where necessary, decisively counter the threat of RUF attack by responding robustly to any hostile actions or threat of imminent and direct use of force."[133] The Security Council also imposed an embargo on Liberian and Sierra Leonean diamonds, which served as the primary source of funding for the RUF.[134] Shortly thereafter, the Security Council authorized an increase in the force size to 17,500.[135]

In May 2000, the United Kingdom, with the consent of Sierra Leone, deployed a military force to initially assist with the evacuation of civilians, but which subsequently shifted its mandate to assist the UN force, and to train and re-equip the Sierra Leone Army. The British forces aggressively engaged the RUF, with the assistance of air strikes from neighboring state of Guinea against RUF strongholds. While the UN sought to have the British forces integrated into its command, the United Kingdom refused and insisted on operating under its own command.

The combined action of forces from Sierra Leone, ECOMOG, the UN, Guinea, and the United Kingdom pushed the RUF to essentially surrender via a ceasefire agreement providing for their complete disarmament and demobilization, with the conflict coming to an end in January of 2002.

The Special Court for Sierra Leone, a hybrid tribunal, subsequently indicted both Foday Sankoh and Charles Taylor for atrocity crimes in Sierra Leone. The Tribunal ruled the Lomé amnesty inapplicable to international laws prohibiting atrocity crimes. Foday Sankoh died while awaiting trial, and Charles Taylor was convicted and sentenced to 50 years imprisonment.

In some instances, the UN will configure the command structure to provide a single member state with unified command. In the case of East Timor, with the consent of Indonesia, the UN Security Council authorized Australia in September of 1999 to undertake a Chapter VII

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[129] *Id.* at art. IX
[130] *Id.* at Annex, art. 5
[131] *Id.* at arts. XIII and XIV
[132] S.C. Res. 1270, U.N. SCOR, U.N. Doc. S/RES/1270 (1999)
[133] S.C. Res. 1313, U.N. SCOR, U.N. Doc. S/RES/1313 (2000)
[134] S.C. Res. 1343, U.N. SCOR, U.N. Doc. S/RES/1343 (2001)
[135] S.C. Res. 1346, U.N. SCOR, U.N. Doc. S/RES/1346 (2001)

authorized mission to lead a multinational force to restore peace and security. The force was to be subsequently replaced by a more traditional UN peacekeeping mission.[136] The Australian command led a combined force of nearly 12,000 troops from 22 nations and rapidly deployed throughout East Timor to secure the territory. During the mission, the forces engaged in combat operations with pro-Indonesian paramilitary forces and occasionally with Indonesian police forces, and suspected Indonesian military forces. Six months after their deployment, the multinational force handed over control to a UN peacekeeping force. Notably, in 2006, heavily armed Australian forces returned to the island at the request of East Timor to restore order following a coup attempt.

A much less successful dual key approach to the authorization of military force was utilized in Bosnia. The system created in Bosnia required the authorization of the UN Secretary General's Envoy to Yugoslavia for any NATO enforcement action. This system substantially constrained the ability of NATO to effectively use force as a deterrent to the atrocity crimes being committed in Bosnia, and is widely credited with playing an essential role in the massacres associated with the Serbian government forces' annihilation of the UN safe areas in Gorazde, Srebrenica, and Zepa.[137] During the Dayton peace negotiations NATO insisted on, and was granted, exclusive authority to determine when and how to use force to secure the implementation of the agreement.

The Mandate of the International Forces

When sharing a monopoly of force with an international force, it is necessary for parties to precisely determine the mandate of that force. The parties and the international organization usually define the mandate at the same time they establish consent and determine the nature and configuration of the force. In nearly all instances, the parties consent to the initial scope of the mandate, and the nature and configuration of the force is tailored to that initial mandate.

The mandate is comprised both of a set of goals that the international force is expected to achieve and a set of tools which that force is authorized to employ in order to facilitate the achievement of those goals.[138] The goals may include facilitating the negotiation process, protecting civilians, reducing or pausing the use of force by the parties, and promoting the durability of a peace agreement.

The tools to accomplish this include deploying peacekeepers or police officers to observe, monitor, and/or report on compliance with ceasefires and peace agreements, providing humanitarian assistance, protecting safe areas, enforcing weapons exclusion zones, enforcing no-fly zones, arresting individuals indicted for war crimes, assisting with DDR, assisting with elections, and establishing the rule of law.[139] When setting the mandate, as noted above, it is necessary to match the nature and configuration of the international force to the mandate.

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[136] S.C. Res. 1264, U.N. SCOR, U.N. Doc. S/RES/1264 (1999)
[137] *See* David Rieff, *Slaughterhouse: Bosnia and the Failure of the West* (Touchstone, 1996)
[138] Williams and Scharf, *supra* note 15, at 35
[139] *Id.*

There are two distinct phases of any mandate. The first relates to the pre-negotiation phase where the state shares its monopoly of force in order to facilitate either getting to yes, or getting to checkmate with the non-state actors. The second relates to sharing the monopoly of force in order to secure the implementation of a peace agreement, or to secure stability after the defeat of the non-state armed actors.

The primary conundrum is to determine how much of a sharing of the monopoly of force is absolutely necessary to facilitate the desired outcome. If insufficient force is shared, the conflict continues on, accomplishing only the introduction of yet another dimension into the conflict. If too much of the monopoly is shared, then the state, or the non-state actors, may lose control over their destiny and ability to shape the outcome in a way they desire. The international force also has an interest in ensuring that its mandate is sufficiently tailored so that it is able to accomplish the goals of its mission with the most efficient and effective use of specified tools. No international force wants to preside over a failed mandate, nor inadvertently be pulled into an expanded mandate for which it may not have a properly configured force.

During this first phase, the goals will likely evolve, and the parties, including the international force, are continuously challenged to match the tools and the force configuration with the evolving mandate, and to assess whether they in fact consent to this evolution.

In the second phase, the parties again face the conundrum of determining how much of the monopoly of force is absolutely necessary to share in order to ensure the durability of a peace agreement. States are frequently in a hurry to re-establish their monopoly of force, but non-state armed actors are often deeply reluctant to permit that re-establishment unless their security is fully ensured for a period of time within which they can establish a trusting relationship with the state. From the perspective of the non-state actors, that period of time can be quite lengthy.

International forces are similarly quite interested in ensuring that they are not called upon to undertake, undefined, unnecessarily dangerous, or expensive tasks that are more appropriately situated with the parties, or for which their force is not suitably configured. The state on the other hand, would often like to move various tasks to the international force so as to shift the burden, responsibility, and public accountability for implementation to the international force and the funding sources that generally accompany such a force.

For both phases, the parties must determine whether the mandate should be authorized under Chapter VI or VII. The conundrum here becomes how best to match the goals of the mandate with the authorized level of force. Essentially, what degree of force must the UN authorize its peacekeepers or regional forces to use in order to successfully carry out their mandate? Given the variation in mission's legal authority to use force, the failure to clarify the legal parameters of peacekeepers' mandate can have significant consequences.

A related conundrum parties face is how to ensure that the international force will actually exercise the level of force authorized to accomplish the mandate, and correspondingly to ensure that the international force does not exceed the use of force mandated.

Approaches to resolving the mandate conundrum

Given the over three dozen UN Security Council resolutions that addressed the ever-evolving mandate of the UN and other forces operating in the territory of the former Yugoslavia, this section will address the approaches to resolving the mandate-based conundrums with an exclusive focus on the former Yugoslavia.[140]

In the early stages of the conflict, the UN sought to accomplish the goal of supporting the resolution of the conflict through peace negotiations by authorizing the deployment of a peacekeeping force to Croatia to monitor a ceasefire and a preliminary political agreement designed to reintegrate back under Croatian state control territories occupied by Serbian paramilitaries.[141] The mandate subsequently was expanded to charge the UN forces with "creating the conditions necessary" for successful peace negotiations with specific authority to monitor the unblocking of the Yugoslav People's Army forces and their return to barracks, and to assist with providing humanitarian aid.[142]

With the failure of the ceasefire and the collapse of the preliminary agreement, the UN then evolved the mandate to include the demilitarization of four "UN Protected Areas," which were Serbian populated enclaves within Croatia that remained occupied by the Yugoslav Army, and from which non-Serbian civilians had been ethnically cleansed. In response to changed facts on the ground brought about by various military acts, the UN further expanded the territorial mandate of the UN forces to so called "pink zones" adjacent to the UN Protected Areas.[143] Facing resistance from Serb paramilitary forces to demilitarize, the UN then extended the mandate to include controlling the international border between these protected areas and Serbia and Bosnia, taking on immigration and customs functions.[144]

In light of the limited success of these efforts, Croatia requested that the UN peacekeepers be authorized to use force. The UN Secretary General objected to the evolution of the mandate on the grounds it would push the peacekeepers into direct military conflict with the Serb paramilitary forces, and that the troops were not configured for such a confrontation. The Security Council struck a compromise, and upgraded the status of the force from Chapter VI to Chapter VII, and authorized the peacekeepers to use force to defend themselves.[145] This resolution put the UN force on the erratic path to the eventual use of air strikes to bring Serbia to the Dayton peace negotiations. The second step along this path was to authorize close air support by NATO member states to defend the UN peacekeepers,[146] followed by authorizing the use of all necessary measures, including the use of air support to protect UN humanitarian aid convoys.[147]

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[140] *See generally*, Ivo H. Daalder, 'Decision to Intervene: How the War in Bosnia Ended' (Brookings Institute, 1 Dec. 1998)
[141] S.C. Res. 721, U.N. SCOR, U.N. Doc. S/RES/721 (1991); S.C. Res. 727, U.N. SCOR, U.N. Doc. S/RES/727 (1992)
[142] S.C. Res. 743, U.N. SCOR, U.N. Doc. S/RES/743 (1992); S.C. Res. 749, U.N. SCOR, U.N. Doc S/RES/749 (1992)
[143] S.C. Res. 762, U.N. SCOR, U.N. Doc. S/RES/762 (1992)
[144] S.C. Res. 769, U.N. SCOR, U.N. Doc. S/RES/769 (1992)
[145] S.C. Res. 743, U.N. SCOR, U.N. Doc. S/RES/743 (1992); S.C. Res. 749, U.N. SCOR, U.N. Doc S/RES/749 (1992)
[146] S.C. Res. 908, U.N. SCOR, U.N. Doc. S/RES/908 (1994)
[147] S.C. Res. 958, U.N. SCOR, U.N. Doc. S/RES/958 (1994)

In light of the failure of the UN peacekeeping force to successfully reintegrate the UN-protected areas back into Croatian state control, Croatia withdrew its consent for nearly all of the mandated authorities of the peacekeeping force. Once it reclaimed its near monopoly of force, Croatia undertook a successful military campaign to reintegrate these territories.

In Bosnia, the mandate evolved similarly, as did the nature and configuration of the international force, as discussed above.[148] As noted by one commentator, through dozens of resolutions, the Security Council "entrusted UNPROFOR with increasingly complex and dangerous tasks that suggested a mix of traditional peacekeeping, 'wider peacekeeping' and peace enforcement."[149]

As a first step in the evolution of the mandate, the Security Council modified and expanded the mandate,[150] acting under Chapter VII to call upon states to take measures nationally or through regional arrangements to facilitate the successful delivery of humanitarian aid in Bosnia.[151] This modification of the mandate was designed to allow the peacekeepers to call on NATO to provide air support to protect UN personnel, UN aid convoys, and civilian populations.[152] The Security Council then expanded the mandate to create a no-fly zone for military aircrafts over Bosnia and authorized the peacekeepers to monitor compliance. After 465 violations, the Security Council again evolved the mandate to permit member states and/or regional organizations to coordinate "all necessary measures" to ensure compliance with the no-fly zone.[153] NATO began immediate enforcement operations, eventually shooting down a number of Serbian fighter planes.

The UN also authorized the creation, and subsequent protection of "safe areas" in and around six sieged cities.[154] As noted above, France, UK, and the Netherlands created an *ad hoc* heavily armed Rapid Reaction Force to supplement the capabilities of the UN peacekeepers. After the safe areas of Zepa and Srebrenica were overrun, and after the Serbian forces took a number of UN peacekeepers hostage, NATO undertook an extensive air campaign, coupled with counter-battery artillery from the Rapid Reaction Force.

Throughout the evolution of the mandate, NATO force commanders, member states of the Security Council, the UN Secretary-General and the UN Envoy constantly debated and negotiated. While some members of the Security Council and the NATO force commanders emphasized the Chapter VII nature of the mandate, and the authority to use force to protect civilians, the Secretary-General and his Special Representative characterized the mandate as "VI and a half," and sought to limit the use of force to protecting UN forces and personnel. As such, the consequences of the timid and tardy approach of the UN Security Council were amplified by the narrow, and inaccurate, interpretation of the mandate by the Secretary-General and his

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[148] Williams and Scharf, *supra* note 15, at 38
[149] Findlay, *supra* note 35, at 263
[150] Williams and Scharf, *supra* note 15, at 38
[151] S.C. Res. 770, SCOR, 47th Year, Resolutions and decisions of the Security Council, 1992, at 24, U.N. Doc. S/RES/770 (13 Aug. 1992) art. 2
[152] Williams and Scharf, *supra* note 15, at 34, 38
[153] S.C. Res. 816, U.N. SCOR, U.N. Doc. S/RES/816 (1993) ¶ 3-4
[154] S.C. Res. 836, U.N. SCOR, U.N. Doc. S/RES/836 (1993) ¶ 5-6, 9

Special Representative. As noted above, the establishment of the dual key approach for the use of force further undermined the effectiveness of the mandate, and led to the ultimate failure of UN forces to protect civilians from massacres, including the one at Srebrenica.[155]

In Macedonia, the UN forces took on the role of a preventative deployment—essentially a trip wire. At the request of the President of Macedonia, in November 1992 the UN agreed to share Macedonia's monopoly of force, and deploy peacekeepers for the purpose of monitoring threats to Macedonia's territorial integrity. This was the first time such a mandate was authorized for UN peacekeeping troops, and in fact a similar request from Bosnia in January 1992 had been denied.[156] To augment the "trip wire" nature of the force, in March 1995 the UN expanded the configuration of the UN force to include American soldiers.[157]

During the Dayton negotiations, NATO sought to avoid the consequences of UN engagement in interpreting the mandate, and insisted that any sharing of the monopoly of force for the purposes of territorial integrity and security be with an *ad hoc* Implementation Force comprised almost exclusively of NATO forces, and under the command of the North Atlantic Council (the civilian command structure for NATO). The first annex of the agreement was the IFOR annex, which provided that the UN would transfer its sharing of Bosnia's monopoly of force to IFOR. The annex also laid out explicit authority for IFOR to use force to accomplish the objective set forth in the annex, and to protect its own forces.[158]

The Bosnian delegation sought to include explicit authority to provide security for elections and to arrest indicated war criminals in the mandate. General Wesley Clark, who was negotiating on behalf of NATO, refused these requests, arguing that the broad mandate provided sufficient authority to take on these tasks should NATO wish to do so. During the initial years of IFOR's deployment the NATO refused to arrest war criminals. Only after intense pressure from human rights organizations and a number of rather humiliating encounters with indicted war criminals[159] did NATO exercise its authority to arrest war criminals.[160]

Negotiations Relating to the Sharing of Force between the State and Non-State Actors

Negotiations relating to the sharing of force between the state and non-state actors can be grouped into three main approaches. In some instances, the state restores full control over the monopoly of force. In others, the state restores full yet modified control over the monopoly of force via the integration of non-state actor forces into the national forces. In still others, the state restores limited control over the monopoly of force by permitting non-state actors to maintain their forces and command structure under the umbrella command of the national forces.

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[155] 'The Fall of Srebrenica and the Failure of UN Peacekeeping' (Human Rights Watch, 15 Oct. 1995)
[156] S.C. Res. 795, U.N. SCOR, U.N. Doc. S/RES/795 (1992)
[157] S.C. Res. 842, U.N. SCOR, U.N. Doc. S/RES/842 (1993)
[158] The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton, 21 Nov. 1995), Annex 1
[159] John Pomfret and Lee Hockstader, 'In Bosnia, a War Crimes Impasse' (The Washington Post, 9 Dec. 1997)
[160] 'War criminal arrested' (NATO, 21 Apr. 2000)

Once a temporary peace has been secured, or in some cases, concurrently with peacekeeping efforts to restore the conditions under which a monopoly of force could be possible, the parties must decide whether they will establish a state-held monopoly of force. Most often, this means negotiating whether they will aim to create a single, unified national army, police, and security infrastructure.

The nature of the conflict at the time of the negotiations influences the willingness of the parties to agree to, or refuse, a state monopoly of force. If the non-state actors were defeated, or if they were victorious and are now poised to become the state actors, they are likely to be more willing to embrace a state monopoly of force.

When peace negotiations occur in the midst of intrastate conflict, or mere days or weeks after a preliminary ceasefire, the non-state actors can be deeply reluctant to agree upon or even envision a state-centric monopoly of force arrangement. In cases where the conflict ends in a stalemate, is characterized by a high degree of atrocity crimes, or is part of a wider series of recurring conflicts between the parties, the non-state actors are much less likely to embrace the state monopoly of force. In the event that the parties do not agree on the state-held monopoly of force as a long-term goal**,** they will then need to create a structure that allows for two or more armed forces to operate on the territory of the state.

The Restoration of Full Control over the Monopoly of Force

In some cases, the state restores full control over the monopoly of force through the defeat of the non-state armed actors, while in others the non-state armed actors are victorious. In still others, neither side is militarily successful, but the parties accomplish their objectives through the peace negotiations, and agree that the state should regain its full control over the monopoly of force.[161]

In any of these cases, the parties face a number of conundrums. First, they face the conundrum of how to create security arrangements that account for any state or non-state armed forces that are not going to be a part of the armed forces. These former-combatants often have difficulty envisioning a return to civilian life and relinquishing their arms.

Parties typically decide to facilitate this transition by undergoing a process of disarmament, demobilization and reintegration into society. DDR is designed to move armed parties toward a state monopoly of force, primarily by removing weapons from combatants, removing combatants from alternate military structures, and reintegrating combatants into civilian and economic life. DDR provides a "face-saving process for rebel groups to lay down their arms without being seen as losers" and establishing a "safety net" for former combatants as they work to transition into a civilian lifestyle.[162]

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[161] *See generally* Mimmi Soderberg Kovacs, 'From Rebellion to Politics: The Transformation of Rebel Groups to Political Parties in Civil War Peace Processes' (Uppsala University doctoral thesis, 2007); Jeroen De Zeeuw (ed), *From Soldiers to Politicians: Transforming Rebel Movements after Civil War* (Lynne Rienner Publishers, 2008).
[162] W. Andy Knight, 'Disarmament, Demobilization, and Reintegration and Post-Conflict Peacebuilding in Africa: An Overview' (2008) 1(1) African Security 24, 34

When approaching DDR, the parties often disagree on how to time the stages of disarmament, demobilization, and reintegration. While the national government is usually keen to have the non-state actors disarm immediately, non-state actors often seek assurances that certain conditions or benchmarks in other areas of the peace agreement will be met before they begin or progress along the process of disarming. The reality is that often parties enter into a peace agreement because a balance of power among forces has occurred on the battlefield. Once the non-state actors begin to disarm, that balance of power shifts in favor of the national forces and this may induce the national forces to return to the use of force to press this advantage.

When undertaking the disarmament of former combatants, the parties must agree on which weapons to surrender. While medium and heavy weapons are almost always relinquished, parties often engage in substantial debate as to whether small arms and light weapons such as AK-47s must be surrendered. Such weapons are often used for personal protection in unstable post-conflict environments, but are highly destabilizing as their retention can enable a paramilitary group to quickly remobilize. Small arms and light weapons are oftentimes sufficient enough to enable a group of former combatants to quickly turn to organized crime such as narcotics trafficking. Further complicating this conundrum, in some instances the possession of light weapons is integral to tribal and cultural structures.[163]

The forces called to disarm may also include government-sponsored paramilitaries and irregular forces that share a common interest with the government, but are not directly supported or controlled by the government. The government is often reluctant to acknowledge that it sponsors paramilitary forces, and may in fact have little control over these irregular forces. Similarly, the government, or the non-state armed actors, may be supported in country by foreign forces, either from a foreign state, or individuals from abroad. These forces may or may not be responsive to the requests of the parties to leave the state.

A second set of conundrums relates to the question of how and when to demobilize the combatants, be they excess state forces, or the forces of the non-state armed actors. Armed actors are usually initially gathered into cantonment sites, sometimes with and sometimes without their weapons.[164] Members of national armed forces are returned to their barracks.[165] Ideally, these zones are away from major civilian areas.[166] As with disarmament, mutually distrusting parties often call upon international observers to monitor these cantonment areas.[167]

Demobilized combatants have an array of possible paths to pursue. They may return to their civilian communities, they may join other militias not part of the peace agreement, turn to organized crime, be hired out as mercenaries, or engage in narcotics or human trafficking. The key to avoiding the latter destabilizing activities is to ensure that former combatants are integrated into civilian life and that they are able to secure stable, income-generating employment.[168] The conundrum is that illicit activity is often times more instantaneously

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[163] *Id.* at 47-48
[164] 'DDR in Peace Operations: A Retrospective' (UN Department of Peacekeeping Operations, 2010) 4
[165] Chapultepec Agreement, chs. 7, 11
[166] Peace Accords for Angola (Lisbon, 1 May 1991), People's Republic of Angola and UNITA, U.N. SCOR S/22609, Annex I, §C
[167] Cotonou Agreement (Cotonou, 25 July 1993) Liberia, UN Peacemaker S/26272, Annex, Part I sec. F, art. 7, ¶ 1
[168] 'DDR in Peace Operations: A Retrospective' (U.N. Department of Peacekeeping Operations, 2010) 4

profitable for former combatants, and may be more in sync with their warrior ethos. Heightened economic incentives for former combatants are often resisted by civilians who suffered during the war, often at the hands of these very same former combatants.

Approaches to resolving the re-establishment of full monopoly of force conundrum

In the case of Papua New Guinea and Bougainville, the Bougainville Revolutionary Army agreed, in August 2001, to the state of monopoly of force by Papua New Guinea in the Rotokas Record agreement,[169] and the subsequent Bougainville Peace Agreement.[170] Specifically, the Revolutionary Army agreed to a weapons disposal plan,[171] and subsequently to the disbanding of their armed groups.[172] The Rotokas Record also required the state aligned paramilitary Bougainville Resistance Force to disarm and demobilize.[173]

The armed groups and the political leaders of the Bougainville resistance forces agreed to reestablish the state monopoly of force, in exchange for a commitment by Papua New Guinea to set Bougainville on a path to external self-determination through increased autonomy and eventually a referendum on the region's independence.[174] In the end, not all the forces disbanded, and a small group followed the former leader of the Revolutionary Army into the jungle where an official no-go zone was established. In the end, the group remained isolated and eventually dissolved when the breakaway leader died of malaria.[175]

In the case of Colombia, under the Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace of November 2016, the state regained the monopoly of force. The agreement did not provide for the integration of FARC members, but rather for the disarmament and demobilization of the militia members and their integration into society. The Agreement also provided for the transformation of the FARC into a political party and set aside seats in the national parliament for the new party.[176]

In a prior related effort in 1990 to disarm and demobilize paramilitary forces associated with the government, nearly a fifth of the members of the paramilitary group that disarmed were later assassinated by other armed groups or by members of the national army.[177] As a

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[169] Rotokas Record (Togaru, 3 May 2001) Bougainville Revolutionary Army and the Bougainville Resistance Force; *See also* 'Arms Surrender' (Post-Courier, 9 May 2001)
[170] Bougainville Peace Agreement (Arawa, 30 Aug. 2001)
[171] Rotokas Record (Togaru, 3 May 2001) Bougainville Revolutionary Army and the Bougainville Resistance Force, Weapons Disposal Plan
[172] Bougainville Peace Agreement (Arawa, 30 Aug. 2001) Annex: Statement of Commitment to Unified Structures
[173] Rotokas Record (Togaru, 3 May 2001) Bougainville Revolutionary Army and the Bougainville Resistance Force, Weapons Disposal Plan; Bougainville Peace Agreement (Arawa, 30 Aug. 2001) Annex: Peace Process Consultative Committee Resolution on Weapons Disposal
[174] Bougainville Peace Agreement (Arawa, 30 Aug. 2001) arts. 60, 312
[175] *See* Jo Woodbury, 'The Bougainville independence referendum: Assessing the risks and challenges before, during and after the referendum' (Australian Defence College Centre for Defence and Strategic Studies, Jan. 2015)
[176] *See e.g.*, Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (Bogota, 2016) Ch. 3, Ch. 2.1.2.1.c
[177] Véronique Dudouet, 'Nonstate Armed Groups and the Politics of Postwar Security Governance' in Melanne A. Civic and Michael Miklaucic (eds), *Monopoly of Force: The Nexus of DDR and SSR* (Institute for National Strategic Studies, National Defense University, 2011) 9; For other, earlier efforts at DDR in Colombia, *see generally* Steven Jones-Chaljub, 'Peace Negotiations in Colombia and the DDR Challenge' (2013) 5(11) Counter Terrorist Trends and

consequence, the agreement contained elaborate provisions for the security of the FARC forces being disarmed and demobilized.

The members of the FARC agreed to turn over their weapons to the United Nations within six months of the signature of the agreement. The weapons were to be transformed by the UN into three historical monuments. The demobilized members, along with their families, assembled in a number of newly formed villages throughout Colombia. Each of these villages was deemed a special economic zone, and the former combatants were each allocated a monthly stipend of 90 percent of the minimum wage, and provided access to various social programs, training and educational opportunities. Security for the villages was provided by the national army. In addition, a special security force was created to protect members of the newly formed FARC political party, and it was deemed permissible for former members of the FARC to serve in this security force.[178]

Within a short time of the beginning of the implementation of the agreement, approximately 1,200 so called "FARC dissidents" returned to armed conflict, and narcotics trafficking. The dissidents were led by a number of former mid-level commanders, and operated mostly in remote areas where they are engaged in active conflict with the national army.[179]

Rwanda faced a more decisive transition to a state-held monopoly of force than occurs in most post-conflict contexts. In 1994, the armed wing of the non-state Rwandan Patriotic Front overwhelmingly defeated the Rwandan army. These non-state armed actors then became the state and replaced the former army as the holder of Rwanda's monopoly of force. Although the new government integrated the new national army with two-thirds Hutu and one-third Tutsi proportions (honoring the commitment that had been previously agreed to in the 1993 Arusha Accords), they appointed former members of the Rwandan Patriotic Army to nearly all the senior positions.[180]

In Yemen, the state failed to establish a full monopoly of force despite the aspirations and outcomes of the National Dialogue. Yemen's 2014 National Dialogue Outcomes explicitly declared, "The constitution shall provide that the State has monopoly on the use of power and force in accordance with the powers vested on them by law and in pursuant to the constitution."[181] That clear articulation was further supplemented a few pages later, when the document stipulated, "The armed forces belong to the people; its mission is to protect the country, maintain security, unity and territorial integrity, sovereignty and the Republican System. The State has the exclusive right to establish such forces. An individual, body, party, agency, group, organization or a tribe are prohibited from establishing such formations, bands, military or Para-military organizations under any name."[182]

Analyses 14-16 and Sergio Jaramillo et al., 'Transitional Justice and DDR: The Case of Colombia' (International Center for Transitional Justice, Jun. 2009)

[178] Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (Bogota, 2016) ch. 3

[179] 'Colombia FARC rebel dissidents number 1,200, military says' (Reuters, 20 Mar. 2018)

[180] Nina Wilen, 'From Foe to Friend? Army integration after war in Burundi, Rwanda and the Congo' (2016) 23(1) International Peacekeeping 79, 81-82

[181] Yemen National Dialogue Outcomes (2014) Ch. II, Working Group on Good Governance, Annex 7, art. 1, p. 92

[182] *Id.* at Ch. II, Working Group on Building the Foundations for the Security and Military Institutions, Decisions on Constitutional Principles, art. 1, p. 95

Despite the conclusions of the National Dialogue, Yemen's non-state armed actors had no interest in relinquishing their arms and disbanding their forces.[183] In particular, the Houthi forces rejected the attempts to codify the National Dialogue Outcomes in new governance structures and continued armed conflict, tipping Yemen into a devastating civil war. The push for a state-held monopoly of force, among other issues, contributed to the decision of the Houthis to pursue change on the battlefield rather than through the political process.

A key element of restoring a state's monopoly of force is ensuring the removal of foreign forces, including those supporting the state as well as those supporting the non-state armed actors. In the case of Angola, the first agreement in the series of agreements bringing an end to the conflict was dedicated to the phased redeployment, followed by the withdrawal, of Cuban forces from Angolan territory. The Agreement also applied to South African forces, which had previously withdrawn.[184] The withdrawal of forces was monitored and verified by a United Nations force.[185] Similarly, the Lomé Peace Agreement for Sierra Leone required the withdrawal of all "mercenaries,"[186] and the Framework for a Comprehensive Political Settlement of the Cambodia Conflict detailed plans for the removal and verification of "any foreign forces, advisers, and military personnel remaining in Cambodia, together with their weapons, ammunition, and equipment."[187]

When restoring the monopoly of force, the parties often must create a program for disarming the non-state combatants, and reintegrating them into civilian society. In the case of Mozambique, for instance, the agreement provided that the armed actors would "revert for all purposes to the status of civilians," in increments of 20 percent of the force per 30 days.[188] This was accompanied by a detailed program for disarmament. The parties to the Burundi agreement structured the demobilization such that those deemed to be suitable for civilian reintegration disarmed, while those deemed suitable for integration into the new armed forces were allowed to keep their weapons and bring them with them into the new security forces.[189]

As noted above, the parties often seek the assistance of the international community when dealing with the restoration of the monopoly of force. The disarmament process is no different. Oftentimes, the non-state armed actors seek assistance and monitoring of their disarmament by UN peacekeepers or other neutral third parties in order to guard against retaliation by the government. This neutral engagement is designed to increase their trust in the weapons collection process. In the case of Angola's Bicesse Accords, non-state forces surrendered their weapons to a joint monitoring entity, rather than transferring their arms to the government

[183] *See generally,* 'Rethinking Peace in Yemen' (International Crisis Group, 2 Jul. 2020)
[184] S.C. S/20346, U.N. SCOR, U.N. Doc. S/20346 (22 Dec. 1988) Annex, Agreement among the People's Republic of Angola, the Republic of Cuba, and the Republic of South Africa
[185] 'Angola: United Nations Angola Verification Mission I' (United Nations Department of Public Information)
[186] Lomé Agreement, art. XVIII; For a detailed examination of DDR efforts in Sierra Leone as it relates to a broader program of transitional justice, *see generally* Mohamed Gibril Sesay and Mohamed Suma, 'Transitional Justice and DDR: The Case of Sierra Leone' (International Center for Transitional Justice, Jun. 2009)
[187] Agreement on a Comprehensive Political Settlement of the Cambodia Conflict (Paris, 23 Oct. 1991) Sec. IV, art. 8
[188] General Peace Agreement for Mozambique (Rome, 4 Oct. 1992) Republic of Mozambique and RENAMO, U.N. SCOR S/24635, Protocol IV, arts. VI.i.1-3
[189] Dudouet, *supra* note 177, at 10

forces.[190] In El Salvador, the armed actors surrendered their weapons under the watch of the UN Observer Mission in El Salvador.[191] In the case of Liberia, the weapons were surrendered to the Economic Community of West African States Monitoring Group in Liberia.[192]

The handover of weapons can involve quite a quixotic process. Oftentimes the state will lead with a request for the disarmament of the non-state armed actors in the first phase of the negotiations. Such a demand by Sudan during the Doha negotiations in 2011 substantially delayed the talks and undermined the trust of the Justice and Equality Movement armed actors to such an extent that they left the talks.

In the case of Aceh, Indonesia asserted during the initial phases of the talks that the Free Aceh Movement disarm. The Free Aceh Movement refused to hand over its weapons on the basis that there was no means to secure the safety of its forces unless the government also redeployed its forces. The government was unwilling to undertake such a redeployment while the Free Aceh Movement retained its weapons and remained an effective fighting force.[193] Ultimately, the 2004 tsunami, and the willingness of Indonesia to grant substantial asymmetrical autonomy to Aceh prompted the Free Aceh Movement to agree to demobilize.[194] But even then, the rebel leaders of the Free Aceh Movement substantially delayed complying with the requirement in the agreement to provide a list of their members that had demobilized. Moreover, they refused to join the Indonesian armed forces, an option provided in the agreement, preferring to return to civilian life.[195]

In the case of Northern Ireland, the disarmament of the Irish Republican Army was one of the most contentious issues in the peace process, with the parties reaching a number of understandings on political issues before reaching agreement on disarmament. Even then, it was not until eight years after the signing of the agreement that the Irish Republican Army formally decommissioned its weapons.[196] In South Africa's peace process, the African National Congress disarmed and demobilized four years after signing the National Peace Accord, by which time they had won the elections and become the governing party.[197] In El Salvador, even with the participation of the UN Observer mission, the Farabundo Martí National Liberation Front stashed a sizeable number of weapons in caches, just in case the peace process was not successful.[198]

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[190] Peace Accords for Angola (Lisbon, 1 May 1991), People's Republic of Angola and UNITA, U.N. SCOR S/22609, Annex I, Appendix 4, 5(a)
[191] Chapultepec Agreement, ch. VII, 29
[192] Cotonou Agreement (Cotonou, 25 July 1993) IGNU, NPFL and ULIMO, UN Peacemaker S/26272, Annex, Part I, sec. E, art. 6
[193] Dudouet, *supra* note 177, at 9
[194] Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (Helsinki, 2005) 4.2
[195] *See* Agus Wandi, 'Guns, Soldiers and Votes: Lessons from DDR in Aceh' in Véronique Dudouet et al. (eds), *Post-war Security Transition Processes: Participatory Peacebuilding after Asymmetric Conflicts* (Routledge, 2011); For more on DDR in Aceh, *see generally* Tommi Niemi, 'Reintegration in Aceh Indonesia' (Crisis Management Centre Finland Yearbook, 2009) 92-109
[196] Bairbre de Brún, 'The Road to Peace in Ireland' (Berghof Transition Series No. 6, 2008) 16
[197] Dudouet, *supra* note 177, at 10
[198] 'El Salvador – ONUSAL Background' (United Nations Peacekeeping)

In some cases, such as the early ceasefires of the Doha peace negotiations on Sudan, the parties opt for simple disbandment, without detailed provisions relating to the disarmament of those forces. Those initial agreements at Doha also provided for a lengthy period of time for the integration of their forces, thus permitting the rebel forces to retain combat ready units in the event the government failed to fulfill its obligations. This ultimately turned out to be the case, with the parties returning to conflict rather quickly.[199]

Even when not formally mandated by a peace agreement, the possibility of continuing to operate in the security sector may be an appealing path for many combatants who worry about their economic prospects in civilian life. Many demobilized members of the Kosovo Liberation Army took new positions in the reformed Kosovo Police Service.[200] The UN Mission in Kosovo also created a new institution, the Kosovo Protection Corps, to accommodate former combatants looking for new jobs. The Corps was as a civilian emergency service agency that employed many former members of the Kosovo Liberation Army and provided humanitarian aid, disaster response, and post-conflict reconstruction.[201] The Corps provided a "stop-gap" solution for demobilized combatants, a formalized entity in which former combatants could stably operate.[202]

The Re-establishment of Full, yet Modified, Control over the Monopoly of Force via the Integration of Non-State Forces into the National Forces

In conflicts that do not have clear victors, but in which the parties do seek a state-held monopoly of force, the parties are likely to move towards integrating their forces into unified security apparatuses. To accomplish this objective, the parties create a plan that addresses the timing and sequencing of integration, and often couple this plan with security sector reform.

One of the first conundrums the parties face is determining when to begin integrating armed forces and over what period of time the process of integration should last. States seeking to reclaim their monopoly of force are often inclined to move quickly towards the creation of a unified armed force, whereas the non-state armed actors that have been challenging the state in conflict are unlikely to possess high levels of trust and may want to proceed more gradually. Non-state actors may also refuse to immediately break apart their command structures, worrying that they may need to return to armed conflict if the state fails to uphold its other commitments in the peace agreement, such as power-sharing, wealth-sharing, and protecting human rights. At the same time, the state may be reluctant to move forward with those commitments before the non-state forces have begun integration.

While an integration process works to transition the non-state forces back to arrangements that do not challenge the state-held monopoly on force, the non-state actors (and

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[199] Paul R. Williams and Matthew T. Simpson, 'Drafting in Doha: An Assessment of the Darfur Peace Process and Ceasefire Agreements' in Melanne A. Civic and Michael Miklaucic (eds), *Monopoly of Force: The Nexus of DDR and SSR* (Institute for National Strategic Studies, National Defense University, 2011) 50-52

[200] Sean McFate, 'The Link Between DDR and SSR in Conflict-Affected Countries' (USIP Special Report 238, May 2010)

[201] Bernard Koucher, SRSG, 'On the Establishment of the Kosovo Protection Corps' Regulation No. 1999/8, U.N. Doc UNMIK/REG/1999/8 (20 Sept. 1999) ¶ 1.1

[202] Ramadan Qehaja, Kosum Kosumi, and Florian Qehaja, 'The Process of Demobilization and Integration of Former Kosovo Liberation Army Members – Kosovo's Perspective' (Kosovo Centre for Security Studies)

often time mediators or the international community) will typically demand that the state also undergo a broad reform process to remedy the initial drivers of conflict that prompted the militarization of opposition groups.[203] Many of these are reforms related to governance, natural resources, and sovereignty arrangements that are discussed in depth in the other chapters of this book. The reform of the security sector is no exception.

The reform of the security sector, at any time, can be a complicated and fragile process. Reforming the security sector, while integrating former non-state armed actors, and providing security for the implementation of a peace agreement, can be particularly challenging.[204] Such reform is necessary, however, to enable the previously warring parties to re-confer political legitimacy upon the new armed forces and security apparatuses, as well as the institutions that support those entities. Importantly, security sector reform can also address impunity for violations and abuses of human rights in post-conflict contexts, contributing to the rule of law.[205]

While SSR clearly includes the reform of armed security forces, it may also include the reform of a range of related state institutions.[206] Some commentators have gone so far as to argue that SSR should be an expansive undertaking that aims to "create a secure environment that facilitates development, poverty reduction, good governance and the consolidation of democracy based on the rule of law."[207]

During the course of a peace negotiation, it can be difficult for parties to determine where to draw the line with reforms. While it is often crucial to reform the army, the police, and the intelligence services, it is tempting to take the opportunity of a negotiation to propose agreement on the comprehensive restructuring of all things related to security in order to promote a peaceful, democratic, and rule of law-based society. Yet, doing so diverts attention and resources from the reform of the core security services, and it may have the unintended and counterproductive effect of framing the provisions as aspirational rather than obligatory.

Notably, strong support for security sector reform is not always present in peace negotiations. The state may be somewhat reluctant to engage in intensive or wide-sweeping reforms, viewing significant changes, particularly when done at the behest of international or mediator pressure, as an infringement on its sovereignty. At the same time, the state may recognize change is necessary to resolve the armed challenge to that very sovereignty, which may be re-launched by the armed groups with which the state is negotiating the peace agreement. Even when the parties may both agree that incorporating certain aspects of SSR within a peace process is necessary, they may face difficulties determining the scope of the reforms.[208]

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[203] Mark Knight, 'SSR: Post-conflict Integration' (Global Facilitation Network for Security Sector Reform, Aug. 2009) 19

[204] Mark Sedra, 'Introduction: The Future of Security Sector Reform' in Mark Sedra (ed), *The Future of Security Sector Reform* (The Centre for International Governance Innovation, 2010) 16

[205] S.C. Res. 2151, U.N. SCOR, U.N. Doc. S/RES/2151 (28 Apr. 2014) ¶ 5

[206] Dylan Hendrickson, *Understanding and Supporting Security Sector Reform* (Department for International Development) 7

[207] 'What is Security Sector Reform' (African Security Sector Network, 2018)

[208] For more on the complexities of SSR, *see generally* Sean McFate, 'Securing the Future: A Primer on Security Sector Reform in Conflict Countries' (United States Institute of Peace, 2008)

Approaches to resolving the integration of non-state forces into the national forces conundrum

For parties reestablishing the state's monopoly of force by pursuing the integration of non-state armed actors into the national security forces, there are a number of approaches that they can pursue.

The first option is for the non-state armed actors to integrate into the national security structure. As noted above, the Doha agreement between the Liberation and Justice Movement and Sudan provided for such an integration over a rather lengthy period of time. [209]

In the case of Angola's Bicesse Accords of 1991, the parties sought to integrate the UNITA non-state armed actors into the national army and state police forces immediately following the start of the ceasefire and prior to holding elections, so that those elections could have a better chance of being free and fair.[210] This rushed timeline proved problematic. The Accords provided an unrealistic timeline of only 60 days for the cantonment of hundreds of thousands of combatants and simultaneous creation of a new army of 50,000. Instead of complying, the rebel UNITA forces used the period to regroup and prepare to resume fighting should the election not result in its favor. By the day of the 1992 election, only 8,800 of the anticipated 40,000 combatants that were meant to integrate into the Angolan Armed Forces had reported for duty.[211] When UNITA lost the election, they disavowed the Accords and the civil war resumed.

In the case of the Philippines, the Moro National Liberation Front used the integration program as a way of retiring older or injured members into the armed forces, where they received a regular pay check and retirement benefits. The Moro National Liberation Front retained much of its force structure outside of the integrated army to operate as an informal guarantor of the peace agreement. Interestingly, unlike the case of Burundi, those integrating into the armed forces needed to turn over their weapons. Since cultural norms essentially required males to be armed, those integrating would take loans against their future military pay to purchase old or dysfunctional weapons to turn in.[212] Notably, the agreement did permit the Moro National Liberation Front to retain its status as a "revolutionary organization" and thus to keep its heavy weapons. The only fighters who were actually "disarmed" during this process were those that integrated into the Philippines' national security forces.

The second option for integration is to create a new national security force composed of members of the former state army and the former non-state armed groups. For instance, in August 2000, multiple parties fighting in Burundi's civil war signed the Arusha Peace and Reconciliation Agreement, which provided for the creation of national defense and national

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[209] Williams and Simpson, *supra* note 199, at 50-52

[210] Peace Accords for Angola (Lisbon, 1 May 1991), People's Republic of Angola and UNITA, U.N. SCOR S/22609, Attachment IV – Protocol of Estoril §VI.A., Arts. 1, 5, 9

[211] Vegard Andersen, 'Disarmament Demobilization and Reintegration (DDR) of ex-combatants in Angola' (University of Bergen, Nov. 2011) 42, 44

[212] G. Eugene Martin, 'Managing DDR and SSR Programs in the Philippines' in Melanne A. Civic and Michael Miklaucic (eds), *Monopoly of Force: The Nexus of DDR and SSR* (Institute for National Strategic Studies, National Defense University, 2011) 185

police forces.[213] The new national security forces were to "include members of the Burundian armed forces and combatants of the political parties and movements in existence at the time of restructuring of the army, as well as other citizens who wish to enlist."[214] The provisions also expressly stipulated that no ethnic group would compose more than 50 percent of either the national defense or national police force.[215]

The Arusha negotiations occurred before a definite end to the conflict in Burundi, and it would be years before key ceasefires were signed. Codifying a firm agreement on integrated monopoly of force arrangements, however, helped guide the subsequent security negotiations during the end of conflict and post-conflict period. Even for the parties that did not sign the Arusha Agreement, the provisions provided a crucial framework against which those groups eventually negotiated and signed agreements in the years that followed.[216] The parties signing the Arusha Agreement were aware that its integration protocols would not be immediately implemented, but their codification within the agreement paved the way for eventual military integration.

Integrating the officer corps can be more complicated given the qualifications required of senior commanders. Nonetheless, parties often allocate substantial space for commanders from the non-state actors for the purpose of ensuring a durable peace, rather than have disaffected senior leadership outside the national forces and potentially posing a threat of renewed conflict. For instance, the Pretoria Protocol on Political, Defence, and Security Power Sharing in Burundi provided that the National Defence Force would be composed of 60 percent officers from the governmental army and 40 percent from the non-state armed actors.[217] The Pretoria protocol also transformed the former armed party into a political party, thus creating space for leadership to move off the battlefield into to the political arena.[218] The Colombian peace process similarly permitted the transformation of the FARC into a political party, and set aside an initial percentage of parliamentary seats for the new party.[219]

When integrating forces into an existing or new security force structure, the parties must address whether to integrate individuals or units. Individuals often feel less secure, but are also less likely to break away from an integrated security force and return to violence. Mozambique addressed this quandary by creating a new national army, and initially integrating whole units from the existing forces of each party until the army was at full strength. At that point, the previous units would be dissolved and reformed into new units.[220] Any forces controlled by the parties not intended to be integrated into the new army would be demobilized under a

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[213] Arusha Agreement, Ch. II, arts. 14 (1, 2)
[214] *Id.* at art 14.1.b. (The quotation refers to the national defense force, and the language is mirrored in art. 14.2.b. with regard to the national police force: "The national police shall include members of the current national police, combatants of the political parties and movements and other citizens who meet the requirements.")
[215] *Id.* at art 14 (1.g., 2.e.)
[216] Cyrus Samii, 'Military integration in Burundi, 2000-2006' (Columbia University, 8 Jun. 2010) 11-12
[217] Pretoria Protocol on Political, Defence, and Security Power Sharing in Burundi (Pretoria, 8 Oct. 2003), art. 1.3.1
[218] Pretoria Protocol on Outstanding Political, Defence and Security Power Sharing Issues in Burundi (Pretoria, 2 Nov. 2003)
[219] Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (Bogota, 2016) 3.2.1
[220] General Peace Agreement for Mozambique (Rome, 7 Aug. 1992), U.N. Doc. S/2463 (1992) Protocol IV.I

comprehensive DDR program.[221] In the case of Nepal, the Maoists forces sought to have almost their entire military structure absorbed into the state army. The army insisted on only integrating individuals, and argued against integrating any officers.[222]

A third option is for a non-state armed force to transition into a fully functional force within the state's security structure. In Sudan, the pro-government militia known as the Janjaweed, which was responsible for much of the genocide in Darfur, transformed in 2019 into the Rapid Support Forces administered by Sudan's National Intelligence and Security Service. This transformation occurred despite an explicit government commitment to disarm those forces.[223] The Rapid Support Forces were relocated from Darfur to Khartoum to bolster the government of Omar al-Bashir. Those forces were widely accused of being responsible for the Khartoum massacre of unarmed protestors on June 3, 2019, which then led to the toppling of the Bashir regime.[224]

In the case of the August 2020 Juba Agreement between Sudan and the Sudan People's Liberation Movement–North/The Revolutionary Front (SPLM-N/SRF), the parties coupled a ceasefire with an integration plan that included substantial SSR. The implementation of the agreement would be carried out and supervised by a series of joint committees composed of members of the two parties and neutral third parties. These committees would exercise command and control over the forces undergoing integration.[225]

The plan for integration into a single national professional army consisted of three yearlong phases wherein the SPLM-N/SRF forces would be integrated first at the battalion level, then the company level, and then finally at the individual level at the conclusion of a roughly three-year period. The agreement provided for an elaborate process of demobilizing the elderly, young and disabled, coupled with the registration and assessment of those interested in serving in the security forces of Sudan. Through the joint mechanisms, the parties would agree on the optimal number of individual to serve in the security forces. The security forces included in this agreement consisted not only of the army and the police, but also the intelligence services. [226]

The program of SSR was designed to dramatically reshape the Sudanese army, which was for decades used as a tool of President al-Bashir to maintain his hold on power, and was implicated in genocide in Darfur and numerous other atrocity crimes throughout Sudan. Under the agreement, the parties agreed to transform the army and other security institutions to reflect the diversity and aspirations of the democratic revolution in Sudan; free these institutions from any ideological, political, regional or tribal affiliation; and adopt best practices of modern

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[221] *See* General Peace Agreement for Mozambique (Rome, 7 Aug. 1992), U.N. Doc. S/2463 (1992) art. 6; Protocol VI

[222] Dudouet, *supra* note 177, at 14

[223] S.C. Res. 1556, U.N. SCOR, 59th year, Resolutions and decisions of the Security Council, 1 August 2003-31 July 2004, U.N. Doc. S/RES/1556 (2004); Human Rights Situation in Sudan, U.N. Doc. A/HRC/7/HGO/21 (21 Feb. 2008) 3

[224] '"They Were Shouting 'Kill Them'" Sudan's Violent Crackdown on Protesters in Khartoum' (Human Rights Watch, 17 Nov. 2019)

[225] Juba Declaration for Trust Building Procedures and Runup for Negotiations (Juba, 2020) Sec. B

[226] Two Areas Track Agreement Between the Transitional Government of Sudan and Sudan People's Liberation Movement-North/The Revolutionary Front (Juba, 2020) sec. C, chs. 2-3

democratically controlled armed forces. The state of Sudan would exercise the sole monopoly of force. The agreement does, however, seem to indicate that this restructuring of the security forces would occur after the three-year period of integration.[227]

In a parallel agreement between Sudan and the Darfur non-state actors, the parties agreed to the rapid integration of the Darfuri rebel forces to begin within the assembly and vetting of forces within 90 days of the singing of the peace agreement. The integration process was to start immediately upon the agreement of requirements and qualifications for integration, and be completed within 15 months as of signing the peace agreement. The parties negotiated an additional requirement that forces, which were to be integrated at the unit level, would remain deployed in Darfur for 40 months, after which time they could be deployed to other parts of Sudan. No integrated soldier could be terminated before six years of service, except for with cause.[228]

The agreement further provided that Sudan would pay to the Darfuri non-state armed actors the value of the weapons surrendered. The value would be determined by a joint specialized technical committee.[229] And, as with the SPLM-N/SRF agreement, this agreement provided for a fairly radical overhaul of Sudan security services.

The Re-establishment of Limited Control over the Monopoly of Force by Permitting Non-State Actors to Maintain their Forces and Command Structure under the Umbrella Command of the National Forces

In some rare instances, the state restores limited control over the monopoly of force by permitting non-state actors to maintain their forces and command structure under the umbrella command of the national forces.

This approach is most frequently adopted when the peace agreement envisions a future determination of final status for a party seeking external self-determination. If a state is contemplating, or if the peace agreement specifically provided for the exercise of the right of external self-determination, the party is likely to wish to maintain effective security forces so as to be able to protect any newly acquired territorial integrity and sovereignty. The conundrum parties face when considering this context is how to maintain security throughout the territory of the state when there are two or more functional armies.

The parties to a peace negotiation often attempt to secure a durable peace by creating some degree of joint command at the highest level, and/or by creating joint integrated units at the operational level. The joint integrated units could either become models for future integration of the multiple armies, or they may become flashpoints leading to renewed hostilities.

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[227] Agreement between Sudan and the Sudan People's Liberation Movement–North/The Revolutionary Front (SPLM-N/SRF) (Juba, 2020) ¶ 18

[228] Darfur Agreement Between the Transitional Government of Sudan and Darfur Parties to Peace (Juba, 2020) sec. I. ch. 4, arts. 26.4-6

[229] *Id.* at sec. I. ch. 4, art. 22.6; For more information related to DDR and SSR in peace processes on the African continent, *see generally* W. Andy Knight, 'Linking DDR and SSR in post conflict peace-building in Africa: an overview' (2010) 4(1) African Journal of Political Science and International Relations 29-54

Approaches to resolving the limited control over monopoly of force conundrum

The Comprehensive Peace Agreement, which brought an end to the Sudanese civil war in 2005, provided that South Sudan would be entitled to hold a referendum within six years to decide whether it wished to remain a part of Sudan or to become an independent state.[230] Over the course of the conflict, South Sudan had developed a substantial armed force, and it wished to maintain this force in the event there was a return to conflict before the referendum, or in the event it attained statehood after the six year period.

The Comprehensive Peace Agreement therefore provided that both the army of Sudan (Sudanese Armed Forces) and the army of South Sudan (the Sudan People's Liberation Army) would continue to exist. The President of Sudan would be the Commander in Chief of the Sudanese Armed Forces, and the First Vice President, who would represent South Sudan, would be the Commander in Chief of the Sudan People's Liberation Army.[231] Both armies were to be considered and treated equally as Sudan's National Armed Forces during the interim period prior to the referendum.[232] In the event South Sudan opted to remain a part of Sudan, the two armies would be merged into a single national army.

The agreement also provided that each army would redeploy to its respective territory within two and a half years.[233] This redeployment proved difficult to implement. Several thousand troops that fought for the Sudan People's Liberation Army, yet were originally from northern regions, ended up remaining in those northern regions. After the South's resounding vote for secession in the 2011 referendum, many of these troops reformed as the Sudan People's Liberation Army-North, which would continue the fight against the northern Government of Sudan.[234]

To prepare the groundwork for a future integrated army in the event the South voted to remain in Sudan, and also to provide security for hot spots during the interim period, the parties agreed to created Joint Integrated Units. These units would each contain an equal number of soldiers from the North and the South. If the outcome of the 2011 referendum was Sudanese and South-Sudanese unity, then these units would be greatly expanded to create a future Sudan national army. Conversely, if the outcome of the vote was independence, then the forces would be dissolved and the forces would return to their respective armies. Nearly 40,000 troops were to participate in these joint integrated units.[235]

To command this "third force," the parties agreed to establish a Joint Defense Board that would be comprised of the Chiefs of Staff of the two forces, their deputies and an agreed upon number of senior officers. The Board was to take its decisions by consensus and be chaired on a

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[230] The Comprehensive Peace Agreement Between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (2005), ch. II, part II, art. 2.3.5
[231] *Id.* at ch. I, art. 2.3.5 8
[232] *Id.* at ch. VI, art. 1b
[233] *Id.* at ch. VI, art. 3
[234] 'Sudan's Spreading Conflict (I): War in South Kordofan' (International Crisis Group Africa Report N°198, 14 Feb. 2013) 23n/140
[235] The Comprehensive Peace Agreement Between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (2005), ch. VI, art. 1a and art. 4

rotating basis by the respective Chiefs of Staff.[236] This approach of rotating command was applied all the way through the chain of command down to the unit level.[237]

The rotating nature of the command, the unwillingness of many troops to serve in joint units, and the fact that the units were destined to return to their respective armies in the event of independence substantially undermined the ability of the units to operate in an efficient and effective manner. In fact, "the three most serious breaches of the CPA's permanent ceasefire resulted directly from the actions of JIU battalions and brigades."[238] The North also developed a habit of incorporating state-aligned paramilitary forces into the joint integrated units in place of its regular armed forces. This substantially undermined the trust relationship with the Southern forces.[239]

In the case of Bosnia, at the time of the signing of the Dayton Accords in December 1995, the parties were set on maintaining separate armies. At the time of the peace talks in Dayton, none of the parties envisioned a full monopoly of force as the long-term goal, so the agreement designated one army for the Republika Srpska, and two within the Federation—one Croatian and one Bosnian.[240] The Dayton Accords established that the Federation and the Republika Srpska would retain entity-level armies as well as their own Ministries of Defense, with some limited coordination at the national level.[241]

During the early days of the implementation of the Dayton Accords, the United States undertook a train and equip program for the Bosnian army, but only for the army of the Federation. Notably, throughout this time, security in Bosnia was provided via 50,000 NATO troops, and thus Bosnia did not suffer from the sporadic post-agreement violence that tended to plague Sudan decades later.

In 2005, a decade after the signing of the Dayton Accords, the three armies established a joint command at the national level and a national Ministry of Defense.[242] The army maintains both multinational and single ethnic battalions, but all brigades are multinational. The integration was driven in large part by an interest in joining NATO's partnership for peace.[243] Eventually, the Bosnian forces themselves shared the monopoly of force with other states as they participated in peace support operations in Mali, Afghanistan, Congo, and Iraq.[244]

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[236] *The Comprehensive Peace Agreement Between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army (2005),* ch. VI, art. 5
[237] Aly Verjee, 'Sudan's Aspirational Army: A History of the Joint Integrated Units' (The Centre for International Governance Innovation, SSR Issue Papers No. 2, May 2011) 6
[238] *Id.* at 4
[239] *Id.* at 7
[240] The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton, 21 Nov. 1995) Annex 1-A, art. I.2.a; Annex 4, art. V.10.a.
[241] Mark Knight, 'SSR: Post-conflict Integration' (Global Facilitation Network for Security Sector Reform, Aug. 2009) 27; *See also* Sgt. Peter Fitzgerald, 'The armed forces in Bosnia and Herzegovina' (NATO, 28 Nov. 2001) 127 SFOR Informer
[242] 'Ministry of Defense and the Armed Forces of Bosnia and Herzegovina: Brochure 2015' (Public Relation Office of the BiH Ministry of Defense, Jul. 2015) 4-5
[243] 'Relations with Bosnia and Herzegovina' (NATO, 3 Feb. 2020)
[244] *See* 'Armed Forces of Bosnia and Herzegovina' (Ministry of Defense and Armed Forces of BiH, 2015)

During the Juba negotiations, Sudan agreed in a pre-agreement statement of principles titled a "Joint Agreement" that the forces of Sudan People's Liberation Army-North/Al-Hilu could retain its own security forces until final security arrangements were agreed upon, and until the "separation between religion and state is actualized."[245] The non-state actors thereby tied the retention of their armed forces until the implementation of one of their top political objectives.

In a variant of the limited control over the monopoly of force, Sudan and the Darfur parties to the Juba negotiations agreed to create a unique "security keeping force" to provide civilian protection in Darfur. The force was to be comprised of 6,000 members from the Darfuri non-state armed actors, and 6,000 from a mix of Sudanese Armed Forces, Janjaweed/RSF forces, and state police and state intelligence forces. While this force would operate in an integrated manner within the framework of the Sudanese Army, the 6,000 Darfuri members would not necessarily be considered part of the Sudanese Armed forces. The force would operate for a renewable period of two years. The force was designed to essentially replace the functions of the UNAMID peacekeeping force. Sudan thus sought to create a separate internal peacekeeping force charged with more or less the same mandate as the joint UN and African Union peacekeeping force.[246]

Conclusion

Negotiating and agreeing upon the re-establishment of a monopoly of force, and broader security arrangements is a fundamental component of achieving a durable peace. Without creating the conditions for an end of armed conflict, de-escalating violence, and re-establishing a monopoly of force, resolving the other puzzles discussed in this book would be impossible. The monopoly of force provides the basis for state legitimacy, a key component of establishing power-sharing arrangements, creating resource-sharing structures, enabling post-conflict governance, and if necessary for a smooth path to external self-determination.

As discussed in this chapter, to achieve a monopoly of force and promote post-conflict security, the parties must navigate the need for international forces to assist with establishing the conditions for peace, overcome mistrust between formerly-warring parties, and develop a common understanding on the future of security and the nature of the forces necessary to provide that security. This chapter examined the opportunity presented to parties in post-conflict peace negotiations to design innovate frameworks for re-establishing the monopoly of force in such a way as to mitigate conflict drivers.

This chapter has also discussed the consequences of rushing the process of determining security arrangements or with the oversharing or imprecise sharing of a state's monopoly of force with international actors. The rushed armed forces unification timeline in Angola and the unclear mandate for peacekeeping forces in Bosnia both contributed to a resurgence of violence and further set back those peace processes. If each conundrum related to the creation of a secure post-conflict state is not carefully considered, the missteps committed can derail any hope for a durable peace.

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[245] Joint Agreement (Juba, 2020) ¶ 4

[246] Permanent Ceasefire and Final Security Agreement Protocol (Juba, 2020) ch. 4, arts. 29, 29.4.1, 29.5.2, 29.6

The case studies highlighted in this chapter: Angola, Bosnia, Burundi, Kosovo, Mozambique, Papua New Guinea/Bougainville, Rwanda, Sierra Leone, Sudan/South Sudan, and Sudan/Darfur, underscore the complicated tradeoffs parties face when confronting conflicting visions for a future state, including the composition of its armed forces, the scope of activities for international forces keeping the peace, and the role of former combatants in society. Each approach parties take when resolving numerous security related conundrums poses a potential for lasting peace as well as a danger for provoking future conflict.

The next chapter will explore a subject that often goes hand in hand with the re-establishment of a monopoly of force and a sense of genuine security thought out the state: power-sharing.