

3. The legitimacy of peace operations

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I. Introduction

The year 2008 marked the 60th anniversary of the first United Nations (UN) peacekeeping operation.¹ Over the preceding decade, during which there were apparently major successes in Burundi and Sierra Leone and marked progress in the building of institutional capacities to carry out peace operations, peacekeeping increasingly came to be perceived as a panacea for the difficulties of countries emerging from conflict. This led to a burgeoning in the number, size and scope of peace operations. However, problems that afflicted peace operations in Afghanistan, the Democratic Republic of the Congo (DRC), Georgia and Sudan in 2008—difficulties in managing ‘spoiler groups’, misconduct by peacekeepers, political crises and chronic delays in the deployment of operations and troop contingents—raised questions about the legitimacy of several peace operations and of peacekeeping itself, as currently practised.² The problems were, according to some, the prelude to a systemic and perhaps paradigmatic crisis in peacekeeping.³

Some observers have focused on the systemic problems, particularly the severe shortfalls in personnel, equipment and financing that plagued several missions—particularly large, multidimensional operations—in 2007 and 2008. They argue that these difficulties are merely the result of a natural cyclical downturn, as the system struggles to adjust to the higher ambitions for peacekeeping, and point to similar problems that appeared in the early 1990s.⁴ Others have argued that that the problems run deeper and are related to the contemporary paradigm of peacekeeping as a political endeavour that often prescribes the direction of transformation of the host

¹ The first UN peacekeeping operation was the UN Truce Supervision Organization (UNTSO). It was deployed in 1948 to monitor the truce in the Palestinian territories following the 1948 Arab–Israeli War. For more detail see the SIPRI Multilateral Peace Operations Database, <<http://conflict.sipri.org/>>.

² ‘Spoiler groups’ are parties that seek to stall or derail transition or peacebuilding processes. On spoiler management see Stedman, S. J., Rothchild, D. and Cousens E. M. (eds), *Ending Civil Wars: The Implementation of Peace Agreements* (Lynne Rienner: Boulder, CO, 2002).

³ E.g. Gowan, R., ‘Strategic context: peacekeeping in crisis’, *International Peacekeeping*, vol. 15, no. 4 (Aug. 2008), pp. 453–69. The ‘system’ in this case is the ‘operational, managerial and political mechanisms required to maintain UN missions in the field’ and the ‘paradigm’ is the ‘set of assumptions and concepts that have informed UN practice in the field over the last decade’.

⁴ MacFarquhar, N., ‘New demands overwhelm UN peacekeeping missions’, *International Herald Tribune*, 11 Feb. 2009.

country in line with a 'liberal peace' agenda.⁵ These observers call for a complete reassessment of the fundamentals and objectives of peace operations.

While a number of systemic problems in peacekeeping need to be addressed, doing so will not avert a crisis. This is not to say that the entire peacekeeping paradigm needs to be discarded: by addressing some of the main issues relating to the legitimacy of peace operations, alongside the shortfalls in personnel, equipment and financing, it should be possible to set contemporary peacekeeping back on the generally positive trajectory of the past few years.

The legitimacy of a peace operation could be defined by three interlinked and mutually reinforcing elements: political consensus, legality and moral authority.⁶ 'Political consensus' refers to agreement—or at least acquiescence—among the international community and the host government that a peace operation is required and appropriate. Political consensus and legality are widely seen as determining the legitimacy of a peace operation's mandate. The 'moral authority' of a peace operation is determined largely by the behaviour of its personnel: how far they adhere to international norms and standards and particularly those that the operation is meant to be diffusing. If one of these aspects of legitimacy is undermined, it can directly affect the other aspects, constrain the operations's efficacy and success and even threaten its overall legitimacy. It is important to bear in mind, however, that the definition and evaluation of legitimacy are to a large extent subjective; even the legitimacy supposedly offered by the UN's endorsement of a peace operation mandate might be questioned.

Section II of this chapter discusses challenges to the legitimacy of the mandates of several peace operations, including how these mandates were translated into operations on the ground in 2008. Section III examines how selected operations were affected by perceptions, particularly among local populations, that they had lost their moral authority due to the conduct of their personnel. Also discussed are attempts by the UN to address misconduct by peacekeepers. Section IV offers some conclusions. Appendix 3A presents extensive data on the multilateral peace operations that were operational in 2008.

⁵ The 'liberal peace' agenda focuses on establishing liberal democracy and a free market economic system. Typical peace operation tasks in this context include consolidating democratic institutions, strengthening state apparatus, promoting 'good governance', and economic and social rehabilitation. On this debate see also Richmond, O. P., *The Transformation of Peace* (Palgrave Macmillan: Basingstoke, 2005).

⁶ This understanding of legitimacy is adapted from Ian Clark's 'international legitimacy trilogy'. Clark, I., *Legitimacy in International Society* (Oxford University Press: Oxford, 2005). See also O'Connor, J., 'Recycling sociology's bargain bin: "legitimacy" in world politics research', *Cooperation and Conflict*, vol. 43, no. 2 (June 2008), pp. 251–60.

II. Legitimacy and the mandate

The establishment of a peace operation typically follows the conclusion of a peace agreement between the conflict parties. The operation's mandate is the authority granted to the operation to carry out a set of activities that are aimed at helping the post-conflict state to effect a transition to sustainable peace. A mandate defines the broad objectives of the operation. Discussions on the legitimacy of a mandate essentially concern questions of the right to intervene, who should do it, and when and how it should be done.⁷ Thus, a number of factors related to the mandate can affect the legitimacy of a peace operation: the mandate's legal basis; the functions it includes and their suitability or appropriateness to the needs of the host country; who is granted the mandate; and how it is implemented. These factors may be complementary or, at times, conflict.

One way in which several factors could conflict is if the mandate were legally sound and the mandated tasks appropriate, but the rules of engagement agreed for the operation were so limiting that the operation had difficulty carrying out the tasks. Equally, the mandate and the actors to whom it is granted might be legitimate in the eyes of international actors and the host government but illegitimate from the perspective of segments of the local population. The need for political consensus or the consent of the conflicting parties often means that compromises that are made in the articulation of the mandate make it less than optimal as a means of achieving sustainable peace.

The legitimacy of a mandate may also be called into question because of perceived gaps between its original aims and its eventual implementation. For example, the geographical location of the deployments on the ground may lead to perceptions of partiality.⁸ In addition, the choice of partners the mission works with can undermine its perceived legitimacy—for example, a decision to work with warlords for reasons of political expediency or because they wield sufficient local power may be considered illegitimate on both moral and practical grounds. It should also be recognized that a mission's mandate, operational plans, rules of engagement and so on, along with the context in which it operates, generally evolve over time. As a result, new challenges to legitimacy may emerge over the life cycle of an operation.

⁷ See Seybolt, T. B., *Humanitarian Military Intervention: The Conditions for Success and Failure* (Oxford University Press: Oxford, 2007).

⁸ Pouligny, B., *Peace Operations Seen from Below: UN Missions and Local People* (Hurst: London, 2006), pp. 28–29.

Legality of the mandate

Legality is perhaps the basic—and the closest to an objective—determinant of the legitimacy of a peace operation's mandate and, ultimately, of the operation itself. UN operations deployed under the authority of a Security Council resolution under chapters VI or VII of the UN Charter have irrefutable legality under international law.⁹ Chapter VIII of the UN Charter states that regional organizations can mandate and conduct peace operations.¹⁰ However, any enforcement action by such an operation must be explicitly authorized by the UN Security Council. Operations conducted outside these two frameworks—for example by a 'coalition of the willing'—or without the UN's explicit sanction tend to be more contentious, especially if they use military force.

The South Ossetia Joint Peacekeeping Forces

A fog of legal ambiguity has hung over the South Ossetia Joint Peacekeeping Forces (JPKF) since its inception in December 1992. The JPKF was mandated by the June 1992 Dagomys Agreement, which governed a ceasefire between Georgia and South Ossetian secessionists.¹¹ The agreement established the Joint Control Commission (JCC), comprising representatives of Georgia, North and South Ossetia and Russia, each of which also contributed 500 military personnel to the JPKF and conducted joint patrols in disputed border areas to monitor the ceasefire.¹² In 1994 the Organization for Security and Co-operation in Europe (OSCE) Mission to Georgia was granted informal observer status with the JCC as a confidence-building measure intended to facilitate broader political settlement of the conflict.¹³

⁹ Chapter VI allows the UN Security Council to recommend measures for the peaceful settlement of international disputes, including the deployment of peacekeepers, to be taken with the consent of all parties concerned. Chapter VII empowers the Security Council to impose such measures on the parties as are needed to restore international peace and security, regardless of the parties' consent. The Charter of the United Nations was signed on 26 June 1945 and entered into force on 24 Oct. 1945. Its text is available at <<http://www.un.org/aboutun/charter/>>.

¹⁰ Regional organizations include the African Union (AU), the Association of Southeast Asian Nations (ASEAN), the Commonwealth of Independent States (CIS), the European Union (EU) and the North Atlantic Treaty Organization (NATO).

¹¹ The Agreement on the Principles Governing the Peaceful Settlement of the Conflict in South Ossetia was signed by Georgian and South Ossetian representatives at Dagomys, Russia, on 24 June 1992, following negotiations between Georgia and South Ossetian separatists brokered by Russia. On developments in the Georgian–South Ossetian conflict in 2008 see chapter 2, section V, in this volume.

¹² Nikitin, A. I. and Loucas, M. A., 'Peace support in the New Independent States: different from the rest?', eds D. C. F. Daniel, P. Taft and S. Wiharta, *Peace Operations: Trends, Progress and Prospects* (Georgetown University Press: Washington, DC, 2008), pp. 137–51.

¹³ Details on the mandate of the OSCE mission are available on the SIPRI Multilateral Peace Operations Database (note 1). The OSCE was known as the Conference on Security and Co-operation in Europe (CSCE) until 1995.

The legitimacy of the JPKF was frequently questioned on the grounds that it directly involved the conflict parties and that the mediator, Russia, was perceived as biased.¹⁴ Neutrality is a long-held principle of peacekeeping and requires the deployment of those who are not party to the conflict. The fighting between Georgia and South Ossetian separatists in 1991–92 was not referred to the UN Security Council and the JPKF was never granted the ‘seal of approval’ of a UN mandate. Nevertheless, the JPKF had the consent of the ‘peacekept’—the decision makers of the conflict parties—and was mandated under an international treaty. As long as the parties continued to give their consent, it thus could be considered a legitimate operation.¹⁵

In recent years, however, Georgia increasingly expressed doubts about the post-Dagomys arrangements and sought ways to balance Russia’s domination of the JCC and include other, more unambiguously neutral, third parties in the commission. In March 2008 Georgia declared that it would withdraw from the JCC if its new ‘2 + 2 + 2’ proposal was rejected. The proposal was to create a new negotiating arrangement comprising three pairs: Georgia and the provisional administration for South Ossetia that it helped to create in 2007; Russia and the South Ossetian separatists; and the European Union (EU) and the OSCE.¹⁶ Russia and the South Ossetians rejected the plan. In the ensuing months, tensions over South Ossetia escalated between Georgia and Russia. On 27 August, following the brief conflict between Georgia and South Ossetian forces supported by Russia, Georgia withdrew from the Dagomys Agreement, voiding the legal basis of the JPKF’s legitimacy and terminating the operation.¹⁷

The EU Rule of Law Mission in Kosovo

The EU Rule of Law Mission in Kosovo (EULEX Kosovo) was launched in February 2008, after a series of false starts, and finally became operational

¹⁴ See e.g. Facon, I., ‘Integration or retrenchment? Russian approaches to peacekeeping’, ed. R. E. Utley, *Major Powers and Peacekeeping: Perspectives, Priorities and the Challenges of Military Intervention* (Ashgate: Burlington, VT, 2006); and Fortna, V. P., *Does Peacekeeping Work? Shaping Beligerents’ Choices after Civil War* (Princeton University Press: Princeton, NJ, 2008), p. 5.

¹⁵ On the concept of the ‘peacekept’ see Clapham, C., ‘Peacekeeping and the peacekept: developing mandates for potential intervenors’, eds R. I. Rotberg et al., *Peacekeeping and Peace Enforcement in Africa* (Brookings Institution: Washington, DC, 2000).

¹⁶ Peuch, J.-C., ‘Georgia seeks to modify South Ossetian peace negotiation format’, Eurasia Insight, 18 Mar. 2008, <<http://www.eurasianet.org/departments/insight/articles/eav031808b.shtml>>. On the provisional administration see Peuch, J.-C., ‘Georgia striving to promote “alternative” South Ossetian leader’, Eurasia Insight, 25 June 2007, <<http://www.eurasianet.org/departments/insight/articles/eav062507a.shtml>>.

¹⁷ Georgian Government, ‘Georgia terminates mandate of peacekeepers in Abkhazia and S. Ossetia regions, as parliament declares Russian Army to be “occupying force”’, Georgia Update, 29 Aug. 2008, <<http://www.president.gov.ge/GeorgiaUpdates.php?l=E>>. A parliamentary resolution of 28 Aug. declared that Russia’s recognition of the independence of South Ossetia and Abkhazia, another secessionist territory, had ‘totally delegitimized all legal acts, according to which Russian troops had been stationed in Georgia’.

in December.¹⁸ The mission was originally scheduled for deployment in 2007, in accordance with the status plan prepared by the UN Special Envoy for the Future Status Process for Kosovo, Martti Ahtisaari.¹⁹ A transition strategy was drawn up to ensure a smooth handover of executive authority from the UN Interim Administration Mission in Kosovo (UNMIK) to the new Kosovan Government, with residual responsibilities going to EULEX Kosovo, a restructured North Atlantic Treaty Organization (NATO) Kosovo Force (KFOR) as the international military presence and the International Civilian Office. This strategy was based on the assumption of international political consensus over Kosovo's statehood and, with it, a UN Security Council resolution approving the Ahtisaari plan.²⁰ However, the Security Council did not endorse the plan and, owing to Serbia's opposition to Kosovo's independence and disunity among the EU, Russia and the USA, political consensus was not reached in 2007.

On 17 February 2008 the Kosovan Assembly nevertheless declared Kosovo's independence, stating that the Ahtisaari plan would serve as its blueprint for the transition.²¹ Serbia, supported by Russia, refused to recognize the declaration and asserted that it was illegal without Serbia's agreement as Resolution 1244 recognized Serbia's sovereignty and territorial integrity.²² Russia maintained that any change to UNMIK's legal status and, subsequently, to its mandate required a new Security Council resolution.²³ France, the United Kingdom, the USA and others argued that Kosovo's independence was the only viable way forward and should be recognized even without a new Security Council resolution; they held that 'the processes under way', including the deployment of EULEX Kosovo, were fully in line with international law, including Resolution 1244.²⁴ In addition, the

¹⁸ EULEX Kosovo was established under EU Council Joint Action 2008/124/CFSP of 4 Feb. 2008, *Official Journal of the European Union*, L 42, 16 Feb. 2008.

¹⁹ The Comprehensive Proposal for the Kosovo Status Settlement was presented to the UN Security Council on 26 Mar. 2007. It called for Kosovo's full independence, with an initial period of 120 days under UN supervision. United Nations, Security Council, Report of the Special Envoy of the Secretary-General on Kosovo's future status, S/2007/168, 26 Mar. 2007.

²⁰ Centre on International Cooperation, *Annual Review of Peace Operations 2008* (Lynne Rienner: Boulder, CO, 2008), pp. 49–56. Both UNMIK and KFOR were established in 1999 and were mandated by UN Security Council Resolution 1244, 10 June 1999.

²¹ Krasniqi, J., President of the Assembly of Kosovo, Kosovo declaration of independence, D-001, 17 Feb. 2008, <<http://www.assembly-kosova.org/?cid=2,128,1635>>.

²² United Nations, Security Council, Letter dated 17 Feb. 2008 from the Permanent Representative of Serbia to the United Nations addressed to the Secretary-General, S/2008/111, 19 Feb. 2008; and United Nations, Security Council, Letter dated 17 Feb. 2008 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, S/2008/108, 19 Feb. 2008.

²³ International Crisis Group, 'Kosovo's fragile transition', Europe Report no. 196, 25 Sep. 2008.

²⁴ 'Situation in Kosovo', Joint statement by UN ambassadors of the UK, France, Croatia, Belgium, Italy, Germany and the USA, 19 Feb. 2008, <<http://ukun.fco.gov.uk/en/newsroom/?view=News&id=3297494>>.

UN Secretary-General, Ban Ki-moon, declared that UNMIK's mandate remained in force.²⁵

On 15 June 2008 a new Kosovan constitution came into force, marking the end of the transition period in the eyes of the majority Kosovan Albanians.²⁶ As both Resolution 1244 and the new constitution were considered to be in force, there was much confusion and disagreement regarding the legal status and operational remits of the various missions. Kosovan Serbs north of the Ibar River refused to cooperate with EULEX Kosovo because they did not recognize Kosovo's independence and thus the mission's legality. Meanwhile, UNMIK ceased to function for all intents and purposes, having lost its legitimacy with the Kosovan Albanians, but did not significantly scale down its deployment until November 2008.²⁷ Although the EU and the UN agreed to the modalities of an eventual handover of policing and judicial responsibilities from UNMIK to EULEX Kosovo, the local institutions affected by the political and legal crises opposed the changes and only agreed to EULEX's deployment in December. Further complicating matters, in October 2008 the UN General Assembly adopted a Serbian proposal that the question of Kosovo's independence be referred to the International Court of Justice (ICJ) for an advisory opinion.²⁸ It remains to be seen how the ICJ will rule and how that ruling will affect EULEX Kosovo, KFOR and UNMIK in 2009.

By the end of 2008, the operational problems that had delayed the handover of duties from UNMIK to EULEX Kosovo since 2007 had only just been overcome. The experience in Kosovo in 2008 testifies to the centrality of political consensus surrounding an operation's legality and its legitimacy, and in turn, its ability to carry out its mandate effectively.

Appropriateness of the mandate

Many peace operations launched in the past decade, particularly those carried out by the UN, have had ambitious and broad-ranging mandates incorporating tasks such as the promotion of human rights and the extension of state authority.²⁹ Inevitably, the more tasks are given to peace operations, the more they are likely to provoke disagreement as to whether the mandates are appropriate and legitimate.

The construction of a peace operation's mandate should correspond as closely as possible to the dynamics of the conflict it intends to address in order for it to be effective in achieving its objectives. For example, a high

²⁵ United Nations, Security Council, Minutes of the 5839th meeting, 18 Feb. 2008, S/PV.5839.

²⁶ This was based on the earlier assumption that the transition period would only last 120 days.

²⁷ International Crisis Group (note 23).

²⁸ UN General Assembly Resolution A/RES/63/3, 8 Oct. 2008.

²⁹ See Wiharta, S., 'Peacekeeping: keeping pace with changes in conflict', *SIPRI Yearbook 2007: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2007).

degree of one-sided violence against the civilian population would suggest the need for a 'robust' mandate—that is, one with the authority to use force—that includes civilian protection among the mandated tasks, and an appropriate type and composition of operation.³⁰ Corresponding rules of engagement would also be needed to enable the operation to carry out this task effectively.

An appropriate mandate would optimally be derived through a 'needs-driven' approach during the predeployment planning of the operation, with substantial input from local stakeholders.³¹ However, both international and local stakeholders have diverse, and at times conflicting, priorities. The compromises reached in order to achieve consensus and cooperation may result in a mandate that is less than optimal, both in the eyes of the various stakeholders and for the aim—which must be paramount—of maintaining and building peace.

The EU Military Operation in Chad and the Central African Republic

The case of the EU Military Operation in Chad and the Central African Republic (EUFOR Tchad/RCA), launched in January 2008, illustrates the difficulty of shaping an appropriate mandate and, more importantly, how subjectivity shapes perceptions of an operation's legitimacy. EUFOR Tchad/RCA is part of a multifaceted international response to the humanitarian crisis and the spread of violence from the conflict in Darfur, Sudan, that is 'intended to help create the security conditions conducive to a voluntary, secure and sustainable return of refugees and displaced persons'.³² It was the outcome of extensive negotiations between the Government of Chad and the international community. The 27 EU member states agreed to the concept and plan of operations for EUFOR Tchad/RCA only after much political wrangling over the concept and plan of operations and a protracted force-generation process.³³

A 37 000-strong EU force was finally authorized by the EU Council on 28 January 2008. However, deployment of the first troops was immediately suspended after rebels launched a wave of attacks in and around the Chadian capital, N'Djamena.³⁴ This incident illustrated that while there was grudging political consensus in the international community, and the

³⁰ On the use of one-sided violence against civilians in armed conflicts see chapter 2 in this volume. On its relationship with the mass displacement of people see chapter 1 in this volume.

³¹ See Wiharta, S., 'Planning and deploying peace operations' *SIPRI Yearbook 2008: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2008).

³² UN Security Council Resolution 1778, 25 Sep. 2007. On the conflict in Darfur see Stepanova, E., 'Trends in armed conflicts', *SIPRI Yearbook 2008* (note 31), pp. 57–63.

³³ EUFOR Tchad/RCA was established by EU Council Joint Action 2007/677/CFSP, adopted on 15 Oct. 2007, according to a mandate granted under Security Council Resolution 1778 (note 32). On the pre-deployment planning for EUFOR Tchad/RCA see Wiharta (note 31), pp. 109–11.

³⁴ Solana, J., EU High Representative for the CFSP, Comments on the situation in Chad and Operation EUFOR Tchad/RCA, S046/08, Brussels, 4 Feb. 2008.

legality of the operation was assured by both a UN Security Council resolution and an EU Council joint action, this held no weight with some local stakeholders in Chad. During discussions as to the validity and feasibility of an EU operation—which was only necessitated by the Chadian Government's refusal to allow a UN force to operate in the country—UN humanitarian officials had cautioned that an EU force would be viewed as illegitimate by the rebel groups, given France's political and historical ties with the Chadian Government.

EUFOR Tchad/RCA is mandated to contribute to protecting civilians in danger, particularly refugees and displaced persons;³⁵ to facilitate the delivery of humanitarian aid and the free movement of humanitarian personnel by helping to improve security in the area of operations; and to contribute to protecting UN personnel, facilities, installations and equipment and to ensuring the security and freedom of movement of its staff and UN and associated personnel.³⁶ However, its capacity to carry out important parts of the mandate was severely hampered by the fact that, in response to the demands of the Chadian Government, EUFOR Tchad/RCA could not operate inside the camps of refugees and internally displaced persons (IDPs). Criminality, banditry, forced recruitment and other dangers to civilians increased sharply in 2008, as did attacks on international humanitarian workers.³⁷ Thus, a year into its deployment, EUFOR Tchad/RCA did not adequately protect civilians or humanitarian workers in 2008.

EUFOR Tchad/RCA's activities reportedly made civilians in its area of operation feel safer, including by surrounding refugee and IDP camps during fighting between government and rebel forces.³⁸ However, according to its force commander, in the face of an increasingly lawless situation, EUFOR Tchad/RCA, as a military force, may not be the most appropriate response even in the areas where it is allowed to operate. It can carry out patrols to demonstrate its presence and serve as a deterrent, but it cannot maintain public law and order, because it does not have police or judiciary powers or capacities.³⁹ Another constraint is that, according to its rules of

³⁵ By mid-2008 c. 250 000 Darfuriian refugees were living in 12 refugee camps in eastern Chad; c. 185 000 Chadian internally displaced persons (IDPs) had fled inter-communal clashes and cross-border raids by Sudanese militia; and another c. 700 000 civilians had been affected by ongoing fighting between the Chadian Government and rebel groups based in Sudan. Refugees International, 'Chad: set the stage for sustainable return', Field Report, 24 July 2008, <<http://www.refugeesinternational.org/policy/field-report/chad-set-stage-sustainable-return>>.

³⁶ Security Council Resolution 1778 (note 32).

³⁷ Oxfam, *Mission Incomplete: Why Civilians Remain at Risk in Eastern Chad*, Oxfam Briefing Paper no. 119 (Oxfam: Oxford, 10 Sep. 2008), pp. 6–8.

³⁸ Oxfam (note 37), p. 13.

³⁹ Oxfam (note 37), p. 12.

engagement, EUFOR Tchad/RCA cannot deploy in small companies to address isolated threats.⁴⁰

According to the agreement reached with the Government of Chad in 2007, EUFOR Tchad/RCA's activities to protect civilians, particularly inside the refugee and IDP camps, were meant to be complemented by a special Chadian police unit trained for humanitarian protection by the UN Mission in the Central African Republic and Chad (MINURCAT). As of August 2008, fewer than half of the planned 850 police had completed training and none had been deployed to the refugee or IDP camps.⁴¹ Nevertheless, EUFOR Tchad/RCA's attempts to fill the gap have met with a lack of cooperation from local authorities—for example, its offers to patrol at night in the city of Abéché, particularly after the shooting of a Red Cross official there in July 2008, were refused by the local governor.⁴²

The situation in Chad underscores how the appropriateness of a mandate and its legitimacy can be undermined by political compromise, international or local, rendering the operation less effective in achieving its objectives.

Execution of the mandate

Assessment of the legitimacy of a peace operation, and ultimately its effectiveness, is commonly based less on the mandate itself than on how it has been carried out. In principle, a peace operation mandate should provide a clear framework to help guide the many decisions that are made during its planning and operation. In practice, however, mandates are often ambiguous, and even self-contradictory, allowing different interpretations by the key actors, particularly the contributing countries, mission headquarters and those on the ground.

The International Security Assistance Force (ISAF) in Afghanistan is a prominent example of a peace operation that has international support and unquestionable legality in the form of a Security Council resolution but whose legitimacy has nevertheless been widely questioned. Most of the criticism has been of ISAF's increasing involvement in counter-insurgency, which, arguably, crosses the line from peace enforcement to war fighting.⁴³ Critics argue that the current direction in ISAF's activities relies on an

⁴⁰ Ismail, O. and Fick, M., 'Toward effective peacekeeping in Chad', Africa Policy Forum, 17 Nov. 2008, <<http://forums.csis.org/africa/?p=224>>.

⁴¹ Oxfam (note 37), p. 15.

⁴² Oxfam (note 37), pp. 12–13.

⁴³ E.g. Groves, A., 'NATO in Afghanistan: fighting to define its future', <<http://www.e-ir.info/?p=489>>, 18 June 2008; and 'Swiss pull military staff out of Afghanistan', Swissinfo.ch, 21 Nov. 2007, <http://www.swissinfo.ch/eng/front/detail/Swiss_pull_military_staff_out_of_Afghanistan.html?siteSect=105&sid=8450120&rss=true&ty=st>.

unjustifiably broad interpretation of the force's mandate to assist in 'the maintenance of security'.⁴⁴

The way in which ISAF has executed counter-insurgency has also been criticized. A growing reliance on air strikes and raids to flush out potential insurgents has led to significant civilian fatalities and has greatly reduced local support for ISAF—and with it perceptions of the operation's legitimacy, both locally and internationally.⁴⁵ The recent criticisms of ISAF raise an important question: how far can the overall legitimacy of an operation's mandate be undermined by one element of its execution?

Different interpretations of a mandate also depend to a great extent on the different cultures and assumptions of the key actors. A prime example is the protection of civilians, a task that is included in the mandates of several current peace operations and is likely to be seen very differently by military and humanitarian personnel. For example, within the UN Mission in the Democratic Republic of the Congo (MONUC) there are multiple concepts of civilian protection: as support to humanitarian space, as a task for UN peacekeepers and as a central goal for military forces.⁴⁶ Clearly, if countries contributing to an operation do not recognize civilian protection—or any other task—as a legitimate part of the mandate and subsequently do not execute the mandate, then the overall legitimacy of the operation and its effectiveness will be damaged. Some troop-contributing countries do not view a civilian protection mandate as having any effect on their military forces' operational role.⁴⁷

III. Moral authority and local legitimacy

In a key document released in 2008, *United Nations Peacekeeping Operations: Principles and Guidelines*, known as the Capstone Doctrine, the UN Department of Peacekeeping Operations (DPKO) highlighted how far local perceptions of a peace operation's legitimacy can affect the operation's success:

The experiences of the past 15 years have shown that in order to succeed, United Nations peacekeeping operations must also be perceived as legitimate and credible, particularly in the eyes of the local population. . . .

The firmness and fairness with which [an] operation exercises its mandate, the circumspection with which it uses force, the discipline it imposes upon its personnel, the respect it shows to local customs, institutions and laws, and the decency

⁴⁴ UN Security Council Resolution 1510, 13 Oct. 2003.

⁴⁵ Filkins, D., 'Afghan civilian deaths rose 40 percent in 2008', *New York Times*, 17 Feb. 2009. For an analysis of recent developments in Afghanistan see chapter 4 in this volume.

⁴⁶ Holt, V. K. and Berkman, T. C., *The Impossible Mandate? Military Preparedness, the Responsibility to Protect and Modern Peace Operations* (Henry L. Stimson Center: Washington, DC, 2006). For further discussion of MONUC see section III below.

⁴⁷ Holt and Berkman (note 46), p. 194.

with which it treats the local people all have a direct effect upon perceptions of its legitimacy.

The perceived legitimacy of a United Nations peacekeeping operation is directly related to the quality and conduct of its military, police and civilian personnel.⁴⁸

Local legitimacy is the most dynamic of the forms of legitimacy examined in this chapter—it may be built, lost and rebuilt during the lifecycle of an operation. As the passage above makes clear, many factors can influence local legitimacy. For example, fairness, or impartiality, must be reflected not just in the mandate and in mission planning but also in the actions of peacekeepers. MONUC's local legitimacy was severely jeopardized in 2008 when it was reported that an Indian peacekeeping commander stationed in the DRC's North Kivu region had fraternized with rebels and even presented their leader, General Laurent Nkunda, with a regimental crest.⁴⁹

One way to keep the goodwill of local populations would be to apply the principle of 'do no harm', which informs most development and humanitarian efforts, in peace operations. Like development and humanitarian operations, peace operations typically bring into an area a large and relatively wealthy foreign population that requires accommodation, infrastructure and resources. They can have major social, economic and environmental impacts on the locality, sometimes with repercussions lasting far beyond the period of deployment. While the influx of money may be welcomed, it can also cause resentment if it is seen as favouring at most a few local businesses, especially if, as often happens, it inflates the prices of goods and services in the community. Similarly, resentment can build up if the operation is believed to be using up scarce resources at the expense of the local population—for example, using water wastefully.

Peace operations and their personnel 'are setting the tone for the nation that is to emerge from the peacekeeping effort'.⁵⁰ Thus, they should abide by and try to embody the international norms and standards that they seek to diffuse, such as upholding and respecting human rights, while also respecting local customs. The perception that a culture of impunity and unaccountability exists in a peace operation can seriously undermine its local legitimacy, particularly when the operation seeks to promote the rule of law. If the means used to achieve the aims of a peace operation mandate are not entirely consistent with those aims, and with the relevant international norms and standards, it is unlikely that the aims will be fulfilled in any sustainable way. Recognizing this fact, the UN now includes its code of

⁴⁸ United Nations, Department of Peacekeeping Operations, *United Nations Peacekeeping Operations: Principles and Guidelines* (United Nations: New York, 2008), p. 36.

⁴⁹ 'UN Congo probes Indian officer over rebel "support"', Reuters, 10 July 2008, <<http://www.alertnet.org/thenews/newsdesk/L10314078.htm>>.

⁵⁰ Kenneth Roth, Executive director of Human Rights Watch, quoted in Crossette, B., 'When peacekeepers turn into troublemakers', *New York Times*, 7 Jan 1996.

conduct in the memorandum of understanding with troop-contributing countries, making the provisions of the code binding.⁵¹

A controversy that surrounded the African Union (AU)/UN Hybrid Operation in Darfur (UNAMID) in 2008 illustrates the difficult balance that must be struck between abiding by such principles and generating a force that has at least some chance of being able to carry out its mandate—particularly at a time when the availability of peacekeepers lags far behind the demand. UNAMID's Rwandan deputy force commander, Major General Emmanuel Karake Karenzi, appointed in 2007, was charged in the Spanish Supreme Court in February 2008 with war crimes that he allegedly committed during the 1994 Rwandan genocide. Attempts to remove Karenzi in 2008 were dropped after the Rwandan Government threatened to withdraw its 3000 troops—nearly half of the operation's entire strength.⁵² The UN's decision to retain Karenzi raises serious questions about its commitment to upholding human rights and fighting impunity for atrocities.

Conversely, countries may withhold or even withdraw their contributions to a peace operation if they are concerned about its moral authority and legitimacy, causing serious problems at a time when peacekeeping resources are already overstretched. The evident reluctance of troop-contributing countries to provide the additional troops requested at the end of 2008 by MONUC could have been due to the multiple scandals that have affected the operation, more of which are discussed below.

The perceived moral authority of peacekeepers can positively influence the behaviour and decisions of the peacekept, as well as the effectiveness of the operation. If peacekeepers are not seen to have this moral authority, their power to influence the conflict parties is limited.⁵³ The rest of this section examines how allegations that peacekeepers were engaged in two areas of illegal activity—sexual exploitation and abuse and arms trafficking—had an impact on the local legitimacy and effectiveness of several peace operations during 2008.

⁵¹ United Nations, General Assembly, Revised draft model memorandum of understanding between the United Nations and [participating State] contributing resources to [the United Nations Peacekeeping Operation], Note by the Secretary-General, A/61/494, 3 Oct. 2006. The revised model makes reference to standards of conduct for UN peacekeepers set out in 3 UN documents: 'Ten rules: code of personal conduct for blue helmets', 'We are United Nations peacekeepers' and the Secretary-General's bulletin 'Prohibitions on sexual exploitation and abuse', ST/SGB/2003/13, 9 Oct. 2003. The first 2 of these are available at United Nations, Department of Peacekeeping Operations, 'Norms of conduct for peacekeeping personnel', 2007, <<http://www.un.org/Depts/dpko/dpko/Conduct/>>.

⁵² Lynch, C., 'U.S. backed U.N. general despite evidence of abuses', *Washington Post*, 21 Sep. 2008.

⁵³ Fortna, V. P. *Does Peacekeeping Work? Shaping Belligerents Choices after Civil War* (Princeton University Press: Princeton, NJ, 2008), pp. 89–93.

Sexual exploitation and abuse

Sexual exploitation and abuse are serious and apparently pervasive forms of misconduct by peacekeepers in the field.⁵⁴ These are serious issues not only in themselves but also because sexual exploitation by peacekeepers perpetuates the low status of women in many post-conflict countries and undermines peace operations' attempts to promote gender equality. Various studies have indicated that sexual exploitation and abuse tend to increase in a locality following the arrival of a peace operation, just as they do when foreign military bases are established.⁵⁵ The likelihood of increases in human trafficking and forced prostitution, with links to international organized crime, also multiplies.⁵⁶

Some factors inherent in peacekeeping deployments promote the conditions for sexual exploitation and abuse—among them the disparity between peacekeepers' incomes and those of local people.⁵⁷ Added to this, in post-conflict zones, IDP and refugee camps, and similar, there are likely to be high proportions of vulnerable groups such as widows and orphaned children. The age of sexual consent may be lower than 18 years in local law or custom, adding to peacekeepers' perceptions that sexual relations with minors are acceptable. UN staff regulations, which are binding on peacekeepers in the field, prohibit sexual activity with anyone under 18.

Over the past decade, charges of sexual exploitation and abuse notably blotted the records of several UN peace operations and NATO operations in the Balkans.⁵⁸ Similar accusations surfaced again in 2008, particularly linked to MONUC. Although the problem occurs in most, if not all, international intergovernmental and non-governmental organizations, there

⁵⁴ Sexual exploitation is defined 'as any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another'. Sexual abuse is defined as 'actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions'. United Nations, ST/SGB/2003/13 (note 51).

⁵⁵ Carnahan, M., Durch, W. and Gilmore, S., *Economic Impact of UN Peace Operations: Final Report* (Peace Dividend Trust: Mar. 2006).

⁵⁶ Amnesty International, 'So Does It Mean that We Have the Rights?' *Protecting the Human Rights of Women and Girls Trafficked for Forced Prostitution in Kosovo*, 5 May 2004, <<http://www.amnesty.org/en/library/info/EUR70/010/2004>>; and UN Department of Peace Keeping Operations, 'Stop abuse, report abuse', Human trafficking resource package, Dec. 2004.

⁵⁷ UN Integrated Regional Information Network (IRIN), 'DRC: UN investigations into allegations of sexual offences by peacekeepers', Interview with Nicole Dahrendorf, MONUC, 26 Jan. 2006, <<http://www.irinnews.org/Report.aspx?ReportId=57925>>. See also Carnahan, Durch and Gilmore (note 55).

⁵⁸ The UN Transitional Authority in Cambodia (UNTAC), the UN Assistance Mission in Sierra Leone (UNAMSIL), the UN Stabilization Mission in Haiti (MINUSTAH), the UN Operation in Côte d'Ivoire (UNOCI), the UN Mission in Liberia (UNMIL), NATO's KFOR and the NATO Stabilization Force (SFOR) in Bosnia and Herzegovina have all been subject to accusations of sexual exploitation and abuse.

appears to be a higher incidence among peacekeepers.⁵⁹ One UN response—a ‘zero tolerance’ policy and a set of structural reforms—is also examined below.

MONUC and the UN ‘zero tolerance’ policy

Since its inception in 1999, MONUC has been subject to more allegations of sexual exploitation and abuse by peacekeepers than any other UN peace operation to date. Perhaps ironically, the operation is mandated to protect civilians.⁶⁰ In 2004 the MONUC leadership and the DPKO requested the UN Office of Internal Oversight Services (OIOS) to investigate the situation in Bunia, eastern DRC, where there had been numerous reports of peacekeepers exploiting and abusing women and children in a nearby IDP camp.⁶¹ The investigation revealed that sexual exploitation occurred regularly, usually in exchange for food or small sums of money.⁶² It further revealed that many mission personnel, including management, had turned a blind eye to the problem, contributing to a culture of impunity and allowing the exploitation to continue.⁶³

The scandal surrounding MONUC in 2004 provided much of the impetus behind a thorough review by the UN Secretariat of internal rules, regulations, policies and mechanisms for overseeing peacekeeping. As part of this, in July 2004 the UN Secretary-General, Kofi Annan, requested Prince Zeid Ra’ad Zeid Al-Hussein of Jordan to examine the issue of sexual exploitation and abuse by UN peacekeepers. Zeid’s report, published in March 2005, shed light on the inadequacies of the UN’s disciplinary measures for peacekeeping personnel.⁶⁴

Among other things, the Zeid report noted that the UN has different accountability mechanisms for different categories of operation personnel—for example, civilian police and military observers are considered ‘experts on mission’ and must agree to be governed by standard operating

⁵⁹ Csáky, C., *No One to Turn to: The Under-reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers* (Save the Children UK: London, 2008), p. 8.

⁶⁰ Civilian protection was added to MONUC’s mandate by UN Security Council Resolution 1291, 24 Feb. 2000.

⁶¹ Between May and Sep. 2004, there were 72 allegations of sexual misconduct by MONUC peacekeepers, the vast majority against military personnel. United Nations, ‘A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations’, included in Letter from the Secretary-General to the President of the General Assembly, A/59/710, 24 Mar. 2005.

⁶² United Nations, Investigation by the Office of Internal Oversight Services into allegations of sexual exploitation and abuse in the United Nations Organization Mission in the Democratic Republic of the Congo, A/59/661, 5 Jan. 2005.

⁶³ Rasmussen, J., Personnel Conduct Officer, MONUC, ‘MONUC: sexual exploitation and abuse’, End of assignment report, 25 Feb. 2005, <<http://www.peacekeepingbestpractices.unlb.org/PBPS/Pages/Public/viewdocument.aspx?docid=617>>.

⁶⁴ United Nations, ‘A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations’, included in Letter from the Secretary-General to the President of the General Assembly, A/59/710, 24 Mar. 2005.

and administrative procedures for peace operations, along with a number of other policies and directives, including the 2002 regulations governing experts on mission and standards of conduct set out in a 2003 directive.⁶⁵ They can be prosecuted by the host country, as long as there is a functioning judicial system. They do have immunity from prosecution, however, for acts carried out in an official capacity, which can only be waived by the Secretary-General. Members of national military contingents, in contrast, are under the direct jurisdiction of their respective countries.⁶⁶ Zeid recommended that a set of uniform and binding regulations be established for all UN peacekeeping personnel and that these be included in the generic memorandum of understanding between the UN and troop-contributing countries.

The Zeid report also proposed that troop-contributing countries try offenders in on-site courts martial rather than repatriating them. This would demonstrate to the local population that peacekeepers do not enjoy impunity for acts of sexual exploitation and abuse. On a practical level, it would afford immediate access to witnesses and evidence. The immediate and direct involvement of the troop-contributing countries would also send a clear signal to their own troops that such behaviour is not tolerated. The use of such tribunals would, however, require supporting codes or legislation in the contributing countries, and to date it has not taken place.

The report found that the effective prosecution of sexual exploitation and abuse was hampered by a lack of transparent and clear reporting mechanisms: neither peacekeepers nor the local community were made aware of the appropriate complaints channels, nor were they afforded the necessary protection when they did file charges. Since the report's publication, all UN peace operations have included outreach programmes to inform the local population about the UN policy on sexual exploitation and abuse and procedures for redress. In addition, the UN has a new victim assistance strategy under which victims are to be provided with, among other things, medical care, social support and legal services.⁶⁷

Several other reforms took place at the UN in the wake of the Zeid report's publication. In 2006 the DPKO set up a dedicated Conduct and Discipline Unit. Additionally, conduct and discipline personnel are now deployed to all 22 UN peace operations, including the special political and

⁶⁵ United Nations (note 64), pp. 35–38. The documents referred to are United Nations, Regulations governing the status, basic rights and duties of officials other than secretariat officials, and experts on mission, included in Secretary-General's bulletin ST/SGB/2002/9, 18 June 2002; and UN Department of Peacekeeping Operations, Directives for disciplinary matters involving civilian police officers and military observers, DPKO/CPD/DDCPO/2003/001, DPKO/MD/03/00994, undated (July 2003), available at <<http://www.peacewomen.org/un/pkwatch/discipline/CivpolandUNMOsDirectives.pdf>>.

⁶⁶ United Nations (note 64), pp. 38–40.

⁶⁷ UN General Assembly Resolution A/RES/62/214, 19 Dec. 2007.

peacebuilding offices, to address all forms of misconduct. The generic memorandum of understanding between the UN and troop-contributing countries was revised in 2007 to reflect the recommendations of the Zeid report—granting the UN the right to start investigations into allegations of abuse and exploitation where the troop-contributing country is unable or unwilling to do so itself.⁶⁸ Perhaps the most important reform, however, has been a normative shift from a permissive, ‘boys will be boys’ stance to one of zero tolerance.

Within MONUC, an Office for Addressing Sexual Exploitation and Abuse (OASEA) was established in March 2005 and given responsibility for administrative investigations, policy development and training on sexual exploitation and abuse. This was the first time that such a unit had been established in a UN peace operation. Shortly afterwards, the unit became a conduct and discipline unit, with a broader mandate related to misconduct by personnel.

New charges of sexual exploitation and abuse by MONUC personnel surfaced in early 2008. MONUC promptly asked the OIOS to launch an investigation. This investigation, which was initiated in March, reportedly found evidence that several Indian peacekeepers stationed in North Kivu had sexually exploited underage girls.⁶⁹ MONUC also reacted quickly to similar accusations that emerged in December.⁷⁰ However, as is discussed below, the alleged misconduct by MONUC peacekeepers had already had a serious impact on the operation’s local legitimacy and operation.

Corruption

Incidents of corruption by peacekeepers also appear to be common.⁷¹ The discovery of rampant corruption in the Oil-for-Food programme in Iraq triggered a wider crackdown on corruption in UN procurement practices, starting in 2006.⁷² At the urging of then UN Under-Secretary-General for Management, Christopher Burnham, an ad-hoc task force was established to look into the procurement practices of UN peace operations. The task force uncovered malfeasance in a number of operations, including the UN Mission in Eritrea and Ethiopia (UNMEE), the UN Mission in Haiti

⁶⁸ UN General Assembly Resolution A/RES/61/267B, 24 July 2007.

⁶⁹ Charbonneau, L., ‘Peacekeepers may have committed sex abuse in Congo: U.N.’, Reuters, 12 Aug. 2008, <<http://www.alertnet.org/thenews/newsdesk/N12498196.htm>>.

⁷⁰ ‘UN to probe sex abuse allegations against DR Congo staff’, Agence France-Presse, 24 Dec. 2008, <http://www.google.com/hostednews/afp/article/ALeqM5j-b-SyMAasnGGTazBj2QAAM_xyrQ>.

⁷¹ United Nations, General Assembly, Report of the Office of Internal Oversight Services on the activities of the Procurement Task Force for the period from 1 July 2007 to 31 July 2008, A/63/329, 25 Aug. 2008.

⁷² See the reports of the Independent Inquiry Committee into the United Nations Oil-for-Food Programme, which are available at <<http://www.iic-offp.org/>>.

(MINUSTAH) and MONUC.⁷³ Corruption is often seen as a simple matter of bribery in exchange for privileged access to goods, services or contracts. Fraud and bribery in procurements by UN peace operations are largely treated as internal matters. However, they cast a shadow over the legitimacy of UN peace operations and diminish the UN's perceived moral authority to advise post-conflict countries on reducing corruption and strengthening the rule of law.

Many other forms of corruption take place in the context of peace operations that may directly harm the interests of the peacekept.⁷⁴ Two high-profile cases of peacekeepers assisting in the illicit trafficking of arms—MONUC in the DRC and the African Union Mission in Somalia (AMISOM)—were widely reported in the media in 2008.

MONUC and arms trafficking

Local and international perceptions of MONUC's legitimacy have been further damaged by allegations that several of its peacekeepers were involved in trading arms for gold with the rebel Front des nationalistes et intégrationnistes (FNI, Front of nationalist and integrationists) militia. These were first brought to the attention of the MONUC leadership by Human Rights Watch, a non-governmental organization, at the end of 2005 and led to an internal investigation by the OIOS. According to the allegations, Pakistani MONUC peacekeepers deployed in the Ituri region of eastern DRC had provided accommodation, security and access to UN flights to facilitate gold smuggling in exchange for arms by a network of Congolese army officers and Kenyan traders.⁷⁵ In mid-2007, the Under-Secretary-General for Peacekeeping, Jean-Marie Guéhenno, told journalists that the OIOS investigation had found no evidence of arms trafficking by peacekeepers, although it found credible evidence of their involvement in gold trafficking. Guéhenno said the matter was closed.⁷⁶

Further investigations by the British Broadcasting Corporation (BBC) in 2008 revived the allegations of arms trafficking and claimed that internal UN investigations had found evidence that Indian peacekeepers serving with MONUC in North Kivu had procured gold, ivory and drugs from the Forces démocratiques de libération du Rwanda (FDLR, Democratic forces for the liberation of Rwanda), a Rwandan militia linked to the 1994 Rwandan genocide, flying a UN helicopter into the Virunga National Park

⁷³ Lynch, C., 'U.N. finds fraud, mismanagement in peacekeeping', *Washington Post*, 18 Dec. 2007.

⁷⁴ Philp, M. 'Peacebuilding and corruption', *International Peacekeeping*, vol. 15, no. 3 (June 2008).

⁷⁵ Human Rights Watch, 'UN: Hold peacekeepers accountable for Congo smuggling', Letter to Chief of UN Peacekeeping, 22 July 2007, <<http://www.hrw.org/en/news/2007/07/22/un-hold-peacekeepers-accountable-congo-smuggling>>.

⁷⁶ 'Peacekeeper "smuggled Congo gold"', BBC News, 13 July 2007, <<http://news.bbc.co.uk/2/689/6881.stm>>. See also Guéhenno, J.-M., Letter to James Oliver, producer of the BBC investigative programme *Panorama*, dated 15 Apr. 2008, available at <<http://news.bbc.co.uk/2/7365568.stm>>.

in order to trade ammunition for ivory with the group. The BBC also claimed to have been told by unnamed UN officials that OIOS investigators had been under political pressure not to embarrass Pakistan.⁷⁷

Whatever the truth of the arms trafficking allegations, they have had grave consequences. There have been reports of repeated war crimes and crimes against humanity by the various militia groups fighting for control of gold mining areas around Ituri.⁷⁸ As argued by Human Rights Watch, purchasing gold from and providing arms and ammunition to the FNI or any other armed group would stoke the violence that MONUC is intended to prevent.⁷⁹ Similarly, the alleged activities of the Indian peacekeepers are of serious concern, not least given that the UN has accused Rwanda of supporting the recent fighting in North Kivu. That the contingents at the centre of the scandals came from the UN's two largest troop-contributing countries and the allegations that the UN handled the investigations in a non-transparent and dismissive manner suggest that the UN is more worried about deploying operations to full strength than it is about the quality and probity of the peacekeepers.

According to press reports, in November 2008 the Government of the DRC stated in a letter to the UN Secretary-General, Ban Ki-moon, that 'in view of the numerous abuses of power carried out by certain troops within MONUC, the [Congolese] people would not understand if soldiers from the same country would be used to boost numbers within MONUC' and asked that in future peacekeepers from that country serving with MONUC be deployed in other parts of the DRC.⁸⁰ India had just offered to provide 1500 more peacekeepers, who could have made up half the temporary reinforcement of MONUC authorized by the UN Security Council in November 2008.⁸¹ Such a statement clearly shows that the scandal had severely eroded the local legitimacy of at least some parts of MONUC—and thus had a direct negative impact on the operation's ability to fulfil its mandate.

AMISOM

In 2008 the UN Monitoring Group on Somalia, which monitors the arms embargo on the country, noted the continued militarization of the conflict in Somalia and increased armed activity between the Transitional Federal

⁷⁷ Plaut, M., 'Congo spotlight on India and Pakistan', BBC News, 28 Apr. 2008, <<http://news.bbc.co.uk/2/7367965.stm>>; and Associated Press, 'BBC: Congolese saw U.N. peacekeepers arming militias, refuting U.N. probe findings', *International Herald Tribune*, 28 Apr. 2008.

⁷⁸ Human Rights Watch (HRW), *The Curse of Gold* (HRW: New York, 1 June 2005).

⁷⁹ Human Rights Watch (note 75).

⁸⁰ 'DR Congo rejects Indian troops for UN force: official', Agence France-Presse, 26 Nov. 2008, <<http://www.google.com/hostednews/afp/article/ALeqM5hixqFhaCbMLBN-cA4Onz5BOBsg7w>>. The letter apparently did not explicitly refer to India.

⁸¹ The reinforcement of the already 17 000-strong MONUC was authorized by UN Security Council Resolution 1843, 21 Nov. 2008.

Government (TFG) and opposition groups.⁸² While this is a run-of-the-mill development for Somalia, the group also alleged that Ugandan peacekeepers serving with AMISOM had sold arms and ammunition on the black market in Mogadishu.⁸³ These goods were believed to have come from army stocks or from stockpiles confiscated from the insurgent group al-Shabab after battles with the TFG. That this was possible also reflects the lack of a proper disarmament, demobilization and reintegration programme in Somalia.

AMISOM was deployed in March 2007 to support the dialogue and reconciliation process in Somalia by supporting the Transitional Federal Institutions, facilitating the provision of humanitarian assistance and contributing to the overall security situation.⁸⁴ In practice, however, the force was limited to providing escorts for officials of the TFG and of the Alliance for the Re-liberation of Somalia (ARS); protecting Aden Adde International Airport, the Mogadishu seaport and the presidential office; and conducting confidence-building patrols within its area of operations. Despite pledges from Burundi, Ghana, Nigeria and Senegal, Uganda was the only country that deployed troops as part of AMISOM in 2007. The 1700-strong contingent of Ugandan soldiers—compared to an authorized force size of 7650—was reinforced by 600 Burundian soldiers in early 2008.⁸⁵ This skeleton force was ineffective at quelling the violence in Mogadishu in 2008, much less the rest of the country. Arguably, however, the restrictive mandate played a bigger role than the size of the force in AMISOM's inability to make any significant change to the security situation of the Somali population.⁸⁶

Arms trafficking by AMISOM peacekeepers clearly breaches UN principles, rules and codes of conduct and the standards of probity expected of international peacekeepers, as well as international law. It also potentially exacerbated the armed violence, in which civilians have frequently been targeted. Undoubtedly, it lost AMISOM moral authority and the trust of the local population. The routine targeting of AMISOM peacekeepers by

⁸² United Nations, Security Council, Report of the Monitoring Group on Somalia pursuant to Security Council Resolution 1766 (2007), S/2008/274, 24 Apr. 2008, p. 9. On developments in the conflict in Somalia in 2008 see chapter 2, section III, in this volume.

⁸³ United Nations (note 82), pp. 30–32.

⁸⁴ AMISOM was created by AU Peace and Security Council Decision AU PSC/PR/Comm.(LXIX), 19 Jan. 2007, and its mandate endorsed by UN Security Council Resolution 1744, 21 Feb. 2007.

⁸⁵ An initial deployment of 220 soldiers was sent in Jan. and others were deployed gradually over the year. '220 Burundian troops join AMISOM', Burundi Réalités Agence Presse, 21 Jan. 2008, <http://www.burundirealite.org/news_view.cfm?ID=2111&LANG=E>; and 'Nigeria will send troops to Somalia', Press TV, 15 Aug. 2008, <<http://www.presstv.ir/detail.aspx?id=66621>>. Another battalion of Burundian troops was deployed at the end of 2008.

⁸⁶ UN Integrated Regional Information Network (IRIN), 'Somalia: one year later, AU force in Mogadishu soldiers on', 12 Mar. 2008, <<http://www.irinnews.org/Report.aspx?ReportId=77236>>.

Islamist insurgents testifies to the fact that the legitimacy of AMISOM is being contested.⁸⁷

The deteriorating security situation in Somalia at the end of 2008 pushed back the prospects of a UN peacekeeping operation being deployed to replace AMISOM, as had been discussed with the AU for over a year.⁸⁸ If the UN does indeed take over from AMISOM in 2009, it would do well to ensure that this does not comprise a mere 'rehatting' of the existing troop contingents. It should also ensure that the operation is given a more appropriate mandate and deal effectively with the corruption charges or lose all legitimacy and credibility in the eyes of the Somali people.

IV. Conclusions

The legitimacy of a peace operation clearly depends on and is affected by several interlinked factors. The effectiveness and ultimate success of an operation can be severely undermined by perceived illegitimacy surrounding its mandate or the conduct of its personnel. The case of EULEX Kosovo highlights the fact that the legal basis of an operation is the bedrock of its legitimacy to deploy, to operate and to withdraw. The case of EUFOR Tchad/RCA shows that the appropriateness and the execution of a mandate go hand in hand in determining the legitimacy of an operation. The example of ISAF also demonstrates that the appropriateness of an operation's mandate and, in turn, its legitimacy are intrinsically linked to the prevailing norms of what constitutes a peace operation and the functions it should undertake.

The cases of MONUC, AMISOM and UNAMID underscore the fact that the moral authority of an operation is crucial to securing its local legitimacy. Misconduct by individual peacekeepers can put an entire operation at risk, severely hampering its ability to effect positive change in the host country. With demand for peacekeepers currently outstripping supply, incidents of misconduct put the UN and other organizations mounting peace operations in the difficult position of having to balance the imperative to uphold norms and standards against the need to bring operations to their full strength. To date, governments and international organizations seem to have prioritized force generation over the quality and record of peacekeepers.

Policy initiatives such as the UN's new 'zero tolerance' policy towards sexual exploitation and abuse by peacekeepers, and the moves to enforce higher standards of conduct by peacekeepers in the field, depend to a great extent on the attitudes of senior management in peace operations. Effective

⁸⁷ 'UN accuses Uganda peacekeepers of arming Somali rebels', Agence France-Presse, 23 May 2008, <http://afp.google.com/article/ALeqM5j38LJ3FfV00Bep1bT_tXjLOQb4Q>.

⁸⁸ See e.g. UN Security Council Resolution 1814, 15 May 2008.

leadership that conveys a resolute commitment to such a policy influences the organizational culture and its capacity and ability to address problems.⁸⁹ The allegations of misconduct against MONUC and AMISOM peacekeepers in 2008 suggest that, in those operations at least, such leadership was not shown. The managers of peace operations—including officers—should be made more accountable for ensuring that incidents of misconduct by peacekeepers in the field are taken seriously and the perpetrators punished.

Legitimacy has many aspects, none of which alone can determine the overall legitimacy—or the effectiveness—of an operation. If measures of some of the aspects of legitimacy touched on in this chapter are included in the evaluation process for peace operations, then it might help to ensure that peace operations with compromised legitimacy do not have their mandates automatically renewed and that operations more closely match the needs of the host country.

⁸⁹ Martin, S., *Must Boys be Boys? Ending Sexual Exploitation and Abuse in UN Peacekeeping Missions* (Refugees International: Washington, DC, Oct. 2005).