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SUPPORTING THE RULE OF LAW IN WAR-TORN SOCIETIES. Tasks and Comparative Advantages of Civilian Police and Military Forces

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8) ABSTRACT

Supporting a reform of the security sector and the rule of law has been recognised as a critical component of peace and state building after a conflict. Although international operations now routinely consist of military, police and constabulary force components, the approach to cooperation is still too rigid. Military forces are loath to take on policing tasks and the international civilian police resent any military interference in law enforcement and police reform. As usual, the truth lies in the middle ground. The present study represents an effort to identify the tasks necessary to put in place a sustainable, effective and just rule of law and use those tasks as the starting-point for an analysis of the comparative advantages of military forces, international civilian police and constabulary forces in the support of the rule of law. Overall, a civilian lead is always desirable when it comes to policing and the rule of law. However, it has become clear that a more differentiated view does indeed open for greater interaction and mutual support among military forces, international civilian police and constabulary forces. Especially the military contribution is valuable wherever establishing public order calls for more robust action or wherever there is a shortage of manpower or logistics capacity. Without necessarily moving beyond their mandate, the military forces can offer substantial assistance to the international police components and at times are the only component that has the resources to meet public security challenges.

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EXECUTIVE SUMMARY

In the course of the last 10-15 years, international civilian police (CivPol) and military forces have become increasingly involved in supporting the rule of law in war-torn societies. Supporting a reform of the security sector and the rule of law has been recognised as a critical component of peace and state building after a conflict. Although international operations now routinely consist of military, police and constabulary force components, the approach to cooperation is still too rigid. Military forces are loath to take on policing tasks and the international civilian police resent any military interference in law enforcement and police reform. As usual, the truth lies in the middle ground. The present study represents an effort to identify the tasks necessary to put in place a sustainable, effective and just rule of law and use those tasks as the starting-point for an analysis of the comparative advantages of military forces, international civilian police and constabulary forces in the support of the rule of law.

There are three main areas tied to the rule of law and public security: (1) providing a secure environment; (2) law enforcement and the judicial process; and (3) security sector reform. Besides the main body of the report, there are two annexes: The first is simply a list of tasks, which can be used in scenario development and other research on peace operations. The second annex is a table with the tasks and the various security actors that might execute those tasks. It summarises the findings of the analysis on possible divisions of labour and comparative advantages.

(1) *Providing a secure environment:* Especially in early stages where public order is threatened by widespread looting and violence, the military forces have the comparative advantages of heavier equipment and greater manpower. Tasks can be grouped into monitoring movements and destabilising activities; protection tasks; elections; repatriation of refugees; disarmament, demobilisation and reintegration (DDR); and information and intelligence. Many of the tasks in these groups indicate a process of moving from high levels of violence to a greater emphasis on civilian-led processes, such as the reintegration of former combatants or the maintenance of public security against the backdrop of which democratic processes unfold.

(2) *Law enforcement and the judicial process*: Here the civilian – local and/or international – police is clearly in the lead, as only they are trained for law enforcement ranging from preventive measures, i.e. community relations and analysis of crime patterns, to reactive measures, i.e. investigations, and fighting organised crime. When it comes to the judicial process of trying cases, there is no adequate substitute for qualified legal staff, whether they are international or local. Following the international operations in Kosovo and East Timor, some military forces now deploy with military lawyers, judges and expanded military police

contingents, thus enabling them to contribute in the early stages when international police forces and judicial staff have not yet arrived in the mission area. Whatever international judicial staff is deployed, they will be few in number and never be able to fulfil all justice needs.

(3) *Security sector reform*: Institution and capacity building is critical to creating a sustainable judicial system. The tasks in security sector reform are grouped into military reform, police reform and judicial and penal reform. Each actor – the military forces and the civilian police – have obvious comparative advantages when it come to the reform of their respective local counterpart institutions. While the international police will seldom be involved in military reform, military staff members have engaged in police training and monitoring in several cases. This is generally undesirable, as military staff lack expertise in policing skills and a military lead undermines efforts to create civilian security forces as a distinct public service institution.

The report also reviews challenges of military-police cooperation. At the level of political strategic coordination and joint planning, it becomes clear that a greater effort to incorporate international civilian police in early stages of mission planning is critical. It is also essential to develop a cohesive approach and a strategic vision for the rule of law that reflects all of the three main areas discussed in this report. In this context, the issues of mandates, joint planning and joint training are raised. Another challenge lies in the command and control arrangements in international operations that bring together a wide range of actors in an effort to strengthen the rule of law. While the understanding of each other's roles can be greatly enhanced among the actors involved, it is important to recognise the limitations of coordination. The comparative advantages of military and police forces will always also entail different modus operandi.

Overall, a civilian lead is always desirable when it comes to policing and the rule of law. However, it has become clear that a more differentiated view does indeed open for greater interaction and mutual support among military forces, international civilian police and constabulary forces. Especially the military contribution is valuable wherever establishing public order calls for more robust action or wherever there is a shortage of manpower or logistics capacity. Without necessarily moving beyond their mandate, the military forces can offer substantial assistance to the international police components and at times are the only component that has the resources to meet public security challenges. The acknowledgement that military forces have an important role to play in the support of the rule of law is in place in principle, but the limited degree to which governments and defence organisations adjust training and conduct planning for public security challenges indicates that the political willingness to bite this particular bullet varies greatly. Whereas the present report has focused on the cooperation between a set of external actors, the centrality of local ownership for a sustainable rule of law is becoming increasingly clear. Future research will look more closely at how the principle of local ownership can be implemented in the public security field.

1   INTRODUCTION

1.1   Background for this Report

In the course of the last 10-15 years, international civilian police (CivPol) and military forces have become increasingly involved in supporting the rule of law in war-torn societies. Supporting a reform of the security sector and the rule of law has been recognised as a critical component of peace and state building after a conflict. As a result, there has been much more comprehensive and more penetrating engagement by international actors in addressing the foundations of public security. In some cases, this has meant monitoring local police forces, in others it has involved reforming existing security forces and in yet others supporting the rule of law has meant that external actors have taken on full operational authority for public security. All three levels of engagement involve a wide range of tasks that at times coincide or overlap.

While this report mainly outlines and systematises the tasks irrespective of their context, it also indicates some of the challenges that the pursuit of law and order faces under the extraordinary conditions of a post-conflict setting. Besides the main body of the report, there are two annexes: The first is simply a list of tasks, which can be used in scenario development and other research on peace operations. The second annex is a table with the tasks and the various security actors that might execute those tasks. It summarises the findings of the analysis on possible divisions of labour and comparative advantages. The remaining part of this introduction will elaborate on why this study is highly relevant to the deployment of both military and police forces and why it is long overdue.

1.2   Focus and Structure of the Analysis

The increasing complexity of peace operations and the growing willingness of international actors to take on extensive responsibility for the rule of law in often highly criminalized environments, unequivocally point to the need for close cooperation between military forces and civilian actors, first and foremost the international civilian police. And still, cooperation is marked by recriminations and buck-passing rather than by constructive engagement.

There is no doubt that the vast majority of tasks can be called 'policing tasks.' That does not take away from the fact that many of the tasks, predominantly those that aim at 'providing a safe and secure environment' are in practice performed by military forces, and have been typical military tasks in traditional peacekeeping operations as well as in more recent peace support operations. The classification of tasks as either military or policing in nature leads the discussion of civil-military relations into a stalemate. In order to develop the capacity to successfully and effectively carry out comprehensive peace building efforts, all hinges on a more sophisticated approach to cooperation between military and police actors and what each brings to the table in the shape of comparative advantage or indeed comparative disadvantage.

This reflects a wider development in domestic security settings where the distinction between external and internal security is being challenged. Recent proposals for a military contribution

in domestic counter-terrorism; for increased international police cooperation in the face of transnational organised crime and terrorist threats; or the rise of Gendarmerie-type forces in a number of European countries are all harbingers of this shift.[1]

The present project approaches the question of civil-military cooperation in three stages. First, the starting-point is a straightforward description of the tasks that can become necessary in connection with efforts to re-establish, strengthen or reform the rule of law in war-torn societies. The report seeks to do so by asking the following four questions:

(1) What are the tasks and what actions do they imply?
(2) How can they be grouped meaningfully?
(3) Who should do what?
(4) How should actors cooperate and coordinate their activities?

Clearly, the list of tasks indicates all the tasks that in *an 'ideal' situation* should be executed in support of law and order. Most case evidence shows that this 'ideal' response is never the reality and some might call it utopian. However, the purpose of this list is to be as complete as possible, without imposing the kind of restraints that arise from delays in deployment, inappropriate or insufficient equipment, donor qualms, ineffective coordination, etc. Some conclusions on those limitations will be raised in a final assessment. There are also some case references in terms of what has been done where and by whom. Due to the sheer number of tasks, the descriptions have been kept brief and focused on the particular challenges that the execution of tasks faces in the pursuit of the rule of law in a post-conflict context.

The third question asks which actors have which capabilities and how well they are suited, organised and trained for executing the tasks identified. Besides the issues of resources and preparation, other determinants for the division of labour include effectiveness and legitimacy. When moving from the mere description of tasks to an indication of who should be doing what, intricate cooperation patterns begin to emerge. Coordination is a never-ending challenge in any international operation, including those that require close cooperation between military and police in the rule of law field. The study then also points to implications for specific issues of coordination, such as command and control arrangements, joint planning at different levels, the use of police with military status, etc.

At this early stage of the analysis, a critical point should be made: The study is largely limited to a review of the efforts of external actors in strengthening the rule of law. A clear conclusion of recent studies on peace building has been that local ownership is essential to securing the viability, sustainability and credibility of any such effort. This is reflected in calls for earlier involvement of local counterparts and more attention to be paid to institution and capacity building. Research is also being conducted on the process of transferring responsibility for order.

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[1] Derek Lutterbeck (2004) "Between Police and Military. The New Security Agenda and the Rise of Gendarmeries," *Cooperation and Conflict* Vol.39, No. 1, pp. 45-68.

1.3   Parameters for the Rule of Law in Post-Conflict Societies

This section outlines the conditions in which military-police cooperation and the efforts to strengthen the rule of law take place. This analysis has chosen to take a comprehensive view, which captures the entire spectrum of tasks that might involve military-police cooperation. The definition of the types of situations in which law and order is to be promoted is therefore deliberately wide. The definition suggested by the CSIS/AUSA project on Post-conflict Reconstruction reflects this view:

"between the cessation of **violent conflict** and the return to **normalisation**. For the purpose of this framework normalisation is reached when: 1) extraordinary outside intervention is no longer needed; 2) the processes of governance and economic activity largely function on a self-determined and self-sustaining basis; and 3) internal and external relations are conducted according to generally accepted norms of behaviour."[2]

It should be underlined that reform and transition processes, such as from authoritarian to democratic rule – for example in countries of the former Soviet Union – and were not preceded by violent conflict, are not addressed in this study.

The international efforts to strengthen the rule of law must proceed under conditions that are particular to war-torn societies and quite distinct from policing in a domestic setting. First and foremost of these is the local political context of the operation. Time and again the establishment or consolidation of the rule of law has been subject to a hostile political climate in which local power holders are unwilling to relinquish control over military forces, police forces, courts and prisons to democratic civilian oversight mechanisms. While fulfilling tasks in pursuit of the rule of law must be based on principles of equity and impartiality and in that sense be apolitical, the political dimensions must be taken into account. Security is at the heart of a state's sovereignty and consolidating the rule of law is an intrinsic part of a state-building process. Any attempts by outsiders to affect the control over security institutions and thereby the balance of power within a state will require significant political negotiations and a minimum of local political consent to succeed. Moreover, more thought has to be put into how the political context can be targeted directly in order to make 'it' more cooperative. In her analysis of the UN efforts in Namibia, Lise Morje Howard concludes that "this case suggests that consent of the warring parties to see through peace implementation is not always present, but can be created and sustained."[3] A related question refers to the issue of spoilers.[4] Most recommendations for peace implementation, including my own, call for a spoiler strategy and spoiler management. Although they are relevant to many of the tasks outlined below, they are not treated in detail in this analysis, as they form the backdrop rather than the substance of the

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[2] Association of the U.S. Army (AUSA)/Center for Strategic and International Studies (CSIS) (2002), *Post-conflict Reconstruction. Task Framework* (AUSA/CSIS: Washington D.C., May 2002), p. 2. (Emphasis given.)
[3] Lise Morjé Howard (2002) "UN Peace Implementation in Namibia: The Causes of Success," *International Peacekeeping* Vol. 9 No. 1 (Spring 2002), p. 127.
[4] Stephen John Stedman (1997) "Spoiler Problems in Peace Processes," *International Security* 22 (2), pp. 5-53.

analysis. Spoilers will be addressed in more detail in subsequent studies on local ownership in public security. The concluding chapter of this report will also briefly address this issue.

Second, addressing the rule of law in war-torn societies requires an understanding of how law enforcement there differs from law enforcement in a typical peaceful, western society. While this will vary from case to case, the international actors will most likely have to contend with the following typical circumstances: a contentious legal basis, i.e. disagreement on the applicable law; non-existent or dysfunctional justice institutions; a large number of refugees and internally displaced persons; a large number of weapons in the area and often weapons smuggling activities; ethnic or otherwise split population; high levels of crime and a legacy of war crimes, oppression and impunity. These challenges can occur in isolation or in conjunction with each other, such as in Kosovo, where there were clear links between armed resistance groups and organised criminals.

2   MAIN ACTORS IN THE PUBLIC SECURITY FIELD

2.1   Overview over Actors

It is not the purpose of this report to rehash the long-standing discussions on the inherent difficulties in civil-military cooperation, such as problems of impartiality or cultural and organisational differences between NGOs and a military force. As early as in 1957, Samuel Huntington pointed to the "tension between an institutionally conservative military and a more liberal society."[5] Still, in order to be able to trace the assessments on suitability below, it is necessary to briefly sketch some of the main features of the three main actors considered here: military forces, police forces and Constabulary forces.

Military forces are organised and deployed in units and operate under a stringent chain-of-command and clear accountability. In peace operations, they are organised in national contingents and often have a designated geographic area of operation. In that area, contingents from several countries constitute a larger unit, such as the Multinational Brigades (MNBs) in Bosnia-Herzegovina and Kosovo. When contingents are small, they often also take on a specific function within the larger multinational unit, such as mine clearance or infrastructure reconstruction as the Norwegian contingent did in Iraq. These contingents are specifically tailored and deployed to fulfil a designated function. Virtually all contingents typically include a military intelligence cell.

That means of course that during larger operations, contingents from different countries must cooperate, with all the challenges of communication and interoperability that entails. Although military forces in peace operations often bemoan that their means are inadequate to fulfil their

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[5] Quoted in Michael C. Williams (1998) *Civil-military Relations and Peacekeeping* (Adelphi Paper no. 321, IISS/Oxford University Press: Oxford), p. 33. See also Samuel Huntington (1957) *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (The Belknap Press: Cambridge, Mass).

mandate effectively ("underequipped"), they are usually more heavily armed and equipped than civilian police forces. At the same time, it is important to note that military forces are usually subject to strict Rules of Engagement (ROEs) that delineate when and how force can be used.

Police officers in an international mission are deployed as individuals and work in small teams. Whereas the military is composed of self-contained units, civilian police officers are often dependent on community support – or support from military peacekeepers – for communications, logistics and transport. Police forces in peace operations are usually not armed. Haiti, Kosovo and East Timor were exceptional cases in which a mandate to carry arms was given. However, even where civilian police have had an executive mandate, armament was light and was not accompanied by concomitant armoured vehicles or heavy riot control gear. (Notwithstanding its MSU/SPU components described below.) The civilian police therefore have no possibility for a show of force. Where police in a domestic setting have back-up forces, such as Special Police Units, international police in the context of a peace operation are usually thinly stretched with little or no depth for escalation or increased presence. The deployment of Constabulary forces, such as the first MSU in Bosnia-Herzegovina, was an attempt to alleviate this problem. It is also important to note that, in the set-up phase of a mission, it takes more time to deploy civilian police forces and to create an organisational framework within which police officers can work effectively. International civilian police officers can effectively promote the rule of law where they are perceived as representatives of a respected authority; be it a recognised international transitional administration or a set of generally accepted rules of behaviour, such as social codes or national criminal law. A "moral authority," comparable to the one police officers enjoy in their home countries, is difficult to recreate in a peace operation, especially where an established legal framework is absent.

Larry Watts identifies three main areas where there is a fundamental difference and a necessary separation between the institutions of the military and the police:[6]
  (1) The means available to each and their modus operandi: Whereas the military is authorised and expected to use lethal force, the police primarily rely on non-lethal force and persuasion.
  (2) The political context for each force's mandate: Whereas the military represent the non-political defence of territory and the state, the police are the protector of a social order and thereby inherently political.
  (3) The legal basis and accountability: Whereas the military are subject to a separate set of laws that govern their behaviour and operations, the police are subject to the same laws as any other citizen and must justify their actions in the same way.
In the context of international deployments, this has clear implications for how military and police forces contribute to supporting the rule of law. This is especially true with regard to the

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[6] Larry Watts (2001) *Whose Professionalism?: Separating the Institutional Roles of the Military & Police* (Paper published by the Conflict Studies Research Centre, Royal Military Academy Sandhurst, Camberley, UK, November 2001).

tasks that are related to providing a secure environment and maintaining public order. For example, the military force may choose confrontational tactics, overreact and escalate public disorder. And/or the international police may feel rudderless without an established social, political and legal framework within which to enforce the law. These dilemmas will emerge in greater detail in the course of the report.

In an attempt to address the gaps in military-police cooperation and deal with the 'grey-area' challenges that lay between peacekeeping and policing, decision makers introduced designated specialised and 'formed' police units, which they believed would be the perfect hybrid.[7] Although the role of these Constabulary units, also called 'police with military status' or 'gendarmerie-type forces', is difficult to assess, there can be no doubt that they now play a part in civil-military cooperation.[8] *Constabularies* were originally "instruments of the central powers in extending and consolidating their rule over the national territory, in particular the often 'unruly' countryside"[9] as part of a nation-building process. While these forces have downgraded their military links, they are often still linked to both the Ministries of Defence and Interior. Robert Perito defines them as "armed forces of the state that have both military capabilities and police powers."[10] Moreover, their organisation still follows a military hierarchy and they are more heavily equipped than civilian police forces. This is a natural consequence of their dual function: Constabularies fulfil both law enforcement duties and can be integrated into the military forces combat capability when necessary.[11] Dominant traits are their flexibility and range of tasks, their ability to respond rapidly and their capability to use force. Military Police forces are also trained to interact with civilians, handle victims and apply minimum force.[12] Typical tasks in their respective domestic contexts are law enforcement, border security, riot/crowd control, and combating organised crime, smuggling and terrorism.[13] It is generally assumed that constabulary-type police can deploy more rapidly and are available in larger numbers. Neither is necessarily true, as Constabularies have important peace-time roles in their home countries from which they must be extracted in the same way as civilian police have to be.[14]

In addition, a variety of *civilian actors* are involved in different aspects of the rule of law agenda. They will be mentioned where relevant in the course of this study, but will not be dealt

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[7] The forces themselves have of course existed for a long time. It is the idea that they have a particular role to play in peace operations that is new. Annika S Hansen (2002c) "Civil-military cooperation: the military, paramilitaries and civilian police in executive policing," in Renata Dwan (ed) *Executive Policing: Enforcing the Law in Peace Operations* (SIPRI Research Report no.16, Oxford University Press: Oxford), pp. 67-84.

[8] The European Union has taken a more systematic approach to the use of police with military status, developing possible concepts of operations and functions for what the EU refers to as "Integrated Police Units (IPUs)."

[9] Lutterbeck (2004), p. 47. In accordance with their respective domestic roles, there will of course be national variations among military or police or constabulary contingents.

[10] Robert M. Perito (2004) *Where Is the Lone Ranger When We Need Him? America's Search for a Postconflict Stability Force* (United States Institute for Peace Press: Washington D.C.), p. 46.

[11] Lutterbeck (2004), p. 47.

[12] Perito (2004), p. 81.

[13] The usefulness and suitability of police with military status in peace operations is debated. Rather than regurgitate the arguments here, the study will – as indicated – suspend judgement and focus on the tasks and the matching capabilities. Political and other constraints will then be addressed in a concluding section.

[14] See for example, on the UNMIK/SPU, Perito (2004), p. 194f.

with in great depth. In line with the traditional wariness that humanitarian agencies and military forces harbour for each other, there has been a general trend towards calling for "complementarity" rather than ever closer "cooperation."[15]

This study does not consider a recent addition to the actors involved in the rule of law field: Private security companies. Needless to say, that all the concerns generally voiced over the accountability of private security companies, especially when they are working in conflict-ridden areas, are equally valid with regard to the rule of law. Shortages of civilian police personnel can indeed be alleviated by outsourcing certain elements, such as police training. However, private companies must be closely supervised to ensure consistency and to ensure that training serves the overall goal of leaving in place democratic and effective police forces. If accountability and complementarity and cohesion can be assured, there is room for private companies in non-executive roles. When it comes to the sensitive and difficult area of law enforcement however, private companies lack the legitimacy to be security guardians and representatives of the state and in the worst case can undermine the credibility of both state institutions and donors.[16]

When discussing the cooperation between military and police forces, it is important to understand which gaps that cooperation is intended to fill. Several analysts have suggested two main gaps in the provision of a secure and stable environment – a deployment and an enforcement gap.[17] They are introduced in turn.

2.2   The Deployment Gap

The notion of a deployment gap originates in a discussion of military-police cooperation that regards an operation as a series of phases.[18] There are important differences in the issues that dominate the different phases: For instance, planning is especially critical early on and, as a general rule, the military force will have a greater role on the ground in early stages because it takes longer to deploy police and levels of instability are higher in the immediate post-conflict phase. The need for coordination between the military and the police is arguably greatest in the pre-deployment and initial deployment phases. More attention is now being directed towards coordinating the stage of an operation, where military activities are scaled down and the police dimension gains in prominence. This only becomes a deployment gap issue, when the police cannot be augmented on a par with their increased role. At this stage provisions can be made to address challenges such as the inevitable time lag between mission initiation and deployment of the full police contingent. In an executive policing mission, the international forces present

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[15] See for example, Damian Lilly (2002) *The Peacebuilding Dimension of Civil-Military Relations in Complex Emergencies* (International Alert: London), p. 2; Williams (1998), p. 14.

[16] For a recent review on the issue, see Caroline Holmqvist (2005) *Private Security Companies. The Case for Regulation* (SIPRI Policy Paper No. 9, SIPRI: Stockholm, January 2005).

[17] See for example, Alice Hills (2001) "The inherent limits of military forces in policing peace operations," *International Peacekeeping*, vol. 8 no. 3 (Autumn 2001), pp. 80-82.

[18] See for example Michael J. Dziedzic (2002) "Policing from above: executive policing and peace implementation in Kosovo," in Renata Dwan (ed) *Executive Policing. Enforcing the Law in Peace Operations* (SIPRI Research Report No. 16, Stockholm International Peace Research Institute (SIPRI): Stockholm), pp. 33-52.

are expected to enforce the law from 'day one', at which time the full international civilian police (CivPol) contingent is never in place.[19] Moreover, in the early days of a mission the situation is often so volatile that a convincing case can be made for the military force, being the more capable and the available actor, to maintain order at this stage. As levels of violence and thus the need for more military support vary from day to day and from region to region, the analysis of cooperation benefits from a more differentiated approach once an operation is under way.

The deployment gap may include shortfalls in the numbers of staff throughout the course of the mission. Here military forces can provide invaluable relief to civilian police forces and contribute to maintaining law and order even once the CivPol contingent has been deployed and the operation is under way.

Formed police units have been hailed as a way to get forces on the ground quickly. However, they are as difficult to recruit as civilian police since they, too, usually form part of the daily public security structures in their home countries. They therefore cannot necessarily help in filling the deployment gap. Italy is perhaps the exception, with its massive and intricate network of security forces, 120,000 of which are *carabinieri*. The recruitment difficulty is diminishing slightly, as more potential contributors are made aware of the needs for formed police units in peace operations and are coming forward with various forms of police with military status.

2.3   The Enforcement Gap

The second and more difficult gap to bridge is the enforcement gap. Where the moral authority of the civilian police is insufficient to enforce the law, military forces can contribute muscular back-up, engage in counter-terrorism or assist in crowd control. Mandates now commonly call on the military to 'provide a secure environment' – both for international civilian staff and for the local population. The security situation in Kosovo and the assumption of executive authority by NATO and the United Nations forced the UN Security Council to include the maintenance of law and order in KFOR's mandate.[20] And yet, when the military acts as a force multiplier for the police, the benefit of the deterrent effect that the military undoubtedly have can backfire. The civilian police gain in credibility by being able to call on a coercive threat, i.e. military back-up, but the close association with a military force can also undermine public confidence and trust in a newly established or reformed rule of law. This is especially true in countries where the military have a history of being the occupying forces of a 'foreign power', as in Kosovo and East Timor, or an instrument of oppression and domestic politics, as in El Salvador or Haiti.

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[19] Strohmeyer argues this point for both Kosovo and East Timor. Hansjoerg Strohmeyer (2001) "Collapse and reconstruction of a judicial system: the United Nations missions in Kosovo and East Timor," *American Journal of International Law*, vol. 95, no. 1 (Jan. 2001), p. 60. The term CivPol was introduced in the context of the UN peacekeeping mission in Cyprus in 1964. Annika S Hansen (2002a) *From Congo to Kosovo: Civlian Police in Peace Operations* (Adelphi Paper No. 343, International Institute for Strategic Studies (IISS)/Oxford University Press: London/Oxford), p. 17.

[20] UN Security Council Resolution 1244, 10 June 1999, para. 9(d).

Another important aspect of cooperation between military and police is the question of whether the military has an enforcement mandate and is authorised to 'use all necessary means', as INTERFET was in East Timor, the MNF was in Haiti and the UN Mission in Somalia (UNOSOM II) was in Somalia. In addressing the enforcement gap it is critical to understand that the military and the police differ in their approach to the use of force. Alice Hills argues that this further complicates the above-mentioned deterrent effect and regards this as the greatest obstacle for military involvement in policing. She points out that the military are the 'coercive resource of last resort' and argues that they cannot be seen to fail, in contrast to the police who rely on discretion and de-escalation of violence.[21]

Constabularies were deployed exactly for the purpose of bridging the enforcement gap between military and civilian police. The usefulness of the Multinational Specialised Unit (MSU), established in 1998 as a more forceful public order alternative in Bosnia and Herzegovina, was initially hampered by the absence of a clear mandate, which prevented its capabilities from being fully exploited. The list of functions it was intended to take on reflects the high expectations, as well as a lack of prioritisation and a lack of clarification as to how the MSU was to relate to the other international security forces, i.e. SFOR and IPTF.[22] The MSU role was defined as "to increase public security and public order in Bosnia-Herzegovina and carry out intelligence gathering to prevent disorder in areas of high tension."[23] Jane's Defence Weekly goes on to say that the MSU "will provide flexible quick-reaction contingents to contain and control crowd disorder," as well as protect displaced refugees returning and controlling and training local police forces.[24] On top of these tasks, there were expectations that the MSU would provide security during elections, play a role in fighting organised crime and stop political corruption and rampant smuggling.[25] This long list represents a veritable smorgasbord of all the issues SFOR and IPTF were struggling with rather than an assessment of relative strengths and weaknesses of each security force.

Although some progress has been made, the overlap between MSU and Special Police Unit (SPU) functions in Kosovo indicates that neither NATO nor the UN has thought out what exactly the gap is that formed police units should fill. The enforcement gap is vastly complex and can only be filled by developing 'effective functional relationships' between military, police and Constabulary forces.[26]

When considering which of the tasks need to be executed in a given situation and by whom they ought to be executed, the following factors are decisive:
- Type of operation/mandate provisions

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[21] Hills (2001), pp. 81, 94.

[22] Perito (2004), pp. 146f., 153-182.

[23] "MSU Force to Deploy to Bosnia-Herzegovina," *Jane's Defence Weekly*, Vol. 030, Iss. 008, 26 August 1998.

[24] "MSU Force to Deploy to Bosnia-Herzegovina," *Jane's Defence Weekly*, Vol. 030, Iss. 008, 26 August 1998; Perito (2004), p. 156f.

[25] Perito (2004), p. 133.

[26] For the actual use of constabulary forces in both Bosnia-Herzegovina and Kosovo, see Perito (2004), pp. 153-182 (on SFOR/MSU), pp. 183-235 (on KFOR/MSU and UNMIK/SPU).

- Phase of operation/level of violence
- Degree of destruction/local capacity (infrastructure and institutions)

In Chapter 3, the tasks that arise in pursuit of the rule of law in conflict areas have been grouped into three categories: Providing a secure environment (3.1), law enforcement and the judicial process (3.2), security sector reform and the rule of law, including military and police reform and judicial and penal reform (3.3). Within each category, in turn, tasks are collated, described and discussed with regard to which one of the main actors is best suited to carry out the particular task(s). Chapter 4 then addresses some of the issues that arise in "putting it all together." It takes a closer look at challenges of coordination among the three main actors – police, military and Constabulary forces.

3   THE TASKS AND WHO SHOULD DO THEM

3.1   Providing a Secure Environment

Before the long-term efforts to build the institutions of the local judicial system have gathered momentum, the military task of providing a secure environment coincides to a great extent with the demand for public security. In Haiti, the Multi-National Force (MNF) was especially designed to create stable conditions necessary for the deployment of the UN Mission in Haiti (UNMIH), which then took over in the spring of 1995. Similarly, the 300 unarmed monitors of the UN Mission in East Timor (UNAMET) were helpless in the face of the growing violence there. The Australian-led military International Force for East Timor (INTERFET) restored order and arguably set a more forceful tone for the deployment of UNTAET.[27] As the call for a safe and secure environment is rather vague, the following attempts to break the function down into smaller groups of tasks. First, however, a brief introduction to the function entitled "providing a safe and secure environment."

Within the remit of providing a secure environment are immediate and long-term measures. Immediate measures aim at preventing outbreaks of violence and maintaining stability in a conflict area. The most prevalent task is monitoring the movement of troops, goods or population through patrols, checkpoints and intelligence gathering. If a situation escalates, the ability to conduct crowd control is central. Closely related to these tasks, is the protection of buildings, minorities or VIPs. In the wake of a conflict, there are often larger ongoing stabilisation programmes that directly impact the security situation. These long-term projects hope to create and consolidate the fundamental conditions for a transition from war to a peaceful society. The three most prevalent are: the Demobilisation, Disarmament and Reintegration of former combatants (DDR); the repatriation and return of refugees and internally displaced; and military reform.

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[27] Strohmeyer (2001), pp. 51, 54; and James Traub (2000) "Inventing East Timor," *Foreign Affairs* Vol. 79, No. 4 (July/August 2000), pp. 77f.

The tasks that are performed by various actors in the pursuit of a secure environment are the ones that border most closely on non-combat military activity. The military can alleviate public security concerns at the outset of an operation by providing equipment and other logistics support, by offering military facilities, as well as military lawyers, by conducting increased patrols and so on.[28] Experience from peace operations has shown that although they are also policing tasks in nature, effectiveness of the international effort in this area usually benefits from a show of force. There is a fine line between "providing a secure environment" and "law enforcement." The critical difference is that measures taken to provide a secure environment are not linked to a wider rule of law concept. In other words, the measures do not enforce specific laws, are not followed through a chain of justice and do not enjoy the predictability of law enforcement in a stable society. Therefore it is all the more important that, at a political level, a cohesive approach to the overarching goals of an operation is developed in the establishment phase *among* and communicated *to* the major contributors, and particularly the military and the civilian police.

3.1.1   Monitoring Movements and Potentially Destabilising Activities

Monitoring Movements
In traditional peacekeeping, monitoring tasks were limited to a clearly delineated area, such as a buffer zone, in and through which the movement of goods and people was limited. Monitoring outside of the designated zone was limited to the movement of the former combatants' troops and arms. This is closely linked to monitoring the withdrawal of forces, such as occurs in connection with demobilisation efforts. It also involves enforcing restrictions on the freedom of movement of both legal and illegal armed groups beyond initial demobilisation efforts. With the increasing engagement in internal conflicts, the monitoring of movements extends to civilians as well as troops and has become more challenging in that an entire territory is to be patrolled and the former combatants have generally not been separated into geographically distinct entities. In Bosnia-Herzegovina the international military force was charged with both elements: IFOR/SFOR patrolled a buffer zone, the Inter-Entity Boundary Line (IEBL), as well conducting patrols throughout Bosnia-Herzegovina. While patrols seek to prevent outbreaks of violence in general, it is the protection of minorities that has become a critical part of monitoring movements and behaviour in war-torn societies (see 3.1.2).

Military patrols in the conflict area increase the visibility and credibility of the usually thinly-stretched civilian police. Haiti is one example of earlier peacekeeping operations – with traits of executive policing – in which military and police cooperated closely and effectively. Joint patrols in Haiti were nicknamed 'Four men in a jeep' and included an international and a local policeman, a military peacekeeper and an interpreter. In Bosnia-Herzegovina the effectiveness

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[28] Both KFOR in Kosovo and the International Force for East Timor (INTERFET) in East Timor arrested and detained a significant number of suspects when the UN civilian police and justice components were unable to do so. Strohmeyer (2001), pp. 51, 57–58, 61.

of the IPTF was greatly enhanced when joint patrols with the Stabilization Force (SFOR) were introduced in 1997.[29]

In any case, monitoring aims to prevent outbreaks of hostilities and increases in tension or instability. In practice, monitoring movements consists of patrolling, fixed and mobile checkpoints and intelligence gathering. The capabilities of a military force are far better suited to maintaining checkpoints, as civilian police in peace operations tend to be lightly armed and equipped and lack both heavy vehicles and – not least – manpower. Moreover, aside from the exceptional circumstances of Kosovo and East Timor the international police force has not been mandated to enforce the law and would therefore not enjoy the necessary legitimacy. Even though the line between executive and non-executive tasks is not always clear, maintaining check points, stopping and potentially disarming or detaining people, evidently falls outside of any non-executive mandate.

Area Security
While it is generally assumed that the military can more easily control unstable areas, the experiences of the initial months in places like Kosovo or Iraq, where the military forces were incapable of effectively countering activities, such as arson, looting, violence against minorities, etc, have underlined just how difficult that task is even for a heavily armed, hierarchically organised and large military force. This, in turn, highlights the need to tie 'technical' military and police stabilisation efforts to a wider process of political development and reconciliation, as well as to economic development and education.

In part, effectively countering looters and aggressors is linked to concerns of force protection. Peter Viggo Jakobsen argues that the demands of a 'secure environment' are at times incompatible with force protection needs.[30] In joint police-military operations, the question of force protection is particularly important for the police force, which is always more lightly armed – if armed at all – and therefore more vulnerable. Force protection has received more attention recently with direct attacks on international forces in Iraq, but was already a tricky issue in such law enforcement operations as the raid of the Hercegovacka Bank in April 2001 and the riots in Kosovo in March 2004. In other operations, such as in Albania, Operation Alba was also tasked with protecting the OSCE observers.[31] Moreover, working together at a tactical level has clear limitations, which spring from the different organisational structures and professional cultures of the military and the police. Whereas a policeman is used to and authorised to act as an individual, making decisions based on his own discretion and personal assessment of a given situation, most soldiers are not, which may inhibit their ability to respond effectively.[32] These patterns are evolving – reflected for instance in the notion of a

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[29] Annika S Hansen (2000) *International Security Assistance to Peace Implementation Processes: The Cases of Angola and Bosnia-Herzegovina* (PhD thesis published at the University of Oslo: Oslo), p. 142f.
[30] Jakobsen (2003), p. 145f.
[31] Williams (1998), p. 49.
[32] Military Police officers are an exception, but generally the military forces' concern for the safety of their personnel takes precedence over the potential gains of individual effort and in that way limit flexibility. This is in no way a criticism of military organization, but must be kept in mind when assessing the extent and nature of military-police cooperation.

"strategic corporal"[33] – and military forces, for example in the United Kingdom and Norway, are moving towards smaller teams of only four soldiers that resemble the deployment pattern of a police patrol more closely.

Mine Clearance and Mine Awareness are also part of providing a secure environment and serve two purposes: First, clearing mines from major roads and other important infrastructure is an element of force protection as the international military force has to be able to move relatively freely to fulfil its role. Second, clearing mines has a humanitarian dimension in that it stabilises the security environment and curbs further casualties. In that way, it removes some of the psychological remnants of the war and allows both the return of refugees and displaced and the use of land or industrial facilities for sustenance and economic development. A division of labour here as emerged in that the international military forces focus on the former purpose and do not generally clear mines for humanitarian purposes. Civilian agencies for mine clearance are concerned with the second purpose. They also conduct awareness campaigns and, as this is a protracted task that goes beyond the timeframe of any international engagement, train local staff. International civilian police play no role in mine clearance and awareness.

Overall, when it comes to providing a secure environment, military forces have the advantage of greater numbers, more adequate equipment and the ability to escalate and are therefore more effective, more credible and more legitimate than a pure police force. Initially or during times of high levels of violence, the police are unlikely to play more than a supporting role and provide a "civilian cover" for military activity. With increasing stability, this balance should gradually shift to the opposite extreme. In other words, when levels of violence have been reduced, the military can scale down their role to a forceful back-up role for the patrolling – local and international – civilian police.

Border Control
Border control is also part of monitoring movements, as both refugee flows and smuggling can be potentially destabilising. International efforts are important as part of monitoring the flow of armed personnel and arms across borders and the effect of these flows for stability in the mission area. In more recent cases, border security is increasingly considered part of the fight against terrorism. The international efforts under Operation Enduring Freedom in south-eastern Afghanistan are a case in point. Controlling an international border is a labour-intensive task and the protection of territorial borders is unquestionably a prerogative of a sovereign state. It has therefore generally been recognised that efforts should be made to put in place or enable a capable local border force. The State Border Service (SBS) in Bosnia-Herzegovina was an early example of a systematic effort to establish an effective border security force. In Kosovo, the Border Police ensured compliance with immigration laws at five border crossings, with KFOR patrolling the borderline between checkpoints.[34] In Iraq, too, the Coalition forces began

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[33] Alice Hills (2002) "Hearts and Minds or Search and Destroy? Controlling Civilians in Urban Operations," *Small Wars and Insurgencies*, Vol. 13, No. 1, p. 15.

[34] Josefine Ingela Aaser (2003) *Tackling Terrorism Together. Potential Benefits of Civil-Military Cooperation in Post-Conflict Territories – The Kosovo Case* (FFI Report-2003/00329, 15 October 2003), p. 14.

training Iraqi security forces early on and formed the Iraqi Border and Customs Police (IBCP), recognising that this was the most effective way to create a sustainable security regime along Iraq's borders.

In European capitals, the concerns of effectively implementing the Schengen Agreement have led to an increase in border police forces.[35] In the context of addressing law enforcement and public security issues in a peace operation, this means that there will be a greater pool of border police from which to draw staff for international deployment. Many European border forces are paramilitary in character and there appears to be a role for constabulary forces in border security in peace operations. In an executive role, they can assist both the military forces and the international civilian police in actual border control. In an advisory role, they can contribute to capacity building by providing advice and training for local border police forces, for instance on combating smuggling of arms, drugs, persons or other contraband, other forms of transnational organised crime or border management more generally. This role is especially important in the European context where the success of the Schengen-ambition requires effective borders on the outskirts of Europe, such as in the Balkans or Northern Africa. Clearly, links to transnational organised crime in the domestic setting of international border police was a driving force behind their deployment in the Balkans.

Crowd and Riot Control (CRC)
Any peace building process is characterised by fluctuating levels of violence and most peace processes have witnessed outbursts by dissatisfied groups. In some cases, the group may simply stage a demonstration that threatens to turn violent, in others former opponents may be involved in a stand-off and in yet other cases the international presence itself may be challenged by an 'angry mob.' It is important to note that crowds may be different from expected crowd behaviour in home settings and in some instances be close to urban warfare.[36] The responses to these challenges differ widely. The military approach views the crowd with an attack/defence mindset, aiming to threaten or intimidate the group. General Wesley Clark remarked that "peacekeeping troops in Bosnia would use deadly force, if necessary, to deal with future mob violence and to protect U.S. forces."[37] In fact, the crowd may well specifically aim to take advantage of military difficulties in dealing with civilian challenges.[38] The police approach, on the other hand, emphasises de-escalation, dialogue and assistance. The police policy is that should force be used, it should be reasonable and moderate and only in response to criminal actions. This distinction has become more nuanced, as a result of military forces' experience in a range of peace operations in the 1990s and early 2000s. Most military forces undergo training for CRC and, borrowing from the modus operandi of civilian police forces, have adjusted both equipment and tactics to be better able to engage in crowd and riot control.

As mentioned earlier, the international CivPol components were generally not equipped or organised to meet the crowd control challenge. Moreover, the CivPol mandate only included

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[35] Lutterbeck (2004), p. 52.
[36] Hills (2002), p. 18.
[37] Quoted in Perito (2004), p. 23f.
[38] Perito (2004), pp. 27-29.

crowd control in the later executive missions in Kosovo and East Timor. At the same time, the military response could be too hostile and further escalate an unstable situation. That is not to say that they have not played a crowd control role in peace operations. In Cambodia, mobile reserve in each of UNTAC's infantry battalions were earmarked to deal with insecurity within their respective areas of responsibility.[39] The desire to close this particular capability gap was a driving factor behind the decision to deploy an 'in-between' force, i.e. Constabulary forces. The fear of unruly crowds was one of the main triggers for the decision to deploy the first Multinational Specialised Unit (MSU) made up of constabulary forces to Bosnia-Herzegovina in 1998. Since then crowd control has become one of the most central tasks for formed police units in the executive policing missions in East Timor and Kosovo.

Constabulary forces have the advantage of being trained and equipped for the specific task of crowd control – which until recently military forces had not been – and are deployed in units – as opposed to the individuals that make up the multinational CivPol component. Moreover, the anticipated added value of the MSU in Bosnia-Herzegovina was that they would be "highly mobile" and able to "respond quickly;" both traits were undermined by cumbersome procedures and command structures.[40] In Kosovo and East Timor, too, the actual use of those units for security functions was limited. For one, this was due to the fact that there were not as many instances of rioting as expected. But for another, in the case of the Special Police Unit (SPU) under the UNMIK police in Kosovo, the constabulary forces were hampered by the fact that they could *only* deploy as formed units and needed military back-up.[41] The Blue Box concept, where a designated area is placed under the authority of a constabulary contingent, is an attempt to alleviate problems that arise with ambiguous chains-of-command and has also been adopted by planners in the EU Police Unit.

The degree to which Constabulary forces emulate police or military tactics depends on the way in which they are trained and deployed in their respective domestic settings. Therefore, it is difficult to draw general conclusions about their comparative advantage and their ability to control crowds in a way that does not disrupt or derail the wider peace building effort. A problem can arise where police with military status come from countries in which democratic standards are not upheld and may be prone to using excessive violence. Since they play a more confrontational role in their crowd control duties, Constabulary forces with a non-democratic background are arguably a more serious problem for formed police units and can have a greater destabilising effect than sub-par individuals among the international civilian police.

3.1.2   Protection Tasks: Minorities and Ethnically Motivated Violence

The protection of minorities became a prominent task within the provision of a secure environment with the rise of ethnic and internal conflicts in the 1990s. In contrast to previous operations, where peacekeepers patrolled a buffer zone between warring parties, internal

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[39] James A. Schear and Karl Farris (1998) "Policing Cambodia: The Public Security Dimensions of UN Peace Operations," in Robert B Oakley, Michael J. Dziedzic and Eliot M. Goldberg (eds) (1998) *Policing the New World Disorder. Peace Operations and Public Security* (National Defence University: Washington DC), p. 95.
[40] Perito (2004), pp. 30f., 162f.
[41] Perito (2004), pp. 206, 214.

conflicts entailed that the warring parties had to coexist within the same territory after fighting had ended. Attacks on minorities are politically explosive and extremely destabilising and the peacekeeping force is often hard-pressed to provide effective protection. The blame heaped upon IFOR and the UNIPTF after the expulsion of Serbs from the Sarajevo suburbs is a good example. Naturally, as the Kosovo example showed, even a substantial military and police force will never be able to protect every individual. This then harbours the danger that individuals who felt threatened and inadequately protected by peacekeepers enlist rival armed groups, such as militias, for their protection. Ultimately, the goal has to be to make local mechanisms for upholding the law impartially functional as soon as possible, so that minorities can find redress in a legal system.

Unless the police have a law enforcement mandate, protecting minorities and preventing or handling ethnically motivated violence falls within the scope of the international military or the local police forces mandate to 'provide a secure environment.' Given the incendiary nature of these ethnically motivated incidents, it is also in the interest of the military force to ensure that an incident does not lead to more widespread destabilisation. Where the international police does have an executive role, they will have to coordinate closely with their military partners. The experience from East Timor highlights how problematic the division of labour between military and police forces can be in the protection of minorities. While international civilian police were expected to protect minorities, among them returning refugees, some of whom were suspected militia members, the military peacekeepers were called on to "respond robustly"[42] to threats from the very same Indonesian militias. It is not difficult to see how potentially conflicting tasks can introduce friction into military-police cooperation.

In later stages of the peace process, minorities may still require protection. This ought to be the job of the local police forces in their daily role of enforcing the law and maintaining public security. Where the minorities do not trust the police sufficiently, an international oversight mechanism that monitors the impartial performance of the local police and – in case of crimes committed against minorities – the judicial process, may be necessary to bridge the gap in confidence. This mechanism may consist of international civilian police or of human rights organisations and other civilian monitors. In order not to exacerbate the problem and further undermine the legitimacy and credibility of the local police forces, external actors should refrain from themselves taking on the responsibility for law enforcement and minority protection, except in the most extreme cases. The protection of minorities also points to the wider political process of reconciliation, where international military and police forces are likely to have a minor role at best. (See 3.2 on preventive law enforcement.)

Maintaining a secure environment also involves a range of other protection tasks. First, there is site protection. In the Balkans, typical threatened sites have been places of worship or other buildings with symbolic value. With greater involvement in judicial reform, the protection of

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[42] The term used by Kofi Annan in Sep. 2000 and cited in Human Rights Watch, *World Report 2001. East Timor*, 2001, p. 1, available on the Human Rights Watch Internet site at URL <http://www.hrw.org/wr2k1/asia/etimor3.html>.

judicial facilities, such as courthouses, has also become more prominent. The majority of peace operations also include staging elections and both military and police forces have contributed to security at polling stations and the security of ballot boxes. The cooperation that emerged in Cambodia is a good example. There, UN CivPol provided a security presence at the polling stations while military peacekeepers secured the approaches to the polling stations.[43] Shears and Farris even claim that "without the Military Component's direct and active involvement, the elections could not have been held under the tense conditions that prevailed at the time."[44] Second, a number of persons are also dependent on protection by external security forces and later local police forces. These include candidates for political office and other VIPs, and critically legal personnel, judges etc. In Kosovo, special Protection Units under the Close Protection Unit of the UNMIK/SPU were created to provide close protection for VIPs.

All of these activities involve patrolling and guard duty, and are therefore highly labour-intensive. The international civilian police – with their limited manpower – are therefore unlikely to take on a substantial protection role. Ideally, it should be transferred to local authorities as soon as they can fulfil it credibly. In Iraq, the Facilities Protection Service (FPS) was established early on to guard critical infrastructure in the face of widespread sabotage and looting and to relieve pressure on Coalition forces. Passive security measures, such as floodlights, video cameras, and similar technical support, are supplementary measures, which can alleviate shortages of personnel but have not played a major role in peace operations.

3.1.3   The Demilitarisation Process: Disarmament, Demobilisation and Reintegration (DDR)

Demobilisation and disarmament of former combatants and excess and/or irregular security forces are only indirectly policing concerns. They are, however, influential factors for the security environment and the law and order challenges in a war-torn society. It is important to distinguish between those combatants that remain in uniform – be it a military or police uniform – and those that are to return to other civilian occupations. Demobilisation and disarmament are well-known concepts that need not be explained in too much detail in this context.[45] Also, depending on the preceding conflict, the DDR process can take different shapes and will have varying relative emphasis on its constituent elements. Here, those aspects are emphasised that have the greatest effect on law and order. Thus, reintegration of former combatants is of greater relevance than the technicalities of the quartering process. Or rather, while quartering is extremely important to the initial stabilisation and pacification phase,

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[43] C. M. Lee Kim and M. Metrikas (1997) "Holding a fragile peace: the military and civilian components of UNTAC," Michael W. Doyle, Ian Johnstone and Robert C. Orr (eds) *Keeping the Peace: Multidimensional UN Operations in Cambodia and El Salvador* (Cambridge University Press: Cambridge, 1997), p. 108; Williams (1998), p. 59.
[44] Schear and Farris (1998), p. 96.
[45] DDR emerged in the early 1980s, when the World Bank was promoting reduction of forces, as a way in which to reduce military expenditure and free up scarce resources. The concept was then used in the context of United Nations peacekeeping operations, such as in Namibia in the late 1980s.

reintegration – or the lack thereof – will affect levels of crime and instability in the longer term. Idle and aimless former combatants, reminiscing about wartime glory and power, are easy prey for both criminal gangs and other armed groups. More innocently, they may simply lack other means of survival and engage in illicit activities. Both of which will have to be handled by the police, be they international or local. In the same way, the experiences in Cambodia indicate that the "Military Component's work in cantonment, weapons impoundment, demining and vocational retraining was expected to mitigate the social impact arising from widespread demobilization."[46]

Demobilisation then entails patrolling, circulating information on the quartering and reintegration process, rounding up and quartering personnel, guarding quartering sites, provision of food and transport, and the registration of combatants. The registration process leads into reintegration efforts that include counselling, vocational training, family reunifications, transport, distribution of starter packs/aid packages and local follow-up. As much as possible of the management of the transformation phase of demobilisation should be done by civilian organisations. After all, the DDR process is about managing a mental transition from war fighting to a civilian life and hopefully a constructive contribution to a peaceful society.[47] Moreover, militias are often politically motivated. In order to address their concerns, a parallel political and social reconciliation process has to take place.[48]

With the soldiers come the guns. Similar to the demobilisation and reintegration process, disengagement and disarmament in the initial phase are military issues and relatively straightforward ones at that. This is especially true of heavy weapons, where less weaponry tends to melt away into private hands and arms caches than is true of small arms, and where the rounding up is more transparent, such as was the case with disarmament under Annex 2B of the Dayton Agreement in Bosnia-Herzegovina. The effectiveness of small arms collection is central to the subsequent law and order situation. As in demobilisation and reintegration, a large number of arms flowing within and into a given society will be a long-term challenge for local law enforcement authorities.

Weapons storage and guarding storage sites are labour-intensive tasks. In Namibia, given the limited military presence and budget only one weapons collection and storage site could be maintained.[49] Weapons searches are part of the longer term disarmament effort and will vary with regard to the resources and scale of searches in relation to the number of weapons flowing into and in the conflict area; and with the level of stability. Searches for weapons can target houses, vehicles or individuals – such as at checkpoints – and can be larger planned actions or part of continuous monitoring. In most cases, these searches, as opposed to a wider

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[46] Schear and Farris (1998), p. 83.
[47] Mark Knight and Alpaslan Özerdem (2004) "Guns, Camps and Cash: Disarmament, Demobilization and Reinsertion of Former Combatants in Transitions from War to Peace," *Journal of Peace Research*, Vol 41, No. 4, pp. 504-7.
[48] John G. Cockell (2002) "Civil-Military Responses to Security Challenges in Peace Operations: Ten Lessons from Kosovo," *Global Governance* Vol. 8, No. 4 (Oct-Dec. 2002).
[49] Howard (2002), p. 116.

disarmament process, will aim to collect small arms, explosives and similar weapons. In Kosovo, UNMIK (SPU) and KFOR routinely cooperated on weapons searches and seizures.[50]

Due to sheer numbers and superior logistics and transport capabilities, the international military forces are better suited to take the lead on the quartering and arms collection and storage. They are also better equipped and organised to take on any protection of storage sites and initial weapons searches. The effectiveness of disarmament processes also diminishes if it is delayed. International military forces are likely to be the first on the scene and therefore in an advantageous position to start up the demilitarisation process. In any DDR effort, it is critical to separate the hardware, i.e. the weapons, from the combatant. While the military forces clearly have advantages in handling the guns, civilian actors – among them the international and local civilian police – should take the lead on the human aspects. This effort calls for close cooperation with humanitarian actors from the outset, as they too will be involved in the registration and further handling of former combatants. A number of humanitarian organisations and NGOs have acquired substantial experience with reintegration and repatriation of combatants. Among the combatants there will also be special interest groups such as child soldiers or women that may require alternative or additional measures.

While international police forces are likely to have a limited role in those elements of a DDR process that focus on the weapons, they may be involved in the orientation and re-socialisation efforts: First, often former combatants wish to continue in a related field of employment and to retrain to become police forces. There are several pitfalls here: one is quite simply the number, as there will be far more former combatants looking to join the police than police officers are actually needed. The international police, perhaps together with human rights organisations, may have to conduct a comprehensive vetting process to carefully select candidates for the new or reformed police force. Another danger is the militarisation of police forces through the presence of former soldiers. In order to counteract this danger, international police forces should conduct and indeed are the most suitable to conduct police training. Second, international and local police – where they exist and are operational – through community policing can play a useful role in monitoring or assisting former combatants once they have returned to their home communities and can in that way nip criminal and other destabilising activities in the bud. This is of course closely linked to the repatriation and return of refugees.

3.1.4 Repatriation and Return of Refugees

The return of refugees and displaced persons has been a major challenge in many missions. While it was a fact of life and considerable challenge in peace operations in Africa, it became more clearly defined as a task that international actors would have to carry out or support, during the wars and the peace operations in the Balkans. Increasingly, it is seen as a measure of success, in that it has been a gauge of reconciliation and of the extent to which the population of a war-torn society has confidence in a peace process. The effort that goes into repatriation varies from case to case, depending on the number of displaced, the amount of

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[50] Aaser (2003), p. 20f., 30.

encouragement and protection that returnees require, their dependence on international assistance, the duration of displacement, the economic and employment opportunities in the destination areas and donor interest. There have been attempts to micromanage repatriation, as in Bosnia-Herzegovina, but due to sheer volume in many African cases, donors have also left repatriation programmes to largely manage themselves on the ground.

Repatriation touches on law and order where returnees require protection either on their journey or at their destination. In addition, international security forces have protected food distribution and have assisted in the transport of returnees. The flow of refugees and returnees can have significant implications for security and stability in the area of operation. Therefore, repatriation is also connected to information and intelligence gathering and management. On the one hand, refugee/returnee flows are directly relevant to the execution of other security tasks above. On the other hand, spreading information and enhancing good will and knowledge among both returnees and recipient communities is an essential catalyst in promoting repatriation. The public relations campaigns of external actors will always be competing with the word-of-mouth assessments among the population. Therefore, tangible improvements in the security situation are perhaps the best advertisement for return. Here there are also clear links to security sector reform and to anti-corruption measures. For example, integrated and reformed police forces have been described as a "magnet for minority returns" and a key aim of police reform in Bosnia-Herzegovina.[51]

As indicated above, military forces may be involved in the logistics and intelligence aspects of repatriation. But it is the international and local police forces and humanitarian agencies, such as UNHCR or the IOM, and NGOs that have the predominant role. In addition, the local judicial system or temporary international mechanisms to resolve property disputes are critical to the rule of law and sustainable return. During a conflict, refugees will have appropriated abandoned houses and now dispute the ownership. The review process conducted in Bosnia-Herzegovina was admittedly unusually systematic and thorough. Still, the example indicates how time intensive and extensive such a process of fairly resolving property disputes – often in the absence of records and documentation – is. While such a process is ongoing, the police will often be called upon to investigate looting or wilful destruction of property and may have to carry out or witness evictions. Only in the most egregious cases would a military presence be required and then in a limited role, such as to protect a site or to assist in disbanding protest rallies.

A special group consists of Prisoners of War (PoWs) that are handled by the International Committee of the Red Cross (ICRC). Here, military forces can provide security and logistical support to the release, transfer and repatriation of PoWs.[52]

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[51] Judy S. Hylton (2002) "Security Sector Reform: BiH Federation Ministry of the Interior," *International Peacekeeping* Vol. 9 No. 1 (Spring 2002), p. 155.

[52] Jonas Gahr Støre (2004) "The Role of a Humanitarian Organisation in an International Security Operation – a Basis for Cooperation or a Basis for Separation?" (Speech given at The Nobel Institute, Oslo, Norway, 02 February 2004, in connection with the *Leangkollen Conference*/Norwegian Atlantic Committee).

3.1.5 Managing Information: Intelligence, Evidence and Public Relations

The task of 'managing information' cuts across the categories of providing a secure environment, law enforcement and security sector reform. Managing information is an – at times – underestimated aspect of peace building and is an integral part of activities that strengthen the rule of law: Information is gathered, when it is a question of maintaining secure environment; evidence is gathered, when enforcing the law; disseminating information and public relations campaigns are relevant at all stages, especially with regard to the return of displaced and to generating an understanding of the Rule of Law in society; and finally, building the capacity to collect and analyse information is part of a security sector reform effort. The efforts to encourage and bring about repatriation are just one example of an issue area in which managing information takes on various guises. For the military it means gathering and analysing intelligence on the security and stability in the recipient area. For the police, this predominantly means maintaining close community relations and gathering and developing evidence in connection with specific incidents. But repatriation will also require a significant public relations effort to facilitate the return and reintegration of displaced people.

The need for good intelligence is fundamental and innate to military operations, but is subject to particular restraints in the context of a peace operation. In the minds of some donors the topic of intelligence has had sinister undertones that do not sit well with the peace and development discourse. This has restricted the interaction between civilian agencies and the international military forces, but has also limited assistance dedicated to building local intelligence capacity and institutions. Many donors will feel vindicated in this assessment following the revelations of prisoner maltreatment by members of the coalition forces in Iraqi jails in 2003-4. The suspicions towards methods and value of military intelligence also affect the cooperation with other civilian agencies. NGOs possess substantial information and local knowledge. Williams refers to the example of Cambodia, where, he states, "NGOs work at the grass roots, often with local knowledge that is superior to that of military intelligence."[53] But cooperation is marred by the mutual reluctance to share information between military and civilian actors, with neither actor being forthcoming with their treasures. While intelligence may not be strictly necessary for a number of – civilian – political and economic reconstruction processes, much of the information would indeed be useful for civilian agents in law enforcement and the subsequent judicial process. ONUSAL is an exception, where the military, with a much larger presence in the field, shared information on crimes with CivPol.[54]

Another restraint that the collection and analysis of information faces is that the military commander of a UN peacekeeping force has information gathering, but no intelligence capacity. He is dependent on the intelligence produced by national contingents and on the contingents' willingness to share that information.[55] To avoid this dilemma the NATO-led

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[53] Williams (1998), p. 38f.
[54] William Stanley and Robert Loosle (1998) "El Salvador: The Civilian Police Component of Peace Operations," in Robert B Oakley, Michael J. Dziedzic and Eliot M. Goldberg (eds) (1998) *Policing the New World Disorder. Peace Operations and Public Security* (National Defence University: Washington DC), p. 115.
[55] Williams (1998), p. 20f.

KFOR established its own Intelligence Unit that could collect information independently on behalf of the mission. This has become all the more important with the deployment of forces into theatres where pockets of instability and hostility towards the international forces continue to exist, despite a formal peace agreement or cease-fire. UNAMSIL in Sierra Leone proved to be insufficiently informed and prepared when "new contingents were hurriedly dispatched to trouble spots without any information explaining what kind of enemy they may have to face."[56]

CivPol recognised the need for good information as early as 1989 and established an Investigations Unit under UNTAG in Namibia and a Forward Investigation and Coordination Centre, which was a "functional equivalent of an intelligence unit."[57] The nature and use of information for police purposes of course differs from military intelligence. Information gathered is likely to be used in an effort to track and maintain criminal statistics as a basis for policy and planning, but more importantly used as evidence in specific cases. This sets requirements for the method of collection and for the quality of information, which has to be reliable enough and meet the necessary formal conditions to be used in court. It is here that miscommunications between military forces and international police have taken place. Of course, the international police will only be involved in gathering evidence when they have an executive mandate and are themselves responsible for enforcing the law. As this is the exception rather than the rule, military-police cooperation in this area would entail the military giving up information to local police forces, which they at best consider to be incompetent and at worst believe to be corrupt and in cahoots with organised criminals. Although the MSU in Bosnia-Herzegovina was intended to collect information, interact with locals and provide regular intelligence reports, SFOR did not make use of that capacity.[58]

When it comes to security sector reform, managing information has two dimensions. First, more recent peace operations have involved reforming, enhancing or reconstructing local capacity to handle intelligence, such as the recent reform of intelligence agencies in Bosnia-Herzegovina. As indicated above, donor agencies avoided involvement with intelligence forces in post-conflict settings, particularly since they were assumed to have played an ominous role in the preceding conflict. And yet, while the conflict area in many cases featured clandestine security services, acting as an instrument of oppression for the government or one of the parties to the conflict, any sovereign government should be able to define its own security needs, which any Western country will admit warrants some sort of information and security service. As such, dealing with intelligence agencies is now a more accepted element of the institutional capacity that security sector reform seeks to build.

Second, efforts to establish or strengthen the rule of law after conflict cannot rely exclusively on building capacity and institutions. Instead, the wider population has to develop an understanding of and confidence in the rule of law. Targeted information and public relations

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[56] United Nations (2003) *Lessons Learned from United Nations Peacekeeping Experiences in Sierra Leone* (United Nations Department of Peace-keeping Operations/Best Practices Unit: New York), p. 39.
[57] Howard (2002), p. 120.
[58] Perito (2004), p. 161f.

campaigns can do far more to promote this confidence and understanding than has been the case to date. This involves managing what the population can expect from, for instance, its police force, but also transmitting the relevance of basic principles of the rule of law, such as equity, predictability, justice and impartiality in judicial processes and accountability and transparency of judicial institutions.

Combating terrorism has arisen in recent years as an additional concern and motivation for promoting the rule of law in general and developing adequate information gathering and intelligence capacity in particular. The importance of combating terrorism and organised crime are emphasised as early as in NATO's 1999 Strategic Concept and reiterated in the UN High-level Panel Report of 2004. Especially where there is a danger that terrorist activities might spill-over into the international arena, the international military, constabulary and civilian police forces will have to integrate monitoring potential terrorist activity, groups or support networks into their efforts to support the rule of law. As a direct response to the terrorist attacks of 11 September 2001, the mandate of the MSU in Bosnia-Herzegovina was extended to include counter-terrorism.[59] Josefine Aaser points to the unholy alliance of criminals, political extremists and terrorists that often people post-conflict situations. In particular, terrorism can be linked to a nationalist cause and then "consists of engaging in lucrative criminal activity, such as smuggling of drugs or arms, in order to finance a dissident movement and/or cause."[60] The international presence will have to draw on all its available resources to address these effectively.

3.2   Law Enforcement and the Judicial Process

In many ways, 'law enforcement' is the police contribution to the military's 'providing a safe and secure environment.' Therefore, a number of police roles such as in protecting minorities and returnees, in receiving and following-up demobilised combatants, in gathering information/evidence, in crowd control and border security have already been discussed above.

Also, as noted above, international responsibility for law enforcement and the subsequent judicial process is incredibly difficult due to the complexity of the tasks and will therefore be rare. One concern is the limited technical infrastructure that supports crime investigations, weaknesses in the judicial chain and difficulties with regard to quality and quantity of international staff. More importantly, doubts arise with the recognition that effective policing requires intimate local knowledge, trust of the local population and detailed understanding of the applicable law and customs. In 1989, UNTAG was not willing to enforce the law in Namibia, as they did not consider themselves to have sufficient knowledge of local legal traditions and policing culture.[61] Since then, the attitude towards how deeply external actors can get involved in enforcing the law has undergone a radical change. While the UN was arguably no more knowledgeable in the case of East Timor, the perceived need to fill a public

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[59] Perito (2004), pp. 176-178.
[60] Aaser (2003), p. 11.
[61] Howard (2002), p. 119.

security gap overshadowed other concerns and encouraged UN decision-makers to include full authority for law enforcement in the mandate for civilian police forces.

UNMIK in Kosovo and UNTAET in East Timor have been the only two peace operations, in which the United Nations assumed transitional authority including the full responsibility for maintaining law and order. The missions were more or less unprepared for the scope of activities involved in law enforcement in a war-torn society. The missions in Haiti involved some executive authority in that in 1993 the International Police Monitors (IPMs) and the CivPol contingent in UNMIH in 1995 carried side arms and had arrest powers.[62] In contrast, the MSU in Bosnia-Herzegovina was explicitly banned from law enforcement.[63] As will become clear below, an international military role in law enforcement is only warranted in severely destabilised conditions and in the absence of any other trusted and functioning local or international mechanisms. Finally, both 'law enforcement' and 'providing a safe and secure environment' should be clearly distinguished from long-term reform measures, in which efforts focus on bringing about sustainable structural and normative change. (See 3.3. below.)

Activities to enforce the law can be grouped in two main categories: preventive and reactive measures.

3.2.1   Preventive Measures

Preventive law enforcement includes managing human interaction, such as fostering relations with the community through patrols and other community policing activities, but also through traffic control, crowd or riot control, and through accessible fixed and mobile police stations, where citizens can report crimes or obtain assistance. This is linked to the need for civilian oversight over and engagement in the security sector. In other words, citizens must understand their rights and duties under the rule of law and must actively use the judicial system to redress grievances. Preventive efforts also include analysing crime patterns, trends and underlying causes of crime and developing initiatives in response to these trends.

Regardless of whether or not they are themselves enforcing the law, international civilian police forces can advise on analysis techniques, database management and can assist in establishing anonymous phone lines and other public complaints channels that contribute to building confidence in local police forces and thereby directly enhance the police' own ability to successfully solve crimes.[64] In countries, where the local police were an instrument of oppression by the government, international advice on adjusting to a new role as a public service institution and on improving relations between the police and the public is particularly valuable. A substantial and visible military role might undermine the fragile confidence in the police' ability to deal with crime effectively and undermine the understanding that military forces should have no role in peacetime law enforcement.

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[62] Perito (2004), p. 110f.
[63] Perito (2004), p. 150.
[64] David H. Bayley (1994) *Police for the Future* (Oxford University Press: New York/Oxford), p. 7f.

3.2.2 Reactive Measures

In reaction to a crime, law enforcement means conducting investigations, gathering information through interviews in the community, taking statements, questioning witnesses, gathering forensic evidence at crime scenes and follow-up at laboratories, interaction with the prosecutor's office, planning and making arrests, detaining and questioning suspects. The investigation of crimes is perhaps the most obvious example of a civilian police prerogative.

And yet, there are situations in which international military forces must play a role. First, in accordance with the deployment gap, there may be a shortage of international civilian police in relation to the level and types of crime that are prevalent. For instance, countries often witness a surge in crime rates in the immediate aftermath of a conflict, including looting and similar unpremeditated offences, as well as highly organised crime networks. In those cases, where the authority remains with the existing local police forces, the international military presence may be called upon to arrest and detain offenders caught in the act – in continuation of its role to "provide a safe and secure environment" and in partnership with local police forces. A second constellation may entail that law enforcement requires a more forceful approach, where the larger number of personnel and the heavy equipment of a military force are necessary. For instance, KFOR conducted numerous raids against the KLA, just as SFOR has collected important information in raids in Bosnia and Herzegovina. This is especially true in those cases where the international police are limited to a monitoring role and the local police are unwilling or unable to carry out the operation.

Kosovo is of course the first case in which the international presence, including military forces, civilian police and civilian administrators, had the full responsibility for law and order. Therefore, many examples of military-police cooperation and stop-gapping by the military originate here. Following the international operations in Kosovo and East Timor, a consensus emerged that the military might have a role to play in safeguarding law and order – in continuation of their mandate to provide a secure environment. As Peter Viggo Jakobsen points out, the issue is less one of principle and more one of capacity and willingness to fully take on that role.[65] While KFOR did indeed plan for some involvement by deploying with a larger than usual military police and Constabulary components, they were unprepared for the size and scope of the public security gap.[66]

Kosovo and East Timor were also precedents with regard to a military role in the judicial process. The judicial process is of course the continuation of executive policing and involves producing witnesses, pre-trial hearings, judicial review, screening, detention, transport of detainees, rulings, etc. As the judicial process and any resulting verdicts must be implemented locally, the ideal scenario is to place the responsibility in local hands to the greatest extent possible. However, there may be extreme cases, where a formal judicial system is non-existent or so biased as to be unusable. In such cases, the military presence such as KFOR in Kosovo

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[65] Peter Viggo Jakobsen (2003) "Military Forces and Public Security Challenges" in WPS Sidhu and Michael Pugh (eds) *The United Nations and Regional Security* (Lynne Rienner Publishers, Colorado), pp. 137-54.
[66] Jakobsen (2003), p. 144f.

can provide military judges and run detention facilities in early stages of a mission. Military police might take on tasks linked to detention, patrolling or arrests. While there are moves to increase the availability of international judicial staff through training programmes and stand-by arrangements, a handful of international judges and prosecutors – military and otherwise – can not be more than a drop on a hot stone when it comes to meeting local judicial demands. While underlining the value of military support to law enforcement, Hansjoerg Strohmeyer, legal adviser in both East Timor and Kosovo, also emphasizes that the role must be stop-gap only; to be terminated as soon as sufficient civilian capacity, including civilian police, civilian judges and prison staff, is in place.[67] International civilian police can play a supportive role, such as transport of detainees, providing court security, managing penal institutions and witness protection, but due to limited numbers of staff the international police will seldom have the capacity to take on a large role. It is also imperative that the international presence does not compromise the independence of the judiciary process by blurring distinctions between executive and judicial functions in its effort to meet immediate needs.

Running a penal system, and where necessary reforming it, is a thankless job. Donors have traditionally been reluctant to provide funding for or otherwise to get involved in the penal system, as involvement does not bring with it 'sexy' achievements and instead entails close scrutiny by and pressure from the human rights community. The recent revelations of abuse conducted by Coalition forces in Iraqi prisons underline the need for close monitoring by the human rights community. But running prisons is also a labour- and logistics-intensive task, which actors other than the military will struggle to fulfil at short notice. In fact, although KFOR expected to deal with a small number of detainees, it did not have the capacity to meet the demands that arose in Kosovo.[68]

The concerns voiced by human rights groups in connection with internationally run detention facilities point to the wider issue of accountability. In those cases, where external actors have taken the lead in law enforcement and the administration of justice, problems of legality and the legislative process arose. More specifically, laws were passed without resorting to the appropriate political process, prisoners/suspects were detained without due process and the system lacked an independent judicial authority, all of which contributes to questioning the legitimacy of the transitional justice mechanisms.[69] Arguably, the introduction of martial law in these – albeit rare – cases of executive missions may at least enjoy greater legitimacy, in that the move dismisses any pretences of being a 'normal' justice system and instead acknowledges the temporary and extraordinary nature of the judicial arrangements. While some have argued that an initial resolute stand is the best preventive measure for future

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[67] Strohmeyer (2001), p. 61.
[68] Jakobsen (2003), p. 144.
[69] See for example, Colette Rausch (2002) "The assumption of authority in Kosovo and East Timor: legal and practical implications," in Renata Dwan (ed.) *Executive Policing. Enforcing the Law in Peace Operations* (SIPRI Research Report No. 16, SIPRI: Stockholm, Sweden), pp. 11-32

instability, Peter Viggo Jakobsen suggests that this implies a clear allocation of responsibility to the occupying military forces that these forces will be highly reluctant to assume.[70]

3.2.3　Organised Crime

Combating organised crime is of course part of law enforcement. However, there are a number of features, which set organised crime apart from other types of crime. The organisation that the term indicates has a criminal, a societal, a political and an international dimension, all of which in turn affects who should be handling organised crime in the context of a peace operation. It is important to realise that the extent to which external military or police forces can effectively combat organised crime in the context of a peace operation is limited in any case. As with any other type of crime fighting, it is effective local law enforcement capacity that will ensure lasting improvement. Where that capacity is not yet fully established partnership and cooperation with local police forces is at least as important as coordination among internationals.

The fact that the *criminal* network is highly organised entails that a large number of people are involved in it and that any trails of evidence are well concealed. The need for local knowledge is exacerbated, as criminal networks are likely to be even more opaque than 'disorganised' criminals. Both military and police require a good intelligence network and analytical capabilities for combating organised crime and managing spoilers. A long-term approach is critical in order to understand the 'ground truth,' i.e. "relevant local personalities, cultural considerations, political dynamics, strengths and weaknesses of various local and international organisations involved."[71] Both military and constabulary forces are here hampered by their rapid rotations, such as the three-month turnover of the Carabinieri in Bosnia-Herzegovina. At the very least, international civilian police tend to have a minimum of six-month and often one year deployments. While this gives the international police an advantage in principle, the task of fighting organised crime is a highly specialised one, where police resources are scarce, expensive and therefore often not provided by contributing governments.

Constabulary forces have again only been used haphazardly. While the MSU under KFOR was tasked to fight organised crime and did collect and analyse information, it did not have a mandate for law enforcement, which meant that information was not admissible as evidence and the MSU did not conduct investigations.[72] In addition, close cooperation between all types of force contributors is required. In Kosovo, the cooperation between KFOR, including its constabulary component, and the UNMIK police was institutionalised and put into practice in regular joint operations. In late 1999, UNMIK formed a Criminal Investigation Unit (CIU) that focused exclusively on organised crime, but its effectiveness was initially limited due to a reluctance to share intelligence.[73] Military forces also face a major dilemma when the demands of confronting a powerful criminal organisation are in conflict with the demands of force

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[70] Jakobsen also describes the actions and stance of the Australian forces in Somalia as a star example of how to establish authority in a peace operation. Jakobsen (2003), p. 146f.
[71] Dziedzic (2002), p. 42f.
[72] Perito (2004), p. 187.
[73] Dziedzic (2002), p. 42.

protection. In other words, where combating organised crime has meant inviting attacks on international forces, military forces have at times avoided the confrontation.[74] The hapless 2001 raids on the Herzegovacka Bank are an example of how difficult it is to fight organised crime in a foreign setting, how compelling concerns of force protection are and how challenging it is for military forces and their constabulary components to cooperate in a menacing environment.[75]

As a *societal* phenomenon, organised crime enjoys the tacit acceptance of the population as a fact of life. Often, in countries where economic development is stunted, criminal networks provide just enough spill-over benefits to the general population to make cooperation between the police and the public undesirable. In other words, why would an individual want to render the fight against organised crime successful, when that also eradicates an important source of income? But perhaps the most difficult to sever are the ties that organised crime has to *political* leaders and parties. In pre-war Yugoslavia, organised crime had long been a part of life, where criminal activity was controlled by intelligence services, which in turn were controlled by the political parties. Where impartial and effective law enforcement is impaired by political influence, the links between the rule of law and good governance and corruption become clear. There is not much that international military or police forces can do to combat the societal and political dimensions of organised crime. Outright corruption can of course be prosecuted, but the real change must occur in the popular understanding of what the rule of law means, how it serves society and what rights and duties each citizen has in a society governed by the rule of law. This is a long-term process of cultural change and falls in under the discussion of security sector reform below. Suffice to say that addressing the societal and political dimensions of organised crime will require the expertise of civilian staff, such as political advisers and advocates in a variety of NGOs, but will also call for international political pressure to break the institutionalisation of crime and the criminalisation of state institutions.

Finally, the *international* dimension of organised crime, the danger of transnational proliferation and its links to international terrorist networks have – in recent years – been the single most motivating factor for external support to law enforcement agencies in countries after conflict. The concern about the spill-over of organised crime is also reflected in the fact a major donor allocates by far the most of its spending to the Drug Enforcement Agency (DEA) activities' abroad.[76] The primary responsibility here lies with the police, both local and international, and international bodies for police cooperation such as Interpol or even Europol. It is imperative to recognise that the level of organisation and cooperation witnessed in the EU and Europe – and to some extent between North and Central America – is exceptional. In contrast, but worldwide efforts to cooperate and coordinate across borders and within regions are far more rudimentary.

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[74] Jakobsen (2003), p. 145f.
[75] See for example, Perito (2004), p. 175f.
[76] David Bayley (forthcoming) *Changing the Guard* (Oxford University Press: Oxford/New York).

3.3 Security Sector Reform and the Rule of Law

Security sector reform is distinct from the tasks that fall under the heading of providing security or fighting crime, in that it focuses on long-term developments in which capacity is built and a mental transition is promoted rather than on immediate security needs. Jane Chanaa has defined Security Sector Reform as

> "a reform of the organisations that have the authority to use, or order the use of force, or the threat of force, as well as those civil structures that are responsible for their management. In other words, it involves a reform of local military and police forces, as well as of the judicial system."[77]

There are two main dimensions of a reform process: A structural and a behavioural dimension or what has also been called "capacity building" and "integrity building."[78] Capacity building and structural reform are directed at the institution of various actors in the security sector and involve: Restructuring of forces; vetting and recruitment; technical training and skills development; (training for) provision and management of equipment and funds; and (training for) administration and other management skills. Integrity building on the other hand targets the individual as part of an organisational culture. It aims to instil respect for human rights and democratic oversight through performance monitoring and advising; the establishment of standards for selection and promotion (disciplinary codes and internal mechanisms); human rights training and public complaints mechanisms.

Note that the bulk of activity in most peace operations will be in the context of security sector reform, as it requires the most comprehensive and the most protracted effort. The security sector reform process – with whatever elements may be required in a given situation – should begin immediately and will continue long after a military presence is needed and the focus of international assistance has shifted to development issues. In particular, links to members of the security sector and its oversight mechanisms should be established as soon as possible, in order to design a sustainable and practicable process that is governed by local security needs.

Military and police reform have many of the same elements, but they take on a different guise for each force. For example, both will require a review of academy and field training, although the content of the police curriculum will of course differ from that of the military.

3.3.1 Reform of Military Forces

In the context of military forces, structural reform usually involves a reorganisation of the military, much of which takes place in the course of withdrawal, disarmament and demobilisation after conflict. In the wake of an internal conflict, reform also entails integrating formerly opposing forces into one structure and redirecting the focus of military forces from internal to external security. Reorganisation can also mean increasing transparency and

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[77] Jane Chanaa (2002) *Security Sector Reform: Issues, Challenges and Prospects* (Adelphi Paper No. 344, International Institute for Strategic Studies/Oxford University Press: London/Oxford, 2002), p. 7.
[78] See, for example, International Center for Transitional Justice (ICTJ) (2004) *Vetting, Institutional Reform and Transitional Justice: An Operational Framework* (ICTJ/UNDP: New York, 17 December 2004).

establishing or reforming internal mechanisms of accountability. In the context of security sector reform, the reform of military forces also encompasses establishing democratic control over the security forces, such as through parliamentary oversight and civil society watchdog organisations. A critical part of military reform is also developing the analytical capability to assess security needs and define the concomitant defence capabilities to meet these needs, as well as enhancing stringency and transparency in military expenditure and budgeting.

Aside from the implications of demobilisation and disarmament discussed above, only the shift from an internal to an external security force and the distinction between military and civilian/public security are relevant to the rule of law. Although drawing a line between appropriate roles for the local military and police forces is pivotal to democratic rule of law, the distinction is at times unclear. As indicated earlier, measures taken in response to transnational organised crime and terrorism involve the military to a greater extent in internal security issues and open for a more external, i.e. international, scope of police activity and cooperation. In conflict-ridden societies there is also a danger of strongman, militia or military support to struggling police forces in the face of high crime rates or other internal instability. The population in countries that have a legacy of former military rule or an influential military role in society may be more tolerant of allowing Draconian measures and assigning public security needs a higher priority than democratic values. This has happened in Latin American countries, such as El Salvador, Guatemala and Brasil, but is also in danger of emerging in Iraq.[79]

Almost exclusively, military experts should conduct military reform and training. The only exception may be human rights training and the civil-military interface where trainers can come from human rights organisations, other NGOs and other civilian experts, including police officers. When it comes to enhancing the administrative, budgeting and planning capacity, training and advice can also draw on civilian management or finance experts. Other security forces, such as border guards or intelligence officers, should preferably be developed by specialists in these fields, but can also be established and trained by military officers with the appropriate expertise.

3.3.2   Reform of Police Forces

The structural reform of local police forces can entail a reorganisation of police forces, including geographical deployment patterns, internal organisation, institutional capacity building and separation from military functions. The behavioural or integrity building reform involves changing the way in which police forces relate to the public and how they understand these relations. Behavioural training can consist of human rights training, instruction on democratic standards of policing and not the least field training and monitoring. In this context, the tasks that make up police reform can be divided into three stages: (1) selection, recruitment, vetting; (2) academy and field training; and (3) performance assessments, promotion and accountability. Although these stages appear chronological, they are more

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[79] See, for example, Orlando J. Perez (2003-4) "Democratic Legitimacy and Public Insecurity: Crime and Democracy in El Salvador and Guatemala," *Political Science Quarterly*, Vol. 118, No. 4, pp. 627-644.

correctly cyclical. In a 'healthy' police organisation, all processes will of course be taking place simultaneously at any given time.

Selection, Recruitment, Vetting
The first step towards establishing a new police force is to select its staff. Clearly, the type and scope of recruitment will vary according to whether a police force is being built from scratch or being revamped. Either starting-point leads to a comprehensive process. Either a large number of new policemen need to be recruited and trained, such as in Haiti, or a large number of experienced policemen need to be vetted and re-trained, such as in Bosnia-Herzegovina. The experience in Kosovo among other places where one chose to build an entirely new police force has demonstrated just how time- and labour-intensive this process is. The international forces faced the associated problems of having to maintain law and order while a new police force was being established.

Which strategy is the most appropriate depends on the specifics of each case, as each strategy – revamping versus starting from scratch – has its pros and cons. For example, the history of the former security forces affects the extent and sensitivity of the task. A difficult balance needs to be struck between integrating and making use of experienced police officers and shedding the legacy of the old force(s). Another issue is the experience gap, which has proven difficult to bridge in several cases where forces have been built from scratch. This was the case in Haiti, where the lack of experienced role models for a police force of rookies was problematic. Another challenge is the integration of former opposing armed forces into one internal security force. In these cases, the issue of minority recruitment has moved into the spotlight, as an important aspect in the selection of recruits. In addition to minority recruitment, the mission in Kosovo placed great emphasis on the recruitment of women police officers.

The selection, recruitment and vetting of police officers is most suitably undertaken by police officers who know best which criteria qualify a person for a high-profile public service job. These criteria should also be clearly defined and transparent and should ideally be determined in consultation with local counterparts. Even if police officers take the lead, these processes also require substantial administration and footwork that can be done by civilian staff and can benefit from the involvement of other civilian organisations that work on issues of human rights and transitional justice.

Academy and Field Training
Police training is a comprehensive issue and can only be sketched very briefly here. Training takes place both in academies and in the field and differs in different cases with respect to duration, frequency/repetition and content, in accordance with the extent to which recruits have prior police training and the legacy of police-public relations.

A primary task is establishing police academies. In some cases they may exist, but require reform and restructuring. In others, they may need to be created from scratch. Academy

training requires the international staff to develop curricula and teaching materials, teach classes and hold exams. Examples of training elements that are typical in most operations are forensics, human rights training or weapons training. Academies also need to be administered and managed. The need to build the administration and management capacity to run a police organisation is a key aspect of reform that has been neglected for a long time. In order to create a sustainable police organisation, leadership capacity needs to be developed for management and budget development.

The classroom education is of limited value without subsequent field training, where the officers are monitored in the performance of their jobs. Field training is more closely related to traditional monitoring tasks and involves advice, co-location and joint patrols of international and local police officers. Field training offers an opportunity for the recruit to adjust and apply theoretical knowledge and for the international staff to gauge whether the recruit is indeed suitable as a policeman. Where time and funds have not been too scarce a mix of academy and field training has been implemented, in which newly trained police officers return to the academy for follow-up training following first field deployment.

With accumulated mission experience in police training, some improvements have been made. One of them is that curricula have been standardised to some extent. This enabled the OSCE, for instance, to speed up the establishment of its Kosovo Police Service School (KPSS). Standardised curricula are also useful in undermining the detrimental effect of multinationality in police operations and the at times contradictory teaching that often results. Police training should be exclusively conducted by police officers and – to the extent possible – by professional trainers. Management and administration training can also draw on civilian experts in this field. Unless they are experienced teachers and qualified on that account, military staff has no place in police training. For one, the military outlook is quite different from that of the police and might simply teach the wrong techniques, procedures etc. More importantly, when military officers conduct police training, it undermines the distinction between civil/public and military security that the training attempts to communicate to the new police force. Constabulary forces can take on specialised training in areas in which they themselves have expertise and experience. Depending on their domestic role, this can range from investigations to crowd control. For instance, the MSU in Bosnia-Herzegovina trained Bosnian police in crowd control in early 2002.[80]

The duration of training has diverged widely in the past. It can range from a few weeks, such as some courses in Haiti or Namibia, to several months in the academy and subsequent field training, such as in Kosovo. One may argue that some police forces require less training than others, but in reality the length and frequency of training courses has been entirely arbitrary or a product of available funding rather than actual training needs. Although there is almost always time pressure to deploy the 'new and reformed' police as soon as possible, in order to demonstrate tangible improvements in the security situation, this pressure has to be balanced by the need to create a solid basis of skills and insight. This is especially true in those cases,

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[80] Perito (2004), p. 179f.

where recruits have no prior experience and there are few 'older cops' that can serve as role models. For example, the police training in Haiti was criticised for being too short for inexperienced recruits to gain a thorough and lasting understanding of how they should perform their jobs. This was illustrated by the fact that the police were not considered reliable, effective and impartial wardens of public order, during the political upheavals in Haiti in early 2004. Instead, other militias gained hold and claimed a role in law enforcement.[81] Here, the important distinction between technical and behavioural aspects recurs: While it is possible to convey technical skills in a short period of time, conveying an understanding of the police as a public service institution takes time. This leads us to the final stage, namely the consolidation of training in police practice through ongoing performance assessments and internal auditing mechanisms.

Performance Assessment, Promotion and Accountability
Regardless of how well a reformed police force has been trained, it remains to be tried and tested in difficult circumstances "on the beat". The traditional role of an international civilian police contingent in peacekeeping has been monitoring the daily conduct of police forces and advising on policing techniques and human rights standards. This involves joint patrols with local police officers, spot checks on reports, files and registries, as well as on detainees and detention facilities, and it entails hearing complaints from the population about the police. In accordance with the rationale that advises against military trainers at police academies, monitoring local police behaviour should primarily be done by fellow police professionals.

Police reform will not have succeeded until a police organisation can correct itself. Tasks in this area include developing standards to assess the performance of police officers and mechanisms for reprimanding human rights violations or other misconduct. In war-torn societies, the population is often left with the impression that police and other security forces can act with impunity. In order for the reformed police to be accepted as the legitimate enforcer of the law, the cycle of impunity must be broken as soon as possible.[82] In the same way that international staff and local managers can select, certify and promote police officers, they must have access to countermeasures, such as recourse to disciplinary procedures. Ultimately, a functioning police organisation has to have mechanisms for promotion, auditing and accountability, both in relation to police conduct and to budgets and resource management.

International police officers can assist in establishing mechanisms and procedures to hold the police accountable. Still, the legitimacy and credibility of local police forces will be enhanced the greater the extent to which they are self-sufficient. In the initial stages after the local forces have taken on full responsibility for accountability mechanisms, an international oversight capacity should remain to ensure the correct and consistent application of the mechanisms, but as early as possible those processes have to be owned by local police institutions.

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[81] "Rebel Says He Is in Charge; Political Chaos Deepens," *The New York Times*, 3 March 2004 (http://www.nytimes.com); "Haiti rebels to 'fill power gap'," *BBC News*, 2 March 2004 (http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/3527243.stm).
[82] This is of course also a question of a functioning court system, which I will return to in the following section.

The transition from being an instrument of the state to becoming a police service is often the most challenging element of the reform process. It can be fostered, if it is embedded in a regional approach in which police colleagues from countries undergoing similar transitions can exchange experiences. This can take the form of developing ties between professional police labour organisations or establishing regional police education institutions, specialisation courses, etc.

3.3.3 Judicial and Penal Reform

In addition to police reform, judicial and penal reform are the two dimensions that make up the triad of the administration of justice. A reform of police forces alone is of little value if it is not matched by similar efforts to create an impartial, effective and trusted judicial system, where criminals – once caught – can be brought to trial and justice. The need to deal with these two dimensions for the rule of law to be meaningful has been generally acknowledged. However, due to resource limitations and the daunting complexity of reforming or constructing a functional judicial system, both penal and judicial reform have been somewhat neglected in peace building operations. The international efforts in both Bosnia-Herzegovina and Sierra Leone are just two of many cases in point, where mandates included a comprehensive police reform but stipulated no provisions for rebuilding a court system.[83] Judicial reform and penal reform have the same structural and normative strands as military and police reform have. As indicated above, there may well be a need for emergency military capacity to arrest or detain suspected criminals. However, there is only a limited role for military and police officers in judicial and penal *reform*. Therefore, the main elements of judicial and penal reform will only be outlined briefly here.

Even where a reform process builds on existing staff, qualified staff may be scarce due to the preceding conflict, in which highly educated professionals may have been killed or have fled the country. The existing judicial staff may also simply be unsuitable for further employment, due to involvement during the conflict or a repressive regime. As a result, judges, prosecutors, lawyers, corrections officers and other justice sector staff will have to be recruited, selected, vetted and retrained. Efforts will need to be directed at universities, academies and other educational facilities. A similar experience gap as the one that is keenly felt among police officers can occur among judicial staff. Another difficulty after divisive internal conflicts is the need to staff courts with personnel from different ethnicities. In Kosovo, the Emergency Judicial System (EJS) was set up in 1999 with 55 judges and prosecutors representing Kosovars, Serbs and other minorities appointed by the Special Representative of the Secretary General (SRSG). As the principle of multiethnicity is applied as a safeguard where there is limited faith in the ability of judicial staff to act impartially, the EJS was instantly discredited when all the Serb representatives resigned after only a brief period. The example of the EJS also underlines the political context in which all these reform efforts take place and that can easily take reform efforts hostage. As is true of military and police forces, the institutional and administrative capacity in the judicial and penal sectors will need to be enhanced. Again, in

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[83] See for example Hansen (2000), pp. 140f., 149; and United Nations (2003) *Sierra Leone*, p. 51.

order to create self-sufficient, self-sustaining, credible and effective judicial and penal systems, the reform process should be driven forward by local experts that are familiar with the law and the legal traditions of a given country.

Among external actors, international legal experts, such as judges or prosecutors who can advise on both structural and normative/cultural reform, will play the predominant role. Several cases, such as Kosovo, East Timor, Sierra Leone and Bosnia-Herzegovina, have witnessed a mix of local and international staff in courts and tribunals. Here, the international legal experts can conduct a performance assessment, as well as provide sorely needed role models and ensure the fair and effective application of the law in a transitional phase or in sensitive cases. Also, international judges and prosecutors may be asked to supplement or substitute for local staff in a Tribunal or Truth Commission in order to fulfil a demand for restorative and transitional justice, where local judicial staff may be unable to guarantee a fair trial. The part played by international police officers in judicial and penal reform is likely to be limited. They can contribute to training for court and corrections personnel, as well as to training for prosecutors on criminal codes and on cooperation with police forces. As part of their efforts in infrastructure reconstruction, military forces have assisted in restoring or building court houses and corrections facilities.

4   CHALLENGES OF MILITARY-POLICE COORDINATION

Much has been written about civil-military relations more generally and the military concept of Civil-Military Cooperation (CIMIC) teams is well-established. This section focuses specifically on the challenges of coordinating efforts to establish or consolidate the rule of law; predominantly among the military and police components of an international mission. Tools of coordination and methods to improve complementarity and consistency of approach among military forces and the international civilian police are reviewed.

Central issues for military-police relations identified in the following are political strategic coordination, joint planning, joint training and command and control issues.[84] Naturally, every decision-making and every planning process will be case specific, but there are two – generally applicable – main concerns of coordination at a strategic level: The need for a strategic vision and the integration of military and police experts in the process of political decision-making on mandates. The section then closes with a look at the limitations of coordination.

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[84] Writing more generally about civil-military relations in 1998, Williams identifies five main areas of improvement for civil-military cooperation: (1) mandates and military input in political decision-making; (2) UN command and control arrangements; (3) adjustment of military training to demands of peace operations; (4) more training on human rights; and (5) better understanding of military needs among civilians. Williams (1998), p. 17.

4.1 Political Strategic Coordination and Joint Planning

4.1.1 Mandates

Mandates are often overly focused on measures to address the current and most visible symptoms of a conflict situation. Political decision-makers invest too little thought into the desired end state of a peace process before launching into 'fixing' the details.[85] Consistency of effort and coherence can only be achieved when all contributors – and important local stakeholders – agree on a strategic vision for the rule of law at the outset. The strategic vision can then form the basis on which benchmarks are defined and meaningful assessments conducted. Throughout a mission, consultations and checks on the progress and the direction of an operation towards that end state have to continue. Defining the desired end states clearly is essential for coordination to function effectively, as the military and police forces not only have to understand each other's roles, but have a common understanding of the wider political context. As the challenges awaiting the international presence are so multi-faceted, unity of effort is essential.

International donors, as well as police and military force contributors, face a dilemma. While wishing to allow the war-torn society in question to determine its own future, the assistance provided by the internationals in support of a peace process will dissipate in the absence of a clear goal. There is no getting around the fact that the rule of law and the reform of local security institutions is an inherently political effort and mandates are the product of political negotiations. As a result, it is virtually impossible to provide "neutral" assistance.[86] It is critical that the normative dimensions of the rule of law are acknowledged and understood by all contributors. The non-negotiable elements, such as democratic oversight, will also require substantial and sustained international political commitment and should be agreed upon and spelled out clearly before launching a mission.

A discussion on the merits of clearly defined mandates is beyond the limits of this study. In this context, it is merely worth pointing out that it is important for a mandate to be flexible so as to allow for emerging developments on the ground, also in the pursuit of the rule of law. Namibia is also an example of thorough mission planning, a decentralised mission structure and flexible, field-driven implementation. This also meant a greater ability to affect the political context.[87] Still, in the course of the initial mandate definition, a clear division of labour should be developed and primary responsibilities for different aspects in the public security arena assigned to different components of the mission. The extent to which the different components have recourse to the use of force – and under which circumstances – also has to be clarified at the outset.

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[85] Annika S. Hansen, Anja T. Kaspersen and Espen Barth Eide (2004) *International Policing and the Rule of Law in Transitions from War to Peace* (NUPI Working Paper No. 4-2004), p. 12f.
[86] Damian Lilly argues that the extent to which the military are mandated to use force will also affect the perceived neutrality of the international effort. Lilly (2002), p.4f., 16; Williams (1998), p. 15.
[87] Howard (2002), pp. 127f.

4.1.2   Joint Planning

Mandates are usually formulated with limited input from and consideration paid to military or police expertise.[88] As a result, mandates often contain ambiguous and inappropriate instructions, which, in turn, generate exaggerated and irreconcilable expectations among contributors to a mission. Mandates that are insufficiently clearly defined are then interpreted in the field in a contradictory or inconsistent manner. Instead, if expertise can be brought in at the earliest possible stage, mandates may be more realistically matched with the necessary and available skills and resources. Suggestions have been made to at least involve a core group of police officers in any fact-finding or mission planning team. This would be a first step towards true integration rather than coordination.[89]

Since security sector reform and the rule of law span the whole continuum from crisis management to development assistance, a wide variety of actors are affected and will play a role in bringing about the envisioned end state. These players, such as the large UN agencies, should be involved in the process of defining a mission and its mandate. This brings together at times awkward partners, such as military forces and aid agencies. At the same time, awkwardness makes it all the more important to define objectives clearly at the outset and to integrate different voices in the planning process. Entrenched institutional barriers have hampered cooperation, such as between agencies in the UN or between the Council and the Commission in the EU context.

The so-called Integrated Mission Task Force (IMTF) proposed in the Brahimi Report was a measure to integrate military and police views – among others – into mission planning.[90] There have been several attempts to use the concept, such as in Afghanistan and Liberia, which struggled due to the fact that the mechanism was not located at a sufficiently high level of decision-making. As a result, its deliberations did not carry enough authority and continued to compete with discussions and political negotiations in other bodies. While the IMTF-concept may need to be refined, its principal underpinnings remain valid. The launch of the IMTF-concept has consolidated the recognition that a variety of actors have to be included in mission planning and has been an important step toward more informed and effective pre-deployment coordination.

As the civilian police component gets off the ground later than the military force, police input in planning is even more sidelined in relation to defining policing tasks in the mandate. The newly established ESDP capabilities are a case in point, in that the military staff comprises almost 150 officers compared to the police unit, which was designed to have only 8-9 staff members. While the police unit has been increased, it is still only a little over one tenth the size

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[88] Hansen (2002a), p. 33f.

[89] See for example Cockell (2002), pp. 485-6; Renata Dwan (2005) "Civilian tasks and capabilities in EU operations" in Mary Kaldor and M. Glasius (eds) *A Human Security Doctrine for Europe: Project, Principles, Practicalities* (Routledge: London, 2005).

[90] United Nations (2000) *Report of the Panel on United Nations Peace Operations* ("Brahimi Report," A/55/305-S/2000/809, United Nations General Assembly and Security Council: New York, 21 August 2000), paras. 198-245.

of the military staff. Although a civil-military planning cell was established in December 2003, Dwan points out that the civilian side will continue to be at a disadvantage, due to the difference in staff size and the fact that the planning cell is based within the military staff. Another expression of this imbalance was the absence of civilian input in the drafting of central strategic planning documents.[91] In the UN context, the Police Adviser that heads the Civilian Police Division (CPD) in the Department for Peacekeeping Operations (DPKO) has a key role to play in bringing in the CivPol perspective.

NATO also took steps to remedy the recognised gap between political guidance and operational planning and established a Policy Coordination Group in May 1996, which brought together the military and political stakeholders of SFOR. While laudable, the operation in Bosnia-Herzegovina was well underway at this stage.

4.1.3 Joint Training

In the course of the last fifteen years, the awareness of what constitutes peacekeeping and of the fact that peace operations are indeed quite different from traditional war fighting has increased. As a result, training and exercises to a greater extent also include typical features of peace operations. Particularly on the police and public security side, there are now numerous national and international training initiatives. The cooperation between military and police forces is still rarely made an explicit element or even goal of training and exercises. Although there are examples of civil-military training, such as was held for UNMIH prior to deployment to Haiti,[92] few such efforts have been directed specifically at bringing together military and police forces. And even fewer have aimed to also integrate Constabularies. The joint civil-military exercises under the ESDP umbrella have been an exception and the CME 04, held in May 2004, also included a constabulary element. The first Crisis-Management Exercise (CME 02) had exposed the difficulties of civil-military cooperation and prompted initiatives to develop a more systematic training approach.[93]

The cultural differences among all the actors involved in supporting the rule of law are identified in all publications on civil-military cooperation. It will never be possible to devise the perfect coordination mechanism or to induce the military, police officers and NGOs to adopt the exact same views. And still, both integrated planning and training can assist in heightening the understanding of each other's modus operandi. For international military and police staff, the most important step is to overcome the mental stalemate, i.e. for military forces to acknowledge their supplemental role in policing and for police to accept the direly needed assistance provided by military forces. Each actor – the military and the civilian police component – has a responsibility to enhance their understanding of each other's modes of operation and organisation, terminology, procedures, etc, but also to recognise the limits of

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[91] Dwan (2005).
[92] Williams (1998), p. 54.
[93] Interviews with European Council Secretariat staff, October 2002 and January 2004. See also "Third EU Crisis Management Exercise (CME 04) to Be Held from 18 to 27 May 2004," Press Release 9281/04 (Presse 154), European Council, Brussels, 14 May 2004.

cooperation. The deployment gap – where police arrive later – is virtually inevitable and military forces should prepare and consider how they may assist while that gap exists. A specific example is training on human rights. In 1998, Williams called on the "UN and NATO [to] ensure that troops under their command carrying out law-enforcement functions – arrest, detention, search and seizure, crowd dispersal and ensuring public order – are trained in, and abide by, international human-rights and criminal-justice standards."[94] Since then, human rights training has become a staple of pre-deployment training for both military and police forces.[95]

In addition to training initiatives, arrangements have been proposed to increase the speed with which civilian staff, including civilian police can be deployed. Over the years, several standby arrangements and rosters have been suggested in the UN, the EU and the OSCE to limited effect. The EU's approach of headline goals for both military and police personnel (as well as other civilian staff) has proven useful in generating staff for missions. However, rotations in the existing EU police operations suggest that the number of police personnel available for international operations still falls short of demands.[96]

4.2   Command and Control

Since the development towards far more complex peace operations after 1989, the UN has struggled to adjust its command and control arrangements to the fact that there are a large number of additional actors and – as a result – competing lines of authority and competing authorisations in the field. The increased robustness of peace operations also makes contributing countries and organisations more wary of surrendering control over staff to others.

An international presence can feature one of several organisational constellations (1) an all-UN mission – from 1989 onwards under the leadership of a Special Representative of the Secretary General (SRSG), (2) an international presence where the military is under the command of NATO or another bi- or multi-lateral endeavour and the civilian aspects under UN control, and (3) an operation without UN involvement.[97] The all-UN Namibia mission was the first of its kind in terms of its complexity, the various mission components and the newly established post of SRSG. Daily meetings took place "between the main heads of UNTAG – the Special Representative, his Deputy, the Force Commander, the Commissioner of the Police, and the Director of the OSRSG."[98] These were followed by meetings at lower and regional levels, which ensured a comprehensive and cohesive flow of information throughout the mission.

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[94] Williams (1998), p. 74.
[95] See for example Francesca Marotta (2000) "The Blue Flame and the Gold Shield: Methodoligy, Challenges and Lessons Learned on Human Rights Training for Police," in Tor Tanke Holm and Espen Barth Eide (eds) *Peacebuilding and Police Reform* (Frank Cass Publishers: London), pp. 69-92.
[96] See also Dwan (2005), p. 11f.
[97] In this particular context, the legitimacy that a Security Council Resolution does or does not bring to a non-UN venture is secondary to the practicalities of coordination and will not be discussed here.
[98] Howard (2002), pp. 111f.

Similarly in Cambodia, the main actors replicated the coordination efforts at the top at regional level, by establishing a UN structure consisting of a Director of Civil Affairs, a military and a civilian police commander and a human rights officer in each province. This was also necessary because UNTAC was the first mission in which the civilian police component was not part of the military structure.[99] In Haiti, the IPMs were part of a unified chain of command, where the Police Commissioner reported directly to the MNF Force Commander.[100]

Efforts to support the rule of law involve all of these actors, as well as any number of NGOs that will be located outside of command and control lines. Command and control issues are heightened due to the politically sensitivity of interference in the security sector. There is an argument to be made in favour of the political/civilian Head of Mission to have the overall responsibility for coordination,[101] but this may not be acceptable to the military for understandable security reasons. John G. Cockell recommends that where full mission integration and collocation under an SRSG is not possible, joint operation centres and joint planning committees should be established, for instance, through CIMIC centres.[102]

Civil-Military Cooperation (CIMIC) is an established NATO concept, which was originally part of any war effort where it was essential to "win hearts and minds," based on the understanding that this increases the security of the forces and assists in the military campaign. It was thus an operational function that contributed directly to the fulfilment of mission objectives. IFOR used the CIMIC concept more systematically in support of a peacekeeping mandate in Bosnia-Herzegovina. The Australian forces deployed to Somalia established a similar concept – Civil-Military Operations Teams (CMOT) and Civil-Military Operations Centres (CMOC) that coordinated the junctures between the military and civilian (especially humanitarian) parts of the mission.[103] Writing about military-police cooperation more generally, Hills suggests that these relationships can be fostered and implemented by co-locating headquarters, liaison procedures and officers, and by developing compatible contingency plans and standard operating procedures.[104] Also, reservists with civilian expertise can usefully be dispatched to assist either in law enforcement or in a reform of the security sector. CIMIC mechanisms can also play a role in transmitting a consistent message and enhancing the public information effort of the international presence as a whole.

When the military and police components are *not* deployed under the same organisational umbrella, this also means that they are accountable to two different political masters or decision-making bodies, sources of funding etc. Moreover, they can have separate mandates or legal bases, which entails additional problems for consistency and effectiveness. When the two components *are* being deployed under the same umbrella, it is likely that their deployment will

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[99] Schear and Farris (1998), p. 83; Williams (1998), p. 43.
[100] Perito (2004), p. 110.
[101] Dwan (2005), p. 17f.
[102] Cockell (2002), pp. 487-489.
[103] Lynn Thomas and Steve Spataro (1998) "Peacekeeping and Policing in Somalia," in Robert B Oakley, Michael J. Dziedzic and Eliot M. Goldberg (eds) (1998) *Policing the New World Disorder. Peace Operations and Public Security* (National Defence University: Washington DC), p. 186.
[104] Hills (2001), pp. 80ff., 93.

be decided on at the same time. Still, an existing military mission can be supplemented by a police element arriving later or the opposite might occur, if a situation destabilises and an existing police component calls for military back-up. In the same way, the time frames for the completion of the objectives for the two components can differ. For instance, IFOR's mandate was limited to one year to implement the military aspects of the Dayton Agreement. In contrast, the civilian mandate was open-ended. The creation of SFOR and its extendable mandate illustrates the recognition that the military component of the international presence in Bosnia-Herzegovina would not be able to leave until the civilian aspects had also been implemented. Moreover, priorities shift in the course of a mission as the situation on the ground is dynamic. Williams cites the Namibian example and explains that "by the time it was deployed the mission had assumed much greater civilian, political and social aspects. As a result, the number of CivPol monitors increased at the expense of military personnel."[105] This in turn resulted in "considerable friction" between the Force Commander and the SRSG as to the appropriate chain-of command.

As much as the strategic process is dominated by politics, the military components of an international mission typically dominate in the field.[106] This is especially true the more unstable and violent the conditions of deployment are. Different flexible control lines have been tried in different missions. For instance, in Kosovo, KFOR developed a system of virtual traffic lights that indicated the level of security in different areas. Where the security situation was red, the military retained control. In those areas that were relatively stable, i.e. green on the traffic light scale, police would have primacy. Similarly, the EU has adopted the 'blue box' concept, which delineates a specific area as under police primacy, requiring the military to submit to the police chain-of-command. Any command structure that attempts to unite the various international security forces will have to strike a balance between the autonomy of each component and the efficiency, cohesion, speed and decisiveness of a response.

MSUs are usually attached to either military or police component and have to date not been deployed as a separate component. This means that they are also subject to either the military or the police' rules of engagement. Robert M. Perito also explains that "no doctrine had been developed concerning [the MSU's] relationship to the SFOR command structure or the conduct of SFOR operations."[107] As a result there were disagreements on the use of the MSU, the unit could not move freely and was kept as an emergency reserve. In the same way, the mismatch between the mandates and capabilities of the KFOR/MSU led to misunderstandings over its authority.[108] There is also a problem of legality and legitimacy. While there are existing doctrines for the use of military forces and guidelines for civilian police deployment in peace operations, the same is not true of Constabularies. This is exacerbated by the fact that in past operations the role of Constabularies has not been clearly defined. There is the dual danger of either resorting to national guidelines – thereby undermining – cohesion – or of

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[105] Williams (1998), p. 44.
[106] Williams (1998), p. 33, 45, 53.
[107] Perito (2004), p. 161.
[108] Perito (2004), pp. 149, 160f, 181, 187, 234.

believing to be above the law. Either alternative undermines efforts to convey respect for the budding *impartial* rule of law in a post-conflict society.

National interference has always plagued peace operations, whether they are conducted by the UN, NATO or the EU. Therefore, defining the goals of the mission at the outset and translating these into coherent mission components is essential for diminishing the room for national interests and separate chains-of-command. National agendas manifest themselves in limitations on information sharing and constraints on the flexibility to deploy contingents freely and according to the needs of an operation rather than to national preferences. Coordination has to cope with fundamental differences in US and European approaches, which become especially visible in the 'soft' side of peace operations and the rule of law. Williams points out that "[r]ather than emphasising the need to deploy overwhelming force, a key tenet of US military operations including peacekeeping, European militaries prefer to play a policing role in which they remain neutral, encourage reconciliation, work with and listen to local leaders and apply military expertise to maximise the impact of civilian authorities and NGOs."[109] Constabularies are in a particular conundrum, when it comes to the challenges of multi-nationality in peace operations: effectiveness and efficiency are greatest, when deployed in formed well-trained, same-language national units. At the same time, formed national units find it more difficult to coordinate or to integrate into a wider international effort.

4.3 Limits of Coordination

Throughout the study it has become abundantly clear that the relationships, as well as the tasks, of military and police are complex and that it will be impossible to plan, train and otherwise prepare for all contingencies. It is therefore essential to strengthen mutual awareness and improve communication between the two. The exposure of military officers to civilian police concerns, and vice versa, in Kosovo and East Timor has already brought the military and police forces closer together and is laying a foundation for future cooperation. Regular consultations, as they are taking place in Bosnia-Herzegovina and Kosovo, are an important step towards if not joint, then at least coordinated planning.

In most missions an effective modus operandum typically falls into place over time. Any analysis of coordination in the initial stages of a mission will reveal shortcomings, duplication of effort and misunderstandings. This situation is likely to be much improved a year later, once all components have settled into their respective tasks. Guidelines for coordination are likely to be more productive than rules, since joint action is generally a product of the needs of the day rather than something that is pre-planned systematically. However, the pace at which effective and functioning mechanisms may be put into place might be accelerated by Standard Operating Procedures (SOPs) that specifically outline cooperation among actors in the public security field.

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[109] Williams (1998), p. 45-48, 55.

There is also a dilemma of perspective. Regardless of how much one discusses coordination and establishes complementary roles, there will always be situations in which the perception of priorities differs among different actors. For instance, bussing in ethnic minorities may be considered important for long-term reconciliation and democratisation, but may be viewed as having a detrimental effect on stability which the military has been asked to ensure. This is particularly relevant for the interaction between conflict management and development assistance and for what has been termed the 'security-development nexus.' There is also an element of timing here. Whereas the military usually rotate every six months, the development community is often the first to arrive and the last to leave a conflict area and therefore has greater insight into – and must live with – long-term consequences and developments.[110]

The military-police cooperation in practice resembles developments in peace operations more generally, where lessons identified in the field do not filter through to home governments, who are the ones that would be able to institutionalise measures for long-term improvements in civil-military cooperation. Practical measures, such as conducting joint exercises or creating the capacity to dispatch key police personnel in advance teams, would be relatively easy to put into place; the real bottleneck is fostering a favourable attitude towards military support to law and order among contributing governments.

5   CONCLUSIONS

5.1   The Road Not Travelled

The analysis in this report was focused on the tasks of military forces and international civilian police in the support of the rule of law in post-conflict societies. There are four aspects that have not been outlined extensively here but are of critical importance and might be the subject of subsequent research: (1) The local political context and the political dimensions of rule of law assistance; (2) the principle of local ownership; (3) other civilians actors involved in rule of law aspects of the peace building effort; and (4) the role of regional organisations.

First and foremost, it is important to realise how politically sensitive any intervention in another state's security sector is. There is no doubt that long-term measures that seek to improve the performance and legitimacy of the security institutions are necessary to provide a solid basis for any peace process and for a prosperous society based on the rule of law. However, it is equally clear that re-distributing power among the security institutions and between the security institutions and the state and, in the process, questioning each actor's legitimacy, is a highly destabilising endeavour that requires sensitivity and vision. As Williams points out, "[i]n contemporary peacekeeping, the military have taken on new and significant political roles."[111]

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[110] Williams (1998), p. 35, 38.
[111] Williams (1998), p. 15.

In order for this complex process of rearranging security in a third state to be viable, it requires the participation and support of local authorities, populations and other local stakeholders. Due to the highly political nature of the undertaking, an international mission will be more effective, when it has a toolbox at its disposal, which includes both incentives/carrots and sanctions/sticks. Similarly, the Brahimi Report also concluded that a UN peacekeeping effort should not be deployed with a toothless mandate and called for "robust rules of engagement, against those who renege on their commitments to a peace accord or otherwise seek to undermine it by violence."[112] In practice, the international actors will have to walk a fine line between imposition and local ownership: While adherence to democratic principles and human rights standards are preconditions for continued international engagement and must be safeguarded, the process of establishing or consolidating the rule of law has to be locally driven.

The political context has two other central aspects that underline the need to maintain a minimum of consent and political commitment from the host government. The first aspect is the legitimacy of the government, which is a critical factor in security sector reform. Unless the rule of law is established against a backdrop of democratic reform and civilian oversight, there is a danger that an authoritarian regime is simply made more effective at suppressing its citizens. In the same way, training new recruits is futile in the face of established 'old-style' hierarchies and organisational culture. While there are numerous cases that confirm this, the behavioural reform of police in Namibia was strengthened by the fact that there was little impunity and that both the police and political superiors would warn and take action against misbehaving police forces.[113]

The second aspect has to do with the intimate link between organised crime and political extremist circles that often features in post-conflict societies and is difficult to dissolve. These actors profit from sustained instability and a dysfunctional justice system and are therefore likely to resist stabilisation and reform efforts. Again, co-operation among international contributors is essential in order to loosen the grip that spoilers and informal networks have over the peace process.[114] The credibility of each component depends as much on how well they work together as on each individual performance. The spoilers that are trying to derail the peace process are usually well-organised and well-versed in playing international actors off against each other.

Second, the principle of local ownership is important in efforts to strengthen the rule of law, as it is in other dimensions of a peace building operation. Local ownership is acknowledged as crucial to effective peace building but there has been little exploration of what this means in practice. The present study will only outline a few basic challenges connected with putting the

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112 United Nations (2000) "Brahimi Report," para. 55.
113 Howard (2002), p. 119.
114 See for example Dziedzic (2002), p. 36.

principle of local ownership into practice.[115] In order for any efforts to bear fruit over time, they will need to be anchored in local views and there needs to be a broad buy-in by society. The case of Namibia showed that it was important not only to interact with the political leadership of the parties, but to go directly to the population and 'spread the word' at a grassroots level. To that end UNTAG, established 42 district and regional offices and conducted an extensive information campaign in order to interact with the local population and represent a 'moral' rather than 'executive' authority.[116]

Local ownership should take place at all stages of an operation, i.e. planning, designing and implementing measures to enhance public security, and in all issues, i.e. setting priorities, structure, management and organisation, etc. But there are also fundamental dilemmas: Should you involve local stakeholders in rule of law *processes* versus allowing local actors to determine the *objectives and outcomes* of the process – even where this may not be consistent with the international contributors' conception of standards and basic rights. The question of whether or not judicial systems can include capital punishment, such as desired by local populations in Somalia or Iraq, is a case in point.

Another dilemma is the question of whom to empower. The most influential that might ensure that international assistance is effective, may or may not be the counterparts that enjoy – popular and/or international – legitimacy. Moreover, often the time schedules imposed by international donors, aid programmes or military and police deployment periods are at odds with the time it takes to establish the local capacity and constituencies to drive and manage reform processes. Finally, not only must the solutions proposed be considered appropriate, but they must also be realistically affordable by the country in question.

Third, this report has unjustly only touched on other civilians actors involved in rule of law aspects of the peace building effort in passing. A steadily growing number of NGOs and donors are involved in this field and are pivotal cooperation partners for the military and constabulary forces and, most importantly, the civilian police.[117] The scope of their work ranges from direct involvement in training security forces to long-term democratisation, civil society and media development efforts. This also highlights the futility of trying to divorce military and police concerns of security and stability from aid and development.

Fourth and finally, there has been a greater involvement of regional organisations in peace operations in recent years. In part, this is a result of strategic thinking, such as calls for more regional involvement in the Brahimi Report. In part, it has arisen in the absence of a UN involvement that perhaps could not garner sufficient political or personnel support in the

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[115] Research is currently being conducted at the Norwegian Defence Research Establishment (FFI) on processes and strategies to transfer responsibility for public security to local hands. Results will be published in forthcoming reports.

[116] Howard (2002), pp. 110-115.

[117] Williams describes the civil-military cooperation needs in the following manner: Military force must cooperate "first with civilians *within* the mission (colleagues in the UN and its agencies); second, with civilians on the *fringes* of the mission (the NGO community); and third, with civilians *outside* the mission (the local population)." Williams (1998), p. 14 (emphasis given).

Security Council. Regional organisations that have played a prominent part in addressing concerns of peace and security have for example been the African Union (AU), the Economic Community of West African States (ECOWAS), NATO, EU, OSCE, etc. Where regional organisations take on a share, it is important that they still have international backing and legitimacy. The efforts in and prospects for strengthening the rule of law in their respective areas cannot be elaborated here. Suffice to say that regional organisations have already been involved in all aspects discussed in this report, ranging from providing a secure environment to security sector reform. They also have advantages, such as greater staying power, rapid response and local knowledge that can be exploited far better. In the spring of 2005, the tension over the possible participation of Ethiopian troops in a new peace operation in Somalia again underlines that there are no simple answers to the pros and cons of regional involvement. At any rate, the activities of regional organisations and actors are likely to increase further in the future.

5.2 Final Remarks

The present study represents an effort to use the tasks necessary to put in place a sustainable, effective and just rule of law as the starting-point for an analysis of the comparative advantages of military forces, international civilian police and constabulary forces in this endeavour. It has become clear that a more differentiated view does indeed open for greater interaction and mutual support. In fact, given the resource restraints of civilian police components, it has become clear that without military involvement in public security and working towards a sustainable rule of law, neither the military force nor the international police forces are likely to be able to fulfil their respective mandates. While a civilian lead is always desirable when it comes to policing and the rule of law, the military contribution is valuable wherever establishing public order calls for more robust action or wherever there is a shortage of manpower or logistics capacity. Without necessarily moving beyond their mandate, the military forces can offer substantial assistance to the international police components and at times are the only component that has the resources to meet public security challenges. This is especially true of the early days of any post-conflict operation in which there may be widespread looting and violence. It is in this stage, Peter Viggo Jakobsen argues, that the military can score proportionally large points by a show of resolution, which lays the foundations for an 'ordered' and law abiding society.[118] At later stages, military forces are more likely to retreat further and fulfil a back-up role only to be activated in specific situations that call for man- or firepower. At the same time, there is an ever present danger in the military tendency to use maximum force and thereby – unintentionally – escalating a tense security situation. The difficulty of training military forces for war fighting, for peacekeeping or for a mixture of both is a case in point.

It is difficult to draw conclusions that are not case specific, but given the enforcement mandate that military forces are now routinely given regardless of the level of violence, there is room for a Force Commander to respond to public security challenges and to assist in strengthening

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[118] Jakobsen (2003), pp. 146-7.

the rule of law in cooperation with local and international police forces. What is required then is the understanding and acceptance in the capitals that contribute military forces that their forces may be involved in public security tasks. As discussed earlier, this acknowledgement is in place in principle, but the limited degree to which governments and defence organisations adjust training and conduct planning for public security challenges indicates that the political willingness to bite this particular bullet varies greatly.

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APPENDIX

A   ACRONYMS

ASF	Auxiliary Security Forces (Somalia)
AU	African Union
AUSA	Association of the United States Army
CIMIC	Civil-military Cooperation
CIU	Criminal Intelligence Unit (UNMIK, Kosovo)
CivPol	International civilian police
CPD	Civilian Police Division (UN)
CRC	Crowd and Riot Control
CSIS	Centre for Strategic and International Studies
DDR	Disarmament, Demobilisation and Reintegration
DEA	Drug Enforcement Agency (USA)
DPKO	Department of Peacekeeping Operations (UN)
ECOWAS	Economic Community of West African States
EJS	Emergency Judicial System
ESDP	European Security and Defence Policy (EU)
EU	European Union
Europol	European Police
IBCP	Iraqi Border and Customs Police
ICRC	International Committee of the Red Cross
IEBL	Inter-Entity Boundary Line (Bosnia-Herzegovina)
IFOR	Implementation Force (Bosnia-Herzegovina)
IMTF	Integrated Mission Task Force (UN)
INTERFET	International Force for East Timor
Interpol	International Police
IOM	International Organisation for Migration
IPM	International Police Monitor (Haiti)
IPTF	International Police Task Force (also, UNITPF; Bosnia-Herzegovina)
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
KPS	Kosovo Police Service
KPSS	Kosovo Police Service School
MNF	Multinational Force (e.g. Haiti)
MSU	Multinational Specialised Unit (e.g. Bosnia-Herzegovina)
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
ONUSAL	United Nations Observer Mission in El Salvador

OSCE	Organisation for Security and Cooperation in Europe
OSRSG	Office of the Special Representative of the Secretary General
PoWs	Prisoners of War
ROEs	Rules of Engagement
SBS	State Border Service (Bosnia-Herzegovina)
SFOR	Stabilisation Force (Bosnia-Herzegovina)
SOPs	Standard Operating Procedures
SPU	Special Police Unit
SRSG	Special Representative of the Secretary General (UN)
UN	United Nations
UNAMET	United Nations Assistance Mission in East Timor
UNAMSIL	United Nations Assistance Mission in Sierra Leone
UNHCR	United Nations High Commissioner for Refugees
UNMIH	United Nations Mission in Haiti
UNMIK	United Nations Mission in Kosovo
UNOSOM	United Nations Operation in Somalia
UNTAC	United Nations Transitional Authority in Cambodia
UNTAET	United Nations Transitional Administration in East Timor
UNTAG	United Nations Transitional Assistance Group (Namibia)

B   TASKS AND COMPARATIVE ADVANTAGES

B.1   List of Tasks

Providing a Secure Environment
Monitoring movements and destabilising activities
Credible provision of security
Monitoring movements of armed groups
Facing/disempowering armed groups
Mobile check points
Fixed check points
Foot patrols
Mounted/vehicle patrols
Making arrests/detaining people in pursuit of public order
Traffic control
Vehicle search
Weapons searches (see also DDR)
Fixed police stations
Mobile police stations
Force protection/evacuation
Border control
Protection against smuggling
Crowd/riot control

Protection Tasks
Area protection
Site protection (Official buildings, private homes, patrimonial sites, etc)
Protection of key persons
Mine clearance
Passive security measures (surveillance cameras, street lighting, traffic barriers...)
Visibility
Regional cooperation

Elections
Security at polling stations and during election rallies
Election monitoring
Security at counting stations
Protection of ballot transport
Protection of candidates/elected officials
Screening of candidates

Public information on elections and democratic process

Repatriation/return of refugees
Monitoring refugee flows
Protection of food distribution
Protection of minorities and returnees
Transport support for returnees

Disarmament, Demobilisation and Reintegration
Weapons collection, storage and destruction
Monitoring demobilisation
Vocational training
Repatriation and reinsertion

Information and Intelligence
Information on security challenges (refugee flows, weapons, etc)
Evidence for law enforcement purposes
Liaison officers
Public Information Campaign on role of mission and understanding of Rule of Law
Building local intelligence capacity

Law Enforcement and the Judicial Process
Preventive Law Enforcement
Ongoing gathering information/intelligence
Patrols
Community relations
Manning police stations
Crime pattern analysis

Reactive Law Enforcement
Securing evidence/forensics
Planning and executing arrests
Taking statements & questioning witnesses
Questioning/interrogating suspects
Liaison between police and prosecutorial officials
Combating transnational/organised crime

Judicial and Penal Process
Pre-trial detention of suspects
Pre-trial hearings/judicial review
Trials/court cases
Producing witnesses
Witness protection

Transport of detainees
Management of penal facilities/detention centres
Protection of facilities and legal personnel
Detention

Security Sector Reform

Military Reform
Withdrawal, disarmament, demobilisation
Integrating opposing forces
Shift of focus from ext to internal security, including human rights training
Accountability, oversight
Strategic force planning capacity, including military expenditure, budgets
Establishing specialised forces, e.g. Border security, intelligence agencies

Police Reform
Selection/vetting/certification
Minority Recruitment
Training (Acad & Field)
Accountability mechanisms/internal discipline
Human rights training
Technical training
Monitoring, mentoring, advising
Logistical support
Admin/management restructuring
Budget development/management
Performance assessment/promotion standards (auditing)
Public information on role of police in society
Building regional ties

Judicial and Penal Reform
Training judicial and penal staff (lawyers, judges, prison wardens, court police etc)
Materiel and infrastructure support
Administration/management
Accountability/oversight

B.2 Comparative Advantages of Military Forces, Civilian Police and Constabulary Forces

Tasks/Roles	Capabilities[119]			
	Police	**Military**	**Constabulary forces**	**Other Civilian Actors**
Key features	Individually deployed, usually lightly armed, often arrive later and in smaller numbers.	Greater numbers, heavier equipment, more logistics and firepower. Also include military police units.	Capabilities, organisation and training depend on domestic role; varies greatly. Also dependent on whether attached to international civilian police or to military forces.[120]	E.g. civilian staff in international organisations, esp judicial staff, also NGOs.
Providing a secure environment				
Monitoring movements and destabilising activities				
Credible provision of security	Depending on the level of violence, patrols by the international police can contribute to a secure environment (also in cooperation with local police forces.)	Presence of significant number of military forces, esp with the ability to respond to escalations of violence is key to providing security.	Can act as part of military component. *SFOR/MSU tasked to maintain public order, but not engage in law enforcement.*	
Monitoring movements of armed groups	Insufficient manpower to conduct systematic monitoring.	Typical military task		
Facing/disempowering armed groups	Ltd role, as police usually has ltd access to the use of force	Military role with necessary man and firepower. *UNTAG: handling Koevoet forces,*		
Mobile checkpoints	Ability to man checkpoints is dependent on manpower and armament. *UNMIK/KFOR*	Again manpower and transport capabilities give military comparative advantage. Mobile checkpoints in part also contingent on intelligence input. *UNMIK/KFOR*	*UNMIK/KFOR*	
Fixed checkpoints	s.a.	Again manpower gives military comparative advantage. *UNMIK/KFOR*	*UNMIK/KFOR*	

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[119] The table identifies capabilities and comparative advantages of each actor. Case references are in *italics*.

[120] As national differences and organisational affiliations make generalisations difficult, the comments in this column will only list, where Constabulary forces have a special advantage or examples of where they have been used in a dedicated role.

Foot patrols	See 'Credible provision of security.' Also police have the advantage of being more accessible and therefore being able to better build community relations on foot patrols than heavily armed military patrols. *UNTAG: CIVPOL accompany SWAPOL, UNMIK/KFOR*	Military advantage is greater numbers and show of force, which may assist confidence-building and stabilisation at the outset of a mission or during periods of high tension. *UNTAG, UNMIK/KFOR*	Where Constabulary can break into smaller units can conduct patrolling (e.g. *KFOR/MSU*). Where they act as formed units only, not as flexible (e.g. *UNMIK/SPU*).	
Mounted/vehicle patrols	As part of 'normal' police duty, depending on levels of violence and instability. *UNTAG: CIVPOL accompany SWAPOL, UNMIK/KFOR, Haiti*	See foot patrols. Military can increase show of force, but at the same time remove police from local population's access. *UNMIK/KFOR, UNITAF joint patrols with ASF.*	*SFOR/MSU, UNMIK/KFOR*	
Making arrests/detaining people in pursuit of public order	Initial or especially violent phases, where police capacity may not be present yet or inadequate. Where international police is involved it presupposes an executive/enforcement mandate. *IPM (Haiti), UNMIK police*	Military involvement in unstable conditions unavoidable, particular role in the arrest of war criminals or other individuals where substantial resistance can be expected and that are clear threats to stability and the execution of the military mandate. Military may also have greater logistics capacity for detention and deploy with military lawyers. *UNITAF*	Constabulary forces with mixture of police and military training may be well suited to address public order arrests and detention, if given clear instructions and sufficient logistical support.	Important to bring in judicial staff as soon as possible to alleviate human rights concerns in early and unstable phases.
Traffic control	Can in principle be conducted by either, but in more stable stages/areas of a mission, it is advantageous to remove the military from everyday life and civilian policing tasks. *UNMIK/KFOR*	This is true both because the more demilitarised public order the better, but also in order not to undermine the military's role as the hard-hitting back up. *UNITAF*		
Vehicle search	Clearly also a civilian policing task, but international police likely to have less capacity to conduct such searches and have fewer capabilities to deter non-compliance. *UNMIK/KFOR*	Either based on tip offs or routine, military have greater manpower to conduct vehicle searches and have a greater ability to deter violent resistance.		
Weapons searches (see also DDR)	Ibid. Here, lack of firepower may be even more disadvantageous. But also involves intelligence cooperation. Where international police has an executive mandate, this can become part of law enforcement. *UNTAC police supports UN military with confiscating arms.*	Greater chance of resistance, therefore more muscular force at advantage. E.g. cordon and search operations to seize arms and illegal materials.		
Fixed & mobile police stations	Should be manned by civilian police, in order to demonstrate clearly that public security is a civilian concern. *UNMIK/KFOR*	Military role only where deployment gap results in no police presence.	Police trained personnel can man both fixed and mobile stations. *UNMIK/KFOR*	

Force protection/evacuation	International police more vulnerable due to deployment as individuals rather than units and more dependent on community relations. Cannot shield/isolate themselves too much.	Protection of military forces and resources, but also role in evacuating and providing some protection for police if violence breaks out.		
Border control	Training of border security forces.	Another guard and patrol type activity that is better placed in military hands, if nothing else due to the quantity of staff necessary. *KFOR coordinates with local border police, foot, vehicle and helicopter patrols.*	Constabulary forces that function as border police domestically can play important role. *UNMIK/SPU assists in manning checkpoints*	
Protection against smuggling	Border control directed against a specific type of violation, which requires military and criminal intelligence and therefore makes use of both military and police resources.	Again manpower is a major factor; military action has included interception operations to prevent weapons smuggling.	Units can assist in or conduct operations against smuggling or illicit border crossing.	Smugglers will need to be handed over to civilian authorities and detention facilities.
Crowd/riot control	Police can take on this task, but often short-staffed and not adequately equipped in international operations. Also post-conflict situations usually marked by higher levels of violence, where international police lacks 'moral authority and negotiation and compromise tactics may be less effective.	Military has staff for crowd control, but seldom trained for it and is still under pressure to 'win' when confronting a crowd. This is changing, also in terms of tactics and equipment for crowd control. *UNMIK/KFOR*	Central task for MSUs, in terms of their preparation, skills and equipment. Effective use depends on clear command arrangements among, military, police and Constabularies. *UNMIK/KFOR, SFOR/MSU e.g. Hercegovacka Bank raid.*	Political grievances underlying unruly crowd activity need to be addressed.
Protection Tasks				
Area protection	Difficult for police that cannot adequately cover large areas due to lack of personnel and transport capacity.	Typical military task, also akin to traditional peacekeeping roles. *KFOR: Ground and Air Safety Zone in Presevo Valley*	Blue box concept envisages primacy of constabulary forces in designated area.	
Site protection (Official buildings, private homes, patrimonial sites, etc)	Another protection task that - in war-torn societies requires manpower of military force. *UNMIK takes over some protection tasks, eventually to be fulfilled by local police.*	In post-conflict areas there are often a large number of sites that require protection (see also on repatriation and minorities). This is why the task becomes very personnel-intensive. *UNITAF secures Mogadishu airport; KFOR assigned 1,000 soldiers to protection of patrimonial sites.*	*UNMIK/SPU used for static guard duties.*	
Protection of key persons	Police able to undertake protection of key persons. *UNMIK Close Protection Unit (CPU)*	Military has special forces trained for close protection tasks. Whether police or military capacity is used, depends on setting.	Can engage in close protection tasks. *UNMIK/SPU*	

Mine clearance	Not usually involved	Mines cleared for own security and freedom of movement to enable military forces to fulfil their mandate.		Humanitarian agencies engaged in mine clearance for humanitarian purposes, but also training of local staff.
Passive security measures (surveillance cameras, street lighting, traffic barriers...)	Can be established by any actor; manpower and logistics will determine which one is most suitable.	s.left		
Visibility	For civilian police visibility means accessibility and association with local police. But their visibility can also be increased through joint patrols with military forces.	For military forces, visibility is about a show of force and providing a security guarantee. Can also reinforce visibility of civilian police, but must be careful not to compromise the civilian character of the police' role.		
Regional cooperation	Building regional ties in both police training and crime fighting is critical and can empower and promote the professionalisation of local police forces. In the Balkan context, closer association with the EU was also used as an incentive for change/compliance.	In the military arena, fostering regional cooperation is also important. It can also take the shape of local militaries providing forces for peace operations elsewhere. Regional cooperation will of course vary with whether neighbouring countries were involved in the hostilities.		
Elections				
Security at polling stations and during election rallies	Police provide security inside polling stations. The extent, to which they will also be responsible for security in the vicinity of polling stations, depends on the level of tension and expected violence during voting.	Military forces are more suited to ensuring safe access to polling stations, i.e. roads. The civilian nature of the electoral process may be compromised by the presence of armed military guards inside polling stations. *UNMIK/KFOR: Risk assessment, co-ordinated patrolling near candidates' homes and election sites*	*UNMIK/SPU*	
Election monitoring	Police task only, if civilian election monitors are not available. *UNTAG*	Inside polling stations, military presence is not desirable. Can be intimidating in nascent democracy.		Predominantly civilian staff.
Security at counting stations	See polling stations, but due to lesser flow of people, more manageable task	*UNMIK/KFOR jointly ensure freedom of movement and provide logistical support.*		
Protection of ballot transport	Due to lack of manpower rather than capabilities, international police is unlikely to play major role.	Military has greater transport capabilities and can deter attacks to a greater extent.		

Protection of candidates/elected officials	VIP protection units can be both part of police or military forces. *UNMIK/KFOR: Protection of candidates; UNTAC provides security for UN elections staff, as well as candidates and parties.*	*SFOR; KFOR/UNMIK; military bodyguards in Kabul, protecting President Karzai.*	*Part of mandate for SFOR/MSU. UNMIK/SPU escorts candidates*	
Screening of candidates	Can provide information on candidates.	Can provide information on candidates.		Civilian process of screening. *OSCE Mission in BiH.*
Public information on elections and democratic process	No particular role.	Manpower might allow support in awareness campaigns especially where security situation is unstable but usually not desirable activity. *Iraq*		Awareness campaigns on practicalities and procedures. *UNTAG: info programme and discussions with civil society*
Repatriation/return of refugees				
Monitoring refugee flows	Can collect/provide information but usually too thin on the ground and not as centrally organised so that focus is less on overall security picture.	Military intelligence critical, assessment of overall security situation. Should also cooperate with other civilian actors, such as refugee agencies and international police. *SFOR*		
Protection of food distribution	s. right	As in other protection tasks, military's greater manpower lends itself to personnel intensive roles.		
Protection of minorities and returnees	Unless international police has an executive mandate, role is mainly to monitor local police. Protection of minorities should become part of 'normal' law enforcement.	S.a. Military has ability and depth to adjust deployment patterns to reinforce staff in volatile areas. *KFOR increased presence in enclaves and dedicates staff to this task.*	*SFOR/MSU; here also seen as part of law and order; UNMIK/SPU provide security measures to protect minority communities, cultural cites etc*	Civilian organisations also monitor protection of minorites and returnees. Also have a role in promoting wider political and social process of reconciliation. Both legal staff and other civilian staff can have a role in resolving property disputes.
Transport support for returnees	Depending on number of returnees and level of instability, civilian police can support return process. *UNTAG: civilian police escort for returning refugees*	Military have greater logistical capacity and can support and protect return convoys. KFOR: provide transport for minorities to schools and shops.		

Disarmament, Demobilisation and Reintegration				
Weapons collection, storage and destruction	Only role for police, when this has become part of daily crime fighting rather than part of the initial disarmament process. Will especially be confronted with flow of small arms.	Handling heavy weapons and small arms frequent task in peacekeeping. Again is relatively personnel intensive task. Also early action important to channel process and maintain control over arms. Involves collection and protection of storage sites. *UNTAG: collection site in Windhoek, UNAVEM III, IFOR, KFOR*		In cooperation with the military, civilian agencies might initiate amnesties or similar programmes to encourage disarmament.
Monitoring demobilisation	Role for police forces where former combatants are police officers or will be integrated into police service.	Personnel intensive task that also benefits from military expertise. Have capacity (manpower and organisation) to manage quartering, distribution of aid/starter packs and provide transport support. *UNTAG, UNAVEM III; IFOR; KFOR/JIC (e.g. monitoring and advising on the demobilisation of the KLA)* But see civilian actors.	Not especially trained for demobilisation but can assist.	Emphasis should be on return to civilian life for those combatants that will not remain part of the armed forces or the police, leadership by civilian agencies therefore preferred, esp with regard to registration etc, special interest groups and support for vetting processes.
Vocational training	Police can address those that remain in uniform, with regard to re-training, reintegration and vetting.	Possible involvement in military training of former combatants, where these are to join the reformed military force.		Civilian lead is central
Repatriation and reinsertion	No particular role for international police, except where in an executive role or training or monitoring on community policing.	Can assist in transport, see on repatriation of refugees above.		Civilian lead is central. Also political process necessary to facilitate reconciliation and reintegration.
Information and Intelligence				
Information on security challenges (refugee flows, weapons, etc)	Can come across information, but unlikely to conduct systematic security assessments (Focus on crime patterns).	Central military task.	Collect information, interact with locals and provide information to military forces	NGOs possess wealth of information
Evidence for law enforcement purposes	Product of investigations and therefore police prerogative.	s. left, except for role of military police.		s.a.
Liaison officers	*UNTAG: 42 district and regional offices to interact with local population 'moral' rather than 'executive' authority*	Military forces also dependent on local relations and frequently use liaison officers, especially when planning specific actions.		
Public Information Campaign on role of mission and understanding of Rule of Law	Police in cooperation with civilian/PR staff.	No particular role.		Public relations effort should not be underestimated, requires experts.

				As in reform tasks below, civilian staff can contribute on administration and management. Also NGOs might have information on past abuses and popular sensitivities.
Building local intelligence capacity	Can assist in developing information structure as a whole, link to criminal intelligence.	Should take the lead on military intelligence.		

Law Enforcement and the Judicial Process				
Preventive Law Enforcement				
Ongoing gathering information/intelligence	Patrolling and monitoring will produce insight and information. *UNTAG: Investigations Unit & Forward Investigation and Coordination Centre*	Military intelligence can supplement police evidence, although it is often problematic as 'evidence'. *KFOR joint operations with UNMIK police and exchange of criminal intelligence.*	Patrolling, gathering information	
Patrols	Police task, preferable jointly or led by local police.	Military role likely where security situation is volatile, there is no effective police and patrolling is part of providing a secure environment		
Community relations	Police (local or international) has primary role on whole range of preventive law enforcement. Important to emphasise the civilian character of law enforcement and remove military from daily maintenance of public security.	Recommended that military role minimal and only where no police capacity is present.		Civilian organisations can assist in channelling popular expectations and desires on the rule of law to police forces.
Manning police stations	s.a. on providing a secure environment	s.a. on providing a secure environment		
Crime pattern analysis	Requires understanding of criminal dynamics, as well as social, political and economic constellations. As police is in closer contact with population, they are better place to develop this understanding.	Military force has no comparative advantage here. It does not have this expertise and the task is not dependent on capabilities.		Support from civilian analysts, social scientists and similar.
Reactive Law Enforcement				
Securing evidence/forensics	Investigations are civilian police prerogative; understand what kind of evidence is permissible and useful in court. Mostly when in executive role, but also with more limited mandate e.g. *UNTAC: investigate human rights abuses.*	Military police are also trained to fulfil some policing duties: They can interact with civilians, conduct investigations etc. Military forces can also secure evidence in raids. *KFOR on KLA, SFOR.*		

Planning and executing arrests	Primarily police task, important to retain the civilian character of arrest and detention, but presupposes executive/enforcement mandate for international police.	Military involvement generally undesirable, but can provide back-up for high risk arrests. (See also arrests in connection with public order above).	*UNMIK/SPU assist in high-risk arrests.*	
Taking statements & questioning witnesses	Interaction with public within the context of an investigation is major part of a police force' public relations effort. Therefore, important that it is conducted in professional, sensitive manner.	Military should only have a role in exceptional circumstances, i.e. when there is no police presence, and then preferably with their own military police capacity.		Possible input/assistance when it comes to special interest groups, i.e. rape victims, child soldiers, etc.
Questioning/interrogating suspects	s.a.	s.a.		Monitoring international accountability and adherence to international law/standards.
Liaison between police and prosecutorial officials	Best done by police officers who are aware of the requirements for sound investigations, evidence and trials.	No particular advantage of military forces, but can deploy with military judges and prosecutors, etc.		
Combating transnational/organised crime	Only relevant with executive mandate, otherwise advice. Requires specialised organisational structure, f ex *Organised Crime Unit in UNMIK*. Also, combating organised crime is complex, resource-intensive and protracted. Requires good criminal intelligence capacity.	Specialised police function that can benefit from information support, but otherwise not a military task. Military involvement also hampered by force protection concerns.	Many constabulary forces have been trained to combat organised crime, but long-term effort can be undermined due to frequent rotations. *SFOR/MSU, KFOR/MSU*	Civilian efforts to change popular acceptance of organised crime. Can exercise significant political pressure as well.
Judicial and Penal Process				Generally, military and police limited to a supportive role.
Pre-trial detention of suspects	Police plays a supportive role throughout judicial process, but always within parameters set by judicial sector.	See detention in connection with public order above. *UNITAF: temporary holding facility.*		
Pre-trial hearings/judicial review		Military role is possible through military judicial staff. However, problems of accountability can arise. *KFOR: Judge Advocates and Military Magistrates (deployed with military force)*		Trend towards developing 'justice packages' that can deploy with the initial military contingent.
Trials/court cases	No role, except for police prosecutors.	s.a.		International judges can either take over or preside jointly with local judges.
Producing witnesses /Witness protection	Typical police role, especially on long-term measures for witness protection.	Military has secure locations that may be used for witnesses that are at risk.	Constabularies that conduct policing duties domestically and work on organised crime, generally have skills in this area.	

Transport of detainees	Guard duty, but often dependent on military transport.	Logistic support possible.	*SFOR/MSU, e.g. armed escorts for prisoners*	
Management of penal facilities/detention centres	Corrections police	*UNMIK: Military Police platoon*		Ideally, corrections staff, where not available police involvement may be preferable to uninitiated civilian staff.
Protection of facilities and legal personnel	s.a. on protection	s.a.	s.a.	
Detention	No capacity for long-term detention and not advisable to take on the responsibility	s. left and above on arresting in context of public order. Only short-term role.		Local facilities are the only ones that can meet needs of long-term detention.
Security Sector Reform {.spanning}				
Military Reform				
Withdrawal, disarmament, demobilisation	s.a. on DDR	s.a. on DDR		
Integrating opposing forces	No role for international civilian police	Military experts on force structure and planning.		Political context likely to require ongoing negotiations during integration process.
Shift of focus from internal to external security, including human rights training	Potential but limited role for police trainers on respective responsibilities of military versus police	Military trainers (Human Rights, international law)		Human Rights groups can provide training, conduct awareness campaigns
Accountability, oversight	No particular role	Military administrators		NGOs and international organisations working on democratisation process, esp parliamentary oversight, free media, etc.
Strategic force planning capacity, including military expenditure, budgets	No particular role	Military experts should take the lead on force structure planning, prioritisation and definition of security needs.		Civilian expertise on management, e.g. Finance experts and administrators. Consultations with local stakeholders are critical.
Establishing specialised forces, e.g. Border security, intelligence agencies	Police input on training and design, but the process should be led by representatives of the specialised agencies.	Similarly (s. left), military intelligence officers can provide input on training and design.		
Police Reform				
Selection/vetting/certification	Police should take the lead in vetting and selection processes, as they are most familiar with the characteristics required for serving in the police.	In general, military has no comparative advantage when it comes to police reform. Involvement only triggered by absence of police capacity. *UNITAF: Military police engaged in vetting of Somali police.*		Civilian staff can assist in the vetting process, esp with regard to administrative support, as personnel reform processes are very labour-intensive.

Minority Recruitment	As part of vetting/selection process, representativeness should be emphasised.	No particular role.		Assistance from civilian agencies working on refugee and minority issues.
Training (Acad & Field)	Police training should be conducted by police officers, in order to underline civilian character of police service. Important that trainers are qualified educators. *UNTAG: training programme for NAMPOL, esp principles of policing*	Generally not desirable that military forces train police officers, due to operational differences, such as on terminology, tactics and investigative procedures. *Haiti, UNITAF/Somalia: writes handbook for ASF, UNOSOM II*		Professional trainers with knowledge of policing can also conduct academy training, assist in curricula development etc. Not as suitable in the field.
Accountability mechanisms/internal discipline	Knowledge of police organisations, legal parameters and criteria for police performance important to setting up and maintaining accountability mechanisms.	Disciplinary mechanism in the military are very different than mechanisms typical of police organisations, as military is accountable to a different set of laws. Military lead in establishing police accountability mechanisms should therefore be discouraged.		Judicial staff and other civilians with experience with accountability mechanisms, can advise, for instance on drawing up procedures.
Human rights training	Important to recruit professional trainers. *UNTAC*	s. left. Otherwise no particular role		In addition to the above, NGOs working in the human rights field can provide training.
Technical training	s.a. reinforced when it comes to weapons training, securing crime scenes, etc. *UNMIK*	Different tactical approach means that military should not conduct technical police training, except through military police.		
Monitoring, mentoring, advising	Traditional CIVPOL role, police lead is meaningful in that they can assess performance, correct police behaviour, etc. *UNTAG/SWAPOL, UNTAC, IPM/Haiti*	Limited expertise to assess police performance, therefore not suitable as mentors and advisers.		
Logistical support to local police		*UNITAF: US equipment from Desert Storm*		
Admin/management restructuring	Police managers, senior staff members or officers in administrative functions are best suited to develop leadership capacity. *UNMIK training on management, EUPM*	No particular advantage.		Civilian staff with finance, accounting or management consulting capacity can contribute, but organisational design has to be based on understanding of police role and functions.
Budget development/management	s.a.	s.a.		s.a.
Performance assessment/promotion standards (auditing)	Again, police are most familiar with the performance expected of police officers.	If military is involved, it should be through their military police and judicial capacity.		Input from human rights organisations on potential violations
Public information on role of police in society	s.a. on information and intelligence. *UNTAG*			

Building regional ties	Police may have access to or knowledge of regional networks.	No role.		Regional police cooperation is often part of a wider political process.
Judicial and Penal Reform				Civilian lead with expertise in the judicial and penal sectors is important.
Training judicial and penal staff (lawyers, judges, prison wardens, court police etc)	Can contribute police perspective, but cannot take on training of judicial staff.	Military lawyers and judges can contribute, esp where they can be deployed early and kick-start a reform process.		
Materiel and infrastructure support	No role.	May provide transport or housing/facilities.		
Administration/management	No particular advantage.			Civilian staff with finance, accounting or management consulting capacity can contribute, but based on understanding of justice needs.
Accountability/oversight				Civil society development and other oversight mechanisms.