

**COLLECTIVE ACCOUNTABILITY IN INTERNATIONAL MILITARY
OPERATIONS: DEVELOPING BLENDED STANDARDS AND
MECHANISMS**

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Introduction: establishing accountability in international military operations

Efforts to establish accountability in military operations at the international level have focused principally on preventing the unilateral use of military force. These efforts to establish collective rather than individual state bases for taking military action developed throughout the twentieth century and were pioneered by initiatives in the Inter-American system, the League of Nations Covenant and the United Nations Charter. Additionally, since 1945, the law of armed conflict and of human rights have set new standards of accountability at the governmental and individual levels. Maintaining these areas of accountability involves both international and national institutions and processes. The blending of these standards and processes is a developing project that has been shaped by decades of experience and practice.

Establishing accountability implies a relationship of responsibility that is both legal and political. This holds true whether action is taken on the basis of a national or international decision. This places a premium on process and establishing the proper relationships between strategic decision-makers and those who carry out the resulting operations. In March 2005, UN Secretary-General Kofi Annan released the report, *In larger freedom: towards development, security and human rights for all*, that was intended to serve as the blueprint for UN reform initiatives. One area singled out for attention was accountability. The report states:

In our efforts to strengthen the contributions of States, civil society, the private sector and international institutions to advance a vision of larger freedom, we must ensure that all involved assume their responsibilities to turn good words into good deeds. We therefore need new mechanisms to ensure accountability – the accountability of States to their citizens, of States to each other, of international institutions to their members and of the present generation to future generations. Where there is accountability we will progress; where there is none we will underperform.¹

These elements of accountability are related. If citizens of member states do not support an international institution, it will make government support for such institutions difficult, particularly in democracies. Acting on a mandate from an international institution can provide additional political clout in some countries for seeing through difficult operations. The Secretary-General's High Level Panel on Threats, Challenges and Change recognized this when it stated that the strength of the UN Charter "must be drawn from the breadth of its partnerships and from its ability to bring those partners into effective coalitions for change across the whole spectrum of issues on which action is required to advance the cause of larger freedom."²

¹ UN Doc A/59/2005, "In larger freedom: towards development, security and human rights for all," Report of the UN Secretary-General (March 21, 2005), p. 7, para. 22.

² In Larger Freedom, paragraph 153.

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As students of political theory and political science know well, maintaining accountability under changing conditions is a constant challenge even in stable political systems, but is essential to the legitimacy of governments. The same holds true for international institutions where maintaining accountability is essential to maintaining the authority of these institutions. Understanding accountability for international operations, however, is more complicated than simply adding a layer to existing national systems and practices. It requires the blending of international and national process and practice because of the different roles international and national institutions play.

International institutions are the locus for decision-making on matters of international security, but national institutions will be called on to carry out these decisions. International institutions do not presently have forces of their own to deploy and how national institutions respond to such decisions remains *ad hoc* and determined on a case by case basis. To blend these systems effectively requires developing new standards and mechanisms to address new areas of shared or coordinated accountability.³ International and national legal standards and mechanisms therefore need to be blended to provide accountability when military forces are used in international operations. This essay will examine this development at three levels:

- the authorization level;
- the operations level; and
- the individual level.

Accountability at the authorization level

Accountability begins at the decision-making level. In the area of the use of force, the UN Charter system plays a special role, with the Security Council given the primary responsibility for maintaining international peace and security. But what happens if the Security Council fails to act? Are there limits to the powers of the Security Council? Are its decisions subject to review? To whom is the Security Council accountable for the decisions it makes? Despite the 60 year history of the UN, these remain open questions, although it does appear settled that the UN Security Council provides a legitimacy for action that is not presently matched by any other form of authorization.⁴

Security Council decisions are not subject to any formal review other than by further Security Council action. However, there are informal review mechanisms built into the UN system. For example, states can decline to participate in or to provide resources for operations authorized by the UN Security Council. To

³ International Law Association, Final Report, Committee on the Accountability of International Organizations, Sir Franklin Berman (Chair), Malcolm Shaw and Karel Wellens (Co-Rapporteurs) (Berlin 2004) available at http://www.ila-hq.org/htm/layout_committee.htm visited on February 13, 2006.

⁴ See Charlotte Ku, "Legitimacy as an Assessment of Existing Legal Standards: The Case of the 2003 Iraq War," in *Iraq and World Order, Volume I: Structural, Institutional and Normative Challenges*. Ramesh Thakur and W.P.S. Sidhu, eds. (Forthcoming, United Nations University Press, 2006).

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underscore the legitimacy of UN Security Council decisions, particular attention has been paid to how well it reflects the distribution of power in the world today. Efforts to do so through a change in the composition of the Security Council's permanent members have nevertheless stalled. Ensuring Security Council legitimacy is also significant because of the changing nature of the conflicts that now require international action. These do not fit a standard template and can question such fundamental Charter values as non-interference in domestic affairs. Crises of the late twentieth century, however, have forced us to reconsider this when governments brutalize their own populations or are unable to govern because of civil strife.

In the wake of the divisive UN Security Council debates that preceded the US-led war in Iraq in March 2003, UN Secretary-General Kofi Annan raised a more fundamental issue – the inability of the UN Security Council to act because of threatened vetoes by permanent members of the UN Security Council which nevertheless failed to block U.S. action. He concluded that:

...[W]e have come to a fork in the road. This may be a moment no less decisive than 1945 itself, when the United Nations was founded... [w]e must decide whether it is possible to continue on the basis agreed then, or whether radical changes are needed.⁵

To consider this issue, the Secretary-General appointed a High Level Panel on Threats, Challenges and Change to “examin[e] the major threats and challenges the world faces in the broad field of peace and security...”. The panel's terms of reference identified three areas for specific attention:

a. Examine today's global threats and provide an analysis of future challenges to international peace and security. Acknowledging that there may be differences among the UN member states on the nature of the threats presently being faced, the Panel is asked to “find an appropriate balance at the global level. It is also important to understand the connections between different threats.”

b. Identify clearly the contribution that collective action can make in addressing these challenges.

c. Recommend the changes necessary to ensure collective action, including but not limited to a review of the principal organs of the United Nations.⁶

The setting up of the High Level Panel and the Secretary-General's highlighting of these issues addressed the primary purpose of the United Nations to provide for the peace and security of its member states under the UN Charter system. Two things are worth noting in the charge to the High Level Panel:

⁵ UN Secretary-General, Address to the General Assembly, New York, September 18 2003 seen at <http://www.un.org/webcast/ga/58/statements/sg2eng030923> on January 16, 2006.

⁶ UN Press Release SG/A/857, “Secretary-General Names High-Level Panel to Study Global Security Threats and Recommend Necessary Changes,” (April 11, 2003) seen at <http://www.un.org/News/Press/docs/2003/sga857.doc.htm> visited on January 16, 2006.

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- The recognition that the nature of contemporary security threats requires a *comprehensive* and *integrated* approach to understanding threats to peace and security for the entire international community regardless of the size or power of the threatened member state [emphasis added].
- The further recognition that perhaps not all challenges are best met by collective action, but to identify where collective action can be most useful.

This was not the first time that Kofi Annan asked UN members to reflect on the basis for collective action and the consequences of the failure or inability of the UN Security Council to act. In 1999, in the aftermath of NATO's Operation Allied Force in Kosovo, the Secretary-General posed the following questions:

To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might say: leave Kosovo aside for a moment, and think about Rwanda. Imagine for one moment that, in those dark days and hours leading up to the genocide, there had been a coalition of states ready and willing to act in defence of the Tutsi population, but the council had refused or delayed giving the green light. Should such a coalition then have stood idly by while the horror unfolded?

To those for whom the Kosovo action heralded a new era when states and groups of states can take military action outside the established mechanisms for enforcing international law, one might equally ask: Is there not a danger of such interventions undermining the imperfect, yet resilient security system created after the second world war, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents and in what circumstances?⁷

These reflections remind us that the UN Charter was concluded at the end of the Second World War in 1945 to respond to a specific kind of security threat. This was for leading powers to deter and to repel aggression through the United Nations. The lack of such a reliable response mechanism was regarded as the major failing of the League of Nations, which the US had rejected, and when the United Kingdom and France failed to act against the aggression of Italy in Ethiopia, Germany in the Rhineland, and Japan in China in the 1930s. Whether the UN security system would operate, as hoped for by its designers, was not tested because of the stalemate between the US and the Soviet Union during the Cold War. By the time the Cold War ended, the nature of conflicts requiring international attention had changed, to include problems like internal conflicts that had not been envisaged by the architects of the UN system.

Security in the face of internal threats. Figure 1 shows the increase in internal conflicts and civil wars as compared to inter-state wars since the founding of the United Nations.

⁷ Kofi Annan, 'Two Concepts of Sovereignty' (September 18, 1999) 352 *The Economist*, 8137, 49.
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Wars: 1946-2002⁸ (see Figure 1 attached)

This shift in the kind of conflict warranting international attention and action has created an authorization problem because of a lack of agreement among the Security Council's permanent members on the propriety or desirability of international involvement in such internal conflicts.⁹

But what happens if the UN Security Council is unable to provide authorization for action? A rigid requirement that member states only use military force if authorized by the UN Security Council could preclude its use when morality and international law would otherwise seem to require it, as was the case in Rwanda. Such concerns led in the 1990s to a search for regional multilateral alternatives to the UN Security Council for authorization. In 2000, for example, the Economic Community of West African States (ECOWAS) adopted a protocol explicitly stating that the ECOWAS Council could authorize the use of military force in humanitarian emergencies even without a Security Council mandate.¹⁰

Although multilateral regional alternatives may provide a stronger basis for action than a unilateral decision, concern remains that such authorization may lead to action contrary to the spirit of the UN Charter and based on the judgment of a small, but powerful number of states. This concern led to efforts such as that of the International Commission on Intervention and State Sovereignty, chaired by Gareth Evans and Mohamed Sahnoun, to insist on objective evidence of a "conscious-shocking" humanitarian crisis and the concept of a "responsibility to protect" rather than a "right to intervene."¹¹ The Report of the International Commission on Intervention and State Sovereignty put the issue this way:

...[S]overeign states have a responsibility to protect their own citizens from avoidable catastrophe -from mass murder and rape, from starvation- but when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.¹²

The report acknowledged the central role of the UN Security Council as the body to authorize any response to such a situation, particularly military action. But it recognized the difficulty that arises when the Security Council cannot agree to authorize a response. In those instances, the Commission recommended that the UN General Assembly be considered as an alternative body to authorize action, including using the mechanisms provided by the 1950 Uniting for Peace

⁸ "A More Secure World: Our Shared Responsibility," Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, United Nations, 2004, p. 11.

⁹ See Lee Feinstein, "UN-Divided," *The National Interest* (Winter 2005/06), pp. 82-6, for an interesting discussion about related changes in the understanding of sovereignty and the emerging concepts of contingent and differentiated sovereignty.

¹⁰ As reprinted in *Journal of Conflict & Security Law* (vol. 5, no.2, December 2000), pp. 231-59.

¹¹ "The Responsibility to Protect," Report of the International Commission on Intervention and State Sovereignty (ICISS), (December 2001), p. viii.

¹² "The Responsibility to Protect," Report of the International Commission on Intervention and State Sovereignty (ICISS), (December 2001), p. viii.

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Resolution.¹³ The Commission also recommended authorization by relevant regional organizations. Should no multilateral authorization be available, the report on the *Responsibility to Protect* calls on member of the international community to accept action by one state or an *ad hoc* coalition based on four principles:

- Establishment of an objective basis for action – i.e. mass killing or other brutalization;
- Agreement that military action should be taken as a last resort;
- Acknowledgement that the scale, duration, and intensity of any military action should be the minimum possible to secure adequate levels of human protection needed for rebuilding; and
- Determination that there is a reasonable chance of achieving these objectives.¹⁴

The Commission's work was motivated by "a clear indication that the tools, devices and thinking of international relations need now to be comprehensively reassessed, in order to meet the foreseeable needs of the 21st century."¹⁵

Prompted by the recognition that brutality and violence within a country can spill across borders and threaten regional and even international security, the international community has sought ways to respond to such menaces without sanctioning self-judging unilateral military actions. This effort to establish objective and broadly acceptable criteria for intervention in the internal conflicts of states, absent authorization by the UN Security Council, is therefore a major new development since the end of the Cold War.

Security in the face of external threats

There remains, however, the historic concern of states to protect themselves from hostile actions emanating from outside their borders. Although this is the kind of security threat the UN system was designed to address, the nature of weapons and character of threats today can make timely response by the Security Council difficult if objective evidence of an attack is required. Can a state take action prior to any actual attack and if so, when? The 2003 US-led invasion of Iraq gave rise to a heated debate over this question in the form of whether pre-emptive self-defense is permissible under the UN Charter system. As with issues related to intervention to prevent or to stop mass killing, part of the discussion focused on how to ensure that such pre-emptive action does not lead to an unregulated use of force. In 2003, the Legal Adviser of the US Department of State, William Howard Taft IV, urged a careful legal analysis to understand the

¹³ UN General Assembly Resolution 377 (v), November 1, 1950 called on the UN General Assembly to act in matters of peace and security should the UN Security Council fail to act because of a veto from one of the permanent members.

¹⁴ "The Responsibility to Protect," Report of the International Commission on Intervention and State Sovereignty (ICISS), (December 2001), p. xii.

¹⁵ "The Responsibility to Protect," Report of the International Commission on Intervention and State Sovereignty (December 2001), p. 11.

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relevant facts and circumstances that might determine whether an action was legal or illegal.

As he put it, “the use of force preemptively is sometimes lawful and sometimes not.”¹⁶ In the case of Iraq, Taft found such action lawful because of Iraq’s breach of its international obligations as imposed by the UN Security Council following the 1991 Gulf War. “As a legal matter, a material breach of the conditions that had been essential to the establishment of the cease-fire left the responsibility to member states to enforce those conditions...”¹⁷ On numerous occasions from 1991 to 2002, Iraq was found by the UN Security Council to be in breach of the 1991 armistice and resulting UN resolutions. The issue became who could determine that a breach warranting military enforcement action had occurred. The US maintained that, since the UN Security Council had established that a breach had occurred, action was warranted and could be undertaken by those UN member states that were willing and able to do so. Other UN Security Council members maintained that the Security Council had not only to establish specifically that a breach had occurred, but also to authorize an armed response.¹⁸

So where does this leave the present UN system? Is fundamental change required? The conclusion of the High Level Panel, as reflected in the UN Secretary-General’s report, “A more secure world: Our shared responsibility” was:

...[W]e believe that the Charter of the United Nations, properly understood and applied, is equal to the task. Article 51 needs neither extension nor restriction of its long-understood scope, and Chapter VII fully empowers the Security Council to deal with every kind of threat that States may confront. The task is not to find alternatives to the Security Council as a source of authority but to make it work better than it has.¹⁹

A review of UN operations provides some empirical support for this view.

¹⁶ William H. Taft IV and Todd F. Buchwald, “Preemption, Iraq and International Law,” 97 *American Journal of International Law* (July 2003), p. 557.

¹⁷ William H. Taft IV and Todd F. Buchwald, “Preemption, Iraq and International Law,” 97 *American Journal of International Law* (July 2003), p. 559.

¹⁸ According to the US, UN Security Council Resolution 1441 (November 8, 2002) recognized that material breach had occurred and provided a final opportunity for Iraq to comply; any failure to comply would trigger an armed response to address the threat posed by Iraq’s failure to comply. The majority of the members of the UN Security Council did not agree with this US assessment and therefore declined to support the US effort to topple Saddam Hussein by force. For a range of views on the legality of U.S. actions, see “Agora: Future Implications of the Iraq Conflict,” 97 *American Journal of International Law* (July 2003), pp. 553-642 and “Agora (Continued): Future Implications of the Iraq Conflict,” 97 *American Journal of International Law* (October 2003), pp. 803-872.

¹⁹ “A more secure world: Our shared responsibility,” Report of the Secretary-General’s High-level Panel on Threats, Challenges and Change (United Nations: 2004), p. 61.

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Table 1
Mention of Chapter VII in UN Security Council Authorizations 1990-2002²⁰

	Total Number of Authorizations (1990-2002)	Number of Security Council Resolutions in which Chapter VII was Mentioned	Percentage of Authorizations that Mentioned Chapter VII (by form of use of force)
Forms of Use of Military Forces			
Monitoring and Observation	9	1	11%
Traditional Peacekeeping	2	1	50%
Peacekeeping plus State-Building	27	8	29%
Force to Ensure Compliance	21	19	90%
Enforcement	1	1	100%
Total	60	30	--

The above table shows that the closer military action gets to major combat operations, the greater the likelihood of UN Security Council involvement, which is as the UN Charter envisaged. These are also the areas where not having Security Council authorization can raise the most serious questions. Accountability therefore begins at the authorization level. For some member states, not having authorization from a UN body (the Security Council or the General Assembly) precludes their participation in military operations. But even for those member states that can constitutionally and legally take action without

²⁰ Table from Charlotte Ku, "When Can Nations Go To War? Politics and Change in the UN Security System: 24 *Michigan Journal of International Law* (Summer 2003), p. 1094. The UNSC authorized 56 of the 58 uses of military forces in the other four categories. The General Assembly, acting under the Uniting for Peace resolution, recommended UNEF I (1956), a traditional peacekeeping operation, and the United Nations Security Force (UNSF, 1962) in West New Guinea (West Irian), a peacekeeping plus state-building operation. NATO's North Atlantic Council (NAC) authorized Operation Allied Force (1999) against Yugoslavia, a force to ensure compliance operation. Although the Security Council authorized the initial deployment of UN forces to Korea in 1950, subsequent decisions about the operation were taken by the General Assembly under the Uniting for Peace Resolution. This was also true in the case of the 1960 UN Operation in the Congo (ONUC).

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UN authorization, not having such authorization can hinder cooperation with other states, both during the action itself, as well as during its aftermath. The perceived failure to have proper international authorization can also have domestic political impact and erode public and legislative support for the executive's decision to act.

UN-sanctioned military operations, however, always require national authorization, because the UN does not have its own military forces and must rely on member state contributions of troops. For many states, some legislative action is required to allow participation, although national authorization frequently can take place without a formal legislative vote or specific parliamentary action. This was particularly the case for participation in classic UN-authorized peacekeeping missions, that operated with the consent of the conflicting parties and whose principal task was to provide a buffer between belligerents. The 1956 UN Emergency Force (UNEF) in the Middle East and the ongoing (since 1960) UN Force in Cyprus (UNFICYP) are examples of classic peacekeeping operations.

National safeguards and mechanisms for accountability further come in two forms – the formal and the informal. Formal safeguards are found in constitutions and national institutions such as legislatures, courts, and budgets.²¹ Informal safeguards operate through political culture and public opinion.²² The effectiveness of these safeguards varies widely, depending on the nature of the domestic political system, including whether it is democratic and how open it is to public debate or not.

Since 1945 the international community has developed a blended system of authorization for the use of force that includes both international and national institutions and procedures. Where national systems require international authorization as a precondition for participation in international military operations, the points of accountability are more integrated. Where the systems can and do act independently of each other, the relationship of the international decision and national action is less clear, making the establishment of accountability also less clear. However, after 60 years of UN history and practice, it is generally accepted that international authorization, preferably by the UN Security Council, is important to establishing the legitimacy of using force.

Despite this reliance on international authorization, accountability for decisions to use force remains heavily dependent on national accountability mechanisms, including the possibility of a participating government's electoral defeat in democracies. How sound a decision for international action is still judged largely by the results of military action and whether its objectives seem to

²¹ For examples of constitutional restraints, see Lori Fisler Damrosch, "The interface of national constitutional systems with international law and institutions on using military forces: changing trends in executive and legislative powers," in Charlotte Ku and Harold K. Jacobson, *Democratic Accountability and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003), pp. 39-60.

²² For examples of such political factors, see Karen A. Mingst, "Domestic political factors and decisions of use military forces," in Charlotte Ku and Harold K. Jacobson, *Democratic Accountability and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003), pp. 61-80.

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be in keeping with the public's understanding of whether law and standards at both the international and national levels are met.

Accountability at the operations level

Following authorization, separate issues of accountability arise at the operations level. Accountability at this level relies heavily on national systems and procedures, largely because troops participating in international operations remain under national command and are therefore responsible and accountable to their own national authorities.

Accountability at the operational level became an issue in the tragic experience of a Dutch battalion whose withdrawal from Srebrenica, Bosnia in July 1995 was followed by the murder of 7,000 men and boys. The victims were murdered in a location that had been declared a "safe haven" under the protection of the UN and specifically of a Dutch battalion. The tactical inability and resulting operational failure of the Dutch UN battalion to protect these victims was a serious blow to the reputation of the UN and UN operations. This failure triggered investigations at both the international and national levels to identify what had happened and to avoid its repetition. The Dutch parliament held the government accountable by their parliament and members of the government including the Defense Minister was forced to resign.²³

This episode illustrates the complexity of understanding accountability in the context of international operations. It further demonstrates the increased need to understand accountability procedures that blend the international and national institutions and processes. To fix accountability where there are multiple authorities can be difficult, and blame at the tactical, operational, and strategic levels often shifts.

The tragic outcome at Srebrenica resulted at the outset from the failure on the part both of the UN and the Dutch government to accept a realistic assessment of the nature of the mission. UN member states and the Dutch public were moved to act by the images of people in concentration camps that recalled the photos of Nazi concentration camps. Yielding to public pressure, the Dutch government and parliament entered into a series of consultations with each other resulting in a Dutch consensus decision by the Dutch government to respond to the UN's request for troops to protect the besieged Moslem population in the area.²⁴ The government authorized a force of 1,000 despite the views of the Dutch military that a force strength of 34,000 would be required to repel any hostile Serb action

²³ See Nederlandse Instituut voor Oorlogsdocumentatie, "Srebrenica, A 'safe' area: Reconstruction, background, consequences and analyses of the fall of a safe area, April 2002 available at <http://www.srebrenica.nl/en/menulinks.htm> seen on June 6, 2002.

²⁴ See Epilogue in Nederlandse Instituut voor Oorlogsdocumentatie, "Srebrenica, A 'safe' area: Reconstruction, background, consequences and analyses of the fall of a safe area, April 2002 available at <http://www.srebrenica.nl/en/menulinks.htm> seen on June 6, 2002.

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and a minimum of 7,000 would be needed to deter any hostile action.²⁵ The Dutch military were further overruled on the kinds of weapons the soldiers would take into the field. (The government's view was that arming the soldiers too heavily might provoke, rather than deter Serb forces).

Three Dutch battalions were rotated through the area beginning in June 1994 and each deployed for six months. Returning soldiers reported on how challenging and strenuous the duty was.²⁶ These ground forces were to be backed up by NATO air power. However, NATO air strikes as a response to hostile Bosnian Serb actions proved to be an untenable option because of the "dual key" system and the exposure of peacekeepers and the population they were trying to protect to any bombardment. The dual key required a request by the UN Special Representative in the region to the NATO Secretary-General to authorize the use of NATO air power. This dual level decision-making not only cost precious time, but was rendered ineffective when the UN Special Representative failed to make any such request.²⁷

Following the mass murder at Srebrenica, the Dutch government embarked on a prolonged period of official inquiry and self-examination that resulted in a change in the Dutch constitution to require a more formalized consultation by the executive with the legislature and the provision to it of detailed information about proposed international deployments.²⁸ The tragedy which involved the Dutch troops and their failure to provide protection to Bosnians in their area of operation caused UN Secretary-General Kofi Annan to appoint a special panel to examine the future of peacekeeping operations. Led by the former Algerian Foreign Minister, Lakdhar Brahimi, the Panel on United Nations Peace Operations concluded that the UN should be wary of making military decisions based on political compromises and practices. Contributing factors to the failure included:

- Inadequate intelligence;
- Overoptimistic assessment of the willingness of the enemy to comply with UN demands;
- Lack of a clear chain of command (dual key);
- Inadequate preparation and arming of the forces;

²⁵ Jan Hoekema, "Srebrenica, Dutchbat and the Role of the Netherlands' Parliament," in *The 'Double Democratic Deficit': Parliamentary Accountability and the Use of Force under International Auspices* edited by Hans Born and Heiner Haenggi (England: Ashgate Publishing Limited, 2004), p. 80. See also the independent official inquiry into the Srebrenica tragedy and the role of Dutchbat/UNPROFOR undertaken by the Netherlands' Institute for War Research, April 10, 2002.

²⁶ See Epilogue in Nederlandse Instituut voor Oorlogsdocumentatie, "Srebrenica, A 'safe' area: Reconstruction, background, consequences and analyses of the fall of a safe area, April 2002 available at <http://www.srebrenica.nl/en/menulinks.htm> seen on June 6, 2002."

²⁷ See paragraph 7, Epilogue in Nederlandse Instituut voor Oorlogsdocumentatie, "Srebrenica, A 'safe' area: Reconstruction, background, consequences and analyses of the fall of a safe area, April 2002 available at <http://www.srebrenica.nl/en/menulinks.htm> seen on June 6, 2002."

²⁸ Jan Hoekema, "Srebrenica, Dutchbat and the Role of the Netherlands' Parliament," in *The 'Double Democratic Deficit': Parliamentary Accountability and the Use of Force under International Auspices* edited by Hans Born and Heiner Haenggi (England: Ashgate Publishing Limited, 2004), p. 75. See also the independent official inquiry into the Srebrenica tragedy and the role of Dutchbat/UNPROFOR undertaken by the Netherlands' Institute for War Research.

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- Lack of clarity in the mission and the force required.²⁹

The panel further recommended that troop-contributing states be fully briefed on ground conditions and consulted if mandates and objectives change. It recommended that the UN consider staying out of situations where its involvement could not make a positive contribution to protecting civilians or to improving the situation.³⁰

UN and regional organization partnerships

As the number of UN operations and the duration of these operations have increased, the UN has been forced to look for additional sources of troops. It has explored partnerships with regional organizations, particularly those with military capabilities. This was the case in the former Yugoslavia, where the UN worked with NATO to deploy peacekeeping forces. Of course, as noted in the discussion of Srebrenica, working with other organizations can raise command and accountability issues and complicate any unity of effort. And even if a regional organization has manpower, that manpower may not be adequately trained for peacekeeping duties. The UN has therefore entered into training and partnership agreements with regional organizations with a goal of having ready forces on each continent around the world.³¹ The partnership with the African Union to create an African Standby Force is an example of such an effort.³²

The Organization of American States is a relative newcomer to participation in UN peace operations. As shown in Table 2 (attached), OAS member state contribution to UN operations are not large, with principal contributions being to the UN Stabilization Mission in Haiti starting in June 2004. As shown on the table, contributions of personnel are generally in the hundreds. Brazil is one of the larger contributors, with 1,200 troops in Haiti. Recent reports, however, indicate the difficulty of the mission: "...the Brazilian effort [in Haiti] has been plagued by many of the same problems that have faced peacekeepers in other conflicted corners of the globe, namely, a lack of money and political backing, and questions over the use of lethal force."³³

²⁹ UN Doc A/55/305, "Comprehensive review of the whole question of peacekeeping operations in all their aspects," (21 August 2000) available at http://www.un.org/peace/reports/peace_operations/report.htm seen on August 29, 2000.

³⁰ UN Doc A/55/305, "Comprehensive review of the whole question of peacekeeping operations in all their aspects," (21 August 2000) available at http://www.un.org/peace/reports/peace_operations/report.htm seen on August 29, 2000.

³¹ See Lessons Learned Unit, Department of Peacekeeping Operations, United Nations, "Cooperation between the United Nations and Regional Organizations/Arrangements in a Peacekeeping Environment: Suggested Principles and Mechanisms," (March 1999).

³² UN Peacekeeping, FAQ: Meeting New Challenges: How is the UN cooperating with other peace and security organizations: available at <http://www.un.org/Depts/dpko/dpko/faq/q10.htm> seen on January 19, 2006.

³³ Ginger Thompson, "Fear and Death Ensnare U.N.'s Soldiers in Haiti," *New York Times*, January 24, 2006 available at <http://www.nytimes.com/2006/01/24/international/americas/24haiti.html?pagewanted+print> seen on January 27, 2006.

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Whether this will change as the UN works to set up regular partnerships with regional organizations remains to be seen. The capacity problem is a serious one, if we recall that at the end of 2004, the UN oversaw 16 operations with more than 60,000 soldiers in the field from 97 countries.³⁴ The ten main troop contributing states are Pakistan, Bangladesh, Nigeria, Ghana, India, Ethiopia, South Africa, Uruguay, Jordan, and Kenya. 10% of those deployed in peacekeeping come from the European Union with only 1% from the U.S.³⁵

Regional organizations may have tactical and operational advantages because of a better understanding of local conditions. Regional organizations may be more acceptable to warring parties, and have a reason to see an operation through because of an interest in maintaining stability in the region. But unless UN, regional, and national forces are coordinated with unified mandates and clear chains of command, there is a risk of exacerbating a situation by introducing into it badly prepared forces carrying out unclear or even contradictory mandates. And regional forces will also have to be subjected to scrutiny and accountability. For example, in Sierra Leone in 1998, the inability of ECOMOG forces to maintain control of the capital, Freetown, led to an evacuation of the city until the regional forces bolstered by British troops could retake the capital.³⁶

Until a time when chains of command between regional forces and the UN are established, unclear lines of accountability may remain a problem. As the UN Secretary-General noted:

As things stand now, different governance structures for the many parts of the system, overlapping mandates and mandates that reflect earlier rather than current priorities all combine to hobble our effectiveness.³⁷

Still, regional organization partnerships with the UN are not just an abstract idea and have operated in Liberia, Sierra Leone, Haiti, Croatia, Eastern Slavonia, Georgia, Tajikistan, Bosnia and Herzegovina, Cambodia and Papua New Guinea.³⁸ Regional peacekeeping partners can also pave the way for a UN operation by being able to deploy more rapidly. This was the case with the French-led European Union Operation Artemis that preceded the arrival of the UN's MONUC in July 2003, and in Liberia in October 2003 and in the Cote d'Ivoire in 2004 where ECOWAS forces paved the way for the deployment of United Nations troops.³⁹ UN experience working with the African Union in

³⁴ A more secure world: Our shared responsibility, Report of the Secretary-General's High-level Panel on Threats, Challenges and Change (United Nations: 2004), p. 68, para. 213.

³⁵ UN Peacekeeping FAQ: Meeting New Challenges: Who Contributes Personnel? available at <http://www.un.org/Depts/dpko/faq/98.htm> viewed on February 13, 2006.

³⁶ "Sierra Leone—UNOMSIL: Background," available at: <http://www.un.org/Depts/DPKO/Missions/unomsil/UnomsilB.htm> seen on February 14, 2006.

³⁷ In Larger Freedom, para. 156.

³⁸ UN Peacekeeping, FAQ: Meeting New Challenges: How is the UN cooperating with other peace and security organizations? available at <http://www.un.org/Depts/dpko/dpko/faq/q10.htm> seen on January 19, 2006.

³⁹ See United Nations Operation in Cote d'Ivoire – Background available at: <http://www.un.org/Depts/dpko/missions/unoci/background/html> seen on February 14, 2006.

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Burundi and with the Multinational Interim Force in Haiti provided models for the partnership between the UN and the Organization of American States to form and to field the International Civilian Mission to Haiti (MICIVIH) in 1993.

Although we tend to focus on the miscalculations that have occurred in UN operations when discussing accountability, it may be useful to recall that UN involvement in complex operations has not been casually done. There was a nearly 30-year interval between the UN operation in the Congo in the early 1960s and the 1989 UN Transition Assistance Group in Namibia (UNTAG). Following the difficulties faced by UN operations in Somalia, Rwanda and Kosovo in the 1990s, the report of the Panel on Peace Operations noted that member states were not willing to accept the risks involved, partly because they are not clear about how to define their national interests in taking such risks, and partly because the risks may be difficult to assess and may suddenly change.

Memories of peacekeepers murdered in Mogadishu and Kigali and taken hostage in Sierra Leone help to explain the difficulties Member States are having in convincing their national legislatures and publics that they should support the deployment of their troops to United Nations-led operations, particularly in Africa. Moreover, developed States tend not to see strategic national interests at stake.⁴⁰

The above attitudes are now exacerbated by the full engagement of U.S. troops around the world making at least those forces less available for UN operations.

The report recognized the shortcomings of Security Council decision-making and the operational problems thus created. Among other things, collaboration with troop contributing states needs to be expanded so that soldiers can be properly equipped and trained for UN missions:

As a political body, the Security Council focuses on consensus-building, even though it can take decisions with less than unanimity. But the compromises required to build consensus can be made at the expense of specificity, and the resulting ambiguity can have serious consequences in the field if the mandate is then subject to varying interpretation by different elements of a peace operation; or if local actors perceive a less than complete Council commitment to peace implementation that offers encouragement to spoilers... While it [the Panel] acknowledges the utility of political compromise in many cases, the Panel comes down in this case on the side of clarity, especially for operations that will deploy into dangerous circumstances.⁴¹

⁴⁰ Report of the Panel on Peace Operations, para. 105. Para. 53: The Panel recognizes that the United Nations does not wage war. Where enforcement action is required, it has consistently been entrusted to coalitions of willing States, with the authorization of the Security Council, acting under Chapter VII of the Charter.

⁴¹ Report of the Panel on Peace Operations, para. 56.

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However clear or unclear the mandate at the international level, national authorities must take care to understand the requirements for a successful outcome and ensure that the appropriate resources are available to carry out any military mission they assign to their forces. As the Dutch government discovered following the withdrawal of the Dutch battalion from Srebrenica in 1995, its failure to provide the means that might have led to the successful outcome of the operation led to the resignation of several of the responsible ministers. It dealt a serious blow to the credibility of UN peace operations and contributed to disenchantment with UN missions.

Accountability at the individual level

Through national institutions. Decades of experience with UN peacekeeping operations and developments in international and domestic law are increasing the demands for individual accountability of peacekeeping soldiers in the field. As with the authorization (strategic) and operations levels, individual accountability takes place in both international and national channels.

The more familiar and better-developed channel for individual accountability is the national one. An example of how national accountability mechanisms work can be seen in the questions raised and reforms undertaken by the Canadian military following a 1993 incident in Somalia. Two Canadian Airborne Regiment soldiers serving as part of the UNOSOM UN peacekeeping force in Somalia tortured and beat to death a 16-year-old Somali civilian, Shidane Arone. One of the two soldiers attempted suicide, resulting in such serious brain damage that he was deemed unfit for trial. The other soldier was convicted of manslaughter and sentenced to five years in prison and a discharge from the army with disgrace.

The beating death of the Somali youth was troubling enough without the discovery of Canadian military hazing rituals that included dehumanizing and racist behavior and remarks. Experts involved in the government-sponsored public inquiry, the Commission of Inquiry into the Deployment of Canadian Forces to Somalia, noted that these practices, coupled with the intensity of work under high stress and little recreational outlet, readily created the conditions that led to abusive behavior.⁴² The discovery of such actions led to public inquiries on the overall suitability and preparedness of Canadian soldiers for peace operations.⁴³

Public confidence was further shaken in the Canadian government's sincerity and ability to bring the soldiers involved and the military leadership to account because of the government's failure to cooperate with the inquiry and efforts to

⁴² UN Doc A/59/710 "Comprehensive review of the whole question of peacekeeping operations in all their aspects," (24 March 2005), para.50. See also Report of the Somalia Commission of Inquiry (1997) available at <http://www.dnd.ca/somalia/vol0/indexe.htm> seen on February 13, 2006.

⁴³ See Report of the Somalia Commission of Inquiry, "Conclusion," p. 1 available at <http://www.dnd.ca/somalia/vol0/v0s10e.htm> seen on February 13, 2006.

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cover up these occurrences.⁴⁴ In the wake of this event, the Canadian military undertook reforms including the creation of an Inspector-General reporting to the civilian authorities rather than the military command.⁴⁵

In a Westminster style parliamentary system with strong party discipline, it is difficult to restrain the power of the executive or indeed even to extract information. To counter this concentration of power, Canada had followed the British tradition of “Royal Commissions,” or Public Inquiries with wide-ranging investigative powers. The government (not the parliament) appoints the Public Inquiries to examine matters of wide public concern. Although the findings of such inquiries can lead to parliamentary debates, “[i]t is a cabinet decision (“Order in Council”) which begins, ends or changes the mandate of an inquiry. The inquiry commissions are appointed by cabinet under the Inquiries Act and report their findings to cabinet and the prime minister for appropriate action.⁴⁶ Understanding this background gives added significance to the Commission’s observation that there is “a perceived need to strengthen the role of parliament in the development and scrutiny of defence” including the power to convene public inquiries.⁴⁷ In effect, the executive remains key to implementing reforms, but may not undertake them without legislative or public pressure. Investigations may reveal, legislatures may prod, but the executive will have to implement.⁴⁸

Through international institutions. Accountability at the individual level did not exist in UN-sponsored international operations other than through national command structures, until 1999 with the issuance of the UN Secretary-General’s Bulletin on “Observance by United Nations Forces of International Humanitarian Law.”⁴⁹ Prior to 1999, the UN did not regard those serving in UN peace support operations as bound by international humanitarian law because it maintained that “the UN is unsuited for carrying out most of the obligations in the [Geneva] [C]onventions, because it lacks the administrative organs with which states are endowed.”⁵⁰ Soldiers serving in UN operations were therefore assumed to be bound to international humanitarian law through their national systems.

This changed significantly following the revelation in 2004 of sexual exploitation and abuse by UN peacekeeping personnel in the UN Organization Mission in the Democratic Republic of the Congo (MONUC) that triggered a major UN effort to upgrade accountability for such individual actions at the

⁴⁴ See Report of the Somalia Commission of Inquiry, “Conclusion,” p. 2 available at <http://www.dnd.ca/somalia/vol0/v0s10e.htm> seen on February 13, 2006.

⁴⁵ See Report of the Somalia Commission of Inquiry available at <http://www.dnd.ca/somalia/vol0/v0s10e.htm> seen on February 13, 2006.

⁴⁶ Inquiries Act, R.S., c-1-11, available at <http://laws.justice.gc.ca/en/I-11/text.html> seen on January 16, 2006.

⁴⁷ See Report of the Somalia Commission of Inquiry, “Accountability,” p. 2. available at <http://www.dnd.ca/somalia/vol0/v0s10e.htm> seen on February 13, 2006.

⁴⁸ See Report of the Somalia Commission of Inquiry, “Accountability,” p. 3. available at <http://www.dnd.ca/somalia/vol0/v0s10e.htm> seen on February 13, 2006.

⁴⁹ UN Doc. ST/SGB/1999/13: Observance by United Nations Forces of International Humanitarian Law.

⁵⁰ Robert C.R. Siekmann, “The legal responsibility of military personnel,” in Charlotte Ku and Harold K. Jacobson, *Democratic Accountability and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003), p. 109.

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international level. Unfortunately, problems of sexual abuse and exploitation by UN peacekeepers did not start in the Congo, but were also documented in Bosnia and Herzegovina, Kosovo, Cambodia and Timor-Leste in the 1990s and in West Africa in 2002.⁵¹

In response to these problems, the UN Secretary-General issued a bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) that applies to all UN peacekeeping personnel, including civilian police, military observers, members of national contingents, UN volunteers, consultants and individual contractors. The UN General Assembly has further approved “Ten Rules: Code of Personal Conduct for Blue Helmets” and “We Are United Nations Peacekeepers” with a recommendation that all UN agreements with troop contributing states include this code, with an assurance that national authorities will hold their military contingents to that standard and to account, if the standard is not met.⁵²

Applying such standards is complicated in the difficult environment of many peace operations, where a variety of personnel are held accountable to different authorities and answer to different mandates, as may be the case with NGO relief workers, contractors, and the military. Where misconduct has occurred, the lack of a functioning judicial system on the ground and the inability to undertake a proper investigation that could be used in a national legal system also have hampered efforts to hold individual soldiers accountable.⁵³

In March 2005, the UN General Assembly made specific recommendations, in “A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations,” that include:

- The establishment of a permanent professional investigative mechanism in the UN to investigate cases of sexual exploitation and abuse.
- That the UN itself undertake appropriate training and data collection to assist investigations and to respond to allegations as they occur.
- Establishing the accountability of managers and commanders to eliminate the problem and to take prompt action to address such misconduct once uncovered.
 - That individual troops bear some burden for the support of the victims.
 - That UN investigations include national military prosecutors who can then ensure that information located at the site of the misconduct is appropriately gathered for use in a national legal proceeding.
 - That troop-contributing states understand that they have a legal obligation to prosecute acts of sexual misconduct and exploitation. (The UN’s model status

⁵¹ UN Doc A/59/710, “Comprehensive review of the whole question of peacekeeping operations in all their aspects,” (24 March 2005), p. 7.

⁵² UN Doc A/59/710 “Comprehensive review of the whole question of peacekeeping operations in all their aspects,” (24 March 2005), p. 11.

⁵³ UN Doc A/59/710 “Comprehensive review of the whole question of peacekeeping operations in all their aspects,” (24 March 2005), p. 4.

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of forces of agreement provides that the troop-contributing country has criminal and disciplinary jurisdiction over its own military contingents. Para. 19).

- That the UN consider appropriate modes of criminal prosecution for those who may not fall under any national jurisdiction – a particular issue concerning the civilians and others who may be involved in UN missions as experts and who may be covered by the privileges and immunities available to UN personnel in the discharge of their functions or duties. (It was further recommended that all civilian contractors be provided with the UN S-G’s bulletin on protection from sexual exploitation. Para. 24).⁵⁴

These recommendations are the latest series of steps taken by the United Nations to provide accountability for sexual misdeeds that take place while individuals are on UN missions. The report acknowledges that the UN is ultimately accountable for actions taken by participants in peacekeeping operations. To discharge this responsibility, the UN now has instituted procedures to address problems as soon as they arise and to take appropriate measures against those involved, including through international institutions and international law, if national systems are not available to address abuses. These recent developments are further contributing to a system of blended accountability in implementing international mandates involves the use of military forces.

Conclusion: toward a collective system of accountability

In the words of the UN Secretary-General Kofi Annan: “Where there is accountability, we will progress; where there is none, we will underperform.”⁵⁵ This review of the past decade of military operations under UN auspices confirms this, and shows that a lack of accountability reduces the legitimacy, credibility and effectiveness of UN operations. It is clear that UN operations have to live up to the organization’s own standards of respect for human rights, international law including humanitarian law, and responsible conduct. It is also clear that UN operations will continue to rely heavily on national and regional resources in order to carry out UN mandates and to maintain accountability. From a legal and institutional standpoint, this will always be complicated because of the wide range of issues that arise in peace operations. These issues include:

- the nature of the operation;
- conditions in the field;
- the status of the individuals involved – whether military, police, civilian, or other;
- local practices and the practices of troop contributing states.

Experience to date tells us that participation in an operation through an

⁵⁴ UN Doc A/59/710 “Comprehensive review of the whole question of peacekeeping operations in all their aspects,” (24 March 2005), pp. 4-6.

⁵⁵ UN Doc A/59/2005, “In larger freedom: towards development, security and human rights for all,” Report of the UN Secretary-General (21 March 2005), p. 7, para. 22.

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international organization does not reduce or absolve a state of its national responsibility. At the same time, individual state responsibility does not reduce or absolve the responsibility of international organizations. In 2004, a multi-year study conducted under the auspices of the International Law Association's Committee on the Accountability of International Organizations concluded that, "given the wide range of levels on which international organizations can operate (international and multiple national and regional), there is no comprehensive legal system governing all relevant responsibility and accountability questions," and that "at each level, a different legal framework and a different kind of ensuing responsibility and accountability might apply."⁵⁶ The Committee concluded that this resulted in a coordinate responsibility. In such a multifaceted environment, blame-shifting and shifts of responsibility can easily take place, so that, in the end there may be no accountability. As UN Secretary-General Kofi Annan recognized, not having an effective system of accountability and responsibility over the long run is detrimental to the credibility and ultimately legitimacy of international operations.⁵⁷

Table 3 records the interplay between the international and the national at various key points – authorization (columns 1 and 2), operational (columns 3 and 4), and individual (column 5).

Locus of responsibility and points of accountability⁵⁸ (see Table 3 attached)

Points of accountability that blend the international and national are perhaps clearest at the authorization level. Indeed, since the 1990s, a trend toward more closely tying together international and national systems of authorization seems to be developing with an increasing number of countries requiring authorization by some international body prior to national authorization of the use of military forces.⁵⁹ The area of individual accountability also seems to be developing, with new standards and mechanisms emerging to ensure that soldiers and others taking part in UN operations follow common standards based on international human rights and humanitarian law. The failure to observe these standards will involve sanctions for the perpetrator and, to the extent possible, remedy for the victim.

This leaves accountability at the operations level the area where it is most difficult to arrive at a common standard, because military forces remain under the

⁵⁶ International Law Association, Final Report, Committee on the Accountability of International Organizations, Sir Franklin Berman (Chair), Malcolm Shaw and Karel Wellens (Co-Rapporteurs) (Berlin 2004), p. 19 available at http://www.ila-hq.org/htm/layout_committee.htm visited on February 13, 2006.

⁵⁷ See A/59/710, "Letter dated 24 March 2005 from the Secretary-General to the President of the General Assembly," transmitting "A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations," pp. 1-2.

⁵⁸ From Charlotte Ku and Harold K. Jacobson, *Democratic Accountability and the Use of Force in International Law* (Cambridge: Cambridge University Press, 2003), p. 377.

⁵⁹ See Lori Fisler Damrosch, "The United States Congress, the German *Bundestag*, and NATO's Intervention in Kosovo," in *The 'Double Democratic Deficit: Parliamentary Accountability and the Use of Force under International Auspices*. Hans Born and Heiner Haenggi, eds. (Ashgate: Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2004), pp. 131-46.

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control of national governments. The ability and willingness of states to contribute to international operations unless their immediate interests are involved perhaps remains the greatest challenge to an effective UN security system. Meeting the operational needs of UN-mandated missions may become increasingly difficult and may add to, rather than reduce, the accountability issues that will arise if ill-prepared or inadequate forces are deployed. General guidelines and best practices are important. Nevertheless, 60 years of experience should provide guidance on where there are critical points in a mission that will increase chances either for success or for failure. Accountability issues will increase in number and complexity depending on the nature of the operation and parties involved.

A collective system of accountability that blends both national and international elements is emerging. We know that the system will not be identically applied in every situation, depending on who is involved, where the mission takes place, the nature of the operation and the nature of the problem. But we do see a growing desire in the UN member states to ensure that there is accountability for actions taken, encompassing all stages and actors, from the authorization of an operation to the individuals who carry it out.

The multilateralization of the use of force has led blending processes and practices that have produced new concepts of collective/coordinate responsibility and collective accountability in international military operations. This evolution will continue as different models of troop contributors and mandates merge to address different crises, capacities and objectives. It will remain a painstaking and sometimes acrimonious process as actors at international, national and individual levels carry out their respective functions to maintain international peace and security in the twenty-first century.