LAW ENFORCEMENT WITHIN THE FRAMEWORK OF PEACE SUPPORT OPERATIONS

Edited by

ROBERTA ARNOLD
TABLE OF CONTENTS

List of Acronyms and Abbreviations .......................................................... xv
Introduction ........................................................................................................ xxi

PART I: LAW ENFORCEMENT—A PSO TASK?

Chapter 1: The Transposition of Inter-State Self-Defense and Use of Force onto Operational Mandates for Peace Support Operations ......................................................... 3
Geert-Jan Alexander Knoops
A. Introduction .................................................................................................. 3
C. Use of Force by Peacekeepers Engaged in (International) Armed Conflicts ................................................................. 6
   1. The Normative Framework for Peacekeepers .............................................. 6
   2. Defining Peacekeepers as “Combatants” ..................................................... 9
   3. Discretionary Boundaries for Peacekeepers to Engage in Combat .......... 10
D. Use of Force by Peacekeepers Beyond the Framework of an Armed Conflict ......................................................................................... 13
   1. Use of Force Against Non-State Actors .................................................... 13
   2. Defining “Armed Attack” Against Peacekeepers ....................................... 16
   3. Self-Defense Pursuant to Article 51 as an Operational Mandate for Peacekeepers ................................................................. 17
   4. Mandating the Use of Force by Peacekeepers Based upon “Hostile Act” and “Hostile Intent” ................................................................. 19
E. Conclusions .................................................................................................. 21

Sigmar Stadlmeier and Franz Leidenmuehler
A. Introduction .................................................................................................. 23
B. The Law of Occupation—Scope of Application and Contents .................... 24
C. Limits to Legislative Action by the Occupying Power—The “Principle of Preservation” ................................................................. 26
E. Legal Basis for Derogation from the Classic Law of Occupation .................. 28
F. Conclusions .................................................................................................. 31

Chapter 3: The Prosecution of Criminals as a Peace-Building Tool:
Cooperation with the ICC and the Case of the LRA in Northern Uganda

Emmanuel Kasimbazi

A. Introduction
B. Overview of International Criminal Court
C. The Lord's Resistance Army Conflict
D. Conditions for the ICC to Prosecute LRA Rebels
   1. Jurisdiction
   2. Other Conditions Under the ICC Statute
E. Alleged Crimes Committed by the LRA
F. Prospects of the LRA Prosecution by the ICC Towards the Peace-Building Process in Northern Uganda
G. Challenges of the ICC as a Peace-Building Tool in Northern Uganda
H. Conclusions

PART II: LAW ENFORCEMENT WITHIN THE FRAMEWORK OF PSOs—LIMITS AND POSSIBILITIES

Chapter 4: The Limits on Law Enforcement by Peacekeeping Operations in Accordance with SOFAs, ROEs and SOPs

Ulf Häusssler

A. Introduction
B. Transitional Authority: Sources and Limits
   1. The International Mandate and SOFAs as Sources of Transitional Authority
   2. The International Mandate and SOFAs as Inherent Limits of Transitional Authority
   3. Limits of Transitional Authority Deriving from General Principles of International Humanitarian and Human Rights Law
C. The Practice of International Peacekeeping—Key Examples
   1. The KFOR Law and Order Mission
   2. Protection and Defense of Designated Property
   3. Operational Detention
D. Assessment and Conclusions

Chapter 5: The Impact of Organized Crime on Peace Support Operations

Fabian Kuehner

A. Introduction
B. Definitions
   1. Organized Crime
   2. Peace Support Operations (PSOs)
C. The Post-Conflict Environment
D. The Impact of Organized Crime on PSOs—A Closer Look
   1. How Does Organized Crime Affect PSOs?
## Table of Contents

2. The Legal Framework of PSOs ........................................... 78  
3. The Military and Civilian Peace Supporting Operators and  
   Their Tasks ................................................................. 80  
4. Other Actors ...................................................................... 81  

E. Case Studies ........................................................................ 82  
1. Bosnia and Herzegovina (BiH) ........................................... 82  
   a. Organized Crime Activities .......................................... 82  
   b. Law Enforcement Institutions and Their Legal  
      Framework .................................................................. 83  
   c. Dilemmas and Problems ............................................. 86  
2. Kosovo ................................................................................. 87  
   a. Organized Crime Activities .......................................... 87  
   b. Law Enforcement Institutions and Their Legal  
      Framework .................................................................. 90  
   c. Dilemmas and Problems ............................................. 93  
3. Afghanistan (ISAF) ............................................................... 94  
   a. Organized Crime Activities .......................................... 94  
   b. Law Enforcement Institutions and Their Legal  
      Framework .................................................................. 97  
   c. Dilemmas and Problems ............................................. 101  

F. Conclusions ........................................................................... 102  

Chapter 6: Peace Support Forces—Assisting the Civilian Authorities in  
Criminal Prosecutions ............................................................... 105  

Kwai Hong Ip  
A. Introduction ......................................................................... 105  
B. Authorized Tasks and International Obligations ....................... 106  
C. Initial Phase of Operations—Control of the Ground Environment and  
   Post-Conflict Actions .......................................................... 108  
   1. Securing Evidence ......................................................... 108  
   2. Documents ...................................................................... 109  
   3. Witnesses ....................................................................... 110  
   4. Mass Graves .................................................................... 112  
D. Applicable Criminal Procedure and Admissibility of Evidence ....... 112  
E. Intelligence Coordination ...................................................... 114  
   1. Threat and Criminal Intelligence .................................... 114  
   2. Sharing Intelligence and Technical Means—Cooperation  
      Arrangements ................................................................ 115  
   3. Classification and Declassification ................................... 116  
F. Crime Scenes and Physical Evidence ........................................ 117  
G. PSF Participation in Searches and Arrests—Coordination  
   Arrangements ................................................................. 119  
H. Conclusions ......................................................................... 119
PART III: LAW ENFORCEMENT AND FORCE PROTECTION BY PSO FORCES: PRACTICAL TOOLS

Chapter 7: The Maintenance of Law and Order in the Aftermath of International Armed Conflict—Lessons Learned from Iraq
Nicholas J. Mercer
A. Introduction .................................................. 123
B. Planning—Time ............................................. 124
C. Training/Use of Force .................................... 125
D. Prisoners ...................................................... 126
E. Nation-Building—Practical Difficulties ............... 129
   1. Constitutional/Legal Framework ...................... 130
   2. Police .................................................... 132
   3. Courts/Judiciary ........................................... 133
   4. Prisons .................................................... 135
   5. International Oversight ................................ 136
F. Finance ....................................................... 136
G. Conclusions ............................................... 137

Chapter 8: The Apprehension of Indicted War Criminals: Lessons from the Former Yugoslavia
Benjamin Perrin
A. Introduction .................................................. 139
B. Law Enforcement Challenges in the International Context ........................................... 139
C. Legal Framework for the Arrest, Detention, Surrender and Transfer of Suspects and Accused .................................................................................................................. 141
   1. Determining the Enforcement Authority of the Arrest Warrant ................................. 141
   2. Rules Governing the Arrest of Suspects and Accused at the ICTY................................. 142
      a. Arrest, Detention and Questioning of Suspects ............................................... 143
      b. Sealed and Public Indictments ................................................................. 143
      c. Execution of Arrest Warrants ................................................................. 144
D. Apprehending Indicted War Criminals in Practice ......................................................... 145
   1. Voluntary Surrender ........................................ 145
   2. Arrest by Domestic State Authorities .............................................................. 146
   3. Arrest by International Peace Support Forces ...................................................... 147
   4. At Large ......................................................... 148
E. Novel Approaches to Apprehending Indicted War Criminals ........................................ 148
   1. Diplomatic and Economic Sanctions Against Non-Cooperative States ................. 149
   2. Freezing Assets and Restricting Travel of Accused and Associates ......................... 150
   3. Deception and Trickery of Accused ............................................................... 151
<table>
<thead>
<tr>
<th>Chapter 9: Law Enforcement in Post-Conflict Bosnia and Herzegovina: War Crimes Prosecutions and Judicial Restructuring</th>
<th>157</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christopher Harland</td>
<td></td>
</tr>
<tr>
<td>A. Introduction</td>
<td>157</td>
</tr>
<tr>
<td>B. Brief History</td>
<td>158</td>
</tr>
<tr>
<td>C. The “Rules of the Road” System: Balancing War Crimes Trials and Freedom of Movement</td>
<td>159</td>
</tr>
<tr>
<td>1. The Problem</td>
<td>160</td>
</tr>
<tr>
<td>2. The Proposed Solution</td>
<td>161</td>
</tr>
<tr>
<td>3. Outcome of the RoR Procedure</td>
<td>162</td>
</tr>
<tr>
<td>4. Conclusions and Prospects for Use in Other Contexts</td>
<td>165</td>
</tr>
<tr>
<td>D. Vetting of Judges</td>
<td>166</td>
</tr>
<tr>
<td>1. Introduction</td>
<td>166</td>
</tr>
<tr>
<td>2. Reselection System</td>
<td>167</td>
</tr>
<tr>
<td>3. Results of the Reselection System</td>
<td>168</td>
</tr>
<tr>
<td>4. Conclusions Regarding Future Use of such a System</td>
<td>170</td>
</tr>
<tr>
<td>E. A New War Crimes Chamber: Linking International and Domestic War Crimes Trials</td>
<td>171</td>
</tr>
<tr>
<td>1. The Problem</td>
<td>171</td>
</tr>
<tr>
<td>2. The Proposed Solution</td>
<td>174</td>
</tr>
<tr>
<td>3. Results of the War Crimes Chamber to Date</td>
<td>175</td>
</tr>
<tr>
<td>4. Conclusions Regarding Future Uses of such a System</td>
<td>176</td>
</tr>
<tr>
<td>F. Conclusions</td>
<td>177</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 10: Forensic Anthropology in Peace Support Operations</th>
<th>179</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mercedes Doretti and Jennifer Burrell</td>
<td></td>
</tr>
<tr>
<td>A. Introduction</td>
<td>179</td>
</tr>
<tr>
<td>B. The Argentine Case and the Formation of EAAF</td>
<td>180</td>
</tr>
<tr>
<td>C. Methodologies and Phases of Forensic Anthropology Investigation of a Human Rights Case</td>
<td>182</td>
</tr>
<tr>
<td>1. Preliminary Investigation</td>
<td>182</td>
</tr>
<tr>
<td>2. The Archaeological Work</td>
<td>184</td>
</tr>
<tr>
<td>3. Laboratory Work</td>
<td>187</td>
</tr>
<tr>
<td>4. Identifications: Problems and Dilemmas</td>
<td>188</td>
</tr>
<tr>
<td>5. Strategies</td>
<td>190</td>
</tr>
<tr>
<td>6. Criteria for Case Selection</td>
<td>190</td>
</tr>
<tr>
<td>7. Psychological Assistance to the Relatives of Victims</td>
<td>191</td>
</tr>
<tr>
<td>D. Conclusions and Recommendations</td>
<td>192</td>
</tr>
</tbody>
</table>
Chapter 11: The Treatment of Detainees by Peacekeepers: 
Applying Principles and Standards at the 
Point of Detention ................................................. 197

Bruce "Ossie" Oswald

A. Introduction ......................................................... 197
B. Defining and Classifying Detainees ................................ 200
C. The Treatment of Detainees: Legal Principles and Standards .... 204
   1. General Principles .............................................. 206
   2. Specific Principles and Standards ............................ 209
      a. Principles Relevant to the Treatment of Detainees .......... 209
         i. Use of Force ............................................. 209
         ii. Prohibition of Torture and Ill-Treatment ................ 210
         iii. Protection from the Environment and 
               Other Threats ............................................ 213
         iv. Reasons for Detention ................................... 213
         v. Registration of Detainees ................................ 213
         vi. Notification of Detention ................................ 214
         vii. Medical Treatments ...................................... 214
         viii. Categories of Persons Entitled to Special 
               Protection ................................................ 215
         ix. Reprisals ............................................... 216
         x. Release or Ongoing Custody ................................ 216
        xi. Transfer ................................................ 217
        xii. Handover ................................................. 217
        xiii. Remedies if There Has Been Ill-Treatment ............ 218
      b. Accountability ............................................... 218
         i. Recording and Reporting .................................. 218
         ii. Investigations ............................................ 219
         iii. Monitoring ............................................... 220
D. Conclusions ...................................................... 220

Chapter 12: IHL v. Human Rights: The Al Jedda Case and Issues 
Arriving from an Operational Perspective .......................... 229

James AE Johnston

A. Introduction ..................................................... 229
B. Background ...................................................... 231
C. Divisional Court Proceedings: July 20–21, 2005 ............... 232
D. Court of Appeal Proceedings: January 16–18, 2006 ............ 240
E. Operational Issues Arising ...................................... 243
F. Conclusions ...................................................... 253

Chapter 13: Witness Protection by Peace Missions ...................... 257

Ulf Häussler

A. Introduction ..................................................... 257
B. The Internal Dimension of Witness Protection .................. 259
   1. Status and Legal Framework .................................. 259
Table of Contents

2. Preventive Action ...................................................... 260
3. Repressive Action ...................................................... 261
4. Practical Issues ......................................................... 262

C. The External Dimension of Witness Protection ............................................. 263
1. Practical Questions of Witness Protection:
   A Hypothetical Scenario .................................................. 264
2. Geographical Overlaps Between the Jurisdiction of Adjudication Bodies and Peace Missions' Areas of Operations ................................. 266
   a. The Former Yugoslavia ................................................. 267
   b. Rwanda .................................................................. 268
   c. The DRC .................................................................. 268
   d. Sudan (Darfur) .......................................................... 269
   e. Sierra Leone ............................................................. 270
   f. Cambodia ................................................................. 270
   g. Lebanon ................................................................. 271

D. Witness Protection and International Mandates ........................................... 271
1. Peace Missions in the Former Yugoslavia ................................................. 272
   a. Croatia and BiH: The UN Protection Force (UNPROFOR) .............. 272
   b. BiH: IFOR/SFOR/EUFOR ALTHEA ........................................ 273
   c. BiH: The High Representative ........................................... 275
   d. Kosovo: KFOR ........................................................... 277
   e. Kosovo: UNMIK ......................................................... 278
2. Peace Missions in the DRC ............................................................. 279
   a. MONUC ...................................................................... 279
   b. EU Peacekeeping ....................................................... 280
3. Peacekeeping in Sudan (Darfur) ............................................................... 281
4. Peacekeeping in Lebanon ................................................................. 283

E. What Cooperation May International or "Hybrid" Criminal Courts and Tribunals Seek with Peace Missions? ........................................... 283
1. ICTY and ICTR ............................................................... 284
2. The ICC ................................................................... 286
3. Sierra Leone: The Special Court ..................................................... 288
4. Cambodia: The Extraordinary Chambers ........................................... 288
5. Lebanon: The Special Tribunal ....................................................... 288

F. Assessment and Conclusions ................................................................. 290

PART IV: LAW ENFORCEMENT WITHIN PSOs—THE PROSECUTION OF PEACEKEEPERS AND THE SPECIAL CASE OF HUMAN TRAFFICKING AND SEXUAL OFFENSES

Chapter 14: Human Rights Training to Law Enforcement Agents: A Key to PSO Success .................................................. 311

David B. Hodgkinson, Sandra L. Hodgkinson, Diana C. Noone and Gregory P. Noone

A. Introduction ............................................................................ 311
B. Human Rights as a Key Factor and Basis for PSOs

1. Importance of Human Rights in PSOs
2. The Role of the UN Code of Conduct
3. Applicable Human Rights in PSOs
4. Relationship Between Law Enforcement and Human Rights Components
   a. Role of Human Rights Components
   b. A Beneficial Relationship
5. Principles for Policing Within the Human Rights Mandate
6. Setting the Scene for Success: The Right People With the Right Training

C. Training Law Enforcement Agents in Human Rights

1. Methods of Training
2. Basis for Human Rights Training
3. UN Training
4. Domestic Training by Countries

D. Effectiveness of Training

1. Misconduct
2. Case Studies
   a. Balkans
   b. Sierra Leone
   c. Democratic Republic of the Congo
3. The United Nations Responds on Sexual Exploitation and Abuse

E. Enforcement and Disciplinary Mechanisms

1. UN Police Officers and Military Observers
   a. Serious Misconduct
   b. Minor Misconduct
2. Military Members of National Contingents
   a. Serious Misconduct
   b. Minor Misconduct
   c. Legal Status
3. Sexual Harassment or Sexual Exploitation
4. Public Information

F. Recommendations

Chapter 15: The NATO Policy on Human Trafficking: Obligation to Prevent, Obligation to Repress

Roberta Arnold

A. Introduction

B. The NATO Policy on Combating Trafficking in Human Beings

1. Four Good Reasons for the Release and Enforcement of the NATO Policy
   a. Damage to the Image of the Mission and the Credibility of the Troops Deployed
Table of Contents

b. A Threat to the Security of the Mission .............................................. 358
c. A Threat to the Security of Individual Peacekeepers ......................... 358
d. Possible Prosecution Under the Host State’s Jurisdiction .................. 359
2. The Nature of the Policy ................................................................. 364
3. Obligations Imposed by the NATO Policy .......................................... 365
C. Implementation of NATO’s Policy at the Domestic Level ..................... 367
  1. Adoption of Legislative Measures .................................................. 367
  2. Introduction of Appropriate Training .............................................. 367
  3. Support to Local Authorities ......................................................... 367
  4. Adoption of Contractual Provisions Prohibiting PSO Personnel
      from Engaging in Trafficking ..................................................... 369
  5. The Example of Switzerland .......................................................... 371
D. Practical Tools for Law Enforcement Agents in the Field .................... 374
  1. General Tools .................................................................................. 374
  2. Assessment of the Situation at Checkpoints .................................... 375
  3. Other Indicators that Trafficking in Persons Might Be
      Taking Place .................................................................................. 376
  4. Use of Pocket Cards ........................................................................ 377
E. Conclusions .......................................................................................... 378

Chapter 16: Trafficking in Human Beings—Reduction Strategies for
Law Enforcement in Peace Support Operations ........................................ 381

Elizabeth Rennie
A. Introduction ..................................................................................... 381
B. Definition of Trafficking and Common Misconceptions ....................... 382
C. The Causes and Dynamics of Trafficking in Persons ......................... 383
D. The Difficulties in Investigating Trafficking in Persons Cases
    and the Extra Challenges Affiliated with a PSO ................................. 384
E. The Required Special Handling of Victims and Witnesses of
    Trafficking ....................................................................................... 387
F. Special Problems Related to the Trafficking of Children ..................... 390
G. Allegations Against Those Working Within PSOs ............................... 392
H. Tools for Successful Investigations .................................................... 394
   1. General Tools ................................................................................. 394
   2. Quick Resource List ....................................................................... 395
I. Conclusions ....................................................................................... 397

Chapter 17: The Role of the International Criminal Court in the
Prosecution of Peacekeepers for Sexual Offenses .................................... 399

Noëlle Quénivet
A. Introduction ..................................................................................... 399
B. Scope and Extent of Sexual Activities of Peacekeepers ....................... 400
C. Different Types of Peacekeepers ....................................................... 403
D. Policies, Investigation and Prosecution .............................................. 406
   1. The United Nations ........................................................................ 407
2. Prosecution of National Contingents ........................................ 409

E. The Zero-Tolerance Policy of the United Nations and International Criminal Law ........................................ 411
   1. Rape .............................................................................. 413
   2. Repeated Rapes ............................................................. 415
      a. Prostitution or Forced Prostitution .............................. 415
      b. Prostitution or Sexual Slavery ..................................... 418

F. Prosecution of Peacekeepers by International Criminal Tribunals ........................................ 420
   1. Issues Relating to Crimes ................................................ 420
      a. Genocide .................................................................... 421
      b. Crimes Against Humanity .......................................... 421
      c. War Crimes .................................................................. 423
   2. The Principle of Complementarity .................................... 424
   3. Immunity ........................................................................ 425

G. Using the ICC ...................................................................... 426
   1. Secondary Jurisdiction .................................................. 426
   2. Investigation .................................................................... 427
      a. The Old Investigation Procedure and Its Criticisms ...... 427
      b. The New Investigation Body ........................................ 428
      c. The Possible Role of the ICC in this New Investigation Body ......................................................... 430

H. Conclusion ........................................................................... 430

Final Conclusions and Remarks by the Editor ........................................ 433

Index ......................................................................................... 435