

‘Would a global constabulary prevent pre-emptive military strikes?’

**New College Lectures 2003
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CASE seminar
Friday, 5 September
New College, UNSW**

When I was boy growing up in Wollongong, I trusted in the incorruptibility and impartiality of the NSW Police, and in the dignity and integrity of serving officers. I believe that I was justified in doing so. On the several occasions the police were called to our home after my father was violent towards my mother, I felt safe with the police because they represented, among other things, fairness and reason, consistency and compassion. My confidence in the force was later shaken by the conduct of officers like Roger Rogerson and by the revelations of the Wood Royal Commission, but after teaching the subject “Police Ethics” at the Police College in 2001-2, I am now convinced the ordinary police officer is a honourable and decent human motivated by a desire to contribute to society.

Perhaps it is because the public has such confidence in the Police that our society is prepared to arm general duties officers, provide high-powered weapons to special operations units and to authorise them both to use lethal force in performing their role. By and large, our society does not appear to have any difficulty with the police being armed and sometimes taking life in securing domestic order and peace and upholding the rule of law. But our society seems to have great difficulty with the military being armed and authorised to kill in resisting aggression and pursuing security at a regional or international level. The difference in attitude – and it is quite acute – is rarely the subject of debate let alone discussion. The 200-mile territorial waters limit off the continent seems to have enormous moral significance.

Why is there a different mindset towards the police and the ADF? Three reasons come to mind. *First*, the personal firearms used by the police do not compare with the destructive capacity of weapon systems operated by the

military while there is a perception that the police are more easily and readily accountable than the military.

Second, criminal and other illegal behaviour is something most people have experienced even in a minor form and want stopped. Conversely, few people have any understanding of enemy occupation or the threats of tyrannical regimes and desperation of those subject to them. *Third*, the role of police is to uphold publicly promulgated laws based on ethical principles to which individuals are accountable while the military is deployed in pursuit of strategic, diplomatic and economic aims with respect to an undefined subject group as part of a larger political agenda.

Not surprisingly, a succession of UN Secretary Generals have advocated the creation not of a 'ready reaction force' but of an "international constabulary" to be controlled by the United Nations and charged with upholding international law and protecting the peace. Their appeals are based on Article 45 of the UN Charter which states:

In order to enable the UN to take urgent military measures, Members shall hold immediately available national contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined ... by the Security Council, with the assistance of the Military Staff Committee.

No such force has ever been established although a UN Legion was often discussed. A number of UN Member States have recently indicated their willingness to provide stand-by forces although these contingents will probably lack all the necessary specialist elements (combatant and non-combatant) and may not be ready for deployment within the UN's desired response time. Most Member states have requested 2-3 months notice of any deployment. There is still no standing UN force although many UN member states recognise the need.

In this seminar I want to ask four questions. *First*, can our understanding of police functions in the context of intra-community relations be translated with or without amendment to the regulation of international affairs.

Second, does the existence of such an international constabulary consisting of military personnel sever an essential connection between the soldier and the state, and amount to the creation of a mercenary army with all its attendant problems. *Third*, given the complexities of operating military forces and the diplomatic sensitivities associated with intervening in the affairs of a sovereign nation, would such a force be effective in any event? *Fourth*, would the existence of such a force obviate the need for nations such as the United States to launch pre-emptive strikes when they felt their national interests were directly or indirectly threatened? If it can be shown that an international constabulary could achieve even limited objectives, some of the political, diplomatic and moral objections to armed interventions by military forces might be overcome.

Part I

It needs to be remembered that police forces are not organised for the purpose of arresting each other. The purpose of the police is to prevent individual members of a society from enforcing their own view of their own rights in a dispute. They restrain a litigant from being judge over their own rights. Force as used by an army is akin to force used by one litigant against the other. Force as used by the police is used to cancel out the power of a recalcitrant litigant by preventing their coercion of the other and is used to give equal rights to both litigants. The crucial challenge is to transfer power from the litigant to the law. This requires nations to renounce the right to be the judge of their own cause. International arbitration was first attempted in 1794 with the Jay Treaty in which Britain and the United States agreed to arbitration over a number of disputes. In 1899, Italy and Argentina had signed a treaty providing for arbitration in advance. Britain and France agreed to arbitration in respect of legal disputes in 1903, excluding matters that the two parties deemed would affect their 'honour' or 'vital interests'. Although the parties were free to act outside the treaty, it provided a basis for subsequent treaties involving other nations, principally the United States.

The operation of an international constabulary depends almost entirely upon the existence of a legitimate authority?

Writing in the SMH (22-23 December 2001), Geoffrey Robertson QC argued that the 'lawful justification for overthrowing the Taliban is the obligation of the world community to stop the commission of crimes against humanity and to punish their perpetrators'. But there were several pre-conditions: 'force must be a last resort, there must be Security Council approval and a commitment to reconstruct the country'. The last resort condition is straightforward; other means must be tried first. The 'clear commitment to reconstructing the country' is practically commendable but doubtful as a compelling moral principal. What is not clear is why a UNSC resolution is a pre-condition? I have no difficulty with the issue of a legal or diplomatic resolution outlining the breach of international law or convention, advising all parties of the action they should take before specific direction is given and enforced. The body of extant international law is sufficiently broad and detailed to regulate the conduct of modern international relations. My difficulty is with the imputation that the UNSC is the only legitimate authority in determining whether and when force can be used in seeking compliance with a resolution.

While many states would agree to the transfer of power from the litigant to the law, they are concerned about the court in which that law is interpreted, judged and enforced. A fair, impartial and credible body to which disputes can be referred is required. This body must have the prestige and authority to determine matters referred to it, and to make certain orders and issue specific directions. It must also have the power to enforce its determinations. The present membership and constitution of the UNSC is not that body. The five permanent members have been compromised in various ways by their past actions or their present legacies while they themselves are likely to become the subject of matters referred to the Security Council for judgement. The Security Council as presently constituted is too self-interested, too small and too smug to be the kind of fair and impartial body that is needed to arbitrate and resolve and international disputes.

There are two other complications associated with asking military forces to act as constabularies.

First, there is a danger that an international constabulary might become or supplant the civilian police. Over the last 15 years, several countries have descended into complete domestic chaos with no legitimate, acknowledged, actual or effective government to administer local laws or preserve the peace. This was the case in Cambodia, Sierra Leone, Sudan and Somalia during the 1990s where thugs, warlords and criminal gangs operated almost with impunity. In the absence of any local order, the possibility of the UN constabulary being bogged down for a very long period while civil order is restored is very great and very real.

Second, the existence of terrorist groups or global corporations that have no territorial base or national allegiance is a complexity needing careful management. We are presently on the fault line between a world populated by nation-states, each of which ultimately pursues its own interest, and a global society, in which power is dispersed between multinational companies and organisations. Some organisations have embraced nation states and effectively subjugated them while multinational corporations undermine them from within. The complexity of dealing with international lawlessness and global aggression has the potential to prompt local diplomatic incidents and create hostility between member states and the Security Council.

Part II

There are also questions of military training and ethos to be considered. What of the social contract that exists between society and the soldier? There is an implicit understanding that the soldier serves to promote the interests of the nation (their nation), usually in the form of its self-defence and survival, and a duty to protect persons and property (which includes their own family and house). But should we ask citizens to join the military and perhaps to risk their lives in operations that do not bear directly upon the vital national interests of their country or, indeed, any country? Are we risking the dissolution of this 'understanding' – and its foundations of sacrifice, duty, loyalty and obedience -

by deploying soldiers to humanitarian relief and peacekeeping missions? And would the basis of their recruitment to such a force make their service conditional in some way?

In any event, for an international constabulary to operate effectively three paradigm changes within the military would be necessary. *First*, military forces must wholeheartedly accept the roles of humanitarian assistance and 'aid to the civil power' in disaster and environmental crisis in addition to their traditional roles of combat and deterrence. They must internalise the expectations of these new roles and broaden the measure of what it means to be in the military. The addition of roles would entail a call to internal cultural redefinition. *Second*, the military's ethos and values need to accept that victory is not the primary measure of success. It may be better to end violence and restore order than to defeat an adversary and destroy their capacity to fight. Stalemates, impasses and containment might be acceptable or even superior outcomes from an intervention. The division of Cyprus and Korea, and the limited objectives of the first Gulf War and the NATO intervention in Kosovo, were instances in which a total military victory was neither sought nor achieved. Political realities may be such that an acceptable resolution is preferred to a perfect one. This is contrary to much military thinking. *Third*, there is no longer a requirement for military forces to provide comprehensive defence against every conceivable threat to potentially aggressive neighbours. The growth of multi-lateralism means that the military capabilities of like-minded nations can be complementary or shared. Military forces no longer need to be completely autonomous in terms of command and control while they must be more pervious to political direction. This means they must exercise more closely and more frequently in multinational settings, developing standard operating procedures and confidence in each other's abilities.

Part III

But would such a force achieve it aims? Let me briefly survey past UN operations to provide a context. The first use of military personnel by the UN was in 1947 as part of the Consular Commission in Indonesia and the Special Committee on the Balkans. The international force deployed to Korea in 1950 was not a UN peacekeeping operation (in the current sense of the term) since

the enforcement action was not carried out by the UN, did not have the consent of the parties and involved the use of force. But it achieved an acceptable outcome.

The first UN peacekeeping mission - Truce Supervision Organisation (UNTSO) - arrived in Palestine in June 1948. The UN Palestine Organisation proved helpful in implementing the Arab-Israeli Armistice Agreements the following year. By this time a similar force – Military Observer Group in India and Pakistan (UNMOGIP) was sent to Kashmir. Following the 1956 Suez Crisis, the UN despatched its first Emergency Force to the region (UNEF I). It served on the Egypt-Israeli sector of the canal until 1967 when Egypt withdrew its consent. A UN Observation group (UNOGIL) was sent to Lebanon in 1958. In the 1960s and 1970s, there were UN missions in the Congo (Zaire), West New Guinea, Yemen, Cyprus, the Dominican Republic, Sinai and the India-Pakistan border region, including the long-running Peacekeeping Force in Cyprus (UNFICYP) established in March 1964, the Disengagement Observer Force deployed to the Syrian Golan Heights in May 1974 (UNDOF) and the Interim Force in Lebanon (UNIFIL) created in March 1978. None of these missions involved military personnel operating as a constabulary. But two more recent examples of constabulary type duties reveal the difficulties of what is being proposed. The first is Rwanda and the second Somalia.

Since achieving independence Belgium in 1962, Rwanda has erupted in recurrent violence between the majority Hutu tribe (who made up 89% of the population) and the minority but previously dominant Tutsis. A UN peacekeeping mission was abandoned when the Hutus launched a wave of violence in April 1994. 270 UN troops remained to prevent the butchery of the 14 local Red Cross workers who remained at their posts. After months of widespread and savage fighting, a Tutsi rebel army drove out the Hutus in mid-1994. Seven UN agencies and more than 100 NGOs returned to Rwanda. The UN was tasked with providing security around the Hutu refugee camps in Rwanda and aid to camps in neighbouring Zaire. The Tutsi-led military opened fire on Hutu refugees at the Kibeho camp on 22 April 1994. 2000 Hutus were killed. As the UN ROEs did not allow the peacekeepers to fire unless they were

fired upon, the 200 UN personnel at Kibeho watched 2000 Tutsi soldiers conduct a massacre.

After Italian and British colonisation, Somalia became an independent state in 1960. By 1990, and after several military coups, Somalia was without a central government even as the people suffered from a terrible drought. A UN mission, UNITAF, was mounted to provide humanitarian aid. Its mandate was 'to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia'. UNITAF did not achieve its objectives and was superseded by UNOSOM in April 1992. Its mandate was to 'assist the people of Somalia to promote and advance political reconciliation, through broad participation by all sectors of Somali society, and the reestablishment of national and regional institutions and civil administration in the entire country'.

UNOSOM involved 31,500 military personnel. It was led by the United States with twenty-one nations contributing personnel. Given its mandate, it was not surprising that this supposedly neutral UN mission became embroiled in the Somali civil war, principally against Somali warlord Mohammed Aidid whom the UN alleged was mainly responsible for the civil disorder and violence. It was a case of the referee trying to intervene and then becoming part of the fight. Tragically, the UN was drawn into a bloody fight with the very people it sought to assist. The conflict reached a climax at Mogadishu on 3 October 1993 in a military action depicted in the motion picture "Black Hawk Down". A US Army Black Hawk helicopter was shot down and 18 American servicemen were killed. 78 were wounded. Estimates of Somali losses exceed 500 people with another 1,000 injured. Washington hastily withdrew its contingent in early 1994 with the UN departing in March 1995. The mission was universally deemed a failure. 155 UN personnel were killed with the situation in Somalia remaining desperate. October 1993 was the turning point for UN missions and prompted a major philosophical rethink of their purpose and conduct.

From these experiences it is apparent that the UN and its members states need to be clear about what peace operations are meant to achieve and

the extent of international commitment to their objectives. As Michael Ignatieff remarks, more than just “moral disgust” is required. He sums up the dilemma.

What else but imperial arrogance could have led anyone to assume that any outside power - even one mandated by the international community - could have gone into Somalia, put an end to factional fighting and then exited, all within months? Who but a European or an American could have believed that the simple ‘exercise of our will’ could have stopped the Yugoslav catastrophe? Was our intervention there not coloured by an imperial hubris which believes we have the right to spread civility and civilisation among the sub-rational zones of the world?

The missions in Rwanda and Somalia demonstrate that it is one thing to have an international constabulary, it is another to deploy them in the right numbers with the right expertise, to give them reasonable and workable ROEs, to maintain the political will to implement UN resolutions, and to ensure they do not belong to nations complicit in the conflict. A constabulary force dominated by French troops would be unsuitable for operations in the Ivory Coast or New Caledonia; Americans would not be welcome in Iraq or Iran, Australian participation in Aceh or West Papua would be resisted. As each nation trains its own soldiers to serve in its own military under its own law, all nations participating in the constabulary would also need to be signatories to the ICC Convention. This might preclude the involvement of troops from some nations.

The other key issue is the consent of the parties made subject to the authority of the constabulary. When is this needed and when can it be dispensed with? In the UN Charter, Chapter 6 operations are defined as those ‘carried out with the consent of belligerent parties in support of efforts to achieve or maintain peace, in order to promote security and sustain life in areas of potential or actual conflict’. Chapter 7 operations are ‘carried out to restore peace between belligerent parties’ who do not all consent to intervention and may be engaged in combat activities. Between 1945 and 1989 the UNSC passed 12 Chapter 7 resolutions relating to five disputes – Palestine, the

Congo, Southern Rhodesia and the Iran-Iraq conflict. In 1990-91, there were 23 Chapter 7 resolutions of which all but two referred to Iraq's invasion of Kuwait. The other two related to the former Yugoslavia.

In 1992-93, there were 36 Chapter 7 resolutions – 19 referring to the former Yugoslavia, 6 to Somalia, 4 to Haiti, three to Iraq and Kuwait, 2 to Libya and one to Liberia and Angola.

Clearly, the UN is now more prepared to engage in missions with only partial consent than ever before. But how is consent measured? When does the UN have sufficient consent to intervene? The level of consent will often determine whether an intervention becomes an invasion (as it did in Haiti in 1995) and the extent to which a constabulary force would be respected or opposed. Experience has shown that non-consenting factions can readily repel a UN mission and lead to its withdrawal by inflicting 'unacceptable casualties' on peacekeepers. This occurred in relation to American participation in Lebanon during 1983 and Somalia a decade later.

Consent is crucial. But the nature of the operation may change when political circumstances head in unexpected directions. This is where the UN machinery and the Charter are inadequate. Chapter 7 mandates were written with prevention of conflict between states and not within them in mind. INTERFET was formed because a conventional UN mission would have taken months to mount. Yet, the need was pressing, immediate and grave. The UN would need to streamline its internal approval procedures before recruiting an international constabulary that had any hope of rapidly restoring law and order.

Part IV

The UN Charter allows member states to act in their own self-defence. Threats are most acutely felt by those at whom they are directed and made anxious by them. My grievance is always more serious; my safety more imperilled, my need more compelling than others realise. Would the existence of an international constabulary prevent pre-emptive strikes by threatened and frightened nations? Yes. Such a force, if tasked with enforcing clear and

unambiguous resolutions, and undergirded by political strength and diplomatic determination, has the potential to avert nations taking the law into their own hands.

One suspects that such a force, were it to overcome the Command-Control-Communication-Intelligence (C3I) difficulties mentioned above, might have prevented an American-led "Coalition of the Willing" taking action in Afghanistan or Iraq. My principle concerns are not, however, with the physical aspects of deploying such a force but the political inability of the UN member states to agree on where, when and how much force is required. There is still too much distrust, suspicion and self-interest in the conduct of international relations but I am driven to explore the possibilities by a desire to avoid any repeat of the avoidable tragedies in Rwanda and East Timor.