

Florida A&M University College of Law

## Scholarly Commons @ FAMU Law

---

Journal Publications

Faculty Works

---

2010

### UN Peacekeeping: A Sheep in Wolves Clothing? Review of UN Peacekeeping in Lebanon, Somalia and Kosovo: Operational and Legal Issues in Practice

Jeremy I. Levitt

Follow this and additional works at: <https://commons.law.famu.edu/faculty-research>



Part of the International Law Commons, Military, War, and Peace Commons, Rule of Law Commons, and the Transnational Law Commons

---

## Book Reviews

### UN Peacekeeping: A Sheep in Wolf's Clothing?

*UN Peacekeeping in Lebanon, Somalia and Kosovo: Operational and Legal Issues in Practice* by Ray Murphy, Cambridge: Cambridge University Press, 2007. Pp.vii+375. ISBN 978-0-521-11444-8. US\$50 (pbk).

Scholars and practitioners have been debating the legal and operational aspects of UN military operations since its enforcement actions in North Korea in 1950 and the Congo in 1960 (UN Operation in the Congo [ONUC]). Since then, the UN Security Council (UNSC) has authorized some semblance of enforcement action in Kuwait, Somalia, the former Yugoslavia, Kosovo, East Timor and Albania, and authorized, sanctioned or co-deployed forces in Liberia, Sierra Leone, the Central African Republic, the Democratic Republic of the Congo, Côte d'Ivoire and Sudan. The scholarly literature is abundant with analysis of nearly every aspect of peacekeeping and peace enforcement by the UN, regional organizations, regional alliances and coalitions of the willing.

Hence, the challenge for new scholarship on peacekeeping is to carve out an identifiable niche while simultaneously making an original contribution to scholarly debate and policy-related discourse. Ray Murphy's book attempts to meet this challenge; albeit awkwardly. Generally speaking, his text is a solid read for graduate students, junior academics and lower-level policy and operations staff in government and international institutions preoccupied with peacekeeping issues. It provides a rich analysis of the character of UN military and civilian operations in Lebanon, Somalia and Kosovo, while providing insightful regional analysis. It is a straightforward, relatively compelling and 'politically incorrect' indictment of UN peacekeeping and peace-enforcement practice and doctrine.

The book purports to illustrate general lessons that should be learned from select traditional and second-generation multidimensional peacekeeping missions in Lebanon, Somalia and Kosovo. It attempts to show how key aspects of UN military operations have considerable impact on the success of missions or mission outcomes, and how each operation – irrespective of its distinctiveness – is unlikely to succeed without significant political support from the UNSC as well as sufficient human and tangible resources. In this context, Murphy comprehensively examines the historical complexity behind the adoption, interpretation and operationalization of UNSC resolutions concerning these case studies.

While the book is rich in information and punchy analysis, five significant conceptual problems detract from the thrust of Murphy's analysis: originality, audience, methodology, clear aims and prospective solutions. Although the book offers valuable comparative legal and operational insight into the multifarious problems with UN operations in Lebanon, Somalia and Kosovo, it is not clear what new information is unearthed. In addition, it is difficult to

discern the intended audience for the text because, while it provides adequate information for the peacekeeping enthusiast, it falls short of offering cutting-edge analysis for senior-level academicians and policy-makers.

Another unusual aspect of the book is the lack of any clear rationale for the choice of Lebanon, Somalia and Kosovo as case studies, which creates methodological friction with the book's stated aims and leaves the reader curious why this eclectic group of states was selected, and whether or not they represent the best cases to illustrate politico-military and legal contradictions and ineffectualness in UN peacekeeping. While Murphy acknowledges that most comprehensive studies of UN peacekeeping have employed a comparative case study approach with a focus on certain missions, he simply adopts the same method without explanation. Although he opines that there are no definitive criteria for determining whether a peacekeeping mission is successful, he argues that the best way to evaluate the performance of a mission is to apply factors deemed essential for success. Murphy oddly justifies using Lebanon, Somalia and Kosovo 'to conduct a comparative analysis' of traditional and second-generation multidimensional peacekeeping because they reflect the 'problems associated with the establishment, deployment, command, use of force' and the applicability of international humanitarian and human rights law, and represent operations conducted in three different regions of the world (p.24). However, the comparative nature of multiregional and variegated peacekeeping analysis necessitates a strong methodological foundation inclusive of a unifying theory and rationale. Hence, while Murphy rightly argues that too much time is spent on determining the modalities of deployment and too little attention paid to the politico-military aims, objectives and outputs of peacekeeping operations, his analysis also often suffers from a mild case of tunnel vision.

Murphy begins his analysis by pointing out that there is no agreed definition of peacekeeping because there is confusion about what exactly constitutes peacekeeping; yet he makes no attempt to provide such a definition. He also includes several accurate but not so novel conclusions such as: 'In order to respond to the problem of intra-state conflict, there is need for reform of doctrinal foundations and structures in the UN system' (p.298). While this is widely known, what is not known are the specific doctrinal foundations and structures needed! The book falls exceedingly short on prescription, especially given that Murphy concludes the book by openly acknowledging that the UN is 'imperfect' and that there are 'few visions of a more effective alternative' (p.311).

Notwithstanding, Murphy's call for a cessation of UN abuse, UNSC reform and expansion, and his castigation of the body and its members for being self-serving conflict-backers and geopolitical hypocrites – albeit charged with maintaining international peace and security – complements a long chorus of soloists seeking to contribute to a more humane orchestra of international peace and security. His focus on UN personnel as a unit of analysis within the book is insightful, particularly the analysis of the use of privileges and immunities as a shield by UN personnel accused of rape and other sexual crimes. Murphy's call for the development of a 'Peacekeeping Bill of Rights' or code of conduct for civilian UN personnel is spot-on as well as his arguments for a universal code of conduct for military personnel participating in UN authorized operations.

In conclusion, Murphy's general argument is that the member states of the UNSC, particularly the United States, UK, France, China and Russia, must robustly support UN peacekeeping operations irrespective of their nature or location, and ensure that such operations are well defined and achievable. Throughout the book he rightly stresses the point that political and military leadership is essential to sustainable peacekeeping and that the character and skill set of peacemakers are as important as the mandate and mission. He succinctly captures this simple concept when he states that 'A general must know how to be a diplomat and a humanist, skilled in the politics and nuances of nation-building' (p.310).

All things considered, Murphy's *UN Peacekeeping in Lebanon, Somalia and Kosovo: Operational and Legal Issues in Practice* is a worthy read.

JEREMY I. LEVITT © 2010

Florida A&M University College of Law

## Afghanistan

*The Taliban and the Crisis of Afghanistan* edited by Robert D. Crews and Amin Tarzi, London: Harvard University Press, 2008. Pp.355+4 maps+notes+index. ISBN 13-9780674-02690-2. £18.95 (pbk).

In September 1996, even as the body of the former Communist president of Afghanistan, Mohammad Najibullah, still hung from a steel post in downtown Kabul, the UN's head of special peace missions was dispatched to the city to confer international legitimacy on the Taliban's authority over a new Afghan state. Although members of the Northern Alliance proposed soon after that Mazar-Sharif be made 'a provisional capital' until Kabul could be retaken from 'enemies of the state', the United States, Britain and Pakistan had already made it known whom they were recognizing as Afghanistan's new rulers. Committed to wiping out all vestiges of the Soviet imprint, the United States dismissed whatever achievements the previous regime may have accomplished, including the education and liberation of women, favouring instead a group of extreme Islamic fighters whose sources of funding and armaments were at the time unclear, and headed by a shadowy cleric named Mollah Mohammad Omar.

For Afghanistan, the dependence on outside actors to determine national outcomes was a well-trodden path. Founded and traditionally administered through autocratic, paternalistic mechanisms of kin-based distributive politics which monopolized power within the majority Pashtun tribes, Afghanistan has, with rare exceptions, relied on foreign patronage to buttress state-building rather than developing the loyalty of its own people and the resources of its own nation. Unable to emerge from this toxic political economy, Afghanistan, since its establishment 250 years ago as a buffer state between British India and Czarist Russia, has experienced over 100 years of fratricidal wars that have engaged foreign material and actual intervention in localized confrontations. These in turn have relied on a legitimating ideology of national unity often expressed in extreme, politicized interpretations of Islam.

The Afghan experience of Talibanism and its successor manifestation – neo-Talibanism – can be seen as the latest permutations of this history in which modern state-building efforts have been inflicted with extraordinary examples of brutality and violence upon many of its ethnic groups following patterns of colonialization. This caused a generalized erosion of ‘trust as social capital’ while encouraging the commodification of loyalties, whether provincial, tribal, ethnic or foreign (p.177). In placing the growth, mutation, internationalization and failure of the Taliban in historical and localized context, *The Taliban and the Crisis of Afghanistan* offers exceptionally nuanced analysis and a multidimensional picture of a ruined country in which poppy-growing, as much as peace-building, has been predicated on or misused because of external exigencies. The book’s strength does not stop there, however, nor does its frame of reference. Its reach extends through a series of themes that include the nature of Karzai’s US-dependent and ill-feted centralized form of governance; the rejuvenation of the socio-religious drivers that led to neo-Talibanism; the impact of US and NATO (North Atlantic Treaty Organization) led reconstruction; and the devastating conflicts among the latest foreign ‘invaders’ in their approaches to peacekeeping.

Although an edited book, this compendium does not suffer from the classic unevenness so common in such works, or from the tendency to leave uncomfortable gaps in the subject. Care has been taken to edit the volume’s contributions so that each chapter follows easily from the next. The chapters are introduced by a deeply intellectual introduction by Crews and Tarzi which covers the gamut of the subject and is followed by the more in-depth and empirically grounded chapters. A trenchant epilogue offers little hope of the promises of ‘Pax Americana’ based on peace operations as instruments of policy and aid as a politicized bargaining chip.

The statistics that emerge in this book are revealing. Their implications are devastating for a society in which traditional organizations and hierarchies have been successively destroyed (whether by Soviet, Taliban or Western force), where demonization of the ‘other’ is increasingly expressed in ethnic or intra-Muslim terms and where cultural and gender paradigms no longer accommodate the social stresses on a state in which half of the population live in poverty and half of all Afghan children are malnourished (p.350). In terms of security provision, in comparison with Iraq, which had 26 million inhabitants and in which the United States deployed a force of 160,000 (averaging 6.1 per 1000 Iraqis in 2003), Afghanistan’s population of 31 million had a high of 66,000 US and NATO peacekeeping forces (including Obama’s ‘surge’), which amounted to less than one coalition or US soldier per 1000 Afghans. This ratio compares ill with Kosovo (23.7 per 1,000, in 1999), or even Haiti (3.5 per 1000). Per capita aid levels compare even less favourably with other conflict zones: US\$57 per Afghan, in contrast with US\$233 in East Timor or US\$679 in Bosnia, for example. The effectiveness of the Afghan National Army (ANA), a cornerstone of the US (and Karzai) policy for developing a local security force, has been undermined by chronic under-funding. Recruits received a third of the salary of militia members, which led to defections of around 50 per cent of recruits (p.325). Despite the lack of investment in Afghan soldiering, the export of Western

arms into the Afghan conflict zone remained a priority – weaponry amounting to half a billion US dollars arrived in both Afghanistan and Pakistan during 2005 alone (p.323).

One of the more unusual contributions to this collection is from Lutz Rzehak, who addresses the impact in cultural–linguistic terms upon Baluchis of living under subsequent waves of Taliban power. This chapter brings into sharp perspective the human impact of a highly internationalized, technologically sophisticated and ideologically Machiavellian war-and-peace project upon a rural, tribal people.

The content and style of *The Taliban and the Crisis of Afghanistan* make it a rare work that is accessible to undergraduate and graduate scholars alike. It should be a requirement for both. Although the book could have benefited from a chapter addressing Pakistan's relationship with its own neo-Taliban in more detail, and its complex Islamist policy of balancing the strategic depth of Afghanistan against India for the sake of Kashmir, there are many references among the chapters to the back stories behind Pakistani's ruthless Inter-Services Intelligence involvement, as well as the many details of Karzai's amnesties and deal-making. These make the book a solid and riveting research tool.

ROXANE FARMANFARMAIAN © 2010  
*University of Cambridge*

*The Afghanistan Challenge: Hard Realities and Strategic Choices* edited by Hans-Georg Ehrhart and Charles C. Pentland, Montreal and Kingston: McGill–Queen's University Press, 2009. Pp. 250. ISBN 9781553392415. US\$39.95 (pbk).

The volume is a collection of papers that were presented at a conference on 'NATO and the International Engagement in Afghanistan' held in Hamburg in December 2007. Like all collections of essays, the volume is rather mixed in terms of quality. It could reasonably claim to represent a satisfying (if not particularly original) overview of the Afghan political and security landscape at the end of 2007, except for two significant flaws. The first, inevitable in any attempt to portray developments in Afghanistan in book format, is that by the time of publication in 2009 most of the contributions in the volume were already quite out of date. This is most obvious in the discussion by K.R. Nossal of the 'withdrawal debate' in Canada, which, while interesting in the end, pointed in the wrong direction when concluding that 'whichever party forms the government in 2010–11 will continue to contribute to the "war without end" in Afghanistan'. By the time of my writing this review, the Conservative government in Ottawa had already made clear that Canadian troops would indeed withdraw from Afghanistan in 2011. Some contributions, such as the one by C. Schetter and R. Glassner, are, however, not affected by such a flaw because they look at underlying trends, in their case 'The Changing Face of Warlordism in Afghanistan'.

A second flaw, at least as far as the volume pretends to review the 'Afghanistan challenge' in its multifaceted reality, is the lack of any discussion of the insurgency. Perhaps this absence could be taken as an indication of the mainly

inward-looking debate that was going on in Western capitals and in NATO in 2007 and arguably even in 2009.

What the book has to offer aside from these flaws are discussions of Canadian, German, Pakistani and Iranian policies in Afghanistan, ranging from the adequate to the mediocre. The Canadian case is discussed in greater depth and to some extent the German case too; while this might not appeal to every reader, it could appeal to scholars of peacekeeping operations. Several chapters deal with the role of the 'international community' more generally, but, as these stand against a much wider range of literature, they struggle to say something really new. Finally a couple of chapters do bother to discuss Afghan politics and society in relation to the peacekeeping operation. Of the two, the aforementioned chapter by Schetter and Glassner is probably the most original in the book, clarifying a number of issues in the rather undisciplined debate on warlords in the scholarly literature. The other chapter by F. Kühn takes the argument developed by B. Rubin in his successful 'The Fragmentation of Afghanistan' into the post-2001 environment.

On the whole, while not an outstanding contribution, the volume has some value mainly insofar as it throws some light on the Canadian and German debates on intervention in Afghanistan.

ANTONIO GIUSTOZZI  
*London School of Economics*

### Seeking Peace in Africa

*Seeking Peace in Africa: Stories from African Peacemakers* edited by Donald E Miller, Scott Holland, Lon Fendall and Dean Johnson, Telford, PA: Cascadia, 2007. Pp.248. ISBN 978-1-931038-38-6, £14.75 (pbk)

This is an edited collection of presentations from a 2004 conference held in Kenya by the World Council of Churches and the Historic Peace Churches. As the latter group is made up of, among others, Friends and Mennonites, many of the contributors have long experience of contributing to peace education, local reconciliation, peacebuilding after conflict, resistance, and bearing witness to human rights abuses. The theme of the conference was 'people of peace' and many of the contributions are personal testimonies from various African settings. Some are very short (a page or two) and are brief updates of the situation in a war-torn context. Others are longer and more insightful. Still others take the form of sermons and combine country-specific updates with biblical references. The book is introduced as 'not primarily about theory, politics, philosophy, or theology but about testimonies, stories, anecdotes, tales, and parables of community-based peacemaking up and down the continent' (p.11).

The foreword by Edward P. Antonio presents strong arguments why books like this that deviate from the standard academic norm are important. He notes how it is 'easy to be overwhelmed by the constant barrage of bad news' from Africa (p.11), and explains that the book is a deliberate attempt to counter the

'Afro-pessimism' that dominates academic, journalistic and policy commentary on Africa. It contains the familiar narratives of conflict and barbarity, but also stories of redemption, forgiveness, reconciliation, justice and peace. These are very useful, especially as they remind one of the affective dimension of conflict which is often overlooked by standard academic studies and policy-oriented reports. Antonio notes the importance of 'critical' Christian perspectives for analyses of peace and conflict. The extent to which the accounts in this book are 'critical' is not always clear, especially given the conservatism of many religious organizations. Yet, it is correct to say that Christian perspectives are often overlooked by many analysts, especially those from the global North, and this often reflects the secular bias of analysts; in many cases they work for states or institutions that are non-religious and come from largely secular cultures. As a result, they may too readily dismiss the significant cultural, social and political role that religion plays in many African contexts. Religious leaders may have significant social standing, they can mobilize social movements and they can act as agents of change or stasis. But for many Western analysts religious belief and practice are firmly parked in the private sphere and so are to be ignored.

Some of the issues discussed in the book may be deemed 'unfashionable' by supposedly 'sophisticated' academic or policy audiences, but many of the contributions to the volume have an authenticity often lacking in the dead texts produced by many political scientists and development specialists. For example, one author, when discussing the Day of Forgiveness initiative in Burkina Faso, notes how much conflict and violence has been prompted by a 'loss of moral values such as righteousness, integrity, honor, dignity and honesty' (p.166). Fuzzy concepts such as 'moral values' may send a shiver down the spine of analysts used to crunching numbers in econometric calculations, but there is much to be said for perspectives that focus on the forces that shape human interactions and inter-group perspectives.

Perhaps the most valuable aspect of the forty-plus contributions to the book is their emphasis on the local. While national and international forces may be at work, peace and conflict are experienced locally. The book is full of examples of 'our own small ways' (p.144) or local-level initiatives that have brought people together, sought social and political change and ministered to the needs of those affected by violent conflict. It is often women who are at the forefront of these initiatives, and indeed women who have borne the brunt of conflict and displacement. Examples of local initiatives include active listening schemes for victims of violence in Burundi, support for the Gacaca traditional justice programmes in Rwanda, seminars on conflict management in Congo, aid distribution schemes in Kenya and programmes to identify mass graves in Zimbabwe.

One or two of the contributions would have benefited from more careful editing to screen out views that are, to put it mildly, unhelpful. For example, one contributor observes that 'Nigerian Muslims seem to be particularly aggressive. They want to fight for other Muslims and for God' (p.89). Such generalizations detract from this work.



## Conflict, Peacekeeping and Law

*International Law on Peacekeeping: A Study of Article 40 of the UN Charter* by H. Nasu, Leiden, the Netherlands and Boston, MA: Martinus Nijhoff, 2009. Pp.xlviii+324+bibliography+index. ISBN 978-90-04-17226-5. US\$208 (hbk).

*European Security Law* by M. Trybus and N.D. White, Oxford: Oxford University Press, 2007. ISBN 978-0-19-921862-2. Pp.399. £69.99 (hbk).

Peacekeeping has been a mainstay for international organizations since the creation of the League of Nations in 1919. While there has been much written about the laws of war, especially in recent years, there has been less written on the laws of peacekeeping. The books under review offer an analysis of the law of peacekeeping and security more broadly in two different settings: one global and one regional. At their heart is more than simply an identification of existing legal norms of keeping the peace, but rather a normative agenda that says either we are going about this the wrong way, in the case of the first book, or we are headed in the right direction, in the case of the second. While Hitoshi Nasu offers a monograph on the legal basis of intervention and peacekeeping in the UN's history, Martin Trybus and Nigel D. White offer an edited collection on the growing role of the European Union (EU) as a security provider. Together, the books make an interesting combination of applied legal studies in an area of research found in this journal's pages. Two themes dominate. Firstly, how has international law on peacekeeping changed since the end of the Cold War? Secondly, what is the contemporary state of the legal basis for intervention and peacekeeping?

Nasu begins his book with a normative argument that more reliance on Article 40 of the UN Charter would introduce an important aspect of conflict management: prevention. Rightly, the author argues that the UN in general and the Security Council in particular lack an infrastructure to head off conflicts before they begin. Nasu argues, 'by placing Article 40 at the centre of the legal regime governing peacekeeping measures, a more flexible approach to conflict management will be facilitated, which will arguably enable the Security Council to direct peacekeeping measures at an earlier state of conflict' (p.2). The nature of the book begs several questions. Why has the UN traditionally relied more heavily on resolution rather than prevention? Would a greater focus on prevention make the UN a more effective actor in the area of peacekeeper? How does Article 40 sit next to the growing mandate of the 'responsibility to protect'? And, finally, can Article 40 provide a legal basis for future peacekeeping operations?

Naturally, resolution can be seen as the failure of prevention. This is Nasu's main argument about the current state of UN peacekeeping operations. At the same time, the UN's relying on resolution over prevention has been largely a result of geopolitics within and outside the UN. Within the UN, Cold War politics has much to answer for in terms of preventing early-warning mechanisms from working to stop conflict. Even today, many of these early-warning indicators, such as the UN High Commissioner for Refugees, have little impact on the decisions of the Security Council to keep the peace. Secondly, the UN, like the

League of Nations before it, has often been seen as an instrument of last resort, both in terms of prevention and resolution. Bilateral tensions are urged to find a solution amongst themselves and often a third-party broker (ordinarily a regional hegemon). Even in the case of resolution, informal groupings of states have often been the reason for peace, as can be seen in El Salvador and Guatemala. When not informal, regional organizations often play the role of providing the first 'boots on the ground' with or without UN mandate. The implementation of Article 40 requires not just an infrastructure for prevention but a sea change in the way that states and the UN designate responsibility.

Whether or not a greater emphasis of the UN on prevention would make the organization a better peacekeeper is speculation. However, the Organization for Security and Cooperation in Europe (OSCE) has made prevention a pillar of the Helsinki process. For example, the OSCE Secretary and chairmen-in-office have several mechanisms for early warning and prevention, including the Conflict Prevention Centre and the High Commissioner on National Minorities. Yet, the history of the OSCE in preventing conflict is debatable, as can be seen in the conflict in Georgia starting in August 2008. Granted, the power of the OSCE is limited by its decision-making process and the fact that it is a political rather than legal organization. Nevertheless, the comparison here is apt because of the dedication of the OSCE to conflict prevention as its main contribution to European security. The UN's role in conflict prevention has been equally uncertain, as it too had a role in the failure to prevent conflict in Georgia (with a mission located in Abkhazia).

The UN has increasingly moved towards a policy of a 'responsibility to protect' as a basis for humanitarian intervention. Examining a 2001 report of the International Commission on Intervention and State Sovereignty, Nasu argues that 'although it stopped short of declaring that there is a legal obligation to protect, it certainly went beyond the traditional question of whether humanitarian intervention was permissible or not' (p.225). Since the 2001 report, numerous agreements have brought the 'responsibility to protect' increasingly into the legal remit of the UN. Several states, including the US, did not want to see the mandate alter the freedom of the Security Council to make decisions on a case-by-case basis. It is hard to tell how Article 40 brings us any closer to implementing such a mandate, except as a 'useful regulatory tool' (p.233).

Nasu provides a fair argument for the greater use of Article 40, although frustratingly often expecting the readers to tease out its application themselves. Nevertheless, the book offers an interesting overview of the origin, development and contemporary state of the UN's ability to keep the peace. As the point of the text was to examine the legal basis of peacekeeping rather than the politics of peacekeeping, it is unfair to point out that the practicalities of international politics often work outside the formalities established in the UN Charter. Rather, the book makes a thorough contribution to our understanding of the past, present and future of intervention.

Where Nasu discusses few alternatives to the UN, Trybus and White focus on the EU as a regional and sometime global security provider. Trybus and White offer a collection of contributors that illustrate and examine European Security

Law from the perspective of the EU. The book is divided into three sections. The first section looks at the legal foundations of European security. The second section examines the nature of the current European security policy. The final section explores the consistency of the European security framework. Altogether, the sections offer a broad yet in-depth analysis of European security law.

The first section looks at European security law from the failure of the European Defence Community (EDC) Treaty to the development of the European Security and Defence Policy (ESDP). Martin Trybus begins the section with a chapter on the early plans in Europe to create a European defence community with and alongside NATO. The EDC Treaty was rejected by the French Parliament in 1954, but would have offered Europe a security infrastructure that goes far beyond the contemporary ESDP. In all, Trybus illustrates how the failed plans for a defence community in 1954 show us how a future ESDP might look. This chapter is followed up by another by Trybus providing a legal overview of the Common Security and Defence Policy (CSDP) in the now legal EU Constitutional Treaty. Set out to replace the ESDP of the Treaty of Nice, the EU Constitutional Treaty sets out a CSDP that looks and feels much like the ESDP from before, despite the elimination of the pillar structure and the creation of a legal entity that is the EU (replacing the European Community). Beyond this, the chapter focuses on how the new CSDP engages with crisis management, capabilities and armaments, and collective defence.

The following section looks at ESDP in more detail, beginning with Frederik Naert's chapter on 'operations'. Naert offers an overview of ESDP missions before taking into account the legal context of the missions, including their international mandate, legal status and applicable law, third-party participation, and cooperation with other international organizations. Nicholas Tzagourias takes a more theoretical approach in his chapter on peacekeeping operations. The author takes as a starting point the 1999 Helsinki European Council and the establishment of the Petersburg Tasks as well as the subsequent Headline Goals. Finally, Tzagourias looks at how the EU engages with international law regarding peacekeeping, crisis management and human rights. Ademola Abass contributes a chapter on the EU's ESDP mission to the Democratic Republic of Congo (DRC), Operation Artemis. The author engages with the issues related to the EU's extension of its collective security regime beyond its own community.

Mirko Sossai examines the anti-terror dimension of the ESDP. His chapter focuses on how anti-terrorist policy is represented in the ESDP and how this has been expanded upon in the EU Constitutional Treaty. Heike Krieger looks at the creation of a Common Defence Union and its role vis-à-vis NATO. She argues that a traditional conceptualization of a defence alliance is unnecessary for Europe in that it (a) does what NATO already is able to do and (b) fails to fill a gap in Europe's security needs. The core of her argument is that a Common Defence Union is far away from either challenging NATO or even living up to the levels of integration seen in economic cooperation and integration. Finally in this section, Aris Georgopoulos examines the development of a European armaments policy. The chapter highlights the complexities involved in developing an armaments policy, particularly in regard to the

issue's sensitive nature for armament-producing states. Georgopoulos offers an important chapter that highlights the difficult nature of an integrated Common Defence Community.

The final section looks at the consistency of the EU foreign and security policy and the EU's role in the larger international security community. Ramses Wessel reintroduces the tension between coherence and flexibility in the ESDP. Wessel focuses particularly on how this affects enhanced cooperation in EU security law, highlighting the tensions between member-states. Similarly, Panos Koutrakos examines the 'issues of coherence, consistency, and effectiveness' in his chapter on the EU's external relations (p.249). He analyses the normative dimensions of the requirement of consistency, an imperative of coherence and the management of consistency. The last three substantive chapters examine how EU security law interacts with other international organizations. Fabien Terpan looks at EU-NATO relations while Marco Odello looks at the EU and the OSCE. Finally, Nigel White summarizes the volume in a chapter on the EU as a security provider in the international legal order. He pays particular attention to the EU's legal identity in relation to the UN.

The conclusion looks at the opportunities and problems with the EU as a security provider. The EU Constitutional Treaty has confirmed a process that was happening anyway towards a CSDP. Nevertheless, political issues around security and defence will continue to complicate the EU's ability to act. The chapter also highlights what the EU gets from other security providers, such as NATO and the OSCE. Altogether, this edited edition is a thorough account of EU security law. There could have been greater discussion about how the 2004 and 2007 enlargements have changed the EU's future security developments. Furthermore, a comparative chapter would have highlighted the complexities of EU security law further. Nevertheless, this edited book fills an important gap in the literature on European security that has been sadly lacking and thus is an important addition to European security and EU law literature.

DAVID GALBREATH © 2010  
*University of Aberdeen*

*Restoring Justice after Large-Scale Violent Conflicts. Kosovo, DR Congo and the Israeli–Palestinian case* edited by Ivo Aertsen, Jana Arsovska, Holger-C. Rohne, Marta Valiñas and Kris Vanspauwen, Cullompton: Willan, 2008. Pp. 483. ISBN 1-843923-02-5. £59 (hbk).

Transitional justice – how to deal with past atrocities and wrongdoings – has become a topical issue in conflict research since the end of the Cold War. At the centre of this discussion has been the South African Truth Commission, but various similar and different legal and political instruments can be detected in a great number of post-conflict situations and geographical contexts. This edited volume contributes to this literature by looking at the cases of Kosovo, the Democratic Republic of Congo and Israel–Palestine – from the perspective of restorative justice.

The project upon which the book is based has been sponsored by the European Union (COST Action) which partly explains the selection of cases, because they have all been high on the agenda of European foreign policy and external relations. By the same token, most of the contributors have a European background, though a number of experts come from the countries or regions that the book focuses upon.

In the theoretical part of the book the conceptual framework of restorative justice is developed and laid out. The introductory chapter argues that the potentials of restorative justice have not been explored in the context of large-scale violence and mass victimization. Restorative justice practices that are future-oriented, inclusive, participatory and deliberatively problem-solving have proven to be successful when dealing with many conventional crimes and they have a long-established background in many non-Western legal cultures. Transitional justice mechanisms have typically been top-down instruments at the societal level, whereas restorative justice is a voluntary process in which all parties choose to participate. Yet, the constitutive elements of restorative justice also need to be broadened on the societal (or even inter-societal) scale by loosening some of the ideas of restorative justice that are restricted to an interpersonal context.

One of the editors, Holger-C. Rohne, has developed a three-level model for the basis of the case study analyses. The model distinguishes between procedures, outcomes and purposes. There are three key issues at the procedural level: knowledge and support of various procedural elements of restorative justice; the legal sources and cultural traditions of the procedures; and the selection and the role of the facilitator. At the outcome level it is possible to distinguish between material and immaterial reparations as well as identification of wider responsibilities. Normally sanctions are not outcomes of restorative justice. The third level – purposes – can be further divided into objectives and beneficiaries. Objectives can be ordered hierarchically by the degree of relational restoration, starting from material redress, to working through the past, to coexistence and finally to reconciliation that includes forgiveness and is the highest form of relational restoration.

In another chapter Finn Tschudi places dignity as the core value of restorative justice. This is achieved through dialogue that requires a willingness to enter the world of the 'other'. Dialogue may not always be possible but there are many positive examples of its success, including Bougainville in Papua New Guinea. Contrary to what most human rights lawyers argue, in Tschudi's view, one should always start with dialogue and only then move to deterrence measures if dialogue fails.

The book examines large-scale violent conflicts but it is not always clear whether the focus is on war and conflict or on grave crimes and human rights violations. The distinction between warfare and wrongdoings should be kept clear. Both cause human suffering and traumas that societies have to deal with, but the latter are much more pointed in terms of requests for justice and accountability.

The empirical part of the book is very rich in content, since all the case studies are covered by several separate chapters. The chapters on Kosovo deal with both the killings in Račak, before the NATO intervention, and also with the aftermath of the conflict. Despite many challenges, restorative justice principles and

practices could provide a complementary option to dealing with past atrocities there, in particular in the sense of rebuilding relationships based on trust. Indeed, some restorative justice principles have been adopted in the country's legislation.

The study on restorative justice mechanisms in the Israeli–Palestinian context is more theoretical than for Kosovo, as there are few empirical practical instances of the application of restorative justice. Nevertheless restorative justice principles of reconciliation can be found in both Jewish and Middle Eastern Muslim traditions. Therefore, even there, restorative justice could open some fruitful possibilities hand in hand with a criminal justice system. Yet, the hurdles are high, since traditions or alternatives such as truth commissions are not supported among the Israeli and Palestinian populations. Sceptical opinions, however, may have resulted more from lack of knowledge than from direct negative experiences.

The discussion of restorative justice in the DRC focuses on North Kivu province on the border of Rwanda and Uganda. There the Congolese National Army attacked civilians, killing at least 100 and raping many women and girls in 2004, but the whole country suffers from a long civil war that has claimed almost four million victims. In the DRC traditions of African conflict resolution mechanisms that are based on principles of restorative justice do exist, but the problem is that they are usually more suitable for dealing with minor wrongdoings than with serious and large-scale human rights violations and war crimes. The tools of restorative justice have not been much used and when they have been tried the results have been generally disappointing and success patchy. The Congolese Truth and Reconciliation Commission was politicized, weak and lacked credibility. Yet, alternative justice mechanisms and especially truth-telling would be essential to creating a more sustainable peace in the DRC.

The conclusions of the book stress the need to consider the mechanisms of restorative justice, not by replacing those of retributive justice but by complementing them. There are no simple solutions as to how they can be combined but they need to be context sensitive and creatively designed taking into account the lessons learnt from recent experiences. When the international community intervenes in post-conflict matters, it needs to be cautious that it does not take away the responsibility of the concerned society to deal with its own past.

Overall, the book is valuable in outlining the restorative justice approach in post-conflict situations and discussing transitional justice mechanisms from a broad perspective. The three cases selected for this study have not been exhausted in the literature and the book does a major service in highlighting them. Yet, this volume does not provide strong, concrete arguments about when restorative justice mechanisms work, and when they work better or worse than alternative mechanisms. The book enhances our belief in restorative justice mechanisms in post-conflict situations more in theory than in practice. The conclusions are almost the same as the starting points: restorative justice mechanisms should be taken more seriously but we should also know more about them.

*The Handbook of International Humanitarian Law* edited by Dieter Fleck, Oxford: Oxford University Press, 2008 (2nd edn). Pp.xxxix+770. ISBN: 978-019-923250-5. £99 (hbk), £34.95 (pbk)

At the time of writing, not all the facts have been verified with respect to Israel's offensive into Gaza between 27 December 2008 and 18 January 2009 but there are numerous allegations of war crimes and violations of international humanitarian law (IHL) that took place during that period. Apropos, this new edition of the Fleck-edited *Handbook of International Humanitarian Law* serves as a definitive guide in assessing whether violations of IHL occurred.

Thirteen contributors, including the editor, have cooperated to examine all the facets that comprise this branch of international law. The aim was to produce a manual of firm principles, printed in bold type, together with commentaries that would be authoritative for adoption into state practice and jurisprudence by all nations whenever engaged in armed conflict. That aim has been accomplished and the book attests to being a compilation of legal precepts and policy for legal instruction of armed forces based on values of humanity to ensure operational standards of protection during hostilities. Pervasive throughout are the tenets that must be followed in the rules of engagement for military operations in the context of air, sea and land warfare as well as in international peacekeeping operations.

The book starts with a historical introduction that provides an evolutionary background to the term 'humanitarian law', its development over time and what it encompasses today. A cogent explanation is given of IHL and related subjects, such as the law of human rights, international criminal law and traditional international laws of war (*jus in bello*). A significant amount of historical detail is included, such as the development of customary rules and treaties that have become the present standard of IHL. The introduction ends with a discussion of the role of the legal adviser who has the responsibility of advising military commanders of the appropriate level of application of the law in all relevant circumstances.

As no sharp dichotomy between peace and armed conflict in international law persists today, non-hostile relations between two countries can exist and there is room for IHL to be applicable in certain circumstances. This is examined in detail with specific examples. The subject of who are combatants and non-combatants is discussed – an issue of current high visibility as regards US practice since 11 September 2001 – but not in connection with the individuals taken prisoner in the war against al-Qaeda or the invasion of Iraq and Afghanistan. Aside from the aforementioned, there is analysis of the status of other people captured during armed conflict: children, persons accompanying armed forces such as war correspondents, civilian contractors, spies, and those who engage in special aspects of aerial and naval warfare.

A chapter is devoted to methods and means of combat, that is, the question of what are the bounds of belligerent violence. Here one finds an appraisal of rules of conventional warfare, questions with regard to severe damage to the natural environment, prohibitions of specific weapons stated in the five Weapons

Protocols to the 1980 Convention. Examples are given of anti-personnel mines by non-party states to the Landmines Convention of 1997, and when booby-trap mines or incendiary weapons can be employed. The discussion involving NBC (nuclear, biological and chemical) weapons, especially nuclear weapons, is relevant given the possibility of an Israeli pre-emptive strike against Iran as the latter attempts to develop nuclear weapons.

The discussion on methods of combat raises many controversial issues such as the legitimacy of Israel's attacks against power plants and water supply devices during the Israeli offensive in Lebanon against Hezbollah in the summer of 2006 or the parameters of Israeli use of 'white phosphorus' in Gaza during 2008–9, or indeed whether Israel's action at that time constituted a disproportionate attack. Numerous other issues of contemporary practice abound, including the present standard of the law of reprisal.

A chapter is included that covers all aspects of humanitarian law regarding the protection of the civilian population during belligerent occupation. Other chapters are devoted to the law that protects the wounded, sick, shipwrecked, prisoners of war and religious personnel. Recent controversies involving the determination of prisoner-of-war status are addressed and human rights aspects of detainees are fully explained. The subject of protection of cultural property is thoroughly discussed on the basis of treaty law provisions and various customary international law standards that are applicable.

Current legal developments and practice are explained with respect to armed conflict at sea. The rules of neutrality that pertain to the protection of victims of armed conflict are more controversial as reflected by some examples of recent state practices and the views of different experts. Certain armed conflicts occur among armed groups within the boundaries of a single state, and rules developed to the present time for non-international armed conflicts are reviewed and assessed. Arguments for alternative rules are presented for situations not covered by existing rules, and the principles advanced use 'humanity' as a guide for all parties. Compliance with the new treaty law invoking the non-international conflict still has its problems, as illustrated by the author. The modern concept of peace operations is fully explored followed by an analysis of the complex legal regime comprising peacetime rules of international law, IHL and national law with reference to the most recent peacekeeping missions, some of which are in progress. Topics in this regard include rules of engagement, child soldiers, humanitarianism and assistance by armed forces.

The final chapter sums up how IHL is enforced today. Brief assessments on a wide range of issues are put forward, such as international fact-finding, the role of the UN (specifically the Security Council), diplomatic activities and national implementing measures.

The editor is to be congratulated on the way he has planned this book with certain paragraphs appearing in bold type to emphasize accepted law, while commentaries and subject headings appear in ordinary type. There are multitudinous footnotes with accurate references to substantiate the sources or legal positions advanced by established experts. To assist the reader further, there are tables of the abbreviations used in the text, the international instruments referred to, the



judgments and decisions of international and national bodies and relevant organizations, an annex of distinctive emblems, a 34-page bibliography and a very workable index. This book is the authority on IHL and will remain so for many years to come.

DANIEL C. TURACK © 2010  
*Capital University*