

## Summary

### *Armed forces and peacekeeping abroad: between military and police operations*

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1. "Traditional" peacekeeping operations can be considered as military operations. This applies to first generation peacekeeping. Police units integrated into second generation peacekeeping can be characterized as non-military or civilian. The development of robust and executive peacekeeping (as a third and fourth generation) blurs the distinction between military and police operations. Armed forces may fill in the so-called deployment and enforcement gaps in international police operations by performing police operation themselves. Gendarmerie is sometimes deployed in these situations.
2. The international community has reacted to new forms of conflict by extending the scope of UN Security Council action and by reforming Chapter VII-based sanctions. This is reflected in counter-terrorist operations as well as combating other phenomena (such as drug proliferation and piracy). These measures are increasingly addressed against non-state actors and individuals. This also blurs the distinction between military and police operations.
3. In international humanitarian law, it is possible to distinguish the substance of police and military activities in situations of international armed conflict while accepting a formal definition of armed forces. However, the distinction between police and military measures tends to get blurred during non-international armed conflicts. Typically, operations can only be classified on a case-by-case basis. This gives rise to problems in so-called new conflicts.
4. With regard to peacekeeping, the legal basis for the operations in Kosovo and Afghanistan provides some criteria for distinguishing police and military measures. The authorization of military (KFOR) and police (UNMIK) operations in Kosovo and of military (ISAF) and police (EUPOL) operations in Afghanistan largely relies upon differences in substance, less upon formal and institutional distinctions. Recently, however, these categorizations seem to have been given up in favour of general clauses authorizing the establishment of a "secure environment".
5. In light of distinctions between police and military operations, so-called "unified use of force rules" have been recommended. This is not satisfactory because human rights law and international humanitarian law are separate bodies of law, with each of them pursuing a different object and purpose. It is advisable to rely upon character of international humanitarian law as *lex specialis* even though both bodies of law enjoy some similarities (such as issues of proportionality, effectiveness, etc.) which allow for interpretative synergies.
6. Any interference with human rights necessitates a proper legal basis. The requirements of human rights law for such a basis in situations below the threshold of an armed conflict are not totally clear. A decision of the UN Security Council as well as an authorization by treaty or customary international law may only meet human rights standards in exceptional situations. They normally lack legal certainty and foreseeability.

It is strongly recommended to rely upon appropriate and adequate national legislation if armed forces perform police operations abroad.

7. Given the difficulties in distinguishing police and military operations, a lot will depend on developing adequate practice. Thus, the operational doctrine for international police operations should be improved and refined since it is not likely that states will agree on a legally binding document to this end.