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## FEATURE

### Beyond Government Accountability

By Matt Armstrong

Discussions over private military companies typically begin with the accountability issue. As the arguments go, the big private military contractors and private security contractors are inherently dangerous and a threat to democracy because they are above the law and beyond control. But starting with the accountability angle ignores the real impact of outsourcing for foreign policy and national security. The approach also ignores another, less-talked-about accountability problem, the accountability of United Nations peacekeepers.

This article is meant to be provocative and to challenge prevailing views of the issue of accountability. It is part of an ongoing analysis that may raise more questions than it answers.

For both private military companies and U.N. peacekeepers, accountability is based foremost on the political will of the country contracting for services or contributing peacekeepers. With respect to private firms, there is clear evidence that the perceived lack of action by the United States to monitor, manage, or otherwise pay attention to the activities of its agents has had an impact on contractors in relation to military strategy or foreign policy. Attempts to place contractors under the Uniform Code of Military Justice fail to acknowledge the hurdles of civilian administration of the code in conflict areas, where even the military judicial system faces challenges.

The issue is similar, but not identical, with regard to national contributors to U.N. peacekeeping missions. When the Blue Helmets (U.N. Peacekeepers are referred to as Blue Helmets) commit or encourage criminal, negligent, or simply undesirable activities, international laws are not automatically invoked. Internal military judicial processes may be slowed or stopped, requiring domestic politics to discover the facts and punish the offenders—or to cover up the crimes completely.

#### Checks and Balances on Private Companies

In the private contracting world, levers are available to influence and control in ways most would consider effective and proper. For companies like Aegis, Armour Group, Blackwater Worldwide, DynCorp International, and Triple Canopy, the government can write contracts that link behavior and action with carrots and sticks. Examples of sticks include financial penalties, contract cancellation, costly investigations and audits, lawsuits, congressional action, and the ability to apply domestic law on foreign deployments of civilians. These democratic and market-driven approaches are nonexistent for U.N. peacekeeping operations (PKOs), which are, by definition, acting under non state authority and outside international jurisdiction.

#### To Whom Are U.N. Peacekeepers Accountable?

If holding nonstate soldiers accountable is really an issue for many critics, then the admitted lack of accountability of and jurisdiction over contracted nations contributing to U.N. PKOs should be a prime concern. The gap between perceived accountability and real accountability has a broader and deeper impact on the societies in which they operate.

The relationship between peacekeeping forces (PKFs) and the U.N. Security Council mimics the relationship between a private military or security company and the country in question. The Security Council negotiates with U.N. members to contribute to PKOs, most often in the stead of the five permanent Security Council members who actually make the decision to deploy military observers, police, and troops. The General Assembly does not authorize or oversee PKFs, but it is tasked to operate on the behalf of the Security Council.

Forgotten is Article 43 of the U.N. Charter, which calls for maintaining a standing rapid reaction military force to be available to the Security Council. Instead, the U.N. relies on ad hoc partnerships and "conditional commitments" through the U.N. Stand-By Arrangements System. This system falls well short of what was envisioned when it was established six decades ago at the dawn of the Cold War.

Governments providing the peacekeepers hand over accountability to the United Nations, and those that finance the operations have little to no say in how the forces will actually operate. With no standing commitment by member states, each operation requires individual negotiations across the spectrum—from questions regarding chain of command and responsibilities to rules of engagement and the rules on the use of force.

In the post-Cold War environment, downsized Western militaries are less able to participate in PKOs owing to capacity limits as well as domestic politics. To fill the gap, the Security Council increasingly turns to developing nations (formerly known as "Third World") countries to deploy to regions that have little direct significance to the contributing country. Often forgotten is the fact that the majority of peacekeepers come from countries that often lack strategic airlift and appropriate equipment and must rely on the U.S., some other major military power, or—as is often the reality—on private military companies for transport, maintenance, emergency evacuation, and hardware.

#### Table 1—U.N. Troop Contributors, as Percentage of Force



*A U.N. Brazilian Peacekeeper takes a rest as a child looks on during an operation in the area of Bois Neuf in the slum of Cite-Soleil in Port-au-Prince, Haiti. (AP Photo/Ariana Cubillos)*

TOTAL U.N. Peacekeeping Force	Top 5 %	Top 7 %	Top 10 %	PERMANENT SECURITY COUNCIL MEMBERS			Top 5	Top 7	
				SC Total	China Among SC Total	France Among SC Total			
Dec-01	47,108	44%	53%	62%	5%	5%	20%	Bangladesh, Pakistan, Nigeria, India, Jordan	Bangladesh, Pakistan, Nigeria, India, Jordan, Ghana, Kenya
Dec-02	39,652	43%	52%	61%	5%	6%	17%	Pakistan, Bangladesh, Nigeria, India, Ghana	Pakistan, Bangladesh, Nigeria, India, Ghana, Kenya, Uruguay
Dec-03	45,815	43%	52%	63%	5%	17%	15%	Pakistan, Bangladesh, Nigeria, India, Ghana	Pakistan, Bangladesh, Nigeria, India, Ghana, Nepal, Uruguay
Dec-04	64,720	42%	51%	63%	5%	35%	20%	Pakistan, Bangladesh, India, Nepal, Ethiopia	Pakistan, Bangladesh, India, Nepal, Ethiopia, Ghana, Jordan
Dec-05	69,838	47%	56%	66%	4%	41%	22%	Bangladesh, Pakistan, India, Jordan, Nepal	Bangladesh, Pakistan, India, Jordan, Nepal, Ethiopia, Ghana
Dec-06	80,368	44%	51%	59%	6%	38%	43%	Pakistan, Bangladesh, India, Jordan, Ghana	Pakistan, Bangladesh, India, Jordan, Ghana, Nepal, Uruguay
Dec-07	84,309	44%	51%	60%	6%	38%	41%	Pakistan, Bangladesh, India, Nepal, Jordan	Pakistan, Bangladesh, India, Nepal, Jordan, Ghana, Nigeria

**Table 2—Total Number of U.N. Peacekeepers from Top 7 Troop Contributors**

	2007	2006	2005	2004	2003	2002	2001
<b>Pakistan</b>	10,610	9,867	8,999	8,140	6,248	4,677	5,552
<b>Bangladesh</b>	9,856	9,861	9,529	8,024	4,730	4,211	6,010
<b>India</b>	9,357	9,483	7,284	3,912	2,882	2,746	2,883
<b>Ghana</b>	3,379	2,694	2,520	3,322	2,306	2,219	2,462
<b>Nepal</b>	3,676	2,607	3,466	3,451	2,285	914	1,121
<b>Jordan</b>	3,574	3,820	3,703	2,950	1,818	1,620	2,720
<b>Nigeria</b>	2,694	2,408	2,412	2,890	3,361	3,277	3,468
<b>Total Top 7</b>	43,146	40,740	37,913	32,689	23,630	19,664	24,216
<b>% of Total Force</b>	51%	51%	54%	51%	52%	50%	51%

### Surrendered Accountability

Soldiers have an identity based on their national mission. American armed forces are sworn to uphold the Constitution, Germans swear to defend the law and liberty of the people, the British take an oath of allegiance to the monarch, and so on. Peacekeeping is beyond the identity and purpose of soldiery based on nationalism for political or financial reasons. The situation ironically relies on a professionalism without nationalism of the type found in mercenaries two centuries ago, when just such traits resulted in the mercenaries' marginalization. This distance from the cause is seen in commitment at all levels, from operational and tactical to strategic, and is most visible in the rules of engagement and use of force that each contributing country independently negotiates with the U.N.

Criticism rises upward onto the U.N. itself, with the actions of U.N. PKFs framed as the actions of a collective force, whether or not the member nation is named. Spokespersons for contributing nations are able to refer questions to the United Nations without providing details if they wish, thus taking advantage of an alternative locus of perceived decisionmaking. This may make sense considering the mechanism behind the deployment of the force, but the logic is strained when considering the leeway each member has that challenges the notion of a cohesive force.

The shift in the nature and structure of PKOs after the end of the Cold War toward more messy operations has made negotiations with contributing nations more difficult. Originally, the U.N. deployed troops, police, and military observers only after a cease-fire was brokered and belligerents agreed to their presence. After 1991, however, the U.N. increasingly has moved in for peacemaking or "complex peacekeeping" that mixes civil and military activities requiring greater logistics, equipment, air support, duration, and risk.

While the Security Council authorizes or agrees to the mission, the General Assembly of all U.N. member states is tasked with providing more than half of military, police, and military observers for the operations. The General Assembly is tapped to participate for three reasons. First, General Assembly authority "internationalizes" the PKO, increasing the buy-in and support for the operation while diffusing any potential imperialist perceptions of the Security Council. Second, of the five permanent Security Council members, the United States, United Kingdom, and Russian Federation are hesitant to send their own troops, whereas China and France are active in U.N. PKOs. Third, the poorer contributing nations do not participate out of pure goodwill—they are paid about \$1,100 per person per month for their troubles.

The number of nations contributing to PKOs grew from 88 in 2001 to 119 in 2007. However, the combined contribution of six countries—Pakistan, Bangladesh, India, Ghana, Nepal, and Jordan—totaled more than 51 percent of PKFs over these last seven years.

Without diminishing the importance of a country's troop contributions, one can fairly say that few of the main providers of U.N. PKFs are renowned for their political accountability and military judicial systems.

Peacekeeping brings prestige to the countries and militaries involved. It is possible that the majority of PKF-contributing countries are using peacekeeping as a tool of public diplomacy, as the Chinese are doing. In 2003, the Chinese government stated that it would increase its participation for public diplomacy purposes, that is, to seek to favorably influence the attitudes and opinions of people around the world. Three years later, Beijing increased its contribution to the Lebanon peacekeeping mission from 187 to 1,000. Chinese Prime Minister Wen Jiabao said the fivefold expansion of peacekeeping in Lebanon was to raise "China's profile in the Middle East and [bolster] ties with Europe."

Perhaps the goals of the other main contributing countries are similar to China's as they seek to increase trade opportunities. However, the troop-providing countries are engaged in a sort of trade of their own: Some of them pay their troops the equivalent of only a few dollars a day while their governments bill the U.N. a geometrically greater amount.

The United States and other wealthy countries pay the bulk of the costs while receiving almost none of the credit. In 2007, the top 10 financial contributors to United Nations PKOs were, in descending order, the United States, Japan, Germany, the United Kingdom, France, Italy, China, Canada, Spain, and Korea. The top manpower contributors were all lower-income countries and labeled in *U.N. Human Development Reports* as having "medium

human development." Peacekeeping can therefore be considered a state-controlled industry. The providers—governments—rent out their military forces to a supranational organization in exchange for payment. In effect providing an international mercenary force.

### Immunity from International Law

Granted authority by international law and the collective will of the international community that is vested in the Security Council, U.N. intervention is still subject to politicking and lobbying by the respective suppliers of troops and money and by the Security Council itself. The paradox is that, although U.N. peacekeepers are authorized to operate under international law and a collective will, they are not subject to international humanitarian law.

The for-hire nature of contemporary peacekeepers is not an acknowledged aspect of PKOs. Former U.N. Secretary-General Kofi Annan "bristled" at suggestions the U.N. might work with private military companies, arguing there is no "distinction between respectable mercenaries and nonrespectable mercenaries."

Ironically, despite operating from the authority of the U.N., the application of international humanitarian law (IHL)—including the Geneva Conventions, the Hague Regulations, and customary law—to the U.N.'s Blue Helmets ultimately relies on self-enforcement by the contributing state. This easily and quickly falters in Western democracies, let alone in less democratic countries.

The U.N. has repeatedly stated that it is not a signatory of the Geneva Conventions, or other IHL instruments for that matter, thus shielding its peacekeepers from international law. Reinforcing his point that neither international law nor the U.N. has jurisdiction over peacekeepers, then-Secretary-General Annan stated in 1999 that in cases "of violations of international humanitarian law, members of the military personnel of the United Nations force are subject to prosecution in their national courts."

Limited attempts to adhere to the "principles and spirit" of the law are rationalized as a requisite of neutrality: Peacekeepers "cannot be considered a 'party' to the conflict, nor a 'power' within the meaning of the Geneva Conventions" says Kofi Annan. To do so and accept the responsibility of a contracting power would imply that the U.N. was no longer impartial.

The U.N. issued a bulletin requesting contracting nations to uphold IHL in an attempt to close the gap between perceived and actual accountability. But inserting this language into contracts has not only been inconsistent, it was and remains voluntary, without any enforcement mechanism to guarantee that appropriate justice is attempted or meted out.

Requiring the contributor nation to oversee, enforce, and punish their own national soldiers is in part a market-driven requirement. The U.N. cannot impose a common military code of justice or judicial process on its forces without provoking a drop in troop contributions from member states. This can be seen in U.S. concerns over participating in U.N. missions vis-a-vis the International Criminal Court (ICC).

Academic suggestions that additional pressure against contributors could be brought through political engagement or even public embarrassment ignore the real dynamics of the peacekeeper market. The demand is greater than the supply—the Security Council needs the contributors more than the other way around. The Security Council's reliance on "medium developed" states may be helpful in integrating these countries in world affairs and may even be a form of cultural exchange, but the Security Council is limited in how far it can embarrass or publically pressure these countries lest they withhold help in future operations.

### When Things go Wrong



U.N. special envoy Edmond Mulet and UN peacekeepers paint over a mural of a Kalashnikov rifle painted by gangs in a Port-au-Prince slum. (AP Photo/Ariana Cubillos)

While a country's national development generally correlates with the professionalism of its armed forces, advanced development does not necessarily correlate with military accountability. Two countries considered among the most "progressive," the Netherlands and Canada, are cases in point.

One of the more publicized and yet little-realized examples of the absence of accountability of peacekeepers occurred in Srebrenica in 1995. The Dutch battalion assigned to protect the former Yugoslavian enclave was one where Blue Helmets were subject only to their home law—and only if their own commanders took notice. Questions about the "moral fitness" of the Dutch were remarkably similar to those about private contractors in Serbia and Iraq. The Dutch participation in illicit trading of sex, tobacco, and cash was not unique to this PKO and brought no global media attention to the unit. International attention came only when the battalion stepped aside and permitted the massacre of up to 7,000 civilians who had fled to Srebrenica for protection. The Dutch peacekeepers not only failed to uphold their mission, but failed to uphold IHL. Political considerations denied the requested air support that could have stopped the massacre. Even after the scope of the debacle was understood, the justice meted out by the Dutch back home was motivated not by law, but by domestic politics.

Another example of a Western power violating IHL on a peacekeeping mission is the Canadian expedition to Somalia for the U.N. in 1992–1993. A report by Canada's Department of National Defense, which by its own admission was "curtailed" with "important questions remain[ing]

unanswered," found significant failures in accountability and discipline among its forces deployed to Somalia. Rules of engagement failures, the beating death of a teenager in custody, and other actions by the Canadian forces did not warrant attention by the ICC or any other international regime. Only Canadian law could be applied and only at the behest of Ottawa.

The Dutch and Canadian examples highlight the challenges of accountability for Western industrialized democracies with professional militaries that operate under strict codes of military justice for U.N. peacekeeping. Further research is necessary into what happens when peacekeepers who violate international law return home to less-developed countries.

### No Punishment for Sex Crimes

Recurring sex crime scandals in U.N. PKOs may merit an occasional brief mention in the Western media, usually floated as additional criticism of the U.N., but they do not warrant sanctioning by the U.N. for the simple reason of supply and demand. A January 2005 CNN.com story on sex crimes by peacekeepers in the Democratic Republic of Congo noted the limit of U.N. authority: "The United Nations can punish its civilian staff, but military personnel fall under the jurisdiction of their own countries. All the organization can do is request a country recall suspects and try and punish them at home." According to the same article, "allegations" have been made against soldiers from South Africa, Uruguay, Morocco, Pakistan, and Nepal. Nepal



Chinese soldiers feed stranded people in a domestic relief operation. China is increasing its U.N. peacekeeping role, but the military commits systematic human rights abuses. (Imaginchina via AP Images)

is accused of using its military to violate the human rights of its own citizens. To keep its peacekeeping export industry alive, Nepal promised the U.N. not to send abusive troops to wear the Blue Helmet.

The Chinese military's role in domestic repression, the subjugation of Tibet, and the ongoing horrors in Sudan raise serious questions about Beijing's increasing participation in U.N. PKOs. No independent checks and balances on the military exist in China.

As former U.N. Secretary-General Annan reiterated in October 2005, there is a clear need to "improve conduct and discipline in United Nations operations," which operate with a significant degree of immunity. By the U.N.'s own admission, the lack of judicial processes prevents those who commit criminal acts during their peacekeeping assignment from being held "criminally accountable in a manner consistent with due process of law." The U.N. has taken steps to correct this deficiency, including establishing a Conduct and Discipline Unit and an accountability office (spurred not only by problems with peacekeeping, but also by the corruption in the Oil for Food program, among other problems).

Crime by peacekeepers, especially by majority contributors, is old news and gets scant attention in the international press. The contributing countries do not fear public retaliation or sanctioning the way Western industrial democracies do. The contributing nation is unlikely to be shamed publicly by the U.N. because of a weakness or failure in discipline. Supply-and-demand pressures prohibit strong sanctioning, leading some to argue a that double standard exists in which U.S., Canadian, and European peacekeepers are held to higher levels of professionalism than their far more numerous African and Asian counterparts.

If accountability is the core problem critics have with private military and security contractors, then the demonstrated lack of Blue Helmet accountability, whose troops are sent to some of the most challenging environments on the planet, should raise equally powerful concerns.

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