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The Legal Implications Arising from Economic and Social Reconstruction as an Aspect of Peace Support Operations

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Abstract

This article asserts that the link between peace and security and stabilization and development, as exemplified by the UN-mandated international presences in Afghanistan, is to be welcomed but that, from the perspective of the laws governing both the use of force and the conduct of warfare, such an evolution is problematic for a number of reasons. One, the broader functions of the military in peace support raises questions for *jus ad bellum* such as determining whether the basis for the peace enforcement has been achieved, as States and their armed forces engage in stabilization and state-building initiatives as a means to counter breaches of and threats to the peace. Two, the broader functions are problematic for *jus in bello* as the practical application of such initiatives is not easily incorporated into a body of law that was drafted primarily to deal with inter-state conflict and only provides limited guidance on internal conflict such as that in Afghanistan. Consequently, international law must evolve to clarify the rights and obligations stemming from peace support operations for both States and their military personnel.

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**The Legal Implications Arising from Economic and Social Reconstruction
as an Aspect of Peace Support Operations**

Claire Breen

Abstract

This article asserts that the link between peace and security and stabilization and development, as exemplified by the UN-mandated international presences in Afghanistan, is to be welcomed but that, from the perspective of the laws governing both the use of force and the conduct of warfare, such an evolution is problematic for a number of reasons. One, the broader functions of the military in peace support raises questions for jus ad bellum such as determining whether the basis for the peace enforcement has been achieved, as States and their armed forces engage in stabilization and state-building initiatives as a means to counter breaches of and threats to the peace. Two, the broader functions are problematic for jus in bello as the practical application of such initiatives is not easily incorporated into a body of law that was drafted primarily to deal with inter-state conflict and only provides limited guidance on internal conflict such as that in Afghanistan. Consequently, international law must evolve to clarify the rights and obligations stemming from peace support operations for both States and their military personnel.

Introduction

Despite the legal controversy surrounding the US-led military invasion of Afghanistan in October 2001, Security Council resolutions passed in December of that year formed the legal basis for an international military presence in Afghanistan.

Subsequently, this presence was expanded to include a Security Council mandate to rebuild Afghanistan. There are two strands to this mandate: a military strand, primarily in the form of the NATO-led International Stabilization Force (ISAF); and a civilian strand, embodied in the United Nations Assistance Mission in Afghanistan (UNAMA). The basis for both mandates, according to the Security Council, is to restore and maintain international peace and security and to assist Afghanistan to transition from a state of conflict to a state of peace. In this regard, the Council's response may be regarded as peace support, comprising stabilization and state-building operations. There are two questions arising from this situation. One, if peace support is an expression of modern collective security measures, is peace support indicative of an evolving international law governing use of force (*jus ad bellum*)? Two, does peace support impact upon the body of international law governing the conduct of warfare (*jus in bello*) as States and their armed forces engage in stabilization and state-building initiatives? Perhaps the central question is what, if any, legal obligations arise out of peace support missions?

This article attempts to answer these questions, in light of New Zealand's peace support role in Afghanistan, through its deployment of Defence Force Personnel as a Provincial Reconstruction Team (PRT) to Bamyan Province. Although there are many aspects to peace support (not least use of force issues), this article will focus on economic and social (re)development given that such measures are a recognized, but often overlooked, aspect of maintaining international peace and security. Economic and social development would also appear to be an increasing aspect of the responsibilities of the military, in spite of the fact that it would appear, on first glance, to be a role more appropriately assigned to the non-military.

This article will first consider Security Council resolutions, which form the legal basis of ISAF and UNAMA with particular focus on reconstruction activities as an aspect of international peace and security. It will then consider the international agreements regarding the reconstruction of Afghanistan, with particular focus upon their economic and social development aspects. It will consider the significance of such developments for maintaining peace and security which in turn is suggestive of a more expansive meaning of the maintenance of international peace and security. The article will focus on the work of PRTs which are more regularly engaged in functions that hitherto may have been regarded as being the functions of their non-military counterparts operating under the umbrella of UNAMA. It will focus on the activities of the New Zealand PRT (NZ PRT) in this regard. Finally, the article will consider the relationship between peace support activities and international humanitarian law (IHL). It will demonstrate that the current laws governing use of force and the conduct of warfare are rather ill-suited to the ever-expanding and increasingly complex environment in which peace support operations operate.

The article concludes that the link between peace and security and stabilization and development is to be welcomed but that such an evolution is problematic for a number of reasons. One, the broader functions of the military in peace support raise questions for *jus ad bellum* such as determining whether the basis for the deployment of the peace enforcement operation has been achieved, as States and their armed forces engage in stabilization and state-building initiatives as a means to counter breaches of and threats to the peace. Two, the broader functions are problematic for *jus in bello* as the practical application of such initiatives is not easily incorporated into a body of law

that was drafted primarily to deal with inter-state conflict and only provides limited guidance on internal conflict such as that in Afghanistan.

**ISAF and UNAMA: Security Council Responses to Threats
to International Peace and Security**

In 2001, in paragraph 4 of resolution 1378, the Security Council called on Member States to provide long-term assistance for the social and economic reconstruction and rehabilitation of Afghanistan. The outcome of this resolution was the establishment of an international presence in Afghanistan primarily comprising ISAF, which is a NATO-led security and development mission, and UNAMA, which as its title indicates, is a UN mission designed to assist Afghanistan to transition from conflict to peace. Both presences were established by Security Council resolutions and their mandates were elaborated upon by the Agreement On Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, S/2001/1154 (the Bonn Agreement). International intervention in Afghanistan was intervention into a State where human and natural forces had combined to destroy almost all social, physical, and economic infrastructure, leaving it without adequate roads, electricity, schools and hospitals (Bosi 2003). The international community recognized that the restoration, and maintenance, of peace and security in Afghanistan was no longer a case of “bashing and whacking” but involved a long-term, financially well supported, and, quite literally, hands-on approach to rebuilding the State. The response by the international community has been one of initial stabilization, followed by further stabilization efforts aimed at effecting a longer-term peace. Both the short-term and

long-term efforts recognize and incorporate economic and social development as a core strategy.

ISAF: Pacification and Stabilization Roles

ISAF's mandate was established by the Bonn Agreement, Annex 1, to create a secure environment in and around Kabul and so that the Afghan Interim Authority and UN personnel could operate in a safe environment which would support the reconstruction of Afghanistan. ISAF's focus upon counter-insurgency (pacification) and state-building (stabilization) across Afghanistan reflected the peace enforcement mandate granted to it under Chapter VII of the Charter on the determination by the Security Council, in 2001, that the situation in Afghanistan continued to pose a threat to international peace and security. ISAF member states are authorized to take all necessary measures to fulfill the mandate (UNSC res 1386). The mission involves troops from 48 nations who operate under robust rules of engagement, as well as a myriad of international aid agencies and private charities, private security contractors, engineers, development experts, political advisors and education specialists (NATO February 2011; Hynes, Newton Lyons and Weber 2007).

ISAF's mandate was extended annually by resolutions 1413 and 1444 respectively. In 2003, the mandate was expanded, by resolution 1510, to assist the Afghan Transitional Authority in the maintenance of security in areas of Afghanistan outside of Kabul and its environs, so that the Afghan authorities, as well as UN personnel and other international civilian personnel engaged in activities including reconstruction and humanitarian efforts, could operate in a secure environment, and to provide security assistance for the performance of other tasks in support of the Bonn Agreement.

Resolutions 1563 and 1623 provided for an expansion of ISAF's mandate in response to the Council's recognition of the constraints upon the full implementation of the Bonn Agreement resulting from concerns about the security situation in parts of Afghanistan. The Security Council's response to the situation in Afghanistan has continued to evolve. In resolution 1707, for example, the Council recognized once again the interconnected nature of the challenges in Afghanistan. In reaffirming that sustainable progress on security, governance and development, as well as on the cross-cutting issue of counter-narcotics, was mutually reinforcing it welcomed the continuing efforts of the Afghan Government and the international community to address these challenges. In renewing ISAF's mandate in October 2010 the Council stressed yet again the central role that the UN continued to play in promoting peace and stability in Afghanistan. It noted in the context of a comprehensive approach, the synergies in the objectives of UNAMA and of ISAF and it stressed the need for further sustained cooperation, coordination and mutual support, taking due account of their respective designated responsibilities. As in previous resolutions, the Council reiterated its concern at the security situation and the harmful consequences of violent and terrorist activities on the capacity of the Afghan Government to guarantee the rule of law, to provide basic services to the Afghan people, and to ensure the full enjoyment of their human rights and fundamental freedoms (UNSC res 1943).

As this brief overview indicates, the core function of ISAF is to establish a secure environment, using all necessary force. In effecting its mandate, ISAF has assisted the Afghan authorities in providing security and stability, thereby creating the conditions for the fulfillment of the other aspect of its mandate, which is reconstruction, development and effective governance as per the Bonn Agreement, the Afghan Compact, the

Afghanistan National Development Strategy (ANDS), the London and Kabul Communiqués and decisions made by the Government of Afghanistan. The manner in which ISAF fulfils this aspect of its mandate is considered in more detail below.

UNAMA: Recovery, Reconstruction and Development

In establishing UNAMA, by resolution 1401 of March 2002, the Security Council reaffirmed both its previous resolutions on Afghanistan in particular resolutions 1378, 1383, 1386 and recalled all relevant General Assembly resolutions, in particular resolution 56/220. The Council also stressed, *inter alia*, that the provision of focused recovery and reconstruction assistance could greatly assist in the implementation of the Bonn Agreement. According to the Secretary-General, —Recovery and reconstruction efforts cannot wait the successful conclusion of the peace process, but rather their early and effective delivery are central to the success of the process itself” (A/56/875-S/2002/278, para. 98(h)). The emphasis on recovery and reconstruction is evident in the resolutions that have extended UNAMA’s mandate on an annual basis ever since. In resolution 1419, the Council called upon all Member States to provide long-term assistance and on-going budget support for the social and economic reconstruction and rehabilitation of Afghanistan as a whole. Prior to that, in resolution 1401, the Council had encouraged donor countries that pledged financial aid at the Tokyo Conference on reconstruction assistance to Afghanistan to fulfill their commitments as soon as possible. When renewing UNAMA’s mandate the following year, the Council noted, in the context of a comprehensive approach, the synergies in the objectives of UNAMA and ISAF, and stressed the need for continued cooperation and coordination. The Council called upon the Afghan Government, with the assistance of the international community, including

ISAF and the Operation Enduring Freedom coalition (OEF), in accordance with their respective designated responsibilities as they evolve, to continue to address the threat to the security and stability of Afghanistan posed by the Taliban, Al-Qaida, other extremist groups and criminal activities (UNSC res 1746).

The manner in which the Security Council has come to recognize the interrelationship between international peace and security and economic and social development, or in the case of Afghanistan, recovery, reconstruction and development, can be seen more recently in its extension of UNAMA's mandate, in March 2011. In resolution 1974, the Council stressed, once again, the importance of a comprehensive approach to address the situation in Afghanistan and recognized that there was no purely military solution to ensure the stability of Afghanistan. The Council continued its recognition of the interconnected nature of the challenges in Afghanistan and reaffirmed that sustainable progress on security, governance and development, as well as the cross-cutting issue of counter-narcotics, was mutually reinforcing. The Council welcomed the continuing efforts of the Afghan Government and the international community to address these challenges through a comprehensive approach. In resolution 1974, the Council also noted, in this context, the synergies in the objectives of UNAMA and ISAF and stressed the need for strengthened cooperation, coordination and mutual support. The Council further decided that UNAMA and the Special Representative of the Secretary-General (SRSG), operating within their mandates and guided by the principle of reinforcing Afghan ownership and leadership, would continue to lead the international civilian efforts, in accordance with their priorities as laid out in paragraph 4 of resolution 1974, as follows:

- (a) promote, as co-chair of the Joint Coordination and Monitoring Board (JCMB), more coherent support by the international community to the Afghan Government's development and governance priorities, including through supporting the ongoing development of the new National Priority Programs, mobilization of resources, coordination of international donors and organizations, and direction of the contributions of United Nations agencies, funds and programs, in particular for counter-narcotics, reconstruction and development activities; at the same time, support efforts to increase the proportion of development aid delivered through the Afghan Government, and support efforts to increase the transparency and effectiveness of the Afghan Government's use of such resources;
- (b) strengthen the cooperation with ISAF and the NATO Senior Civilian Representative at all levels and throughout the country in support of the transition to Afghan leadership agreed to at the Kabul and London Conferences and the Lisbon Summit, in a sustainable manner to ensure the protection and promotion of the rights of all Afghans, in accordance with their existing mandates, in order to improve civil-military coordination, to facilitate the timely exchange of information and, to ensure coherence between the activities of national and international security forces and of civilian actors in support of an Afghan-led development and stabilization process, including through engagement with provincial reconstruction teams and engagement with non-governmental organizations,

Arguably, UNAMA has a strong mandate as regards human rights and economic and social development (Kreilkamp 2002/03), although this aspect of the mandate, like the mandate overall, is limited to providing assistance to the transitional authority (Schoiswohl 2006; A/56/875-S/2002/278). UNAMA exemplifies the manner in which the Security Council has begun to move towards a much broader understanding of peace and security that acknowledges the significance of human rights and economic and social factors. UNAMA, both as a multidimensional peace operation in its own right as well as being an operation intertwined with ISAF, advances the doctrinal shift, first advanced in the Brahimi Report, of incorporating elements of peace-building into peace operations (O'Flaherty 2003). However, the actual impact of this doctrinal shift has been limited by the fact that donors have been slow to deliver on the generous pledges made to the planned recovery programs which has meant that much of its recovery programming has had to be scaled back in the face of insufficient funds (Griffin 2003). ISAF and UNAMA provide separate but entwined legal frameworks for the peace support mission in Afghanistan. However, as the Security Council resolutions indicate, its peace support initiatives are largely dependent on upon the fulfillment of international agreements pertaining to Afghanistan.

**Rebuilding Afghanistan: From Security Council Resolutions
to International Agreements**

The above-mentioned resolutions are at the apex of the international efforts to rebuild Afghanistan. In terms of international law, the resolutions are binding although, perhaps unsurprisingly, the language of the resolutions is somewhat vague. The Council's calls for recovery and reconstruction assistance are made in tandem with and,

according to the Council, are heavily reliant upon the implementation of a number of international agreements containing much of the detail underpinning reconstruction in Afghanistan.

The Bonn Agreement: Transitioning towards Permanent Governance

The Bonn Agreement created the agenda and process for the establishment of permanent governance institutions, representing a new level of commitment and political will by both Afghans and major powers (Johnson 2006). The agreements paved the way for the creation of a three-way partnership between the Afghan Transitional Authority, UNAMA, and ISAF.

Amongst the wide range of issues covered by the Bonn Agreement was the interrelationship between economic and social recovery and international peace and security. In paragraph 2, the participants to the Agreement urged the UN, the international community, particularly donor countries and multilateral institutions, to reaffirm, strengthen and implement their commitment to assist with the rehabilitation, recovery and reconstruction of Afghanistan, in coordination with the Interim Authority. For its part, the Security Council, in resolution 1471, stressed that the continued provision of focused recovery and reconstruction assistance could contribute significantly to the implementation of the Bonn Agreement and, to this end, urged bilateral and multilateral donors to coordinate closely with the SRSB and the Afghan Transitional Administration, in particular through the Afghan Consultative Group Process. It reiterated its strong support for the full implementation of the Bonn Agreement. It also supported, in resolution 1536, the objectives of the international conference which took place in Berlin from 31 March to 1 April 2004 to allow the Afghan authorities and the international

community to reaffirm their long-term commitment to take the transitional process in Afghanistan forward, including by demonstrating support for the Afghan political process and its national security, as well as by confirming and generating international financial and other donations. In extending and supporting UNAMA's mandate, the Security Council, in resolution 1589 for example, continued to affirm its support for the implementation of the provisions of the Bonn Agreement and of the Berlin Declaration.

However, the Bonn Agreement is not a "peace agreement" between the parties to the internal conflict in Afghanistan. Only the US-backed Northern Alliance was party to the Agreement (Johnson 2006). As such, the Bonn Agreement is largely a political agreement with little or no clear legal undertakings.

The Afghan Compact and the London and Kabul Communiqués: Sustaining International Cooperation

The process outlined in the Bonn Agreement came to a formal end in 2005 with the completion of the Parliamentary and Provincial elections. The Afghan Compact, the culmination of the 2006 London Conference on Afghanistan, was a successor to the Bonn process and established the framework for international cooperation with Afghanistan for the ensuing five years. The Compact was agreed to by the Islamic Republic of Afghanistan and the international community. Recognition of the interrelationship between peace, security and economic and social development can be seen in some of the Compact's preambular statements. According to the Compact, its parties expressed their:

[Determination] to strengthen their partnership to improve the lives of Afghan people, and to contribute to national, regional, and global peace and security;

...

[Resolve] to overcome the legacy of conflict in Afghanistan by setting conditions for sustainable economic growth and development; strengthening state institutions and civil society; removing remaining terrorist threats; meeting the challenge of counter-narcotics; rebuilding capacity and infrastructure; reducing poverty; and meeting basic human needs;...

The Compact identified security; governance, rule of law and human rights; and economic and social development as three critical and interdependent areas or pillars of activity for the five years subsequent to its adoption. A further vital and cross-cutting area of work was the elimination of the narcotics industry, which remained a formidable threat to the people and state of Afghanistan, the region and beyond. Under the terms of the Compact, the Afghan Government committed itself to realizing a shared vision of the future and the international community, for its part, committed itself to provide resources and support to realize that vision.

Annex I of the Compact set out detailed outcomes, benchmarks and timelines for delivery, consistent with the high-level goals set by the ANDS. Annex I also identified a number of goals in the area of economic and social development. The Afghan Government with the support of the international community agreed to pursue high rates of sustainable economic growth with the aim of reducing hunger, poverty and unemployment. According to the Compact, public investments were to be structured around the six sectors of the pillar on economic and social development of the ANDS which are: infrastructure and natural resources; education; health; agriculture and rural

development; social protection; and economic governance and private sector development. In each of these areas, the objective was to achieve measurable results towards the goal of equitable economic growth that would reduce poverty, expand employment and enterprise creation, enhance opportunities in the region and improve the well-being of all Afghans. The Government and international community also committed themselves to improving the effectiveness and accountability of international assistance as set forth in Annex II. For its part, the Security Council's support for the implementation of the Compact remained up until 2010 (UNSC res 1917), at which point continued support for the reconstruction of Afghanistan was reconstituted by both the international community and the Council to reflect the outcomes of the London Conference of January 2010. The ensuing Communiqué of the London Conference continues the recognition by both the international community and Afghanistan of the formidable development challenges faced by the latter which require sustained, long-term support from the former (S/2010/65). According to the Communiqué:

Economic growth, respect for Rule of Law and human rights alongside creation of employment opportunities, and good governance for all Afghans are also critical to counter the appeal of the insurgency, as well as being vital to greater stability in Afghanistan. (S/2010/65, para. 16)

The significance of economic and social development was reaffirmed in the subsequent Kabul Communiqué which noted the support of the international community for the Afghan Government's strategy of seeking to achieve fiscal independence through an effective mix of investment in critical infrastructure and the development of a skilled labor force and of a strong, value-adding agricultural sector. It was noted that part of the

success of this strategy would depend upon initiatives such as public-private partnerships in social and economic development, through adequate regulatory and institutional reform.

The disparity between statements of intent and subsequent action on the part of States and other donors raises an interesting question around the extent of States' international legal obligations in response to Security Council resolutions affirming the Bonn Agreement, the Afghan Compact, the London and Kabul Communiqués, and UN Charter obligations, more generally. Early Security Council resolutions pertaining to Afghanistan indicate that the Bonn Agreement formed the core of the operation of the mandate. However, the Agreement has been described as neither a domestic agreement, an international treaty, nor a peace-treaty. Consequently, whether the Agreement could create rights and obligations for the United Nations given that the Agreement was merely witnessed by the SRSG to Afghanistan has been questioned (Schoiswohl 2006; Report of the Secretary-General 2002; Bonn Agreement 2001). Similarly, the theory of self-determination, posited to elevate the Agreement to the level of other international agreements, has proven problematic as not all groups were adequately represented and, as a result, a collective exercise of the right to self-determination could not be exercised (Schoiswohl 2006).

Accordingly, it has been argued that the Bonn Agreement does not qualify as an enforceable international agreement so that those provisions that relate to the United Nations should be only interpreted as a declaration concerning the latter's mandate in the political reconstruction of Afghanistan. The affirmation of the Bonn Agreement by the Security Council, in Resolution 1358, would have been unnecessary if the Bonn

Agreement could be regarded as an international agreement between the United Nations and –Afghanistan” represented by the participants to the Bonn talks (Schoiswohl 2006). Similar analysis can be applied to the Afghan Compact and the subsequent Communiqués. Following this view, the assistance provided by donors is not imposed, at least technically, but provided on the basis of the normative framework of the type originally enshrined in the Bonn Agreement. The converse of this analysis is the obligation imposed by upon all Member States by Article 2(5) of the Charter to give the United Nations every assistance in any action it takes in accordance with the Charter. Overall, it would appear that the legally binding, although vaguely worded, Security Council resolutions are dependent upon non-binding legal agreements pledging financial support. This situation raises some questions around the ability of the Council to meet its mandate which may have particular legal consequences for its initial and on-going armed intervention, *jus ad bellum*, in Afghanistan more generally. This type of scenario raises questions more generally regarding *jus ad bellum* and peace support operations if the goal of the intervention is difficult or even impossible to determine, achieve or sustain.

Constructing Peace and Security: Stabilization and Development

Mandates and the Military

The peace support operation in Afghanistan is evidence of a more balanced institutional approach aimed at simultaneously advancing recovery in governance, security, justice and reconciliation, and socio-economic development (Rietjens, Bollen, Khalil, and Fazlullah Wahidi 2009). It has resulted in a greater convergence between military and non-military tasks so that military forces have been playing an increasing role in the conduct of humanitarian and development missions, previously regarded as

being the domain of civilian actors, because of the immediate needs of the situation (Ryan 2007/08; MacNerney 2005/06; Freeman 2007). ISAF is conducting immediate and longer-term stabilization operations either simultaneously with, or in rapid succession to, security operations. Perhaps the most obvious aim of such stabilization operations is the fulfillment of the Chapter VII peace enforcement mandate. However, such operations also aim to establish a secure environment in which local, domestic and international actors, such as UNAMA, can operate.

Provincial Reconstruction Teams: The Front Line in Securing Economic and Social Reconstruction

ISAF established Provincial Reconstruction Teams (PRTs), consisting of military and civilian personnel, throughout Afghanistan to carry out stabilization and reconstruction and development activities. Neither NATO nor ISAF have control over the orientation and work of the PRTs. Each PRT reports to its own national authorities and they tend to reflect the priorities of their troop contributing nations, which often leads to coordination problems and inefficient development assistance (Kouvo 2009). According to the UN Secretary-General, as the number of PRTs increases, as well as the number of countries involved in them, issues of consistency and coordination with the Afghan Government and the international community are increasingly relevant. Therefore, special attention ought to be paid to ensuring that a unified vision and common policy are implemented countrywide (A/58/742-S/2004/230; Tiersky 2009). PRTs assist ISAF's overall goal of assisting the Afghan authorities to establish and strengthen those institutions whose role it is to effect good governance, rule of law and the promotion of

human rights. Development advisors are also embedded within the PRTs, Regional Commands and ISAF Headquarters (NATO March 2010; NATO 2008; S/2003/1212).

In practical terms, PRTs provide area security and support for the reconstruction and development efforts of local, national and international actors. On the one hand, the PRTs' civilian components have responsibility for political, economic, humanitarian and social matters. On the other hand, the PRTs' military components focus on increasing security and stability in the area and building security sector capacity. The PRTs' military components are also responsible for directing assistance to the civilian elements, in particular at the levels of transport, medical assistance and engineering, thus demonstrating the intertwined nature of military and civilian operators. Overall, various kinds of projects are underway, facilitated by the NATO-ISAF PRTs. As the work of the NZ PRT below indicates, schools are being rebuilt with the mentoring or assistance of ISAF engineers, allowing children to resume their education; irrigation ditches, pipelines, reservoirs and wells are being constructed to bring water to the local population and farmers; infrastructure is being repaired and/or built to facilitate mobility and communication; and local people are provided with greater access to medical assistance. Upon request, ISAF PRTs are assisting the Afghan Government and international actors with humanitarian relief. In particular, ISAF soldiers have launched several relief missions, distributing medication, food and winter supplies to help villagers cope with severe weather conditions in different parts of the country (NATO March 2010; Malley 2007; Bosi 2003).

The NZ PRT: The Reality of Stabilization and Development

New Zealand Defence Force personnel began working in Afghanistan following United Nations resolutions adopted after 11 September 2001. From the perspective of domestic law, New Zealand's presence derives from s 5 of the Defence Force Act 1990 which provides:

The Governor-General may from time to time, in the name and on behalf of the Sovereign, continue to raise and maintain armed forces, either in New Zealand or elsewhere, for the following purposes:

(a) the defence of New Zealand, and of any area for the defence of which New Zealand is responsible under any Act:

(b) the protection of the interests of New Zealand, whether in New Zealand or elsewhere:

(c) the contribution of forces under collective security treaties, agreements, or arrangements:

(d) the contribution of forces to, or for any of the purposes of, the United Nations, or in association with other organisations or States and in accordance with the principles of the Charter of the United Nations:

(e) the provision of assistance to the civil power either in New Zealand or elsewhere in time of emergency:

(f) the provision of any public service.

New Zealand has maintained a PRT in Bamyán Province since September 2003. Originally, the NZ PRT was originally part of New Zealand's contribution to OEF. Since November 2006, the NZ PRT has operated under the command of

ISAF. As with all deployments, the Chief of Defence Force maintains full command of the NZ PRT. Operational command of deployed NZDF personnel is the responsibility of the Commander Joint Forces New Zealand. New Zealand also has personnel serving in ISAF headquarters and UNAMA.

The NZ PRT comprises four Liaison teams which facilitate aid efforts, monitor disarmament and assist in the reconstruction of Afghan institutions, including education facilities (NZDF October 2010). The provision of security and stability to facilitate the deliverance of government assistance, capacity building, and governance improvements has been a primary purpose. In 2009, the head of New Zealand's PRT in Bamyan readily acknowledged that security was only part of the mission:

We are heavily focused on development and more recently governance.

The NZPRT is in the middle of a \$US40m 'development surge' with the priorities on roads, health and education infrastructure. This money is being supplied by the US military, with meaningful contributions from NZAID, USAID and Singapore. Significantly, the delivery is all Kiwi led ... Winning the people over is what will win this war; this means improving the lives of Afghans.' (NZDF October 2009, 6).

In terms of assisting with governance, the NZ PRT has established relationships with the Afghan regional leadership to monitor and co-ordinate activities in order to strengthen the influence of the Government and marginalize regional causes of instability (NZDF October 2010). Such support manifests itself at the provincial and local

government in the provision of advice and assistance to the Provincial Governor, the Afghan National Police and district sub-governors.

Physical, social and economic reconstruction has been a joint effort. An American military contingent, which has access to funding from the US Commanders Emergency Response Program (CERP), has also been assigned to the NZ PRT. Together, they are responsible for timely project delivery, quality and cost while adhering to and maintaining national guidelines. New Zealand's PRT has introduced a robust Development Plan that includes Terms of Reference for Sector Working Group representatives to ensure it meets both mission and local expectations. The combined personnel are heavily involved in major road infrastructure, health and education programs and have jointly facilitated the successful delivery of over 600 projects since the deployment of the NZ PRT (Breen 2009; Fletcher 2009). The NZ PRT has assisted in the rebuilding of Bamyan's physical infrastructure by identifying, preparing and providing project management for NZAID projects within the region. These projects have provided both employment and new amenities in the region because they are contracted to Afghan companies that hire local workers, thus contributing to economic reconstruction in the area (NZDF October 2010; Breen 2009).

In addition to its work on the re-building of Bamyan Province's physical infrastructure, the NZ PRT has had a particular impact on some basic social (re)development with regard to health, education and security (NZDF October 2009). As of 2009, 83 percent of Afghans had access to basic healthcare, up from just eight percent in 2002 (NZDF June 2009). In Bamyan province the provision of basic health care is a combined effort between the NZ PRT and United States' military personnel. The US

military initiated the organization of clinics so that people in remote areas of the war-ravaged province could access medical checks, and have their animals treated, dosed and vaccinated at the same time. In addition to providing security for the clinics, the NZ PRT team includes nurses and medics. Together with their US counterparts, as well as US veterinarians, the NZ PRT personnel have run all-day multi-purpose clinics in several remote villages that otherwise possess few or no medical facilities (Breen 2009). In this regard, the NZ PRT's policy has been broad, seeing as many people and animals as possible, and, where possible, providing them with medical treatment or advice and referring some people to hospitals and dental facilities in Kabul or Bagram. Cattle, donkeys, horses, sheep and have been vaccinated and dewormed, and dogs have been given rabies vaccinations (NZDF July 2004). Malnourishment has been a major medical problem in the Bamyan area. At the local hospital more than two thirds of the inpatient pediatric admissions have been from (often very serious) malnourishment alone.

According to New Zealand Army nurse Captain Georgina Parata-Turvey:

Hopefully, when the area where we are based becomes stable, and life for the local population returns to some sense of normality, with jobs returning to the local economy and things as simple as being able to grow crops and raise livestock happen without them being 'requisitioned' by the Taliban, the level of malnutrition will decrease. (NZDF July 2004, 5)

In 2009, Afghanistan had thirteen state universities, eight other state institutions of higher education, and a dozen private universities in which 20 per cent of the students were female (NZDF October 2009). At a provincial level, Bamyan Boys' School was built with the assistance of the NZ PRT which helped with planning, the organization of

contractors and the allocation of \$500,000 worth of funds provided by NZAID (Breen 2009; NZDF 2006). According to New Zealand contingent commander, Group Captain Kevin Short, the boys' school —is a very visible and tangible example of progress towards a positive future for the people of Bamyan” as education was key to the success of Afghanistan as a country (NZDF December 2006).

Social redevelopment has also seen members of the NZ PRT engaged in mentoring and teaching roles. In 2007, for example, the NZ PRT approved sponsorship for a four-day Strategic Working Group with the intention of allowing Bamyan's Director of Education and the Province's District Directors to meet together to learn about strategic planning and to assist the Provincial Director in preparing a draft Provincial Education Plan. The Provincial Director and his staff were also mentored in preparation and delivery. At the completion of the Working Group meeting all objectives had been achieved and attendees were united in their appreciation of the experience. Both the organization of the meeting by the NZ PRT and the meeting itself constitute a further strand and practical demonstration of reconstruction as local leaders are prepared to assume responsibility for the development and outputs of their departments (Breen 2009; Smith 2007).

One of the New Zealand Government's key areas of assistance in Afghanistan relates to the Afghan National Police (ANP) (Martin 2006). In this regard, New Zealand Police have worked very closely with the NZ PRT with day-to-day activities for police personnel consisting of training, coaching or mentoring, facilitating the provision of equipment and infrastructure, restructuring, pay-roll, rank reform and other specialist project work. By 2007, much progress (albeit slow) and many notable achievements had

been made in training and equipping the ANP which had resulted in a definite improvement in the overall capability and competence of the ANP within Bamyan Province. A fully functional Regional Training Centre had produced over 2,000 trainees with 1,600 of these trainees returning to their police districts within the Province. The new Bamyan Provincial Police Headquarters building was almost finished, good progress was being made on pay-roll reform and the ANP restructure ‘the Tashkil’ was underway (Breen 2009; Edghill 2007). These successes stemmed from earlier work by the NZ PRT including an NZAID-funded literacy program as illiteracy had been identified as one of the biggest challenges facing Afghan police. In addition, capacity in the local force was further supported by the instruction of local trainers by the NZ PRT (Breen 2009; Martin 2006).

Strengthening security and reconstruction of physical infrastructure saw the provision of seven new police vehicles to the local police by NZAID, the building of five new stations and the occurrence of several other smaller policing-related projects throughout the province. The NZ PRT was charged with training an effective traffic police force in Bamyan province. The extent of the required training was described by Group Captain Howse who observed that, “[F]or many of the people we are training, donkeys have been their main form of transport, so we have to start from scratch with vehicles” (NZDF July 2004, 3). Using two of its own Toyota Hiluxs which it donated to the Bamyan police to use as training vehicles, the NZ PRT trained the local police in vehicle maintenance, driver evaluation and driver training, basic road rules, driving so as to avoid damage to the vehicle by the roads and how to reverse a vehicle accurately. The

police were instructed in vehicle checkpoint drills, skills which local police need to help maintain security in the local area (Breen 2009; NZDF July 2004).

The intended impact of such hands-on activities in terms of physical, economic and social reconstruction finds expression in the views of Air Force engineer Squadron Leader Shane Meighan:

We're trying to build capacity, to get the local council to support itself, and take care of its own planning and decision making. We're here to help them develop the skills to be self-governing. Ultimately we should do ourselves out of a job here I hope. That's our aim. (Martin 2006)

The role of the NZ PRT has also been described as one of giving effect to the Afghan Government and ISAF's aim of establishing a secure environment. That such an approach requires a long term view of security can be seen in the comments of the former Deputy Chief of Plans at the Headquarters of ISAF, Lieutenant Colonel Jeremy Ramsden, who stated:

Security improvements occur when the population sees growth in governance capacity and tangible development effort. Winning the people over is what will win this war; this means improving the lives of Afghans.

(Ramsden 2009, 2)

The Deputy Chief was also of the opinion that the challenge for Afghanistan was to integrate the security line of operation (ISAF) with the governance responsibility (the Afghan Government) and development (United Nations) lines to produce a combined effect. He was of the opinion that for ISAF's part this meant genuine engagement, showing "operational patience," understanding the long game, and positioning for it. An

integrated approach to security would require the Afghan Government to extend appropriate governance and to deal with corruption. The integrated approach would require the UN Mission to fulfill the basis for its establishment and to giving effect to its mandate responsibilities (Breen 2009; Ramsden 2009).

As the previous paragraphs demonstrate, the necessities of reconstruction have frequently drawn ISAF and the NZ PRT into activities that go well beyond their originally intended missions of providing direct security, including the delivery of essential services such as health care, education, or food. From the perspective of the military forces, the destruction or defeat of the enemy should remain the key goal. Many military forces may argue that they are not the appropriate actors to be performing non-security related tasks on the basis that the performance of such tasks may lead to: a dilution of the central role and motivation of the military which is warfighting; an overstretching of increasing limited military resources; an overlapping of responsibilities with civilian operators such as NGOs engaged in humanitarian assistance resulting in confusion and tensions between both sets of operators. NGOs may not welcome the input or assistance of the military which the former may regard as inflexible and a threat to the need to appear impartial amongst the local population. The overall outcome may be unrealistic and result in unmet expectations on the part of the local populace (Ryan 2007; Wing 2000), which serves neither the military nor the non-military operators. Increasingly, the reality is that complex peace support operations are deployed to many areas where tenuous security conditions prevent humanitarian organizations, which may be deliberately targeted by insurgents, from establishing a presence. In such situations, the debate on specific domains becomes less relevant, and military involvement in non-

military activities is necessary to provide a temporary gap and gain momentum for reaching the primary military goal: the creation of stability (Rietjens 2009). The achievement of this goal in turn facilitates the destruction of the enemy, the key and traditional goal of the military forces.

However, the blurring of military and non-military roles and the increased co-operation with domestic governmental and non-governmental actors, as well as international governmental actors raises the question of “~~un~~governed spaces” in international law.

International Law and Stabilization and Development Mandates in Afghanistan:

Plenty of Policies but what about the Law?

Interventions by international organizations such as the UN and NATO, and their on-going presence in Afghanistan, pose some challenges for *jus ad bellum* and *jus in bello*. As part of any consideration of the, arguably open-ended, relationship between the legal objectives for intervention and the manner by which those objectives are achieved, it might be useful to consider some of the policy-based and legal complexities impacting upon the current international presences in Afghanistan

Peacebuilding: A New Policy for an Old Problem?

In An Agenda for Peace, UN Secretary-General Boutros-Ghali stated that in order for peacemaking and peacekeeping operations to be truly successful, such operations had to include efforts both to identify and to support structures that would consolidate peace and advance a sense of confidence and well-being (A/55/305-S/2000/809). Similarly, the Report of the High Level Panel on Threats, Challenges and Change, A More Secure World, stated that, “[r]esources spent on implementation of peace agreements and

peacebuilding are one of the best investments that can be made for conflict prevention - States that have experienced civil war face a high risk of recurrence” (A/59/565, para.

221). Furthermore, the High Level Panel was of the view that:

Along with establishing security, the core task of peacebuilding is to build effective public institutions that, through negotiations with civil society, can establish a consensual framework for governing within the rule of law. Relatively cheap investments in civilian security through police, judicial and rule-of-law reform, local capacity-building for human rights and reconciliation, and local capacity-building for public sector service delivery can greatly benefit long-term peacebuilding. This should be reflected in the policies of the United Nations, international financial institutions and donors, and should be given priority in long- term policy and funding. (A/59/565, para. 229)

Similarly, the Report of the Panel on United Nations Peace Operations (the Brahimi Report) identified the way in which the UN had conceived of, funded and implemented peace-building strategies and activities as being a fundamental deficiency. It not only laid out a clear peace-building strategy in an effort to bridge the chasm between the development and the conflict management sides of the UN (Griffin 2003), it also called for clear, credible and achievable mandates for peacekeeping (A/55/305 - S/2000/809; Breau 2006). Similarly, the link between poverty reduction, economic growth and conflict prevention was identified in the UN’s Millennium Report (A/54/2000) and the theme was further expanded upon by the International Commission

on Intervention and State Sovereignty (ICISS). In its report, the Responsibility to Protect, the ICISS stated:

Too often the responsibility to rebuild had been insufficiently recognized and the exit of the intervention poorly managed with the underlying problems causing the conflict left unresolved. In addition to the more obvious aspects of disarmament, demobilization and reintegration of the armed, other aspects of post-conflict activity were the necessity for justice, reconciliation and economic growth. (ICISS 2001, para.5.2)

According to the ICISS:

True and lasting reconciliation occurs with sustained daily efforts at repairing infrastructure, at rebuilding housing, at planting and harvesting, and cooperating in other productive activities. External support for reconciliation efforts must be conscious of the need to encourage this cooperation, and dynamically linked to joint development efforts between former adversaries. (ICISS 2001, para. 5.4)

Collectively, these reports constitute a rethinking of international policy.

International interventions must now deal with harsh realities such as violent attacks, badly broken infrastructure, mounting frustration with occupiers over insecurity, lack of basic services, and unemployment (Rudderham (2007/08). Neglecting health, education and other needs of the civilian population may not only entrench dependency on external aid and render the population less capable of recovering from war but it may also increase the likelihood of a resumption of conflict. Consequently, the view has developed that humanitarian and conflict management operations must be linked, so that longer-

term, locally-driven, capacity-building development interventions must take root alongside the expensive, large-scale, short-term, externally driven humanitarian interventions responses to that typify the initial response to crises (Breen 2009; Griffin 2003). Although such policy initiatives are to be welcomed, there remains the question of how such policies impact on the law which underpins the deployment of peace support operations, and within which the distinction between military and non-military roles are blurred.

Jus ad bellum

As Security Council resolutions indicate, ISAF's presence is in response to the on-going threat to international peace and security posed by the situation in Afghanistan. Responding to that threat is the legal basis for the collective security response embodied, in this case, in the peace enforcement operation. UNAMA's role is one of assisting Afghanistan to transition from conflict to sustainable peace. It is not a Chapter VII action. Rather, it falls under the broader principles surrounding the maintenance of international peace and security as enshrined in the Charter, particularly in Chapter VI. The Council's endorsement of the Bonn Agreement, the Afghan Compact and subsequent Communiqués and its more recent recognition of the synergies between the mandates of ISAF and UNAMA, in renewing ISAF's mandate under Chapter VII, are evidence of *jus ad bellum*, or a collective security response, based not only on military responses to a threat to the peace. Such endorsement is also evidence of a collective security response which appears to be incorporating non-military responses to deal with that threat (Stahn 2006). Post-conflict reconstruction is not a novel concept. The relationship between peace and security and economic and social reconstruction and development can be

traced back to the early years of the UN and the immediate aftermath of WWII.

However, much of the focus on reconstruction and development takes place in a post-conflict context (A/59/565).

In many ways, the intervention in Afghanistan is following the UN blueprint for peace support identified from *Agenda to Peace* onwards. However, the pacification and stabilization efforts are running concurrently with economic and social development, indeed the latter are part of the stabilization process. The Security Council mandates underpinning ISAF suggest an evolution in collective security where intervention remains to be justified by a long-term, effective plan to deal to the threat that triggered the initial armed intervention. The evolution of collective security practice poses interesting questions regarding the nature and extent of the obligations placed upon the UN, troop contributing nations and the international community to counter the threat to peace and security that formed, and continues to form, the legal basis for peace enforcement in Afghanistan.

Jus in bello

The evolution of collective security also raises difficulties for the operation of such policies by States and peacekeepers within the current confines of IHL. Currently there exists an on-going armed conflict between Afghan Government forces (supported by ISAF), on the one hand, and insurgent Taliban forces (a non-state actor), on the other. Despite the presence of ISAF, this conflict is classified as a non-international armed conflict (Engdahl 2008). Consequently, ISAF (and the Afghan forces) is required to comply with, at a minimum, Common Article 3 of the Geneva Conventions relating to certain minimum standards of humane treatment that are applicable instances of armed

conflict not of an international character occurring in the territory of one of the High Contracting Parties. Additional Protocol II may also be applicable but only where a troop contributing nation has ratified that treaty. This requirement presents one of a number of difficulties in trying to create a cohesive body of international law (Kouvo 2009) given that the United States, for example, has not ratified the Protocol but New Zealand has. According to the Secretary-General, as the number of PRTs increase, as well as the number of countries involved in them, issues of consistency and coordination with the Government and the international community are increasingly relevant. Special attention should be paid to ensuring that a unified vision and common policy are implemented countrywide (A/58/742-S/2004/230).

Customary international law seeks to plug some of the gaps in IHL that regulate non-international conflicts. Both Common Article 3 and a number of provisions of APII are now regarded as to be part of customary international law. The ICJ has affirmed that the provisions of common Article 3 reflect customary international law and represent a minimum standard from which the parties to any type of armed conflict must not depart (*Military and Paramilitary Activities In and Against Nicaragua*, 1986). With regards to APII, among the acts governed by customary international law are the: prohibition of attacks on civilians; obligation to respect and protect medical and religious personnel, medical units and transports; obligation to respect the fundamental guarantees of persons who are not taking a direct part, or who have ceased to take a direct part, in hostilities; obligation to search for and respect and protect the wounded and sick (and shipwrecked); obligation to protect persons deprived of their liberty; prohibition of the forced movement

of civilians; and specific protection for women and children (Henckaerts and Doswald-Beck 2005).

The impact of IHL upon peace enforcement operations is somewhat awkward, however. The UN is not party to any IHL treaties, although there appears to be little doubt but that the provisions of humanitarian law that have customary status do apply to UN forces (Murphy 2003). The UN is not capable of following IHL, which is State-centric, in its entirety. Chapter VII authorizes use of force which would suggest that the rules of IHL should govern the conduct of peace enforcement operations but such operations do not easily sit within the framework of internal conflict law and do not sit at all within the 'inter-state' framework of international law (Engdahl 2008). Thus, the positive obligations regarding the protection of civilians, for example, would appear to apply to combatants but not peacekeepers or enforcers (Murphy 2003).

According to Article 1.1 of the Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law, the fundamental principles and rules of IHL set out in the Bulletin are applicable to UN forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement (Engdahl 2008). The Bulletin contains detailed guidance on Geneva law issues relative to the treatment and protection of civilians, detainees, and wounded and sick combatants. It also contains detailed guidance on Hague law issues relative to the means and methods of combat. The approach of the Secretary-General was based on the premise that peace enforcement operations could not be categorized as traditional armed conflict. The legal status of this Bulletin is debatable but it does provide

a foundation for legal advisors, commanders and civil authorities tasked to implement peace enforcement operations (Hoffman 2000).

Article 2(2) of the Convention on the Safety of United Nations and Associated Personnel states that the:

Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.

This view would suggest that the mere presence of United Nations peacekeeping soldiers in an area of conflict or a theatre of war, while performing a humanitarian or diplomatic mission, does not necessarily mean that humanitarian law binds these troops (Murphy 2003) and they are entitled to the status of civilians under IHL and the legal rights and obligations that ensue. This view is consonant with a prima facie reading of the Geneva Conventions and their Additional Protocols and, arguably, clarifies the legal status of UNAMA personnel. For the purposes of the Safety Convention, the status change as between combatant and civilian reflects the same conditions for civilians in general (Engdahl 2008). The Secretary-General also noted that the express reference to the laws regulating international conflict, “gives rise to the suggestion that enforcement actions carried out in situations of internal armed conflict (UNOSOM II type of operations) are included within the scope of the Convention and subject to its protective regime” (A/55/637 2000, 9 (fn. 3)). He concluded, however, that it was not the nature or character of the conflict that should determine whether the Convention or IHL applied

but whether, ~~in~~ any type of conflict, members of United Nations peacekeeping operations are actively engaged therein as combatants, or are otherwise entitled to the protection given to civilians under the international law of armed conflict” (A/55/637 2000, 9 (fn. 3)).

The preceding paragraphs are illustrative some of current legal complexities and potential loopholes in the law. Restricting the rules binding parties to Common Article 3 or to APII clearly overlooks the international dimension to the conflict (Murphy 2003). Moreover, ISAF troops may be combatants engaged in conflict and, thus, subject to broader IHL rules when they are acting as members of national armed forces. The same troops, and/or other members of armed forces in the same armed conflict, when they are not engaged in combat but are acting as peacekeepers are exempted from IHL obligations to respect the rights of protected persons (Murphy 2003). The switch between non-combatant and combatant status may serve to answer some of the questions as to rights and obligations of the combatant. It may address the issue of the rights of the non-combatant but it does not clearly address obligations of peace support personnel engaged in non-combatant roles, a range of activities neatly encapsulated in the role of the PRTs. It may be that the work of the PRTs are simply over and above the minimum standards provided for by Common Article 3 and APII, if such activities are carried out during the course of conflict.

The question arises then as to which body of law are peace support personnel most appropriately subject to, in the international and domestic arenas, in the course of non-combat activities as some of the work of the NZ PRT would appear to be. Arguably, such personnel may become subject to human rights law, in this case, the domestic laws

of New Zealand, with New Zealand, in turn, being governed by its obligations in the international sphere. Currently, however, the application of human rights law to peace support personnel, especially with regard to activities arising from reconstruction and development, is a less than satisfactory approach. Reconstruction and development activities are closely correlated to economic and social rights such as the rights to an adequate standard of living, health and education (Breen 2009). However, accountability for a failure to achieve such rights is not easily resolved as some States, including New Zealand, strongly resist attempts to provide a judicial or quasi-judicial remedy for the breach of such rights (Breen 2008). Moreover, the issue of accountability for the breach of economic and social rights is rife with more uncertainty as the issues of extraterritorial application of human rights treaties and responsibility (state or international) organization for breaches thereof remain to be traversed.

The nature of conflict has changed. More significantly, the collective security response embodied in the Charter sets out the pattern of potential responses. The evolution of peace support operations, including the increased emphasis on economic and social development components, suggests an evolution in both *jus ad bellum*, as well as *jus in bello*. However, only a small component of IHL, being the laws of occupation, was drafted with this type of activity in mind. There remains rather a large gap in international treaty law as regards the issue of whether the military when participating in peace support operations are under any positive obligations such as a duty to build hospitals as opposed to the current IHL obligation to refrain from bombing hospitals.

Conclusion

Peace support operations are a necessary but *ad hoc* response to breaches of international peace and security, or threats thereof. Peace support operations operate under the umbrella of IHL which incorporates, in particular, Articles 1 and 2 and Chapters VI and VII of the UN Charter, as well as the provisions of the Geneva Conventions and their Additional Protocols.

Peace support operations are a manifestation of modern collective security measures as set out in the UN Charter and are indicative of an evolved *jus ad bellum*. ISAF and UNAMA, with their interrelated synergies and their reliance upon the Bonn Agreement, the Afghan Compact and later Communiqués are the legal and practical response to the requirements of the afore-mentioned Charter provisions. The work of the PRTs demonstrates the blurring of the military and non-military roles designed to meet the objectives of ISAF and UNAMA. The situation in Afghanistan is indicative of a peace enforcement operation based on an initial military response followed by an immediate military and civilian component, or a military and civilian component running concurrently. *Jus ad bellum* seems to be incorporating a reconstruction and development response, either way. The broader functions of the military in peace support raises questions for *jus in bello* as States and their armed forces engage in stabilization and state-building initiatives, initiatives that are not easily incorporated into IHL.

With regards to Afghanistan, a clear link between peace and security and stabilization and development exists and the link underpins the peace support operation. However, the extent of the legal obligations incurred is not clear as the mandates are vague. On a more positive note, it would appear that the international community in

Afghanistan is seeking to follow quite closely the peace-building strategy outlined by the UN over the past two decades. However, the manner in which such a strategy fits into the framework of international law governing those who have undertaken the responsibility to effect the strategy remains unclear. The legal consequences of these developments for IHL is unclear given that the latter was drafted largely to deal with inter-state conflict and, to a more limited extent, internal conflict. The boundary between these categories is no longer clear in the context of peace support missions, especially those authorized under Chapter VII. As the work of the NZ PRT suggests, the nature of military roles is evolving as it increasingly engages economic and social reconstruction and development.

This state of affairs raises the question of whether the international community needs (yet another) treaty, a further Additional Protocol to set some parameters for peace support operations. Such a treaty might assist in drawing together a framework against which issues such as the extent of a State's obligations, the manner in which such objectives are to be met and how the international community, and troop contributing nations such as New Zealand knows that it has met its objectives.

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