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UNITED NATIONS PEACEKEEPING AND NON-STATE ACTORS: A THEORETICAL AND EMPIRICAL ANALYSIS OF THE CONDITIONS REQUIRED FOR COOPERATION

by

GREG HODGIN

Under the Direction of John Duffield

ABSTRACT

This paper attempts to determine the theoretical requirements for a non-state actor to give peacekeepers to a Member state of the United Nations, who would in turn give those peacekeepers to the United Nations. The paper examines two case studies, specifically the contract between Blackwater and the United States Department of State and the SHIRBRIG series of treaties. The paper finds that there is some overlap between a Member state's needs and a non-state actor's needs and that there is a theoretical possibility of the donation stated above taking place.

INDEX WORDS: United Nations, Peacekeeping, Non-profit, Non-state actor, Non-governmental organization, NGO, Blackwater, SHIRBRIG, International treaties, International security, International law, International organizations, Bilateral agreements, Multilateral agreements, Cooperation

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GREG HODGIN

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of

Master of Arts

in the College of Arts and Sciences

Georgia State University

2009

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UNITED NATIONS PEACEKEEPING AND NON-STATE ACTORS: A THEORETICAL AND EMPIRICAL ANALYSIS OF THE CONDITIONS REQUIRED FOR COOPERATION

by

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December 2009

This thesis is dedicated to those people who have suffered through conflict and to the United Nations. Help is on the way.

ACKNOWLEDGEMENTS

I would like to thank my committee, Dr. Scott Graves, Dr. Jelena Subotic and Dr. John Duffield, without whose help this thesis would have never come about. Their devotion to the craft is evident, as is their knowledge of the subject matter. I would also like to thank my good friend Tyra Bouhamdan, who kept me on track throughout this entire process and helped me keep my wits about me. One goes through life and rarely finds people of such caliber; I am very lucky for all.

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CHAPTER 1.

INTRODUCTION

The crafters of the United Nations Charter were not able to foresee the world that would come into being after World War II. Interstate conflict has sharply declined in the last 60 years (Zacher, 2001), whereas intrastate conflict has risen dramatically in that same time period, with at least 84 intrastate conflicts fought since 1960, and that number rising after 1989. The Charter was not designed to deal directly with intrastate conflict; most of the mechanisms are instead intended for preventing interstate conflict. The main mechanism that has evolved for the maintenance of international peace and security has been the mechanism of peacekeeping, where the United Nations acts as a neutral third party as either an observer, or, more recently, an active partner in seeking and maintaining peace. This idea of peacekeeping is not explicitly laid out in the Charter; instead it has grown by fits and starts since 1948 and is now usually the main answer with respect to intrastate conflict in the 21st century.[1]

The United Nations has frequently not been able to fulfill the Security Council's mandates with respect to troop strength, sufficient training for troops, and supplies due to the changes that have taken place in the peacekeeping system, the roles of forces in peacekeeping, and the types of conflicts that peacekeepers are sent into. The main issue here is the fact that the UN Charter was designed for and structured to combat interstate conflict, while modern peacekeeping missions are instead aimed at resolving intrastate conflicts. For instance, the United Nations has called for 19,315 peacekeepers for the mission in Darfur (along with additional police, volunteers and the like); however, the actual number of peacekeepers currently deployed for this mission is merely 12, 737, despite the fact that the United Nations Security

[1] Although this has increasingly not been the case, the UN, at the very least, attempts to engage in neutrality and impartial peacekeeping.

Council (UNSC) made the call for these peacekeepers in 2007.[2] The number of peacekeeping missions that the United Nations has embarked on has skyrocketed since 1989, with only 15 peacekeeping missions undertaken up to 1989, and 48 peacekeeping missions deployed during and after 1989.[3] The UN peacekeeping system never has been and is still not set up to deal with such massive numbers of peacekeepers.[4] The United Nations has had serious issues with the logistical side of peacekeeping as well, failing to supply peacekeepers in the field, with the sad truth that the UN has been unable to quickly and effectively procure food, equipment and ammunition for its peacekeepers in the field as the UN only has one logistics station in Brindisi, Italy and no effective method for rapid deployment.[5]

More and more frequently the call comes for the UN Security Council to outsource peacekeeping; i.e. contract out specific peacekeeping duties to private military companies (PMCs) or private security companies (PSCs).[6] Not only have Member states called for this, but public figures have called for this as well; UN Secretary Boutros-Ghali called for this in *An Agenda for Peace* and Madeline Albright, former US Secretary of State, calling for the international community to equip and train units willing to volunteer in advance for peace enforcement (Albright, 2003). The UNSC, however, has never shown any interest in taking peacekeepers from PSCs or PMCs.[7]

This paper will therefore explore a question that has not been answered in the literature: would it be possible for a non-state actor (NSA), perhaps a non-profit organization, to *donate*

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[2] http://www.un.org/Depts/dpko/dpko/bnote.htm.
[3] http://www.un.org/Depts/dpko/list/list.pdf
[4] The UN peacekeeping system has swollen from dealing with approximately 20,000 peacekeepers in 1989 to the current number of 93, 481 peacekeepers.
[5] http://www.amnestyusa.org/document.php?lang=e&id=ENGUSA20071129001
[6] PMCs are companies that specialize in heavy military operations w/ corresponding heavy weaponry and mostly military training. PSCs are companies that specialize in less armed roles, i.e. police, guard duty, etc.
[7] For a concise article on the issues inherent in outsourcing UN peacekeeping and a call for said outsourcing, see: http://www.metimes.com/Security/2009/02/27/dogs_of_war_outsourcing_peacekeeping/50d5/

peacekeepers to a Member State who would in turn donate those peacekeepers to the UNSC under the provisions of Article 43?[8] In the same token, could that non-state actor accept the constraints placed upon it by the Member State in question? Could the UN Security Council actually take peacekeepers from a non-state actor? Due to the fact that this scenario is at this point hypothetical, this paper will first explore cases that might help to highlight the issues at hand, followed by an analysis of these issues with the case studies and a thought experiment on exactly what conditions would be needed and how/if they could be met. This paper could therefore be considered a heuristic probe: if conditions X, Y and Z are available, is there a chance of event Q taking place? This paper will also cover the conditions needed to be met with regards to differing types of peacekeeping operations; i.e. preventive diplomacy, peacekeeping, peacemaking, post-conflict reconstruction and peace enforcement.[9] This paper finds that there is possibility for overlap with respect to preventive diplomacy, peacekeeping and peacemaking, but the possibility of overlap for post-conflict reconstruction and peace enforcement are low to non-existent at this time.

[8] Article 43 deals with the signing of special agreements which deal with the numbers and types of forces, their degree of readiness and general location and the nature of the facilities and assistance to be provided. This is the only method wherein the United Nations is allowed to take peacekeepers directly into the UN peacekeeping system. Although this was only supposed to be intended for Chapter VII operations, this has been expanded greatly since 1948 to fill all peacekeeping missions.

[9] Doyle, pgs. 10-11.

CHAPTER 2.

LITERATURE REVIEW

Although there is no specific literature on the subject in question, it is possible to look at related bodies of literature to gain at least some partial insights into the question at hand. To discuss the idea of a Member state actively using a non-state actor's peacekeepers, the literature review will discuss:

a. A history of the rise and decline of mercenary use by states in the Westphalian system, and the resurgence of mercenary use by states after the end of the Cold War and in the 21st century,
b. The outsourcing and delegating of Member state tasks (both military and civilian support missions) to non-state actors as documented in the literature,[10]
c. The development of international legal institutions with respect to sovereignty, non-state actors and their role on peacekeeping and
d. Trends in weak states and civil conflicts with respect to the privatization of security in both weak states and civil conflicts.

Each of these in itself does very little to explain the possibility of a Member state actively using a non-state actor's peacekeepers; however, each of these taken together can help shed light on the possibilities inherent in a Member state accepting peacekeepers from a NSA.

[10] Examples include election monitoring, logistical capacity, guard duties, hardware repair/maintenance and the like.

Mercenary Use in the Westphalian System

The Sovereignty Norm (and Violations Thereof)

After the Peace of Westphalia in 1648,[11] which created the notion of state sovereignty as a global milestone, large numbers of interstate wars were fought; states did meddle with the internal affairs of other states, and most countries were unable to exercise full control over their territories. Despite the violations inherent in the Westphalian structure, the general idea of state sovereignty is considered a keystone of the international system, so much so that it is encoded in international law via the United Nations Charter: "The Organization is based on the principle of sovereign equality of all its Members".[12]

Krasner covers four specific types of violations of Westphalian sovereignty:

1) Conventions wherein a sovereign state agrees to some external scrutiny over said state's internal affairs;[13]
2) Contracts, where a sovereign state signs an agreement between two or more sovereign states or a non-state international actor that is mutually acceptable to all parties involved;[14]
3) Coercion where one state threatens sanctions against another state unless the targeted state agrees to compromise internal autonomy,[15] and;
4) Imposition, where a sovereign state simply imposes its will on another weaker state.[16]

---

[11] The Peace of Westphalia produced three important elements with respect to sovereignty: territorial integrity, the equality of states in the international system and non-intervention by external sources in the internal affairs of a state.
[12] United Nations Charter, Article 2, Section 1.
[13] Krasner, pg. 124.
[14] Krasner, pg. 128.
[15] Krasner, pg. 136.
[16] Ibid.

All of these situations violate Westphalian sovereignty. Indeed, history is replete of examples of all four of these specific scenarios. One of the main examples of sovereignty violation with respect to the United Nations system deals with Chapter VII enforcement missions authorized by the United Nations Security Council, wherein the UNSC has the ability to enforce sanctions (a form of coercion),[17] and even the ability to invade and occupy another Member State (a form of imposition).[18] For the purposes of this paper, the main violation that will be explored will be the idea of *contracts* between two or more states and/or a non-state international actor. This can include bilateral/multilateral treaties, contracts signed between states and International Organizations (IOs) and also contracts signed between states and Non-Governmental Organizations (NGOs) or other non-state actors. Contracts are signed on behalf of Member states which give both parties involved in the contract some benefit. Due to the fact that this signing allows Member to lease sovereignty, this violation of Westphalian sovereignty has important ramifications for the central question of this paper as this clearly shows that states have no problem with violating Westphalian sovereignty if/when it suits their interests, as it clearly would in the case of a mutually beneficial contract between a NSA and a Member state.

The Norm of Nation-State's Use of Mercenaries

Before the 19th century, the majority of a state's army was actually composed of hired mercenaries (Thomson, 1990). State power was viewed in almost exclusive terms of hard power; i.e. the number of troops that could be fielded, the number of ships in that state's navy, etc. To field the maximum number of troops, states would either a) directly enlist individuals in

[17] United Nations Charter, Article 41.
[18] United Nations Charter, Article 42.

their armies, b) purchase or lease entire army units or c) subsidize another state's army.[19] Not only were mercenaries hired in large numbers by states engaging in warfare, hiring foreign mercenaries was considered the norm with respect to how states fought each other; states would contract out military work for a specified amount of money and those two armies would fight (Thomson, 1990), (Avant, 2000).

The late 18th and 19th centuries saw a change in this norm; i.e. the rise of nationalism and also the rise of the idea of the state having the monopoly over the use of force (Thomson, 1990). States began this transition by first tying foreign military service with the loss of the national's citizenship,[20] followed by the transition of the citizenry's ideas of being a citizen;[21] i.e. serving exclusively in the citizen's national army, not the army of any other.[22] The institutionalization of new state authority with claims to both municipal and international law led to the decline of mercenarism. By marrying the norm of "citizen-armies" with the idea that mercenary armies are not internationally condoned, the need for and hiring of mercenaries declined. By the middle of the twentieth century, only eighteen states had members from other states in their armies; most of these being colonial leftovers.[23]

Resurgence of the Mercenary Norm after the End of the Cold War

During the Cold War, local conflicts were held in check by superpower rivalry; in essence, the elites in the situations in question simply turned to one of the superpowers for support, weaponry, etc. With the end of the Cold War this easy source of power dried up, leaving elites in "battleground" states with nowhere to turn for effective military support, as the

[19] Thomson, pg. 24.
[20] Thomson, pg. 41.
[21] Thomson, pg. 43. Thomson states that nation-states passed laws stripping citizenship of nationals serving in foreign militaries, leading to a re-evaluation of citizens with respect to the definition of citizenry.
[22] Ibid.
[23] Thomson, pg. 28.

superpowers had propped up regimes that were supportive to one or the other superpower. PMCs filled this gap by providing those services, effectively allowing small states to field battle-tested and technologically advanced militaries. With the end of the Cold War, a number of state's armed forces units were demobilized (as in the United States) or simply turned private (as in the former Soviet Union and South Africa).[24] In both situations, these former military units had the expertise to engage in effective military actions but lacked the funding to do so. Therefore, the logical outcome was for these forces to go into business for themselves, leading to the proliferation of PMCs such as Executive Outcomes, Blackwater/Xe and Sandline.

It has been noted in the literature that every major United States military operation in the world since the end of the Cold War has been supported by significant and growing levels of PMC support.[25] The exact number of PMCs and PSCs are not generally known; however, they have been noticed by the United States and UK as growing since the 1990s, with a larger number of them taking on more missions in Member states and earning larger amounts of profits,[26] with these PMCs being hired by upwards of 30 Member states or rebel groups.[27] The vast majority (specifically 89.5%) of these missions by PMCs took place after the end of the Cold War.[28] It must also be stated that most of the PMCs and PSCs in question are in the habit of taking citizens of other countries for employment in their companies.[29] PMCs and PSCs are valued worldwide

[24] With respect to South Africa, this is exactly how Executive Outcomes came into being; entire former South African military units after being demobilized simply filled out corporate paperwork and became contractors-for-hire.
[25] Singer, pg. 188.
[26] 2002 UK Green Paper, pg. 12, accessible at: http://www.fco.gov.uk/resources/en/pdf/pdf4/fco_pdf_privatemilitarycompanies
[27] Ibid, Annex A.
[28] Ibid, Annex A; although this covers only Africa, 9 of these PMCs were in Africa before the end of the Cold War, 77 after the Cold War.
[29] Blackwater/XE, Sandline and Executive Outcomes all state on their websites that they have "strict application standards"; however, one of them is *not* citizenship in the home country of that PMSC (US for Blackwater, UK for Sandline and South Africa for Executive Outcomes)

at $165 billion and are forecast to grow 8% annually for the foreseeable future (Abrahamsen & Williams, 2009).

Due to these issues, it is logical to assume that because Member states have allowed for this monopoly of force to become diluted, it stands to reason that IOs that are specifically made up of Member states (such as the UN) would also allow this monopoly to dilute in its dealings with NSAs.

Outsourcing/Delegating Tasks from Member States to NGO/Non-State Actors

This represents the opposite side of the equation: even if a Member state was able to take peacekeepers from a NSA, could an IO such as the UN actually take those peacekeepers? After all, if peacekeepers could only flow from the NSA to the Member state, but not from the Member state to the UN, there would be little point in this discussion. As stated in the previous section, recently Member states have contracted military duties to non-state actors, specifically PMCs. Because of this, the unrestricted access to military services, ushered in by the rise of the privatized military industry has clearly enhanced the role of non-state groups.[30] Even the most powerful military on the planet has contracted out a large amount of its military duties to these PMCs, clearly showing a breach in the Weberian monopoly of force. The United Nations has taken note of the increased use of PMCs. Indeed, the Special Rapporteur for the Commission on Human Rights in 2003 stated that after examining the role of PMCs in the field and the questions raised by Member States on the question of PMCs:

> "Hence the need for a debate on the role of the State with respect to the use of force 'so as to reach a common understanding on the respective duties and responsibilities of the different State and non-State actors in the current context, and their respective obligations for the promotion and protection of human rights',

[30] Singer, pg. 212.

> the core issue being to identify 'who is entitled to legitimacy in the use of force in the current political and security climate. This could conceivably lead to 'a fundamental revamping or the total revocation of the UN 1989 Convention on mercenaries' and also yield 'a useful outcome for the United Nations itself with respect to effective maintenance of its peacekeeping and peacebuilding mandates.'" (Ghebali, 2009)

The United Nations, along with others, has clearly realized that the question of what entities in the international system have the ability to engage in the use of force is not a self-evident answer. That there is discussion on this issue gives leverage to the idea that outsourcing peacekeeping to a NSA is therefore theoretically possible.

The Development of International Legal Institutions with Respect to Sovereignty, Non-State Actors and their Role on Peacekeeping

The entire UN system is based around a treaty which attempts to produce an international system based around the rule of international law, specifically under Article 103, making all other international treaties subservient to the UN Charter (United Nations, 1945). In essence, by signing this treaty, Member states have voluntarily given up part of their sovereignty, especially when it deals with international peace and security.[31] This development of the norm of international law has led to a slow encroachment of international and supranational institutions on the classic definition of sovereignty.

The European Court of Justice (ECJ) and the International Criminal Court (ICC) are both clear examples of this checking of sovereignty. The ECJ has the ability to interpret law with respect to the EU, may review the validity of an act of Community law, and its judgments are

[31] Of course this is not always entirely true or accurate, but international law is more often than not followed by all players involved. Article 24 of the Charter specifically states that international peace and security is the Security Council's job; NOT the job of the Member states.

binding on all members of the EU.[32] The ICC is a widely encompassing legal institution that can try individuals on four specific counts: Genocide, Crimes Against Humanity, War Crimes and the Crime of Aggression (Nations, Rome Statute of the International Criminal Court, 1998, 1998). With respect to sovereignty, each Member that has signed the ICC statute has agreed to:

1) The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.
2) The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.[33]

Yet another example of this growth is UNCLOS, the United Nations Conference on the Law of the Sea.[34] This treaty produces a regime known as the International Seabed Authority (ISA) that has the ability to distribute seabed mining royalties.[35] In essence, this treaty gives this international regime the ability to tax and regulate a resource, an ability that is classically considered to be the sole domain of states. Any disputes are taken care of by binding arbitration; however if necessary the option to present the case to the UNSC is present as a last resort in the treaty.

Also, it is possible to look at the impact that NSAs have had with respect to international organizations, specifically the United Nations. Although NGOs are only mentioned once in the United Nations Charter, they have steadily increased their representation and influence throughout the entire UN system.[36] Specifically, the UN has outsourced more and more of its legal and political functions to NGOs in the field, such as election monitoring and the like.

[32] Description of the ECJ's powers and abilities: http://curia.europa.eu/jcms/jcms/Jo2_7024/presentation
[33] Rome Statute of the International Criminal Court, 1998: Article 4, Sections 1 and 2.
[34] UNCLOS full treaty text found at: http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm
[35] Ibid, Article XI.
[36] UN Charter, Article 71.

Indeed, the UN has stated on many occasions that the job of peacekeeping cannot be done in the field without NGO support. The UN has also specifically granted NGOs the ability to be first responder units with respect to disaster relief, showing again how far NGOs have come with respect to NSAs.

These examples show that the international legal institutions that have been put into place over the last 50 years have also contributed to what could be considered an erosion of state sovereignty. This also has led to the creation of an international legal culture where not only Member states are checked with respect to their actions, but also NSAs are increasingly being held accountable for their actions in the international system, giving one less reason for Member states to refuse accepting peacekeepers from NSAs.

Trends in Weak States and Civil Conflicts with Respect to the Privatization of Security in both Weak States and Civil Conflicts

After the end of the Cold War, a number of states that were previously propped up by either one of the superpowers lost their funding and equipment from these poles.[37] To compensate for this, both rebel groups and weak states hired PMCs and PSCs to guard dignitaries, train militaries, protect resources, or engage in all-out war with the opposite side (Singer, 2001). These weak states justified the hiring of these companies under the UN Charter, specifically the idea that hiring these companies was conducive to their inherent right to defense.[38] With the rise of intrastate conflict and the decline of interstate war since the Second World War, weak states were no longer able to effectively control the territories that they nominally claimed (Zacher, 2001). This led to governments hiring these companies to engage in the work

[37] Somalia, Sudan, Liberia and others come readily to mind with respect to the Cold War pullout.
[38] United Nations Charter, Article 51.

that the state was no longer able to effectively do for itself (Singer, 2001). This shows that the use of PMCs for defense and internal security is justified under international law, which is the exact use that peacekeepers would be used for if used in the current context of UN peacekeeping. Due to the fact that these states have used international norms and legal instruments to justify their leasing of the use of force to NSAs, this represents another piece of evidence that shows that a Member state accepting donated peacekeepers is not impossible.

As can be seen, there is a great deal of literature showing that the erosion of state sovereignty and the outsourcing of both military and non-military functions to non-state actors are historically precedented, with a lapse and resurgence documented above. This also shows that the concept of outsourcing military and military-related tasks to non-state actors has not only occurred a great number of times, but also has a large background of past actions. It is clear that there is ample evidence to show that a NSA-Member state partnership is not only theoretically possible, it is probable.

CHAPTER 3.

GENERAL SETS OF CONDITIONS WHICH A NON-STATE ACTOR AND A MEMBER STATE WOULD REQUIRE TO BEGIN NEGOTIATIONS

This section will identify the sets of conditions required for a Member State to accept volunteer peacekeepers and the conditions that a NSA (from here throughout the paper, NSA will refer to non-profit NSAs; i.e. NSAs that do not operate for profits unless specifically stated otherwise) would need to be able to donate said peacekeepers to a Member State: the "carrots" and "sticks" required on both sides of the equation to engage in mutually beneficial negotiations. These are general conditions that will be refined by the case study data in the next section.

For-Profit vs. Non-Profit NSAs

Although the literature review and the case studies cover for-profit NSAs, it would be logical to look at the advantages and disadvantages between for-profit NSAs and non-profit NSAs, as the ultimate aim of this paper is to examine non-profit NSA interaction with Member states.

For-profit NSAs, first and foremost, have what can only be termed a stigma attached to them, being called "soldiers of fortune" and/or "guns for hire". The UN has specifically stated that they will not work with mercenaries. Although for-profit NSAs have been used for state purposes, no for-profit NSA has been used under the aegis of an international organization such as the UN with respect to military/security matters.[39] Yet another issue is the matter of cost: who would pay for a for-profit NSA to engage in peacekeeping operations? The UN as stated above will not work with for-profit NSAs, and would most certainly not pay them to engage in said

[39] This does not include PSCs, as PSCs have been used by the UN to guard convoys, etc. The UN and other IOs have never used PMCs to engage in military work.

activities. Even if a very poor country wished to use an NSA to fulfill its contractual obligations, it would be doubtful if the UN would agree to the use of those forces and would therefore not pay for their deployment and/or use. For-profit NSAs are, by definition, for profit, thereby forcing them to work to maximize profit so as to pay dividends to shareholders, like any company. This could be either an advantage or disadvantage; the advantage being that the for-profit NSA will have a clear motivation to engage in the work done (i.e. money) while the disadvantage is specifically how to ensure that the for-profit NSA is not skimming money off the top, under-equipping peacekeepers, and the like. For-profit NSAs are also usually not publicly traded, thereby making them non-transparent and as will be seen later, non-accountable. Indeed, Erik Prince, the founder of Blackwater, specifically stated the obvious with respect to accountability and transparency to the House Oversight and Government Reform Committee: when asked where all of the federal funding to Blackwater was going, Prince responded: "We're a *private* company, and there's a key word there – private".[40]

Non-profit NSAs, on the other hand, have a different set of advantages and disadvantages. Non-profit NSAs are not motivated primarily by money; instead, they are motivated by their beliefs. This of course can be either a massive advantage or disadvantage: the Red Cross is world renowned for its devotion to its beliefs, but then again so is Al-Qaeda. Because of this, non-profit NSAs will attempt to promote their beliefs, not their profit. Most Member states that support non-profits in their tax codes force these non-profits to publically transmit their financial records; this leads non-profit NSAs to be far more transparent in financial dealings as opposed to for-profit NSAs.[41] This also makes the non-profit NSA more accountable: the non-profit must know at all times where all resources are allocated and

[40] *The Washington Times*, October 3rd, 2007. Page A02.
[41] 501(c)3 US tax codes explicitly states that any organization filing under that tax code makes public its financial records at all times and must publish said records yearly.

expended at; otherwise they will lose tax-exempt status. Non-profit NSAs would also not be funded by the UN or the Member states; it would be privately funded to maintain neutrality and accountability.

General Conditions Required by Member State

Here a rhetorical question is in order: what conditions would the Member state insist on if it were to engage a NSA in negotiations? The Member state, at the very minimum, would require an NSA to agree to be bound by its national laws and the ability to have some influence on how the NSA's peacekeepers were trained. The Member state would also be forced to make absolutely sure that the NSA was held accountable for its actions; due to the fact that the Member state had hired said NSA for a specific job, if the NSA made a mistake the NSA would need to be held accountable so that the Member state would have the ability to disavow itself of the NSA's mistakes. The Member state would almost certainly require the ability to cancel or opt-out of a contract at specific intervals. The NSA would be able to offer the Member State *de facto* access to the Security Council under the provisions of Article 44.[42] This is not a voting seat; however, this simply allows the Member State in question to participate in discussions of where its peacekeepers are deployed when the UNSC decides on the international use force. The Member state, however, might not choose to use Article 44 for a seat; instead, the Member state might simply see enhanced, effective peacekeeping as the main payoff for this transaction. A number of Member States also consider peacekeeping to be in line with their foreign policy: the Scandinavian Members come immediately to mind. For instance, Norway's foreign minister stated:

[42] Article 44 states that when the UNSC decides to use force the Member (if it is not already represented on the Council) who donates armed forces from special agreements signed under Article 43 may participate in decisions of the Security Council concerning the employment of that Member's armed forces.

"Norway's engagement in peacekeeping is based on its interest in upholding certain basic principles of international conduct which are of *vital importance* to small states everywhere".[43] For small Member states of the UN system, participating in peacekeeping reinforces two key concepts for small states in the UN system:

1) Peacekeeping helps to strengthen the rule of international law, and
2) Peacekeeping promotes peaceful settlement of disputes.[44]

Therefore, the logical conclusion here is that small states would have the most to gain from entering negotiations with a NSA to help reinforce the two major objectives of small state diplomacy as stated above. Small states have a vested interest in the rule of international law as international law could be considered the best defense for small states which have little to no ability to defend themselves from attack. The same could be held true with respect to peaceful settlements of disputes. A NSA that was able to peacefully settle disputes in accordance with international law would dovetail effectively with any small state in the UN system's foreign policy. This therefore leads to some of the questions asked in the case studies; i.e. how accountability is dealt with and what stipulations the Member state would need to accede to.

A Member state would want an ideal non-profit NSA that would have the following features:

1) Full transparency and accountability,
2) Well-trained, well disciplined peacekeepers ready for rapid deployment,
3) Fully equipped and supplied peacekeepers,
4) The least cost possible for these peacekeepers[45] and

[43] Jakobsen, pg. 20.
[44] Jakobsen, pg. 19.

5) Neutrality and impartiality with respect to all Member states; i.e. the NSA would not be supported monetarily by any individual Member state.

These five conditions would make up what could be considered the "perfect" NSA to enter into a long-term partnership with a Member state.

General Conditions Required by NSA

A NSA would require a Member state which was fully integrated in the international community, a Member of the United Nations, and the understanding that international law is the basis for any arrangement involving a NSA and a Member state. The NSA would also require that the Member state and the NSA share the same commitment to peacekeeping and other international norms. The NSA would also require access to the UNSC through a process known as the Arria formula, wherein a NSA has the ability to informally consult with the UNSC (Global Policy Forum, 2003). The NSA would also need the ability to opt-out of a contract with a Member state in case the Member state's objectives steer clear of the NSA's objectives. For instance, it could be possible for an election in a Member state to change the foreign policy of a Member state such that the NSA's goals and the Member state's goals are no longer synonymous. The Member state could give the non-state actor is the ability to, at the very minimum, increase the prestige and clout of that non-state actor.

General Conditions Required by the UN

The United Nations is a system devoted to serving its Member states; as such, Member states dictate the terms under which the system operates. The UN has rapidly expanded its

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[45] The most ideal case would be no cost peacekeepers; i.e. the non-profit NSA supported by private donors and foundations with no charge to the Member state. This would include training and any salaries paid to the volunteers.

peacekeeping missions since the late 90's, so much so that the system is becoming overworked and not being able to pull in the resources to get the job done. Michael Doyle goes so far as to say, "At this point, the UN is so desperate for troops and peacekeepers they will take just about anything".[46] It must also be remembered that if these peacekeepers are donated by a Member state, the UN could possibly refuse these, but that would be the equivalent of refusing the troops of a Member state, which if the NSA set up the contract with an appropriate Member state, this issue would not be even considered.[47]

The United Nations would also require two specific conditions with respect to peacekeepers:

1) The Degree of Force mandated by the Security Council for use by peacekeepers and
2) The Rules of Engagement under which peacekeepers are allowed to operate.

The degree of force is what chapter of the United Nations Charter the peacekeeping operation is operating under, stretching from preventive diplomacy which is considered a standard Chapter VI mandate to peace enforcement, which is considered a strongly militarily-oriented Chapter VII mandate. The degree of force will be covered in the SHIRBRIG case study that specifies the Member state ✍ UN relationship.

The rules of engagement is the amount of force that is allowable on a specific mission, ranging from unarmed peacekeepers where no combat is allowed to rules of engagement authorizing offensive action. The rules of engagement will be covered in the Blackwater case study that specifies the NSA ✍ Member state relationship.

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[46] Personal Interview with Michael Doyle, April 10, 2009.

[47] By appropriate Member state, this means a Member state which has an excellent peacekeeping record and fields peacekeepers as often as possible. Potential candidates include the Scandinavian countries, Canada, Austria and the like.

CHAPTER 4.

CASE STUDY ANALYSIS FOR PRECEDENT

In this section, the paper will attempt to select cases from a universe of cases to shed further light on the theoretical possibilities of NSA-Member state negotiations and also the ability of Member states to pool resources for UN peacekeeping.

Case Selection

The universe of cases to choose from is relatively small due to the unique circumstances looked at in this paper. The universe of cases should consist of a Member state hiring a PMC for security and military operations outside of its own country. This limits the universe of cases to a very small number due to the fact that a large number of PMCs are hired to engage in internal security by either the government of a territory or by the rebel/insurgent groups of that country. The first set of cases that were looked at is the NSA✍ Member state relationship. The main issue with this first set of cases is the fact that most of these NSA✍ Member state contracts are considered classified for security purposes by the Member state in question. It is imperative to actually have the contract between the Member state and the NSA so that the *exact* concessions granted by both NSA and Member state are spelled out in said contract. Simply observing the consequences of a NSA-Member state relationship are not enough due to the fact that it would be unknown whether those actions were within the bounds of the contract signed between the NSA and the Member state. As stated in the literature review, there have been a number of Member states contracting out work ranging from guard and convoy duty to all out state security with a full-blown military. Unfortunately, these NSAs are not publicly traded companies or corporations, and are therefore under no obligation to publicly release any records whatsoever. The Blackwater contract, on the other hand, was signed between Blackwater and the United

States government, and was therefore was eligible to be released under the Freedom of Information Act (FoIA). This contract was also identical with contracts signed with Dyncorp and with Triple Canopy, showing that the contract signed wasn't due specifically to a special relationship between the company and the policymakers but was instead a deliberate choice by the Member state. Although parts of the contract are considered classified still, a large portion of the contract was obtained by the American press and was released to the general public, allowing for an analysis of the relationship of NSA✍ Member state.

The second set of cases that were looked at is the Member state✍ UN relationship. The UN has signed a great number of special agreements with Member states under Article 43 which specifically deals with only that Member state (i.e. only one Member's nationals) being handed over to the UNSC. SHIRBRIG was established in 1995 through Letters of Intent between the constituent Member states. This Letter of Intent was presented to the United Nations, and on September 2nd, 1997, Kofi Annan inaugurated the first meeting of SHIRBRIG's Planning Element, showing that the UN was made aware of and approved of SHIRBRIG from the start of operations.[48] The SHIRBRIG case deals with multiple countries (and multiple nationals) under one specific set of treaties being handed to the UN as one cohesive unit; this is the only case of a treaty series specifically setting up this concept and being successfully implemented, hence why this case was used for the second case study.

General Case Study Questions to Ask

The two case studies that will be covered are:

a) The contract signed between Blackwater, a PMC based in North Carolina, and the United States government during the Iraqi invasion from 2003-2007[49] and

[48] http://www.unwatch.com/shirbrig.shtml
[49] Blackwater's contract with the US government can be found at: http://r.m.upi.com/other/12216818791223.pdf

b) The series of treaties signed between Member states of the Multinational Standby High Readiness Brigade for UN operations (SHIRBRIG).[50]

For each case study, the same four questions will be answered, where X = the NSA (or in Case Study #2 the Member states) and Y = the Member State (or in Case Study #2 the UN):

1) What contract stipulations did X specifically enter into with Y?
2) What contract stipulations did Y specifically accede to when hiring X?
3) Did X or Y include reservations for cancellations of said contract if either X or Y needed/wanted to opt out?
4) How was accountability dealt with? Was X's employees/volunteers considered Y's concern? Why or why not?

These four questions are asked of both case studies due to the fact that these four questions, when answered, map out the theoretical overlap required for the NSA and the Member state to actually intersect and possible reach a viable compromise.

Case Study #1: X = Blackwater, Y = United States of America

How does this case study help answer the main question?

A logical parallel can be drawn from the experiences of the United States outsourcing its military operations in Iraq to Blackwater and other PMCs. Although this case is not an accurate representation of the situation at hand, it could be considered analogous due to the fact that the

[50] SHIRBRIG's main series of treaties can be found at: http://treaties.un.org/doc/publication/unts/volume%202232/v2232.pdf

situation in question is the closest case study possible in recent history that could provide information. Although the entrance of Blackwater into the arena of military force was considered a failure for the Iraqi war and subsequent occupation, lessons could be drawn from this study to illustrate the mistakes and attempt to repair those mistakes.

This case study will cover the portions of the contract that specifically answer the four questions listed in the previous sections as it pertains to this paper. This case study also shows the specific contractual obligations imposed by the Member state on the NSA and vice versa. This case study also shows the Rules of Engagement that a Member state would allow a NSA as discussed above in Chapter 3. Although this is a for-profit NSA, this is the closest case study that information can be found on. This case study is limited due to it being a for-profit NSA and also due to it dealing with only one Member state on a mission that did not involve the international community; however, this case study still can provide at least some guideposts to illuminate what is and is not permissible.

Question 1: What contract stipulations did X specifically enter into with Y?

The contract signed between the NSA and the United States State Department goes into great detail about the specific stipulations the US State Department placed on the NSA.[51] According to Section C, Subsection 2, Clause 1:

The Contractor shall provide the following types of services under this contract, and as further specified in each Task Order issued under this contract:

1) Recruiting, screening, and selecting applicants for Protective Services (PRS) detail, and PRS support positions,
2) Training of personal protective service and PRS support personnel,
3) Recruit, train, and deploy local nationals/third country nationals for static details and/or PRS),
4) Plan, manage and perform personal and facilities protective services details,

[51] The contract actually refers to Blackwater, Triple Canopy and DynCorp, but each of these PMCs were tasked with the same responsibilities in the contract.

5) Mobile details, including walking, ground transportation, waterborne transportation, and airborne transportation (United States State Department, 2007).

The NSA specifically agreed to provide "all qualified personnel, facilities, equipment, material and supplies necessary to accomplish the work under this contract and as further defined in each Task Order, except for that specifically identified in this contract as Government furnished".[52] The NSA's operatives were required to file for and receive Top Secret Facility Clearance with the US State Department for the duration of the contract.[53] The NSA was tasked with providing protection services for a 24-hour, seven-day week basis by providing armed, qualified protective services.[54]

One of the key points of the NSA contract is the fact that the NSA was tasked to recruit, screen and train local national (LN) or third party nationals (TPN) in established protective security procedures.[55] To facilitate this, the NSA was also contracted to provide any and all translation/interpretation services for communications between the NSA's personnel and local government, police, military members and citizens.[56] The NSA was held responsible for all logistical support required to perform its assigned tasks.[57] This logistical support included not only purchase of all materials needed, but also maintenance and upkeep of transportation, clothing, food, and also weaponry.[58]

Two appendices are worth noting here: Appendix C covers the general qualifications that the US State Department placed on American contractor personnel, whereas Appendix D covers the general qualifications that the US State Department placed on LN and TPN personnel. The

[52] Blackwater contract, Section C.2.2.1.
[53] Blackwater contract, Section C.4.1.5.
[54] Blackwater contract, Section C.4.2.1.
[55] Blackwater contract, Section C.4.3.2.2.
[56] Blackwater contract, Section C.4.3.5.1.
[57] Blackwater contract, Section C.4.3.8.1.1.
[58] Blackwater contract, Section C.4.3.8.2 & C.4.3.8.3.

only major difference between the two appendices is the fact that the US State Department reserves the right to deny any foreign national working under the contract.[59]

Question 2: What contract stipulations did Y specifically accede to when hiring X?

The United States State Department allows for a great deal of negotiation room in the contract with the NSA. The State Department agreed to allow the use of government property by the NSA to fulfill its duties in the field.[60] The State Department agreed to provide all contractors (who were American citizens), with diplomatic passports if needed for the job at hand.[61] The State Department allowed the NSA to create and implement its own applicant screening and selection process.[62] Although the government reserved the right to inspect all training programs and facilities, the government did not *require* this in the contract, thereby making it a concession to the NSA.[63] The State Department also gave the NSA the ability to recruit, screen and train LNs and TCNs as required by specific Task Orders.[64] The State Department gave the NSA the ability to interpret/translate for itself when necessary or required for the job at hand.[65] The State Department allowed the NSA to produce its own training programs for its contractors and guards.[66] The NSA was allowed to keep its own inventories that were only checked once a year by the State Department, if at all.[67] The State Department directly authorized the use of non-

[59] Blackwater contract, Appendix C and D.
[60] Blackwater contract, Section C.2.2.2.
[61] Blackwater contract, Section C.4.1.6.
[62] Blackwater contract, Section C.4.3.1.2.
[63] Blackwater contract, Section C.4.3.2.1.
[64] Blackwater contract, Section C.4.3.2.2.
[65] Blackwater contract, Section C.4.3.5.1.
[66] Blackwater contract, Section C.4.3.7.3.
[67] Blackwater contract, Section C.4.3.8.3.

lethal[68] and lethal force[69] by the NSA's personnel, both with large lists of permissible and non permissible uses of said force.

Question 3: Did X or Y include reservations for cancellations of said contract if either X or Y needed/wanted to opt out?

The State Department included clauses that specifically allow the US government to opt out of the contract. This allowed the State Department to reevaluate its relationship with the NSA by evaluating the NSA at 6-month intervals.[70] It is clear in the contract that both the NSA and the State Department had the ability to opt out of the contract but only *after* the evaluation period of 6 months wherein the State Department would offer the exact same contract to the NSA and the NSA could either sign or not.

Question 4: How was accountability dealt with? Was X's employees/volunteers considered Y's concern? Why or why not?

Accountability is partially addressed in the contract between the NSA and the US government, specifically: "The Contractor, including all Contractor-provided personnel, shall comply with all of the laws of the United States and the host countries in which they are required to provide services under this contract."[71] However, although the NSA is told to comply with all laws, there is no enforcement mechanism in the contract. Although the rule of law is clearly spelled out in this portion of the contract, other forces are at work with respect to this particular case study. The Coalition Provisional Authority (CPA) issued orders to the contrary when it

[68] Blackwater contract, Pg. 72, Section 16.
[69] Blackwater contract, Pg. 72, Section 17.
[70] Blackwater contract, Section C.1.5.4.
[71] Blackwater Contract, Section C.4.1.8.

issued an order specifically granting immunity to any foreign national in Iraq.[72] Although this order allows for the waiving of immunity by contractors, it was neither required nor enforced by this order or by the government in question.[73] Due to these conflicting orders given to the NSA, the legal status of the NSA's employees was very ambiguous for almost the entire duration of the NSA's contract. Only after the contract was not renewed in 2007 was the NSA's employees actually prosecuted, but it must be noted that the NSA's employees were prosecuted under American law (per the original contract), not Iraqi law where they were deployed.

Significant stipulations garnered from case study

This case study shows a Member state clearly delegating a great deal of authority and power to a NSA which it has contracted out specific services to. The NSA in question was given the ability to use force, both deadly and non-deadly. The Member state allowed this NSA to engage in whatever activities it deemed necessary to achieve its objectives. The Member State also attempted to hold the NSA to specific accountable standards, with mixed results. Although there were a number of issues with this contract leading to it ultimately not being renewed, it is clear that this contract lays out some interesting issues that must be addressed for a NSA to give peacekeepers to a Member state.[74] The case study shows the possible implications and/or conditions that would be laid out by the Member state, but also shows that the NSA✍ Member state relationship does contain enough common starting points to be viable.

[72] Text fully accessible at http://www.cpa-iraq.org/regulations. Section 2, Clause 1.
[73] Ibid, Section 5, Clause 2.
[74] Specifically the question of accountability was one of the main reasons for the non-renewal of this contract.

Case Study #2: X = Signatories of SHIRBRIG series of treaties, Y = United Nations

How does this case study help answer the main question?

The second case study are the treaties signed between the member countries of the Multinational Standby High Readiness Brigade for UN operations (SHIRBRIG), a fast response unit made up of Member States' militaries dedicated to peacekeeping. SHIRBRIG was created between the Member states of Argentina, Austria, Canada, Denmark, Finland, Italy, Ireland, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain and Sweden with the explicit purpose of producing a brigade-strength military unit for rapid deployment at the command of the UNSC. The treaty series was signed between these eighteen Members with the understanding with the UN that these troops would only be used for UN peacekeeping missions. Again, although this is not an exact match for the scenario envisioned, this would provide another avenue of answering questions with respect to contract stipulations; i.e. what stipulations were included in the series of treaties that created SHIRBRIG, what reservations did the Member States make in these treaties, and also what stipulations (if any) did the United Nations itself place on this force. Here, SHIRBRIG helps to explain the degree of force mentioned in Chapter 3 above: what kind of degree of force would be allocated to such an organization? The main reason for including SHIRBRIG in this analysis is that although this is not an exact case study for the question involved, the case is relevant in the fact that SHIRBRIG has successfully worked with the Department of Peacekeeping Operations (DPKO) and has successfully coordinated with said agency with respect to peacekeeping operations and also the fact that SHIRBRIG is a multinational coalition, specifically designed to interface with the UN peacekeeping system, allowing for a derivation of conditions required to work with UN

peacekeeping. The main focus will be on three Memorandums of Understanding (MOU), signed between the Member states that comprise SHIRBRIG.

Question 1: What contract stipulations did X specifically enter into with Y?

The Member states of SHIRBRIG specifically state:

> The SHIRBRIG will be available at high readiness and will be reserved for missions where rapid response is important, and where other forces cannot meet the United Nations' requirements. The SHIRBRIG will only be employed on a case-by-case basis in a manner safe-guarding national sovereignty considerations in peacekeeping operations mandated by the Security Council under Chapter VI of the Charter of the United Nations, including humanitarian tasks. The SHIRBRIG, as an integral formation – i.e. consisting of elements from all types of arms, including manoeuvre units, medical, logistics and communications – will only be employed for deployments of up to 6 months duration, and it should not be considered for routine rotation of forces in connection with ongoing missions. As a general rule, force contributions for the SHIRBRIG will not be equipped for operations in extreme climates, e.g. arctic or alpine environments, severe desert, swamp and jungle areas. (United Nations, 1997).[75]

SHIRBRIG's MOUs state that all units will be prepared for deployment within 21-30 days upon their request from the United Nations.[76] The Member states agree to work through the United Nations system with respect to logistical support for the brigade.[77] The Member states agree that financial responsibilities will be negotiated with the United Nations before deployment of SHIRBRIG.[78] The Member states agree to support the United Nations headquarters with operational planning at the tactical level and preparations involving the deployment of SHIRBRIG.[79] The costs related to fact-finding missions requested by the UN are financed by

[75] MOU, SHIRBRIG, Section 3.1.
[76] MOU, SHIRBRIG, Section 3.3.
[77] MOU, SHIRBRIG, Section 6.6.
[78] MOU, SHIRBRIG, Section 8.1.
[79] MOU, PLANELM, Section 4.1.

SHIRBRIG.[80] The Member states of SHIRBRIG agree that decisions regarding force deployment are dealt with between nations in cooperation with the UN through established diplomatic procedures.[81] As stated above, SHIRBRIG was to only be used on Chapter VI missions, including humanitarian missions for no more than 6 months. SHIRBRIG also agreed to use English as the official language for the brigade even though English is not the official language of most of the Member states of SHIRBRIG.[82] The Member states of SHIRBRIG also specifically state that SHIRBRIG is intended to only be deployed by the UNSC, and not by any national military.[83] The Member states agreed when SHIRBRIG was deployed to place SHIRBRIG under the command of the UN Force Commander who was appointed by the UNSC.

Question 2: What contract stipulations did Y specifically accede to when hiring X?

The United Nations agreed to cover the costs of all SHIRBRIG in the field.[84] The United Nations agreed to help cover logistical costs and supplies with agreements signed.[85] The United Nations agreed to take the peacekeepers offered by SHIRBRIG under SHIRBRIG's conditions; i.e. the peacekeepers offered by SHIRBRIG were taken all at once or not at all.[86] The UNSC would recommend how many peacekeepers were needed at times, but on other occasions SHIRBRIG would offer what they thought would be a logical number of peacekeepers and the UNSC would accede to that number. During deployment, the United Nations agreed to pay for and adjudicate claims with respect to damages while on deployment.[87] The United Nations also

[80] MOU, PLANELM, Section 8.6.
[81] MOU, Steering Committee SHIRBRIG, Section 6.1.
[82] MOU, Steering Committee SHIRBRIG, Section 5.1.
[83] MOU, SHIRBRIG, Section 3.1.
[84] MOU, SHIRBRIG, Section 9.1.
[85] MOU, SHIRBRIG, Section 6.5.
[86] Specifically, SHIRBRIG offered the UNSC X number of peacekeepers, and the UNSC either accepted or declined.
[87] MOU, SHIRBRIG, Section 9.3.

agreed to Status of Forces agreements with the Member states of SHIRBRIG[88], and also agreed to allow for a representative of SHIRBRIG to have consultative status with the UNSC during deployment.[89] The UNSC also acknowledged that SHIRBRIG was a multinational brigade with similar training and deployment standards. SHIRBRIG was also to be flagged in the field as UN troops, *not* as the individual Member state's troops.

Question 3: Did X or Y include reservations for cancellations of said contract if either X or Y needed/wanted to opt out?

Although no specific contract section deals with cancellation between the UN and the Member states, there are provisions for Member states to pull out if necessary.[90] The UNSC always had the option to simply refuse to take the peacekeepers provided by SHIRBRIG, but this option was never exercised by the UNSC.

Question 4: How was accountability dealt with? Was X's employees/volunteers considered Y's concern? Why or why not?

Accountability was dealt with in Section 10 of the main SHIRBRIG MOU. In Section 10, each participant exercises judicial authority over its own nationals. The SHIRBRIG MOU also states in Section 10 that the peacekeepers are accountable only to the Member states of SHIRBRIG, not to the United Nations. Although when SHIRBRIG was deployed it was only deployed on UNSC missions and considered UN personnel while deployed, ultimate jurisdiction laid with the peacekeeper's Member state.

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[88] MOU, SHIRBRIG, Section 6.4.
[89] UN Charter, Article 44.
[90] MOU, SHIRBRIG, Section 11.3.

Significant stipulations garnered from case study

Here a multinational brigade[91] was clearly set up to give the UNSC the ability to rapidly deploy a ready-made force on short notice for Chapter VI missions.[92] SHIRBRIG was treated by the UNSC as one, unified unit and was not split apart. The UNSC made it clear that it would accept peacekeepers from a multinational brigade. Therefore, the UNSC clearly accepted peacekeepers from a coalition of Member states wherein the Member states specifically created said coalition for the UN, a situation that a NSA would clearly be interested in repeating. Another key point here is the fact that the UN flagged the Member state's peacekeepers as UN troops, not as Member state's troops. This shows that the UN was taking responsibility for the Member states' troops on the ground by flagging them as UN troops.

[91] Brigade strength = approximately 5000 peacekeepers.
[92] Also with respect to Chapter VI missions, SHIRBRIG was rapidly expanded after the initial set of negotiations to Chapter VI ½ missions after initial deployments.

CHAPTER 5.

OVERLAP OF CONDITIONS

To combine these two case studies, it would be logical to go over the theoretical overlap of the NSA and the theoretical overlap of the Member state.

The graph, demonstrated below, maps out the theoretical overlap between a NSA and a Member state. The X-axis is the degree of force that would be needed for the peacekeeping mission at hand, whereas the Y-axis would be the rules of engagement agreed upon for a mission. The X-axis extends from 0 to 4:

0: Preventive diplomacy, which involves confidence-building measures, fact-finding, early warning to reduce the danger of violence and increase the prospects of peaceful settlement, which is considered a Chapter VI mandate and usually involves unarmed peacekeepers;

1: Peacekeeping, which is considered a confidence building measure to monitor a truce between parties while diplomats attempt to negotiate a comprehensive peace treaty, which is considered a Chapter VI mandate and involves either unarmed or lightly armed peacekeepers;

2: Peacemaking, which is designed to bring hostile parties to agreement, which is considered to be a “Chapter VI ½“ mandate dealing with lightly armed peacekeepers involved in more strenuous situations;

3: Post-conflict reconstruction, which is designed to reconstruct infrastructure with the expressed aim of preventing future violence and laying the foundation for a durable peace, which is considered to also be a Chapter VI ½ mandate which deals with more heavily armed peacekeepers with a long-term commitment to the mission and

4: Peace enforcement, which is designed to act with or without the consent of the parties in order to ensure compliance of a cease-fire, which is considered to be a Chapter VII mandate

which deals with heavily armed peacekeepers operated under the direction of the Secretary-General.[93]

The Y-axis shows the rules of engagement for a mission with the axis going from 0 to 4:

0: No rules of engagement whatsoever;[94]

1: Rules of engagement authorizing self-defense only;

2: Rules of engagement authorizing robust self-defense;[95]

3: Rules of engagement authorizing robust self-defense and defense of others,[96] and

4: Rules of engagement authorizing offensive action.[97]

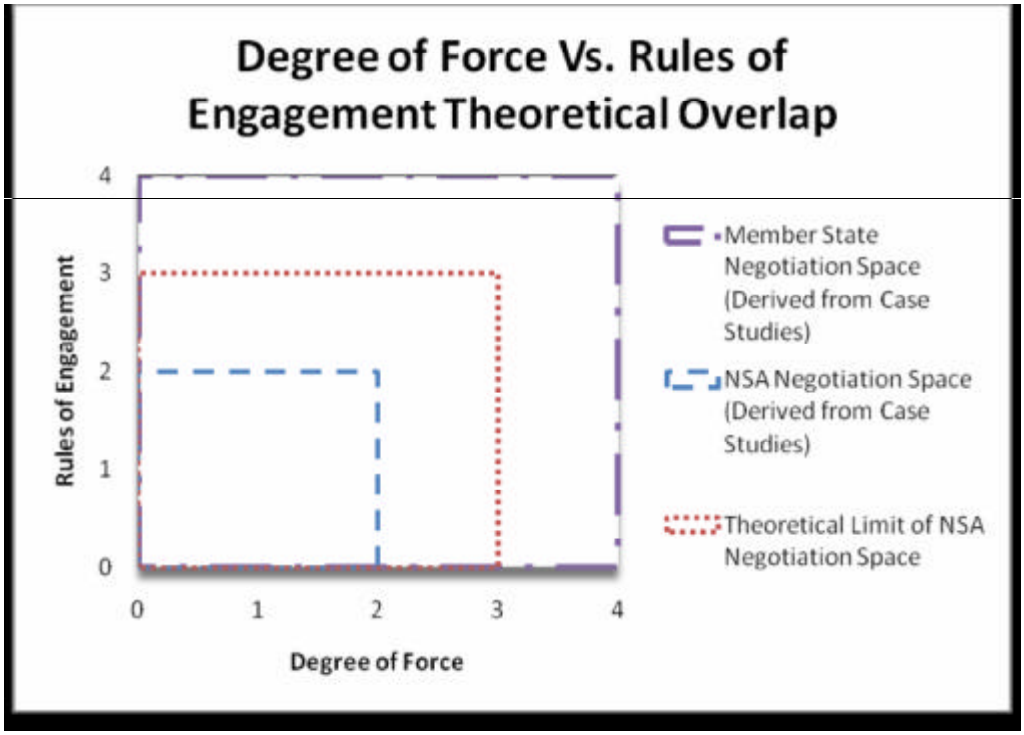

Figure 1. Degree of Force vs. Rules of Engagement Theoretical Overlap

[93] All of these definitions are lifted directly from Doyle, pgs. 10-11 which were in turn derived from *An Agenda for Peace.*
[94] This would be in essence an unarmed force which lacks the authority to use any force whatsoever.
[95] Robust self-defense would be the ability to defend oneself and take proactive measures towards defending oneself; i.e. patrolling, police work, etc.
[96] Defense of others includes civilians, other NGOs, VIPs, etc.
[97] This would be considered what a standard military would do, destruction of enemies, capture of territory, etc.

The case studies show the limits of where the NSA and the Member state would be. The Member state can use any and all degrees of force it sees fit, leading to it to be placed from 0 to 4 on the scale. The Member state also has the ability to gain and use whatever rules of engagement as it sees fit; therefore, it receives a score on the scale from 0 to 4, filling the entire theoretical overlap.

The NSA, according to the case studies, would only be able to have a small amount of force delegated to it, and would therefore receive a 2 on the degree of force scale. With respect to rules of engagement, the case studies show that Member states would relatively easy allow access up to a 2 on the rules of engagement scale. However, a non-profit NSA could theoretically have more leeway with respect to negotiations as discussed below, and this leads to the second NSA theoretical overlap wherein the NSA gains a 3 on the degree of force scale and a 3 on the rules of engagement scale.

Theoretical Overlap

Preventive Diplomacy

Preventive diplomacy is considered a Chapter VI operation which are covered by the SHIRBRIG treaties. Therefore the Member state ✍ UN arrow is valid given the case study in question: SHIRBRIG specifically stated that Chapter VI operations were valid under that series of treaties. The NSA ✍ Member state case study also shows that preventive diplomacy operations were specifically delegated to the NSA: Blackwater was clearly tasked with fact-finding missions and early warning patrols. This would correspond to a Rules of Engagement rating of either 0 or 1 and a Degree of Force rating of 0, which is covered by both the Member

state and the NSA. Therefore, there is a theoretical possibility that the relationship NSA ✍ Member state ✍ UN is valid in this case.

From a realistic standpoint, a preventive diplomacy Chapter VI operation would be an excellent starting point for a NSA as the peacekeepers involved would be either unarmed or lightly armed at most, and would not be expected to engage in any defensive or offensive measures. The main issue with SHIRBRIG and Member states supporting peacekeeping troops is the large drain of resources for rapid deployment, leading to the *ad hoc* system currently used by the UNSC to garner and deploy peacekeepers. A NSA would be able to rapidly deploy unarmed or lightly armed, well-trained and well-equipped peacekeepers relatively quickly with no cost to the Member states or the United Nations except for the contract stipulations listed above, making this option particularly viable for the UN and Member states to outsource this particular type of peacekeeping operations. A case can also be made for a NSA to help coordinate other NGOs on the ground, allowing for greater efficiency for all NGOs involved in the diplomatic discourse that would take place in this type of mission.

Peacekeeping[98]

Peacekeeping operations are considered Chapter VI operations and are usually considered long-term commitments for the peacekeepers involved. This is again clearly covered in the SHIRBRIG treaties, as SHIRBRIG was delegated for Chapter VI missions only. The NSA ✍ Member state case study also shows that peacekeeping operations were specifically delegated to the NSA: Blackwater was clearly tasked with missions that are consistent with UN peacekeeping under Chapter VI mandates. This would correspond to a Rules of Engagement rating of 1 (or in rare circumstances 2) and a Degree of Force rating of 1 on the chart, which is covered by both

[98] Chapter VI ½, usually deals with long term missions.

the Member state and the NSA. Therefore, there is a theoretical possibility that the relationship NSA ✍ Member state ✍ UN is valid in this case.

From a realistic standpoint, a Chapter VI peacekeeping mission would again be an excellent starting place for a relationship between a NSA and a Member state. Chapter VI peacekeeping missions usually do not require the authorization of anything above self defense, hence the 1, perhaps 2, rating on the rules of engagement. The same issue of rapid deployment discussed in preventive diplomacy can be reiterated here: the *ad hoc* structure of the UNSC precludes rapid deployment and a NSA could easily alleviate this problem by simply having the peacekeepers ready for rapid deployment for peacekeeping missions. As peacekeeping is on a similar footing with respect to preventive diplomacy, it would be logical to state that the ability of the NSA to coordinate with other NGOs in the field would be another argument in the rapid deployment of the NSA by the Member state. As above, an argument could be logically made that a NSA would be able to rapidly deploy unarmed or lightly armed, well-trained and well-equipped peacekeepers relatively quickly with no cost to the Member states or the United Nations except for the contract stipulations listed above, making this option particularly viable for the UN and Member states to outsource this particular type of peacekeeping operations.

Peace Making

Peace making situations are considered Chapter VI ½ mandates and are also considered long-term commitments. SHIRBRIG was indeed designed for Chapter VI ½ mandates; however, SHIRBRIG was not designed for long-term deployments which a peace making mission usually is. Because of this, the Member state ✍ UN is theoretically supported for peace making, but only in the short term unless the NSA in question was able to deploy for a long-term

commitment. The use of force on the first case study is only for self-defense purposes; however, as discussed in the previous section, there is a bit of leeway with respect to how the US State Department deployed Blackwater, so this could still be a theoretical possibility. These missions can possibly involve the use of lethal force if necessary. This corresponds to a Rules of Engagement score of 2 (perhaps 3 depending on the mandate) and a Degree of Force score of 2; leading to a theoretical overlap. Therefore the NSA✍ Member State✍ UN relationship is theoretically possible.

From a realistic standpoint, a Chapter VI ½ peace enforcement mission would have almost the same advantages listed above for the NSA: rapid deployment, NGO coordination if possible, and the fact that the supplies, equipment and volunteers would be no drain on the UN system. For a peace enforcement mission, however, there is an additional incentive for a NSA to effectively engage in this type of mission: the timetable in question. Peace enforcement missions are usually long-term commitments of large numbers of peacekeepers, a fact that the UNSC is all too aware as it attempts to scrape peacekeepers together for not only new missions, but also for older missions of this nature to continue operations. A properly structured NSA could solve this problem due to the simple fact that a NSA only has one “domestic constituency”: its donors. Given the fact that the donors of the NSA in question would be donating specifically for missions of this nature, it would be logical to assume that these missions would be the most logical place for the NSA to deploy to. Member states would be able to rightfully state that they are helping the international community with no cost to themselves, and the Member state would not have to appease any domestic constituency with respect to cost and resources for a long-term commitment as the only commitment the Member state is making is simply renewing its support

of the NSA. The NSA in turn is able to fulfill its stated objectives of providing the UN with well-trained, well-equipped peacekeepers at no cost to the international community.

Post-Conflict Reconstruction

Post-conflict reconstruction is considered a long term, much more robust Chapter VI ½ mandate involving a large number of peacekeepers involved in rebuilding infrastructure, disarmament of factions, and other military operations. These missions usually involve the use of lethal force if necessary. This corresponds to a Rules of Engagement score of 2 or 3 depending on mandate and a Degree of Force score of 3; leading to a very small theoretical overlap.[99] Although the NSA✍ Member State ✍ UN is theoretically possible, the very small theoretical overlap shows that this is highly unlikely.

From a realistic standpoint, a Chapter VI ½ post-conflict reconstruction mission would have almost the same advantages listed above for the NSA: rapid deployment, NGO coordination if possible, and the fact that the supplies, equipment and volunteers would be no drain on the UN system. The timetable issue above would again help the NSA with respect to its lack of a domestic constituency as again the Member state would be "free-riding" the NSA for increased international prestige. However, this type of UN peacekeeping has a serious disadvantage inherent for the NSA: specifically, the number of peacekeepers that would be required for a long-term commitment. Post-conflict reconstruction requires large numbers of peacekeepers; far above the brigade strength of SHIRBRIG. A NSA could in theory field that number of peacekeepers, but the chances of this are highly unlikely. If anything, the NSA would have to

[99] More often than not, these missions would have a Rules of Engagement rating of 3 but there have been exceptions.

work with Member states and be a portion of the peacekeepers sent, but could never fully run the peacekeeping operation in question unlike above.

Peace Enforcement[100]

Peace enforcement situations are considered Chapter VII mandates and are also considered long-term commitments. Indeed, peace enforcement is usually placed under Article 42 of the Charter, which allows the UNSC to order any kind of military action for the situation in question. Because of this, *both* arrows are in jeopardy for this situation. SHIRBRIG was not designed for Chapter VII mandates; therefore, the Member state ✍ UN is not theoretically supported for peace making. Also due to the fact that peace enforcement would require a larger number of peacekeepers than simply brigade strength, this case study shows the inadequacy of attempting to fulfill Chapter VII mandates with SHIRBRIG. By the same coin, the use of force on the first case study is only for self-defense purposes; this makes the NSA ✍ Member state relationship also highly unlikely. Also, an NSA would simply not have the capability to deploy the numbers of peacekeepers required to actually engage in this type of operation. On the chart, this would lead to a Rules of Engagement rating of 4 and a Degree of Force rating of 4. There is no overlap space at this point; therefore, peace enforcement does not have the theoretical backing of the case studies in question.

[100] This would be considered a "hard" Chapter VII mandate; i.e. a very large militarily-oriented mandate.

CHAPTER 6.

CONCLUSION

The goal of this thesis is to ascertain the answer to the question proposed at the beginning: i.e. could a Member State actually take volunteers from a non-state actor to fulfill its requirements under the United Nations Charter? Given the available data, there is a possibility that the conditions in question could be met by both sides leading to more productive UN peacekeeping missions.

To summarize:

? Preventive Diplomacy: Theoretically possible according to the case studies.

? Peacekeeping: Theoretically possible according to the case studies.

? Peace Making: Theoretically possible according to the case studies.

? Post-Conflict Reconstruction: Theoretically possible, but highly unlikely according to the case studies and the slim theoretical overlap.

? Peace Enforcement: Not theoretically possible according to the case studies.

It must be stated again here that this is a hypothetical paper at this point in time. This paper is intended to show that with the existence of certain factors, a cooperative peacekeeping agreement *could* be reached among two or more given actors; i.e. it is in the realm of possibility. It does not imply in any way that this *will* or *should* happen. Indeed, with the international security system as it is currently, innovative solutions must at the very least be explored in order for a more secure future to be possible.

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