PKSOI PAPERS

War, Law and Order
Case Study: Australian Whole-of-Government Efforts to Develop the Security and Criminal Justice Sectors in Stabilization

Marcus Fielding

PKSOI PAPER

War, Law and Order

Case Study: Australian Whole-of-Government Efforts to Develop the Security and Criminal Justice Sectors in Stabilization

**By Colonel Marcus Fielding,
Australian Army**

May 2012

*****

Comments pertaining to this report are invited and should be forwarded to: Director, Peacekeeping and Stability Operations Institute, U.S. Army War College, 22 Ashburn Drive, Carlisle, PA 17013-5054.

*****

All Peacekeeping and Stability Operations Institute (PKSOI) publications are available on the PKSOI homepage for electronic dissemination. Hard copies of this report also may be ordered while copies last from our homepage. PKSOI's homepage address is: *https://pksoi.army.mil*

*****

The Peacekeeping and Stability Operations Institute publishes a quarterly journal to update the peace and stability operations community on the research of our analysts, recent and forthcoming publications and upcoming conferences sponsored by PKSOI. Each quarterly journal has a specific theme related to peace and stability operations and a commentary by the Director of PKSOI entitled *The Director's Corner*. If you are interested in receiving this journal, please subscribe on our homepage at *http://pksoi.army.mil/subscription.cfm.*

FOREWORD

In recent years the Australian Government has deployed capabilities offshore to respond to natural disasters, to assist developing nations, and support nations where there is open conflict. Prominent among these deployable capabilities are the Australian Defence Force and the relatively new capabilities resident in the International Deployment Group of the Australian Federal Police and the Australian Civilian Corps. Through the use of these agencies Australia has made a unique and significant contribution to the safety, security, stability and development of countries in the region and beyond. At the same time, other countries, such as the United States, the United Kingdom, and Canada are engaged in such activities.

In the opening sentence of his book, "The Utility of Force", General Rupert Smith makes the statement that, "War no longer exists". His thesis is that war has changed from large scale industrial war to war among the people. In this new type of warfare General Smith challenges the reader to consider the utility of existing military forces and their ability to deal with current and likely future security problems.

Of course any nation needs to maintain forces to defend against the threat of a major conventional military attack. In Australia's case that threat can be assessed as being remote for the medium term future. The more likely future security environment is the proliferation of fragile, and failing and failed states giving rise to terrorism, humanitarian disasters and intra-state conflict. In these situations there is a complex mix of political, social, cultural, economic development and security problems requiring resolution.

Over the last two decades Australia has been involved in a wide range of regional and global activities to deliver developmental support and assistance aimed at restoring and building host government capacity and contributing to peace, security and stability. The missions to Cambodia, Namibia, Bougainville in Papua New Guinea, Somalia, Rwanda, East Timor, The Solomon Islands, southern Iraq and Afghanistan are primary examples. To deal with these problems new methods of response providing a force of greater utility are required. A "whole of government" response is required to provide a "whole of government" solution. The Australian Government is at the forefront of responding to these new security challenges. It is deployed globally and has introduced novel solutions, such as the world's first deployable police force.

Australia has made a good start but there is more work to be done. A fully integrated political-military response is required. An important issue is one of balance and the integration of new and old capabilities to deal with a wider spectrum of defence, security and development problems. The three agencies are not used to working together and have distinctly different objectives, cultures, operating procedures and budgeting processes. There is a lot more work to be done to build trust and confidence and a true whole of government response.

Another important issue for government to resolve is the one of timing. Too often any response is in reaction to a crisis. In this case the situation has deteriorated to the extent that a military deployment is the first and often the only feasible response. The military have quick reaction capabilities and can deploy into austere and dangerous situations. But until a permis-

sive security environment is achieved it is difficult, if not impossible, to deploy the civilian elements of the whole of government response. Quite understandably they are reluctant to deploy until the security situation has stabilised.

Given the danger and difficulties of a late response, a more pre-emptive approach should be considered. Increasing the budget of respective agencies for international development to intervene early and forestall the development of more serious problems is wise. A pre-emptive strategy accords with recent thought that argues for a closer relationship between Australia's aid budget and national security objectives.

The military are an essential element of any solution but cannot, on their own, provide a lasting answer. The best results are achieved when the support is provided in an integrated whole of government approach in full partnership and consultation with the supported government.

In this important work, Marcus Fielding has conducted a wide ranging and comprehensive study to examine how the Australian Government can assist other governments in developing capacity in the security and criminal justice sectors and if necessary restoring and maintaining public security. He examines a number of recent Australian experiences and makes sensible and practical recommendations on how to provide a whole of government approach to support other nations.

Marcus' recommendations are a timely and practical intervention. They come at a time when Australia has gained considerable experience and has been able to learn valuable lessons from a wide range of interventions. Equally, his analysis and recommendations are also very relevant to efforts in other countries to develop similar capabilities.

But a word of caution, many of the interventions are lengthy and it is hard to determine the nature of success and how long the support should last. Certainly it is important to determine what to do and how to provide support but it is perhaps just as important to determine what our limitations are.

Peter Leahy
Professor
Lieutenant General (Retired)
University of Canberra

ABOUT THE AUTHOR

Colonel Marcus Fielding joined the Army in 1983, graduated from the Royal Military College Duntroon in December 1986 and was commissioned into the Royal Australian Engineers. He has commanded at troop and squadron level and was the Commanding Officer of the 3rd Combat Engineer Regiment as part of the 3rd Brigade in Townsville. In 2008 and 2009 he completed a nine-month deployment as an embedded staff officer developing theatre level operational plans in the Combined Joint Operations Directorate of the Multi-National Force - Iraq Headquarters in Baghdad. Other operational deployments include tours of duty as Brigade Major of West Force, International Force East Timor (INTERFET); G3 Engineer Operations Officer of the United States Combined Joint Task Force 190 in Haiti; and Operations Officer of the 8th Australian Contingent of the United Nations Mine Clearance Training Team in Pakistan and Afghanistan.

Notable staff appointments include Director of Strategic Plans at Border Protection Command (a standing multi-agency task force) developing whole-of-government and multi-agency operational policy and plans for the security of Australia's maritime domain; exchange instructor at the US Army Command and General Staff College in Fort Leavenworth Kansas instructing on operational planning in joint, multi-agency and multi-national settings; and Brigade Major of the 3rd Brigade in Townsville. He is a graduate of the Australian Centre for Defence and Strategic Studies and the Australian Command and Staff College.

SUMMARY

This paper begins with a description of an Australian Special Forces raid in Afghanistan where civilians were killed and wounded. The subsequent White Paper prompted several questions: What exactly are "situations of armed conflict short of conventional war"? How does the Australian Defence Force (ADF) "establish a secure environment in conflict zones"? What role should the ADF play in a 'stabilization' situation? And what can we do to further develop a "whole-of-government" effort? And have we adequately organized, trained and equipped Australian forces "for conflicts within societies"?

To answer these questions, this paper examines how the Australian Government can assist another state government to restore and maintain public security by developing capacity in its security and criminal justice sectors.

But this paper is not just about Australia because Australia's experiences are not unlike those being experienced by the United States, the United Kingdom, and others. This is particularly relevant as the Asia-Pacific region is becoming more of an area of an interest to U.S. National Security.

This paper first examines the origins, nature and prevalence of intra-state conflicts. It shows that one common feature of the ADF's interventions over the last few decades has been that forces have often been deployed in support of another state government, and in many instances the immediate and essential task has been to assist in restoring and maintaining public security.

In order to better understand the phenomena and nature of intra-state conflicts, the international geo-

political environment since 1945 is examined. It finds that the legacy of uti possidetis juris, the desire for self-determination and the presence of over 100 active autonomous, separatist or independence movements, the proliferation of small arms, the rise in transnational crime, the growing concern about failing states, the international support for the principles of R2P and the emerging paradigm of human security, coupled with the global contest between al-Qaeda and the U.S. and its allies, it is reasonable to expect that intra-state conflicts will remain a significant feature in the international security environment for some time into the future.

Further, given the increasing globalization of national interests in the security and economic domains, as well as an increasing concern for human rights and human security, it is reasonable to expect an increasing level of international interest and involvement in intra-state issues and conflicts.

The legal dimension of intra-state conflict and violence is examined by considering international law and domestic state law, and exploring the legal status and role of foreign forces in interventions. It finds that foreign forces present in another state are often operating in a complex, and sometimes ambiguous, legal environment. The creation of an expeditionary police force is unique and coupled with the Australian Civilian Corps (ACC) and the ADF's capabilities has the potential to create a powerful and coherent 'Team Australia' whole-of-government approach to building capacity in the security and criminal justice sectors of other states. The paper shows, through the example of the challenges being experienced in Afghanistan, that there is scope to further develop and to more holistically and effectively integrate these capabilities.

The Australian Government has a clear responsibility to determine national policy, identify the capability requirements, delineate roles and responsibilities, and to adequately organize, train and equip forces to undertake the tasks given to them by the Government.

The paper considers how to develop capacity in the security and criminal justice sectors of other states and how to optimize the application of these two new expeditionary capabilities - the Australian Federal Police (AFP) International Deployment Group (IDG) and the Australian Agency for International Development (AusAID) ACC - in concert with the ADF as part of a whole-of-government response.

Finally, this paper makes fifteen recommendations and identifies the agencies that should initiate action on each of them. Thirteen of the fifteen recommendations can be implemented within the existing organizational structures and within current budgets of the stakeholder agencies concerned, and the remaining two recommendations (5 and 14) can be achieved as part of ongoing capability development processes and budgets.

Looking to the future, it seems inevitable that Australia and its partners will be engaged in stabilization in the region or more widely in the years ahead. The White Paper foretold as much, but the onus to be prepared does not fall solely on the ADF – it falls onto the whole of the Australian Government. The imperative to further develop the Australian Government's capability to assist other states in restoring and maintaining public security is driven as much by liberal internationalism as cold hard national interest. Promoting an international environment, particularly in the Asia Pacific region, that is stable, peaceful and prosperous, is in Australia's, and other States', national interests.

These recommendations can all be implemented well within the next five years, but given that Australia has forces, on the ground now, conducting stabilization in Afghanistan, East Timor and Solomon Islands, the imperative to implement them more quickly cannot be clearer. The Australian Government's efforts to develop capabilities to assist another state government to restore and maintain public security by developing capacity in its security and criminal justice sectors are instructive to other states developing similar capabilities, such as the United States, the United Kingdom and Canada.

INTRODUCTION

On a cool night in Afghanistan in mid February 2009 Australian Special Forces soldiers initiated a raid into a complex of rural mud-brick buildings to capture a Taliban insurgent. Shots were exchanged and grenades were thrown. When the smoke and dust cleared it was revealed that six Afghans had been killed at the hands of the Australian Defence Force (ADF), four of them small children and one a youth. Two more children and two adults from the family group were wounded.

In September 2010, after an extensive investigation, the ADF's Director of Military Prosecutions announced that charges would be laid against three Australian Defence Force (ADF) members involved in the raid.[1] The announcement elicited a wide range of public opinions and served to illustrate the type of complex and dynamic environments that ADF members are expected to operate in - environments where the term 'war' seems inappropriate yet where soldiers are clearly necessary. A common theme that developed in the media debate was "what sort of war are we fighting?" It is a question that has no clear and simple answer. Similar debates occurred in the United States, by far the largest contributor of military forces to Afghanistan. [2]

Three months after the raid the Australian Government issued its Defence White Paper 2009, *Defending Australia in the Asia Pacific Century: Force 2030* (the White Paper). The White Paper stated that the Government had:

> …considered the issue of intra-state conflict and what it means to our armed forces…[and] judged that this

type of conflict will be an enduring feature, and the most common form, in the period to 2030, and that the ADF needs to be prepared to play its part in dealing with such contingencies.[3]

The White Paper went on to say that:

ADF deployments into situations of armed conflict short of conventional war may be required. These could be in the form of humanitarian, stabilisation, counter-insurgency, peacekeeping and reconstruction interventions, such as we have undertaken over recent years in Cambodia, Namibia, Bougainville in Papua New Guinea, Somalia, Rwanda, East Timor, Solomon Islands, southern Iraq and Afghanistan.

In such circumstances, the ADF has a particular focus on establishing a secure environment in conflict zones. These could involve separating warring ethnic or other groups or deterring or defeating insurgents or terrorists fighting a legitimate government and intimidating local populations.

As we can see in Afghanistan, security objectives in intra-state conflict situations are increasingly interdependent with broader political, humanitarian, economic and development goals. These operations require a 'whole-of-government' response on the part of military and civilian agencies, extending beyond individual agency operations, and integrating security and other objectives into comprehensive political-military strategies. The ADF's capacity to deploy rapidly and establish a basic level of security at the outset of a crisis situation will often be an essential element of any comprehensive approach - but it will, in nearly all cases, not be a sufficient response in itself.

In this context, it will be crucial to ensure that the ADF can work effectively alongside civilian agen-

cies that specialise in law enforcement, development assistance, humanitarian relief, health, correctional services, municipal services (such as water and infrastructure), education, and political and administrative governance.[4]

These few paragraphs invite a wide range of questions. What exactly are "situations of armed conflict short of conventional war"? How does the ADF "establish a secure environment in conflict zones"? What role should the ADF play in a "stabilization" situation? And what can we do to further develop a "whole-of-government" effort?[5] Have we adequately organized, trained and equipped Australian forces "for conflicts within societies"?

This paper contends that one common feature of the ADF's previous interventions[6] is that forces have often been deployed in support of another state government[7], and that in many instances the immediate and essential task has been to assist in restoring and maintaining public security.[8]

Public security is a political good provided by a state government to its citizens.[9] Public security is the ability for a state's citizens, and its legal persons, to live without fear of intimidation, violence, coercion or exploitation. Public security is broadly provided through the development of domestic laws, the enforcement of a state's domestic laws, the maintenance of public order, and the defence against external security threats. Public security is achieved through functioning security and criminal justice sectors that uphold the rule of law and control the use of violence within a state.[10]

The security and criminal justice sectors comprise institutions and organizations that in turn are made

up of people, equipment, facilities and processes. They interact as a system that produces an overall effect - a 'satisfactory' level of public security. What constitutes satisfactory is different for each state and even for areas within each state. For example, what is satisfactory in Lagos is different to what is satisfactory in Melbourne. And given that in many instances the population is recovering from a period of increased violence, establishing a new satisfactory level will take time.[11] Additionally, the level of public security will be perceived differently by each individual so often it is important to define some objective criteria to measure it against.

In most states enforcement of a state's domestic laws is usually performed by a state government's police and other law enforcement agencies[12], as well as the criminal justice sector. In certain circumstances, such as when the very authority of a state government is being challenged by organized groups employing violence, a state's military forces may be used to directly or indirectly assist in enforcing a state's domestic laws.

In Western countries the military is only rarely used in a domestic security role (such as short duration counter-terrorism tasks), but in non-Western countries the use of the military in a domestic security role is more common. For example, in Australia the use of the ADF in support of the civil authorities where the potential for the use of force exists is governed by a very clear set of provisions in Part IIIAAA of the *Defence Act 1903*.[13]

Looking abroad, the Australian Government appears to have accepted that the ability to assist other state governments to restore and maintain public security is an enduring requirement.[14]

As a result, the Australian Government has recently raised two new 'expeditionary' capabilities to potentially contribute to its national effort overseas - the Australian Federal Police's (AFP) International Deployment Group (IDG), and the Australian Agency for International Development's (AusAID) Australian Civilian Corps (ACC).[15] Taken together with the ADF, the Australian Government has chosen to develop the capability to 'export security'.[16] The creation of an expeditionary police force is unique and coupled with the ACC and the ADF's capabilities has the potential to create a powerful and coherent 'Team Australia' whole-of-government approach to building capacity in the security and criminal justice sectors of other states.[17]

Having raised these two new capabilities it is necessary to consider how they will be integrated 'on the ground' with the ADF, as well as indigenous forces and other foreign agencies including non-government organizations (NGOs). While the ACC is still in the process of becoming operational, the integration of ADF, IDG and AusAID capacity-building and development effort is presently being undertaken in Afghanistan under the rubric of 'stabilization' operations.[18] It is vital that these experiences in Afghanistan are captured and analysed to inform future missions and further develop the capabilities.

The purpose of this paper is to make recommendations on how Australian Government capabilities can enhance its ability to assist another state government to restore and maintain public security - to help fill a public security deficit and develop capacity in another state's security and criminal justice sectors. And in turn, to provide a case study that, hopefully, will assist other countries wrestling with these same issues.

THE AUSTRALIAN DEFENCE FORCE'S
INTERVENTIONS SINCE WORLD WAR II

One common feature of the ADF's interventions over the last few decades has been that military forces have often been deployed in support of another state government, and in many instances the immediate and essential task has been to assist in restoring and maintaining public security.

No single source details all the ADF's interventions since the end of World War II.[19] The ADF has been involved in several inter-state conflicts since the end of World War II (Korea, South Vietnam, the First Gulf War in 1990-1991, Afghanistan in 2001-2002, and Iraq in the first half of 2003).[20] ADF participation in numerous United Nations (UN) missions has tended to be more about monitoring cease fires and supporting the conduct of elections, but a majority of these have been in the wake of intra-state conflicts.

Significantly, there have been numerous occasions when the Australian Government has provided forces in support of another state government. Indeed, interventions where the Australian Government has provided forces in support of another state government are becoming increasingly prevalent. These forces have performed tasks ranging from conventional combat (Korea) to counter-insurgency (Malaya, Malaysia, South Vietnam, Iraq and Afghanistan) to the restoration of public order (Papua New Guinea, East Timor/Timor Leste, Solomon Islands and Tonga) to medical and humanitarian assistance in response to natural disasters. The counter-insurgency and restoration of public order tasks can be regarded as being about restoring and maintaining public security. In some instances a disaster response environment may require

the restoration and maintenance of public order. Thus, in many instances the immediate and essential task has been to assist in restoring and maintaining public security. This task has been principally undertaken by the Army (with Navy and Air Force in support) and almost always been undertaken in conjunction with indigenous forces. Often, this task is being undertaken in conjunction with efforts in other sectors to improve the capacity of the indigenous government to provide other public goods (South Vietnam, East Timor/Timor Leste, Solomon Islands, Iraq and Afghanistan). In this regard, the public security situation needs to be at a level that allows efforts in other sectors to proceed.[21]

Geographically, the majority of the interventions have been within the geographic boundaries of a single state - reflecting an intra-state challenge. The interventions reflect Australia's national interests, and increasingly the U.S. interests, as they focus on the Asia Pacific region. Increasingly, the interventions are being authorized through government to government invitations and arrangements, and without the imprimatur of the UN - reflecting a developing sense of trust and cooperation between states in the region.

There have been two occasions when ADF troops were empowered to act in a law enforcement capacity. The first was as a part of the Allied occupation forces in Japan, but in this instance it was preferably affected through Japanese police officers.[22] In the second case of the Regional Assistance Mission in Solomon Islands (RAMSI), the Solomon Islands government, via the *Facilitation of International Assistance Act 2003*, empowered foreign forces with police powers and to use force (as is 'reasonably necessary') to enforce its state domestic law.[23] Within RAMSI, foreign military forces were placed in support of the foreign police

forces. In all the other interventions involving the restoration and maintenance of public security, however, ADF members were not empowered to act in a law enforcement capacity in accordance with the relevant domestic laws.

The interventions have progressively become more 'joint' in nature involving all three services of the ADF, and more recently conducted in conjunction with members from other Australian Government departments and agencies. The increasingly multi-agency nature of interventions in recent years has generated an impetus for greater levels of coordination and co-operation between the ADF, the AFP and AusAID, as well as the Department of Foreign Affairs and Trade (DFAT) and the Australian Intelligence Community.[24] The environments in which the interventions are conducted are increasingly witnessing the involvement of foreign NGOs and foreign private commercial organizations.

Also noteworthy is that every intervention has involved foreign forces from several states – mostly working collaboratively as a coalition. In a number of cases the Australian contribution has been part of a larger U.S.-led coalition (Korea, South Vietnam, Somalia, the Persian Gulf, Afghanistan and Iraq) - highlighting the importance of interoperability with the U.S. and other forces.

THE PHENOMENA AND CHARACTER OF INTRA-STATE CONFLICTS SINCE 1945

The White Paper claims that intra-state conflicts are likely to be an enduring feature of the international security environment in the next 20 years. But first, it is necessary to define 'intra-state conflict'. Intra-state

conflict is a relatively vague term that could simply refer to a dispute or disagreement over a particular issue within a state. But in the context of the White Paper and this paper, it refers to situations where an issue is being disputed using intimidation, violence and physical coercion. The issue in dispute may be political in nature in the case of an insurgency against the government, or it may be inter-communal violence or organized criminal activity.

The conclusion of World War II heralded a new world order defined by the Allies. One of the most significant developments was the creation of the UN, in June 1945, as an international state-centric organization. Another development was the commitment to the principles of self-determination - a moral and legal right, that all peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development.[25] This commitment saw colonial powers divesting themselves of responsibility for their dominions and the formation of new independent sovereign states - a period and process known as 'decolonization'.[26]

However, the UN Charter and other resolutions did not insist on full independence as the best way of achieving self-determination and obtaining self-government. Additionally, new states were created using the legal doctrine of '*uti possidetis juris*', meaning that old colonial administrative boundaries would become international boundaries upon independence, even if they had little relevance to linguistic, ethnic, religious and cultural boundaries.

As a consequence, the achievement of independence by some states was relatively peaceful, but in other instances there were tensions and violence - both with the colonial power and between different indig-

enous groups.[27] Those conflicts that occurred became known as 'wars of national liberation'. In several cases the UN facilitated the process through the conduct of self-determination referenda, the provision of neutral peacekeeping forces to monitor ceasefire agreements and the conduct of elections.[28] Between 1946 and 1960, the peoples of 37 new states freed themselves from the 'colonial yoke' in Asia, Africa and the Middle East.

The post-World War II decolonization period was contrasted with a period of territorial expansion by the Soviet Union. Several regional states in Eastern Europe, the Baltic, and Central Asia were annexed by the Soviet Union during World War II. After World War II the Soviet Union extended its influence by establishing satellite states in Eastern Germany and the countries of Eastern Europe, along with support for revolutionary movements in China, North Korea, Cuba, North Vietnam and Africa. Although satellite states were independent and possessed sovereignty, the Soviet Union often violated principles of self-determination, for example, by suppressing the Hungarian revolution of 1956 and the Czechoslovak reforms of 1968. It intervened in Afghanistan in 1979 to support an increasingly unpopular communist government.

As the prospects of major inter-state war between the two superpowers and their allies became more remote during the Cold War, largely due to nuclear mutually assured destruction, the contest between the U.S. and the Soviet Union increasingly played out in places where decolonization and Soviet expansionism was occurring. While the Soviets supported decolonization, they invariably sought to establish communist government in these new states. Many of the wars of national liberation became proxy contests between the two superpowers. The Soviet Union supported

communist North Vietnam in its efforts to integrate democratic South Vietnam throughout the 1970s, for example, and the U.S. supported the Mujahedeen resistance against the communist government in Afghanistan throughout the 1980s.

In 1989-90, the communist regimes of Soviet satellite states collapsed in rapid succession in Poland, Hungary, Czechoslovakia, East Germany, Bulgaria, Romania and Mongolia. In December 1991, Mikhail Gorbachev resigned as President and the Soviet Union dissolved relatively peacefully into fifteen sovereign republics, all of which rejected communism and most of which adopted democratic reforms and free-market economies.[29] In 1993 Czechoslovakia peacefully split into the Czech Republic and Slovakia. Twenty-eight new independent states were admitted into the UN between 1990 and 1993.

The dissolution of the Soviet Union and the end of the Cold War in the early 1990s created a period of both considerable uncertainty and yet also optimism.[30] The prevailing view in the West at the time was that the world would be a safer and more peaceful place. In 1991 President George H.W. Bush, for example, proclaimed a new world "where the UN, freed from Cold War stalemate, is poised to fulfill the historic vision of its founders...a world in which freedom and respect for human rights find a home among all nations."[31] Bush foresaw the coming of a more peaceful era in world politics, where the use of force was rejected as a foreign policy tool. Other policymakers and scholars echoed this optimism, proclaiming the "end of history" and a new era of peace and prosperity.[32] Several Western states including the U.S. and the UK reaped a 'peace dividend' and reduced the size of their standing military forces.

But this sense of optimism proved ill-founded. Since the early 1990s, the legitimatization of the principle of national self-determination has led to an increase in the number of conflicts within states, as sub-groups seek greater self-determination and even full secession, and as their conflicts for leadership within groups and with other groups and with the dominant state become violent. Throughout the 1990s conflict increased in both the former Soviet Union and in places where decolonisation had occurred.

In 1990 Yugoslavia began a violent break up into its former six sub-unit republics largely along ethnic lines.[33] Chechnya sought independence from Russia in 1991, resulting in a Russian military response and a brutal conflict that continues to this day. In the new republics of the former Soviet Union, four major areas witnessed conflict as part of claims for independence: Abkhazia and South Ossetia in Georgia, Transnistria in the Ukraine, and Nagorno-Karabakh in the south Caucuses. Between 1988 and 1990 Kosovo, which was previously an autonomous part of Serbia, witnessed two sequential, and at times parallel, armed conflicts. Insurgencies have also become manifest in the central Asian republics largely in response to the suppression of ethnic minorities by autocratic rulers.[34]

Beyond the former Soviet Union, in places where decolonization had occurred, the end of the Cold War witnessed a rise in conflict between different linguistic, ethnic, religious or cultural groups. These were largely a result of the international state boundaries derived from the *uti possidetis juris* legal doctrine. The civil war in Afghanistan throughout the 1990s, the 1994 inter-communal violence in Rwanda in particular, and the ongoing conflicts in Western Sahara, Sudan and Somalia are examples. Additionally, instances where

Cold War proxies had been permitted to undertake territorial expansion, such as the 1975 Indonesian invasion and occupation of East Timor, resurfaced as self-determination issues.

While changes to the boundaries of states have been a feature of human society for millennia, the 'right' to self-determination unleashed in 1945 and stimulated again with the end of the Cold War does not yet appear over.[35] The number of states in the world has been steadily increasing over the last sixty years. Fifty-one states signed the UN Charter in 1945; in 2010 the number of UN member states was 193. And yet, in over 100 states there are one or more active autonomous, separatist or independence movements advocating a different political arrangement.[36] The grievances these movements have against state governments span a wide range of issues. The international reaction to these movements has been uneven and often dictated more by politics than principle.[37] There is no common or agreed basis on reasons to form a state. Ethnicity and religion have been factors in the past, but human rights and economic opportunity are becoming more influential today. Most states do not recognize the right to self-determination through secession in their constitutions; indeed, many expressly forbid it.[38]

Paradoxically, rather than binding the planet, globalization fuels the human thirst for self-determination and independence as well as the means to achieve it.[39] Globalization in general, and the Internet in particular, provide ideas and information to those groups of people that desire self-determination as well as providing them a means to voice their claim and generate support amongst the global community. Separatist movements and insurgencies are also now globalized.[40] While the state government and the

insurgents may be engaged in one type of battle within the territory of the state they are engaged in another throughout the rest of the world. The government seeks reinforcement of its legitimacy from other states. The insurgents seek to legitimize their cause to as wide an audience as possible - most recently through the media and Internet. The insurgents might also draw on support from an ethnic diaspora or sympathetic community in other states.[41] They may also seek support from a third party - be it another state or some other form of benefactor.[42] In turn, the state government will seek to disrupt all of these efforts - usually through cooperation with other state governments.[43]

The global proliferation of small arms and knowledge of tactics and the construction of improvised explosive devices have also enabled separatist and insurgent groups to employ violence in support of their objectives.[44] There are also a growing number of examples of cooperation between separatist and insurgent groups and transnational organized crime groups.[45] While criminals are said to be motivated by material gain and insurgents are said to be motivated by political objectives, they both have an interest in reducing the control exercised by a particular state government - be it in a certain geographic area or in terms of its overall capacity. Limited governance, weak rule of law, inadequate legislation, and a lack of human capital and leadership within many states create opportunities for criminal elements to suborn elements of the state infrastructure, largely through graft and corruption, for illegitimate purposes and provide opportunities to finance and support international terrorism. Tamara Makarenko describes an emerging 'crime-terror continuum' where the

interests of terrorist (insurgent) and criminal groups can converge, resulting in a potent mix of politically and commercially motivated violence. She described a 'black-hole syndrome' where terrorist and criminal groups create 'safe havens' removed from state controls.[46] We can identify elements of her thesis in Afghanistan where the large scale production of opiates is funding, in part, the Taliban insurgents.[47]

The sanctuary that the Taliban afforded al-Qaeda in Afghanistan gave rise to the notion of a 'failed state'.[48] A failed state is perceived as a state that can no longer perform the basic functions and responsibilities of a sovereign government. These might include: the loss of physical control of its territory; the loss of the monopoly on the legitimate use of physical force; the erosion of legitimate authority to make collective decisions; an inability to provide reasonable public services; and an inability to interact with other states as a full member of the international community. After introducing the notion of a failed state, states were then graded on a spectrum between failed and sustainable, giving rise to the notion of 'failing states' and a 'failed states index'.[49]

Since the al-Qaeda attacks on the U.S. on 11 September 2001, there has been a growing perception that failing states potentially provide a place where terrorist organizations can find sanctuary and where other transnational security threats, such as organized crime and pandemics, can become manifest.[50] The 2002 U.S. National Security Strategy stated that "America is now threatened less by conquering states than we are by failing ones".[51] A 2008 U.S. Congressional Research Report identified that "numerous U.S. government documents point to several threats emanating from states that are variously described as weak, fragile,

vulnerable, failing, precarious, failed, in crisis, or collapsed.[52] These threats include providing safe havens for terrorists, organized crime, and other illicit groups; causing conflict, regional instability, and humanitarian emergencies; and undermining efforts to promote democracy, good governance, and economic sustainability."[53]

Several commentators argued in the early 1990s that the role of the state was diminishing - particularly as globalization surged. Yet since 11 September 2001 the state has become more central and important – accepting that globalization is continuing to influence the way that state governments act.[54] The growing concern about failing states and the transnational security threats that might emanate from them has witnessed a commensurate growth in the amount of official development assistance (ODA)[55] being offered by developed states, and a number of cases where foreign (largely Western) forces are providing assistance to a state government.

The failure of the international community to intervene to arrest the inter-communal violence in Cambodia in the 1970s and Rwanda in 1994 gave rise to a school of thought that the international community had a obligation to prevent genocide or intervene in another state if its government was not fulfilling its responsibility to protect its people.[56] This school of thought has now evolved into the notion of a 'responsibility to protect' (RtoP or R2P) and focuses on preventing and halting four crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing.[57] The situation in Darfur in Sudan over the last several years has continued to fuel debate. While R2P is not international law, it is an increasingly accepted international norm - although there are many

concerns and criticisms largely centered on the rights of sovereignty.[58] As yet, the international community has not yet mounted a military-led intervention on the argument of R2P, but the White Paper had this to say:

> For a rules-based global security order to work, occasionally it is necessary to act to restore order. Within the UN context, the 'responsibility to protect' principle, which is currently at an important stage of development, holds that states are responsible for the protection of their own citizens from mass atrocities, and that the international community should encourage and assist states to exercise that authority. Australia supports the principle, and recognises that, on occasion, it may be necessary for other states to intervene, under the auspices of a UN Security Council resolution, if a state cannot or will not protect its population.[59]

Additionally, an emerging paradigm of 'human security' for understanding global vulnerabilities argues that the proper referent for security should be the individual rather than the state. Human security holds that a people-centered view of security is necessary for national, regional and global stability. The concept emerged from a post-Cold War, multi-disciplinary understanding of security involving a number of research fields, including development studies, international relations, strategic studies, and human rights. The UN Development Programme's 1994 Human Development Report is considered a milestone publication in the field of human security, and argues that the scope of global security should be expanded to include threats in seven areas; economic, health, food, environmental, personal, community and political security.[60]

Taken together, the legacy of *uti possidetis juris*, the desire for self-determination and the presence of over 100 active autonomous, separatist or independence movements, the proliferation of small arms, the rise in transnational crime, the growing concern about failing states, the international support for the principles of R2P and the emerging paradigm of human security, coupled with the global contest between al-Qaeda and the US and its allies, it is reasonable to expect that intra-state conflicts will remain a significant feature in the international security environment for some time into the future.[61] Additionally, there has been a steady decline in the number of inter-state wars over the last several years.[62] While the future is impossible to predict, the White Paper's claim that intra-state conflict is likely to be an enduring feature of the international security environment in the next 20 years seems reasonable.

Commensurate with the phenomena of intra-state conflict there has been a corresponding level of interest in the issues by the international community. This trend can be seen in the number of UN Security Council Resolutions (UNSCR) passed. Between 1946 and mid-1991 (a period of 45 years) a total of 700 UNSCR were passed. Between mid-1991 and mid-2010 (a period of 19 years) over 1,400 UNSCR were passed.[63] Additionally, the number of UN peacekeeping missions has increased significantly since the end of the Cold War. [64] Statistics reflect an increasing globalization of interests in the security and economic domains, as well as an increasing concern for human rights and human security. A growing prevalence of multi-national coalitions formed by like-minded states (many operating with a UN mandate but not as UN missions) add to the evidence of increasing international inter-

est and involvement in intra-state issues, violence and conflicts.

It is fair to expect that intra-state conflicts will remain a significant and enduring feature in the international security environment in the next 20 years. Further, given the increasing globalization of national interests in the security and economic domains, as well as an increasing concern for human rights and human security, it is reasonable to expect an increasing level of international interest and involvement in intra-state issues and conflicts.

THE LEGAL DIMENSION OF INTRA-STATE CONFLICT AND VIOLENCE

The centrality of the legal dimension is illustrated by the decision by the ADF Director of Military Prosecutions to prefer charges against three ADF members for actions undertaken in Afghanistan in a raid that resulted in civilian casualties in February 2009.[65] A considerable degree of public debate on this issue demonstrates how complex the legal environment that soldiers are operating in stabilization operations in other states has become.[66] But to fully appreciate how and why we have gotten to this point, it is necessary to go back to the origins of the nexus between war and law.

A range of drivers have witnessed the progressive definition and regulation of war via a series of treaties, conventions and international law.[67] These drivers include restrictions on the use of certain weapons, the protection of combatants who are 'out of combat' (*hors de combat*) and the protection of non-combatants. The law of war is a body of law concerning acceptable justifications to engage in war (*jus ad bellum*) and the limits to acceptable wartime conduct (*jus in Bello*).[68]

'War' in its ordinary popular meaning is a conflict carried out by force of arms between states, or between parties within a state in the case of 'civil war'. A 'state of war' exists between two parties when accompanied by a formal declaration, or when both parties treat hostilities as war. The official international protocol for declaring war is defined in the Hague Convention (III) of 1907 on the Opening of Hostilities.[69] The question of whether a state of war exists depends on the dimensions of the conflict, the intentions of the parties, and the reactions and attitudes of the non-parties (i.e. those parties not involved in the conflict).[70]

Declaring war on another party has onerous legal and political obligations and duties on the parties - particularly if they are states.[71] It also potentially opens a state to accusations of being in breach of the 1945 United Nations Charter.[72] As a consequence, since 1945, states have generally forsaken recourse to declaring a formal state of war[73] and the term 'non-war armed conflict', or more simply 'armed conflict', has been increasingly applied.[74] Practically, provided it rises above certain thresholds, any hostile action between armed groups that is not contained within what constitutes a state of war can be regarded as an 'armed conflict'.[75] Converse to the increasing rhetorical political use of the term 'war', in legal terms 'war' is now only invoked when authorized under Chapter VII of the UN Charter or under Article 51 as a right of self-defence - and even then the UN Charter refers to the 'use of force' and 'armed attack' rather than war.[76]

The increasing use of the term 'armed conflict' since 1945 has also increasingly brought about use of the term the 'Law of Armed Conflict' (LOAC) in lieu of the term 'law of war'. As briefly described above, the LOAC is the body of conventions, treaties, custom-

ary international law [77] and case law that regulates the conduct of armed conflict.[78] The LOAC include rules that protect those who are not, or no longer, taking an active part in hostilities, and limit the choice of methods and means of warfare. The Geneva Conventions were drafted to protect civilians and medical workers who are not taking part in the hostilities, as well as those out of combat who are no longer participating in the hostilities, including wounded, sick, shipwrecked, and prisoners of war. In addition to prohibitive elements, the LOAC contains permissive elements such as the right to deliberately target and kill combatants as well as destroy their materiel.

The LOAC come into force whenever armed conflict begins and it remains in force while a state of armed conflict exists.[79] The LOAC impose duties and confers rights. The LOAC do not explicitly make the killing or injuring of civilians or non-combatants illegal; it does, however, impose a requirement on military forces to exercise discrimination and judgement regarding the use of force and to balance military necessity against the potential for civilians or non-combatants to be killed or injured. It can also include obligations which continue following the cessation of hostilities. Unlike most other parts of international law, the LOAC binds individuals as well as states. Members of forces that are accused of committing or authorizing unlawful acts, or of omitting to fulfil their duties, may be tried by the authorities of their own state. In some circumstances they may be tried by the authorities of other states or in international courts.

In 1977, at the height of the Cold War, two Additional Protocols to the Geneva Conventions were adopted that supplement the Geneva Conventions.[80] These two Additional Protocols made a distinction

between 'international' (inter-state) and 'non-international' (intra-state) armed conflict. Protocol I relates to the Protection of Victims of International Armed Conflicts, and Protocol 2 relates to the Protection of Victims of Non-International Armed Conflicts.[81] Additionally, Protocol I extends the Geneva Conventions definition of international armed conflict to include wars of 'national liberation' (noting that this term is never used in the text of the Additional Protocol) and specify what constitutes a legitimate target of military attack.

The terms 'colonial domination', 'alien occupation' and 'racist regimes' are not defined or clarified in the instrument, but it is clear that they reflect the politics of the decolonization period.[82] Given this definition, the majority of armed conflicts during the period 1945 to 1990 were considered as international armed conflicts where the full protections of the Geneva Conventions, and later Additional Protocol I, were considered to apply.[83] Since the end of the decolonization period (largely coincident with the end of the Cold War), however, the majority of armed conflicts have been regarded as non-international armed conflicts. In these cases the provisions of Additional Protocol II should apply rather than Additional Protocol I - although some aspects of Additional Protocol I have become generally accepted as customary international law that also apply to non-international armed conflicts.[84]

Additional Protocol II extends the provisions of common article 3 of the Geneva Conventions[85] to include:

"...dissident armed forces or other organized armed groups which, under responsible command, exercise

such control over a part of its territory as to enable them to carry out sustained and concerted military operations. [86]

The requirement for 'dissident armed forces or other organized armed groups' to be 'under responsible command', 'exercise control over territory', 'conduct sustained and concerted military operations' and to be able to implement the provisions of Additional Protocol II provide multiple opportunities for states to refute that an armed conflict exists within their borders.[87] Article 1.2 of Additional Protocol II further qualifies Article 1.1 by saying that:

> This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

Article 1.2 essentially defines an even lower threshold where LOAC would be superimposed onto a state's domestic criminal laws. The terms used in Article 1.1 or 1.2 are defined in 'soft law' but are usually highly contextual and not universally agreed.[88] Because of the potential for dissidents to not be readily identifiable in a uniform or with distinguishing marks, one of the key features of Additional Protocol II is that it protects people on the basis of their activities rather than their status (as per the Additional Protocol I and the Geneva Conventions in general). Under Additional Protocol II a distinction must be made between those who take a direct part in hostilities and may be targeted by government forces at the time of their activities, and those who do not and are therefore protected.[89]

The LOAC come into effect when an armed conflict exists, whether an international armed conflict

or non-international armed conflict. The LOAC apply to a signatory state even if the other parties are not bound by it, or choose to not conform to it.[90] Thus, the question of whether the LOAC apply to a certain situation within a state becomes somewhat circumstantial and subjective. Given that breaches of the LOAC could potentially result in an individual being prosecuted under international law for war crimes, this is an important issue.

States with 'dissident armed forces' (insurgents)[91] or 'other organized armed groups' (other non-state armed groups) within their territorial borders tend to prefer to deal with them within their own domestic arrangements.[92] They do so because they want to protect and exercise their sovereignty and do not want external international instruments, such as the LOAC (particularly Additional Protocol II) to interfere or constrain their efforts.[93] Indeed, Article 3.1 of Additional Protocol II was clearly included to protect the sovereignty of states by saying that:

> Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

Additionally, state governments do not want to grant insurgents any degree of legitimacy by accepting the applicability of Additional Protocol II.[94] To this end, interpretation of Article 1.2 of Additional Protocol II is often contested and states tend to describe a particular situation in terms that do not imply that the LOAC should apply. The UK, for example, never accepted that the situation in Northern Ireland over the

last forty years was anything other than an internal disturbance or 'troubles' that could be dealt with using their domestic laws (noting that it did amend their laws to deal with the situation over time).[95]

Each state has different 'domestic arrangements' available to it to deal with 'internal disturbances and tensions' depending on their model of government, constitution (if one exists) or domestic laws. Indeed, the state government may be in a position to invoke extra-ordinary powers under the auspices of a 'state of emergency' and have significantly more latitude to 'deal' with the insurgents or other non-state armed groups than if they declared, or were considered to be party to an armed conflict.[96] The state of emergency powers available to each state government are unique and range from what would be considered 'quite reasonable' by international norms to the 'clearly unacceptable'.

On the other side of the issue, some insurgent groups want the LOAC to be applied in a particular situation. They do this not only for their own benefit, but also so that they are seen to be acting in accordance with international legal principles and enhance their status in the eyes of the international community.[97] Indeed, some non-state groups have already formally advised the International Committee of the Red Cross/Crescent that they intend to follow the provisions of the Geneva Conventions and several have taken to wearing uniforms to be identifiable.[98] Not surprisingly, the state governments that they are challenging are resistant to this idea as it provides a degree of legitimacy to the non-state groups.

Given the lack of universally accepted definitions on terms such as *colonial domination*, *alien occupation*, *racist regimes*, *dissident armed forces or other organized*

armed groups, *internal disturbances and tensions*, and *responsible command*, as well as arguments that elements of both international and non-international armed conflict can be simultaneously present in a given situation, there are also considerable debates as to which Additional Protocol should apply to a particular situation.[99] An added complication comes into play when insurgents seek sanctuary in a neighbouring state and cross the international boundary to mount attacks.

There have been calls for the two Additional Protocols to be amalgamated, but these proposals have not advanced in any substantive manner.[100] Fundamentally, however, the dual legal existence of *international armed conflicts* and *non-international armed conflicts* has not been able to be reconciled or adapted to meet contemporary demands.[101] Despite this, the pressing demands of the ongoing armed conflict in Afghanistan have forced foreign forces to 'operationalize' Additional Protocol II into specific direction for their troops.[102]

Beyond these issues and challenges, the yearning for an international system governed by the rule of law has grown since the end of the Cold War. And despite the recalcitrance of a number of states to ratify treaties and conventions related to the regulation of the use of force, the majority of states support the establishment of global norms.

Foreign Forces

The introduction of foreign forces into a state government's territory increases the complexity of a particular situation. In addition to the bilateral relationship between the host state government and the foreign force state government, each of the foreign

states also has a relationship with each of the other foreign states.

Foreign forces might be present in another state as a result of two circumstances. First, they have been present since before an indigenous host state government came into being, i.e. a foreign transitional authority was initially in place, as was the case in Afghanistan in 2001 [103] and Iraq in 2003-04.[104] In this circumstance, foreign forces will derive their legal status and authority from a UNSCR and/or a law passed by the transitional authority. In the absence of such executive powers foreign forces have no legal basis to perform law enforcement functions other than to 'detain' suspected criminals and pass them onto indigenous law enforcement forces as soon as practicable.

The second circumstance might be because the indigenous host state government has invited them - typically when the capabilities of the host state government and its indigenous forces are unable to adequately deal with a particular situation. In this circumstance, foreign military forces will derive their legal status and authority from either a bilateral Status of Forces Agreement/Arrangement (SOFA) with the host state government, or from a host state's domestic law.[105] Foreign civilian forces (including police forces) will usually derive their legal status and authority from some form of bilateral agreement or memorandum of understanding (unless they are diplomatic or consular personnel in which case other arrangements apply).[106]

A more challenging situation occurs when foreign forces shift from the first circumstance to the second. This situation occurs when a new indigenous host state government and its institutions becomes more capable and effective. As the indigenous host state

government's capacity improves the foreign force can potentially be viewed as an *occupation force*, and potentially as a force resisting or preventing the full assumption of responsibility by indigenous forces.[107] The progressive assumption of authority and responsibility by the host state government is typically matched by a progressive reduction in the authority and actions that can be undertaken by foreign military and police forces. In Iraq, for example, responsibility for security was progressively transferred from Coalition forces to the Iraqi Security Forces as they and the Iraqi Government became more capable and confident. The management of this transition can potentially become a contentious issue between foreign forces and an indigenous state government - particularly if there are differing views on the capacity of indigenous forces to effectively deal with the public security deficit.[108] A true partnership with agreement on all the major components of a transition plan is difficult to achieve.[109] In some instances, a UN Security Council Resolution will grant powers to foreign forces that might be at odds with the host state government's wishes.

The presence of foreign forces - particularly foreign military forces - does not automatically imply that a state of armed conflict exists. Irrespective of the 'host state government's' position on whether the LOAC are applicable, foreign forces working to support another state government are often bound to conform with the LOAC through the domestic laws or policies of their parent state.[110]

Thus, it is possible to have a situation where indigenous domestic and foreign forces are working within the same territory or in cooperation with very different sets of 'rules'. And increasingly, in addition to the LOAC, international human rights law, interna-

tional criminal law and international refugee law are being applied to the conduct of parties within conflict zones.[111] In all, foreign forces present in another state are often operating in a complex, and sometimes ambiguous, legal environment. In operationalizing the *Additional Protocols* in the ongoing armed conflict in Afghanistan, members of organized armed groups or civilians participating directly in hostilities are now considered to be combatants and legitimate targets for security forces under the LOAC. The crux is that the person must be in the act of directly participating in hostilities for the LOAC to be applied (i.e. he or she can be targeted with lethal force); otherwise, it is necessary to detain the person and proceed down a law enforcement pathway. If the person being detained threatens the lives of those forces seeking to detain them, then the forces have the right to apply lethal force in self-defense.

States seek to provide clear guidance to their military forces participating in interventions via national rules of engagement (ROE). The ROE usually specify a time period within which the detainee must be transferred to the legitimate law enforcement authority (i.e. the indigenous police forces) or else be released. For example, the Australian ROE issued to ADF members for the interventions in RAMSI, East Timor in 1999 and Timor Leste in 2006 were all limited to law enforcement provisions and only authorized the use of lethal force for self-defense purposes.[112] In Afghanistan, the initial Australian ROE included armed conflict provisions that were later expanded to include law enforcement provisions.

While it is too early to make definitive judgements, the charges being laid against the ADF members relating to the raid in Afghanistan in February 2009

illustrate the challenge.[113] These members were operating under ADF ROE, but the environment in which they are expected to operate is not a 'conventional war zone'. The Taliban insurgents are not uniformed, they routinely operate amongst civilian non-combatants and they can only be engaged with lethal force under certain circumstances. The insurgents have become very adept at identifying the limits of ROE and exploiting the boundary between law enforcement and armed conflict to survive and continue to prosecute their cause. In response, coalition and Afghan forces have sought to close that space by developing police forces in parallel with military forces, achieving closer cooperation between different forces, and applying traditional law enforcement techniques and technologies to an intra-state counter-insurgency campaign.[114] And yet actions by troops that are perceived to be necessary under local circumstances and entirely legal if performed within the ROE and LOAC, may be perceived as being unjustified and subject to criminal investigation by a different audience at a later time in another part of the world. By dispatching forces in support of another state government the Australian Government is recognizing and endorsing the legitimacy of the other state government.[115] Being a legitimate government, however, is not the same as being a viable and effective government.[116] A viable state government is one that is structurally and procedurally capable of functioning, is impartial, has transparent processes, and is receptive to criticism and open to change. An effective state government is one that is functioning and providing political goods to its citizens, and which is acting as a responsible member of the international community.[117] Foreign forces present in another state

are often operating in a complex, and sometimes ambiguous, legal environment. If such foreign forces are required to enforce the domestic criminal law of a host state, then those forces need to be authorized and adequately organized, trained and equipped to perform that function. It is entirely possible that these issues will be brought to light when the charges against the three ADF members involved in the February 2009 raid in Afghanistan proceeds to court.

NEW AUSTRALIAN GOVERNMENT CAPABILITIES

The Department of Foreign Affairs is the Australian Government's primary foreign policy and development body. Once a particular policy regarding Australia's relations with another state is specified it is typically implemented or operationalized by other Australian Government departments and agencies. This section examines the establishment of the Australian Federal Police's International Deployment Group (IDG) and the Australian Agency for International Development's Australian Civilian Corps (ACC), and reviews the mandates given to these organizations. It briefly discusses two other related initiatives within the Department of Defence, and identifies the current coordination and integration mechanisms between the Department of Defence, AusAID and the AFP.

The Australian Federal Police's International Deployment Group

Since its inception, the Australian Federal Police (AFP) has had a long tradition of involvement in international peacekeeping, policing and capacity development. Since 1964, Australia has contributed police

officers to several UN peacekeeping missions around the globe. In recent years, Australian Government efforts to assist neighboring and remote countries with institutional capacity building has led to AFP deployments to Papua New Guinea, the Solomon Islands (under RAMSI), Timor-Leste (under the Timor-Leste Police Development Program), Nauru, Tonga, Vanuatu and Afghanistan.

The establishment of International Deployment Group (IDG) was announced in February 2004 to provide a single and holistic internal management regime for the AFP's peacekeeping, peace restoration and capacity building missions.[118] The IDG contributes to the development, maintenance or restoration of the rule of law in countries that seek Australia's support. The role of the IDG is to provide leadership within the law and criminal justice sector in the delivery of offshore law enforcement initiatives. The IDG presently has an approved strength of 1,200[119] organized in three components:

- **Australia Based.** 250 personnel providing executive, analytical, administrative, intelligence training and technical support for deployed personnel and strategic advice to the AFP Executive.
- **Operations Response Group.** 200 personnel providing ready response, highly-skilled tactical policing capability for rapid deployment to unstable domestic and international operational situations.[120]
- **Mission Component.** 750 personnel providing a blend of sworn and unsworn personnel deployed, or ready to deploy, to group missions and other operations as required. The Mission Component is expected to be able to support

two large long-term missions, one medium sized long term mission and seven smaller missions at any one time. The Mission Component can deploy in response to a crisis or preemptively in a capacity building effort to prevent a crisis.

Deploying members of the IDG must complete a 35 day pre-deployment course at the IDG's training facility.[121] The IDG presently has 13 international missions and 5 domestic missions underway.[122] These missions perform either in-line policing and/or capacity building.[123] The UN peacekeeping missions tend to require more in-line policing effort, although the object in most AFP IDG missions is to build capacity and transition responsibility to indigenous forces as soon as practicable.

The IDG has established strong partnerships with other key Commonwealth agencies, State and Territory police services, international organizations and the private sector to improve the effective delivery of IDG capability.[124] The AFP has established a number of Memoranda of Understanding (MOU) with the Department of Defence and other departments and agencies with the aim of better integrating efforts - both in Australia and in interventions.[125] Additionally, a Joint Standing Committee on Defence/AFP Integration has been established.[126] One of the products currently in development is a *Guide to Defence and AFP Interoperability for Offshore Operations* aimed at providing a framework for cooperation in preparation for, and the conduct of, offshore operations.[127] The IDG has also assigned two full-time liaison officers/ planning staff to the Department of Defence and they work at Headquarters Joint Operations Command

(HQ JOC). The AFP IDG has also assigned a full-time liaison officer to the AusAID ACC.

The IDG is a unique capability; a standing expeditionary police unit able to be deployed overseas at short notice. No other state has made a similar commitment to developing such a capability despite a growing demand for police forces in UN and coalition field missions around the globe.[128] The AFP IDG is continuing to develop and refine its institutional capability to sustain deployed forces as well as its operational capabilities as the international security environment evolves.

The Australian Agency for International Development's Australian Civilian Corps

The formation of the Australian Civilian Corps (ACC) was announced in October 2009.[129] The decision to create the ACC followed an extensive feasibility study undertaken by an Australian Government Deployable Civilian Capacity Taskforce.[130] The ACC is a register of up to 500 civilian specialists and expected to be fully operational in 2014.[131] The ACC will enable the rapid deployment of trained civilian specialists to countries experiencing or emerging from natural disasters or conflict. These specialists will supplement the very short notice Rapid Response Teams that provide humanitarian assistance in a crisis or after a disaster, or the permanent mission staff that help restore essential services and infrastructure, and help rebuild government institutions to establish economic and social stability over the longer term in affected countries.[132]

Specialists will be chosen for inclusion on the deployment register based on their expertise and demon-

strated experience in relevant fields such as security, justice and reconciliation; machinery of government; essential services; economic stability; community and social capacity building; and stabilization and recovery management.[133] Specialists will also require personal attributes appropriate for deployment into difficult environments such as self-reliance, flexibility, cross-cultural sensitivity and resilience. They will be required to undergo medical and police checks. These specialists will remain in their regular employment until accepting a deployment. They will be drawn from all levels of government and the private sector.[134]

Following a natural disaster or conflict, AusAID will undertake a rapid assessment of the recovery needs, develop strategies and programs to address these recovery needs, and deploy civilian specialists from a register as required. Deployed ACC members may work alongside the Australian military and police forces where present, or in a stand-alone capability. They may work alongside foreign military, UN peacekeepers, police and civilian experts from other countries. They may also work in-line or in partnership with host government officials. Assignments will support immediate stabilization and recovery needs and will flow into longer-term capacity building roles.[135]

When deployed, ACC members will be engaged as Commonwealth employees. Appropriate terms and conditions will be offered to reflect the particular conditions and hardships of different deployments. As civilian specialists will be working in physically and mentally challenging environments, effective management of their welfare and security will be an Australian Government priority. AusAID will provide training to prepare civilian specialist for their particular overseas assignments.[136]

AusAID and the Department of Defence signed a strategic partnership agreement in April 2009 to "advance the [Australian] Government's policies of promoting security and development, good governance and stability."[137] The agreement defines partnership principles and goals, and establishes coordination arrangements to guide planning and response. AusAID has placed a liaison officer at HQ JOC to assist with planning. Defence has placed a seconded (liaison) officer at AusAID to assist in the development of the ACC capability.

AusAID and the AFP signed a strategic partnership agreement in September 2004 identifying the skills, attributes and strengths of each agency; defining partnership principles and shared strategic goals; and detailing the coordination arrangements with a view towards developing the 'law and justice sector' of other states. AusAID and AFP liaison officers have been located in each other's organizations - and the AusAID officer works at the IDG.

In July 2010 the AusAID ACC and the U.S. Office for the Coordination of Stabilization and Reconstruction (now Bureau of Conflict and Stabilization Operations) signed a memorandum of understanding on enhanced collaboration.[138]

Other Recent Initiatives within the Department of Defence

In addition to these new expeditionary capabilities and arrangements, the Australian Government has also recently established the Asia Pacific Civil-Military Centre of Excellence (APCMCOE) administered by the Department of Defence.[139] The APCMCOE's establishment is recognition of the benefits to be derived

from a more integrated national and international civil-military approach to conflict and disaster management. The APCMCOE includes secondees from a range of Australian Government departments and agencies including the AFP and AusAID.[140]

By applying a collaborative approach with other government agencies, the UN and other relevant partners, the APCMCOE focuses on improving civil-military education and training, and developing civil-military doctrine and guiding principles. Through its research program on relevant civil-military issues, the APCMCOE also aims to identify best practice responses to key lessons learned and recommend their application to achieve continuous improvement.[141]

One of the APCMCOE's major products has been the production of a *conceptual framework* to assist Australian Government departments and agencies in further developing Australia's capabilities for conflict and disaster management overseas.[142] The conceptual framework identifies six guiding principles, describes a four-track approach to promoting multi-agency understanding, and describes three areas that can contribute to developing and implementing multi-agency strategies.

Additionally, within the ADF, the establishment of a co-located Headquarters Joint Operations Command (HQ JOC) in Bungendore near Canberra in 2009 has provided a place in which multi-agency planning for interventions can occur. To support this, the IDG has assigned two full-time liaison officers/planning staff to HQ JOC, and AusAID has assigned one. There has been a good (and improving) degree of coordination and cooperation between the AFP IDG and AusAID at HQ JOC over the last several months - particularly with regard to the Australian Government's ongoing

efforts in Afghanistan. The ADF, however, has not located a liaison officer with the AFP IDG.

Looking back over the last five years there has been considerable progress in the development of expeditionary capabilities within the AFP and AusAID. There has also been a considerable progress in the development of coordination and integration mechanisms. The relationships between the ADF and the AFP IDG, and the AFP IDG and AusAID are the most advanced. At present, agency efforts are coordinated but not integrated to achieve a common objective. The Australian Government needs to evolve from a *coordinated* to an *integrated* approach to stabilization. A balanced and mature trilateral relationship, however, has not yet been achieved - principally due to the in-progress development of the ACC capability. Effort to further develop the whole-of-government capability is slowly but inexorably heading in a positive direction - particularly with the ongoing intervention in Afghanistan providing incentive - but a clear 'roadmap' for the way ahead is absent.

Afghanistan provides a good illustration of the challenges surrounding these types of interventions. It is vital that these experiences in Afghanistan are captured and analysed to inform future interventions and further develop the capabilities.

CURRENT EFFORTS IN AFGHANISTAN

The history of the international intervention in Afghanistan since October 2001 is a large and complex topic that cannot be fully examined in this paper.[143] There is considerable scope to criticize the conduct of the international campaign in Afghanistan to date, and success is far from assured.[144] This section is in-

tended to be illustrative, not necessarily representing an enduring model of how foreign forces might support another state government in restoring and maintaining public security.

International and National Arrangements

The North Atlantic Treaty Organisation (NATO)-led International Security Assistance Force (ISAF) is the main foreign force in Afghanistan. ISAF is authorized by UNSCR 1386 and in accordance with the Bonn Agreement of 5 December 2001 implements its mandate under Chapter 7 of the UN Charter (initially to provide security for the Afghan Interim Authority in Kabul and its vicinity). On 11 August 2003 NATO assumed leadership of ISAF[145] and in October 2003 its mandate was extended across Afghanistan.[146] It is broadly accepted by the ISAF contributing states that a non-international armed conflict is occurring in Afghanistan and that the LOAC, in general, and Additional Protocol II, in particular, are applicable.[147]

ISAF's mission is to act:

> "In support of the Government of the Islamic Republic of Afghanistan, conducts operations in Afghanistan to reduce the capability and will of the insurgency, support the growth in capacity and capability of the Afghan National Security Forces, and facilitate improvements in governance and socio-economic development, in order to provide a secure environment for sustainable stability that is observable to the population."[148]

ISAF presently comprises forces from 47 different states.[149] Almost all of these states are party to the Geneva Conventions and Additional Protocols I and II.[150]

ISAF directs its efforts in three sectors: security; reconstruction and development; and governance - but being a military organization it has prime carriage of the security sector.[151]

The UN Assistance Mission in Afghanistan (UNAMA) is a diplomatic mission (i.e. not a peacekeeping mission) run by the UN's Department of Political Affairs.[152] UNAMA has prime carriage of efforts in the reconstruction and development sector as well as the governance sector.

The Bonn Agreement established an Afghan Interim Authority in late 2001. Afghanistan's new constitution was adopted in 2003 and an executive president was democratically elected in 2004. Parliamentary elections took place in 2005 and a second presidential election was held in 2009. The Afghan Government ratified the Geneva Conventions in 1956 and Additional Protocols I and II in 2009.

The Afghan Government includes an Attorney General's Department, a Ministry of Interior, and a Ministry of Defense. The ANP operate under the authority of the Afghan National Police Law. The ANA operate under the authority of the Constitution of the Islamic Republic of Afghanistan, and in accordance with a national ROE.[153] The ROE used by the ANA is very different to the ROE used by the foreign forces in Afghanistan, including the ADF. The Afghan Government has not authorized the ANA or foreign forces any executive power to enforce its domestic criminal laws.[154]

The forces that are threatening the security and stability of Afghanistan include the 'Taliban' and al-Qaeda. The Taliban is comprised a number of factions including the Haqqani Network, the Quetta Shura, Hezb-e-Islami Gulbuddin, Hezb-e Islami Khalis,

Jaish-e-Mohammed and Lashkar-e-Tayyiba amongst others. It is believed that all regard the Karzai Government as illegitimate and foreign forces as occupiers. It is believed that they seek the withdrawal of foreign forces and want to replace the Karzai Government.

Australian Defence Force

A chronology of Australia's military commitment in Afghanistan between 2001 and 2010 has been produced by the Department of Parliamentary Services.[155] The ADF commitment since 2006 has been focused on Uruzgan Province with smaller supporting units and individuals working in Kandahar and Kabul.[156]

The Uruzgan based organizations have comprised a Special Forces Task Group and a reconstruction and mentoring task force whose composition and focus has evolved over the last four years. The Mentoring Task Force (MTF) is part of a larger Combined Team Uruzgan (CT-U) which, in addition to a range of military units, includes a mixed civilian and military Provincial Reconstruction Team (PRT).[157] The PRT is a multinational organization led by an Australian Department of Foreign Affairs and Trade (DFAT) member. The PRT works in concert with the Governor of Uruzgan and his office to develop both the capacity of the provincial government and to provide political goods to the people of Uruzgan. The PRT works with a range of other foreign agencies to realize development projects in Uruzgan.

The main task for the MTF is to train and mentor[158] the 4th Afghan National Army (ANA) Brigade.[159] The 4th ANA Brigade is the only ANA unit based in Uruzgan Province but elements of it can be employed outside of Uruzgan Province. The Special Forces Task Group,

in addition to performing in-line combat tasks, trains and mentors the Afghanistan National Police (ANP) Police Provincial Reserve - a paramilitary force. In order to reinforce training, members of the MTF and Special Forces Task Group accompany ANA forces on operational missions.

ADF members in Afghanistan operate under the auspices of a SOFA between the Governments of Afghanistan and Australia. ADF members operate in accordance with Australian national ROE which includes both armed conflict and law enforcement provisions (i.e. the authority to detain persons suspected of *serious* crimes). ADF members are not granted any executive power to enforce Afghan criminal law.

Australian Federal Police

The AFP IDG officers in Afghanistan operate under the auspices of a bilateral agreement between the Afghan and Australian governments.[160] The number of AFP IDG officers working in Afghanistan has grown from four in 2007 to 28 in January 2011.[161]

Two thirds of that number works in the Police Provincial Training Centre in Tarin Kowt in Uruzgan to train the ANP in conjunction with the European Union Police Mission in Afghanistan.[162] These 'Focused District Development' efforts within Uruzgan Province are conducted as a sub-set of the broader NATO Training Mission-Afghanistan efforts at the national level.[163] The AFP IDG officers training the ANP are not part of the Uruzgan PRT. After basic training foreign Police Mentoring Teams are supposed to mentor the ANP as they perform their operational duties throughout Uruzgan Province - but a shortage of resources often means that this does not occur.

The remainder of the AFP presence in Afghanistan works in the national counter-narcotics and criminal intelligence efforts in Kandahar and Kabul.[164] The AFP IDG officers in Afghanistan are not granted any executive power to enforce Afghan criminal law.[165]

Australian Agency for International Development

AusAID has seven members in Afghanistan with five working as part of the PRT in Uruzgan Province. They operate under the auspices of Vienna Conventions.[166] They undertake capacity building activities in a range of sectors including governance, law and justice, health, education, agriculture, water management with a view towards the delivery of basic services to the population of Uruzgan Province.

In addition to the ADF, AFP IDG and AusAID presence, the Australian Government also has a small Embassy in Kabul and one DFAT member who has recently taken charge of the Uruzgan PRT. The Australian Government has also made a significant financial contribution to the international reconstruction effort.[167] Over the course of 2010 a concerted effort was made by the Australian Government to increase its civilian presence in Afghanistan in order to provide a more joint or whole-of-government effort in support of the coalition and Afghan Government.[168]

There is no clear delineation of roles and responsibilities or formal command and control relationship between the ADF, AFP IDG and AusAID elements on the ground in Uruzgan. While personal relationships and goodwill will always achieve some degree of cooperation and de-confliction, the ability to properly integrate must derive from more formal authorities. ADF Special Forces soldiers are training and mentor-

ing the Uruzgan Police Provincial Reserve in paramilitary role rather than a police role. There is some public debate as to whether the Uruzgan Police Provincial Reserve is an appropriate indigenous partner.[169] The AFP IDG does not mentor ANP trainees outside of the Police Provincial Training Centre – leaving the in-line mentoring task to Police Mentoring Teams from other states. AusAID's development efforts in Uruzgan are constrained by a paucity of security and security forces. No member of the ACC has yet deployed to Afghanistan. There is insufficient Australian or other national resources dedicated to the development of the Uruzgan Provincial Government's capabilities and capacity. Overall, Australian national efforts in Uruzgan Province are coordinated but not nationally integrated.[170] The presence of foreign forces from other states in the CT-U adds to challenge to achieving unity of purpose and integrating efforts. There is scope to achieve a higher degree of integration and effectiveness across all the agencies and foreign forces involved.

ANALYSIS AND RECOMMENDATIONS

AusAID proposes that:

Fostering functioning states is essential because appropriate and effective machinery of government is the basis for prosperity. Sound policies and institutions are essential for growth and development.[171]

The provision of a secure environment based on the rule of law is the first duty of any government and the precondition for citizens to live productive and fulfilled lives. Security, stability, development and the

rule of law are all strongly related and interdependent areas. UN Secretary-General Kofi Annan once said "There is no long-term security without development. There is no development without security." [172] Indeed the correlation between security and development is now so well recognized that an on-line workshop sponsored by the EU and NATO recommended that the UN establish *Millennium Security Goals* to complement the existing Millennium Development Goals.[173] The challenge is to restore and maintain the authority and effectiveness of the state in the face of detractors that employ violence and seek to create a public security deficit.

The provision of a satisfactory level of security enables activity and progress in other aspects of a society. The Honourable Jason Clare MP, the Minister for Defence Materiel, stated during the recent Parliamentary debate on Australia's involvement in Afghanistan that "you can't have a stable and secure society unless the government has a monopoly on the use of force".[174] But it is impractical for a society to wait for a satisfactory level of security to be achieved across a whole state, so in practice life goes on as best it can and capacity building development effort occurs concurrently across several sectors. There are no simple models to understand or explain how such a venture might be planned and managed given the interrelated nature of a society[175] and there is insufficient scope in this paper to examine the entirety of a state building venture, so this part concentrates on the security and criminal justice sectors - which is where the Australian Government has been most engaged in recent interventions.

The first question that should be asked when there is the potential for Australian Government agents to be

involved in an intra-state conflict situation is whether the supported government is legitimate. In the event of a *regime change* intervention by foreign forces the establishment of a new legitimate indigenous government will invariably be an objective to be achieved as part of the venture. In other situations a state may be asked to join a multi-national coalition after that indigenous government has been formed, or indeed the state might be invited by another state government to provide support. In each situation, if the Australian Government does not believe that the supported state government is legitimate, and it is in Australia's national security interest, then it should not risk the safety and well-being of its agents to support it.[176] If the Australian Government is satisfied that another state government is legitimate then the task given to its agents is invariably to contribute to efforts to improve the capacity of that supported state government and its institutions to make it viable and effective.[177] The provision of support to another state government can be conceptualised in five phases: a needs analysis, planning, implementation, review, and termination.

In the needs analysis phase a *common* view on the nature of the security deficit and how it might be addressed needs to be formed between the foreign forces and the host or supported state government - essentially a joint agreement.[178] The root causes of the violence and conflict need to be fully understood.[179] In terms of the institutions and organisations in the security and criminal justice sectors an assessment on their effectiveness as a system needs to be conducted. Additionally, consideration needs to be given to the *informal* security and justice system based on tribal or religious traditions that might be present in some states.[180]

The supported state government and the foreign forces must then agree on what is functioning satisfactorily and what needs to be built, developed or reformed.[181] It should be noted here that the foreign view is not always the correct approach. Often, foreign forces make the mistake of creating or reforming institutions and organizations in their own image. It is vitally important for the indigenous perspective to be fully understood and considered. Equally, the supported state government might be 'too close to the problem' and not able to appreciate an outside perspective. As ever, communication and trust will be required to develop a common view of the issues and the objectives.[182] The primary objective is to create a legitimate and enduring indigenous capacity that can maintain satisfactory levels of public security.

Once common objectives are agreed then the plan for how it might be realized can be developed in detail. This phase might identify the requirement to sequence activities in time and space, as well as resource requirements.[183] The plan would then be implemented and there would be a requirement for a periodic review of progress against the plan and for adjustments to be made. This might occur several times during the implementation phase.[184] Ultimately, public security is returned to satisfactory levels, or the supported state government is confident that it can effectively continue to manage the remaining public security deficit with its own resources, and foreign forces can terminate their presence and return to their parent states.[185] All of this is likely to occur in a physical and temporal patchwork across the supported state.

The security deficit in a particular state might be so large that the indigenous forces are unable to deal with it in any meaningful fashion - or they may even

be contributing to the deficit because of political mo-
tivations or corruption, as was the case in the Solo-
mon Islands in 2003. In this circumstance it might be
necessary for foreign forces to provide public security
on behalf of the supported state government - that is,
to undertake an *in-line* role. Such a situation is high
risk for foreign forces as they might be oblivious to
the root causes of the violence or conflict and/or may
be unable to effectively understand the operating en-
vironment.[186] Foreign forces in this circumstance will
need to obtain executive powers from the supported
state government or the transitional international au-
thority. This will involve more than the power of ar-
rest, but also the ability to detain try and incarcerate
convicted criminals.

In all instances, foreign forces should seek to de-
velop indigenous capacity and transfer responsibility
to them as soon as possible.[187] Often, there will be some
form of existing indigenous forces that require their
capacity developed or built. In some instances the in-
digenous forces may also need to be reformed in some
way to remove political bias, adjust ethnic or religious
bias or to eliminate corruption for example.[188] The key
lesson from contemporary intra-state conflicts is that
the demand for the political goods provided by criminal
justice sector exists independent of the demand for the
military forces to fight insurgents so the two sectors
must have their capacity built concurrently. Or stated
another way, in intra-state conflicts, irrespective of the
imperative for military action there is a requirement
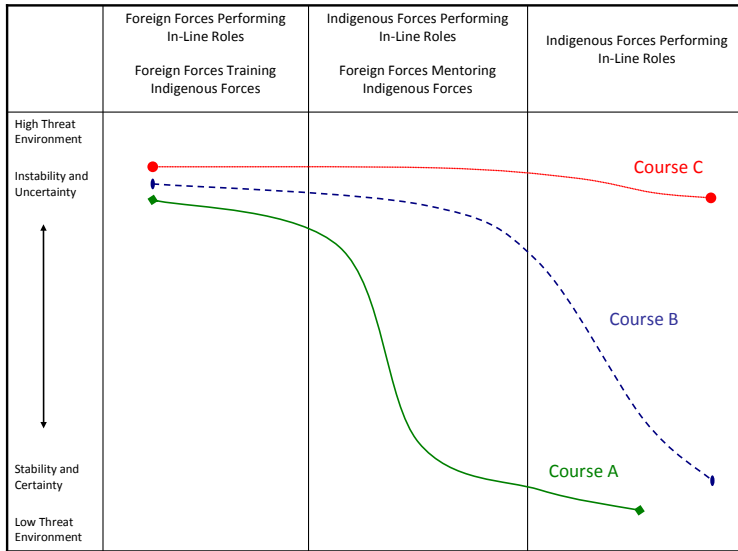for policing and criminal justice to continue.[189]

If foreign forces do decide to provide support to
another state government to restore and maintain
public security, then in order to reinforce the
legitimacy and moral authority of the supported state

government, it is in the foreign forces interests to deal with the violence and conflict as a criminal justice issue *whenever possible.* Dealing with the situation as an armed conflict (with the concomitant *war-like* philosophy, aggressive tactics, use of lethal force as well as the inevitable unavoidable collateral damage) both legitimizes the insurgents and delegitimizes the supported state government. Insurgents will often seek to provoke disproportionate responses from Government forces. More philosophically, foreign forces should not give up their own national values in the name of supporting another state government.

Drawing down to an Australian national approach, Edwina Thompson, in a recent study of Australian Government efforts in fragile states, identified a clear imperative for the 'players' to "think about how they fit into the various steps of a holistic solution" and for the need for "an overall concept of what needs to be accomplished so that everyone is one the same page, contributing efforts in light of that agreed direction."[190] At present, agency efforts are coordinated but not integrated to achieve a common objective. The Australian Government needs to evolve from a *coordinated* to an *integrated* approach to stabilization. While each situation will be unique, it is worth developing capabilities for generic situations that can be adapted as required. To determine the requisite capabilities it is necessary to work backwards from what constitutes functioning and effective security and criminal justice sectors.

The first step is to develop a conceptual understanding of how foreign forces might assist another state government to deal with a security deficit by developing the capacity of its security and criminal justice sectors. Figure 1 depicts three possible ways that the security and criminal justice sectors

could potentially develop capacity over time.[191] The horizontal axis represents three potential 'phases' of the relationship between foreign forces and the indigenous forces of the supported government. They are temporally sequential from left to right. The vertical axis represents a continuum in the level of threat or violence and the level of stability and certainty - highest at top reducing to lowest at bottom.

	Foreign Forces Performing In-Line Roles / Foreign Forces Training Indigenous Forces	Indigenous Forces Performing In-Line Roles / Foreign Forces Mentoring Indigenous Forces	Indigenous Forces Performing In-Line Roles

Figure 1 – Capacity of the Security and Criminal Justice Sectors over Time

The three possible Courses (A, B and C) have indicative starting points, pathways and finish points. In broad terms the aim is to move from the top left corner of the figure to the bottom right. Each Course could begin in the second phase if foreign forces are not granted executive powers to perform in-line roles (particularly law enforcement) and/or indigenous forces already have some level of capability.

Course A is the optimum course where the combined efforts by foreign and indigenous forces results in an early and significant improvement in the level of public security. RAMSI is an example of this course.

Course B is the second best course where the combined efforts by foreign and indigenous forces results in an improvement in the level of public security, but not as quickly as Course A. This might be due to violent and non-violent resistance to the stabilisation efforts. It may also be due to political issues, resource constraints or organisational issues (including corruption) in the supported state government. Iraq (after the 2007 surge) and Timor Leste in 2006 are examples of this course.[192]

Course C is where the foreign forces believe they have done all that they can do to build the capacity of the indigenous forces, but there is no commensurate or significant improvement in the level of public security. This may be due to the same reasons identified in Course B but it would indicate some deeper issues that are giving rise to the conflict and violence. South Vietnam is an example of this course. It is probably still too early to call, but Afghanistan could be an example of this course.[193] It is conceivable that the growing unpopularity of the conflict in Afghanistan could result in foreign forces withdrawing over the next several years and leaving the indigenous security forces to deal with the security situation as best they can. Invariably this would be called a *transition of responsibility* and not a *withdrawal*. Indeed, it is also conceivable that in this situation the level of violence and instability would actually rise as the competing factions vie to establish a new order in Afghanistan - as happened in the 1990s after the Soviet withdrawal in 1989.

It is also possible for different components of the security and criminal justice sectors to develop at different rates. For example, in Iraq the capacity of the military was developed earlier and more rapidly than the police and judiciary. In Afghanistan, there was hardly any progress in the development of the police in the first six years of the intervention.[194] This situation might be visualised as the Course B line divided into Course B1 (Military) and B2 (Police and Judiciary).

Equally, the transition from one phase to the next might occur at different times in different administrative or geographic areas across the state. It is not necessary for the transition of responsibility from foreign forces to indigenous forces to occur across the entire state at one time; it can occur progressively at district and provincial levels. For example, responsibility for security in each of Iraq's provinces was progressively transferred from foreign force to Iraqi forces over an 18 month period. And within each province, the Iraqi forces then progressively transferred from a military lead to a police lead as public security improved. Overall, the aim is to achieve balanced progress in both the security and criminal justice sectors from the top left corner of Figure 1 to the bottom right on a geographic basis.

With a conceptual model in place it remains to *operationalize* it; that is, to translate concepts into plans and recommendations. There is no overarching Australian Government directive or guidance on developing such an integrated capability to developing the capacity of its security and criminal justice sectors of other states - at least not in the public domain.[195] Capabilities are being developed by agencies separately albeit with an increasing degree of cross-agency awareness and a growing recognition of the need to

coordinate and complement efforts. While the capabilities from all three agencies might not be required in every instance, but it would be prudent to develop the integrated capability on the premise that it will and adjust the deployment according to the demands of a particular situation.

The ACC faces a significant immediate challenge in determining where to develop its capability. It has identified a wide cross-section of sectors and fields in which it perceives there is a requirement for effort and expertise.[196] Additionally, that effort and expertise can potentially be applied from the strategic to the tactical level. That is, for example, it could range from mentoring a state minister on the development of a national institution at the strategic level to the training of a carpenter.

Given the potential width and breadth of the ACC's potential 'operating space' the organization would do well to 'team' with the ADF and the AFP IDG to develop an integrated approach to developing the security and criminal justice sectors of other states. Equally, the ADF and the AFP IDG can benefit by better defining the limits of their expertise and responsibility. In several instances military force members have been forced to perform tasks for which they are unqualified simply because there was no one else present to fill the requirement.[197] This issue is at the heart of the creation of deployable civilian capabilities in several Western states. Stabilization and state-building ventures require foreign military, police and civilian elements to come together in an integrated approach. It is not reasonable to expect the military to undertake law enforcement duties. Soldiers are trained to operate within their ROE in conformance with the LOAC and their parent state's domestic laws. Law enforcement

officers are trained in accordance with very different principles to those used to train soldiers. It is necessary that expeditionary police forces are developed to perform both in-line and capacity building roles. And it is necessary to ensure that military and police forces can integrate their efforts seamlessly. Given that the Australian Government has now chosen to develop expeditionary military, police and civilian capabilities it could potentially be a global leader in the application of an integrated approach.

Recommendation 1: The Australian Government issue a directive or guidance on developing an integrated capability to develop the security and criminal justice sectors of other states and that the ADF, AFP IDG and AusAID ACC continue to collaborate on the integration of capabilities.

The UK and the U.S. are considerably more advanced than Australia in the development of their whole-of-government integrated approaches to stabilization.[198] In addition to national policy statements, institutions and doctrine, both the U.S. and UK have scoped the potential tasks that might be required in stabilization. The U.S.'s Office for Coordinator for Reconstruction and Stabilization (S/CRS) produced a 'Post-Conflict Reconstruction Essential Tasks' list in April 2005.[199] It identified goals and listed potential tasks in the *security* and *justice and reconciliation* sectors in three temporal stages: *initial response*, *transformation* and *fostering sustainability*.

Similarly, in June 2008 the UK's Stabilization Unit produced a 'Stabilization Tasks Matrix' that described requirements and activities across a wide range of sectors and functions along a roughly temporal se-

quence.[200] The Stabilization Task Matrix included sections on *reform and rebuild the security sector, provide internal public order, ensure territorial activity* and *reconstruct and reform the justice sector*. Recognizing that a comprehensive approach to the development of the security and criminal justice sectors of other states demands concurrent effort by military, police and civilian agencies, the Stabilization Task Matrix also identified which of these agencies would be best suited to particular tasks based on their skills and expertise.[201] It recognized that matching practitioners is the most effective method of training and mentoring indigenous forces; that is, military forces train and mentor military forces.

Both S/CRS's Post-Conflict Reconstruction Essential Tasks and the Stabilisation Unit's Stabilisation Tasks Matrix are good 'broad brushed' attempts at scoping the potential requirements of reviewing and developing the security and criminal justice sectors of other states. They are only generic, however, and need to be adapted to suit the demands of a particular situation.

In order to develop an integrated 'Team Australia' approach to stabilization, an *Australian Government Stabilization Task Matrix* is required.[202] This document would identify the potential tasks in the security and criminal justice sectors and which agency would be best positioned to perform it.[203] Given that the Australian Government's expeditionary capabilities are each at relatively short notice, the temporal dimension to such a Matrix would be best to employ the conditions identified for Figure 1; that is where foreign forces are performing the in-line role and when the indigenous forces are performing the in-line role with foreign forces mentoring.

Given its work on the conceptual framework document[204] the Asia Pacific Civil-Military Centre of Excellence (APCMCOE) is well placed to facilitate a multi-agency working group to produce the Australian Government Stabilization Task Matrix.[205] The priority of effort should go to the sections on the security and criminal justice sectors, but the methodology will be applicable to developing task lists in other sectors.

Recommendation 2: The Australian Government direct the development of an Australian Government Stabilization Task Matrix with the Department of Defence's APCMCOE to lead a multi-agency effort.

The process will help to define the boundaries of expertise and responsibility between the ADF, the AFP IDG and the ACC. This will provide the ACC with a basis for further development of its capability in these two essential sectors in the near term. Similarly, it will allow the ADF and AFP IDG to review their operational concepts and capabilities in the context of a nationally integrated approach.

Recommendation 3: The ADF, the AFP IDG and the AusAID ACC each develop capabilities that are complementary and able to be integrated in accordance with the Australian Government Stabilization Task Matrix.

In developing these capabilities, which are designed to work together in Stabilization in the field, it will be important for the ADF, the AFP IDG and AusAID ACC to align the individual conditions of employment or service – probably along both a trade/task technical difficulty and risk exposure basis. This

is necessary to engender a common perception of purpose and risk, and to prevent any perceptions of inequality or differences in importance.[206]

Recommendation 4: The ADF, the AFP IDG and AusAID ACC seek to align the conditions of service (or terms and conditions of employment) that individuals from each agency are entitled when participating in Stabilization.

Recommendation 5: The ADF and AFP IDG continue to maintain and develop capabilities to perform both in-line and mentoring roles.

Recommendation 6: The AusAID ACC develops the capability to lead and contribute to Provincial Reconstruction Teams for stabilization.

It is clear that the ADF and the AFP IDG need to have the capability to perform both in-line and mentoring roles. As most stabilization occurs on land, the Australian Army should continue to lead the ADF's doctrine and capability development efforts for military operations as part of stabilization.[207] The creation of Provincial Reconstruction Teams in both Iraq and Afghanistan has proven to be a successful organizational approach to developing the non-military capacity and capability of indigenous provincial governments. Given the success of the Provincial Reconstruction Team approach, and the Australian contribution to the Uruzgan Provincial Reconstruction Team, the ACC should develop the capability to lead and contribute towards Provincial Reconstruction Teams for stabilisation and capacity building.

Recommendation 7: The ADF, the AFP IDG and the AusAID ACC each continue to deepen their collaboration and interoperability with their 'sister' functional organisations in other states.

Concurrently, each of the three agencies should continue to deepen their collaboration and interoperability with their 'sister' functional organizations in other states. Specifically, the ACC should continue to collaborate with the U.S. Department of State, Bureau of Conflict and Stabilization Operations (CSO)[208], the Stabilization Unit and START. The CSO and the Stabilization Unit are producing a wealth of valuable material that can be readily adapted for Australian Government purposes. The AFP IDG should collaborate with the UK, US and EUPOL to further develop concepts, doctrine and capabilities regarding the police contribution to stabilization.

The Australian Army should continue to collaborate with the U.S. Army and U.S. Marine Corps, the UK Army and the Canadian Army to further develop concepts, doctrine and capabilities regarding the military contribution to stabilisation. The U.S. Army produced *Field Manual 3-07 Stability Operations* in October 2008[209] and the U.S. Department of Defense developed *Joint Publication 3-07 Stability Operations*. The UK Ministry of Defence produced *Joint Doctrine Publication (JDP) 3-40 Security and Stabilization: The Military Contribution* in November 2009.[210] Each of these documents contains a wealth of valuable information, experience and advice that can be readily leveraged by the ADF.

Recommendation 8: The Australian Army leads the ADF's doctrine and capability development efforts for operations as part of Stabilization.

A potential task within stabilization is developing the capacity of indigenous security forces and institutions. The Australian Army identifies 'indigenous capacity building' as one of its principal generic tasks.[211] The U.S. Armed Forces has coined the term *Security Force Assistance* (SFA) to describe "that set of activities that contribute to the development of capability and capacity of foreign security forces and their supporting institutions."[212] In 2006 the U.S. Armed Forces established a Joint Center for International Security Force Assistance (JCISFA) which has subsequently produced a number of manuals and guide books on how to organize, train, equip, rebuild, and advise indigenous security forces.[213]

Recommendation 9: The Australian Government adopts 'Public Security Assistance' as the term for multi-agency efforts to develop the capacity in the security and criminal justice sectors of other states.

The term *Security Force Assistance* can be seen as a little too militaristic and focused on forces more so than the other elements that comprise the security and criminal justice sectors; to this end Australian Government should adopt the more inclusive term 'Public Security Assistance' (following the definition for public security used by this paper) to describe the assistance provided to other state governments in developing their security and justice sector institutions.

Recommendation 10: The Australian Government directs the development of a manual on undertaking Public Security Assistance for use by Australian Government agencies with the Department of Defence to lead a multi-agency effort.

In Iraq and Afghanistan, the multi-national coalitions established temporary project offices to perform this function in conjunction or partnership with the supported state governments.[214] In Iraq, the Multi-National Security Assistance Command - Iraq was the branch of the Multi-National Force - Iraq responsible for developing, organizing, training, equipping, and sustaining the Iraqi Ministries of Defense and Interior and their associated forces including the Iraqi Army and the police.[215] In Afghanistan, the NATO Training Mission - Afghanistan's mission is to "generate and sustain the Afghan National Security Forces, develop leaders, and establish enduring institutional capacity in order to enable Afghan-led security."[216] The lessons from Afghanistan, Iraq and other locales are all passed back to JCISFA for consolidation. The ADF and the AFP IDG also have their own body of recent experience on Public Security Assistance from Iraq, Afghanistan, Timor Leste, Solomon Islands and Tonga. The non-military community tends to refer to *security sector reform* and the Geneva Centre for Democratic Control of Armed Forces has also published a series of well researched papers on security sector governance and reform.[217] The ADF and AFP IDG must access and capitalize on this significant body of knowledge and develop a manual on undertaking Public Security Assistance for use by Australian Government.[218]

Recommendation 11: The Australian Government directs the development of a 'keystone' document on Stabilization with the Department of Defence's APC-MCOE to lead a multi-agency effort.

Once the Australian Government Stabilization Task Matrix is finalized (noting that it will be a *living* or *evolving* document) the Australian Government should develop a *keystone* document on 'Stabilization'. A keystone document is one that other departments and agencies can nest their own organizational documents underneath. In the case of Defence, for example, this would take the form of doctrine.[219] Such a Stabilization keystone document should articulate the Australian Government's policy on stabilization and delineate the responsibilities of each Government agency to realise that policy.[220] It could also usefully describe the future international environment that warrants such a policy and could point to subordinate documents as they are progressively developed.[221] The production of a Stabilization keystone document would ensure that an integrated national approach is better understood and achieved. Again, the APC-MCOE is well placed to lead a multi-agency working group to produce this document. The existence of Stabilization keystone document would not obviate the requirement to produce an Australian Government policy and plan for each individual intervention.[222]

Recommendation 12: The Australian Government adopts 'Stabilisation' as the term for multi-agency interventions in post-conflict and post-crisis/disaster situations to augment or develop the capacity of other state governments.

A key element of the production of a Stabilization keystone document will be acceptance and understanding of the term 'stabilization'.[223] Aside from the fact that this term is well established with at least two of Australia's major partners - the U.S. and the UK - the term has wide utility. Firstly, it is perceived slightly differently by different agencies. Politicians view it as a softer word for limited interventions. The military view it as a process where they are first responders that first create a secure environment that enables other civilian efforts to then commence. The diplomatic community view it as a peace process. The development community view it as action that seeks to fix the structural drivers of conflict.[224] In all, it is it is a good fit for many stakeholders. The term is also reasonably palatable with the target or supported state in that it is not offensively paternalistic and can used to communicate a collaborative effort.

Developing a broadly accepted definition of stabilization for use by the Australian Government will be essential.[225] The definition for Stabilization used by the UK Government would be a good draft working definition: "The process that supports states which are entering, enduring or emerging from conflict, in order to prevent or reduce violence; protect the population and key infrastructure; promote political processes and governance structures, which lead to a political settlement that institutionalises non-violent contests for power; and prepares for sustainable social and economic development."[226]

Recommendation 13: The ADF undertakes a fundamental review of ROE training and consider the requirement to include a sound understanding of the relevant indigenous criminal laws and a basic familiarity with law enforcement techniques.

This paper has also examined the complexity of the legal dimension in intra-state conflicts and stabilization. Military forces place emphasis on preventing security threats from developing and seek to interdict threats at the earliest possible opportunity. The armed conflict provisions of the LOAC allow military forces to deliberately target individuals and groups who are taking part in hostilities. Conversely, police forces place emphasis on being able to prosecute individuals suspected of breaking the law and may therefore wait until the amount and quality of evidence reaches a certain threshold before arresting an individual - commensurate with the need to protect life and property. These different approaches mean that it is not easy for military forces to apply law enforcement provisions concurrently with armed conflict provisions of their ROE.[227] The two approaches are difficult to reconcile and the boundary between law enforcement and armed conflict is difficult to define - particularly in unfamiliar, ambiguous and stressful situations.[228] The progressive introduction of law enforcement provisions into Australian ROE demands a fundamental review of ROE training conducted within the ADF. At the very least the continued inclusion of law enforcement provision for serious crimes requires a sound understanding of the relevant indigenous criminal laws and a basic familiarity with law enforcement techniques including the use of non-lethal force by ADF members.[229]

Recommendation 14: That the ADF place increased emphasis on developing capabilities for stabilisation including forensic intelligence and accounting, biometrics, electronic surveillance, information fus-

ing and information operations, the use of non-lethal force as well as improvised explosive device counter measures.

The White Paper also touches on the question of the ADF's organizational structure for operations as part of stabilization (vice 'conventional combat'); it states:

> The military forces required for conventional combat against other military forces are not always well suited for conflict within societies, where combatants may not be easily distinguishable and where military and civilian agencies need to work side-by-side to secure and rebuild broken communities.[230]

Every military organization evolves, and invariably the existing organization has to be task organized to meet the demands of a particular intervention or situation - the ADF is no exception in this regard. Herein lays the challenge of capability development and preparing an organization for a future that is not able to be predicted with certainty. The *different* demands of post Cold War stabilization have been the subject of considerable debate in military organizations around the globe - particularly in the U.S.[231] As expected, the ADF in general, and the Australian Army in particular, is continually reviewing its organizational posture and capabilities for the conduct of operations as part of stabilization.[232] But there is merit in putting some additional focus on some areas that contemporary experiences have demonstrated there is a clear requirement in stabilization and counter-insurgency operations. These include an emphasis on the areas of forensic intelligence and accounting, biometrics, electronic surveillance, information fusing and information opera-

tions, the use of non-lethal force as well as improvised explosive device counter measures.[233] Alternately, the ADF could seek to leverage these particular capabilities where they already exist in the AFP or through the ACC in an effort to reduce duplication.

Recommendation 15: That the ADF develop a personnel management process that identifies individuals suited to mentoring and develops a pre-deployment training module that seeks to inculcate some essential mentoring skills.

Additionally, if the requirement conduct Public Security Assistance becomes an accepted enduring capability requirement the ADF should consider developing specialists in this field. Fortunately, a good part of the ADF's organizational institution is already dedicated to training the ADF so parts of this community might need to be recognised as a deployable component. There is also a clear need to further develop the Australian Army's fledgling civil-military cooperation capability and perhaps evolve it to specialize in stabilization.

Mentoring also demands a particular skill and character set for which Australians are not generally pre-disposed.[234] The ADF does not explicitly recruit individuals to perform mentoring roles or trains those individuals selected to perform those roles. There may be merit in developing a personnel management process that does identify suitable individuals, and a pre-deployment training module that seeks to inculcate some essential mentoring skills. In many regards this effort aligns with the existing personnel management processes that identify individuals suited to appointments in ADF training establishments.

CONCLUSION

This paper began with a description of an Australian Special Forces raid in Afghanistan where civilians were killed and wounded, and posited a number of questions regarding a few short paragraphs of text in the White Paper. What exactly are "situations of armed conflict short of conventional war"? How does the ADF "establish a secure environment in conflict zones"? What role should the ADF play in a 'stabilization' situation? And what can we do to further develop a "whole-of-government" effort? And have we adequately organized, trained and equipped Australian forces "for conflicts within societies"?

To answer these questions, this paper examined how the Australian Government can assist another state government to restore and maintain public security by developing capacity in its security and criminal justice sectors.

This paper first examined the origins, nature and prevalence of intra-state conflicts. It showed that one common feature of the ADF's interventions over the last few decades has been that forces have often been deployed in support of another state government, and in many instances the immediate and essential task has been to assist in restoring and maintaining public security.

The international geo-political environment since 1945 was examined in order to better understand the phenomena and nature of intra-state conflicts. It found that the legacy of *uti possidetis juris*, the desire for self-determination and the presence of over 100 active autonomous, separatist or independence movements, the proliferation of small arms, the rise in transnational crime, the growing concern about failing states,

the international support for the principles of R2P and the emerging paradigm of human security, coupled with the global contest between al-Qaeda and the US and its allies, it is reasonable to expect that intra-state conflicts will remain a significant feature in the international security environment for some time into the future.

Further, given the increasing globalization of national interests in the security and economic domains, as well as an increasing concern for human rights and human security, it is reasonable to expect an increasing level of international interest and involvement in intra-state issues and conflicts.

The legal dimension of intra-state conflict and violence was examined by considering international law and domestic state law, and exploring the legal status and role of foreign forces in interventions. It found that foreign forces present in another state are often operating in a complex, and sometimes ambiguous, legal environment. The creation of an expeditionary police force is unique and coupled with the ACC and the ADF's capabilities has the potential to create a powerful and coherent 'Team Australia' whole-of-government approach to building capacity in the security and criminal justice sectors of other states. The paper has shown, through the example of the challenges being experienced in Afghanistan, that there is scope to further develop and to more holistically and effectively integrate these capabilities.

The Australian Government has a clear responsibility to determine national policy, identify the capability requirements, delineate roles and responsibilities, and to adequately organize, train and equip forces to undertake the tasks given to them by the Government.

The paper considered how to develop capacity in the security and criminal justice sectors of other states and how to optimize the application of these two new expeditionary capabilities - the AFP IDG and the AusAID ACC - in concert with the ADF to as part of a whole-of-government response.

Finally, this paper made fifteen recommendations and identified the agencies that should initiate action on each of them. Thirteen of the fifteen recommendations can be implemented within the existing organizational structures and within current budgets of the stakeholder agencies concerned, and the remaining two recommendations (5 and 14) can be achieved as part of ongoing capability development processes and budgets.

Looking to the future, it seems inevitable that Australia and its partners will be engaged in stabilization in the region or more widely in the years ahead. The White Paper foretold as much, but the onus to be prepared does not fall solely on the ADF – it falls onto the whole of the Australian Government. The imperative to further develop the Australian Government's capability to assist other states in restoring and maintaining public security is driven as much by liberal internationalism as cold hard national interest. Promoting an international environment, particularly in the Asia Pacific region, that is stable, peaceful and prosperous, is in Australia's and other States' national interests.

These recommendations can all be implemented well within the next five years, but given that Australia has forces, on the ground now, conducting stabilization in Afghanistan, East Timor and Solomon Islands, the imperative to implement them more quickly cannot be clearer. The Australian Government's efforts to develop capabilities to assist another state govern-

ment to restore and maintain public security by developing capacity in its security and criminal justice sectors are instructive to other states developing similar capabilities such as the United States, the United Kingdom and Canada.

SOURCES

AAP, 'Civilian corps to complement assistance: Kevin Rudd', *The Australian*, 25 October 2009, available at: http://www.theaustralian.com.au/news/nation/civilian-corps-to-complement-assistance-kevin-rudd/story-e6frg6nf-1225791031127, accessed on 24 April 2012.

Agordzo, Benjamin Kwasi, 'Filling the 'Security Gap' in Post-Conflict Situations: Could Formed Police Units Make a Difference?' *International Peacekeeping*, Vol. 16, No. 2, 2009, pp. 287-294.

Albanese, Jay S., *Criminal Justice. Third Edition.* Pearson. 2005.

Annan, Kofi A., UN Secretary-General, Address to the UN Association of the UK, 31 January 2006, available at: http://www.un.org/News/ossg/sg/stories/statments_search_full.asp?statID=49, accessed on 24 April 2012.

Anonymous, 'Kyrgyzstan: Stalin's Latest Victims', *The Economist*, June 19-25 2010, p. 13, available at: http://www.economist.com/node/16377279, accessed on 24 April 2012.

Armitage, David T. and Anne M. Moisan, 'Constabulary Forces and Postconflict transition: The Euro-Atlantic Dimension.' *Strategic Forum*, Institute for National Strategic Studies, National Defense University, No. 218, November 2005.

Ashdown, Paddy, *Swords and Ploughshares – Bringing Peace to the 21st Century*, Weidenfield and Nicholson, 2007.

Australian Government, *Crimes Act 1914*, Section 15K - Definitions, available at: http://www.austlii.com/au/legis/cth/consol_act/ca191482/s15k.html, accessed on 24 April 2012.

Australian Government, Department of Defence – Army, *Land Warfare Doctrine 3-0, Operations (Developing Doctrine),* 2008.

Australian Government, Department of Defence – Army, *Land Warfare Doctrine 1-0, The Fundamentals of Land Warfare,* 2009.

Australian Government, Department of Defence – Army, *Adaptive Campaigning 09. Army's Future Land Operating Concept,* Australian Army Headquarters, September 2009.

Australian Government, Department of Defence – Army, *Land Warfare Doctrine 3-0-1, Counterinsurgency (Developing Doctrine),* 2009.

Australian Government, *Defending Australia in the Asia Pacific Century: Force 2030. Defence White Paper 2009,* Commonwealth of Australia, 2009.

Australian Government, Law Enforcement Integrity Commissioner Act 2006, Section 5 - Definitions, available at: http://www.austlii.edu.au/au/legis/cth/consol_act/leica2006419/s5.html, accessed on 2 April 2012.

Australian Government, Management Advisory Committee, *Connecting Government: Whole of Government Responses to Australia's Priority Challenges*, 2004.

Australian Government, Senate Standing Committee on Foreign Affairs, Defence and Trade, *Australia's Involvement in Peacekeeping Operations*, August 2008.

Ayson, Robert, *When is it Safe to Leave? Finding Stability in Stabilisation Operations,* Paper for International Studies Association Annual Convention, Chicago, March 2008.

Barnett, Thomas P.M., *The Pentagon's New Map,* Putnam Publishing Group, 2004.

Barnett, Thomas P.M., *Blueprint for Action: A Future Worth Creating*, Putnam Publishing Group, 2005.

Baumgarner, Amy S., *Learning from our Past: How a Vietnam-era Pacification Program can help us win in Afghanistan*. US Naval Postgraduate School. September 2009.

Bhagwati, Jagdish, *In Defense of Globalization*. Oxford University Press, 2004.

Beaumont, R., 'Constabulary or Fire Brigade? The Army National Guard', *Parameters* 25 (Summer), 1995.

Beede, Benjamin R., 'The Roles of Paramilitary and Militarized Police', *Journal of Political and Military Sociology*, Vol. 36, No. 1, Summer 2008, pp. 53-63.

Bergin, Anthony, *A Whole-of-Government Approach to International Assistance*, Australian Strategic Policy Institute, Policy Analysis, 17 September 2008.

Bergin, Anthony and Bob Breen, *Rudd's Army: A Deployable Civilian Capacity for Australia*, Australian Strategic Policy Institute, Policy Analysis, 25 May 2009.

Betz, Philip J., *Planning for and Employing Crime Control Capabilities during Security and Stability Operations, a Necessary Ingredient for Phase IV Operational Success,* US Naval War College, May 2006.

Bilton, Gregory, *Australia's Whole of Government Approach in Afghanistan*, unpublished paper, Centre for Defence and Strategic Studies, 2009.

Blaxland, John, *Revisiting Counterinsurgency: A Manoeuvrist Response to the War on Terror for the Australian Army*, Land Warfare Studies Centre, Working Paper No. 131, July 2006.

Blaxland, John, *Adapting to Complexity: A Review of the Australian Army on Operations from 1972 to 2007*, unpublished manuscript.

Block, Robert and Gary Fields, 'Is the Military Creeping into Law Enforcement?', *Wall Street Journal*, 9 March 2004.

Bobbitt, Philip, *The Shield of Achilles: War, Peace and the Course of History,* Anchor Books, 2003.

Bobbitt, Philip, *Terror and Consent: The Wars for the Twenty-first Century,* Allen Lane, 2008.

Bowman, M.E., 'Law Enforcement Technology, Intelligence and the War on Terror', *Joint Forces Quarterly*, Issue 46, 3ʳᵈ Quarter 2007, pp. 14-19.

Bozeman, Adda, 'War and the Clash of Ideas', *Orbis*, Spring 1976, pp. 61-102.

Brangwin, Nicole and Ann Rann, *Australia's Military Involvement in Afghanistan since 2001: a Chronology*, Parliament of Australia, Department of Parliamentary Services, 16 July 2010, available at: http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/QUBX6/upload_binary/qubx60.pdf;fileType=application/pdf#search=%22afghanistan%22, accessed 2 April 2012.

Brinkerhoff, Derick W., (ed), *Governance in Post-Conflict Societies: Rebuilding Fragile States,* Routledge Global Security Series, 2007.

Bronson, R., 'When Soldiers Become Cops', *Foreign Affairs*, Vol. 81, No. 6, 2002.

Brown, J., 'Combat Cops? The Army as Constabulary: Lessons from Our Past.' *Armed Forces Journal*, September 2000.

Bryden, Matthew and Jeremy Brickhill, 'Disarming Somalia: lessons in stabilisation from a collapsed state', *Conflict Security and Development*, Vol. 10, No. 2, pp. 239-262.

Bull, Hedley, *The Anarchical Society: A Study of Order in World Politics,* Basingstoke MacMillan, 1977.

Byers, Michael, *War Law: Understanding International Armed Conflict*, Grove Press, 2005.

Campbell, Donald J., and Kathleen M. Campbell, 'Soldiers as Police Officers/Police Officers as Soldiers: Role Evolution and Revolution in the United States', *Armed Forces and Society*, Vol. 36, No. 2, pp. 327-350.

Carbonell, Rachael, 'Commandos to be Charged over Children's Death', *ABC News*, 27 August 2010, available at: http://www.abc.net.au/news/stories/2010/08/27/2995069.htm, accessed on 12 April 2012.

Celeski, Joseph D., *Policing and Law Enforcement in COIN – the Thick Blue Line*, Joint Special Operations University Report 09-2, February 2009.

Christoff, Joseph A., *Stabilization and Reconstruction: Actions Needed to Improve Governmentwide Planning and Capabilities for Future Operations*, Testimony before the Subcommittee on Oversight and Investigations, Committee on Armed Services, House of Representatives, US Government Accountability Office, 30 October 2007.

Clarke, Wesley K., *Waging Modern War: Bosnia, Kosovo, and the Future of Combat,* Public Affairs, 2002.

Clare, Honourable Jason MP, *Statement to the House of Representatives on Afghanistan*, 21 October 2010; available at: http://www.jasonclare.com.au/media/speeches/364-statement-to-the-house-of-representatives-on-afghanistan.html, accessed on 2 April 2012.

Cline, L., 'The New Constabularies: Planning US Military Stabilization Missions', *Small Wars and Insurgencies*, Vol. 14, No. 3, 2003.

Cockayne, James, Christopher Mikulaschek and Chris Perry, *The United Nations Security Council and Civil War: First Insights from a New Dataset*, International Peace Institute, September 2010.

Coll, Steve, *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion to September 10, 2001*, Penguin Press, 2004.

Commonwealth Secretariat, *Civil Paths to Peace: Report of the Commonwealth Commission on Respect and Understanding*, Commonwealth Secretariat, 2007.

Connable, Ben and Martin C. Libicki, *How Insurgencies End,* RAND, 2010, available at: http://www.rand.org/pubs/monographs/MG965/, accessed on 2 April 2012.

Connery, David, *National Security Community 2020: Six Practical Recommendations for the Australian Government*, Kokoda Paper No. 3, Kokoda Foundation, April 2007, available at: http://www.kokodafoundation.org/Resources/Files/Kokoda%20Paper%203%20NSC%202020_print%20format.pdf, accessed 10 April 2012.

Cookman, Colin and Caroline Wadhams, *Governance in Afghanistan: Looking Ahead to What we Leave Behind*, Centre for American Progress, 11 May 2010, available at: http://www.americanprogress.org/issues/2010/05/afghan_governance.html, accessed 2 April 2012.

Cordesman, Anthony, *Afghan National Security Forces: Shaping the Path to Victory*, Centre for Strategic and International Studies, 27 July 2009.

Cordesman, Anthony, 'Sorry Story of Spin and lies in Afghan War', *The Age*, Insight Section, 31 July 2010, p. 9.

Council on Foreign Relations, *In the Wake of War: Improving U.S. Post-Conflict Capabilities.* Independent Task Force Report 55, Council on Foreign Relations New York, 2005.

Covey, Jock, Michael Dziedzic and Leonard Hawley, (eds), *The Quest for a Viable Peace. International Intervention and Strategies for Conflict Transformation,* USIP Books, 2005.

Croft, John, 'Conflict: Crime and War Compared', *RUSI Journal*, August 2007, Vol. 152, No. 4, pp. 40-45.

Croucher, Sheila, *Globalization and Belonging: The Politics of Identity in a Changing World,* Rowman & Littlefield, 2004.

Dahlstrom, Tim, 'The Role of the Australian Federal Police in Peacekeeping Operations: An Opportunity for Cooperation and Preventive Action', *Shedden Papers*, Centre for Defence and Strategic Studies, 2007, available at: http://www.defence.gov.au/ADC/docs/Publications/Shedden%20Papers%202008/Shed-

den%20paper%205%20-%20Tim%20Dahlstrom.pdf, accessed 12 April 2012.

Danner, Mark, *Stripping Bare the Body. Politics, Violence and War,* Black Inc., 2009.

Deflem, Mathieu and Suzanne Sutphin, 'Policing Post-War Iraq: Insurgency, Civilian Police, and the Reconstruction of Society', *Sociological Focus*, Vol. 39, No. 4, November 2006, pp. 265–282, available at: http://www.cas.sc.edu/socy/faculty/deflem/zpoliraq.html, accessed on 2 April 2012.

Demerast, G., 'Expeditionary Police Service', *Military Review*, June 1993, pp. 50-56.

DePue, Mark R., *Patrolling Baghdad: A Military Police Company and the War in Iraq*, University Press of Kansas, 2007.

Dinnen, Sinclair, Abby McLeod and Gordon Peake, 'Police-Building in Weak States: Australian Approaches in Papua New Guinea and Solomon Islands', *Civil Wars*, Vol. 8, No. 2, pp. 87-108.

Dinnen, Sinclair and Abby McLeod, 'The Quest for Integration: Australian Approaches to Security and Development in the Pacific Islands', *Security Challenges*, Vol. 4, No. 2, Winter 2008, pp. 23-43.

Dinstein, Yoram, *War, Aggression and Self-Defence*, Fourth Edition, Cambridge University Press, 2005.

Dodd, Mark, 'Diggers to Face Criminal Charges', *The Australian*, 23 July 2010, available at: http://www.theaustralian.com.au/national-affairs/defence/diggers-involved-in-pre-dawn-raid-to-face-criminal-charges/story-e6frg8yo-1225895825314, accessed on 18 April 2012.

Donnelly, Thomas, 'The Underpinnings of the Bush Doctrine', February 2003, available at: http://www.aei.org/outlook/15845, accessed on 14 March 2010.

Engelhardt, Tom, 'Why Afghanistan's Proving to be 'Catch-22-ville': In Afghanistan, the Strangeness of the U.S. Way of

War in Distant Lands is That Much Stranger', *CBS News Opinion*, 25 July 2010, available at: http://www.cbsnews.com/stories/2010/07/26/opinion/main6714885.shtml, accessed 24 April 2012.

Epstein, Raphael, 'Afghan Warlord's Men Trained in Australia', *The Age*, 29 October 2010, available at http://www.theage.com.au/national/afghan-warlords-men-trained-in-australia-20101028-175pw.html, accessed on 22 April 2012.

Evans, Gareth, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, Brookings Institution Press, 2008.

Evans, Michael, 'The Twenty-First Century Security Environment: Challenges for Joint Forces', *RUSI Journal*, April 2009, Vol. 154, No. 2, pp. 64-72.

Feil, Scott, 'Building Better Foundation: Security in Post-Conflict Reconstruction', *The Washington Quarterly*, Vol. 25, No. 4, Autumn 2002, pp. 97-109.

Field, K. and R. Perito, 'Creating a Force for Peace Operations: Ensuring Stability with Justice', *Parameters*, Vol. 32, No. 4, 2002-2003, pp. 77-87.

Fielding, Marcus, 'Regime Change: Planning and Managing Military-Led Interventions as Projects', *RUSI Journal*, Vol. 151, No. 5, October 2006, pp. 20-29.

Findlay, Trevor, *The Use of Force in Peace Operations,* Stockholm International Peace Research Institute, Oxford University Press, 2002.

Frewen, John J., 'Contested Nation Building: The Challenge of Countering Insurgency in Afghanistan in 2007', *Small Wars Journal*, available at http://www.smallwarsjournal.com, accessed on 2 April 2012.

Friesendorf, Cornelius, *The Military and Law Enforcement in Peace Operations. Lessons from Bosnia-Herzegovina and Kosovo,* Geneva Centre for the Democratic Control of Armed Forces. Date unspecified.

Francis Fukuyama, 'The Imperative of State-Building', *Journal of Democracy,* Vol. 15, No. 2, April 2004, pp. 17-31.

Fukuyama, Francis, (ed), *State Building: Governance and World Order in the 21st Century,* Profile Books, 2005.

Fukuyama, Francis, (ed), *Nation Building: Beyond Afghanistan and Iraq,* John Hopkins University Press, 2006.

Gellman, Barton, *Angler – The Shadow Presidency of Dick Cheney,* Allen Lane, 2008.

Grabosky, P., (ed), *Community Policing and Peacekeeping,* CRC press. 2009.

Graham, Bradley, *By His Own Rules – The Ambitions, Successes, and Ultimate Failures of Donald Rumsfeld*, Public Affairs, New York, 2009.

Greener-Barcham, B.K., 'Crossing the Green or Blue Line? Exploring the Military-Police Divide', *Small Wars and Insurgencies*, Vol. 18, No. 1, pp. 90-112.

Gray, Colin S., 'How Has War Changed Since the End of the Cold War?', *Parameters*, Spring 2005, pp. 14-26 available at: http://findarticles.com/p/articles/mi_m0IBR/is_1_35/ai_n15674067/?tag=content;col1, accessed on 2 April 2012.

Gray, Colin S., 'Stability Operations in Strategic Perspective: A Skeptical View', *Parameters*, Vol. 36, No. 2, 2006, pp. 4-14.

Hallett, Brien, *The Lost Art of Declaring War*, Urbana: University of Illinois Press, 1998.

Hammes, Thomas X., *The Sling and the Stone: On Warfare in the 21st Century,* Zenith Press. 2004.

Hänggi, Heiner and Vincenza Scherrer, *Towards a Common UN Approach to Security Sector Reform : Lessons Learned from Integrated Missions*, Geneva Centre for Democratic Control of Armed Forces, Policy Paper 25, 2007.

Higgins, Noelle, 'The Regulation of Armed Non-State Actors: Promoting the Application of the Laws of War to Conflicts Involving National Liberation Movements', *Human Rights Brief*, Vol. 17, No. 1, pp. 12-17, available at: http://www.wcl.american.edu/hrbrief/17/1higgins.pdf?rd=1, accessed on 2 April 2012.

Hills, Alice, *Policing Post-Conflict Cities,* Zed Books. 2009.

Hoffman, Mike, 'Rescuing the Law of War: A Way Forward in an Era of Global Terrorism', Parameters, Summer 2005, pp. 18-35, available at: http://www.carlisle.army.mil/USAWC/parameters/Articles/05summer/hoffman.htm, accessed on 22 April 2012.

Holslag, Jonathan and David Doyle, *10 Recommendations from the 2010 Security Jam*, 2010, p. 13..

Horner, David, Peter Londey and Jean Bou, (eds), *Australian Peacekeeping – Sixty Years in the Field*, Cambridge University Press, 2009.

Hutcheson, John, 'The Lessons of 2006: Army Operations in East Timor and Solomon Islands', *Australian Army Journal*, Vol. IV, No. 2, Winter 2007, pp. 93-106.

Huntington, Samuel, 'The Clash of Civilizations', *Foreign Affairs*, Vol. 72, No. 3, Summer 1993, pp. 22-49.

International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, December 2001, available at: http://responsibilitytoprotect.org/ICISS%20Report.pdf, accessed on 30 June 2010.

International Committee of the Red Cross, *The Law of Armed Conflict – Non-International Armed Conflict,* Lesson 10, p. 7, available at: http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5P8EX4/$File/LAW10_final.pdf, accessed on 22 April 2012.

Islamic Republic of Afghanistan, Afghanistan National Development Strategy 1387–1391 (2008–2013), A Strategy for Security, Governance, Economic Growth and Poverty Reduction.

Jakes, Lara, 'Iraqi Forces Still Frail as US Troops Head Home', *The Washington Post*, 25 July 2010.

James, Neil, 'Commando charges expose complexity of war', *On-line Opinion,* available at: http://www.onlineopinion.com.au/view.asp?article=11041, accessed on 24 April 2012.

Kaplan, Robert D., *The Coming Anarchy: Shattering the Dreams of the Post Cold War*, Vintage Books, 2001.

Karp, Candace, 'Leading by Example: Australia's Reconstruction Task Force and the NGO Civil-Military Relationship in Afghanistan, *Security Challenges*, Vol. 2, No. 3, October 2006, pp. 1-8.

Kaufmann, Greg (ed), *Stability Operations and State Building: Continuities and Contingencies,* Strategic Studies Institute Colloquium Report, October 2008.

Kennedy, David, *Of War and Law*, Princeton University Press, 2006.

Kennedy, Paul M., *Preparing for the Twenty-first Century*, Random House, 1993.

Kewley, Gretchen, *Humanitarian Law in Armed Conflicts*, Victorian Commercial Teachers Association Publishing, 1984.

Khosa, Raspal, *Making it count: Australia's involvement in Afghanistan*, Strategic Insights 40, Australian Strategic Policy Institute, May 2008.

Khosa, Raspal, *The Long and Winding Road: Australia's Role in Building and Afghan National Army*, Australian Strategic Policy Institute, Policy Analysis, August 2009.

Khosa, Raspal, *Finding a Way Forward in Afghanistan*, Australian Strategic Policy Institute, Policy Analysis, 2 November 2009.

Kilcullen, David, *The Accidental Guerrilla: Fighting Small Wars in the Midst of a Big One,* Oxford, 2009.

Krause, Michael, *Square Pegs for Round Holes: Current Approaches for Future Warfare and the Need to Adapt*, Land Warfare Studies Centre, Working Paper No. 132, June 2007.

Lemay-Herbert, Nicholas, 'UNPOL and Police Reform in Timor-Leste: Accomplishments and Setbacks', *International Peacekeeping*, Vol 16, No. 3, pp. 393-406.

Lietzau, William K., 'Combating Terrorism: Law Enforcement or War?', *Terrorism and International Law, Challenges and Responses, in* Michael N. Schmitt and Gian Luca Beruto (eds), International Institute of Humanitarian Law and George C. Marshall Center for European Security Studies, 2003, pp. 75–84.

Lin, Thaddeus, 'Institutional Capacity and Cooperation for Policing Operations: The Australian Experience', *International Peacekeeping*, Vol. 14, No. 5, pp. 569-583.

Londey, Peter, *Other People's Wars: A History of Australian Peacekeeping*, Allen and Unwin, 2004.

Makarenko, Tamara, 'The Crime-Terror Continuum: Tracing the Interplay between Transnational Organised Crime and Terrorism', *Global Crime*, Vol. 6, No. 1, February 2004, pp. 129-145.

McFarlane, John, 'The Thin Blue Line: The Strategic Role of the Australian Federal Police.' *Security Challenges*, Vol. 3, No. 3, August 2007.

Melzer, Nils, *Interpretive Guidance on the notion of Direct Participation in Hostilities under International Humanitarian Law*, 2009, available at: http://www.icrc.org/, assessed 2 April 2012.

Meharg, Sarah, Aleisha Arnusch and Susan Merrill, (eds), *Security Sector Reform: A Case Study Approach to Transition and Capacity Building,* Strategic Studies Institute, January 2010.

Merrill, Susan, (ed), *Guide to Rebuilding Governance in Stability Operations: A Role for the Military?,* Peace Keeping and Stability Operations Institute Papers, June 2009.

Merrill, Susan, (ed), *Guide to Rebuilding Public Sector Services in Stability Operations: A Role for the Military*, PKSOI Papers, October 2009.

Metz, Steven, *Rethinking Insurgency*, Strategic Studies Institute, June 2007, available at: http://www.strategicstudiesinstitute.army.mil/pdffiles/pub790.pdf, accessed on 23 April 2012.

Modarelli, Matthew, R., *Military Police Operations and Counterinsurgency*, Unpublished thesis submitted in partial fulfilment of the requirements for the degree of Master of Military Arts and Science, USMC Command and Staff College. 2008.

Muller, Jerry Z., 'Us and Them: The Enduring Power of Ethnic Nationalism', *Foreign Affairs*, March/April 2008, pp. 18-35.

Murray, Tonita, 'Police-Building in Afghanistan: A Case Study of Civil Security Reform', International Peacekeeping, Vol. 14, No. 1, January 2007, pp. 108-126.

Napoleoni, Loretta, *Terror Incorporated: Tracing the Dollars Behind the Terror Networks*, Seven Stories Press, 2005.

National Intelligence Council, *Mapping the Global Future: Report of the National Intelligence Council's 2020 Project*, Washington D.C., 2004, available at: http://www.dni.gov/nic/NIC_2020_project.html, accessed on 14 April 2012.

Oakes, Dan and Rafael Epstein, 'Anger as commandos face manslaughter charge', *Sydney Morning Herald*, 28 September 2010, available at: http://www.smh.com.au/world/anger-as-commandos-face-manslaughter-charge-20100927-15u3o.html, accessed on 24 April 2012.

Oakes, Dan, 'Defence head backs warlord', *The Age*, 30 October 2010, available at: http://www.theage.com.au/national/defence-head-backs-warlord-20101029-177hk.html, accessed on 12 April 2012.

Obama, Barack, Remarks of President Barack Obama – Responsibly Ending the War in Iraq, 27 February 2009, available at: http://www.whitehouse.gov/the-press-office/remarks-president-barack-obama-ndash-responsibly-ending-war-iraq, accessed on 1 April 2012.

Obama, Barack, Remarks by the President on a New Strategy for Afghanistan and Pakistan, 27 March 2009, available at: http://www.whitehouse.gov/the-press-office/remarks-president-a-new-strategy-afghanistan-and-pakistan, accessed on 1 April 2010.

Obama, Barack, Remarks by the President on National Security, 21 May 2009, available at: http://www.whitehouse.gov/the-press-office/remarks-president-national-security-5-21-09, accessed on 1 April 2012.

Obama, Barack, Speech in Cairo, 'A new beginning', 21 October 2009, available at: http://www.whitehouse.gov/blog/New-Beginning/transcripts, accessed on 24 March 2012.

Organisation for Economic Cooperation and Development (OECD), *Enhancing the Delivery of Justice and Security*, 2007, available at: http://www.oecd.org/dataoecd/27/13/38434642.pdf, accessed on 9 April 2012.

O'Neill, Mark, *Confronting the Hydra – Big Problems with Small Wars.* Lowy Institute Paper 28, 2009.

Parker, Ingrid A., *Understanding the Links between Organised Crime and Terrorism in Military Operations,* Unpublished thesis submitted in partial fulfilment of the requirements for the degree of Master of Military Arts and Science, US Army Command and General Staff College. 2007.

Peake, Gordon and Kaysie Studdert Brown, 'Policebuilding: The International Deployment Group in the Solomon Islands', *International Peacekeeping*, Vol. 12, No. 4, Winter 2005, pp. 520-532.

Peters, Gretchen, *Seeds of Terror: How Heroin is Bankrolling the Taliban and al Qaeda*, Thomas Dunne Books, 2009.

Peters, Gretchen, *How Opium Funds the Taliban*, US Institute of Peace, 2009.

Perito, Robert M., *Where is the Lone Ranger When We Need Him? America's Search for a Post Conflict Stability Force,* USIP, 2004.

Perito, Robert M., 'U.S. Police in Peace and Stability Operations', *United States Institute of Peace Special Report*, No. 191, August 2007.

Perito, Robert M., 'Police in Peace and Stability Operations: Evolving US Policy and Practice', *International Peacekeeping*, Vol. 15, No. 1, February 2008, pp. 51-66.

Pumphrey, Caroline W., (ed), *Transnational Threats: Blending Law Enforcement and Military Strategies,* Strategic Studies Institute, November 2000.

Rathmell, Andrew, 'Adapting Government for Stabilisation and Counter-insurgency Operations', *The RUSI Journal*, Vol. 154, No. 6, December 2009, pp. 8-13.

Robert I. Rotberg, 'The Failure and Collapse of Nation-States: Breakdown, Prevention and Repair', in Robert I. Rotberg (ed), *When States Fail: Causes and Consequences,* Princeton University Press, 2004.

Roth, Kenneth, 'Drawing the Line: War Rules and Law Enforcement Rules in the Fight against Terrorism', *Human Rights Watch*, World Report 2004.

Rudd, Kevin, *The First National Security Statement to the Australian Parliament,* Address by Prime Minister of Australia the Hon Kevin Rudd MP to the Australian Parliament, 4 December 2008.

Ryngaert, Cedric, 'Non-State Actors and International Humanitarian Law' *Institute for International Law, Working Paper 2008*, available at: https://www.law.kuleuven.be/iir/nl/onderzoek/ wp/WP146e.pdf, accessed on 2 April 2012.

Saikal, Amin, 'A Solution in Afghanistan', *Australian Financial Review*, 30 July 2010, pp. 5-9.

Sassoli, Marco, *Transnational Armed Groups and International Humanitarian Law*, Program on Humanitarian Policy and Conflict Research, Harvard University, Winter 2006, available at: http:// www.hpcr.org/pdfs/OccasionalPaper6.pdf, accessed on 12 April 2012.

Serong, Brigadier F.P., 'An Australian View of Revolutionary Warfare', *Conflict Studies*, No. 16, October 1971, pp. 1-16.

Sharp, Jeremy M., *Egypt: Background and U.S. Relations*, Congressional Research Service, RL33003 m,, September 2009, available at http://www.fas.org/sgp/crs/mideast/RL33003.pdf, accessed on 12 April 2012.

Smith, Hugh, (ed), *The Force of Law, International Law and the Commander,* Australian Defence Studies Centre, 1994.

Smith, Hugh, (ed), *International Peace Keeping - Building on the Cambodian Experience,* Australian Defence Studies Centre, 1994.

Smith, Rupert, *The Utility of Force: The Art of War in the Modern World,* Penguin Books Limited, 2005.

Solis, Gary, D., *Law of Armed Conflict: International Humanitarian Law in War,* Cambridge University Press. 2010.

Speedie, Colin, *The Changing Paradigm of Civil Policing: An Assessment of Expeditionary Policing as a New Instrument of State Craft*, unpublished paper, Centre for Defence and Strategic Studies, 2010.

Stephens, Dale and Michael W. Lewis, 'The Law of Armed Conflict – A Contemporary Critique', *Melbourne Journal of International Law*, Vol. 6, No. 1, May 2005, pp. 55-85.

Sunstein, Cass R., 'Should Constitutions Protect the Right to Secede? A Reply to Weinstock', *Journal of Political Philosophy*, Vol. 9, Issue 3, 2001, pp. 350-355, available at: http://www3.interscience.wiley.com/journal/118998840/abstract, accessed on 24 April 2012.

Takemae, Eiji, *Allied Occupation of Japan,* Continuum, 2003.

Taw, Jennifer Morrison, 'Stability and Support Operations: History and Debates', *Studies in Conflict and Terrorism*, Vol. 33, No. 5, April 2010, pp. 387-407.

Terriff, Terry, Aaron Karp and Regina Karp, (eds), *Global Insurgency and the Future of Armed Conflict: Debating fourth-generation warfare,* Routledge Global Security Series, 2008.

Thomson, Edwina, *Smart Power: Making Australia's Whole-of-Government Strategy Work in Fragile States and Situations*, Kokoda Paper No. 12, April 2010, available at: http://www.kokodafoundation.org/Resources/Files/KP12_Smart_Power_Final_080410_1.pdf, accessed on 14 April 2012.

United Kingdom Government, Ministry of Defence, *Joint Doctrine Publication 3-40 Security and Stabilisation – The Military Contribution*, United Kingdom Government.

United Nations Development Program, *Human Development Report, 1994*, available at: http://hdr.undp.org/en/reports/global/hdr1994/, accessed 24 April 2012.

United Nations, Secretary General's High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, 2004, available at: http://www.un.org/secureworld/report2.pdf, accessed on 24 April 2012.

United Nations, *A New Partnerships Agenda: Charting a New Horizon for UN Peacekeeping*. Department of Peacekeeping Operations and Department of Field Support, New York, July 2009.

United Nations, *Convention against Organised Transnational Crime and the Protocols Thereto,* 2009, available at: http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCbook-e.pdf, accessed on 4 April 2012.

United Nations, *Peacekeeping Operations - Principles and Guidelines*, 2008, available at: http://www.peacekeepingbestpractices.unlb.org/Pbps/Library/Capstone_Doctrine_ENG.pdf, accessed on 2 April 2012.

United States Government, Department of Defense, *Quadrennial Defense Review,* February 2010, available at: http://www.defense.gov/QDR/, accessed on 2 April 2012.

United States Government, Department of Defense, *Field Manual (FM) 3-0 Operations,* US Army, February 2008.

United States Government, Department of Defense, *Field Manual (FM) 3-07 Stability Operations,* US Army, 6 October 2008.

Van Creveld, Martin, *The Transformation of War,* Free Press, 1991.

Wainwright, Elsina, *Police Join the Front Line. Building Australia's International*

Wagner, Michael, 'The Challenges of Iraq: Putting US Army Stability Operations Doctrine to the Test', *Small Wars and Insurgencies*, Vol. 19, No. 4, December 2008. pp. 484-509.

Wass de Czege, Huba, 'On Policing the Frontiers of Freedom', *Army*, July 2006.

Watson, Cynthia A., *Nation-Building and Stability Operations: A Reference Handbook,* Praeger Security International, 2008.

Woods, James, *The Forgotten Force The Australian Military Contribution to the Occupation of Japan 1945-1952,* Allen and Unwin, 1998.

Wyler, Liana Sun, *Congressional Research Service Report for Congress, Weak and Failing States: Evolving Security Threats and U.S. Policy,* Order Code RL34253, August 2008, available at: http://www.fas.org/sgp/crs/row/RL34253.pdf, accessed on 2 April 2012, p. i.

Ziemke, Earl F., *The U.S. Army in the Occupation of Germany 1944-1946,* Center of Military History United States Army, 1990.

Zimmerman, D., 'Between Minimum Force and Maximum Violence: Combating Political Violence Movements with Third-Force Options', *Connections: The Quarterly Journal*, 2005, pp. 43-60.

ENDNOTES

1.   See: Mark Dodd, 'Diggers to Face Criminal Charges', *The Australian*, 23 July 2010, available at: http://www.theaustralian.com.au/national-affairs/defence/diggers-involved-in-pre-dawn-raid-to-face-criminal-charges/story-e6frg8yo-1225895825314, accessed on 23 July 2010; Rachael Carbonell, 'Commandos to be Charged over Children's Death', *ABC News*, 27 August 2010, available at: http://www.abc.net.au/news/stories/2010/08/27/2995069.htm, accessed on 27 August 2010.

2.   The United States, as of January 2012 had approximately 90,000 U.S. military forces deployed in support of ISAF. In contrast, Australia had 1,550. See. www.isaf.nato.int/

3.   Australian Government, *Defending Australia in the Asia Pacific Century: Force 2030, Defence White Paper 2009*, Commonwealth of Australia, 2009, p. 22.

4.   Ibid, pp. 22-23.

5.   A whole-of-government response (or approach or effort) has been defined as one where "public service agencies work across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues. From Management Advisory Committee, *Connecting Government: Whole of Government Responses to Australia's Priority Challenges*, 2004, p.1.

6.   This paper will continue to use the White Paper's characterisation of the overseas deployments cited as 'interventions' on the basis that it is a generic phrase for those occasions when the ADF has deployed to locations outside of Australian territory.

7.   A sovereign state (commonly simply referred to as a 'state') is a political association with effective internal and external sovereignty over a geographic area and population which is not dependent on, or subject to any other power or state. According to the 1933 Convention on the Rights and Duties of States (the Montevideo Convention), a sovereign state should possess the following qualifications: a permanent population, a defined

territory, a government, and the capacity to enter into relations with the other states. In respect of the last qualification, the role of recognition by other states can often be crucial since it implies acceptance into the international community. The Convention on the Rights and Duties of States is available at: http://avalon.law.yale.edu/20th_century/intam03.asp, accessed on 28 June 2010.

8.   A similar thesis was advocated by Brigadier 'Ted' Serong in 1971 albeit in the context of counter revolutionary warfare against communist insurgencies. See: Brigadier F.P. Serong, 'An Australian View of Revolutionary Warfare', *Conflict Studies*, No. 16, October 1971, p. 6.

9.   Political goods are those intangible and hard to quantify claims that citizens make on state governments. Robert I. Rotberg, 'The Failure and Collapse of Nation-States: Breakdown, Prevention and Repair', in Robert I. Rotberg (ed), *When States Fail: Causes and Consequences,* Princeton University Press, 2004, p. 2.

10. The security sector includes : core security organizations ; Criminal justice organizations; management and oversight bodies; and non-statutory security organizations. See http://www.stabilisationunit.gov.uk/resources/securitysectorlaw.pdf, accessed on 13 July 2010.

11. For example, in Baghdad in 2008 and 2009 the occasional suicide bombing or assassination was considered a relatively satisfactory situation after the bloodshed of 2006 and 2007.

12. 'Law enforcement' is a commonly used term, but contrary to expectations there is a paucity of definitions. 'Law' is a collection of rules imposed by authority. 'Enforcement' is the act of enforcing or ensuring observance of or obedience to. Law Enforcement agencies are those government agencies that enforcing or ensuring observance of a state's law.

13. See the Commonwealth Consolidated Acts website available at: http://www.austlii.edu.au/au/legis/cth/consol_act/da190356/, accessed 17 May 2010.

14. See, for example, the August 2008 Report by the Senate Standing Committee on Foreign Affairs, Defence and Trade

regarding *Australia's Involvement in Peacekeeping Operations*, http://www.aph.gov.au/Senate/committee/FADT_CTTE/ peacekeeping/report/index.htm, accessed 29 June 2010. The acceptance of this requirement is not unique to Australia. Many developed western nations with a 'liberal internationalist' outlook have developed the capability to contribute forces to multilateral stabilisation and reconstruction or state-building missions. A counter-argument exists, however, that large scale interventionist stability and state-building ventures by foreign forces is either impossible, or that the return does not justify the investment. See, for example, Morton Abramowitz and Heather Hurlburt, 'Appetite for Construction', *National Interest*, 29 August 2007, available at: http://www.nationalinterest.org/General. aspx?id=92&id2=15366, accessed on 29 June 2010. -

15.   For the purposes of this paper the term 'expeditionary' is used to mean capabilities that are designed and intended to be deployed from and employed outside of Australian territory.

16.   Sinclair Dinner and Abby McLeod, 'The Quest for Integration: Australian Approaches to Security and Development in the Pacific Islands', *Security Challenges*, Vol. 4, No. 2, Winter 2008, pp. 23-43.

17.   The terms 'capacity building' and 'capacity development' are often used interchangeably. For the purpose of this paper the term capacity building will be used. 'Capacity' is the ability of people, organizations and society as a whole to perform appropriate functions effectively, efficiently and sustainably.

18.   The term 'stabilization' operations is the common Western term used to describe interventions where foreign forces are providing support to another state government in order to deal with instability, insurgents and/or terrorism.

19.   It is acknowledged that the ADF has only existed as an organization since 1976, but for the sake of expediency this paper will refer to the ADF as a collective term for the Royal Australian Navy (RAN), Royal Australian Air Force (RAAF) and Australian Army (Army).

20.   Although it is worth noting that not since the Korean War have conventional Army forces (i.e. other than Special Forces) been involved in these inter-state conflicts.

21.   Other sectors might include, for example, governance, diplomatic, economic, financial, infrastructure, social or legal.

22.   Eiji Takemae, *Allied Occupation of Japan*, Continuum, 2003; and James Woods, *The Forgotten Force The Australian Military Contribution to the Occupation of Japan 1945-1952,* Allen and Unwin, 1998.

23.   The Solomon Islands *Facilitation of International Assistance Act 2003 is a*vailable at: http://www.paclii.org/sb/legis/num_act/foiaa2003386/, accessed on 2 June 2010.

24.   The Australian Intelligence Community includes the Office of National Assessments, the Defence Intelligence Organisation, the Defence Signals Directorate, the Defence Imagery and Geospatial Organisation, the Australian Security Intelligence Organisation, and the Australian Secret Intelligence Service.

25.   In 1941 the Allies signed the Atlantic Charter and accepted the principle of self-determination. In January 1942 twenty-six states signed the Declaration by United Nations, which accepted those principles. The ratification of the UN Charter in 1945 at the end of World War II placed the right of self-determination into the framework of international law and diplomacy. Chapter 1, Article 1, part 2 states that purpose of the UN Charter is: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." In 1948 the General Assembly of the UN also adopted and proclaimed the Universal Declaration of Human Rights which stated in Article 21 that "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

26.   Decolonization refers to the undoing of colonialism, the establishment of governance or authority through the creation of settlements by another country or jurisdiction. The term generally refers to the achievement of independence by the various European colonies and protectorates following World War I and World War II, but it can also pertain to South and Latin America in the 19th Century. Decolonization can be achieved by attaining independence, integrating with the administering power or another state, or establishing a 'free association' status. Decolonization is rarely achieved through a single historical act, but rather progresses through one or more stages of emancipation, each of which can be offered or fought for: these can include the introduction of elected representatives (advisory or voting; minority or majority or even exclusive), degrees of autonomy or self-rule. Decolonization may involve peaceful negotiation and/or violent revolt and armed struggle by the indigenous population. It may be intramural or it may involve the intervention of foreign powers or international bodies.

27.   In several cases the withdrawal of the colonial power allowed suppressed traditional enmities to resurge. For example, the withdrawal of the British from India led to its partition in 1947 along religious lines and the creation of West and East Pakistan; during which several hundred thousand people were killed.

28.   The UN also established the Trusteeship Council in 1945 to oversee the decolonization of those dependent territories that were to be placed under the international trusteeship system created by the UN Charter as a successor to the League of Nations mandate system. Ultimately, eleven territories were placed under trusteeship: seven in Africa and four in Oceania.

29.   These fifteen sovereign republics were Russia, Ukraine, Uzbekistan, Kazakhstan, Belarus, Azerbaijan, Georgia, Tajikistan, Moldova, Kirghizstan, Lithuania, Turkmenistan, Armenia, Latvia and Estonia.

30.   Colin S. Gray, 'How Has War Changed Since the End of the Cold War?', *Parameters*, Spring 2005, pp. 14-26 available at: http://findarticles.com/p/articles/mi_m0IBR/is_1_35/ai_n15674067/?tag=content;col1, accessed on 1 July 2010.

31.   George H. W. Bush, *Address before a Joint Session of Congress on the End of the Gulf War,* 6 March 1991, available at: http://millercenter.org/scripps/archive/speeches/detail/3430, accessed on 24 May 2010.

32.   Francis Fukuyama coined this term in his 1992 book *The End of History and the Last Man* where he argued that with the defeat of Communism signaled the end point of humanity's socio-cultural evolution with Western liberal democracy being the final or ultimate universal form of government.

33.   These were Slovenia, Croatia, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia. Yugoslavia was created from the amalgamation of several territorial entities in the aftermath of World War I. The break up of Yugoslavia largely represents a return to the pre-World War I political boundaries.

34.   The origins of many of these grievances lay in Moscow's modification the original political boundaries of the central Asian republics in 1924. See, for example, Anonymous, 'Stalin's Harvest: The latest outbreak of violence in the ethnic boiling-pot of Central Asia will take generations to heal', *The Economist*, June 19-25 2010, pp. 24-26, available at: http://www.economist.com/node/16377083, accessed on 29 June 2010.

35.   For an in-depth examination of the causes of contemporary conflict and violence see Commonwealth Secretariat, *Civil Paths to Peace: Report of the Commonwealth Commission on Respect and Understanding*, Commonwealth Secretariat, 2007.

36.   For an examination of ethnic nationalism see Jerry Z. Muller, 'Us and Them: The Enduring Power of Ethnic Nationalism', *Foreign Affairs*, March/April 2008, pp. 18-35.

37.   Some areas possess de facto independence, such as Taiwan, North Cyprus, Kosovo, and South Ossetia, but their independence is disputed one or more major states. Significant movements for self-determination also persist for locations that lack de facto independence, such as Tibet, Kurdistan Region, Chechnya and Palestine.

38. Cass R. Sunstein, 'Should Constitutions Protect the Right to Secede? A Reply to Weinstock', *Journal of Political Philosophy*, Vol. 9, Issue 3, 2001, pp. 350-355, available at: http://www3.interscience.wiley.com/journal/118998840/abstract, accessed on 17 June 2010.

39. 'Globalization' describes a process by which regional economies, societies, and cultures have become integrated through a global network of communication, transportation, and trade. Globalization is usually recognized as being driven by a combination of economic, technological, socio-cultural, political, and biological factors. The term can also refer to the transnational circulation of ideas, languages, or popular culture through acculturation. See Jagdish Bhagwati, *In Defense of Globalization*, Oxford University Press, 2004; Sheila Croucher, *Globalization and Belonging: The Politics of Identity in a Changing World*, Rowman & Littlefield, 2004, p.10.

40. Cyberspace is increasingly viewed as a new domain or dimension to wage 'wars'. See: 'War in the Firth Domain', *The Economist*, 3 July 2010, pp. 20-22.

41. For example, the Tamil Tigers (LTTE) and the Irish Republican Army both received considerable financial support from their respective diasporas throughout the world. The Irish Republican Army also received arms and funding from Libya.

42. Al-Qaeda can be considered as a benefactor. It provides ideological, financial and material support to 'local' insurgencies in a manner similar to a venture capitalist in the commercial world.

43. And occasionally in the form of extra-judicial murders in third countries. The most recent example of this tactic is Israel's use of its Mossad agents to conduct the assassination of a senior Hamas leader in Dubai in February 2010.

44. For more information on the proliferation of small arms see: http://www.fas.org/asmpcampaigns/smallarm.html, accessed on 17 June 2010.

45.   The UN Secretary General's High-Level Panel on Threats, Challenges and Change stated that "terrorists use criminal groups to move money, men and materials around the globe". UN Secretary General's High-Level Panel on Threats, Challenges and Change. *A More Secure World: Our Shared Responsibility*, 2004, p. 4, available at: http://www.un.org/secureworld/report2.pdf, accessed on 17 June 2010.

46.   Tamara Makarenko, 'The Crime-Terror Continuum: Tracing the Interplay between Transnational Organised Crime and Terrorism', *Global Crime*, Vol. 6, No. 1, February 2004, pp. 129-145.

47.   See Gretchen Peters, *Seeds of Terror: How Heroin is Bankrolling the Taliban and al Qaeda*, Thomas Dunne Books, 2009; and Gretchen Peters, *How Opium Funds the Taliban*, US Institute of Peace, 2009, available at http://www.usip.org/files/resources/taliban_opium_1.pdf, accessed on 17 June 2010.

48.   Security concerns about weak or poorly governed states predated this event. For example, Professor Paul Dibb coined the term 'arc of instability' during the launch of the 2000 Defence White Paper. It refers to the political instability in the states in an arc around Australia from the South West Pacific to East Timor. See: http://www.abc.net.au/7.30/stories/s220773.htm, accessed on 29 February 2008.

49.   The Fund for Peace publishes The Failed States Index, which rates nations' relative stability based on social, economic, and political indicators such as demographic pressures, presence of refugees, uneven economic development or severe economic decline, and rise of factionalized elites, among others. See the Fund for Peace website available at: http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=99&Itemid=140, accessed on 5 June 2010. The Institute for Peace and Economics also produces a Global Peace Index that measure a state's and regions' relative 'peacefulness' and includes consideration of a state's political stability. See http://www.visionofhumanity.org/wp-content/uploads/PDF/2010/2010%20GPI%20Results%20Report.pdf, accessed on 21 June 2010.

50. These deductions were informed substantially by the US Government sponsored Political Instability Task Force, a panel of scholars and methodologists which was formed in 1994 and initially known as the State Failure Task Force. The Task Force was an unclassified research project that considered and reported on major domestic political conflicts leading to state failure. See http://globalpolicy.gmu.edu/pitf/, accessed on 21 June 2010.

51. United States Government, *National Security Strategy*, September 2002, p. iv, available at: http://www.globalsecurity.org/military/library/policy/national/nss-020920.pdf, accessed on 1 April 2010.

52. The most recent term is 'at-risk' states.

53. Liana Sun Wyler, *Congressional Research Service Report for Congress. Weak and Failing States: Evolving Security Threats and U.S. Policy,* Order Code RL34253, August 2008, available at: http://www.fas.org/sgp/crs/row/RL34253.pdf, accessed on 1 April 2010, p. i.

54. Indeed Philip Bobbitt argues that the current 'nation-state' is in the process of evolving into what he calls a 'market-state'. See Philip Bobbitt, *The Shield of Achilles: War, Peace and the Course of History*, Anchor Books, 2003.

55. ODA is a statistic compiled by the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD) to measure aid.

56. Stimulated largely by the Canadian government's International Commission on Intervention and State Sovereignty convened in September 2000. The UN force commander at the time of the inter-communal violence in Rwanda in 1994 was a Canadian.

57. The responsibility to protect can be thought of as having three parts: (1) a State has a responsibility to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing (mass atrocities); (2) if the State is unable to protect its population on its own, the international community has a responsibility to assist the state by building its capacity. This can

mean building early-warning capabilities, mediating conflicts between political parties, strengthening the security sector, mobilizing standby forces, and many other actions; and (3) if a State is manifestly failing to protect its citizens from mass atrocities and peaceful measures are not working, the international community has the responsibility to intervene at first diplomatically, then more coercively, and as a last resort, with military force. See: International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, December 2001, available at: http://responsibilitytoprotect.org/ICISS%20Report.pdf, accessed on 30 June 2010.

58. Concerns largely stimulated by the fear that the West might justify military interventions on the basis of the R2P.

59. Australian Government, *Defending Australia in the Asia Pacific Century: Force 2030, Defence White Paper 2009*, p. 44.

60. United Nations Development Program, *Human Development Report, 1994*, available at: http://hdr.undp.org/en/reports/global/hdr1994/, accessed 29 July 2010.

61. The UN Secretary General's 2004 High-Level Panel on Threats, Challenges and Change identified six clusters of threats with which the world must be concerned now and in the decades ahead – one of which was "Internal conflict, including civil war, genocide and other large-scale atrocities." UN Secretary General's High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, 2004, available at: http://www.un.org/secureworld/report2.pdf, accessed on 17 June 2010, p. 2.

62. See the Stockholm International Peace Research Institute website at: http://www.sipri.org/databases/first, accessed on 22 July 2010.

63. It is acknowledged that not all of these UNSCR are related to intra-state issues and conflicts, but it does reflect an increase in the number of security related issues and concerns since the end of the Cold War, as well as an increasing level of interest by the international community.

64. James Cockayne, Christopher Mikulaschek and Chris Perry, *The United Nations Security Council and Civil War: First Insights from a New Dataset*, International Peace Institute, September 2010, p.1.

65. See: Mark Dodd, 'Diggers to Face Criminal Charges', *The Australian*, 23 July 2010, available at: http://www. theaustralian.com.au/national-affairs/defence/diggers-involved-in-pre-dawn-raid-to-face-criminal-charges/story-e6frg8yo-1225895825314, accessed on 23 July 2010; Rachael Carbonell, 'Commandos to be Charged over Children's Death', *ABC News*, 27 August 2010, available at: http://www.abc.net.au/news/stories/2010/08/27/2995069.htm, accessed on 27 August 2010; and Dan Oakes and Rafael Epstein, 'Anger as commandos face manslaughter charge', Sydney Morning Herald, 28 September 2010, available at: http://www.smh.com.au/world/anger-as-commandos-face-manslaughter-charge-20100927-15u3o.html, accessed on 29 September 2010.

66. Neil James, 'Commando charges expose complexity of war', *On-line Opinion*, available at: http://www.onlineopinion.com.au/view.asp?article=11041, accessed on 30 September 2010.

67. The main sources of international law are treaties, custom and judicial decisions.

68.   For a comprehensive examination of the legal nature of war see Yoram Dinstein, War, Aggression and Self-Defence, Fourth Edition, Cambridge University Press, 2005, p. 3-56.

69. The Hague Convention (III) of 1907 on the Opening of Hostilities is available at: http://avalon.law.yale.edu/20th_century/hague03.asp, accessed on 17 May 2010.

70. One measure of the dimensions of a conflict is the number of battle-related deaths. The Uppsala Conflict Data Program (recognised by the UN) defines an armed conflict as "a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year." See: http://www.pcr.uu.se/research/UCDP/index.htm, accessed on 17 May 2010.

Other conflict research centres use different threshold figures for battle-related deaths. The Stockholm International Peace Research Institute (SIPRI), for example, uses 1,000 battle related deaths per year, see the SIPRI website at: http://www.sipri.org/databases/first, accessed on 22 July 2010.

71.   These include providing warning to the other party or parties, providing advice to neutral states, the deposition of ratified versions of the declaration at The Hague, the provision of ratified versions of the declaration to the other party or parties in accordance with the Hague Convention (III) as well as the obligation to conform to the Geneva Conventions. In the US it also gives rise to a domestic debate concerning the powers of the executive and legislative branches of government.

72.   In an effort to force nations to resolve issues without warfare, framers of the UN Charter attempted to commit member nations to using 'armed attack' only under limited circumstances, particularly for defensive purposes. The UN Charter provides two bases for the resort to force: Chapter VII enforcement actions under the auspices of the Security Council, and self-defence pursuant to Article 51, which governs acts of both individual and collective self-defence. The UN has issued Security Council Resolutions that declare the use of force to be legal actions under international law

73.   Brien Hallett, *The Lost Art of Declaring War*, Urbana: University of Illinois Press, 1998. The last time Australia formally declared a 'time of war', for example, was in 1939.

74.   House of Lords, Select Committee on the Constitution, *Waging war: Parliament's role and responsibility*, Volume I: Report, 15th Report of Session 2005–06, HL Paper 236-I, 27 July 2006, available at: http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/236/236i.pdf, accessed on 17 May 2010.

75.   Or in another way, all wars are armed conflicts but not all armed conflicts are war.

76.   All armed attacks involve the use of force, but not all uses of force are considered an armed attack. International case law provides some description of the threshold.

77.   Customary international law is that aspect of international law that derives from custom. Coupled with general principles of law and treaties, custom is considered by the International Court of Justice, jurists, the United Nations, and its member states to be among the primary sources of international law. Customary international law must be a defined rule and states must believe they are bound by that rule.

78.   This body of law is also known as the 'laws of war', or the 'laws and customs of war'. For the purpose of this paper the term the LOAC will be used. Because the LOAC has largely been driven by humanitarian concerns it is also known as International Humanitarian Law, although an argument can be made that the LOAC should be regarded as a sub-set of International Humanitarian Law.

79.   The LOAC also applies when one state 'occupies' part of all of another state.

80.   The two Additional Protocols were intended to connect the LOAC to the international protection of human rights. Gretchen Kewley, *Humanitarian Law in Armed Conflicts*, Victorian Commercial Teachers Association Publishing, 1984, p. 14.

81.   These instruments have not been ratified by every state, but some provisions have been deemed to be part of customary law, to which every state is bound.

82.   Some of these terms are defined in some UN Security Council Resolutions but these are not universally accepted. International case law applies.

83.   Paul R. Hensel, *The More Things Change...: Recognizing and Responding to Trends in Armed Conflict*, available at: http://www.paulhensel.org/Research/cmps02.pdf, accessed on 23 May 2010.

84.   It is worth noting that Additional Protocol II is considerably less extensive (28 articles) than Additional Protocol I (102 articles). Provisions in Additional Protocol I which relate to non-international armed conflicts (without any equivalent in Additional Protocol II) include the prohibition of the use of weapons, projectiles and material; methods of warfare likely

to cause superfluous injury or unnecessary suffering; and the prohibition of methods of warfare which may be intended or expected to cause widespread, long-term and severe damage to the natural environment. Other provisions in Additional Protocol I not included in Additional Protocol II are those for the protection of civilian populations and the prohibition of attacks on non-defended localities.

85. Common Article 3 of the Geneva Conventions is available at: http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e 636d/6756482d86146898c125641e004aa3c5, accessed 15 May 2010.

86. Additional Protocol II is available at: http://www.icrc. org/ihl.nsf/7c4d08d9b287a42141256739003e636b/d67c3971bcff1 c10c125641e0052b545, accessed 15 May 2010.

87. While a state might refute that an armed conflict exists there are cases where external third parties (such as the International Committee of the Red Cross/Crescent) have made a legal application to declare a situation as an armed conflict. Thresholds pertaining to the level of violence present have been established in international case law.

88. Soft law includes non-treaty based law such (i.e. international case law) as well as International Committee of the Red Cross guideline documents.

89. Gretchen Kewley, *Humanitarian Law in Armed Conflicts*, Victorian Commercial Teachers Association Publishing, 1984, p. 46.

90. Particularly those elements that are generally (but not necessarily universally) regarded as customary international law.

91. This paper will refrain from using the term 'terrorists' because terrorism is a tactic employed by some individuals and groups - often with political motivations. Some insurgent groups choose to employ terrorism which is generally regarded as the deliberate killing or injuring of civilian (non-government or non-legitimate) personnel. Some insurgent groups that employ violence contest who and what constitutes a legitimate target. Terrorism violates both domestic criminal law and the LOAC.

92. International Committee of the Red Cross, *The Law of Armed Conflict – Non-International Armed Conflict,* Lesson 10, p. 7, available at: http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5P8EX4/$File/LAW10_final.pdf, accessed on 18 May 2010.

93. For example, a number of states have not signed Additional Protocol I or Additional Protocol II. A number of states have signed but not ratified Additional Protocol I or Additional Protocol II including the U.S. The U.S. is probably unique in that it resists conformance with some international law as a matter of principle and because it doesn't agree that certain elements of customary international law are actually customary (as viewed by other states). Increasingly, Additional Protocol I is being regarded as customary international law. See Barton Gellman, *Angler - The Shadow Presidency of Dick Cheney.* Allen Lane, 2008, p. 285.

94. Deidre Willmott, 'Removing the Distinction Between International and Non-International Armed Conflict in the Rome Statue of the International Criminal Court', *Melbourne Journal of International Law*, Vol. 5, No. 1, 2004, available at: http://www.austlii.edu.au/au/journals/MelbJIL/2004/8.html, accessed on 17 May 2010.

95. Personal communication with Dr. David Blazer, Canberra, 19 May 2010 and Colonel (retired) Peter Davies, Canberra, 17 August 2010. The Northern Ireland Emergency Provisions Act provided executive powers to UK military forces. Changes to UK domestic law included the ability to intern suspects, the establishment of 'Diplock' (non-public) courts and the formation of a new 'political prisoner' category.

96. Authorizing 'martial law' could be one of the possible responses to a particular situation. Martial law is the imposition of military rule by military authorities over designated regions on an emergency basis - usually only temporary - when the civilian government or civilian law enforcement authorities cannot to function effectively (e.g., maintain order and security, and provide essential services), when there are extensive riots and protests, or when the disobedience of the law becomes widespread.

97. See, for example, the Taliban's recently issued 'code of conduct' document: http://www.google.com/hostednews/ap/article/ALeqM5hvWEqwq3CrRvaQCmt21MfoYhjZJQD9HC6HN80, accessed on 4 August 2010.

98. See for example Noelle Higgins, 'The Regulation of Armed Non-State Actors: Promoting the Application of the Laws of War to Conflicts Involving National Liberation Movements', *Human Rights Brief*, Vol. 17, No. 1, pp. 12-17, available at: http://www.wcl.american.edu/hrbrief/17/1higgins.pdf?rd=1, accessed on 3 May 2010; and Cedric Ryngaert, 'Non-State Actors and International Humanitarian Law.' *Institute for International Law, Working Paper 2008*, available at: https://www.law.kuleuven.be/iir/nl/onderzoek/wp/WP146e.pdf, accessed on 3 May 2010.

99. Additionally, the distinction also restricts the applicability of war crimes provisions in the 1998 Rome Statute of the International Criminal Court. See Deidre Willmott, 'Removing the Distinction Between International and Non-International Armed Conflict in the Rome Statue of the International Criminal Court', *Melbourne Journal of International Law*, Vol. 5, No. 1, 2004, available at: http://www.austlii.edu.au/au/journals/MelbJIL/2004/8.html, accessed on 17 May 2010.

100. See for example James G. Stewart, 'Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict', *International Review of the Red Cross*, No. 850, pp. 313-350. Interestingly, Stewart relates that when drafting Additional Protocol II, the ICRC recommended a further proposition that was intended to make the whole body of international humanitarian law applicable to a civil war if foreign troops intervened. This recommendation was not accepted at the time.

101. Trevor Findlay, *The Use of Force in Peace Operations,* Stockholm International Peace Research Institute, Oxford University Press, 2002, pp. 315-340; and Hoffman, Mike, 'Rescuing the Law of War: A Way Forward in an Era of Global Terrorism', Parameters, Summer 2005, pp. 18-35, available at: http://www.carlisle.army.mil/USAWC/parameters/Articles/05summer/hoffman.htm, accessed on 29 June 2010.

102. The term 'operationalize' is used to describe the process used to translate concepts and policies into plans and action. In the context of Additional Protocol II it means interpreting the Protocol in order to derive Rules of Engagement.

103. Following the U.S.-led invasion of Afghanistan political leaders gathered in Germany in December 2001 to establish an Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions (the Bonn Agreement). Under the Bonn Agreement an interim Transitional Administration was created and Hamid Karzai was named as the Chairman of a 29-member governing committee. A Loya Jirga on 13 June 2002, appointed Karzai as the interim holder of the new position as President of the Afghan Transitional Administration.

104. The UN Security Council via UNSCR 1483 (2003) authorised the establishment of the Coalition Provisional Authority (CPA) as the transitional government in Iraq. The CPA vested exercised executive, legislative, and judicial authority over Iraqi from the period of the CPA's inception on 21 April 2003 until its dissolution on 28 June 2004. CPA Order 17 granted the Multi-National Forces in Iraq certain legal status and protections.

105. SOFAs generally specify the rights of entry and exit, immigration, customs, freedom of movement within the host nation, weapons carriage within host nation territory, criminal jurisdiction, death penalty, licences, liability for damage caused by force members (including third party claims), and death of a member of the force. Short term operational SOFAs are sometimes made as bilateral arrangements rather than agreements. An example, from when Australian forces intervened in Timor Leste in May 2006 is available at: http://www.laohamutuk.org/reports/UN/06SOFAs.html, accessed on 17 June 2010.

106. Foreign diplomatic and consular personnel will not be considered in this section. The legal status of diplomatic personnel is codified under the Vienna Convention on Diplomatic Relations (1961) ratified by 186 countries. The legal status of consular personnel is codified under the Vienna Convention on Consular Relations (1963) ratified by 172 countries.

107. Indeed, the perception that foreign forces in Afghanistan are occupation or colonizing forces has been a significant point of tension with the indigenous state government and the indigenous population. The simultaneous messages from foreign forces that they 'do not intend to stay forever' and 'will stay only as long as necessary' but 'will not leave until the insurgency is defeated' are irreconcilable in the minds of the indigenous population – essentially forcing them to remain uncommitted to either the government or the insurgency.

108. See, for example, in Iraq Lara Jakes, 'Iraqi Forces Still Frail as US Troops Head Home', *The Washington Post*, 25 July 2010, available at: http://www.washingtonpost.com/wp-dyn/content/article/2010/07/26/AR2010072600039.html, accessed 26 July 2010; and Editorial, 'Iraq: Half Built with the Roof Off', *The Guardian*, 13 August 2010, available at: http://www.guardian.co.uk/commentisfree/2010/aug/13/iraq-barack-obama-policy, accessed on 15 August 2010.

109. Based, in part, on the author's personal observation of the security responsibility transition between Coalition forces and Iraqi Security Forces over the period August 2008 to June 2009.

110. Members of the ADF are bound to comply with the LOAC through domestic law and the Australian Government's obligations under international law.

111. This complexity has prompted the Geneva Academy of International Humanitarian Law and Human Rights to initiate the Rule of Law in Armed Conflict Project to support the application and implementation of international law in armed conflict. Through its global database and analysis, the Project aims ultimately to report on every concerned state and disputed territory in the world, considering both the legal norms that apply and the extent to which they are being respected by the relevant actors. See: http://www.adh-geneva.ch/RULAC/index.php, accessed on 28 June 2010.

112. Despite the fact that the Solomon Islands legislation for RAMSI provided all foreign police and military forces executive power to enforce domestic law, the ROE for the military forces was deliberately limited to only allow the apprehension and

detention of individuals. That is, despite the legal authorisation the military forces were not permitted to become general law enforcement officers.

113. There are several other instances of serious or capital charges being laid against troops from other coalition states from operations in Iraq and Afghanistan.

114. For example, military intelligence and evidence collection are now being fused, and the military is required to secure a legal warrant before conducting raids.

115. A legitimate state government, is one that is appointed through a widely accepted process (such as an election), is representative of the people it intends to govern over and which has a fundamental desire to work in the interests of the people within that state.

116. Noting that 'government' typically exists at several levels in every state.

117. Steven Metz, *Rethinking Insurgency*, Strategic Studies Institute, June 2007, available at: http://www. strategicstudiesinstitute.army.mil/pdffiles/pub790.pdf, accessed on 23 July 2010.

118. A significant driver to form the IDG was the AFP's part in RAMSI.

119. Due to funding shortfalls the actual total number of personnel in the IDG at the time of writing was a little over 900.

120. The Operational Response Group comprises a Tactical Response Team, a Stability (Riot) Response Team, a Marksman/Reconnaissance Team, a Maritime Response Unit, an Aviation Support Unit and Tactical Intelligence Teams.

121. This training facility is also used to prepare members of other Australian Government Agencies including DFAT and AusAID for overseas field missions.

122. See the AFP website available at: http://www.afp.gov. au/policing/international-deployment-group/deployments. aspx, accessed on 14 July 2010.

123. The term 'in-line' means actually performing the duties of a position. The term 'capacity development' is the process of developing competencies and capabilities in individuals, groups, organisations, sectors or countries which will lead to sustained and self-generating performance improvement.

124. See the AFP website available at: http://www.afp.gov.au/policing/international-deployment-group.aspx, accessed on 17 June 2010.

125. These include MOU on interoperability (signed in September 2008 and not including counter-terrorism, domestic security and domestic emergency management); mutual logistics support; information and intelligence sharing and exchange; support to defence investigations; the use of Majura Training Facility; science and technology; and actual or suspected bomb incidents. There is presently a plan to review and combine all of these MOU into one document.

126. The Committee meets biannually and is co-chaired by the ADF's Chief of Joint Operations and the AFP's National Manager of the IDG. The five Working Groups address: Coordination; Operations; Operations Support; Capability Development; and Training, Learning and Validation.

127. The production of this document is being led by the ADF's Joint Warfare Doctrine and Training Centre and was advanced at the time of writing.

128. As a measure of this demand, at the time of writing there were over 12,500 police from over 90 states working in 17 different UN field missions. The fact that no other state has developed this type of capability is most likely because of the (politically charged) argument that every police person not on the job domestically results in an increased crime rate. Australia is also in a fairly unique position that it has had a national police force in addition to the police forces of the states within the Commonwealth.

129. AAP, 'Civilian corps to complement assistance: Kevin Rudd', *The Australian*, 25 October 2009, available at: http://www.theaustralian.com.au/news/nation/civilian-corps-to-complement-assistance-kevin-rudd/story-e6frg6nf-1225791031127, accessed on 19 June 2010.

130. The creation of the ACC was informed by similar initiatives in other Western countries – particularly the U.S., the UK and Canada. The U.S. created an Office for the Coordination of Stabilization and Reconstruction in 2004 charged by Congress and the Secretary of State with building and maintaining an expeditionary, innovative, and interagency civilian capability to plan, manage, and conduct U.S. stabilization operations on behalf of the Secretary of State and Chiefs of Mission overseas. To enhance the U.S.'s institutional capacity to respond to crises involving failing, failed and post-conflict states, as well as complex emergencies, the Office for the Coordination of Stabilization and Reconstruction, recently changed to the Bureau of Conflict and Stabilization (CSO), created a Civilian Response Corps. The UK created the Post Conflict Reconstruction Unit (PCRU) in 2004, and then changed its name to the Stabilisation Unit in December 2007. The Stabilisation Unit provides specialist, targeted, rapid assistance where the UK is helping to achieve a stable environment that will enable longer term development to take place. The Stabilisation Unit is jointly owned by the Department for International Development (DFID), Foreign and Commonwealth Office (FCO) and Ministry of Defence (MOD). Canada created the Stabilization and Reconstruction Task Force (START) within Foreign Affairs and International Trade Canada in 2005 to improve Canada's capacity for timely and effective international crisis response. START is designed to help answer the growing international demand for Canadian support and involvement in complex crises - conflict or natural disaster related - and to coordinate whole-of-government policy and program engagements in fragile states. See http://www.state. gov/s/crs/index.htm accessed on 19 June 2010, http://www. stabilisationunit.gov.uk/ accessed on 19 June 2010, and http:// www.international.gc.ca/start-gtsr/index.aspx accessed on 19 June 2010. Other states that have developed deployable civilian capabilities include Germany (Center for International Peace Operations), the Netherlands (Peace building and Stabilisation Unit) and Denmark.

131. Personal communication with Cheryl Johnson, Assistant Director General, Australian Civilian Corps Branch, Australian Agency for International Development, Canberra, 30 August 2010.

132. The ACC capability has also been described as bridging the 'gap' between the Rapid Response Teams and the long term development staff.

133. The ACC members with expertise in security and justice fields will be the individuals most relevant to efforts to restore and maintain public security. At the time of writing there was no additional information on exactly what type of expertise and skill sets will be sought for these fields.

134. See the AusAID website available at: http://www. ausaid.gov.au/acc/, accessed on 19 June 2010.

135. Personal communication with Mr Robert Jackson, former Head of the Deployable Civilian Capacity Taskforce, Canberra, 17 June 2010.

136. The Australian Government introduced a bill into the Parliament to establish the ACC on 23 June 2010, but it was not passed as legislation because of the general election. The bill seeks to establish the ACC and provide a legal framework for the effective and fair employment and management of ACC employees. The ACC Bill will need to be reintroduced and, if passed, regulations for the ACC will have to be developed. See the AusAID website available at: http://www.ausaid.gov.au/ hottopics/topic.cfm?ID=5268_6990_4216_9810_9265, accessed 30 June 2010.

137. Strategic Partnership Agreement between the Department of Defence and the Australian Agency for International Development (AusAID), 28 April 2009, p. 1.

138. See the US Department of State website available at: http://www.america.gov/st/texttrans-english/2010/July/ 20100721102503su0.1793591.html, accessed 14 August 2010. At the time of writing the AusAID ACC does not yet have any memoranda with the UK's Stabilisation Unit or the Canadian START.

139. This organization is to some degree a successor to the unsuccessful Failed States Unit established as a multi-agency planning cell within AusAID between 2005 and 2007. AusAID

still, however, recognises the challenge of 'fragile' states. See the AusAID website available at: http://www.ausaid.gov.au/keyaid/fragile_states.cfm, accessed on 1 July 2010.

140. See the APCMCOE website available at: http://www.civmilcoe.gov.au/web.php?sec=13, accessed on 30 June 2010.

141. See the APCMCOE website available at: http://www.civmilcoe.gov.au/web.php?sec=13, accessed on 30 June 2010.

142. The document is titled 'Strengthening Australia's Effectiveness for Conflict and Disaster Management Overseas: A Conceptual Framework'.

143. A good way point report for early 2008, however, is Raspal Khosa's *Making it count: Australia's involvement in Afghanistan*, Strategic Insights 40, Australian Strategic Policy Institute, May 2008.

144. See, for example, Anthony Cordesman, 'Sorry Story of Spin and lies in Afghan War', *The Age*, Insight Section, 31 July 2010, pp. 9; and Amin Saikal, 'A Solution in Afghanistan', *Australian Financial Review*, 30 July 2010, pp. 5-9.

145. NATO became responsible for the command, coordination and planning of the force, including the provision of a force commander and headquarters on the ground in Afghanistan.

146. The ISAF mandate was renewed in subsequent UNSCR (1413, 1444, 1510, 1563, 1623, 1659, 1707, 1776, 1806, 1817 and 1833).

147. Yet, in the early stages of the intervention, this view was not widely held. Personal communication with Captain Rob McLaughlin, RAN, Director of Operations and International Law, ADF Legal Service, Canberra, 11 August 2010.

148. Afghan National Security Forces include the Afghan National Army and the Afghan National Police. See ISAF website available at: http://www.isaf.nato.int/mission.html, accessed on 10 April 2012.

149. See ISAF website available at: http://www.isaf.nato.int/, accessed on 10 April 2012.

150. Except Azerbaijan, Singapore and Turkey who have ratified the Geneva Conventions but have not signed or ratified Additional Protocols I or II. The U.S. has ratified the Geneva Conventions and has signed but not ratified Additional Protocols I and II.

151. These sectors are from the Afghanistan National Development Strategy (2008-2013), available at: http://www.cfr.org/afghanistan/afghanistan-national-development-strategy-2008-2013/p16450 , accessed on 10 April 2012.

152. See UNAMA website available at: http://unama.unmissions.org/default.aspx?/, accessed on 10 April 2012.

153. Personal communication with Lieutenant Colonel David McKerral, ANA 205th Corps Mentoring Team, International Security Assistance Force, 17 October 2010.

154. That is, the Afghan Punishment Law.

155. For a chronology of Australia's military commitment in Afghanistan since 2001 to June 2010 see Nicole Brangwin, and Ann Rann, *Australia's Military Involvement in Afghanistan since 2001: a Chronology*, Parliament of Australia, Department of Parliamentary Services, 16 July 2010, available at: http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/QUBX6/upload_binary/qubx60.pdf;fileType=application/pdf#search=%22afghanistan%22, accessed 10 April 2012.

156. ADF members in Afghanistan are deployed under the banner of 'Operation Slipper'.

157. Combined Team - Uruzgan (CT-U) is a US-led multi-national force that comprises a combat force, support forces, the MTF and a Provincial Reconstruction Team. The CTU includes foreign forces from the US, Australia, Singapore and Slovakia.

158. Mentoring is this context is akin to supervising on the job training and providing advice and recommendations. It is typically performed after a period of training.

159. The 4th ANA Brigade consists of a headquarters, three (infantry) kandaks (battalions), one combat support kandak and one combat service support kandak.

160. The agreement is titled "Agreement between the Government of Australia and the Government of the Islamic Republic of Afghanistan Concerning the Deployment of Visiting Personnel to Afghanistan."

161. The AFP officers in Afghanistan are deployed under the banner of 'Operation Illuminate'. See AFP website available at: http://www.afp.gov.au/media-centre/news/afp/2011/january/afp-clarifies-its-commitment-to-afghanistan.aspx, accessed 10 April 2012.

162. The European Union Police Mission (EUPOL) in Afghanistan contributes to the establishment of sustainable and effective policing arrangements in conjunction with the NATO Training Mission-Afghanistan. See the EUPOL website available at: http://www.eupol-afg.eu/, accessed on 10 April 2012.

163. The Focused District Development is a US Department of State program to provide 8 weeks of basic training to ANP officers. The NATO Training Mission-Afghanistan includes Combined Security Transition Command-Afghanistan. See the NATO Training Mission-Afghanistan website available at: http://www.ntm-a.com/, accessed 21 July 2010.

164. Personal communication with Commander Grant Edwards on 15 July 2010, Superintendent Colin Speedie, Canberra, 21 July 2010 and AFP website available at: http://www.afp.gov.au/policing/international-deployment-group/deployments.aspx#afghanistan, accessed on 15 July 2010.

165. The AFP IDG does not support its members mentoring the ANP performing an in-line policing role in Uruzgan for several reasons. The first is that the NSC has directed that the AFP will not undertake this role. Secondly, until military clearing and holding operations have been completed, the threat environment is not permissive enough to allow the conduct of any community policing activities, let alone in-line mentoring toward that endeavor. Thirdly, the ANP at the provincial level is fundamentally a paramilitary force rather than a community

police force and therefore they would have little to add for mentoring in-line policing. Additionally, as armed individuals it is unclear what the status of AFP IDG members is under international law - combatants or civilians. The Taliban clearly regards foreign police forces as combatants and legitimate targets.

166. Personal communication with Wing Commander Roger Parr, ADF liaison officer to AusAID ACC, Canberra, 13 July 2010.

167. The estimated total Official Development Assistance (ODA) to Afghanistan in 2010–11 is AUD 123.1 million out of a total ODA budget of AUD 4.35 billion. See the AusAID website available at: http://www.ausaid.gov.au/country/country.cfm?CountryID=27886219&Region=AfricaMiddleEast/, accessed on 10 April 2012.

168. See the DFAT website available at: http://www.dfat.gov.au/media/releases/department/2010/100302.html, accessed on 10 April 2012.

169. See Raphael Epstein, 'Afghan Warlord's Men Trained in Australia', *The Age*, 29 October 2010, available at http://www.theage.com.au/national/afghan-warlords-men-trained-in-australia-20101028-175pw.html, accessed on 10 April 2012; and Dan Oakes, 'Defence head backs warlord', *The Age*, 30 October 2010, available at: http://www.theage.com.au/national/defence-head-backs-warlord-20101029-177hk.html, accessed on 10 April 2010.

170. Based on personal communication with several ADF and AFP officers who have served in Uruzgan Province and Afghanistan and who wish to remain anonymous. With the recent establishment of the CT-U and an Australian taking command of the Provincial Reconstruction Team there is some hope for improved levels of military-civil cooperation and integration – at least from an Australian perspective.

171. See the AusAID website available at: http://www.ausaid.gov.au/keyaid/default.cfm, accessed on 10 April 2012.

172. Address by UN Secretary-General Kofi A. Annan to the UN Association of the UK, 31 January 2006, available at: http://www.un.org/News/ossg/sg/stories/statments_search_full.asp?statID=49, accessed on 10 April 2012.

173. See: Jonathan Holslag and David Doyle, *10 Recommendations from the 2010 Security Jam*, 2010, p. 13, available at: http://www.securitydefenceagenda.org/Portals/7/2010/Publications/SDA_JAM_Report_highres.pdf, accessed on 15 August 2010.

174. The Honourable Jason Clare MP, *Statement to the House of Representatives on Afghanistan*, 21 October 2010; available at: http://www.jasonclare.com.au/media/speeches/364-statement-to-the-house-of-representatives-on-afghanistan.html, accessed on 22 October 2010.

175. In a previous paper the author described how such a venture might be planned and managed using a project management approach. See Fielding, Marcus, 'Regime Change: Planning and Managing Military-Led Interventions as Projects', *RUSI Journal*, Vol. 151, No. 5, October 2006, pp. 20-29.

176. Additionally a state government may become illegitimate over time. In this instance, foreign forces should either strive to make the state government legitimate (if possible) or consider withdrawing their support. A case can be made that the Karzai Government in Afghanistan lost its legitimacy following the presidential elections in 2009.

177. Noting that 'government' typically exists at several levels in every state - most typically national, provincial and district.

178. Many states might be involved in the activity, but it is best when a 'lead' state is identified and speaks on behalf of all the foreign forces.

179. In some cases a third party might simply be able to help realise a peaceful solution.

180. See: Organization for Economic Cooperation and Development (OECD), *Enhancing the Delivery of Justice and Security*, 2007, pp. 40-41, available at: http://www.oecd.org/dataoecd/27/13/38434642.pdf, accessed on 9 August 2010.

181. The questions asked in this phase could range from 'What should be the constitutional role of the military?' to 'What sort of skill sets does a policeman require?' to 'How many prison berths are required and what sort of prisoner rehabilitation program should be provide?' for example. It is also likely that answers can be foreseen to change over time. For example, Iraq may not need a 600,000 strong Army once the insurgency in Iraq is defeated so there must be some thought given to downsizing it at some point in the future.

182. Sinclair Dinnen and Abby McLeod, 'The Quest for Integration: Australian Approaches to Security and Development in the Pacific Islands', *Security Challenges*, Vol. 4, No. 2, Winter 2008, p. 42.

183. The Afghan National Police Strategy (March 2010) is a good example of such a plan. It details objectives, the phases by which they are aimed to be achieved and resource requirements. Disappointingly, however, the 2010 Strategy is the inaugural document after eight years of foreign force presence in Afghanistan. The Afghan National Police Strategy is available at: http://www.ntm-a.com/documents/other/anps.pdf, accessed on 21 July 2010.

184. This sequence closely correlates with the process and documents that AusAID employs to provide ODA to another state government. First, a country situation analysis is completed, then a statement of commitment is agreed between the two governments, and finally a delivery strategy for each program is developed. Personal communication with John Davidson, Office of Development Effectiveness AusAID, Canberra, 28 July 2010.

185. Of course, reality is not always this neat especially since insurgents and other spoilers might interfere with the plan, and other unforseen influences also impact. See, for example, Tom Engelhardt, 'Why Afghanistan's Proving to be 'Catch-22-ville': In Afghanistan, the Strangeness of the U.S. Way of War in Distant Lands is That Much Stranger', *CBS News Opinion*, 25 July 2010, available at: http://www.cbsnews.com/stories/2010/07/26/opinion/main6714885.shtml, accessed 26 July 2010.

186. This was illustrated in Iraq in 2003 and 2004 and remains a criticism of foreign forces in Afghanistan to this day.

187. This also prevents foreign forces from being perceived as an occupation force.

188. This might be achieved through purging known 'spoilers', establishing a clear code of conduct and discipline regime, and by education and training.

189. Indeed some counter-insurgency commentators argue that the military's activities are secondary importance. See Mark O'Neill, *Confronting the Hydra – Big Problems with Small Wars.* Lowy Institute Paper 28, 2009, p.16.

190. Edwina Thompson, *Smart Power: Making Australia's Whole-of-Government Strategy Work in Fragile States and Situations*, Kokoda Paper No. 12, April 2010, p. 50, available at: http://www.kokodafoundation.org/Resources/Files/KP12_Smart_Power_Final_080410_1.pdf, accessed on 14 August 2010.

191. There other possible ways that the security and criminal justice sectors could potentially develop capacity over time, especially if the public security situation deteriorates rather than improves, but these situations will not be explored in this paper. An example of this situation is Iraq between 2003 and 2007.

192. Indeed, prior to 2007 there was a steady escalation of violence in Iraq for a range of reasons.

193. For a view on what needs to be done to transfer responsibility from ISAF to the Afghan Government and its security forces see Colin Cookman and Caroline Wadhams, *Governance in Afghanistan: Looking Ahead to What we Leave Behind*, Centre for American Progress, 11 May 2010, available at: http://www.americanprogress.org/issues/2010/05/afghan_governance.html, accessed 28 July 2010.

194. It is now widely accepted that the indigenous police forces should have been developed with at least equal priority as the indigenous military forces in both cases.

195. A document equivalent, for example, to the *US National Security Presidential Directive 44 (NSPD-44) – Management of Interagency Efforts Concerning Reconstruction and Stabilization*, available at: http://www.fas.org/irp/offdocs/nspd/nspd-44.html, accessed on 14 August 2010.

196. See the list of key areas of technical expertise required at http://www.ausaid.gov.au/acc/, accessed on 14 August 2010.

197. This was particularly the case in the early stages of the armed conflicts in Iraq and Afghanistan.

198. This has largely been driven by the UK's multi-agency commitment to Basra in Iraq and Helmand Province and Regional Command South in Afghanistan.

199. Available at: http://www.crs.state.gov/index.cfm?fuseaction=public.display&shortcut=J7R3, accessed on 14 August 2010.

200. Available at: www.stabilisationunit.gov.uk/resources/tasksmatrix-version%201.0%20.doc, accessed on 14 August 2010.

201. Additionally, The Stabilisation Unit's Stabilisation Task Matrix also makes a distinction between 'non-permissive' and 'permissive' environments as a means to distinguish between higher threat and lower threat situations. Accepting that longer term trends are applicable, this two-tiered approach has limited utility as the threat situation in intra-state conflicts can be highly variable from one area to the next and over time.

202. It is recognised that in an interconnected and network world it is difficult to distil all the necessary tasks into a two dimensional tabular format, but there are few alternatives short of a relational database that would potentially defeat is utility.

203. The separation is offered simply to manage its potential length. As only three agencies will be involved in potentially satisfying the tasks they could be combined into a single section.

204. Titled 'Strengthening Australia's Effectiveness for Conflict and Disaster Management Overseas: A Conceptual Framework'.

205. Amongst other considerations and inputs the APCMCOE would do well to consider Edwina Thompson's recent paper on Australian whole-of-government strategy in fragile states and situations. See: Edwina Thompson, *Smart Power: Making Australia's Whole-of-Government Strategy Work in Fragile States and Situations*, Kokoda Paper No. 12, April 2010, p. 50, available at: http://www.kokodafoundation.org/Resources/Files/KP12_ Smart_Power_Final_080410_1.pdf, accessed on 14 August 2010.

206. Such perceptions of inequality have become management issues in some recent Stabilisation missions – notably RAMSI.

207. The Australian Army has led this effort principally through the development of its 'Future Land Operating Concept'. Australian Government, Department of Defence – Army, *Adaptive Campaigning 09. Army's Future Land Operating Concept*, Australian Army Headquarters, September 2009, available at http://www. defence.gov.au/Army/docs/adaptive_campaigning-future_ land_operating_concept.pdf, accessed on 14 August 2010.

208. Formerly S/CRS.

209. Field Manual 3-07 is the US Army's keystone doctrinal publication for stability operations. FM 3-07 presents overarching doctrinal guidance and direction for conducting stability operations, setting the foundation for developing other fundamentals and tactics, techniques, and procedures detailed in subordinate field manuals. It also provides operational guidance for commanders and trainers at all echelons and forms the foundation for Army Training System curricula. Available at: http://usacac.army.mil/cac2/repository/FM307/FM3-07.pdf, accessed on 14 August 2010.

210. JDP 3-40 provides joint, operational level doctrine for the military contribution to stabilisation. This will usually take place during or immediately following conflict and in the context of weak or failed states that face a range of challenges to governmental authority that range from criminality to insurgency. JDP 3-40 identifies the general priorities for stabilising failed or failing states, and determines the nature, level, principles and priorities that govern the UK military contribution and the guidelines governing transition to civilian and host nation control. Available

at: http://www.mod.uk/DefenceInternet/MicroSite/DCDC/OurPublications/JDWP/JointDoctrinePublicationjdp340SecurityAndStabilisationTheMilitaryContribution.htm, accessed on 14 August 2010.

211. Contained in *Adaptive Campaigning 09. Army's Future Land Operating Concept.*

212. See: https://jcisfa.jcs.mil/Public/WhatIsSFA.aspx, accessed on 26 July 2010.

213. See: https://jcisfa.jcs.mil/Public/JCISFA_Publications.aspx, accessed on 26 July 2010.

214. Accepting that 'temporary' has been over several years.

215. With the transition of Multi-National Force - Iraq into US Forces - Iraq on 1 January 2010, the functions performed by Multi-National Security Assistance Command - Iraq functions were assumed by the whole of US Forces - Iraq.

216. See: http://www.ntm-a.com/command/documents/979-ntm-a-command-philosophy-1-pager-?lang, accessed on 26 July 2010.

217. See the Geneva Centre for Democratic Control of Armed Forces website available at: http://www.dcaf.ch/about/index.cfm?nav1=1, accessed on 3 October 2010. For example: Hänggi, Heiner and Vincenza Scherrer, *Towards a Common UN Approach to Security Sector Reform : Lessons Learned from Integrated Missions*, Geneva Centre for Democratic Control of Armed Forces, Policy Paper 25, 2007, available at: http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=44989&nav1=5, accessed on 23 August 2010.

218. The ADF and the Australian Army in particular have a long history of conducting Public Security Assistance to foreign military forces. The ADF has created mission specific teams for the interventions in South Vietnam, Iraq and Afghanistan. During peacetime these efforts have generally been part of the 'Defence Cooperation Program'.

219. Indeed, the Australian Army has already produced 'developing' doctrine that identifies a 'stabilisation posture' and 'stabilisation actions' as prime operational activities. See: Australian Government, Department of Defence – Army, *Land Warfare Doctrine 3-0, Operations (Developing Doctrine)*, 2008, pp. 3-3 – 3-5.

220. In addition to the US and UK stabilisation doctrine, the Australian document could draw on the work of the Geneva Centre for the Democratic Control of Armed Forces which is one of the world's leading institutions in the areas of security sector reform (SSR) and security sector governance (SSG). See the Geneva Centre for the Democratic Control of Armed Forces website at: http://www.dcaf.ch/, accessed on 30 August 2010.

221. Edwina Thomson also identified the need for an 'overarching strategy' for fragile states in *Smart Power: Making Australia's Whole-of-Government Strategy Work in Fragile States and Situations*, Kokoda Paper No. 12, April 2010, pp. 71-71, available at: http://www.kokodafoundation.org/Resources/Files/KP12_Smart_Power_Final_080410_1.pdf, accessed on 14 August 2010.

222. An Australian Government policy and plan for a particular intervention should describe the context; identify the national interests, objectives and end-state; articulate a national strategy (which might be described in functional, geographic and/or temporal terms); identify the risks and specify a risk mitigation strategy; define the departmental and agency authorities and responsibilities and identify the resource to be assigned. Such a policy and plan should be periodically reviewed and amended if necessary. This follows a theme developed by David Connery, *National Security Community 2020: Six Practical Recommendations for the Australian Government*, Kokoda Paper No. 3, Kokoda Foundation, April 2007, p.32, available at: http://www.kokodafoundation.org/Resources/Files/Kokoda%20Paper%203%20NSC%202020_print%20format.pdf, accessed 14 August 2010.

223. Note not the term 'stabilisation operations' as the ADF has begun using. This connotes, inaccurately, that stabilisation is a principally military activity. The ADF should talk of military operations that are part of stabilisation.

224. Personal communication with Dr David Matthews, Canberra, 17 August 2010. Dr Matthews was one of the principal authors of the UK's *JDP 3-40 Security and Stabilisation: The Military Contribution.*

225. An Australian definition might seek to find common ground between the US approach to stabilisation which is very function/technocratic and the UK approach which is more political.

226. United Kingdom Government, Ministry of Defence, *Joint Doctrine Publication 3-40 Security and Stabilisation – The Military Contribution*, United Kingdom Government, p. 239, available at: http://www.mod.uk/DefenceInternet/MicroSite/DCDC/OurPublications/JDWP/JointDoctrinePublicationjdp340SecurityAndStabilisationTheMilitaryContribution.htm, accessed on 14 August 2010.

227. For example, there is currently debate on whether individuals who are performing the following functions are combatants that can be targeted: intelligence collector, spotter, improvised explosive device (IED) maker, IED component maker, IED transporter, recruiter, trainer, financier, political or ideological advisor, propagandist, vehicle driver, arms smuggler, sanctuary provider, etc. And what is the difference between those who act willingly and those who are coerced – and how can you tell the difference?

228. This boundary or nexus suggests that military armed conflict and police law enforcement operations must be very closely coordinated and that some situations are handled jointly.

229. The ADF has periodically trained forces to use non-lethal force to control individuals and groups. In domestic border security operations, ADF members employ 'tear gases and 'capsicum spray' as part of maritime boarding operations. The Australian Army has trained some forces in tactics and techniques to control relatively small groups of agitators.

230. Australian Government, *Defending Australia in the Asia Pacific Century: Force 2030, Defence White Paper 2009,* Commonwealth of Australia, 2009, p. 23.

231. This debate has been the especially passionate in the US principally because the US military has the most significant capabilities for conventional combat. See, for example, Thomas P.M. Barnett, *Blueprint for Action: A Future Worth Creating*, Putnam Publishing Group, 2005; Colin S. Gray, 'Stability Operations in Strategic Perspective: A Skeptical View', *Parameters*, Vol. 36, No. 2, 2006, pp. 4-14; and D. Zimmerman, 'Between Minimum Force and Maximum Violence: Combating Political Violence Movements with Third-Force Options', *Connections: The Quarterly Journal*, 2005, pp. 43-60.

232. But there are some in the ADF that suggest that the process of adaptation isn't occurring as quickly as it should be. See: Krause, Michael, *Square Pegs for Round Holes: Current Approaches for Future Warfare and the Need to Adapt*, Land Warfare Studies Centre, Working Paper No. 132, June 2007.

233. See Bowman, M.E., 'Law Enforcement Technology, Intelligence and the War on Terror', *Joint Forces Quarterly*, Issue 46, 3rd Quarter 2007, pp. 14-19; Robert Block and Gary Fields, 'Is the Military Creeping into Law Enforcement?', *Wall Street Journal*, 9 March 2004; and Donald J. Campbell and Kathleen M. Campbell, 'Soldiers as Police Officers/Police Officers as Soldiers: Role Evolution and Revolution in the United States', *Armed Forces and Society*, Vol. 36, No. 2, pp. 327-350.

234. Australian workplaces tend to reward 'doing' so making a transition to 'guiding' or mentoring is a little unnatural for many. Additionally, 'building capacity' is a broad concept that can be interpreted several ways. See: Sinclair Dinner and Abby McLeod, 'The Quest for Integration: Australian Approaches to Security and Development in the Pacific Islands', *Security Challenges*, Vol. 4, No. 2, Winter 2008, p. 23-24.

DEDICATION

This paper is dedicated to Paul Anthony Breen who died on 27 August 2010. Paul completed over 30 years of service to Australia through careers in both the Australian Defence Force and Australian Federal Police. He exemplified the values common to both organisations; rising to the rank of Lieutenant Commander in the Australian Defence Force and Superintendent in the Australian Federal Police. The author had the honour to serve with Paul in Iraq in 2009 where he was a highly regarded member of Headquarters Multi-National Force - Iraq. Paul's dedication and commitment to developing the capacity of the security and criminal justice sectors in Australia and other states was commendable.

ACKNOWLEDGEMENTS

University of Melbourne; Doctor Michael Evans and Doctor Stephanie Koorey from the Australian Defence College; and Colonel Jane Spalding, Superintendent Colin Speedie from the Defence and Strategic Studies Course.

PKSOI

U.S. ARMY WAR COLLEGE
Prudens Futuri
Carlisle Barracks, PA

This Publication

PKSOI Website

USAWC Website