

pages devoted to the question of attribution. Many investment contracts are concluded, not by the state itself, but state entities having a separate legal personality from that of the state. However, the connection to the state is so close that the question arises as to whether the contracts are attributable to the state under an umbrella clause. Here, a very helpful and instructive list of the cases addressing this question is given.

Chapter 10 finally addresses one of the most controversial aspects regarding the application of the substantive standards of investment protection: the question of exceptions within IIAs and customary international law. As one can expect that future IIAs will more and more provide for such clauses – this is at least a tendency reflected within many more recent model investment agreements – this chapter provides very useful information on how to handle the exceptions regime. The book ends with a table of cases, a table of treaties and other instruments as well as a very useful and comprehensive index.

To conclude, the *Law and Practise of Investment Treaties* by Andrew Newcombe and Lluís Paradell offers far more than a mere description of the most relevant treatment standards. It is well written, well structured, very informative and at the same time concise. Practitioners as well as students will find the book equally helpful for their respective work. It can be expected that the book will soon be recognized as one of the ten most important publications in the field of international investment law.

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Australian Peacekeeping: Sixty Years in the Field

Edited by David Horner, Peter Londey, and Jean Bou
(Cambridge University Press Melbourne 2009 pp xviii + 333).

Peacekeeping has been a major aspect of the United Nations (UN) activities in maintaining international peace and security. Many countries have been involved in peacekeeping activities either as host states or as contributing states. Canada has been seen as one of the most enthusiastic and active contributors to the development of peacekeeping practice ever since the time when legendary Lester Pearson proposed a UN peacekeeping force as a way out of the impasse caused by the Suez Crisis in 1956.¹ The United Kingdom and France engaged actively with peace support operations during the 1990s, instigating the doctrinal debate on a

¹ See, eg, S Maloney, 'In the Service of Forward Security: Peacekeeping, Stabilization, and the Canadian Way of War' in B Horn (ed), *The Canadian Way of War: Serving the National Interest* (2006) 297; J T Jockel, *Canada and International Peacekeeping* (1994).

wider range of activities than the previous peacekeeping missions.² The United States, on the other hand, has not been an active participant in peacekeeping operations with the exception of a few peace enforcement missions.³ Japan's contribution to peacekeeping has been minimal due to the legal restriction that supposedly applies under its Constitution.⁴

Compared to the peacekeeping experiences of those developed countries, Australia's contribution has not drawn much attention despite the fact that, as *Australian Peacekeeping* reveals,⁵ peacekeeping has been a substantial part of Australia's overseas military engagement over the last 60 years. *Australian Peacekeeping* attempts to fill this gap and to put peacekeeping back on the agenda with the focus on Australian experience.⁶ The seventeen chapters that vary in length and perspectives explore how Australian peacekeeping policy and practice have been developed and have overcome challenges that have confronted peacekeepers. The introduction by the three editors sets the stage by defining the purpose and the scope of this volume, taking due account of the increased complexity of peacekeeping operations and the diversity of individual peacekeepers' experiences. As the editors make clear, this volume does not purport to answer all the questions, but rather demonstrates the value of writing about the subject from an historical viewpoint with the focus on Australia as a case study.⁷ Although its approach is historical and hence the contents are largely descriptive rather than analytical, readers of this *Year Book* may also benefit from the practical insights that the authors provide in raising and examining international law issues in respect of peacekeeping.

In Chapter I, Peter Londey provides a definition of peacekeeping that sets out the criteria to draw boundaries between peacekeeping and war-fighting. Although it is not clear how those criteria are drawn to define peacekeeping, it reflects a wider understanding encompassing different taxonomies such as 'peace operations' and 'peace support operations', yet distinguish it strictly from war-fighting on account of different moral justifications and rationales in public policy.⁸ Lacking in

² See, eg, R Thornton, 'The Role of Peace Support Operations Doctrine in the British Army' (2000) 7(2) *International Peacekeeping* 41; *Supplement to An Agenda for Peace: Aide-mémoire by France*, at 2–3, UN Doc A/50/869-S/1996/71 (26 February 1996).

³ See, eg, Robert M Cassidy, *Peacekeeping in the Abyss: British and American Peacekeeping Doctrine and Practice After the Cold War* (2004).

⁴ See, eg, A Morrison and J Kiras (eds), *UN Peace Operations and the Role of Japan* (1996). However, this reviewer is of the view that peacekeeping operations are not restricted even under Article 9 of the Japanese Constitution – the famous war renunciation clause. See, H Nasu, 'Article 9 of the Japanese Constitution: Revisited in light of International Law' (2004) 18 *Journal of Japanese Law* 50.

⁵ D Horner, P Londey, and J Bou (eds), *Australian Peacekeeping: Sixty Years in the Field* (2009).

⁶ D Horner, P Londey, and J Bou, 'Introduction' in Horner et al, above n 5, 1, 3.

⁷ Ibid 7.

⁸ P Londey, 'Inventing Peacekeeping' in Horner et al, above n 5, 11, 12–13.

this analysis is the legal basis that could explain more clearly the difference of each military operation. The lack of a proper appreciation of the precise legal basis for each peacekeeping operation has arguably been a primary cause of confusion and the blurring of the boundaries, as this reviewer argues elsewhere.⁹ Nevertheless, Londey's analysis of peacekeeping in the early days of the UN history, particularly in relation to the organic development of its peacekeeping practice, is unbiased and thorough.¹⁰

One of the underlying themes that is commonly found especially in the first four chapters is how Australia has been motivated (or de-motivated) to participate in international peacekeeping operations. Peter Londey,¹¹ David Horner,¹² John Connor,¹³ and Bob Green,¹⁴ all confirm the proposition that Australian peacekeeping practice has been driven by its foreign and defence policy of the time, rather than a planned and cohesive military doctrine.

Horner explains that the Australian government has been guided by four broad guidelines in considering whether to contribute to UN peacekeeping operations:

- whether the mission is likely to make a constructive contribution to the resolution of the conflict and promote international peace and stability;
- how the mission would relate to Australia's foreign policy and interests and how participation would be regarded by key allies, regional parties and the parties concerned;
- the nature of the commitment and whether resources are available; and
- the risks to be incurred by the mission, balanced against the benefits to be derived from it.¹⁵

While those guidelines may have set a general benchmark for Australia's participation in peacekeeping, experiences in relation to the Former Yugoslavia, Somalia, and Rwanda appears to show that domestic political concerns and interests also have informed political debates regarding the deployment of Australian peacekeepers.¹⁶

As a historical study, those policy and political motives for Australia's participation in peacekeeping are objectively and uncritically observed. Readers of this *Year Book*, however, may be prompted to consider whether the way in which Australia decides its participation in peacekeeping is sustainable, given the recent

⁹ H Nasu, *International Law on Peacekeeping: A Study of Article 40 of the UN Charter* (2009), chap 1.

¹⁰ Londey, above n 8, 18–25.

¹¹ Londey, above n 8, 25–28.

¹² D Horner, 'Australian Peacekeeping and the New World Order' in Horner et al, above n 5, 33, 38–59.

¹³ J Connor, 'Intervention and Domestic Politics' in Horner et al, above n 5, 60–83.

¹⁴ B Green, 'Towards Regional Neighbourhood Watch' in Horner et al, above n 5, 84–110.

¹⁵ Horner, above n 12, 52.

¹⁶ Connor, above n 13, 72, 75, 80–82.

international law debates with regard to national decision-making on the use of force. First, the emerging norm of the responsibility to protect may require Australia to re-assess its peacekeeping policy. While it is still an ambiguous and nascent concept,¹⁷ the basic premise may raise the question as to whether Australia can still maintain its traditional, conservative policy of non-commitment for the reason that the country in need of outside intervention is too distant or involves little interest for Australia's foreign policy. Second, although this issue is less likely raised in the context of peacekeeping than enforcement military action, democratic accountability for the government's decision to send troops overseas has recently been called into question,¹⁸ especially since the controversial invasion of Iraq by the coalition of the willing in 2003.¹⁹ Strengthening democratic accountability does not necessarily promise consistent implementation of peacekeeping policy. Yet, it is certainly the issue that merits discussion in re-assessing Australia's peacekeeping policy.

Australia's regional peacekeeping policy and practice are of particular significance, given the direct engagement of its national interest. Bob Green reviews Australia's changing attitude towards its contribution to peace and security in its regional neighbourhood from an *in extremis* intervention policy to a regional approach – the strategy that Green describes as 'regional neighbourhood watch'.²⁰ Recently, greater attention is drawn to the fact that Australia has been playing an active role in the Asia-Pacific region, for example in East Timor and the Solomon Islands since 1999. Australia's active role as the regional law enforcement agency or as a 'deputy sheriff' in the international stage presents new issues for debate about its potential and limits, especially in cases where a security situation in one of the neighbouring countries does not draw international attention at the UN Security Council's table. Although Green briefly mentions this recent development,²¹ more substantial discussion would have been helpful in considering whether and under what circumstances Australian-led regional peacekeeping could be justified even in the absence of UN authorisation.

Turning to the practical side of Australia's peacekeeping involvement, different perspectives are provided from the Australian Defence Force (ADF), the Department of Foreign Affairs and Trade (DFAT), the Australian Federal Police (AFP), UN civilian police (UNCIVPOL), and non-governmental organisations (NGOs). One of the common threads that link those chapters is the emphasis on the

¹⁷ For discussion about the general concept, see, eg, A Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (2009); G Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (2008).

¹⁸ See, eg, C Ku and H K Jacobson (eds), *Democratic Accountability and the Use of Force in International Law* (2003).

¹⁹ This is particularly strong in the United Kingdom, see, D Jenkins, 'Efficiency and Accountability in War Powers Reform' (2009) 14 *Journal of Conflict & Security Law* 145.

²⁰ Green, above n 14.

²¹ *Ibid* 106–07.

whole-of-government approach to peacekeeping – the idea that peacekeeping has to bring more than just military, police and humanitarian power to the table if we aim to provide for long-term stability and progress in fragile nations. Sound as it may seem, the actual incorporation and implementation of such an approach would require a careful and balanced consideration. The four chapters that provide different perspectives based on the authors' experiences scrupulously lay a solid foundation for that consideration.

Ken Gillespie explores the major lessons that the ADF has learned from its peacekeeping operations in the past.²² Gillespie points out the need for a clear, credible, and achievable mandate, suggesting that Australia will be unlikely to commit its troops to a peacekeeping operation without being satisfied with the proposed mandate.²³ While a clear, credible, and achievable mandate is understandably desirable, it is interesting to see whether this position will remain compatible with modern peacekeeping that tends to be given multiple mandates. As Tim Ford makes evident in a subsequent chapter, the lack of common and complete peacekeeping doctrine and the under-developed UN mission rules of engagement often cause confusion and a consequent lack of understanding as to how force could be applied at the tactical level.²⁴ This poses a challenge to the international law on peacekeeping, requiring us to consider whether and, if affirmative, how a cohesive military doctrine can be developed in such a way as to ensure the integrity and consistency between multiple mandates and UN mission rules of engagement.

More specifically, Gillespie is hoping that the development of the responsibility to protect concept will ensure the security and protection of the local population.²⁵ However, it is expected that it becomes more difficult to have clear, credible or achievable mandates as the number of tasks given grows. How are different mandates to be reconciled, for example, when the protection mandate contradicts a more traditional peacekeeping mandate during an actual operation in the field? It is interesting to note Gillespie's remark that the need to ensure the protection of the local population 'was behind the Australian government's decision to work with regional countries to establish the International Security Force (ISF) in Timor-Leste in 2006' outside the UN's control.²⁶ A more explicit and critical analysis of the recent development of UN peacekeeping from the ADF's point of view would have helped clarify the ADF's concerns about contribution to UN-led peacekeeping operations.

The key impetus to the development of improved whole-of-government approaches to peacekeeping, James Batley argues, is the involvement of DFAT

²² K Gillespie, 'The Australian Defence Force and Peacekeeping' in Horner et al, above n 5, 113–29.

²³ Ibid 114–17.

²⁴ T Ford, 'Commanding a Multinational Force' in Horner et al, above n 5, 203, 207.

²⁵ Ibid 117–18.

²⁶ Ibid 118.

personnel at the high level of peacekeeping missions.²⁷ Although DFAT's active involvement with a great degree of flexibility in regional peacekeeping efforts has proven to be fruitful, the concern for resources remains due to the relatively small size of the department.²⁸

The larger in size is the AFP whose peacekeeping contribution also symbolises the shift from military-led to multi-agency approaches. The Regional Assistance Mission to Solomon Islands (RAMSI) in 2003 marked a watershed for AFP's involvement in peacekeeping, as Australia's first police-led, military-supported regional multi-agency stabilisation and restoration operation.²⁹ Dahlstrom and Steedman identify and highlight three aspects of the AFP's key strength that reflect its depth and diversity of skills: (1) the ability to understand and manage the emotions of the local population by working within the community; (2) flexibility in a use-of-force continuum that ranges from the minimum force necessary through to lethal force; and (3) contribution to capacity building by supporting and strengthening the development of a justice system.³⁰ However, as described by Geoff Hazel,³¹ there are difficulties in securing from different countries police officers with adequate qualifications, status, rank, and training necessary to make effective contribution to capacity-building for police and justice sectors.³² Furthermore, careful planning would be required to consider to what extent civilian police are trained and equipped to manage the escalation of armed violence in volatile situations and how the response to the escalating violence should be coordinated with the military. The recent establishment of the Asia-Pacific Civil-Military Centre of Excellence is encouraging and is expected to address those challenges as future agendas.³³

The new demands for and tasks assigned to peacekeepers, such as the protection of local civilians and security sector reform, are also emphasised from the NGO's perspective by Michael G Smith.³⁴ However, different cultures and values that military forces and humanitarian workers embrace could affect the delivery of services and the rebuilding of the community for sustainable development, which on occasion makes NGOs reluctant to cooperate too closely with peacekeeping forces.³⁵ The traditional approach to the relationship between military forces and humanitarian workers has been military-NGO coordination in

²⁷ J Batley, 'Lessons from the Neighbourhood' in Horner et al, above n 5, 130–35.

²⁸ Ibid 136–37.

²⁹ T Dahlstrom and J Steedman, 'Full Spectrum Policing' in Horner et al, above n 5, 138, 142.

³⁰ Ibid 146–47.

³¹ G Hazel, 'Police in Peacekeeping' in Horner et al, above n 5, 153–70.

³² Ibid 160–65.

³³ The Centre's website is available at <<http://www.civmilcoe.gov.au/web.php>> (last visited 10 April 2010).

³⁴ M G Smith, 'Non-Government Organisations and Peacekeeping' in Horner et al, above n 5, 171–94.

³⁵ Ibid 176.

the provision of logistical support, communications and transportation in the humanitarian space secured by the military.³⁶ While welcoming the recent military involvement in humanitarian activities, Smith calls for careful planning of cooperation requiring a holistic approach that emphasises strong linkages between more traditional state-centric security and human security.³⁷ The significance of coordination between the military and civilian components of a mission is acknowledged from the practical point of view by John Sanderson reflecting on his commanding experience in Cambodia.³⁸ Yet Smith goes further by proposing that the scope of coordination be extended to include NGOs outside the official mission.

Central to Smith's idea of human security as strategic guidance is that peacekeeping operations 'should be planned and implemented through a protection prism to help forge greater understanding, coordination and closer linkages between the responsibilities of the host country, the military and police, UN agencies and NGOs'.³⁹ As Gillespie examines in a previous chapter, the protection of the local population is certainly on the ADF's agenda, and yet it is unclear whether the ADF and NGOs perceive and incorporate the same idea in the same way. In fact, the protection agenda was, Gillespie argues, behind the Australian government's decision to establish ISF in Timor-Lester outside the UN,⁴⁰ whereas Smith, adopting the NGO perspective, preferred deployment under the unitary control of the UN.⁴¹

The four chapters share the authors' personal experience in different positions in UN peacekeeping operations: John Sanderson reflecting on his challenging journey of commanding a large multinational UN force in Cambodia — the first modern peacebuilding type of UN operation;⁴² Tim Ford describing the difficulties in commanding multinational operations;⁴³ Keith Howard, Paul Symon, Ian Gordon, and Andrew Meacham providing their own personal stories at different stages of the UN Truce Supervision Organization (UNTSO) operation in the Middle East since 1956;⁴⁴ and Erica Hanisch providing a candid, albeit brief, story of her own, facing gender-oriented bias that resides in police culture of different countries.⁴⁵ Although a number of lessons can be drawn from those personal experiences, one important point demonstrated throughout is the high standard of

³⁶ Ibid 179.

³⁷ Ibid 179–80.

³⁸ J Sanderson, 'Command in Cambodia' in Horner, et al, above n 5, 197–202.

³⁹ Ibid 185.

⁴⁰ Gillespie, above n 22, 118.

⁴¹ Smith, above n 34, 187.

⁴² Sanderson, above n 38.

⁴³ Ford, above n 24.

⁴⁴ K Howard, P Symon, I Gordon, and A Meacham, 'Observers in UNTSO' in Horner et al, above n 5, 209–16.

⁴⁵ E Hanisch, 'A Career in International Policing' in Horner et al, above n 5, 217–20.

professionalism that Australian peacekeepers have been maintaining, which has guided through often challenging situations that confront UN operations where there are no agreed operational standards or common military procedures. This professionalism also underwrites Australia's contribution to disarmament operations such as mine action and weapons inspection.

Ian Mansfield and Rod Barton introduce two contrasting episodes of disarmament operations. Mansfield reviews Australia's contribution to mine action, which has provided purely technical, yet significant support outside formal UN peacekeeping missions.⁴⁶ In contrast, Barton examines highly politically charged missions of weapons inspection in Iraq focusing on Australia's contribution to the UN Special Commission (UNSCOM).⁴⁷ He rightly points out that 'it would have been asking a lot of the inspectors to advise the Security Council that Iraq was free of weapons given the games that Iraq was playing'.⁴⁸ Both episodes illustrate difficulties involved in the third party's effort to secure the implementation of disarmament where belligerent parties are unable or conceivably unwilling to cooperate in disarmament. Mansfield positively evaluates the subsequent adoption of the Ottawa Convention to ban anti-personnel landmines as having set the framework for many countries to deal with mines.⁴⁹ It would be interesting to see how Barton might consider the current debate and potential development regarding legal regulation on nuclear weapons, given the difficulties he identifies in the weapons inspection operation with the most far-reaching powers that could ever be granted.

The two concluding chapters by Tim Ford and Ramesh Thakur review the history, the current debates and developments, and future prospects of peacekeeping in general.⁵⁰ Although some readers might find those reviews useful in keeping the grasp of the trajectory of peacekeeping, neither of them disappointingly contribute to the overall aim of this volume to explore how Australian peacekeeping policy and practice develop and overcome challenges that confront Australian peacekeepers. This is particularly so, given that both authors identify as an issue for consideration the tension between UN-led peacekeeping and non-UN initiatives by, for example, regional organisations and coalitions of willing states.⁵¹ This tension, involving a difficult choice from Australia's perspective, is of special significance, particularly given the current trend of peacekeeping deployed for the rising number of conflicts for an unspecified period of time with limited financial and military resources.

⁴⁶ I Mansfield, 'Landmines, Australians and Peacekeeping' in Horner et al, above n 5, 223–34.

⁴⁷ R Barton, 'Weapons Inspections in Iraq' in Horner et al, above n 5, 235–40.

⁴⁸ Ibid, 240.

⁴⁹ Mansfield, above n 46, 234.

⁵⁰ T Ford, 'Past Experiences, Future Prospects' in Horner et al, above n 5, 243–54; Ramesh Thakur, 'Yesterday, Today, Tomorrow' in Horner et al, above n 5, 255–72.

⁵¹ Ford, *ibid* 253–254; Thakur, *ibid* 270–71.

Due to the variations in focus and perspective, it is not clear to what extent the overarching objective of this volume to examine the values of Australian peacekeeping policy and practice in the historical context is achieved. *Australian Peacekeeping*, nevertheless, raises important legal issues for Australia's future direction and role in peacekeeping. Given the emergence of the responsibility to protect doctrine, should Australia re-consider the way in which to decide its participation in peacekeeping? What mechanism(s) should be developed to enhance the accountability of the Australian government in decision-making on deployment or of peacekeepers in the course of implementing their mission? Under what circumstances should Australia choose to deploy peacekeeping missions outside the UN's control, and does it pose a legal challenge to the current collective security mechanism under the UN Charter? How could Australian peacekeepers meet the challenge of implementing multiple and often competing mandates? What level of cooperation or coordination is appropriate for achieving the protection agenda between the military and civilian components of a mission and humanitarian NGOs? Australia has a rich and distinguished history in peacekeeping, contributing to its good reputation by Australian peacekeepers' service in often challenging and volatile situations. Yet, Australian peacekeepers can and should do more and need to be prepared for complex and integrated missions of the future. To that end, it is imperative to develop an Australian doctrine of peacekeeping that addresses those questions identified above and to lead the international community, particularly in the Asia-Pacific region, in meeting the challenges posed to peacekeepers.

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