

The Ethics of Peacekeeping

PRESENTATION

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Introduction:

In September of 2000, members of the 3rd Battalion, 504th Parachute Infantry Regiment, 82nd Airborne Division in Kosovo, were charged with using excessive force against members of the Albanian and Serbian communities they were sent to protect. Among the things they were accused of was threatening people they had detained in order to get information regarding operations of Albanian splinter groups who were undermining the fragile peace in the area. What is also interesting, is that investigators attributed the guidance of the unit's commander as well as the unit's motto as directly contributing to these acts. They found that the guidance to "identify and neutralize" and the motto "shoot them in the face" created a set of conditions that gave the members of the unit cause to use what the investigators deemed as excessive force.¹

It is interesting to note that the commander, and presumably many in his chain of command, saw this guidance not only as morally reasonable, but also essential to accomplishing the mission. According to the commander, "to be successful at maintaining security in this area and policing the area, you have to eliminate the people that (sic) were causing the problems."² To do this, he concluded, one must identify and neutralize them.

While the tasks "identify and neutralize" do not require the use of deadly force, the motto "shoot 'em in the face," suggests that the members of that unit saw its use as central to how they would conduct operations in the region. In fact, a number of the soldiers complained to investigators that they had expected to be going into combat and felt unprepared for peacekeeping operations.³

Thus "shooting 'em in the face" seemed to be an appropriate way to go about business. In combat soldiers use the most force they can to defeat the enemy. The enemy may be hard to identify, and he may also be hard to neutralize, but once identified, shooting him in the face *as a first resort* is a perfectly appropriate way for a soldier to accomplish his mission. By this standard, then, aggressively interrogating and detaining people who may or may not be combatants is considerably restrained.

The problem is that it is not a perfectly appropriate way for a peacekeeper to accomplish his mission. It is telling that no one prior to the incident seemed to have ever questioned the appropriateness of that slogan for a peacekeeping unit.

They did not because the members of the 82nd do not conceive of themselves as peacekeepers, but as soldiers. And while the Just War Tradition (JWT) clearly rules out

¹ *Army Probes Soldiers' Reported Misconduct in Kosovo*, Cable News Network, 18 September 2000. <http://europe.cnn.com/2000/US/09/19/ussoldiers.kosovo.ap>

² Ibid.

³ Ibid. See also *For 82nd Officers Punished for Bad Behavior in Kosovo*, Army Times, 28 August 2000.

many, though not all, of the acts that the soldiers of the 3/504 were accused of, it does not rule out the guidance of the commander or the motto of the unit. Yet it was this guidance which investigators blame for the excessive use of force.

When we charge soldiers with winning wars we expect them to use as much force as is permissible in accordance with the JWT to achieve their objectives in order to achieve peace. Soldiers, in fact, experience this charge as a moral imperative and balance it with other moral imperatives captured by the Just War Tradition.

In peacekeeping missions, however, we expect them to maintain peace, and we maintain peace by using the least force possible. It simply does not make any sense to breach the peace in order to preserve it. *If this is true, then there is a fundamental gap between the ethic of war and the ethic of peacekeeping which needs to be resolved if soldiers and their commanders are going to correctly understand the moral requirements of using force in these operations.*

And as the situation of the members 3/504 demonstrate, this is not merely an academic issue, but one that has profound implications for how soldiers should conduct themselves in such operations.

The Law and Morality of War:

When soldiers consider how to accomplish their ends, they are legally, morally, and pragmatically obligated to consider how much force to use.⁴ As a general rule of thumb, the more indirect and long range direct fire soldiers can put on an objective is inversely proportional to the amount of resistance they will experience when they try to take the objective. The less the resistance, the less the cost in friendly soldiers' lives necessary to take the objective. Thus, the more force soldiers apply, the less risk they have to take in order to accomplish their missions. Viewed this way, what soldiers understand as the amount of force necessary is that which reduces risks to soldiers the most. Sometimes, however, the application of this force endangers non-combatant lives and property. Because of this, soldiers must also ask how much force *should* they apply.

In order to limit the misery caused by war, the law and morality of war attempt to answer the question of "how much" by requiring soldiers to consider certain rules, principles, and consequences that may restrain the amount of force they may apply.⁵ To determine how much force they should place on an objective, soldiers must temper their judgments not only with the pragmatic concern of how much is practical, but also with the moral and legal concern of protecting non-combatant lives and property. A

⁴ The use of the word "force" throughout this paper is synonymous with "deadly force." For the sake of simplicity, I am not considering uses of force that do not have the potential to kill or seriously injure someone.

⁵ The way moral and legal considerations shape the use of force is quite complex. While moral and legal considerations do limit the misery caused by war, this does not always (though it does usually) entail limiting the amount of force a soldier should apply. For a more detailed discussion, see my monograph *Peacekeeping and the Just War Tradition* (Strategic Studies Institute, Carlisle Barracks, PA, September 2000) Appendix A.

commander may be able, with a high degree of accuracy, to place a single bomb in a specific building, but he cannot always be sure how many civilian lives will be lost if he does so. And though there is nothing in the law or morality of war that absolutely prohibits him from doing so, he is morally and legally required to take into account the due care he owes civilians when deciding how much and what kind of force he will use. Often, this means limiting the amount of force soldiers may want to apply and this will correspondingly raise the amount of risk his soldiers have to take. Thus there is a tension between the amount of due care commanders owe non-combatants and the amount of due risk they and their soldiers are expected to take in order to accomplish military missions.⁶ Since lowering risks to soldiers is also closely associated with increasing the likelihood of overall success, soldiers and their leaders experience it as a moral imperative of considerable force.

Given the logic of warfare, it is always in the commander's interest to place as much force as is morally and legally permissible on any particular objective in order to preserve soldiers' lives. This means when commanders and their soldiers determine what is necessary, they are always asking themselves how much force is allowable, not how little is possible. What is necessary when resolving the tension between due care and due risk is minimizing risk, not force. The most force allowable then becomes the *necessary* force since it is what is necessary to preserve soldiers' lives without violating the law or morality of war.

However, as the incidents with the 3/504 PIR suggest, sometimes and in some situations soldiers are morally obligated to consider the least force possible—given that this force is sufficient to accomplish the mission—when deciding how much force is necessary to apply. *If this last view is true, then it is the case that the law and morality of war do not extend well into certain kinds of missions.*

Proportionality, Discrimination, and the Doctrine of Double Effect:

The moral and legal distinctions of *jus in bello* are captured in the concepts of proportionality and discrimination. Proportionality requires soldiers to do more good than harm. Discrimination requires that soldiers distinguish between legitimate and illegitimate targets AND only engage legitimate ones.

These distinctions are both found in the doctrine of double effect which is one of the more restrictive provisions of the JWT, which is that body of thought that represents soldiers' struggle with the tension between winning and fighting well.

The doctrine of double effect is a Christian doctrine first formulated by St. Thomas Aquinas as a response to St. Augustine's moral prohibition against self-defense.⁷

⁶ James M. Dubik, "Human Rights, Command Responsibility, and Walzer's Just War Theory," *Philosophy and Public Affairs* 11, no. 4 (1982): 355.

⁷ Paul Christopher, *The Ethics of War and Peace: An Introduction to Legal and Moral Issues* 2nd ed. (New Jersey: Prentice Hall, 1999) 52. Augustine held that self-defense was inherently selfish and that acts motivated by selfishness were not morally justifiable since selfishness is not morally justifiable.

This doctrine results from the recognition that there is a moral difference between the consequences of our actions that we intend and those we do not intend, but still foresee. Thus, according to this doctrine, it is permissible to perform a good act that has bad consequences, if certain other conditions hold. Those conditions are: 1) the bad effect is proportional to the desired military objective 2) the bad effect is unintended, 3) the bad effect is not a direct means to the good effect and 4) actions are taken to minimize the foreseeable bad effects, even if it means accepting an increased risk to soldiers.⁸

Applying the Law and Morality of War to Peacekeeping:

On 21 January 1996, an AK-47 let loose near a US dismounted patrol in the Zone of Separation. As rounds ripped through the troop formation of D Company, 3d Battalion, 5th Cavalry, the soldiers realized that this fire was not celebratory and instinctively sought cover. Tumbling behind the protection of their overwatching M2 Bradley Fighting Vehicle, the patrol chambered rounds and brought their weapons off safe.⁹

From this point, the soldiers had at least three possible courses of action that cover the spectrum from assuming no risk at the expense of civilian lives to accepting too much risk at the expense of accomplishing the mission:¹⁰

- 1) Use the Bradley 25 mm main gun and fire in the direction of the gunman. This would cause the most damage and most likely result in the death of gunman as well as some others (if there were any) in the building. This would pose the least amount of risk to the soldiers.
- 2) Leave cover and, using squad fire and maneuver techniques, assault the gunman's position. As long as they only fired at the gunman, this course of action posed the greatest risk to the soldiers, but would likely result in the least amount of civilian casualties.
- 3) Remain behind cover and allow the situation to develop until a way could be found to take care of the gunman without exposing soldiers or civilians to any risk. In this course of action they accept no risk, but do no harm.

According to the legally binding consideration of proportionality, the soldiers would be permitted to pursue any of those courses of action. If the harm is simply the death of the gunman and the destruction of some property and the military gain is that peace is maintained, a belligerent is eliminated, and soldiers lives are protected, it would

⁸ Ibid., 93.

⁹ David Fastabend, "The Categorization of Conflict," *Parameters*, Summer (1997): 75. <http://carlisle-www.army.mil/usawc/Parameters/97summer/fastaben.htm>

¹⁰ There may have been other options. However, whatever other options there may have been, they would have fallen along the same spectrum created by the tension between due care and due risk.

be hard to argue that the first course of action, though it is the most destructive, would not be permitted.

Furthermore, even if it was likely that there were some civilians in the building, it is still the case that the soldiers would be permitted to risk injuring or killing them. Unless the building was clearly marked “Hospital” or was obviously occupied by a number of civilians, any civilians inside would not enjoy any protection from the law and morality of war. Given that several soldiers’ lives could potentially be saved and given the added gain of eliminating the belligerent, the balance would tip in favor of permitting course of action one.

The choice is further complicated by the fact that the mission (maintaining the peace) depended to a large degree on how the people regarded the peacekeeping force. They could not appear too reluctant to use force (thus compromising their credibility), but neither could they afford to apply force too strongly (thus compromising their neutrality)—that would alienate subgroups and make their job more difficult and dangerous. In fact, it was the failure to properly balance this tension that led to the failure of the UN mission in Bosnia, which precipitated NATO’s involvement.¹¹

In addition to the condition of proportionality, double effect also holds that the bad effect must be unintended. In this case, the soldiers may plausibly argue they only wanted to eliminate the threat the gunman posed to them and to the peace. That others might be harmed would certainly be unintended, especially since the soldiers did not intend to be shot at.

Double effect also holds that the bad effect must not be a direct means to the good effect. In this case, even with course of action one, the soldiers are not destroying the building to stop the gunman nor are they putting civilians at risk as a means to stop the gunman. Thus, this condition would also hold.

Finally, soldiers must act to minimize the foreseeable bad effects, even if it means accepting an increased risk to themselves. This is the most restrictive element of this doctrine and may make it hard to justify course of action one. But even this condition has limits. Soldiers are not required to take risks that may lead to them not being able to accomplish the mission at hand or make it likely they will not retain enough fighting capacity to continue to accomplish additional missions.¹²

One way to resolve the tension of due care and due risk is to adopt a course of action where one assumes no risk and does no harm—course of action three. Soldiers could always refuse to apply force when the possibility of civilian casualties exists and when any other course of action would place additional risk on the soldiers themselves. This would often be, however, at the expense of mission accomplishment. Thus such a refusal would be tantamount to refusing to accomplish a mission, and this is a course of action seldom available to the soldier.

¹¹ Richard Holbrooke, *To End a War* (New York: The Modern Library, 1999) 69 and 72.

¹² Michael Walzer, *Just and Unjust Wars* (HarperCollins, 1992) 157.

It is important at this point to acknowledge the complexity of this particular situation. It is a legitimate question in the context of this scenario whether accepting no risk and doing no harm was, in fact, the best means to accomplish the mission. In this case it is not clear. Nonetheless, course of action three would only be a permissible option if it *were* the case that it was the best way to accomplish the mission. What *is* the case is that soldiers are not permitted to resolve the tension between getting the job done and getting it done in a moral fashion simply by walking away. Soldiers have a *prima facie* obligation to accomplish properly assigned missions, and thus can only be obligated, as argued before, to consider the maximum permissible force, not the minimum possible force.

Thus in this situation, the maximum amount of force permissible would balance the additional risk inherent in course of action two with considerations of mission accomplishment. But the fog of war makes such judgments problematic. What the soldiers could not know was if there were other gunmen or what other weapons the gunman had. It was certainly conceivable that he could have been equipped with anti-tank weapons that could have damaged the Bradley. Also, it is not clear from the example how risky an assault from their current position was. If there were inadequate cover and concealment or if they would have had to remain exposed for long periods in order to get to the gunman, it is likely that this condition would also hold.

If any one of these considerations were true—and there would be no way for the soldiers at the time to know otherwise—then choosing course of action two over course of action one would no longer be morally obligatory. So again, the application of the Just War Tradition would not preclude choosing the most damaging and lethal of the possible courses of action. Thus, the law and morality of war would permit the soldiers to eliminate the gunman, even if it meant killing civilians.

The Problem for the JWT: There's a Difference between War and Peace

For the Just War Tradition, the appropriate end of all wars is a “better state of peace.”¹³ Such a peace must be more secure than the peace before the war was fought. This means it must be the kind of peace in which parties in conflict can and *want* to resolve conflicts non-violently.¹⁴ Thus while an absence of fighting is a necessary condition for peace, it is not a sufficient one. Parties in conflict must have available to them peaceful means to resolve conflicts of interest.

For peace operations, the endstate, then, is a “settlement”, which is defined as “a resolution by conciliation among the competing parties, rather than termination (of the conflict) by force.”¹⁵ Thus, the condition of “peace” may be understood as that set of conditions that permit non-violent resolution of conflicts of

¹³ Walzer, 121.

¹⁴ Ibid.

¹⁵ US Army Field Manual FM 100-23 (Peace Operations) (Headquarters, Department of the Army, Washington, DC, December 1994) v-vi.

interests among individuals and groups. This does not mean groups or individuals will always seek non-violent means to resolve conflicts; but it does mean that those means are available and that they are the preferred and normal means of resolving conflict.

To achieve this settlement, the military primarily conducts two kinds of operations: peace enforcement and peacekeeping. In peace enforcement operations, the sides have not agreed to a settlement and must be compelled to do so. In peacekeeping operations, the warring sides have agreed to a settlement, but require outside assistance to ensure compliance.¹⁶ If peace is understood in this way, peace enforcement operations resemble a conventional conflict, in which peace must be established. Peacekeeping resembles the domestic situation, in which individuals and groups have non-violent means to resolve conflicts, though may not always agree to use them. Thus, even though the Just War Tradition can apply to peacekeeping operations, the operations themselves more resemble the domestic situation in which police operate. As will be demonstrated, this will have important implications for how soldiers *should* conduct themselves.

In the example above, the soldiers chose course of action three, the one that involved the least risk to themselves, the least harm to others, and, which some later argued, the most risk to mission accomplishment.¹⁷ In fact, in the aftermath of the incident, the soldiers were both criticized and praised for the decision they made. Most of the debate revolved around determining the kind of operation they were engaged in.

Some argued that their purpose was to establish peace where there was none. By failing to send a clear and decisive signal to all the factions that NATO forces would impose peace, even at a cost to civilian lives if necessary, the soldiers had sent a clear signal that it was now “open season on IFOR.”¹⁸ Others argued that their purpose was to maintain the peace established by the Dayton Accords.¹⁹ They further pointed out that killing everyone who posed a threat, no matter how minimal that threat might be, would only serve to polarize the factions against IFOR and make maintaining the peace even more difficult.²⁰

Certainly, when settling the issue of “should” soldiers must also consider a practical dimension. What the soldiers should do does depend on what will most likely facilitate mission accomplishment. A problem does arise for soldiers, however, because there was no agreement on what the mission really was. It is interesting to note that pragmatically speaking, right or wrong depended on an accurate understanding of what purpose the soldiers in fact served. Since this purpose has a moral dimension, in addition to the practical conundrum, soldiers must also deal with its moral analog.

¹⁶ Ibid., 111-112.

¹⁷ Fastabend, 75.

¹⁸ Ibid., 77.

¹⁹ Ibid.

²⁰ Richard Holbrooke’s analysis suggests the latter interpretation is the more appropriate and that NATO troops were there to maintain, rather than impose, peace. Holbrooke points out that “[i]n any case, we would not employ American or other NATO troops absent ironclad guarantees from all three parties concerning their safety, access, and authority...*There is no peace without American involvement, but . . . there is no American involvement without peace.*” 218.

Resolving the Problem for JWT: An Argument by Analogy

While such ambiguity does make it difficult for soldiers to make certain practical decisions, as argued before, these are not the *only* considerations soldiers must make. Further, just as the judging the best practical course of action depends on settling the issue of ends, as the ends change so to some degree do the ethical requirements of the application of force.

If we look at this situation from the analogous position of the police officer, much of the moral ambiguity is clarified. Police maintain, rather than establish peace. Thus, it does not make sense for police officers to breach the peace in order to maintain it. If a sniper were firing from a building that contained civilians, we would not likely claim that the police were morally permitted to use the maximum force allowable under the principles of proportionality or doctrine of double effect. Even if a sniper were likely to kill several people if he were allowed to remain in the building, it would still not be permissible to destroy the building if by doing so innocent people would be killed. Even in extreme cases, police are obligated to try *every* possible course of action that preclude civilian casualties before they would be morally permitted to engage in a course of action that could potentially lead to civilian casualties. But, from the standpoint of the law and morality of war, this just is not the case.

This is not to say that police are prohibited from taking some risks that might place civilian lives in danger. For example, police are permitted to engage in high-speed pursuits even though such pursuits can and have resulted in accidents in which innocent bystanders have been killed. The difference is police are not permitted to engage in such pursuits, or any other activity in which they *know* civilians *will* be killed or seriously injured.²¹ But, as discussed above, there are many conditions under which such actions would be permissible for soldiers.

Of course, it remains to be shown that this analogy is, in fact, appropriate. Soldiers, after all, protect the nation from external threats, while police protect it from internal ones. Soldiers traditionally fight wars; police traditionally protect the peace. It would seem unfair then to claim that moral truths from one professional ethic should then inform the other. Nonetheless, as soldiers find themselves more and more in situations where there is a peace, even though it may be a tenuous one, the military profession would do well to reconsider some of the principles upon which they base their legal and moral judgments.

Extending the JWT: When Soldiers have to Act Like Police

When it is the case that there is no peace and that it must be established, it only makes sense to think of applying as much force as is permissible given the law and morality of war. This facilitates the defeat of the enemy, and defeat of the enemy facilitates the reestablishment of peace—the appropriate end of all wars. However, in

²¹ John Kleinig, *The Ethics of Policing*, (Cambridge: Cambridge University Press, 1996) 118-122.

peacekeeping situations the peace exists. It may be tenuous, and as the above discussion indicates, not always recognized, but it exists nonetheless.

When peace exists, people who break the peace are more like criminals than soldiers in that they destroy the security the rest of the society enjoys as a result of this state of peace. However, because those who break the peace are more like criminals, they enjoy roughly the same kinds of rights and protections that criminals generally enjoy—namely, a presumption of innocence.

To underscore this point, as well as underscore the gap between how police and military consider the application of force, consider the following example that occurred during the riots in Los Angeles in 1992:

Police officers responded to a domestic dispute, accompanied by marines. They had just gone up to the door when two shotgun birdshot rounds were fired through the door, hitting the officers. One yelled 'cover me!' to the marines, who then laid down a heavy base of fire . . . The police officer had not meant 'shoot' when he yelled 'cover me' to the marines. [He] meant . . . point your weapons and be prepared to respond if necessary. However, the marines responded instantly in the precise way they had been trained, where 'cover me' means provide me with cover using firepower. . . . over two hundred bullets [were] fired into that house.²²

The good news is that no one was hurt. What is interesting about this example is that even in the face of mass rioting, where peace and civil authority were tenuous and not always recognized, it was still inappropriate, from the police officers' point of view, for the Marines to respond the way they did. At one level, such a response was probably imprudent. At another, it was certainly immoral.²³ If the morally appropriate end of the use of force is to maintain the peace, it does not make sense, especially moral sense, to breach the peace in order to preserve it. Though there was a riot in progress, the civilians in question were not directly partaking in it. Though the peace was being disrupted elsewhere, it was not being abandoned everywhere. Thus, the Marines responded to a potential breach of the peace with an actual breach of the peace. This would make them morally culpable for any further breaches of the peace their actions engendered.²⁴

²² James D. Delk, *Fires & Furies: The L.A. Riots* (Palm Springs, Calif.: ETC Publications, 1995). Quoted in Christopher M. Schnaubelt "Lessons in Command and Control from the Los Angeles Riots," *Parameters*, Summer, (1997) 1.

²³ I wish to emphasize that the judgment of immorality is against the act, and not the Marines in question. They were acting in good faith in accordance with their training and their understanding of the situation. Since what I am arguing is not generally accepted at this point, it would be unreasonable to hold any particular individual responsible for not acting in accordance with it.

²⁴ Kleinig points out that, "the use of force represents a nonrational and nonloving response to a situation involving conflict between rational beings, it does nothing to defuse, but only serves to perpetuate, and may even magnify the violence" 98. This suggests that resorting to violence to preserve the peace will only serve to escalate the violence until one side has run out of the capacity to continue acting violently. Peace may eventually be restored, but only at a cost. This underscores why police should never resort to deadly force before they have attempted all other possible courses of action. It also suggests they are partially responsible for any further violence if they do.

Furthermore, while rioting may represent a massive disruption of the peace, it is not the same as the destruction of the peace. This of course begs the question regarding what to do in the face of large angry mobs, who are obviously bent on disrupting, if not destroying, the peace. It also begs the question regarding the differences between a mob and an army. Given the way belligerents have conducted themselves in the Balkans, in Rwanda, as well as in other ethnic conflicts, it is not always easy to tell.

Nonetheless, it can never be the case that police could be morally permitted to resort to deadly force first, setting aside the presumed innocence of any suspect as well as the right of innocent civilians not to be killed or severely injured. For it to be moral for police to do this, it would have to be the case that where conditions of peace do not exist or are tenuous at best, it would be appropriate for police officers to adopt the law and morality of war to guide their actions. I suggest, however, that this is rarely the case. Soldiers, when acting as soldiers fight enemies; police, when acting as police protect citizens. They may have to harm certain citizens in order to do so, but this can never be a first resort, even in the face of a large angry mob.²⁵

This is because it is a different and probably dangerous thing for police to consider as “enemies” any members of the community whom they are sworn to protect. The political philosopher Carl Schmitt labeled the enemy distinction: “the utmost degree of intensity of . . . separation.”²⁶ Enemies represent the most intense threat there can be to the security of a community. The presence of an enemy represents the absence of peace. As such, the enemy becomes the class of persons it is permissible to kill since failure to defeat or at least contain them would mean the loss of the community, and the loss of peace. Since citizens, even ones suspected of committing a crime, do not represent the same threat that enemies do, they do not belong to the class of persons it is permissible to kill. Only when a citizen presents him or herself as a threat to other citizens may police be permitted to use deadly force, and then only after they have tried other means to apprehend the citizen peacefully.²⁷

Of course, the police-peacekeeping analogy is not without weaknesses. Peacekeeping operations are different from those on the domestic front, even in situations where peace is tenuous and not universally recognized. In domestic situations, police and soldiers rarely, if ever, are permitted to view the citizens they protect as enemies. In peacekeeping, soldiers are sent to restore and then preserve peace by preventing groups, *who are not their enemies* from breaching the peace. In spite of this, they are unlike police in that soldiers on peacekeeping missions are neither a part of the community they find themselves in nor are they going to be a part of it. Furthermore, while neither group involved in the conflict is an enemy to the peacekeepers, they are enemies (or at least were) of each other, thus there is a potential for peacekeepers to *become* enemies, which does not exist for police.

²⁵ Kleinig, 116-117.

²⁶ Carl Schmitt, *The Concept of the Political* trans. George Schwab (Chicago: The University of Chicago Press, 1996) 26.

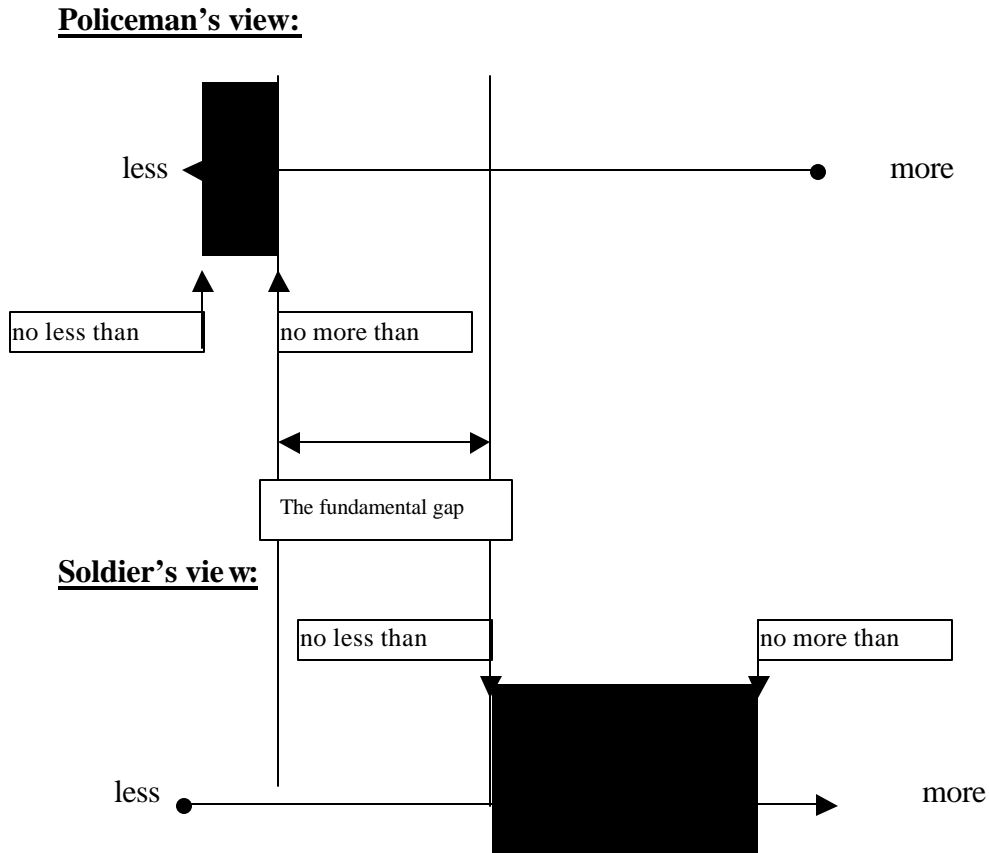
²⁷ Kleinig, 116.

This last point is significant. In a guerrilla war, like Vietnam, it is hard to discern who the enemy is; but this is different from what troops face in places like Bosnia, where it is not even clear that there is an enemy. Logically, where this *is* hard to discern, the morally (as well as practically) appropriate course of action may also be hard to discern. While this will have important implications for the specific policies and rules of engagement for certain operations, it does not alter the principle of using the least amount of force possible when a state of peace exists. Thus, ultimately, the analogy holds.

What is not clear is that the analogy holds in the other direction. When police find themselves in situations where the peace must be established, can the ethic of war apply to them? While I am reluctant to grant it, the argument does imply that when individuals or groups identify themselves as an enemy, the police would be permitted to employ the doctrine of double effect when dealing with them. This would mean they would be permitted to use the most force allowable under that doctrine, even if it meant killing or seriously injuring innocent civilians.

Though the argument does seem to imply this, it also implies that such situations will be rare. Recall that to be an enemy, an individual or group must represent the existential negation of the community and their success must represent the absence of peace. I would argue that even terrorist groups do not usually, if ever, represent this level and kind of threat. However, as the threat they represent increases, selective suspension of this prohibition becomes permissible. For example, police may not be required to attempt to capture a terrorist if by doing so they will not likely be able to stop him from detonating an explosive in a crowded area (for example the bombing of the Olympics in Atlanta). I would argue, however, that they would not be morally permitted to risk harming an innocent civilian to do so unless the threat is an unusually great one.

Having said this, it is certainly the case that there is room for judgment in both police and military applications of force. It may seem as though police are merely lowering the maximum amount of force permissible, rather than applying the minimum possible, so that they may afford protection to a larger group of people than soldiers must. However, this is not the case. There is a fundamental gap between the ranges of force permitted to soldiers acting as soldiers and police acting as police. (See figure below)



Police are obligated to apply force with a view to using the least amount possible and still accomplish the desired end (e.g. preventing a violent criminal from escaping), never exceeding so much force that an innocent person will be seriously harmed. When deliberating on how much force to use, police are obligated to first consider using the amount of force represented by the “no less than” arrow and are prohibited from using more force than is represented by the “no more than” arrow.

Soldiers are obligated to apply force with a view to using no more than the most amount permissible (given other legal and moral considerations), even if an innocent person is likely to be seriously harmed. In this figure, the “no more than” arrow represents the most amount of force that complies with legal and moral restrictions, but poses the least risk to soldiers. They are, of course not obligated to use this maximum force, as they are free to take more risk than may be morally required. However, they are not obligated to engage in a course of action where they apply so little force that they fail the mission or render themselves incapable of conducting future operations.

The gap exists because for soldiers the application of force is oriented toward the upper limit allowable. This makes sense since soldiers, when fighting enemies, are preventing the existential negation of the community. Soldiers, when acting as soldiers, are permitted to kill as a first resort and are permitted to engage in courses of actions that will result in the certain death of civilians (as long as the provisions of the doctrine of

double effect hold) because if they do not, the security the community enjoys may be lost. As we have seen, the problem arises when soldiers import an ethic designed to deal with enemies into an environment where there are none.

For police the application of force is oriented toward the least amount possible. When police apply force against a suspected perpetrator they are not permitted to use deadly force as a first resort and never if it is the case that the perpetrator is not likely to harm anyone (even if he or she is likely to evade capture otherwise). Furthermore, as stated before, police are never permitted to engage in any action that, if by doing so, will very likely result in the death or serious injury of a civilian.

Returning to our earlier example, the rules of engagement for the peacekeeping mission in Bosnia included the provision, "to 'use only the minimum force necessary to defend yourself.'" These rules also included additional provisions that restricted soldiers' authority to return deadly fire. "You may open fire against an individual who fires or aims his weapon at you, friendly forces, or persons with designated special status under your protection."²⁸ While this certainly reduced the amount of force permissible, it did not require the minimum amount of force necessary. Thus, such rules of engagement would permit the soldiers of D Company, 3-5 CAV firing on the sniper even if civilians would likely be harmed because it did not require them to rethink the concept of necessity. They also would not call into question the wisdom of a battalion motto like "shoot 'em in the face." The Just War Tradition only requires soldiers to understand "minimum necessary force" to mean the most amount of force allowable (in order to minimize risk) without violating the doctrine of double effect.

It is also the case that there is a confusion which arises from the gap between these rules of engagement and the moral requirements of peacekeeping. Sometimes soldiers have not use any force, even when appropriate. I have talked to a number of soldiers who correctly intuited that the use of force in the way soldiers are accustomed to understanding it is inappropriate in these situations. Thus, because they do not conceive of using force in the least amount possible, often opt to use no force at all.

Therefore, rules of engagement are not sufficient. In order to extend the law of war and by extension the morality of war on which it is founded to peacekeeping operations, we must understand that in certain military operations where the goal is to maintain peace, applying the least amount of force possible is morally obligatory.

So, where conditions of peace exist, soldiers, like police, must consider what is the least amount of force possible, rather than what is the most amount of force permissible. If there is a peace, even a tenuous one, it makes no sense to preserve it by engaging in courses of action that breach it. Where there is peace, there may be criminals who breach it, but they do not, by themselves, destroy it. It is true that police may harm criminals who will likely harm others, but it generally makes no sense to harm those others in order to prevent the criminal from doing so. To minimize the potential for harm

²⁸ Fastabend, 77.

to those others, those with the authority to use force must use the least amount possible, rather than the most amount permissible.

It is true that in many cases it is difficult for commanders and soldiers to know if they are in a peace maintaining or peace establishing operation. The discussion regarding the actions of 3-5 CAV was not merely academic. Though labeled a peace maintaining operation, there were times and places during the initial phases of Operation JOINT ENDEAVOR where it had all the characteristics of a peace establishing operation. It is also interesting to note that operations in Somalia fell under the doctrinal distinction of “peacetime” which the Army defines as those operations that are routine actions between nations.²⁹ This clearly would fall under the category of peace maintaining, though to those involved there were significant parts of the operation that were clearly peace establishing.³⁰

Such practical, as well as epistemic, difficulties make it currently impossible to apply the moral distinction I am recommending. However, this does not invalidate such a distinction, nor does it render it useless. Political leaders and senior commanders may label military operations in certain ways because of political concerns or limitations in the doctrinal vocabulary. But political and doctrinal distinctions do not necessarily map onto moral ones. As the nature of an operation changes on the ground, commanders and their soldiers must see their moral obligations more clearly by understanding how the condition of the state of peace in the area under their control should affect their moral decision making.

Policy Implications:

Several policy implications follow from the above arguments:

1) Just War Theorists, as well as those who rely on the Just War Tradition to form policy and law, must work to extend it to peacekeeping operations. It is not enough simply to declare the mission as peacekeeping and then conclude the police ethic applies. As suggested earlier, there is only a limited analogy between the police officer maintaining the peace at home and the soldier maintaining the peace abroad. For instance, for police officers the status of peace in their communities is relatively stable; thus, they do not need to be prepared to transition rapidly from one state of peace to another.

Such stability is not present for soldiers maintaining the peace abroad. If this were so, their presence would not be needed. Because of the potential for rapidly changing situations and, consequently, rapidly changing moral frameworks, it may not always be appropriate to adopt the police ethic, even when the warring parties have reached a settlement. For any particular situation, the answer will lie in resolving the tension that exists between the police ethic,

²⁹ Department of the Army, FM 100-5 *Operations*, (US Government Printing Office), 2-1.

³⁰ Lieutenant Colonel Stephen Parshley of United States Military Academy, interview by author, 28 October, 1999.

which is designed to preserve peace, and the Just War ethic, which is designed to establish it.

2) In peacekeeping operations, the language of operations orders and rules of engagement must be changed to better reflect the ethical demands of the environment. Rather than requiring soldiers to apply the minimum force necessary, they should, instead, require soldiers to only use that force which is the minimum amount possible to accomplish the mission.

3) Training for peacekeeping operations must be changed to reflect the requirements of the police ethic. As things stand now, when soldiers train, even for peacekeeping operations they still, for the most part, train to apply the maximum force permissible. Though ROEs typically restrict what is permitted compared to combat operations, they still permit, as argued earlier, courses of action which are not morally permissible.

4) If it is the case, that training a force to handle both situations renders the force ineffective at both, then the argument for establishing a separate peacekeeping force within the military becomes more compelling. It should be noted, however, that we would still not want to create a force that would *only* be capable of routine policing. Even in peacekeeping operations the peace is often unstable; such a force would have to be prepared to handle rapid shifts between peacekeeping and peace enforcement. Thus, it would have to be more robust and more flexible than a conventional police unit.

5) The argument also suggests that the current debate over non-lethal weapons should be resolved in favor of developing and deploying such weapons. While some are concerned that such weapons will “inadvertently bridge the gap between peace and war,” and thus lead us down the “slippery slope” to war,³¹ they do give soldiers a wider range of options in applying the minimum force possible. This ultimately makes it easier for soldiers respond appropriately to breaches of the peace without breaching it themselves.

6) This argument also suggests senior leaders should reconsider whether certain weapons and ammunition, currently not permitted for soldiers’ use, such as CS gas and “dum dum” bullets, should, in fact, be permitted. Though these can have undesirable effects, they too give the soldier a wider range of options for applying the least amount of force possible.³²

³¹ Lorenz, F.M., “Non-Lethal Force: The Slippery Slope to War?” *Parameters*, Autumn, 1996, 52.

³² While the Law of Land Warfare does not expressly prohibit CS gas, it does prohibit its first use in many situations. For this reason, military units seldom deploy with CS gas because it requires presidential approval to employ (FM 27-10 (The Law of Land Warfare), July 1956, 1-4). “Dum dum” bullets are made of soft lead and thus they expand when they enter the body. Because of this, they are prohibited because they do more damage to the individual than is necessary to accomplish conventional military missions. A problem arises in that the smaller, harder bullets are likely to pass through the individual and thus, in crowd situations, are more likely to strike others. This makes their use by soldiers trying to defend themselves against angry mobs more indiscriminate than it otherwise might be.

Conclusion:

Many questions and issues remain. As has been demonstrated, the epistemic issue of how a commander can know if a state of peace exists has not been settled. While I think it is entirely possible to settle this issue at the political level, until it is done, it will be difficult for military officers to know if an operation is peace enforcing or peacekeeping. When this distinction is uncertain, it will be difficult for soldiers to discern their moral obligations regarding civilians and their property. But what has been suggested is that answering this question will have moral as well as political significance.

In addition, as the incidents in Kosovo with the 3/504 PIR and the police-Marine incident in Los Angeles suggest, the actions that soldiers are trained to take in war-fighting missions may be inappropriate in peacekeeping missions. They have to do the right thing very quickly, without much time for moral-philosophical reflection. This means that training for war and operations other than war may be more difficult than anticipated.

What has been suggested is that as an area of operations transitions from a state of nature to a state of peace, what it means morally to apply force also changes. This means when such a distinction can be made, soldiers are afforded a powerful and practical conceptual tool for resolving the inherent conflict between the due care they owe civilians and the due risk they are obligated to take to achieve their objectives. By understanding the limits on necessity as applying the least amount of force possible rather than the most permissible under the doctrine of double effect, soldiers avoid the contradictory and self-defeating practice of destroying the peace in order to preserve it.³³

³³ I want to thank my colleagues at the United States Military Academy for reading and providing critical comments, especially Lieutenant Colonel Timothy Challans, Major Ben Danner, and Major Chris Ballard. I would especially like to thank Dr. Don Snider of the Social Sciences Department for his invaluable efforts in developing and editing this paper.